

The Rule of Law, Justice, and Interpretation

LUC B. TREMBLAY

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Rule Of Law Justice And Interpretation

**Yasutomo Morigiwa, Michael
Stolleis, Jean-Louis Halperin**



Rule Of Law Justice And Interpretation:

The Rule of Law, Justice, and Interpretation Luc B. Tremblay, 1997 In *The Rule of Law Justice and Interpretation* Luc Tremblay analyses and refutes the positivist legal theory that prevails in Canadian constitutional practice Using the techniques of critical theory hermeneutic interpretation and analytical jurisprudence he shows that the dominant interpretations of the central legal doctrines of the rule of law and the sovereignty of Parliament are incoherent The analysis opens the way for the construction of a bold alternative theory of legal discourse and practice based on the concept of the rule of law itself

The Federalist Papers Alexander Hamilton, John Jay, James Madison, 2018-08-20 Classic Books Library presents this brand new edition of *The Federalist Papers* a collection of separate essays and articles compiled in 1788 by Alexander Hamilton Following the United States Declaration of Independence in 1776 the governing doctrines and policies of the States lacked cohesion *The Federalist* as it was previously known was constructed by American statesman Alexander Hamilton and was intended to catalyse the ratification of the United States Constitution Hamilton recruited fellow statesmen James Madison Jr and John Jay to write papers for the compendium and the three are known as some of the Founding Fathers of the United States Alexander Hamilton c 1755 1804 was an American lawyer journalist and highly influential government official He also served as a Senior Officer in the Army between 1799 1800 and founded the Federalist Party the system that governed the nation's finances His contributions to the Constitution and leadership made a significant and lasting impact on the early development of the nation of the United States

Judging Statutes Robert A. Katzmann, 2014-08-14 In an ideal world the laws of Congress known as federal statutes would always be clearly worded and easily understood by the judges tasked with interpreting them But many laws feature ambiguous or even contradictory wording How then should judges divine their meaning Should they stick only to the text To what degree if any should they consult aids beyond the statutes themselves Are the purposes of lawmakers in writing law relevant Some judges such as Supreme Court Justice Antonin Scalia believe courts should look to the language of the statute and virtually nothing else Chief Judge Robert A Katzmann of the U S Court of Appeals for the Second Circuit respectfully disagrees In *Judging Statutes* Katzmann who is a trained political scientist as well as a judge argues that our constitutional system charges Congress with enacting laws therefore how Congress makes its purposes known through both the laws themselves and reliable accompanying materials should be respected He looks at how the American government works including how laws come to be and how various agencies construe legislation He then explains the judicial process of interpreting and applying these laws through the demonstration of two interpretative approaches purposivism focusing on the purpose of a law and textualism focusing solely on the text of the written law Katzmann draws from his experience to show how this process plays out in the real world and concludes with some suggestions to promote understanding between the courts and Congress When courts interpret the laws of Congress they should be mindful of how Congress actually functions how lawmakers signal the meaning of statutes and what those

