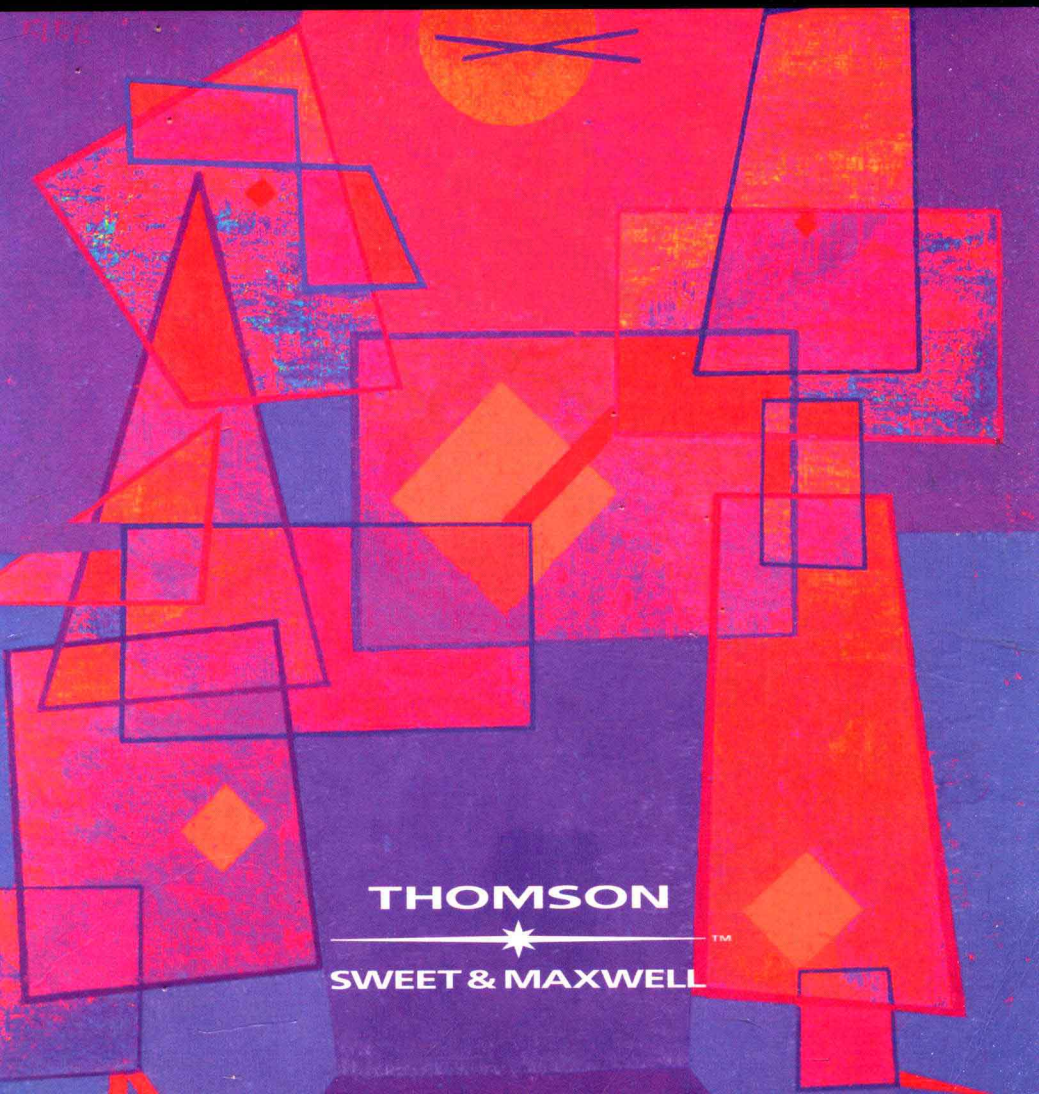


LLOYD'S

INTRODUCTION TO JURISPRUDENCE

SEVENTH EDITION

M.D.A. FREEMAN



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INTRODUCTION
TO
JURISPRUDENCE

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by

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PREFACE TO THE SEVENTH EDITION

It is now 42 years since Dennis Lloyd published his pioneering textbook. My own involvement in the book goes back nearly 30 years—and five editions. Each successive new edition has contained substantial new writing and a large number of new extracts from key writings. This edition is no exception. Virtually every chapter contains new introductory and critical comment, in most cases to take account of new thinking and new literature. Hart's "Postscript" was published as the last edition of this book went to print. No account could be taken of it last time (though some criticism of Dworkin in it is consistent with what has appeared in several editions of *Lloyd*). In this edition it is considered in some detail. However, there is no extract from it. It was Dennis Lloyd's view—and it is mine—that if students read only one book in full it should be *The Concept of Law*. For this reason we have never used extracts from this classic source. Not surprisingly the "Postscript" has engendered much critical comment: indeed, much of the excellent new journal *Legal Theory* has been devoted to assessments of it. There is greater emphasis in this edition also on the important writings of Hart's successor Raz.

This edition contains two new chapters: one on Theories of Justice—a range of theories from Rawls, Nozick and Dworkin to economic theories and feminist examples—is discussed in a substantial text and new extracts are included from Dworkin, Sandel, Posner and Iris Marion Young.

There is a new chapter also on Critical Race Theory with a representative sample of new extracts from CRT and also from the LatCrit movement. It has often been said that jurisprudence is a mansion with many rooms. It is also one upon which a new extension is built every decade or so!

