

UNIVERSITY OF TEXAS AT AUSTIN
STUDIES IN FOREIGN AND TRANSNATIONAL LAW

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JÖRG FEDTKE

*JUDICIAL RECOURSE
TO
FOREIGN LAW*

A NEW SOURCE OF INSPIRATION?

Judicial Recourse To Foreign Law Judicial Recourse To Foreign Law

Basil S Markesinis, Jörg Fedtke



Judicial Recourse To Foreign Law Judicial Recourse To Foreign Law:

Judicial Recourse to Foreign Law Basil Markesinis, Jörg Fedtke, Laurie Ackermann, 2006 With commentaries by an international collection of leading judges this accessible and clearly structured book includes examinations of public and private law in its discussion about access to foreign laws and looks at the practice across the globe

The Use of Foreign Precedents by Constitutional Judges Tania Groppi, Marie-Claire Ponthoreau, 2013-03-28 In 2007 the International Association of Constitutional Law established an Interest Group on The Use of Foreign Precedents by Constitutional Judges to conduct a survey of the use of foreign precedents by Supreme and Constitutional Courts in deciding constitutional cases Its purpose was to determine through empirical analysis employing both quantitative and qualitative indicators the extent to which foreign case law is cited The survey aimed to test the reliability of studies describing and reporting instances of transjudicial communication between Courts The research also provides useful insights into the extent to which a progressive constitutional convergence may be taking place between common law and civil law traditions The present work includes studies by scholars from African American Asian European Latin American and Oceania countries representing jurisdictions belonging to both common law and civil law traditions and countries employing both centralised and decentralised systems of judicial review The results published here for the first time give us the best evidence yet of the existence and limits of a transnational constitutional communication between courts

Engaging with Foreign Law Basil S Markesinis, Jörg Fedtke, 2009-03-30 This book presents a developed theory of how national lawyers can approach understand and make use of foreign law Its theme is pursued through a set of detailed essays which look at the courts as well as business practice and with the help of statistics demonstrate what type of academic work has any impact on the real world Engaging with Foreign Law thus aims to carve out a new niche for comparative law in this era of globalisation and may also be the only book which deals in some depth with both private and public law in countries such as England Germany France South Africa and the United States

Human Rights in the UK and the Influence of Foreign Jurisprudence Hélène Tyrrell, 2018-09-20 Longlisted for the 2022 Inner Temple Main Book Prize Human Rights in the UK and the Influence of Foreign Jurisprudence represents the first major empirical study of the use of foreign jurisprudence at the UK Supreme Court This book focuses on the patterns of use and non use of rulings from foreign domestic courts in human rights cases before the UK Supreme Court Results are drawn from quantitative and qualitative research presenting data from the first eight years of Supreme Court activity The evidence includes interviews with active and former members of the senior judiciary as well as a focus group including some of the Supreme Court Judicial Assistants It is argued that foreign jurisprudence is more intimately woven into the fabric of judicial reasoning and serves a wider range of functions than the term persuasive authority might imply Foreign jurisprudence is used mainly as a heuristic device providing judges with a fresh analytical lens Foreign jurisprudence is also important when interpreting a common legislative scheme supporting dialogue between the Supreme Court and

supranational courts such as the European Court of Human Rights The perspectives offered by foreign jurisprudence can also support a stronger conception of domestic human rights In these ways this book addresses a broader political question about the source of human rights in the UK

Failures of American Methods of Lawmaking in Historical and Comparative Perspectives James Maxeiner, 2018-03-08 What Americans sought What Americans got deranged laws What Americans can do improve legal methods

The Application of Foreign Law in the British and German Courts Alexander DJ Critchley, 2022-12-15 This book explores the application of foreign law in civil proceedings in the British and German courts It focuses on how domestic procedural law impacts on the application of choice of law rules in domestic courts It engages with questions involved in the investigation and determination of foreign law as they affect the law of England and Wales Scotland and Germany Although the relevant jurisdictions are the focus the comparative analysis extends to explore examples from other jurisdictions including relevant international and European conventions Ambitious in scope it expertly tracks the development of the law and looks at possible future reforms