legislators expect of courts construing their laws The legislative record behind a law is in truth part of its foundation and therefore merits consideration The Rule of Law Tom Bingham,2011-07-07 A gem of a book Inspiring and timely Everyone should read it Independent The Rule of Law is a phrase much used but little examined The idea of the rule of law as the foundation of modern states and civilisations has recently become even more talismanic than that of democracy but what does it actually consist of In this brilliant short book Britain s former senior law lord and one of the world s most acute legal minds examines what the idea actually means He makes clear that the rule of law is not an arid legal doctrine but is the foundation of a fair and just society is a guarantee of responsible government is an important contribution to economic growth and offers the best means yet devised for securing peace and co operation He briefly examines the historical origins of the rule and then advances eight conditions which capture its essence as understood in western democracies today He also discusses the strains imposed on the rule of law by the threat and experience of international terrorism The book will be influential in many different fields and should become a key text for anyone interested in politics society and the state of our world Normative Jurisprudence Robin West,2011-08-22 Normative Jurisprudence aims to reinvigorate normative legal scholarship that both criticizes positive law and suggests reforms for it on the basis of stated moral values and legalistic ideals It looks sequentially and in detail at the three major traditions in jurisprudence natural law legal positivism and critical legal studies that have in the past provided philosophical foundations for just such normative scholarship Over the last fifty years or so all of these traditions although for different reasons have taken a number of different turns toward empirical analysis conceptual analysis or Foucaultian critique and away from straightforward normative criticism As a result normative legal scholarship scholarship that is aimed at criticism and reform is now lacking a foundation in jurisprudential thought The book criticizes those developments and suggests a return albeit with different and in many ways larger challenges to this traditional understanding of the purpose of legal scholarship *A Matter of Interpretation* Antonin Scalia,2018-01-30 We are all familiar with the image of the immensely clever judge who discerns the best rule of common law for the case at hand According to U S Supreme Court Justice Antonin Scalia a judge like this can maneuver through earlier cases to achieve the desired aim distinguishing one prior case on his left straight arming another one on his right high stepping away from another precedent about to tackle him from the rear until bravo he reaches the goal good law But is this common law mindset which is appropriate in its place suitable also in statutory and constitutional interpretation In a witty and trenchant essay Justice Scalia answers this question with a resounding negative In exploring the neglected art of statutory interpretation Scalia urges that judges resist the temptation to use legislative intention and legislative history In his view it is incompatible with democratic government to allow the meaning of a statute to be determined by what the judges think the lawgivers meant rather than by what the legislature actually promulgated Eschewing the judicial lawmaking that is the essence of common law judges should interpret statutes and regulations by focusing on the text itself Scalia then extends this

principle to constitutional law He proposes that we abandon the notion of an everchanging Constitution and pay attention to the Constitution's original meaning Although not subscribing to the strict constructionism that would prevent applying the Constitution to modern circumstances Scalia emphatically rejects the idea that judges can properly smuggle in new rights or deny old rights by using the Due Process Clause for instance In fact such judicial discretion might lead to the destruction of the Bill of Rights if a majority of the judges ever wished to reach that most undesirable of goals This essay is followed by four commentaries by Professors Gordon Wood Laurence Tribe Mary Ann Glendon and Ronald Dworkin who engage Justice Scalia's ideas about judicial interpretation from varying standpoints In the spirit of debate Justice Scalia responds to these critics Featuring a new foreword that discusses Scalia's impact jurisprudence and legacy this witty and trenchant exchange illuminates the brilliance of one of the most influential legal minds of our time

The Rule of Law in the Real World Paul Gowder, 2016-02-09 A pathbreaking theoretical and empirical study proposing social equality as a measure of the rule of law

Rule of Law, Justice, and Interpretation Luc B. Tremblay, 1997-10-24 Tremblay's theory of the rule of law involves a set of practical principles that constitute the ideal type of a conception of law that is both constitutive and regulative of legal discourse and practice Tremblay examines two competing ideal types the rule of law as certainty and the rule of law as justice The former a standard doctrine within contemporary legal social and political theory is shown to be incoherent Thus the rule of law as justice he shows provides the best basis for understanding legal discourse in general and Canadian constitutional law in particular Tremblay offers a coherent reconstruction of Canadian law from fundamental principles of the rule of law as justice and tests the theory through applications to key judicial decisions that have proven resistant to positivist interpretation The Rule of Law Justice and Interpretation is both a stimulating work of contemporary legal theory and an innovative challenge to the traditions of Canadian constitutional law Tremblay examines fundamental issues of legal epistemology and ontology and brings rigorous analytical jurisprudence to bear on interpretations and applications specific to Canadian constitutional law Given the important implications of his theory for statutory and constitutional interpretation especially with respect to the Canadian Charter of Rights and Freedoms and the potential crisis involving provincial rights of secession and partition this book will be central to the practice of law in Canada

