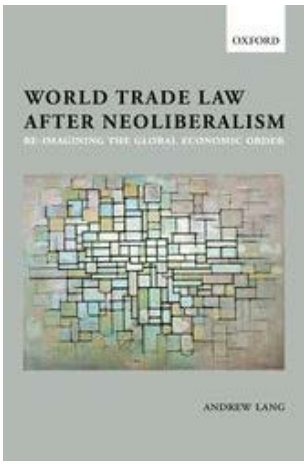
World Trade Law after Neoliberalism

donderdag 19 januari 2012, 1:00:00 | Andrew Lang



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Andrew Lang
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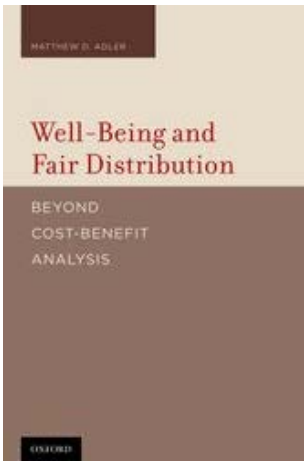
The rise of economic liberalism in the latter stages of the 20th century coincided with a fundamental transformation of international economic governance, especially through the law of the World Trade Organization. This book provides a new account of this transformation, and considers its enduring implications for international law. Against the commonly-held idea that 'neoliberal' policy prescriptions were encoded into WTO law, the book argues that the last decades of the 20th century saw a reinvention of the international trade regime, and a reconstitution of its internal structures of knowledge. In addition, the book explores the way that resistance to economic liberalism was expressed and articulated over the same period in other areas of international law, most prominently international human rights law. It considers the promise and limitations of this form of 'inter-regime' contestation, arguing that measures to ensure greater collaboration and cooperation between regimes may fail in their objectives if they are not accompanied by a simultaneous destabilization of each regime's structures of knowledge and characteristic features. With that in mind, the book contributes to a full and productive contestation of the nature and purpose of global economic governance.

Well-Being and Fair Distribution

donderdag 19 januari 2012, 1:00:00 | Matthew Adler



Author:
Matthew Adler
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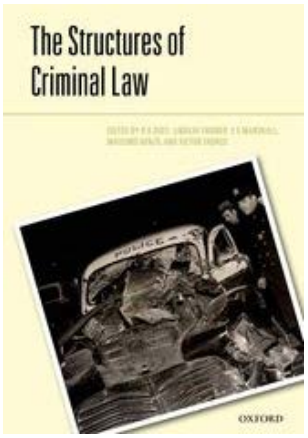
This book addresses a range of relevant theoretical issues, including the possibility of an interpersonally comparable measure of well-being, or "utility" metric; the moral value of equality, and how that bears on

the form of the social welfare function; social choice under uncertainty; and the possibility of integrating considerations of individual choice and responsibility into the social-welfare-function framework. This book also deals with issues of implementation, and explores how survey data and other sources of evidence might be used to calibrate both a utility metric and a social welfare function, and whether distributive goals are ever best pursued through regulation rather than the tax system. In working through this range of theoretical and practical issues, the book draws from a wide variety of literatures, including philosophical scholarship on equality, responsibility, the nature of well-being, and personal identity over time; the social choice literature within economics; applied economic literatures concerning the measurement of inequality and poverty; legal and policy-analysis scholarship on cost-benefit analysis, environmental justice, and the choice between regulation and taxation; and the burgeoning field of “happiness studies”.

The Structures of the Criminal Law

donderdag 19 januari 2012, 1:00:00 | R.A. Duff, Lindsay Farmer, S.E. Marshall, Massimo Renzo, and Victor Tadros



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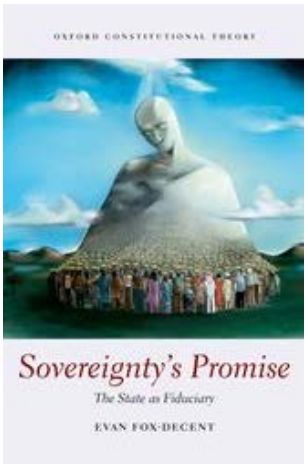
This book is part of a series arising from an interdisciplinary investigation into the issue of criminalization, focussing on the principles and goals that should guide decisions about what kinds of conduct are to be criminalized, and the forms that criminalization should take. This is the second volume in the series and it concerns itself with the structures of criminal law in three different senses. The first examines the internal structure of the criminal law itself and the questions posed by familiar distinctions between which offences are typically analysed. These questions of classification include discussion of the growing range of crimes and the problems posed by this broadening of definition. Should traditional ideas and conceptions of the criminal law be reshaped in light of recent developments or should these developments be criticized and refuted? Structures of criminal law also refer to the place of the criminal law within the larger structure of the law. Here, the book examines the relationships with and between the criminal law and other aspects of law, particularly private law and public law. It also looks at how the criminal law is made, and by whom. Finally, the third sense of structure is outlined — the relationships between legal structures and social and political structures. What place does the criminal law have within the existing political and social landscapes? What are the influences, both political and social, upon the criminal law, and should they be allowed to influence the law in this fashion? What is its proper role?

Sovereignty's Promise

donderdag 19 januari 2012, 1:00:00 | Evan Fox-Decent



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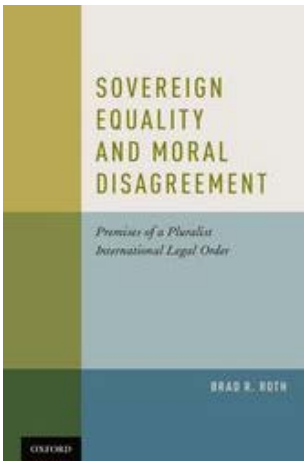
Political theory is concerned with the justification and limits of state power. Its questions include: Can states legitimately direct and coerce nonconsenting subjects? If they can, what limits, if any, constrain sovereign power? Public law is concerned with the justification and limits of judicial power. Its questions include: On what grounds can judges 'read down' or 'read in' statutory language against the apparent intention of the legislature? What limits, if any, are appropriate to these exercises of judicial power? This book develops an original fiduciary theory of authority that yields novel answers to both sets of questions. The author argues that the state is a fiduciary of its people, and that this fiduciary relationship grounds the state's authority to announce and enforce law. The fiduciary state is conceived of as a public agent of necessity charged with guaranteeing a regime of secure and equal freedom. Whereas the social contract tradition struggles to ground authority on consent, the fiduciary theory explains authority with reference to the state's fiduciary obligation to respect legal principles constitutive of the rule of law. This obligation arises from the state's possession of irresistible public powers. The author begins with a discussion of Hobbes' conception of legality and the problem of discretionary power in administrative law. Drawing on Kant, he sketches a theory of fiduciary relations, and develops the argument through three parts. Part I shows that it is possible for the state to stand in a public fiduciary relationship to its people through a discussion of Crown-Native fiduciary relations recognised by Canadian courts. Part II sets out the theoretical underpinnings of the fiduciary theory of the state. Part III explores the implications of the fiduciary theory for administrative law and common law constitutionalism. The final chapter situates the theory within a broader philosophical discussion of the rule of law.

