

The Procedural and Organisational Law of the European Court of Justice

How should judges of the European Court of Justice be selected, who should participate in the Court's proceedings and how should judgments be drafted? These questions have remained blind spots in the normative literature on the Court. This book aims to address them. It describes a vast, yet incomplete transformation. Originally, the Court was based on a classic international law model of court organisation and decision-making. Gradually, the concern for the effectiveness of EU law led to the reinvention of its procedural and organisational design. The role of the judge was reconceived as that of a neutral expert, an inner circle of participants emerged and the Court became more hierarchical. While these developments have enabled the Court to make EU law very effective, they have also created problems from a democratic perspective. The book argues that it is time to democratise the Court and shows ways to do this.

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The Procedural and Organisational Law of the European Court of Justice

An Incomplete Transformation

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Preface

What are courts for? Specifically, what role has the European Court of Justice (ECJ) intended to fulfil within the legal order of the EU? These are the questions that animate Christoph Krenn's new book, which we are delighted as Series Editors to welcome to the *Cambridge Studies in European Law and Policy*.

In very many respects, the role of courts should be obvious. It is to ensure justice and the rule of law, both at a systemic and an individual level. In that respect, the ECJ is no different to other courts, despite its being a relatively unusual type of court with a treaty-based jurisdiction. A large part of the scholarship that addresses the functions of courts does so via a focus on what they do and what they say, especially via various techniques of interpretation. Krenn's focus is different, although it retains the normative approach of seeking the 'best' version of the Court which is common in much writing about what the ECJ actually does. He focuses on the procedural and organisational law of the ECJ, and examines it against a backdrop of three core theories of political and social organisation, which he can also match to the phases of the ECJ's development. The liberal theory, which focuses primarily on the capacity of courts to deliver individual justice and freedom, can be matched to the early phases of the evolution of the Court, from the time of the Coal and Steel Community onwards. A long middle phase of the Court's development can be understood best by reference to systems theories which focus on the rule of law tasks that a court such as the ECJ undertakes. Finally, Krenn observes that in some respects the Court's role, within its wider political and institutional setting, has changed in recent years, and this requires a theory with a focus on how judges deliberate within a wider public discourse which is connected to the will of the democratic legislator. This final turn in the

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book allows Krenn then to offer suggestions about how to improve the ECJ's embeddedness in its social and political environment, for example through reforms to the appointment of judges or to the admission of NGOs and other organisations as participants in court processes.

Krenn offers a deft handling of the theories which help to understand better how courts operate in modern liberal democracies or in post-liberal legal environments such as that of the European Union. He underpins his work by extensive documentary analysis and some quantitative analysis based on datasets of ECJ processes such as the allocation of cases to particular judges as reporting judge. In the end, he offers some shrewd and thought-provoking arguments for reform, which – if adopted – could help to reinforce the legitimacy of this unique supranational court.

Jo Shaw
Mark Dawson
Laurence Gormley

Acknowledgements

This book is the result of a long journey. I developed the main ideas in a doctoral thesis, which I wrote at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg and defended at Goethe University Frankfurt in June 2017. It took some time to turn them into this book.

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Abbreviations

ECHR	European Convention on Human Rights
ECJ, the Court	European Court of Justice
ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights
EEC	European Economic Community
EU	European Union
GC	General Court of the European Union
HUDOC	Human Rights Documentation
ICJ	International Court of Justice
MEP	Member of the European Parliament
NGO	non-governmental organisation
O.J.	Official Journal of the European Union
RoP	Rules of Procedure
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees