

<<宪政的哲学基础>>

图书基本信息

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作者：拉里·亚历山大

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内容概要

“剑桥哲学和法律研究丛书”定期推出一些专门合作而成的著作，它们构成一个小的系列，讨论的是在当代法律哲学中具有中心地位的关键性问题。

《剑桥哲学和法律研究丛书：宪政的哲学基础（影印本）》是这一系列的第二本。

在本书中，一群卓尔不凡的法律理论家探讨了宪政问题，他们把这样一类基本的问题表述为：为什么有宪法？

我们何以知道一个国家宪法的真切含义？

宪法应该如何加以解释？

为什么一代人应该体察先辈制定的宪法的约束？

在哲学、法律、政治科学和国际关系研究领域，有一些人对于是否在没有宪法的国家引入宪法，引入什么类型的宪法，以及谁会介入宪法解释方面的争论这类问题感兴趣，对于他们来说，本书尤为重要。

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If this is all that is meant , we can still speak comfortably of limitations effected solely by the preexisting rules. The subsequent interpreters , in the manner discussed , weigh the historical evidence and decide whether the scope of the rule does or does not cover the challenged instance. But it is sometimes suggested that , at least sometimes , constitution-makers intended the constitutional rules to be "indeterminate" so that , in applying them , opposite results might be equally correct. Take , again as an example , the constitutional rule prohibiting the infliction of "cruel" punishment. The view of constitutional interpretation sketched earlier supposes that the underlying intentions of the rule-makers define a category of action. A particular action-say , the imposition of solitary confinement - is or is not within that category. Two judges , each honestly attempting to apply the intended meaning , may disagree on that question , but each will suppose that only one of them can be right. The position under consideration , on the other hand , might hold that the constitution-makers intended that the question of whether the rule did or did not apply in a given case should not be decided until the question actually arose and that , when it did arise , it should be determined (within certain constraints) by the judges at the time , on the basis of factors not identified by the Constitution. In that case , neither of the two disagreeing judges would be right or wrong with respect to the correct application of the rule as intended by its enactors. In that sense , at least , there is no such thing as a "correct" application. To the extent that this is an accurate depiction of constitutional rules , it is subversive of the goals of constitutionalism spelled out earlier. The limits of governmental power in this situation are necessarily defined on the occasion , not imposed by preexisting rules. State decision-making in this kind of regime will not , it is true , be just the same as it would be were the political departments subject to no constitutional constraint. But neither will it exhibit the special values of the rule of law discussed in the preceding section.

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编辑推荐

This is the second volume in a sub-series of specially commissioned collaborative volumes on key topics at the heart of contemporary philosophy of law that will be appearing regularly with in Cambridge Studies in Philosophy and Law. A distinguished international team of legal theorists examine the issue of constitutionalism and pose such foundational questions as why have a constitution? How do we know what the constitution of a country really is? How should a constitution be interpreted? Why should one generation feel bound by the constitution of an earlier one? The volume will be of particular importance to those in philosophy, law, political Science and international relations interested in whether and what kinds of constitutions should be adopted in countries without them, and involved in debates about constitutional interpretation. Contributors: Larry Alexander, Richard S. Kay, Frank I. Michelman, Michael J. Perry, Joseph Raz, Jed Rubenfeld, Lawrence Sager, Jeremy Waldron

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