[MOBI] Judicial Review And The Law Of The Constitution

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Judicial Review and Contemporary Democratic Theory - Scott E. Lemieux - 2017-11-03
For decades, the question of judicial review’s status in a democratic political system has been adjudicated through the framework of what Alexander Bickel labeled "the counter-majoritarian difficulty." That is, the idea that judicial review is particularly problematic for democracy because it opposes the will of the majority. Judicial Review and Contemporary Democratic Theory begins with an assessment of the empirical and theoretical flaws of this framework, and an account of the ways in which this framework has hindered meaningful investigation into judicial review’s value within a democratic political system. To replace the counter-majoritarian difficulty framework, Scott E. Lemieux and David J. Watkins draw on recent work in democratic theory emphasizing democracy's opposition to domination and analyses of constitutional court cases in the United States, Canada, and elsewhere to examine judicial review in its institutional and political context. Developing democratic criteria for veto points in a democratic system and comparing them to each other against these criteria, Lemieux and Watkins yield fresh insights into judicial review’s democratic value. This book is essential reading for students of law and courts, judicial politics, legal theory and constitutional law.
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In this book, the author presents a new interpretation of the origin of judicial review. She traces the development of judicial review from American independence through the tenure of John Marshall as Chief Justice, showing that Marshall's role was far more innovative and decisive than has yet been recognized. According to the author all support for judicial review before Marshall contemplated a fundamentally different practice from that which we know today. Marshall did not simply reinforce or extend ideas already accepted but, in superficially minor and disguised ways, effected a radical transformation in the nature of the constitution and the judicial relationship to it.

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Law and Judicial Duty - Philip HAMBURGER - 2009-06-30
Philip Hamburger’s Law and Judicial Duty traces the early history of what is today called "judicial review." The book sheds new light on a host of misunderstood problems, including intent, the status of foreign and international law, the cases and controversies requirement, and the authority of judicial precedent. The book is essential reading for anyone concerned about the proper role of the judiciary.

Judicial Review of Administrative Action Across the Common Law World - Swati Jhaveri - 2021-01-31
Research on comparative administrative law, in contrast to comparative constitutional law, remains largely underdeveloped. This book plugs that gap. It considers how a wide range of common law systems have received and adapted English common law to the needs of their own socio-political context. Readers will be given complex insights into a wide range of common law systems of administrative law, which they may not otherwise have access to given how difficult it would be to research all of the systems covered in the volume single-handedly. The book covers Scotland, Ireland, the USA, Canada, Israel, South Africa, Kenya, Malaysia, Singapore, Hong Kong SAR, India, Bangladesh, Australia and New Zealand. Comparative public lawyers will have a much greater range of common law models of administrative law - either to pursue conversations about their own common law system or to sophisticate their comparison of their system (civil law or otherwise) with common law systems.

The Doctrine of Judicial Review - Edward Samuel Corwin - 1914

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Judicial Review in an Objective Legal System - Tara Smith - 2015-08-07
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The third edition of Judicial Review: Law and Practice has been updated to provide practitioners with a comprehensive companion to judicial review proceedings. It covers the substantive law of judicial review including grounds of review and remedies, and looks in detail at the practice and procedure specific to such claims. The largest part of the work is dedicated to individual areas of the law where judicial review is relevant, including planning and environment, community care, housing, mental health, criminal law, education, licensing, central/local government and immigration law. It provides a wide-ranging coverage of administrative law and its niche practice areas including essential procedural rules, forms and guidance issued by the Administrative Court. Whether you are a specialist public lawyer or whether you practice in areas of law where expertise in judicial review is required, Judicial Review: Law and Practice provides the guidance you need to take on and manage cases confidently.

The Politico-Legal Dynamics of Judicial Review - Theunis Roux - 2018-09-30
Comparative scholarship on judicial review has paid a lot of attention to the causal impact of politics on judicial decision-making. However, the slower-moving, macro-social process through which judicial review influences societal conceptions of the law/politics relation is less well understood. Drawing on the political science literature on institutional change, The Politico-Legal Dynamics of Judicial Review tests a typological theory of the evolution of judicial review regimes - complexes of legitimating ideas about the law/politics relation. The theory posits that such regimes tend to conform to one of four main types - democratic or authoritarian legalism, or democratic or authoritarian instrumentalism. Through case studies of Australia, India, and Zimbabwe and a comparative chapter analyzing ten additional societies, the book then explores how actually-existing judicial review regimes transition between these types. This process of ideational development, Roux concludes, is distinct both from the everyday business of constitutional politics and changes to the formal constitution.

