CONTENTS

PREFACE ix

PART ONE: THE NATURE OF LAW 1

The Natural Law Tradition 8
Brian Bix, "Natural Law Theory" 8
Lon L. Fuller, "Eight Ways to Fail to Make Law" 20

Positivism and Its Critics 24
John Austin, "A Positivist Conception of Law" 24
H. L. A. Hart, "A More Recent Positivist Conception of Law" 36
H. L. A. Hart, "Positivism and the Separation of Law and Morals" 50
Lon L. Fuller, "Positivism and Fidelity to Law—
A Reply to Professor Hart" 67
Ronald M. Dworkin, "The Model of Rules" 82
Riggs v. Palmer 100
Jules L. Coleman and Brian Leiter, "Legal Positivism" 105

Law From the Perspective of the Judge 119
O. W. Holmes, Jr., "The Path of the Law" 119
Jerome Frank, "Legal Realism" 125
Ronald Dworkin, "Integrity in Law" 127
Lon L. Fuller, "The Case of the Speluncean Explorers" 142
John Hart Ely, "Discovering Fundamental Values" 157
David Lyons, "Constitutional Interpretation and Original Meaning" 172
Antonin Scalia, "Common-Law Courts in a Civil-Law System:
The Role of United States Federal Courts in Interpreting
the Constitution and Laws" 187
Ronald Dworkin, "Comment" 196
The Moral Obligation to Obey the Law 204

Plato, *Crito* 204
Martin Luther King, Jr., “Letter from Birmingham Jail” 213
M. B. E. Smith, “Is There a Prima Facie Obligation to Obey the Law?” 221
Scott J. Shapiro, “Authority” 236

PART TWO: JUSTICE 258

Liberty 267

Joel Feinberg, “Offensive Nuisances” 278
Gerald Dworkin, “Paternalism” 293

Rights 304

Joel Feinberg, “The Nature and Value of Rights” 304
F. M. Kamm, “Conflicts of Rights” 313
Jules L. Coleman and Jody Kraus, “Rethinking the Theory of Legal Rights” 323

Justice in the Administration of the Law 333

*The Machinery of Justice* 333
John H. Langbein, “Torture and Plea Bargaining” 333
Gerald Dworkin, “The Serpent Beguiled Me and I Did Eat: Entrapment and the Creation of Crime” 343

Constitutional Privacy 354

*Griswold v. Connecticut* 354
*Roe v. Wade* 359
*Planned Parenthood of S.E. Pennsylvania v. Casey* 364
*Bowers v. Hardwick* 368

Freedom of Expression and Its Limits 379

Joel Feinberg, “Limits to the Free Expression of Opinion” 379

*Cohen v. California* 395
*Village of Skokie v. National Socialist Party of America* 399
*Texas v. Johnson* 403

Henry Louis Gates, Jr., “War of Words: Critical Race Theory and the First Amendment” 412

Justice, Affirmative Action, and Racial Quotas 433

Thomas Nagel, “Equal Treatment and Compensatory Discrimination” 433
CONTENTS

California Constitution, Article I Declaration of Rights  454

Inequality and Gender  456
Kim Lane Scheppele, “The Reasonable Woman”  456
State v. Rusk  461
Regina v. Morgan  464
State v. Kelly  467
Michael M. v. Superior Court of Sonoma County  471
Leslie Green, “Sexuality, Authenticity, and Modernity”  479

Justice and Contract  490
Anthony T. Kronman, “Contract Law and Distributive Justice”  490
Seana Valentine Shiffrin, “Paternalism, Unconscionability Doctrine, and Accommodation”  508

Torts  526

Property  560
Jeremy Waldron, “Property Law”  560
Robert P. Merges, “Property Rights Theory and the Commons: The Case of Scientific Research”  574
Moore v. Regents of the University of California  588

PART THREE: RESPONSIBILITY AND PUNISHMENT  602

Ascribing Responsibility  612
Stephen R. Perry, “The Impossibility of General Strict Liability”  612
H. L. A. Hart and A. M. Honoré, “Causation and Responsibility”  630
Judith Jarvis Thomson, “The Decline of Cause”  642
David Lewis, “The Punishment That Leaves Something to Chance”  650
John Gardner, “Obligations and Outcomes in the Law of Torts”  658
Palsgraf v. The Long Island Railroad Co.  676
Summers v. Tice  682
Sindell v. Abbott Laboratories  686
Thomas Babington Macaulay, “Notes on the Indian Penal Code”  700
Ernest J. Weinrib, “The Case for a Duty to Rescue”  702

Defeating Responsibility  724
John Martin Fischer and Mark Ravizza, “Responsibility for Consequences”  724
CONTENTS

People v. Young 739
Sanford H. Kadish and Stephen J. Schulhofer, “The Case of Lady Eldon’s French Lace” 741
The M’Naghten Rules, The House of Lords 746
The Insanity Defense, The American Law Institute 747
State v. Guido 750
Joel Feinberg, “What Is So Special About Mental Illness?” 751

Punishment 761
Joel Feinberg, “The Expressive Function of Punishment” 761
Toni M. Massaro, “Shame, Culture, and American Criminal Law” 771
Joel Feinberg, “The Classic Debate” 799
C. L. Ten, “Fantastic Counterexamples and the Utilitarian Theory” 804
Herbert Morris, “Persons and Punishment” 819
Russ Shafer-Landau, “The Failure of Retributivism” 831
Jeffrie G. Murphy, “Getting Even: The Role of the Victim” 842

The Death Penalty 854
Furman v. Georgia 854
Woodson v. North Carolina 863
Ernest van den Haag, “In Defense of the Death Penalty: A Practical and Moral Analysis” 873
Stephen Nathanson, “Should We Execute Those Who Deserve to Die?” 879