

The Judicial Process

Realism, Pragmatism, Practical Reasoning and Principles

DAVID M. GERTMAN

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Pragmatism And Judicial Choice

Anne Wagner, Richard K. Sherwin



Pragmatism And Judicial Choice:

Pragmatism and Judicial Choice Denis J. Brion, 2003 A central focus of scholarly discourse in law is the phenomenon of endemic change in the substantive content of judicial doctrine the manifest structure of rules and principles that determine the outcomes of litigated disputes This discourse constitutes a debate over whether this phenomenon undermines the legitimacy of the judicial process in the Rule of Law system by which the society of the United States is popularly perceived to be governed Pragmatism and Judicial Choice is a collection of essays that use the concepts of semiotics to subject various aspects of the judicial process in the United States to analysis and critique for the purpose of demonstrating that endemic instability does not undermine judicial legitimacy but instead is an inevitable consequence of the judicial process when it is functioning in a manner consistent with its institutional nature *The Theory and Practice of Statutory Interpretation* Frank B. Cross, 2008-11-19 Today statutes make up the bulk of the relevant law heard in federal courts and arguably represent the most important source of American law The proper means of judicial interpretation of those statutes have been the subject of great attention and dispute over the years This book provides new insights into the theory and practice of statutory interpretation by courts Cross offers the first comprehensive analysis of statutory interpretation and includes extensive empirical evidence of Supreme Court practice He offers a thorough review of the active disputes over the appropriate approaches to statutory interpretations namely whether courts should rely exclusively on the text or also examine the legislative history The book then considers the use of these approaches by the justices of the recent Rehnquist Court and the degree to which they were applied by the justices either sincerely or in pursuit of an ideological agenda

The Hague Judgments Convention and Commonwealth Model Law Abubakri Yekini, 2021-08-12 This book undertakes a systematic analysis of the 2019 Hague Judgments Convention the 2005 Hague Choice of Court Convention 2005 and the 2017 Commonwealth Model Law on recognition and Enforcement of Foreign Judgments from a pragmatic perspective The book builds on the concept of pragmatism in private international law within the context of recognition and enforcement of judgments It demonstrates the practical application of legal pragmatism by setting up a toolbox pragmatic goals and methods that will assist courts and policymakers in developing an effective and efficient judgments enforcement scheme at national bilateral and multilateral levels Practitioners national courts policymakers academics students and litigants will benefit from the book s comparative approach using case law from the United Kingdom and other leading Commonwealth States the United States and the Court of Justice of the European Union The book also provides interesting findings from the empirical research on the refusal of recognition and enforcement in the UK and the Commonwealth statutory registration schemes respectively **Law, Culture and Visual Studies** Anne Wagner, Richard K. Sherwin, 2013-07-11 The proposed volumes are aimed at a multidisciplinary audience and seek to fill the gap between law semiotics and visuality providing a comprehensive theoretical and analytical overview of legal visual semiotics They seek to

promote an interdisciplinary debate from law semiotics and visuality bringing together the cumulative research traditions of these related areas as a prelude to identifying fertile avenues for research going forward Advance Praise for Law Culture and Visual Studies This diverse and exhilarating collection of essays explores the many facets both historical and contemporary of visual culture in the law It opens a window onto the substantive jurisdictional disciplinary and methodological diversity of current research It is a cornucopia of materials that will enliven legal studies for those new to the field as well as for established scholars It is a must read that will leave you wondering about the validity of the long held obsession that reduces the law and legal studies to little more than a preoccupation with the word Leslie J Moran Professor of Law Birkbeck College University of London Law Culture Visual Studies is a treasure trove of insights on the entwined roles of legality and visuality From multiple interdisciplinary perspectives by scholars from around the world these pieces reflect the fullness and complexities of our visual encounters with law and culture From pictures to places to postage stamps from forensics to film to folklore this anthology is an exciting journey through the fertile field of law and visual culture as well as a testament that the field has come of age Naomi Mezey Professor of Law Georgetown University Law Center Washington D C USA This highly interdisciplinary reference work brings together diverse fields including cultural studies communication theory rhetoric law and film studies legal and social history visual and legal theory in order to document the various historical cultural representational and theoretical links that bind together law and the visual This book offers a breath taking range of resources from both well established and newer scholars who together cover the field of law s representation in interrogation of and dialogue with forms of visual rhetoric practice and discourse Taken together this scholarship presents state of the art research into an important and developing dimension of contemporary legal and cultural inquiry Above all Law Culture and Visual Studies lays the groundwork for rethinking the nature of law in our densely visual culture How are legal meanings produced encoded distributed and decoded What critical and hermeneutic skills new or old familiar or unfamiliar will be needed Topical diverse and enlivening Law Culture and Visual Studies is a vital research tool and an urgent invitation to further critical thinking in the areas so well laid out in this collection Desmond Manderson Future Fellow ANU College of Law Research School of Humanities the Arts Australian National University Australia

The UK Constitution after Miller
Mark Elliott, Jack Williams, Alison L Young, 2018-07-26 The judgment of the UK Supreme Court in R Miller v Secretary of State for Exiting the European Union is of fundamental legal constitutional and political significance The Supreme Court s judgment discussed the relative powers of Parliament and the Government the relationship between Westminster and the devolved legislatures and the extent to which the UK s membership of the EU had changed the UK constitution both prior to and even after departure It also provided further evidence of the emerging role of the UK s Supreme Court as a constitutional court despite the lack of a codified constitution in the UK This edited collection critically evaluates the decision in Miller providing a detailed analysis of the reasoning in the judgment and its longer term consequences for the UK

constitution through the period of Brexit and beyond The case is used as a lens through which to evaluate the modern UK constitution and its potential future evolution Whatever form Brexit may eventually take the impact that EU membership and the triggering of Brexit has already had on the UK's constitutional settlement is profound The book will be of great value to anyone interested in the effect of the Miller case and Brexit on the UK's constitution