Apart from Hart's "Postscript" the most significant books to appear since the last edition of *Lloyd* are—and I have to add in my opinion, of course—Habermas's *Between Facts and Norms*, Jules Coleman's *The Practice of Principle*, Roberto Unger's *What Should Legal Analysis Become?* And Brian Tamanaha's *Realistic Socio-Legal Theory*. This is not to underestimate Joseph Raz's *Ethics In The Public Domain* or Ronald Dworkin's *Sovereign Virtue*, but both of these books were based largely on material published before 1994. This new edition contains extracts from all of these books except Habermas's (where a short article by Habermas summarising the themes of *Between Facts and Norms* is a particularly convenient substitute—Habermas is a difficult author from whom to mine an extract!). There are new extracts also from Stephen Perry—his article in "Legal Theory" offers I believe major critical insights into Hart and indeed modern positivism; from Matthew Kramer; from Roger Cotterrell and David Nelken (their debate about the role of

the sociology of law is eye-opening); from Robert Alexy (the best entrée into Radbruch and thus the Hart-Fuller debate that I have seen, and an excellent teaching instrument); from Stanley Paulson (on Kelsen); from Dennis Patterson (on postmodernism); from Susan Moller Okin, Niki Lacey and Joanne Conaghan (on feminist jurisprudence); from Larry Alexander and Ken Kress (on Dworkin and principles).

The book contains new sections on the obligation to obey law, on the legal enforcement of morality, and on precedent's justifications. Also included in the book for the first time are discussions of legal process, of legal pluralism, of the private-public dualism, of corrective justice and of cultural pluralism and women's rights. There are extracts from John Finnis and Joseph Raz to introduce students to the problem of evaluation in legal theory (Julie Dickson's excellent *Evaluation In Legal Theory* was published too late for any account to be taken of it this time).

This new edition combines the old and the new. Thus, there is more Finnis, Raz and Dworkin than in the previous edition and more discussion of Hart. There is an important new essay by Sir Neil MacCormick on the jurisprudential implications of the U.K.'s European accession. And the book retains chapters on Scandinavian Realism and Marxism: both have intrinsic interest, insight and value, and it would be as wrong to dispense with them as it would have been as wrong for a nineteenth century "Lloyd" to have omitted natural law. But alongside such well-tried favourites are names which will be new to most readers of this edition: apart from several already mentioned, I would draw attention to Robin Barnes, Kevin Johnson and Berta Experanza Hernández-Troyol, all of whom are extracted in the Critical Race Theory chapter.

Of course, whatever the pretensions to comprehensiveness, there will be omissions. The new edition barely touches on law and literary theory or the implications of globalisation (the subject of a new series of essays by William Twining). There is no discussion of the jurisprudence of cyberspace and too little on the "law and . . ." phenomenon (nothing on law and science, law and religion, law and geography). The implications of chaos theory for law is overlooked. There was no room to include such significant contemporary thinkers as Brian Bix, David Dyzenhaus, Gerald Postema or Jeremy Waldron—and I regret this. I nevertheless believe that this new edition offers students and teachers alike an excellent assortment of the best in classic and contemporary juristic writing, a wide-ranging compendium of legal thought. It is important that authors should be read in the original and *Lloyd* continues to give students this opportunity. Once appetites are whetted—and it is hoped that the introductory texts will assist this—whole libraries of jurisprudence are there to be sampled and enjoyed.

This edition could not have been produced without the help and assistance of colleagues at UCL and elsewhere. I owe also a particular debt of gratitude to Anita Garfoot, without whose secretarial and organisational skills this edition could not have been produced (and without whose knowledge of classical Greek a spelling error dating from the first edition would not have been eradicated!).

M. D. A. Freeman
July 2001

FROM THE PREFACE TO THE FIRST EDITION

The aims of this book can be stated quite simply. They are, first, to provide the student of jurisprudence with a textbook which will enable him to become acquainted with the theories, attitudes, and insights of leading jurists from selected texts culled from their own writings. In the second place, an attempt is made to afford him a coherent picture of the subject, by means of a full commentary setting out the background and inter-connections between the differing approaches, and a critical appraisal of the viewpoints illustrated in the selected texts. This is done by means of introductory chapters to each section of the book, as well as by way of annotations to the texts themselves.

Present-day textbooks of jurisprudence, by attempting to summarise at second-hand the views of a great number of leading writers, tend not only to reduce themselves to a repertory of schools of thought, but inevitably to lose the distinctive flavour of the particular writers it is sought to epitomise. It is therefore hoped that a book in the present form will provide the student with the stimulation of sampling the actual style of those whose ideas he is studying. This is not to say of course that all the styles represented in this volume are admirable in themselves. Far from it. But at least they do afford the student firsthand contact with an author's own thoughts expressed in his own way. *Le style c'est l'homme*. And among the many authors whose viewpoints are contained in this volume it seems reasonable to suppose that a few students at least will find some passages which will strike a sufficient chord in their own minds to provoke them into reading more of the writings of authors to whom they have proved responsive. At least it seems to me that the existing plan may achieve more, in encouraging the serious student to range beyond the covers of his chosen textbook, than will a series of potted summaries. And for those who find themselves unable or unwilling thus to enlarge their range of reading, it is hoped that the fare contained in this volume will provide a more educative study of its subject matter than the traditional approach.

As I have attempted to indicate, this is not a book of readings on the American pattern, though it obviously owes a good deal of inspiration to that familiar transatlantic aid to learning. Where it differs principally is in the fullness of the accompanying commentary, by which I have striven to give a coherence to the book as a whole, and thus enable it to be read through as a self-contained textbook, and not simply to be used as an ancillary aid to a course of lectures or seminars. Nevertheless it is hoped that it may also be found of service for that purpose too, particularly by affording scope for discussion of the actual writings of the authors quoted.

