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# THE RULE OF LAW

NOMOS XXXVI

EDITED BY Ian Shapiro

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# Rule Of Law Nomos Xxxvi

**James E. Fleming**



## **Rule Of Law Nomos Xxxvi:**

**Democracy and the Rule of Law** Adam Przeworski, José María Maravall, 2003-07-21 This book addresses the question of why governments sometimes follow the law and other times choose to evade the law The traditional answer of jurists has been that laws have an autonomous causal efficacy law rules when actions follow anterior norms the relation between laws and actions is one of obedience obligation or compliance Contrary to this conception the authors defend a positive interpretation where the rule of law results from the strategic choices of relevant actors Rule of law is just one possible outcome in which political actors process their conflicts using whatever resources they can muster only when these actors seek to resolve their conflicts by recourse to la does law rule What distinguishes rule of law as an institutional equilibrium from rule by law is the distribution of power The former emerges when no one group is strong enough to dominate the others and when the many use institutions to promote their interest

**Getting to the Rule of Law** James E. Fleming, 2011-09-01 The rule of law has been celebrated as an unqualified human good yet there is considerable disagreement about what the ideal of the rule of law requires When people clamor for the preservation or extension of the rule of law are they advocating a substantive conception of the rule of law respecting private property and promoting liberty a formal conception emphasizing an inner morality of law or a procedural conception stressing the right to be heard by an impartial tribunal and to make arguments about what the law is When are exertions of executive power outside the law justified on the ground that they may be necessary to maintain or restore the conditions for the rule of law in emergency circumstances such as defending against terrorist attacks In Getting to the Rule of Law a group of contributors from a variety of disciplines address many of the theoretical legal political and moral issues raised by such questions and examine practical applications on the ground in the United States and around the world This timely interdisciplinary volume examines the ideal of the rule of law questions when if ever executive power outside the law is justified to maintain or restore the rule of law and explores the prospects for and perils of building the rule of law after military interventions

**When Governments Break the Law** Austin Sarat, Nasser Hussain, 2010-10-20 Recent controversies surrounding the war on terror and American intervention in Iraq and Afghanistan have brought rule of law rhetoric to a fevered pitch While President Obama has repeatedly emphasized his Administration's commitment to transparency and the rule of law nowhere has this resolve been so quickly and severely tested than with the issue of the possible prosecution of Bush Administration officials While some worry that without legal consequences there will be no effective deterrence for the repetition of future transgressions of justice committed at the highest levels of government others echo Obama's seemingly reluctant stance on launching an investigation into allegations of criminal wrongdoing by former President Bush Vice President Cheney Secretary Rumsfeld and members of the Office of Legal Counsel Indeed even some of the Bush Administration's harshest critics suggest that we should avoid such confrontations that the price of political division is too high Measured or partisan scholarly or journalistic clearly the debate about

accountability for the alleged crimes of the Bush Administration will continue for some time Using this debate as its jumping off point *When Governments Break the Law* takes an interdisciplinary approach to the legal challenges posed by the criminal wrongdoing of governments But this book is not an indictment of the Bush Administration rather the contributors take distinct positions for and against the proposition offering revealing reasons and illuminating alternatives The contributors do not ask the substantive question of whether any Bush Administration officials in fact violated the law but rather the procedural legal political and cultural questions of what it would mean either to pursue criminal prosecutions or to refuse to do so By presuming that officials could be prosecuted these essays address whether they should *When Governments Break the Law* provides a valuable and timely commentary on what is likely to be an ongoing process of understanding the relationship between politics and the rule of law in times of crisis Contributors Claire Finkelstein Lisa Hajjar Daniel Herwitz Stephen Holmes Paul Horwitz Nasser Hussain Austin Sarat and Stephen I Vladeck     *The Rule of Law in America* Ronald A. Cass, 2001 Drawing upon extensive experience in law government service teaching and research Ronald Cass offers a contribution to the ongoing public discussion on law and society After opening his discussion with chapters on the rule of law in American society Cass turns to the hard case of its application to the president of the United States Through this prism Cass examines the behavior of judges who may not always act according to a perfect model This book provides a corrective to criticism of the American legal system raised all too frequently by some members of the academy Rather than concentrating on relatively minor inconsistencies in the law and slight departures from the ideal of perfectly constrained decision making Cass argues that the energies of his fellow scholars could be better spent on more serious defects in the legal system With a special section on the 2000 presidential election including the Florida recount and Supreme Court decision *The rule of law in America* offers a look at a subject of interest to legal scholars and general readers alike     *The Rule of Law* Ian Shapiro, 1994 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

