The European Court s Political Power

Selected Essays

KAREN J. ALTER Northwestern University



Table of Contents

List	of	Tables	and	Figure	es xxi
List		of	Abbre	viations	xxiii
Table	of	Le	egal	Citations	XXV
Previous		Publication	!	Venues	xxix

I. STUDYING THE EUROPEAN COURT OF JUSTICE

1.	The European Court's Political Power Across Time and Space	
	(2009)	3
	I. The European Court of Justice During the Founding Period ofLegal Integration (1952-80)	6
	II. The ECJ and its Varied Influence on European Policy and Politics (1980-2005)	16
	III. Beyond European Court Politics—The ECJ in a Comparative Perspective	25
	IV. Conclusion—Where We Stand in Understanding the ECJ's Political Power	29
2.	The European Court and Legal Integration: An Exceptional	
	Story or Harbinger of the Future? (2008)	32
	I. Scholarship on the ECJ and European Integration	34
	II. The European Court of Justice: The Exception or the Rule?	40
	II. THE EUROPEAN COURT OF JUSTICE	
	DURING THE FOUNDING PERIOD OF LEGAL	
	INTEGRATION (1952-1980)	
3.	The Theory and Reality of the European Coal and Steel	
	Community With David Steinberg (2007)	47
	I. The ECSC at its Founding	48
	II. Critical Junctures in Coal and Steel Integration	50
	III. What Role Did the ECSC Play in Postwar European Politics?	60
4.	jurist Advocacy Movements in Europe: The Role of Euro-Law	
	Associations in European Integration (1953-1975) (2009)	63
	I. Founding National Euro-Law Associations and the Federation Internationale de Droit Europeen (FIDE)—1952-1975	65

xviii	i Table of Contents	
	II. The Impact of Euro-Law Advocacy Movements on European	
	Legal Integration	72
	III. Imagining Legal Integration without Jurist Associations—	
	The Case of the Andean Tribunal of Justice	- 82
	IV. Does Transnational Law Need Advocacy Movements and	00
	Transnational Legal Fields to Flourish?	89
5.	The European Court's Political Power: The Emergence of an	
	Authoritative International Court in the European Union (1996) 92
	I. Turning National Courts into Enforcers of International Law	<i>y</i> 94
	II. Eliciting Political Acquiescence and Political Support?	106
	III. The Emergence of a Rule of Law in Europe	106
6	Who Are the 'Masters of the Treaty'?: European Governments	
0.	and the European Court of Justice (1998)	109
	I. The ECJ as the Agent of Member States?	III
	II. The Transformation of the Preliminary Ruling Procedure	111
	into an Enforcement Mechanism	114
	III. Escaping Member State Control	117
	IV. Transformation of the Preliminary Ruling Procedure	121
	V. Could Member States Regain Control? Why Did Member	121
	States Accept Unwanted ECJ Jurisprudence?	123
	VI. Overcoming the Joint-Decision Trap? The Barber Protocol	125
	and the 1996-97 IGC and the Treaty of Amsterdam	128
	VII. Conclusion: A New Framework for Understanding ECI—	
	Member State Interactions	132
	III. THE ECJ AND ITS VARIED INFLUENCE	Ξ
	ON EUROPEAN POLICY AND POLITICS	
	(1980-2005)	

7.	Judicial Politics in the European Community: European Integration and the Pathbreaking Cassis de Dijon Decision With Sophie Meunier (1994)	139
	I. Legal Significance and Implications of the Cassis de Dijon	
	Case	140
	II. Political Consequences of the Cassis Decision	143
	III. The New Approach to Harmonization—Judge-Made Policy,	
	Focal Point, or Political Compromise?	147
	IV. Conclusion: Judicial Politics in the European Community	156

			Table	of	Contents	xix
8.	8. Explaining Variation in the Use of European Litigation Strategies: European Community Law and British Gender					
	Equality Policy With Jeannette Vargas (2000) I. The EOC and the Shifting Domestic Balance of Power in				159	
		Great Britain When will Domestic	C			161
		Domestic Balance of			Shirt the	173
	III.	Conclusion: EC Law of Power	as a Tool to Shi	ft the Dome	stic Balance	181
9.		e European Union's La llover or Backlash? (2		l Domestic I	Policy:	184
		Legalization in the EU National Courts			-	185
	II.	How and When Do				100
	III.	Use the European Le Interaction Effects of			•	188 204
		A Challenge to Neo-	-	-		
		Interactive Effects an		-	ion	204
	V.	Generalizing from the	e European Ca	se		212
10.		nana Splits: Nested ar Insatlantic Banana Tr		-		215
		The Nesting and C	-	-		-
		Nesting/Overlapping				219
		Unpeeling the Layer				
		Dispute				225
	IV.	Conclusion				231
	Γ	V. BEYOND EUR ECJ IN A CO				
11.	Ag	ents or Trustees? Inte	rnational Cour	ts in their Po	olitical	
		ntext (2008)				237
	I.	Empirical and Ontol	logical Problem	s Within Pri	ncipal-Agent	220
	П	Theory Delegation to 'Agent	ts' Compared to	Delegation	to 'Trustees'	239 241
	III.	• •	-	-		246
		Taking the Cases To		'		258
	V.	Conclusion: Moving	g Beyond P-A P	resumptions		261

XX	Table	of	Contents

12. Private Litigants and the New International Courts (2006)	263		
I. How Are ICs with Compulsory Jurisdiction and Private-Actor Access Different from ICs without Compulsory Jurisdiction			
and Private-Actor Access?	264		
II. The New ICs -	265		
III. A Functional Explanation of the Design Trend in Delegation			
to ICs'	270		
IV. More European Courts?	280		
V. Democracy and Access to Justice in the New ICs	284		
13. Law and Politics in Europe and Beyond (2009)	287		
I. Lessons from the ECJ Experience	290		
II. Going Forward: Research Questions for the Study of			
Transnational Legal Politics in Europe and Beyond	298		
III. Generalizing from the European Case	301		
Appendix: Related Essays Not Included in This Volum	ne 304		
	<i>ie</i> 304 305		
6 F 9			
Index	329		