

Table of Contents

1. Introduction	1
I. Chapter Summary	8

PART I: THE NEW APPOINTMENT PROCESSES OF THE ECJ: THE 255 PANEL

2. The Prehistory and History of the 255 Panel	37
I. The ECSC Negotiations	37
II. The ECJ's 1995 Report	44
III. The 2000 Ole Due Report	46
IV. The 2003 Constitutional Convention's Discussion Circle on the ECJ	48
V. The Treaty of Lisbon	54
3. The 255 Panel in Operation	57
I. The Establishment of the Panel	57
II. The 255 Panel's Work	60
A. The Panel's Decisions	60
1. Introduction: the lack of transparency	60
2. The numbers	62
B. The Activity Reports	66
C. "Personal" Publications	78
III. Conclusion	85

PART II: THE NEW APPOINTMENT PROCESSES OF THE ECTHR: THE ADVISORY PANEL OF EXPERTS

4. The Prehistory and History of the APE	91
I. History: Back to the Beginning	91
II. The Judicial Appointments Developments	100
5. The APE in Operation	128
I. The Early Days	128
II. The Storm Hits	131
III. The Response	140
IV. Conclusion	147

PART III: JUDICIAL INDEPENDENCE? AGAIN?

6. The Primary Literature: Taking Measures (and More Measures)	163
I. The Committee of Ministers' 1994 Recommendation "On the Independence, Efficiency and Role of Judges"	163
II. The 1998 European Charter on the Statute for Judges	168
III. The CCJE's 2001 Opinion No. 1	172
IV. The Venice Commission Reports	177
V. Concluding Trends	182
7. The Secondary Literature: What to Make of Judicial Independence?	186
I. By Way of Introduction: Classics Old and New	187
II. The Tactical Turn	189
III. An Independent Take on European Judicial Independence and Accountability	196
A. Judicial Independence or Judicial Accountability?	197
1. Judicial independence	197
2. Judicial accountability	199
B. <i>Judicial</i> Accountability?	202
C. <i>European</i> Judges?	205
D. <i>European Judges?</i> On European Uncertainty	207
IV. Conclusion	212

PART IV: A QUALITY DISCUSSION

8. Formalization and Judicial Quality	219
I. Formalization	219
A. Procedural Formalization	219
B. Substantive/Normative Formalization	222
C. Institutional Formalization	224
II. The Rise of Judicial Quality	226
A. The EU and Council of Europe Debates	226
B. The Academic Debates	237
9. Formalized Quality in Operation	244
I. Removing and Imposing Control	244
II. Judicial Quality as a Loaded Mediating Device	248
III. Recognizing Historical Exceptions	252
IV. Conclusion: A Supple Formalization	258

PART V: SCANDAL!

10. The Juicy Bits	273
I. The 1998 Bulgarian Appointment	273
II. The 2001 Moldovan Appointment	275

III. The 2004 Slovak Appointment	278
IV. The 2004 Estonian Appointment	281
V. The 2011 French Appointment	287
VI. The 2012 Czech Appointment	289
VII. Temporary Conclusion	292
11. Scandal Theory in Context	293
I. The Core of Scandal Theory	293
A. The Scandalous Event	293
B. Claim of Violation of Norms	294
C. Revelation to a Public	295
D. Contested Norms or Values	298
E. Unfolding over Time	301
F. Public Disapproval ... or not	302
II. Scandal Theory in Action	307
A. The Scandalous Event	307
B. Claim of Violation of Norms	308
C. Leadership Struggles: The Construction of Inter-Institutional Allegiances	322
D. The Formation of Identities and Interests	328
III. Conclusions	334
PART VI: MAKING SENSE OF THE REFORMS	
12. Different Ways to Connect the Dots	345
I. Strand #1: The Supranational Transplantation of Institutional Forms: The Rise and Spread of Judicial Councils	345
II. Strand #2: The Legal and Professional Normalization of the European Courts	350
A. The Legalization and De-Internationalization of the International/Supranational	350
B. The Legalization and De-Constitutionalization of the International/Supranational	353
III. Strand #3: Judicial/Judicial Dynamics	358
A. Practical Inter-Institutional Politics: The European Courts' Efforts to Promote Buy-In from Member State Courts	358
B. Inter-Institutional Domestication: The Member State Judiciaries' Influence over the European Courts	366
IV. Strand #4: Separation of Powers Developments	368
V. Strand #5: The "Neoliberal" Turn: The Empowered and Disempowered Judiciary	370
VI. Strand #6: Neo-Institutionalism: Unintended Consequences?	374
VII. Strand #7: The Construction of Elite Judicial Power	378
VIII. Transitional Conclusion	384

13. A Crisis in Legitimacy and Authority	386
I. The Orthodox Analysis and Prescription	387
II. Reasons for Skepticism	390
A. Çali et al.: Self-Referential Professional Perceptions	390
B. British Eurosceptics and the Tabloid Press	393
1. Ignorance/misinformation about the European Courts	394
2. The ECJ's legitimacy shortage	396
C. Challenging the Orthodox Account	398
1. Option 1: The European <i>Courts</i> are beside the point	401
2. Option 2: The critiques really <i>are</i> about the European Courts ...	408
14. Conclusion: Disentangling Three Types of Judicial Legitimacy	424
<i>Bibliography</i>	437
<i>Index</i>	451