Table of Contents

The	Law-Making Process as a Juridical and Political Activity	
A. F	Pizzorusso	1
I	The Law-Making Process	1
1	Law, Rules, Legal System	1
2	The Making of the Law and its Different Meanings.	4
	a. Law-Making and Law-Applying	5
	b. "Rechtssetzung" and "Rechtsfindung"	5
	c. The Various Phases of the Law-Making Process.	7
	d. Theoretical Law and Living Law	9
	e. Provision and Norm; Normative Acts and	
	Patterns of Behaviour	9
3	Rules on Law-Making	11
	a. The Sources of Law as a Field of Law-Making .	12
	b. "Ex facto ius oritur"	12
	c. The Double Hierarchy of Rules	13
	d. The Effectiveness Rule	14
4	The Sources of the Law	15
	a. The Juridical Notion of Source of Law	15
	b. Rules Operating "erga omnes" and Rules Operat-	
	ing "inter partes"	16
	c. The Classification of Sources of Law	17
	d. The Main Factors Legitimizing Normative Power	22
5	Normative Inflation	24
II	The Concept of Legal System	27
1	The Role of the Legal System in Modern Societies .	27
2	The Plurality of Legal Systems	28
3	Relations between Legal Systems	31
	a. Relations between State Legal Systems	31
	b. State Law and International Law	32
	c. State Law and Legal Systems Linked to it	33
	d. Relations between "Alternative" Legal Systems .	34
4	The Most Important Models of State Legal Systems.	35
	a. The Subjects of Legal Comparison	36

	b. Criteria for the Classification of Systemsc. Prospects of Evolution in Contemporary Legal	38
	c. Prospects of Evolution in Contemporary Legal Systems	39
		4.4
III		44
1		44
	a. The Structure of the Parliamentary Legislative	44
	Process	46
	b. The Initiative Phase	48
	c. The Resolution Phase	40
	Force of the Act	48
	e. Characteristics of this Type of Normative	10
	Activity	50
2		
	Bodies	51
	a. The Structure of the Administrative Process	51
	b. Types of Governmental Normative Acts	52
	c. Characteristics of this Type of Normative	
	Activity	54
3		55
4		58
5		61
IV	Relations between Forms of Government and Sources	
	of Law Systems	62
1	Forms of Government and Forms of State	62
2	1	64
	a. Unitary States and Pluralistic States	64
	b. Democratic States and Authoritarian States	66
	c. "Patrimonial State", "Polizeistaat", "Rechtsstaat"	68
	d. "Liberal State", "Welfare State", "Socialist State"	69
3		70
	a. Absolute, Limited, Constitutional and	70
	Parliamentary Monarchies	70
	b. Presidential, Semi-Presidential and Parliamentary	70
	Republics and Government by "Directoire"	72 74
	c. "Democratic Centralism"	/4
	d. Multi-Party, Bi-Party and Single Party Systems;	
	Consociational Government, Alternation and	76
	Hegemony	/0
4		77
-	and Sources of Law Systems	//
5	Hierarchy of Sources of Law	78
	a. Limits to the Use of Forms of Direct Democracy	79
	w. Pillito to the Ob of I dillio of Pilot Politoliae	. ,

	b. Parliamentary Legislative Activity and	
	Governmental Normative Activity	81
6	Judicial Interpretation and Judicial Law-Making;	01
U	Law-Making by State Authorities and Autonomous	
		83
	Law-Making	83
	a. Judicial Law-Making of Constitutional	03
	b. The Normative Autonomy of Constitutional	
	Organs and Public Authorities, and Private	84
-	Normative Autonomy	04
7		
	the Sources of Law and the Form of State and of	06
	Government	86
Can	etitutional Customs and Courses of Law	
	stitutional Systems and Sources of Law Delpérée	88
1°. L	Desperce	00
1	The Sources of Law and the Constitutional Context.	88
2	The Hierarchy of the Sources of Law	89
3	The Conception of the Sources of Law and the	
	International Legal Order	91
4	Unitary or Composite Structure of the State	92
5	Different Categories of Laws	94
6	Referendums and Other Forms of Participation	
	of Citizens	95
7	Parliamentary Regimes and Presidential Regimes	97
8	Parliamentary Legislation and Governmental Action	97
9	Other Aspects of the Form of Government	99
10	The Delegation of Normative Powers	100
11	The Role of the Judiciary	100
12	Conclusions	101
	stitutional Law between Statutory Law and Higher Law	100
E. I	Denninger	103
I	Preliminary Notes: Object and Method	
1	of the Investigation	103
II	· · · · · · · · · · · · · · · · · · ·	104
1	Written or Unwritten Constitutions?	104
. 2	Contents and Formal Structure	106
	a. Fundamental Rights and Organizational Rules -	
	a General Principle of Division?	106
	b. The Extent of Constitutions	106

