An Exercise in Legal Honesty: Re-writing the Court of Justice and the Bundesverfassungsgericht

Michelle Everson

February 2014

Institut für Höhere Studien (IHS), Wien
Institute for Advanced Studies, Vienna
## Contents

I. THE RULE OF LAW UNDONE? ................................................................. 7

II. GIVING LAW IN THE STATE OF EXCEPTION ................................. 11

II 1. A RETURN TO ‘NORMAL CONSTITUTIONALITY’ ................................. 11

II 2. CONSTITUTIONAL GUARANTEES FOR THE ‘OPENNESS OF DEMOCRATIC PROCESS’ ................................. 14

III. WHICH POLITICAL? ........................................................................ 20

IV. POPULAR PROTEST AND HONEST ILLEGALITY ............................... 25

IV1. PRINGLE WITH RESPECT FOR PROTEST: ‘JUDGE MARIO BOUNAVENTURA’ (DISSENTING) ................................................................. 26

IV2. ‘THE FCC ADDRESSES THE UNDERLYING ISSUES: ‘JUSTICE EDIT HEUMACHER’ (DISSENTING) ................................................................. 29

V. A POLITICAL CAVEAT ....................................................................... 32

VII. REFERENCES .................................................................................. 34