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GOVERNING WITH JUDGES

Constitutional Politics
in Europe

Alec Stone Sweet

Governing With Judges Constitutional Politics In Europe

David Scott Clark



Governing With Judges Constitutional Politics In Europe:

Governing with Judges Alec Stone Sweet, 2000 Constitutional Politics in Europe Governing with Judges elaborates a theory of constitutional politics the process through which the discursive practices and techniques of constitutional adjudication come to structure the work of governments parliaments judges and administrators Focusing on the cases of France Germany Italy Spain and the European Union the book examines the sources and consequences of the pan European movement to confer constitutional review authority on a new governmental institution the constitutional court Detailed case studies illustrate how and to what extent legislative processes have been placed under the influence of constitutional judges In a growing number of policy domains these judges function as powerful adjunct legislators As constitutional courts have consolidated their position as authoritative interpreters of the constitutional law and especially of human rights provisions the work of the judiciary too has gradually been constitutionalised Today ordinary judges seek to detect violations of the constitution in their application of the various codes and to rewrite statutes that they deem unconstitutional Constitutional politics have not only provoked the demise of traditional notions of parliamentary sovereignty they have organized profound transformations in the very nature of European governance Stone Sweet argues that constitutional adjudication constructs complex causal linkages between rule systems and normativity on the one hand and the strategic behaviour of individuals on the other The theory constitutes a novel synthesis of normative and rational approaches to politics The book also addresses central questions raised by a wide range of ongoing theory projects including the new institutionalism rational choice principal agent theories of delegation and the new constitutionalism in Continental legal theory

Constitutional Politics in the European Union D. Castiglione, J. Schönau, C. Longman, E. Lombardo, N. Pérez-Solórzano, M. Aziz, 2007-11-28 This volume examines the Convention on the Future of Europe as a moment of European constitutional politics It discusses the contested nature of constitutional politics in the EU and how the Convention dealt with these issues The book also assesses the Convention's aftermath

EU Treaties and the Judicial Politics of National Courts Pablo José Castillo Ortiz, 2015-08-11 Cases such as the Maastricht ruling by the German Federal Constitutional Court or the Crotty decision by the Irish Supreme Court have gone down in the history of European integration as outstanding examples of intervention by judicial actors in important political processes In this book Dr Castillo Ortiz makes for the first time a comprehensive analysis of all such rulings by national higher courts on European Union treaties issued during their processes of ratification Using an interdisciplinary Law and Politics approach and a sophisticated methodological strategy the book describes the political dynamics underlying some of the most relevant judicial episodes in the process of European Integration during the last decades litigation strategies by Europhile and Eurosceptic actors relations between the judiciary and the other branches of government and clashes of power between national courts and the European Court of Justice of the European Union By offering empirical evidence and by relying on scientific rigor the book seeks to provide both experts and the general public

an accessible account of one of the most salient but least studied aspects of current European law and politics

Constitutional Politics Sotirios A. Barber, Robert P. George, 2021-03-09 What does it mean to have a constitution Scholars and students associated with Walter Murphy at Princeton University have long asked this question in their exploration of constitutional politics and judicial behavior These scholars concerned with the making maintenance and deliberate change of the Constitution have made unique and significant contributions to our understanding of American constitutional law by going against the norm of court centered and litigation minded research Beginning in the late 1970s this new wave of academics explored questions ranging from the nature of creating the U S Constitution to the philosophy behind amending it In this collection Sotirios A Barber and Robert P George bring together fourteen essays by members of this Princeton group some of the most distinguished scholars in the field These works consider the meaning of having a constitution the implications of particular choices in the design of constitutions and the meaning of judicial supremacy in the interpretation of the Constitution The overarching ambition of this collection is to awaken a constitutionalist consciousness in its readers to view themselves as potential makers and changers of constitutions as opposed to mere subjects of existing arrangements In addition to the editors the contributors are Walter F Murphy John E Finn Christopher L Eisgruber James E Fleming Jeffrey K Tulis Suzette Hemberger Stephen Macedo Sanford Levinson H N Hirsch Wayne D Moore Keith E Whittington and Mark E Brandon

