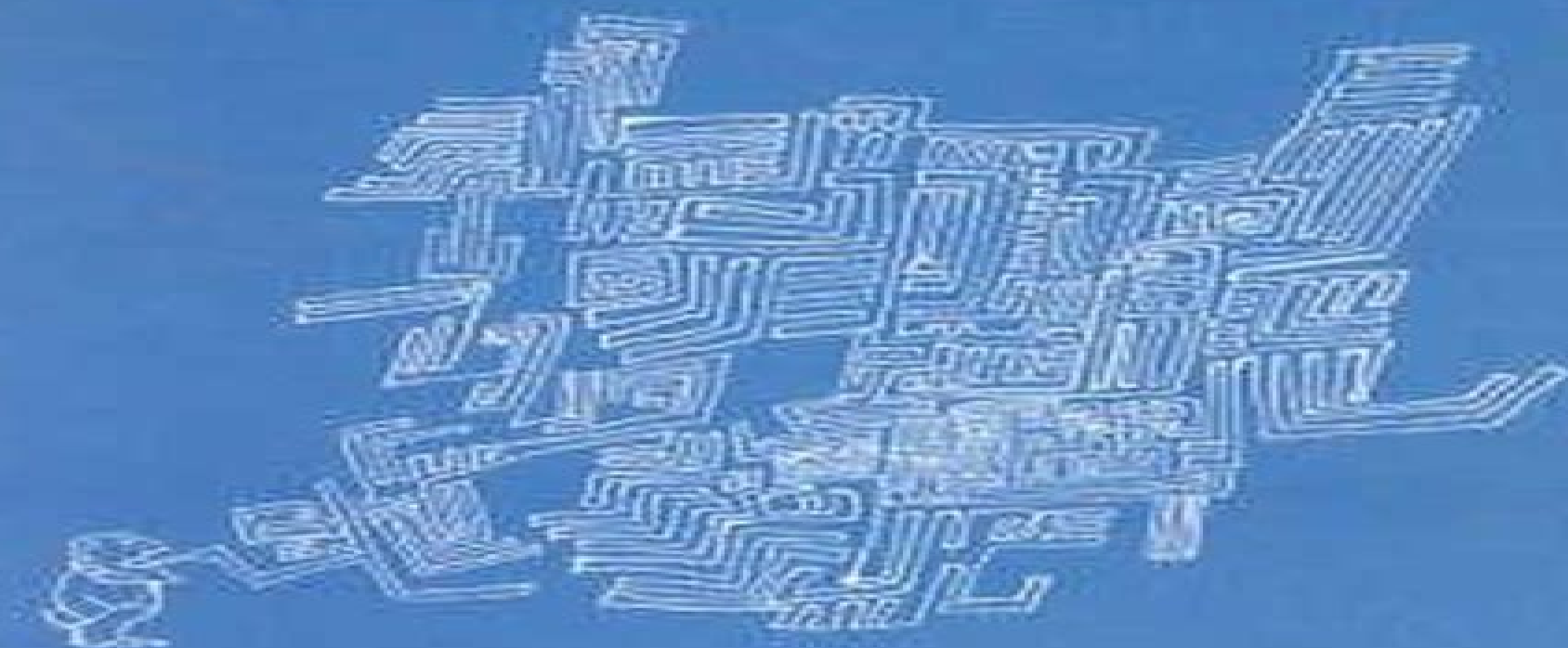


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# Rediscovering Fuller

Essays on Implicit Law  
and Institutional Design



Amsterdam University Press

# Rediscovering Fuller

**Andrea Bianchi, Daniel Peat, Matthew Windsor**



## Rediscovering Fuller:

*Rediscovering Fuller* W. J. Witteveen, Wibren van der Burg, 1999 Lon Fuller one of the great American jurists of this century is often remembered only for his stand on the morality of law in the Fuller Hart debate *Rediscovering Fuller* considers the full range of Fuller's writings from his early engagement with legal fictions and his critique of legal positivism to his later work on implicit law and the art of institutional design Contributors from the fields of both civil law and common law argue that Fuller's insights are highly relevant to contemporary concerns The book contains essays by K Winston D Dyzenhaus P Cliteur F Schauer Beyond the Fuller Hart Debate P Westerman W van der Burg D Luban Moralities of Law G Postema P Teachout Implicit Law R Macdonald W Witteveen J Allison M Hertogh K Soltan The Art of Institutional Design J Allan F Mootz J Vining Law's Dialogue and a preface by Ph Selznick At some point in the future when we become more open to the moral relevance of social inquiry more empirical in our study of philosophical issues more capable of uniting moral and social theory Lon Fuller's work will stand as a landmark This volume will help show the way Ph Selznick

