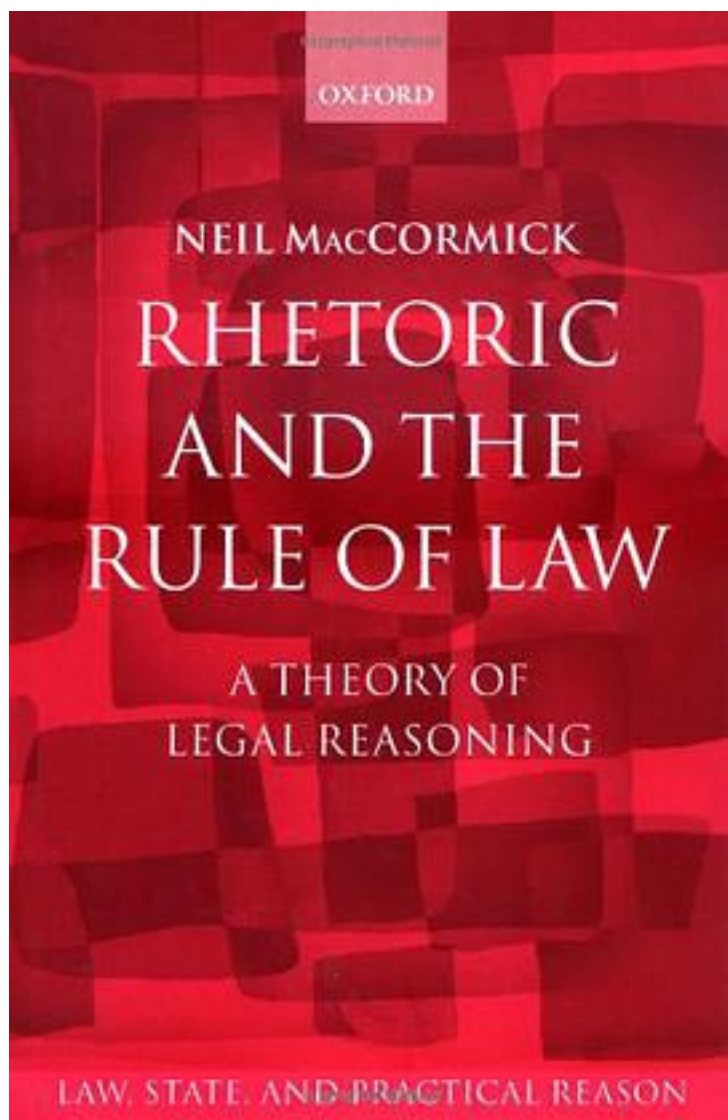


Rhetoric and the Rule of Law



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出版者:Oxford University Press

出版时间:2005-10-13

装帧:Hardcover

isbn:9780198268789

Is legal reasoning rationally persuasive, working within a discernible structure and using recognisable kinds of arguments? Does it belong to rhetoric in this sense, or to the domain of the merely 'rhetorical' in an adversative sense? Is there any reasonable certainty about legal outcomes in dispute-situations? If not, what becomes of the Rule of Law? Neil MacCormick's book tackles these questions in establishing an overall theory of legal reasoning which shows the essential part 'legal syllogism' plays in reasoning aimed at the application of law, while acknowledging that simple deductive reasoning, though always necessary, is very rarely sufficient to justify a decision. There are always problems of relevancy, classification or interpretation in relation to both facts and law. In justifying conclusions about such problems, reasoning has to be universalistic and yet fully sensitive to the particulars of specific cases. How is this possible? Is legal justification at this level consequentialist in character or principled and right-based? Both normative coherence and narrative coherence have a part to play in justification, and in accounting for the validity of arguments by analogy. Looking at such long-discussed subjects as precedent and analogy and the interpretative character of the reasoning involved, Neil MacCormick expands upon his celebrated Legal Reasoning and Legal Theory (OUP 1978 and 1994) and restates his 'institutional theory of law'.

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