



Recrafting the Rule of Law

The Limits of Legal Order

Edited by David Dyzenhaus

B L O O M S B U R Y

Recrafting The Rule Of Law The Limits Of Legal Order

David Dyzenhaus



Recrafting The Rule Of Law The Limits Of Legal Order:

Law and Morality David Dyzenhaus, Sophia Reibetanz Moreau, Arthur Ripstein, 2007-01-01 Since its first publication in 1996 *Law and Morality* has filled a long standing need for a contemporary Canadian textbook in the philosophy of law Now in its third edition this anthology has been thoroughly revised and updated and includes new chapters on equality judicial review and terrorism and the rule of law The volume begins with essays that explore general questions about morality and law surveying the traditional literature on legal positivism and contemporary debates about the connection between law and morality These essays explore the tensions between law as a protector of individual liberty and as a tool of democratic self rule and introduce debates about adjudication and the contribution of feminist approaches to the philosophy of law New material on the Chinese Canadian head tax case is also featured The second part of *Law and Morality* deals with philosophical questions as they apply to contemporary issues Excerpts from judicial decisions as well as essays by practicing lawyers are included to provide theoretically informed legal analyses of the issues Striking a balance between practical and more analytic philosophical approaches the volume's treatment of the philosophy of law as a branch of political philosophy enables students to understand law in its function as a social institution *Law and Morality* has proved to be an essential text in both departments of philosophy and faculties of law and this latest edition brings the debates fully up to date filling gaps in the previous editions and adding to the array of contemporary issues previously covered

Recrafting the Rule of Law David Dyzenhaus, 1999-07-01 This collection of essays on the rule of law focuses on the traditional question whether the rule of law is necessarily the rule of moral principles the question of the legitimacy of law Essays by lawyers philosophers and political theorists illuminate and take forward both that question and debate about issues to do with the reach of the rule of law which complicate its answer The essays are divided into sections which deal first with legal orders where the rule of law is under severe stress second with the question of the value of the rule of law as a conceptual problem and third with the question of the limits of legal order Contributors Richard Abel Jody Freeman Robert Alexy Neil MacCormick Kenneth Winston Andras Sajó Alon Harel Anton Fagan Anthony Sebok Christine Sypnowich Allan Hutchinson Bill Scheuerman John MacCormick Julian Rivers Henry Richardson David Dyzenhaus

Law, Liberty, and the Rule of Law Imer B. Flores, Kenneth E. Himma, 2012-09-29 In recent years there has been a substantial increase in concern for the rule of law Not only have there been a multitude of articles and books on the essence nature scope and limitation of the law but citizens elected officials law enforcement officers and the judiciary have all been actively engaged in this debate Thus the concept of the rule of law is as multifaceted and contested as it's ever been and this book explores the essence of that concept including its core principles its rules and the necessity of defining or even redefining the basic concept *Law Liberty and the Rule of Law* offers timely and unique insights on numerous themes relevant to the rule of law It discusses in detail the proper scope and limitations of adjudication and legislation including the challenges not only of limiting legislative and executive power via

judicial review but also of restraining active judicial lawmaking while simultaneously guaranteeing an independent judiciary interested in maintaining a balance of power It also addresses the relationship not only between the rule of law human rights and separation of powers but also the rule of law constitutionalism and democracy **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 **Recrafting the Rule of Law** David Dyzenhaus,1999 This collection of essays on the rule of law focuses on the traditional question whether the rule of law is necessarily the rule of moral principles the question of the legitimacy of law Essays by lawyers philosophers and political theorists illuminate and take forward both that question and debate about issues to do with the reach of the rule of law which complicate its answer The essays are divided into sections which deal first with legal orders where the rule of law is under severe stress second with the question of the value of the rule of law as a conceptual problem and third **Asian Discourses of Rule of Law** Randall P. Peerenboom,2004 Rule of law one of the pillars of the modern world has emerged in Western liberal democracies This book considers how rule of law is viewed and implemented in the different cultural economic and political context of Asia **Opposing the Rule of Law** Nick Cheesman,2015-03-12 A striking new analysis of Myanmar s court system revealing how the rule of law is lexically present but semantically absent [Reconceptualising the Rule of Law in Global Governance, Resources, Investment and Trade](#) Photini Pazartzis,Maria Gavouneli,2016-06-30 The relevance and importance of the rule of law to the international legal order cannot be doubted and was recently reaffirmed by the Declaration of the High level Meeting of the General Assembly on the Rule of Law at the National and International Level s solemn commitment to it on behalf of states and international organizations In this edited collection leading scholars and practitioners from the fields of global governance resources investment and trade examine how the commitment to the rule of law manifests itself in the respective fields The book looks at cutting edge issues within each field and examines the questions arising from the interplay between them With a clear three part structure it explores each area in detail and addresses contemporary challenges while trying to assure a commitment to the rule of law The contributions also consider how the rule of law has been or should be reconceptualised

Taking a multi disciplinary approach the book will appeal to international lawyers from across the spectrum including practitioners in the field of international investment and trade law **Asian Yearbook of International Law** B.S.

