The increase in the European Union’s executive powers in the areas of economic and financial governance has thrown into sharp relief the challenges of EU law in constituting, framing, and constraining the decision-making processes and political choices that have hitherto supported
European integration. The constitutional implications of crisis-induced transformations have been much debated but have largely overlooked the tension between law and discretion that the post-2010 reforms have brought to the fore. This book focuses on this tension and explores the ways in which legal norms may (or may not) constrain and structure the discretion of the EU executive. The developments in the EU's post-crisis financial and economic governance act as a reference point from which to analyze the normative problems pertaining to the law's relationship to the exercise of discretion. Structured in three parts, the book starts by analyzing the challenges to the maxim that the law both grounds and constrains EU executive and administrative discretion, setting out the concepts, problems and approaches to the relation between law and discretion both in general public law and in EU law. It progresses to analyze how these problems and approaches have unfolded in EU's financial, economic and monetary governance. Finally, it moves on from these specific developments to assess how existing legal principles and means of judicial review contribute to ensuring the rationality and legality of EU's discretionary powers.

This book deals with one of the greatest challenges for the judiciary in the 21st century. It reflects on the judiciary's role in reviewing administrative discretion in the administrative state; a role that can no longer solely be understood from the traditional doctrine of the Trias Politica. Traditionally, courts review acts of administrative bodies implying a degree of discretion with quite some restraint. Typically it is reviewed whether the decision is non-arbitrary or whether there is no manifest error of assessment. The question arises though as to whether the concern regarding ensuring the non-arbitrary character of the exercise of administrative power, which is frequently performed at a distance from political bodies, goes far enough to guarantee that the administration exercises its powers in a legitimate way. This publication searches for new modes of judicial review of administrative discretion exercised in the administrative state. It links state-of-the-art academic research on the role of courts in the administrative state with the daily practice of the higher and lower administrative courts struggling with their position in the evolving administrative state. The book concludes that with the changing role and forms of the administrative
state, administrative courts across the world and across sectors are in the process of reconsidering their roles and the appropriate models of judicial review. Learning from the experiences in different sectors and jurisdictions, it provides theoretical and empirical foundations for reflecting on the advantages and disadvantages of different models of review, the constitutional consequences and the main questions that deserve further research and debate. Jurgen de Poorter is professor of administrative law at Tilburg University and deputy judge in the District Court of The Hague. Ernst Hirsch Ballin is distinguished university professor at Tilburg University, professor in human rights law at the University of Amsterdam, and president of the T.M.C. Asser Institute for International and European Law. He is also a member of the Scientific Council for Government policy (WRR). Saskia Lavrijssen is professor of Economic Regulation and Market Governance of Network Industries at Tilburg University.

This anthology presents articles on various aspects of discretionary decisionmaking in the administration of justice. Discretionary justice suggests latitude of decisionmaking rather than formality or certainty, and unlike the symbolic idea of due process, it suggests that idiosyncrasy rather than rules may guide decisionmaking within the administration of criminal justice at all levels of the police, court, and penal systems. The relationship between forms of discretion and the criminal justice system is explored. The role of discretion at the arrest, prosecution, and sentencing levels as well as within the framework of correctional institutions is examined. The development of the discretionary ethic is discussed, and the severity and legality of its application in criminal justice procedures are examined. Discretion on the part of the police is covered, with special attention to legal norms and discretion in the police sentencing processes, factors in police discretion and decisionmaking, and administrative problems in controlling the exercise of police authority. An approach to the legal control of police in terms of discretionary powers is presented. The role of prosecutorial discretion is underscored; the application of discretion during charging and plea bargaining processes is examined, and means for controlling prosecutorial discretion are discussed. Judicial discretion during sentencing is also examined, with attention to pretrial decisionmaking, the growth and consequences of sentencing
discretion, and contemporary sentencing proposals. Finally, the application of discretionary powers within the prison environment is summarized; decisionmaking within the prison community, the control of discretionary powers of prison organizations, the use of discretion in determining the severity of punishment for incarcerated offenders, and discretion within the parole bureaucracies decisionmaking process are discussed.

