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Rights and Reason

Essays in Honor of Carl Wellman

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Rights And Reason Essays In Honor Of Carl Wellman

Michael Baurmann



Rights And Reason Essays In Honor Of Carl Wellman:

Rights and Reason Marilyn Friedman, Larry May, K. Parsons, J. Stiff, 2013-06-29 The papers in this book have been collected in celebration of Carl Wellman who after forty five years is retiring from teaching Here I would like to highlight a few of the moments which have shaped Carl as a person and a philosopher Although his childhood was not unhappy Carl faced considerable challenges growing up in Manchester New Hampshire He never knew his father he and his mother Carolyn had little money and he fought a long battle with Stevens Johnson Syndrome an illness which made him more familiar with hospitals than any young person should be His mother once told me that there were times when the doctors put Carl in his own hospital room because while he was too young to be housed with adult men they did not want the other children to see him die Following a year of physician prescribed rest after high school the doctors recommended the University of Arizona in the misguided hope that the desert climate might improve his health In spite of the doctors hopes life in Tucson was not easy The heat takes its toll on everyone but the desert was especially oppressive for Carl since his unusually sensitive eyes were no match for the intense sun Still Carl enjoyed college Rights and Reason, 2000 *Being Apart from Reasons* Cláudio Jr. Michelin, 2006-03-09 *Being Apart from Reasons* deals with the question of how we should go about using reasons to decide what to do More particularly the book presents objections to the most common response given by contemporary legal and political theorists to the moral complexity of decision making in modern societies namely the attempt to release public agents from their argumentative burden by insulating a particular set of reasons from the general pool of reasons and assigning the former systematic priority over all other reasons That strategy is apparent both in Rawls claim that reasons concerning the right are systematically prior to reasons concerning the good and in Raz s claim that pre-emptive reasons are systematically prior to first order reasons The same strategy is also instantiated by certain arguments for the procedural value of law such as Jeremy Waldron s In the book each of those arguments for the insulation of reasons is objected to in order to defend the thesis the reasoning by public agents must always be as comprehensive as possible The remaining chapters object to those arguments mentioned above which aim at justifying the exclusion of certain reasons from public agents decision making *Methods of Legal Reasoning* Jerzy Stelmach, Bartosz Brozek, 2006-09-03 Anyone reflecting on the methodology of legal reasoning faces a difficult task The number of methodological theories in jurisprudence and the vast literature on the subject are not the only problems that have to be taken into account Perhaps the most striking difficulty concerning the methodology of legal argument is the heated debate between jurists legal theorists and philosophers of law that has been recurring since at least nineteenth century Therefore a justification is needed for writing yet another book concerning the methods of legal reasoning a book that aims to cover a lot of what has already been proposed in legal theory We believe that there is such a justification First the perspective that we adopt in the present book is unique at least in some respects We venture to look at the methodology of legal reasoning from the outside i.e. from a more general philosophical

perspective while taking into account the hardness of law. This perspective enables us to ask questions about the justification for the methods of legal argument presented. Second we do not want to defend one paradigmatic conception of legal reasoning. On the contrary we put forward the thesis that there is a plurality of argumentative methods. The plurality however does not lead to relativism in legal decision making. Third we reject any hierarchy of the methods of legal reasoning and take the view that one can speak only of the precision and flexibility of different methodologies.

On the Interpretation of Treaties Ulf Linderfalk, 2007-09-11

1 PURPOSE AND TOPIC We live in the age of treaties. Increasingly bilateral and multilateral written agreements are used for the creation of new international legal standards. For political reasons states are decreasingly less willing to rely upon customary international law for the regulation of legal matters. New technology and growing international exchange have established the need for an ever more precise and flexible international law, a need not satisfactorily met by customary law. In many fields of activity we can seriously question whether the creation of a rule of custom is at all possible. Considering also that the number of states capable of drafting and concluding treaties seems to be growing it is not surprising that treaties are concluded far more frequently than ever before. In several ways this is a development that should be met with approval. By entering into written agreements states avoid the difficulties inherent in customary international law. At the same time the increasing number of treaties should also be causing concern. The more treaties that are concluded the more treaties that will have to be applied and the more treaties that are applied the more often the question will arise. To what extent and under what specific conditions should such an application occur. Naturally this includes the question of how treaties should be interpreted.

