The Legal System Between Order And Disorder

Legal System Between Order and Disorder - Michel van de Kerchove 1994
This book considers two interrelated core questions. The first is: how have legal philosophers systematized law, and what types of assumptions have they made in undertaking this task? Second, in what sense is law a system, and how is it maintained as such? In answering the first question the book surveys and analyses the theories of a number of European legal philosophers and in answering the second puts forward its own distinct theory.

Legal System Between Order and Disorder - Michel van de Kerchove 2002

Order and Dispute - Simon Roberts 2013-04-10
A classic resource in the modern study of the anthropology of law, this book is now widely available again in an updated and expanded edition. There are many societies that survive in a remarkably orderly fashion without the help of judges, law courts and policemen. They are small in scale and have relatively simple technologies, lacking those centralized agencies which we associate with legal systems; yet early anthropologists did not hesitate to name “law,” along with kinship, politics and religion, as one of the facets of their subject. Simon Roberts contends, however, that legal theory has become too closely identified with our own arrangements in western societies to be of much help in cross-cultural studies of order. But conversely, by looking at the ways in which other societies keep order and solve disputes, he sheds valuable light on the contemporary debates about order in our own society, in a straightforward text which will be accessible to the general reader and anthropologist alike. Now in its Second Edition with a new Foreword and Afterword by the author, this renowned introduction to the anthropology of law is part of the Classics of Law & Society Series from Quid Pro Books.

The Interaction Between Europe’s Legal Systems - Giuseppe Martinico 2012-01-01
This detailed book begins with some reflections on the importance of judicial interactions in European constitutional law, before going on to compare the relationships between national judges and supranational laws across 27 European jurisdictions. For the same jurisdictions it then makes a careful assessment of way in which ECHR and EU law is handled before national courts and also sets this in the context of the original goals and aims of the two regimes. Finally, the authors broaden the perspective to bring in the prospects of European enlargement towards the East, and consider the implications of this for the rapprochement between the two regimes. the Interaction between Europe's Legal Systems will strongly appeal to academics and students in European law, comparative law, theory of law, postgraduate students and LLM students in European law and in comparative law.
An Introduction to the American Legal System - John Malcolm Scheb 2002 "An Introduction to the American Legal System" is ideal for undergraduate students in legal studies, political science, criminal justice, pre-law, and sociology programs, as well as for anyone with an interest in the historical and contemporary approaches to law in America.

The Fluid State - Hilary Charlesworth 2005 The Fluid State was cited by the High Court in Momcilovic v The Queen [2011] HCA 34 (8 September 2011) Traditional accounts of the relationship between international and national law present the interaction between the two as relatively ordered, if conflicting. This limited view of the relationship has become outmoded, as the scope of international legal regulation and the internationalised context of domestic law continue to expand. This book analyses some of the national contexts in which international law and domestic law interact and identifies the way in which attitudes to international law shift between them. Some of the questions considered are: How do perceptions of international law differ according to particular institutional vantage-points, whether that of the executive, the legislature or the judiciary? What is the impact of the perceived 'democratic deficit' in international treaty-making? What are some of the ways in which the judiciary acts as a gatekeeper between the national and international legal orders? How does national politics influence engagement with the international sphere? The contributors bring a range of different perspectives: politics, law and international relations. They include influential scholars such as Mayo Moran, Ann Capling, John Uhr, Andrew Byrnes and Janet MacLean and they discuss contemporary issues, such as the Australia-US Free Trade Agreement and the 2003 Iraq War.

Convergence and Divergence in European Public Law - Paul Beaumont 2002-06-07 This book grew out of a symposium held in the University of Aberdeen in May 2000. It examines the extent to which the European Union has brought about and should bring about convergence of law in Europe. Rather than focusing narrowly on the Intergovernmental Conference process, the book engages those who wish a detached and, at times, theoretical examination of the politics of institutional reform in the EU; of the legal techniques for accommodating diversity within the Union and the process of treaty making or constitution building in the EU; the cross-fertilization of administrative law concepts between the EU level and the national level; the need for and legitimacy of a European Union competence on human rights; and whether private law and public law differ in the extent to which they reflect national culture and therefore in the extent to which they are amenable to convergence.