There is now almost universal acceptance that tax law is overly complex and indeterminate; and yet, there has to date been no comprehensive assessment of the role of the tax authority in the current arrangement. If the legislation and case law offer few immediate answers to the taxpayer, then the role of Her Majesty's Revenue & Customs (HMRC) in advising taxpayers becomes more apparent. This monograph contends that the provision of advice by HMRC is desirable by virtue of the rule of law and it follows that any such advice should be correct, clear, accessible and reliable. Additionally, there should exist some means of scrutinising the advice in order to check that it satisfies these criteria. Tax Authority Advice and the Public explores this view of HMRC's role in tax collection. It explains the deficiencies in the current system in this light, highlighting the pitfalls for taxpayers and practitioners as well as the potential remedies. Finally, the book assesses potential reforms which could be adopted in order to alleviate existing problems. A timely and ambitious work, this book is essential reading for practitioners and academics interested in the interaction between tax administration and public law.

The increase in the European Union's executive powers in the areas of economic and financial governance has thrown into sharp relief the challenges of EU law in constituting, framing, and constraining the decision-making processes and political choices that have hitherto supported European integration. The constitutional implications of crisis-induced transformations have been much debated but have largely overlooked the tension between law and discretion that the post-2010 reforms have brought to the fore. This book focuses on this tension and explores the ways in which legal norms may (or may not) constrain and structure the discretion of the EU executive. The developments in the
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"Aims to analyse whether unwarranted disparity existed in rape sentencing in India, which anecdotal work of other scholars had pointed to"--Provided by publisher"

One noticeable feature of modern legal systems is the extent to which power is conferred upon government officials and agencies to be exercised at their discretion, according to policy considerations, rather than according to precise legal standards. This book is a legal and jurisprudential analysis of discretionary power in modern legal systems, with particular emphasis on the consequences of discretion in the relationship between the individual and the state.

Putting police power into the centre of the picture of capitalism The ubiquitous nature and political attraction of the concept of order has to be understood in conjunction with the idea of police. Since its first publication, this book has been one of the most powerful and wide-ranging critiques of the police power. Neocleous argues for an expanded concept of police, able to account for the range of institutions through which policing takes place. These institutions are concerned not just with the maintenance and reproduction of order, but with its very fabrication, especially the fabrication of a social order founded
on wage labour. By situating the police power in relation to both capital and the state and at the heart of the politics of security, the book opens up into an understanding of the ways in which the state administers civil society and fabricates order through law and the ideology of crime. The discretionary violence of the police on the street is thereby connected to the wider administrative powers of the state, and the thud of the truncheon to the dull compulsion of economic relations.

Police detention is the place where suspects are taken whilst their case is investigated and a case disposal decision is reached. It is also a largely hidden, but vital, part of police work and an under-explored aspect of police studies. This book provides a much-needed comparative perspective on police detention. It examines variations in the relationship between police powers and citizens’ rights inside police detention in cities in four jurisdictions (in Australia, England, Ireland and the US), exploring in particular the relative influence of discretion, the law and other rule structures on police practices, as well as seeking to explain why these variations arise and what they reveal about state-citizen relations in neoliberal democracies. This book draws on data collected in a multi-method study in five cities in Australia, England, Ireland and the US. This entailed 480 hours of observation, as well as 71 semi-structured interviews with police officers and detainees. Aside from filling in the gaps in the existing research, this book makes a significant contribution to debates about the links between police practices and neoliberalism. In particular, it examines the police, not just the prison, as a site of neoliberal governance. By combining the empirical with the theoretical, the main themes of the book are likely to be of utmost importance to contemporary discussions about police work in increasingly unequal societies. As a result, it will also have a wide appeal to scholars and students, particularly in criminology and criminal justice.

Beyond civil disobedience and the citizen’s power to protest and defy law, this book looks at rule departures actually sanctioned by law. This acclaimed study by philosophy professor Mortimer Kadish and law professor Sanford Kadish is a truly interdisciplinary inquiry into the idea of departing from the
strict letter of the law in a way that, they argue, actually comports with both law and morality. An instant classic and source of debate when first published by Stanford University Press in 1973, this book still resonates on questions of rule violations for the greater good, jury nullification, police and prosecutor discretion not to arrest or charge, civil disobedience, and the very concept of rules. Both citizens and government actors, they write, hold the power and the right to deviate from law in certain contexts and yet not act illegally in a sense -- because law itself contains strands of adaptations to its own departures that the authors weave into a sustained jurisprudential point. As one reviewer soon wrote, "the paradoxical idea that a citizen or official may lawfully break the law" will surely "raise the hackles" of any legal positivist. Yet it remains a challenging idea well worth considering. This book, despite its reputation in the fields of law and philosophy, is actually accessible to fields and scholars beyond, and to citizens who are finding their rightful place among the powers of governmental institutions. Part of the Classics of Law & Society Series from Quid Pro, includes 2010 Notes by the series editor and is available in new high-quality digital formats as well.

