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# The Rule of Law and the Separation of Powers



Richard Bellamy

# Regulation International Library Of Essays In Law And Legal Theory Second Series

**Guofu Liu**



## **Regulation International Library Of Essays In Law And Legal Theory Second Series:**

**The Rule of Law and the Separation of Powers** Richard Bellamy, 2017-07-05 The rule of law is frequently invoked in political debate yet rarely defined with any precision Some employ it as a synonym for democracy others for the subordination of the legislature to a written constitution and its judicial guardians It has been seen as obedience to the duly recognised government a form of governing through formal and general rule like laws and the rule of principle Given this diversity of view it is perhaps unsurprising that certain scholars have regarded the concept as no more than a self congratulatory rhetorical device This collection of eighteen key essays from jurists political theorists and public law political scientists aims to explore the role law plays in the political system The introduction evaluates their arguments The first eleven essays identify the standard features associated with the rule of law These are held to derive less from any characteristics of law per se than from a style of legislating and judging that gives equal consideration to all citizens The next seven essays then explore how different ways of separating and dispersing power contribute to this democratic style of rule by forcing politicians and judges alike to treat people as equals and regard none as above the law     From Transnational Relations to Transnational Laws Shaheen Sardar Ali, Anne Griffiths, 2016-04-15 This book approaches law as a process embedded in transnational personal religious communicative and economic relationships that mediate between international national and local practices norms and values It uses the concept living law to describe the multiplicity of norms manifest in transnational moral social or economic practices that transgress the territorial and legal boundaries of the nation state Focusing on transnational legal encounters located in family life diasporic religious institutions and media events in countries like Norway Sweden Britain and Scotland it demonstrates the multiple challenges that accelerated mobility and increased cultural and normative diversity is posing for Northern European law For in this part of the world as elsewhere national law is challenged by a mixture of expanding human rights obligations and unprecedented cultural and normative pluralism enhanced by expanding global communication and market relations As a consequence transnationalization of law appears to create homogeneity fragmentation and ambiguity expanding space for some actors while silencing others Through the lens of a variety of important contemporary subjects the authors thus engage with the nature of power and how it is accommodated ignored or resisted by various actors when transnational practices encounter national and local law     Law and Legal Interpretation Fernando Atria Lemaitre, Neil MacCormick, 2017-11-01 This title was first published in 2003 Leading contemporary essays on interpretation are assembled in this volume which offsets them against a small number of classical works from earlier periods It has long been recognized that textual sources constitutions statutes precedents commentaries are central to developed systems of law and that interpretation of such texts is one highly important element in adjudication legal practice and legal scholarship Scholars have also contended that the totality of legal activity is interpretive in a wider sense and debates about objectivity have raged The reasons for this development are here critically scrutinized     Dealing

with Bribery and Corruption in International Commercial Arbitration Emmanuel Obiora Igbokwe, 2023-01-10 International Arbitration Law Library Volume 65 International commercial arbitration is by no means free from bribery and corruption. Although a plethora of legal scholarship clearly affirms this contention, a thorough study on the particularly important question of the authority and duty of international commercial arbitrators to investigate a suspicion or indication of bribery or corruption *sua sponte* that is on their own initiative has been surprisingly lacking. This important book fills this gap *inter alia* by locating *sua sponte* authority in the position of arbitral tribunals in establishing the facts of a case and ascertaining and applying the applicable normative standards. In addition to providing a comprehensive examination of how the issue of bribery and corruption is dealt with in contemporary international commercial arbitration, the book also highlights the role of arbitrators in global efforts to combat transnational commercial bribery and corruption. Among others, the following critical issues are thoroughly investigated: arbitrability of issues of public interests; intermediary contracts; role of arbitrators in the fact-finding process; party autonomy versus overriding mandatory rules; *iura novit curia* in international commercial arbitration in the context of bribery and corruption; notion of transnational or truly international public policy; arbitrators' duty to act as guardians of international commerce; investigative tools available to arbitrators dealing with manifestly recalcitrant parties; possible consequences of violating the obligation to *sua sponte* investigate; and the view from developing countries. The analysis leans primarily on Swiss law, as Switzerland is one of the most important jurisdictions in international commercial arbitration. Switzerland has also been involved in some of the most famous and controversial arbitration cases wherein bribery and corruption became an issue. However, the study also includes a comparative analysis of the relevant laws, jurisprudence, and doctrine of other major arbitration venues, particularly England, France, and Germany. Not only in the light it sheds on how and whether international commercial arbitrators have hitherto justified the trust States have placed in them regarding the protection of the public interests, but also in the practical solutions it offers arbitrators faced with issues of bribery and corruption, this deeply researched book equips arbitration practitioners and arbitration institutions with a hitherto lacking in-depth analysis on the question of *sua sponte* investigation. It also provides invaluable insights on how this issue might affect the future legitimacy and expansion of this dispute settlement mechanism. Outside the field of arbitration, the book also provides jurists, legal scholars, in-house counsel for companies doing transnational business, and public officials with highly enlightening perspectives on the interaction between international commercial arbitration and public interests.

