



Judicial Review and Bureaucratic Impact

International and Interdisciplinary Dimensions

Edited by

MARC HERTOUGH AND SIMON HALLIDAY

CAMBRIDGE STUDIES IN LAW AND SOCIETY

Judicial Review And Bureaucratic Impact International And Interdisciplinary Perspectives

Jeff King



Judicial Review And Bureaucratic Impact International And Interdisciplinary Perspectives:

Judicial Review and Bureaucratic Impact M. L. M. Hertogh, Simon Halliday, 2004-08-19 International scholars from political science and law socio legal studies present new research which focuses on the relationship between judicial review and bureaucratic behaviour Individual chapters consider fundamental conceptual and methodological issues in addition to presenting empirical case studies from various parts of the world the United States Canada Australia Israel and the United Kingdom This is a landmark text offering an international interdisciplinary and empirical perspective on judicial review s impact on bureaucracies It will significantly advance the research agenda concerning judicial review and its relationship to social change

Reconstructing Judicial Review Sarah Nason, 2016-12-01 This book offers a new interpretation of judicial review in England and Wales as being concerned with the advancement of justice and good governance as opposed to being concerned primarily with ultra vires or common law constitutionalism It is developed both from examining the functions and values that ought to be served by judicial review and from analysis of empirical social facts about judicial review primarily as experienced in the Administrative Court Based on ground up case law analysis it constructs a new taxonomy on the grounds of judicial review mistake procedural impropriety ordinary common law statutory interpretation discretionary impropriety relevant irrelevant considerations breach of an ECHR protected right or equality duty and constitutional allocation of powers constitutional rights or other complex constitutional principles It explains each of these grounds what academic and judicial support there might be for them outside case law analysis and their similarities and differences when viewed against popular existing taxonomies It concludes that Administrative Court judges are engaged in ordinary common law statutory interpretation in approximately half of all cases and that where discretionary judgement is involved on the part of the initial decision maker judges do indeed consider their task to be one of determining whether the challenged decision was justified by reasoning of adequate quality It finds that judges apply ordinary common law principles of statutory interpretation with historical pedigrees including assessing the initial decision maker s reasoning with reference to statutory purpose and sifting relevant from irrelevant considerations including moral considerations The result is a ground breaking reassessment of the grounds of judicial review in England and Wales and the practice of the Administrative Court

Public Law Mark Elliott, Robert Thomas, 2014 Public Law is an introductory textbook that offers a mixture of black letter law and political analysis to give students an excellent grounding in the subject It covers all of the key topics on undergraduate courses and includes a number of pedagogical features to aid understanding

Administrative Law in Action Robert Thomas, 2022-02-10 This book investigates and analyses how administrative law works in practice through a detailed case study and evaluation of one of the UK s largest and most important administrative agencies the immigration department In doing so the book broadens the conversation of administrative law beyond the courts to include how administrative agencies themselves make apply and enforce the law Blending theoretical and empirical administrative legal analysis the book

demonstrates why we need to pay closer attention to what government agencies actually do how they do it how they are organised and held to account Taking a contextual approach the book provides a detailed analysis of how the immigration department performs its core functions of making policy and law taking mass casework decisions and enforcing immigration law The book considers major recent episodes of immigration administration including the development of the hostile environment policy and the treatment of the Windrush generation By examining a diverse range of material the book presents a model of administrative law based upon the organisational competence and capacity of administration and its institutional design Alongside diagnosing the immigration department s failings the book advances positive proposals for its reform

Access to Justice Ellie Palmer, Tom Cornford, Yseult Marique, Audrey Guinchard, 2016-01-28 Building on a series of ESRC funded seminars this edited collection of expert papers by academics and practitioners is concerned with access to civil and administrative justice in constitutional democracies where for the past decade governments have reassessed their priorities for funding legal services embracing new technologies that reconfigure the delivery and very concept of legal services cutting legal aid budgets and introducing putative cost cutting measures for the administration of courts tribunals and established systems for the delivery of legal advice and assistance Without underplaying the future potential of technological innovation or the need for a fair and rational system for the prioritisation and funding of legal services the book questions whether the absolutist approach to the dictates of austerity and the promise of new technologies that have driven the Coalition Government s policy can be squared with obligations to protect the fundamental right of access to justice in the unwritten constitution of the United Kingdom

