



sword & scales

*An Examination of the Relationship
Between Law & Politics*

Martin Loughlin

Sword And Scales An Examination Of The Relationship Between Law And Politics

Brian Christopher Jones



Sword And Scales An Examination Of The Relationship Between Law And Politics:

Sword and Scales Martin Loughlin, 2000-07-24 This short and accessible book provides a provocative re assessment of the various tangled relationships between law and politics and in so doing examines legal and political thinking on such critical areas as justice the state constitutionalism and rights It introduces lawyers especially to certain important themes in some of the key texts in political thought and introduces political scientists to the legal dimensions of a number of central themes of political studies Written by one of the leading theorists in constitutional law the book should prove to be an indispensable companion for any student or teacher interested in law and politics Contents I Law and Politics in the Conversation of Mankind II Justice III The State IV Constitutionalism V Conclusions **Human Rights Between Law and Politics** Petr Agha, 2017-08-24 This book analyses human rights in post national contexts and demonstrates through the case law of the European Court of Human Rights that the Margin of Appreciation doctrine is an essential part of human rights adjudication Current approaches have tended to stress the instrumental value of the Margin of Appreciation or to give it a complementary role within the principle of proportionality while others have been wholly critical of it In contradiction to these approaches this volume shows that the doctrine is a genuinely normative principle capable of balancing conflicting values It explores to what extent the tension between human rights and politics embodied in the doctrine might be understood as a mutually reinforcing interplay of variables rather than an entrenched separation By linking the interpretation of the Margin of Appreciation doctrine to a broader conception of human rights understood as complex political and moral norms this volume argues that the doctrine can assist in the formulation of the common good in light of the requirements of the Convention *Reasoning with Law* Andrew Halpin, 2001-12-31 The reader is invited to follow a route that visits Fish s view of theory and practice Raz s legal reasoning thesis theoretical models of judicial review Dworkin s right answer thesis the law of the excluded middle and Lukasiewicz s development of three valued logic Wittgenstein s language games and Moore s metaphysical realism The destination is the practice at the heart of legal reasoning It is suggested that this manifests the way in which the limitations of language and the incompleteness of human experience allow the opportunity for coherent development of the law and at the same time produce an inherent incoherence within the law The central part of the book seeks to demonstrate how the problems of understanding legal reasoning replicate difficulties encountered in the philosophy of language but challenges the attempts that have been made to harness approaches from within that discipline to illuminate legal reasoning Instead it is argued that law provides an unrivalled test bed for examining the limits of the capacity of our words and that the study of law may be used to confront in a robust and illuminating manner the limitations of that discipline The final chapter considers some of the implications of recognising the incoherence at the heart of legal reasoning commenting on an institutional approach to law the legitimacy of law legal definitions different approaches to legal reasoning the role of appellate courts the general possibility of providing a theoretical model of law the

use of legal rules and the nature of law's critical aperture The book should be of interest to advanced undergraduate students particularly on jurisprudence courses postgraduate students academics and practitioners concerned to reflect on the nature of the discipline they practice **Constitutional and Administrative Law** Roger Masterman, Colin Murray, 2022-06-02

Provides an accessible discursive and scholarly treatment of the key contemporary issues in UK Public Law **The Making of Constitutional Democracy** Paolo Sandro, 2022-01-27 This open access book addresses a palpable yet widely neglected tension in legal discourse In our everyday legal practices whether taking place in a courtroom classroom law firm or elsewhere we routinely and unproblematically talk of the activities of creating and applying the law However when legal scholars have analysed this distinction in their theories rather than simply assuming it many have undermined it if not dismissed it as untenable The book considers the relevance of distinguishing between law creation and law application and how this transcends the boundaries of jurisprudential enquiry It argues that such a distinction is also a crucial component of political theory For if there is no possibility of applying a legal rule that was created by a different institution at a previous moment in time then our current constitutional democratic frameworks are effectively empty vessels that conceal a power relationship between public authorities and citizens that is very different from the one on which constitutional democracy is grounded After problematising the most relevant objections in the literature the book presents a comprehensive defence of the distinction between creation and application of law within the structure of constitutional democracy It does so through an integrated jurisprudential methodology which combines insights from different disciplines including history anthropology political science philosophy of language and philosophy of action while also casting new light on long standing issues in public law such as the role of legal discretion in the law making process and the scope of the separation of powers doctrine The ebook editions of this book are available open access under a CC BY NC ND 4.0 licence on bloomsburycollections.com

