

Rule Of Recognition Hart

Nicholas McBride, Sandy Steel

The Rule of Recognition and the U.S. Constitution Matthew Adler, Kenneth Einar Himma, 2009-07-20 The Rule of Recognition and the U.S. Constitution is a volume of original essays that discuss the applicability of Hart's rule of recognition model of a legal system to U.S. constitutional law. The contributors are leading scholars in analytical jurisprudence and constitutional theory, including Matthew Adler, Larry Alexander, Mitchell Berman, Michael Dorf, Kent Greenawalt, Richard Fallon, Michael Green, Kenneth Einar Himma, Stephen Perry, Frederick Schauer, Scott Shapiro, Jeremy Waldron, and Wil Waluchow. The volume makes a contribution both in jurisprudence, using the U.S. as a test case that highlights the strengths and limitations of the rule of recognition model; and in constitutional theory, by showing how the model can illuminate topics such as the role of the Supreme Court, the constitutional status of precedent, the legitimacy of unwritten sources of constitutional law, the choice of methods for interpreting the text of the Constitution, and popular constitutionalism.

An Examination of Hart's Theory of a Rule of Recognition Donohue, Brian, 1978

The Legal Philosophy of H.L.A. Hart Michael Martin, 1987

Is the Rule of Recognition a Myth? An-Heng Yang, King's College London. Department of Law, 2012 This thesis examines the idea of the rule of recognition. Initially proposed by HLA Hart as the key to understanding a legal system, the idea has proved to be quite controversial. Not only because some flatly deny that the rule of recognition tells us anything useful about law or legal systems, but because even among Hart's fellow legal positivists there is no consensus on the exact nature of the idea. -- Using Hart's version of the idea as an archetype, I identify three paradigmatic senses of the notion, which have been used to explain several related but perhaps heterogeneous questions about law. I argue that the often underappreciated 'normative sense of the rule of recognition' is indispensable to the correct understanding of the rule of recognition. I also review Ronald Dworkin's influential arguments against the idea and find that Dworkin's critique is based on a series of misinterpretations. Nevertheless, Dworkin's failure usefully points to two problems in Hart's version of the rule of recognition: that it lacks a suitable restriction on the scope of the rule's possible content and the rule's own normativity is inadequately explained. -- I then examine a proposal for amendment according to which the rule of recognition is to be understood as conventional. I argue that this amended understanding is false and the only viable option is to take a non-conventionalist approach and interpret the content of the rule of recognition as excluding moral considerations. There are

indeed some false elements in Hart's original idea. However, it remains a powerful explanatory device if equipped with the right modifications in response to criticism. It is not a myth.

The Equilibrium of Parliamentary Law-making Viktor Kazai, 2024-08-01 This book is a response to the dangers posed to constitutional democracy by the continuous growth of executive power and the simultaneous decline of parliaments' role in policy formation. These phenomena are often manifested in the manipulation and even the violation of the rules of parliamentary law-making, called irregularities. If left without consequences, these irregularities can ultimately lead to the elimination of the procedural constraints imposed on the ruling political forces to prevent their arbitrary exercise of power. This work investigates the constitutional significance of the irregularities of parliamentary law-making and explores the role that courts play in the remedy of these flaws. The analysis is premised on the concept of equilibrium. This explanatory concept denotes an ideal state in which parliamentary law-making complies with the requirements of constitutionalism, and judicial review is conceptualized as a mechanism suitable to achieve this aim. The volume places the judicial review of the regulation and the practice of parliamentary law-making at its center and discusses all the relevant legal concepts, institutions, and doctrines. It combines theoretical analysis with case law-centered comparative research covering a large number of decisions delivered by apex courts operating in various jurisdictions. Due to this methodological choice, the book aims to simultaneously contribute to the scholarly discourse and provide useful information to practicing lawyers and policymakers working in the areas of constitutional law and politics and comparative law.

