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The Rational as Reasonable

A Treatise on Legal Justification

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Rational As Reasonable A Treatise On Legal Justification

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The Rational as Reasonable Aulis Aarnio, 1986-12-31 During the last half of the twentieth century legal philosophy or legal theory or jurisprudence has grown significantly It is no longer the domain of a few isolated scholars in law and philosophy Hundreds of scholars from diverse fields attend international meetings on the subject In some universities large lecture courses of five hundred students or more study it The primary aim of the Law and Philosophy Library is to present some of the best original work on legal philosophy from both the Anglo American and European traditions Not only does it help make some of the best work available to an international audience but it also encourages increased awareness of and interaction between the two major traditions The primary focus is on full length scholarly monographs although some edited volumes of original papers are also included The Library editors are assisted by an Editorial Advisory Board of internationally renowned scholars Legal philosophy should not be considered a narrowly circumscribed field Insights into law and legal institutions can come from diverse disciplines on a wide range of topics Among the relevant disciplines or perspectives contributing to legal philosophy besides law and philosophy are anthropology economics political science and sociology Among the topics included in legal philosophy are theories of law the concepts of law and legal institutions legal reasoning and adjudication epistemological issues of evidence and procedure law and justice economics politics or morality legal ethics and theories of legal fields such as criminal law contracts and property

The Rational as Reasonable Aulis Aarnio, 2012-12-06 During the last half of the twentieth century legal philosophy or legal theory or jurisprudence has grown significantly It is no longer the domain of a few isolated scholars in law and philosophy Hundreds of scholars from diverse fields attend international meetings on the subject In some universities large lecture courses of five hundred students or more study it The primary aim of the Law and Philosophy Library is to present some of the best original work on legal philosophy from both the Anglo American and European traditions Not only does it help make some of the best work available to an international audience but it also encourages increased awareness of and interaction between the two major traditions The primary focus is on full length scholarly monographs although some edited volumes of original papers are also included The Library editors are assisted by an Editorial Advisory Board of internationally renowned scholars Legal philosophy should not be considered a narrowly circumscribed field Insights into law and legal institutions can come from diverse disciplines on a wide range of topics Among the relevant disciplines or perspectives contributing to legal philosophy besides law and philosophy are anthropology economics political science and sociology Among the topics included in legal philosophy are theories of law the concepts of law and legal institutions legal reasoning and adjudication epistemological issues of evidence and procedure law and justice economics politics or morality legal ethics and theories of legal fields such as criminal law contracts and property

The Reasonable As Rational? Werner Krawietz, Robert S. Summers, Ota Weinberger, Georg Henrik von Wright, 2016 In the course of the last few decades Aulis Aarnio has made a major contribution to the process of laying of new foundations for

the theory of practical legal argumentation and modern jurisprudence legal theory philosophy of law He was influenced by the modern philosophy of language and by the late works of Ludwig Wittgenstein as well as being inspired by the analytical hermeneutic philosophy of his teacher Georg Henrik von Wright With his original and widely acknowledged research in law and legal systems and the rationality of the resulting scholarly interpretation which have been crowned and honoured with the Alexander von Humboldt Research Award in the field of the Humanities he has changed the face of modern legal science above all that of juridical or legal method the methodology of law and the social sciences and of legal and social theory the latter in his capacity as editor in chief of *Associations* a new periodical from the same publisher The *Festschrift* was presented to him on his 60th birthday in the name of his friends and colleagues from all over the world in a specially handrafted copy This book is a kind of handbook to his discipline and contains very profound and sophisticated responses to his magnum opus *The Rational as Reasonable A Treatise on Legal Justification* which has determined and significantly advanced contemporary research in the field of legal and scholarly interpretation and argumentation It deals with nearly all the central issues in the application of law and its justification **The Reasonable as Rational?** Werner Krawietz, 2000

Approaches to Legal Rationality Dov M. Gabbay, Patrice Canivez, Shahid Rahman, Alexandre Thiercelin, 2010-10-04 Legal theory political sciences sociology philosophy logic artificial intelligence there are many approaches to legal argumentation Each of them provides specific insights into highly complex phenomena Different disciplines but also different traditions in disciplines e.g. analytical and continental traditions in philosophy find here a rare occasion to meet The present book contains contributions both historical and thematic from leading researchers in several of the most important approaches to legal rationality One of the main issues is the relation between logic and law the way logic is actually used in law but also the way logic can make law explicit An outstanding group of philosophers logicians and jurists try to meet this issue The book is more than a collection of papers However different their respective conceptual tools may be the authors share a common conception legal argumentation is a specific argumentation context The Rule of Law History, Theory and Criticism Pietro Costa, Danilo Zolo, 2007-05-06 Authors Costa and Zolo share the conviction that a proper understanding of the rule of law today requires reference to a global problematic horizon This book offers some relevant guides for orienting the reader through a political and legal debate where the rule of law and the doctrine of human rights is a concept both controversial and significant at the national and international levels **Arguing Fundamental Rights** Agustín J. Menéndez, Erik O. Eriksen, 2006-11-22 *Arguing Fundamental Rights* explores the path breaking Theory of Constitutional Rights of Robert Alexy The critical analysis of the structural elements of Alexy's theory is combined with an assessment of its applied relevance with special attention being paid to the UK Human Rights Act and the fundamental rights protection in the European Union before and after the Charter of Fundamental Rights of 2000 The book is unique in combining a challenging interpretation of one of the foremost European conceptions of fundamental rights with the discussion of the pragmatics of constitutional adjudication

