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Law and Disagreement Jeremy Waldron. A Clarendon Press Publication. A collection of essays from one of the world's leading legal and political philosophers; The author's arguments against Bills of Rights and his critique of American-style judicial review are particularly topical

~~Law and Disagreement - Hardcover - Jeremy Waldron - Oxford ...~~

It presents legislation by a representative assembly as a form of law making which is especially apt for a society whose members disagree with one another about fundamental issues of principle, for it is a form of law making that does not attempt to conceal the fact that our decisions are made and claim their authority in the midst of, not in spite of, our political and moral disagreements.

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Law and Disagreement redresses the balances in modern jurisprudence. It presents legislation by a representative assembly as a form of law making which is especially apt for a society whose members disagree with one another about fundamental issues of principle, for it is a form of law making that does not attempt to conceal the fact that our decisions are made and claim their authority in the midst of, not in spite of, our political and moral disagreements.

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~~Law and Disagreement - Oxford Scholarship~~

Jeremy Waldron's Law and Disagreement (1999) is a landmark work in jurisprudence and in democratic theory. In retrospect, it also constitutes an intervention into a methodological debate over the aims of political theory, defending the study of institutions over work attending to the ends and ideals of a good society.

~~Jeremy Waldron, Law and Disagreement - Oxford Handbooks~~

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Waldron's "Law and Disagreement" makes a case against over-constitutionalizing rights because, as the title suggests, people disagree about the nature of those rights. Waldron worries listing rights in a constitution focuses discourse too much on the text rather than the underlying right at stake.

~~Law and Disagreement: Waldron, Jeremy: 9780199243037 ...~~

law. I. The Doctrine of Stare Decisis Stare decisis is a many-faceted doctrine. It originated in common law courts and worked its way into federal courts over the course of the nineteenth century. By the twentieth century, the doctrine had become a

~~Precedent and Jurisprudential Disagreement~~

32 Enoch, David, "Taking Disagreement Seriously: On Jeremy Waldron's Law and Disagreement", Israel Law Review, 39 (2006), 22 – 35 33 I am not suggesting that Christiano and Waldron are unaware that, in the real world, disagreements about justice are often what I call thick, and that this has important implications.

Justice, Disagreement and Democracy | British Journal of ...
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It presents legislation by a representative assembly as a form of law making which is especially apt for a society whose members disagree with one another about fundamental issues of principle, for it is a form of law making that does not attempt to conceal the fact that our decisions are made and claim their authority in the midst of, not in spite of, our political and moral disagreements.

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When people disagree about justice and about individual rights, how should political decisions be made among them? How should they decide about issues like tax policy, welfare provision, criminal procedure, discrimination law, hate speech, pornography, political dissent and the limits of religious toleration?The most familiar answer is that these decisions should be made democratically, by ...

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In Budapest and Warsaw, however, officials claim that the attacks against them are politicised and are simply a disagreement over values rather than real debates over the rule of law.

When people disagree about justice and about individual rights, how should political decisions be made among them? How should they decide about issues like tax policy, welfare provision, criminal procedure, discrimination law, hate speech, pornography, political dissent and the limits of religious toleration? The most familiar answer is that these decisions should be made democratically, by majority voting among the people or their representatives. Often, however, this answer is qualified by adding ' providing that the majority decision does not violate individual rights.' In this book Jeremy Waldron has revisited and thoroughly revised thirteen of his most recent essays. He argues that the familiar answer is correct, but that the qualification about individual rights is incoherent. If rights are the very things we disagree about, then we are quarrelling precisely about what that qualification should amount to. At best, what it means is that disagreements about rights should be resolved by some other procedure, for example, by majority voting, not among the people or their representatives, but among judges in a court. This proposal - although initially attractive - seems much less agreeable when we consider that the judges too disagree about rights, and they disagree about them along exactly the same lines as the citizens. This book offers a comprehensive critique of the idea of the judicial review of legislation. The author argues that a belief in rights is not the same as a commitment to a Bill of Rights. He shows the flaws and difficulties in many common defences of the 'democratic' character of judicial review. And he argues for an alternative approach to the problem of disagreement: when disagreements about rights arise, the respectful way to resolve them is by decision-making among the right-holders on a basis that reflects an equal respect for them as the holders of views about rights. This respect for ordinary right-holders, he argues, has been sadly lacking in the theories of justice, rights, and constitutionalism put forward in recent years by philosophers such as John Rawls and Donald Dworkin. But the book is not only about judicial review. The first tranche of essays is devoted to a theory of legislation, a theory which highlights the size, the scale and the diversity of modern legislative assemblies. Although legislation is often denigrated as a source of law, Waldron seeks to restore its tattered dignity. He deprecates the tendency to disparage legislatures and argues that such disparagement is often a way of bolstering the legitimacy of the courts, as if we had to transform our parliaments into something like the American Congress to justify importing American-style judicial reviews. Law and Disagreement redresses the balances in modern jurisprudence. It presents legislation by a representative assembly as a form of law making which is especially apt for a society whose members disagree with one another about fundamental issues of principle, for it is a form of law making that does not attempt to conceal the fact that our decisions are made and claim their authority in the midst of, not in spite of, our political and moral disagreements. This timely rights-based defence of majoritarian legislation will be welcomed by scholars of legal and political philosophy throughout the world.

