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Author: Glover, John
Title: The Trust in Common Law Systems: Functions and Philosophical Correspondences
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Abstract: Locating the origins of the thought on equity in European Antiquity (Aristotle) and pursuing its development from the 17th century to the present in countries with Anglo-Saxon civil law, the author offers a contemporary post-structural context to the application of the legal instrument of the trust, which has no equivalent in any other legal system. Already Aristotle recognized the potential of equity to act as a corrective of the general law. The trust is the applied form of equity in Anglo-Saxon Common Law systems. As doctrine, the trust eliminates the gap between property law and obligation which exists in Civil Law and thus propels itself into the domain of ethics. Functionally, the trust serves many diverse purposes, which extend from the care for the disabled, corporate finance, charitable giving and tax avoidance. In this article, anti-formalism and Pragmatism frame the theoretical basis of the legal instrument of the trust. The trust behaves similarly to the process of meaning in the Pragmatist philosophy of Charles Sanders Peirce and is focused on the "outcomes" of actions. That is why the author offers the coinage "value-in-action" as a theoretical explanation of the trust. "Trusting" emerges as a vital component of modern trade which again suggests an ethical orientation of the trust. The author advances speculatively that the ethics of modern capitalism, which is invisible ("reclusive"), surfaces implicitly in the law of equity, whose instrument is the trust.
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