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Legal Indeterminacy And Constitutional Interpretation

Emily M. Calhoun



Legal Indeterminacy And Constitutional Interpretation:

Legal Indeterminacy and Constitutional Interpretation J.J. Moreso, 2013-04-17 The main purpose of this book is to offer a logical analysis of legal propositions especially of constitutional propositions This analysis shows the relationship between truth conditions of legal propositions and the problem of indeterminacy Where the law is indeterminate legal propositions lack truth values The background of this approach is the philosophical debate between realism and antirealism The book deals with the notions of legal norms and legal systems and provides an analysis of the notion of legal indeterminacy and its relation to gaps contradictions and the vagueness of legal concepts It shows also that the simple model of a legal system is not sufficient to account for the complexity of legal propositions referring to legal systems of some degree of maturity Several notions from legal dynamics are presented in order to bring to light the importance of concepts like applicability or hierarchy for the determination of the truth value of a legal proposition Thus the primacy of constitution becomes a central idea in the theoretical reconstruction of most contemporary legal systems a conceptual explanation of this idea is presented and some conclusions from that explanation are drawn Finally a particular conception of constitutional interpretation is proposed Special attention is paid to the relationship between interpretation and legal indeterminacy and more specifically to the problem of the discretion enjoyed by the organs entrusted with applying the constitution and also to the several theses that have been discussed controversially in the context of constitutional interpretation such as the relevance of the intentions for the interpretation of the constitution and for the justification of judicial review

Constitutional Interpretation Keith E. Whittington, 1999 With its detailed and wide ranging explorations in history philosophy and law this book is essential reading for anyone interested in how the Constitution ought to be interpreted and what it means to live under a constitutional government BOOK JACKET

Constitutional Semiotics Martin Belov, 2022-06-30 This book offers an outline of the foundations of a theory of constitutional semiotics It provides a systematic account of the concept of constitutional semiotics and its role in the representation and signification of meaning in constitution constitutional law and constitutionalism The book explores the constitutional signification of meaning that is stretched between rational entrenchment and constitutional imagination It provides a critical assessment of the rationalist entrapment of constitutional modernity and justifies the need to turn to shadow constitutionalisms textual symbolic imaginary and visual constitutionalism The book puts forward innovative incentives for constitutional analysis based on constitutional semiotics as a paradigm for representation of meaning in rational textual symbolic imaginary and visual constitutionalism The book focuses on the textual imaginative and visual discourse of constitutionalism which is built upon collective constitutional imaginaries and on the peculiar normativity of constitutional geometry and constitutional mythology as borderline phenomena entrenched in rational textual symbolic imaginary and visual constitutionalism The book analyses concepts such as constitutional text and texture authoritative constitutional narratives and authoritative constitutional narrators

constitutional semiotic community constitutional utopia constitutional taboo normative ideology and normative ideas constitutional myth and mythology constitutional symbolism constitutional code and constitutional geometric form It explores the textual entrenchment of constitutionalism and its repercussions for representation and signification of meaning

Handbook of Legal Reasoning and Argumentation Giorgio Bongiovanni, Gerald Postema, Antonino Rotolo, Giovanni Sartor, Chiara Valentini, Douglas Walton, 2018-07-02 This handbook addresses legal reasoning and argumentation from a logical philosophical and legal perspective The main forms of legal reasoning and argumentation are covered in an exhaustive and critical fashion and are analysed in connection with more general types and problems of reasoning Accordingly the subject matter of the handbook divides in three parts The first one introduces and discusses the basic concepts of practical reasoning The second one discusses the general structures and procedures of reasoning and argumentation that are relevant to legal discourse The third one looks at their instantiations and developments of these aspects of argumentation as they are put to work in the law in different areas and applications of legal reasoning

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

Roma Tre Law Review - 01/2020 Giulio Napolitano, Giorgio Resta, 2020-07-14 The Roma Tre Law Review R3LR is an open source peer reviewed e journal which aims to offer a digital forum for scholarly debate on issues of comparative law

