

The Rule of Law, Justice, and Interpretation

LUC B. TREMBLAY

McGill-Queen's University Press

Rule Of Law Justice And Interpretation

**La Ode Husen,Aan Aswari,Ilham
Abbas,Andika Prawira Buana,Moch.
Andry Wikra Wardhana
Mamonto,Muhammad Fauzan,Faizal
Kurniawan,Muhammad Fachri
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Rule Of Law Justice And Interpretation:

The Rule of Law, Justice, and Interpretation Luc B. Tremblay, 1997 In *The Rule of Law Justice and Interpretation* Luc Tremblay analyses and refutes the positivist legal theory that prevails in Canadian constitutional practice Using the techniques of critical theory hermeneutic interpretation and analytical jurisprudence he shows that the dominant interpretations of the central legal doctrines of the rule of law and the sovereignty of Parliament are incoherent The analysis opens the way for the construction of a bold alternative theory of legal discourse and practice based on the concept of the rule of law itself

Rule of Law, Justice, and Interpretation Luc B. Tremblay, 1997-10-24 Tremblay's theory of the rule of law involves a set of practical principles that constitute the ideal type of a conception of law that is both constitutive and regulative of legal discourse and practice Tremblay examines two competing ideal types the rule of law as certainty and the rule of law as justice The former a standard doctrine within contemporary legal social and political theory is shown to be incoherent Thus the rule of law as justice he shows provides the best basis for understanding legal discourse in general and Canadian constitutional law in particular Tremblay offers a coherent reconstruction of Canadian law from fundamental principles of the rule of law as justice and tests the theory through applications to key judicial decisions that have proven resistant to positivist interpretation *The Rule of Law Justice and Interpretation* is both a stimulating work of contemporary legal theory and an innovative challenge to the traditions of Canadian constitutional law Tremblay examines fundamental issues of legal epistemology and ontology and brings rigorous analytical jurisprudence to bear on interpretations and applications specific to Canadian constitutional law Given the important implications of his theory for statutory and constitutional interpretation especially with respect to the Canadian Charter of Rights and Freedoms and the potential crisis involving provincial rights of secession and partition this book will be central to the practice of law in Canada

The Literary Exception and the Rule of Law Johan Van Der Walt, 2022-07-20 Addressing the influential analysis of law and literature this book offers a new perspective on their relationship The law and literature movement that has gained global prominence in the course of last decades of the twentieth and the first decades of the twenty first centuries has provided the research and teaching of law with a considerable body of new and valuable knowledge and understanding Most of the knowledge and insights generated by the movement concern either a thematic overlap between legal and literary discourses suggesting they deal with the same moral concerns or a rhetorical semiotic or general linguistic comparability or sameness between them imputing to both the same or very similar narrative structures *The Literary Exception and the Rule of Law* recognises the wealth of knowledge generated by this approach to the relationship between law and literature and acknowledges its debt to this genre of scholarship It nevertheless also proposes on the basis of a number of revealing phenomenological inquiries a different approach to law and literary studies one that emphasises the irreducible difference between law and literature It does so with the firm belief that a regard for the very different and indeed opposite discursive

