Diplomacy and Debate
Sydney D. Bailey and Sam Daws

in The Procedure of the UN Security Council

Published in print: 1998 Published Online: November 2003
Item type: chapter

Looks at diplomacy and debate at the UN Security Council, and the role of procedural rules and practice in these activities. The first four sections of the chapter describe the rules for: the order of speakers; interrupting the speaker; the right of reply; and motions, proposals and suggestions — the various types of these are all defined. The next section discusses precedence motions (Rule 33), which are techniques available to the Council by which debate can be suspended or terminated, either to facilitate positive purposes, or to frustrate negative ones (such as filibustering); these include: suspension of the meeting; adjournment of the meeting either sine die or to a certain day or hour; reference of any matter to a committee, the Secretary-General of the UN, or a rapporteur; postponement of the discussion to a certain day, or indefinitely; and introduction of an amendment; all of these are described separately. The remaining sections of the chapter discuss amendments, and statements before or after the vote.

Procedures for Conducting the Claims Process
HOWARD M. HOLTZMANN and EDDA KRISTJÁNSDÓTTIR

in International Mass Claims Processes: Legal and Practical Perspectives

Published in print: 2007 Published Online: January 2010
Item type: chapter

This chapter discusses claims process procedures. Topics covered include whether an existing set of recognized procedural rules is incorporated by reference and, where there is such incorporation, what changes, if any, are made to reflect the particular circumstances of
the claims process; whether the constituting instruments or procedural rules include special provisions with respect to evidence and standards of proof; whether the constituting instruments or procedural rules include special provisions with respect to the language(s) of the claims process, and, if applicable, how translation and interpretation services are provided; whether the constituting instruments or procedural rules include special provisions with respect to oral hearings or decisions based on documents only; the extent to which various procedures are conducted by means other than in-person proceedings; and the use of special mass claims processing methodologies. An Editors’ Commentary and separate Annotations show how each of these Mass Claims Processes has handled the matter.

The Legal Approach to Procedural Fairness
D. J. Galligan

in Due Process and Fair Procedures: A Study of Administrative Procedures

Published in print: 1997 Published Online: March 2012
Publisher: Oxford University Press

This chapter describes and analyses the general judicial approach to procedural fairness. It examines a number of issues: the tests developed by English law as to who is entitled to fair procedures; the extent to which abstract principles are translated into more detailed procedural rules; and the general judicial approach to exactly what procedural fairness requires and how those requirements are reconciled by the courts with competing considerations, especially costs.

The Rights of Private Parties under EU Law and Member State Remedies and Procedural Rules: Background
Angela Ward

in Judicial Review and the Rights of Private Parties in EU Law

Published in print: 2007 Published Online: March 2012
Publisher: Oxford University Press

The chapter provides a historical background of how the legal principles of non-discrimination and effectiveness emerged and how those concepts serve as a primary factor in intensifying implementation of the EC rules on the national level. In contrast, the principle of equivalence is mainly used as an instrument in assessing implementation on the national level.
rather than as a means to modify the procedural rules. Moreover, this principle was recently debated as to whether it affords an improved level of protection by the national court with respect to the community rights.

**Social Practices of Rule-Making**

Mark Raymond

_in Social Practices of Rule-Making in World Politics_

Published in print: 2019 Published Online: March 2019
Item type: chapter

This chapter begins by outlining the conceptions of rules, institutions, and social practices employed throughout the book. It demonstrates that attention to procedural rules for rule-making and interpretation, or secondary rules, sheds light on the puzzle of how actors know how and when to engage in particular forms of social construction and therefore on why we observe patterned practices of global rule-making. Secondary rules shape the way actors present and evaluate proposals for making, changing, and interpreting rules. As such, they are a key overlooked cause of the form, process, and timing of change in the rules and institutions of the international system. They also help explain the success or failure of particular attempts to create such change, since proposals presented according to relevant secondary rules are more likely to be accepted. Finally, the chapter outlines the book’s significance and contributions, and discusses issues of method and evidence.