international law law and economics law and society criminal law legal history and teaching methods in law Argument Types and Fallacies in Legal Argumentation Thomas Bustamante, Christian Dahlman, 2015-04-07 This book provides theoretical tools for evaluating the soundness of arguments in the context of legal argumentation It deals with a number of general argument types and their particular use in legal argumentation It provides detailed analyses of argument from authority argument ad hominem argument from ignorance slippery slope argument and other general argument types Each of these argument types can be used to construct arguments that are sound as well as arguments that are unsound To evaluate an argument correctly one must be able to distinguish the sound instances of a certain argument type from its unsound instances This book promotes the development of theoretical tools for this task *The Principle of Legal Certainty in EC Law* J. Raitio, 2013-03-14 The intertwinement of EC law and national law may create unforeseeability in situations where EC law invades the national cases which gives rise to the very question of legal certainty in EC law This study contributes to the contemporary discussion which wrestles with the following questions in particular What have been the visions and objectives for European integration in the last decades How to describe European Union as a political entity and a legal system What is the relationship between legal certainty rule of law various general principles and human rights What is the core of legal certainty on the basis of the case study What kind of legal arguments and patterns of justification are there from a comparative perspective How has the term legal certainty been defined in the Nordic legal theory How predictable and acceptable are the interpretations of the European Court of Justice is it running wild Legal certainty relates to the principle of non retroactivity and the protection of legitimate expectations in particular but more profoundly it can be related to the conceptual scale for weighing up and balancing between formal justice and material fairness in legal decision making This scale is illustrated by presenting the terms formal factual and substantive legal certainty **Brown Versus Board of Education and the Civil Rights Movement** Michael J. Klarman, 2007 Publisher Description **The Power of Precedent** Michael J. Gerhardt, 2011 The author connects the vast social science data and legal scholarship to provide a wide ranging assessment of precedent He outlines the major issues in the continuing debates on the significance of precedent and evenly considers all sides The Max Planck Handbooks in European Public Law Armin von Bogdandy, Peter M. Huber, Christoph Grabenwarter, 2023 The fourth volume of the Max Planck Handbooks in European Public Law series compares European constitutional jurisdiction in the perspective of the European legal space It examines the structures of the organization the appointment of judges the procedures and the methods of argumentation and interpretation their impact on state and society their legitimacy or their role in the division of powers and thus completes the picture following the country reports in Volume III This comparative perspective is supplemented by an examination that illustrates the relationship to the ECJ the ECtHR and the Venice Commission as well as their constitutional function Finally the volume is devoted to the challenges currently facing constitutional jurisdiction in the European Legal Space The historical political and

theoretical foundations as well as the basic doctrinal features of constitutional jurisdiction are presented in such a way that the discussion about its role and further development in this legal space is sustainably stimulated

The Invisible Origins of Legal Positivism W.E. Conklin, 2012-12-06 Conklin's thesis is that the tradition of modern legal positivism beginning with Thomas Hobbes postulated different senses of the invisible as the authorising origin of humanly posited laws Conklin re-reads the tradition by privileging how the canons share a particular understanding of legal language as written Leading philosophers who have espoused the tenets of the tradition have assumed that legal language is written and that the authorising origin of humanly posited rules norms is inaccessible to the written legal language Conklin's re-reading of the tradition teases out how each of these leading philosophers has postulated that the authorising origin of humanly posited laws is an unanalysable externality to the written language of the legal structure As such the authorising origin of posited rules norms is inaccessible or invisible to their written language What is this authorising origin Different forms include an originary author an a priori concept and an immediacy of bonding between person and laws In each case the origin is unwritten in the sense of being inaccessible to the authoritative texts written by the officials of civil institutions of the sovereign state Conklin sets his thesis in the context of the legal theory of the polis and the pre polis of Greek tribes The author claims that the problem is that the tradition of legal positivism of a modern sovereign state excises the experiential or bodily meanings from the written language of the posited rules norms thereby forgetting the very pre legal authorising origin of the posited norms that each philosopher admits as offering the finality that legal reasoning demands if it is to be authoritative

The Making of Constitutional Democracy Paolo Sandro, 2022-01-27 This open access book addresses a palpable yet widely neglected tension in legal discourse In our everyday legal practices whether taking place in a courtroom classroom law firm or elsewhere we routinely and unproblematically talk of the activities of creating and applying the law However when legal scholars have analysed this distinction in their theories rather than simply assuming it many have undermined it if not dismissed it as untenable The book considers the relevance of distinguishing between law creation and law application and how this transcends the boundaries of jurisprudential enquiry It argues that such a distinction is also a crucial component of political theory For if there is no possibility of applying a legal rule that was created by a different institution at a previous moment in time then our current constitutional democratic frameworks are effectively empty vessels that conceal a power relationship between public authorities and citizens that is very different from the one on which constitutional democracy is grounded After problematising the most relevant objections in the literature the book presents a comprehensive defence of the distinction between creation and application of law within the structure of constitutional democracy It does so through an integrated jurisprudential methodology which combines insights from different disciplines including history anthropology political science philosophy of language and philosophy of action while also casting new light on long standing issues in public law such as the role of legal discretion in the law making process and the scope of the

