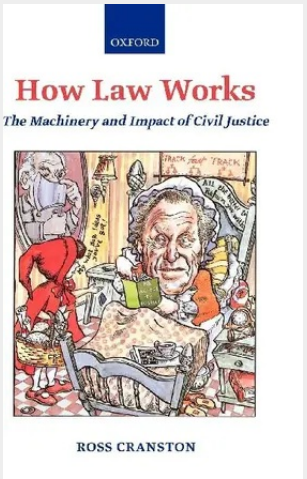
Cranston

How Law Works

The Machinery and Impact of Civil Justice



Access to justice, equality before the law, and the rule of law are three fundamental values underpinning the civil justice system. This book examines these values and how, although they do not have great leverage in decision making by the courts, they are a crucial foundation of the civil justice system and a powerful argument for arrangements such as legal aid, the impartial application of law, and the independence of the judiciary. The second theme of this book concerns the role of procedure, often regarded as of secondary importance compared with substantive law. Taking the definition of procedure at its widest, the book discusses Lord Woolf's Inquiry, and demonstrates how procedural reform can maximize a fundamental value like access to justice. This linkage is furthered in a later analysis of access to justice comparatively, in relation to civil and commercial law. Thirdly, the book looks at understanding how law works, and how it could be made to work better, and concludes that this demands both a knowledge of law and of law's context. This theme offers a framework for the book, which then goes on to deal with the machinery of the law, and discusses what the courts do, civil procedure, and the ethics of lawyer's conduct, all in relation to the broader context of access to justice. This broader context of the law is particularly prominent in the latter half of the book which deals with various dimensions of the impact of the law. Including studies of civil and social rights in practice, the role of European law in the destruction of Aboriginal society in Australia, and commercial law in Asia, these examples raise issues about the gap between the law and reality, the potential law has to destroy social patterns, and the relationship between law and economic development. This is a thought-provoking, critical exploration which has much to offer those interested in the operation of the civil justice system.

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