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978-0-521-17423-7 - Punishment, Compensation, and Law: A Theory of Enforceability

Mark R. Reiff

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Punishment, Compensation, and Law

A Theory of Enforceability

This book is the first comprehensive study of the meaning and measure of enforceability. While we have long debated what restraints should govern the conduct of our social life, we have paid relatively little attention to the question of what it means to make a restraint enforceable. Focusing on the enforceability of legal rights but also addressing the enforceability of moral rights and social conventions, Mark Reiff explains how we use punishment and compensation to make restraints operative in the world. After describing the various means by which restraints may be enforced, Reiff explains how the sufficiency of enforcement can be measured, and he presents a new, unified theory of deterrence, retribution, and compensation that shows how these aspects of enforceability are interconnected. Reiff then applies his theory of enforceability to illuminate a variety of real-world problem situations.

Mark R. Reiff is Lecturer in Philosophy of Law at the University of Durham. He has written on various topics within legal, moral, and political philosophy, and he is a qualified lawyer in England, Wales, and the United States, where he also practiced for many years.

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Acknowledgments

The ideas that form the backbone of this work have a long history. They began as an effort to reconcile some received notions of the role law plays in maintaining social order with my experience of the law as I encountered it in practice. When I ultimately decided to leave practice and return to academia to do a Ph.D. at the University of Cambridge, I planned to develop these ideas into a dissertation that included a theory of enforceability, a theory of adjudication, and a theory of litigation. But I quickly realized that it would be impossible to deal adequately with all three topics in a single work, and so focused first on developing a theory of enforceability, which I viewed as more fundamental and in any event necessary before the further work I had envisioned could be undertaken. This book represents the culmination of that effort. It has gone through a great many revisions since its original incarnation, and it includes much new material, but I can still see the seeds of the ideas it contains in my experience of practice.

A great many people provided valuable assistance in bringing this project to fruition. Hillel Steiner and Nigel Simmonds, who acted as examiners of my dissertation, provided me with numerous criticisms, comments, and suggestions that led to substantial improvements in the manuscript. Antony Duff provided me with an extensive, insightful, and thought-provoking written critique of Chapter 4 that helped me clarify my argument in that chapter, and Gerald Dworkin provided a similar critique that helped me clarify my argument even further. I also benefited greatly from the many thoughtful and detailed comments and suggestions contained in the anonymous reader reports solicited by Cambridge University Press. I am grateful to these readers for helping make the book far better than it otherwise would have been. I am also grateful to Harriet Davidson, who provided me with valuable feedback on the introduction and much general advice and encouragement, and to Jerry Hirniak, who provided me with much advice and inspiration for important elements of the book's design.

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Mark R. Reiff
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