The chapters combine a focus on key political questions such as whether rights adjudication can be subject to rational assessment and whether judges and not democratically elected parliaments should be the umpires of fundamental rights protection with a concern with key jurisprudential issues such as the determination of the limits of fundamental rights the binding effect of fundamental rights to private parties or whether certain fundamental rights should or should not be regarded as ultimate reasons for action and as such could be not be limited not even when it conflict with other rights Robert Alexy himself opens the book with an insightful contextualisation of his theory of fundamental rights within his general legal theory The book is a timely defence of practical reason against claims that emergencies justify trumping fundamental rights

Finnish Yearbook of International Law, Volume 25, 2015 Tuomas Tiittala, 2019-10-03 The Finnish Yearbook of International Law aspires to honour and strengthen the Finnish tradition in international legal scholarship Open to contributions from all over the world and from all persuasions the Finnish Yearbook stands out as a forum for theoretically informed high quality publications on all aspects of public international law including the international relations law of the European Union The Finnish Yearbook publishes in depth articles and shorter notes commentaries on current developments book reviews and relevant overviews of Finland's state practice While firmly grounded in traditional legal scholarship it is open for new approaches to international law and for work of an interdisciplinary nature The Finnish Yearbook is published for the Finnish Society of International Law by Hart Publishing Earlier volumes may be obtained from Martinus Nijhoff an imprint of Brill Publishers

Mutual Expectations Govert Hartogh, 2002-05-31 The law persists because people have reasons to comply with its rules What characterizes those reasons is their interdependence each of us only has a reason to comply because he or she expects the others to comply for the same reasons The rules may help us to solve coordination problems but the interaction patterns regulated by them also include Prisoner's Dilemma games Division problems and Assurance problems In these games the rules can only persist if people can be expected to be moved by considerations of fidelity and fairness not only of prudence This book takes a fresh look at the perennial problems of legal philosophy the source of obligation to obey the law the nature of authority the relationship between law and morality and the nature of legal argument from the perspective of this conventionalist understanding of social rules It argues that since the resilience of such rules depends on cooperative dispositions conventionalism properly understood does not imply positivism

Reasoning in

Ethics and Law Albert W. Musschenga, Wim J. van der Steen, 2017-03-02 Legal and moral reasoning share much methodology and they address similar problems This volume charts two shared problems the relation between theory principles and particular judgments and the role of facts and factual assertions in normative settings The relation between theory and practice and between principle and particular judgment has become the subject of much debate in moral philosophy In the ongoing debate some moral philosophers refer to legal philosophy for a support of their views on the primacy of practice over theory According to them legal philosophy should have a more balanced view in that relation In the

contributions to Part One this claim is critically analysed The role of the facts is underestimated in discussions on legal reasoning and legal theory as well as moral reasoning and ethical theory Factual statements enter into moral and legal discussions not only because they link the conclusion with a rule They also play a role as background assumptions in supporting a theory Its focus on the role of facts in normative reasoning makes this book of special interest to scholars of legal and moral argumentation

A Theory of Precedent Raimo Siltala, 2000-11-25 In this study the author identifies six types of judicial precedent ideology and are tests them against judicial experiences in various countries

Political Friendship and the Good Life Gianfrancesco Zanetti, 2002-07-31 The main subject of this book is the rather fascinating link between an acceptable concept of political whole and its legal and moral implications When we face this problem we find that widespread categories like happiness and friendship are at the same time necessary and dangerous crucial and elusive In order to make the case against the so called Legal Enforcement of Morals and to grasp the complex relationship between law and morality from a liberal point of view it is not enough to reject a pattern of happiness or of human flourishing from which to draw normative instructions for men and women it must be recognized that integration of individuals in the comprehensive groups as well as in the political whole itself is not the only valuable option The fragile value of a relative lack of integration a right to unhappiness turns out to be eventually what makes the weak but decisive moral primacy of liberal societies

