



Rule Of Law And Its Limits

Lisa Burton Crawford



Rule Of Law And Its Limits:

Law's Limits Neil K. Komisar, 2001-12-10 What law is can be or ought to be is determined by the character of those institutions that make interpret and enforce law The interaction of these institutions molds the supply of and demand for law Focusing on this interaction in the context of US property rights law and the debates about private property and the rule of law this book paints an unconventional picture of law and rights shifting and cycling as systemic factors such as increasing numbers and complexity strain both supply and demand Although there may be an important role for law rights and courts both in the US and abroad it can not be facilely defined This book proposes a way to define that role and to reform legal education and legal analysis

The Limits of the Rule of Law in China Karen G. Turner, James V. Feinerman, R. Kent Guy, 2000-02-01 In *The Limits of the Rule of Law in China* fourteen authors from different academic disciplines reflect on questions that have troubled Chinese and Western scholars of jurisprudence since classical times Using data from the early 19th century through the contemporary period they analyze how tension between formal laws and discretionary judgment is discussed and manifested in the Chinese context The contributions cover a wide range of topics from interpreting the rationale for and legacy of Qing practices of collective punishment confession at trial and bureaucratic supervision to assessing the political and cultural forces that continue to limit the authority of formal legal institutions in the People's Republic of China

Overcriminalization Douglas Husak, 2008-01-08 The United States today suffers from too much criminal law and too much punishment Husak describes the phenomena in some detail and explores their relation and why these trends produce massive injustice His primary goal is to defend a set of constraints that limit the authority of states to enact and enforce penal offenses The book urges the weight and relevance of this topic in the real world and notes that most Anglo American legal philosophers have neglected it Husak's secondary goal is to situate this endeavor in criminal theory as traditionally construed He argues that many of the resources to reduce the size and scope of the criminal law can be derived from within the criminal law itself even though these resources have not been used explicitly for this purpose Additional constraints emerge from a political view about the conditions under which important rights such as the right implicated by punishment may be infringed When conjoined these constraints produce what Husak calls a minimalist theory of criminal liability Husak applies these constraints to a handful of examples most notably to the justifiability of drug proscriptions

The Constitution of Equality Thomas Christiano, 2010-06-10 What is the ethical basis of democracy And what reasons do we have to go along with democratic decisions even when we disagree with them And when do we have reason to say that we may justly ignore democratic decisions These questions must be answered if we are to have answers to some of the most important questions facing our global community which include whether there is a human right to democracy and whether we must attempt to spread democracy throughout the globe This book provides a philosophical account of the moral foundations of democracy and of liberalism It shows how democracy and basic liberal rights are grounded in the principle of

public equality which tells us that in the establishment of law and policy we must treat persons as equals in ways they can see are treating them as equals The principle of public equality is shown to be the fundamental principle of social justice This account enables us to understand the nature and roles of adversarial politics and public deliberation in political life It gives an account of the grounds of the authority of democracy It also shows when the authority of democracy runs out The author shows how the violations of democratic and liberal rights are beyond the legitimate authority of democracy how the creation of persistent minorities in a democratic society and the failure to ensure a basic minimum for all persons weaken the legitimate authority of democracy 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 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 *SOU-CCJ230 Introduction to the*

American Criminal Justice System Alison Burke,David Carter,Brian Fedorek,Tiffany Morey,Lore Rutz-Burri,Shanell

Sanchez,2019 **The Limits of International Law** Jack L. Goldsmith,Eric A. Posner,2005-02-03 International law is much debated and discussed but poorly understood Does international law matter or do states regularly violate it with impunity If international law is of no importance then why do states devote so much energy to negotiating treaties and providing legal defenses for their actions In turn if international law does matter why does it reflect the interests of powerful states why does

it change so often and why are violations of international law usually not punished In this book Jack Goldsmith and Eric Posner argue that international law matters but that it is less powerful and less significant than public officials legal experts and the media believe International law they contend is simply a product of states pursuing their interests on the international stage It does not pull states towards compliance contrary to their interests and the possibilities for what it can achieve are limited It follows that many global problems are simply unsolvable The book has important implications for debates about the role of international law in the foreign policy of the United States and other nations The authors see international law as an instrument for advancing national policy but one that is precarious and delicate constantly changing in unpredictable ways based on non legal changes in international politics They believe that efforts to replace international politics with international law rest on unjustified optimism about international law s past accomplishments and present capacities

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

The Legal Limits of Direct Democracy Moeckli, Daniel, Forgács, Anna, Ibi, Henri, 2021-07-31 With the rise of direct democratic instruments the relationship between popular sovereignty and the rule of law is set to become one of the defining political issues of our time This important and timely book provides an in depth analysis of the limits imposed on referendums and citizens initiatives as well as of systems of reviewing compliance with these limits in 11 European states

Constitutional Idolatry and Democracy Brian Christopher Jones, 2020-06-26 *Constitutional Idolatry and Democracy* investigates the increasingly important subject of constitutional idolatry and its effects on democracy Focussed around whether the UK should draft a single written constitution it suggests that constitutions have been drastically and persistently over sold throughout the years and that their wider importance and effects are not nearly as significant as constitutional advocates maintain Chapters analyse whether written constitutions can educate the citizenry invigorate voter turnout or deliver We the People sovereignty

