

Judicial Deliberations A Comparative Analysis of Judicial Transparency and Legitimacy 1st Edition Mitchel De S.-O.-L'E. Lasser

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Judicial Deliberations A Comparative Analysis Of Judicial Transparency And Legitimacy

Claire Kilpatrick, Joanne Scott



Judicial Deliberations A Comparative Analysis Of Judicial Transparency And Legitimacy:

Judicial Deliberations, 2004 The author compares how and why the European Court of Justice the French Cour de cassation and the United States Supreme Court offer different approaches for generating judicial accountability and control judicial debate and deliberation and ultimately judicial legitimacy R sum de l diteur **Judicial Deliberations** Mitchel de S.-O.-L'E. Lasser, 2009 Judicial Deliberations compares how and why the European Court of Justice the French Cour de cassation and the US Supreme Court offer different approaches for generating judicial accountability and control judicial debate and deliberation and ultimately judicial legitimacy Examining the judicial argumentation of the United States Supreme Court and of the French Cour de cassation the book first reorders the traditional comparative understanding of the difference between French civil law and American common law judicial decision making It then uses this analysis to offer the first detailed comparative examination of the interpretive practice of the European Court of Justice Lasser demonstrates that the French judicial system rests on a particularly unified institutional and ideological framework founded on explicitly republican notions of meritocracy and managerial expertise Law making per se may be limited to the legislature but significant judicial normative administration is entrusted to State selected trained and sanctioned elites who are policed internally through hierarchical institutional structures The American judicial system by contrast deploys a more participatory and democratic approach that reflects a more populist vision Shunning the unifying controlling and hierarchical French structures the American judicial system instead generates its legitimacy primarily by argumentative means American judges engage in extensive debates that subject them to public scrutiny and control The ECJ hovers delicately between the institutional argumentative and republican democratic extremes On the one hand the ECJ reproduces the hierarchical French discursive structure on which it was originally patterned On the other it transposes this structure into a transnational context of fractured political and legal assumptions This drives the ECJ towards generating legitimacy by adopting a somewhat more transparent argumentative approach The Legitimacy of Highest Courts' Rulings Nick Huls, Jacco Bomhoff, Maurice Adams, 2009 In his Judicial Deliberations A Comparative Analysis of Judicial Transparency and Legitimacy Oxford 2004 the American French scholar Mitchel Lasser has among other things tried to re establish the strengths of the French cassation system Using Lasser s approach and ideas as a starting point in this book judges from the French Belgian and Dutch Cassation Courts reflect on the challenges that their Courts are facing The book also contains a series of contributions from scholars analyzing the wide range of factors that determine the legitimacy of these courts decisions Specific attention is given to the Strasbourg Court of Human Rights that has been so important for the moral legitimacy of the European legal order and to courts in post communist systems which face many similar challenges and are even under greater pressure to modernize The book is a multidisciplinary contribution to the international debate about the legitimacy of the highest courts rulings as well as the concept of judicial leadership and offers a new perspective in the USA versus Europe debate It is

recommended reading for academics judges policymakers political scientists and students Nick Huls is a Professor of socio legal studies at the Faculty of Law of the Erasmus University Rotterdam and Leiden University s Faculty of Law The Netherlands Maurice Adams is a Professor of law at Tilburg University The Netherlands and part time Professor of comparative law at Antwerp University in Belgium Jacco Bomhoff is a Lecturer in law at the Law Department of the London School of Economics in the UK Cambridge Yearbook of European Legal Studies, Vol 14 2011-2012 Catherine Barnard, Markus Gehring, Iyiola Solanke, 2012-12-20 The Cambridge Yearbook of European Legal Studies provides a forum for the scrutiny of significant issues in EU Law the law of the European Convention on Human Rights and Comparative Law with a European dimension and particularly those issues which have come to the fore during the year preceding publication The contributions appearing in the collection are commissioned by the Centre for European Legal Studies CELS Cambridge a research centre in the Law Faculty of the University of Cambridge specialising in European legal issues The papers presented are at the cutting edge of the fields which they address and reflect the views of recognised experts drawn from the University world legal practice and the institutions of both the EU and its Member States Inclusion of the comparative dimension brings a fresh perspective to the study of European law and highlights the effects of globalisation of the law more generally and the resulting cross fertilisation of norms and ideas that has occurred among previously sovereign and separate legal orders The Cambridge Yearbook of European Legal Studies is an invaluable resource for those wishing to keep pace with legal developments in the fast moving world of European integration

