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Edited by Shyamkrishna Balganesh , Ted M. Sichelman , Henry E. Smith

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WESLEY HOHFELD A CENTURY LATER

Wesley Hohfeld is known the world over as the legal theorist who famously developed a taxonomy of legal concepts. His contributions to legal thinking have stood the test of time, remaining relevant nearly a century after they were first published. Yet, little systematic attention has been devoted to exploring the full significance of his work. Beginning with a lucid, annotated version of Hohfeld's most important article, this volume is the first to offer a comprehensive look at the scope, significance, reach, intricacies, and shortcomings of Hohfeld's work. Featuring insights from leading legal thinkers, the book also contains many of Hohfeld's previously unseen personal papers, shedding new light on the complex motivations behind Hohfeld's projects. Together, these selected papers and original essays reveal a portrait of a multifaceted and ambitious intellectual who did not live long enough to see the impact of his ideas on the study of law.

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Ted M. Sichelman is a Professor of Law at the University of San Diego School of Law, where he founded and directs the Center for Computation, Mathematics & the Law and directs the Center for Intellectual Property Law & Markets.

Henry E. Smith is the Fessenden Professor of Law at Harvard Law School, where he directs the Project on the Foundations of Private Law. Smith served as the President of the Society for Institutional and Organizational Economics and is the Reporter for the American Law Institute's Fourth Restatement of Property.

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EDITED WORK, SELECT PERSONAL PAPERS,
AND ORIGINAL COMMENTARIES

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Anna di Robilant is Professor of Law at Boston University School of Law. She is a property law scholar trained in both Europe and the United States. She writes and teaches in the areas of property law, property theory, legal history, and comparative law. Di Robilant's scholarship focuses on two main themes. The first theme is to question the idea, long shared by comparative law experts, that property law in Europe and the United States is fundamentally different. By contrast, di Robilant's work suggests that modern Western property is the product of a "transatlantic dialogue" shaped by intellectual, professional, social, and economic factors. For example, in her article, *Abuse of Rights. The Continental Drug and the Common Law*, 61 *HASTINGS L.J.* 687 (2010), Professor di Robilant challenges the idea that the doctrine of "abuse of rights" is a peculiarity of civil law systems, absent in the common law, and explores the reasons for the parallel, yet different, development of the doctrine in the two systems. Similarly, in *Property: A Bundle of Sticks or a Tree?*, 66 *VAND. L. REV.* 86 (2013), Professor di Robilant questions the idea that the "bundle of sticks" image of property is an American invention and examines the intellectual, political, and economic concerns that led European jurists, in the first half of the twentieth century, to develop a new conceptualization of property as a "tree" that shares many of the intuitions of the "bundle of rights" approach and yet differs from it in significant ways. The second theme in di Robilant's property scholarship is designing property law institutions that reflect the values of a free and democratic society, committed to making access to fundamental resources, such as housing, water, cultural, or natural resources, more equitable. In *Common Property and Equality of Autonomy*, 58 *MCGILL L.J.* 263 (2012), di Robilant analyzes the challenges involved in the design of common ownership institutions, such as conservation land trusts, affordable-housing cooperatives, community gardens, neighborhood-managed parks, and proposes refocusing the design work on promoting greater "equality of autonomy." Similarly, in *Property and Democratic Deliberation: The Numerus Clausus Principle and Democratic Experimentalism in Property Law*, 62 *AM. J. COMP. L.* 367–416 (2014), di Robilant examines a selection of recently created property forms which establish mechanisms of democratic and deliberative governance for resources as diverse as natural resources, scarce urban land, historic landmarks, or cultural institutions. Professor di Robilant is the chair of the Property section of the "Common Core of European Private Law," a project that has brought together more than 200 legal scholars and practitioners to analyze and map the connections and underlying similarities in contract, property, and torts laws across Europe. She received her JD from the University of Torino, Italy; her PhD in Comparative Private Law from the University of Trento, Italy, and her LLM and SJD from Harvard Law School.

Frederick Schauer has been David and Mary Harrison Distinguished Professor of Law at the University of Virginia since 2008. Previously he was Frank Stanton Professor of the First Amendment at Harvard University, and, earlier, Professor of Law at the

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Pierre Schlag is University Distinguished Professor and Byron R. White Professor at the University of Colorado Law School. A broad-ranging legal theorist, his most recent works include: *How to Do Things with Hohfeld*, 78 *LAW & CONTEMP. PROBS.* 185 (2015); *L’Autonomie des Avocats (Une Conception Problématique Parmi Des Développements Démoralisants)*, in *L’AUTONOMIE DES AVOCATS* (Jean Louis Assier ed., Dalloz 2015); and *Coase Minus the Coase Theorem: Some Problems with Chicago Transaction Cost Analysis*, 99 *IOWA L. REV.* 175 (2013). His other works include: *The Dedifferentiation Problem*, 42 *CONTINENTAL PHIL. REV.* 35 (2009); *The Aesthetics of American Law*, 115 *HARV. L. REV.* 1047 (2002); *Formalism and Realism in Ruins (Mapping the Logics of Collapse)*, 95 *IOWA L. REV.* 195 (2009); *THE ENCHANTMENT OF REASON* (Duke University Press 1998); *Law and Phrenology*, 110 *HARV. L. REV.* 877 (1997); and *The Empty Circles of Liberal Justification*, 96 *MICH. L. REV.* 1 (1997). His works have been translated into French, Russian, Ukrainian, Italian, and Spanish.