Proceedings of the ... World Congress of the International Association for Philosophy of Law and Social Philosophy (IVR) - International Association for the Philosophy of Law and Social Philosophy 2004

God and the Secular Legal System - Rafael Domingo 2016-09-29 This is a timely contribution to the debate on the rights and liberties of religion, beliefs, and conscience in
an age of secularization.

**Legal Thoughts between the East and the West in the Multilevel Legal Order**-Chang-fa Lo 2016-11-11 This book focuses on the interaction and mutual influences between the East and the West in terms of their legal systems and practices. In this regard, it highlights Professor Herbert H.P. Ma’s achievements and his efforts to bring Eastern and Western legal concepts and systems closer together. The book shows that, while there have been convergences between different legal regimes in many fields of law, diverse legal practices and approaches rooted in differing cultural, social, political and philosophical backgrounds do remain, and that these differences are not necessarily negative elements in the contemporary legal order. By examining different levels of the legal order, including domestic, regional and multilateral, it goes on to argue that identifying these diversities and addressing the interactions and mutual influences between different regimes is a worthwhile undertaking, not only in terms of mutual enrichment, but also with regard to intensifying the degree of desirable coordination between different legal systems. All chapters were written by leading experts, practitioners and scholars from different jurisdictions with expertise in various fields of law and different levels of the legal order, and discuss a number of issues with particular focus on either “one-way” or mutual influences between the Eastern and the Western legal systems, practices and philosophies.

**From Empire to Republic**-Taner Akçam 2013-07-18 Taner Akçam is one of the first Turkish academics to acknowledge and discuss openly the Armenian Genocide perpetrated by the Ottoman-Turkish government in 1915. This book discusses western political policies towards the region generally, and represents the first serious scholarly attempt to understand the Genocide from a perpetrator rather than victim perspective, and to contextualize those events within Turkey's political history. By refusing to acknowledge the fact of genocide, successive Turkish governments not only perpetuate massive historical injustice, but also pose a fundamental obstacle to Turkey's democratization today.

**Law, Legal Culture and Society**-Alberto Febbrajo 2018-07-04 This volume addresses the pluralistic identity of the legal order. It argues that the mutual reflexivity of the different ways society perceives law and law perceives society eclipses the unique formal identity of written law. It advances a distinctive approach to the plural ways in which legal cultures work in a modern society, through the metaphor of the mirror. As a mirror of society, it distinguishes between the structure and function of legal culture within the legal system, and the external representation of law in society. This duality is further problematized in relation to the increasing transnationalisation of law. Based on a multi-level interpretation of the concept of legal culture, the work is divided into three parts: the first addresses the mutual reflections of social and legal norms that support a pluralist representation of internal legal cultures, the second concentrates on the external legal cultures that constantly enable pragmatic adjustments of the legal order to its social environment, and the third concludes the book with a theoretical discussion of the issues presented.
**Hunting the Dark Knight**-Will Brooker 2012-08-06 Publishing alongside the world premiere of Christopher Nolan's third Batman film "The Dark Knight Rises", Will Brooker's new book explores Batman's twenty-first century incarnations. Brooker's close analysis of "Batman Begins" and "The Dark Knight" offers a rigorous, accessible account of the complex relationship between popular films, audiences, and producers in our age of media convergence. By exploring themes of authorship, adaptation and intertextuality, he addresses a myriad of questions raised by these films: did "Batman Begins" end when "The Dark Knight began? Does its story include the Gotham Knight DVD, or the 'Why So Serious' viral marketing campaign? Is it separate from the parallel narratives of the Arkham Asylum videogame, the monthly comic books, the animated series and the graphic novels? Can the brightly campy incarnations of the Batman ever be fully repressed by "The Dark Knight", or are they an intrinsic part of the character? Do all of these various manifestations feed into a single Batman metanarrative? This will be a vital text for film students and academics, as well as legions of Batman fans.

