

## IV. PROCEDURAL AUTONOMY AND RULE OF LAW

The concept of 'procedural autonomy' already has a history stretching over five decades and has been established as one of the main principles of the law of the European Union (EU). This chapter aims to confront this principle with the value/principle of rule of law. Although at first sight, both principles appear mutually notwithstanding, but their interplay can be crucial for the understanding and definition of the concept of procedural autonomy in the future. The concept of procedural autonomy deals with the area uncovered by the EU law, thus remaining in the sphere of national legislation. At the same time, the member states are obliged to enforce the EU law and honour their obligations arising from the EU law according to the principle of sincere cooperation. Since the legal order of the EU relies on the enforcement capacity of the Member States, the EU law may have requirements for the quality of the national legal environment in order for the EU law to be applied properly. In the first decades, the review of the effectiveness of the application of EU law by national measures was dominant; in recent years, scrutiny was expanded also to the securing the effective judicial protection. Reforms in the judiciary in Poland and Romania, as well as the political situation in Hungary, brought the values of the EU into focus. And, while the values of the EU can limit the scope of constitutional identity of the Member States and thus the sovereign sphere of respected national identity of the Member States, it is apparent that the question of how far EU law can shape national procedural rules and institutional setting becomes a meeting point between the concept of 'procedural autonomy' and the value of 'rule of law'.

# Autonomy In The Law Autonomy In The Law

**Alan Bogg, Cathryn Costello, ACL  
Davies, Jeremias Adams-Prassl**



## **Autonomy In The Law Autonomy In The Law:**

Autonomy in the Law Mortimer Sellers, 2007-09-19 By juxtaposing European and American concepts of autonomy in the law as they are applied to families capital punishment and criminal trials authors reveal the common values that justify all legal systems This book sheds new light on the fundamental purpose of law by examining how European and American lawyers judges and citizens actually apply and should apply legal autonomy to litigation legislation and the law itself

Autonomy Mortimer Sellers, 2007 Autonomy in the Law considers one of the most important benefits of the rule of law Juxtaposing European and American conceptions of autonomy in the law of families capital punishment and criminal trials reveals the common values that justify all legal systems Law protects the autonomy of individuals and associations by defending the boundaries of their own self rule This book illuminates the fundamental purpose of law by examining how European and American lawyers judges and citizens do and should apply legal autonomy to the practical circumstances of litigation legislation and the law The Logic of Autonomy Jan-R Sieckmann, 2012-11-13 Autonomy is the central idea of modern practical philosophy Understood as self legislation autonomy seems to require that the validity of norms depends on recognition namely that their addressees being autonomous agents recognise these norms to be valid But how can one be bound by norms whose validity depends on their being recognised as valid by their addressees The questions of how autonomous morality and on this basis the authoritative character of law can be understood present persistent puzzles that have been widely discussed but still await a satisfactory solution This book presents an analysis of the idea of autonomy as self legislation and its consequences for law and morality It links the idea of autonomy with the idea of the balancing of normative arguments develops a notion of normative arguments as distinct from normative judgements and statements and explains claims to correctness and objectivity that are found in normative discourse Thus a logic of autonomy emerges and it is pervasive in normative reasoning It connects theses regarding the logic of norms the structure of balancing human and fundamental rights legal validity legal interpretation and the relations among legal systems offering a theory of central elements of normative argumentation a theory that is undergirded by the mutual relations that exist between and among its parts as well as through the relations that it bears to other theories Moreover it offers an alternative to Kantian notions of autonomy and provides solutions to problems that other theories have failed to master **Law's Relations** Jennifer Nedelsky, 2011-10-11 Jennifer Nedelsky claims that we must rethink our notion of autonomy rejecting the usual vocabulary of control boundaries and individual rights If we understand that we are fundamentally in relation to others she argues we will recognize that we become autonomous with others **Autonomy, Consent and the Law** Sheila A.M. McLean, 2009-09-10 Autonomy is often said to be the dominant ethical principle in modern bioethics and it is also important in law Respect for autonomy is said to underpin the law of consent which is theoretically designed to protect the right of patients to make decisions based on their own values and for their own reasons The notion that consent underpins beneficent and lawful

medical intervention is deeply rooted in the jurisprudence of countries throughout the world. However, Autonomy, Consent and the Law challenges the relationship between consent rules and autonomy, arguing that the very nature of the legal process inhibits its ability to respect autonomy specifically in cases where patients argue that their ability to act autonomously has been reduced or denied as a result of the withholding of information which they would have wanted to receive. Sheila McLean further argues that the bioethical debate about the true nature of autonomy while rich and challenging has had little if any impact on the law. Using the alleged distinction between the individualistic and the relational models of autonomy as a template, the author proposes that while it might be assumed that the version ostensibly preferred by law roughly equivalent to the individualistic model would be transparently and consistently applied, in fact courts have vacillated between the two to achieve policy based objectives. This is highlighted by examination of four specific areas of the law which most readily lend themselves to consideration of the application of the autonomy principle: namely refusal of life sustaining treatment and assisted dying, maternal foetal issues, genetics and transplantation. This book will be of great interest to scholars of medical law and bioethics.