Constitutional Courts, Gay Rights and Sexual Orientation Equality Angioletta Sperti, 2017-05-04 In the last fifteen years constitutional issues regarding the rights of gays lesbians and same sex couples have emerged on a global scale The pace of recognition of their fundamental rights both at judicial and legislative level has dramatically increased across different jurisdictions reflecting a growing consensus toward sexual orientation equality This book considers a wide range of decisions by constitutional and international courts from the decriminalization of sexual acts to the recognition of same sex marriage and parental rights for same sex couples It discusses analogies and differences in judicial arguments and rationales in such cases focusing in particular on human dignity privacy liberty equality and non discrimination It argues that courts operate as major exporters of models and principles and that judicial cross fertilization also helps courts in increasing the acceptability of gays and lesbians rights in public opinions and politics Courts discuss changes in the social perception of marriage and family at national and international levels and at the same time confirm and reinforce them forging the legal debate over sexual orientation equality Furthermore by promoting the political reception of the achievements of foreign gay movements in their own jurisdictions courts play an essential role in breaking the political stalemate

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

The Metaethics of Constitutional Adjudication Bosko Tripkovic, 2018-01-11 In this book Bosko Tripkovic develops a theory of value based arguments in constitutional adjudication In contrast to the standard question of constitutional theory that asks whether the courts get moral answers wrong it asks a more fundamental question of whether the courts get the morality itself wrong Tripkovic argues for an antirealist conception of value one that does not presuppose the existence of mind independent moral truths and accounts for the effect this ought to have on existing value based arguments made by constitutional courts The book identifies three dominant types of value based arguments in comparative constitutional practice arguments from constitutional identity common sentiment and universal reason and explains why they fail as self standing approaches to moral judgment It then suggests that the appropriate moral judgments emerge from the dynamics between practical confidence which denotes the inescapability of the self and the evaluative attitudes it entails and reflection which denotes the process of challenging and questioning these attitudes The book applies the notions of confidence and reflection to constitutional reasoning and maintains that the moral inquiry of the constitutional court ought to depart from the emotive intuitions of the constitutional community and then challenge these intuitions through reflective exposure to different perspectives in order to better understand and develop the underlying constitutional identity The book casts new light on common constitutional dilemmas and allows us to envisage new ways of resolving them

Judicial Bricolage Tania Groppi, Marie-Claire Ponthoreau, Irene Spigno, 2025-02-06 This book represents a unique contribution to comparative legal studies by presenting the results of an empirical research project on the use of foreign precedents in constitutional interpretation in 31 jurisdictions worldwide It expands and updates the outcomes presented in the previous successful book *The Use of Foreign Precedents by Constitutional Judges* edited by Tania Groppi and Marie Claire Ponthoreau and published in 2013 as Volume 1 of the series *Hart Studies in Comparative Public Law* This new research covering countries from all the continents with special attention to some of the emerging jurisdictions of the Global South confirms that the practice of making explicit use of foreign precedents is still limited both quantitatively and qualitatively Judicial dialogue only exists in common law jurisdictions and even there judicial bricolage is much more common than judicial comparativism Since the previous edition this practice has gone hand in hand with new developments in constitutional law such as the democratic erosion and backsliding the emergence of populist movements the increasing role of regional human rights courts which in

many cases overshadowed foreign sources and the end of a global vision of constitutionalism Applying a quantitative and a qualitative analysis with the support of tables and data the book gives a more complete picture of the practice of citing foreign precedents in this new and challenging era resulting in essential reading for comparative and constitutional legal scholars

Comparative Law Mathias Siems, 2014-06-05 This book presents a fresh contextualised and cosmopolitan perspective on comparative law for both students and scholars It critically discusses established approaches to comparative law but also presents more modern ones such as socio legal and numerical comparative law Its contextualised approach draws on examples from politics economics and development studies to provide an original contribution to topics of comparative law

"Partly Laws Common to All Mankind" Jeremy Waldron, 2012-05-29 Should judges in United States courts be permitted to cite foreign laws in their rulings In this book Jeremy Waldron explores some ideas in jurisprudence and legal theory that could underlie the Supreme Court's occasional recourse to foreign law especially in constitutional cases He argues that every society is governed not only by its own laws but partly also by laws common to all mankind *ius gentium* But he takes the unique step of arguing that this common law is not natural law but a grounded consensus among all nations The idea of such a consensus will become increasingly important in jurisprudence and public affairs as the world becomes more globalized

