

Contents

Acknowledgments	page xi
Introduction	1
1 The rule of law: a basic account	7
I Opening technicalities	8
II The weak version of the rule of law in two principles	12
A Regularity	12
B Publicity	15
III Vertical equality	18
A Respect and hubris	19
B Terror	20
C Normative robustness	22
IV Closing technicalities	24
2 The strong version of the rule of law	28
I Generality and the idea of a relevant distinction	29
A Many conceptions of generality	29
B Against the formal conception of generality	29
C Public reason as relevance criterion	33
II How to apply the public reason conception of generality	33
A Public reason: expressive	33
B Finding the expressive content of a law	35
1 Reasons and meanings	35
2 Proof of concept	38
III Generality as egalitarian principle	40
3 Generality and hierarchy	42
I The literacy tests: a model of nongeneral law	42
II The rule of law and social facts	45
A The disjunctive character of rule of law commands	45

III	The rule of law and the criminalization of poverty	45
A	The rule of law critique of economic injustice	47
IV	Is this still the rule of law?	48
V	Private power and ordinary citizens	51
A	Does the rule of law require ordinary citizens to obey the law?	51
B	The Jim Crow challenge	53
4	Egalitarian liberty and reciprocity in strategic context	58
I	The rule of law as a technology of constraint	59
II	Some arguments for the liberty thesis	62
A	The incentives argument	62
B	The chilling effects argument	63
1	The problem of complexity	66
C	The planning argument	68
D	Neorepublican liberty	70
E	Democratic liberty	73
III	Libertarian equality	74
5	Isonomia: The dawn of legal equality	78
I	How was the rule of law implemented in Athens?	79
A	An overview of the Athenian legal system	79
B	The rule of law and the oligarchy	80
C	The Athenian rule of law	80
1	Regularity	81
2	Publicity	83
3	Generality	84
II	Equality and the Athenian rule of law	85
A	A catalog of Athenian evidence	86
1	Forensic evidence for the Athenian equality thesis	86
2	Evidence from poets, philosophers, and historians	89
III	But is the rule of law really consistent with egalitarian democracy?	91
A	The conceptual objection: constitutionalism as the rule of law	91
B	The practical objection: arbitrary democracy and the trial of the generals	93
C	The problem of informality	94
IV	Law contra oligarchy	95
V	Appendix: A brief time line of the late-fifth-century Athenian upheavals	95
6	The logic of coordination	97
I	The strength <i>topos</i> and the amnesty	97
A	The struggle between oligarchs and democrats, an overview	98
B	The puzzle of the amnesty	99

C	Did the Athenians learn from experience?	103
D	The problems of commitment: disagreement and temptation	105
E	Athens as a case of transitional justice	108
II	Formalizing and generalizing Athens	109
A	The model	112
1	Proof	117
2	Analysis	117
7	Parliament, Crown, and the rule of law in Britain	120
I	The British rule of law: illusory?	121
A	Hobbesian sovereignty and the absolute-power coalition	123
B	Constraint, coordination, custom, and the constitution	124
C	A historical precedent: customary manorial courts	128
II	The rule of law and equal status in seventeenth-century England	129
A	Magna Carta as egalitarian text	130
B	The parliamentary debates of 1628	134
1	Villeins and status	136
2	Dishonor, fear, and contempt	137
3	Political liberty and coordination	139
4	Reviewing the evidence	140
III	Civic trust and the British rule of law in later years	141
8	The logic of commitment	143
I	The rule of law's teleology of equality?	145
A	Commitment, full generality, and the internal point of view	151
II	Commitment and institutions	154
A	Democracy and the rule of law	158
III	Diversity, generality, and democracy	160
IV	Simulating legal stability	161
9	The role of development professionals: measurement and promotion	168
I	Rule of law development	168
A	Persuasive commitment-building	171
B	Generality development	172
C	Radical localism	172
1	Locally driven project design	175
II	Studying the rule of law: new empirical directions	176
A	The new measure: methods	179
1	Structure and scaling	179
2	Item selection and scale-fitting	181
B	Limitations	183
C	Behavior of the measure	183

III Appendix: Scores and states	184
A Rule of law scores	185
B The rule of law and other measures of political well-being	186
Conclusion: a commitment to equality begins at home	189
Notes	197
References	249
Index	271