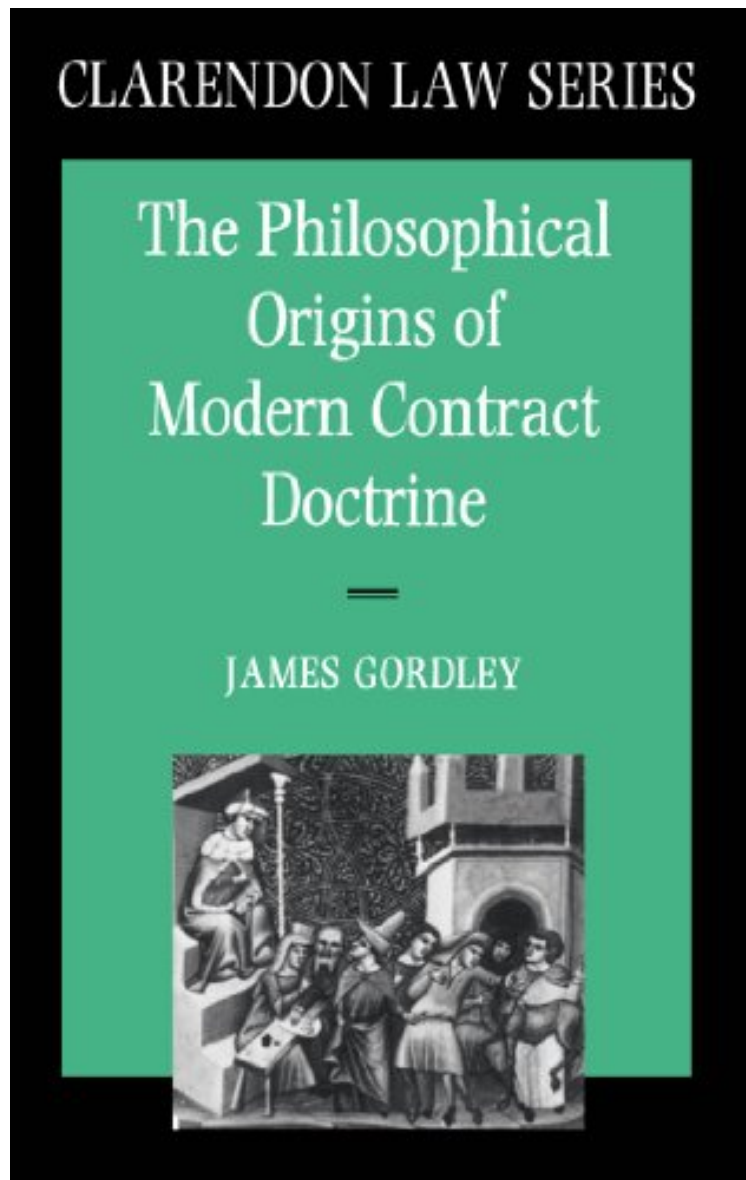


[FREE] The Philosophical Origins of Modern Contract Doctrine (Clarendon Law Series)

The Philosophical Origins of Modern Contract Doctrine (Clarendon Law Series)

James Gordley

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James Gordley : The Philosophical Origins of Modern Contract Doctrine (Clarendon Law Series) before purchasing it in order to gage whether or not it would be worth my time, and all praised The Philosophical Origins of Modern Contract Doctrine (Clarendon Law Series):

5 of 5 people found the following review helpful. A radical critique of everything you thought you knew about the philosophical origins of modern contract doctrineBy ThomasI don't remember quite why I bought this book, other than

the obvious purpose of getting a little philosophical background for teaching a first year contracts course. But as I read into the book, it was the case of saying, then practically shouting, what? WHAT?! The story this book tells is not your grandfather's history of contract law. The other reviewer ably summarizes it, but let's say I was not expecting the Spanish Neo-scholastics. By way of criticism, I will say the latter chapters are pretty hard going for one who is not learned in 16th and later century French and German jurists. A few more signposts along the road would have been helpful. A lot of these guys I had never heard of before. But that's minor. It does leave me in a bit of quandry how to teach Contracts to the eager students. I can hardly say, first, go back and learn Aristotle and Aquinas! Or, none of it makes sense in the end without them. Perhaps read this book after rather than before teaching the class. In any event, this is a book that will really change the way you think about the law of contracts and what it is based on. 12 of 12 people found the following review helpful. A powerful challenge to modern legal theory

By Careful Reader

The common law of England and the United States and the civil law of continental Europe have a similar doctrinal structure not found in the older English cases or Roman legal texts from which they supposedly descend. In this original and unorthodox study of law and legal philosophy, James Gordley demonstrates that this structure was created in the 16th century in a self-conscious attempt to synthesize two powerful traditions: Roman law and the moral theology of St. Thomas Aquinas. The protagonists in this movement were the group known to history as the late scholastics or the Spanish natural law school. Although the doctrines of the late scholastics were borrowed by later jurists, the Thomistic philosophy on which these doctrines were founded lost its authority among educated people in the 17th and 18th centuries. 19th century jurists reworked these doctrines, removing the Thomistic concepts that they thought were wrong or unintelligible. The result was the "will theories" of contract in which contractual obligation was explained as far as possible in terms of the will of the parties. But with Thomas Aquinas removed it proved impossible to construct coherent doctrines and contract law fell into a state of confusion from which it has yet to emerge. In this powerful study Gordley demonstrates that by throwing light on the historical origins of this confusion it is possible to find answers to many of the puzzles that contract lawyers face today. And, reassessing the impact of modern philosophy on contract law, he concludes that modern philosophy has failed to provide a new basis for a coherent doctrinal system. The only hope lies in rediscovering the neglected philosophy of Aristotle and Aquinas.

This study traces the influence of philosophical ideas on the development of contract law from the post-Roman period to the 19th century, focusing upon the synthesis of Roman law and the moral philosophy of Aristotle and Aquinas.

'I cannot do justice to the detail and painstaking scholarship which backs up Gordley's interpretation of contract doctrine. Whatever view one ultimately takes of the argument this is undoubtedly a remarkable work of scholarship and essential reading for anyone with an academic interest in the law of contract ... It achieves its purpose magnificently.' Hugh Collins, *Law Quarterly*

'This remarkable (and remarkably concise) book successfully combines an extensive knowledge of legal history and of comparative law with an insightful understanding of the philosophical debates surrounding contract doctrine. Gordley interweaves a number of themes with considerable aplomb, and has provided much that will be of interest to disparate audiences.' N. E. Simmonds, *Cambridge Law Journal*