In making my selection I have been influenced by certain objectives which seemed to me desirable. Thus I have placed a particular emphasis on modern developments, while endeavouring at the same time to set these in their relationship to the main streams of Western legal thought. Again I have attempted to emphasise the more universal aspects of the subject by giving full space to the viewpoints of leading jurists in other Western countries, whether from the continent of Europe or of America. Harold Laski once wrote of English jurisprudence that it "still does little more than ring the changes on the ideas of Jeremy Bentham and Sir Henry Maine".¹ Such a view may seem not a little unjust at the present day, and though (as will be seen in the pages that follow), I am not among those who desire to denigrate either Bentham or Austin, I do attempt to evaluate the contributions of those eminent writers for our modern atomic age. At the same time, while allowing foreign jurists to speak for themselves in their own context and sometimes at considerable length, I have not hesitated to essay an evaluation of those writers from the standpoint of an English lawyer desirous of seeing what fresh insights he may learn from them, and their relevance to his own legal community. Also in selecting passages I have aimed – though not consistently – at providing long extracts from a few authors rather than a series of short passages from a great many. In this way I feel the student is given the opportunity of coming more adequately to grips both with the style and approach and the extended argument of the writer in a way that cannot be provided by very short extracts. For this purpose, too, I have not sought to select what may be called "purple passages", but those which set forth the core or certain essential features of the writer's approach. In this connection I am very mindful of Holmes' saying: "I care nothing for the systems – only for the insights".² It is these which, more than sustained argument, often afford the most illumination, and we must always guard against a tendency to depreciate their originality when uttered, because they may since have become part of our current mental coinage. I have also quoted from leading judgments both English and American where these seemed effectively to illustrate or expound an important approach: only severe limitations of space have prevented me from doing this as often as I could have wished.

Throughout this volume signs will be found of the controversy – ancient in lineage but as vital as ever – between the positivists and the natural lawyers. In a recent essay on "The present position of Jurisprudence in the United States",³ Professor Jerome Hall has written that "the most striking fact about current national developments is the rise of natural law philosophies almost everywhere. England, Sweden, and Denmark are among the few countries which do not participate in this world movement. The contrast is sharpest in England where, despite Maine and Pollock, Austin continues to reign. Indeed Austin's imperative theory has been subjected to logical positivism, and the product is a nominalist jurisprudence which reflects the view that logical analysis is the only function of jurisprudence." Despite these strictures I am not

¹ *American Democracy* (1949), p. 66.

² *Holmes-Laski Letters*, I, 300.

³ (1958) 44 *Virginia L.R.* 321.

ashamed to affirm that my own allegiance is with the positivists, but lest it be thought that this implies acceptance of what Jerome Hall calls "a nominalist jurisprudence" I feel called upon to say something here of my own position.

The recent emphasis on the linguistic nature of philosophical problems stems principally in England from the overwhelming influence of the Cambridge philosopher, Ludwig Wittgenstein.⁴ His approach, which is often wrongly called logical positivism, was aimed at showing how philosophical puzzlement is frequently due to confusions of language. "Philosophy is a battle against the bewitchment of our intelligence by means of language."⁵ And in answer to the question, "What is your aim in philosophy?", the reply is given, "To show the fly the way out of the flybottle."⁶ Wittgenstein's later developments, which have proved so pervasive in almost every field of thought, including even legal theory, mainly occurred in the 1930s, but owing to his unwillingness to publish his own writings, the details of his thought and method were little known at that time outside a small circle in Cambridge. It was my good fortune to meet Wittgenstein and attend his seminars when I was in Cambridge, during the years 1935 and 1936, on the introduction of my friend, Francis Skinner (one of Wittgenstein's closest associates and followers up till the time of Skinner's lamented early death in 1938). The force of Wittgenstein's thought and personality could hardly fail to make some impact even on one who, like myself, was quite unequipped to assess their significance. Certainly as a lawyer I was naturally intrigued with the implications of this approach for legal thinking. Soon after, however, legal practice and a long absence on war service took me far from these esoteric regions, though an article I published in the *Law Quarterly Review* in 1948 was a reflection of the continuing influence of this approach.⁷ Since the war, and particularly with the posthumous publication of Wittgenstein's later works, the impact of his influence has spread very widely, and far beyond the field of purely philosophical speculation.

The present author writes as a lawyer and not as a philosopher, and is fully conscious of his lack of competence to evaluate philosophical theories. At the same time their impact on legal, as on other fields, cannot be altogether denied, as the contents of this volume sufficiently testify. It always seemed to me, from my Cambridge days, that the value of this new "Socratic" method, as strikingly demonstrated to us by Wittgenstein himself, was in its ability to clear up linguistic confusions, to get rid of "puzzlement", as we were constantly told. Wittgenstein, so far as I could see, claimed no more than this, and it seemed to me that his method might well prove apt for showing how some of the more philosophical aspects of legal thinking, such as the concept of corporate personality,⁸ as

⁴ But this itself is linked with the empirical tradition which has been dominant in English philosophical thought from Hume to Bertrand Russell.

⁵ L. Wittgenstein, *Philosophical Investigations*, 47e.

⁶ *Ibid.*, 103e.

⁷ 'Reason and Logic in the Common Law' (1948) 64 L.Q.R. 468.

