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978-1-107-02805-0 - The U.S. Supreme Court's Modern Common Law Approach to
Judicial Decision Making

Simona Grossi

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THE U.S. SUPREME COURT'S MODERN COMMON LAW APPROACH TO JUDICIAL DECISION MAKING

This book studies the U.S. Supreme Court and its current common law approach to judicial decision making, from a national and transnational perspective. The modern Supreme Court's approach appears detached from and inconsistent with the underlying fundamental principles that ought to guide it, an approach that often leads to unfair and inefficient results.

This book suggests the adoption of a judicial decision-making model that proceeds from principles and rules treating them as premises to develop consistent unitary theories to meet current social conditions. This model requires judicial opinions to be informed by a wide range of considerations, beginning with established legal standards, but including the insights derived from deductive and inductive reasoning, the lessons learned from history and custom, and from an examination of the social and economic consequences of the decision. Under this model, the considerations made to reach a specific result should be articulated through a process that considers various hypothesis, arguments, confutations and confirmations, and it should be shared with the public.

Simona Grossi is a professor of law at Loyola Law School Los Angeles. She worked for the UN from 2000 to 2002. She then went into private practice, doing national and transnational litigation from 2002 to 2008 for Clifford Chance LLP and Bonelli Erede Pappalardo. She worked for Judge Charles Breyer at the United States District Court for the Northern District of California in 2010. Her scholarship focuses on civil procedure and transnational litigation. She is the author of the *Commentary to the Italian Code of Civil Procedure* (2010).

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But one may criticize even what one reveres. Law is the business to which my life is devoted, and I should show less than devotion if I did not do what in me lies to improve it, and, when I perceive what seems to me the ideal of its future, if I hesitated to point it out and to press toward it with all my heart.

Oliver Wendell Holmes, Jr.
The Path of Law

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CAMBRIDGE
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107028050

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First published 2015

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

Grossi, Simona, author.

The U.S. Supreme Court's Modern Common Law Approach to Judicial Decision Making / Simona Grossi.

pages cm

ISBN 978-1-107-02805-0 (Hardback)

1. United States. Supreme Court—Decision making. 2. Judicial process—United States. 3. Forum non conveniens—United States. 4. Jurisdiction—United States. 5. Conflict of laws—Jurisdiction. I. Title. II. Title: US Supreme Court and the modern common law approach. III. Title: United States Supreme Court and the modern common law approach.

KF8748.G76 2015

347.73'262—dc23 2014021014

ISBN 978-1-107-02805-0 Hardback

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