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Roberto Gargarella

The Scepter of Reason

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Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism

R. Gargarella



Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism:

The Scepter of Reason Roberto Gargarella, 2001-11-30 This book explores the origins of Anglo American Constitutionalism from both a philosophical and a historical perspective It attempts to show that the institutional mechanisms incorporated into the American Constitution were modeled under a strong bias against collective discussion The book also examines the alternative institutional system then proposed by a different and more radical tradition of thought and evaluates this alternative from the ideal of a deliberate democracy The Scepter of Reason challenges much of the current academic literature on the philosophical foundations of modern constitutionalism and advances suggestions for a different approach It will be particularly attractive for legal scholars political scientists and graduate and undergraduate students interested in Constitutional Theory Anglo American History and Democratic Theory The Scepter of Reason R.

Gargarella, 2012-12-06 It is not unusual that formal and informal discussions about the political system its virtues and its many defects conclude in a discussion about impartiality In fact we all discuss impartiality when we talk about the best way to equally consider all viewpoints We show our concerns with impartiality when facing a particular problem we try to figure out the best solution for all of us given our conflicting interests Thus the quest for impartiality tends to be a common objective for most of us although we normally disagree on its particular contents Generally these formal and informal discussions about impartiality conclude in a dispute between different epistemic conceptions That is to say simply that in these situations we begin to disagree about best procedure to define the more neutral impartial solution for all of us Basically trying to answer this question we tend to fluctuate between two opposite positions According to some the best way to know which is the more impartial solution is to resort to a process of collective reflection in those situations we have to consider the opinions of all those who are possibly affected **Constitutionalism and Legal Reasoning** Massimo La

Torre, 2007-04-10 This book which consist of three chapters and two appendices is intended to connect subjects that have usually been considered as detached or not strongly connected constitutionalism legal argumentation and legal ethics Its main contention is that contemporary constitutionalism pushes towards a new style of legal reasoning which needs to take into account moral criteria and principles and that eventually the interpretative and moralist approach will lead to a somewhat unorthodox and less authoritarian concept of law A constitution to be taken seriously and as a distinct and superior source of law will end up referring to some sort of constitutional justice or judicial review And constitutional reasoning and justice need to make recourse to principles but principles to be given an operative content should be elaborated through some form of moral reasoning This reasoning however if it does not want to betray the spirit of constitutional democracy and the very idea of a constitution as a special moment of self determination could not be just Platonism a cognitivism without roots in the practice of public discourse and deliberation So that constitutionalism will not really do without a public sphere and some activism of the latter But if this is so the traditional concept of law based on hierarchy commands prescription sanction and in

the last instance violence becomes obsolete A law which is a command cannot be congruent with a practice ruled by discourse that is I argue with constitution

Where Our Protection Lies Dimitrios Kyritsis,2017 In this book Dimitrios Kyritsis advances an original account of constitutional review of primary legislation for its compatibility with human rights Key to it is the value of separation of powers When the relationship between courts and the legislature realizes this value it makes a stronger claim to moral legitimacy Kyritsis steers a path between the two extremes of the sceptics and the enthusiasts Against sceptics who claim that constitutional review is an affront to democracy he argues that it is a morally legitimate institutional option for democratic societies because it can provide an effective check on the legislature Although the latter represents the people and should thus be given the initiative in designing government policy it carries serious risks which institutional design must seek to avert Against enthusiasts he maintains that fundamental rights protection is not the exclusive province of courts but the responsibility of both the judiciary and the legislature Although courts may sometimes be given the power to scrutinize legislation and even strike it down if it violates human rights they must also respect the legislature s important contribution to their joint project Occasionally they may even have a duty to defer to morally sub optimal decisions as far as rights protection is concerned This is as it should be Legitimacy demands less than the ideal In turn citizens ought to accept discounts on perfect justice for the sake of achieving a reasonably just and effective political order overall

Being Apart from Reasons Cláudio Jr. Michelon,2006-03-09 Being Apart from Reasons deals with the question of how we should go about using reasons to decide what to do More particularly the book presents objections to the most common response given by contemporary legal and political theorists to the moral complexity of decision making in modern societies namely the attempt to release public agents from their argumentative burden by insulating a particular set of reasons from the general pool of reasons and assigning the former systematic priority over all other reasons That strategy is apparent both in Rawls claim that reasons concerning the right are systematically prior to reasons concerning the good and in Raz s claim that pre emptive reasons are systematically prior to first order reasons The same strategy is also instantiated by certain arguments for the procedural value of law such as Jeremy Waldron s In the book each of those arguments for the insulation of reasons is objected to in order to defend the thesis the reasoning by public agents must always be as comprehensive as possible The remaining chapters object to those arguments mentioned above which aim at justifying the exclusion of certain reasons from public agents decision making

