# Recht, Gerechtigkeit und der Staat

Studien zu Gerechtigkeit, Demokratie, Nationalität, nationalen Staaten und supranationalen Staaten aus der Perspektive der Rechtstheorie, der Sozialphilosophie und der Sozialwissenschaften

## Law, Justice, and the State

Studies in Justice, Democracy, Nationality, National States, and Supra-national States from the Standpoints of Legal Theory, Social Philosophy, and Social Science

Herausgegeben von / Edited by Mikael M. Karlsson / Ólafur Páll Jónsson / Eyja Margrét Brynjarsdóttir

> Vorwort von / Preface by Mikael M. Karlsson



Duncker & Humblot · Berlin

### Studies on Law, Justice, and the State

Attracta Ingram	
The Empire Strikes Back: Liberal Solidarity in a  Europe des Patries	7
Maria Boruck-Arctowa	
Unity and Diversity: The Dilemma of the European  Community and National Identity	25
Åke Frändberg	
On the Relation Between Law and State	37
Zenon Bankowski	
Don't Think About it: Legalism and Legality	45
Roberto Vernengo	
Law and Morality: An Analysis of Their Possible Relations	59
Anne de Moor	
Contract, Justice and Diversity in the Remaking of Europe	71
Alexander Bröstl	
Troubles with Law, Justice and Nationalism	83
Joxerramon Bengoetxea	
L'état, c'est fini?	93
Anita Allen	
Does a Child Have a Right to a Certain Identity?	109
Letizia Gianformaggio	
Identity, Equality, Similarity and the Law	121
K. B. Agrawal	
The Rule of Law and the Principles of the Welfare State	135

The Rights of Aliens and Human Rights	145
Jon Elster  The Empirical Study of Justice	157
Páll S. Árdal  Revenge and Punishment: Common Morality and the Law Re-visited, with a Lesson from the Icelandic Sagas	169
I. Law and the State: Issues Concerning Democracy, Justice, and the State	
Eerik Lagerspetz  Democracy and Paradox	181
Rex Martin Basic Rights	191
Tecla Mazzarese  Judicial Implementation of Fundamental Rights:  Three Sorts of Problem	203
Jeffrie G. Murphy  Human Decency and the Limitations of Kantianism	215
James Sterba  Conceptions of Justice: A Practical Reconciliation	223
II. Nationality, Law, and the State	
Lars D. Eriksson  The Disintegration of the Nation-State	239
Denise Réaume Moral and Legal Responses to the Multi-cultural, Multi-ethnic State	251
Brian Slattery  Transcending Community: Some Thoughts on Havel and Bergson	265
Michel Troper  Some Thoughts on the Status of the General Theory of the State	277

#### III. Law, Justice, and the Re-making of Europe

Jes Bjarup	
If you Can't Join Them, Beat Them: Some Jurisprudential Comments on Denmark's Position on the Maastricht Treaty	291
Helen Endre	
Post-structuralist Values in the Post-unification Era: Colonisation or Synthesis?	303
Valentin Petev	
A New Concept of Law for Eastern Europe	317
Marek Zirk-Sadowski	
The Instrumentalization of Law and Legal Culture in  Eastern European Countries	327
IV. Law, Justice, and Disproportionalities	
Wesley Cragg Philosophy of Punishment and the Problem of Disparities	339
Y. R. Haragopal Reddy Prison Justice and the Rights of Prisoners	351
Sandra Marshall Punishing Women: Equal or Different?	365
Uma Narayan  'Standard Persons' and 'Non-standard' Vulnerabilities:  The Legal Protection of Non-standard Interests	377
Yadlapalli Vishnupriya The Legal Rights of Children	387
Sigríður Þorgeirsdóttir	
Freedom, Community and the Family: Feminist Critique, Communitarianism and Liberalism	399

#### V. Social Philosophy and Social Sciences: Approaches to Law, Justice, and the State

Johann Patt Arnason	
Images of Society and Visions of Democracy	411
Mogens Blegvad	
What is Social Philosophy?	421
Hubert Rottleuthner	
The Conformity of the Legal Staff	441
Jan van Dunné	
Montesquieu Revisited: The Balance of Power of Legislature	
and Judiciary in a National-International Context	451