WHAT MAKES LAW

This book offers an advanced introduction to central questions in legal philosophy. What factors determine the content of the law in force? What makes a normative system a legal system? How does law beyond the state differ from domestic law? What kind of moral force does law have? These are all questions about the nature of law. The most important existing views are introduced, but the aim is not to survey the existing literature. Rather, this book introduces the subject by stepping back from the fray to sketch the big picture, to show just what is at stake in these old debates.

Legal philosophy has become somewhat arid and inward looking. In part this is because the disagreement between the main camps on the important questions is apparently intractable. The main aim of this book is to suggest both a diagnosis and a proper practical response to this situation of intractable disagreement about questions that do matter.

Liam Murphy works in legal, moral, and political philosophy and the application of these inquiries to law and legal theory. He has published two books: Moral Demands in Nonideal Theory (2000) and The Myth of Ownership: Taxes and Justice (2002, with Thomas Nagel). His articles have appeared in Philosophy & Public Affairs among other journals. Murphy has been an associate editor and now is a member of the editorial board of Philosophy & Public Affairs. He is Herbert Peterfreund Professor of Law and Professor of Philosophy at New York University.
CAMBRIDGE INTRODUCTIONS TO PHILOSOPHY AND LAW

Series Editors
Brian H. Bix
University of Minnesota
William A. Edmundson
Georgia State University

This introductory series of books provides concise studies of the philosophical foundations of law, of perennial topics in the philosophy of law, and of important and opposing schools of thought. The series is aimed principally at students in philosophy, law, and political science.

Matthew Kramer, *Objectivity and the Rule of Law*
Larry Alexander and Emily Sherwin, *Demystifying Legal Reasoning*
Larry Alexander, Kimberly Kessler Ferzan, and Stephen J. Morse, *Crime and Culpability*
Robin West, *Normative Jurisprudence*
Gregory S. Alexander and Eduardo S. Penalver, *An Introduction to Property Theory*
Brian H. Bix, *Contract Law*
Pablo E. Navarro and Jorge L. Rodriguez, *Deontic Logic and Legal Systems*
What Makes Law

AN INTRODUCTION TO THE PHILOSOPHY OF LAW

Liam Murphy

New York University
For Sibylle
# Contents

*Acknowledgments*  
*Introduction*  
*Morality and the Grounds of Law*  
*Legal Positivism*  
*Nonpositivism*  
*Disagreement in Practical Philosophy*  
*Law*  
*The Normative Force of Law*  
*What Makes Law Law? Law beyond the State*  
*Conclusion: What Matters?*

*References*  
*Index*
I have been thinking and teaching about the issues in this book for about twenty years. Over that period my views have changed a lot. Throughout I have benefited enormously from countless conversations with Lewis Kornhauser, who generously discussed each new idea with me. His skepticism about the very issue of the nature of law has been one of the main influences on this book. I have also benefited greatly over the years from discussions with my students at the NYU School of Law.

Over the ten years or so I have been working on the book, very many others have helped me. I am grateful to colleagues and audience members at Columbia University; Harvard University; London School of Economics; New York University; Pontifical Catholic University, Rio de Janeiro; Princeton University; Queens University; Stanford University; The University of California, Berkeley; The University of California, Los Angeles; The University of Melbourne; The University of Texas, Austin; The University of Toronto; The University of Vienna; The University of Warwick; University College London; and Yale University. Some of the people whose comments and conversation have influenced my thinking the most are: Daniel Baker, Gabriella Blum, Tom Campbell, David Chalmers, David Dyzenhaus, Sibylle Fischer, Barbara Fried, David Golove, Leslie Green, Mark Greenberg, Paul Horwich, Robert Howse, Muhammad Ali Khalidi, Benedict Kingsbury, Nicola Lacey, Joseph Raz, Kristen Rundle, Lawrence Sager, T. M. Scanlon, Frederick Schauer, Samuel Scheffler, Stefan Sciaraffa, Seana Shiffrin, Nicos Stavropoulos,
Jeremy Waldron, Wil Waluchow, and Moran Yahav. Special mention must be made of Ronald Dworkin and Thomas Nagel, who kept inviting me back to the NYU Colloquium in Legal, Political, and Social Philosophy for yet another patient and friendly demonstration that whatever it was I wanted to do, which was not at all clear, I had not yet got it right. The pervasive influence of the writings of Joseph Raz will be obvious from the steady drumbeat of citations from start to finish. Most recently I have benefited from excellent comments on the whole manuscript by the series editors, William A. Edmundson and Brian H. Bix. On top of that, I owe Bill and Brian and a long series of editors at Cambridge University Press huge gratitude for their cheerful patience as the years went by. Sibylle Fischer found me a title one night while driving on NY Route 17. Erick Rabin and Moran Yahav provided excellent and generous research assistance. Finally, the support of the Filomen D'Agostino and Max E. Greenberg Research Fund of New York University School of Law is gratefully acknowledged.