Democracy and the Rule of Law

The question posed in this book is why governments do or do not act according to laws. The traditional answer of jurists has been that law has an autonomous causal efficacy: law rules when actions follow anterior norms; the relation between laws and actions is one of obedience, obligation, or compliance. Contrary to this normative conception, the authors defend a positive interpretation according to which the rule of law results from the strategic choices of relevant actors. Rule of law is just one possible outcome in which political actors process their conflicts using whatever resources they can muster: only when these actors seek to resolve their conflicts by recourse to law, does law rule. What distinguishes “rule of law” as an institutional equilibrium from “rule by law” is the distribution of power. The former emerges when no one group is strong enough to dominate the others and when the many use institutions to promote their interests. Conflicts between rule of majority and rule of law are simply conflicts in which actors use either votes or laws as their instruments of power.

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Democracy and the Rule of Law

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