Jurisprudence Scott Veitch, Emilianos Christodoulidis, Marco Goldoni, 2013-07-04 Jurisprudence Themes and Concepts offers an original introduction to and critical analysis of the central themes studied in jurisprudence courses The book is presented in three parts each of which contains General Themes Advanced Topics tutorial questions and guidance on further reading Law and Politics locating the place of law within the study of institutions of government Legal Reasoning examining the contested nature of the application of law Law in Modernity exploring the social forces that shape legal development This second edition includes enhanced discussion of the rise of legal positivism within the context of the rise of the modern state the changing role of natural and human rights discourse concepts of justice in and beyond the nation state the impact of emergency doctrines in contemporary legal regulation and challenges to the rule of law in light of shifting and competing demands for new types of social solidarity Accessible interdisciplinary and socially informed this book has been revised to take into account the latest developments in jurisprudential scholarship *Authoritarian Liberalism and the Transformation of Modern Europe* Michael A. Wilkinson, 2021 Oxford Constitutional Theory has rapidly established itself as the primary point

of reference for theoretical reflections on the growing interest in constitutions and constitutional law in domestic regional and global contexts The majority of the works published in the series are monographs that advance new understandings of their subject But the series aims to provide a forum for further innovation in the field by also including well conceived edited collections that bring a variety of perspectives and disciplinary approaches to bear on specific themes in constitutional thought and by publishing English translations of leading monographs in constitutional theory that have originally been written in languages other than English Book jacket 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

The Palgrave Handbook of Political Norms in Southeast Asia Gabriel Facal, Elsa Lafaye de Micheaux, Astrid Norén-Nilsson, 2024-06-07 This open access handbook aims to constitute a reference point on political norm dynamics in Southeast Asia by bringing together the array of normative repertoires that frame the possibilities for citizens to participate in set agendas for make decisions in and contest not only electoral and institutional politics but also informal and imaginary political spaces It sheds light on intersecting political and social transformations and their consequences from the vantage point of political norms While chapters lay out and analyse how political norms across Southeast Asia have been shaped in successive historical phases the core of the handbook addresses current dynamics involved in defining and transforming political norms 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

A Companion to Contemporary Political Philosophy Robert E. Goodin, Philip Pettit, Thomas W. Pogge, 2012-03-12 This new edition of A Companion to Contemporary Political Philosophy has been extended significantly to include 55 chapters across two volumes written by some of today's most distinguished scholars New contributors include some of today's most distinguished scholars among them Thomas Pogge Charles Beitz and Michael Doyle Provides in depth coverage of contemporary philosophical debate in all major related disciplines such as economics history law political science international relations and sociology Presents analysis of key political ideologies including new chapters on Cosmopolitanism and Fundamentalism Includes detailed discussions of major concepts in political philosophy including virtue power human rights and just war

The Fight Over Freedom in 20th- and 21st-Century International Discourse Rita Augestad Knudsen, 2020-06-01 This book shows how international discourse citing self determination over the last hundred years has functioned as a battleground between two ideas of freedom a radical idea of freedom and a liberal conservative idea of freedom The book examines each of the major moments in which self determination has been a central part of the language of high level international politics and law the early 20th century discourse of V I Lenin and U S President Woodrow Wilson the aftermath of the First World War and the formulation of the UN Charter the 1950 1960s UN debates on self determination and the 2008 2010 International Court of Justice case on Kosovo's declaration of independence At each of these moments in history self determination was at the top of the international agenda And at each moment a fight over the meaning of freedom played out in self determination discourse Besides providing insights into the historical times in which self determination was prominently cited internationally the book offers a recasting and renewal of international debates on freedom in international discourse

