This chapter focuses on the democratic degradation that may be caused by the apparent replacement of the law of the state with the “law” of the firm when boilerplate is deployed in mass markets. It considers mass-market boilerplate rights deletion schemes and how the widespread use of boilerplate causes democratic degradation; for example, it threatens the distinction between public and private ordering, undermines the rule of law, and erases legal rights. The chapter also examines private law, the main legal infrastructure of the liberal notion of private ordering, and copycat boilerplate. Finally, it discusses technological protection measures (TPMs) and their implications for legal infrastructure, along with measures that might help to make TPMs less problematic from the point of view of the rule of law.

This chapter focuses on the origins of the notion of jus cogens (public order/public policy) and examines its fundamental characteristics by reference to different national legal systems. It then examines the necessity of jus cogens in international law and some doctrinal objections to it.
Securing the State, the Institutions of Government, and Maintaining Public Order
Keith Smith


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Published Online: 2010
Item type: chapter
Publisher: Oxford University Press
DOI: 10.1093/acprof:oso/9780199239757.003.0009

This chapter begins with a discussion of offences against the state, government, and its institutions, covering, sedition, treason, and secrets. It then turns to offences against public order, covering assembly and riot.

Introduction
ROGER B. MANNING


Published in print: 1993 Published Online: March 2012
Published Online: 1993
Item type: chapter
Publisher: Oxford University Press
DOI: 10.1093/acprof:oso/9780198203247.003.0001

This introductory chapter explains the coverage of this book, which is about social and cultural aspects of the history of unlawful hunting in England during the period from 1485 to 1640. This book focuses on the early modern sense of unlawful taking of deer. It explores the conflicting uses of land, the awakening of political consciousness, and the form violence that often accompany the confrontations between poachers and gamekeepers. The chapter discusses the role of the Court of Star Chamber in the development of the modern law of public order.

Conclusion
Ronan Mccrea

in Religion and the Public Order of the European Union

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This chapter argues that the Union's approach to religion is characterised by a commitment to balancing its predominantly Christian religious
tradition with a strong tradition of secularism and of questioning and challenging religion. The Union does so by treating religion as a form of identity. While such an approach permits the accommodation of divergent Member State approaches to religion, there are limits and approaches that fail to respect public or private autonomy which are contrary to the Union's public order. These features give the Union a public order that is unambiguously linked to a Christian humanist tradition and which facilitates the predominantly Christian, cultural role of religion in influencing the law. On the other hand, while not strictly secular, such a public order is avowedly non-theocratic and while recognising religion and privileging certain culturally entrenched forms thereof, the Union also recognises the importance of non-religious perspectives.

Introduction
Ronan McCrea

in Religion and the Public Order of the European Union

Published in print: 2010 Published Online: January 2011
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DOI: 10.1093/acprof:oso/9780199595358.003.0001

This introductory chapter sets out the overall approach of the book. It notes the many ways in which EU law can affect and be affected by religion. It argues that the Union's approach to religion is based on a commitment to balance between two partially competing influences: a predominantly Christian religious tradition and a secular and humanist tradition that limits religious influence over law and politics. Such balance is sought by treating religion as a form of identity. Such an approach is complicated by religion's nature as both a form of individual identity and a form of collective identity that can serve as the basis for the restriction of individual identity rights. The chapter contends that treating religion as a matter of identity limits the degree to which religious truth claims can be asserted in the political arena and reinforces the Union's humanist-influenced commitment to individual autonomy. Religious approaches which cannot accept such limitations will, the chapter concludes, struggle to achieve influence within the EU's public order.
The Last Postwar
Charles Townshend

in Making the Peace: Public Order and Public Security in Modern Britain
Published in print: 1993 Published Online: October 2011
Publisher: Oxford University Press
DOI: 10.1093/acprof:oso/9780198229780.003.0007
Item type: chapter

This chapter examines the passage of public order laws in post-war England. It suggests that though the Public Order Acts of 1936 and 1986 appear to be divided into two equal parts, the division is less clear-cut. This is because the Brixton issue did not initiate but rather accelerated the sense of crisis which had already been sufficiently acute in 1977. A critic and historian also observe that the public sense of sudden deterioration in public security and the sudden growth in violent crimes is a recurrent one.

