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978-0-521-49337-6 - The Separation of Powers in the Contemporary Constitution: Judicial Competence and Independence in the United Kingdom

Roger Masterman

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THE SEPARATION OF POWERS IN THE CONTEMPORARY CONSTITUTION

The Separation of Powers in the Contemporary Constitution 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.

ROGER MASTERMAN is Senior Lecturer in Law at Durham Law School, where his teaching and research interests lie in the area of constitutional law and reform.

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For my parents

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‘in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors but holds the sword of the community. The legislature not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither force nor will but merely judgment; and must ultimately depend upon the aid of the executive arm for the efficacy of its judgments.’

J. Madison, A. Hamilton and J. Jay, *The Federalist Papers*
(London: Penguin Classics, 1987), No.LXXXVIII

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