This book explores the relationship between the law and pervasive and persistent reasonable disagreement about justice. It reveals the central moral function and creative force of reasonable disagreement in and about the law and shows why and how lawyers and legal philosophers should take reasonable conflict more seriously. Even though the law should be regarded as the primary mode of settlement of our moral conflicts,it can, and should, also be the object and the forum of further moral conflicts. There is more to the rule of law than convergence and determinacy and it is important therefore to question the importance of agreement in law and politics. By addressing in detail issues pertaining to the nature and sources of disagreement, its extent and significance, as well as the procedural, institutional and substantive responses to disagreement in the law and their legitimacy, this book suggests the value of a comprehensive approach to thinking about conflict, which until recently has been analysed in a compartmentalized way. It aims to provide a fully-fledged political morality of conflict by drawing on the analysis of topical jurisprudential questions in the new light of disagreement. Developing such a global theory of disagreement in the law should be read in the context of the broader effort of reconstructing a complete account of democratic law-making in pluralistic societies. The book will be of value not only to legal philosophers and constitutional theorists, but also to political and democratic theorists, as well as to all those interested in public decision-making in conditions of conflict.

The boundaries of the international order's pluralism remain variable, and relative convergences in both values and interests over time have

led to the broadening of exceptions to sovereign prerogative, such as jus cogens, universal jurisdiction, and humanitarian intervention. With little prospect of these long term trends diminishing in either momentum or scope, this book weighs in to consider the enduring importance of sovereignty.

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.

Examining the role of 'open remedies' in human rights adjudication, this book provides a new perspective informing comparative constitutional debates on how to structure institutional relationships over fundamental rights and freedoms. Open remedies declare a human rights violation but invite the other branches of government to decide what corrective action should be taken. Open remedies are premised on the need to engage institutions beyond courts in the process of thinking about and acting on human rights problems. This book considers examples across the United States, South Africa, Canada, and internationally, emphasising their similarities and differences in design and the diverse ways they could operate in practice. he book investigates these possibilities through the first systematic legal and empirical study of the declaration of incompatibility model under the United Kingdom Human Rights Act. This new model provides a non-binding declaration that the law has infringed human rights standards, for the legislature's consideration. By design, it has the potential to support democratic deliberation on what human rights require of the laws and policies of the State, however, it also carries uncertainties and risks. Providing a lucid account of existing debates on the relative roles of courts and legislatures to determine the requirements of fundamental rights commitments, the book argues that we need to look beyond the theoretical focus on rights disagreements, to how these remedies have operated in practice across the courts and the political branches of government. Importantly, we should pay attention to the nature and scope of legislative engagement in deliberation on the human rights matters raised by declarations of incompatibility. Adopting this approach, this book presents a carefully argued view of how courts have exercised this power, as well as how the UK executive and Parliament have responded to its use.

Al-Qadi al-Nu□man was the chief legal theorist and ideologue of the North African Fatimid dynasty in the tenth century. This translation makes available in English for the first time his major work on Islamic legal theory, which presents a legal model in support of the Fatimids□ principle of legitimate rule over the Islamic community. Composed as part of a grand project to establish the theoretical bases of the official Fatimid legal school, Disagreements of the Jurists expounds a distinctly Shi□i system of hermeneutics, which refutes the methods of legal interpretation adopted by Sunni jurists. The work begins with a discussion of the historical causes of jurisprudential divergence in the first Islamic centuries, and goes on to address, point by point, the specific interpretive methods of Sunni legal theory, arguing that they are both illegitimate and ineffective. While its immediate mission is to pave the foundation of the legal Isma□ili tradition, the text also preserves several Islamic legal theoretical works no longer extant□including Ibn Dawud□s manual, al-Wusul ila ma□rifat al-usul□and thus throws light on a critical stage in the historical development of Islamic legal theory (usul al-fiqh) that would otherwise be lost to history.