Meetings, Protest, and Public Order
ERIC BARENDT

in Freedom of Speech
Published in print: 2007 Published Online: January 2010
Publisher: Oxford University Press
DOI: 10.1093/acprof:oso/9780199225811.003.0008
Item type: chapter

This chapter examines the scope of legal rights to hold meetings on the streets and other public fora. It considers the relationship of freedom of speech and freedom of assembly. The relationship of freedom of speech and of assembly to public order is also discussed, along with two techniques that may be used to limit the scale of the public order problems. The convenors of political demonstrations on the streets may be required to give notice of a proposed march, to allow the police to take steps to avoid disorder and disruption to the life of the community by the imposition of conditions on its route and timing. Secondly, in some sensitive contexts, in particular those of anti-abortion protest, buffer zones may be set up between demonstrators and others who may feel harassed or intimidated by the protest. The use of these techniques enables the courts to strike a balance between free speech and other important interests.
Prologue
Richard W. Kaeuper
in Chivalry and Violence in Medieval Europe
Published in print: 2001 Published Online: October 2011
Publisher: Oxford University Press
DOI: 10.1093/ 9780199244584.003.0001
Item type: chapter

This chapter discusses Mark Twain and his idea of romanticism. The most compelling reason to avoid romanticizing chivalry is that to take a view through rose-tinted lenses distorts and trivializes this force in early European history. By escaping romanticism, people can recognize the linkage between chivalry and major issues in medieval society, especially the issue of violence and public order. It argues that in the problem of public order the knights play an important role, and that the guides to their conduct that chivalry provided are in themselves complex and problematic.

The English Image of Order
Charles Townshend
in Making the Peace: Public Order and Public Security in Modern Britain
Published in print: 1993 Published Online: October 2011
Publisher: Oxford University Press
DOI: 10.1093/ 9780198229780.003.0001
Item type: chapter

This chapter examines the historical changes in the image of public order in England during the 19th century. Until the French revolutionary wars, the English people were seen by themselves and by their rulers as an ungovernable people. By the 1850s, the situation started to change and public order had ceased to be a national problem. The decisive moment in this shift was April 1848, fuelled by a decade of chartist mobilization, which petered out in London, stifled by middle-class solidarity. This chapter also discusses the role of the police in maintaining peace and order.

Making the Peace
Charles Townshend
Published in print: 1993 Published Online: October 2011
Publisher: Oxford University Press
DOI: 10.1093/ 9780198229780.001.0001
Item type: book
In recent years, such episodes as the death of Blair Peach, the Miners' Strike, the Scarman Report, and the Ponting and Stalker affairs have raised serious doubts as to whether the ‘British trick’ of maintaining law and order by consensus is still feasible. Beginning with the Swing, Chartist, and Plug Riots, this book shows how public order was steadily tightened during the Victorian era and how that process has continued throughout this century, thanks to such legislation as the Official Secrets, Public Order, Defence of the Realm, and Emergency Powers Acts. This is a historical analysis of the fundamental concepts on which the law-and-order debate rests. In addition to exploring the issues and events that have influenced mainland affairs, the book also examines the Irish situation between the First Land Act and the Prevention of Terrorism Act, and offers valuable insights into the periodic ‘crises of order’ that seem to be threatening modern Britain.

State Power versus Individual Freedom: Japan’s Constitutional Past, Present, and Possible Future

Lawrence Repeta and Colin P. A. Jones

in Japan: The Precarious Future

Published in print: 1953 Published Online: May 2016
Item type: chapter

The Liberal Democratic Party has been committed to fundamental change in the Japan’s constitutional order since the party was founded in 1955. In 2012, the party published detailed proposals to amend the Constitution that would sharply increase the power of the state and reduce protection for individual rights. The party attacks individual rights protection as based on “Western natural rights theory” that is inappropriate for Japan. The revisions would also impose a new set of “constitutional duties” on the people, including to respect Meiji-era nationalist symbols. Prime Minister Shinzo Abe is deeply committed to this program. This chapter examines these proposals for constitutional change and how they may affect the allocation of power and the lives of the Japanese people.

Preparing for Revolution 1919–1939

Charles Townshend

in Making the Peace: Public Order and Public Security in Modern Britain

Published in print: 1993 Published Online: October 2011
DOI: 10.1093/acprof:oso/9780198229780.003.0005
This chapter examines the public order and security measures employed by the English government to deal with civil violence during the period from 1919 to 1939. After World War I, public disorder and civil disobedience became major problems because of the demobilization of the battered economy. Examples of these were the police strikes of 1918 and 1919 and the crowd riot following the declaration of a bank holiday weekend in August 1919. To address these threats to civil security, the government was forced to employ strategies that defied all previous military orthodoxy.

Ambition and Social Order
Catherine Kovesi Killerby
in Sumptuary Law in Italy 1200-1500
Published in print: 2002 Published Online: January 2010
Item type: chapter

This chapter focuses on the attempts by governments to tackle the wider variety of problems presented by the changes due to sumptuary policy, as well as to cope with the problems of public order experienced by any state, no matter how stable. It demonstrates how sumptuary measures were used as a means of social and political control. It begins by discussing the governments' concern regarding modesty in outward apparel, and the avoidance of any clothing that might lead to, or encourage, immoral activities. It examines the governments' concern regarding behaviour at, and social practices during, public occasions such as weddings, funerals, christenings, and feasts in general. It adds that legislators were also concerned with the fundamental structure of society. This chapter also discusses laws that was supposed to apply to all citizens no matter what their status but did, however, make an extra distinction concerning servants and slaves.

