

SERIES EDITOR PREFACE

Where once a scholar interested in studying either the human or natural world began from the standpoint of philosophical analysis, this trend has been reversed since the rise of social science and its imperative to replace philosophy with ‘theory’, that began in the mid-nineteenth century. A critical reason for the existence of this book series is to reintroduce philosophical study into the investigation of transnational policy and law. While there are many ways to do this, what characterises a philosophical, as opposed to a theoretical, point of view is that the former values comprehensive scope over narrow focus and the illumination of the essence of the law’s inherent logic of concepts over an exclusive concentration on the parameters of its superficial structure.

Specifically, the comprehensive search for the essence of society and the natural world has been replaced by the compartmentalised and highly focused effort to find a specific theory for each independent corner or contextual problem of the human experience, taken in isolation. Here, the only use found for the comprehensive philosophy of the past is as disconnected conceptual bits and pieces within these new theoretical structures. Part of the contemporary imperative for reintegrating philosophical study into transnational policy and law is to both illuminate the wider context of these theoretical corners and demonstrate how a fuller philosophical understanding of the conceptual essence of the law renders a higher degree of clarity in the analysis of the specific problems of contemporary legal practice. Michael Burkard’s book does both these things very well.

There are two areas of transnational law and policy that have infrequently been treated together: the WTO and Environmental Risk. With calls for making the dispute settlement system of the WTO the foundation for international constitutional law and as environmental risk persists as one of the most ubiquitous problems of our age, Michael Burkard's book is an especially timely and unique treatment of the epistemological and methodological dilemmas associated with this legal nexus.

A unique dimension of this book is the meticulous consideration of the similarities and distinctions between positivism and relativism. These distinctions are commonly considered to be independent contradictory points of departure for scientific consideration of risk in transnational law and the foundational points of departure for modern 'theoretical' analysis, requiring no more fundamental consideration of their conceptual essence. Burkard's argument deconstructs these positions to a much more essential level, exposing their epistemological and methodological dynamics, while also more adequately illuminating the distinct advantages and disadvantages of each. Burkard's comparative study of the philosophical substructure that underlies the 'science' of the policy involved is singular in the literature and should invigorate the practice of transnational risk law.

In addition to working within the positivist—relativist framework of modern theory and exposing the inherent philosophical logics that underpin current policy, he also, on the basis of this deeper epistemological analysis of method, synthesises a more balanced 'critical' approach to make the policy and law of transnational environmental risk regulation more effective. By first submitting existing positive law to more comprehensive philosophical analysis, both his critical and constructive arguments expertly highlight the problems involved in current WTO risk law. From the roots of conceptual conflicts between the panel and appellate structures of WTO dispute settlement system that have retarded policy in this critical area of the law to his more comprehensive and essential analysis of international legal practice, Burkard's findings make his recommendation of a methodological change in the fundamental analysis of WTO law more persuasive and more powerful than previous work in this area. His conclusions merit our very serious attention.

By first distinguishing risk as a particular class of cases pertaining to the regulation of the environment and then by unpacking the full methodological and epistemological essence of relativism and positivism, this book transforms the consideration of both the adequacy of the WTO dispute settlement system and the ability of current theoretical constructs to

effectively incorporate the unique characteristics of environmental risk into international public law. Utilising WTO case law, it is his comprehensive philosophical analysis of the essence of practice in transnational risk law and policy that makes Michael Burkard's book a perfect addition to our series on **PHILOSOPHY, PUBLIC POLICY AND TRANSNATIONAL LAW**.

This book sheds new light on a number of questions concerning the role of the WTO in the contemporary evolution of transnational law. The philosophical illumination of conventional theory and practice present in this book, especially in terms of policy questions dealing with those areas of law that must transcend sovereignty for authority beyond the state, make this monograph a welcome addition to our series.

Bethlehem, USA

John Martin Gillroy

Conflicting Philosophies and International Trade Law
Worldviews and the WTO

Burkard, M.

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