

# A SPECIAL RELATIONSHIP?

*American Influences on Public Law in the UK*

*Edited by*  
IAN LOVELAND



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# Special Relationship American Influences On Public Law In The Uk

**Lo Pui Yin**



## **Special Relationship American Influences On Public Law In The Uk:**

UK Public Law and European Law Gordon Anthony, 2002-05-11 Academic attention has in recent years increasingly focused upon the Europeanization of national legal orders The interaction of domestic and supranational standards while often presented as problematic enables national courts to use European law as a reference point against which to develop domestic principle and practice The effects of such borrowing can be far reaching Courts may assume an enhanced institutional role relative to other branches of the State and individuals may benefit from the introduction of new remedies and principles of judicial review This book examines the dynamics of the process whereby UK courts borrow principle and practice from European law It argues that recent internal developments in UK law notably the passage of the Human Rights Act present new possibilities for legal integration Although UK courts have already demonstrated a willingness to use European law creatively the book suggests that integration has been unduly constrained by the previously unincorporated status of the ECHR and by the courts justification for the reception of EU law Focusing in particular on the principles of administrative law applied by courts in judicial review proceedings the book highlights how the emergence of new principles of review has been frustrated by the courts inability to view EU law and the ECHR as part of an interlocking whole The book's central argument therefore is that the Human Rights Act coupled with the more general programme of constitutional reform introduced by New Labour now offers the courts the opportunity to reassess the nature of the interactive relationship that domestic law has with European law UK Public Law and European Law The Dynamics of Legal Integration will be of interest to public lawyers European lawyers and political scientists alike It offers a comprehensive overview of existing jurisprudence dealing with the reception of European law into the domestic order More significantly it places that jurisprudence within the wider context of legal and political change ongoing within and without the United Kingdom *The Unity of Public Law* David Dyzenhaus, 2004-03 This book tackles the relationship between the common law of judicial review the written constitution and public international law **The Oxford Handbook of Comparative Administrative Law** Peter Cane, Herwig Hofmann, Eric C. Ip, Eric Chi Yeung Ip, Peter L. Lindseth, 2021 In this Handbook distinguished experts in the field of administrative law discuss a wide range of issues from a comparative perspective The book covers the historical beginnings of comparative administrative law scholarship and discusses important methodological issues and basic concepts such as administrative power and accountability The Province of Administrative Law Michael Taggart, 1997-06-19 This book draws upon the experiences of several jurisdictions to analyse the scope development and future of administrative law *Importing the First Amendment* Ian Loveland, 1998-07-01 These studies by a group of eminent academics and judges compare the different approaches of the British European and American courts to the questions of free speech which lie at the heart of much debate in constitutional law The authors of these studies adopt opposing views some favouring the pursuit of a US inspired approach to protecting free speech in the belief that the political culture of British society would be

enhanced if our courts were to fashion our common law in accordance with many First Amendment principles Others more sceptically reject this embrace of US legal culture offering distinctly American sceptic views and arguing for a solution based on common law principles and on the jurisprudence of the European courts

**Public Law in a Multi-Layered Constitution**

Nicholas Bamforth, Peter Leyland, 2003-10-30 How is the distribution of power between the different levels of the contemporary constitution to be policed What is the emerging contribution of the courts in regard to EC law the Human Rights Act 1998 and devolution What roles should be played by the legislative and judicial bodies at each level Who should have access to the courts in public law disputes and on what grounds should the courts regulate the exercise of public power Can a coherent distinction be maintained between public and private law These essays by leading public law scholars explore the allocation and regulation of public power in the United Kingdom At the beginning of the twenty first century it appears that the traditional Diceyan model of a unitary constitution has been superseded as power has come to be distributed particularly in the post 1997 period between institutions at European national devolved and local level Furthermore the courts have come to play a powerful role at all levels through judicial review while forms of regulation and contracting together with other informal techniques of governance have emerged The contemporary constitution can be characterised as involving a multi layered distribution of power a situation which raises many key questions about the role of public law The essays in this important collection tackle such questions from a variety of perspectives aiming between them to provide a dynamic picture of the role of public law in the contemporary multi layered constitution