*The Rule of Law after Communism* Martin Krygier, 2017-10-23 This book is among the first books to consider post communist Europe from the point of view of the rule of law This book collects articles written by specialists on the rule of law in particular countries Interdisciplinary in approach this book reveals the multi layered complexity of the development of the rule of law after communism

**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

Getting to the Rule of Law James E. Fleming, 2011 This title addresses many of the theoretical legal political and moral issues raised by questions concerning the rule of law

*The Cambridge Companion to the Rule of Law* Jens Meierhenrich, Martin Loughlin, 2021-08-12 Introduces students scholars and practitioners to the theory and history of the rule of law

*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

**Key Concepts in Governance** Mark Bevir, 2008-12-18 A comprehensive multidisciplinary examination of the concepts embodied in governance and their wide ranging applications and implications An important read and reference for students and academics in the social sciences particularly those engaged in public policy studies Professor Carolyn J Heinrich University of

Wisconsin Madison An authoritative short survey for which students and teachers alike will be profoundly grateful Professor Rod Rhodes University of Tasmania and Australian National University Students of governance will welcome this book given the explosion of literature in the field It provides a quick guide to key concepts and ideas but does so with considerable originality We are offered not just a review of well established positions but a distinctive take on the governance debate Gerry Stoker Professor of Governance University of Southampton The language of governance has risen to prominence in the last 20 years as a way of describing and explaining changes in the nature and role of the state but the concepts involved can be confusing as they are often new and come from diverse disciplinary and theoretical settings Key Concepts in Governance provides a clear introduction to the technical concepts and policies of contemporary governance through short definitional essays Each entry features a snapshot definition of the concept a contextualization of the concept an overview of relevant debates a guide to further reading The book also includes a substantial introductory chapter which gives an overview of governance studies as a whole orientating and guiding the reader around the issues that the concepts address Highly readable with clear cross referencing this is an ideal book for students on introductory courses and an indispensable resource for anyone interested in governance

**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

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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 to *Citizens in Europe* Claus Offe, Ulrich K Preuß, 2024-08-22 This interdisciplinary collection of essays by a constitutionalist and a political sociologist examines how fragmented societies can be held together by appropriate and effective constitutional arrangements providing for bonds of democratic citizenship Exploring the political order dilemmas of capitalist democracies the authors address moral and institutional prerequisites on which the deepening of European integration depends The desirability of such deepening is currently contested with the membership of some states and their compliance with the spirit of the Union s treaties at stake The authors do not consider the renationalisation of Europe to be a feasible and even less so a desirable way out of Europe s current malaise Yet whatever the way out charting it calls not just for the vision and imagination of political elites but also for the intellectual efforts of social scientists With this book Preu and Offe contribute to those efforts Key Features original insights on the nature of the European crisis analysis of how fragmented societies can be held together by appropriate constitutional arrangements how state sovereignty and federal structures can be merged account of the moral prerequisites and resources of democratic polities dilemmas of political order under democratic capitalism

Administrative Law Daniel L. Feldman, 2015-09-23 Administrative Law The Sources and Limits of Government Agency Power explains the sources of administrative agency authority in the United States how agencies make rules the rights of clients and citizens in agency hearings and agency interaction with other branches of government This concise text examines the everyday challenges of administrative responsibilities and provides students with a way to understand and manage the complicated mission that is governance Written by leading scholar Daniel Feldman the book avoids technical legal language but at the same time provides solid coverage of legal principles and exemplar studies which allows students to gain a clear understanding of a complicated and critical aspect of governance **Transitions** Austin Sarat, 2012-06 Transitions Legal Change Legal Meanings illustrates the various intersections crises and shifts that continually occur within the law and how these moments of change interact with and comment on contemporary society Together the essays in this volume investigate the transformation of US law during moments of political change and explore what we can learn about law by examining its role and its use in times of transition Whether by an abrupt shift in regime or an orderly progression from one government to the next political change often calls into question the stability and versatility of the law making it appear temporarily absent or in suspension What challenges to the law arise at these times To what extent do transitional periods foster ingenuity and resourcefulness and how might they precipitate crises in legal authority What do moments of legal change mean for law itself and how legal institutions bring about and respond to times of transition in legal arrangements Transitions begins the scholarly exploration of these questions that have largely been neglected Contributors Akhil Reed Amar William L Andreen Jack M Beermann Heather Elliott Joshua Alexander Geltzer David Gray Paul Horwitz Daniel H Joyner Nina Mendelson