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Animal Studies Paul Waldau, 2013-03-28 The field requires both learning and unlearning to develop forms of critical thinking that are scientifically informed and ethically sensitive High Courts in Global Perspective Nuno Garoupa, Rebecca D. Gill, Lydia B. Tiede, 2021-08-27 High courts around the world hold a revered place in the legal hierarchy These courts are the presumed impartial final arbiters as individuals institutions and nations resolve their legal differences But they also buttress and mitigate the influence of other political actors protect minority rights and set directions for policy The comparative empirical analysis offered in this volume highlights important differences between constitutional courts but also clarifies the unity of procedure process and practice in the world s highest judicial institutions High Courts in Global Perspective pulls back the curtain on the interlocutors of court systems internationally This book creates a framework for a comparative analysis that weaves together a collective narrative on high court behavior and the scholarship needed for a

deeper understanding of cross national contexts From the U S federal courts to the constitutional courts of Africa from the high courts in Latin America to the Court of Justice of the European Union high courts perform different functions in different societies and the contributors take us through particularities of regulation and legislative review as well as considering the legitimacy of the court to serve as an honest broker in times of political transition Unique in its focus and groundbreaking in its access this comparative study will help scholars better understand the roles that constitutional courts and judges play in deciding some of the most divisive issues facing societies across the globe From Africa to Europe to Australia and continents and nations in between we get an insider s look into the construction and workings of the world s courts while also receiving an object lesson on best practices in comparative quantitative scholarship today Contributors Aylin Aydin Cakir Yeditepe University Turkey Tanya Bagashka University of Houston Clifford Carrubba Emory University Amanda Driscoll Florida State University Joshua Fischman University of Virginia Joshua Fjelstul Washington University in St Louis Tom Ginsburg University of Chicago Melinda Gann Hall Michigan State University Chris Hanretty University of London Lori Hausegger Boise State University Diana Kapiszewski Georgetown University Lewis A Kornhauser New York University Dominique H Lewis Texas A M University Chien Chih Lin Academia Sinica Taiwan Sunita Parikh Washington University in St Louis Russell Smyth Monash University Australia Christopher Zorn Pennsylvania State University

Constitutionalism and Democracy *Indonesian Law* Tim Lindsey, Simon Butt, 2018-09-05 Indonesia has a growing population of almost 300 million people it is increasingly involved in world affairs and has a booming economy The need to better understand its unique complex and often obscure legal system has become pressing This is true across a wide range of sectors including but not limited to trade and investment crime and terrorism and human rights Indonesia s democratization after the fall of Soeharto in 1998 triggered massive social and political changes that opened up this diverse and formerly tightly controlled society Law reform was a key driver of Indonesia s transformation and its full effect remains to be seen This book offers clear and detailed explanations of the foundations of Indonesia s legal system in the context of its legal reform and rapid development It offers succinct commentaries on a wide range of issues examining the judicial process the constitution corruption and the court system contract law administrative law foreign investment taxation Islamic law and family law It examines current substantive law and judicial interpretation and presents case studies of how the system operates in practice Written in an accessible and engaging style this book is an essential guide for readers seeking quick and clear answers to questions regarding the law and its application in Indonesia

The Limits of Legal Reasoning and the European Court of Justice Gerard Conway, 2012-01-12 The European Court of Justice is widely acknowledged to have played a fundamental role in developing the constitutional law of the EU having been the first to establish such key doctrines as direct effect supremacy and parallelism in external relations Traditionally EU scholarship has praised the role of the ECJ with more critical perspectives being given little voice in mainstream EU studies From the standpoint of legal reasoning Gerard Conway offers

the first sustained critical assessment of how the ECJ engages in its function and offers a new argument as to how it should engage in legal reasoning He also explains how different approaches to legal reasoning can fundamentally change the outcome of case law and how the constitutional values of the EU justify a different approach to the dominant method of the ECJ