**EC and EEA Law**-M. Elvira Méndez-Pinedo 2009 The effectiveness of European Community (EC) law and the way it is enforced in order to assure the judicial protection of individuals penetrating into the national legal orders is probably the most distinguishing feature of this unique legal order, in contrast with classic international law. By now, this principle and doctrine created by the European Court of Justice has become part of the European legal order with general acceptance in all EU countries. By contrast, the effectiveness of European Economic Area (EEA) law, and the way this other even more sui generis legal system provides comparable rights for European Free Trade Association (EFTA)-EEA citizens, is a silent revolution brought by the EFTA Court that has not been properly researched and exposed in the field of European law. This book summarizes and explains the basic principles governing the relationship between EEA law and the national legal systems, while searching for similarities and differences with EC law. The research questions explored in this collection include: How does EEA law achieve supremacy over national laws? Does EEA law have direct applicability? Can we speak, under some circumstances, of a sort of direct effect of EEA law? Can EEA law be defined as having "quasi" primacy and "quasi" direct effect? What about the indirect effect of EEA law (duty of consistent interpretation)? Last but not least, does the doctrine of State liability for breaches of EC law apply to EEA law? If so, what are the differences between the two legal orders? These questions are explored from a European perspective in order to help understand the effectiveness of European law, the special relationship between the Community/EEA legal orders with the national legal systems when the enforcement of European rights, and that the judicial protection of individuals are at stake.

**Ruling Before the Law**-William Hurst 2018-04-19 Building on extensive fieldwork in China and Indonesia, Hurst offers a valuable comparison of legal systems in practice.

**Common Law and Civil Law Today - Convergence and Divergence**-Marko Novakovic 2019-05-09 Authors from 13 countries come together in this edited volume, Common Law and Civil Law Today: Convergence and Divergence, to present different aspects of the
relationship and intersections between common and civil law. Approaching the relationship between common and civil law from different perspectives and from different fields of law, this book offers an intriguing insight into the similarities, differences and connections between these two major legal traditions. This volume is divided into 3 parts and consists of 22 articles. The first part discusses the common law/civil law dichotomy in the international legal systems and theory. The second focuses on case-law and arbitration, while the third part analyses elements of common and civil law in various legal systems. By offering such a variety of approaches and voices, this book allows the reader to gain an invaluable insight into the historical, comparative and theoretical contexts of this legal dichotomy. From its carefully selected authors to its comprehensive collection of articles, this edited volume is an essential resource for students, researchers and practitioners working or studying within both legal systems.

**Between Autonomy and Dependence**- Ramses A. Wessel 2012-12-14 The European Union is traditionally seen as a new and partly separate legal order within the global legal system. At the same time, the EU is an important player in the global governance network. The strong and explicit link between the EU and a large number of other international organisations raises questions concerning the impact of decisions taken by those organisations and of international agreements concluded with those organisations (either by the EU itself or by its Member States) on the autonomy of the EU legal order. This book addresses the relationship between the EU and other international organisations by looking at the increasing influence of norms enacted by international organisations on the shaping of EU law.

**The Principle of Loyalty in EU Law**- Marcus Klamert 2014 The principle of loyalty requires the EU and its Member States to co-operate sincerely towards the implementation of EU law. Under the principle, the European courts have developed significant public law duties on States to deepen the reach of EU law. This is the first full-length analysis of the loyalty principle and its legal implications.