*The Judicial Construction of Hong Kong's Basic Law* Lo Pui Yin, 2014-02-13 China has granted Hong Kong a high degree of autonomy through the Basic Law under the principle of one country two systems Hong Kong's legal system under the Basic Law is based on the common law and is administered by independent courts By interpreting the Basic Law Hong Kong's courts have reviewed legislation and executive decisions and have achieved a second founding of the Basic Law as an enforceable constitution This book is the first comprehensive account of how the Hong Kong courts gained this vital power of judicial review Through an analysis of important court cases since 1997 the book also examines how the Hong Kong courts maintain their relationships with the executive and legislature and with China's Central Authorities which have been sceptical of these achievements Hong Kong's unique status as a common law jurisdiction within socialist China poses risks of integration this book concludes that the best choice lies in maintaining and developing a cosmopolitan judicial outlook This book will become the definitive account of the judicial role in Hong Kong after 1997 Writing with great flair Dr Lo provides a richly contextual story of judges making great use of a novel legal arrangement to tread new ground This thorough work of scholarship is a must read for students of Hong Kong law as well as those interested in China and comparative judicial politics more broadly Tom Ginsburg Leo Spitz Professor of International Law University of Chicago Law School Lo Pui Yin has written a comprehensive and sophisticated introduction to the major cases and jurisprudence of the Hong Kong courts Engaging important current controversies he

offers a powerful defence of the present system of constitutional review resting on Hong Kong's common law tradition Mark Tushnet William Nelson Cromwell Professor of Law Harvard Law School This is a thoughtful and scholarly account of an important topic the construction of the Basic Law by the HKSAR courts This is a question of vital importance to Hong Kong but it should also be of interest and importance to Mainland legal scholarship Moreover the comparative constitutional lawyers across the world will be intrigued by this rigorous and perceptive account of the bridge between the common law of Hong Kong and the legal system of the PRC Christopher Forsyth Professor of Public Law and Private International Law University of Cambridge Lo Pui Yin has produced a monumental book of great learning profound research and insightful reflections on the efforts of Hong Kong's judiciary in maintaining the rule of law within the framework of the Basic Law developing its jurisdiction and jurisprudence with great skill learning and now a bit of tact Lo's mastery of the case law is unrivalled and his legal and political analysis masterly Yash Ghai Emeritus Professor University of Hong Kong and author of Hong Kong's New Constitutional Order Taking Law Seriously James Goudkamp, Mark Lunney, Leighton McDonald, 2022-01-27 This book celebrates the scholarship of Peter Cane The significance and scale of his contributions to the discipline of law over the last half century cannot be overstated In an era of increasing specialisation Cane stands out on account of the unusually broad scope of his interests which extend to both private and public law in equal measure This substantive breadth is combined with remarkable doctrinal historical comparative and theoretical depth This book is written by admirers of Cane's work and the essays probe a wide range of issues especially in administrative law and tort law Consistently with the international prominence that Cane's research has enjoyed the contributors are drawn from across the common law world The volume will be of value to anyone who is interested in Cane's towering contributions to legal scholarship and administrative law and tort law more generally **American Exceptionalism and Human Rights** Michael Ignatieff, 2009-01-10 With the 2003 invasion and subsequent occupation of Iraq the most controversial question in world politics fast became whether the United States stands within the order of international law or outside it Does America still play by the rules it helped create American Exceptionalism and Human Rights addresses this question as it applies to U S behavior in relation to international human rights With essays by eleven leading experts in such fields as international relations and international law it seeks to show and explain how America's approach to human rights differs from that of most other Western nations In his introduction Michael Ignatieff identifies three main types of exceptionalism exemptionalism supporting treaties as long as Americans are exempt from them double standards criticizing others for not heeding the findings of international human rights bodies but ignoring what these bodies say of the United States and legal isolationism the tendency of American judges to ignore other jurisdictions The contributors use Ignatieff's essay as a jumping off point to discuss specific types of exceptionalism America's approach to capital punishment and to free speech for example or to explore the social cultural and institutional roots of exceptionalism These essays most of which appear in print here for

the first time and all of which have been revised or updated since being presented in a year long lecture series on American exceptionalism at Harvard University's John F Kennedy School of Government are by Stanley Hoffmann Paul Kahn Harold Koh Frank Michelman Andrew Moravcsik John Ruggie Frederick Schauer Anne Marie Slaughter Carol Steiker and Cass Sunstein