Protecting Rights Without a Bill of Rights Jeffrey Goldsworthy, Tom Campbell, Adrienne Stone, 2017-11-30 Australia is now the only major Anglophone country that has not adopted a Bill of Rights Since 1982 Canada New Zealand and the UK have all adopted either constitutional or statutory bills of rights Australia however continues to rely on common law statutes dealing with specific issues such as racial and sexual discrimination a generally tolerant society and a vibrant democracy This book focuses on the protection of human rights in Australia and includes international perspectives for the purpose of comparison and it provides an examination of how well Australian institutions governments legislatures courts and tribunals have performed in protecting human rights in the absence of a Bill of Rights

The Constitution of the United Kingdom Peter Leyland, 2016-06-02 This acclaimed book provides a topical and contextual outline of the principles doctrines and institutions that underpin the United Kingdom constitution The third edition of The Constitution of the United Kingdom has been comprehensively revised and updated to take account of recent

constitutional developments and debates This includes the revised framework for devolution following the 2014 referendum in Scotland the constitutional ramifications of the realignment of UK politics reflected in the result of the 2015 general election and the debate over the possible replacement of the Human Rights Act 1998 with a British Bill of Rights The chapters are written in sufficient detail for anyone coming to the subject for the first time to develop a clear and informed view of how the constitution is arranged and how it operates The main themes include discussion of the history sources and conventions of the constitution later chapters deal with constitutional principles the role of the Crown Parliament and the electoral system government and the executive the constitutional role of courts including the protection of human rights the territorial distribution of power between central devolved and local government and the European Union dimension In addition the book offers analysis of the evolution of the uncoded UK constitution its strengths and perceived weaknesses and of reforms aimed at its modernisation

Lawyers in 21st-Century Societies Richard L Abel, Ole Hammerslev, Hilary Sommerlad, Ulrike Schultz, 2020-04-02 The world's legal professions have undergone dramatic changes in the 30 years since publication of the landmark three volume *Lawyers in Society* which launched comparative sociological studies of lawyers This is the first of two volumes in which scholars from a wide range of disciplines countries and cultures document and analyse those changes The present volume presents reports on 46 countries with broad coverage of North America Western Europe Latin America Asia Australia North Africa and the Middle East sub Saharan Africa and former communist countries These national reports address the impact of globalisation and neoliberalism on national legal professions the relationship of lawyers and their professional associations to the state and tensions between state and citizenship changes in lawyer demography rapidly growing numbers and the profession's efforts to retain control the entry of women and obstacles to full gender equality ethnic diversity legal education the proliferation of institutions and pedagogic innovation the regulation of lawyers structures of production especially the growth of large firms and the impact of technology and paraprofessionals the distribution of lawyers across roles and access to justice state funded legal aid and pro bono services The juxtaposition of the reports reveals the dramatic transformations of professional rationales labour markets and working practices and the multiple contingencies of the role of lawyers in societies experiencing increasing juridification within a new geopolitical order

The Separation of Powers in the Contemporary Constitution Roger Masterman, 2010-12-02 In this 2010 book Roger Masterman examines the dividing lines between the powers of the judicial branch of government and those of the executive and legislative branches in the light of two of the most significant constitutional reforms of recent years the Human Rights Act 1998 and Constitutional Reform Act 2005 Both statutes have implications for the separation of powers within the United Kingdom constitution The Human Rights Act brings the judges into much closer proximity with the decisions of political actors than previously permitted by the *Wednesbury* standard of review and the doctrine of parliamentary sovereignty while the Constitutional Reform Act marks the emergence of an institutionally independent judicial branch Taken together the two