**Interpreting China's Legal System**- Li Lin 2018-01-03 This book systematically and concisely expounds the construction process of China's legal system since China's reform and opening-up. Chapter 1 defines the legal system in China and describes the development of China's legal system from 1949 to 1978. Chapter 2 introduces China's legislative system, including its historical development, division of legislative functions and power, and legislative procedures. Chapter 3 compares the differences between the law systems of other countries and China's law system and how other law systems in the world influences the law system in China. Chapter 4 studies China's constitutional law system, including its historical development, forms of law and enforcement of the constitution. Chapter 5 introduces China's administrative legal system, including main principles, administrative legislation and administrative compensation. Chapters 6, 7, 8, 9 describe China's civil and commercial legal system, China's economic legal system, China's social legal system and China's criminal legal system respectively. Chapter 10 introduces China's legal system in litigation and non-litigation procedure in terms of criminal, civil, administrative and non-
litigation procedures. Chapter 11 analyses the legal system of the special administrative regions in China and its relationship with China's legal system. The last chapter, Chapter 12 studies the relationship between the international law and China's domestic law system.

Contents:
- Introduction to China's Legal System
- China's Legislative System
- Law System with Chinese Characteristics
- China's Constitutional Law System
- China's Administrative Legal System
- China's Civil and Commercial Legal System
- China's Economic Legal System
- China's Social Legal System
- China's Criminal Legal System
- Chinese Legal System in Litigation and Non-litigation Procedure
- "One Country, Two Systems" and Legal System in the Special Administrative Region
- International Law and China's Law System

Readership: Policymakers, professionals, academics, undergraduate and graduate students interested in China's legal system. Keywords: China; Legal System; International Law; Special Administrative Region; Economic Legal System; Social Legal System; Criminal Legal System; Litigation and Non-litigation Procedure

Review: Key Features: Provides comprehensive and systematic analysis of China's legal system.

**Equal Justice** - Frederick Wilmot-Smith 2019-10-08 It cannot be fair that wealthy people enjoy better legal outcomes. That is why Frederick Wilmot-Smith argues that justice requires equal access to legal resources. At his most radical, he urges us to rethink the centrality of the market to legal systems, so that those without means can secure justice and the rich cannot escape the law's demands.

**The United States Legal System** - Margaret Z. Johns 2007 This book is designed to introduce incoming law students to the U.S. legal system in order to prepare them to get the most out of law school from the day it begins. Authors Johns and Perschbacher do not assume a great deal of prior knowledge and begin by explaining what legal education is all about. There is then a chapter on the legal profession? who are all those lawyers, how are they regulated, and what are they doing? The book then covers the structure of our legal system, looking at the complex relationship between the states and the federal government as well as at the institutions of both. Finally, two important sources of law are considered: legislatures and courts. The book examines some of the ways that legislation is interpreted and some of the ways that the law evolves through the judicial process. The authors are revising and updating all the chapters, but the biggest change is the complete replacement of chapter 6. Chapter 6 is basically one, long, complicated case. In the new edition, the authors are using Lockyer v. San Francisco as it raises very interesting questions about the rule of law and separation of powers. This book not only can serve as a crucial introduction for all law students but would also work well in an undergraduate course geared to pre-law students or a more general course about our contemporary legal system.

**Law, Psychology, and Justice** - Christopher R. Williams 2002-01-01 A provocative critique of the relationship between the legal system and psychology that uses chaos theory to offer a more humane alternative.

**The Concept of Law** - Herbert Lionel Adolphus Hart 1986
Law as a Social System - Niklas Luhmann 2004 However, unlike conventional legal theory, this volume seeks to provide an answer in terms of a general social theory: a methodology that answers this question in a manner applicable not only to law, but also to all the other complex and highly differentiated systems within modern society, such as politics, the economy, religion, the media, and education. This truly sociological approach offers profound insights into the relationships between law and all of these other social systems.

The Individual in the International Legal System - Kate Parlett 2011-04-14 Kate Parlett's study of the individual in the international legal system examines the way in which individuals have come to have a certain status in international law, from the first treaties conferring rights and capacities on individuals through to the present day. The analysis cuts across fields including human rights law, international investment law, international claims processes, humanitarian law and international criminal law in order to draw conclusions about structural change in the international legal system. By engaging with much new literature on non-state actors in international law, she seeks to dispel myths about state-centrism and the direction in which the international legal system continues to evolve.