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Judicial Review of Legislation - Gerhard van der Schyff - 2010-06-16
Constitutionalism is the permanent quest to control state power, of which the judicial review of legislation is a prime example. Although the judicial review of legislation is increasingly common in modern societies, it is not a finished project. This device still raises questions as to whether judicial review is justified, and how it may be structured. Yet, judicial review’s justification and its scope are seldom addressed in the same study, thereby making for an inconvenient divorce of these two related avenues of study. To narrow the divide, the object of this work is quite straightforward. Namely, is the idea of judicial review defensible, and what influences its design and scope? This book addresses these matters by comparing the judicial review of legislation in the United Kingdom (the Human Rights Act of 1998), the Netherlands (the Halsema Proposal of 2002) and the Constitution of South Africa of 1996. These systems present valuable material to study the issues raised by judicial review. The Netherlands is of particular interest as its Constitution still prohibits the constitutional review of acts of parliament, while allowing treaty review of such acts. The Halsema Proposal wants to even out this difference by allowing the courts also to apply constitutional norms to legislation and not only to international norms. The Human Rights Act and the South African Constitution also present interesting questions that will make their study worthwhile. One can think of the issue of dialogue between the legislature and the judiciary. This topic enjoys increased attention in the United Kingdom but is somewhat

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Judicial Review and Compliance with Administrative Law - Simon Halliday - 2004-05
How effective is judicial review in securing compliance with administrative law? This book presents an empirically-based study of the influence of judicial review on government agencies. In doing so, it explores judicial review from a regulatory perspective and uses the insights of the regulation literature to reflect on the capacity of judicial review to modify government behavior. On the basis of extensive research with heavily litigated government agencies, the book develops a framework for analyzing and researching the regulatory capacity of judicial review. Combining empirical and legal analysis, it describes the conditions which must exist to maximize judicial review's capacity to secure compliance with administrative law.

The Magna Carta - King John of England - 2018-04-06
The Magna Carta, Latin for "Great Charter" (literally "Great Paper"), also known as 'Magna Carta Libertatum, is an English 1215 charter which limited the power of English Monarchs, specifically King John, from absolute rule. The Magna Carta was the result of disagreements between the Pope and King John and his barons over the rights of the king: Magna Carta required the king to accept that the will of the king could be bound by law. The Code of Hammurabi was a Mesopotamian legal code that laid a foundation for later Hebraic and European law. The Magna Carta is widely considered to be the first step in a long historical process leading to the rule of constitutional law and is one of the most famous documents in the world. Originally issued by King John of England (r.1199-1216) as a practical solution to the political crisis he faced in 1215, Magna Carta established for the first time the principle that everybody, including the king, was subject to the law. Although nearly a third of the text was deleted or substantially rewritten within ten years, and almost all the clauses have been repealed in modern times, Magna Carta remains a cornerstone of the British constitution. Most of the 63 clauses granted by King John dealt with specific grievances relating to his rule. However, buried within them were a number of fundamental values that both challenged the autocracy of the king and proved highly adaptable in future centuries. Most famously, the 39th clause gave all 'free men' the right to justice and a fair trial. Some of Magna Carta's core principles are echoed in the United States Bill of Rights (1791) and in many other constitutional documents around the world, as well as in the Universal Declaration of Human Rights (1948) and the European Convention on Human Rights (1950). This translation is considered to be the best and an excellent reference document for your library. This is book 10 in the series of 150 books entitled "The Trail to Liberty." The following is a partial list (20 of 150) of books in this series on the development of constitutional law. 1. Laws of the town Eshmunna (ca. 1800 BC),
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The Oxford Handbook of the U.S. Constitution - Mark Tushnet - 2015-07-31
The Oxford Handbook of the U.S. Constitution offers a comprehensive overview and introduction to the U.S. Constitution from the perspectives of history, political science, law, rights, and constitutional themes, while focusing on its development, structures, rights, and role in the U.S. political system and culture. This Handbook enables readers within and beyond the U.S. to develop a critical comprehension of the literature on the Constitution, along with accessible and up-to-date analysis. The historical essays included in this Handbook cover the Constitution from 1620 right through the Reagan Revolution to the present. Essays on political science detail how contemporary citizens in the United States rely extensively on political parties, interest groups, and bureaucrats to operate a constitution designed to prevent the rise of parties, interest-group politics and an entrenched bureaucracy. The essays on law explore how contemporary citizens appear to expect and accept the exertions of power by a Supreme Court, whose members are increasingly disconnected from the world of practical politics. Essays on rights discuss how contemporary citizens living in a diverse multi-racial society seek guidance on the meaning of liberty and equality, from a Constitution designed for a society in which all politically relevant persons shared the same race, gender, religion and ethnicity. Lastly, the essays on themes explain how in a "globalized" world, people living in the United States can continue to be governed by a constitution originally meant for a society geographically separated from the rest of the "civilized world." Whether a return to the pristine constitutional institutions of the founding or a translation of these constitutional norms in the present is possible remains the central challenge of U.S. constitutionalism today.