Australian Constitutional Values

Rosalind Dixon, 2018-02-08 Vigorous debate exists among constitutional scholars as to the appropriate modalities of constitutional argument and their relative weight Many scholars however argue that one important modality of constitutional argument involves attention to underlying constitutional purposes or values In Australia this kind of values oriented approach has been advocated by leading constitutional scholars and also finds support in the judgments of the High Court at various times particularly during the Mason Court era Much of the scholarly debate on constitutional values to date however focuses on whether the Court should in fact look to constitutional values in this way not the kinds of values the Court should consider given such an approach This book responds to this gap in the existing scholarly literature by inviting a range of leading Australian constitutional lawyers and scholars to address the relevance and scope of various substantive constitutional values and how they might affect the Court's approach to constitutional interpretation in various contexts It is essential reading for anyone seeking a deeper understanding of Australia's constitutional system

Distributional Choices in EU Climate

Change Law and Policy Javier De Cendra de Larragán, 2011-01-01 Climate change policy inevitably has two core components the goals and the means chosen to pursue those goals Decisions on goals and means necessarily have distributional consequences Any policy choice generates winners and losers While this outcome cannot be avoided even doing nothing leads to distributional consequences policymakers can through the choice design and implementation of policies shape to some extent the distribution of the burdens of mitigation and adaptation to climate change In greater depth than any previous legal study in the field this book deals with the way in which the European Union EU has dealt with climate change and with the distribution of the benefits and costs of climate change mitigation policies among affected parties With extraordinary thoroughness the author assesses the legality of choices made particularly concerning mitigation targets and timelines and examines the role that legal principles can play in the adoption interpretation and judicial testing of distributional choices His analysis of the tension between such choices and EU law is bolstered by an exploration of emerging legal principles which could provide additional guidance in this challenging and controversial area Among the core issues dealt with are the following relationship among mitigation adaptation and sustainable development regulations as means to make distributional choices distributional choices between generations and the principle of intergenerational justice distributional choices concerning firms and individuals the participation of affected parties in distributional choices access to justice in EU courts to challenge violations of procedural environmental rights the role of legal principles in making evaluating and testing distributional choices the principle of proportionality with its tests of appropriateness and necessity

the principle of equality the precautionary principle the principle of prevention the polluter pays principle A concluding chapter offers deeply informed recommendations regarding the design of EU climate change law including a preliminary assessment of EU wide personal carbon trading In its insightful illumination of how the inevitable trade offs weaknesses inconsistencies and ambiguities in the way law deals with distributional choices renders them vulnerable to external pressures this book will be of enormous value to regulators and policymakers concerned with effective efficient and fair climate change measures As a critical assessment of existing EU climate change laws and policies and as a systematic analysis of the problem of burden sharing this book will also prove highly valuable to academics in environmental fields of study

The Revival of Pragmatism Morris Dickstein, 1998-11-23 An assessment by a distinguished panel of experts on the impact of pragmatism on contemporary thought

Judge Manfred Lachs and Judicial Law-Making Edward MacWhinney, Manfred Lachs, 1995-10-31 This volume the second in the series *The Judges* which collects and synthesizes the opinions of leading international contemporary judges who have contributed significantly to the progressive development of international law is devoted to the work of Judge Manfred Lachs who was elected to the International Court of Justice in 1967 In his Foreword to the study UN Secretary General Boutros Boutros Ghali says of Lachs that His contribution to jurisprudence is especially noteworthy He initiated a significant part of the jurisprudence of the Court in the area of human rights He contributed to the formulation of the right to self determination helped to develop the law of the sea and participated in the work of the Court in many other areas But above all he was at the forefront of the most progressive battles of the Court demonstrating great personal courage and great analytical rigour As President of the Court he showed a constant interest in improving its procedures and developing relations between the judicial organ and other organs of the United Nations Edward MacWhinney's masterly essay which precedes extracts from Manfred Lachs Opinions and from some Judgements in which he played a crucial role is essential reading for all those interested in the World Court as well for Manfred Lachs countless admirers students and colleagues

Pragmatism, Logic, and Law Frederic Kellogg, 2020-12-10 *Pragmatism Logic and Law* offers a view of legal pragmatism consistent with pragmatism writ large tracing it from origins in late 19th century America to the present covering various issues legal cases personalities and relevant intellectual movements within and outside law It addresses pragmatism's relation to legal liberalism legal positivism natural law critical legal studies CLS and post Rorty neopragmatism It views legal pragmatism as an exemplar of pragmatism's general contribution to logical theory which bears two connections to the western philosophical tradition first it extends Francis Bacon's empiricism into contemporary aspects of scientific and legal experience and second it is an explicitly social reconstruction of logical induction Both notions were articulated by John Dewey and both emphasize the social or corporate element of human inquiry Empiricism is informed by social as well as individual experience which includes the problems of conflict and consensus Rather than following the Aristotelian model of induction as immediate inference from particulars to

generals a model that assumes a consensual objective viewpoint pragmatism explores the actual and extended process of corporate inference from particular experience to generalization in law as in science This includes the necessary process of resolving disagreement and finding similarity among relevant particulars

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