LEGAL THEORY

Volume 15 Number 3 September 2009

CAMBRIDGE UNIVERSITY PRESS

LEGAL THEORY

EDITORS

Matthew D. Adler, University of Pennsylvania Law School Larry Alexander, University of San Diego School of Law

David O. Brink, University of California, San Diego, Philosophy Department

Jules L. Coleman, Yale Law School

EDITORIAL BOARD

Robert Alexy, University of Kiel Anita Allen, University of Pennsylvania Mitchell N. Berman, University of Texas, Austin Brian Bix, University of Minnesota, Twin Cities

Susan Brison, Dartmouth College Allen Buchanan, Duke University Bruno Celano, University of Palermo Ruth Chang, Rutgers University Richard Craswell, Stanford University

Julie Dickson, Oxford University Michael Dorf, Cornell University

Antony Duff, Stirling University Gerald Dworkin, University of California, Davis Ronald Dworkin, New York University, University

College London David Enoch, Hebrew University of Jerusalem John Fischer, University of California, Riverside

John Gardner, Oxford University Ruth Gavison, Hebrew University

John Goldberg, Vanderbilt University Law School

Jeff Goldsworthy, Monash University Leslie Green, Oxford University Kent Greenawalt, Columbia University

Mark Greenberg, University of California, Los Angeles

Scott Hershovitz, University of Michigan John Horty, University of Maryland Heidi Hurd, University of Illinois Douglas Husak, Rutgers University Frances Kamm, Harvard University

Robin Kar, Loyola Law School

Greg Keating, University of Southern California

Mark Kelman, Stanford University

Matthew Kramer, Cambridge University

Jody Kraus, University of Virginia Larry Laudan, University of Texas Brian Leiter, University of Chicago David Lyons, Boston University Daniel Markovits, Yale Law School

Andrei Marmor, University of Southern California

Jeff McMahan, Rutgers University Michael Moore, University of Illinois Stephen Morse, University of Pennsylvania Stephen Munzer, University of California, Los Angeles

Jeffrie Murphy, Arizona State University Dennis Patterson, Rutgers University, European

University Institute, Swansea University Stephen Perry, University of Pennsylvania Gerald Postema, University of North Carolina Joseph Raz, Oxford University, Columbia University

Donald Regan, University of Michigan Arthur Ripstein, University of Toronto

Frederick Schauer, University of Virginia Scott Shapiro, Yale Law School Hanoch Sheinman, Rice University Patricia Smith, City University of New York Nicos Stavropoulos, Oxford University Martin Stone, Benjamin Cardozo Law School Peter Vallentyne, University of Missouri Jeremy Waldron, New York University

Wil Waluchow, McMaster University Alan Wertheimer, National Institutes of Health Gideon Yaffe, University of Southern California

Ben Zipursky, Fordham University

Editorial Office: Legal Theory, University of San Diego School of Law, 5998 Alcala Park, San Diego, California 92110, USA; e-mail: legaltheory@sandiego.edu.; telephone: 619-260-2264; fax: 619-260-4728.

Publishing, Subscription, and Advertising Offices: Cambridge University Press, 32 Avenue of the Americas, New York, NY 10013-2473; or Cambridge University Press, The Edinburgh Building, Shaftesbury Road, Cambridge CB2 2RU, England. Legal Theory (ISSN 1352-3252) is published quarterly by Cambridge University Press, 32 Avenue of the Americas, New York, NY 10013-2473, U.S.A./Cambridge University Press, The Edinburgh Building, Shaftesbury Road, Cambridge CB2 8RU, U.K. Annual subscription rates for Volume 15, 2009: Annual institutional print and electronic rates: US \$276.00 in the USA, Canada, and Mexico; UK £158.00+VAT elsewhere. Institutional electronic rates only: US \$236.00 in the USA, Canada, and Mexico; UK £137.00+VAT elsewhere. Institutional print rates only: US \$260.00 in the USA, Canada, and Mexico; UK £145.00+VAT elsewhere. Individual rates print only: US \$72.00 in the ÚSA, Canada, and Mexico; UK £43.00 + VAT elsewhere. Single part rates: US \$69.00 in the USA, Canada, and Mexico; UK £46.00 + VAT elsewhere. Prices include postage and insurance. Legal Theory and all other Cambridge Journals can be found at http://journals.cambridge.org/

Copyright © Cambridge University Press, 2009. All rights reserved. No part of this publication may be reproduced, in any form or by any means, electronic, photocopying, or otherwise, without permission in writing from Cambridge University Press. Permission enquiries from the USA, Mexico, and Canada should be addressed to the New York office of Cambridge University Press http://www.cambridge.org/us/information/rights/contacts/newyork.htm; permission enquiries from elsewhere should be addressed to the Cambridge office http://www.cambridge.org/uk/information/rights/contacts/cambridge.htm: permission enquiries from Australia and New Zealand should be addressed to the Melbourne office http://www.cambridge.org/aus/ information/contacts_melbourne.htm.

Permission to copy (for users in the U.S.A.) is available from Copyright Clearance Center, www.copyright.com, email:info@ copyright.com. Specific written permission must be obtained for republication; contact the nearest Cambridge University Press

Periodicals postage paid at New York, NY, and additional mailing offices. Forwarding and Return Postage Guaranteed, Address Correction Requested. Postmaster: Send address changes in the USA and Canada to: Legal Theory, Cambridge University Press, Journals Fulfillment Dept., 100 Brook Hill Drive, W. Nyack, NY 10994–2133, U.S.A. Send address changes elsewhere to Legal Theory, Cambridge University Press, Journals Fulfillment Dept., The Edinburgh Building, Shaftesbury Road, Cambridge CB2 8RU, England.

Printed in the United States of America