*Regulation* Colin D. Scott, 2003 Legal scholarship is concerned with distinctive issues and problems of regulatory governance. This volume draws together writings on regulation which problematize law in regulatory settings and which introduce problems of regulatory law to legal theory. The main themes addressed are the character of regulatory law, legal theories of state and market, regulatory rules, organizations, and institutional variety accounting for regulation. **Law and Morality** Kenneth Einar Himma, 2017-07-05 This volume collects many of the key essays exploring the possible relationships

between the concepts of law and morality a central concern of contemporary philosophizing about law It is organized around five conceptual issues classical natural law theory legal positivism s separability thesis Ronald Dworkin s constructive interpretivism inclusive legal positivism s assertion that there can be legal systems with moral criteria of legality and the relevance of morality and moral theorizing in theorizing about the concept of law and associated legal concepts Each of the essays makes an important contribution toward addressing these issues

**The Right to Leave and Return and Chinese Migration Law** Guofu Liu, 2007-01-31 Although the Right to Leave and Return RLR is a fundamental human right each State has the sovereign right to regulate RLR in accordance with its own laws In the case of China the country s communist political system has significantly affected the development of RLR and the country s approach to it As a rule China s approach is restrictive As part of its reform and opening up policies China has embarked on a range of reforms to liberalise RLR but the reforms lack cohesion and focus and remain restrictive Given its past and its complex social and economic conditions China may have some justifications for its approach but on balance has more to gain from adopting a more liberal approach The issue of RLR in China is crucial both for the future of China and for development of RLR in the world The Right to Leave and Return RLR and Chinese Migration Law provides a comprehensive and systematic review of the RLR in international and Chinese migration law It has been written on the basis of Chinese statutes pertinent to the RLR also of relevant international instruments and key cases It investigates RLR in international migration law and practice analyses RLR in the context of China and identifies its driving factors investigates the conditions and practical concerns relevant to the protection of RLR and concludes with recommendations on how the Chinese regulatory regime governing RLR can be improved

**The Philosophy of Law** Christopher Berry Grey, 2013-07-04 From articles centering on the detailed and doctrinal exposition of the law to those which reside almost wholly within the realm of philosophical ethics this volume affords comprehensive treatment to both sides of the philosophico legal equation Systematic and sustained coverage of the many dimensions of legal thought gives ample expression to the true breadth and depth of the philosophy of law with coverage of The modes of knowing and the kinds of normativity used in the law Studies in international constitutional criminal administrative persons and property contracts and tort law including their historical origins and worldwide ramifications Current legal cultures such as common law and civilian European and Aboriginal Influential jurisprudents and their biographies All influential schools and methods

Current Publications in Legal and Related Fields ,2006 Law, Truth, and Reason Raimo Siltala, 2011-07-29 This book is an innovative contribution to analytical jurisprudence It is mainly based on the distinct premises of linguistic philosophy and Carnapian semantics but also addresses the issues of institutional philosophy social pragmatism and legal principles as envisioned by Dworkin among others Wr blewski s three ideologies bound free legal and rational and Makkonen s three situations isomorphic semantically vague normative gap of judicial decision making are further developed by means of 10 frames of legal analysis as discerned by the author With the

philosophical theories of truth serving as a reference the frames of legal analysis include the isomorphic theory of law Wittgenstein Makkonen the coherence theory of law Alexy Peczenik Dworkin the new rhetoric and legal argumentation theory Perelman Aarnio social consequentialism Posner natural law theory Fuller Finnis and the sequential model of legal reasoning by Neil MacCormick and the Bielefelder Kreis At the end some key issues of legal metaphysics are addressed like the notion of legal systematics and the future potential of the analytical approach in jurisprudence      **Law, Society and**