Justice to Future Generations and the Environment H.P. Visser 't Hooft, 2013-03-09 The analysis of justice between generations proposed in this book is based first of all on a critical reading of Rawls theory of justice but it also pays attention to the existential and cultural context of our intuitions about intergenerational equity Although the desire for justice supplies an independent reason for action the unprecedented character of the context in which that reason must operate necessarily raises the question of its psychological support we want justice for future people but what interest do we have in their welfare in the first place I have tried to capture this double orientation by making use of Thomas Nagel s conceptual dichotomy between the objective detached point of view and the subjective in our case the culturally and historically situated perspective There is on the one hand a desire for justice that tends towards the definition of transhistorical standards detached from the particular values of the time and place there is on the other hand a motivational background that is tied to our present position in history and nourished by the values we presently believe in I have attempted to bridge the gap between the one and the other dimension by different conceptual avenues the principal one being a time related interpretation of Rawls concept of equal liberty justice wants us to maintain the worth of liberty over time by perpetuating the conditions of its meaningful exercise

Influence and Power Ruth Zimmerling, 2005-07-19 Exact but not exacting this is a fine work of overview and analysis it makes an excellent contribution to the literature on power and freedom Philip Pettit William Nelson Cromwell Professor of Politics Princeton University In this work the author assumes the task of a logical clean up an extremely valuable contribution to the promotion of scientific rigour and clarity in political scholarship This book gives

the reader orientation in a conceptual jungle It is an excellent analysis of the relationships between normative and social power Ernesto Garzón Valdés Prof em *Justifying Taxes* Agustín José Menéndez, 2013-03-14 Justifying Taxes offers readers some of the elements of a democratic tax law considered within its political and philosophical context in order to determine the extent of legitimate tax obligations The objective is to revisit some of the issues in the dogmatics of tax law from the viewpoint of a critical citizen always ready to ask questions about the justification underlying her obligations and especially about her paramount burden viz the payment of certain amounts of money Within this purview special attention is paid to the general principles of taxation The argument is complemented by a detailed reconstruction of constitutional reasoning in tax matters close attention being paid to the jurisprudence of the Spanish Tribunal Constitucional Readership Legal scholars political scientists and philosophers Especially recommended to graduate and undergraduate students of Tax Law Constitutional Law Jurisprudence Philosophy of Law and Political Theory **The Paradoxes of Action** Daniel González Lagier, 2013-03-09 Through the combined effects of certain natural facts connected with the passage of time institutional acts performed at various points within the university system and bonds of friendship forged over quite a number of years of academic life I have lately become an occasional writer of forewords It is certainly not a kind of work that displeases me but it would be too much to say that I have learned to do it with ease Quite to the contrary Writing a foreword is it seems to me an example of a rather complex action although of course much less complex than writing the book it accompanies In fact it is not even an action it is rather an activity carried out over a more or less prolonged period of time and typically including something like the following stages deciding to write the foreword carefully reading the book taking notes thinking about what would be appropriate aspects to be mentioned sketching an outline writing a first draft by hand writing several corrected versions typing the last of them into the computer distributing it to several colleagues to see how they like it correcting the text once more sending it to the author of the book delivering it to the publisher In each of these actions leaving aside for a moment purely mental actions such as thinking we can in turn distinguish several components These are basically bodily movements intentions and intentionally or unintentionally produced changes in the world **The Scepter of Reason** R. Gargarella, 2012-12-06 It is not unusual that formal and informal discussions about the political system its virtues and its many defects conclude in a discussion about impartiality In fact we all discuss impartiality when we talk about the best way to equally consider all viewpoints We show our concerns with impartiality when facing a particular problem we try to figure out the best solution for all of us given our conflicting interests Thus the quest for impartiality tends to be a common objective for most of us although we normally disagree on its particular contents Generally these formal and informal discussions about impartiality conclude in a dispute between different epistemic conceptions That is to say simply that in these situations we begin to disagree about best procedure to define the more neutral impartial solution for all of us Basically trying to answer this question we tend to fluctuate between two opposite positions According to some the best way

to know which is the more impartial solution is to resort to a process of collective reflection in those situations we have to consider the opinions of all those who are possibly affected

The Law in Philosophical Perspectives Luc J. Wintgens, 2013-04-17 In this age of collections that is ours many volumes of collections are published They contain contributions of several well known authors and their aim is to present a selective overview of a relevant field of study This book has the same purpose Its aim is to introduce students scholars and all those interested in current problems of legal theory and legal philosophy to the work of the leading scholars in this field The large number of publications both books and articles that have been produced over recent decades makes it quite difficult however for those who are making their first steps in this domain to find firm guidelines The book is new in its genre because of its method The choice was made not to reprint an example of contributors earlier basic articles or a part of one of their books This would only give a partial view of the rich texture of their work Rather the authors were asked to make an original synthesis of their own contributions to the field of legal theory and legal philosophy Brought together in this volume they constitute a truly author ised view of their work This book is also new in that each essay is complemented with bibliographical information in order to encourage further research on the author s self selected work This will help the reader rapidly to become familiar with the whole of the published work of the contributors