John Henry Schlegel is the U.B. Distinguished Professor and Floyd H. and Hilda L. Hurst Faculty Scholar at the University at Buffalo School of Law. He joined the SUNY Buffalo Law faculty in 1973 where he teaches courses in corporate finance, commercial law and regional economic development. For over twenty years, Schlegel’s scholarship was focused on the history of legal education, legal theory, and the activities in the 1920s and 1930s of a group of scholars at Columbia, Yale, and

Johns Hopkins universities known as the American Legal Realists. These efforts resulted in a book entitled *AMERICAN LEGAL REALISM AND EMPIRICAL SOCIAL SCIENCE* (University of North Carolina Press 1995), which described and analyzed Wesley Hohfeld's life and work. While he continues to publish regularly on these topics, his most recent project is a book titled *WHILE WAITING FOR RAIN: COMMUNITY, ECONOMY AND LAW IN A TIME OF CHANGE* (forthcoming from the University of Michigan Press in 2022). This book focuses on changes in the U.S. economy and in the local, Buffalo one since the Civil War. It attempts to explain the decline in both and, using the economic theory of the urbanist Jane Jacobs, tries to suggest what communities might sensibly do that might make them as attractive to economic actors today as they were in the years after that war.

Emily Sherwin is Professor of Law at Cornell Law School. She specializes in jurisprudence, property, and remedies. She is the author of four books: *AMES, CHAFFEE, AND RE ON REMEDIES* (West Academic 2019) (with Samuel Bray); *ADVANCED INTRODUCTION TO LEGAL REASONING* (Edward Elgar 2021) (with Larry Alexander); *DEMISTIFYING LEGAL REASONING* (Cambridge University Press 2008) (with Larry Alexander); and *THE RULE OF RULES: MORALITY, RULES, AND THE DILEMMAS OF LAW* (Duke University Press 2001) (with Larry Alexander). She is also an editor of *THE OXFORD HANDBOOK OF THE NEW PRIVATE LAW* (Oxford University Press 2020) (with Andrew Gold, John Goldberg, Daniel Kelly & Henry Smith). She has published numerous book chapters, articles, and reviews in her subjects of specialty. She was a member of the advisory committee for the ALI's Restatement (Third) of Restitution and Unjust Enrichment, and is currently a member of the advisory committee for the Restatement (Third) of Torts (Remedies). She continues to be a regular participant in the Analytical Legal Philosophy Conference.

Joseph Singer has been a Professor of Law at Harvard Law School since 1992. He was appointed Bussey Professor of Law in 2006. He began teaching at Boston University School of Law in 1984. Singer received a BA from Williams College in 1976, an AM in political science from Harvard in 1978, and a JD from Harvard Law School in 1981. He clerked for Justice Morris Pashman on the Supreme Court of New Jersey from 1981 to 1982 and was an associate at the law firm of Palmer & Dodge in Boston, focusing on municipal law, from 1982 to 1984. He teaches and writes about property law, conflict of laws, and federal Indian law. He also writes about legal theory with an emphasis on moral and political philosophy. He has published more than eighty law review articles. He is one of the executive editors of the 2012 edition of *COHEN'S HANDBOOK OF FEDERAL INDIAN LAW* (with 2015 Supplement; LexisNexis). He has written a casebook and a treatise on property law, as well as: *PERSUASION: GETTING TO THE OTHER SIDE* (Carolina Academic Press 2020); *CHOICE OF LAW: PATTERNS, ARGUMENTS, PRACTICES* (Carolina Academic Press 2020); *NO FREEDOM WITHOUT REGULATION: THE HIDDEN LESSON OF THE SUPREME*

CRISIS (Yale University Press 2015); ENTITLEMENT: THE PARADOXES OF PROPERTY (Yale University Press 2000); and THE EDGES OF THE FIELD: LESSONS ON THE OBLIGATIONS OF OWNERSHIP (Beacon Press 2000).

Talha Syed teaches at the University of California, Berkeley School of Law. His research focuses on law and political economy, with applications to intellectual property, property, torts, antitrust, and theories of distributive justice. His principal publications include: *Reconstructing Patent Eligibility*, 70 AM. U. L. REV. 1937 (2021); *Educational Accommodation and Distributive Equity: The Principle of Proportionate Progress*, 50 CONN. L. REV. 485 (2018); *The Wrongs of Copyright's Statutory Damages*, 98 TEX. L. REV. 1219 (2020) (with Oren Bracha); *The Continuum of Excludability and the Limits of Patents*, 122 YALE L.J. 1900 (2013) (with Amy Kapczynski); *Beyond Efficiency? Consequence-Sensitive Theories of Copyright*, 29 BERKELEY TECH. L.J. 229 (2014) (with Oren Bracha); *Beyond the Incentive-Access Paradigm? Product Differentiation and Copyright Revisited*, 92 TEX. L. REV. 1841 (2014) (with Oren Bracha); *A Prize Alternative as a Partial Solution to the Health Crisis in the Developing World*, in INCENTIVES FOR GLOBAL HEALTH (Thomas Pogge et al. eds., 2009) (with William W. Fisher III); and *Global Justice in Healthcare: Developing Drugs for the Developing World*, 40 U.C. DAVIS L. REV. 581 (2007) (with William W. Fisher III). He has two forthcoming books: FROM PATENTS TO PUBLIC UTILITY: PHARMACEUTICAL INNOVATION POLICY; and A WAR NOT EASILY WON: CURBING INFECTIOUS DISEASES IN DEVELOPING COUNTRIES (with William W. Fisher III). He received his JD from the University of Victoria, Canada, where he graduated as the Gold Medalist, and an LLM from Harvard University. He is a fellow at the Institute for New Economic Thinking and his academic honors include a fellowship at the Harvard Petrie-Flom Center for Health Law, Biotechnology, and Bioethics; the Canadian Bar Association's national Viscount Bennett Fellowship; and a Social Sciences and Humanities Research Council of Canada fellowship.

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