**Community** Richard Nobles, David Schiff, 2016-04-22 This collection of socio legal studies written by leading theorists and researchers from around the world offers original perceptive and critical contributions to ideas and theories that have been expounded by Roger Cotterrell over a long and distinguished career Engaging with many classic issues and theories of the sociology of law the contributions are likely to become classics themselves as they tackle some of the most significant challenges that modern law faces They do not shy away from what one of the contributors describes as the complexity and multiplicity of our contemporary legal world The book is organized in three parts socio legal themes methodological and jurisprudential themes globalization cultural and comparative law themes Starting with a chapter that re engages with the need to interpret legal ideas sociologically and ending with one that explores the global significance of modern fascination with the idea of the rule of law this selection offers important additions to the oeuvre of Roger Cotterrell a list of whose academic writings is included in the book      *Handbook of Law and Economics* A. Mitchell Polinsky, Steven

Shavell, 2007-11-07 Law can be viewed as a body of rules and legal sanctions that channel behavior in socially desirable directions for example by encouraging individuals to take proper precautions to prevent accidents or by discouraging competitors from colluding to raise prices The incentives created by the legal system are thus a natural subject of study by economists Moreover given the importance of law to the welfare of societies the economic analysis of law merits prominent treatment as a subdiscipline of economics Our hope is that this two volume Handbook will foster the study of the legal system by economists The two volumes form a comprehensive and accessible survey of the current state of the field Chapters prepared by leading specialists of the area Summarizes received results as well as new developments      **Gender and**

**Justice** Ngaire Naffine, 2017-07-05 The leading articles on gender and justice within Anglo American legal theory are assembled in this volume The essays are drawn primarily from the writings of lawyers working in the common law tradition and they mainly examine the justice of legal institutions Due to the close kinship between political and legal theories of justice the book also includes a selection of the work of the more prominent political theorists of justice and gender

**Constitutional Theory** Wojciech Sadurski, 2005 In this volume key contributors consider various elements of constitutional theory creating a work of immense interest to legal scholars and political scientists alike      *The Philosophy of Law* Christopher Berry Gray, 1999 This encyclopedia offers systematic and sustained coverage of the many dimensions of legal thought and gives expression to the breadth and depth of the philosophy of law      **Sovereignty and the Stateless**

**Nation** Keith Azopardi, 2009-10-06 Gibraltar is an Overseas Territory of the UK within the EU which has for three centuries been at the centre of a dispute between Britain and Spain a dispute based on traditional perceptions of sovereignty Hitherto the dispute has been managed in a predominantly bilateral way but this has prevented the people of Gibraltar having an equal say on the issue of Gibraltar's sovereignty and decolonisation It has produced a paradox of governance and constitutionalism that encases the Gibraltar people This book considers the effects of sovereignty and the culture of bilateralism on the dispute and examines the resulting deficits of governance and democracy In assessing the evolution of the themes underlying the dispute it asks how its resolution might be facilitated by the application of ideas drawn from the modern legal context of late sovereignty pluralism and stateless nationalism suggesting that a productive trilateral approach and recognition of the legal and societal context could enable an enduring settlement The author marries theories from international relations constitutional law and public international law in the context of modern literature on sovereignty and nationalism applying these theories to the case study of Gibraltar with emphasis on constitutionalism in its international and EU context to produce a ground breaking addition to the literature on stateless nationalism late sovereignty and constitutional pluralism As such it also complements recent studies of sub state societies regions or nations within Europe and elsewhere including Catalunya the Basque Country and Scotland and Wales and in the broader Commonwealth context other British overseas territories This book will be of interest to lawyers political scientists constitutional historians and constitutionalists

**The Creation and Interpretation of Commercial Law** Clayton P. Gillette, 2022-03-21 This title was first published in 2003 This volume contains essays by prominent commentators on topics in commercial law It addresses the increasing harmonization of international commercial law and the essays demonstrate different methodologies used in analysing commercial law such as economic and jurisprudential approaches

*Restitution* Lionel Smith, 2020-11-25 This title was first published in 2001 In the Western legal tradition the history of restitution for unjust enrichment reaches back to pre classical Roman law In common law the roots of unjust enrichment may be said to lie in the fourteenth century but its history as a subject of academic study is much shorter The law of restitution has become increasingly important in the courts of the common law world during the last decade This has generated a great deal of scholarly attention and there has been an explosion of literature as legal academics have addressed the theoretical foundations of the subject its structure and its underlying principles

*Anti-discrimination Law* Christopher McCrudden, 2004 Since the early 1990s there has been an enormous growth in scholarship addressing the theoretical aspects of anti discrimination law Touching upon a number of jurisdictions this volume collects many of the most illuminating articles published since then As with other volumes in the series the studies are placed into context by a specially written introduction

*The Changing Constitution* Jeffrey Jowell, Colm O'Cinneide, 2019 The Changing Constitution provides concise scholarly and thought provoking essays on the key issues surrounding the UK's constitutional development and the current debates around reform

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