The Use of Foreign Precedents by Constitutional Judges

Edited by
Tania Groppi
and
Marie-Claire Ponthoreau

HART PUBLISHING
OXFORD AND PORTLAND, OREGON
2013
Contents

Table of Cases............................................................................................................................. vii
Table of Legislation .................................................................................................................. xxv

Introduction. The Methodology of the Research: How to Assess the Reality of Transjudicial Communication? ......................................................... 1
Tania Groppi and Marie-Claire Ponthoreau

Part I...............................................................................................................................................II

1. Reference to Foreign Precedents by the Australian High Court: A Matter of Method ........................................................................................................... 13
Cheryl Saunders and Adrienne Stone

Gianluca Gentili

3. India: A ‘Critical’ Use of Foreign Precedents in Constitutional Adjudication ..........................................................................................................................69
Valentina Rita Scotti

4. The Supreme Court of Ireland and the Use of Foreign Precedents: The Value of Constitutional History ............................................................................. 97
Cristina Fasone

5. Israel: Creating a Constitution—The Use of Foreign Precedents by the Supreme Court (1994–2010) ...................................................................................... 129
Suzie Navot

6. Namibia: The Supreme Court as a Foreign Law Importer ..........................................................................................................................155
Irene Spigno

Christa Rautenbach

Part II...........................................................................................................................................211

8. Austria: Non-cosmopolitan, but Europe-friendly—The Constitutional Court’s Comparative Approach ............................................................................. 213
Anna Gamper
9. Lifting the Constitutional Curtain? The Use of Foreign Precedent by the German Federal Constitutional Court
Stefan Martini

Zoltán Szente

11. A Gap between the Apparent and Hidden Attitudes of the Supreme Court of Japan towards Foreign Precedents
Akiko Ejima

12. Mexico: Struggling for an Open View In Constitutional Adjudication
Eduardo Ferrer MacGregor and Rubén Sánchez Gil

13. Romania: Analogical Reasoning as a Dialectical Instrument
Elena Simina Tanasescu and Stefan Deaconu

14. Russia: Foreign Transplants in the Russian Constitution and Invisible Foreign Precedents in Decisions of the Russian Constitutional Court
Sergey Belov

15. Judges as Discursive Agent: The Use of Foreign Precedents by the Constitutional Court of Taiwan
Wen-Chen Chang and Jiunn-Rong Yeh

16. United States of America: First Cautious Attempts of Judicial Use of Foreign Precedents in the Supreme Court’s Jurisprudence
Angioletta Sperti

Conclusion. The Use of Foreign Precedents by Constitutional Judges: A Limited Practice, An Uncertain Future
Tania Groppi and Marie-Claire Ponthoreau