separation of powers doctrine The ebook editions of this book are available open access under a CC BY NC ND 4 0 licence on bloomsburycollections com *Juristic Concept of the Validity of Statutory Law* Andrzej Grabowski, 2013-06-24 This book presents the theory of the validity of legal norms aimed at the practice of law in particular the jurisdiction of the constitutional courts The postpositivist concept of the validity of statutory law grounded on a critical analysis of the basic theories of legal validity elaborated up to now is introduced In the first part of the book a contemporary German nonpositivist conception of law developed by Ralf Dreier and Robert Alexy is analysed in order to answer the question whether the juristic concept of legal validity should include moral standards or criteria In the second part a postpositivist concept of legal validity and an innovative model of validity discourse based on the juristic presumption of the validity of legal norms are proposed The book is a work on analytical legal theory written from a postpositivist detached point of view *Legal Reductionism and Freedom* Martin V.B.P.M. van Hees, 2012-12-06 Martin van Hees presents a new approach to the study of law legal reductionism which combines elements of legal positivism new institutionalism and decision theory From legal positivism Van Hees derives some fundamental insights into the nature of legal systems but he also revises some of its key tenets He argues that law can be reduced to facts moreover he re-establishes the relation between law and morality by arguing that law and positive morality are inherently related He subsequently uses decision theoretic tools to develop and defend his reductionist methodology The second part of the study applies the resulting approach to an analysis of legal freedom By showing that legal reductionism allows us to analyse the value of liberal legal systems Van Hees makes a forceful case for including the study of law in moral and political philosophy The book is accessible to a wide readership including legal and moral philosophers political theorists and social scientists **Problems of Normativity, Rules and Rule-Following** Michał Araszkiewicz, Paweł Banaś, Tomasz Gizbert-Studnicki, Krzysztof Pleszka, 2014-11-07 This book focuses on the problems of rules rule following and normativity as discussed within the areas of analytic philosophy linguistics logic and legal theory Divided into four parts the volume covers topics in general analytic philosophy analytic legal theory legal interpretation and argumentation logic as well as AI Law area of research It discusses inter alia Kripkenstein's sceptical argument against rule following and normativity of meaning the role of neuroscience in explaining the phenomenon of normativity conventionalism in philosophy of law normativity of rules of interpretation some formal approaches towards rules and normativity as well as the problem of defeasibility of rules The aim of the book is to provide an interdisciplinary approach to an inquiry into the questions concerning rules rule following and normativity Philosophical Foundations of Constitutional Law David Dyzenhaus, Malcolm Thorburn, 2016-02-05 Constitutional law has been and remains an area of intense philosophical interest and yet the debate has taken place in a variety of different fields with very little to connect them In a collection of essays bringing together scholars from several constitutional systems and disciplines *Philosophical Foundations of Constitutional Law* unites the debate in a study of the philosophical issues at the very foundations of the idea of a constitution why one

might be necessary what problems it must address what problems constitutions usually address and some of the issues raised by the administration of a constitutional regime Although these issues of institutional design are of abiding importance many of them have taken on new significance in the last few years as law makers have been forced to return to first principles in order to justify novel practices and arrangements in their constitutional orders Thus questions of constitutional revolutions challenges to the demands of the rule of law and the separation of powers have taken on new and pressing importance The essays in this volume address these questions filling the gap in the philosophical analysis of constitutional law The volume will provoke specialists in philosophy politics and law to develop new philosophically grounded analyses of constitutional law and will be a valuable resource for graduate students in law politics and philosophy

Comparative Constitutional

History Francesco Biagi, Justin O. Frosini, Jason Mazzone, 2022-12-05 Constitutions are a product of history but what is the role of history in interpreting and applying constitutional provisions This volume addresses that question from a comparative perspective examining different uses of history by courts in determining constitutional meaning The book shows that there is considerable debate around the role of history in constitutional adjudication Are for example historical public debates over the adoption of a constitution relevant to reading its provisions today If a constitution represents a break from a prior repressive regime should courts construe the constitution's provisions in light of that background Are former constitutions relevant to interpreting a new constitution Through an assessment of current practices the volume offers some lessons for the future practices of courts as they adjudicate constitutional cases Contributors are Mark D Rosen Jorge M Farinacci Ferns Justin Collings Jean Christophe B dard Rubin Cem Tecimer ngel Aday Jim nez Alem n Ana Beatriz Robalinho Keigo Obayashi Zolt n Szent Szente Shih An Wang and Diego Werneck Arguelhes

Originalism in American Law and Politics Johnathan

O'Neill, 2005-07-12 This book explains how the debate over originalism emerged from the interaction of constitutional theory U S Supreme Court decisions and American political development Refuting the contention that originalism is a recent concoction of political conservatives like Robert Bork Johnathan O'Neill asserts that recent appeals to the origin of the Constitution in Supreme Court decisions and commentary especially by Justices Antonin Scalia and Clarence Thomas continue an established pattern in American history Originalism in American Law and Politics is distinguished by its historical approach to the topic Drawing on constitutional commentary and treatises Supreme Court and lower federal court opinions congressional hearings and scholarly monographs O'Neill's work will be valuable to historians academic lawyers and political scientists

Losing Twice Emily M. Calhoun, 2011-04-06 Constitutional losers represent a thorny and longstanding problem in American constitutional law Given our adversarial system the way that rights cases are decided means that regardless of whether a losing side has committed any actions that cause harm to others they typically suffer unnecessary harm as a consequence of decisions In areas such as affirmative action and gay rights the losers are essentially punished for losing despite neither intending nor causing injury In *Losing Twice* Emily Calhoun draws upon conflict

resolution theory political theory and Habermasian discourse theory to argue that in such cases the Court must work harder to avoid inflicting unnecessary harm on Constitutional losers But for this to happen Calhoun contends the role of judges needs to be reconceptualized She contends that the Court should not perceive itself simply as an adversarial forum but also as a transactional one where losers are not simply losers but participants in a process capable of addressing and ameliorating the effects that come with loss Filled with lucid discussions of well known cases Losing Twice offers an intellectually powerful argument for transforming the decision making process in Constitutional rights disputes

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