

# **The Rule of Law, Justice, and Interpretation**

*LUC B. TREMBLAY*

**McGill-Queen's University Press**

# Rule Of Law Justice And Interpretation

**Luc B. Tremblay**



## **Rule Of Law Justice And Interpretation:**

**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 in Crisis** Martin Below, 2022-12-30 This book addresses the current crisis that threatens the rule of law and has led to the need for its adjustment as normative concept legal principle and pragmatic guideline for the behaviour of political players Rule of law is a pillar of the constitutional orders and a key principle of national international and EU law Yet rule of law is subject to pressure for change in the face of emergency crisis and transition This book explores how constitutional crisis emergency constitutionalism and constitutional polycrisis assert pressures for the transformation of rule of law and thus produce a state of flux It examines the rule of law from the viewpoint of constitutional imaginaries memory politics and identity politics It critically assesses the responses given by the EU and its member states to the current crisis The work also provides an analysis of the most important challenges to rule of law stemming from the performance of constitutional courts including the risks of judicial activism politicization of the courts and judicialization of politics The book will be an invaluable resource for researchers academics and policy makers working in the areas of Constitutional Law and Political Science

**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

**Pack the Court!** Stephen M. Feldman, 2021-08-13 Challenges the argument that court packing will politicize the Court and undermine its institutional legitimacy arguing that the law politics dichotomy is a myth because politics always has and always will influence Supreme Court decision making

**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

*Building the Rule of Law in China* Weidong Ji, 2017-12-12 After thirty years of Mao era 1949-1979 which was struggle based the Communist Party of China has begun to change its position as a pioneering revolutionary party evolving into a universal ruling party that transcends class interests Meanwhile administrative and judicial reforms oriented toward a more efficient serving government and the rule of law have been actively carried out As the earliest work on constructive jurisprudence of new proceduralism in China this book elucidates some of the most critical problems in the process of constructing a legal order and realizing institutional innovation in China democracy fair and reasonable procedure interpretation techniques cognitive ability of legislation position and function of the jurist group and professional ethics etc Besides it expounds five pairs of contradictions in the modernization process of Chinese legal system namely substantial and procedural justice moral and legal debates formal and reflective rationality the major responsibility on bureaucrats and lawyers and the motivation of public welfare and profit and explores appropriate approaches to combine the different factors Scholars and students in Chinese legal and social transformation studies will be attracted by this book Furthermore it will help different civilizations conduct rational dialogues on justice and order

**International Economic Law in the 21st Century** Ernst-Ulrich Petersmann, 2012-07-24 The state centred Westphalian model of international law has failed to protect human rights and

other international public goods effectively Most international trade financial and environmental agreements do not even refer to human rights consumer welfare democratic citizen participation and transnational rule of law for the benefit of citizens This book argues that these multilevel governance failures are largely due to inadequate regulation of the collective action problems in the supply of international public goods such as inadequate legal judicial and democratic accountability of governments vis a vis citizens Rather than treating citizens as mere objects of intergovernmental economic and environmental regulation and leaving multilevel governance of international public goods to discretionary foreign policy human rights and constitutional democracy call for civilizing and constitutionalizing international economic and environmental cooperation by stronger legal and judicial protection of citizens and their constitutional rights in international economic law Moreover intergovernmental regulation of transnational cooperation among citizens must be justified by principles of justice and multilevel constitutional restraints protecting rights of citizens and their public reason The reality of constitutional pluralism requires respecting legitimately diverse conceptions of human rights and democratic constitutionalism The obvious failures in the governance of interrelated trading financial and environmental systems must be restrained by cosmopolitan constitutional conceptions of international law protecting the transnational rule of law and participatory democracy for the benefit of citizens

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

**Cases and Materials on Constitutional and Administrative Law** Brian Thompson, Michael Gordon, Adam Tucker, 2021 Cases and Materials on Constitutional and Administrative Law provides an essential collection of key primary and secondary materials with incisive commentary from the authors

Purposive Interpretation in Law Aharon Barak, 2005 This book presents a comprehensive theory of legal interpretation by a leading judge and legal theorist Currently legal philosophers and jurists apply different theories of interpretation to constitutions statutes rules wills and contracts Aharon Barak argues that an alternative approach purposive interpretation allows jurists and scholars to approach all legal texts in a similar manner while remaining sensitive to the important differences Moreover regardless of whether purposive interpretation amounts to a unifying theory it would

still be superior to other methods of interpretation in tackling each kind of text separately Barak explains purposive interpretation as follows All legal interpretation must start by establishing a range of semantic meanings for a given text from which the legal meaning is then drawn In purposive interpretation the text s purpose is the criterion for establishing which of the semantic meanings yields the legal meaning Establishing the ultimate purpose and thus the legal meaning depends on the relationship between the subjective and objective purposes that is between the original intent of the text s author and the intent of a reasonable author and of the legal system at the time of interpretation This is easy to establish when the subjective and objective purposes coincide But when they don t the relative weight given to each purpose depends on the nature of the text For example subjective purpose is given substantial weight in interpreting a will objective purpose in interpreting a constitution Barak develops this theory with masterful scholarship and close attention to its practical application Throughout he contrasts his approach with that of textualists and neotextualists such as Antonin Scalia pragmatists such as Richard Posner and legal philosophers such as Ronald Dworkin This book represents a profoundly important contribution to legal scholarship and a major alternative to interpretive approaches advanced by other leading figures in the judicial world 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 Law, Reason and Emotion Mortimer Sellers (org.), Catherine Moore (org.), Vitor Medrado (org.), Volume II Special Workshops Initia Via Editoria *Interpretation in International Law* Andrea Bianchi, Daniel Peat, Matthew Windsor, 2015-02-26 International