Chimni,Miyoshi Masahiro,Li-ann Thio,2009-06-02 The Asian Yearbook of International Law is produced by the Foundation for the Development of International Law in Asia DILA and is a major refereed publication dedicated to international law issues as seen primarily from an Asian perspective The articles are written by experts from the region and elsewhere

Foundations of Public Law Martin Loughlin,2010-06-03 This text develops Martin Loughlin s distinctive and provocative theory of public law Tracing the historical evolution of the concept of public law the book rethinks the foundational concepts of state constitution and government arguing that public power is created not controlled by law

The EU's Conceptualisation of the Rule of Law in its External Relations Lisa Louwerse,2023-09-04 This book explores the question of how the EU understands the rule of law in its external relations with a particular focus on development cooperation and enlargement Although the EU s commitment to the rule of law is strong the relevant concept remains nebulous On the basis of a detailed analysis of two key EU external policy areas the main argument advanced is that the Union has adopted a mostly institutional approach to the concept by focussing largely on judicial reform By testing the relevant practice against the background of the constitutional traditions of the Member States and legal theory the book attests to the significance of developing a comprehensive approach to the rule of law in EU external relations **Legal**

Symbolism Jiří Přibáň,2007-01-01 Prib n s book contributes to the field of systems theory of law in the context of European legal and political integration and constitution making It puts recent European legislative efforts and policies especially the EU enlargement process in the context of legal theory and philosophy **The Federal Contract** Stephen

Tierney,2022-05-26 Federalism is a very familiar form of government It characterises the first modern constitution that of the United States and has been deployed by constitution makers to manage large and internally diverse polities at various key stages in the history of the modern state Despite its pervasiveness in practice this book argues that federalism has been strangely neglected by constitutional theory It has tended either to be subsumed within one default account of modern constitutionalism or it has been treated as an exotic outlier a sui generis model of the state rather than a form of constitutional ordering for the state This neglect is both unsatisfactory in conceptual terms and problematic for constitutional practitioners obscuring as it does the core meaning purpose and applicability of federalism as a specific model of constitutionalism with which to organise territorially pluralised and demotically complex states In fact the federal contract represents a highly distinctive order of rule which in turn requires a particular territorialised approach to many of the fundamental concepts with which constitutionalists and political actors operate constituent power the nature of sovereignty subjecthood and citizenship the relationship between institutions and constitutional authority patterns of constitutional change and ultimately the legitimacy link between constitutionalism and democracy In rethinking the idea and practice of

federalism this book adopts a root and branch recalibration of the federal contract It does so by analysing federalism through the conceptual categories that characterise the nature of modern constitutionalism foundations authority subjecthood purpose design and dynamics This approach seeks to explain and in so doing revitalise federalism as a discrete capacious and adaptable concept of rule that can be deployed imaginatively to facilitate the deep territorial variety that characterises so many states in the 21st century

Administrative Law and Judicial Deference Matthew Lewans,2016-01-28 In recent years the question whether judges should defer to administrative decisions has attracted considerable interest amongst public lawyers throughout the common law world This book examines how the common law of judicial review has responded to the development of the administrative state in three different common law jurisdictions the United Kingdom the United States of America and Canada over the past 100 years This comparison demonstrates that the idea of judicial deference is a valuable feature of modern administrative law because it gives lawyers and judges practical guidance on how to negotiate the constitutional tension between the democratic legitimacy of the administrative state and the judicial role in maintaining the rule of law

Refugees, Asylum Seekers and the Rule of Law Susan Kneebone,2009-03-19 An assessment of the impact of asylum on the integrity of the rule of law in five common law jurisdictions *Turpin and Tomkins' British Government and the Constitution* Alison L. Young,2021-04-01 A lot has happened to the UK Constitution in the last seven years We ve witnessed the UK s exit from the EU further devolution to Scotland and Wales a number of prominent cases by the Supreme Court two early parliamentary general elections major governmental defeats and two Prime Ministerial resignations Alison Young has built on the text of Colin Turpin and Adam Tomkins earlier edition keeping their unique historical and contextual approach whilst bringing the material up to date with more contemporary examples including references to Brexit the recent prorogation and Brexit case law and the Covid 19 pandemic The book continues to include substantial extracts from parliamentary and other political sources as well as from legislation and case law It also provides a full yet accessible account of the British constitution at the culmination of a series of dramatic events on the threshold of possible further constitutional reform

