

Contents

Preface	page xi
<i>Part I: The good faith thesis</i>	
1 Stubborn indeterminacy	3
1.1 The determinacy problem	3
1.2 Indeterminacy clarified	6
1.3 Indeterminacy and judging	13
1.4 Indeterminacy and contemporary jurisprudence	17
1.4.1 The priority of power politics	18
1.4.2 The priority of the intellectual	22
1.4.3 The primacy of reasons	27
2 The good faith thesis	35
2.1 Judicial duty	35
2.2 Judicial discretion	37
2.2.1 The force of legal reasons	38
2.2.2 Duty and discretion	43
2.3 Weighing reasons	50
2.3.1 What gets weighed?	51
2.3.2 The grounds of weight	54
2.4 Background justifications	62
3 An illustrative case and first objections	69
3.1 The judicial standpoint	69
3.2 <i>Patterson v. McLean Credit Union</i>	70
3.2.1 The majority opinion	72

Contents

3.2.2	The dissenting opinion	75
3.2.3	Results or reasons?	78
3.3	An alternative opinion	81
3.4	First objections	89
3.4.1	Meanings of "good faith"	90
3.4.2	Opportunism	93
3.4.3	Particularism and balancing	94
3.4.4	Judicial lawmaking	97
<i>Part II: The permissible discretion thesis</i>		
4	Science and skepticism	107
4.1	Permissible discretion	107
4.2	Epistemic determinacy	108
4.3	The theoretical and the practical	117
4.4	The role of social science	124
4.4.1	Law and society	125
4.4.2	The client writ large	129
4.4.3	Social science in judging	132
5	Critical claims	135
5.1	Political determinacy	135
5.2	Internal claims of the law	135
5.3	Internal claims of liberalism	140
5.3.1	The rule of law	141
5.3.2	Causal chains	145
5.3.3	Deductive chains	148
5.3.4	Authorization chains	152
5.4	Constraint and character	157
5.4.1	Motives	158
5.4.2	Character	163
6	Philosophies of law	166
6.1	Determinacy and the nature of law	166
6.2	Rules, by definition	166
6.2.1	The framework of rules	167
6.2.2	The determinacy of rules	171
6.3	Hart's concept of law	178

Contents

6.4	The right answer thesis	185
6.5	Semantic natural law	191
<i>Part III: Law, morals, and politics</i>		
7	Legal and moral duties	203
7.1	Doing justice	203
7.2	Conflicts of law and morals	204
7.2.1	Role morality	207
7.2.2	Inaccurate rules	210
7.2.3	Normative powers	213
7.3	A moral duty to uphold the law	217
7.4	All things considered	221
8	The politics of good faith	229
8.1	Political motivation	229
8.2	Law and politics	231
8.3	Improper bias	238
8.3.1	Neutrality	239
8.3.2	“Perspectivism”	245
8.4	The future of good faith	256
	Tables of cases	261
	Index of names	263
	Index of subjects	266