**The Autonomy of Law** Robert P. George, 1996. This collection of essays from legal philosophers offers an assessment of the nature and viability of legal positivism. It addresses questions such as to what extent is the law adequately described as autonomous and should legal theorists maintain a conceptual separation of law and morality?

*Chinese Law* Jianfu Chen, 1999-07-14. Law in particular its actual functioning in any given society is above all a part of the culture of that society, a part of its historical, political, social and intellectual creation. If a black letter approach towards law in the West is under increasing criticism, it is particularly unhelpful if not misleading in understanding Chinese law, its nature and developments. Rather than to understand Chinese law, its nature and developments, we need to examine the Chinese legal traditions, the prevailing political and economic situations, Party policies on economic reform and tolerance towards political liberalisation and scholarly discussions and debate. This is the approach of this book. Its aim is to put Chinese law in context, to outline the nature and present status of its development and to analyse the meaning of the law within the Chinese context. However, this monograph does not ignore the practical needs for determining the precise contents of the black letter law either. A study of this kind necessarily involves a process of topic selection. However, to avoid over-generalisation and over-simplification, it also demands a considerable degree of comprehensiveness in coverage. For this reason, the book covers what the Chinese scholars term fundamental law and basic branches of law, while other topics are covered because they are either crucial for the understanding of the law, such as legal traditions in China, or of practical importance, such as foreign investment and trade. Chapter One provides an historical background to traditional Chinese legal culture and modern law reforms. The historical background of specific topics is examined as the topics are analysed in the following chapters. Chapter Two deals with the changing fate of law under Communist rule. Its focus is on the underlying factors and justifications for such changes. Chapter Three introduces discussions on specific branches of law from public law, constitutional law, law

making administrative law criminal law criminal procedure law to private law civil law family law contracts law on business entities and law on foreign investment and trade Each of these is dealt with in a separate chapter After the analysis of these substantial topics certain conclusions are drawn which attempt to define the nature of Chinese law and its developments in present day China

**Relational Autonomy and Family Law** Jonathan Herring, 2014-03-11 This book explores the importance of autonomy in family law It argues that traditional understandings of autonomy are inappropriate in the family law context and instead recommends the use of relational autonomy The book starts by explaining how autonomy has historically been understood before exploring the problems with its use in family law It then sets out the model of relational autonomy which it will be argued is more appropriate in this context Finally some examples of practical application are presented The issues raised and theoretical discussion is relevant to any jurisdiction

**Proceedings of the 4th International Conference on Social Sciences and Law (ICSSL 2024)** Galih W. Pradana, Deby F. Eprilianto, Dita Perwitasari, Riyadi Riyadi, Moh. Mudzakkir, Suci Megawati, 2024-12-11 This is an open access book Welcome to the 4th International Conference on Social Sciences and Law ICSSL 2024 where innovation meets inspiration and collaboration flourishes Our conference stands as a beacon of knowledge bringing together academics researchers professionals and enthusiasts from around the globe to engage in meaningful dialogue and shape the future At the 4th ICSSL we believe in the power of connection and the transformative potential of shared ideas With a commitment to excellence and a dedication to fostering growth our conference serves as a platform for individuals and organizations to exchange insights explore emerging trends and forge lasting partnerships Since 2021 ICSSL has been at the forefront of driving change and driving innovation in the fields of social sciences and law Each year our meticulously curated program features a diverse array of keynote speakers presenters and networking opportunities designed to inspire educate and empower our attendees Whether you re a scholar or a professional ICSSL offers something for everyone Join us as we embark on a journey of discovery collaboration and transformation Thank you for choosing ICSSL as your destination for insight inspiration and impact We look forward to welcoming you to our community and sharing in the excitement of 2024

**The Autonomy of Labour Law** Alan Bogg, Cathryn Costello, ACL Davies, Jeremias Adams-Prassl, 2015-03-26 To what extent is labour law an autonomous field of study This book is based upon the papers written by a group of leading international scholars on this theme delivered at a conference to mark Professor Mark Freedland s retirement from his teaching fellowship in Oxford The chapters explore the boundaries and connections between labour law and other legal disciplines such as company law competition law contract law and public law labour law and legal methodologies such as reflexive governance and comparative law and labour law and other disciplines such as ethics economics and political philosophy In so doing it represents a cross section of the most sophisticated current work at the cutting edge of labour law theory