Comparative Judicial Review - Erin F. Delaney - 2018-09-28
Constitutional courts around the world play an increasingly central role in day-to-day democratic
In No Place for Ethics, Hill argues the Supreme Court has an overriding obligation to ground its judicial review responsibilities not only in the Constitution but also in ethics, understood as the Constitution's ultimate justification. The text discusses a response to the question basic to all human beings: how should I behave?

**No Place for Ethics** - T. Patrick Hill - 2021-10
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**The History and Growth of Judicial Review, Volume 1** - Steven Gow Calabresi - 2021-04-27
"This book examines the origins and growth of judicial review in the key G-20 constitutional democracies, which include: the United States; the United Kingdom; France; Germany; Japan; Italy; India; Canada; Australia; South Korea; Brazil; South Africa; Indonesia; Mexico; and the European Union. The book considers five different theories, which help to explain the origins of judicial review, and it identifies which theories apply best in the various countries discussed. It considers not on what gives rise to judicial review originally, but also what causes of judicial review lead it to become more powerful and prominent over times. The positive account of what causes the origins and growth of judicial review in so many very different countries over such a long period of time has normative implications"--
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Vigilance and Restraint in the Common Law of Judicial Review - Dean R. Knight - 2018-03-31
Explores how courts vary the depth of scrutiny in judicial review and the virtues of different approaches.

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Judicial Review in the Commonwealth Caribbean - Rajendra Ramlogan - 2013-01-11
The establishment of the Caribbean Court of Justice sees the countries of the Commonwealth Caribbean at an important and exciting judicial crossroads. Debate, often acrimonious, continues over the abolishment of ties to the Judicial Committee of the Privy Council and, increasingly those influencing the debate are a more educated and articulate Caribbean people, insisting on proper governance of the area’s public bodies. This new book analyzes judicial review, a mechanism for achieving public justice, through emerging case law in the hope that it will cast light on the jurisprudential evolution of Caribbean society in the twenty-first century. Bringing together cases and materials on judicial review in the Caribbean for the first time, this book examines what judicial review is, before going on to discuss the grounds, obstacles and conduct within the judicial review process. It concludes by examining the future of judicial review and justice more generally in the Caribbean. Legal professionals in the Caribbean will find it a useful and comprehensive reference tool.

Wea...
Unlike many other countries, the United States has few constitutional guarantees of social welfare rights such as income, housing, or healthcare. In part this is because many Americans believe that the courts cannot possibly enforce such guarantees. However, recent innovations in constitutional design in other countries suggest that such rights can be judicially enforced—not by increasing the power of the courts but by decreasing it. In Weak Courts, Strong Rights, Mark Tushnet uses a comparative legal perspective to show how creating weaker forms of judicial review may actually allow for stronger social welfare rights under American constitutional law. Under "strong-form" judicial review, as in the United States, judicial interpretations of the constitution are binding on other branches of government. In contrast, "weak-form" review allows the legislature and executive to reject constitutional rulings by the judiciary—as long as they do so publicly. Tushnet describes how weak-form review works in Great Britain and Canada and discusses the extent to which legislatures can be expected to enforce constitutional norms on their own. With that background, he turns to social welfare rights, explaining the connection between the "state action" or "horizontal effect" doctrine and the enforcement of social welfare rights. Tushnet then draws together the analysis of weak-form review and that of social welfare rights, explaining how weak-form review could be used to enforce those rights. He demonstrates that there is a clear judicial path—not an insurmountable judicial hurdle—to better enforcement of constitutional social welfare rights.

