

Judging Judges

VALUES AND THE RULE OF LAW

Jason E. Whitehead



Judging Judges Values And The Rule Of Law

Ian Shapiro



Judging Judges Values And The Rule Of Law:

Judging Judges Jason E. Whitehead, 2014 The rule of law stands at the heart of the American legal system But the rule of law does not require judges slavishly to follow the letter of the law unaffected by political or social influences Because following the rule of law absolutely is impossible it is dismissed by the public as a myth and judges are vilified Judging Judges refocuses and elevates the debate over judges and the rule of law by showing that personal and professional values matter Jason E Whitehead demonstrates that the rule of law depends on a socially constructed attitude of legal obligation that spawns objective rules Intensive interviews of judges reveal the value systems that uphold or undermine the attitude of legal obligation so central to the rule of law This focus on the social practices undergirding these value systems demonstrates that the rule of law is ultimately a matter of social trust rather than textual constraints Whitehead's unique combination of philosophical and empirical investigation is a major advance because it moves beyond the dichotomy of law or politics and shows that the rule of law is a shared social enterprise involving all of society judges politicians scholars and ordinary citizens alike Judging Judges attention to judicial values establishes judges true worth in a liberal democracy

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

University of Chicago Law Review: Volume 79, Number 4 - Fall 2012 University of Chicago Law Review, 2012-01-30 A leading law review offers a quality ebook edition This fourth issue of 2012 features articles from internationally recognized legal scholars and extensive research in Comments authored by University of Chicago Law School students Contents for the issue are ARTICLES Elected Judges and Statutory Interpretation by Aaron Andrew P Bruhl footnotes are fully linked and properly numbered graphs and figures are reproduced legibly URLs in footnotes are active and proper eBook formatting is used

The Rule of Law Ian Shapiro, 1995-07-01 From the sprawling remnants of the Soviet empire to the southern tip of Africa attempts are underway to replace arbitrary political regimes with governments constrained by the rule of law This ideal which subordinates the wills of individuals social movements and even sometimes democratically elected majorities to the requirements of law is here explored by leading legal and political thinkers Part I of

The Rule of Law examines the interplay of democracy and the rule of law while Part II focusses on the centuries old debate about the meaning of the rule of law itself Part III takes up the constraints that rationality exercises on the rule of law If the rule of law is desirable partly because it is rational then departures from that rule might also be desirable in the event that they can be shown to be rational Part IV concentrates on the limits of the rule of law considering the tensions between liberalism and the rule of law which exist despite the fact that reasoned commitment to the rule of the law is preeminently a liberal commitment Contributing to the volume are Robert A Burt Yale University Steven J Burton University of Iowa William N Eskridge Jr Georgetown University John Ferejohn Stanford University Richard Flathman Johns Hopkins University Gerald F Gaus University of Minnesota Duluth Jean Hampton University of Arizona Russell Hardin University of Chicago James Johnson University of Rochester Jack Knight Washington University Stephen Macedo Harvard University David Schmidtz Yale University Lawrence B Solum Loyola Marymount University Michael Walzer Princeton University Catherine Valcke University of Toronto and Michael P Zuckert Carleton College

Aristotle and The Philosophy of Law: Theory, Practice and Justice Liesbeth Huppes-Cluysenaer, Nuno M.M.S. Coelho, 2013-02-14 The book presents a new focus on the legal philosophical texts of Aristotle which offers a much richer frame for the understanding of practical thought legal reasoning and political experience It allows understanding how human beings interact in a complex world and how extensive the complexity is which results from humans own power of self construction and autonomy The Aristotelian approach recognizes the limits of rationality and the inevitable and constitutive contingency in Law All this offers a helpful instrument to understand the changes globalisation imposes to legal experience today The contributions in this collection do not merely pay attention to private virtues but focus primarily on public virtues They deal with the fact that law is dependent on political power and that a person can never be sure about the facts of a case or about the right way to act They explore the assumption that a detailed knowledge of Aristotle s epistemology is necessary because of the direct connection between Enlightened reasoning and legal positivism They pay attention to the concept of proportionality which can be seen as a precondition to discuss liberalism

Cases, Materials and Commentary on Administrative Law S. H. Bailey, Brian L. Jones, Alastair R. Mowbray, 2005 Provides a set of commentaries on a contractual history of an oil or gas field from the initial formation of a consortium to bid on concessions to the abandonment of the facilities The book is accompanied by a disk containing precedents to accompany and illustrate the principles described

Nomination of Robert H. Bork to be Associate Justice of the Supreme Court of the United States United States. Congress. Senate. Committee on the Judiciary, 1989

Recrafting the Rule of Law David Dyzenhaus, 1999-07-01 This collection of essays on the rule of law focuses on the traditional question whether the rule of law is necessarily the rule of moral principles the question of the legitimacy of law Essays by lawyers philosophers and political theorists illuminate and take forward both that question and debate about issues to do with the reach of the rule of law which complicate its answer The essays are divided into sections

which deal first with legal orders where the rule of law is under severe stress second with the question of the value of the rule of law as a conceptual problem and third with the question of the limits of legal order Contributors Richard Abel Jody Freeman Robert Alexy Neil MacCormick Kenneth Winston Andras Sajó Alon Harel Anton Fagan Anthony Sebok Christine Sygnowich Allan Hutchinson Bill Scheuerman John MacCormick Julian Rivers Henry Richardson David Dyzenhaus