trajectories of legal and literary language allows for a more profound understanding of the unique and indeed separate roles that the discourses of law and literature generally play in the sustenance of relatively stable legal cultures This important rethinking of the relationship between law and literature will appeal to scholars and students of legal theory jurisprudence philosophy politics and literary theory Research Handbook on the Ombudsman Marc Hertogh,Richard Kirkham,2018-11-30 The public sector ombudsman has become one of the most important administrative justice institutions in many countries around the world This international and interdisciplinary Research Handbook brings together leading scholars and practitioners to discuss the state of the art of ombudsman research It uses new empirical studies and competing theoretical explanations to critically examine important aspects of the ombudsman s work This comprehensive Handbook is of value to academics designing future ombudsman studies and practitioners and policymakers in understanding the future challenges of the ombudsman **The Structure of Liberty : Justice and the Rule of Law** Randy E. Barnett,1998-04-02 In this provocative and engaging new book Randy Barnett outlines a powerful and original theory of liberty structured by the liberal conception of justice and the rule of law Drawing on insights from philosophy political theory economics and law he shows how this new conception of liberty can confront and solve the central societal problems of knowledge interest and power What is liberty as opposed to license and why is it so important When people pursue happiness peace and prosperity whilst living in society they confront pervasive problems of knowledge interest and power These problems are dealt with by ensuring the liberty of the people to pursue their own ends but addressing these problems also requires that liberty be structured by certain rights and procedures associated with the classical liberal conception of justice and the rule of law In this controversial new work Barnett examines the serious social problems that are addressed by liberty and the background or natural rights and rule of law procedures that distinguish liberty from license He goes on to outline the constitutional framework that is needed to protect this structure of liberty This is the only discussion of the liberal conception of justice and the rule of law to draw upon insights from philosophy economics political theory and law to describe comprehensively the vital social functions performed by adherence to these concepts And although the book is intended to challenge specialists its clear and accessible prose ensure that it will be of immense value to both scholars and students working in a range of academic disciplines Substantive Justice International Journal of Law La Ode Husen,Aan Aswari,Ilham Abbas,Andika Prawira Buana,Moch. Andry Wikra Wardhana Mamonto,Muhammad Fauzan,Faizal Kurniawan,Muhammad Fachri Said,Aditya Halim Perdana Kusuma Putra,2019-12-06 Substantive Justice International Journal of Law is published on behalf of the Faculty of Law in the Universitas Muslim Indonesia It is a forum for outstanding original contributions to legal studies with an emphasis on matters of theory and on broad issues arising from the relationship of law to other disciplines In addition to traditional questions of legal interest the following are all within the purview of the journal comparative and international law the law of the Republic of Indonesia legal history and philosophy and interdisciplinary material that is relevant to legal

studies *Law and Justice in Community* Garrett Barden, Tim Murphy, 2010-08-19 The origins of civil society and the function of law Justice ownership and law Natural justice and conventional justice Justice and the trading order Adjudication and interpretation Morality law and legislation Natural law Rights The force of law The authority and legitimacy of law

The Many Concepts of Social Justice in European Private Law H. W. Micklitz, 2011-11-01 Does European regulatory private law offer a genuine model of justice for society Beyond its initial libertarian focus on economic integration through the market citizen might it now serve the social inclusion of the vulnerable In the wake of Hans Micklitz's inspired and relentless pursuit of meaning within the ongoing constitutionalization of private law relationships this rich collection explores the implications of new specifically European forms of access rights which ensure horizontally and vertically enforceable and non discriminatory opportunity for market participation Horatia Muir Watt Columbia Law School US This insightful book with contributions from leading international scholars examines the European model of social justice in private law that has developed over the 20th century The first set of articles is devoted to the relationship between corrective commutative procedural and social justice more particularly the role and function of commutative justice in contrast to social justice The second section brings together scholars who discuss the relationship between constitutional order the values enshrined in the constitutional order and the impact of constitutional values on private law relations The third section focuses on the impact of socio economic developments within the EU and within selected Member States on the proprietary order of the EU on the role and function of the emerging welfare state and the judiciary as well as on nation state specific patterns of social justice The final section tests the hypothesis to what extent patterns of social justice are context related and differ in between labour consumer and competition law The Many Concepts of Social Justice in European Private Law will prove to be of great interest to academics of law as well as to private lawyers and European policymakers **International Law, Power,**

Security and Justice Serge Sur, 2010-10-05 These collected essays deal with the evolutions and immutabilities of international society and international law during the last 25 years a period during which these fields of study have undergone many changes The starting point is that far from operating at different levels or being in conflict international law and politics are closely intertwined The book addresses the many different aspects of international law the role and concept of the State and the position of States in the international system the basic principles and evolution of public international law questions of international security that still govern international relations classic and current systems of peace and security maintenance the standing role and actions of the UN Security Council arms control and limitation of armaments unilateral uses of armed force and the legality of war and humanitarian law and international criminal justice The perspective of these essays is not a theoretical or dogmatic vision of international law and politics rather they are based upon the practices of States in the international arena and the ways in which the guiding legal rules are elaborated and implemented These texts have been selected from Professor Sur's various books and numerous articles on international law and relations