⁸ Chap. 1 of my *Unincorporated Associations* (1938) owes something to this approach.

well as general thinking about law, might benefit from his “purgative” approach.⁹

Since the war, however, developments have taken place which, though derived from Wittgenstein, seem to me, to a greater or lesser extent, to distort his teaching, or seek to press it further than it will go. I have in mind here the tendency in some quarters to try to resolve all problems into purely linguistic ones, and to try to build up a positive body of knowledge by purely linguistic analysis. As I have said, I am a lawyer and not a philosopher, and I do not presume to embark on matters of high philosophy. I confess, however, that I am not persuaded, as a lawyer, that it is possible or desirable to resolve fundamental legal problems in purely linguistic or analytical terms. What is, however, of first importance is to avoid confusions or misunderstandings which have their roots in the misuse of language. For my part I am doubtful whether Wittgenstein’s message goes beyond this, and certainly not for the lawyer, whatever may be the case for the purely speculative philosopher. But while, therefore, I agree with Jerome Hall that logical analysis is not enough – and with all respect to him, I take leave to doubt whether any English positivist would wish to take up so extreme a position¹⁰ – it seems to me that the natural law developments, which Hall discerns so widespread outside the purlieus of these benighted islands, will also benefit from a little of Wittgenstein’s purgative method. At the same time I have endeavoured, within the limits of space of this volume, to give full scope to the natural law viewpoint, for its importance, whether we accept it or not, cannot be gainsaid. In this section of the book I have therefore given examples of natural law thinking at many different periods, and in particular quoted modern authors who have attempted to adapt this line of thought to modern conditions, with what success must be judged by the reader.

But Legal Positivism, it may still be said, is not enough. And certainly if reduced to mere verbal analysis, this may be so. But must it be treated so narrowly? Does it necessarily mean no more than the arid study of linguistic forms? Certainly not for Bentham or Austin, who fully recognised the need to take account of human values and man’s social and economic needs, though admittedly their approach, in accordance with their times, was far more abstract than would satisfy a modern sociological jurist. What, however, I desire to maintain is that there is nothing inconsistent or incompatible with a positivist outlook, in acknowledging the essential role of human values in law and human society. What the positivist rejects is neither valuations nor their effect on human institutions, but only the logical or practical possibility of establishing a scale of absolute values which govern mankind universally without distinction of time or place. Since, however, those who maintain this position regard it not so much as a question of logic or practice but of feeling or intuition, it is evident that the debate is likely to remain inconclusive. What matters, however, are the ideas which at different times are accepted and impel men to action, and if it is true that “the law is a museum of philosophical

⁹ But it is as well to remember Holmes’ admonition that ‘philosophising about the law does not amount to much until one has soaked in the details’ – *HolmesLaski Letters*, IL 1253.

¹⁰ *Pace also E. McWhinney, who has referred to ‘some’ (unspecified) English law schools as ‘bogged down in rather trivial problems of linguistic analysis’: (1958) McGill L.J. 213, 218.*

concepts which men not primarily interested in philosophy have found in practice to be valid",¹¹ one cannot ignore any operative concepts in that field, however much they may be open to question.

One result of the positivist school of law which derived from Bentham and Austin was that legal science became, both in the minds of practitioners and jurists, rigidly demarcated from other studies, and this led to the notion that legal problems could be solved purely in terms of legal analysis without regard to other fields of study and in rather lofty disregard of external considerations.¹² This certainly was very far from the aim of either Bentham or Austin, nor was it by any means invariably reflected in the writings or judgments of many of the distinguished jurists and judges who broadly accepted the Austinian approach. The rise of the modern sociological school has restored much of the original objective (but not the dogmas) of the earlier utilitarians, and has made conspicuous – if not so far outstandingly successful – attempts to link legal thought with developments in other subjects, such as anthropology, psychology and sociology. This has been by no means a one-way traffic, for other branches of learning at the present day have found some fertile insights and illumination from the study of jurisprudence and the working of legal systems or institutions. Although, in a work of these limited proportions, there can be but little space for such sorties, I have where possible endeavoured to introduce occasional material from nonlegal writings where these can throw light on current trends of thought or the connection of legal thinking with related fields of study.

It should be observed that some of the original notes to the selected texts have been omitted wholly or in part where this seemed desirable for the present purpose. No indication has been given of particular omissions of such notes, as this would have been unduly cumbersome. Original notes to the selected texts which have been retained are clearly distinguishable from my own annotations to the texts, as the latter are always enclosed in square brackets.

Lastly I would like to express my gratitude, in no perfunctory sense, for the most helpful cooperation I have been accorded, at every stage of the production of this book, by the publishers, Messrs. Stevens & Sons, and especially by my friend Mr. Hilary Stevens himself.

DENNIS LLOYD

LONDON

SEPTEMBER, 1959

¹¹ Rebecca West, *Sunday Times*, May 25, 1958.

¹² It is this form of so-called legal positivism that has earned so many transatlantic strictures, from Pound's 'Mechanical Jurisprudence' in 1908 (8 Col. L.R. 605) to McWhinney in *Canadian Jurisprudence* (1959), p. 10. It would almost seem that positivism is a 'dirty' word in America, with overtones that it lacks in this country.

