Discretionary Powers A Legal Study Of Official Descretion Clarendon Paperbacks A Legal Study Of Official Discretion

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The Rule of Law and the Separation of Powers Richard Bellamy 2017-07-05 The rule of law is frequently invoked in political debate, yet rarely defined with any precision. Some employ it as a synonym for democracy, others for the subordination of the legislature to a written constitution and its judicial guardians. It has been seen as obedience to the duly-recognised government, a form of governing through formal and general rule-like laws and the rule of principle. Given this diversity of view, it is perhaps unsurprising that certain scholars have regarded the concept as no more than a self-congratulatory rhetorical device. This collection of eighteen key essays from jurists, political theorists and public law political scientists, aims to explore the role law plays in the political system. The introduction evaluates their arguments. The first eleven essays identify the standard features associated with the rule of law. These are held to derive less from any characteristics of law per se than from a style of legislating and judging that gives equal consideration to all citizens. The next seven essays then explore how different ways of separating and dispersing power contribute to this democratic style of rule by forcing politicians and judges alike to treat people as equals and regard none as above the law.

Understanding Common Law Legislation F. A. R. Bennion 2001-10-18 Many countries use and apply the common law. The common law world largely operates through statutes enacted by a country's democratic legislature. These statutes are drafted and interpreted according to a uniform system of rules, presumptions, principles and canons evolved over centuries by common law judges. In this book, Francis Bennion distills forty years of his prolific writings on statute law and statutory interpretation to provide valuable guidance on statutory interpretation applicable to all common law jurisdictions.

Legitimate Expectations in Administrative Law Søren J. Schønberg 2000 This original and stimulating book is the first systematic study of the principle of 'legitimate expectations' in administrative law to appear in the English language. The notion of reasonable or legitimate expectations has played a central role in the development of administrative law over the last thirty years and it remains one of the most contentious and most frequently invoked grounds of judicial review. In this book Dr Schonberg provides a detailed, comparative, and critical analysis of that notion He begins by clarifying why administrative law should protect expectations at all, by linking expectations to fairness, trust in administration, and the Rule of Law with its requirements of legal certainty and formal equality. In the light of this framework he examines in detail the principles and rules which contribute to the protection of expectations. The scope of this analysis is broad, looking both at procedural and substantive principles of administrative law as wellas principles of tort liability and statutory compensation. In all of these areas, English law is carefully compared with French and EC law and is shown how the three legal systems often reach similar outcomes by the application of different legal principles and rules. The current state of English law is examined critically in the light of the comparative study of French and EC law, and a number of original suggestions for legal reform are presented. They include the adoption of: a generalprinciple of irrevocability of intra vires administrative decisions, a distinct principle of substantive legitimate expectations subject to a 'significant imbalance' threshold for judicial intervention, and a statutory right to compensation for loss caused by 'sufficiently serious' violations of public law.
Discretionary Powers Galligan, Denis James Galligan 1986

Judicial Review of Administrative Discretion in the Administrative State Jurgen de Poorter 2019-06-07 This book deals with one of the greatest challenges for the judiciary in the 21st century. It reflects on the judiciary's role in reviewing administrative discretion in the administrative state; a role that can no longer solely be understood from the traditional doctrine of the Trias Politica. Traditionally, courts review acts of administrative bodies implying a degree of discretion with quite some restraint. Typically it is reviewed whether the decision is non-arbitrary or whether there is no manifest error of assessment. The question arises whether as to whether the concern regarding ensuring the non-arbitrary character of the exercise of administrative power, which is frequently performed at a distance from political bodies, goes far enough to guarantee that the administration exercises its powers in a legitimate way. This publication searches for new modes of judicial review of administrative discretion exercised in the administrative state. It links state-of-the-art academic research on the role of courts in the administrative state with the daily practice of the higher and lower administrative courts struggling with their position in the evolving administrative state. The book concludes that with the changing role and forms of the administrative state, administrative courts across the world and across sectors are in the process of reconsidering their roles and the appropriate models of judicial review. Learning from the experiences in different sectors and jurisdictions, it provides theoretical and empirical foundations for reflecting on the advantages and disadvantages of different models of review, the constitutional consequences and the main questions that deserve further research and debate. Jurgen de Poorter is professor of administrative law at Tilburg University and deputy judge in the District Court of The Hague. Ernst Hirsch Ballin is distinguished university professor at Tilburg University, professor in human rights law at the University of Amsterdam, and president of the T.M.C. Asser Institute for International and European Law. He is also a member of the Scientific Council for Government policy (WRR). Saskia Lavrijssen is professor of Economic Regulation and Market Governance of Network Industries at Tilburg University.