Extracting Home in the Oil Sands - Clinton N. Westman 2019-12-20 The Canadian oil sands are one of the world’s most important energy sources and the subject of global attention in relation to climate change and pollution. This volume engages ethnographically with key issues concerning the oil sands by working from anthropological literature and beyond to explore how people struggle to make and hold on to diverse senses of home in the region. The contributors draw on diverse fieldwork experiences with communities in Alberta that are affected by the oil sands industry. Through a series of case studies, they illuminate the complexities inherent in the entanglements of race, class, Indigeneity, gender, and ontological concerns in a regional context characterized by extreme extraction. The chapters are unified in a common concern for ethnographically theorizing settler colonialism, sentient landscapes, and multispecies relations within a critical political ecology framework and by the prominent role that extractive industries play in shaping new relations between Indigenous Peoples, the state, newcomers, corporations, plants, animals, and the land.

Sourcebook on the English Legal System - Gary Slapper 2001 Sourcebook on the English Legal System is a key collection of primary legal sources, Committee and Commission reports, explanatory documents and articles. A variety of critical articles and commentaries complement and expand upon these materials. Since the first edition of this book in 1996, the English legal system has undergone major and comprehensive changes. As a result of these profound changes, this second edition has been thoroughly updated to include presentation and analysis of three landmark pieces of legislation: the Access to Justice Act 1999, the Civil Procedure Rules 1998 and the Human Rights Act 1998. Other changes abound: the Auld Committee has undertaken a root and branch review of the criminal justice system. The Crown Prosecution Service has been re-organised, the nature of judicial impartiality has been authoritatively defined, the role of the jury has been exposed to intense public and legal debate, liability of advocates for courtroom negligence has been
established, the appeals system has been altered, alternative dispute resolution has become a major feature of British life, and European law has continued to widen and deepen its application. The Sourcebook guides the reader through these areas, as well as the more traditional elements of any course on the English legal system, with clarity and insight.

**A Dual Approach to Ocean Governance**-Yoshifumi Tanaka 2016-03-23 Taking the North-East Atlantic Ocean as an example of regional practice, this book addresses the dual approach to ocean governance in international law. It examines the interaction between zonal and integrated management approaches and the conservation of marine living resources and marine biological diversity. The study examines the limitations of the traditional zonal approach and suggests new possibilities for conformity between sovereign states, international law and sustainable development.

**Between the Rule of Law and States of Emergency**-Yoav Mehozay 2016-10-20 Raises concerns about the degree to which the rule of law and emergency powers have become fundamentally entangled, using Israel as a case study. Contemporary debates on states of emergency have focused on whether law can regulate emergency powers, if at all. These studies base their analyses on the premise that law and emergency are at odds with each other. In Between the Rule of Law and States of Emergency, Yoav Mehozay offers a fundamentally different approach, demonstrating that law and emergency are mutually reinforcing paradigms that compensate for each other’s shortcomings. Through a careful dissection of Israel’s emergency apparatus, Mehozay illustrates that the reach of Israel’s emergency regime goes beyond defending the state and its people against acts of terror. In fact, that apparatus has had a far greater impact on Israel’s governing system, and society as a whole, than has traditionally been understood. Mehozay pushes us to think about emergency powers beyond the “war on terror” and consider the role of emergency with regard to realms such as political economy.

**A New Introduction to Comparative Law**-Jaakko Husa 2015-05-28 This thought-provoking introduction to the study of comparative law provides in-depth analyses of all major comparative methodologies and theories and serves as a common sense guide to the study of foreign legal systems. It is written in a lively and accessible style and will prove indispensable reading to students of the subject. It also contains much that will be of interest to comparative law scholars, offering novel insights into commonplace methodological and theoretical questions and making a significant contribution to the field.