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- ALEXANDER, LARRY and KRESS, KEN, 'Against Legal Principles' from Andrei Marmor (Ed.), *Law and Interpretation* (1995), (Clarendon Press).
- AQUINAS, *Summa Theologica*, trans. J.G. Dawson, ed. d'Entrèves (Basil Blackwell).
- ARISTOTLE, *Ethics*, trans. Sir D. Ross (Oxford Univ. Press).
- AUSTIN, J., *Lectures on Jurisprudence*, ed. Campbell.
- AUSTIN, J., "The Uses of the Study of Jurisprudence", from *The Province of Jurisprudence Determined*, ed. H.L.A. Hart (published in 1954 by George Weidenfeld & Nicolson Ltd. and reprinted by kind permission of the Editor).
- AXLEY, R., 'A Defence of Radbruch's Formula' from David Dyzenhaus (ed.), *Recrafting the Rule of Law: The Limits of Legal Order* (1999), (Hart Publishing).
- BALL, MILNER S., 'The Legal Academy and Minority Scholars' (1990) 103 Harvard Law Review 1855 (The Harvard Law Review Association).
- BARNES, R.D., 'Race Consciousness: The Thematic Content of Racial Distinctiveness in Critical Race Scholarship' (1990) 103 Harvard Law Review 1864 (The Harvard Law Review Association).
- BARTLETT, K., "Feminist Legal Methods" (1990) 103 Harvard Law Review 829. (Copyright © 1990 by the Harvard Law Review Association).
- BENTHAM, J., *An Introduction to the Principles of Morals and Legislation* (ed. J.H. Burns and H.L.A. Hart, 1970) (The Athlone Press, Univ. of London).
- BENTHAM, J., *Of Laws in General*, ed. H.L.A. Hart (The Athlone Press, Univ. of London, 1970 and also by kind permission of the editor).
- BOHANNAN, PAUL, Selections from "The Differing Realms of the Law" which appears in *Law and Warfare* by Paul Bohannan. (Copyright © 1967 by Paul Bohannan. The American Anthropological Association from American Anthropologist 67 (6. Pt. II): 34-37, 1965. Not for further reproduction).
- CAIN, P.A., "Feminism and the Limits of Equality". (This article was originally published at 24 Ga.L.Rev. 803 (1990) and is reprinted with permission).
- CAMPBELL, T., *Seven Theories of Human Society*. (Oxford University Press).

- CARDOZO, B., *Nature of the Judicial Process* (Yale Univ. Press. Reprinted by permission).
- CICERO, *De Republica*, trans. C.W. Keyes (Loeb Classical Library Harvard Univ. Press: William Heinemann).
- COHEN, G.A., *Karl Marx's Theory of History*. (Reprinted by kind permission of A.D. Peters & Co.).
- COLEMAN, J., 'Inclusive Legal Positivism' from *The Practice of Principle* (2001), (Oxford University Press).
- CONAGHAN, J., 'Reassessing the Feminist Project in Law' (2000) 27 *Journal of Law and Society* 351 (Blackwell Publishers).
- COTTERRELL, R., *Law's Community* (1995), (Oxford University Press).
- COTTERRELL, R., 'Why Must Legal Ideas be Interpreted Sociologically?' (1998) *Journal of Law and Society* vol. 25, 171 (Blackwell Publishers).
- CRENSHAW, K., "Race, Reform and Retrenchment: Transformation and Legitimation in AntiDiscrimination Law" (1988) 101 *Harvard Law Review* 1331. (Copyright © 1988 by the Harvard Law Review Association).
- DE SOUZA SANTOS, B., "The Postmodern Tradition: Law and Politics" in *The fate of Law*, Austin Sarat and Thomas Kearns, editors (Ann Arbor: The University of Michigan Press).
- DELGADO, RICHARD and STEFANCIC, JEAN, 'Critical Race Theory: An Annotated Bibliography' (1993) 79 *Virginia Law Review* 461 (The Virginia Law Review Association).
- DALTON, C., "An Essay in the Deconstruction of Contract Doctrine" (1985) 94 *Yale L.J.* 1095–1114. (Reprinted by kind permission of The Yale Law Journal Company and Fred B. Rothman from *The Yale Law Journal*, Vol. 94, pp. 9971114).
- DEWEY, J., "Logical Method and Law" from (1924) 10 *Cornell Law Quarterly* 17 (Cornell Law Review and Fred B. Rothman & Co. © Copyright 1924, by Cornell University).
- DIAMOND, S., "The Rule of Law versus the order of custom", *Social Research*, Vol. 38, No. 1, Spring 1971, pp. 42–72. (Copyright © 1971 *Social Research*. By permission of the Graduate Faculty, New School for Social Research, New York).
- DOUZINAS, C., and Warrington, R., "A wellfounded fear of Justice: Law and Ethics in Postmodernism" *Law and Critique* Vol. 2(2), 115 pp. 115–131. (This article has been republished in a different version in Costas Douzinas & Ronnie Warrington "Justice Miscarried: Ethics, Aesthetics and the Law" (Harvester 1994)).
- DURKHEIM, E., *The Division of Labour in Society*, translated by W.D. Halls. (Reprinted by permission of Macmillan, London & Basingstoke).
- DWORKIN, R., 'What is Equality? Part 2: Equality of Resources' (1981) 10 *Philosophy and Public Affairs* 283 (Princeton University Press).
- DWORKIN, R., *Laws Empire* (1986), (First published by Fontana Press and reprinted by Hart Publishing, 1998).
- DWORKIN, R., *Taking Rights Seriously*. (Reprinted by kind permission of the author and Gerald Duckworth & Co.).
- DWORKIN, R., "Law as Interpretation" (Published originally in 60 *Texas L.Rev.* 527 (1982). Copyright © 1982 by the *Texas Law Review*. Reprinted by permission).