legislative schemes form the backbone of a more comprehensive system of constitutional checks and balances policed by a judicial branch underpinned by the legitimacy of institutional independence Constitutional Rights After Globalization Gavin Anderson, 2005-05-18 Constitutional Rights after Globalization juxtaposes the globalization of the economy and the worldwide spread of constitutional charters of rights The shift of political authority to powerful economic actors entailed by neo liberal globalization challenges the traditional state centred focus of constitutional law Contemporary debate has responded to this challenge in normative terms whether by reinterpreting rights or redirecting their ends e g to reach private actors However globalization undermines the liberal legalist epistemology on which these approaches rest by positing the existence of multiple sites of legal production e g multinational corporations beyond the state This dynamic between globalization and legal pluralism on one side and rights constitutionalism on the other provides the context for addressing the question of rights constitutionalism s counterhegemonic potential This shows first that the interpretive and instrumental assumptions underlying constitutional adjudication are empirically suspect constitutional law tends more to disorder than coherence and frequently is an ineffective tool for social change Instead legal pluralism contends that constitutionalism s importance lies in symbolic terms as a legitimating discourse The competing liberal and new politics of definition the latter highlighting how neoliberal values and institutions constrain political action are contrasted to show how each advances different agenda A comparative survey of constitutionalism s engagement with private power shows that conceiving of constitutions in the predominant liberal legalist mode has broadly favoured hegemonic interests It is concluded that counterhegemonic forms of constitutional discourse cannot be effected within but only by unthinking the dominant liberal legalist paradigm in a manner that takes seriously all exercises of political power *Public Law and Politics* Stephen Tierney, 2016-12-05 In a critical engagement with the function of public law and with constitutionalism in its political dimensions this volume brings together the reflections of three leading constitutionalists Martin Loughlin James Tully and Frank Michelman Comprising three critical commentaries on each it addresses the multiple ways in which public law is implicated in the logic of rule This operates on the one hand in maintaining and underwriting relative patterns of power and weakness through political structures and processes On the other hand public law is considered to contain the potential to redress these patterns through the use of constitutional authority social and economic as well as civil and political rights redistribution of political power the expansion of territorial governance and moves to supra state levels of authority The book reproduces in a succinct and organized way the insights into both the limitations and the potentialities of public law within its political setting *The International Legal Order in Global Governance* Alain Germeaux, 2022-10-18 The space occupied by international law in shaping political action is subject to continuing debate and controversy This book aims to answer the question of how and why international law impacts the behaviour of actors on the international stage in the absence of central authority and faced with asymmetric power At a time when the role of normative restraints in international relations

and international law in particular has come under renewed questioning it advances an analytical framework for understanding the effect of norms on behaviour that is not contingent on material restraints or a given political constellation while being informed by the practical realities and practice of international organisation In doing so this book draws on an interdisciplinary range of sources including international law political theory cognitive psychology and behavioural economics to explore a communicative action based approach of how norms and ideas persuade actors to engage in a course of action consonant with international law to achieve a particular outcome In probing the role of norms on questions such as the use of force and accountability and issues of equity and justice it examines the challenges international law faces and what the way forward may look like

Constitutional Acceleration within the European Union and Beyond Paul Blokker, 2017-10-12 Modern constitutionalism as an idea and practice is facing great uncertainty in current times Scholarly debates focus predominantly on constitutions beyond the state while the predicament of domestic constitutionalism is much less considered This volume contributes to a theoretically informed analysis of the key challenges and changes affecting domestic constitutionalism in Europe and beyond departing from the idea of constitutional acceleration or the increased propensity of different actors to engage in formal reform of the constitutional order The volume points to a fundamental change in the function of constitutions in that constitutions themselves are increasingly subjects of political contestation rather than framing political debates The collection of essays addresses a range of critical challenges including societal acceleration depoliticization civic engagement multi faceted constituent power modernization populism and nationalism and transnationalization The volume includes a variety of disciplinary and in some cases interdisciplinary approaches including political sociology political science constitutional law and constitutional and legal theory and will be of interest to researchers and students in any of these areas Case studies focus on the EU and the wider European context and include highly relevant but little known or ill understood cases such as the recent constitutional events in Iceland Italy or Romania and cases of democratic reversal such as Hungary while also engaging with traditional but rapidly changing cases of constitutional interest such as the UK

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