As constitutional scholar John Nowak noted when the book was first released, "Professor Choper's Judicial Review and the National Political Process is mandatory reading for anyone seriously attempting to study our constitutional system of government. It is an important assessment of the democratic process and the theoretical and practical role of the Supreme Court." That view is no less true today, as borne out by the countless citations to this landmark work over the decades, including scores in the last few years alone. It is simply part of the foundational canon of constitutional law and political theory, an essential part of the library of scholars, students, and educated readers interested in considering the hard choices inherent in what the courts should decide and how they should decide them.

This collection of essays presents opposing sides of the debate over the foundations of judicial review. In this work, however, the discussion of whether the 'ultra vires' doctrine is best characterised as a central principle of administrative law or as a harmless, justificatory fiction is located in the highly topical and political context of constitutional change. The thorough jurisprudential analysis of the relative merits of models of 'legislative intention' and 'judicial creativity' provides a sound base for consideration of the constitutional problems arising out of legislative devolution and the Human Rights Act 1998. As the historical orthodoxy is challenged by growing institutional independence, leading figures in the field offer competing perspectives on the future of judicial review. “Confucius was wrong to say that it is a curse to live in interesting times. We are witnessing the development of a constitutional philosophy which recognises fundamental values and gives them effect in the mediation of law to the people”. (Sir John Laws)
Judicial Review and the Constitution - Christopher Forsyth - 2000-05-01
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A Common Law Theory of Judicial Review - W. J. Waluchow - 2006-12-25
In this study, W. J. Waluchow argues that debates between defenders and critics of constitutional bills of rights presuppose that constitutions are more or less rigid entities. Within such a conception, constitutions aspire to establish stable, fixed points of agreement and pre-commitment, which defenders consider to be possible and desirable, while critics deem impossible and undesirable. Drawing on reflections about the nature of law, constitutions, the common law, and what it is to be a democratic representative, Waluchow urges a different theory of bills of rights that is flexible and adaptable. Adopting such a theory enables one not only to answer to critics' most serious challenges, but also to appreciate the role that a bill of rights, interpreted and enforced by unelected judges, can sensibly play in a constitutional democracy.

The Constitutional Foundations of Judicial Review - Mark Elliott - 2001-03-16
Recent years have witnessed a vibrant debate on the basis for judicial review. This collection of essays presents opposing sides of the debate over the foundations of judicial review. The thorough jurisprudential analysis of the relative merits of models of 'legislative intention' and 'judicial creativity' provides a sound base for consideration of the constitutional problems arising out of legislative devolution and the Human Rights Act 1998. As the historical orthodoxy is challenged by growing institutional independence, leading figures in the field offer competing perspectives on the future of judicial review. “Confucius was wrong to say that it is a curse to live in interesting times. We are witnessing the development of a constitutional philosophy which recognises fundamental values and gives them effect in the mediation of law to the people”. (Sir John Laws) Contributors Nick Bamforth, Paul Craig, David Dyzenhaus, Mark Elliott, David Feldman, Christopher Forsyth, Brigid Hadfield, Jeffrey Jowell QC, Sir John Laws, Dawn Oliver, Sir Stephen Sedley, Mark Walters. With short responses by: TRS Allan, Stephen Bailey, Robert Carnworth, Martin Loughlin, Michael Taggart, Sir William Wade.
This powerfully argued appraisal of judicial review, which reflects a broader discourse about the role of the courts, and their relationship with the other institutions of government, within the constitutional order. This book comprehensively analyses the foundations of judicial review. It subjects the traditional justification, based on the doctrine of ultra vires, to critical scrutiny and fundamental reformulation, and it addresses the theoretical challenges posed by the impact of the Human Rights Act 1998 on administrative law and by the extension of judicial review to prerogative and non-statutory powers. It also explores the relationship between the theoretical basis of administrative law and its practical capacity to safeguard individuals against maladministration. The book seeks to develop a constitutional rationale for judicial review which founds its legitimacy in core principles such as the rule of law, the separation of powers and the sovereignty of Parliament. It presents a detailed analysis of the interface between constitutional and administrative law, and will be of interest to all public lawyers.

