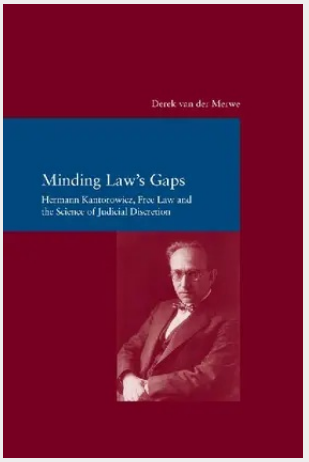
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Minding Law's Gaps

Hermann Kantorowicz, Free Law and the Science of Judicial Discretion



Hermann Kantorowicz was a formidable legal scholar in the turbulent first three decades of the 20th century, a leading participant in the ‘renaissance’ of legal philosophy in Germany. He gained an international reputation as a legal historian and legal theorist (and no small notoriety for his contrarian, combative views). He first formulated a ‘free law’ theory in Kampf um die Rechtswissenschaft in 1906, his bold strike against orthodox jurisprudence. Substantially modified over time, the theory sought to explain and to justify when and how judges employ discretion when called upon to fill gaps in the law by a process of legal discovery. This book examines the evolution of Kantorowicz’s free law thought – from contra legem adjudication to the science of method trialism; its philosophical, sociological and historical underpinnings; and why it still retains relevance for modern legal methodology.

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