The Invisible Origins of Legal Positivism W.E. Conklin,2012-12-06 Conklin s thesis is that the tradition of modern legal positivism beginning with Thomas Hobbes postulated different senses of the invisible as the authorising origin of humanly posited laws Conklin re reads the tradition by privileging how the canons share a particular understanding of legal language as written Leading philosophers who have espoused the tenets of the tradition have assumed that legal language is written and that the authorising origin of humanly posited rules norms is inaccessible to the written legal language Conklin s re reading of the tradition teases out how

each of these leading philosophers has postulated that the authorising origin of humanly posited laws is an unanalysable externality to the written language of the legal structure. As such the authorising origin of posited rules/norms is inaccessible or invisible to their written language. What is this authorising origin? Different forms include an originary author, an a priori concept and an immediacy of bonding between person and laws. In each case the origin is unwritten in the sense of being inaccessible to the authoritative texts written by the officials of civil institutions of the sovereign state. Conklin sets his thesis in the context of the legal theory of the polis and the pre polis of Greek tribes. The author claims that the problem is that the tradition of legal positivism of a modern sovereign state excises the experiential or bodily meanings from the written language of the posited rules/norms thereby forgetting the very pre legal authorising origin of the posited norms that each philosopher admits as offering the finality that legal reasoning demands if it is to be authoritative.

The Rule of Law History, Theory and Criticism Pietro Costa, Danilo Zolo, 2007-05-06 Authors Costa and Zolo share the conviction that a proper understanding of the rule of law today requires reference to a global problematic horizon. This book offers some relevant guides for orienting the reader through a political and legal debate where the rule of law and the doctrine of human rights is a concept both controversial and significant at the national and international levels.

On the Interpretation of Treaties Ulf Linderfalk, 2007-09-11

1 PURPOSE AND TOPIC We live in the age of treaties. Increasingly bilateral and multilateral written agreements are used for the creation of new international legal standards. For political reasons states are decreasingly less willing to rely upon customary international law for the regulation of legal matters. New technology and growing international exchange have established the need for an ever more precise and flexible international law, a need not satisfactorily met by customary law. In many fields of activity we can seriously question whether the creation of a rule of custom is at all possible. Considering also that the number of states capable of drafting and concluding treaties seems to be growing, it is not surprising that treaties are concluded far more frequently than ever before. In several ways this is a development that should be met with approval. By entering into written agreements states avoid the difficulties inherent in customary international law. At the same time the increasing number of treaties should also be causing concern. The more treaties that are concluded the more treaties that will have to be applied and the more treaties that are applied the more often the question will arise: To what extent and under what specific conditions should such an application occur? Naturally this includes the question of how treaties should be interpreted.

Disability Rights Peter Blanck, 2017-05-15 There is great diversity of definitions, causes and consequences of discrimination against persons with disabilities, yet there are fundamental themes uniting countries in their pursuit of human rights policies to improve the social and economic status of those with disabilities. In this volume are twenty-five important articles examining historical, contemporary and comparative issues crucial to the advancement of disability rights. The volume foreshadows the future of disability rights as a medium for ensuring that those living with disabilities participate as equal citizens of the world.