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**Democracy and Distrust** - John Hart Ely - 1981-08-15
This powerfully argued appraisal of judicial review may change the face of American law. Written for layman and scholar alike, the book addresses one of the most important issues facing Americans today: within what guidelines shall the Supreme Court apply the strictures of the Constitution to the complexities of modern life? Until now legal experts have proposed two basic approaches to the Constitution. The first, “interpretivism,” maintains that we should stick as closely as possible to what is explicit in the document itself. The second, predominant in recent academic theorizing, argues that the courts should be guided by what they see as the fundamental values of American society. John Hart Ely demonstrates that both of these approaches are inherently incomplete and inadequate. Democracy and Distrust sets forth a new and persuasive basis for determining the role of the Supreme Court today. Ely’s proposal is centered on the view that the Court should devote itself to assuring majority governance while protecting minority rights. “The Constitution,” he writes, “has proceeded from the sensible assumption that an effective majority will not unreasonably threaten its own rights, and has sought to assure that such a majority not systematically treat others less well than it treats itself. It has done so by structuring decision processes at all levels in an attempt to ensure, first, that everyone’s interests will be represented when decisions are made, and second, that the application of those decisions will not be manipulated so as to reintroduce in practice the sort of discrimination that is impermissible in theory.” Thus, Ely’s emphasis is on the procedural side of due process, on the preservation of governmental structure rather than on the recognition of elusive social values. At the same time, his approach is free of interpretivism’s rigidity because it is fully responsive to the changing wishes of a popular majority. Consequently, his book will have a profound impact on legal opinion at all levels—from experts in constitutional law, to lawyers with general practices, to concerned citizens watching the bewildering changes in American law.

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judicial nullification of federal laws because it facing Americans today: within what guidelines shall the Supreme Court apply the strictures of the Constitution to the complexities of modern life? Until now legal experts have proposed two basic approaches to the Constitution. The first, “interpretivism,” maintains that we should stick as closely as possible to what is explicit in the document itself. The second, predominant in recent academic theorizing, argues that the courts should be guided by what they see as the fundamental values of American society. John Hart Ely demonstrates that both of these approaches are inherently incomplete and inadequate. Democracy and Distrust sets forth a new and persuasive basis for determining the role of the Supreme Court today. Ely’s proposal is centered on the view that the Court should devote itself to assuring majority governance while protecting minority rights. “The Constitution,” he writes, “has proceeded from the sensible assumption that an effective majority will not unreasonably threaten its own rights, and has sought to assure that such a majority not systematically treat others less well than it treats itself. It has done so by structuring decision processes at all levels in an attempt to ensure, first, that everyone’s interests will be represented when decisions are made, and second, that the application of those decisions will not be manipulated so as to reintroduce in practice the sort of discrimination that is impermissible in theory.” Thus, Ely’s emphasis is on the procedural side of due process, on the preservation of governmental structure rather than on the recognition of elusive social values. At the same time, his approach is free of interpretivism’s rigidity because it is fully responsive to the changing wishes of a popular majority. Consequently, his book will have a profound impact on legal opinion at all levels—from experts in constitutional law, to lawyers with general practices, to concerned citizens watching the bewildering changes in American law.

Repugnant Laws - Keith E. Whittington - 2020-05-18
The USA may want to believe that the Supreme Court is above politics; in fact the Court is a political institution and operates in a political environment to advance controversial principles, often with the aid of political leaders who sometimes encourage and generally tolerate the judicial nullification of federal laws because it serves their own interests to do so.