3	The Normative and Programmatic Character	
	of Constitutions	108
	a. Fundamental Structural Distinction - Normative	
	and Programmatic Types of Constitutions	108
	b. Contents and Normative Function of Preambles	110
	aa. Preamble - the Preface of a Constitution	110
	bb. Selected Characteristic Elements	111
	cc. Preambles as Normative Binding Rules?	112
	Translate as I tolling I tolling I tollow	112
III	Constitutional Law and Statutory Law	113
1	Constitutional Law and Other Sorts of Law -	
	a Categorical Ranking	113
	a. A Formal Distinction of Categories on the Basis	
	of the Formal Requirements for Enactment	113
	b. Constitutional Amendment and Unalterable	
	Constitutional Rules ("Perpetuity Clauses")	115
2	Supremacy of the Constitution and its Implications for	
	the Legislature	115
	a. Legislative Authority	116
	aa. General and Qualified Authority with Respect to	
	Basic Rights ("Gesetzesvorbehalt")	116
	bb. Special Provisions for Limitation and	-
	Enforcement of Basic Rights	116
	b. Binding the Legislature	117
	aa. Constitution as an Objective Binding Law	117
	bb. The Immediate Binding Effect of Basic Rights.	118
	cc. The Guarantee of Essential Content	110
	("Wesensgehaltsgarantie")	119
		119
		120
	the Legislature	120
	aa. Provisions Setting State Goals ("Staatsziel-	
	bestimmungen") and Law-Making Mandates	100
	("Gesetzgebungsaufträge")	120
	bb. Impact of the Constitution on the Legislature	
	Through the Objective-Legal Character	
	of Fundamental Rights Articles	122
IV	Relationship between Constitutional Law	
- '	and Higher Law	124
1	Recognition of Human Rights and Their	12.
	Incorporation	124
	a. Recognition of Innate Human Rights	124
	b. Rank of the European Human Rights Convention	127
	(EHRC)	126
2	Constitutional Law and International Law	127
2	Recognition of General Legal Principles	127
)	INCOMPLICION OF MERICINAL PROPERTY OF THE PROP	147

	te and Statutory Instrument in the Evolution	
P. Ca	aretti and E. Cheli	131
I	Preliminary Notes	131
II	Statute and Statutory Instrument in the Constitutions	
	and in Practice in Some European Legal Systems	134
1	Great Britain	134
2	Switzerland	136
3	Belgium	137
4	Austria	139
5	West Germany	140
6	Italy	142
7	France	143
8	Spain	145
777	Common Tendencies	147
III	Underestimation of the Problem by Constituent	147
1	Assemblies	147
2	The Expansion of the Functional Scope of Statutory	,
2	Instruments	148
3	The Flexible Interpretation of Constitutional Rules	
5	Defining Areas Reserved for Regulation by Statute	
	Law	148
4	Statutory Instruments Enacted Outside the Central	
	Government Area	148
5	Relations between Statute and Statutory Instrument as	
	a Problem Regarding the Division of Competences	
	More than the Hierarchy of Sources of Law	149
		1.40
IV		149
1	The English Model	150
2	The French Model	152
3	The Intermediate Continental Model	153
Con	stitutional Jurisdiction as Law-Making	
	Rubio Llorente	156
I	Subject and Scope	156
1	Terminology	156
2	Scope and Method	157
		4.50
II	Techniques of Constitutional Jurisdiction	159
1	"Erga Omnes" Binding Effects and the Concept of	150
	Constitutional Jurisdiction	159