Sovereign Equality and Moral Disagreement

donderdag 19 januari 2012, 1:00:00 | Brad R. Roth



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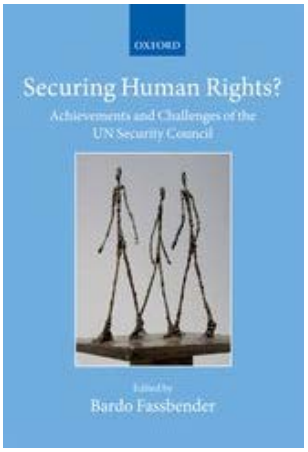
The United Nations system's foundational principle of sovereign equality reflects persistent disagreement within its membership as to what constitutes a legitimate and just internal public order. While the boundaries of the system's pluralism have narrowed progressively in the course of the United Nations era, accommodation of diversity in modes of internal political organization remains a durable theme of the international order. This accommodation of diversity underlies the international system's commitment to preserve states' territorial integrity and political independence, often at the expense of other values. For those who impute to the international legal order an inherent purpose to establish a universal justice that transcends the boundaries of territorial communities, the legal prerogatives associated with state sovereignty appear as impediments to the global advance of legality. That view, however, neglects the danger of allowing powerful states to invoke universal principles to rationalize unilateral (and often self-serving) impositions upon weak states. Though frequently counterintuitive, limitations on cross-border exercises of power are supported by substantial moral and political considerations, and are properly overridden only in a limited range of cases. This book accomplishes two tasks. One is to construct a unifying account of the manifestations of the principle of sovereign equality in international legal norms governing a range of subject areas, from foundational matters such as the recognition of states and governments to controversial questions such as legal authority for extraterritorial criminal prosecution and armed intervention. The other is to defend the principle as a morally sound response to persistent and profound disagreement within the international community as to the requirements of legitimate and just internal public order.

Securing Human Rights?

donderdag 19 januari 2012, 1:00:00 | Bardo Fassbender



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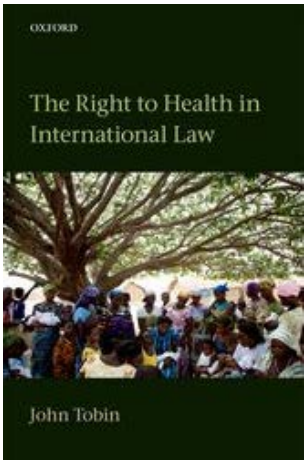
The contributions to this book, which are based on lectures delivered at the Academy of European Law in Florence, take a closer look at the two sides of the United Nations Security Council's involvement in human rights — its efforts to promote and enforce human rights on the one hand, and the imperiling of those same rights by action of the Council meant to maintain or restore international peace and security, on the other hand. The book offers a collection of individual views and appraisals, presented by leading experts in international law, of how the Council has dealt with human rights issues, especially in the post-Cold War phase of its life, and of possible avenues for improvement. The opening chapter analyses how the role of the Council in the promotion and protection of human rights has developed since 1945: an organ not endowed with any specific powers in the field of human rights became the ‘centre-piece of the human rights protection system’ of the international community. Another chapter focuses on the legal issues of the Council's actions in favour of human rights. In particular, the legal problems of a qualification of human rights violations as a threat to international peace are addressed. Procedural questions take centre stage in a contribution on the role for human rights in the decision-making process of the Security Council. The following chapters then turn to a practice of the Council which has been sharply criticized because of its negative effects on human rights — ‘targeted sanctions’ imposed on individuals in the form of travel bans,

arms embargoes, and the freezing of financial assets. In no other area of its work has the Security Council been so vulnerable to attack by human rights activists and lawyers. In particular, the enforcement of targeted sanctions in Europe and its supervision by European courts is closely analysed.

The Right to Health in International Law

donderdag 19 januari 2012, 1:00:00 | John Tobin



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John Tobin
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The link between health and human rights has been recognized for many years. But the increasing visibility of the right to health in international law has been a distinct feature in social and policy debates over the last decade. It has been embraced to varying degrees by actors within civil society, academics, health professionals, lawyers and courts in several jurisdictions, policy makers and international institutions, as a tool to address health inequalities at the local and global level in matters ranging from access to medicines and the availability of affordable health care services to sexual and reproductive health and the availability of abortion services. But it has equally been the subject of derision and scorn by its opponents who have described it as being without foundation, nebulous and incapable of implementation. This book seeks to offer a comprehensive discussion of the status and meaning of the right to health in international law. It traces the history of this right to reveal its nexus with public health and the long standing recognition that a state has a responsibility to attend to the health needs of its population. It offers a theoretical account of its conceptual foundations which challenges the position held by many philosophers that health is undeserving of the status of a human right. It develops an interpretative methodology to provide a persuasive account as to the meaning of the right to health and it applies this methodology to describe the nature of obligations imposed upon States. This process reveals an understanding of the right to health that, while challenging, remains practical and capable of guiding States that are genuinely committed to addressing the health needs of their population.

Retributivism Has a Past

donderdag 19 januari 2012, 1:00:00 | Michael Tonry

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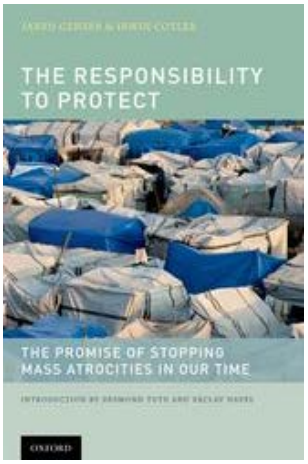
The fundamental contrast between the ideas that punishment is morally justified because people have behaved wrongly (retributivist), and that punishment is morally justified only when it has good consequences (consequentialist/utilitarian), has long existed and most likely always will. Beginning in the 1960s and 1970s, retributivist ways of thinking became much more influential than they had been for the preceding century, but it is clear now that no paradigm shift from consequentialist to retributivist ideas occurred, and that thinking about punishment is in a period of flux. This book reconsiders the extent of its resurgence and its current prospects. Chapters covering topics such as punishment theory, law, and philosophy engage with contemporary ideas about restorative justice, therapeutic jurisprudence, rehabilitation of offenders, and mandatory punishments that are difficult to reconcile with retributive analytical frameworks. It is crucial to understand why and when individuals can be deprived of their property, their liberty, and their lives in the pursuit of collective interests, and this book grapples anew with contemporary debates over these perennial questions.

