



The Legal Reasoning of the Court of Justice of the EU (Modern Studies in European Law)

Gunnar Beck

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The European Court of Justice (ECJ) has often been characterized both as a motor of integration and a judicial law-maker. To what extent is this a fair description of the ECJ's jurisprudence over more than half a century? This book, divided into two parts, examines this question. Part one develops a new heuristic theory of legal reasoning which argues that legal uncertainty is a pervasive and inescapable feature of primary legal material and judicial reasoning alike, which has its origin in a combination of linguistic vagueness, value pluralism, and rule instability associated with precedent. Part two examines the jurisprudence of the ECJ against this theoretical framework. The book demonstrates that the ECJ's interpretative reasoning is best understood in terms of a tripartite approach whereby the ECJ justifies its decisions in terms of the cumulative weight of purposive, systemic, and literal arguments. That approach is more in line with orthodox legal reasoning in other legal systems than is commonly acknowledged and differs from the approach of other higher, especially constitutional, courts only in degree. It nevertheless leaves the ECJ considerable discretion in determining the relative weight and ranking of the various interpretative criteria from one case to another. The ECJ's exercise of its discretion is best understood in terms of the constraints imposed by the accepted justificatory discourse and certain extra-legal steadying factors of legal reasoning, which include a range of political factors, such as sensitivity to Member States' interests, political fashion, and deference to the 'EU legislator.' In conclusion, case law analysis across most areas of EU law suggests that the ECJ has used the flexibility in its tripartite approach to resolve legal uncertainty in the EU primary materials in a broadly communautaire fashion subject, however, to: 1) regard to the political, constitutional and budgetary sensitivities of Member States; 2) depending on the constraints and extent of interpretative manoeuvre afforded by the degree of linguistic vagueness of the provisions in question, the relative status of and degree of potential conflict between the applicable norms, and the range and clarity of the interpretative topoi available to resolve first-order legal uncertainty; and, finally, 3) bearing in mind the largely unpredictable personal element in all adjudication. (Series: Modern Studies in European Law - Vol. 36)

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