**Political Participation of Minorities** Marc Weller, Katherine Nobbs, 2010 This Commentary provides the reader with a review of international standards and practice relating to the political participation

of minorities Political participation has been increasingly recognized as a foundational issue in the debate about minority rights It is argued that minorities are more likely to feel co ownership in the state if they have the opportunity to participate freely and effectively in all aspects of its governance and that sustained and meaningful engagement will guard against the sense of alienation and exclusion among minorities that often emerges in ethnically divided societies Taking as its starting point the two most important standard setting documents in the field the Lund Recommendations on the Effective Participation of National Minorities in Public Life developed by the Organization for Security and Cooperation in Europe and the Council of Europe s Thematic Commentary on the Issue of Political Participation of Minorities the Commentary locates the international legal entitlement to political participation within the wider context of the right to democratic governance It also considers effective participation in relation to the right to full and effective equality as well as the legal entrenchment of these provisions and implementation mechanisms Individual chapters then consider each of the principal mechanisms aimed at enhancing political participation ranging from procedures covering minority representation in political institutions to consultative mechanisms and autonomy solutions The Commentary draws on a team of experts all of whom are recognized authorities in this specialized area of minority issues Official Gazette. English Edition Japan,1947 **Choosing Life, Choosing Death** Charles Foster,2009-02-27 Autonomy is a vital principle in medical law and ethics It occupies a prominent place in all medico legal and ethical debate But there is a dangerous presumption that it should have the only vote or at least the casting vote This book is an assault on that presumption and an audit of autonomy s extraordinary status This book surveys the main issues in medical law noting in relation to each issue the power wielded by autonomy asking whether that power can be justified and suggesting how other principles can and should contribute to the law It concludes that autonomy s status cannot be intellectually or ethically justified and that positive discrimination in favour of the other balancing principles is urgently needed in order to avoid some sinister results This book is a sustained attack on the hegemony of the idea of autonomy in medical ethics and law Charles Foster is no respecter of authority whether of university professors or of law Lords He grabs his readers by their lapels and shakes sense into them through a combination of no nonsense rhetoric and subtle argument that is difficult to resist Tony Hope Professor of Medical Ethics Oxford University This book is unlikely to be in pristine state by the time you have finished reading it Whether that is because you have thrown it in the air in celebration or thrown it across the room in frustration will depend on your perspective But this book cannot leave you cold It is a powerful polemic on the dominance of autonomy in medical law which demands a reaction Charles Foster sets out a powerful case that academic medical lawyers have elevated autonomy to a status it does not deserve in either ethical or legal terms In a highly engaging accessible account he challenges many of the views which have become orthodox within the academic community This will be a book which demands and will attract considerable debate Jonathan Herring Exeter College Oxford University This is a learned lively and thought provoking discussion of problems central to the courts approach to ethical

issues in medical law What principles are involved More significantly which really underlie and inform the process of seeking justice in difficult cases Charles Foster persuasively argues and demonstrates that respect for autonomy is but one of a number of ethical principles which interact and may conflict He also addresses the sensitive issue of the extent to which thoughts and factors which go to influence legal decisions may not appear in the judgments Adrian Whitfield QC Introducing the Jake La Motta of medical ethics Foster is an academic street fighter who has bloodied his hands in the court room He provides a stinging relentless ground attack on the Goliath of medical ethics the central place of autonomy in liberal medical ethics This is now the first port of call for those who feel that medical ethics has become autonomized Julian Savulescu Uehiro Chair in Practical Ethics University of Oxford This important book offers a robust challenge to anyone whether lawyer or ethicist who sees respect for autonomy as the only game in town It argues eloquently and effectively that on the one hand despite the reverence paid to it by judges in practice the law even in the context of consent weaves together a number of moral threads of which autonomy is merely one in the pursuit of a good decision It argues on the other hand that were the day to day practice of law to be guided primarily by respect for autonomy this would be wrong Foster concludes that whilst any society that does not have laws robustly protecting autonomy is an unsafe and unhappy one so too would be a society in which too much emphasis was placed on respect for autonomy at the expense of other important moral principles This is essential reading for anyone interested in the role of autonomy and indeed of medical ethics in the law Michael Parker Professor of Bioethics University of Oxford

Towards Sustainable Fisheries Law Gerd Winter, 2009 With the growing scarcity of fish resources instruments of fisheries management become crucial This publication suggests a legal approach to this issue and focuses on six case studies Indonesia Kenya Namibia Brazil Mexico and the EU The case studies are preceded by an analysis of the international law requirements concerning fisheries management with a focus on fisheries in Exclusive Economic Zones The final part of the book summarises the case studies and develops a proposal for a legal clinic for fisheries management