- EHRlich, E., *Fundamental Principles of the Sociology of Law*, trans. L.W. Moll (Harvard Univ. Press, Copyright 1936 by The President and Fellows of Harvard College).
- ENDICOTT, T., *Vagueness in Law* (2000), (Oxford University Press).
- ENGELS, F., "AntiDühring" from M. Oakeshott, *Social and Political Doctrines of Contemporary Europe* (Cambridge Univ. Press).
- ENGELS, F., Letter to J. Bloch, September 21, 1890 from *Selected Correspondence*. (Reprinted by kind permission of Lawrence and Wishart Ltd).
- ENGELS, F., Letter to Conrad Schmidt, October 27, 1890 from *Selected Correspondence*. (Reprinted by kind permission of Lawrence and Wishart Ltd).
- ENGELS, F., "Ludwig Feuerbach and the End of Classical German Philosophy" from Marx and Engels, *Collected Works*, Vol. III. (Reprinted by kind permission of Lawrence and Wishart Ltd).
- ENGELS, F., "The Housing Question" from Marx and Engels, *Selected Works*, Vol. III. (Reprinted by kind permission of Lawrence and Wishart Ltd).
- FINLEY, L., "Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning", *The Notre Dame Law Review*, Vol. 64, Issue 5 (1989) 886–910. (Reprinted with permission. © by *Notre Dame Law Review*, University of Notre Dame).
- FINNIS, J., *Natural Law and Natural Rights* (1980), (Clarendon Press)
- FINNIS, J. et al, *Nuclear Deterrence, Morality and Realism* (1987), (Clarendon Press).
- FOUCAULT, M., "Two Lectures" from *Power/Knowledge: Selected Interviews and other Writings 1972–1977*, by Michael Foucault, edited by Colin Gordon. Copyright © 1977 by Michael Foucault. (Reprinted by permission of Harvester Press and Pantheon Books, a division of Random House Inc.).
- FRANK, J., *Law and the Modern Mind*. (Copyright © 1930, 1933, 1949 by Coward McCann Inc., Copyright © 1930 by Brentano's Inc., from Anchor Books edition 1963. Copyright renewed in 1958 by Florence K. Frank. Reprinted by arrangement with estate of Barbara Frank Krstein).
- FULLER, L.L., "Human Interaction and the Law" from (1969) 14 *Amer. J. of Jurisprudence* 1 (*American Journal of Jurisprudence*).
- FULLER, L.L., "Positivism and Fidelity to Law – A Reply to Professor Hart" (1958) 71 *Harv.L.Rev.* 630. (Copyright © 1958 by the Harvard Law Review Association).
- FULLER, L.L., *The Morality of Law* (Yale Univ. Press, Copyright © 1964, by Yale University).
- FULLER, L.L., "The Case of the Speluncean Explorers" 62 *Harvard Law Review* 616 (1949). (Copyright © 1949 by the Harvard Law Review Association).
- GABEL, P., "Reification in Legal Reasoning" from "Research in Law and Sociology" Vol. 3 (1980) 25–46 *Critical Legal Studies*.
- GLUCKMAN, M., *Judicial Process Among the Barotse* (Published on behalf of the Institute for Social Research, Univ. of Zambia, by Manchester Univ. Press. First published 1955; 2nd edition with corrections and two additional chapters 1967).

- GORDON, R.W., "Law and Theology" from *Tikkun* (1988) Vol. 13(1), 14–18, 83–86.
- GORDON, R.W., "New Developments in Legal Theory" from *The Politics of Law: A Progressive Critique*, edited by David Kairys. Compilation copyright © 1982 by David Kairys. Reprinted by permission of Pantheon Books, a division of Random House Inc.
- HAGERSTRÖM, AXEL, *Inquiries into the Nature of Law and Morals*, trans. C.D. Broad (Almqvist and Wiksell).
- HARRIS, A.P., 'The Jurisprudence of Reconstruction' (1994) 82 California Law Review 741 (The California Law Review).
- HART, H.L.A., "Positivism and the Separation of Law and Morals" (1958) 71 Harv.L.Rev. 593. (Copyright © 1958 by the Harvard Law Review Association).
- HART, H.L.A., "Problems of Philosophy of Law: Substantive Law". (Reprinted with permission of the Publisher from the *Encyclopedia of Philosophy*, Paul Edwards, Editor in Chief, Vol. 6, pp. 264–276. Reprinted with permission of Macmillan Publishing Company. Copyright © 1967 by Macmillan Publishing Company).
- HART, H.L.A., "Definition and Theory in Jurisprudence" (1954) 70 L.Q.R. 37. (Reprinted by kind permission of the author, and the Editor of *Law Quarterly Review*, Stevens & Sons Ltd).
- HEGEL, F., *Philosophy of Right*, trans. T.M. Knox (by permission of Oxford Univ. Press).
- HERNÁNDEZTRUYOL, BERTA ESPERANZA, 'Borders (En)Gendered: Normativities, Latinas and a LatCrit Paradigm' (1997) New York University Law Review 882 (New York University Law Review).
- HOEBEL, E.A., *Law of Primitive Man* (Harvard Univ. Press, Copyright 1954, by the President and Fellows of Harvard College).
- HOHFELD, W.N., *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (Yale Univ. Press).
- HOLMES, O.W., "The Path of Law" (1897) 10 Harv L.Rev. 457–478. (Copyright © 1897 by the Harvard Law Review Association).
- HUNT, A., "Dichotomy and Contradictions in the Sociology of Law" (1981) 8 *British Journal of Law and Society* 47. (Reprinted by kind permission of Basil Blackwell Ltd).
- JHERING, R. VON, *Law as Means to an End*, trans. I. Husik. (Reprinted by permission of Augustus M. Kelley, Publishers).
- JOHNSON, K.R., 'Celebrating LatCrit Theory: What Do We Do When the Music Stops?' (2000) 33 University of California David Law Review 753 (Regents of the University of California).
- JUSTINIAN, *Institutes*, trans. R.W. Lee (Sweet & Maxwell Ltd).
- KELMAN, M., "Interpretive Construction in the Substantive Criminal Law" 33 Stan.L.Rev. 591–605, 611–616, 669–673. (Reproduced by kind permission of The Stanford Law Review).
- KELSEN, H., *General Theory of Law and State* (Harvard Univ. Press. Copyright 1946 by the President and Fellows of Harvard College).
- KELSEN, H., "Professor Stone and the Pure Theory of Law" originally from *Stanford Law Review*, Vol. 17, p. 1128. (Copyright 1965, by the Board of Trustees of the Leland Stanford Junior University).
- KELSEN, H., "The Pure Theory of Law", trans. Max Knight. (Originally published by the University of California Press; reprinted by permis-