Judicial Review Handbook - Michael Fordham - 2021-05-06

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Cases, Materials and Text on Judicial Review of Administrative Action - Chris Backes - 2019-08-08
This casebook studies the law governing judicial review of administrative action. It examines the foundations and the organisation of judicial review, the types of administrative action, and corresponding kinds of review and access to court. Significant attention is also devoted to the conduct of the court proceedings, the grounds for review, and the standard of review and the remedies available in judicial review cases. The relevant rules and case law of Germany, England and Wales, France and the Netherlands are analysed and compared. The similarities and differences between the legal systems are highlighted. The impact of the jurisprudence of the European Court of Human Rights is considered, as well as the influence of EU legislative initiatives and the case law of the Court of Justice of the European Union, in the legal systems examined. Furthermore, the system of judicial review of administrative action before the European courts is studied and compared to that of the national legal systems. During the last decade, the growing influence of EU law on national procedural law has been increasingly recognised. However, the way in which national systems of judicial review address the requirements imposed by EU law differs substantially. The casebook compares the primary sources (legislation, case law etc) of the legal systems covered, and explores their differences and similarities: this examination reveals to what extent a ius commune of judicial
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Where Our Protection Lies - Dimitrios Kyritsis - 2017-07-27
In this book Dimitrios Kyritsis advances an original account of constitutional review of primary legislation for its compatibility with human rights. Key to it is the value of separation of powers. When the relationship between courts and the legislature realizes this value, it makes a stronger claim to moral legitimacy. Kyritsis steers a path between the two extremes of the sceptics and the enthusiasts. Against sceptics who claim that constitutional review is an affront to democracy he argues that it is a morally legitimate institutional option for democratic societies because it can provide an effective check on the legislature. Although the latter represents the people and should thus be given the initiative in designing government policy, it carries serious risks, which institutional design must seek to avert. Against enthusiasts he maintains that fundamental rights protection is not the exclusive province of courts but the responsibility of both the judiciary and the legislature. Although courts may sometimes be given the power to scrutinize legislation and even strike it down, if it violates human rights, they must also respect the legislature's important contribution to their joint project. Occasionally, they may even have a duty to defer to morally sub-optimal decisions, as far as rights protection is concerned. This is as it should be. Legitimacy demands less than the ideal. In turn, citizens ought to accept discounts on perfect justice for the sake of achieving a reasonably just and effective political order overall.

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the years. It questions the prevalent view in legislature. Although courts may sometimes be given the power to scrutinize legislation and even strike it down, if it violates human rights, they must also respect the legislature's important contribution to their joint project. Occasionally, they may even have a duty to defer to morally sub-optimal decisions, as far as rights protection is concerned. This is as it should be. Legitimacy demands less than the ideal. In turn, citizens ought to accept discounts on perfect justice for the sake of achieving a reasonably just and effective political order overall.

This study examines the influence of American law and theories of judicial review on the development, practice and theorization of judicial review in Norway, Denmark, and Iceland from the 19th century to the present. The study describes how Nordic scholars in the late 19th century rationalized judicial review based on American theory and how American law influenced both their views of the institution and their way of thinking about substantive constitutional rights. These views in turn influenced Nordic jurisprudence for decades.

Judicial Review in EU Law - Alexander H. Türk - 2010-01-01
Judicial review constitutes an important aspect of any legal system operating under the rule of law. This book provides a comprehensive account of judicial review in EU law by assessing the vast and complex case-law of the European Court of Justice (ECJ) in this area and the academic opinion which has accompanied its rulings over the years. It questions the prevalent view in academic literature that the Court's restrictive approach to allowing individuals direct access to the Community Courts, in case of a challenge against normative acts, amounts to a denial of an effective remedy. The author argues that the emerging constitutional nature of the European Union and its federal structure requires a more balanced view. While it will improve direct access for individuals to the Union's judiciary, the Lisbon Treaty will not radically alter the system of judicial review in the European Union. Judicial Review in EU Law will be of great interest to academics, and given its detailed discussion of case-law of the ECJ it will also appeal to postgraduate students of European law. Dealing with an important aspect of legal practice, it will be invaluable reading for practitioners in law firms and officials working in local, regional and central government.

Judicial Review of Arbitration - Lin Yifei - 2018-08-14
International commercial arbitration relies on the possibility of enforcing arbitral decisions against academic literature that the Court's restrictive approach to allowing individuals direct access to the Community Courts, in case of a challenge against normative acts, amounts to a denial of an effective remedy. The author argues that the emerging constitutional nature of the European Union and its federal structure requires a more balanced view. While it will improve direct access for individuals to the Union's judiciary, the Lisbon Treaty will not radically alter the system of judicial review in the European Union. Judicial Review in EU Law will be of great interest to academics, and given its detailed discussion of case-law of the ECJ it will also appeal to postgraduate students of European law. Dealing with an important aspect of legal practice, it will be invaluable reading for practitioners in law firms and officials working in local, regional and central government.
recognition and enforcement of arbitral awards market, where the annual arbitration caseload has reached 200,000 and where arbitration is evolving, authorities attach great importance to judicial review of arbitration. This is the first book to address issues concerning the recognition and enforcement of arbitral awards under applicable law in “Greater China”—the People’s Republic (PRC), Taiwan, Hong Kong and Macao—describing and analyzing the effect of judicial review on a wealth of recent issues and cases. After providing an overview of the legal framework for Chinese arbitration and judicial review of arbitration, the book introduces and discusses the law governing the arbitration agreement, due process, the arbitrator’s power, arbitrability, formation of arbitral tribunal, mediation and public policy. In its focus on the various challenges and defenses arising at all stages of the enforcement application process, such issues and topics as the following are covered in detail: • significant judicial interpretations of the Supreme People’s Court as recent as 2018; • examination of the validity of arbitration agreements; • setting aside and enforcement of arbitral awards by PRC arbitration institutions; • role of the New York Convention and other treaties; • succession of contract; • examination of evidence; and • role of competition law and intellectual property law. In the discussion of each case and each type of issue, the book shows clearly what kind of arbitral awards can be recognized and enforced in China and what kind cannot. Comparative studies of foreign laws and practices are included where relevant, and an abundance of primary source material is provided in appendices. Practitioners, global law firms, companies doing transnational business, jurists and academics from all countries concerned with matters regarding international and foreign-related arbitration in China will welcome this invaluable source of detailed information.

