French Constitutional Law

Cases and Materials

Second Edition

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for Linda, Ben, Harry, and Seth
Contents

Preface xi
Acknowledgments xiii
Table of Cases xvii

Chapter One • Introduction to the French Constitution of October 4, 1958 3
B. The French Model 8
C. Thinking about Law in France: Cartesian Rationality and Kelsen’s “Pure Theory of Law” 10
D. Comparative Constitutional Law and Its Uses 21

Chapter Two • The Fifth Republic: Political Institutions and Separation of Powers 33
A. The Constitutional Structure of Governmental Institutions: Overview and General Principles 35
B. The Executive Power: The President of the Republic and the Government 59
  1. The President’s Perspective 60
  2. The President’s Emergency Powers 66
  3. The Prime Minister’s Perspective 70
  4. Cohabitation 70
C. Relations between Government and Parliament: From régime d’assemblée to parlementarisme rationalisé to rééquilibrage et modernisation des institutions 85
  1. Responsibility of the Government to the National Assembly 86
  2. Role of the Constitutional Council in Supervising Government-Legislative Relations 86
  3. The Domain of the Law 90
  4. The Legal Nature of Ordinances 100
  5. The Legislative Process 107
<table>
<thead>
<tr>
<th>B. Libertés publiques and Human Rights</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Human Dignity</td>
<td>280</td>
</tr>
<tr>
<td>2. Individual Liberty (Arrest and Detention, Freedom of Movement, Right of Privacy)</td>
<td>288</td>
</tr>
<tr>
<td>4. Freedom of Assembly and Association</td>
<td>310</td>
</tr>
<tr>
<td>5. Economic Freedoms (Protection of Property, Freedom of Enterprise)</td>
<td>311</td>
</tr>
<tr>
<td>C. Equality</td>
<td></td>
</tr>
<tr>
<td>1. General Principles</td>
<td>315</td>
</tr>
<tr>
<td>2. Origin, Race, and Religion</td>
<td>317</td>
</tr>
<tr>
<td>3. Gender Equality</td>
<td>324</td>
</tr>
<tr>
<td>4. Public Employment</td>
<td>329</td>
</tr>
<tr>
<td>5. Equality Through the Law (discrimination positive)</td>
<td>333</td>
</tr>
<tr>
<td>D. Secularism (la laïcité)</td>
<td>336</td>
</tr>
<tr>
<td>E. Indivisibility</td>
<td>359</td>
</tr>
<tr>
<td>F. Social Solidarity</td>
<td>376</td>
</tr>
<tr>
<td>Chapter Five • International and European Law</td>
<td></td>
</tr>
<tr>
<td>A. International Law</td>
<td>411</td>
</tr>
<tr>
<td>B. European Human Rights Law</td>
<td>424</td>
</tr>
<tr>
<td>C. European Community Law</td>
<td>443</td>
</tr>
<tr>
<td>Appendix A • Constitution of October 4, 1958 (Extracts)</td>
<td>475</td>
</tr>
<tr>
<td>Appendix B • Declaration of the Rights of Man and the Citizen of 1789</td>
<td>503</td>
</tr>
<tr>
<td>Appendix C • Preamble to the Constitution of 1946</td>
<td>507</td>
</tr>
<tr>
<td>Appendix D • Charter for the Environment of 2004</td>
<td>509</td>
</tr>
<tr>
<td>Appendix E • French Regimes and Constitutions Since 1791</td>
<td>511</td>
</tr>
<tr>
<td>Appendix F • Amendments to the Constitution of 1958</td>
<td>513</td>
</tr>
<tr>
<td>Appendix G • Presidents and Prime Ministers of the Fifth Republic</td>
<td>515</td>
</tr>
<tr>
<td>Appendix H • Bibliography of Works in English</td>
<td>517</td>
</tr>
<tr>
<td>Appendix I • Bibliography of Works in French</td>
<td>521</td>
</tr>
<tr>
<td>2013 Addendum</td>
<td>529</td>
</tr>
<tr>
<td>Index</td>
<td>547</td>
</tr>
</tbody>
</table>
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.

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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.
Acknowledgments

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La Documentation française. Translation by the Editor of excerpts from Comité pour la réforme des collectivités locales, Il est temps de décider: Rapport au Président de la République, 5 mars 2009 (2009) © 2009 Librairie


Odile Jacob. Translation by the Editor of excerpts from Dominique Rousseau, La Ve République se meurt, vive la démocratie (2007) © 2007 Odile Jacob

ACNOWLEDGMENTS


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Constitutional Council


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xx CASES

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**Council of State**

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**United States Supreme Court**