- sion of the Regents of the Univ. of California).
- KELSEN, H., *What is Justice?* (Originally published by the Univ. of California Press; reprinted by permission of the Regents of the Univ. of California).
- KELSEN, H., *The Function of a Constitution*, trans. Dr. I. Stewart. (Reprinted by kind permission of the translator).
- KENNEDY, D., "The Ideological Content of Legal Education" from *The Politics of Law: A Progressive Critique*, edited by David Kairys. Compilation copyright © 1982 by David Kairys. Reprinted by permission of Pantheon Books, a division of Random House Inc.
- KENNEDY, D., "The Structure of Blackstone's Commentaries" [1979] 28 Buffalo L.Rev. 211–220.
- KRAMER, M., 'How Moral Principles Can Enter Into the Law' (2000) 6 Legal Theory 83 (Cambridge University Press).
- KUHN, T.S., *The Structure of Scientific Revolutions*. (Reprinted by permission of the University of Chicago Press. Copyright © 1962, 1970 by the University of Chicago. All rights reserved).
- LACEY, N., *Unspeakable Subjects* (1998), (Hart Publishing).
- LENIN "State and Revolution" from M. Oakshott, *Social and Political Doctrines of Contemporary Europe* (Cambridge Univ. Press).
- LEVI, E.H., *An Introduction to Legal Reasoning*. (Reprinted by permission of the University of Chicago Press. Copyright © 1949 by The University of Chicago. All rights reserved).
- LITTLETON, C., "Reconstructing Sexual Equality" 75 *California Law Review* 1279.
- LLEWELLYN, K.N., *The Common Law Tradition: Deciding Appeals* (Little, Brown & Co, Inc., 1960).
- LLEWELLYN, K.N., "On Reading and Using the Newer Jurisprudence" This article originally appeared at (1940) 40 Col.L.R. 581.
- LLEWELLYN, K.N., "Some Realism about Realism – Responding to Dean Pound" (1931) 44 Harv. L.Rev. 1222–1256. (Copyright © 1931 by the Harvard Law Review Association).
- LLEWELLYN, K.N., *My Philosophy of Law* (Boston Law Co.).
- LLEWELLYN, K.N., "The Normative, the Legal and the Law Jobs: The Problem of Juristic Method" (1940) 49 Yale L.J. 1373. (Reprinted by permission of the Yale Law Journal Company and Fred B. Rothman & Company from *The Yale Law Journal* Vol. 49, pp. 1373–1395).
- LUHMANN, N., "Operational Closure and Structural Coupling: The Differentiation of the Legal System" (1992) 13 Cardozo L.Rev. 1419.
- LUKES, S., 'Can the Base be Distinguished from the Superstructure?' from D. Miller (ed.), *The Nature of Political Theory*. (Oxford University Press).
- LUNSTEDT, V., *Legal Thinking Revised* (Almqvist & Wiksell).
- LYOTARD, J., "Answering the Question: What is Postmodernism" (1984) in *The Postmodernist Condition: A Report on Knowledge*. (Manchester University Press).
- MACCORMICK, 'A Very British Revolution?' from *Questioning Sovereignty* (1999), (Oxford University Press).
- MACCORMICK, N., "Contemporary Legal Philosophy: The Rediscovery of Practical Reason" (1983) 10 *Journal of Law and Society* 1. (Reprinted by kind permission of Basil Blackwell Ltd).