Studies in Legal Logic Jaap Hage, 2006-03-30

Studies in Legal Logic is a collection of nine interrelated papers about the logic, epistemology and ontology of law. All of the papers were written after the publication of the author's *Reasoning with Rules* and supplement the issues addressed therein. Some of the papers are new, others have been revised substantially after the publication of their original versions. The emphasis is on analysis, not on logical technicalities. *Studies in Legal Logic* contains chapters about the nature of norms, the role of coherence in the law, the nature of defeasibility, the role of dialectics in law and artificial intelligence, the statics and dynamics of the law and the consistency of rules. Moreover it contains a new simplified and yet more powerful version of Reason based Logic and extensive examples of how it can be used for the analysis of legal reasoning. The examples deal with legal theory, construction, case based reasoning and judicial proof.

Knowledge Discovery from Legal Databases Andrew Stranieri, John Zeleznikow, 2006-03-30

Knowledge Discovery from Legal Databases is the first text to describe data mining techniques as they apply to law. Law students, legal academics and applied information technology specialists are guided through all phases of the knowledge discovery from databases process with clear explanations of numerous data mining algorithms including rule induction, neural networks and association rules. Throughout the text assumptions that make data mining in law quite different to mining other data are made explicit. Issues such as the selection of commonplace cases, the use of

discretion as a form of open texture transformation using argumentation concepts and evaluation and deployment approaches are discussed at length

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

Constitutionalism and Legal Reasoning Massimo La Torre, 2007-04-10 This book which consist of three chapters and two appendices is intended to connect subjects that have usually been considered as detached or not strongly connected constitutionalism legal argumen tion and legal ethics Its main contention is that contemporary consti tionalism pushes towards a new style of legal reasoning which needs to take into account moral criteria and principles and that eventually the interpretative and moralist approach will lead to a somewhat unort dox and less authoritarian concept of law A constitution to be taken seriously and as a distinct and superior source of law will end up referring to some sort of constitutional justice or judicial review And constitutional reasoning and justice need to make recourse to principles but principles to be given an operative content should be elaborated through some form of moral reasoning This r soning however if it does not want to betray the spirit of constitutional democracy and the very idea of a constitution as a special moment of self determination could not be just Platonism a cognitivism without roots in the practice of public discourse and deliberation So that cons tutionalism will not really do without a public sphere and some activism of the latter But if this is so the traditional concept of law based on hi archy commands prescription sanction and in the last instance violence becomes obsolete A law which is a command cannot be congruent with a practice ruled by discourse that is I argue with constitution

The Concept of Rights George W. Rainbolt, 2006-03-09 What does it mean to have a right Previous answers to this question fall into two groups interest benefit theories of rights and choice will theories This book proposes an alternative to these traditional views the justified constraint theory of rights which avoids the pitfalls of earlier theories and solves the puzzle of the relational nature of rights The analysis shows that this theory applies without modification to past present and future beings

The Legal Essays of Michael Bayles W.L. Robison, 2002-06-30 The legal essays by Michael Bayles in this collection display his commitment to utilitarianism both as a moral theory and an analytical device A utilitarian must choose between the best of all possible alternatives and so must lay out the alternatives and thus their consequences carefully and completely As it happens there is no better way of understanding why something is as it is in the law and no better way to lay the foundations for criticism and improvement than to lay out what the alternatives are carefully distinguishing them their justifications and their implications for changing other areas of the law and for changing our relation to the law Bayles was a master at such work and each essay thus repays careful study for anyone concerned about the law The essays cover a wide variety of topics from contract law to the criminal law from torts to theory and form a

natural set Laying out the alternatives in one area makes it much clearer how and why alternatives in other areas are acceptable or required Interconnections within the legal system as a whole not readily visible when studying one area of the law become obvious when several are laid out side by side using the analytical skill required by a good utilitarian **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 **Recognition, Responsibility, and Rights** Robin N. Fiore, 2003 In the words of Catharine MacKinnon a woman is not yet a name for a way of being human In other words women are still excluded as authors and agents from identifying what it is to be human and what therefore violates the dignity and integrity of humans Recognition Responsibility and Rights is written in response to that failure This collection of essays by prominent feminist thinkers advances the positive feminist project of remapping the moral landscape by developing theory that acknowledges the diversity of women This book is the first volume in a new series of edited collections showcasing the best new work in feminist theory that has emerged from the group Feminist Ethics and Social Theory FEAST FEAST advances the goal of a feminist ethico politics by creating an organization and a body of work in which feminist ethicists and feminist social theorists join forces to produce a politically effective feminist ethics In this first volume essayists address that goal by analyzing gender with respect to three key ethical concepts recognition responsibility and rights **The Principle of Legal Certainty in EC Law** J. Raitio, 2013-03-14 The intertwinement of EC law and national law may create unforeseeability in situations where EC law invades the national cases which gives rise to the very question of legal certainty in EC law This study contributes to the contemporary discussion which wrestles with the following questions in particular What have been the visions and objectives for European integration in the last decades How to describe European Union as a political entity and a legal system What is the relationship between legal certainty rule of law various general principles and human rights What is the core of legal certainty on the basis of the case study What kind of legal arguments and patterns of justification are there from a comparative perspective How has the term legal certainty been defined in the Nordic legal theory How predictable and acceptable are the interpretations of the European Court of Justice is it running wild Legal