The Legal Doctrines of the Rule of Law and the Legal State (Rechtsstaat) James R. Silkenat, James E. Hickey Jr., Peter D. Barenboim, 2014-05-28 This book explores the development of both the civil law conception of the Legal State and the common law conception of the Rule of Law It examines the philosophical and historical background of both concepts as well as the problem of the interrelation between the two doctrines The book brings together twenty five leading scholars from around the world and provides both general and specific jurisdictional perspectives of the issue in both contemporary and historical settings The Rule of Law is a legal doctrine the meaning of which can only be fully appreciated in the context of both the common law and the European civil law tradition of the Legal State Rechtsstaat The Rule of Law and the Legal State are fundamental safeguards of human

dignity and of the legitimacy of the state and the authority of state prescriptions *Reading Law* Antonin Scalia, Bryan A. Garner, 2012 In this groundbreaking book Scalia and Garner systematically explain all the most important principles of constitutional statutory and contractual interpretation in an engaging and informative style with hundreds of illustrations from actual cases Is a burrito a sandwich Is a corporation entitled to personal privacy If you trade a gun for drugs are you using a gun in a drug transaction The authors grapple with these and dozens of equally curious questions while explaining the most principled lucid and reliable techniques for deriving meaning from authoritative texts Meanwhile the book takes up some of the most controversial issues in modern jurisprudence What exactly is textualism Why is strict construction a bad thing What is the true doctrine of originalism And which is more important the spirit of the law or the letter The authors write with a well argued point of view that is definitive yet nuanced straightforward yet sophisticated The Structure of Liberty : Justice and the Rule of Law Randy E. Barnett, 1998-04-02 In this provocative and engaging new book Randy Barnett outlines a powerful and original theory of liberty structured by the liberal conception of justice and the rule of law Drawing on insights from philosophy political theory economics and law he shows how this new conception of liberty can confront and solve the central societal problems of knowledge interest and power What is liberty as opposed to license and why is it so important When people pursue happiness peace and prosperity whilst living in society they confront pervasive problems of knowledge interest and power These problems are dealt with by ensuring the liberty of the people to pursue their own ends but addressing these problems also requires that liberty be structured by certain rights and procedures associated with the classical liberal conception of justice and the rule of law In this controversial new work Barnett examines the serious social problems that are addressed by liberty and the background or natural rights and rule of law procedures that distinguish liberty from license He goes on to outline the constitutional framework that is needed to protect this structure of liberty This is the only discussion of the liberal conception of justice and the rule of law to draw upon insights from philosophy economics political theory and law to describe comprehensively the vital social functions performed by adherence to these concepts And although the book is intended to challenge specialists its clear and accessible prose ensure that it will be of immense value to both scholars and students working in a range of academic disciplines Constitutional Justice Trevor R. S. Allan, 2003

Scope of Judicial Review **Interpretation of Law in the Age of Enlightenment** Yasutomo Morigiwa, Michael Stolleis, Jean-Louis Halperin, 2011-06-29 A collaboration of leading historians of European law and philosophers of law and politics identifying and explaining the practice of interpretation of law in the 18th century The goal establishing the actual practice in the Age of Enlightenment and explaining why this was the case The ideology of the Age was that law i e the will of the sovereign can be explicitly and appropriately stated thus making interpretation redundant However the reality was that in the 18th century there was no one leading source of national law that would be the object of interpretation Instead there was a plurality of sources of law the Roman Law local customary law and the royal ordinance However in deciding a case in a

court of law the law must speak with one voice Hence interpretation to unify the norms was inevitable What was the process What role did justification in terms of reason the hallmark of the Enlightenment play These are some of the questions addressed

A Matter of Interpretation Elizabeth Mac Donald,2021-06 It s 13th century Europe and a young monk Michael Scot has been asked by the Holy Roman Emperor to translate the works of Aristotle and recover his lost knowledge The Scot sets to his task traveling from the Emperor s Italian court to the translation schools of Toledo and from there to the Moorish library of Cordoba But when the Pope deems the translations heretical the Scot refuses to desist So begins a battle for power between Church and State one that has shaped how we view the world today

An Introduction to the Study of the Law of the Constitution A.V. Dicey,1985-09-30 A starting point for the study of the English Constitution and comparative constitutional law The Law of the Constitution elucidates the guiding principles of the modern constitution of England the legislative sovereignty of Parliament the rule of law and the binding force of unwritten conventions