Discretion, Divergence, and Unity
Michiel Brand
in The Coherence of EU Law: The Search for Unity in Divergent Concepts
Published in print: 2008 Published Online: January 2009
Item type: chapter
This chapter examines some of the main points and characteristics associated with discretion. In particular, it attempts to lay bare the relations of discretion with conceptual divergence and, ultimately, how this may relate to the attainment or stimulation of unity within a legal system. It argues that discretion is a concept that relates strongly to divergence, subsidiarity, and decentralization. It could therefore be held that the granting of discretion from above by the ECJ often involves the sustenance as well as the creation of divergence, in many cases for the sake of upholding the unity of the EU system.

Flawed Equipoise 1880—1914
Charles Townshend

This chapter examines the contrast between the image of orderliness and the persistence of substantial disorder in Great Britain during the period from 1880 to 1914. It suggests that contrary to the widely-held belief about the public orderliness of Victorian society, Britain remained a very disorderly society until the 1890s. In particular, the 1880s witnessed a turmoil dramatically at odds with the broad meliorism of the modernization process and the intensification of rural conflict in Ireland.

Losing the Trick
Charles Townshend

This chapter examines the hegemony in public order measures in England. It suggests that the deployment of the concept of public order presents several clear examples of the hegemonic process. This chapter contends that the government reaction to the sudden and unexpected intensification of disorder in the 1980s has taken both explicit and covert forms and that the 1986 Public Order Act represents an attempt to counter the degradation of domestic peace by making more explicit the
basic mechanics of tolerance and self-restraint on which the British way has been assumed to depend.

The Runners in a New Age of Policing, 1792–1815
J. M. Beattie

in The First English Detectives: The Bow Street Runners and the Policing of London, 1750-1840

Published in print: 2012 Published Online: May 2012
DOI: 10.1093/acprof:oso/9780199695164.003.0007
Item type: chapter

This chapter is concerned with the consequences of the French Revolution and the war that began in 1793 and came to a final conclusion only in 1815. The runners’ work was directly affected by the domestic consequences of the war. Their engagement in criminal prosecutions – already diminished by the new patrol and new police offices – was further reduced by the fall in violent offences during the war. On the other hand, the encouragement the Revolution gave to radical reform movements alarmed the government and what they took to be serious threats of sedition and insurrection. The chapter is concerned with the several ways the runners were drawn into national security measures and other efforts to preserve social order.

Emergencies
DAVID CLARK and GERARD McCOY

in The Most Fundamental Legal Right: Habeas Corpus in the Commonwealth

Published in print: 2000 Published Online: January 2010
DOI: 10.1093/acprof:oso/9780198265849.003.0004
Item type: chapter

This chapter examines the situations in which emergency laws are invoked and the reduced scope for habeas corpus during those situations. It considers emergencies that are not necessarily called emergencies, for example, periods of war, and also covers the use of emergency laws that operate outside of states of emergency. These include situations where public order, preventive detention, or internal security laws coexist with the normal legal system. Special safeguards have been adopted in some jurisdictions in recognition of the potentially draconian nature of emergency laws — either in those laws themselves or in the constitution, to operate when these special or emergency laws operate. Most Commonwealth countries include in their written
constitutions a chapter on emergencies, while countries without such provisions may deploy standing legislation specifically designed to govern emergencies. One of the characteristics of periods of emergency rule is mass arrests — and the subsequent discovery that many of the arrests were simply not justified or were based on the flimsiest of information.

Criticism of the State and Incitement to Violence

Perry Keller

in European and International Media Law: Liberal Democracy, Trade, and the New Media

Published in print: 2011 Published Online: September 2011
Item type: chapter

Chapter Eight concerns public scrutiny and criticism of the state, including transatlantic differences over the proper limits to the protection of state security and public order. This Chapter looks first at European Union law, which provides not only considerable leeway for member states to safeguard national security and domestic public order, but also prescriptive rules regarding the prohibition of incitement to terrorism. The ECHR Article 10 right to freedom of expression provides a counterweight to these interests, although the Council of Europe has also sponsored treaty obligations on incitement to terrorism. Chapter Eight then examines the GATT and GATS exceptions to primary trade obligations that also permit restrictions protecting national security and public order. Yet, unlike EU obligations, these are not tightly bound to human rights law. Finally, the Chapter discusses the criticism of the state and incitement to violence under international trade and human rights law, including UN terrorism obligations.