Welfare state professionals decide or establish premises as to whom will receive what, in what manner, when and how much, and when enough is enough. They control who passes through the gates of the welfare state. This book provides an in-depth understanding of the phenomenon of discretion. It shows why the delegation of discretionary powers to professionals in the front-line of the welfare state is both unavoidable and problematic. Extensive use of discretion can threaten the principles of the rule of law and relinquish democratic control over the implementation of laws and policies. The book introduces an understanding of discretion that adds an epistemic dimension (discretion as a mode of reasoning) to the common structural understanding of discretion (an area of judgment and decision). Accordingly, it distinguishes between structural and epistemic measures of accountability. The aim of the former is to constrain discretionary spaces or the behavior within them while the aim of the latter is to improve the quality of discretionary reasoning. This text will be of key interest to scholars and students in the fields of applied philosophy, public policy and public administration, welfare state research, and the sociology
This book tackles the relationship between the common law of judicial review, the written constitution and public international law.

This is the second edition of the highly successful book first published in 1989. However, it has been extensively revised in content and updated: Eight out of 14 chapters are new including chapters such as The Constitutional Framework of Powers, Alternative Dispute Resolution, and The Singapore Legal System and International Law; and the law on all subjects has been updated.

This book explores how the right to the free movement of goods, persons, services and capital in the European Union legal order affects welfare states. These “four freedoms”, as they are known, are vital instruments for the protection of a European market unencumbered by internal frontiers. The European Constitution, Welfare States and Democracy explore the relationships and conflicts that have emerged between the European constitution and the legal regulation of mixed economies and markets within welfare-states. In particular, it examines the threat posed to the discretionary powers enjoyed by national governments and administrative authorities. Christoffer C. Eriksen has undertaken a comprehensive analysis of a series of judgments in which the European Court of Justice has clearly indicated the ways in which the four freedoms may be incompatible with the current practice of entrusting national administrative authorities with discretionary powers and thus highlights how the four freedoms are provoking democratic dilemmas, previously neglected in the academic literature. The book is written in a style which communicates beyond an audience of specialized legal scholars and although it includes analysis of black letter law, its methodology also draws from the disciplines of philosophy, political science, and sociology.
Contextualised study setting out the foundations of administrative law, with discussion of case law and legislation to show practical application.

This book provides the first scholarly investigation of prosecutorial discretion in the International Criminal Court (ICC) from an interdisciplinary perspective. This work analyses the discretionary power of the ICC prosecutor and its scope. It explains that there is a tendency to overlook the necessity of distinguishing between the various usages of discretion when exercised as a power authorised by the law and effect when applying indeterminate legal thresholds. The author argues that the latter indeterminacy may give decision makers an unwarranted opportunity to exercise a wide range of discretion, where extra-legal factors may be considered. In comparison, prosecutorial discretion allows decision makers to consider extra-legal considerations. This book also discusses the relevance of political considerations within the decision-making process in the context of the exercise of prosecutorial discretion. It suggests that there need not be a conflict between the broad sense of justice as outlined in the Statute and political factors in giving effect to decisions. This book will be of interest to students of international law, global governance and international relations.