*Sourcebook on Environmental Law* Maurice Sunkin, 2001-11-30

Chapter 1 SOURCES AND PRINCIPLES OF ENVIRONMENTAL LAW

chapter THE SOURCES OF ENVIRONMENTAL LAW Environmental law the international perspective chapter The sources of international environmental law chapter Customary international law General principles of international law chapter Judicial decisions and the writings of eminent publicists United Nations General Assembly Resolutions chapter Environmental law European Community perspective chapter The institutions of the EC chapter Law making by Community institutions chapter Voluntary agreements chapter Application of direct effect chapter Environmental directives with direct effect chapter The duty to interpret national law in the light of a directive indirect effect chapter The subsidiarity principle chapter The EC's Environmental Action Programmes chapter Statutes Delegated legislation Codes of Practice chapter Ministerial guidance Government White Papers Reports of the Royal Commission on Environmental Pollution chapter Select Committee reports The Environment Agency chapter PRINCIPLES OF ENVIRONMENTAL LAW The relationship between principles Sustainable development chapter Preventive and precautionary principles chapter The principle of citizen participation and the right to a healthy environment chapter The principle of integration chapter Integrated pollution control chapter ENVIRONMENTAL PRINCIPLES THE KEY INSTRUMENTS Defining the environment and pollution of the environment Stockholm Declaration on the Human Environment 1972 chapter Rio Declaration on Environment and Development 1992 chapter LIABILITY FOR ENVIRONMENTAL DAMAGE International liability for environmental damage chapter European Community law chapter REFERENCES AND FURTHER READING chapter USEFUL WEBSITES chapter AIR AND ATMOSPHERIC POLLUTION chapter Structure of the chapter AIR AND ATMOSPHERIC POLLUTION THE INTERNATIONAL CONTEXT Customary international law chapter Framework Convention on Climate Change 1992 chapter Kyoto Protocol 1997 chapter Monitoring and Evaluation Protocol 1984 Sulphur Protocols 1985 and 1994 Nitrogen Oxides Protocol 1988 chapter Volatile Organic Compounds Protocol 1991 chapter Vienna Convention for the Protection of the Ozone Layer 1985 and its Montreal Protocol 1987 EUROPEAN COMMUNITY LAW chapter Sulphur in air chapter Lead in air chapter Vehicle emissions chapter Emissions from industrial plants chapter Towards a unified framework for EC air quality law and policy Air Quality Framework Directive 96/62 chapter CAFE chapter Local air quality management areas AQMAs chapter Road traffic pollution chapter Restricting the use of roads and traffic management chapter REFERENCES AND FURTHER READING chapter USEFUL WEBSITES chapter WATER AND MARINE POLLUTION chapter INTERNATIONAL LAW UN Convention on the Law of the Sea 1982 chapter International legal regime for vessel source marine oil pollution chapter MARPOL Convention 1973/78 chapter Measures controlling the release of substances into water

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**Law and Administration** Carol Harlow, Richard Rawlings, 2006 Legal Culture, Legality and the Determination of the Grounds of Judicial Review of Administrative Action in England and Australia Voraphol Malsukhum, 2021-07-01 This book presents a navigating framework of legal culture and legality to facilitate a comprehensive understanding of the English and Australian determination of the grounds of judicial review This book facilitates tangible process of how and why jurisdictional error jurisdictional fact proportionality and substantive legitimate expectations are debatable in English law while they are either completely rejected or firmly entrenched in Australian law This book argues that these differences are not just random Legality is not just a fig leaf but is profoundly rooted in legal systems legal culture hence it dictates the way in which courts empower justify constrain or limit the scope of judicial review This book presents evidence that courts differ in legal systems and apply diverse ways to determine the scope of judicial review based on their deep understanding of legality which is embedded in the legal culture of their legal system This book uses comparative methodology and develops this framework between English and Australian law Although obvious and important this book presents a kind of examination that has never been undertaken in this depth and detail before

**Contested Words** Ian Cram, 2016-05-13 In modern liberal democracies rights based judicial intervention in the policy choices of elected bodies has always been controversial For some such judicial intervention has trivialized and impoverished democratic politics For others judges have contributed to a dynamic and healthy dialogue between the different spheres of the constitution removed from pressures imposed on elected representatives to respond to popular sentiment This book provides a critical evaluation of ongoing debates surrounding the judicial role in protecting fundamental human rights focusing in particular on legislative executive abridgment of a core freedom in western society

namely liberty of expression A range of types of expression are considered including expression related to electoral processes political expression in general and sexually explicit forms of expression

**Comparative Administrative Law** Susan Rose-Ackerman, Peter L. Lindseth, Blake Emerson, 2017-08-25 A comprehensive overview of the field of comparative administrative law that builds on the first edition with many new and revised chapters additional topics and extended geographical coverage This Research Handbook's broad multi method approach combines history and social science with more strictly legal analyses This new edition demonstrates the growth and dynamism of recent efforts spearheaded by the first edition to stimulate comparative research in administrative law and public law more generally reaching across different countries and scholarly disciplines