EU Justice and Home Affairs Law Steve Peers, 2024-01-18 An abstract is a short description of your longer piece of work and is used as a free layer of content discoverable online An abstract should not attempt to summarise the whole work as it is also there to show readers whether or not reading further is warranted It is used to allow people searching on the internet to see that they have encountered a worthwhile hit This will encourage them to read further by clicking through to the work in full Keywords are index terms that capture the essence of the topics covered in a piece of work and are essential to improving ranking in search results Abstracts and Keywords A K combined are used to aid discovery of your content and to generate links across relevant content A K not only aid in discovery of online content they also support the discovery of print and eBook content marketed through the online catalogue or in library catalogues **The Rule of Law Under Fire?** Raymond Wacks, 2021-10-21 Does the rise of populism authoritarianism and nationalism threaten the welfare of the rule of law Is this fundamental democratic ideal under siege In this timely and important book Raymond Wacks examines the philosophical roots of the rule of law and its modern often contentious interpretation He then investigates 16 potential ideological economic legal and institutional dangers to the rule of law They range from the exercise of judicial and administrative discretion and parliamentary sovereignty to the growth of globalisation the war on terror and the disquieting power of Big Tech He also considers the enactment and enforcement in several countries of Draconian measures to curtail the spread of COVID 19 which has generated fears that these emergency powers may outlive the pandemic and become a permanent feature of the legal landscape thereby impairing the rule of law Wacks identifies which issues among this extensive array pose genuine risks to the rule of law and suggests how they might be confronted to ensure its defence and preservation *The Institutes* Rudolf Sohm, 1901 **Law, Justice and the State: Problems in law** International Association for Philosophy of Law and Social Philosophy. World Congress, 1995 Proceedings of the 16th World Congress of the International Association for Philosophy of Law and Social Philosophy IVR Reykjav k 26 May 2 June 1993 The Theory of Justice Rudolf Stammler, 1925 *The Legal Reasoning of the Court of Justice of the EU* Gunnar Beck, 2013-01-21 The Court of Justice of the European Union has often been characterised both as a motor of integration and a judicial law maker To what extent is this a fair description of the Court s jurisprudence over more than half a century The book is divided into two parts Part one develops a new heuristic theory of legal reasoning which argues that legal uncertainty is a pervasive and inescapable feature of primary legal material and judicial reasoning alike which has its origin in a combination of linguistic vagueness value pluralism and rule instability associated with precedent Part two examines the jurisprudence of the Court of Justice of the EU against this theoretical framework The author demonstrates that the ECJ s interpretative reasoning is best understood in terms of a tripartite approach whereby the Court justifies its decisions in terms of the cumulative weight of purposive systemic and literal arguments That approach is more in line with orthodox legal reasoning in other legal systems than is commonly acknowledged and differs from the approach of other higher especially constitutional courts more in

degree than in kind. It nevertheless leaves the Court considerable discretion in determining the relative weight and ranking of the various interpretative criteria from one case to another. The Court's exercise of its discretion is best understood in terms of the constraints imposed by the accepted justificatory discourse and certain extra-legal steadying factors of legal reasoning which include a range of political factors such as sensitivity to Member States' interests, political fashion and deference to the EU legislator. In conclusion, the Court of Justice of the EU has used the flexibility inherent in its interpretative approach and the choice it usually enjoys in determining the relative weight and order of the interpretative criteria at its disposal to resolve legal uncertainty in the EU primary legal materials in a broadly communautaire fashion, subject however to:

- i regard to the political, constitutional and budgetary sensitivities of Member States;
- ii depending on the constraints and extent of interpretative manoeuvre afforded by the degree of linguistic vagueness of the provisions in question, the relative status of and degree of potential conflict between the applicable norms and the range and clarity of the interpretative *topoi* available to resolve first order legal uncertainty; and finally
- iii bearing in mind the largely unpredictable personal element in all adjudication.

Only in exceptional cases which the Court perceives to go to the heart of the integration process and threaten its *acquis communautaire* is the Court of Justice likely not to feel constrained by either the wording of the norms in issue or by the ordinary conventions of interpretative argumentation and to adopt a strongly communautaire position if need be in disregard of what the written laws say, but subject to the proviso that the Court is assured of the express or tacit approval or acquiescence of national governments and courts.

International Society David R. Mapel, Terry Nardin, 2021-03-09

In a time of eroding sovereignty and resurgent nationalism, this collection provides a searching investigation of the moral foundations of the international order. Drawing on diverse philosophical and theological perspectives, the contributors debate the character of international society, the authority of international law and institutions, and the demands of international justice. In a series of philosophical essays, each followed by a critical commentary, the book considers the contributions of legal positivism, natural law, Kantian ethics, contractarian theory, and moral cosmopolitanism to the discussion of law and justice in international society. It also includes commentaries by experts in Jewish, Christian, and Islamic moral theology, and a concluding chapter that compares and contrasts the views presented without seeking to adjudicate their differences. Because of its comprehensive approach and the diversity of its viewpoints, the volume serves as an introduction to the topic and as a resource for scholars, journalists, policy makers, and anyone else who wants to understand better the range of moral perspectives that underlies discussion of the current international order. In addition to the editors, the contributors are Brian Barry, Chris Brown, John Charvet, Richard Friedman, Robert P. George, Sohail Hashmi, Pierre Laberge, David Miller, David Novak, Max L. Stackhouse, Fernando Tesón, and Frederick G. Whelan.