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 Sypnowich Allan Hutchinson Bill Scheuerman John MacCormick Julian Rivers Henry Richardson David Dyzenhaus *The Rule of Law in Europe* María Elósegui, Alina Miron, Iulia Motoc, 2021-04-20 This book discusses the nature of the challenges that have confronted European democracies in recent years In the past decade the rule of law in Europe has been put under strain by both external and internal factors The term illiberal democracies is sometimes used to describe the rise of a phenomenon in which the fundamental values of the European legal order as enshrined in the European Convention of Human Rights and in the Charter of Fundamental Rights of the European Union are called into question The preservation of the independence of the judiciary of the freedom of expression and the protection of journalists are among the values under threat But these challenges are also present within the older democracies in which emergency regimes have become more common As the European Union's sanctions regime shows striking a balance between security and the rule of law of which fundamental rights are an intrinsic part is a constant challenge Focusing on the European courts responses to these threats the book discusses how courts could provide the ultimate line of defense The acid test of the rule of law might indeed be how it safeguards the judicial guarantees designed to protect core European values beyond the discretion of government

Emergencies and the Limits of Legality Victor V. Ramraj, 2008-11-13 Most modern states turn swiftly to law in an emergency The global response to the 11 September 2001 attacks on the United States was no exception and the wave of legislative responses is well documented Yet there is an ever present danger borne out by historical and contemporary events that even the most well meaning executive armed with extraordinary powers will abuse them This inevitably leads to another common tendency in an emergency to invoke law not only to empower the state but also in a bid to constrain it Can law constrain the emergency state or must the state at times act outside the law when its existence is threatened If it must act outside the law is such conduct necessarily fatal to aspirations of legality This collection of essays at the intersection of legal political and social theory and practice explores law's capacity to constrain state power in times of crisis *Transitional Justice and the Rule of Law in New Democracies* A. James McAdams, 1997 This is the first focused study on the relationship between the use of national courts to pursue retrospective justice and the construction of viable democracies Included in this interdisciplinary volume are fascinating detailed essays on the experiences of eight countries Argentina Bolivia Chile Germany Greece Hungary Poland and South Africa According to the contributors the most important lesson for leaders of new democracies who are wrestling with the human rights abuses of past dictatorships is that they have many options

Democratizing regimes are well advised to be attentive to the significant political ethical and legal constraints that may limit their ability to achieve retribution for past wrongs On prudential ground alone some fledgling regimes will have no choice but to restrain their desire for punishment in the interest of political survival However it would be incorrect to think that all new democracies are therefore bereft of the political and legal resources needed to bring the perpetrators of egregious human rights violations to justice In many instances governments have overcome the obstacles before them and by appealing to both national and international legal standards have brought their former dictators to trial When these judicial proceedings have been properly conducted and insulated from partisan political pressures they have provided tangible evidence of the guiding principles equality fairness and the rule of law that are essential to the post authoritarian order This collection shows that the quest for transitional justice has amounted to something more than merely a break with the past it constitutes a formative act which directly affects the quality and credibility of democratic institutions

On the Rule of Law, 2004 This book explores the history politics and theory surrounding the rule of law ideal It examines the rule of law on a global level and concludes by answering the question of whether the rule of law is a universal human good

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

of laws rather than of men **The Limits of Presidential Power** Lisa Manheim, Kathryn A. Watts, 2018 **Facing the Limits of the Law** Erik Claes, Wouter Devroe, Bert Keirsbilck, 2009-04-21 Many legal experts no longer share an unbounded trust in the potential of law to govern society efficiently and responsibly They often experience the limits of the law as they are confronted with striking inadequacies in their legal toolbox with inner inconsistencies of the law with problems of enforcement and obedience and with undesired side effects and so on The contributors to this book engage in the challenging task of making sense of this experience Against the background of broader cultural transformations such as globalisation new technologies individualism and cultural diversity they revisit a wide range of areas of the law and map different types of limits in relation to some basic functions and characteristics of the law Additionally they offer a set of strategies to manage justifiably law's limits such as dedramatising law's limits conceptual refinement constructivism striking the right balance between different functions of the law seeking for complementarity between law and other social practices Complicity and its Limits in the Law of International Responsibility Vladyslav Lanovoy, 2016-09-22 This book examines the responsibility of States and international organizations for complicity aid or assistance in an internationally wrongful act Despite the recognition of responsibility for complicity as a rule of customary international law by the International Court of Justice this book argues that the effectiveness and utility of this form of responsibility is fraught with systemic and operational limits These limits include a lack of clarity in its constituent elements its co existence with primary rules prohibiting complicity and the obligations of due diligence its implementation and the underlying causal tests its uncertain relationship to other forms of shared and indirect responsibility and its potential as a form of attribution of conduct This book submits that the content and elements of this form of responsibility need adjustments to respond more effectively to the phenomenon of complicity in international affairs Awarded The Paul Guggenheim Prize in International Law 2017

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