

SUPREME COURT DECISION-MAKING

NEW INSTITUTIONALIST APPROACHES

EDITED BY

CORNELL W. CLAYTON AND HOWARD GILLMAN

Supreme Court Decision Making New Institutional Approaches

Kevin J. McMahon



Supreme Court Decision Making New Institutional Approaches:

Supreme Court Decision-Making Cornell W. Clayton, Howard Gillman, 1999 What influences decisions of the U S Supreme Court For decades social scientists focused on the ideology of individual justices Supreme Court Decision Making moves beyond this focus by exploring how justices are influenced by the distinctive features of courts as institutions and their place in the political system Drawing on interpretive historical institutionalism as well as rational choice theory a group of leading scholars consider such factors as the influence of jurisprudence the unique characteristics of supreme courts the dynamics of coalition building and the effects of social movements The volume s distinguished contributors and broad range make it essential reading for those interested either in the Supreme Court or the nature of institutional politics Original essays contributed by Lawrence Baum Paul Brace Elizabeth Bussiere Cornell Clayton Sue Davis Charles Epp Lee Epstein Howard Gillman Melinda Gann Hall Ronald Kahn Jack Knight Forrest Maltzman David O Brien Jeffrey Segal Charles Sheldon James Spriggs II and Paul Wahlbeck

The Remaking of the Courts Dr Sarah Murray, 2014-03-21 The Remaking of the Courts Less Adversarial Practice and the Constitutional Role of the Judiciary in Australia centres on the changing nature of courts within the Australian constitutional context In essence the monograph explores the degree to which less adversarial innovations and the remodelling of the judicial role can be accommodated within Australia s constitutional framework The work draws upon comparative principles separation of powers jurisprudence and the theoretical perspectives of constitutionalism and neo institutionalism By examining Chapter III of the Commonwealth Constitution and applying Chapter III approaches to less adversarial case studies traversing state and federal fields the book argues that less adversarial judicial practices can be broadly accommodated by the Australian constitutional framework However the book asserts that the clarity and suitability of the Chapter III constitutional approaches employed would be significantly improved by the adoption of a contextual incompatibility methodology which would protect the constitutional role of the courts while not forestalling constitutionally compatible reform

The Most Activist Supreme Court in History Thomas M. Keck, 2010-02-15 When conservatives took control of the federal judiciary in the 1980s it was widely assumed that they would reverse the landmark rights protecting precedents set by the Warren Court and replace them with a broad commitment to judicial restraint Instead the Supreme Court under Chief Justice William Rehnquist has reaffirmed most of those liberal decisions while creating its own brand of conservative judicial activism Ranging from 1937 to the present The Most Activist Supreme Court in History traces the legal and political forces that have shaped the modern Court Thomas M Keck argues that the tensions within modern conservatism have produced a court that exercises its own power quite actively on behalf of both liberal and conservative ends Despite the long standing conservative commitment to restraint the justices of the Rehnquist Court have stepped in to settle divisive political conflicts over abortion affirmative action gay rights presidential elections and much more Keck focuses in particular on the role of Justices O Connor and Kennedy whose deciding votes have