The Politics of the Rule of Law in the EU Polity Ramona Coman, 2022-04-23 This book analyses the challenges facing the European Union through the frame of the rule of law It shows how over the last decades the increased dissensus and contestation of the rule of law has given rise to heightened tensions between national and EU institutions leading to the establishment of new soft and hard policy tools to safeguard it at the supranational level The book proposes a comprehensive and multifaceted analysis of the current state of debates by exploring how EU institutional actors seek to uphold the Union s values It shows that European integration in core state powers is the outcome of the clash between liberal and anti liberal ideas between dissensus and contestation over how collective problems should be solved in a community of voices featuring assent and dissent all of which give democracy its substance Beyond the analysis of the emerging EU s rule of law policy the book will help readers to better understand the EU s fragilities and resilience and the potential challenges for the future of EU integration

Precedents and Judicial Politics in EU Immigration Law Marie De Somer, 2018-07-27 This study explores the use of precedents in the case law of the Court of Justice of the European Union CJEU It argues that a strategic use of precedent based discourses aids the Court in developing its jurisprudence autonomously that is independent of the political preferences of EU member states The study is based on a long term assessment of CJEU case law in the politically sensitive area of immigration law It traces the Court s rulings in this area from the 1970s up until the most recent period The study identifies a series of consistent discursive patterns that slowly but surely moved EU immigration law beyond what member states had intended The work takes an interdisciplinary approach engaging

with both political science and legal discussions on the Court of Justice and its role in processes of European integration

The Politics of Delegation Alec Stone Sweet, Mark Thatcher, 2004-08-02 There is a growing interest in delegation to non majoritarian institutions in Europe following both the spread of principal agent theory in political science and law and increasing delegation in practice During the 1980s and 1990s governments and parliaments in West European nations have delegated powers and functions to non majoritarian bodies the EU independent central banks constitutional courts and independent regulatory agencies Whereas elected policymakers had been increasing their roles over several decades delegation involves a remarkable reversal or at least transformation of their position This volume examines key issues about the politics of delegation how and why delegation has taken place the institutional design of delegation to non majoritarian institutions the consequences of delegation to non majoritarian institutions the legitimacy of non majoritarian institutions The book addresses these questions both theoretically and empirically looking at central areas of political life central banking the EU the increasing role of courts and the establishment and impacts of independent regulatory agencies **European Union** Jeremy Richardson, 2006-01-16 This best selling book delivers a comprehensive introduction to the policy making processes at work in the European Union Written by some of the leading authorities in the field this new edition has been significantly improved to make it even more accessible for second and third year undergraduates Addressing some of the more contentious areas in order to stimulate students interest this book also continues to cover the vital elements of EU courses including theory history institutions policy relations with member states external relations enlargement A companion website also supports this edition with a clear guide to more technical material such as statistics as well as regular updates This volume is essential reading for all students of politics and the European Union *Authoritarian Liberalism and the Transformation of Modern Europe* Michael A. Wilkinson, 2021 Oxford Constitutional Theory has rapidly established itself as the primary point of reference for theoretical reflections on the growing interest in constitutions and constitutional law in domestic regional and global contexts The majority of the works published in the series are monographs that advance new understandings of their subject But the series aims to provide a forum for further innovation in the field by also including well conceived edited collections that bring a variety of perspectives and disciplinary approaches to bear on specific themes in constitutional thought and by publishing English translations of leading monographs in constitutional theory that have originally been written in languages other than English Book jacket **The Function of Proportionality Analysis in European Law** Tor-Inge Harbo, 2015-03-20 The proportionality principle has become ever more important in European law and elsewhere The career of the principle has attracted considerable attention from legal practitioners legal theorists and political scientists alike but the debate so far has been quite fragmented In this new book the author offers a broad and systematic analysis of the proportionality principle Discussing and comparing proportionality analysis as applied by European courts in part one of the book the author proceeds to contrast proportionality analysis with alternative assessment schemes

