

POLITICAL QUESTIONS

Does the Rule of Law Apply to Foreign Affairs?

JUDICIAL ANSWERS

THOMAS M. FRANCK

Political Questions Judicial Answers

Nada Mourtada-Sabbah, Bruce E. Cain



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decided in court even when they include allegations that the President or Congress has violated a law or the Constitution itself. Most of these orphan cases are shunned by the judiciary simply because they have foreign policy aspects. In refusing to address the issues involved, judges indicate that judicial review like politics should stop at the water's edge and foreign policy managers find it convenient to agree. Thomas Franck, however, maintains that when courts invoke the political question doctrine to justify such reticence, they evade a constitutional duty. In his view, whether the government has acted constitutionally in sending men and women to die in foreign battles is just as appropriate an issue for a court to decide as whether property has been taken without due process. In this revisionist work, Franck proposes ways to subject the conduct of foreign policy to the rule of law without compromising either judicial integrity or the national interest. By examining the historical origins of the separation of powers in the American constitutional tradition with comparative reference to the practices of judiciaries in other federal systems, he broadens and enriches discussions of an important national issue that has particular significance for critical debate about the imperial presidency.

The Political Question Doctrine and the Supreme Court of the United States Nada Mourtada-Sabbah, Bruce E. Cain, 2007-01-01. Historically, the political question doctrine has held the courts from resolving constitutional issues that are better left to other departments of government as a way of maintaining the system of checks and balances. However, this book discusses the gradual changes in the parameters of the doctrine, including its current position dealing with increasingly extraterritorial concerns.

Asian Yearbook of International Law, Volume 5 (1995) Sik Ko Swan, J.J.G. Syatauw, M.C.W. Pinto, 2020-01-29. The Asian Yearbook of International Law is the first publication dedicated primarily to international law as seen from an Asian perspective. It provides international law articles written by experts from the region and other articles relating to Asian topics. The editorial board, national correspondents, advisory council, and governing board comprise a diverse group of academics and government officials from a wide range of countries and positions. The Asian Yearbook of International Law offers a number of useful features: articles, notes, legal materials such as the state practice in a number of Asian countries and participation in multilateral treaties, Asia and international organizations, chronicle of events for the covered year, literature including book reviews, and a bibliography of selected documents, treaties, agreements, and other relevant primary documents, and an index. Its range of features assures that the Yearbook comprehensively covers the critical events, legislation, and issues of the past year, and that users can easily access all of this information. Academics and practitioners who deal with international public law in Asia will appreciate this unique, complete resource. The Asian Yearbook of International Law provides insight into Asian views and practices, especially for non-Asian readers, and also promotes the dissemination of knowledge of international law in Asia. Some of the topics covered in this volume: the right to legal assistance, recent developments in Asian investment treaty expropriation clauses, the law and practice of India on effectuation of international law in the municipal order, and China's ratification of the 1982 UN Convention on the Law of the Sea.

Constitutional Principles of EU External Relations Geert De Baere, G. de

Baere,2008 This book explores how foreign policy fits within the complex constitutional structure of the EU providing both an analysis of the constitutional reality of EU foreign policy and a theoretical analysis suggesting possibilities for reform The Constitution's Text in Foreign Affairs Michael D. Ramsey,2007-06-01 Ramsey describes the constitutional law of foreign affairs derived from an historical understanding of the Constitution s text Examining recurring foreign affairs controversies such as the power to enter armed conflict the author shows how the words structure and context of the Constitution can resolve pivotal court cases and modern disputes **International Law in the U.S. Legal System** Curtis A. Bradley,2015-03-24 International Law in the U S Legal System provides a wide ranging overview of how international law intersects with the domestic legal system within the United States and points out various unresolved issues and areas of controversy Curtis Bradley covers all of the principal forms of international law treaties decisions and orders of international institutions customary international law and jus cogens norms He also explores a number of issues that are implicated by the intersection of U S law and international law such as foreign sovereign immunity international human rights litigation war powers extradition and extraterritoriality This book highlights recent decisions and events relating to the topic including decisions and events arising out of the war on terrorism while also taking into account relevant historical materials including materials relating to the U S Constitutional founding Written by one of the most cited international law scholars in the United States the book is a resource for lawyers law students legal scholars and judges from around the world **The Occupation of Justice** David Kretzmer,Yaël Ronen,2021 The book provides a critical analysis of the manner in which the Israeli Supreme Court has dealt with petitions relating to the actions and policies of the Israeli authorities in the West Bank and Gaza which were occupied by Israel in 1967 It offers an exhaustive analysis of the Court s decisions on a variety of topics including civilian settlements the separation barrier punitive house demolitions and conduct of hostilities *Yearbook of International Humanitarian Law - 2010* M.N. Schmitt,Louise Arimatsu,Tim McCormack,2011-08-05 The world s only annual publication devoted to the study of the laws of armed conflict the Yearbook of International Humanitarian Law provides a truly international forum for high quality peer reviewed academic articles focusing on this highly topical branch of international law Ease of use of the Yearbook is guaranteed by the inclusion of a detailed index Distinguished by its topicality and contemporary relevance the Yearbook of International Humanitarian Law bridges the gap between theory and practice and serves as a useful reference tool for scholars practitioners military personnel civil servants diplomats human rights workers and students EU Counter-Terrorist Policies and Fundamental Rights Christina Eckes,2009-12-10 Of individual sanctions could comply with general principles of EU law Readership Academics graduate students and practitioners interested in sanctions against individuals **The Anatomy of Torture** William J. Aceves,2007-01-01 This is the story of one of the most significant examples of human rights litigation in the U S presented as a documentary history The pleadings and documents appear with minimal editing and are supplemented through commentary The Role of National Courts in Applying