shaped this uncharacteristically activist Court *Judicial Decision-Making* Piotr Bystranowski, Bartosz Janik, Maciej Próchnicki, 2022-11-03 This book shares state of the art insights on judicial decision making from both theoretical and empirical perspectives It offers in depth coverage of the forefront of the field and reviews the most important issues and discussions connected with an empirical approach to judicial decision making It also addresses the challenges of judicial psychology to the ideal of rule of law and explores the promise and perils of applying artificial intelligence in law In closing it offers empirically driven guidance on ways to improve the quality of legal reasoning Chapter The Challenges of Artificial Judicial Decision Making for Liberal Democracy is available open access under a Creative Commons Attribution 4.0 International License via link [springer.com](https://www.springer.com) **The Pioneers of Judicial Behavior** Nancy L. Maveety, 2009-11-16 Examines the contributions of the pioneers of research into judicial behavior The Politics of Principle Theunis Roux, 2013-03-28 Under its first chief justice Arthur Chaskalson the South African Constitutional Court built an unrivalled reputation in the comparative constitutional law community for technically accomplished and morally enlightened decision making At the same time the Court proved remarkably effective in asserting its institutional role in post apartheid politics While each of these accomplishments is noteworthy in its own right the Court's simultaneous success in legal and political terms demands separate investigation Drawing on and synthesising various insights from judicial politics and legal theory this study offers an interdisciplinary explanation for the Chaskalson Court's achievement Rather than a purely political strategy of the kind modelled by rational choice theorists the study argues that the Court's achievement is attributable to a series of adjudicative strategies in different areas of law In combination these strategies allowed the Court to satisfy institutional norms of public reason giving while at the same time avoiding political attack Religion-State Relations in the United States and Germany Claudia E. Haupt, 2011-12-08 This comparative analysis of the constitutional law of religion state relations in the United States and Germany focuses on the principle of state neutrality A strong emphasis on state neutrality a notoriously ambiguous concept is a shared feature in the constitutional jurisprudence of the US Supreme Court and the German Federal Constitutional Court but neutrality does not have the same meaning in both systems In Germany neutrality tends to indicate more distance between church and state whereas the opposite is the case in the United States Neutrality also has other meanings in both systems making straightforward comparison more difficult than it might seem Although the underlying trajectory of neutrality is different in both countries the discussion of neutrality breaks down into largely parallel themes By examining those themes in a comparative perspective the meaning of state neutrality in religion state relations can be delineated **The Supreme Court in a Separation of Powers System** Richard Pacelle, 2015-01-09 The U S Supreme Court is not a unitary actor and it does not function in a vacuum It is part of an integrated political system in which its decisions and doctrine must be viewed in a broader context In some areas the Court is the lead policy maker In other areas the Court fills in the gaps of policy created in the legislative and executive branches In either instance the Supreme Court's

work is influenced by and in turn influences all three branches of the federal government as well as the interests and opinions of the American people Pacelle analyzes the Court's interaction in the separation of powers system detailing its relationship to the presidency Congress the bureaucracy public opinion interest groups and the vast system of lower courts The niche the Court occupies and the role it plays in American government reflect aspects of both the legal and political models The Court has legal duties and obligations as well as some freedom to exercise its collective political will Too often those studying the Court have examined it in isolation but this book urges scholars and students alike to think more broadly and situate the highest court as the balance wheel in the American system

The Procedural and Organisational Law of the European Court of Justice Christoph Krenn, 2022-09-22 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 uniquely 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

The Constrained Court Michael A. Bailey, Forrest Maltzman, 2011-08-22 How do Supreme Court justices decide their cases Do they follow their policy preferences Or are they constrained by the law and by other political actors The Constrained Court combines new theoretical insights and extensive data analysis to show that law and politics together shape the behavior of justices on the Supreme Court Michael Bailey and Forrest Maltzman show how two types of constraints have influenced the decision making of the modern Court First Bailey and Maltzman document that important legal doctrines such as respect for precedents have influenced every justice since 1950 The authors find considerable variation in how these doctrines affect each justice variation due in part to the differing experiences justices have brought to the bench Second Bailey and Maltzman show that justices are constrained by political factors Justices are not isolated from what happens in the legislative and executive branches and instead respond in predictable ways to changes in the preferences of Congress and the president The Constrained Court shatters the myth that justices are unconstrained actors who pursue their personal policy preferences at all costs By showing how law and politics interact in the construction of American law this book sheds new light on the unique role that the Supreme Court plays in the constitutional order

Routledge Handbook of Judicial Behavior Robert M. Howard, Kirk A. Randazzo, 2017-10-02 Interest in social science and empirical analyses of law courts and specifically the politics of judges has never been higher or more salient Consequently there is a strong need for theoretical work on the research that focuses on courts judges and the judicial process The Routledge Handbook of Judicial Behavior

provides the most up to date examination of scholarship across the entire spectrum of judicial politics and behavior written by a combination of currently prominent scholars and the emergent next generation of researchers Unlike almost all other volumes this Handbook examines judicial behavior from both an American and Comparative perspective Part 1 provides a broad overview of the dominant Theoretical and Methodological perspectives used to examine and understand judicial behavior Part 2 offers an in depth analysis of the various current scholarly areas examining the U S Supreme Court Part 3 moves from the Supreme Court to examining other U S federal and state courts and Part 4 presents a comprehensive overview of Comparative Judicial Politics and Transnational Courts Each author in this volume provides perspectives on the most current methodological and substantive approaches in their respective areas along with suggestions for future research The chapters contained within will generate additional scholarly and public interest by focusing on topics most salient to the academic legal and policy communities