The Oxford Handbook of Comparative Foreign Relations Law Curtis A. Bradley, 2019-06-07 This 46 chapter book written by leading experts across the globe compares and contrasts the foreign relations law of nations around the world both documenting important differences and also noting commonalities and emerging trends Comparative foreign relations law is a newly emerging field of study and teaching and this volume is likely to become a key reference work as the field continues to develop

Borrowing Justification for Proportionality João Andrade Neto, 2018-11-11 The proportionality test as proposed in Robert Alexy's principles theory is becoming commonplace in comparative constitutional studies And yet the question are courts justified in borrowing proportionality has not been expressly put in many countries where judicial borrowings are a reality This book sheds light on this question and examines the circumstances under which courts are authorized to borrow from alien legal sources to rule on constitutional cases Taking the Supreme Federal Court of Brazil and its enthusiastic recourse to proportionality when interpreting the Federal Constitution as a case study the book investigates the normative reasons that could justify the court's attitude and offers a comprehensive overview of its case law on controversial constitutional matters like abortion same sex union racial quotas and the right to public healthcare Providing a valuable resource for those interested in comparative constitutional law and legal theory or curious about Brazilian constitutional law this book questions the alleged universality of the proportionality test challenges the premises of Alexy's principles theory and discloses more than 68 Brazilian Supreme Court decisions delivered from 2003 to 2018 that would otherwise have remained unknown to an English speaking audience

The Right To Parody Amy Lai, 2019-01-03 In *The Right to Parody Comparative Analysis of Free and Fair Speech* Amy Lai examines the right to parody as a natural right in free

speech and copyright proposes a legal definition of parody that respects the interests of rights holders and accommodates the public's right to free expression and describes mechanisms to ensure that parody will best serve this purpose. Combining philosophical inquiry with robust legal analysis, the book draws upon examples from the United States, Canada, the United Kingdom, France, and Hong Kong. While it caters to scholars in intellectual property and constitutional law, as well as free speech advocates, it is written in a non-specialist language designed to appeal to any reader interested in how the boom in online parodies and memes relates to free speech and copyright.

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 Judicial Review Erin F. Delaney, Rosalind Dixon, 2018. Constitutional courts around the world play an increasingly central role in day-to-day democratic governance. Yet scholars have only recently begun to develop the interdisciplinary analysis needed to understand this shift in the relationship of constitutional law to politics. This edited volume brings together the leading scholars of constitutional law and politics to provide a comprehensive overview of judicial review, covering theories of its creation, mechanisms of its constraint, and its comparative applications, including theories of interpretation and doctrinal developments. This book serves as a single point of entry for legal scholars and practitioners interested in understanding the field of comparative judicial review in its broader political and social context.

Judicial Decision-Making in a Globalised World Elaine Mak, 2014-07-04. Why do judges study legal sources that originated outside their own national legal system, and how do they use arguments from these sources in deciding domestic cases? Based on interviews with judges, this book presents the inside story of how judges engage with international and comparative law in the highest courts of the United Kingdom, Canada, the United States, France, and the Netherlands. A comparative analysis of the views and experiences of the judges clarifies how the decision-making of these Western courts has developed in light of the internationalisation of law and the increased opportunities for transnational judicial communication. While the qualitative analysis reveals the motives that judges claim for using foreign law, and the influence of globalist and localist approaches to judging, the author also finds suggestions of a convergence of practices between the courts that are the subject of this study. This empirical analysis is complemented by a constitutional theoretical inquiry into the procedural and substantive factors of legal evolution which enable or constrain the development and possible convergence of highest courts' practices. The two strands of the analysis are connected in a final contextual reflection on the future development of the role of Western highest courts.