International Humanitarian Law Sharon Weill, 2014-03-06 International law is increasingly applied in domestic courts This can result in situations where the courts are being asked to rule on politically sensitive issues especially issues which involve actions during armed conflicts Domestic courts do not show a uniformity of approach in addressing cases concerning international humanitarian law and can often be seen to differ markedly in their response The book argues that different national courts demonstrate different functional roles in different countries These can be situated on a scale from apology to utopia which can be set out as follows 1 the apologist role of courts in which they serve as a legitimating agency of the state s actions 2 the avoiding role of courts in which they for policy considerations avoid exercising jurisdiction over a case 3 The deferral role of courts in which courts defer back to the other branches of the government the responsibility of finding an appropriate remedy 4 the normative application role of courts in which they apply international humanitarian law as required by the rule of law and 5 the utopian role of courts in which they introduce moral judgments in favour of the protection of the individual beyond the requirements of the law The book investigates the rulings of five key domestic courts those of the UK the USA Canada Italy and Israel to understand how their approaches differ and where their practice can be placed on the methodological scale This analysis has been assisted by the author s extensive field work notably in Israel and in the Occupied Palestinian Territories Providing a detailed understanding each court s function the book offers a critical analysis of the courts rulings in which both the legal arguments and the political context of cases they have ruled on are examined The book shows that the functional role of the national courts is a combination of contradictions and mixed attitudes and that national courts are in the process of defining their own role as enforcing organs of international humanitarian law **Judicial**

Avoidance Carolina Alves das Chagas, 2023-08-24 This book analyses cases of judicial avoidance what happens when courts leave some or all of the merits of a case undecided It explores examples of justiciability assessments and deferential approaches regarding the decision of another authority and examines legitimacy issues involving judicial avoidance The reader is presented with answers to two fundamental questions that guide the development of the book Is it legitimate to practise judicial avoidance How could judicial avoidance be practised legitimately The conflict of competences which often emerges in instances of judicial avoidance is an important book baseline From this conflict the book considers and defends the possibility of applying formal balancing to provide a clearer structure of the exercise of justiciability and judicial deference The formal balancing methodology is based on Alexy s principles theory and its connection with judicial avoidance represents a significant contribution and novel point in constitutional adjudication Constitutional Law for a Changing

America Lee Epstein, Kevin T. McGuire, Thomas G. Walker, 2021-07-23 Constitutional Law for a Changing America shows students how political factors influence judicial decisions and shape the development of constitutional law Updated with additional material such as recent court rulings more than 500 supplemental cases and greater coverage of freedom of expression the Eleventh Edition of this bestseller will develop students understanding of how the U S Constitution protects

civil rights and liberties *The Concept of Security in International Law* Hitoshi Nasu, 2022-12-23 This book explores how the concept of security interacts with the rigid framework of international law to test the hypothesis that the system of public order among states is regulated under the rule of law *The Currency of Solidarity* Vestert Borger, 2020-10-08 In their fight against the debt crisis the European Union and its member states took measures that have profoundly changed the euro It now differs fundamentally from when it was introduced by the Treaty of Maastricht Surprisingly this change has come about with hardly any formal amendment to the Union's basic constitutional charter the Treaties How then to understand it This book argues that the constitution of the EU has transformed which occurs when constitutions change without amendment The transformation is characterized by a broadening of the currency union's stability conception from price stability to also financial stability Using solidarity as a lens the book conceptualises the unity of the member states and analyses how this was preserved during the crisis Subsequently it explains how that changed the currency union's set up and why the European Court of Justice could not turn against the change in Pringle and Gauweiler EU External Relations Law Graham Butler, Ramses A Wessel, 2022-06-02 Marking the 50th anniversary of the influential ERTA doctrine this book analyses and contextualises the entire breadth of the jurisprudence of EU external relations law through a systematic case by case account of the field The entire framework of EU external relations law has been built from the ground up by the jurisprudence of the Court of Justice of the European Union At the beginning of the field's emergence the legal questions to be answered concerned the division of powers and competence between firstly the Member States and that of the Union and secondly the division of powers and competence between the different institutions of the Union Questions on such matters continue to be asked but more contemporarily new legal questions have arisen that have been in need of adjudication including questions concerning the autonomy of Union law the relationship between the Union and other international organisations the relationship between Union law and international law the scope and breadth of international agreements amongst others The book features established academic scholars judges agents of institutions and Member States and legal practitioners in the field of EU external relations law analysing over 90 cases in which the Court has legally shaped the theory and practice of the external dimension of legal Europe Cited in Opinion of Advocate General Nicholas Emiliou in Case C 516 22 European Commission v United Kingdom of Great Britain and Northern Ireland ECLI EU C 2023 857 Judgment of the UK Supreme Court Court of Justice of the European Union 9 November 2023 **International Law** Malcolm N. Shaw, 2014-09-18 The definitive textbook on international law updated to reflect all case law and treaty developments **Constitutional Law: Rights, Liberties and Justice 8th Edition** Lee Epstein, Thomas G. Walker, 2013 Judicial decisions never occur in a vacuum they are influenced by a myriad of political factors From lawyers and interest groups to the shifting sentiments of public opinion to the ideological and behavioral inclinations of the justices Epstein and Walker show how all these dynamics play an integral part in the overall development of constitutional doctrine Drawing deeply from the spheres of political science and

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