Courts and Federalism Gerald Baier, 2011-11-01 *Courts and Federalism* examines recent developments in the judicial review of federalism in the United States Australia and Canada Through detailed surveys of these three countries Gerald Baier clearly demonstrates that understanding judicial doctrine is key to understanding judicial power in a federation Baier offers overwhelming evidence of doctrine s formative role in division of power disputes and its positive contribution to the operation of a federal system *Courts and Federalism* urges political scientists to take courts and judicial reasoning more seriously in their accounts of federal government *Courts and Federalism* will appeal to readers interested in the comparative study of law and government as well as the interaction of law and federalism in contemporary society

Measuring Judicial Activism Stefanie Lindquist, Frank Cross, 2009-04-23 *Measuring Judicial Activism* supplies empirical analysis to the widely discussed concept of judicial activism at the United States Supreme Court The book seeks to move beyond more subjective debates by conceptualizing activism in non ideological terms

Measuring Judicial Activism Stefanie Lindquist, Frank Cross, 2009-04-13 This book informs the debates about judicial activism with concrete empirical analyses of what judges actually do Much has been written about judicial activism but little social science analysis has been used to approach the topic Since most of the scholarship is normative doctrinal or historical *Measuring Judicial Activism* will play a key role in future debates as a non ideological source of information and will likely become the authoritative book on the subject

Reconsidering Roosevelt on Race Kevin J. McMahon, 2010-02-15 Many have questioned FDR s record on race suggesting that he had the opportunity but not the will to advance the civil rights of African Americans Kevin J McMahon challenges this view arguing instead that Roosevelt s administration played a crucial role in the Supreme Court s increasing commitment to racial equality which culminated in its landmark decision in *Brown v Board of Education* McMahon shows how FDR s attempt to strengthen the presidency and undermine the power of conservative Southern Democrats dovetailed with his efforts to seek racial equality through the federal courts By appointing a majority of rights based liberals deferential to presidential power Roosevelt ensured that the Supreme Court would be receptive to civil

rights claims especially when those claims had the support of the executive branch **The Oxford Handbook of U.S. Judicial Behavior** Lee Epstein, Stefanie A. Lindquist, 2017 The Oxford Handbook of U S Judicial Behavior offers readers a comprehensive introduction and analysis of research regarding decision making by judges serving on federal and state courts in the U S Featuring contributions from leading scholars in the field the Handbook describes and explains how the courts political and social context formal institutional structures and informal norms affect judicial decision making The Handbook also explores the impact of judges personal attributes and preferences as well as prevailing legal doctrine influence and shape case outcomes in state and federal courts The volume also proposes avenues for future research in the various topics addressed throughout the book Consultant Editor for The Oxford Handbooks of American Politics George C Edwards III

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 Courting Peril Charles Gardner Geyh, 2016-01-21 The rule of law paradigm has long operated on the premise that independent judges disregard extralegal influences and impartially uphold the law A political transformation several generations in the making however has imperiled this premise Social science learning the lessons of which have been widely internalized by court critics and the general public has shown that judicial decision making is subject to ideological and other extralegal influences In recent decades challenges to the assumptions underlying the rule of law paradigm have proliferated across a growing array of venues as critics agitate for greater political control of judges and courts With the future of the rule of law paradigm in jeopardy this book proposes a new way of looking at how the role of the American judiciary should be conceptualized and regulated This new legal culture paradigm defends the need for an independent judiciary that is acculturated to take law seriously but is subject to political and other extralegal influences The book argues that these extralegal influences cannot be eliminated but can be managed by balancing the needs for judicial independence and accountability across competing perspectives to the end of enabling judges to follow the law less rigidly conceived respect established legal process and administer justice

The Oxford Handbook of Political Economy Barry R. Weingast, Donald Wittman, 2008-06-20 Over its long lifetime political economy has had many different meanings the science of managing the resources of a nation so as to provide wealth to its inhabitants for Adam Smith the study of how the ownership of the means of production influenced historical processes for Marx the study of the inter relationship between economics and politics for some twentieth century commentators and for others a methodology emphasizing individual rationality the economic or public choice approach or institutional adaptation the sociological version This Handbook views political economy as a grand if imperfect synthesis of these various strands treating political economy as the methodology of economics applied to the analysis of political behavior and institutions This Handbook surveys the field of political economy with 58 chapters ranging from micro to macro national to international institutional to behavioral methodological to substantive Chapters on social choice constitutional theory and public economics are set alongside ones on voters parties and pressure groups macroeconomics and politics capitalism and democracy and international political economy and international conflict

21st Century Political Science: A Reference Handbook John T Ishiyama, Marijke Breuning, 2011 Offering full coverage of major subthemes and subfields within political science this reference handbook includes entries on topics from theory and methodology to international relations and institutions

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