**Proving Constitutional Facts: Sources and Burdens of Proof for Doctrinal, Reviewable, and Case-Specific Facts**

David L. Faigman

_in Constitutional Fictions: A Unified Theory of Constitutional Facts_

Published in print: 2008 Published Online: January 2009
Item type: chapter

Until now, no scholar has attempted to bring procedural order to the subject of fact-finding in constitutional cases. In ordinary cases, a vast array of procedural and evidentiary rules applies to fact-finding. The ordinary rules of procedure and evidence do not apply straightforwardly in constitutional cases. Constitutional facts come in three basic varieties: doctrinal, reviewable, and case-specific. In practice, rules of discovery and evidence rules are sometimes applied to constitutional facts,
Sometimes not, and sometimes applied and not applied at the same time. This chapter considers in detail two basic procedural issues that arise in connection with the three types of constitutional facts. First, it explores the sources of proof—or what evidence scholars would call “admissibility standards”—for each type. Second, it considers the fundamental trial consideration of how burdens of proof should be allocated for constitutional facts.

The Limits of Process
Robin West

in Getting to the Rule of Law: NOMOS L
Published in print: 2011 Published Online: March 2016
Item type: chapter

This chapter discusses how there is some significance in expanding the rule of law to include a procedural dimension, particularly given contemporary national, global, and political realities. Due to suffering a deficit of procedural fairness in various courts of criminal justice, complementing the property-centered rule of law ideology with something that highlights people rather than profit certainly cannot hurt. A little bit of rule of law idealism—whether formal, procedural, or substantive—might help make the case for robust procedural protections, or at least complement rule of law interpretations that focus on profit with one that centers on individual dignity and intelligence. The chapter presents four objections to this proposal, characterized as suggested friendly amendments, and a fifth crucial remark about some of the features of all three paradigms of rule of law scholarship that Professor Jeremy Waldron has identified: formal, procedural, and substantive.

Human Rights in International Criminal Proceedings
Salvatore Zappalà

Published in print: 2003 Published Online: January 2010
Item type: book

This book takes a procedural approach to human rights guarantees in international criminal proceedings and covers both the systems of the ad hoc Tribunals for the former Yugoslavia and Rwanda and the International Criminal Court. It analyzes the rights conferred on individuals involved in international criminal trials from the commencement of investigations to the sentencing stage, as well
as the procedural rights of victims and witnesses. The study focuses on problems which have emerged in three main areas: (i) length of proceedings; (ii) absence of specific sanctions and other remedies for violation of procedural rules; (iii) the need to strengthen the protection of the accused from undue interference with his rights (likely to be caused by a variety of factors, such as conflicting governmental interests, the presence of malicious witnesses, or inadequate legal assistance). Three general suggestions are made to reduce the impact of these weaknesses. First, it could be helpful to adopt specific sanctions for violation of procedural rules (such as, the exclusion of evidence as a remedy for violations of rules on discovery). Second, (as has already been provided for in the ICC Statute,) the Prosecutor of the ad hoc Tribunals should play a proactive role in the search for the truth, by among other things gathering evidence that might exonerate the accused. Third, the right of compensation for unlawful arrest (or detention) and unjust conviction, provided for in the ICC Statute, should be extended to other serious violations of fundamental rights, and in addition should be laid down in the Statutes of the ICTY and ICTR.

The Woolf Reforms: A Singular Event or an Ongoing Process?

Anthony Clarke

in The Civil Procedure Rules Ten Years On

Published in print: 2009 Published Online: March 2012
Publisher: Oxford University Press
DOI: 10.1093/acprof:oso/9780199576883.003.0002
Item type: chapter