The Judge and the Proportionate Use of Discretion Sofia Ranchordás, Boudewijn de Waard, 2015-06-12 This book examines different legal systems and analyses how the judge in each of them performs a meaningful review of the proportional use of discretionary powers by public bodies Although the proportionality test is not equally deep rooted in the literature and case law of France Germany the Netherlands and the United Kingdom this principle has assumed an increasing importance partly due to the influence of the European Court of Justice and European Court of Human Rights In the United States different standards of judicial review are applied to review arbitrary and capricious agency discretion However do US judges achieve a similar result to the proportionality or reasonableness test Drawing together a selection of key experts in the field this book analyses the principle of proportionality in the judicial review of administrative decisions from different perspectives The principle is first examined in the context of recent developments in the literature and case law including the inevitable EU influence then light shall be shed on the meaning of this principle in the specific case law of the European Court of Justice and European Court of Human Rights Finally the authors go on to explore the ways in which US judges consciously sanction the disproportionate and or unreasonable use of agency discretion In the legal systems where the proportionality test plays a very limited role Ranchordás and de Waard also try to clarify why this is the case and look at what alternative solutions have been found This book will

be of great interest to scholars of public and administrative law and EU law *Proportionality and Deference in Investor-State Arbitration* Caroline Henckels, 2015-10-15 In this study Caroline Henckels examines how investment tribunals have balanced the competing interests of host states and foreign investors in determining state liability in disputes concerning the exercise of public power Analyzing the concepts of proportionality and deference in investment tribunals decision making in comparative perspective the book proposes a new methodology for investment tribunals to adopt in regulatory disputes which combines proportionality analysis with an institutionally sensitive approach to the standard of review Henckels argues that adopting a modified form of proportionality analysis would provide a means for tribunals to decide cases in a more consistent and coherent manner leading to greater certainty for both states and investors and that affording due deference to host states in the determination of liability would address the concern that the decisions of investment tribunals unjustifiably impact on the regulatory autonomy of states Judging Social Rights Jeff King, 2012-05-10 Jeff King argues in favour of constitutionalising social rights and presents an incrementalist approach to judicial enforcement

Rights-based Litigation, Urban Governance and Social Justice in South Africa Marius Pieterse, 2017-09-08 Rights based Litigation Urban Governance and Social Justice in South Africa considers the overlap between legal and everyday struggles for social and spatial justice in the particular context of Johannesburg South Africa Drawing from literature across disciplines of law urban geography and urban planning as well as from reported case law concerning the invocation of constitutional rights in Johannesburg and other South African cities the book critically examines whether and to what extent the invocation of legal rights before South African courts have contributed to the advancement of social justice in the city It considers the impact of the legal assertion of different constituent aspects of the so called right to the city on the many people simultaneously performing the right the governance structures responsible for enabling and facilitating its enjoyment and thirdly the physical place in which it is performed Drawing broad conclusions on the utility of rights based litigation for the achievement of social change and spatial justice this book will be of interest to students and scholars of South Africa constitutional law human rights law regulatory law sociology of rights studies of law and society urban studies urban geography governance studies and development studies **Soft Law and Public Authorities** Greg Weeks, 2016-02-25 This book considers the phenomenon of soft law employed by domestic public authorities Lawyers have long understood that public authorities are able to issue certain communications in a way that causes them to be treated like law even though these are neither legislation nor subordinate legislation Importantly for soft law as a regulatory tool people tend to treat soft law as binding even though public authorities know that it is not It follows that soft law's binding effects do not apply equally between the public authority and those to whom it is directed Consequently soft law is both highly effective as a means of regulation and inherently risky for those who are regulated by it Rather than considering soft law as a form of regulation this book examines the possible remedies when a public authority breaches its own soft law upon which people have relied

