How effective are the courts in controlling bureaucracies? What impact does judicial review have on the agencies which are targeted by its rulings? For the first time, a collection of essays brings together the insights of two intellectual disciplines which have hitherto explored these questions separately: political science and law/socio-legal studies. Leading international scholars from both fields present new research which focuses on the relationship between judicial review and bureaucratic behaviour. Individual chapters discuss fundamental conceptual and methodological issues, in addition to presenting a number of empirical case studies from various parts of the world: the United States, Canada, Australia, Israel and the United Kingdom. This volume constitutes a landmark text offering an international, interdisciplinary and empirical perspective on judicial review’s impact on bureaucracies. It will significantly advance the research agenda concerning judicial review and its relationship to social change.

Dr Marc Hertogh is Associate Professor of Socio-Legal Studies at the Faculty of Law, Tilburg University, The Netherlands.

Dr Simon Halliday is Nicholas de B. Katzenbach Research Fellow at the Centre for Socio-Legal Studies at the University of Oxford.
CAMBRIDGE STUDIES IN LAW AND SOCIETY

Cambridge Studies in Law and Society aims to publish the best scholarly work on legal discourse and practice in its social and institutional contexts, combining theoretical insights and empirical research.

The fields that it covers are studies of law in action; the sociology of law; the anthropology of law; cultural studies of law, including the role of legal discourses in social formations; law and economics; law and politics; and studies of governance. The books consider all forms of legal discourse across societies, rather than being limited to lawyers’ discourses alone.

The series editors come from a range of disciplines: academic law; socio-legal studies; sociology; and anthropology. All have been actively involved in teaching and writing about law in context.

Series Editors
Chris Arup
Victoria University, Melbourne
Martin Chanock
La Trobe University, Melbourne
Pat O’Malley
Carleton University, Ottawa
Sally Engle Merry
Wellesley College, Massachusetts
Susan Silbey
Massachusetts Institute of Technology

Books in the Series
The Politics of Truth and Reconciliation in South Africa
Legitimizing the Post-Apartheid State
Richard A. Wilson
0 521 80219 9 hardback
0 521 00194 3 paperback

Modernism and the Grounds of Law
Peter Fitzpatrick
0 521 80222 9 hardback
0 521 00253 2 paperback

Unemployment and Government
Genealogies of the Social
William Walters
0 521 64333 3 hardback
Autonomy and Ethnicity
Negotiating Competing Claims in Multi–Ethnic States
Yash Ghai
0 521 78112 4 hardback
0 521 78642 8 paperback

Constituting Democracy
Law, Globalism and South Africa's Political Reconstruction
Heinz Klug
0 521 78113 2 hardback
0 521 78643 6 paperback

The New World Trade Organization Agreements
Globalizing Law through Services and Intellectual Property
Christopher Arup
0 521 77355 5 hardback

The Ritual of Rights in Japan
Law, Society, and Health Policy
Eric A. Feldman
0 521 77040 8 hardback
0 521 77964 2 paperback

The Invention of the Passport
Surveillance, Citizenship and the State
John Torpey
0 521 63249 8 hardback
0 521 63493 8 paperback

Governing Morals
A Social History of Moral Regulation
Alan Hunt
0 521 64071 7 hardback
0 521 64689 8 paperback

The Colonies of Law
Colonialism, Zionism and Law in Early Mandate Palestine
Ronen Shamir
0 521 63183 1 hardback

Social Citizenship and Workfare in the United States and Western Europe
The Paradox of Inclusion
Joel F. Handler
0 521 83370 1 hardback
0 521 54153 0 paperback

Law, Anthropology and the Constitution of the Social
Making Persons and Things
Edited by Alain Pottage and Martha Mundy
0 521 83178 4 hardback
0 521 53945 5 paperback
JUDICIAL REVIEW AND BUREAUCRATIC IMPACT

International and Interdisciplinary Perspectives

Edited by Marc Hertogh and Simon Halliday
CONTENTS

Acknowledgments ix
Notes on the contributors xi

Introduction 1
MARC HERTOGH AND SIMON HALLIDAY

Part One Conceptual and methodological issues 13

1 Understanding judicial review and its impact 15
PETER CANE

2 Conceptual issues in researching the impact of judicial review on government bureaucracies 43
MAURICE SUNKIN

3 Studying bureaucratic implementation of judicial policies in the United States: conceptual and methodological approaches 76
BRADLEY C. CANON

