



The Unity of the Common Law

Alan Brudner

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The structure of common law has for many years been the subject of intense debate between formalists and functionalists. The former, drawing on legal realism, proposes that transactional law is a private law for interacting parties, while the latter, inspired by Kant, argue it is a public law serving the collective ends of society. But what if there were a unity between functionalism and formalism? What if, in this unity, private law is modified by a common good?

In this thoroughly revised and re-written edition of his classic book 'The Unity of the Common-Law: Studies in Hegelian Jurisprudence,' Alan Brudner draws on Hegel's legal philosophy to exhibit this unity in each of transactional law's main divisions; property, contract, unjust enrichment and tort. Brudner suggests each of these divisions is composed of private-law and public-law parts that complement each other and that they are connected by a single narrative thread. This thread consists in development towards a goal. The goal is the dignity that comes with the attainment of the legal conditions necessary and sufficient for reconciling dependence with independence. Thus the end point is what a transactional law can contribute to a life sufficient for dignity.

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