'Political science has leap-frogged law, economics, and sociology to become the dominant discipline contributing to regulatory studies. David Levi-Faur's volume taps the rich veins of regulatory scholarship that have made this the case. It brings together the talented new network of politics scholars intrigued by the importance of the changing nature of state and non-state regulation. Their fresh insights complement important new work by established stars of the field. Definitely a book to have on your shelf when in search of exciting theoretical approaches to politics.' – John Braithwaite, Australian National University
provides an extraordinary survey of research in that field – a survey remarkable in its comprehensiveness, outstanding in the quality of the contributions by leading regulatory scholars from different nations and academic disciplines.' – Robert A. Kagan, University of California, Berkeley, US 'An authoritative collection by a range of contributors with outstanding reputations in the field.' – Michael Moran, WJM Mackenzie Professor of Government 'This is an extraordinarily useful one-stop-shop for a wide range of traditions and approaches to the political aspects of regulation. David Levi-Faur has assembled a fine collection that by reporting on the state of the art also shows the way ahead for a discipline that has to capture and explain dramatic changes in real-world regulatory philosophies and policies.' – Claudio Radaelli, University of Exeter, UK 'This is an unusually impressive edited volume. Its contributors include the leading academic experts on government regulation from around the world. Its several clearly-written and informative essays address the most important topics, issues, and debates that have engaged students of regulatory politics. I strongly recommend this volume to anyone interested in understanding the breadth and depth of contemporary scholarship on the political dimensions of regulation.' – David Vogel, University of California, Berkeley, US This unique Handbook offers the most up-to-date and comprehensive, state-of-the-art reviews of the politics of regulation. It presents and discusses the core theories and concepts of regulation in response to the rise of the regulatory state and regulatory capitalism, and in the context of the 'golden age of regulation'. Its ten sections include forty-nine chapters covering issues as diverse and varied as: theories of regulation; historical perspectives on regulation; regulation of old and new media; risk regulation, enforcement and compliance; better regulation; civil regulation; European regulatory governance; and global regulation. As a whole, it provides an essential point of reference for all those working on the political, social, and economic aspects of regulation. This comprehensive resource will be of immense value to scholars and policymakers in numerous fields and disciplines including political science, public policy and administration, international relations, regulation, international law, business and politics, European studies, regional studies, and development studies.
"The granting of a range of discretionary powers to the franchisor shows the hierarchical face, besides the market or contractual face, of franchising and similar networks. Dealing with power-related contractual problems within these arrangements is particularly challenging, since they occupy a little explored niche in legal reasoning. In this thesis, I develop an interdisciplinary inquiry on the network concept to assess to which extent it reveals the rationalities underlying the granting of such powers. I study the typical contract law categories of control of the exercise of individual prerogatives available both in civil law and in common law tradition. I discuss to which extent those categories are capable of controlling the exercise of discretionary powers in franchise disputes. I finally turn to public law reasoning on control of power and propose a prudent transplant of some elements of this reasoning into contract law discourse." --

The publication shows the impact of judicial decisions on the discretionary power of public administration. This issue is analysed in relation to the process of issuing individual decisions by the administration, which have a dominant influence on the sphere of rights and freedoms of man. Judicial influence on public administration discretion is shown in the context of various models of judicial control of public administration.

This yearbook provides a new forum for the scrutiny of significant issues in European Union Law, the law of the Council of Europe, and comparative law with a European dimension.

The trans-jurisdictional discourse on criminal justice is often hampered by mutual misunderstandings. The translation of legal concepts from English into other languages and vice versa is subject to ambiguity and potential error: the same term may assume different meanings in different legal contexts. More importantly, legal systems may choose differing theoretical or policy approaches to resolving the same issues, which sometimes - but not always - lead to similar outcomes. This book is the second
volume of a series in which eminent scholars from German-speaking and Anglo-American jurisdictions work together on comparative essays that explore foundational concepts of criminal law and procedure. Each topic is illuminated from German and Anglo-American perspectives, and differences and similarities are analysed.

Fresh, modern, and practical, Public Law provides law undergraduates with a unique approach to constitutional and administrative law, aptly demonstrating why this is an exciting time to be studying the subject. Writing in a fluid, succinct style, the authors carve a logical pathway through the key areas studied on the LLB, guiding students to a solid understanding of the fundamental principles. This theoretical grounding is then rooted in reality, with each concept applied to a hypothetical scenario (included at the start of each chapter) to set it into a practical context. While this practical element helps students to understand how the law applies and develop problem-solving skills, a trio of supportive learning features also encourages active engagement with and a critical appreciation of public law. 'Key case' boxes highlight and analyse the significant case law in each area; "Counterpoint" boxes flag alternative viewpoints and areas of debate; and "Pause for reflection" boxes prompt readers to consider the impact of laws, and what potential developments and reforms may lie ahead. Public Law's modern approach and unique combination of practical application and theoretically critical discussion makes it the ideal choice for students seeking to understand concepts not only in the abstract but in practice, helping them to develop the skills they need to succeed at university and beyond.

Online Resources This title is supported by an online resources platform for students featuring guidance on approaching and analysing the real life scenarios in the book, a bank of multiple choice questions, legal updates, and links to useful material elsewhere on the web.