**The Dynamics of Law and Morality** Wibren van der Burg, 2016-03-23 This book investigates the dynamic intertwinement of law and morality with a focus on new and developing fields of law Taking as its starting point the debates and mutual misunderstandings between proponents of different philosophical traditions it argues that this theoretical pluralism is better explained once law is accepted as an essentially ambiguous concept Continuing on the book develops a robust theory of law that increases our grasp on global legal pluralism and the dynamics of law This theory of legal interactionism inspired by the work of Lon Fuller and Philip Selznick also helps us to understand apparent anomalies of modern law such as international law the law of the European Convention on Human Rights and horizontal interactive legislation In an ecumenical approach legal interactionism does justice to the valuable core of truth in natural law and legal positivism Shedding new light on familiar debates between authors such as Fuller Hart and Dworkin this book is of value to academics and students interested in legal theory jurisprudence legal sociology and moral philosophy

*Designing Government* F. Pearl Eliadis, Margaret M. Hill, Michael Howlett, 2005 This collection of readings examines the tools used by today's government to achieve legitimacy effectiveness and accountability The contributors examine the instrument choice perspective on government and public policy over the past two decades moving beyond the preoccupation with deregulation and efficiency to trace the complex relationships between instrument choices and governance Readers are encouraged to consider factors in the design of complex mixes such as issues of redundancy context the rule of law and accountability These latter factors are especially central in today's world to the design and implementation of effective instrument choices by governments and ultimately to good governance The authors conclude that instrument choice itself is integral to government and governance

**Preservation of Ecosystems of International Watercourses and the Integration of Relevant Rules** Lee Jing, 2014-07-17 In *Preservation of Ecosystems of International Watercourses and the Integration of Relevant Rules* An

Interpretative Mechanism to Address the Fragmentation of International Law Lee Jing takes an innovative approach to developing an international legal framework for preserving ecosystems Deploying Article 31 3 c of the 1969 Vienna Convention an analytical framework is devised that examines the ecosystem approach under international law through the prism of Article 20 of the UN Watercourses Convention The analysis provides an enhanced normative scope and content for the UN Watercourses Convention s approach to the obligation to preserve taking into account contemporary developments in international law The work demonstrates the full potential of the Vienna Convention s Article 31 3 c as an integration tool in addressing the fragmentation of international law

**Architectures of Justice** Henrik Palmer Olsen, Stuart Toddington, 2016-05-23 Law can be seen to consist not only of rules and decisions but also of a framework of institutions providing a structure that forms the conditions of its workable existence and acceptance In this book Olsen and Toddington conduct a philosophical exploration and critique of these conditions what they are and how they shape our understanding of what constitutes a legal system and the role of justice within it

**Who is Afraid of the State?** Gordon S. Smith, Gordon Scott Smith, Daniel Wolfish, 2001-01-01 The essays in this collection argue that contrary to some private sector populists the state is in the best position to lead in making policy in a rapidly changing world and should retain and refine this responsibility

**Handbook on Global Constitutionalism** Anthony F. Lang, Antje Wiener, 2023-11-03 This thoroughly revised Handbook presents an up to date political and philosophical history of global constitutionalism By exploring the constitutional like qualities of international affairs it provides key insight into the evolving world order

**A Rule of Law for Our New Age of Anxiety** Stephen J Toope, 2023-06 In an age of anxiety Toope makes the case for a revitalised rule of law to bolster collective resilience and restore our capacity to build healthier societies A pragmatic approach to the rule of law recognises its ability to chasten power while not disconnecting law from other sources of social action and human agency

**Legitimacy and Legality in International Law** Jutta Brunnée, Stephen J. Toope, 2010-08-05 It has never been more important to understand how international law enables and constrains international politics By drawing together the legal theory of Lon Fuller and the insights of constructivist international relations scholars this book articulates a pragmatic view of how international obligation is created and maintained First legal norms can only arise in the context of social norms based on shared understandings Second internal features of law or criteria of legality are crucial to law s ability to promote adherence to inspire fidelity Third legal norms are built maintained or destroyed through a continuing practice of legality Through case studies of the climate change regime the anti torture norm and the prohibition on the use of force it is shown that these three elements produce a distinctive legal legitimacy and a sense of commitment among those to whom law is addressed