The Oxford Handbook of Comparative Administrative Law Peter Cane,Herwig C H Hofmann,Eric C Ip,Peter L Lindseth,2020-12-17 The comparative study of administrative law has a long history dating back more than 200 years It has enjoyed a renaissance in the past 15 years or so and now sits alongside fields such as comparative constitutional law and global administrative law as a well established area of scholarly research This book is the first to provide a broad and systematic view of the subject both in terms of the topics covered and the legal traditions surveyed In its various parts it surveys the historical beginnings of comparative administrative law scholarship discusses important methodological issues examines the relationship between administrative law and regime type analyses basic concepts such as administrative power and accountability and deals with the creation functions and control of administrative power and values of administration The final part looks to the future of this young sub discipline In this volume distinguished experts and

leaders in the field discuss a wide range of issues in administrative law from a comparative perspective Administrative law is concerned with the conferral nature exercise and legal control of administrative or executive governmental power It has close links with other areas of public law notably constitutional law and international law It is of great interest and importance not only to lawyers but also to students of politics government and public policy Studying public law comparatively helps to identify both similarities and differences between the way government power and its control is managed in different countries and legal traditions

Human Dignity and the Foundations of International Law

Patrick Capps,2009-06-11 International lawyers have often been interested in the link between their discipline and the foundational issues of jurisprudential method but little that is systematic has been written on this subject In this book an attempt is made to fill this gap by focusing on issues of concept formation in legal science in general with a view to their application to the specific concerns of international law In responding to these issues the author argues that public international law seeks to establish and institutionalise a system of authoritative judgment whereby the conditions by which a community of states can co exist and co operate are ensured A state in turn must be understood as ultimately deriving legitimacy from the pursuit of the human dignity of the community it governs as well as the dignity of those human beings and states affected by its actions in international relations This argument is in line with a long and now resurgent Kantian tradition in legal and political philosophy The book shows how this approach is reflected in accepted paradigm cases of international law such as the United Nations Charter It then explains how this approach can provide insights into the theoretical foundations of these accepted paradigms including our understanding of the sources of international law international legal personality and the design of global institutions

Political Concepts

Adi M. Ophir,Ann Laura Stoler,2018-01-02 Deciding what is and what is not political is a fraught perhaps intractably opaque matter Just who decides the question on what grounds to what ends these seem like properly political questions themselves Deciding what is political and what is not can serve to contain and restrain struggles make existing power relations at once self evident and opaque and blur the possibility of reimagining them differently Political Concepts seeks to revive our common political vocabulary both everyday and academic and to do so critically Its entries take the form of essays in which each contributor presents her or his own original reflection on a concept posed in the traditional Socratic question format What is X and asks what sort of work a rethinking of that concept can do for us now The explicitness of a radical questioning of this kind gives authors both the freedom and the authority to engage intervene in critique and transform the conceptual terrain they have inherited Each entry either implicitly or explicitly attempts to re open the question What is political thinking Each is an effort to reinvent political writing In this setting the political as such may be understood as a property a field of interest a dimension of human existence a set of practices or a kind of event Political Concepts does not stand upon a decided concept of the political but returns in practice and in concern to the question What is the political by submitting the question to a field of plural

contention The concepts collected in Political Concepts are Arche Stathis Gourgouris Blood Gil Anidjar Colony Ann Laura Stoler Concept Adi Ophir Constituent Power Andreas Kalyvas Development Gayatri Spivak Exploitation tienne Balibar Federation Jean Cohen Identity Akeel Bilgrami Rule of Law J M Bernstein Sexual Difference Joan Copjec and Translation Jacques Lezra **Certainty in Law** Humberto Ávila, 2016-07-20 Instead of the usual apologetic treatment found in legal doctrine linked to the determinacy immutability or predictability of norms this book treats legal certainty innovatively holistically and in depth Using a method at once analytical and functional Professor vila examines the structural elements of legal certainty from its definition and foundations to its various dimensions normative forces and efficacies citing a wealth of examples from case law to support each of the theses defended No subject is more important and topical than legal certainty Problems relating to lack of understanding instability and unpredictability of law intensify day by day everywhere in civil law and common law countries alike Normative sources are increasingly diverse in origin national international community and multiple in nature legal contractual jurisprudential They change constantly and present increasingly frequent problems of ambiguity and vagueness that significantly hinder their comprehension This state of affairs which to a greater or lesser extent is true of any legal order justifies a return to the subject of legal certainty In this book essential questions are answered such as Legal certainty in what sense Certainty of what for whom in whose vision and by whom When to what extent and to what end it is probably the most comprehensive and systematic study ever produced on this subject using the analytical method Riccardo Guastini Professor of Jurisprudence University of Genoa Italy

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