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PUBLIC LAW: A CASEBOOK FOR MASTER'S DEGREE STUDENTS
(SELECTED FRONT MATTER)

BY

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PUBLIC LAW

A CASEBOOK FOR MASTER'S DEGREE STUDENTS



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To my students, who inspired this book.

INTRODUCTION

This casebook is designed for students in master's programs, including those for non-lawyers and for lawyers from foreign countries, as well as for advanced undergraduates. It provides materials for class discussions on U.S. federal constitutional law, state constitutional law, and statutes. As such it concentrates on "public law," the rules regulating the relationship between individuals and government. The subject matter is distinguished from, and complements, "private law," or rules regulating relations between individuals. There is necessarily some blurring of these categories, both in European civil law (code-based) jurisdictions and in common law (judicial decision-based) countries such as England and the United States.¹

The origins of the public-private law division can be traced to the classical period of ancient Rome (27 B.C.E.–284 C.E.) when the state protected the scope of magistrates' and priests' judicial power while all other conflicts were considered private.² Despite the narrowness of the public sphere, all disputes had to be resolved in accordance with *utilitas publica*, or the common good.³ In addition, limits were placed on the ability of officials and judges to impose fines on individuals and dispose of private property.⁴ The distinction was further muddled in medieval law's reference to both private ownership and governmental power over property as *dominium*, or the capacity to control and dispose.⁵ In the United States, the precise limits of the public versus the private spheres continue to be debated—a question exacerbated by the post-Civil War expansion of the administrative state, with its jurisdiction over a broad range of disputes between the government and private parties.⁶

In teaching Public Law to master's degree students at UCLA, I have developed a set of course materials that introduce students to constitutional and statutory analysis at both the federal and state levels, which I provide here. Rather than cover every aspect of these categories, I have chosen topics that give a sense of the overall structure of public law

¹ ELIZABETH ZOLLER, INTRODUCTION TO PUBLIC LAW: A COMPARATIVE STUDY 1–2 (2008). To simplify the private-public law separation, some civil law nations, such as France, have two court systems; common law systems adjudicate both in the same system but provide distinct private and public law remedies.

² David Johnston, *The General Influence of Roman Institutions of State and Public Law*, in THE CIVILIAN TRADITION AND SCOTS LAW 87, 88–89 (David L. Carey Miller & Reinhard Zimmerman eds. 1997).

³ *Id.* at 89 (citing Ulpian's Digest).

⁴ TONY HONORÉ, ULPIAN 236–46 (1982) (citing Ulpian's Digest).

⁵ FREDERIC WILLIAM MAITLAND, DOMESDAY BOOK AND BEYOND 224 (Bruce Lyon ed., 1966) (1897).

⁶ See generally BLAKE EMERSON, THE PUBLIC'S LAW: ORIGINS AND ARCHITECTURE OF PROGRESSIVE DEMOCRACY (2019).

in the United States. After an introduction to constitutional interpretation, judicial power, and federalism, this book presents chapters on standing, the Commerce Clause, the Dormant Commerce Clause, taxing and spending, the President's foreign affairs and military roles, executive authority and individual rights, judicial limitations on the executive, economic regulation, takings, equal protection and race, equal protection and gender/education, the First Amendment, and the Fourth Amendment. Departing from federal constitutional law, the text continues with chapters on state constitutional parallels to the U.S. Constitution, state constitutional positive rights, statutory interpretation, and administrative law. Then, decisions interpreting specific statutes have been chosen to illustrate how courts have resolved questions in various aspects of public law: the National Environmental Policy Act, the Endangered Species Act, plenary power and immigrant status, persecution and asylum, corporate criminal liability and privilege, Title VII discrimination, occupational safety and workers' compensation. The book's concluding chapter shows how government regulation of private action also takes place through the common law, under the Public Trust doctrine. For each chapter I provide a brief introduction to the topic, followed by references to contextual background readings—something my students regularly request—and questions to spark discussion.

A word is in order about the case method, widely used in U.S. law schools, and which this book encourages for master's students. This approach began in the late nineteenth century and employed the analysis of judicial decisions to explain how common law developed and changed. Designed at Harvard Law School, the method follows the analogy of natural science investigation: Students read cases (as well as essays and statutes), and with an instructor's guidance discover the workings of the legal system, just as a laboratory researcher examines specimens to ascertain the principles of botany or zoology. In the law school context this inductive approach has been found to engage students far more effectively than top-down lectures.⁷ The selection of cases and other materials presented here, along with the discussion questions, are informed by this pedagogy.

For encouraging me to embark on this project, as well as for helpful comments, I am particularly grateful to Russell Korobkin, Vice Dean and Professor at UCLA School of Law; Jason Fiske, Assistant Dean for Graduate Studies and Professional Programs; and my editors at West Academic Publishing, Louis Higgins and Jon Harkness. My students have been indispensable in telling me which cases work well, which don't, and

⁷ BRUCE A. KIMBALL & DANIEL R. COQUILLETTE, *THE INTELLECTUAL SWORD: HARVARD LAW SCHOOL, THE SECOND CENTURY* 51 (2020).

how the material might be better explained. If those who assign this casebook have suggestions for improvement, I welcome any feedback.

Los Angeles, November 2024

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