China's Foreign Investment Legal Regime Yuwen Li, Cheng Bian, 2022-03-10. China has developed a piecemeal pattern of regulating foreign

investment since the end of 1970s The latest law is the Foreign Investment Law FIL which became effective on 1 January 2020 The groundbreaking new FIL is well acknowledged for its promises and affirmations pledged to investors signalling China's eagerness to improve its investment environment and regain momentum for investment growth This book provides an updated and holistic understanding of the key features of the regulatory regime on foreign investment in China with critical analysis of laws and their implementation It also examines sensitive and complex legal issues relevant to foreign investment beyond the 2020 FIL and new developments on foreign related dispute settlement The book uses cases of success and failure to illustrate the nuances and differences between law and practice regarding foreign investment Considering China's magnitude in the global economy and the weighty role of the regulatory system on foreign investment in China this book is of great interest to a wide range of audience including academics in the field of investment law legal practitioners policymakers and master's students in law and in management

Treatment of Foreign Law - Dynamics towards

Convergence? Yuko Nishitani, 2017-07-04 This work presents a thorough investigation of existing rules and features of the treatment of foreign law in various jurisdictions Private international law conflict of laws and civil procedure rules concerning the application and ascertainment of foreign law differ significantly from jurisdiction to jurisdiction Combining general and individual national reports this volume demonstrates when and how foreign law is applied ascertained interpreted and reviewed by appeal courts Traditionally conflicts lawyers have been faced with two contrasting approaches Civil law jurisdictions characterize foreign law as law and provide for the ex officio application and ascertainment of foreign law by judges Common law jurisdictions consider foreign law as fact and require that parties plead and prove foreign law A closer look at various reports however reveals more differentiated features with their own nuances among civil law jurisdictions and the difference of the treatment of foreign law from other facts in common law jurisdictions This challenges the appropriacy of the conventional law fact dichotomy This book further examines the need for facilitating access to foreign law After carefully analyzing the benefits and drawbacks of existing instruments this book explores alternative methods for enhancing access to foreign law and considers practical ways of obtaining information on foreign law It remains to be seen whether and the extent to which legal systems around the world will integrate and converge in their treatment of foreign law

The Top Books of the Year Judicial Recourse To Foreign Law Judicial Recourse To Foreign Law The year 2023 has witnessed a remarkable surge in literary brilliance, with numerous compelling novels captivating the hearts of readers worldwide. Lets delve into the realm of bestselling books, exploring the captivating narratives that have captivated audiences this year.

Judicial Recourse To Foreign Law Judicial Recourse To Foreign Law : Colleen Hoover's "It Ends with Us" This touching tale of love, loss, and resilience has gripped readers with its raw and emotional exploration of domestic abuse. Hoover masterfully weaves a story of hope and healing, reminding us that even in the darkest of times, the human spirit can succeed.

Judicial Recourse To Foreign Law Judicial Recourse To Foreign Law : Taylor Jenkins Reid's "The Seven Husbands of Evelyn Hugo" This captivating historical fiction novel unravels the life of Evelyn Hugo, a Hollywood icon who defies expectations and societal norms to pursue her dreams. Reid's compelling storytelling and compelling characters transport readers to a bygone era, immersing them in a world of glamour, ambition, and self-discovery.

Judicial Recourse To Foreign Law Judicial Recourse To Foreign Law : Delia Owens' "Where the Crawdads Sing" This mesmerizing coming-of-age story follows Kya Clark, a young woman who grows up alone in the marshes of North Carolina. Owens crafts a tale of resilience, survival, and the transformative power of nature, captivating readers with its evocative prose and mesmerizing setting.

These bestselling novels represent just a fraction of the literary treasures that have emerged in 2023. Whether you seek tales of romance, adventure, or personal growth, the world of literature offers an abundance of engaging stories waiting to be discovered.

The novel begins with Richard Papen, a bright but troubled young man, arriving at Hampden College. Richard is immediately drawn to the group of students who call themselves the Classics Club. The club is led by Henry Winter, a brilliant and charismatic young man. Henry is obsessed with Greek mythology and philosophy, and he quickly draws Richard into his world. The other members of the Classics Club are equally as fascinating. Bunny Corcoran is a wealthy and spoiled young man who is always looking for a good time. Charles Tavis is a quiet and reserved young man who is deeply in love with Henry. Camilla Macaulay is a beautiful and intelligent young woman who is drawn to the power and danger of the Classics Club. The students are all deeply in love with Morrow, and they are willing to do anything to please him. Morrow is a complex and mysterious figure, and he seems to be manipulating the students for his own purposes. As the students become more involved with Morrow, they begin to commit increasingly dangerous acts.

The Secret History is a masterful and gripping novel that will keep you wondering until the very end. The novel is a warning tale about the dangers of obsession and the power of evil.

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