Contents

Lis	t of C	ontributors	ix
1		onality in Legislation—Legal Theory as Legisprudence: htroduction	1
	Luc	J Wintgens	
2	Leg	islation as an Object of Study of Legal Theory: Legisprudence	9
	Luc	J Wintgens	
	I.	Introduction	9
	II.	The Absence of a Theory of Legislation (Legisprudence)	10
	III.	The Internal and the External	15
		1. The Internal and External Point of View	15
		2. Points of View and Theories of Law	16
		3. The Hermeneutic Point of View	17
		4. The Judicial Point of View	21
		5. The Judicial Point of View Qualified: Another	
		Hermeneutic Point of View?	22
	IV.	The Internal and the External: The Legislator's Point of	
		View	24
		1. Legalism, Sovereignty and the Internal Point of View of	
		the Legislator	24
		2. The Legislator between Duty and Aspiration	26
		3. The Legislator's Point of View: Yet Another Version of	
		the Hermeneutic Point of View?	29
		4. The Bundesverfassungsgericht and the Rationality of	
		Legislation	32
		5. The Hermeneutic Point of View _j , the Hermeneutic Point	
		of View _l and Coherence	35
	V.	Summary and Conclusion	39
3	Ma	king Society through Legislation	41
	Lar	s D Eriksson	
	I.	Introduction	41
	II.	The Liberal State and the Welfare State	42
	III.	Some Problems Related to Welfare Rights	44
	IV.	An Exemplification: What Happened to the Job?	45
	V.	Is this Really a Contribution to Legisprudence?	46

vi	Contents

4	Rat	ionality of Legislation in a Sociological View	49
	Каи	ko Pietilä	
	I.	An Overture in Philosophy	49
	II.	The Problem Itself	49
	III.	Modes of Representation	51
	IV.	The Senseless Lawgiver I: The Case of Reduced Taxes	54
	V.	The Senseless Lawgiver II: The Case of Financial	
		Liberation	57
	VI.	This is a Constitutional Problem	60
5	Leg	islative Inflation and the Quality of Law	65
	Svei	n Eng	
	I.	Introduction	65
	II.	Is Great Legislative Quantity Per Se a Bad Thing?	66
		1. Legislative Quantity as Product	66
		2. Legislative Quantity as Process	67
	III.	Some Main Causes of Legislation—and of Legislative	
		Inflation	68
	IV.	Is Bad Legislation among the Significant Causes of Great	
		Legislative Quantity?	68
		1. Substantial Flaws	69
		1.1 Briefly on Substantial Flaws	69
		1.2 Is Substantially Flawed Legislation Among the	
		Significant Causes of Great Legislative Quantity?	69
		2. Technical Flaws	74
		2.1 Briefly on Technical Flaws	74
		2.2 Is Technically Flawed Legislation Among the	
		Significant Cause of Great Legislative Quantity?	75
		3. Means–End Flaws	76
		3.1 Briefly on Means–End Flaws	76
		3.2 Is Means–End Flawed Legislation Among the	
		Significant Causes of Great Legislative Quantity?	77
	V.	Working from Below: Legal Definitions as a Starting Point for	
		Reflections and as a Test Case for General Propositions	78
	VI.	Conclusion	79
6	Prec	lictable Rules and Flexible Principles—The Problem of	
		logical Pluralism and Legitimacy	81
		istian Dahlman	
	I.	Introduction	81
	II.	Two Ways of Dealing With Pluralistic Legal Concepts	82
	III.	Conclusion	85

<u> </u>	••
Contents	V11

7	Concept and Institution of the State in the European Legal Tradition	87
	Hannu Tolonen	07
	I. Points of Departure	87
	II. Feudal State/Society	89
	III. The Modern Public Power: The Bureaucratic State	91
	1. The Concept of Sovereignty	92
	2. Rechtsstaat	92
	IV. Welfare State and Post-welfare Conception of the State	93
	1. Welfare Doctrine	94
	2. Post-welfare State: Welfare and Post-welfare	94
	V. Conclusion	97
8	Legislation Between Politics and Law	99
	Kaarlo Tuori	
	I. The Problem of Legisprudence	99
	II. Legislative Activities as a Combination of Political and Legal	
	Practices	100
	III. Legislation in the Overall Structure of the Legal Order	101
	IV. Law and Morals V. Excursion: the Autonomy of the Law	102
	V. Excursion: the Autonomy of the LawVI. The Rationality of Legislation	104 104
		101
9	Legisprudence and European Law: in Search of the Principles of	
	European Legislation	109
	Amaryllis Verhoeven	
	I. Introduction	109
	II. Law-making in Europe: an Unconventional Scheme	110
	 Who 'Legislates' in the European Union? Constitutional Constraints on European Law-making 	110 112
	III. In Search of a Conceptual Model	112
	1. Three Competing Models of Law-making	117
	2. Law-making European-Style: Beyond Parliamentary	
	Sovereignty	122
	IV. Conclusion	125
10	Rationality in Legislation by Employing Informatics?	127
	Wim Voermans	
	I. Drafting Assistance and Computers: Legimatics	127
	II. Legislative Drafting and Legal Problem Solving	128
	III. Legislative Quality Standards as a Motivation for the	
	Development of LEDA	129

viii	Contents

		1. The Directives for Regulations	130
		2. Handling the Directives	131
		3. The Goals of the LEDA Project	131
	IV.	The LEDA System: How Does it Work?	131
		1. The LEDA system's Functions: General Features	131
		2. The Preparatory Module	132
		3. The Basic Design Screen	135
		4. The CD Parser	136
	V.	Conclusion	136
11	The	Forum Model in Evaluation of Legislation	139
		nrich Winter	
		nrich Winter Introduction	139
	Hei		139 140
	Hei I.	Introduction	
	<i>Hei</i> I. II. III.	Introduction The Growing Importance of Evaluation-Research	140
	<i>Hei</i> I. II. III.	Introduction The Growing Importance of Evaluation-Research Legislative Policy: From Quantity to Quality	140 141
	Hei I. II. III. IV.	Introduction The Growing Importance of Evaluation-Research Legislative Policy: From Quantity to Quality The Orientation of Meta-Evaluations	140 141
	Hei I. II. III. IV. V.	Introduction The Growing Importance of Evaluation-Research Legislative Policy: From Quantity to Quality The Orientation of Meta-Evaluations Central Thesis: Systematic Evaluation can Lead to Improved	140 141 142
	Hei I. II. III. IV. V. VI.	Introduction The Growing Importance of Evaluation-Research Legislative Policy: From Quantity to Quality The Orientation of Meta-Evaluations Central Thesis: Systematic Evaluation can Lead to Improved Quality of Laws	140 141 142 143