Record Nr. UNINA9910457475403321 Autore Aspremont Jean d' **Titolo** Formalism and the sources of international law: a theory of the ascertainment of legal rules / / Jean d'Aspremont Oxford;; New York:,: Oxford University Press,, 2011 Pubbl/distr/stampa **ISBN** 0-19-968226-7 0-19-173220-6 0-19-150482-3 Descrizione fisica 1 online resource (285 p.) Collana Oxford monographs in international law 285 Disciplina International law - Philosophy Soggetti International law - Interpretation and construction Legal positivism Electronic books. Lingua di pubblicazione Inglese **Formato** Materiale a stampa Livello bibliografico Monografia Note generali Description based upon print version of record. Nota di bibliografia Includes bibliographical references (pages [225]-258) and index. Nota di contenuto Cover; Contents; List of Abbreviations; 1. Introduction; 1.1 Setting the Stage: The Retreat from Formal Law-Ascertainment; 1.2 The Argument: Rejuvenating Formalism in the Theory of the Sources of International Law: 1.3 Preliminary Caveats About the Argument Made in this Book: 2. The Concept and the Rationale of Formalism in International Law; 2.1 Formalism and its Multiple Meanings; 2.1.1 The concept of formalism espoused in this book: formalism as a theory of law-ascertainment based on social practice; 2.1.2 Other conceptions of formalism 2.2 Rationale of Formalism in the Theory of the Sources of International Law3. The Emergence of Formal Law-Ascertainment in the Theory of the Sources of International Law; 3.1 The Emergence of Formal Law-Ascertainment in General Legal Theory: A Sketch; 3.1.1 Introduction; 3.1.2 Formal law-ascertainment and the restrictive source thesis: Hobbes, Bentham, and Austin; 3.1.3 The emergence of the social thesis: from Kelsen to Hart; 3.1.4 Formal law-ascertainment after Hart; 3.2 Formal Law-Ascertainment in the Theory of the Sources of International Law

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Sommario/riassunto

This book revisits the theory of the sources of international law from the perspective of formalism. It critically analyzes the virtues of formalism, construed as a theory of law ascertainment, as a means of distinguishing between law and non-law. The theory of formalism is re-evaluated against the backdrop of the growing acceptance by international legal theorists of the blurring of the lines between law and non-law. At the same time, the book acknowledges that much internationalnormative activity nowadays takes place outside the ambit of traditional international law and that only a limited