The Responsibility to Protect

donderdag 19 januari 2012, 1:00:00 | Jared Genser, Irwin Cotler, Desmond Tutu, and Vaclav Havel



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Jared Genser, Irwin Cotler, Desmond Tutu, Vaclav Havel
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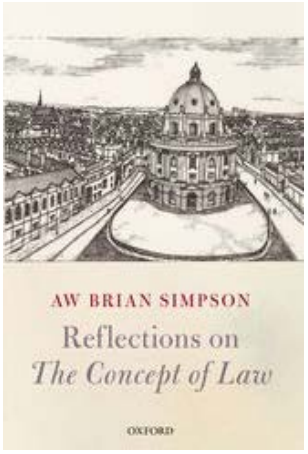
This book provides an overview on how the “responsibility to protect,” (RtoP) a contemporary principle of international law, has developed and analyze how best to apply it to current and future humanitarian crises. The “responsibility to protect” is a doctrine unanimously adopted by the UN World Summit in 2005, which says that all states have an obligation to protect their own citizens from mass atrocities, which includes genocide, war crimes, crimes against humanity, and ethnic cleansing. Its adoption and application has generated a passionate debate in law schools, professional organizations, media, and within the UN system. To present a full picture of where the doctrine now stands and where it could go in the future, a global

team of contributors with diverse backgrounds and differing viewpoints balance the pro-RtoP chapters with more skeptical arguments from agency staff and scholars with long experience in addressing mass atrocities. The book presents authoritative analyses which move beyond theory to demonstrate how RtoP has worked on the ground and should work if applied to other crises.

Reflections on 'The Concept of Law'

donderdag 19 januari 2012, 1:00:00 | A. W. Brian Simpson



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A. W. Brian Simpson
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HLA Hart's The Concept of Law is one of the most influential works of philosophy of the 20th century, redefining the field of legal philosophy and introducing generations of students to philosophical reflection on the nature of law. Since its publication in 1961 an industry of academic research and debate has grown up around the book, disputing, refining, and developing Hart's work. Under the sheer volume of competing interpretations of the book the original contexts — cultural and intellectual — that shaped Hart's project can be obscured. This book attempts to sweep aside the volumes of academic criticism and return to 'Troy I', revealing the world of post-war Oxford that produced Hart and his famous book. Drawing on personal experience of studying and teaching in Oxford at the time Hart developed The Concept of Law, this book recreates the social and intellectual culture of Oxford philosophy and the law faculty in the 1950s. It traces Hart's early work and influences, within and outside Oxford, showing how Hart developed his picture of philosophy and its potential for enriching the understanding of law. It also lays bare the painful shortcomings of post-war Oxford academia, depicting a world of eccentric dons and intellectual Cyclopses — isolated and closed to broad, interdisciplinary exchange — arguing that Hart did not escape from the limitations of his intellectual world.

On the Frontlines

donderdag 19 januari 2012, 1:00:00 | Fionnuala Ni Aolain, Dina Francesca Haynes, and Naomi Cahn

Author:
Fionnuala Ni Aolain, Dina Francesca Haynes, Naomi Cahn
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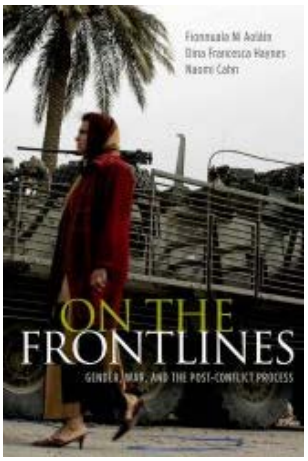

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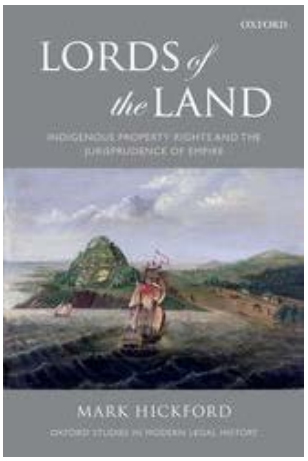
Gender oppression has been a feature of war and conflict throughout human history, yet until fairly recently, little attention has been devoted to addressing the consequences of violence and discrimination experienced by women in post-conflict states. Thankfully, that is changing. Today, in a variety of post-conflict settings—the former Yugoslavia, Afghanistan, Colombia, Northern Ireland—international advocates for women's rights have focused bringing issues of sexual violence, discrimination, and exclusion into peace-making processes. This book considers such policies in a range of cases and assesses the extent to which they have had success in improving women's lives. It argues that there has been too little success, and that this is in part a product of a focus on schematic policies like straightforward political incorporation rather than a broader and deeper attempt to alter the cultures and societies that are at the root of much of the violence and exclusions experienced by women. The book contends that this broader approach would not just benefit women, however. Gender mainstreaming and increased gender equality has a direct correlation with state stability and functions to preclude further conflict. If we are to have any success in stabilizing failing states, gender needs to move to fore of our efforts. With this in mind, the book examines the efforts of transnational organizations, states, and civil society in multiple jurisdictions to place gender at the forefront of all post-conflict processes. The book offers concrete analysis and practical solutions to ensuring gender centrality in all aspects of peace making and peace enforcement.