Constitutional Justice Trevor R. S. Allan 2003 Scope of Judicial Review

The Business of Judging Tom Bingham 2011-09-08 Tom Bingham (1933-2010) was the 'greatest judge of our time' (The Guardian), a towering figure in modern British public life who championed the rule of law and human rights inside and outside the courtroom. The Business of Judging collects Bingham's most important writings during his period in judicial office before the House of Lords. The papers collected here offer Bingham's views on a wide range of issues, ranging from the ethics of judging to the role of law in a diverse society. They include his reflections on the main contours of English public and criminal law, and his early work on the incorporation of the European Convention on Human Rights and reforming the constitution. Written in the accessible style that made The Rule of Law (2010) a popular success, the book will be essential reading for all those working in law, and an engaging inroad to understanding the role of the law and courts in public life for the general reader.

The Delicate Balance Chris Evans 2011 Few aspects of revenue law generate stronger feelings than the exercise of discretionary power by tax administrations. A delicate balance often needs to be struck between the legitimate needs of revenue authorities and the equally legitimate interests and rights of taxpayers. On the one hand, the executive and administration need to have sufficient capacity to apply the law; on the other, there is a need to maintain the principle of the rule of law that it is the elected legislature, and not the executive or tax administration, that establishes tax burdens. The chapters in this volume explore that delicate balance. The Delicate Balance - Tax, Discretion and the Rule of Law considers the critical questions that arise from the intersections of tax, discretion and the rule of law in modern common and civil law jurisdictions: What do we mean by tax discretion and how does it vary in conceptual and practical terms in different tax regimes? -What role should discretion play in tax systems that operate under the rule of law and how large should that role be? -What are the legal, political, institutional and other constraints that can prevent abuse of discretion? -To what extent can, and should, the legislature safely delegate discretionary powers to tax administrations?

Social and Political Foundations of Constitutions Denis J. Galligan 2013-10-14 This volume explores the social and political forces behind constitution making from a global perspective. It combines leading theoretical perspectives on the social and political foundations of constitutions with a range of in-depth case studies on constitution making in nineteen countries. The result is an examination of constitutions as social phenomena and their interaction with other social phenomena, from various perspectives in the social sciences.

German Administrative Law Mahendra P. Singh 2013-04-17 It is with the greatest pleasure that I add a few introductory remarks to the book of Dr. Mahendra Pal Singh on German administrative law. Between 1981 and 1982 Dr. Singh spent nearly two years in Heidelberg, doing re search partly at the South Asia Institute of the Ruprecht Karl University and partly at the Max Planck Institute for Comparative Public Law and International Law. During his stay in the Federal Republic of Germany, Dr. Singh studied the general principles of German administrative law in a careful and admirable manner, and he has now completed the present book which is based on his studies in Heidelberg. For several reasons Dr. Singh is especially qualified to write this book: His familial ties with the administrative law of his home country has enabled him to look upon the German law with considerable objectivity; his knowledge of the German lan guage gave him access to the vast amount of German literature and court decisions; and Dr. Singh was able to penetrate this material with a searching and scholarly spirit. The final product seems to be the first comprehensive treatise in
English on German administrative law.

Model Rules of Professional Conduct American Bar Association. House of Delegates 2007 The Model Rules of Professional Conduct provides an up-to-date resource for information on legal ethics. Federal, state and local courts in all jurisdictions look to the Rules for guidance in solving lawyer malpractice cases, disciplinary actions, disqualification issues, sanctions questions and much more. In this volume, black-letter Rules of Professional Conduct are followed by numbered Comments that explain each Rule's purpose and provide suggestions for its practical application. The Rules will help you identify proper conduct in a variety of given situations, review those instances where discretionary action is possible, and define the nature of the relationship between you and your clients, colleagues and the courts.

Aviation Law and Policy in Asia Jae Woon Lee 2020-11-23 Aviation Law and Policy in Asia: Smart Regulation in Liberalised Markets investigates the regulatory and business dimensions of aviation law and policy in Asia and serve as a roadmap for understanding aviation law and policy in Asia.