Justice Scalia Brian G. Slocum, Francis J. Mootz III, 2019-03-06

Justice Antonin Scalia (1936–2016) was the single most important figure in the emergence of the new originalist interpretation of the US Constitution, which sought to anchor the Court's interpretation of the Constitution to the ordinary

meaning of the words at the time of drafting For Scalia the meaning of constitutional provisions and statutes was rigidly fixed by their original meanings with little concern for extratextual considerations While some lauded his uncompromising principles others argued that such a rigid view of the Constitution both denies and attempts to limit the discretion of judges in ways that damage and distort our system of law In this edited collection leading scholars from law political science philosophy rhetoric and linguistics look at the ways Scalia framed and stated his arguments Focusing on rhetorical strategies rather than the logic or validity of Scalia's legal arguments the contributors collectively reveal that Scalia enacted his rigidly conservative vision of the law through his rhetorical framing

Rehnquist Justice Earl M. Maltz, 2003 With seven of its justices appointed by Republican presidents today's Supreme Court has significantly altered America's legal landscape since 1986 by tilting constitutional jurisprudence to the right That was the goal of Presidents Reagan and Bush in filling court vacancies and has been felt in cases related to federalism economic rights and affirmative action However liberal issues such as abortion have moved only marginally to the right while rulings by the Court on school prayer and gay rights have moved constitutional doctrine slightly to the left In this collection of original articles prominent constitutional scholars are joined by new voices from the cutting edge of academia to subject the Rehnquist Court to closer scrutiny and to show that its brand of conservatism is less extreme than many have supposed Reflecting views across the political spectrum the contributors help readers understand the Court dynamic its constrained conservatism and the forces that shape constitutional law in general As these authors show the overall pattern of decision making in the Rehnquist era cannot be attributed to any single unified approach to constitutional analysis Instead today's Court can only be understood as the product of a complex interaction among individual justices each with an idiosyncratic view of the proper interpretation of the Constitution and the role of the Court in the American political system These provocative essays are designed to provide readers with insight into this interaction by focusing on each member of the bench From the staunch conservatism of Clarence Thomas to the accommodationism of Sandra Day O'Connor to the liberal constitutionalism of David Souter the essays analyze the unique approach of each justice to interpreting the Constitution They also show that the current justices are the product of a nomination and confirmation process that has undergone a major transformation in recent decades one which favors experienced often unknown jurists over high profile public servants By concentrating attention on its members *Rehnquist Justice* allows us to better understand the Supreme Court as a whole And by assessing today's judiciary in light of a public philosophy that looks askance at government it shows us that the Supreme Court has truly become a mirror of its times

Shaping a Genuine Area of Freedom, Security and Justice Koen Lenaerts, Eugene Regan, Ulla Neergaard, Karsten Engsig Sørensen, 2024-10-31 This book provides an ambitious assessment of the increasing importance of case law in the field of the Area of Freedom Security and Justice on the evolution of EU law In recent years the Area of Freedom Security and Justice AFSJ has occupied an increasingly prominent place in the working of the European Union and by extension the

Court of Justice CJEU Over three parts the book looks at the framework of the AFSJ its workings and finally the impact of EU law upon it The collection provides remarkable insights into the growing importance of the AFSJ and how EU law has evolved in light of this **International Adjudications, Ancient and Modern** John Bassett Moore, 1929

Enjoying the Beat of Term: An Emotional Symphony within **Rule Of Law Justice And Interpretation**

In a global consumed by displays and the ceaseless chatter of instantaneous connection, the melodic splendor and mental symphony created by the published word usually disappear into the back ground, eclipsed by the persistent sound and interruptions that permeate our lives. But, nestled within the pages of **Rule Of Law Justice And Interpretation** an enchanting literary prize filled with raw feelings, lies an immersive symphony waiting to be embraced. Crafted by an elegant musician of language, this charming masterpiece conducts visitors on an emotional journey, well unraveling the hidden melodies and profound influence resonating within each cautiously constructed phrase. Within the depths with this poignant review, we can examine the book is central harmonies, analyze their enthralling publishing style, and submit ourselves to the profound resonance that echoes in the depths of readers souls.

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