**An Introduction to the American Legal System**-John M. Scheb II 2015-03-18 The Fourth Edition of An Introduction to the American Legal System provides both historical context and thoroughly up-to-date coverage of all aspects of American law and the legal system. Vivid examples, on-point case summaries, and hot-button issues make this text an obvious choice for paralegal, criminal justice, political science, or legal studies courses. Key New Features Cases in Point that concisely illustrate how the law applies in the real world Questions for discussion in every chapter that point to high-interest issues for debate
Discussions of recent U.S. Supreme Court decisions such as the Obamacare decisions, the Defense of Marriage Act decision, and key rulings on recess appointments and First Amendment Rights Contemporary topical coverage, such as the national security legislation and whistleblowers Updated discussions of justifiable use of force, intellectual property, abortion rights, capital punishment, and affirmative action A well-crafted design that includes learning objectives and chapter outlines A convenient Glossary of Legal Terms and The Constitution of the United States of America in the Appendices

**Law’s Order** - David D. Friedman 2001-07-02

What does economics have to do with law? Suppose legislators propose that armed robbers receive life imprisonment. Editorial pages applaud them for getting tough on crime. Constitutional lawyers raise the issue of cruel and unusual punishment. Legal philosophers ponder questions of justness. An economist, on the other hand, observes that making the punishment for armed robbery the same as that for murder encourages muggers to kill their victims. This is the cut-to-the-chase quality that makes economics not only applicable to the interpretation of law, but beneficial to its crafting. Drawing on numerous commonsense examples, in addition to his extensive knowledge of Chicago-school economics, David D. Friedman offers a spirited defense of the economic view of law. He clarifies the relationship between law and economics in clear prose that is friendly to students, lawyers, and lay readers without sacrificing the intellectual heft of the ideas presented. Friedman is the ideal spokesman for an approach to law that is controversial not because it overturns the conclusions of traditional legal scholars—it can be used to advocate a surprising variety of political positions, including both sides of such contentious issues as capital punishment—but rather because it alters the very nature of their arguments. For example, rather than viewing landlord-tenant law as a matter of favoring landlords over tenants or tenants over landlords, an economic analysis makes clear that a bad law injures both groups in the long run. And unlike traditional legal doctrines, economics offers a unified approach, one that applies the same fundamental ideas to understand and evaluate legal rules in contract, property, crime, tort, and every other category of law, whether in modern day America or other times and places—and systems of non-legal rules, such as social norms, as well. This book will undoubtedly raise the discourse on the increasingly important topic of the economics of law, giving both supporters and critics of the economic perspective a place to organize their ideas.

**The Legal Order** - Santi Romano 2017-07-14

First published in 1917 (Part 1) and 1918 (Part 2), with a second edition in 1946, this is the first English translation of Santi Romano’s classic work, L’ordinamento giuridico (The Legal Order). The main focus of The Legal Order is the notion of institution, which Romano considers to be both the core and distinguishing feature of law. After criticizing accounts of the nature of law centred on notions of rule, coercion or authority, he offers a compelling conception, not merely of law as an institution, but of the institution as ‘the first, original and essential manifestation of law’. Romano advances a definition of a legal institution as any group who share rules within a bounded context: for example, a family, a firm, a factory, a prison, an association, a church, an illegal organisation, a state, the community of states, and so on. Therefore, this understanding of legal institutionalism at the same time provides a ground-breaking theory of legal pluralism whereby ‘there are as many legal orders as institutions’. The acme of a jurisprudential
current long overlooked in the Anglophone environment (Romano’s work is highly regarded in France, Germany, Spain and South America, as well as in Italy), The Legal Order not only proposes what Carl Schmitt described as a ‘very significant theory’. More importantly, it offers precious insights for a thorough rethinking of the relationship between law and society in today’s world.

