

LEGAL THEORY

LEGAL THEORY

ISSN 1352-3252

VOLUME 16

NUMBER 4

DECEMBER 2010

VOLUME 16 | NUMBER 4 | DECEMBER 2010 | PAGES 229-300

CAMBRIDGE

CAMBRIDGE
UNIVERSITY PRESS

<https://doi.org/10.1017/S1352325210000194> Published online by Cambridge University Press

LEGAL THEORY

ISSN 1352-3252

EDITORS

Matthew D. Adler, *University of Pennsylvania Law School*

Larry Alexander, *University of San Diego School of Law*

David O. Brink, *University of California, San Diego, Philosophy Department*

Scott J. Shapiro, *Yale Law School*

EDITORIAL BOARD

Robert Alexy, *University of Kiel*

Anita Allen, *University of Pennsylvania*

Mitchell N. Berman, *University of Texas, Austin*

Brian Bix, *University of Minnesota, Twin Cities*

Susan Brison, *Dartmouth College*

Allen Buchanan, *Duke University*

Bruno Celano, *University of Palermo*

Ruth Chang, *Rutgers University*

Jules L. Coleman, *Yale Law School*

Richard Craswell, *Stanford University*

Julie Dickson, *Oxford University*

Michael Dorf, *Cornell University*

Antony Duff, *Stirling University*

Gerald Dworkin, *University of California, Davis*

Ronald Dworkin, *New York University, University College London*

David Enoch, *Hebrew University of Jerusalem*

John Fischer, *University of California, Riverside*

John Gardner, *Oxford University*

Ruth Gavison, *Hebrew University*

John Goldberg, *Vanderbilt University Law School*

Jeff Goldsworthy, *Monash University*

Leslie Green, *Oxford University*

Kent Greenawalt, *Columbia University*

Mark Greenberg, *University of California, Los Angeles*

Scott Hershovitz, *University of Michigan*

John Horty, *University of Maryland*

Heidi Hurd, *University of Illinois*

Douglas Husak, *Rutgers University*

Frances Kamm, *Harvard University*

Robin Kar, *Loyola Law School and University of Illinois*

Greg Keating, *University of Southern California*

Mark Kelman, *Stanford University*

Matthew Kramer, *Cambridge University*

Jody Kraus, *University of Virginia*

Larry Laudan, *University of Texas*

Brian Leiter, *University of Chicago*

David Lyons, *Boston University*

Daniel Markovits, *Yale Law School*

Andrei Marmor, *University of Southern California*

Jeff McMahan, *Rutgers University*

Michael Moore, *University of Illinois*

Stephen Morse, *University of Pennsylvania*

Stephen Munzer, *University of California, Los Angeles*

Jeffrie Murphy, *Arizona State University*

Dennis Patterson, *Rutgers University, European*

University Institute, Swansea University

Stephen Perry, *University of Pennsylvania*

Gerald Postema, *University of North Carolina*

Joseph Raz, *Oxford University, Columbia University*

Donald Regan, *University of Michigan*

Arthur Ripstein, *University of Toronto*

Frederick Schauer, *University of Virginia*

Hanoch Sheinman, *Rice University*

Seana Shiffrin, *University of California, Los Angeles*

Patricia Smith, *City University of New York*

Nicos Stavropoulos, *Oxford University*

Martin Stone, *Benjamin Cardozo Law School*

Peter Vallentyne, *University of Missouri*

Jeremy Waldron, *New York University*

Wil Waluchow, *McMaster University*

Alan Wertheimer, *National Institutes of Health*

Gideon Yaffe, *University of Southern California*

Ben Zipursky, *Fordham University*

Editorial Office: *Legal Theory*, University of San Diego School of Law, 5998 Alcalá Park, San Diego, California 92110, USA; e-mail: legaltheory@sandiego.edu.; telephone: 619-260-2264; fax: 619-260-4728.

Publishing, Subscription, and Advertising Offices: Cambridge University Press, 32 Avenue of the Americas, New York, NY 10013-2473; or Cambridge University Press, The Edinburgh Building, Shaftesbury Road, Cambridge CB2 2RU, England. *Legal Theory* (ISSN 1352-3252) is published quarterly by Cambridge University Press, 32 Avenue of the Americas, New York, NY 10013-2473, U.S.A./Cambridge University Press, The Edinburgh Building, Shaftesbury Road, Cambridge CB2 8RU, U.K. Annual subscription rates for Volume 17, 2011: Annual institutional print and electronic rates: US \$307.00 in the USA, Canada, and Mexico; UK £175.00 + VAT elsewhere. Institutional electronic rates only: US \$262.00 in the USA, Canada, and Mexico; UK £151.00 + VAT elsewhere. Institutional print rates only: US \$288.00 in the USA, Canada, and Mexico; UK £161.00 + VAT elsewhere. Individual rates print only: US \$75.00 in the USA, Canada, and Mexico; UK £43.00 + VAT elsewhere. Single part rates: US \$75.00 in the USA, Canada, and Mexico; UK £51.00 + VAT elsewhere. Prices include postage and insurance. *Legal Theory* and all other Cambridge Journals can be found at <http://journals.cambridge.org/>

© Cambridge University Press 2011. All rights reserved. No part of this publication may be reproduced, in any form or by any means, electronic, photocopying, or otherwise, without permission in writing from Cambridge University Press. Policies, request forms, and contacts are available at: <http://www.cambridge.org/rights/permissions/permission.htm>

Permission to copy (for users in the U.S.A.) is available from Copyright Clearance Center, <http://www.copyright.com>, email: info@copyright.com.

Periodicals postage paid at New York, NY, and additional mailing offices. Forwarding and Return Postage Guaranteed, Address Correction Requested. Postmaster: Send address changes in the USA and Canada to: *Legal Theory*, Cambridge University Press, Journals Fulfillment Dept., 100 Brook Hill Drive, W. Nyack, NY 10994-2133, U.S.A. Send address changes elsewhere to *Legal Theory*, Cambridge University Press, Journals Fulfillment Dept., The Edinburgh Building, Shaftesbury Road, Cambridge CB2 8RU, England.

Printed in the United States of America