Political Friendship and the Good

Life Gianfrancesco Zanetti,2002-07-31 The main subject of this book is the rather fascinating link between an acceptable concept of political whole and its legal and moral implications When we face this problem we find that widespread categories like happiness and friendship are at the same time necessary and dangerous crucial and elusive In order to make the case against the so called Legal Enforcement of Morals and to grasp the complex relationship between law and morality from a liberal point of view it is not enough to reject a pattern of happiness or of human flourishing from which to draw normative instructions for men and women it must be recognized that integration of individuals in the comprehensive groups as well as in the political whole itself is not the only valuable option The fragile value of a relative lack of integration a right to unhappiness turns out to be eventually what makes the weak but decisive moral primacy of liberal societies **Law as Symbolic Form** Deniz Coskun,2007-07-17 This book describes the rule of law as the reign of persuasion rather than the reign of force and democracy as the reign by persuasion rather than the reign by force It synthesizes a vast amount of current Cassirer literature and makes a contribution to jurisprudence The book is the first systematic elaboration on law as a symbolic form and it sheds new light on a still dark area of intellectual and jurisprudential thought *Studies in Legal Logic* Jaap Hage,2006-03-30 Studies in Legal Logic is a collection of nine interrelated papers about the logic epistemology and ontology of law All of the papers were written after the publication of the author s Reasoning with Rules and supplement the issues addressed therein Some of the papers are new others have been revised substantially after the publication of their original versions The emphasis is on analysis not on logical technicalities Studies in Legal Logic contains chapters about the nature of norms the role of coherence in the law the nature of defeasibility the role of dialectics in law and artificial intelligence the statics and dynamics of the law and the consistency of rules Moreover it contains a new simplified and yet more powerful version of Reason based Logic and extensive examples of how it can be used for the analysis of legal reasoning The examples deal with legal theory construction case based reasoning and judicial proof The Concept of Ideals in Legal Theory Sanne Taekema,2002-12-31 Talk about law often includes reference to ideals of justice equality or freedom But what do we refer to when we speak about ideals in the context of law This book explores the concept of ideals by combining an investigation of different theories of ideals with a discussion of the role of ideals in law A comparison of the theories of Gustav Radbruch and Philip Selznick leads up to a pragmatist theory of legal ideals which provides an interesting new position in the debate about values in law between legal positivists and natural law thinkers Attention for law s central ideals enables us to understand law s autonomous character while at the same time tracing its connection to societal values Essential reading for anyone interested in the role of values or ideals in law **Group Rights as Human Rights** Neus Torbisco Casals,2006-06-30 Liberal theories have long insisted that cultural diversity in democratic societies can be accommodated through classical liberal tools in particular through individual rights and they have often rejected the claims of cultural minorities for group rights as illiberal Group Rights as Human Rights argues that such a rejection is misguided

Based on a thorough analysis of the concept of group rights it proposes to overcome the dominant dichotomy between individual human rights and collective group rights by recognizing that group rights also serve individual interests It also challenges the claim that group rights so understood conflict with the liberal principle of neutrality on the contrary these rights help realize the neutrality ideal as they counter cultural biases that exist in Western states Group rights deserve to be classified as human rights because they respond to fundamental and morally important human interests Reading the theories of Will Kymlicka and Charles Taylor as complementary rather than opposed Group Rights as Human Rights sees group rights as anchored both in the value of cultural belonging for the development of individual autonomy and in each person's need for a recognition of her identity This double foundation has important consequences for the scope of group rights it highlights their potential not only in dealing with national minorities but also with immigrant groups and it allows to determine how far such rights should also benefit illiberal groups Participation not intervention should here be the guiding principle if group rights are to realize the liberal promise

Arguing Fundamental Rights Agustín J. Menéndez, Erik O. Eriksen, 2006-11-22

Arguing Fundamental Rights explores the path breaking Theory of Constitutional Rights of Robert Alexy The critical analysis of the structural elements of Alexy's theory is combined with an assessment of its applied relevance with special attention being paid to the UK Human Rights Act and the fundamental rights protection in the European Union before and after the Charter of Fundamental Rights of 2000 The book is unique in combining a challenging interpretation of one of the foremost European conceptions of fundamental rights with the discussion of the pragmatics of constitutional adjudication The chapters combine a focus on key political questions such as whether rights adjudication can be subject to rational assessment and whether judges and not democratically elected parliaments should be the umpires of fundamental rights protection with a concern with key jurisprudential issues such as the determination of the limits of fundamental rights the binding effect of fundamental rights to private parties or whether certain fundamental rights should or should not be regarded as ultimate reasons for action and as such could be not be limited not even when it conflict with other rights Robert Alexy himself opens the book with an insightful contextualisation of his theory of fundamental rights within his general legal theory The book is a timely defence of practical reason against claims that emergencies justify trumping fundamental rights

Influence and Power Ruth Zimmerling, 2005-07-19

Exact but not exacting this is a fine work of overview and analysis it makes an excellent contribution to the literature on power and freedom Philip Pettit William Nelson Cromwell Professor of Politics Princeton University In this work the author assumes the task of a logical clean up an extremely valuable contribution to the promotion of scientific rigour and clarity in political scholarship This book gives the reader orientation in a conceptual jungle It is an excellent analysis of the relationships between normative and social power Ernesto Garzón Valdés Prof em