**New Waves in Philosophy of Law** Maksymilian Del Mar, 2011-08-15 A collection of 11 cutting edge essays by leading young scholars challenging long held assumptions and offering new research paradigms in Philosophy of Law in five parts 1 methodology metatheory 2 reasoning evaluating 3 values the moral life 4 institutions the social life and 5 the global

international dimension      **Routledge Handbook of the Rule of Law** Michael Sevel, 2024-10-24 This Handbook provides a state of the art survey of the study of the rule of law across law the humanities and social sciences as well as insights into the practice of building the rule of law within and among states Its 28 chapters are by many of the world s leading scholars of the rule of law as well as distinguished junior scholars from a dozen countries and representing a number of academic disciplines The chapters are ordered to progress first from theory to the practice of the rule of law and second from the rule of law within to beyond the state They divide into three parts The first part examines the concept history and value of the rule of law This section considers the importance of political and intellectual history in shaping the concept over the centuries and takes novel philosophical approaches to the connection between the rule of law and other important ideals such as justice equality and civil disobedience The second part transitions from theoretical studies to accounts of practical exercises in building the rule of law The chapters consider the challenges of rule of law reform including the use of local intermediaries facilitating interactions between international legal aid organizations and state governments the challenges of legal translation across vastly different societies the pathways of knowledge among the powerless about the protective potential of the rule of law as well as the possible future for artificial intelligence systems in helping to reinforce rule of law principles The third part examines the rule of law from a number of perspectives within particular supranational and national states such as the European Union China Singapore and South Africa among others and concludes by considering the prospects of the rule of law beyond the state both within and among international institutions such as the United Nations as well as non territorial spaces like the world s oceans This Handbook is aimed at rule of law scholars across law the humanities and the social sciences law and development practitioners policymakers and advanced students and researchers who seek a state of the art overview of the history theory and practice of the rule of law      **Interpretation in International Law** Andrea Bianchi, Daniel Peat, Matthew Windsor, 2015-02-26 International lawyers have long recognised the importance of interpretation to their academic discipline and professional practice As new insights on interpretation abound in other fields international law and international lawyers have largely remained wedded to a rule based approach focusing almost exclusively on the Vienna Convention on the Law of Treaties Such an approach neglects interpretation as a distinct and broader field of theoretical inquiry Interpretation in International Law brings international legal scholars together to engage in sustained reflection on the theme of interpretation The book is creatively structured around the metaphor of the game which captures and illuminates the constituent elements of an act of interpretation The object of the game of interpretation is to persuade the audience that one s interpretation of the law is correct The rules of play are known and complied with by the players even though much is left to their skills and strategies There is also a meta discourse about the game of interpretation playing the game of game playing which involves consideration of the nature of the game its underlying stakes and who gets to decide by what rules one should play Through a series of diverse contributions Interpretation in International Law reveals

interpretation as an inescapable feature of all areas of international law It will be of interest and utility to all international lawyers whose work touches upon theoretical or practical aspects of interpretation

**Law and Morality** Kenneth Einar Himma, 2017-07-05 This volume collects many of the key essays exploring the possible relationships between the concepts of law and morality a central concern of contemporary philosophizing about law It is organized around five conceptual issues classical natural law theory legal positivism s separability thesis Ronald Dworkin s constructive interpretivism inclusive legal positivism s assertion that there can be legal systems with moral criteria of legality and the relevance of morality and moral theorizing in theorizing about the concept of law and associated legal concepts Each of the essays makes an important contribution toward addressing these issues

Encyclopedia of Ethics Lawrence C. Becker, Charlotte B. Becker, 2013-10-18 The editors working with a team of 325 renowned authorities in the field of ethics have revised expanded and updated this classic encyclopedia Along with the addition of 150 new entries all of the original articles have been newly peer reviewed and revised bibliographies have been updated throughout and the overall design of the work has been enhanced for easier access to cross references and other reference features New entries include Cheating Dirty hands Gay ethics Holocaust Journalism Political correctness and many more

**Modern Jurisprudence** Sean Coyle, 2014-12-01 This book provides a concise and accessible guide to modern jurisprudence offering an examination of the major theories and systematic discussion of themes such as legality and justice It gives readers a better understanding of the rival viewpoints by exploring the historical developments which give modern thinking its distinctive shape and placing law in its political context A key feature of the book is that readers are not simply presented with opposing theories but are guided through the rival standpoints on the basis of a coherent line of reflection from which an overall sense of the subject can be gained Chapters on Hart Fuller Rawls Dworkin and Finnis take the reader systematically through the terrain of modern legal philosophy tracing the issues back to fundamental questions of philosophy and indicating lines of criticism that build to a fresh and original perspective on the subject