**European Regulation of Medical Devices and Pharmaceuticals**-Nupur Chowdhury 2014-04-29 One of the primary functions of law is to ensure that the legal structure governing all social relations is predictable, coherent, consistent and applicable. Taken together, these characteristics of law are referred to as legal certainty. In traditional approaches to legal certainty, law is regarded as a hierarchical system of rules characterized by stability, clarity, uniformity, calculable enforcement, publicity and predictability. However, the current reality is that national legal systems no longer operate in isolation, but within a multilevel legal order, wherein norms created at both the international and regional level are directly applicable to national legal systems. Also, norm creation is no longer the exclusive prerogative of public officials of the state: private actors have an increasing influence on norm creation as well. Social scientists have referred to this phenomenon of interacting and overlapping competences as multilevel governance. Only recently have legal scholars focused attention on the increasing interconnectedness (and therefore the concomitant loss of primacy of national legal orders) between the global, European and national regulatory spheres through the concept of multilevel regulation. In this project the author uses multilevel regulation as a term to characterize a regulatory space in which the process of rule making, rule enforcement and rule adjudication (the regulatory lifecycle) is dispersed across more than one administrative or territorial level and amongst several different actors, both public and private. The author draws on the concept of a regulatory space, using it as a framing device to differentiate between specific aspects of policy fields. The relationship between actors in such a space is non-hierarchical and they may be independent of each other. The lack of central ordering of the regulatory lifecycle within this regulatory space is the most important feature of such a space. The implications of multilevel regulation for the notion of legal certainty have attracted limited attention from scholars and the demand for legal certainty in regulatory practice is still a puzzle. The book explores the idea of legal certainty in terms of the perceptions and expectations of regulatees in the context of medical products – specifically, pharmaceuticals and medical devices, which can be differentiated as two regulatory spaces and therefore form two case studies. As an exploratory project, the book necessarily explores new territory in terms of investigating legal certainty first in terms of regulatee perceptions and expectations and second, because it studies it in the context of multilevel regulation.

**International Law and Domestic Legal Systems**-Dinah Shelton 2011-09-29 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 27 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.

The Unsteady State—Keith Culver 2017-03-30 Analytical jurisprudence often proceeds with two key assumptions: that all law is either contained in or traceable back to an authorizing law-state, and that states are stable and in full control of the borders of their legal systems. What would a general theory of law be like and do if these long-standing presumptions were loosened? The Unsteady State aims to assess the possibilities by enacting a relational approach to explanation of law, exploring law's relations to the environment, security, and technology. The account provided here offers a rich and renewed perspective on the preconditions and continuity of legal order in systemic and non-systemic forms, and further supports the view that the state remains prominent yet is now less dominant in the normative lives of norm-subjects and as an object of legal theory.

The Art of Legislating—Virgilio Zapatero Gómez 2019-10-11 Any contemporary state presents itself as committed to the “rule of law”, and this notion is perhaps the most powerful political ideal within the current global discourse on legal and political institutions. Despite being a contested concept, the rule of law is generally recognised as meaning that government is bound in all its actions by fixed and public rules, and that these rules respect certain formal requirements and are enforced by an independent judiciary. This book focuses on formal legality and the question of how to achieve good laws—a topic that was famously addressed by the 18th century enlightened thinkers, but also by prominent legal scholars of our time. Historically, the canon of “good legislation” demanded generality, publicity and accessibility, and comprehensibility of laws; non-retroactivity; consistency; the possibility of complying with legal obligations and prohibitions; stability; and congruency between enacted laws and their application. All these are valuable ideals that should not be abandoned in today's legal systems, particularly in view of the silent revolution that is transforming our legality-based “states of law” into jurisdictional states. Such ideals are still worth pursuing for those who believe in representative democracy, in the rule of law and in the dignity of legislation. The idea for the book stemmed from the author’s parliamentary and governmental experience; he was responsible for the Government of Spain’s legislative co-ordination from 1982 to 1993, which were years of intensive legislative production. The more than five hundred laws (and thousands of decrees) elaborated in this period profoundly changed all sectors of the legal order inherited from Franco’s dictatorship, and laid the foundations of a new social and democratic system. For an academic, this was an exciting experience, which offered a unique opportunity to put the theory of legislation to the test. Reflecting and elaborating on this experience, the book not only increases scholarly awareness of how laws are made, but above all, improves the quality of legislation and as a result the rule of law.
Legality's Borders-Keith Culver 2010-03-23 English-speaking jurisprudence of the last 100 years has devoted considerable attention to questions of identity and continuity. H.L.A. Hart, Joseph Raz, and many others have sought means to identify and distinguish legal from non-legal social situations, and to explain the enduring legality of those typically dynamic social situations. Focus on characterization of legality associated with the state, the most prominent legal phenomena available, has led to an analytical approach dominated by the idea of legal system and analysis of its constituent norms. Yet as far back as Hart’s 1961 encounter with international law, the system-focussed approach to legality has experienced moments of self-doubt. From international law to the new legal order of the European Union, to shared governance and overlapping jurisdiction in transboundary areas, what at least appear to be instances of legality are at best weakly explained by approaches which presume the centrality of legal system as the mark and measure of social situations fully worthy of the title of legality. What next, as phenomena threaten to outstrip theory? Legality's Borders: An Essay in General Jurisprudence explains the rudiments of an inter-institutional theory of law, a theory which finds legality in the interaction between legal institutions, whose legality we characterise in terms of the kinds of norms they use rather than their content or system-membership. Prominent forms of legality such as the law-state and international law are then explained as particular forms of complex agglomeration of legal institutions, varying in form and complexity rather than sheer legality. This approach enables a fundamental shift in approach to the problems of identity and continuity of characteristically legal situations in social life: once legality is decoupled from legal system, the patterns of intense mutual reference amongst the legal institutions of the law-state can be seen as one justifiably prominent form of legality amongst others including overlapping forms of legality such as the European Union. Identity over time, on this view, is less a fixed set of characteristics than a history of intense mutual interaction of legal institutions, comparable against similar other agglomerations of legal institutions.