certainty relates to the principle of non retroactivity and the protection of legitimate expectations in particular but more profoundly it can be related to the conceptual scale for weighing up and balancing between formal justice and material fairness in legal decision making This scale is illustrated by presenting the terms formal factual and substantive legal certainty *The Concept of Ideals in Legal Theory* Sanne Taekema, 2002-12-31 Talk about law often includes reference to ideals of justice equality or freedom But what do we refer to when we speak about ideals in the context of law This book explores the concept of ideals by combining an investigation of different theories of ideals with a discussion of the role of ideals in law A comparison of the theories of Gustav Radbruch and Philip Selznick leads up to a pragmatist theory of legal ideals which provides an interesting new position in the debate about values in law between legal positivists and natural law thinkers Attention for law s central ideals enables us to understand law s autonomous character while at the same time tracing its connection to societal values Essential reading for anyone interested in the role of values or ideals in law

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 fail of Communism **The**

Oxford Handbook of Ethical Theory David Copp, 2006-01-26 The Handbook is a comprehensive reference work in ethical theory consisting of commissioned articles by leading scholars The first part treats meta ethics and the second part normative ethical theory As with all the Oxford Handbooks the collection is designed to achieve three goals exposition of central ideas criticism of other approaches and defenses of distinct points of view *Legal Method and the Rule of Law* Sebastián Urbina, 2002-08-31 We cannot see the world as it is because we face it in a contaminated vein That is our conceptual scheme and biological constitution condition our world view The legal normative world we are dealing with has some special features like the primacy of practical reason over theoretical reason and the primacy of the internal point of

view over the external point of view Although it is not a feature of all legal traditions legal dogmatics is a privileged way of knowing legal normative object that is our legal orders But we are not undertaking as legal scholars an empiricist enterprise because among other reasons we are not interested in the reality in itself but in the relevant reality at least for us In this respect we do not only depend on theories like physicists but also on legal authoritative sources that is power and legitimacy Legal scholars and other participants in the legal life are not neutral observers of their own world trying to discover some hidden truth They are committed experts trying to describe justify and improve the legal order

Law as Symbolic Form Deniz Coskun, 2007-07-17 This book describes the rule of law as the reign of persuasion rather than the reign of force and democracy as the reign by persuasion rather than the reign by force It synthesizes a vast amount of current Cassirer literature and makes a contribution to jurisprudence The book is the first systematic elaboration on law as a symbolic form and it sheds new light on a still dark area of intellectual and jurisprudential thought

The Market of Virtue Michael Baurmann, 2002-08-31 The Market of Virtue Morality and Commitment in a Liberal Society is a contribution to the present controversy between liberalism and communitarianism This controversy is not only confined to academic circles but is becoming of increasing interest to a wider public It has become popular again today to criticize a liberal market society as being a society in which morality and virtues are increasingly being displaced by egoism and utility maximization According to this view the competition between individuals and the dissolution of community ties erode the respect for the interests of others and undermine the commitment to the common good The present book however develops quite a different picture of a liberal society An analysis of its fundamental principles shows that anonymous market relations and competition are by no means the only traits of a liberal society Such a society also provides the framework for freedom of cooperation and association It gives its citizens the right to cooperate with other people in pursuit of their own interests Just as the rivalry between competitors is a basic element of a liberal society so is the cooperation between partners Thus not only self centred individualism is rewarded The main part of the book explains how the freedom to cooperate and to establish social ties lays the empirical foundation for the emergence of civil virtues and moral integrity It is the basic insight of this analysis that it can no longer be maintained that a liberal society is incapable of producing moral attitudes and social commitment If a civil society can develop under a liberal order then one can reckon with citizens who voluntarily contribute to public goods and who commit themselves of their own accord to the society its constitution and institutions However this book not only develops further arguments for the current debate between liberalism and communitarianism by explaining the emergence of morality and virtue in a market society It also provides new aspects for the present theoretical and methodological controversies over the fundamentals of the social sciences and contributes to the advancement of the modern individualistic approach in social theory In this context it aims especially at an improvement of a sociological model of behaviour

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