

French Constitutional Law

Cases and Materials

Second Edition

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Preface

French Constitutional Law: Cases and Materials includes extracts from decisions of the Constitutional Council and Council of State, significant laws, important reports, and a variety of French legal writings. These materials are accompanied by commentary, notes, and readings from secondary sources, including a generous sampling of extracts from historical and philosophical texts, to permit an understanding of the French constitutional system in context. The aim of the book is to present French constitutional law from a French perspective—to understand how the French think about constitutional law and its practice. Dynamics of constitutional evolution in France are stressed, and special attention is devoted to the extensive constitutional amendments of July 2008. The book deals in depth with the following matters: separation of powers and the structure and functioning of government, the evolution and practice of judicial review by the Constitutional Council, the role of the Council of State in the French constitutional system, sources of French constitutional law and their interpretation, the Republican tradition (liberty and human rights, democracy and national sovereignty, secularism, equality, social solidarity, and the indivisibility of the Republic), and the application of supranational law (international law, European Union law, and European human rights law) in the French constitutional system. The materials direct attention to the most significant differences between French and American thinking about constitutionalism, political and judicial institutions, and substantive constitutional principles. This book is well suited for use in law school, as the materials are structured to provide the basis for class discussion of legal issues. It is also well suited for use in undergraduate and graduate courses in French, European, or comparative politics or history.

Translations, notes, citations, and style. Translations of the documents in Appendices A, B, C, and D (Constitution of 1958, Declaration of the Rights of Man and the Citizen of 1789, Preamble to the Constitution of 1946, and Charter for the Environment of 2004) are by the Constitutional Council. All other translations from the French are by the Editor, unless otherwise indicated. Omissions from decisions with numbered paragraphs in the original

are not indicated by ellipses; reproduced paragraphs retain their original numbering. Most citations in excerpted material have been omitted. Citations to decisions of the Constitutional Council are to the *Recueil des décisions du Conseil constitutionnel* (abbreviated as Rec.). Citations to decisions of the Council of State are to the *Recueil Lebon* (Rec. Lebon). Recent decisions of the Constitutional Council are cited to the *Journal officiel de la République française* (J.O.). Recent decisions of the Council of State are identified by number so that they may be easily accessed on the Council's website. Citations to print versions of certain historic French documents are provided for the reader's convenience. Other historic French documents are cited to Internet sources. Cutoff date for research and citations is June 30, 2010. Text and notes written by the Editor for this book follow the *Chicago Manual of Style*. Materials reproduced from other sources and translations from the French retain the style of the original (capitalization, punctuation, italicization, spelling, etc.). Titles of readings and their sources appear in ordinary typeface.

The Editor would like to thank Marie-Laure Gély and Pierre-Henri Prétot for reviewing the manuscript of this book and for their helpful suggestions. He would also like to thank his student assistants Eric Bither, Amber Collins, Michael Dixon, Benjamin Hutchinson, Nicole Wakely, and Lauren Wille, and his son, Seth Rogoff, for their editorial assistance, and Chris Knott, Julie Welch, Sherry McCall, and Suzanne Parent of the Garbrecht Law Library at the University of Maine School of Law for their invaluable help. He is particularly grateful to his French friends and colleagues for what they have taught him over the years about French legal culture: Ludovic Ayrault, Abdelkalleq Berramdane, Yves Brard, Gilles Cottreau, Armel Le Divellec, Jean-Éric Gicquel, Christophe Guettier, Yves Guillotin, Emmanuelle Jouannet, Jean-François Lang, Jean-Paul Markus, Gwenaëlle Proutière-Maulion, Stavros Tsiklitis, and Claudine Viard. Finally, he wants to extend special thanks to his former student, now colleague and friend, David Corbé-Chalon for his indispensable research and bibliographic assistance, his many valuable substantive suggestions, and his editorial assistance.

2013 Addendum. An addendum has been added to this book in its second printing to reflect important developments with respect to the new *Question prioritaire de constitutionnalité* (QPC) jurisdiction of the Constitutional Council. The 2013 Addendum is entitled *The Question prioritaire de constitutionnalité (QPC) in operation* and is located at pp. 529 et seq. It is meant to be inserted in the book at p. 207 following the *Mme. L.* case.

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