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MORAL PUZZLES AND LEGAL PERPLEXITIES

Drawing inspiration from the profoundly influential work of legal theorist Larry Alexander, this volume tackles central questions in criminal law, constitutional law, jurisprudence, and moral philosophy. What are the legitimate conditions of blame and punishment? What values are at the heart of constitutional protections against discrimination or infringements of free speech? Must judges interpret statutes and constitutional provisions in ways that comport with the intentions of those who wrote them? Can the law obligate us to violate the demands of morality, and when can the law allow the rights of the few to be violated for the good of the many? This collection of essays by world-renowned legal theorists is for anyone interested in foundational questions about the law's authority, the conditions of its fair application to citizens, and the moral justifications of the rights, duties, and permissions that it protects.

Heidi M. Hurd is the Ross and Helen Workman Chair in Law and Professor of Philosophy at the University of Illinois. She has published articles in leading law and philosophy journals on topics in criminal law, tort law, jurisprudence, environmental ethics, and moral and political philosophy, and is the author of *Moral Combat* (Cambridge, 1999).

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Moral Puzzles and Legal Perplexities

Essays on the Influence of Larry Alexander

Edited by
HEIDI M. HURD
University of Illinois



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*For Larry's children,
Jenny, David, and Jonathan,*

*and for Larry's grandchildren,
Tej, Simran, Sejal, Kai, and Luka.*

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Frederick Schauer writes about legal authority, rules, legal reasoning, the theory of rights, and freedom of expression. Before joining the Virginia faculty, he was Frank Stanton Professor of the First Amendment at Harvard University and, earlier, Professor of Law at the University of Michigan. A fellow of the American Academy of Arts and Sciences and former holder of a Guggenheim Fellowship, Professor Schauer is the author of *The Law of Obscenity* (BNA, 1976); *Free Speech: A Philosophical Enquiry* (Cambridge University Press, 1982); *Playing By the Rules: A Philosophical Examination of Rule-Based Decision-Making in Law and in Life* (Oxford University Press, 1991); *Profiles, Probabilities, and Stereotypes* (Harvard University Press, 2003); *Thinking Like a Lawyer: A New Introduction to Legal Reasoning* (Harvard University Press, 2009), and *The Force of Law* (Harvard University Press, 2015); Editor of Karl Llewellyn's, *The Theory of Rules* (University of Chicago Press, 2011); and a cofounder and Editor of *Legal Theory*. Professor Schauer's writings are the subject of two books, *Rules and Reasoning: Essays in Honour of Fred Schauer* (Hart, 1999) and *The Force of Law Reaffirmed: Frederick Schauer Meets the Critics* (Springer, 2016); special issues of the Notre Dame, Connecticut, and Quinnipiac law reviews, *Politeia*, the *Harvard Journal of Law & Public Policy*, and *Materiali per una Storia della Cultura Giuridica*; and symposia on the force of law in *Law & Social Inquiry*, *Ratio Juris*, and *Jurisprudence*. Professor Schauer received his AB (1967) and MBA (1968) from Dartmouth College (1967) and his JD from Harvard Law School (1972).

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Emily Sherwin specializes in jurisprudence, property, and remedies. She joined the Cornell University faculty in 2003 after serving as a member of the faculties of law at the University of San Diego and the University of Kentucky. She has also visited at the University of Pennsylvania Law School and the Boston University School of Law. She is the coauthor of three books: *Ames, Chafee, and Re on Remedies* (Foundation Press, 2012), with Theodore Eisenberg; *Demystifying Legal Reasoning* (Cambridge University Press, 2008); and *The Rule of Rules: Morality, Rules, and the Dilemmas of Law* (Duke University Press, 2001), the latter two with Larry Alexander. In addition, she has published numerous articles, book chapters, and reviews in her subjects of specialty, and has served as a member of the advisory committee for the ALI's Restatement (Third) of Restitution and Unjust Enrichment. Professor Sherwin received her BA from Lake Forest College (1977), her JD from Boston University School of Law (1981), and her PhD in philosophy from Cornell (2017).

