LAW, REASON, AND EMOTION

This book examines the role and importance of reason and emotion in justice and the law. Eight lawyers and philosophers of law consider law’s basis in the universal human need for society, our innate sense of justice, and many other powerful inclinations and emotions, including the desire for fairness and even for law itself. Human beings are deeply social creatures, inspired by social and other emotions, which can ennoble, support, or undermine the law. Law gains legitimacy and effectiveness when reason recognizes and embraces human emotions for the benefit of society as a whole. This volume explores the power and purposes of reason and emotion in the law.

M. N. S. Sellers is Regents Professor of the University System of Maryland, Director of the University of Baltimore Center for International and Comparative Law, and president of the International Association for the Philosophy of Law and Social Philosophy (IVR). He was educated at Harvard College, Harvard Law School, and at University and Wolfson Colleges, Oxford, where he was a Rhodes Scholar, a Frank Knox Fellow, and the T.H. Green Scholar. Professor Sellers is co-editor (with Stephan Kirste) of the Encyclopedia of the Philosophy of Law and Social Philosophy and general editor of the book series IVR Studies in the Philosophy of Law and Social Philosophy. He has been the H.L.A. Hart Fellow at University College, Oxford, a Lauterpacht Fellow at Cambridge University, and the EACLE Professor of Law at Erasmus University, Rotterdam. Among his many books on law and the philosophy of law are The Sacred Fire of Liberty: Republicanism, Liberalism, and the Law (1998), Republican Legal Theory (2003) and Parochialism, Cosmopolitanism, and the Foundations of International Law (2012).
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Law, Reason, and Emotion

Edited by

M. N. S. SELLERS

University of Baltimore Center for International and Comparative Law
To Lucy Bell
April girl
April 29, 2014
with love and admiration
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Preface

This book inaugurates the IVR Studies in the Philosophy of Law and Social Philosophy, a book series dedicated to the cultivation and development of legal and social philosophy at the national and international levels. Too often, legal philosophy is limited by the parochial academic and legal cultures of the local milieu in which it arises. This book series will encourage a broader conversation, embracing the insights of leading scholars from all corners of the world and every legal tradition.

The idea for this series grows out of more than a century of work by the International Association for the Philosophy of Law and Social Philosophy – the Internationale Vereinigung für Rechts- und Sozialphilosophie (“IVR”) – to promote legal and social philosophy across the globe through its national sections, world congresses on the philosophy of law, and the Archiv für Rechts- und Sozialphilosophie, since 1907 the leading forum for the discussion and better understanding of the philosophy of law and social philosophy. IVR Studies in the Philosophy of Law and Social Philosophy will supplement these initiatives with a series of monographs and edited volumes considering fundamental questions in the philosophy of law.

This series does not seek to settle all disputed questions on the philosophy of law and social philosophy, but rather to improve the quality of the discussion. The fields of legal and social philosophy have seen a vast growth in interest since the Second World War, not always accompanied by greater mutual understanding. On the contrary, British, Australian, and to some extent North American scholarship has lost touch with scholars in Europe and South America, while both jurisprudential traditions have paid little attention to Asia and other legal cultures. The IVR Studies in the Philosophy of Law and Social Philosophy will seek to remedy this deficiency.

This first volume addresses the foundational questions of reason and emotion – the two most basic elements in law. Law is a social function, founded on
human nature and seeking human ends. Thus law inevitably depends on emotion, which constitutes the basis, impetus, and final result of human society. Law echoes, serves, and shapes our emotions. The doctrines of legal and social philosophy arise in trying better to understand how this interchange between feeling and reality does, ought, and sometimes necessarily must play out in practice. Reason provides insights through which societies better understand, discover, and sometimes design their laws. No legal theory can offer much clarity to students of law and society without first addressing the relationship between reason and emotion, and how both shape and inspire the law.

The chapters collected in this volume grew out of the plenary sessions of the XXVII World Congress on the Philosophy of Law and Social Philosophy, held in Washington, D.C., from July 27 through August 1, 2015, under the auspices of the International Association for the Philosophy of Law and Social Philosophy (IVR). The primary sponsors of the World Congress were the Library of Congress, the University of Baltimore, American University Washington College of Law, Georgetown University, George Washington University, Wake Forest University, and Amintaphil, the American branch of the International Association for the Philosophy of Law and Social Philosophy. The primary organizers of the XXVII World Congress were Laurie Schnitzer, Catherine Moore, Marcelo Galuppo, Vitor Medrado, Thiago Braga, Matheus Assaf, Whitney Gurner, and Jill Castleman. The host committee included Jennifer Dabson, Susan Karamanian, Gregory Klass, David Mao, Robert Nowlen, and Roberta Shaffer. Susan Carle, Leslie Francis, Joshua Kassner, and John Mikhail were responsible for the program. The President of the IVR was Ulfrid Neumann and the Secretary-General was Lorenz Schulz. The Senior Vice-President, Ricardo Guibourg, presided at the World Congress. I am very grateful to these practical philosophers for their hard work, guidance, and good sense.

The University of Baltimore, Georgetown University, the University of California (Irvine), and University College, Oxford, all gave me material support and hospitality while I was editing this volume. I am indebted to Ronald Weich, Claudio Grossman, William Treanor, Erwin Chemerinsky, and Sir Ivor Crewe for their kindness and encouragement, and to Laurie Schnitzer for her patience and good humor. I am grateful to the anonymous readers of Cambridge University Press, who guided me to improve this volume, and to John Berger, who gave me encouragement. Much love to my sister, Lucy Bell, to whom this book is dedicated, for her kindness, companionship, and lifelong pursuit of truth and beauty. Above all, I thank my wife, Frances Stead Sellers, our daughter Cora Stead Pluta, and Cora’s two Williams for life’s greatest purpose and pleasure, which is love.