



Social Systems Theory and Judicial Review: Taking Jurisprudence Seriously (Studies in Modern Law and Policy)

Katayoun Baghai

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This book demonstrates the empirical gains and integrative potentials of social systems theory for the sociology of law. Against a backdrop of classical and contemporary sociological debates about law and society, it observes judicial review as an instrument for the self-steering of a functionally differentiated legal system. This allows close investigation of the US Supreme Court's jurisprudence of rights, both in legal terms and in relation to structural transformations of modern society. The result is a thought-provoking account of conceptual and doctrinal developments concerning racial discrimination, race-based affirmative action, freedom of religion, and prohibition of its establishment, detailing the Court's response to boundary tensions between functionally differentiated social systems. Preliminary examination of the European Court of Human Rights' privacy jurisprudence suggests the pertinence of the analytic framework to other rights and jurisdictions. This contribution is particularly timely in the context of increasing appeals to fundamental rights around the world and the growing role of national and international high courts in determining their concrete meanings.

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