**American Legal Education Abroad** Susan Bartie, David Sandomierski, 2021-07-06 A critical history of the Americanization of legal education in fourteen countries The second half of the twentieth century witnessed the export of American power both hard and soft throughout the world What role did US cultural and economic imperialism play in legal education American Legal Education Abroad offers an unprecedented and surprising picture of the history of legal education in fourteen countries beyond the United States Each study in this book represents a critical history of the Americanization of legal education reexamining prevailing narratives of exportation transplantation and imperialism Collectively these studies challenge the conventional wisdom that American ideas and practices have dominated globally Editors Susan Bartie and David Sandomierski and their contributors suggest that to understand legal education and to respond thoughtfully to the mounting present day challenges it is essential to look beyond a particular region and consider not only the ideas behind legal education but also the broader historical political and cultural factors that have shaped them American Legal Education Abroad begins with an important foundational history by leading Harvard Law School historian Bruce Kimball who explains the factors that created a transportable American legal model and the book concludes with reflections from two prominent American law professors Susan Carle and Bob Gordon whose observations on recent disruptions within US law schools suggest that their influence within the global order of legal education may soon fall into further decline This book should be considered an invaluable resource for anyone in the field of law

**Public Interest Environmental Litigation in India, Pakistan, and Bangladesh** Jona Razzaque, 2004-01-01 This research examines the growth and expansion of public interest environmental litigation PIEL in India and analyses the changes that are influencing the development of PIEL in Bangladesh and Pakistan The necessity for this research lies in the rapid degradation of environment and the need of efficient environmental management in the three countries of the South Asian region Here we compare the legal systems of the three countries from the environmental point of view discuss new ideas and directions and critically analyse the legal provisions that would help to apply environmental norms These offer the legislators a chance to find out what can be applied in their own region thus developing their existing legal mechanisms About the author Jona Razzaque is barrister and holds a PhD in law from the University of London She works in the field of access to environmental



justice and has published numerous articles on this issue She taught law in Queen Mary College and School of Oriental and African Studies under the University of London She is currently working as a lawyer in the Foundation for International Environmental Law and Development FIELD on cross themed projects related to bio diversity trade and climate change

**Constitutional Idolatry and Democracy** Brian Christopher Jones, 2020-06-26 Constitutional Idolatry and Democracy investigates the increasingly important subject of constitutional idolatry and its effects on democracy Focussed around whether the UK should draft a single written constitution it suggests that constitutions have been drastically and persistently over sold throughout the years and that their wider importance and effects are not nearly as significant as constitutional advocates maintain Chapters analyse whether written constitutions can educate the citizenry invigorate voter turnout or deliver We the People sovereignty

**The Unpredictable Constitution** Norman Dorsen, 2002 The Unpredictable Constitution brings together a distinguished group of U S Supreme Court Justices and U S Court of Appeals Judges who are some of our most prominent legal scholars to discuss an array of topics on civil liberties In thoughtful and incisive essays the authors draw on decades of experience to examine such wide ranging issues as how legal error should be handled the death penalty reasonable doubt racism in American and South African courts women and the constitution and government benefits Contributors Richard S Arnold Martha Craig Daughtry Harry T Edwards Ruth Bader Ginsburg Betty B Fletcher A Leon Higginbotham Jr Lord Irvine of Lairg Jon O Newman Sandra Day O Connor Richard A Posner Stephen Reinhardt and Patricia M Wald

**Administrative Law** Steven Cann, 2018-06-14 This title was first published in 2002 Designed to complement the first volume on administrative law which was published as part of the original series of The International Library of Essays in Law and Legal Theory the articles contained in this volume pick up on themes dealt with in the first while others reflect different concerns and new developments in administrative law scholarship It offers a representative sample of the best contemporary writing in administrative law theoretical empirical and doctrinal What ties all the essays in this volume together is not that they fall within the province of administrative law but that they are all concerned with the legal framework within which government business is conducted and government policies are pursued by executive action

Civil Society and Legitimate European Governance Stijn Smismans, 2006-01-01 Smismans gathers a fine selection of papers The book gains particular authority from its interdisciplinary approach Ulrike Ehling European Law Journal This book explores the concept of civil society which over recent years has been revived and introduced into the institutional debate within the EU Significantly EU institutions themselves have made reference to civil society and on an academic plane it has been argued that the debate on the legitimacy of European governance should value the role of civil society organisations Bringing together lawyers and political scientists the book studies the role of civil society organisations in the multi level context of European governance Civil Society and Legitimate European Governance bridges the distance between normative suggestions legal instruments and empirical analysis Providing original contributions to the research on European

governance this book will appeal to all scholars and students with an interest in European integration and European institutions

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