In the third part of the book the author reaches beyond doctrinal reconstructions as he deciphers the functions of proportionality jurisprudence In view of the various facets of proportionality analysis the author departs from the asserted infringement of a legally protected position by some regulatory act proceeds to discuss the legitimacy of this intervention and undertakes an analysis of its suitability appropriateness and necessity According to the author the safe grounds of proportionality means ends rationality do not suffice where the legitimacy of an infringement has to be assessed where conflicting values have to be balanced or where courts engage in a proportionality analysis *stricto sensu* In the concluding remarks the author proposes how proportionality analysis may be structured in order to better secure the legitimacy of the analysis

Politics, Judicial Review, and the Russian Constitutional Court C. Thorson, 2012-02-07 Analysis of why politicians are driven to create an independent judicial institution with the authority to overrule their decisions It focuses on a country with no tradition of independent judicial review Russia History does not support an independent judiciary here yet a potentially powerful constitutional court has existed for 20 years

The Many Constitutions of Europe Suvi Sankari, 2016-03-03 This volume makes a contribution to the ongoing lively discussion on European constitutionalism by offering a new perspective and a new interpretation of European constitutional plurality The book combines diverse disciplinary approaches to the constitutional debate It brings together complementing contributions from scholars of European politics economics and sociology as well as established scholars from various fields of law Moreover it provides analytical clarity to the discussion and combines theory with more practical and critical approaches that make use of the constitutional toolbox in analysing the tensions between the different constitutions The collection is a valuable point of reference not only for scholars interested in European studies but also for graduate and post graduate students

Comparative Politics Daniele Caramani, 2020 Comparative Politics provides a comprehensive introduction to political systems around the world It covers methods and theories the nation state institutions actors and processes policies and recent changes

The Legal Protection of Human Rights Tom Campbell, Keith D. Ewing, Adam Tomkins, 2011 The value and legitimacy of using courts to limit the powers of governments in the domain of human rights is a significant ongoing debate This book provides a critical review that explores the alternative means for protecting and promoting human rights This group of twenty four leading human rights scholars from around the world present a variety of perspectives on the disappointing human rights outcomes of recent institutional developments and consider the prospects of reviving the moral force and political implications of human rights values

Comparative Law and Society David Scott Clark, 2012-01-01 Comparative Law and Society part of the Research Handbooks in Comparative Law series is a pioneering volume that comprises 19 original essays written by expert authors from across the world This innovative handbook offers both a history of the field of comparative law and society and a thorough exploration of its methods disciplines and major issues presenting the most comprehensive look into this contemporary field to date In Part I Methods and Disciplines contributors approach

critical issues in comparative law and society from a variety of academic fields including sociology criminology anthropology economics political science and psychology This multidisciplinary approach highlights the importance of addressing the variance of perspectives inherent to the field In Part II Core Issues chapters offer an exploration of major legal institutions processes professionals and cultures associated with particular legal subjects Since authors utilize the perspective of at least two different legal systems this book offers a truly thorough and wide ranging focus the general reader as well as students and scholars will find this handbook useful in their continuing explorations into the interaction between law and society Practitioners such as lawyers and judges with an interest in global perspectives of law will also find much to admire in this innovative volume Lawyering Europe Antoine Vauchez, Bruno de Witte, 2013-03-13 While scholarly writing has dealt with the role of law in the process of European integration so far it has shed little light on the lawyers and communities of lawyers involved in that process Law has been one of the most thoroughly investigated aspects of the European integration process and EU law has become a well established academic discipline with the emergence more recently of an impressive body of legal and political science literature on European law in context Yet this field has been dominated by an essentially judicial narrative focused on the role of the European courts underestimating in the process the multifaceted roles lawyers and law play in the EU polity notably the roles they play beyond the litigation arena This volume seeks to promote a deeper understanding of European law as a social and political phenomenon presenting a more complete view of the European legal field by looking beyond the courts and at the same time broadening the scholarly horizon by exploring the ways in which European law is actually made To do this it describes the roles of the great variety of actors who stand behind legal norms and decisions bringing together perspectives from various disciplines law political science political sociology and history to offer a global multi disciplinary reassessment of the role of law and lawyers in the European integration process