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Steven Smith writes in the areas of law and religion, constitutional law, torts, and jurisprudence. Before joining the USD law faculty in 2002, he was the Robert and Marion Short Professor of Law at the University of Notre Dame Law School, and before that, the Byron R. White Professor of Law at the University of Colorado School of Law. He has also been a Visiting Professor of Law at the University of Michigan and the University of Virginia. In addition to his numerous articles on constitutional law and law and religion in scholarly legal journals, Professor Smith is the author of *The Rise and Decline of American Religious Freedom* (Harvard University Press, 2014); *The Disenchantment of Secular Discourse* (Harvard University Press, 2010); *Law's Quandary* (Harvard University Press, 2004); *The Constitution and the Pride of Reason* (Oxford University Press, 1998); and *Foreordained Failure: The Quest for a Constitutional Principle of Religious Freedom* (Oxford University Press, 1995). He received his BA from Brigham Young University (1976) and his JD from Yale University (1979).

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Lawrence Solum works in constitutional theory, procedure, and the philosophy of law and is well known for his work on the philosophy of language and constitutional interpretation. He was a pioneer in the development of “virtue jurisprudence,” now the subject of numerous articles, monographs, and scholarly conferences. Before joining the Georgetown faculty in 2011, Professor Solum was the John E. Cribbet Professor of Law and Professor of Philosophy at the University of Illinois. He was also a member of the law faculties at the University of San Diego and Loyola Marymount University, and he has been a Visiting Professor of Law at Boston University and the University of Southern California. Professor Solum’s volume on prior adjudication and related doctrines in *Moore’s Federal Practice* has been cited by the United States Supreme Court and every circuit court of appeal. He has lectured at dozens of universities throughout the world, authored numerous scholarly articles in leading Anglo-American journals, and is the Editor of *Legal Theory Blog*, an influential weblog that focuses on developments in contemporary normative and positive legal theory. Professor Solum earned his BA from the University of California–Los Angeles (1981) and his JD from Harvard Law School (1984).

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Peter Westen's principal scholarly interests are in the fields of criminal law and legal theory. He has authored a lengthy list of articles and book chapters that have appeared in prominent journals and volumes of collected essays, and he is the author of *The Logic of Consent: The Diversity and Deceptiveness of Consent as a Defense to Criminal Conduct* (Routledge, 2004) and *Speaking of Equality: The Rhetoric of "Equality" in Moral and Legal Discourse* (Princeton University Press, 1990). Prior to joining the faculty of the University of Michigan Law School in 1973, Professor Westen served as law clerk to Justice William O. Douglas of the Supreme Court of the United States. He was a Fellow of the International Legal Center in Bogota, Colombia, where he advised the Colombian Ministry of Economic Development on commercial code reform. When he returned to the United States, he became an Associate in the Washington, DC office of Paul, Weiss, Rifkind, Wharton & Garrison and appeared as counsel in several cases before the US Supreme Court. Professor Westen was also a Guggenheim Fellow in 1981. He earned his BA from Harvard College (1964). He spent the following year in Vienna on an Austrian state scholarship studying contemporary Austrian political history, and he then earned his JD from the University of California–Berkeley (1968).

Gideon Yaffe

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Gideon Yaffe's research interests include the philosophy of law, particularly criminal law; metaphysics, including causation, free will and personal identity; the philosophy of mind and action; and the history of early modern philosophy. Prior to joining the Yale faculty in 2011, Professor Yaffe was a Professor of Philosophy and Law at the University of Southern California. He was a member of the MacArthur Foundation's Law and Neuroscience Project and he continues to collaborate with several neuroscientists to devise experiments that aim to be of legal and philosophical significance. In 2015 he was named a Guggenheim Fellow. Professor Yaffe has written four books: *The Age of Culpability: Children and the Nature of Criminal Responsibility* (Oxford University Press, 2018); *Attempts: In the Philosophy of Action and the Criminal Law* (Oxford University Press, 2010); *Manifest Activity: Thomas Reid's Theory of Action* (Oxford University Press, 2004); and *Liberty Worth the Name: Locke on Free Agency* (Princeton University Press, 2000). He has also written articles that have appeared in leading law and philosophical journals. Professor Yaffe holds an AB from Harvard University (1992) and a PhD in philosophy from Stanford University (1998).

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