

von Bogdandy | Schmidt-Aßmann [Eds.]

Theorising Comparative Public Law

A Reader from Germany



Nomos

Beiträge zum
ausländischen öffentlichen Recht und Völkerrecht

Edited by

the Max Planck Society
for the Advancement of Science
represented by Prof. Dr. Armin von Bogdandy
and Prof. Dr. Anne Peters

Volume 334

Armin von Bogdandy | Eberhard Schmidt-Aßmann [Eds.]

Theorising Comparative Public Law

A Reader from Germany

Managing Editor: Kanad Bagchi



Nomos

Open Access funding by the Max Planck Society.

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>

ISBN 978-3-7560-0599-4 (Print)
978-3-7489-3903-0 (ePDF)

1st Edition 2024

© The Authors

Published by

Nomos Verlagsgesellschaft mbH & Co. KG
Waldseestraße 3–5 | 76530 Baden-Baden
www.nomos.de

Production of the printed version:

Nomos Verlagsgesellschaft mbH & Co. KG
Waldseestraße 3–5 | 76530 Baden-Baden

ISBN 978-3-7560-0599-4 (Print)
ISBN 978-3-7489-3903-0 (ePDF)

DOI <https://doi.org/10.5771/9783748939030>



Online Version
Nomos eLibrary



This work is licensed under a Creative Commons Attribution 4.0 International License.

Preface

This reader presents contributions that help theorize comparative public law. Its main aim is to advance the transnational field of comparative public law by reflecting on its rationales, methods, and practices. Focusing on comparative *public* law is to showcase its specificities. We do not deny the many commonalities with private comparative law nor the general field of comparative law *tout court*.

When selecting among the many possible contributions, nationality was a key criterion. Indeed, presenting contributions from Germany is this reader's second aim. Comparative public law scholarship (as public international law or European public law) continues to be influenced by national traditions and contexts. Reflecting those traditions and contexts, disputed as they are, helps building a transnational, but rooted field of comparative public law. Such rootedness is valuable in a world that celebrates diversity and self-determination.

The contributions come in three groups according to their main theoretical thrust. Those of the first group mainly reflect *rationales* of comparative public law, while the second are more reflective of *methods* and the third theorizes specific *practices*. Of course, the lines between rationales, methods and practices are rather blurred and many contributions traverse through these categories. Therefore, the presentation under the broad categories of 'rationales', 'methods' and 'practices' is not meant to pigeonhole them into sealed compartments. So the texts could be classified differently. Indeed, academic work, including editorial work, is always a reflection of the situatedness of the scholar, an insight best proven by reflecting on comparative public law.

Table of Contents

Reflecting Rationales

<i>Karl-Peter Sommermann</i> The Germanic Tradition of Comparative Administrative Law	11
<i>Peter Häberle</i> The Rationale of Constitutions from a Cultural Science Viewpoint	41
<i>Markus Kotzur</i> Understanding the Law in a Wider Context: On the Value of Comparative Law	67
<i>Anne Peters and Heiner Schwenke</i> Comparative Law Beyond Post-Modernism	89
<i>Philipp Dann, Michael Riegner and Maxim Bönnemann</i> The Southern Turn in Comparative Constitutional Law	131
<i>Armin von Bogdandy</i> Comparative Public Law for European Society	175

Reflecting Methods

<i>Uwe Kischel</i> Method in Comparative Law – The Contextual Approach	225
<i>Rainer Grote</i> Contextual Comparison and Shifting Paradigms in Comparative Public Law	247

Table of Contents

Christoph Schönberger

Comparative Administrative Law:
Particularities, Methodologies, and History 275

Eberhard Schmidt-Aßmann

Comparative Administrative Law: Concepts and Topics 333

Reflecting Various Practices

Günter Frankenberg

Legal Transfer 381

Peter M. Huber

The Constitutional Traditions Common to the Member States:
Identification and Concretisation 405

Andreas Voßkuhle

Constitutional Comparison by Constitutional Courts
– Observations from Twelve Years of Constitutional Practice 423

Susanne Baer

Comparing Courts 443

Michaela Hailbronner

Transformative Constitutionalism: Not Only in the Global South 469