lawyers have long recognised the importance of interpretation to their academic discipline and professional practice As new insights on interpretation abound in other fields international law and international lawyers have largely remained wedded to a rule based approach focusing almost exclusively on the Vienna Convention on the Law of Treaties Such an approach neglects interpretation as a distinct and broader field of theoretical inquiry Interpretation in International Law brings international legal scholars together to engage in sustained reflection on the theme of interpretation The book is creatively structured around the metaphor of the game which captures and illuminates the constituent elements of an act of interpretation The object of the game of interpretation is to persuade the audience that one s interpretation of the law is correct The rules of play are known and complied with by the players even though much is left to their skills and strategies There is also a meta discourse about the game of interpretation playing the game of game playing which involves consideration of the nature of the game its underlying stakes and who gets to decide by what rules one should play Through a series of diverse contributions Interpretation in International Law reveals interpretation as an inescapable feature of all areas of international law It will be of interest and utility to all international lawyers whose work touches upon theoretical or practical aspects of interpretation Judicial Dialogue and Human Rights Amrei Müller, Hege Elisabeth Kjos, 2017-05-25 A comprehensive analysis of the extent method purpose and effects of domestic and international courts judicial dialogue on human rights Prohibition of Abuse of Law Rita de la Feria, Stefan Vogenauer, 2011-06-09 The Court of Justice has been alluding to abuse and abusive practices for more than thirty years but for a long time the significance of these references has been unclear Few lawyers examined the case law and those who did doubted whether it had led to the development of a legal principle Within the last few years there has been a radical change of attitude largely due to the development by the Court of an abuse test and its application within the field of taxation In this book academics and practitioners from all over Europe discuss the development of the Court s approach to abuse of law across the whole spectrum of European Union law analysing the case law from the 1970s to the present day and exploring the consequences of the introduction of the newly designated principle of prohibition of abuse of law for the development of the laws of the EU and those of the Member States **The Law and Economics of Globalisation** Linda Y. Yueh, 2009-01-01 The diversity of author backgrounds coupled an assortment of provocative insights makes this book a useful tool for delving into the meat of globalization providing a succinct but authoritative overview of the underpinnings necessary to appreciate the who what where and when of globalization American Society of International Law This is a fascinating and insightful set of essays the relevance of which has only increased with the financial and economic crisis The ideas and basic positions of the authors range wide but that is exactly what we require as we struggle to understand twenty first century globalisation and what to do about it I should like to see it in the hands of all academics and policy makers working on global affairs Alan Winters University of Sussex Chief Economist UK Department for International Development and Former Head of Research the World Bank This inter

disciplinary volume focuses on the economic and legal challenges confronting globalisation and the evolution of the global system The Law and Economics of Globalisation discusses the hotly debated topic of globalisation from a wide set of perspectives of law economics and international political economy The authors shed new light on the legal economic and institutional issues raised by globalisation extending into areas previously considered as national issues They discuss how the development of the norms institutions and reach of the global system will be influenced by the domestic and international concerns arising from the increasing integration of countries in the new century With contributions from lawyers economists and other experts in the field this book will be welcomed by academics students researchers and policymakers who are interested in a comprehensive volume on economic globalisation It will also appeal to a wider audience such as executive education courses as well as business and law schools

**Multilingual Interpretation of European Union Law** Mattias

Derlén,2009-01-01 At head of title Kluwer Law International

**European Patent Law** Duncan Matthews,Paul

Torremans,2023-10-04 This book provides a comprehensive overview of European Patent Law It presents a critical analysis of the European patent law system and the proposed changes to it The book explores the strengths and weaknesses of the European Patent Convention and the interaction between the national and the European level as well as across borders

**Judicial Methods of Interpretation of the Law** Julio C. Cueto-Rua,1981 *The Promise of Legality* Geneviève

Cartier,Mark D Walters,2025-05-15 This book assembles critical contributions on the work of TRS Allan the Professor Emeritus of Jurisprudence and Public Law at the University of Cambridge whose leading work in legal and constitutional theory spans almost 45 years Allan has charted a distinctive path for legal political and moral theory and practice and has become a highly significant figure in the UK and in common law parliamentary systems around the world His ideas challenge established opinions about constitutional law within these systems as well as established views about the rule of law from more abstract or philosophical perspectives Allan claims that law and morality find an inherent connection through the rule of law He argues that there is a connection that flourishes in common law jurisdictions because although Parliament has sovereign legislative powers its laws gain their full legal meaning only through an interpretive lens This lens seeks to reconcile sovereign will with legality s basic moral ideals especially the idea that law must be general and capable of guiding behaviour and thus respectful of the equality and dignity of its subjects Allan s scholarship is powerful yet controversial and it has inspired 20 leading scholars from the UK Canada Australia and New Zealand to engage with the central themes of his work By doing so the contributors help to make that work accessible to a new generation of scholars and students They also provide a timely framework for engaging in the most important challenges facing our democracies today how our legal systems do or do not honour and respect democracy and therefore legislative sovereignty while at the same time honouring and respecting the rule of law or the Promise of Legality



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