Lords of the Land

donderdag 19 januari 2012, 1:00:00 | Mark Hickford



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Mark Hickford
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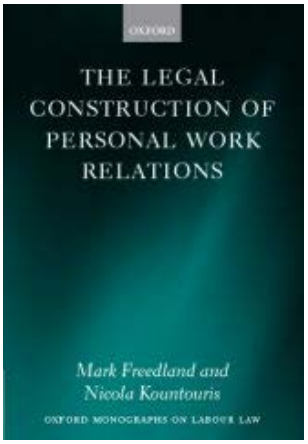
The recognition and allocation of indigenous property rights have long posed complex questions for the imperial powers of the mid-nineteenth century and their modern successors. Recognizing rights of property raises questions about pre-existing indigenous authority and power over land that continue to trouble the people and governments of settler states. Through focusing on the settlement of New Zealand during the

critical period of the 1830s through to the early 1860s, this book offers a fresh assessment of the histories of indigenous property rights and the jurisprudence of empire. It shows how native title became not only a key construct for relations between Empire and tribes, but how it acted more broadly as a constitutional frame within which discourses of political authority formed and were contested at the heart of Empire and the colonial peripheries. Native title thus becomes another episode in imperial political history in which increasingly fierce and highly polemical contestation burst into violence. Native title explodes as a form of civil war that lays the foundation (by Maori ever after challenged) for revised constitutional orders. This book considers histories of indigenous property rights not only as the stuff of entwined streams of a law of nations and constitutional theory but also as exemplars of the politics of negotiability — engaging relations of struggle and ambition for power, together with the openness and limits of incoming settler polities towards indigenous polities and laws. This study is an examination of rights as instruments of analysis and political discourse, constructed and contested in and through time. Anchored in the striking experiences of New Zealand and the politics of trans-oceanic empire, it tells a tale of indigenous political autonomy and how the vocabularies of property rights mediated relations between empire and the indigenous political communities found in newly settled lands.

The Legal Construction of Personal Work Relations

donderdag 19 januari 2012, 1:00:00 | Mark Freedland and Nicola Kountouris



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Mark Freedland, Nicola Kountouris
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This book argues that a broad notion of ‘personal work relation’ should become the central organising idea for the future development of labour law. This concept is developed by drawing on extensive comparative research of the legal architecture of employment relations in national legal systems and EU law to analyse the traditional model of the contract of employment and the difficulties of using that traditional model to frame modern working relationships. The chapters then present a new model of the foundations of employment relationships, based on the concept of a ‘personal work nexus’, and explore the potential of the book's model in shaping labour law along the lines of the normative goal of ‘personality in work’, and its conceptual building blocks of ‘dignity’, ‘capability’, and ‘stability’. Throughout, the book analyses the interaction of domestic and EU employment law, and discusses the possibility of future legal harmonisation in the area. The book concludes by exploring the potential for a common framework for European employment law, in the context of broader debates surrounding the harmonisation of European private law.

Law's Relations

donderdag 19 januari 2012, 1:00:00 | Jennifer Nedelsky

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Jennifer Nedelsky
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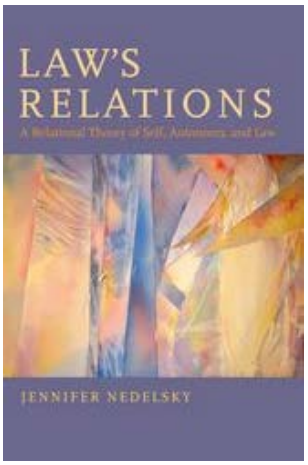

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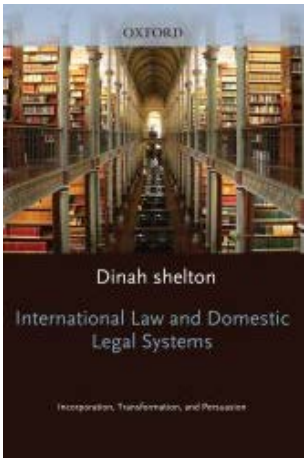
Autonomy is one of the core concepts of legal and political thought, yet also one of the least understood. The prevailing theory of liberal individualism characterizes autonomy as independence, yet from a social perspective, this conception is glaringly inadequate. In this brilliantly innovative work, Jennifer Nedelsky claims that we must rethink our notion of autonomy, rejecting the usual vocabulary of control, boundaries, and individual rights. If we understand that we are fundamentally in relation to others, she argues, we will recognize that we become autonomous with others—with parents, teachers, employers, and the state. We should not therefore regard autonomy as merely a conceptual tool for assigning rights, but as a capacity that can be fostered or undermined throughout one's life through the relationships and the societal structures we inhabit. The political project thus should not only be to protect the individual from the state and keep the state out, but to use law to construct relations with the state that enhance autonomy. Law's Relations includes many concrete legal applications of her theory of relational autonomy, offering new insights into the debates over due process, judicial review, violence against women, and private versus public law.

International Law and Domestic Legal Systems

donderdag 19 januari 2012, 1:00:00 | Dinah Shelton



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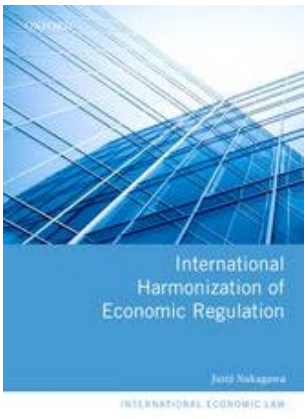
Different countries incorporate and interpret international law in different ways. This book provides a systematic analysis of the domestic constitutional regime of over two dozen countries, setting out the status accorded to international law in those countries and its normative weight, as well as problems relating to its implementation. This country-by-country comparison allows the book to examine how the international legal order and domestic legal systems interact and influence each other. Through a series of chapters on the role of international law in twenty-seven countries throughout the world, it shows a growing tendency

towards greater democratic participation in treaty-making coupled with a significant utilization of informal agreements that by-pass such participation, as well as a role for non-binding normative instruments as persuasive authority in domestic judicial decision-making. The chapters suggest a stronger attachment to international law in legal systems that have survived a period of repression, resulting in many cases in a higher normative status for international human rights instruments in those states. The impact of the European Union on the constitutional order of its member states is also examined.

International Harmonization of Economic Regulation

donderdag 19 januari 2012, 1:00:00 | Junji Nakagawa



Author:
Junji Nakagawa
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International harmonization of economic regulation is an attempt to eliminate, or at least reduce, regulatory diversity in economic policy areas where states have autonomous regulatory jurisdiction. In some regulatory areas, its history dates back to the late 19th century, but harmonization efforts have accelerated and intensified particularly since the 1980s. This book is a first attempt to comprehend the phenomenon of international harmonization of economic regulation in its entirety by analyzing its causes and backgrounds as well as negotiating processes involved in a broad range of areas, and by elucidating the impact of harmonization on domestic laws and global economic governance. Through its analysis, this book emphasizes the existence of dynamic regulatory structures and processes of global economic governance consisting of different actors (notably, international harmonizing bodies, states and the private sector) and the interconnectedness of international rule-making and domestic implementation. It also highlights non-legislative (soft law) and non juridical aspects (collegial implementation) of the drafting and implementation of harmonized regulation. It thus provides new empirical and theoretical perspectives for understanding international economic law and global economic governance. This book will be of interest to scholars and students of international economic law and international relations, as well as government officials and corporate lawyers dealing with economic regulation in a wide range of areas.