**Judicial Review of Arbitration** - Lin Yifei - 2018-08-14

International commercial arbitration relies on the possibility of enforcing arbitral decisions against recalcitrant parties. In China, a crucial world market, where the annual arbitration caseload has reached 200,000 and where arbitration is evolving, authorities attach great importance to judicial review of arbitration. This is the first book to address issues concerning the recognition and enforcement of arbitral awards under applicable law in “Greater China”—the People’s Republic (PRC), Taiwan, Hong Kong and Macao—describing and analyzing the effect of judicial review on a wealth of recent issues and cases. After providing an overview of the legal framework for Chinese arbitration and judicial review of arbitration, the book introduces and discusses the law governing the arbitration agreement, due process, the arbitrator’s power, arbitrability, formation of arbitral tribunal, mediation and public policy. In its focus on the various challenges and defenses arising at all stages of the enforcement application process, such issues and topics as the following are covered in detail: • significant judicial interpretations of the Supreme People’s Court as recent as 2018; • examination of the validity of arbitration agreements; • setting aside and enforcement of arbitral awards by PRC arbitration institutions; • role of the New York Convention and other treaties; • succession of contract; • examination of evidence; and • role of competition law and intellectual property law. In the discussion of each case and each type of issue, the book shows clearly what kind of arbitral awards can be recognized and enforced in China and what kind cannot. Comparative studies of foreign laws and practices are included where relevant, and an abundance of primary source material is provided in appendices. Practitioners, global law firms, companies doing transnational business, jurists and academics from all countries concerned with matters regarding international and foreign-related arbitration in China will welcome this invaluable source of detailed information.


This is a compendium of administrative law and judicial review in Papua New Guinea. In this book the author precisely recounts the history of the development of administrative law and judicial review in England and some other common law jurisdictions. The main theme of the book is, however, devoted to judicial review in Papua New Guinea. The practice and procedure for appealing from the decision of the National Court in judicial review are unique and onerous. This book evaluates them in detail to give the readers a complete sense of reference. The interlocutory procedures encapsulated in this
and enables lay persons, including those in the courts. At the end of various chapters, the author makes some insightful and thought-provoking commentaries on gaps found in judicial review. The book is an authoritative text for lawyers, law students, academia, judicial officers and other interested persons alike. It is a must read for lawyers and law students who seek to be familiar with the often cumbersome judicial review procedures and practices. For students and scholars in other disciplines who aim to learn and abreast themselves of how administrative law affects administrative action and public policy, this book is a perfect choice. The book dissects complex administrative law concepts and enables lay persons, including those in the public service, to fully understand and apply them. The book is a valuable resource material for the Pacific Island countries like Fiji, Vanuatu and Solomon Islands, who have adopted the common law legal systems similar to Papua New Guinea.

