

Why Law Matters Oxford Legal Philosophy

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Why Law Matters Oxford Legal

The idea that political and legal institutions might be intrinsically valuable has received little philosophical attention. Why Law Matters - Hardcover - Alon Harel - Oxford University Press Contemporary political and legal theory typically justifies the value of political and legal institutions on the grounds that such institutions bring about desirable outcomes - such as justice, security, and prosperity.

Why Law Matters - Hardcover - Alon Harel - Oxford ...

Why Law Matters is an indispensable resource for anyone committed to thinking seriously about the justification of the legal institutions and processes that comprise a liberal legal order. While Harel neither purports to offer a general criticism of legal instrumentalism nor a general defense of its non-instrumentalist counterpart, he deftly navigates the challenges surrounding the justification of rights, public institutions, and constitutional arrangements.

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why law matters alon harel oxford legal philosophy presents a provocative argument that standard justifications for political institutions and legal procedures are misguided failing to account for laws

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philosophical attention why law matters presents the argument that legal institutions and legal procedures are valuable and matter as such irrespective of their instrumental value harel advances the argument in several ways firstly he why law matters oxford legal philosophy by alon harel 2016 01 01 isbn kostenloser versand fur alle bucher mit

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'Why Law Matters' argues that public institutions and legal procedures are valuable and matter as such, irrespective of their instrumental value. Examining the value of rights, public institutions, and constitutional review, the book criticises instrumentalist approaches in political theory, claiming they fail to account for their enduring appeal.

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the value of rights, public institutions, and constitutional review, the book criticises instrumentalist approaches in political theory, claiming they fail to account for their enduring appeal.

Through an extensive exploration of comparative constitutional endeavours past and present, near and far, Ran Hirschl shows how attitudes towards engagement with the constitutive laws of others reflect tensions between particularism and universalism as well as competing visions of who 'we' are as a political community. Drawing on insights from social theory, religion, history, political science, and public law, Hirschl argues for an interdisciplinary approach to comparative constitutionalism that is methodologically and substantively preferable to merely doctrinal accounts. The future of comparative constitutional studies, he contends, lies in relaxing the sharp divide between constitutional law and the social sciences.

This Oxford Handbook ambitiously seeks to lay the groundwork for the relatively new field of comparative foreign relations law. Comparative foreign relations law compares and contrasts how nations, and also supranational entities (for example, the European Union), structure their decisions about matters such as entering into and exiting from international agreements, engaging with international institutions, and using military force, as well as how they incorporate treaties and customary international law into their domestic legal systems. The legal materials that make up a nation's foreign relations law can include constitutional law, statutory law, administrative law, and judicial precedent, among other areas. This book consists of 46 chapters, written by leading authors from around the world. Some of the chapters are empirically focused, others are theoretical, and still others contain in-depth case studies. In addition to being an invaluable resource for scholars working in this area, the book should be of interest to a wide range of lawyers, judges, and law students. Foreign relations law issues are addressed regularly by lawyers working in foreign ministries, and globalization has meant that domestic judges, too, are increasingly confronted by them. In addition, private lawyers who work on matters that extend beyond their home countries often are required to navigate issues of foreign relations law. An increasing number of law school courses in comparative foreign relations law are also now being developed, making this volume an important resource for students as well. Comparative foreign relations law is a newly emerging field of study and teaching, and this volume is likely to become a key reference work as the field continues to develop.

The Oxford Handbook of Comparative Health Law addresses some of the most critical issues facing scholars, legislators, and judges today: how to protect against threats to public health that can quickly cross national borders, how to ensure access to affordable health care, and how to regulate the pharmaceutical industry, among many others. When matters of life and death literally hang in the balance, it is especially important for policymakers to get things right, and the making of policy can be greatly enhanced by learning from the successes and failures of approaches taken in other countries. Where there are "common challenges" in law and health, there is much to be gained from experiences elsewhere. Thus, for example, countries that suffered early from the COVID-19 pandemic provided valuable lessons about public health interventions for countries that were hit later. Accordingly, the Handbook considers key health law questions from a comparative perspective. In health law, common challenges are frequent. In addition to ones already mentioned, there are questions about addressing the social determinants of health (e.g., poverty and pollution), organizing health systems to optimize use of available resources, ensuring that physicians provide care of the highest quality, protecting patient privacy in a data-driven world, and properly balancing patient autonomy with the interest in preserving life when reproductive and end-of-life decisions are made. This Handbook's wide scope and comparative take on health law are particularly timely. Economic globalization has made it increasingly important for different countries to harmonize their legal rules. Students, practitioners, scholars, and policymakers need to understand how health laws vary across national boundaries and how reforms can ensure a convergence toward an optimal set of legal rules, or ensure that specific legal arrangements are needed in particular contexts. Indeed, comparative analysis has become essential for legal scholars, and The Oxford Handbook of Comparative Health Law is the only resource that provides such an analysis in health law.

