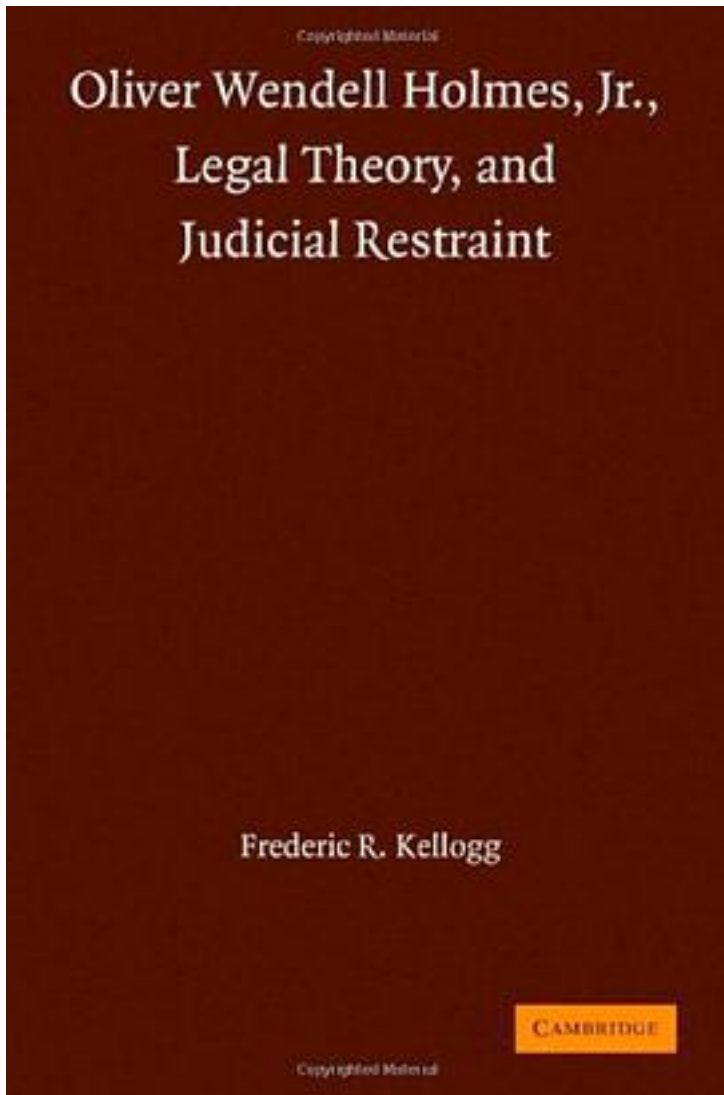


Oliver Wendell Holmes, Jr. Legal Theory, and Judicial Restraint



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Oliver Wendell Holmes, Jr., is considered by many to be the most influential American jurist. The voluminous literature devoted to his writings and legal thought, however, is diverse and inconsistent. In this study, which was originally published in 2007, Frederic R. Kellogg follows Holmes's intellectual path from his early writings through his judicial career. He offers a fresh perspective that addresses the views of Holmes's leading critics and explains his relevance to the controversy over judicial activism and restraint. Holmes is shown to be an original legal theorist who reconceived common law as a theory of social inquiry and who applied his insights to constitutional law. From his empirical and naturalist perspective on law, with its roots in American pragmatism, emerged Holmes's distinctive judicial and constitutional restraint. Kellogg distinguishes Holmes from analytical legal positivism and contrasts him with a range of thinkers.

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