

Legisprudence Library

Studies on the Theory and Practice of Legislation

Volume 3

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Rational Lawmaking under Review

Legisprudence According to the German
Federal Constitutional Court

 Springer

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Foreword

This new book in the *Legisprudence Library* focuses on the process of rational law making according to the review practice of the German Constitutional Court. The tradition of German constitutional law has, in many respects, provided the inspiration for the theory of legislation widely labelled ‘legisprudence’, and we think that now is an apt time to share and feed back into practice the accumulated body of research on this topic. The editors of this volume have brought together a number of contributions, each one reflecting the unique perspective of its author, be that academic, legislative or judicial, to expose the intricate connections between judicial review and the drafting and evaluation of legislation.

The idea of rational law making is not new, and the use of deductive reasoning as a method in rational law making can be traced back to the seventeenth century when natural law predominated in the European intellectual climate. These days, deductive reasoning and a priori thinking are less explicit in our legal discussions, but that does not mean the attraction of ‘rational law making’ has diminished. What makes the legislative process ‘rational’ is hard to pinpoint but not—however—impossible to examine or consider.

Legisprudence as a theory of rational legislation is conceived of as a theory of a practice, that is, a theory that cannot survive without practice. Practice, then, consists in what courts do with rationality requirements. By uncovering the impact of the German Constitutional Court on rational law, making this book fills a gap in expertise and presents a nuanced view that balances constitutionalism, democracy, proportionality, and separation of powers among other parameters.

Furthermore, and importantly, this book opens up to non-German speaking audiences the practice of the German Constitutional Court. I applaud the editors for their efforts to deliver a well-rounded, bird’s eye view of the Court’s contribution to rational law making and to give the reader a comprehensive account of a complex process of legislation that no longer exclusively belongs in the domain of the sovereign legislator as an exclusively political agent.

In the following 14 essays, ranging over rational legislation from the viewpoints of MPs, academic and judges themselves, the German, non-German and non-European reader alike will discover a rich source of inspiration to reflect on the rationality of norm production.

Leuven, Belgium

Luc J. Wintgens

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