*Administrative Law* Daniel L. Feldman, 2015-09-23 *Administrative Law The Sources and Limits of Government Agency Power* explains the sources of administrative agency authority in the United States how agencies make rules the rights of clients and citizens in agency hearings and agency interaction with other branches of government This concise text examines the everyday challenges of administrative responsibilities and provides students with a way to understand and manage the complicated mission that is governance Written by leading scholar Daniel Feldman the book avoids technical legal language but at the same time provides solid coverage of legal principles and exemplar studies which allows students to gain a clear understanding of a complicated and critical aspect of governance

**Comparative Constitutionalism** A.V. Dicey, 2013-10 The Oxford Edition of Dicey provides sources with which to reassess the extraordinary authority and lasting influence of Dicey s canonical text Volume Two *Comparative Constitutionalism* provides a complement to Dicey s *The Law of the Constitution* These largely unpublished comparative constitutional lectures were written for different versions of a

comparative constitutional book that Dicey began but did not finish prior to his death in 1922 The lectures were a pioneering venture into comparative constitutionalism and reveal an approach to legal education broader than Dicey is widely understood to have taken Topics discussed include English French American and Prussian constitutionalism the separation of powers representative government and federalism The volume begins with an editorial introduction examining the implications of these comparative lectures and Dicey's early foray into comparative constitutionalism for his general constitutional thought and the kinds of response it has elicited

Judicial Review and the Constitution Christopher Forsyth, 2000-05-01 This collection of essays presents opposing sides of the debate over the foundations of judicial review In this work however the discussion of whether the ultra vires doctrine is best characterised as a central principle of administrative law or as a harmless justificatory fiction is located in the highly topical and political context of constitutional change The thorough jurisprudential analysis of the relative merits of models of legislative intention and judicial creativity provides a sound base for consideration of the constitutional problems arising out of legislative devolution and the Human Rights Act 1998 As the historical orthodoxy is challenged by growing institutional independence leading figures in the field offer competing perspectives on the future of judicial review Confucius was wrong to say that it is a curse to live in interesting times We are witnessing the development of a constitutional philosophy which recognises fundamental values and gives them effect in the mediation of law to the people Sir John Laws Contributors Nick Bamforth Paul Craig David Dyzenhaus Mark Elliott David Feldman Christopher Forsyth Brigid Hadfield Jeffrey Jowell QC Sir John Laws Dawn Oliver Sir Stephen Sedley Mark Walters With short responses by TRS Allan Stephen Bailey Robert Carnworth Martin Loughlin Michael Taggart Sir William Wade

Cosmopolitanism in Context Roland Pierik, Wouter Werner, 2010-06-17 Is it possible and desirable to translate the basic principles underlying cosmopolitanism as a moral standard into effective global institutions Will the ideals of inclusiveness and equal moral concern for all survive the marriage between cosmopolitanism and institutional power What are the effects of such bureaucratisation of cosmopolitan ideals This volume examines the strained relationship between cosmopolitanism as a moral standard and the legal institutions in which cosmopolitan norms and principles are to be implemented Five areas of global concern are analysed environmental protection economic regulation peace and security the fight against international crimes and migration

Tax Justice and Tax Law Dominic de Cogan, Peter Harris, 2020-11-12 Most people would agree that tax systems ought to be just and perhaps a great deal more just than they are at present What is more difficult is to agree on what tax justice is This book considers a range of different approaches to and ideas about the nature of tax justice and covers areas such as imbalances in international tax arrangements that deprive developing countries of revenues from natural resources and allow wealthy taxpayers to use tax havens protests against governments and large business attempts to influence policy through more technical means such as the OECD's Base Erosion and Profits Shifting project interpersonal matters such as the ways in which tax systems disadvantage women and minorities

the application of wider philosophical or economic theories to tax systems The purpose of the book is not to iron out these underlying differences into a grand theory but rather to gain a more precise understanding of how and why we disagree about tax justice In doing so the editors are assisted by a stellar cast of contributors from four continents with a wide variety of views and experiences but a common interest in this central question of how to agree and disagree about tax justice This is of course not only an intellectual exercise but also a necessary precursor to achieving real world change



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