

1. Record Nr.	UNINA9910784265603321
Autore	Siltala Raimo
Titolo	A theory of precedent : from analytical positivism to a post-analytical philosophy of law / / by Raimo Siltala
Pubbl/distr/stampa	Oxford [England] ; ; Portland, Oregon : , : Hart Publishing, , 2000
ISBN	1-4725-6219-4 1-280-80056-9 9786610800568 1-84731-150-4
Edizione	[1st ed.]
Descrizione fisica	1 online resource (304 p.)
Disciplina	340/.1
Soggetti	Law - Philosophy Stare decisis
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Note generali	Description based upon print version of record.
Nota di bibliografia	Includes bibliographical references (pages [269]-278) and index.
Nota di contenuto	Part A: How to Do Things with Precedents. 1 Frame of Analysis ; 2 The Concept of a Legal Norm: Legal Rules and Principles ; 3 A Theory of Precedent Ideology ; 4 Confrontations ; 5 Theory and Practice of Precedent-Following -- Part B: A Theory of the Multi-Level Structure of Law. 6 Towards a Rule of Law Ideology for Precedents ; 7 Discourse-Theoretical Frame of Law: Ratio and Auctoritas, and the Felicity Conditions of Legal Adjudication ; 8 The Quest for the Final Premises of Law - I: The Infrastructures of Legal Norm Constitution ; 9 The Quest for the Final Premises of Law - II: The Infrastructures of Judicial Signification under Precedent-Following ; 10 Summary.
Sommario/riassunto	"Analytical jurisprudence has been mostly silent on the role of precedent in legal adjudication. What is the content of a judge's precedent ideology, or the rule of precedent-recognition, by means of which the ratio of a case is to be distinguished from mere dicta? In this study, the author identifies six types of judicial precedent-ideology, among them judicial legislation, systemic construction of the underlying reasons of law in the Dworkinian sense, and a radical re-evaluation of the merits of a prior case in later adjudication, as envisioned by the American Realists. These competing models are

tested against judicial experiences in the UK, US, France, Italy, Germany and Finland. By this means Lon Fuller's famous 'internal morality of law' is shown to function rather poorly in the context of precedents, and the author therefore suggests a redefinition of the rule which makes it work for precedent. This, in turn leads the author to confront fundamental questions about the normative nature of law. Is Kelsen's grundnorm or Hart's ultimate rule of recognition a valid rule, in the image of legal rules proper, or is it merely a social fact, observable only in the practices and behaviour of judges and other officials? The author claims that Hart is caught between Kelsen and J.L. Borges, the late Argentinian fabulist, in so far as the ontology and epistemology of the rule of recognition are concerned. This leads the author to the conclusion that the two predicaments affecting analytical positivism, namely the threat of endless self-referentiality, or infinite regress, can only be accounted for by means of recourse to the philosophy of deconstruction as posited by Jacques Derrida."--Bloomsbury Publishing.