Are legislatures able to form and act on intentions? The question matters because the interpretation of statutes is often thought to centre on the intention of the legislature and because the way in which the legislature acts is relevant to the authority it does or should enjoy. Many scholars argue that legislative intent is a fiction: the legislative assembly is a large, diverse group rather than a single person and it seems a mystery how the intentions of the individual legislators might somehow add up to a coherent group intention. This book argues that in enacting a statute the well-formed legislature forms and acts on a detailed intention, which is the legislative intent. The foundation of the argument is an analysis of how the members of purposive groups act together by way of common plans, sometimes forming complex group agents. The book extends this analysis to the legislature, considering what it is to legislate and how members of the assembly cooperate to legislate. The book argues that to legislate is to choose to change the law for some reason: the well-formed legislature has the capacity to consider what should be done and to act to that end. This argument is supported by reflection on the centrality of intention to the nature of language use. The book then explains in detail how members of the assembly form and act on joint intentions, which do not reduce to the intentions of each member, before outlining some implications of this account for the practice of statutory interpretation. Developing a robust account of the nature and importance of legislative intention, the book represents a significant contribution to the literature on deliberative democracy that will be of interest to all those thinking about legal interpretation and constitutional theory.

Does constitutionalizing rights improve respect for those rights in practice? Drawing on statistical analyses, survey experiments, and case studies from around the world, this book argues that enforcing constitutional rights is not easy, but that some rights are harder to repress than others. First, enshrining rights in constitutions does not automatically ensure that those rights will be respected. For rights to matter, rights violations need to be politically costly. But this is difficult to accomplish for unconnected groups of citizens. Second, some rights are easier to enforce than others, especially those with natural constituencies that can mobilize for their enforcement. This is the case for rights that are practiced by and within organizations, such as the rights to religious freedom, to unionize, and to form political parties. Because religious groups, trade unions and parties are highly organized, they are well-equipped to use the constitution to resist rights violations. As a result, these rights are systematically associated with better practices. By contrast, rights that are practiced on an individual basis, such as free speech or the prohibition of torture, often lack natural constituencies to enforce them, which makes it easier for governments to violate these rights. Third, even highly organized groups armed with the constitution may not be able to stop governments dedicated to rights-repression. When constitutional rights are enforced by dedicated organizations, they are thus best understood as speed bumps that slow down attempts at repression. An important contribution to comparative constitutional law, this book provides a comprehensive picture of the spread of constitutional rights, and their enforcement, around the world.

Scope of Judicial Review

Comparative study has emerged as the new frontier of constitutional law scholarship as well as an important aspect of constitutional adjudication. Increasingly, jurists, scholars, and constitution drafters worldwide are accepting that 'we are all comparativists now'. And yet, despite this tremendous renaissance, the 'comparative' aspect of the enterprise, as a method and a project, remains under-theorized and blurry. Fundamental questions concerning the very meaning and purpose of comparative constitutional inquiry, and how it is to be undertaken, are seldom asked, let alone answered. In this path-breaking book, Ran Hirschl addresses this gap by charting the intellectual history and analytical underpinnings of comparative constitutional inquiry, probing the various types, aims, and methodologies of engagement with the constitutive laws of others through the ages, and exploring how and why comparative constitutional inquiry has been and ought to be pursued by academics and jurists worldwide. Through an extensive exploration of comparative constitutional endeavours past and present, near and far, Hirschl shows how attitudes towards engagement with the constitutive laws of others reflect

tensions between particularism and universalism as well as competing visions of who 'we' are as a political community. Drawing on insights from social theory, religion, history, political science, and public law, Hirschl argues for an interdisciplinary approach to comparative constitutionalism that is methodologically and substantively preferable to merely doctrinal accounts. The future of comparative constitutional studies, he contends, lies in relaxing the sharp divide between constitutional law and the social sciences. *Comparative Matters* makes a unique and welcome contribution to the comparative study of constitutions and constitutionalism, sharpening our understanding of the historical development, political parameters, epistemology, and methodologies of one of the most intellectually vibrant areas in contemporary legal scholarship.

The empirical study of law, legal systems and legal institutions is widely viewed as one of the most exciting and important intellectual developments in the modern history of legal research. Motivated by a conviction that legal phenomena can and should be understood not only in normative terms but also as social practices of political, economic and ethical significance, empirical legal researchers have used quantitative and qualitative methods to illuminate many aspects of law's meaning, operation and impact. In the 43 chapters of *The Oxford Handbook of Empirical Legal Research* leading scholars provide accessible and original discussions of the history, aims and methods of empirical research about law, as well as its achievements and potential. The Handbook has three parts. The first deals with the development and institutional context of empirical legal research. The second - and largest - part consists of critical accounts of empirical research on many aspects of the legal world - on criminal law, civil law, public law, regulatory law and international law; on lawyers, judicial institutions, legal procedures and evidence; and on legal pluralism and the public understanding of law. The third part introduces readers to the methods of empirical research, and its place in the law school curriculum.

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