The bills of rights adopted in the Commonwealth countries of Canada, New Zealand, the United Kingdom and, at the subnational level, Australia in recent decades, have prompted scholars and institutional actors involved in the process of constitutional design and reform to rethink how to evaluate and compare the different approaches to human rights protection. They have challenged a number of assumptions in the field, for example, that courts must have the power to invalidate laws that are found to violate rights (ie courts can now be given non-binding powers), that courts must have the 'final word' on rights issues (ie legislatures can now be given the power to override judicial decisions) and that bills of rights are enforced exclusively by courts (ie legislators can now be given new responsibilities to ensure that the laws they enact are compatible with rights).This book addresses three questions arising from these developments. How do these new bills of rights differ from the traditional approaches to rights protection? Why, if at all, should we consider the Commonwealth's approach over the traditional approaches? What compromises must be struck in the course of adopting a bill of rights of this variety? In answering these questions, the book sets out a new framework for comparison that focuses on the types of inter-institutional disagreement facilitated by and found in the different approaches to rights protection. It also identifies a previously unrecognised element of the Commonwealth's approach - the normative trade-offs with other constitutional principles and values - that is pivotal to understanding its operation. Finally, it seeks to contribute to future debates about rights reform in Australia and elsewhere by setting out a number of lessons that emerge from the answers to these three questions.**Dr Scott Stephenson, From Dialogue to Disagreement in Comparative Rights Constitutionalism, was joint winner of the inaugural Holt Prize 2015.

In Sovereign Equality and Moral Disagreement: Premises of a Pluralist International Legal Order, Professor Brad R. Roth provides readers with a working knowledge of the various applications of sovereign equality in international law, and defends the principle of sovereign equality as a morally sound response to disagreements in the international realm. 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 preserving a state's territorial integrity and political independence, sometimes at the expense of efforts to establish a universal justice that transcends territorial boundaries. Efforts to establish a universal justice, however, need to heed the dangers of allowing powerful states to invoke universal principles to rationalize unilateral (and often self-serving) impositions upon weak states. In Sovereign Equality and Moral Disagreement, Brad R. Roth explains that 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 invites newcomers to analytical legal philosophy to reconsider the terms in which they are accustomed to describing and defending their jurisprudential allegiances. It argues that familiar taxonomic labels such as legal positivism, natural law theory and legal interpretivism are poor guides to the actual diversity of views on the nature and normativity of law, mainly because they fail to carve up the reality of jurisprudential disagreement at its joints. These joints, the author suggests, are elusive because the semantics of law systematically misplaces them. Their true nature resides in the metaontological and metanormative features that dictate or indicate the target of a theory's jurisprudential commitments. The book advocates a new vocabulary for articulating these commitments without eliminating the use of familiar criteria of division among competing theories of law. The resulting picture is a much broader platform of meaningful disagreement about the nature and grounds of legal truth and legal normativity. Albeit based on a factualist-cognitivist understanding of the sources and grounds of

law, the book reserves ample room for the unconvinced. Those suspicious of the project of ‘ontologising’ theoretical disagreements in law can avail themselves of the quietist or anti-metaphysical avenue that the book's alternative taxonomy also makes available. The humblest path to law's reality may not be metaphysically ambitious after all.

Property relations are such a common feature of social life that the complexity of the web of laws, practices, and ideas that allow a property regime to function smoothly are often forgotten. But we are quickly reminded of this complexity when conflict over property erupts. When social actors confront a property regime – for example by squatting – they enact what can be called ‘contested property claims’. As this book demonstrates, these confrontations raise crucial issues of social justice and show the ways in which property conflicts often reflect wider social conflicts. Through a series of case studies from across the globe, this multidisciplinary anthology brings together works from anthropologists, legal scholars, and geographers, who show how exploring contested property claims offers a privileged window onto how property regimes function, as well as an illustration of the many ways that the institution of property shapes power relationships today.