Administrative Law and Judicial Review in Papua New Guinea - Christopher Karaiye - 2019-06-18

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Judicial Review - Susana Galera - 2010-01-01

"The traditional state model, based on a domestic approach to rule of law, is currently evolving towards a new one, where international factors and relations play a prominent role. This trend is also characterized by the pre-eminence of executive powers, along with a weakening of parliamentary balances and judicial controls. This work seeks to answer two essential questions concerning the rule of law: how can citizens challenge public decisions affecting them, and what kinds of public decisions can be judicially controlled. Two groups of legal regulations are considered in this analysis: the so-called European legal tradition, covering nine national laws strongly influenced by Council of Europe legal standards since 1950, and the more recent body of European Union law. The authors conclude that the issue of individual guarantees vis-à-vis public powers should be carefully monitored in Europe."--


About this book: Judicial Review of Arbitration
countries concerned with matters regarding enforcement application process focusing mainly on various challenges and defenses regarding the enforcement of foreign and domestic arbitral awards. This book discusses concepts and cases in commercial arbitration and judicial review. International commercial arbitration relies on the possibility of enforcing arbitral decisions against recalcitrant parties. In China, a crucial world market, where the annual arbitration caseload has reached 200,000 and where arbitration is evolving, authorities attach great importance to judicial review of arbitration. This is the first book to address issues concerning the recognition and enforcement of arbitral awards under applicable law in "Greater China"--the People's Republic of China (PRC), Taiwan, Hong Kong and Macao--describing and analyzing the effect of judicial review on a wealth of recent issues and cases. What's in this book: After providing an overview of the legal framework for Chinese arbitration and judicial review of arbitration, the book introduces and discusses the law governing the arbitration agreement, due process, the arbitrator's power, arbitrability, formation of arbitral tribunal, mediation and public policy. For a better understanding of commercial arbitration from an international perspective, there are comparative studies of foreign laws and practices across the chapters of the book, and abundant primary source material is provided in appendices. In its focus on the challenges arising at all stages of the enforcement application process, such issues and topics as the following are covered in detail: significant judicial interpretations of the Supreme People's Court as recent as 2018; examination of the validity of arbitration agreements; setting aside and enforcement of arbitral awards by PRC arbitration institutions; role of the New York Convention and other treaties; succession of contract; examination of evidence; and role of competition law and intellectual property law. In the discussion of each case and each type of issue, the book shows clearly what kind of arbitral awards can be recognized and enforced in China and what kind cannot. How this will help you: As an invaluable source of detailed information and as a thorough guide on the grounds and procedures of judicial review of arbitration in Chinese courts, this book will be of valuable source to practitioners, global law firms, companies doing transnational business, jurists and academics from all international and foreign-related arbitration in China.
Judicial Review in the Contemporary World - Mauro Cappelletti - 1971

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The Authority of the Court and the Peril of Politics - Stephen Breyer - 2021-09-14
Americans increasingly believe the Supreme Court is a political body in disguise. But Justice Stephen Breyer disagrees. Arguing that judges are committed to their oath to do impartial justice, Breyer aims to restore trust in the Court. In the absence of that trust, he warns, the Court will lose its authority, imperiling our constitutional system.

The Rise of Modern Judicial Review - Christopher Wolfe - 1994-03-29
'A clear, readable and fair account of the development of judicial review.'-Ashley Montagu

Criminal Judicial Review - Piers von Berg - 2014-09-25
This is a comprehensive guide to challenging decisions of criminal courts and public bodies in the criminal justice system using judicial review. Written by a team of criminal and public law practitioners, it considers claims for judicial review arising in the criminal justice system, which now represent a distinct area of public law. These claims are set apart by special considerations and rules; for example, on the limits of the High Court's jurisdiction or the availability of relief during ongoing proceedings. Criminal practitioners may lack the background to spot public law points. Equally, public law specialists may be unfamiliar with criminal law and types of issues that arise. Criminal Judicial Review is intended as a resource for both. The book deals with the principles, case law, remedies and, the practice and procedure for obtaining legal aid and costs. It will be of assistance to any practitioner preparing or responding to judicial review claims involving the following: - The Police and the Crown Prosecution Service. - Magistrates' courts, the Crown Court and Coroners. - Prisons and the Parole Board. - Statutory bodies such as the Independent Police Complaints Commission and the Legal Aid Agency. - Claimants who are children, young persons or have mental disorders. - The international dimension including extradition proceedings and European Union law. - Practical considerations such as CPR Part 54, remedies, legal aid and costs. From the Foreword by The Rt Hon Lord Judge “The book is offered in clear and simple style, focussing less on esoteric theoretical considerations and more on the practical needs of the practitioner. It brings together materials relating to public law with which a criminal specialist may be less well informed, and material relevant to the criminal justice processes which may not be immediately apparent to the public law specialist. It will assist with the preparation of arguments, and also enable submissions which are unarguable to be discarded. It will therefore provide valuable guidance in this broad and developing area of practice.”

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