Humanity's Law

donderdag 19 januari 2012, 1:00:00 | Ruti G. Teitel

Author:
Ruti G. Teitel
ISBN:
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Post-Cold War history has witnessed a transformation in the relationship of law to violence in global politics. The normative foundations of the international legal order have been shifting their emphasis from state security to human security: the security of persons and peoples. Increasingly, courts, tribunals, other international bodies, and political actors draw from this new framework to assess the rights and wrongs of conflict; determine whether and how to intervene; and impose accountability and responsibility on state and non-state actors. The result of this shift is the law of humanity — a framework that spans the law of war, international human-rights law, and international criminal justice. The author explores the humanity-law phenomenon by looking to its historical roots, its contemporary tendencies, and its effect on the discourse of international relations. Humanity law's framework is most evident in the jurisprudence of the tribunals — international, regional and domestic — adjudicating disputes often spanning issues of internal and international conflict and security. Yet because most international legal scholarship focuses on individual regimes or tribunals, it is easy to miss the evolution of a jurisprudence connecting the rulings of diverse tribunals and institutions. This jurisprudence tends to expand rights and responsibilities to encompass wider circles of conduct; sweep in additional actors within conflicts; increase the legal responsibilities of states, even for the behavior of non-state actors; and exhibit less deference to the traditional sovereign prerogatives of states, where doing so would interfere with the overriding goal of protecting persons and peoples.

The Foundations of European Union Competition Law

donderdag 19 januari 2012, 1:00:00 | Renato Nazzini

Author:
Renato Nazzini
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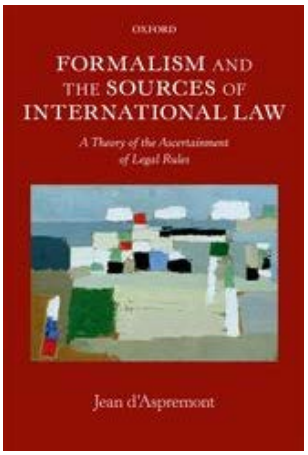
Article 102 of the Treaty on the Functioning of the European Union prohibits the abuse of a dominant position as incompatible with the internal market. Its application in practice has been controversial with goals as diverse as the preservation of an undistorted competitive process, the protection of economic

freedom, the maximisation of consumer welfare, social welfare, or economic efficiency all cited as possible or desirable objectives. These conflicting aims have raised complex questions as to how abuses can be assessed and how a dominant position should be defined. This book addresses the conceptual problems underlying the tests to be applied under Article 102 in light of the objectives of EU competition law. Adopting an interdisciplinary approach, the book covers all the main issues relating to Article 102, including its objectives, its relationship with other principles and provisions of EU law, the criteria for the assessment of individual abusive practices, and the definition of dominance. It provides an in-depth doctrinal and normative commentary of the case law with the aim of establishing an intellectually robust and practically workable analytical framework for abuse of dominance.

Formalism and the Sources of International Law

donderdag 19 januari 2012, 1:00:00 | Jean d'Aspremont



Author:
Jean d'Aspremont
ISBN:
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This book revisits the theory of the sources of international law from the perspective of formalism. It critically analyzes the virtues of formalism, construed as a theory of law ascertainment, as a means of distinguishing between law and non-law. The theory of formalism is re-evaluated against the backdrop of the growing acceptance by international legal theorists of the blurring of the lines between law and non-law. At the same time, the book acknowledges that much international normative activity nowadays takes place outside the ambit of traditional international law and that only a limited part of the exercise of public authority at the international level results in the creation of international legal rules. The theory of ascertainment that the book puts forward attempts to dispel some of the illusions of formalism that accompany the delimitation of customary international law. It also sheds light on the tendency of scholars, theorists, and advocates to deformalize the identification of international legal rules with a view to expanding international law. The book seeks to revitalize and refresh the formal identification of rules by engaging with some tenets of the postmodern critique of formalism. As a result, the book not only grapples with the practice of law-making at the international level, but it also offers broad theoretical insights on international law, dealing with the main schools of thought in legal theory (positivism, naturalism, legal realism, policy-oriented jurisprudence, and postmodernism).

Federalism and the Tug of War Within

donderdag 19 januari 2012, 1:00:00 | Erin Ryan

Author:
Erin Ryan
ISBN:
9780199737987
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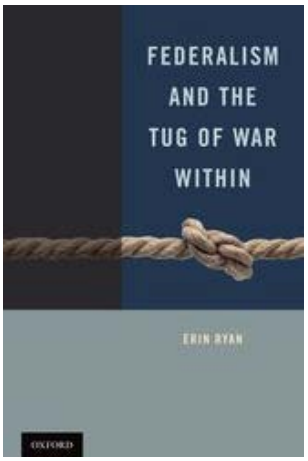
Oxford University Press



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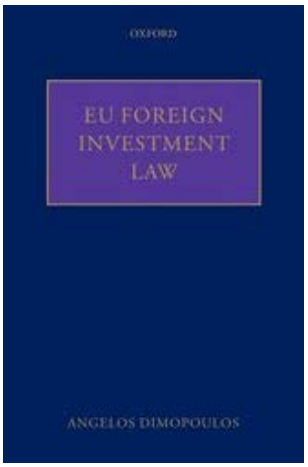
This book explores how constitutional interpreters struggle to reconcile the competing values that undergird American federalism, with real consequences for governance that requires local and national collaboration. Drawing examples from the response to Hurricane Katrina, climate governance, health reform, nuclear waste, and other problems that implicate both state and federal authority, it shows how federalism theory can inhibit effective multijurisdictional governance by failing to navigate the tensions within federalism itself. The book argues that American federalism is best understood through the “tug of war” between the good-governance principles that dual sovereignty fosters—including checks and balances, accountable governance, local autonomy, and interjurisdictional synergy. Instability in the Supreme Court’s federalism jurisprudence reflects its ongoing attempt to reconcile the tension through successive theories of federalism, each privileging different values in the federalism constellation. It traces federalism’s internal struggle through history and into the present, critiquing the Rehnquist Court and Tea Party’s embrace of greater jurisdictional separation, the limits of New and Cooperative Federalism approaches, and the growing disjuncture between federalism theory and practice. The book then outlines a Balanced Federalism alternative, mediating federalism’s tensions on three separate planes: (1) fostering balance among the competing federalism values, (2) leveraging the functional capacities of all three branches of government in interpreting federalism, and (3) maximizing the wisdom of both state and federal actors in so doing. It articulates distinct judicial and political roles in navigating jurisdictional overlap, including strong and weak judicial constraints in Tenth Amendment contexts and deference to intergovernmental bargaining. Forging new territory in the federalism safeguards debate, it provides theoretical justification for the political safeguards already in operation while preserving a role for judicial review. The resulting dynamic model fosters a healthier dialectic between the core principles and functional capacities that—though in tension—have made the American system of government so effective and enduring.