Contemporary European Politics José M. Magone, José Magone, 2013-07-03 In this important new introductory textbook Jos Magone provides an accessible and comprehensive introduction to contemporary European politics The unification of the European continent since the Fall of the Berlin wall in 1989 and the collapse of communist regimes in Central and Eastern Europe has changed the nature of European politics This book seeks to address the new European politics that emerged out of this coming together of West and East Utilizing a pan European comparative approach the book covers key topics with chapters on the history theory institutions parties and party systems interest groups systems of interest intermediation and civil society the impact of European public policy and the emergence of a European common and foreign policy provides detailed comparisons of the national political systems across Europe including Central and Eastern Europe and the Balkans contextualises national politics in the growing importance of European integration examines the European Union multi level governance system approach highlighting relationships and interactions between the global supranational national regional and local levels analyses the change from modern politics in which the nation state was still

in command of domestic politics and its own borders to postmodern politics in which de territorialisation de nationalisation and internationalisation processes have transformed the national politics of European states facilitates learning through a wide range of pedagogical features including chapter summaries guides to further reading questions for revision and extensive use of maps figures case studies and tables Richly illustrated throughout this work is an indispensable resource for all students and academics of European politics

Polity and Crisis Massimo Fichera, Sakari Hänninen, 2016-04-22 European integration is an open ended ongoing process which has been deeply challenged by integral world capitalism This study explores the present EU foundational dilemma looking at the problematic relationship between the ideal model of integration and the reality of the 21st century Including contributions from leading theorists this volume explores the ways and extent to which the present European crisis could create a politico legal space for new possibilities and opportunities for action The authors discuss the current role of the EU and whether it aspires to be a democratic polity or a functional organization based on inter governmental bargaining The chapters question whether the future of European integration after the crisis will be paved by decisions which conflict with its Treaty basis and how it might come up with alternatives which would do more than echo the compulsions of the global market Issues are analysed from a historical perspective to see what can be learnt from its past and to explore the options for the future With contributions from prominent international legal and political scholars the book will be of interest to academics students and policy makers working in these areas

Revisiting Judicial Politics in the European Union Mark Dawson, Bruno de Witte, Elise Muir, 2024-03-14 Addressing the tensions between the political and the legal dimension of European integration as well as intra institutional dynamics this insightful book navigates the complex topic of judicial politics Providing an overview of key topics in the current debate and including an introductory chapter on different conceptions of judicial politics experts in law and politics interrogate the broader political role of the European Court of Justice

How the EU Really Works Olivier Costa, Nathalie Brack, 2016-04-29 The European Union is facing a profound crisis and is confronted with multiple challenges Over the last two decades it has experienced a series of dramatic changes to its powers its institutional design its constitutional framework and its borders At the same time the uneasy relationship between European citizens and elites has complicated both the reform and the function of the Union While the Lisbon treaty provided some answers to crucial questions it did not clarify the nature of the EU which remains at the crossroads of federal and intergovernmental logic The current economic and financial crisis puts the EU s legitimacy further under pressure and creates the impression of a turning point This book provides a concise analysis of the EU and its dynamics by paying particular attention to its day to day operation It aims to help students and scholars understand its evolution its institutions its decision making and the interactions between the EU and various actors Avoiding abstract theorizing the authors propose an easy to read analysis of how the Union works while recognizing the complexity of the situation Throughout the book the key issues of European integration are addressed democratic deficit politicization the role

of member states institutional crisis and citizen involvement

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