The People Themselves Larry D. Kramer,2004-06-10 In this groundbreaking interpretation of America s founding and of its entire system of judicial review Larry Kramer reveals that the colonists fought for and created a very different system and held a very different understanding of citizenship than Americans believe to be the norm today Popular sovereignty was not just some historical abstraction and the notion of the people was more than a flip rhetorical device invoked on the campaign trail Questions of constitutional meaning provoked vigorous public debate and the actions of government officials were greeted with celebratory feasts and bonfires or riotous resistance Americans treated the Constitution as part of the lived reality of their daily existence Their self sovereignty in law as much as politics was active not abstract

Constitutional Construction Keith E. Whittington,William Nelson Cromwell Professor of Politics and the Director of Graduate Studies in the Department of Politics Keith E Whittington,2009-06-01 This book argues that the Constitution has a dual nature The first aspect on which legal scholars have focused is the degree to which the Constitution acts as a binding set of rules that can be neutrally interpreted and externally enforced by the courts against government actors This is the process of constitutional interpretation But according to Keith Whittington the Constitution also permeates politics itself to guide and constrain political actors in the very process of making public policy In so doing it is also dependent on political actors both to formulate authoritative constitutional requirements and to enforce those fundamental settlements in the future Whittington characterizes this process by which constitutional meaning is shaped within politics at the same time that politics is shaped by the Constitution as one of construction as opposed to interpretation Whittington goes on to argue that ambiguities in the constitutional text and changes in the political situation push political actors to construct their own constitutional understanding The construction of constitutional meaning is a necessary part of the political process and a regular part of our nation s history how a democracy lives with a written constitution The Constitution both binds and empowers government officials Whittington develops his argument through intensive analysis of four important cases the impeachments

of Justice Samuel Chase and President Andrew Johnson the nullification crisis and reforms of presidential congressional relations during the Nixon presidency *The Rule of Law* Geoffrey de Q. Walker, 1988 *The Rule of Law and the Australian Constitution* Lisa Burton Crawford, 2017-04-27 The Rule of Law and the Australian Constitution has been cited with approval and discussed by Edelman J in *Graham v Minister for Immigration and Border Protection* handed down by the High Court today at 106 at 175

The rule of law is one of the most cherished political ideals in the modern world Even though we disagree about what the rule of law means we all seem to agree that it is a worthy goal to which any good legal system should aspire Yet some argue that this is not enough that the rule of law is too important to be left in the realm of politics and must be protected by legal means References to the rule of law now appear with apparently increasing frequency in case law from across the common law world In some countries it has been claimed that the government can never validly act in a way that is contrary to the rule of law The position in Australia remains unclear There is no mention of the rule of law in our constitutional text but in the *Communist Party Case* Dixon J said that the rule of law forms an assumption of the Australian Constitution This statement has often been repeated but never properly analysed Taking Dixon J's statement as its starting point this book examines the extent to which the rule of law is protected and promoted by the Australian Constitution indeed how the complex and contested concept of the rule of law should be understood within the Australian constitutional order This wide ranging and engaging book combines theoretical analysis of the concept of the rule of law and constitutionalism with doctrinal analysis of the case law of the Australian High Court It examines the nature and limits of legislative executive and judicial power and so should appeal to constitutional and administrative lawyers scholars and practitioners The book adds an Australian voice to global debates and a novel perspective on that enduring question of how to create a government of laws rather than of men *The Law and the Constitution* Sir Ivor Jennings, 2021-09-09 This work has been selected by scholars as being culturally important and is part of the knowledge base of civilization as we know it This work is in the public domain in the United States of America and possibly other nations Within the United States you may freely copy and distribute this work as no entity individual or corporate has a copyright on the body of the work Scholars believe and we concur that this work is important enough to be preserved reproduced and made generally available to the public To ensure a quality reading experience this work has been proofread and republished using a format that seamlessly blends the original graphical elements with text in an easy to read typeface We appreciate your support of the preservation process and thank you for being an important part of keeping this knowledge alive and relevant

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