The European Fundamental Freedoms Pedro Caro de Sousa, 2015-04-23 Law can be looked at from both an internal legal perspective reflected in the official discourse supporting legal decisions and an external perspective which is pursued by studies that look at the law from the outside as the subject of sociological economic or philosophical analysis This external dimension related to extra legal factors that impact the law such as the institutional environment in which the law is applied is usually ignored or not addressed systematically by studies that focus on the internal perspective By systematically internalizing these external elements into legal theory and practice contextual approaches lead to the development of better descriptive theories and more attractive normative models of the law and specifically EU law than de contextualized approaches allow for Additionally contextual approaches are more self aware than de contextualized approaches since they are able to make sense of the role that legal practice by judges legal practitioners and academics plays in the development of the law It is through a contextual approach that Pedro Caro de Sousa develops a general theory of European constitutional law in particular free movement law and the EU fundamental freedoms As a contribution to the development of EU constitutionalism this monograph focuses on the interplay between the different normative concerns behind the EU s market freedoms identified in traditional legal discourse and the various extra legal and institutional factors that affect how that law is applied and develops in practice Moving away from traditional studies of free movement law Caro de Sousa s book offers a fresh approach to free movement law Rather than proposing normative approaches he uses this approach to construct a broader thesis that the EU law of free movement can best be understood as interplay of traditional legal doctrines and practices and the specific institutional environment where this law is applied and developed

Globalization and Private Law Michael Faure, Andre Van der Walt, 2010-01-01 This timely book explores the relationship between private law and globalization It examines the consequences of the fact that law making now takes place in a globalized world which increasingly leads to questions of accountability and legitimacy of the law making process Within this work European and South African scholars deal with the relationship between private law and globalization in fourteen innovative chapters addressing inter alia globalization democracy and accountability harmonization versus decentralization public law issues corporate governance procedural issues as well as human rights and the environment This well documented and original study will be a valuable resource for academics and legal practitioners as well as students Specialists in private law transnational law international law and legal theory should also not be without this important book

Constitutional Engagement in a Transnational Era Vicki Jackson, 2013-05-30 *Constitutional Engagement in a Transnational Era* explores how transnational phenomena affect our understanding of the role of constitutions and of courts in deciding constitutional

cases In it Vicki Jackson looks at constitutional court decisions from around the world and identifying postures of resistance convergence or engagement with international and foreign law *Ruling the World?* , *Legal Education in Asia* Andrew J. Harding, Jiaxiang Hu, Maartje de Visser, 2017-11-20 Legal education systems like legal systems themselves were framed across Asia without exception according to foreign models These reflect the vestiges of colonialism and can be said to amount to imitating the style and purposes of legal education typical in Western and relatively pure common law and civilian systems Today however we see Asian legal education coming into its own and beginning to accept responsibility for designing curricula and approaches that fit the region's particular needs This book explores how conventional transplanted approaches as regards program design as well as modes of teaching are or are on the cusp of being reimagined and discerns emerging home grown traces of innovation replacing imitation in countries and universities across East Asia *Rethinking Comparative Law* Glanert, Simone, Mercescu, Alexandra, Samuel, Geoffrey, 2021-10-19 Over the past decades the field commonly known as comparative law has significantly expanded The multiplication of journals the proliferation of scholarship and the creation of courses or summer schools specifically devoted to comparative law attest to its increasing popularity Within the Western legal tradition a traditional black letter approach to law has proved particularly authoritative This co-authored book rethinks comparative law's mainstream model by providing both students and lawyers with the intellectual equipment allowing them to approach any foreign law in a more meaningful way [The EU Treaties and Charter of Fundamental Rights: A Commentary](#) , 2024-08-07 The second edition of *The EU Treaties and the Charter of Fundamental Rights A Commentary* provides an article by article summary of the TEU the TFEU and the Charter of Fundamental Rights to reflect the latest developments in the law since publication of the first edition in 2019 It offers a quick reference to the provisions of the treaties how they are interpreted and applied in practice and to the most important legal instruments enacted on their basis The fully updated Commentary considers key developments in all areas of EU law including the debates and requirements around the Rule of Law legal decisions in relation to the Covid 19 pandemic climate change measures such as the European Green Deal as well as recent changes to the Common Agricultural Policy It also includes significant court rulings on freedom security and justice migration and asylum as well as issues relating to freedom of movement and Brexit The new edition outlines the Digital Markets Act a major piece of legislation adopted in 2022 and contains significant updates on EU competition law in the light of new Regulations and Guidelines Written by a team of contributors drawn from the Legal Service of the European Commission and from academia the Commentary offers expert guidance to practitioners and academics seeking fast access to the Treaties secondary law and current practice The Commentary follows a set structure offering a short overview of the Article the Article text itself a key references list including essential case law and legislation followed by a structured commentary on the Article The editors and contributors combine experience in practice with a strong academic background and have published widely on a variety of EU law