Meredith Render Austin Sarat Ruti Teitel Lindsey Ohlsson Worth      **Dispute Resolution in Transnational Securities Transactions** Tiago Andreotti, 2017-12-14 This book explores the transnational legal infrastructure for dispute resolution in transnational securities transactions. It discusses the role of law and dispute resolution in securities transactions, the types of disputes arising from them, and the institutional and legal aspects of dispute resolution both generally and regarding aggregate litigation. It illustrates different dispute resolution systems and aggregate litigation methods and examines the legal issues of dispute resolution arising from transnational securities transactions. In addition, the book proposes two systems of dispute resolution for transnational securities transactions depending on the type of dispute: collective redress through arbitration and a network of alternative dispute resolution systems.

Legal Fictions in Theory and Practice Maksymilian Del Mar, William Twining, 2015-03-11 This multi-disciplinary, multi-jurisdictional collection offers the first ever full-scale analysis of legal fictions. Its focus is on fictions in legal practice, examining and evaluating their roles in a variety of different areas of practice, e.g. in Tort Law, Criminal Law, and Intellectual Property Law, and in different times and places, e.g. in Roman Law, Rabbinic Law, and the Common Law. The collection approaches the topic in part through the discussion of certain key classical statements by theorists including Jeremy Bentham, Alf Ross, Hans Vaihinger, Hans Kelsen, and Lon Fuller. The collection opens with the first ever translation into English of Kelsen's review of Vaihinger's *As If*. The 17 chapters are divided into four parts: 1. a discussion of the principal theories of fictions, as above, with a focus on Kelsen, Bentham, Fuller, and classical pragmatism; 2. a discussion of the relationship between fictions and language; 3. a theoretical and historical examination and evaluation of fictions in the common law; and 4. an account of fictions in different practice areas and in different legal cultures. The collection will be of interest to theorists and historians of legal reasoning, as well as scholars and practitioners of the law, more generally, in both common and civil law traditions.

**Islamic Law and International Law** Emilia Justyna Powell, 2019-10-18 There are twenty-nine Islamic law states (ILS) in the world today, and their Muslim population is over 900 million. Muslims in these countries, and to some extent all Muslims, are ethically, morally, doctrinally, or politically committed to the Islamic legal tradition, a unique logic and culture of justice based on nonconfrontational dispute resolution. In *Islamic Law and International Law*, Emilia Justyna Powell examines the differences and similarities between the Islamic legal tradition and international law, focusing in particular on the issue of conflict management and resolution. In many Islamic Law States, Islamic law displaces secular law in state governance and shapes these countries' international dealings. Powell considers why some of Islamic Law States accept international courts while others avoid them, stressing throughout that we cannot make blanket claims about such states. Each relationship is context-specific, hinging on the nature of the domestic legal system. Moreover, not all of these states are Islamic to the same degree or in the same way. Secular law and religious law fuse in different ways in different domestic legal systems. Often the Islamic legal tradition points in one direction while the Western-based secularized international law points in another. However, Powell argues that Islamic legal



tradition contains elements that are compatible with modern international law She marshals original data on the legal systems structures in thirty Islamic Law States over the entire course of the post World War Two era and she draws from in depth interviews with Islamic law scholars and leading practitioners of international law including judges of the International Court of Justice Rich in empirical evidence this book will reshape how we think about the relationship between ILS and the international system The book has been reviewed in more than 25 outlets including 16 countries to extensive praise

**Institutions & Public Law** Robert A. Kagan, 2005 Institutions Public Law Comparative Approaches is a set of essays on the politics of law and courts by leading public law scholars in the United States Europe and Latin America The essays share the view that understanding courts requires attention to the political dynamics that shape judicial design and authority as well as the position of courts within the broader political system This volume is essential reading for undergraduate and graduate courses in judicial politics

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