The Decision-Making Process of Investor-State Arbitration Tribunals-Mary Mitsi 2018-12-28 In the course of a single investor-state dispute, an arbitrator may make numerous decisions, from interpreting the treaty or national laws to taking into account case law, customs and policies. In practice, this process raises important issues regarding the consistency of decisions and the predictability and legitimacy of the decision-making process in general. Investment arbitration tribunals have developed a specialised process of legal decision making adapted to the interpretational needs that arise in the context of an investor-state dispute and to the transnational characteristics of the investment arbitration framework. This is the first book to offer an in-depth analysis of the transnational characteristics of investment arbitration and to analyse the interpretive arguments of investment tribunals and the way they use treaties, precedent, policies, general principles of law and customary law in their decision-making process. Drawing on publicly available arbitral case law supplemented with personal interviews with investment arbitrators, the author touches on such concepts and practices as the following: - an overview of various decision-making genres of arbitral tribunals: attitudinal, economic, strategic and legal; - the legal argumentation triptych of language–rhetoric–dialogue; - the specific language arbitrators have developed when interpreting the law; - how arbitrators use the concepts 'standards', 'rules', 'principles' and 'rights'; - the importance of the legal reasoning of arbitral awards and the role of rhetoric therein; - concepts of 'acceptability', 'audience' and
'legitimacy'; - limitations of the public international law interpretive methodology enshrined in the Vienna Convention; - interpretation of precedents, customary law, general principles of law and policies; - the way national and international legal orders interact in the context of interpretation; and - how decision-making is connected to the issues of predictability, consistency and the rule of law. The core of the book proposes a novel, full- edged dialogical network theory for analysing the interpretation process. As an exemplary demonstration of developing theory to keep up with practice, this unique book provides a deeply engaged means for enhancing the practice of international arbitration. Its introduction of a new field of interdisciplinary analysis employing legal argumentation theories is sure to provide inestimable guidance for institutions and policymakers, especially in light of recent proposals for the creation of a permanent investment arbitration court. Given that unveiling the legal decision-making process is critical for the well-being of the whole dispute resolution procedure, and that being aware of how arbitrators interpret the law can constitute a roadmap for counsel's arguments and approaches when dealing with cross-border disputes, the topic of this book is relevant for both academics and practitioners, and its significance can only grow as recourse to investor-state arbitration continues to expand.

Wrightsman's Psychology and the Legal System-Edith Greene 2013-01-01
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