

Theoretical Inquiries in Law

Volume 22, Number 1, January 2021

Editorial Board

Editors in Chief: Alon Klement
Yishai Blank

Guest Editors: Adam J. Kolber
Talia Fisher

Executive Editors: Alon Jasper
Jasmin Wenersbusch

Junior Editors: Maya Hay
Nir Kremerman
Or Shua

Assistant Editors: Alma Gilboa-Schechtman
Amihai Gotlieb
Amir Marom
Aviv Shimshi
Dana Karasik
Eden Kravitz
Mais Abdallah
Mor Pnini
Narda Vasquez Arancibia
Ori Chaim Yaniv
Ott Arava
Shani Tsur
Valeria Hidalgo Lev
Yosef Brander
Yotam Reis

Managing Editors: Ayelet Avriel
Sharon Vered Shaked

ISSN 1565-1509

©

Copyright 2021 by Theoretical Inquiries in Law
The Cegla Center for Interdisciplinary Research of the Law
The Buchmann Faculty of Law, Tel Aviv University

Printed in Israel
By Sdar Zalam

THEORETICAL INQUIRIES IN LAW is a biannual English-language law journal published by the Cegla Center for Interdisciplinary Research of the Law at the Buchmann Faculty of Law, Tel Aviv University. The journal specializes in the application to legal problems of insights developed in other disciplines, such as moral and political theory, epistemology, history, cultural studies, social sciences, economics and game theory, probability theory, and cognitive psychology. The range of issues dealt with by the journal is virtually unlimited, in line with its commitment to the cross-disciplinary cultivation of ideas. Contributors to the journal are distinguished legal scholars working in different “law and . . .” areas. The journal also strives to offer a forum for contributions to legal theory by scholars working in disciplines outside of law.

The previous issues of the journal have been devoted to the following topics: Restitution and Unjust Enrichment; Judgment in the Shadow of the Holocaust; Contemporary Legal Scholarship: Achievements and Prospects; Protecting Investors in a Global Economy; Economic Analysis of Constitutional Law; Negligence in the Law (Parts 1 & 2); Writing Legal History; Liberty, Equality, Security; The Palestinian Refugees and the Right of Return: Theoretical Perspectives; The Role and Limits of Legal Regulation of Conflicts of Interest (Parts 1 & 2); The Excessive Use of Force; Personal Bankruptcy in the 21st Century: Emerging Trends and New Challenges; Critical Modernities: Politics and Law Beyond the Liberal Imagination; Why Citizenship?; Moral and Legal Luck; Legal Pluralism, Privatization of Law and Multiculturalism; Community and Property; Histories of Legal Transplantations; Money Matters: The Law, Economics, and Politics of Currency; Comparative Tax Law and Culture; Copyright Culture, Copyright History; Rights and Obligations in the Contemporary Family: Rethorizing Individualism, Families and the State; Back to the State? Government Investment in Corporations and Reregulation; International Courts and the Quest for Legitimacy; Public and Private, Beyond Distinctions?; New Approaches for a Safer and Healthier Society; Sovereignty as Trusteeship for Humanity: Historical Antecedents and Their Impact on International Law; Labor Organizing the Law; The Constitution of Information: From Gutenberg to Snowden; Law, Economy and Inequality; Sovereignty and Property; Fifty Years of Class Actions – A Global Perspective; The Tragedy of the Commons at 50: Context, Precedents, and Afterlife; The Problem of Theorizing Privacy; Freedom, Choice & Contracts; Elder Law and its Discontents; Historical Justice in the Israeli-Palestinian Context. Forthcoming issues will include: How Law Changes What You Want: Positive and Normative Effects of Law on Values and Preferences; The Global Law Market: New Frontiers for Economic and Empirical Analysis of Private International Law.

An online version of the journal, as well as comments on articles published in the journal, are available in the *Theoretical Inquiries in Law* website (<http://en-law.tau.ac.il/til>). All articles are also indexed and available on HeinOnline, LegalTrac, Lexis-Nexis, and Westlaw.

Contact Information: Theoretical Inquiries in Law, The Cegla Center for Interdisciplinary Research of the Law, The Buchmann Faculty of Law, Tel Aviv 6997801, Israel. Tel.: 972-3-6406697; fax: 972-3-6405849; email: cegla@tauex.tau.ac.il.

Theoretical Inquiries in Law

Volume 22, Number 1, January 2021

Legal Discontinuity

Contents

	Introduction	i
Lee Fennell	Sizing Up Categories	1
Leo Katz & Alvaro Sandroni	Disorder and Discontinuity in Law and Morality	31
Re'em Segev	Continuity in Morality and Law	45
Talia Fisher	Half the Guilt	87
Adam J. Kolber	Line Drawing in the Dark	111
Avlana K. Eisenberg	Discontinuities in Criminal Law	137
Omer Y. Pelled	All-Or-Nothing, Or Something – Proportional Liability in Private Law	159
Mark Spottswood	Proof Discontinuities and Civil Settlements	201
Saul Levmore	Probabilistic Disclosures for Corporate and other Law	263
Eric Kades	The Charitable Continuum	285
Julie Roin	Changing Places, Changing Taxes: Exploiting Tax Discontinuities	335