XIV Table of Contents

2	The American System	159
	a. The Principle of "Stare Decisis"	159
	b. The Judicial Review of Legislation	161
	c. Unconstitutionality due to Vagueness	
	or Overbreadth	164
3	The European System	164
	a. The Idea of the Judiciary in Civil Law Countries	164
	b. The Austrian Model	165
	c. The Post-War European Systems	167
	aa. "Interpretative" Decisions	170
	bb. "Mere Unconstitutionality" Decisions	173
	cc. "Manipulative" Decisions	174
TTT	Mathoda of Indicial I am Making and its Effects	175
III	Methods of Judicial Law-Making and its Effects	
1	Legal Law-Making Through Declaration of Voidness	176
	a. Object of the Declaration	176
	b. Form of the Declaration	177
_	c. Spatial and Temporal Scope of the Declaration.	179
2	Constitutional Law-Making	184
Col	lective Bargaining as Agreement and as Law: Neo-	
Con	tractualist and Neo-Corporative Tendencies of our Age	
Lor	d Wedderburn of Charlton and S. Sciarra	186
I	Introduction	186
1	Introduction	100
II	The Legal Nature of Collective Agreements	189
1	Functions of the Agreements. Normative and	
	Procedural Clauses	189
2	Agreements Binding in Honour and Legally Binding	191
3	Freedom of Association and Bargaining Agents	196
4	Effects of new Patterns in Bargaining: Some	
	Examples	201
777	State Caridance in Collectine Banasining	200
III	State Guidance in Collective Bargaining	208
1	Legal Support for Collective Agreements	208
2	Remittals From the Law to Collective Bargaining	224
IV	Neo-Corporative Tendencies	228
1	Negotiated Legislation	228
2		
_	Tripartite Bargaining and Institutions	233
3		233236

	o. The Lack of all Organic Constitutional Regulation	
	of Cooperative Practice	259
	c. Common Features of Forms of Cooperative	
	Decentralization	260
IV	What Peripheral Law is and how it Works	262
	T and the same of	202
1	Separation of Jurisdictions of "Oberstaat" and	
	"Gliedstaaten": Principle of Competence, Principle	
	of Hierarchy and Concurrent Legislative Powers	262
	a. The Principle of Rigid Separation	
	of Competences	263
	b Consument Legislating Description 1	203
	b. Concurrent Legislative Powers of "Oberstaat" and	
	"Gliedstaaten"	264
	c. The Principle of Hierarchy	266
2	The Conzern-Basis of the Separation of Jurisdictions:	
	Matters, Functions, Policies	266
		200
	a. The Separation of Jurisdictions as the Basis for	
	a Classification of Forms of Decentralization	267
	b. The Problem of the Juridical Definition of Matters	
	or Concerns	267
3	Legislative Process and Cooperative Decentralization:	207
5	Towards a Madal of December 1 of December 1.	
	Towards a Model of Decentralization Based on	
	Procedural Guarantees?	270
	a. Cooperative Practice as a Means or as an End? .	270
	b. Seeking a new Equilibrium in Relations between	
	"Oberstaat" and "Gliedstaaten"	272
	Oberstaat and Gredstaaten	212
The	Law-Making Process in the European Communities	
F. C	Capotorti	275
I	Introduction	275
1		213
1	Reasons for Extending the Research to the European	
	Communities	275
2	The Difference in Nature between the Communities	
	and States	275
3	The Particular Characteristics of the Communities	213
5		07.
	with Respect to International Organizations	276
4	The Existence of three Communities with Separate	
	Rules and Common Structural Elements	277
5	Nature and Role of Community Institutions	278
	The state of Committee of the state of the s	210
TT	The Formation of Committee Day 1	050
II	The Formation of Community Regulations	279
1	Regulations: General Features	279
	a. Typical Features of Regulations	279
	b. Equivalence between Regulations and General	
	Decisions of the ECSC	281
		401

