

The Rule of Law, Justice, and Interpretation

LUC B. TREMBLAY

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Rule Of Law Justice And Interpretation

Issa G. Shivji, Hamudi Majamba



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

Rule of Law vs. Rulers of Law. Justice Barnabas Albert Samatta's Road To Justice Issa G. Shivji, Hamudi Majamba, 2011

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

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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

EU Justice and Home Affairs Law Steve Peers,2012-08-30 Steve Peers examines the institutions of justice and home affairs policy formulation and implementation within the EU The author discusses the ways in which these institutions have intervened in cases of crime corruption and immigration

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 Reykjavik 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 *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

Doing Justice to History Barrie Sander, 2021-03-09 As communities struggle to make sense of mass atrocities expectations have increasingly been placed on international criminal courts to render authoritative historical accounts of episodes of mass violence Taking these expectations as its point of departure this book seeks to understand international criminal courts through the prism of their historical function The book critically examines how such courts confront the past by constructing historical narratives concerning both the culpability of the accused on trial and the broader mass atrocity contexts in which they are alleged to have participated The book argues that international criminal courts are host to struggles for historical justice discursive contests between different actors vying for judicial acknowledgement of their interpretations of the past By examining these struggles within different institutional settings the book uncovers the legitimating qualities of international criminal judgments In particular it illuminates what tends to be foregrounded and included within as well as marginalised and excluded from the narratives of international criminal courts in practice What emerges from this account is a sense of the significance of thinking about the emancipatory limits and possibilities of international criminal courts in terms of the historical narratives that are constructed and contested within and beyond the courtroom

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 R Tesón and Frederick G Whelan *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

Broberg and Fenger on Preliminary References to the European Court of Justice Morten P. Broberg, Niels Fenger, 2021 A fully revised and updated third edition this book details the form contents and procedures for preliminary references Written for both practitioners and academics this is an essential guidebook covering all aspects of preliminary references

International Adjudications, Ancient and Modern John Bassett Moore, 1929

Modernising European Legal Education (MELE) Oskar J. Gstrein, Mareike Fröhlich, Caspar van den Berg, Thomas Giegerich, 2023-08-22 This open access book presents innovative strategies to address cross cutting topics and foster transversal competences The modernization of European legal education presents a compelling challenge that calls for enhanced interdisciplinary collaboration among academic disciplines and innovative teaching methods The volume introduces venues towards education innovation and engages with complex and emerging topics such as datafication climate change gender and the aftermath of the COVID 19 pandemic The insights presented not only emphasize the importance of preserving traditional approaches to legal disciplines and passing them on to future generations but also underscore the need to critically reassess and revolutionize existing structures As our societies become more diverse and our understanding of legitimacy justice and values undergoes transformations it is imperative to reconsider the role of traditional values while exploring promising alternative approaches

The Rule of Law Among Nations American Bar Association. Special Committee on World Peace Through Law, 1959

Restorative Justice Theo Gavrielides, 2017-09-19 The legitimacy and performance of the traditional criminal justice system is the subject of intense scrutiny as the world economic crisis continues to put pressure on governments to cut the costs of the criminal justice system This volume brings together the leading work on restorative justice to achieve two objectives to construct a comprehensive and up to date conceptual framework for restorative justice suitable even for newcomers and to challenge the barriers of restorative justice in the hope of taking its theory and practice a step further The selected articles start by answering some fundamental questions about restorative justice regarding its historical and philosophical origins and challenge the concept by bringing into the debate the human rights and equality discourses Also included is material based on empirical testing of restorative justice claims especially those impacting on reoffending rates victim satisfaction and reintegration The volume concludes with a critique of restorative justice as well as with analytical thinking that aims to push its barriers It is hoped

that the investigations offered by this volume not only offer hope for a better system for abolitionists and reformists but also new and convincing evidence to persuade the sceptics in the debate over restorative justice

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