This book examines different legal systems and analyses how the judge in each of them performs a meaningful review of the proportional use of discretionary powers by public bodies. Although the proportionality test is not equally deep-rooted in the literature and case-law of France, Germany, the
Netherlands and the United Kingdom, this principle has assumed an increasing importance partly due to the influence of the European Court of Justice and European Court of Human Rights. In the United States, different standards of judicial review are applied to review ‘arbitrary and capricious’ agency discretion. However, do US judges achieve a similar result to the proportionality or reasonableness test? Drawing together a selection of key experts in the field, this book analyses the principle of proportionality in the judicial review of administrative decisions from different perspectives. The principle is first examined in the context of recent developments in the literature and case-law, including the inevitable EU influence, then light shall be shed on the meaning of this principle in the specific case-law of the European Court of Justice and European Court of Human Rights. Finally, the authors go on to explore the ways in which US judges consciously ‘sanction’ the ‘disproportionate’ and/or unreasonable use of agency discretion. In the legal systems where the proportionality test plays a very limited role, Ranchordás and de Waard also try to clarify why this is the case and look at what alternative solutions have been found. This book will be of great interest to scholars of public and administrative law, and EU law.

Aviation Law and Policy in Asia: Smart Regulation in Liberalised Markets investigates the regulatory and business dimensions of aviation law and policy in Asia and serve as a roadmap for understanding aviation law and policy in Asia.

The question of which European or international institution should exercise public authority is a highly contested one. This new collection offers an innovative approach to answering this vexed question. It argues that by viewing public authority as relative, it allows for greater understanding of both its allocation and its legitimacy. Furthermore, it argues that relations between actors should reflect the comparative analysis of the legitimacy assets that each actor can bring into governance processes. Put succinctly, the volume illustrates that public authority is relative between actors and relative to specific legitimacy assets. Drawing on the expertise of leading scholars in the field, it offers a thought-provoking
and rigorous analysis of the long debated question of who should do what in European and international law.

The book is devoted to the issue of public administration discretionary power within law application processes and its control. It presents a variety of factors that may affect the range of discretion as well as the influence on public administration's reasoning.

In the modern administrative state, hundreds if not thousands of officials wield powers that can be used to the benefit or detriment of individuals and corporations. When the exercise of these powers is challenged, a great deal can be at stake. Courts are confronted with difficult questions about how to apply the general principles of administrative law in different contexts. Based on a comparative theoretical analysis of the allocation of authority between the organs of government, A Theory of Deference in Administrative Law provides courts with a methodology to apply no matter how complex the subject matter. The firm theoretical foundation of deference is fully exposed and a comprehensive doctrine of curial deference is developed for application by courts in judicial review of administrative action. A wide scope is urged, spanning the whole spectrum of government regulation, thereby ensuring wide access to public law remedies.

Modern Administrative Law in Australia provides an authoritative overview of administrative law in Australia. It clarifies and enlivens this crucial but complex area of law, with erudite analysis and modern perspectives. The contributors - including highly respected academics from eleven Australian law schools, as well as eminent practitioners including Chief Justice Robert French AC and Justice Stephen Gageler of the High Court of Australia - are at the forefront of current research, debate and decision making, and infuse the book with unique insight. The book examines the structure and themes of administrative law, the theory and practice of judicial review, and the workings of administrative law beyond the courts. Administrative law affects innumerable aspects of political, commercial and private
life, and yet is often considered difficult to understand. Modern Administrative Law unravels the intricacies and reveals how they are applied in real cases. It is an essential reference for students and practitioners of administrative law.

This book explores the manner in which a variety of public benefits such as environmental protection and consumer safety have been accommodated through the authorisation process within competition law and policy in Australia. While the regulator's use of its discretion can be explained as a triumph of practice over theory, this book explores the potential for competition principles to be imbued by the wider discourses of democratic participation and human rights. In doing so it makes a significant contribution to the Australian competition policy as well as reconceptualising the way in which discretion is used by regulators—a very important and creative contribution to the literatures on both business regulation in general and Australian competition and consumer protection law in particular. It pays special attention to an everyday regulatory function that is often ignored in scholarship. And it is very important in challenging—on both empirical and normative policy oriented grounds—a narrowly economic approach to competition law, and proposing an alternative understanding and practice for the public benefit test in ACCC authorisations.

It is with the greatest pleasure that I add a few introductory remarks to the book of Dr. Mahendra Pal Singh on German administrative law. Between 1981 and 1982 Dr. Singh spent nearly two years in Heidelberg, doing research partly at the South Asia Institute of the Ruprecht Karl University and partly at the Max Planck Institute for Comparative Public Law and International Law. During his stay in the Federal Republic of Germany, Dr. Singh studied the general principles of German administrative law in a careful and admirable manner, and he has now completed the present book which is based on his studies in Heidelberg. For several reasons Dr. Singh is especially qualified to write this book: His familiarity with the administrative law of his home country has enabled him to look upon the German law with considerable objectivity; his knowledge of the German language gave him access to the vast amount of
German literature and court decisions; and Dr. Singh was able to penetrate this material with a searching and scholarly spirit. The final product seems to be the first comprehensive treatise in English on German administrative law.