Sentencing and Human Rights Sarah J Summers, 2022-10-06 This is an open access title available under the terms of a CC BY NC ND 4.0 International licence It is free to read at Oxford Scholarship Online and offered as a free PDF download from OUP and selected open access locations There has been little sustained consideration of the ways in which human rights act to safeguard the individual from substantive unfairness or injustice in the imposition of punishment Human rights might be expected to play a pivotal role at the sentencing stage regulating the process and substance of sentencing mapping out the state's role and affording it legitimacy in the imposition of punishment The traditional view that sentencing theory is best understood as a branch of moral philosophy has obscured the importance of consideration of the special nature of state punishment as mediated by and through law and the significance of human rights principles notably legality proportionality equality and judicial responsibility for the determination of the sentence Sarah J Summers focusses on sentencing practices which are widespread across Europe and indeed further afield and their compatibility with constitutional or human rights principles Sentencing and Human Rights develops a systematic account of the importance of human rights principles at sentencing stage Consideration of these principles provides the basis for an examination of the way in which they might be expected to limit important sentencing practices such as the imposition of aggravated sentences for previous convictions the treatment of confessions and mandatory minimum sentences It is not just that punishment follows a multitude of aims but rather that the balance of these aims may and in the context of lengthy prison sentences almost certainly will change during the sentence This examination of the human rights limits on the sentence suggests that it might be necessary to reconsider the way in which state punishment is conceptualised in sentencing theory [Nomination of Robert H. Bork to be Associate Justice of the United States Supreme Court](#) United States. Congress. Senate. Committee on the Judiciary, 1987

Universals of Legal Reasoning by Judges Thomas Lundmark, 2024-03-28 Universals in Legal Reasoning by Judges explores and expounds the usage of rules to justify judicial decisions It argues for judicial transparency and candour to enhance the persuasiveness and efficacy of judicial precedents to foster democratic legitimacy and to permit political accountability **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

Legal, Moral, and Metaphysical Truths Kimberly Kessler Ferzan, Stephen J. Morse, 2016 Reviewing the work of legal philosopher Michael S Moore this volume examines how crimes ought to be defined what justifies punishment what moral commitments underlie the law how our understanding of concepts such as causation impact law and morality and how psychiatry and cognitive neuroscience relate to law

Values in the Supreme Court Rachel Cahill-O'Callaghan, 2020-02-20 This book examines the significance of values in Supreme Court decision making Drawing on theories and techniques from psychology it focuses on the content analysis of judgments and uses a novel methodology to reveal the values that underpin decision making The book centres on cases which divide judicial opinion Dworkin's hard cases in which the result is not clearly dictated by statute or precedent In hard cases there is real uncertainty about the legal rules that should be applied and factors beyond traditional legal sources may influence the decision making process It is in these uncertain cases where legal developments can rest on a single judicial decision that values are revealed in the judgments The findings in this book have significant implications for developments in law judicial decision making and the appointment of the judiciary

Law and Nature David Delaney, 2003-10-13 This interdisciplinary study explores the relationship between conceptions of nature and largely American legal thought and practice It focuses on the politics and pragmatics of nature talk as expressed in both extra legal disputes and their transformation and translation into forms of legal discourse tort property contract administrative law criminal law and constitutional law Delaney begins by considering the pragmatics of nature in connection with the very idea of law and the practice of American legal theorization He then traces a set of specific political legal disputes and arguments The set consists of a series of contexts and cases organized around a conventional distinction between external and internal nature forces of nature endangered species animal experiments bestiality reproductive technologies genetic screening biological defenses in criminal cases and involuntary medication of inmates He demonstrates throughout that nearly any construal of nature entails an interpretation of what it is to be distinctively human

Constitutional Morality and the Rise of Quasi-Law Bruce P. Frohnen, George W. Carey, 2016-06-13 Americans are ruled by an unwritten constitution consisting of executive orders signing statements and other quasi laws designed to reform society Bruce Frohnen and George Carey argue Consequently the Constitution no longer means what it says to the people it is supposed to govern and the government no longer acts according to the rule of law

Statutes in Court William D. Popkin, 1999 A history of the discretion accorded U S

judges in interpreting legislation from the Revolution to the present culminating in the author's own theory of the proper scope of judicial discretion Congressional Record United States. Congress, 1975 Purposive Interpretation in Law Aharon Barak, 2011-10-16 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. **Law, Religion and Tradition** Jessica Giles, Andrea Pin, Frank S. Ravitch, 2018-09-27 This book explores different theories of law, religion, and tradition from both a secular and a religious perspective. It reflects on how tradition and change can affect religious and secular legal reasoning, identifying the patterns of legal evolution within religious and secular traditions. It is often taken for granted that even in law, change corresponds and correlates to progress: that things ought to be changed and they will necessarily get better. There is no doubt that legal changes over the centuries have made it possible to enhance the protection of individual rights and to somewhat contain the possibility of tyranny and despotism. But progress is not everything; in law, stability and certainty lie at the core of the rule of law. Similarly, religions and religious laws could not survive without traditions, and yet they still evolve, and their evolution is often intermingled with secular law. The book asks, and in some ways answers, the questions: What is the role of tradition within religions and religious laws? What is the impact of religious traditions on secular laws, and vice versa? How are the elements of tradition to be identified? Are they the same within the secular and the religious realm? Do secular law and religious law follow comparable patterns of change? Do their levels of resilience differ significantly? How does the

history of religion and law affect changes within religious traditions and legal systems The overall focus of the book addresses the extent to which tradition plays a role in shaping and re shaping secular and religious laws as well as their mutual boundaries

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