Judging Regulators Eric C. Ip 2020-10-30 Drawing insights from economics and political science, Judging Regulators explains why the administrative law of the US and the UK has radically diverged from each other on questions of law, fact, and discretion.

Thinking About Law Richard Johnstone 2020-07-23 There is more to law than rules, robes and precedents. Rather, law is an integral part of social practices and policies, as diverse and complex as society itself. Thinking About Law offers a comprehensive introduction to the ways in which law has been presented and represented. It explores historical, sociological, economic and philosophical perspectives on the major legal and political debates in Australia today. The contributors examine the position of Aborigines in the Australian legal system and the impact of the Mabo case; divisions of power in Australian society and law; the question of objectivity in law; the relationship between legislation and social change; judicial decision-making and other issues. Accessibly written, Thinking About Law is essential reading for students and anyone interested in understanding our legal system.

EU Executive Discretion and the Limits of Law Joana Mendes 2019-05-02 The increase in the European Union's executive powers in the areas of economic and financial governance has thrown into sharp relief the challenges of EU law in constituting, framing, and constraining the decision-making processes and political choices that have hitherto supported European integration. The constitutional implications of crisis-induced transformations have been much debated but have largely overlooked the tension between law and discretion that the post-2010 reforms have brought to the fore. This book focuses on this tension and explores the ways in which legal norms may (or may not) constrain and structure the discretion of the EU executive. The developments in the EU's post-crisis financial and economic governance act as a reference point from which to analyze the normative problems pertaining to the law's relationship to the exercise of discretion. Structured in three parts, the book starts by analyzing the challenges to the maxim that the law both grounds and constrains EU executive and administrative discretion, setting out the concepts, problems and approaches to the relation between law and discretion both in general public law and in EU law. It progresses to analyze how these problems and approaches have unfolded in EU's financial, economic and monetary governance. Finally, it moves on from these specific developments to assess how existing legal principles and means of judicial review contribute to ensuring the rationality and legality of EU's discretionary powers.

Prosecutorial Discretion at the International Criminal Court Anni Pues 2020-07-09 This timely book provides a comprehensive guide to, and rigorous analysis of, prosecutorial discretion at the International Criminal Court. This is the first ever study that takes the reader through all the key stages of the Prosecutor’s decision-making process. Starting from preliminary examinations and the decision to investigate, the book also explores case selection processes, plea agreements, culminating in the question of how to end engagement in specific country situations. The book serves as a guide to the Rome Statute through the lens of the Prosecutor's activities. With its unique combination of legal theory and specific policy analysis, it addresses broader questions that will be relevant to other international and hybrid criminal courts and tribunals. The book will be of interest to students, practitioners of law, academics, and the wider public concerned with international law, criminal justice and international relations.

Philosophical Foundations of Constitutional Law David Dyzenhaus 2016 This is a collection of essays from leading constitutional lawyers and theorists, examining the philosophical foundations of constitutional law and the issues that arise from the fundamental philosophical issues raised by the idea of a constitution.

Judicial Review of Administrative Discretion Adam Szot 2019 The publication shows the impact of judicial decisions on the discretionary power of public administration. This issue is analysed in relation to the process of issuing individual decisions by the administration, which have a dominant influence on the sphere of rights and freedoms of man. Judicial influence on public administration discretion is shown in the context of various models of judicial control of public administration.

Discretionary Powers Denis James Galligan 1990 One noticeable feature of modern legal systems is the extent to which power is conferred upon government officials and agencies to be exercised at their discretion, according to policy considerations, rather than according to precise legal standards. This book is a legal and jurisprudential analysis of discretionary power in modern legal systems, with particular emphasis on the consequences of discretion in the relationship between the individual and the state.
Discretionary Power of Public Administration Leszek Leszczynski 2017 The book is devoted to the issue of public administration discretionary power within law application processes and its control. It presents a variety of factors that may affect the range of discretion as well as the influence on public administration’s reasoning.

The Sovereignty of Law T.R.S. Allan 2013-07-18 An original account of the British constitution, this book explains how the requirements of constitutional law depend on underlying considerations of legal and political theory and defends an account of the British constitution as a source of individual freedom, grounded in a persuasive interpretation of the common law constitutional tradition.

The Coherence of EU Law Sacha Prechal 2008 This volume examines the problems of legal and linguistic diversity in the EU legal system. In a union of 27 member states, with 23 different languages, how can the coherence of EU law be guaranteed? The volume addresses this central question from a range of theoretical and practical perspectives.