- MACCORMICK, N., "The Ethics of Legalism" *Ratio Juris* 2 (1989) 184–193
© 1989 Neil MacCormick. Reproduced by permission.
- MACCORMICK, N., "Formal Justice and the Form of Legal Arguments" from *Etudes de Logique Juridique* (1976), Vol. 6, ed. Perelman (Etablissements Emile Bruylant).
- MACDONALD, M., "Natural Rights" (1947/8), *Proc.A.S.* (Reprinted by courtesy of the Editor of the Aristotelian Society. Copyright © 1948 The Aristotelian Society).
- MACKINNAN, C., "Difference and Dominance: On Sex Discrimination" from *Feminism Unmodified: Discourses on Life and Law*. (Harvard University Press. Copyright © 1987 by the President and Fellows of Harvard College).
- MAINE, SIR HENRY, *Ancient Law*, ed. Sir. F. Pollock (by permission of Oxford Univ. Press).
- MARITAIN, J., *Man and the State*. (Reprinted by permission of the University of Chicago Press. Copyright © 1951 The University of Chicago. All rights reserved).
- MARX, K., *Capital* (trans. B. Fowkes and D. Fernbach. Translation copyright © 1976 by Ben Fowkes). (Reprinted by permission of Penguin Books Ltd. and Random House Inc.).
- MARX, K., "Critique of Hegel's Philosophy of Right" from McLennan (ed.), *Early Texts*. (Reprinted by kind permission of Basil Blackwell Ltd).
- MARX, K., "Preface to Contribution to Critique of Political Economy" trans. T.B. Bottomore, from Bottomore and Rubel, *Selected Writings in Sociology and Social Philosophy*. (Reprinted by permission of Pitman Publishing Ltd).
- MARX, K., "The German Ideology" from Marx and Engels, *Selected Works*, Vol. V. (Reprinted by kind permission of Lawrence and Wishart Ltd).
- MARX, K., "Critique of the Gotha Programme" from McLennan, *The Thought of Marx* (Macmillan, London and Basingstoke).
- MARX, K., "Preface to the Critique of Political Economy" from McLennan, *The Thought of Marx* (Macmillan, London and Basingstoke).
- MARX, K., "The Civil War in France" from McLennan, *The Thought of Marx* (Macmillan, London and Basingstoke).
- MARX, K., "The German Ideology" from McLennan, *The Thought of Marx* (Macmillan, London and Basingstoke).
- MEAD, M., "Some Anthropological Consideration Concerning Natural Law" 6 *Natural Law Forum* 51. (Reprinted by kind permission of the *American Journal of Jurisprudence*).
- MOLLER OKIN, S., *Justice, Gender and the Family* (1989), (Basic Books)
- MOLLER OKIN, S., *Is Multiculturalism Bad for Women?* (1999), (Eds. Joshua Cohen, Matthew Howard and Martha C. Nussbaum), (Princeton University Press).
- NELKEN, D., 'Blinding Insights? The Limits of a Reflexive Sociology of Law' (1998) *Journal of Law and Society* vol. 25, 407 (Blackwell Publishers).
- NOZICK, R., *Anarchy, State and Utopia* (Basic Books Inc).
- OKESHOTT, M., *Social and Political Doctrines of Contemporary Europe*,

- Oxford University Press.
- OLIVECRONA, K., *Law as Fact* (Ejnar Monksgaard).
- OLIVECRONA, K., "Legal Language and Reality" from *Essays in honour of Pound*, ed. Newman (BobbsMerrill Co. Inc.).
- PASHUKANIS, E., *Law and Marxism*, edited and introduced by Chris Arthur and translated from the German by Barbara Einhorn. (Published by Inks Links Ltd. in 1978).
- PATTERSON, D., *Law and Truth* (1996), (Oxford University Press).
- PAULSON, S.L., 'Continental Normativism and its British Counterpart: How are They Different?' (1993) 6 Ratio Juris 3 (Blackwell Publishers)
- PERRY, S., 'Hart's Methodological Positivism' (1998) 4 Legal Theory 427 (Cambridge University Press).
- POPPER, K., *The Poverty of Historicism* (Routledge & Kegan Paul).
- POSNER, *The Economic of Justice* (1983), (reprinted by kind permission of the President and Fellows of Harvard College).
- POUND, R., *Contemporary Juristic Theory* (Friends of the Claremont Colleges).
- POUND, R., *Philosophy of Law* (Yale Univ. Press. Reprinted by permission).
- POUND, R., *Social Control Through Law* (Yale Univ. Press. Reprinted by permission).
- RAWLS, J., *A Theory of Justice*, Oxford University Press (1972).
- RAWLS, J., "The Laws of Peoples" (1993) from *On Human Rights*, Shute & Hurley (eds.) (Basic Books Inc.).
- RAZ, J., *Ethics in the Public Domain* (1994), (Clarendon Press).
- RAZ, J., *Practical Reason and Norms*. (Reprinted by kind permission of the author).
- RAZ, J., "The Purity of the Pure Theory" (1983) *Revue Internationale de Philosophie* 442-459. (Copyright © J. Raz. Reprinted by permission of the author).
- RENNER, K., *The Institutions of Private Law* (Routledge & Kegan Paul).
- ROSS, A., *Directives and Norms* (Routledge & Kegan Paul).
- ROSS, A., *On Law and Justice* (Stevens & Sons Ltd).
- ROSS, A., "Tûtû" (1957) 70 Harv.L.Rev.812. (Copyright © 1957 by the Harvard Law Review Association).
- SARTORIUS, R., "Social Policy and Judicial Legislation", 8 *American Philosophical Quarterly* 151.
- SCALES, A.C., "The Emergence of Feminist Jurisprudence: An Essay" (1986) Yale L.J., Vol. 95, 1373. Reprinted by kind permission of the Yale Law Journal Company and Fred B. Rothman & Company from *The Yale Law Journal*, Vol. 95, pp. 1373-1986.
- SCHAUER, F., 'Positivism as Pariah' from Robert George (ed.), *The Anatomy of Law* (1996), (Oxford University Press).
- SCHLAG, P., "Normativity and the Politics of Form" 139 U.Pa.L.Rev.834 (1991). (Reproduced by kind permission of *The University of Pennsylvania Law Review* and Fred B. Rothman & Company).
- SELZNICK, P., "The Sociology of Law" from *Sociology Today: Problems and Prospects*, ed. Robert K. Merton, Leonard Broom and Leonard S. Cottrell, Jr. (Copyright © 1959 by Basic Books Inc., Publishers, New York).
- SHKLAR, J., *Legalism*. (Reprinted by permission of the publishers from