

Contents

Acknowledgments	vii
Introduction: ‘Not Law but Politics-Smuggled-into-Law’	1
I. The Theoretical Background	2
II. A Map of the Present Work	4
III. Key Concepts	6
A. Law, Law-Making and Legal Discipline	6
B. Politics, Political Order and Political Material	8
1 Law and Politics in Contemporary Legal Theory	11
I. Law and Politics Debate: Different Directions, Same Starting Line	11
II. Law, Politics and Legal Theory: A Way to Tackle the Questions	13
A. Fundamental Issues as to the Relations between Law and Politics	14
B. Ideal-Type as a Heuristic Device	17
III. Either Law or Politics: The Autonomous Model	18
A. The Rigidity of Law from Politics	19
B. Closing the Law-Making to the Political Order	22
C. A Legal Discipline Purified of Political Material	25
IV. Law is Politics: The Embedded Model	29
A. The Flexibility of the Law towards Politics	29
B. Making Law or Making Politics?	33
C. A Mixed Legal Discipline for a Mixed Law	37
V. Law and Politics: The Intersecting Model	41
A. Law and Politics in the Legal Realisms	43
B. The Legal Realists Open the Law-Making	47
C. The Realists’ Legal Discipline and the Political Material	50
VI. Common Points of the Three Models	54
VII. Conclusion	58
2 Law, Politics and the Grey Box	61
I. The Grey Box: The Transformational Moment in Contemporary Legal Theories	61
II. The Transformational Moment and the Autonomous Model	65
A. The Transformational Moment at the Periphery of the Autonomous Model’s Investigation	68

x *Contents*

III. The Transformational Moment and the Embedded Model	72
A. Self-Evidence of the Transformational Moment	77
IV. The Transformational Moment and the Intersecting Model	80
A. The Transformational Moment in the Legal Realists' Analysis	84
V. Some Further Light on the Grey Box	87
VI. Conclusion	90
3 Law and Policy	91
I. The Transformational Moment in the Different Models: At the Centre of their Law-Making	91
A. The Politicisation of Contemporary Law	92
B. The Specialisation of Contemporary Law	94
II. ... But Some Questions Are Still Open	96
III. The Concept of Policy in Political Science	100
IV. The Concept of Policy in The Minds of Lawyers	104
A. Policy at the Border of the Lawyer's Attention	105
B. Policy at the Centre of the Lawyer's Work	107
C. Policy as a Political Phenomenon	108
D. Policy as Standards	113
V. The Lawyer's Policy as Political Standards	115
VI. Models Outlining Policy According to Contemporary Legal Theory	117
VII. Conclusion	120
4 The Policy of Law: Opening and Framing the Field	123
I. Opening the Field of the 'Policy of Law'	123
A. The Policy of Law as Rational Processes Leading to Legal Categories	124
B. The Policy of Law as More than a Political Phenomenon	127
II. An Updated Concept of Policy of Law	129
III. Legalisation of the Policy of Law	130
IV. A Traditional Law-Making Model	135
A. Formation of the Legal Political Inputs and Policy of Law Process	135
B. Policy of Law Outputs and Outcomes	139
V. Frameworks and Adjustments of the Policy Of Law	142
A. Mutual Character of the Relations between the Arenas	143
B. Mutual Influences Internal to the Legal Arena	148

VI. Legal Withinputs	149
VII. Overlapping of the Different Arenas of Law-Making	153
A. Some Exceptional Cases within the Policy of Law Process	160
VIII. Conclusion	161
5 The Policy of Law Analysis	163
I. The Politics of Law Analysis and the Law-Making Process	163
II. The Sociology of Law and the Law-Making Process	167
III. The Policy of Law Analysis	171
A. Separation of the Policy of Law from Legal-Political and Legal-Sociological Studies	172
B. The Policy of Law Analysis as a Distinct Legal Discipline	176
C. Partially Mixed Nature of the Policy of Law Analysis	181
IV. Conceptual Apparatus of the Policy of Law Scholar	184
V. Some Final Comments on the Policy of Law Analysis	188
VI. Conclusion	190
6 The Policy of Law Analysis: What is the Point?	193
I. A Synopsis	193
II. Local, Supranational and International Dimensions of the Policy of Law	197
III. The Policy of Law Analysis and Certain Contemporary Phenomena	200
A. The Policy of Law Analysis and Globalisation	200
B. The Policy of Law Analysis and Gender	204
IV. The Policy of Law Analysis: Some Questions to be Answered	206
A. How Does the Policy of Law Work?	207
B. Why Do Legal Actors Choose One Legal Category instead of the Other?	208

The obvious is our business; making sense (or nonsense) of the obvious is what philosophers do. We are the ones who examine cause-and effect, the reality of the external world, personal identity, and our ability as humans to argue about value.

Jeremy Waldron, *The Dignity of Legislation* 126 (1999).

<http://www.pbookshop.com>