Tax Authority Advice and the Public Stephen Daly 2020-04-02 There is now almost universal acceptance that tax law is overly complex and indeterminate; and yet, there has to date been no comprehensive assessment of the role of the tax authority in the current arrangement. If the legislation and case law offer few immediate answers to the taxpayer, then the role of Her Majesty’s Revenue & Customs (HMRC) in advising taxpayers becomes more apparent. This monograph contends that the provision of advice by HMRC is desirable by virtue of the rule of law and it follows that any such advice should be correct, clear, accessible and reliable.

Additionally, there should exist some means of scrutinising the advice in order to check that it satisfies these criteria. Tax Authority Advice and the Public explores this view of HMRC’s role in tax collection. It explains the deficiencies in the current system in this light, highlighting the pitfalls for taxpayers and practitioners as well as the potential remedies. Finally, the book assesses potential reforms which could be adopted in order to alleviate existing problems. A timely and ambitious work, this book is essential reading for practitioners and academics interested in the interaction between tax administration and public law.

Discretion in Tax Law Alexander Demin 2017 The article examines discretionary powers of the tax authorities.

Purpose: to identify the main characteristics of the use of discretion in tax law. Methods: the study is based on empirical methods of comparison, description and interpretation, theoretical methods of formal and dialectical logic, and specific scientific methods: legal dogmatic method and method of legal norm interpretation.

Results: Russian and foreign lawmakers are actively using discretionary powers of the tax authorities to achieve the objectives of legal regulation to overcome the uncertainty in tax law. Conclusions: discretion in tax law is designed so that in a situation of complete or relative uncertainty the tax authority could have the opportunity to choose the optimal solution from a number of legitimate alternatives. The attribute signs of discretion in tax law include: existence of legal bases; implementation of discretionary powers strictly within the competence; alternativeness of the choice, where each of possible alternatives is lawful; accounting of the specific situation in case of adoption of the discretionary decision (the situation-based approach); creative nature; a discretionary decision is made under the influence of both objective and subjective factors; discretion is limited by legal and extra-legal framework; the exercise of a discretion power
They control who passes through the gates of the welfare state. This book provides an in-depth understanding of the phenomenon of discretion. It shows why the delegation of discretionary powers to professionals in the front-line of the welfare state is both unavoidable and problematic. Extensive use of discretion can threaten the principles of the rule of law and relinquish democratic control over the implementation of laws and policies. The book introduces an understanding of discretion that adds an epistemic dimension (discretion as a mode of reasoning) to the common structural understanding of discretion (an area of judgment and decision). Accordingly, it distinguishes between structural and epistemic measures of accountability. The aim of the former is to constrain discretionary spaces or the behavior within them while the aim of the latter is to improve the quality of discretionary reasoning. This text will be of key interest to scholars and students in the fields of applied philosophy, public policy and public administration, welfare state research, and the sociology of professions.

**European Economic Legal Order After Brexit**

Enzo Cardi 2021-07-29 This book takes an innovative approach to provide a mirror perspective of the legal systems of the UK and the EU in contemporary institutional scenarios. At the beginning of the second decade of the 21st century, the legal systems of the EU and the UK are facing challenges of epic proportions. Never before have the two legal orders been confronted with the simultaneous impact of a series of events. First, the effect of the “divorce” between the two regulatory systems caused by the UK’s withdrawal from the EU. The Negotiating Documents and the Draft Texts being discussed and aimed at leading to a ‘New Partnership’ are examined in the book. Second, the book discusses the impact of the coronavirus shock in all European economies leading to a substantial change of political perspective in the EU legal order implying innovative debt instruments. Third, it explores the consequences of the judicial activism of the German Constitutional Court undermining the strategic role of the European Central Bank and the primacy of the European Union Court of Justice. The book questions the effects deriving from the legacy, i.e. the foundations of the two legal systems, on handling the issues of our time, the impact on market regulation of the striking contemporary events and the unsettled consequences on policy of the current convulsing political and financial landscape. The book will be essential reading for those working in the areas of European public regulatory law.

**A Theory of the Executive Branch**

Margit Cohn 2021-02-24 This monograph offers a theoretical foundation of the executive branch in Western democracies and argues that the tension between dominance and submission is maintained by the adoption of various forms of fuzziness, under which a guise of legality masks the absence of the substantive limitation of power.

