



Intention, Supremacy and the Theories of Judicial Review

John McGarry

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In the late 1980s, a vigorous debate began about how we may best justify, in constitutional terms, the English courts' jurisdiction to judicially review the exercise of public power derived from an Act of Parliament. Two rival theories emerged in this debate, the ultra vires theory and the common law theory. The debate between the supporters of these two theories has never satisfactorily been resolved and has been criticised as being futile. Yet, the debate raises some fundamental questions about the constitution of the United Kingdom, particularly: the relationship between Parliament and the courts; the nature of parliamentary supremacy in the contemporary constitution; and the possibility and validity of relying on legislative intent.

This book critically analyses the ultra vires and common law theories and argues that neither offers a convincing explanation for the courts' judicial review jurisdiction. Instead, the author puts forward the theory that parliamentary supremacy – and, in turn, the relationship between Parliament and the courts – is not absolute and does not operate in a hard and fast way but, rather, functions in a more flexible way and that the courts will balance particular Acts of Parliament against competing statutes or principles. McGarry argues that this new conception of parliamentary supremacy leads to an alternative theory of judicial review which significantly differs from both the ultra vires and common law theories.

This book will be of great interest to students and scholars of UK public law.

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