	c. Limits to the Communities' Law-Making Power.	28
	d. Mitigation of the Enumerated Powers Principle.	282
	e. Classifications of Regulations	283
2	The Initiative Stage	284
	a. The Commission's Power of Initiative in the EEC	
	and in the EAEC	284
	b. The Influence of Other Bodies on the Exercise of	
	the Above-Mentioned Power	285
	c. Preliminary Contacts between the Commission	200
	and the Council	286
	d. Preparation of Draft Regulations by	200
	the Commission	286
3		287
3	The Consultation Stage	201
	a. Consultation of the Parliament and of	205
	the Economic and Social Committee	287
	b. The Possibility of Modifying the Initial Proposal	288
4	c. The Conciliation Procedure	289
4	The Decision Stage	290
	a. The Role of the COREPER	290
	b. The Majority Principle in the Council	290
	c and its Abandonment in Community Practice	291
_	d. The Final Stage of the Rule-Making Process	292
5	Characteristics of the ECSC System	292
	a. Power of Initiative with Respect to Decisions	292
	b. The Consultative and Final Stages	293
6	Commission Regulations and the System	
	of the "Management Committees"	294
7	Reasons for the Regulations	295
8	Other Aspects as Concerns Form	296
9	Publication and Entry into Force	296
III	Regulations and Other Sources of the Community	
	Legal System	297
1	The Creation of Individuals' Rights and Obligations	
	on the Basis of Sources Other than a Regulation	297
2	Classification of Community Treaties into	
	three Groups	298
	a. Rules Expressly Addressed to Private Subjects .	298
	b. Rules Addressed to the States or to Institutions;	
	Interpretation of these Rules in the Light of the	
	"Direct Effect" Doctrine	299
	c. Rejection of the Thesis according to which Laws	
	Implementing Community Treaties are Necessary	
	in Order to Grant Rights to, and Impose	
	Obligations on, Individuals	300
	d. Relationship between Treaty Rules and Rules	
	Embodied in Regulations	300

XVII

Table of Contents

Ústřední knihovna právnické fakulty MU Brno

3	Directives: Differences between their Features and those of Regulations	301
	a. Developments in Community Practice	
	as Concerns Directives	301
	b. The Application of the Direct Effect Doctrine	
	to Directives	302
4	The Possibility that Agreements Stipulated by one of	
•	the Communities can Have Immediate Effect	
	on Individuals	303
5	The Role of Principles of Unwritten Law	303
	the Cocialist	
Prol	blems of the Legislative Process in the Socialist	
Cou	ntries of Europe Peteri	306
Z. F	'eteri	500
T	Preliminary Remarks	306
I	Preliminary Remarks	
		200
II	Law and Legislation in the Socialist Countries	308 308
1	Law in General	310
2	Historical Foundations of Socialist Legislation	313
3	The "Style" of Socialist Legislation	313
		210
III	The Legislative Process in the Socialist Countries	319
1	Phases of the Legislative Process	319
2	Legislative Initiative	321 324
3	The Drafting Process	324
4	Parliamentary Procedure: The Enactment	327
	of the Statute	321
	Down	
Sor	ne Specific Elements Concerning the Legislative Process	
	the S.F.R. of Yugoslavia	332
S	Jogan	332
1		
	System of Yugoslavia	332
2		332
3		334
4		225
	(Provincial) Agencies in the Legislative Process	337
5		339
6		340
7	Concluding Note	341

Table	e of Contents	XIX
Soft	ware for the Legislator	
	A. Martino	342
		,
1	Introductory Notes	342
2	Legislative Pollution	345
3	"Gesetzgebung"	347
4	Computer Aids	349
5	Legislative Information Retrieval Systems	350
6	Automatic Analysis of Legislation	353
7	A Model for Rational Reconstruction of a Positive	
	Legal System	356
8	The Legislator's Language	357
9	Calculation of Combinations and Consequences	360
10	Expert Systems	362
11	A Shell for Basic Deontic Logic	368
12	Conclusions	370
Ann	ex I: How the Research was Carried out	372
Ann	ex II: Guidelines for the National Reporters	374
I	Preliminary Notes	374
II	The Legislative Process	376
III	Statutes and the Forms of State and of Government .	378
IV	Statutes in the System of the Sources of the Law	379
V	The Structure of the National Reports	381
Subj	ect Index	385