EU Foreign Investment Law

donderdag 19 januari 2012, 1:00:00 | Angelos Dimopoulos



Author:
Angelos Dimopoulos
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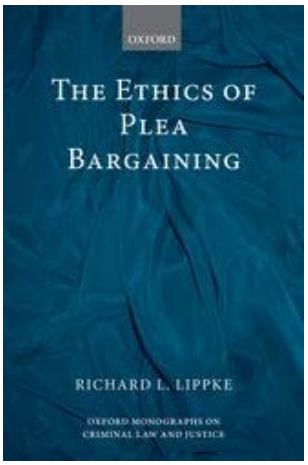
Regulation of foreign investment presents one of the most topical and controversial subjects in EU law and international investment law. The introduction of EU competence over foreign direct investment (FDI) in Article 207 TFEU after the Lisbon Treaty as well as the recent successful challenge of Member States Bilateral Investment Treaties (BITs) regarding their compatibility with EU law, indicate the emerging importance of EU foreign investment law. Within this framework, the purpose of this book is to identify whether and to what extent the EU has become an international actor in the field of foreign investment. Exploring the existing legal framework on the scope and exercise of EU competence and its legal effects, it examines the foundations upon which EU investment policy is based and will be based in the future. The book examines EU foreign investment law firstly from an EU law perspective. It addresses questions relating to the definition of foreign investment, the scope of EU competences, the actual exercise of EU powers, the substantive content of existing and future EU International Investment Agreements (EU IIAs), the objectives of EU investment policy and its EU law effects, in particular as regards the compatibility of Member States BITs with EU law. Secondly, the book examines the influence that the EU exerts on international law and regulation of foreign investment. Specific attention is paid to the substantive content and orientation of EU IIAs, taking a comparative approach to the content of BITs, as well as to the ramifications of EU foreign investment regulation for international law, especially with regard to the EU's international responsibility. Taking into account the recent developments in this field, this book addresses the legal, practical and political concerns that the creation of an EU common investment policy creates.

The Ethics of Plea Bargaining

donderdag 19 januari 2012, 1:00:00 | Richard L. Lippke



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Richard L. Lippke
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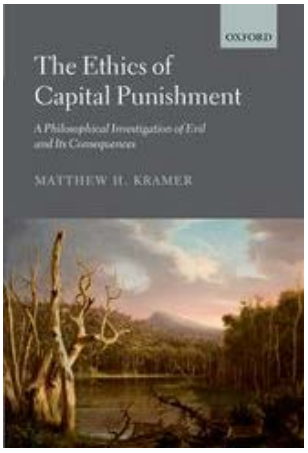
The Ethics of Plea Bargaining offers a sustained argument for restrained forms of plea bargaining and against the freewheeling kinds of it that predominate in the United States. Rewards for admitting guilt are distinguished from penalties for exercising the right to trial. The latter appear in numerous guises and are shown to be indefensible. Modest and fixed sentence reductions for defendants who admit their guilt are urged. Deliberate overcharging by prosecutors and charge bargaining, it is argued, should be discouraged. Claims that large and variable charge and sentence reductions are needed to expand deserved punishment, reward remorseful offenders, encourage cooperation from defendants in implicating others suspected of crimes, enhance the deterrent profile of the criminal justice system, or salvage convictions when the evidence against accused individuals is weak are all shown to lack credibility. The contention that such reductions in punishment are justified because they are freely agreed by state officials and criminal defendants is likewise shown to be unconvincing, given the ways in and extent to which criminal justice practices ought to be structured by desert or crime reduction norms. Forms of overcriminalization are noted throughout the book and shown to complicate the analysis of plea bargaining practices.

The Ethics of Capital Punishment

donderdag 19 januari 2012, 1:00:00 | Matthew H. Kramer



Author:
Matthew H. Kramer
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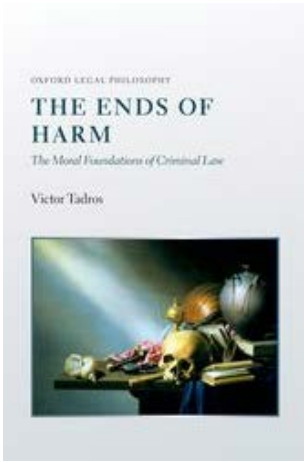
Though much of this book is devoted to impugning all the standard rationales for capital punishment, the chief purpose of the volume is to advance an alternative justification for such punishment in a very limited range of cases. Pursuing both a project of critical debunking and a project of partial vindication, the book presents a rationale for the death penalty that is free-standing rather than an aspect or offshoot of a general theory of punishment. Its purgative rationale has not heretofore been propounded in any contemporary philosophical and practical debates over the death penalty. While the volume contributes to many areas of normative ethics, it contributes above all to the philosophy of criminal law with a fresh rationale for the use of the death penalty and with probing assessments of all the major theories of punishment that have been broached by jurists and philosophers for centuries.

The Ends of Harm

donderdag 19 januari 2012, 1:00:00 | Victor Tadros



Author:
Victor Tadros
ISBN:
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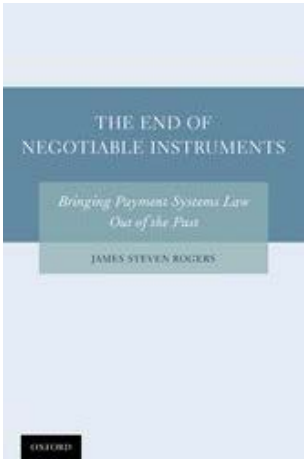
Victor Tadros sets out to defend the ‘duty view’ of punishment. On this view, the permission to punish offenders is grounded in the duties that they incur in virtue of their wrongdoing. The most important duties that ground the justification of punishment are the duty to recognise that the offender has done wrong and the duty to protect others against wrongdoing. In the light of these duties the state has a permission to punish offenders to ensure that they recognise that what they have done is wrong, but also to protect others from crime. Hence, the book offers a defence not only of a communicative view of punishment but also of general deterrence as central to the justification of punishment. This view is developed in the light of a non-consequentialist moral theory: a theory which endorses constraints on the pursuit of the good. It is

shown that it is normally wrong to harm a person as a means to pursue a greater good. However, there are exceptions to this principle in cases where the person harmed has an enforceable duty to pursue the good. The implications of this idea are explored both in the context of self-defence, and then in the context of punishment. The book offers the most systematic exploration of the relationship between self-defence and punishment to date and makes significant progress in defending a plausible set of non-consequentialist moral principles. It also critically explores other theories of punishment, including retributivism and purely communicative theories, identifying unexamined deficiencies in these theories.