thereby suffering loss It considers judicial review remedies modes of compensation which are not based upon a finding of invalidity namely tort and equity and soft challenges outside the scope of the courts such as through the Ombudsman or by seeking an ex gratia payment Law in Politics, Politics in Law David Feldman,2014-07-18 A great deal has been written on the relationship between politics and law Legislation as a source of law is often highly political and is the product of a process or the creation of officials often closely bound into party politics Legislation is also one of the exclusive powers of the state As such legislation is plainly both practical and inevitably political at the same time most understandings of the relationship between law and politics have been overwhelmingly theoretical In this light public law is often seen as part of the political order or as inescapably partisan We know relatively little about the real impact of law on politicians through their legal advisers and civil servants How do lawyers in government see their roles and what use do they make of law How does politics actually affect the drafting of legislation or the making of policy This volume will begin to answer these and other questions about the practical day to day relationship between law and politics in a number of settings It includes chapters by former departmental legal advisers drafters of legislation law reformers judges and academics who focus on what actually happens when law meets politics in government **The Oxford Handbook of Empirical Legal Research** Peter Cane,Herbert Kritzer,2012-05-17 The empirical study of law legal systems and legal institutions is widely viewed as one of the most exciting and important intellectual developments in the modern history of legal research Motivated by a conviction that legal phenomena can and should be understood not only in normative terms but also as social practices of political economic and ethical significance empirical legal researchers have used quantitative and qualitative methods to illuminate many aspects of law s meaning operation and impact In the 43 chapters of The Oxford Handbook of Empirical Legal Research leading scholars provide accessible and original discussions of the history aims and methods of empirical research about law as well as its achievements and potential The Handbook has three parts The first deals with the development and institutional context of empirical legal research The second and largest part consists of critical accounts of empirical research on many aspects of the legal world on criminal law civil law public law regulatory law and international law on lawyers judicial institutions legal procedures and evidence and on legal pluralism and the public understanding of law The third part introduces readers to the methods of empirical research and its place in the law school curriculum Public Law within Government T. P. B. Rattenbury,2008-04-17 Drawing on rich source material one local authority s involvement in the epic central local confrontation over local government spending in 1980s England this book develops a multifaceted and widely applicable analysis of public law within government as a process of sustaining the art of the possible The Ombudsman Enterprise and Administrative Justice Trevor Buck,Richard Kirkham,Brian Thompson,2016-02-17 The statutory duty of public service ombudsmen PSO is to investigate claims of injustice caused by maladministration in the provision of public services This book examines the modern role of the ombudsman within the overall emerging system of administrative

justice and makes recommendations as to how PSO should optimize their potential within the wider administrative justice context. Recent developments are discussed and long standing questions that have yet to be adequately resolved in the ombudsman community are re-evaluated given broader changes in the administrative justice sector. The work balances theory and empirical research conducted in a number of common law countries. Although there has been much debate within the ombudsman community in recent years aimed at developing and improving the practice of ombudsmanship, this work represents a significant advance on current academic understanding of the discipline.

The Oxford Handbook of Administrative Justice Marc Hertogh, Richard Kirkham, Robert Thomas, Joe Tomlinson, 2022. The core animating feature of administrative justice scholarship is the desire to understand how justice is achieved through the delivery of public services and the actions, inactions and decision making of administrative bodies. The study of administrative justice also encompasses the redress systems by which people can challenge administrative bodies to seek the correction of injustices. For a long time now scholars have been interested in administrative justice but without necessarily framing their work as such. Rather than existing under the rubric of administrative justice, much of the research undertaken has existed within sub-categories of disciplines such as law, sociology, public policy, politics and public administration. Consequently, although aspects of the topic have attracted rich contributions across such disciplines, administrative justice has rarely been studied or taught in a manner that integrates these areas of research more systematically. This Handbook signals a major change of approach. Drawing together a group of world leading scholars of administrative justice from a range of disciplines, The Oxford Handbook of Administrative Justice shows how administrative justice is a vibrant, complex and contested field that is best understood as an area of inquiry in its own right rather than through traditional disciplinary silos.

Judicial Activism in Bangladesh Ridwanul Hoque, 2011-01-18. This book critically examines the evolving global trend of judicial activism with particular reference to Bangladesh. It constructs judicial activism as a golden mean adjudicative technology standing between excessive judicial assertion and unacceptable judicial passivity that may leave injustices unredressed. It argues that judicial balancing between over activism and meek administration of justice should essentially be predicated upon domestic conditions and the needs and fundamental public values of the judges' respective society. Providing cross-jurisdictional empirical evidence, the study demonstrates that judicial activism steered towards improving justice and grounded in one's societal specificities can be exercised in a morally and legally legitimate form and without rupturing the balance of powers among the state organs. This study has sought to displace the myth of judicial activism as constitutional transgression by unelected judges, arguing that judicial activism is quite different from excessivism. It is argued and shown that a particular judge or judiciary turns out to be activist when other public functionaries avoid or breach their constitutional responsibilities and thus generate injustice and inequality. The study treats judicial activism as the conscientious exposition of constitutional norms and enforcement of public duties of those in positions of power. The study assesses whether Bangladeshi judges have been striking the correct

