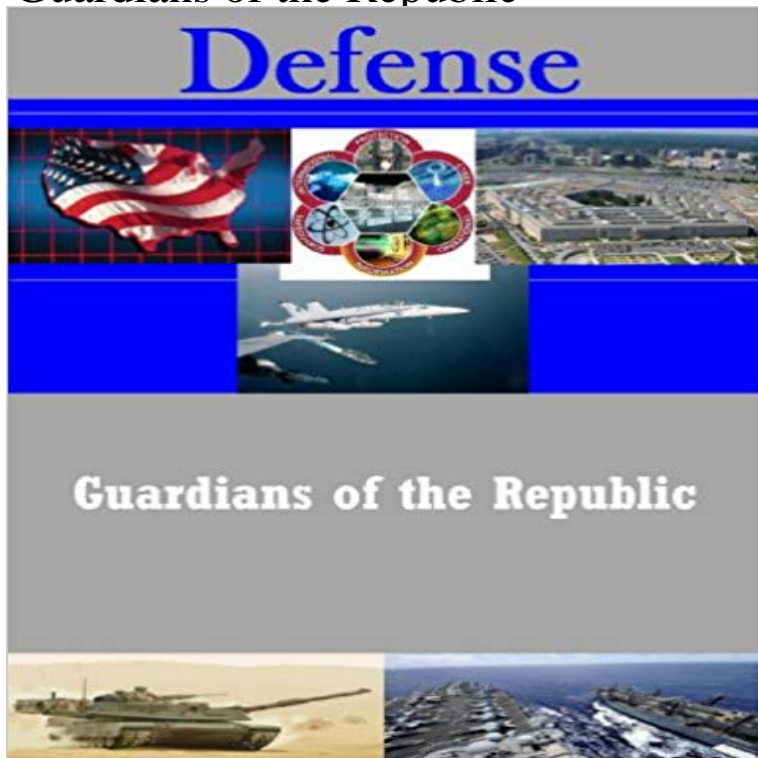


Guardians of the Republic



This paper addresses the question of whether it is just that the commanding officer who convenes a court-martial selects the voting members of the court-martial panel. To ask whether a practice is just presupposes that some things are just and others are not, and that we can tell the difference. Also, it is a different question than asking whether it accords with constitutional principles or with positive law. Those are important questions, but they are not our question. To pursue a meaningful answer to our question, this paper attempts an interdisciplinary approach of employing philosophical reasoning, with historical and literary illustration, in the evaluation of a legal practice. The second part of this introduction distinguishes philosophical reasoning from legal reasoning to clarify the papers use of sources and authorities, which will differ from Anglo-American legal practice. The first substantive portion of the paper will offer an elementary model of natural law reasoning as a point of departure for thinking about law and justice. Although the term natural law has many implications, in this paper it stands for the modest common sense proposition that some rights and duties can be discerned, by operation of our reason, from our common humanity and our human relationships. Natural law reasoning has been extended far beyond this basic proposition - but not in this paper, which concedes that disagreement is reasonable and inevitable in the application of this proposition. Because our philosophical question is practical, the paper next turns to the practical philosophers of the ancient world, the Roman Stoics, for insights that will enhance our appreciation of basic natural law reasoning as it applies to human equality and government institutions. We will see that some political philosophers - especially Plato, whose influence has been so profound in Western

philosophy - posited that government power should be employed to create societies characterized by unified effort in pursuit of a single vision of the ideal society. In contradistinction to the idea that a common human nature justifies or necessitates agreement on the character of the perfect human community, we posit pluralism - the idea that human values conflict to such an extent that, in accordance with the principle of human equality, government power should not be employed to enforce an agenda in furtherance of one particular vision of the ideal human community. To illustrate the danger of government power in the service of an intolerant Utopian vision, we see how the rise of the murderous National Socialist regime (among others) was a problem not of democracy or positive law, but of pluralism.

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