Decision Making under Deep Uncertainty Vincent A. W. J. Marchau, Warren E. Walker, Pieter J. T. M. Bloemen, Steven W. Popper, 2019-04-04 This open access book focuses on both the theory and practice associated with the tools and approaches for decisionmaking in the face of deep uncertainty. It explores approaches and tools supporting the design of strategic plans under deep uncertainty, and their testing in the real world, including barriers and enablers for their use in practice. The book broadens traditional approaches and tools to include the analysis of actors and networks related to the problem at hand. It also shows how lessons learned in the application process can be used to improve the approaches and tools used in the design process. The book offers guidance in identifying and applying appropriate approaches and tools to design plans, as well as advice on implementing these plans in the real world. For decisionmakers and practitioners, the book includes realistic examples and practical guidelines that should help them understand what decisionmaking under deep uncertainty is and how it may be of assistance to them. *Decision Making under Deep Uncertainty: From Theory to Practice* is divided into four parts. Part I presents five approaches for designing strategic plans under deep uncertainty: Robust Decision Making, Dynamic Adaptive Planning, Dynamic Adaptive Policy Pathways, Info-Gap Decision Theory, and Engineering Options Analysis. Each approach is worked out in terms of its theoretical foundations, methodological steps to follow when using the approach, latest methodological insights, and challenges for improvement. In Part II, applications of each of these approaches are

presented. Based on recent case studies, the practical implications of applying each approach are discussed in depth. Part III focuses on using the approaches and tools in real-world contexts, based on insights from real-world cases. Part IV contains conclusions and a synthesis of the lessons that can be drawn for designing, applying, and implementing strategic plans under deep uncertainty, as well as recommendations for future work. The publication of this book has been funded by the Radboud University, the RAND Corporation, Delft University of Technology, and Deltares.

Great Debates in Jurisprudence Nicholas McBride, Sandy Steel, 2018-03-16 This textbook is an ambitious and engaging introduction to the more advanced writings on Jurisprudence, primarily designed to allow students to 'get under the skin' of the topic and begin to build their critical thinking and analysis skills. Each chapter is structured around key questions and debates that provoke deeper thought and, ultimately, a clearer understanding. The aim of the book is therefore not to present a complete overview of theoretical issues in Jurisprudence, but rather to illustrate the current debates which are currently going on among those working in shaping the area. The text features summaries of the views of notable experts on key topics and each chapter ends with a list of guided further reading. A perfect book for students taking a module in jurisprudence, or for those wanting to deepen their knowledge. New to this Edition: - New debates on the nature and legitimacy of global justice, and the binding force of precedent. - Incorporates discussion of new contributions to jurisprudential writing by Mark Greenberg, Scott Hershowitz, David Howarth and Shona Stark, Matthew Kramer, Frederick Schauer, and Jeremy Waldron. - Includes substantially revised chapters on 'The nature of jurisprudence' and 'Morality and rights'

A Theory of Precedent Raimo Siltala, 2000-11-25 In this study, the author identifies six types of judicial precedent-ideology and are tests them against judicial experiences in various countries.

Kelsen and Hart on International Law William Charles Starr, 1977

The British Constitution Resettled Jim McConalogue, 2019-07-17 Adopting a political constitutionalist view of the British constitution, this book critically explores the history of legal and political thought on parliamentary sovereignty in the UK. It argues that EU membership strongly unsettled the historical precedents underpinning UK parliamentary sovereignty. Successive governments adopted practices which, although preserving fundamental legal rules, were at odds with past precedents. The author uses three key EU case studies – the financial transactions tax, freedom of movement of persons, and the working time directive – to illustrate that since 1973 the UK incorporated EU institutions which unsettled those precedents. The book further shows that the parliament's place since the referendum on Brexit in June 2016 and the scrutinising of the terms of the withdrawal agreement constitute an enhanced, new constitutional resettlement, and a realignment of parliament with the historical precedent of consent and its sovereignty.