subjects *Greening EU Competition Law and Policy* Suzanne Kingston, 2011-10-27 One of the fundamental challenges currently facing the EU is that of reconciling its economic and environmental policies Nevertheless the role of environmental protection in EU competition law and policy has often been overlooked Recent years have witnessed a shift in environmental regulation from reliance on command and control to an increased use of market based environmental policy instruments such as environmental taxes green subsidies emissions trading and the encouragement of voluntary corporate green initiatives By bringing the market into environmental policy such instruments raise a host of issues that competition law must address This interdisciplinary treatment of the interaction between these key EU policy areas challenges the view that EU competition policy is a special case insulated from environmental concerns by the overriding efficiency imperative and puts forward practical proposals for achieving genuine integration *New Legal Approaches to Studying the Court of Justice* Claire Kilpatrick, Joanne Scott, 2020-12-16 At the beginning of 2015 the Court of Justice opened its archives which created a new and challenging primary source for those studying the Court of Justice the dossiers de procédure which contain much more than the contemporary documents published by the Court This volume includes five chapters which analyse the activities of the Court of Justice from a highly diverse range of non doctrinal perspectives However they also highlight significant new developments at the Court itself which attract attention and deserve analysis Thus the idea behind this volume is to make available new tools and approaches through which the activities of the Court of Justice can be studied It shows a more intense engagement with scholars across disciplines to reflect on law and courts with the Court of Justice as a central focus and new methods such as network citation analysis and sources such as the Court's archives being discovered and developed It also shows a more intense and deeply knowledgeable engagement with EU law and the Court of Justice by non legal scholars such as the new sociologies and histories of the Court of Justice These and other new approaches have spawned productive and ongoing conversations across disciplines *A Short Introduction to the Common Law* Geoffrey Samuel, 2013-10-31 It adopts an approach which explains the historical development of the common law institutions and procedures whilst also setting them in perspective through a comparative outlook Aspects of the common law are contrasted on occasions with structural o *The New Commonwealth Model of Constitutionalism* Stephen Gardbaum, 2013-01-03 Stephen Gardbaum proposes and examines a new way of protecting rights in a democracy *Comparative Reasoning in European Supreme Courts* Michal Bobek, 2013-08-08 The last two decades have witnessed an exponential growth in debates on the use of foreign law by courts Different labels have been attached to the same phenomenon judges drawing inspiration from outside of their national legal systems for solving purely domestic disputes By doing so the judges are said to engage in cross border judicial dialogues They are creating a larger transnational community of judges This book puts similar claims to test in relation to highest national jurisdictions supreme and constitutional courts in Europe today How often and why do judges choose to draw inspiration from foreign materials in solving domestic cases The book addresses these questions from

both an empirical and a theoretical angle Empirically the genuine use of comparative arguments by national highest courts in five European jurisdictions is examined England and Wales France Germany the Czech Republic and Slovakia On the basis of comparative discussion of the practice and its national theoretical underpinning in these and partially also in other European systems an overreaching theoretical framework for the current judicial use of comparative arguments is developed Drawing on the author's own past judicial experience in a national supreme court this book is a critical account of judicial engagement with foreign authority in Europe today The sober middle ground inductively conceptualized and presented in this book provides solid jurisprudential foundations for the ongoing use of comparative arguments by courts as well as its further scholarly discussion

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