Part Two International case studies 101

4 Impact studies in the United Kingdom 103
GENEVRA RICHARDSON

5 The politics of soft law: how judicial decisions influence bureaucratic discretion in Canada 129
LORNE SOSSIN

6 The operation of judicial review in Australia 161
ROBIN CREYKE AND JOHN MCMILLAN
## CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Legalising the unlegaliseable: terrorism, secret services and judicial review in Israel 1970–2001</td>
<td>190</td>
</tr>
<tr>
<td></td>
<td>YOAV DOTAN</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Implementing court orders in the United States: judges as executives</td>
<td>221</td>
</tr>
<tr>
<td></td>
<td>MALCOLM M. FEELEY</td>
<td></td>
</tr>
<tr>
<td><strong>Part Three</strong></td>
<td>The future of judicial review and bureaucratic impact</td>
<td>249</td>
</tr>
<tr>
<td>9</td>
<td>Judicial review and bureaucratic impact: the future of European Union administrative law</td>
<td>251</td>
</tr>
<tr>
<td></td>
<td>MARTIN SHAPIRO</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Judicial review and bureaucratic impact in future research</td>
<td>269</td>
</tr>
<tr>
<td></td>
<td>MARC HERTOGH AND SIMON HALLIDAY</td>
<td></td>
</tr>
</tbody>
</table>

**Bibliography**  
**Index**  

© Cambridge University Press  
www.cambridge.org
ACKNOWLEDGMENTS

The idea for this volume first took shape on the steps of the Central European University in Budapest, Hungary, during a joint meeting in 2001 of the Law and Society Association and the Research Committee on the Sociology of Law. During a rainy lunch break, in between conference sessions, we discussed the fact that, despite the growing importance of judicial review worldwide, there were still very few empirical studies available about its actual effects on government bureaucracies. Moreover, there was no single publication that combined studies from different countries and different academic disciplines. This led to the idea to publish such a much needed collection of essays ourselves. In November 2002 we organised a very stimulating and enjoyable two-day workshop on ‘Judicial Review and Bureaucratic Impact’ at Tilburg University, the Netherlands, with a group of leading international scholars. The results are published in this book.

For their support and assistance we would like to thank a number of people and institutions in particular. The generous financial support provided by the Netherlands Organization for Scientific Research (NWO) enabled us to invite all contributors to this volume to attend the workshop. We are also very grateful for the sponsorship of Tilburg University (Department of Jurisprudence and Legal History), the Centre for Socio-Legal Studies, University of Oxford, and Cambridge University Press. Thanks are also due to Vina Wijkhuijs who assisted in the running of the workshop and to Vidya Kumar who helped us prepare the manuscript for publication. In addition, of course, we would like to thank the authors in this volume who – with no exception – reacted very positively to our first invitation to join this project. Their constructive and cooperative attitude has been a great stimulus for us to go ahead with our plans and bring it to a close. Finally, we are much indebted to Finola O’Sullivan of Cambridge University Press who was
ACKNOWLEDGMENTS

supportive of this project right from the start and who was very helpful throughout the publication process.

Marc Hertogh and Simon Halliday
Tilburg and Oxford
October 2003
NOTES ON THE CONTRIBUTORS

Peter Cane  Professor of Law, Research School of Social Sciences, Australian National University, Australia

Bradley C. Canon  Professor of Political Science, University of Kentucky, USA

Robin Creyke  Alumni Professor of Administrative Law, Australian National University, Australia

Yoav Dotan  Associate Professor, Faculty of Law, Hebrew University, Jerusalem, Israel

Malcolm M. Feeley  Professor of Law, University of California at Berkeley, USA

Simon Halliday  Nicholas de B. Katzenbach Research Fellow, Centre for Socio-Legal Studies, University of Oxford, UK

Marc Hertogh  Associate Professor of Socio-Legal Studies, Faculty of Law, Tilburg University, the Netherlands

John McMillan  Commonwealth Ombudsman and Professor of Administrative Law (on leave), Australian National University, Australia

Genevra Richardson  Professor of Public Law, Queen Mary, University of London, UK

Martin Shapiro  James W. and Isabel Coffroth Professor of Law, University of California at Berkeley, USA

Lorne Sossin  Associate Professor, Faculty of Law, University of Toronto, Canada

Maurice Sunkin  Professor of Law, University of Essex, UK