balance between over activism and injudicious passivity Broadly the present book reveals judicial under activism in Bangladesh and offers insights into causes for this It is argued that the existing milieu of socio political injustices and over balance of constitutional powers in Bangladesh calls for increased judicial intervention and guidance of course in a balanced and pragmatic manner which is critical for good governance and social justice Writing about judicial activism easily gets shackled by fussy and pedestrian debates about what judges may or may not do as unelected agents of governance The book goes much beyond such reductionist pedestrianisation of law for it courageously lifts the debate into the skies of global legal realism The analysis perceptively addresses bottlenecks of justice identifying shackles and mental blocks in our own minds against activating concerns for justice for the common citizen Prof Werner Menski Foreword

Property Rights and Neoliberalism Laura J. Hatcher, 2016-04-15 Property rights and efforts to curb state appropriation of private properties for public purposes have always held high status on the political agenda of the US and many other nations that feature a corporate capitalist economic system In addition to this over the last several decades conservative libertarian and neo liberal groups have put constitutional demands for greater property protection on the agendas of courts in several countries Studying property rights mobilization in both domestic and comparative contexts the contributors to this volume bring a range of social science perspectives to address three primary issues the contours and characteristics of property rights mobilizations the degree to which property rights movements have influenced development of law in demonstrable ways and the broader cultural social and economic implications of modern era property rights litigation and legal mobilizations This will be a key text for anyone working within or interested in property rights

Adjudicating New Governance Emilia Korkea-aho, 2015-02-11 This book engages with and advances the current debate on new governance by providing a much needed analysis of its relationship with the courts New modes of governance have produced a plethora of instruments and actors at various levels that present a challenge to more traditional forms of command and control regulation In this respect it is commonly maintained that new governance generally and political experimentation more broadly weakens the power of the courts producing a legitimacy problem for new forms of governance and perhaps more fundamentally for law itself Focusing on the European Union this book offers a new account of the role of the courts in new governance Connecting new governance with the conception of deliberative democracy this book demonstrates how the role of courts has been transformed by the legal and political experimentation currently taking place in the European Union Drawing on a series of case studies it is argued that although deliberations in governance frameworks provide little by way of hard binding law these collaborative frameworks nevertheless condition judicial decision making With far reaching implications for how we understand the justiciability of soft law participation rights the legitimacy of governance measures and the role of courts beyond the nation state this book argues that far from undermining the power of the courts governance regimes assist their functioning Its analysis will therefore be of considerable interest for lawyers political scientists and anyone interested in the

transformation of the judiciary in the era of new governance Judicial Independence in Transitional Democracies Nauman Reayat, Rhona K. M. Smith, Moohyung Cho, 2024-12-31 This book presents interdisciplinary and comparative analyses of judicial independence in transitional democracies across Asia Latin America Eastern Europe the Middle East and Africa Although judicial empowerment and independence in transitional democracies have gained both academic and real world prominence in recent decades an ongoing debate persists regarding the nature scope and determinants of judicial independence in transitional settings Some transitional democracies successfully develop democracy and the rule of law with the sustained growth of judicial independence whereas others grapple with substantial challenges and move more towards authoritarianism This book examines factors that drive de jure and de facto judicial independence in transitional democracies and evaluates their relationship In doing so it identifies challenges and opportunities associated with developing judicial independence in transitional democracies At the intersection of political science and law the work will be a valuable resource for academics researchers and policymakers in constitutional law constitutional politics and human rights law

Deconstructing the Reconstruction Dina Francesca Haynes, 2016-12-05 Bringing together a range of contributors from multiple countries this interdisciplinary volume offers a unique field view of the rule of law and human rights reform in the reconciliation and reconstruction process The contributors all worked in Bosnia and Herzegovina during the ten years after the Dayton Peace Accords were signed here they pause to analyze and critique the work they did The contributors offer insights from within a variety of international organizations including the Office of the High Representative the Organization for Security and Cooperation in Europe and the United Nations Allowing those who were in the field to identify discuss and reflect upon the programmes and policies the collection reveals how the programmes were created what laws they were pursuant to and what alternatives were rejected and why The authors not only assess both the positive and negative aspects and outcomes of their work but also comment on lessons learned for future post conflict reconstruction scenarios

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