The End of Negotiable Instruments

donderdag 19 januari 2012, 1:00:00 | James Steven Rogers



Author:
James Steven Rogers
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When we make purchases [better word than ‘things?’], we need to use some system for making payment. Today we use checks, credit cards, debit cards, and various other electronic or semi-electronic payment systems. One would assume that the legal system has developed a sensible, coherent body of law to deal with payment system problems. One would be wrong. Modern American law of payment systems is, to be honest, a confused muddle. The basic problem is anachronism. The law of payment systems has not come to grips with the realities of the modern world. Rather, much of the law is still based on “negotiable instruments law”, a body of law that developed centuries ago when instruments issued by private parties circulated as a form of money. A great deal of the current law of checks and notes is the product of nothing more than an historical fluke, such as the odd details of the eighteenth century Stamp Acts. The law could be much simpler if it were written in light of the way that checks and notes are actually used today, rather than being based on concepts derived from the past. This book shows that there is no need for a statute governing promissory notes and that the law of checks would be far simpler if it treated checks simply as instructions to the financial system, akin to debit or credit cards. The book provides an indispensible guide for lawyers, judges, professors, and students who must find ways of dealing sensibly with this profoundly anachronistic body of law.

The Emergence of EU Contract Law

donderdag 19 januari 2012, 1:00:00 | Lucinda Miller

Author:
Lucinda Miller
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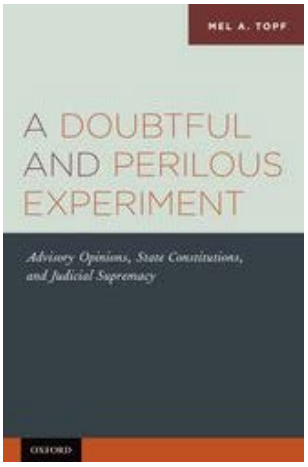
The emergence of a European contract law is one of the more significant legal developments in Europe today. The complexities that lie at its heart also make it one of the more fascinating areas of legal study. European Contract Law: Exploring Europeanization examines the origins of the discipline and its subsequent evolution. It brings the discussion up-to-date with full analysis of the debate on the Common Frame of Reference and the future that this ambiguous instrument may have in the contemporary European legal framework. One of the central themes of the book is exploration of the multi-level, open architecture of the EU legal order and the implications of such governance arrangements for the EU's private law programme. The book demonstrates that the key to understanding European contract law in the 21st century lies in adopting a perspective and mechanisms suitable for a legal order populated by multiple sources of private law. Legal pluralism is offered as a theoretical construct in relation to which the future of European private law might be shaped. Legal pluralism forces consideration of diversity's normative appeal and readjusts the analytical spotlight beyond the traditional, centralised, legislative, 'command and control' means of regulation. In so doing, softer mechanisms are introduced for the governance of contract law; mechanisms that enable coordination between the different sites at which contract law operates. This reorientation in thinking about European contract law, indeed about Europeanization itself, enables the inevitable diversity and pluralism that is a feature of multi-level Europe to be captured within a framework that maximises the opportunities for mutual transformations and learning.

A Doubtful and Perilous Experiment

donderdag 19 januari 2012, 1:00:00 | Mel A. Topf



Author:
Mel A. Topf
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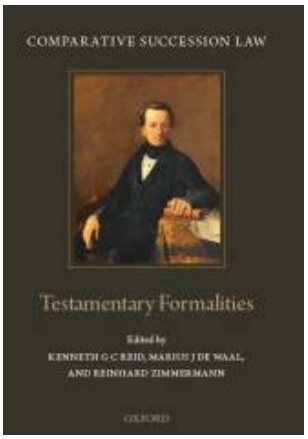
This book is the only comprehensive treatment of the history and controversies, the law and theories, about U.S. state supreme court advisory opinions. This significant but little studied area of state constitutional law has no parallel in federal law (which bars federal courts from giving advisory opinions). Just ten states

permit such advising (many others have rejected it), but advisory opinions have been attacked because they clash with fundamental doctrines of American constitutionalism, including separation of powers, due process, judicial review, judicial independence, and, especially, judicial supremacy. This book offers a narrative of the attacks on state supreme court advisory opinions, telling how the law of advisory opinions arose in response to the attacks, resulting in an elaborate but not entirely successful jurisprudence of advisory opinions. This book tells of the attempts to adopt and defend advisory opinions, including New Deal–era proposals to amend the U.S. Constitution to require the U.S. Supreme Court to issue them. It tells also of the persistent and uneasy relation between advisory opinions and the power of judicial review (arguing that advising is in fact a distinct political power in its own right), and tells as well of their effects on judicial independence and the ways that they reinforce judicial supremacy.

Comparative Succession Law

donderdag 19 januari 2012, 1:00:00 | Kenneth G C Reid, Marius J. de Waal, and Reinhard Zimmermann



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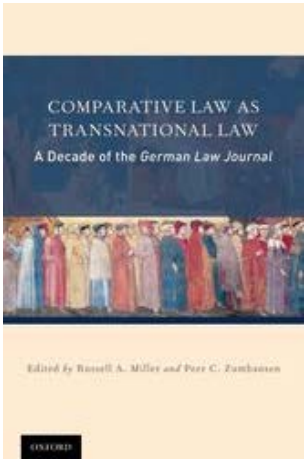
This book is about testamentary formalities, that is to say, about the requirements which the law of succession imposes in order for a person to make a will. How are wills made? What precisely are the rules — as to the signature of the testator, the use of witnesses, the need for a notary public or lawyer, and so on? Is there is a choice of will-type and, if so, which type is used most often and what are the advantages and disadvantages of each? How common is will-making or do most people die intestate? What happens if formalities are not observed? How can requirements of form be explained and justified? What is the legal history of wills, the state of the law today, and the prospects for the future? Is this a fruitful topic for comparative law? The book explores these questions through a representative sample of countries in Europe as well as in the USA, Latin America, South Africa, Australia, and New Zealand. A final chapter draws the threads together and offers an overall assessment of the development of wills and will-making in Europe and beyond.

