

Chapter 5

The Equitable Duty of Loyalty in Public Office

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There was a comic novel written by David Lodge in the 1960s which focused on a day in the life of a postgraduate student of English literature. The student had set out to write a thesis entitled 'Language and Ideology in Modern Fiction'. He had ended up working alone in the reading room of the British Museum attempting to finish a thesis, the title of which had been reduced to 'The Long Sentence in Three English Novels'. In the process, his life had become a pastiche of the texts he had studied. The novel ends with what, at the time it was written, was almost certainly the longest sentence in any English novel.¹

Like that postgraduate student of English literature, I started with a grand design. It was to explore and expound upon the 'The Public Trust', a concept to which Paul Finn first drew the attention of the modern legal reader in a series of publications in the late 1980s and early 1990s, and a concept which has since received attention in academic literature in the United States and Canada. The project held, at the outer reaches of its potential, the possibility of reimagining legal constraints on the exercise of governmental power in a way that was faithful to a tradition embedded deeply, if somewhat obscurely, within our legal tradition and that was also consistent with a contemporary moral understanding of the nature and functioning of government.

Like that postgraduate student of English literature, my ambition has narrowed. It has reduced to exploring how equity supplements statute and the common law by imposing proscriptive duties of loyalty on holders of public offices and by providing remedies to require accounting for gains made in consequence of breach of those duties.

One apology I can give for that much-reduced topic is that it is within the scope of the grand design with which I started. Another is that concentration on a topic of that specificity fits somewhere within the oeuvre of

1 David Lodge, *The British Museum is Falling Down* (MacGibbon & Kee, 1965).

This is a preview. Not all pages are shown.