**Radical Critiques of the Law** Stephen M. Griffin, Robert C. L. Moffat, 1997 The past two decades have seen an outpouring of work in legal theory that is self consciously critical of aspects of American law and the institutions of the liberal state In this lively volume eminent scholars in philosophy law and political science respond to this recent scholarship by exploring what constitutes a radical critique of the law examining such theories as critical legal studies feminist theory and theories of difference and critical race theory The authors consider whether the critiques advanced in recent legal theory can truly be called radical and what form a radical critique of American law should take Writing at the cutting edge of the critique of critical legal theory they offer insights first on critical legal scholarship then on feminist political and legal theory A third group of contributions questions the radicalness of these approaches in light of their failure to challenge fundamental aspects of liberalism while a final section focuses on current issues of legal reform through critical views on criminal punishment including observations on rape and hate speech Each major essay describes the underlying

principles in the development of a radical legal theory and addresses unresolved questions relating to it while accompanying commentaries present conflicting views The resulting dialogue explores wide ranging issues like equity value relativism adversarial and empathic legal advocacy communitarianism and the social contract impartiality and contingency natural law and corrective justice A common thread for many of the articles is a focus on the social dimension of society and law which finds the individualism of prevailing liberal theories too limiting Radical Critiques of the Law is particularly unique in presenting critical and feminist approaches in one volume along with skeptical commentary about just how radical some critiques really are Proposing alternative critiques that embody considerably greater promise of being truly radical it offers provocative reading for both philosophers and legal scholars by showing that many claims to radicalism are highly problematic at best

The Law Journal ,1927      *Massachusetts Law Quarterly* ,1928      Immovable Laws, Irresistible Rights Christine Pierce,2000 Same sex partnerships Pregnancy through in vitro fertilization Ending one s own life in dignity All are deemed inherently wrong by the standards of natural law ethics but for many people they represent legitimate life choices that are morally right Now a leading feminist critic of the natural law tradition explores the ongoing confrontation between natural law and moral rights to argue that rights constitute a more solid grounding for ethics in human affairs and for feminist thought In this volume Christine Pierce s important essays including the celebrated Natural Law Language and Women expand reflect and refine this central controversy Reaching back to Aristotle and Aquinas and drawing on modern papal encyclicals and Supreme Court cases Pierce demonstrates that the natural law tradition with its doctrine of a supposed hierarchy of natural purpose has served to mystify women s nature and thereby justify restricting women to a predetermined social stratum Addressing issues that concern not only feminism but legal theory as well she defends her views on equality and universalization against a growing postmodern critique and presents rights theory as an alternative to an ethics of responsibility based on Aristotelian notions of friendship and trust Through tightly constructed arguments presented in engaging prose Pierce conveys her deep knowledge of legal philosophy and her passion for rights as she takes on such issues as AIDS gay marriage animal liberation and feminist separatism She combats the prevailing view of Plato as sexist and explores Sartre s views of holes and slime She also examines the work of contemporary authors in ecology biology sociobiology and religion to reveal their reliance on nature for ethical conclusions and she criticizes recent efforts to root a feminist natural law in Thomism With natural law concepts now in fashion with many conservatives and even some Supreme Court justices Pierce s essays offer a necessary perspective on where current legal and ethical thinking is headed Immovable Laws Irresistible Rights is invigorating reading for all scholars students and interested readers who seek a better understanding of these arguments and the issues affected by them

**Autonomy, Informed Consent and Medical Law** Alasdair Maclean,2013      The Differentiation and Autonomy of Law Emilios Christodoulidis,2023-10-05 This Element looks first at the fundamental principle of modernity that is the functional differentiation of society and the emergence of



autonomous positive law The careful architecture of differentiation balance and mutual performance between the legal political and economic systems is jeopardised with the hypertrophy of any one of the structurally coupled systems at the expense of the others The pathologies are described in the second section of the Element It explores how under conditions of globalisation market thinking came to hoist itself to the position of privileged site of societal rationality In the third section we look at what sustains law s own reflexive intelligence under conditions of globalisation and whether we can still rely today on the constitutional achievement to guarantee law s autonomy its democratic credentials and its ability to reproduce normative expectations today

## **Autonomy In The Law Autonomy In The Law** Book Review: Unveiling the Power of Words

In a global driven by information and connectivity, the ability of words has become more evident than ever. They have the capacity to inspire, provoke, and ignite change. Such may be the essence of the book **Autonomy In The Law Autonomy In The Law**, a literary masterpiece that delves deep into the significance of words and their affect our lives. Published by a renowned author, this captivating work takes readers on a transformative journey, unraveling the secrets and potential behind every word. In this review, we will explore the book is key themes, examine its writing style, and analyze its overall impact on readers.

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