Comparative Law as Transnational Law

donderdag 19 januari 2012, 1:00:00 | Russel A. Miller and Peer C. Zumbansen

Author:
Russel A.MillerPeer C.Zumbansen
ISBN:
9780199795208
Publisher:



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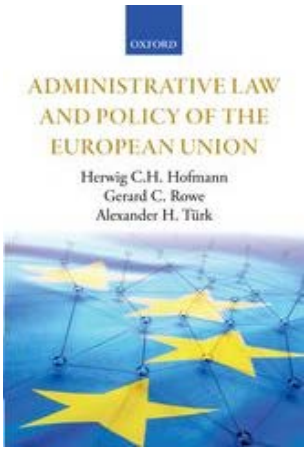
This book assembles the works of scholars from around the world, forming a contextual demonstration of the increasing encounters and tensions among legal cultures. In recognizing the lack of consensus on how to define transnational law, the text includes carefully selected works that originally appeared in the German Law Journal in order to help show the challenges of defining transnational law, and to help with the appreciation of the differing approaches towards it. Some, for example, maintain that the processes of transnationalization has created a space for a new, discrete corpus of law—a field in its own right that is the equal of public international law or conflict of laws. Others understand the perceived transnational phenomena to be illustrations of an emerging legal culture that no longer fits the traditional distinction between national and international jurisdictions. In offering different approaches to such an understanding of transnational law, the chapters also bring out the important consequences of a more global outlook in legal scholarship, legal practice, and legal education.

Administrative Law and Policy of the European Union

donderdag 19 januari 2012, 1:00:00 | Herwig C.H. Hofmann, Gerard C. Rowe, and Alexander H. Türk



Author:
Herwig C.H. Hofmann, Gerard C. Rowe, Alexander H. Türk
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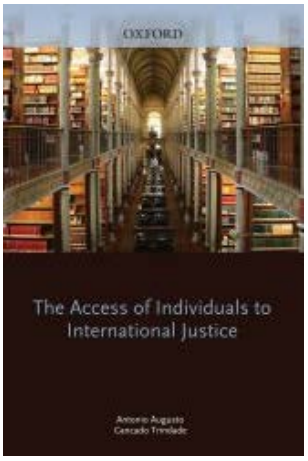
This book provides an analysis of the administration of the European Union and the legal framework within which that administration operates. It examines the multifarious approaches, techniques, and structures of public administration in order to systematize and assess the solutions they offer to political, social, and economic problems. The legal framework of administration is examined from the standpoint of how it meets the demands of specific policy objectives established by democratically accountable decision-makers. Administrative law structures and many of its underlying principles have developed in an evolutionary and isolated manner in each policy area. While aware of the diversity of specific areas, this book takes an overarching approach, setting out the common rules and principles that constitute the general body of EU

administrative law. By integrating the disciplines of political and administrative science, and administrative law, the book offers a rich explanation and critique of the complex executive framework of the EU.

The Access of Individuals to International Justice

donderdag 19 januari 2012, 1:00:00 | Antônio Augusto Cançado Trindade



Author:
Antônio Augusto Cançado Trindade
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The right of access to justice, at national and international levels, is a fundamental cornerstone of the protection of human rights. It conforms a true right to the Law. Such right, lato sensu, amounts to the right to the realization of justice. In such understanding, it comprises not only the formal access to a tribunal or judge, but also respect for the guarantees of due process of law, the right to a fair trial, and to reparations (whenever they are due), and the faithful execution of judgments. The right to an effective domestic remedy is a basic pillar of the rule of law in a democratic society. In its turn, the right of international individual petition, and the safeguard of the integrity of international jurisdiction, are the basic foundations of the emancipation of the individual vis-à-vis his own State.This is a domain that has undergone a remarkable development in recent years. The very notion of “victim” has been the subject of a considerable international case-law. The direct access of victims to international justice has been taking place in the most diverse circumstances, including situations of great adversity, or even defencelessness, of the complainants (e.g., abandoned or “street children”, undocumented migrants, members of peace communities in situations of armed conflict, internally displaced persons, individuals in infra-human conditions of detention, surviving victims of massacres). It is submitted that the right of access to justice belongs today to the domain of jus cogens. Without it, there is no legal system at all. The protection of the human person in the most adverse circumstances has evolved amongst considerations of international ordre public. Such recent evolution has been contributing to the gradual expansion of the material content of jus cogens.

Aboriginal Title

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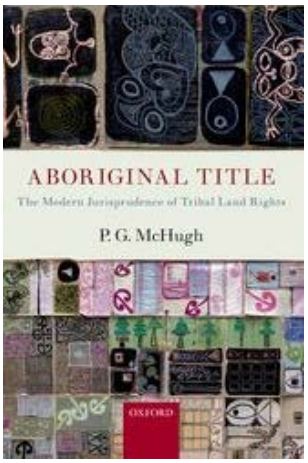

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Aboriginal title was one of the most remarkable and controversial legal developments in the common law world of the late-twentieth century. The common law doctrine gave sudden substance to the tribes' claims to justiciable property rights over their traditional lands, catapulting these up the national agenda and jolting them out of a seemingly embedded culture of governmental inattention. In a series of breakthrough cases national courts adopted the argument developed first in western Canada, and then New Zealand and Australia by a handful of influential scholars. Almost overnight these cases changed the political leverage of indigenous peoples. By the beginning of the millennium the doctrine had spread to Malaysia, Belize, and southern Africa, and had a profound impact upon the rapid development of international law of indigenous peoples' rights. This book is a history of this doctrine and the explosion of intellectual activity arising from this inrush of legalism into the tribes' relations with the Anglo settler state. The author of this book was one of the key scholars involved from the doctrine's appearance in the early 1980s as an exhortation to the courts, and a figure who has both witnessed and contributed to its acceptance and subsequent pattern of development. The book looks critically at the early conceptualisation of the doctrine, its doctrinal elaboration and evisceration in Canada and Australia — the busiest jurisdictions — through a proprietary paradigm located primarily (and constrictively) inside adjudicative processes. This book also considers the issues of inter-disciplinary thought and practice (for anthropologists and historians especially) arising from national legal systems' recognition of aboriginal land rights, including the emergent and associated themes of self-determination that surfaced more overtly during the 1990s and after. The doctrine made modern legal history, and it is still making it.