This timely book provides a comprehensive guide to, and rigorous analysis of, prosecutorial discretion at the International Criminal Court. This is the first ever study that takes the reader through all the key stages of the Prosecutor's decision-making process. Starting from preliminary examinations and the decision to investigate, the book also explores case selection processes, plea agreements, culminating in the question of how to end engagement in specific country situations. The book serves as a guide to the Rome Statute through the lens of the Prosecutor's activities. With its unique combination of legal theory and specific policy analysis, it addresses broader questions that will be relevant to other international and hybrid criminal courts and tribunals. The book will be of interest to students, practitioners of law, academics, and the wider public concerned with international law, criminal justice and international relations.

Key chapters, written by leading experts across the field, engage with important ongoing debates in the field of EU administrative law, focusing on areas of topical interest such as financial markets, the growing security state and problematic common asylum procedures. In doing so, they provide a summary of what we know, don’t know and ought to know about EU administrative law. Examining the control functions of administrative law and the machinery for accountability, this Research Handbook eloquently challenges areas of authoritarian governance, such as the Eurozone and security state, where control and accountability are weak and tackles the seemingly insoluble question of citizen ‘voice’ and access to policy-making.

A collection of essays which focus on the relationship between judicial review and bureaucratic behaviour.
Few aspects of revenue law generate stronger feelings than the exercise of discretionary power by tax administrations. A delicate balance often needs to be struck between the legitimate needs of revenue authorities and the equally legitimate interests and rights of taxpayers. On the one hand, the executive and administration need to have sufficient capacity to apply the law; on the other, there is a need to maintain the principle of the rule of law that it is the elected legislature, and not the executive or tax administration, that establishes tax burdens. The chapters in this volume explore that delicate balance. The Delicate Balance - Tax, Discretion and the Rule of Law considers the critical questions that arise from the intersections of tax, discretion and the rule of law in modern common and civil law jurisdictions: What do we mean by tax discretion and how does it vary in conceptual and practical terms in different tax regimes? -What role should discretion play in tax systems that operate under the rule of law and how large should that role be? -What are the legal, political, institutional and other constraints that can prevent abuse of discretion? -To what extent can, and should, the legislature safely delegate discretionary powers to tax administrations?

This volume explores the social and political forces behind constitution making from a global perspective. It combines leading theoretical perspectives on the social and political foundations of constitutions with a range of in-depth case studies on constitution making in nineteen countries. The result is an examination of constitutions as social phenomena and their interaction with other social phenomena, from various perspectives in the social sciences.

The executive branch in Western democracies has been granted a virtually impossible task: expected to 'imperially' direct the life of the nation through thick and thin, it is concurrently required to be subservient to legislation meted out by a sovereign parliament. Drawing on a general argument from constitutional theory that prioritizes dispersal of power over concepts of hierarchy, this book argues that the tension between dominance and submission in the executive branch is maintained by the adoption of various forms of fuzziness, under which a guise of legality masks the absence of substantive
limitation of power. Under this 'internal tension' vision of constitutionalism, the executive branch is simultaneously submissive to law and dominant over it, while concepts of substantive legality are compromised. Building on legal and political science research, this volume classifies and analyses thirteen forms of fuzziness, ranging from open-ended or semi-written constitutions to unapplied legislation. The study of this unavoidable yet problematic feature of the public sphere is addressed descriptively and normatively. Adding detailed examples from two fields of law - emergency law and air-pollution law - in two systems (the UK and the US), the book ends with a call for raising the threshold of judicial review, grounded in theories of participatory and deliberative democracy. This book addresses an area that is surprisingly under-researched. Despite the increase in executive power across democratic polities and increasing public interest in the executive branch and executive powers, this much-needed book offers a theoretical foundation that should ground all analysis of arguably the most powerful branch of modern government.

Looking at discretion broadly as the exercise of controlled freedom, this edited volume introduces insights from a range of social sciences perspectives. Traditionally, discussions of discretion have drawn on legal notions of the appropriate exercise of legitimate authority specified by legislators. However, empirical and theoretical studies in the social sciences have extended our understanding of discretion, moving us beyond a narrow legal view. Contributors from a range of disciplines explore the idea of discretion and related notions of freedom and control across social and political practices and in different contexts. As this complex and important topic is discussed and examined, both total control and unconstrained freedom appear to be illusions.

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