General International Law Before Human Rights Courts Frédéric Vanneste, 2010 This book analyzes how the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR) deal with general

international law. In light of the concerns of various authors about the fragmentation of international law and the human rightist aspirations of human rights law, the question arises whether these human rights courts put the unity of general international law into danger. The main idea of this study is that the ECtHR and the IACtHR may, in principle, only elaborate and not depart from or contradict general international law. A departure is only acceptable if a clear *lex specialis* has been established for human rights law. The author researches whether or not the sometimes different case law of both human rights courts fits into this assumption. Almost all topics of general international law that have been dealt with by the ECtHR and IACtHR are analyzed, including: reservations * application of treaties * *ratione temporis*, *ratione loci*, and *r*

Canada and the Ethics of Constitutionalism Samuel V. Laselva, 2018-12-30 A new perspective on the Canadian Constitution that focuses on Canada's distinctive contribution to constitutional ethics.

Law, Truth, and Reason Raimo Siltala, 2011-07-29 This book is an innovative contribution to analytical jurisprudence. It is mainly based on the distinct premises of linguistic philosophy and Carnapian semantics, but also addresses the issues of institutional philosophy, social pragmatism, and legal principles as envisioned by Dworkin, among others. Wróblewski's three ideologies (bound/free/legal and rational) and Makkonen's three situations (isomorphic/semantically vague/normative gap) of judicial decision-making are further developed by means of 10 frames of legal analysis as discerned by the author. With the philosophical theories of truth serving as a reference, the frames of legal analysis include the isomorphic theory of law (Wittgenstein, Makkonen), the coherence theory of law (Alexy, Peczenik, Dworkin), the new rhetoric and legal argumentation theory (Perelman, Aarnio), social consequentialism (Posner), natural law theory (Fuller, Finnis), and the sequential model of legal reasoning by Neil MacCormick and the Bielefelder Kreis. At the end, some key issues of legal metaphysics are addressed, like the notion of legal systematics and the future potential of the analytical approach in jurisprudence.

Introduction to Jurisprudence and Legal Theory Anne Barron, 2002-08-13 This text lays out a course of study combining the traditional subject matter of jurisprudence with a series of introductions to a variety of other theoretical perspectives. It is designed for those taking jurisprudence/legal theory courses, and political science, philosophy and sociology students.

Is the Rule of Recognition Really a Conventional Rule? Julie Dickson, 2010 In this article I examine the view, common amongst several contemporary legal positivists, that rules of recognition are to be understood as conventional rules of some kind. The article opens with a discussion of H.L.A. Hart's original account of the rule of recognition in the 1st edn of *The Concept of Law* and argues that Hart did not view the rule of recognition as a conventional rule in that account. I then discuss Hart's apparent turn towards a conventionalist understanding of the rule of recognition in the Postscript to the 2nd edn of *The Concept of Law*, and attempt to cast doubt on the strength of Hart's commitment to such a turn, and on the reasons prompting him to make it. Finally, I consider one of the most interesting contemporary conventionalist accounts of

rules of recognition, namely Andrei Marmor's view that such rules should be understood as the constitutive conventions of partly autonomous social practices. My aim in this part of the article is to compare Marmor's account with my earlier interpretation of Hart's views, and to consider whether Marmor's account truly is conventionalist in character and whether it provides us with a persuasive conventionalist understanding of rules of recognition.

Introduction to Jurisprudence Dennis Lloyd Baron Lloyd of Hampstead, 1972

Social Theory and Practice, 1989

Law and Philosophy, 2006

Supreme Court Conceptions of Press Responsibility, 1931 to 1991 Elizabeth Blanks Hindman, 1994

Making Sense in Jurisprudence Bernard S. Jackson, 1996 This textbook reviews both traditional and radical approaches to legal theory, with emphasis on the accounts which legal theorists have given of law as a particular form of meaning. It offers an accessible account of contemporary jurisprudence, in its relationship to linguistics, psychology and semiotics.

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