**The Machinery of Government**

Joseph Heath 2020-08-03 In political theory, the traditional model of state power was that elected officials make policy decisions which are then faithfully executed by a lower cadre of
This theoretical grounding is then rooted in reality, with each concept applied to a hypothetical time to be studying the subject. Writing in a fluid, succinct style, the authors carve a logical pathway through with a unique approach to constitutional and administrative law, aptly demonstrating why this is an exciting.

Core Concepts in Criminal Law and Criminal Justice Kai Ambos 2022-02-17 Volume two of a comparative study of the concepts that underpin different domestic systems of criminal law and justice.

Public Law John Stanton 2020-05-14 Fresh, modern, and practical, Public Law provides law undergraduates with a unique approach to constitutional and administrative law, aptly demonstrating why this is an exciting time to be studying the subject. Writing in a fluid, succinct style, the authors carve a logical pathway through the key areas studied on the LLB, guiding students to a solid understanding of the fundamental principles. This theoretical grounding is then rooted in reality, with each concept applied to a hypothetical scenario (included at the start of each chapter) to set it into a practical context. While this practical element helps students to understand how the law applies and develop problem-solving skills, a trio of supportive learning features also encourages active engagement with and a critical appreciation of public law. 'Key case' boxes highlight and analyse the significant case law in each area; "Counterpoint" boxes flag alternative viewpoints and areas of debate; and "Pause for reflection" boxes prompt readers to consider the impact of laws, and what potential developments and reforms may lie ahead. Public Law's modern approach and unique combination of practical application and theoretically critical discussion makes it the ideal choice for students seeking to understand concepts not only in the abstract but in practice, helping them to develop the skills they need to succeed at university and beyond.

Language and Legal Interpretation in International Law Anne Lise Kjaer 2022 Language and Legal Interpretation in International Law sheds light on the complicated process of language interpretation that adjudicators (judges and arbitrators) and legal practitioners adopt when they act within international legal systems. The book also analyzes the role that language and the diversity of languages and national legal cultures plays in different international legal systems.

The Invisible Justice System Burton Atkins 1982 This anthology presents articles on various aspects of discretionary decisionmaking in the administration of justice. Discretionary justice suggests latitude of decisionmaking rather than formality or certainty, and unlike the symbolic idea of due process, it suggests that idiosyncrasy rather than rules may guide decisionmaking within the administration of criminal justice at all levels of the police, court, and penal systems. The relationship between forms of discretion and the criminal justice system is explored. The role of discretion at the arrest, prosecution, and sentencing levels as well as within the framework of correctional institutions is examined. The development of the discretionary ethic is discussed, and the severity and legality of its application in criminal justice procedures are examined.

Discretion on the part of the police is covered, with special attention to legal norms and discretion in the police sentencing processes, factors in police discretion and decisionmaking, and administrative problems in controlling the exercise of police authority. An approach to the legal control of police in terms of discretionary powers is presented. The role of prosecutorial discretion is underscored; the application of discretion during charging and plea bargaining processes is examined, and means for controlling prosecutorial discretion are discussed. Judicial discretion during sentencing is also examined, with attention to pretrial decisionmaking, the growth and consequences of sentencing discretion, and contemporary sentencing proposals. Finally, the
application of discretionary powers within the prison environment is summarized; decisionmaking within the prison community, the control of discretionary powers of prison organizations, the use of discretion in determining the severity of punishment for incarcerated offenders, and discretion within the parole bureaucracies decisionmaking process are discussed.

The Golden Metwand and the Crooked Cord C. F. Forsyth 1998 This is a collection of essays on public law in the UK. The essays are written in honour of Sir William Wade, one of the leading scholars of his generation and credited for having contributed to the development of administrative law in Britain through his text Administrative Law.

A Theory of Deference in Administrative Law Paul Daly 2012-06-28 In the modern administrative state, hundreds if not thousands of officials wield powers that can be used to the benefit or detriment of individuals and corporations. When the exercise of these powers is challenged, a great deal can be at stake. Courts are confronted with difficult questions about how to apply the general principles of administrative law in different contexts. Based on a comparative theoretical analysis of the allocation of authority between the organs of government, A Theory of Deference in Administrative Law provides courts with a methodology to apply no matter how complex the subject matter. The firm theoretical foundation of deference is fully exposed and a comprehensive doctrine of curial deference is developed for application by courts in judicial review of administrative action. A wide scope is urged, spanning the whole spectrum of government regulation, thereby ensuring wide access to public law remedies.