

A 1975
10443

COMPARATIVE JUDICIAL POLITICS

The Political Functionings of Courts

THEODORE L. BECKER

University of Hawaii
New York University



Rand McNally & Company • Chicago

CONTENTS

	Preface	vii
	Foreword	ix
PART A		
<i>Introduction</i>	The Reconceptualization of the Search: Toward a Judicial Theory	1
	The Concepts of Function and Structure	4
	Definition of the Concept of Court	12
	The Concept of Politics	16
	The Conceptual Scheme and a Paradigm	19
<i>Chapter 1</i>	The Search for Judicial Role and the Courts: Location and Measurement	24
	Early Misdirection and Failure in the Contemporary Search	27
	Redirection: The Search for Judicial Role Expectations and Role Behavior	35
	Interviews and Surveys of Role Definers, 37	
	Institutions and Trappings, 39	
	Writings of Indigenous Scholars and Foreign Experts, 41	
	Linking Role Expectations and Behavior, 42	
	Appendix	
	<i>Chancery Lane Safe Deposit and Offices Co., Ltd., v. Inland Revenue Com- missioners</i> (England, 1965), 53	
<i>Chapter 2</i>	Causes of the Judicial Decision	64
	On Causation	64
	On Attitudes, of All Sorts, 66	
	Comparative Work on Attitudes, 70	

	Background Study, 75	
	Comparative Analysis of Backgrounds, 80	
	Factors Other than Attitudes and Values, 85	
	Relevance to Political Science:	
	Toward a General Theory of	
	Decision-Making	90
Chapter 3	Whether There Are Courts or Not:	
	Causes and Consequences	98
	Court as a Dependent Variable:	
	The Preconditions of Courts	99
	Court as an Independent or Intervening	
	Variable: The Effects of Courts	109
	Internal Order; Status Quo, 109	
	Democracy; Individual and	
	Minority Rights (Liberty), 119	
	Justice; Fairness; Equity, 125	
PART B		
<i>Introduction</i>	On Structural Variations of Courts	135
<i>Chapter 4</i>	The Measure, Conditions, and Functions	
	of Judicial Independence	140
	The Concept Defined	141
	Indicators and Measures	145
	The Conditions for the Existence	
	and/or Degrees of Judicial Independence	154
	The Political Functions of	
	Judicial Independence	161
	Maintenance of the Status Quo, 162	
	Protection of Individual Rights	
	against Government, 164	
	Appendix	
	<i>Tumey v. Ohio</i> (U.S.A., 1927), 169	
	<i>The State v. Sir Edward Snelson</i>	
	(Pakistan, 1961), 172	
	<i>Kent v. Dulles</i> (U.S.A., 1958), 186	
	<i>Cleveland v. United States</i>	
	(U.S.A., 1946), 195	
	<i>Gonzales v. Hechanova</i>	
	(Philippines, 1963), 200	

Chapter 5	<p>Variations in Court Structure: Judicial Review 204</p> <p style="padding-left: 20px;">The Wide, Wide World of Judicial Review 205</p> <p style="padding-left: 40px;">The Nature of Reviewing Organs, 206</p> <p style="padding-left: 40px;">Accessibility to the Structure, 207</p> <p style="padding-left: 40px;">Scope of the Review, 208</p> <p style="padding-left: 40px;">Typical Functioning, 209</p> <p style="padding-left: 20px;">The Relationship between Judicial Independence and Judicial Review 211</p> <p style="padding-left: 20px;">The Conditions for Judicial Review 217</p> <p style="padding-left: 20px;">The Functions of Judicial Review 224</p> <p style="padding-left: 40px;">Protection of Individual Rights and/or of Democracy, 225</p> <p style="padding-left: 40px;">Maintenance and Strengthening of Federal Systems, 232</p> <p style="padding-left: 40px;">Legitimization, 238</p> <p style="padding-left: 20px;">Conclusion 246</p> <p style="padding-left: 20px;">Appendix</p> <p style="padding-left: 40px;"><i>Baker v. Carr</i> (U.S.A., 1961), 248</p> <p style="padding-left: 40px;"><i>Keshav Singh v. Uttar Pradesh</i> (India, 1964), 252</p> <p style="padding-left: 40px;"><i>Youngstown Sheet and Tube Co. v. Sawyer</i> (U.S.A., 1952), 259</p> <p style="padding-left: 40px;"><i>Watkins v. United States</i> (U.S.A., 1957), 264</p> <p style="padding-left: 40px;"><i>The Party Finance Case</i> (West Germany, 1966), 269 Translated by DONALD P. KOMMERS</p> <p style="padding-left: 40px;"><i>Nakamura et al. v. Japan</i> (Japan, 1962), 280 Translated by DAN F. HENDERSON</p> <p style="padding-left: 40px;"><i>Marbury v. Madison</i> (U.S.A., 1803), 297</p>
Chapter 6	<p>Variations in Court Structure:</p> <p style="padding-left: 20px;">Lay Participation in Decision-Making 304</p> <p style="padding-left: 20px;">Legal and Political Propositions in the Literature 305</p> <p style="padding-left: 40px;">The Empirical Evidence on the Legal Propositions, 308</p> <p style="padding-left: 20px;">The Political Functions of the Jury System 317</p>

	Effect on the Citizen-Participant Himself, 321	
	Legitimacy, 323	
	Fortress of Political Liberty, 324	
	Comparative Studies	326
	Conclusion	333
	Appendix	
	<i>Sheppard v. Maxwell</i> (U.S.A., 1966), 335	
Chapter 7	The Political Use, Abuse, and Misuse of the Judicial Structure	345
	Level of Significance in Politics and on Policy	346
	Influence, 347	
	Impact, 356	
	The Use of Court Systems to Gain and Consolidate Political Power	361
	The Use of Court Procedures to Combat Political Enemies: The Political "Trial" and the Political Trial	372
Chapter 8	A Few Words in Favor of Functional Restructuring	380
	Name Index	387
	Subject Index	393