Group Rights as Human Rights Neus Torbisco Casals, 2006-06-30 Liberal theories have long insisted that cultural diversity in democratic societies can be accommodated through classical liberal tools in particular through individual rights and they have often rejected the claims of cultural minorities for group rights as illiberal Group Rights as Human Rights argues that such a rejection is misguided Based on a thorough analysis of the concept of group rights it proposes to overcome the dominant dichotomy between individual human rights and collective group rights by recognizing that group rights also serve individual interests It also challenges the claim that group rights so understood conflict with the liberal principle of neutrality on the contrary these rights help realize the neutrality ideal as they counter cultural biases that exist in Western states Group rights deserve to be classified as human rights because they respond to fundamental and morally important human interests Reading the theories of Will Kymlicka and Charles Taylor as complementary rather than opposed Group Rights as Human Rights sees group rights as anchored both in the value of cultural belonging for the development of individual autonomy and in each person s need for a recognition of her identity This double foundation has important consequences for the scope of group rights it highlights their potential not only in dealing with national minorities but also with immigrant groups and it allows to determine how far such rights should also benefit illiberal groups Participation not intervention should here be the guiding principle if group rights are to realize the liberal promise

Constitutional Justice, East and West Wojciech Sadurski, 2002-12-31 How can the power of constitutional judges to overturn parliamentary choices on the basis of their own reading of the constitution be reconciled with fundamental democratic principles which assign the supreme role in the political system to parliaments This time

honoured question acquired a new significance when the post communist countries of Central and Eastern Europe without exception adopted constitutional models in which constitutional courts play a very significant role at least in theory Can we learn something about the relationship between democracy and constitutionalism in general from the meteoric rise of constitutional tribunals in the post communist countries Can the discussions and controversies relating to constitutional review which have been going on for decades in more established democracies illuminate the sources of the strength of constitutional courts in Central and Eastern Europe These questions lie at the center of this book which focuses on the question of constitutional review in postcommunist states from a theoretical and comparative perspective The chapters contained in the book outline the conceptual framework for analyzing the sources the role and the legitimacy of constitutional justice in a system of political democracy From this perspective it assesses the experience of constitutional justice in the West where the model originated and in Central and Eastern Europe where the model has been implanted after the fall of Communism

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Table of Contents Rational As Reasonable A Treatise On Legal Justification

1. Understanding the eBook Rational As Reasonable A Treatise On Legal Justification
 - The Rise of Digital Reading Rational As Reasonable A Treatise On Legal Justification
 - Advantages of eBooks Over Traditional Books
2. Identifying Rational As Reasonable A Treatise On Legal Justification
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Rational As Reasonable A Treatise On Legal Justification
 - User-Friendly Interface

4. Exploring eBook Recommendations from Rational As Reasonable A Treatise On Legal Justification
 - Personalized Recommendations
 - Rational As Reasonable A Treatise On Legal Justification User Reviews and Ratings
 - Rational As Reasonable A Treatise On Legal Justification and Bestseller Lists
5. Accessing Rational As Reasonable A Treatise On Legal Justification Free and Paid eBooks
 - Rational As Reasonable A Treatise On Legal Justification Public Domain eBooks
 - Rational As Reasonable A Treatise On Legal Justification eBook Subscription Services
 - Rational As Reasonable A Treatise On Legal Justification Budget-Friendly Options
6. Navigating Rational As Reasonable A Treatise On Legal Justification eBook Formats
 - ePub, PDF, MOBI, and More
 - Rational As Reasonable A Treatise On Legal Justification Compatibility with Devices
 - Rational As Reasonable A Treatise On Legal Justification Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Rational As Reasonable A Treatise On Legal Justification
 - Highlighting and Note-Taking Rational As Reasonable A Treatise On Legal Justification
 - Interactive Elements Rational As Reasonable A Treatise On Legal Justification
8. Staying Engaged with Rational As Reasonable A Treatise On Legal Justification
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Rational As Reasonable A Treatise On Legal Justification
9. Balancing eBooks and Physical Books Rational As Reasonable A Treatise On Legal Justification
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Rational As Reasonable A Treatise On Legal Justification
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Rational As Reasonable A Treatise On Legal Justification
 - Setting Reading Goals Rational As Reasonable A Treatise On Legal Justification
 - Carving Out Dedicated Reading Time

12. Sourcing Reliable Information of Rational As Reasonable A Treatise On Legal Justification
 - Fact-Checking eBook Content of Rational As Reasonable A Treatise On Legal Justification
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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anesteziologiya i reanimatologiya

observers of garden flowers

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