The Concept of Rights George W. Rainbolt, 2006-03-09

What does it mean to have a right Previous answers to this question fall into two groups interest benefit theories of rights and choice will theories This book proposes an alternative to these traditional views

the justified constraint theory of rights which avoids the pitfalls of earlier theories and solves the puzzle of the relational nature of rights The analysis shows that this theory applies without modification to past present and future beings

The Paradoxes of Action Daniel González Lagier,2013-03-09 Through the combined effects of certain natural facts connected with the passage of time institutional acts performed at various points within the university system and bonds of friendship forged over quite a number of years of academic life I have lately become an occasional writer of forewords It is certainly not a kind of work that displeases me but it would be too much to say that I have learned to do it with ease Quite to the contrary Writing a foreword is it seems to me an example of a rather complex action although of course much less complex than writing the book it accompanies In fact it is not even an action it is rather an activity carried out over a more or less prolonged period of time and typically including something like the following stages deciding to write the foreword carefully reading the book taking notes thinking about what would be appropriate aspects to be mentioned sketching an outline writing a first draft by hand writing several corrected versions typing the last of them into the computer distributing it to several colleagues to see how they like it correcting the text once more sending it to the author of the book delivering it to the publisher In each of these actions leaving aside for a moment purely mental actions such as thinking we can in turn distinguish several components These are basically bodily movements intentions and intentionally or unintentionally produced changes in the world

The Principle of Legal Certainty in EC Law J. Raitio,2013-03-14 The intertwining of EC law and national law may create unforeseeability in situations where EC law invades the national cases which gives rise to the very question of legal certainty in EC law This study contributes to the contemporary discussion which wrestles with the following questions in particular What have been the visions and objectives for European integration in the last decades How to describe European Union as a political entity and a legal system What is the relationship between legal certainty rule of law various general principles and human rights What is the core of legal certainty on the basis of the case study What kind of legal arguments and patterns of justification are there from a comparative perspective How has the term legal certainty been defined in the Nordic legal theory How predictable and acceptable are the interpretations of the European Court of Justice is it running wild Legal certainty relates to the principle of non retroactivity and the protection of legitimate expectations in particular but more profoundly it can be related to the conceptual scale for weighing up and balancing between formal justice and material fairness in legal decision making This scale is illustrated by presenting the terms formal factual and substantive legal certainty

Territorial Rights Tamar Meisels,2007-09-20 Liberal defences of nationalism have become prevalent since the mid 1980 s Curiously they have largely neglected the fact that nationalism is primarily about land Should liberals throw up their hands in despair when confronting conflicting claims stemming from incommensurable national narratives and holy texts Should they dismiss conflicting demands that stem solely from particular cultures religions and mythologies in favour of a supposedly neutral set of guidelines Does history matter Should ancient

injustices interest us today Should we care who reached the territory first and who were its prior inhabitants Should principles of utility play a part in resolving territorial disputes Was John Locke right to argue that the utilisation of land counts in favour of its acquisition And should Western style settlement projects work in favour or against a nation's territorial demands When and how should principles of equality and equal distribution come into play Territorial Rights examines the generic types of territorial claims customarily put forward by national groups as justification for their territorial demands within the framework of what has come to be known as liberal nationalism The final outcome is a multifarious theory on the ethics of territorial boundaries that supplies a workable set of guidelines for evaluating territorial disputes from a liberal national perspective and offers a common ground for discussion including disagreement and for the mediation of claims

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Table of Contents Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism

1. Understanding the eBook Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism
 - The Rise of Digital Reading Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism
 - Advantages of eBooks Over Traditional Books
2. Identifying Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism

- User-Friendly Interface
- 4. Exploring eBook Recommendations from Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism
 - Personalized Recommendations
 - Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism User Reviews and Ratings
 - Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism and Bestseller Lists
- 5. Accessing Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism Free and Paid eBooks
 - Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism Public Domain eBooks
 - Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism eBook Subscription Services
 - Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism Budget-Friendly Options
- 6. Navigating Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism eBook Formats
 - ePub, PDF, MOBI, and More
 - Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism Compatibility with Devices
 - Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism
 - Highlighting and Note-Taking Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism
 - Interactive Elements Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism

8. Staying Engaged with Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism
9. Balancing eBooks and Physical Books Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism
 - Setting Reading Goals Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism
 - Fact-Checking eBook Content of Scepter Of Reason Public Discussion And Political Radicalism In The Origins Of Constitutionalism
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements

- Interactive and Gamified eBooks

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