

**Book reviews**

Public Law after the Human Rights Act

**Author:** Tom Hickman

**Publisher:** Hart Publishing (May 2010)

---

## Book reviews

### Public Law after the Human Rights Act By Julia Marlow

Published 10 years after the Human Rights Act 1998 (HRA) came into force, Tom Hickman's recent book is an impressive critique of the complex relationship between public law and the HRA. The complexity of that relationship is particularly evident from the book's contrasting emphasis on the centrality of the Act to the legal system as a whole, and on the fraught relationship resulting from its position within the context of the well established principles of public law.

#### KEY QUESTIONS

Throughout the book, Hickman grapples with a number of key questions, such as the function of public law, the status and nature of the HRA, and the HRA's relationship with common law. In doing so, he provides a well-measured assessment of different arguments, heavily drawn from relevant case-law and academia. Having analysed these differing views, he presents convincing, albeit far from universally accepted, conclusions. The author reaches a number of forcefully argued conclusions as to how human rights and public law principles should interact, lamenting, for example, the House of Lords' blanket conclusion that the HRA does not ever, regardless of context, impose process obligations on public authorities.

***"While the book is admirably erudite, it also reflects Hickman's sound understanding of his subject"***

Hickman does not balk at criticising judicial decisions he considers to have been unhelpful in terms of the development of human rights law. However, criticism is constructively balanced with his proposed solutions; in the case of the court's seemingly entrenched position on human rights and process obligations, he suggests that the existing requirements at common law are used by judges to facilitate a necessary retreat. He is also keen to set out his criteria for the Bill of Rights proposed by the current government. However, the book generally avoids being over prescriptive, and leaves many questions unanswered in recognition that the debate remains very much underway.

Particularly insightful are his views on the importance of distinguishing between the two elements of Art 6; the procedural right of access to court and the substantive principle of legal equality. However, while the book is admirably erudite, it also reflects Hickman's sound understanding of the practical nature of his subject, at times in a refreshingly light manner. For example, in the conclusion to a weighty chapter on the legal standards applicable to executive decision-making, he notes that "public officials do not get up in the morning and decide to make a proportionate interference with a protected right".

#### DEBATE

This book does not profess to be a text book; rather, it is an important contribution to a debate in which Hickman does not aim to speak the final word. It makes it clear that any other approach to the debate would be impossible. Throughout, the Act is presented as a relatively unsettled and, in some ways, fragile piece of legislation, with significant developments ahead of it. Those developments will have equally important repercussions for public law. What seems certain, however, is that this book will, at the very least, stimulate further debate on the subject. It seems likely that it will also play an important part in informing it.

---

[www.companylawfourm.co.uk](http://www.companylawfourm.co.uk)

---

Leading debate, opinion and comment on company law

---

*This note is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.*

## www.hoganlovells.com

---

Hogan Lovells has offices in:

Abu Dhabi	Caracas	Ho Chi Minh City	Moscow	San Francisco
Alicante	Chicago	Hong Kong	Munich	Shanghai
Amsterdam	Colorado Springs	Houston	New York	Silicon Valley
Baltimore	Denver	Jeddah*	Northern Virginia	Singapore
Beijing	Dubai	London	Paris	Tokyo
Berlin	Dusseldorf	Los Angeles	Philadelphia	Warsaw
Boulder	Frankfurt	Madrid	Prague	Washington DC
Brussels	Hamburg	Miami	Riyadh*	Zagreb*
Budapest*	Hanoi	Milan	Rome	

"Hogan Lovells" or the "firm" refers to the international legal practice comprising Hogan Lovells International LLP, Hogan Lovells US LLP, Hogan Lovells Worldwide Group (a Swiss Verein), and their affiliated businesses, each of which is a separate legal entity. Hogan Lovells International LLP is a limited liability partnership registered in England and Wales with registered number OC323639. Registered office and principal place of business: Atlantic House, Holborn Viaduct, London EC1A 2FG. Hogan Lovells US LLP is a limited liability partnership registered in the District of Columbia.

The word "partner" is used to refer to a member of Hogan Lovells International LLP or a partner of Hogan Lovells US LLP, or an employee or consultant with equivalent standing and qualifications, and to a partner, member, employee or consultant in any of their affiliated businesses who has equivalent standing. Rankings and quotes from legal directories and other sources may refer to the former firms of Hogan & Hartson LLP and Lovells LLP. Where case studies are included, results achieved do not guarantee similar outcomes for other clients. New York State Notice: Attorney Advertising.

© Copyright Hogan Lovells 2010. All rights reserved.

\*\*Associated offices