This chapter focuses on a concrete change which Woolf's reforms have made to English civil justice and procedural reform. Woolf intended to bring about a reduction in complexity, cost, and delay through improving the structure of the civil justice system and its procedural rules. The Woolf Reforms were fundamentally new, in that Lord Woolf called for a new approach to civil justice, a reform of litigation culture among legal practitioners, those they represent, and the judiciary. The change in litigation culture was achieved through three innovations: the introduction of active case management, the introduction of the overriding objective, and the imposition of a duty on litigants and their representatives to assist the court in furthering the overriding objective.
This chapter explains the puzzling 2013 agreement of the UN Group of Governmental Experts (GGE) on cybersecurity that existing international law applies to state military use of information and communication technologies (ICTs), and the 2015 GGE report that extended the consensus reached in 2013. These important developments in the emergence of rules and norms for cyberspace took place despite deteriorating relations between the United States and Russia. They also took place despite increasing global contention over Internet governance and cybersecurity issues more broadly, and occurred with less controversy than related (but lower-priority) Internet governance issues. The chapter argues that the 2013 and 2015 GGE reports were reached in large part as a result of a conscious process of rule-making and interpretation structured by agreed-upon secondary rules, and that the timing of the agreements reflected emerging consensus among participants despite remaining divergence on substantive preferences about governance arrangements for cyberspace.

Conclusion

The concluding chapter summarizes the main argument of the book concerning the nature and operation of social practices of rule-making and reviews the main findings from the four empirical cases. It then discusses the book’s significance. It sheds light on how to resolve comparability issues and investigate scope conditions among various proposed mechanisms for creating shared knowledge such as rules and institutions. It extends the range of applications of the practice-turn to the practice of rule-making, and identifies synergies between rule and practice constructivisms. It also demonstrates that the study of social practices of rule-making improves existing explanations of change in international systems. In doing so, it highlights the importance of these
practices to contemporary global governance, as well as the overlooked importance of global governance for the study of international systems and world orders. Finally, it demonstrates the book’s utility for studying hierarchy and authority in world politics.

The Legislative Embedding of the Governance of EU Equality Law

Elise Muir

in EU Equality Law: The First Fundamental Rights Policy of the EU

Published in print: 2018 Published Online: December 2018
Item type: chapter

Earlier chapters have warned against relying too heavily on a constitutional narrative to address the protection of fundamental rights in the EU. This indeed risks hindering political debate on fundamental rights at the European level. Chapter 5 sheds light on how certain features of EU law can in contrast be usefully exploited to support political debate and the development of a fundamental rights culture at the domestic level. One of the great added values of EU intervention in the field of fundamental rights protection lies in the procedural safeguards and governance tools available under EU law: they are remarkably advanced and sophisticated for a supranational organization seeking to combat fundamental rights violations. EU equality law and policy can in that sense be treated as a laboratory for the governance of fundamental rights steered at supranational level. Specialized watchdogs, such as equality bodies, may play a particularly interesting role. Furthermore, understanding specific EU policies as being intended to promote a fundamental right opens a vast area for comparative research across the given sectors of EU fundamental rights law, leading to a better grasp of how best to enhance the governance of these rights beyond state level. By way of experiment, this chapter explores the potential for legislative and jurisprudential cross-fertilization of the notion of independent fundamental rights guardians, such as equality bodies and data protection authorities, at the domestic level.
The humanities came about in a variety of ways—as part of a ritual, as a consequence of philosophy, and sometimes as a political instrument. This chapter goes into the methodological principles that have been developed for each of the humanities and the results (patterns) that have been obtained with these principles. Moreover, the chapter addresses the approaches that, conversely, reject the quest for patterns. More than once it is found that there is a surprising correspondence between the humanities in different parts of the world. Everywhere efforts were made to formulate a system of rules: grammars in linguistics, rules for working with sources in historiography, heuristics for word analogies in philology, harmonic proportions and grammars in musicology and art history, procedures in logic, a heuristic system of rules in rhetoric, and a narrative system of rules in poetics.

Social Practices of Rule-Making and the Global War on Terror
Mark Raymond

This chapter examines public dialogue between al-Qaeda and the United States from 1996 until the 2003 invasion of Iraq. Both sides spoke clearly and consistently about actual and preferred rules for the international system, and the way they should be applied; and both sides engaged in procedural criticism and justification. Both sides knew that conflict was overdetermined, and that they had deep disagreements about relevant social practices of rule-making. So why engage in futile dialogue? Attempts to reach like-minded audiences clearly matter, but esoteric appeals about legitimate rule-making procedures are typically not expected to move political audiences. The chapter argues that participants on both sides had internalized ideas about legitimate rule-making practices, and tied these understandings to conceptions.
of the appropriate nature and ends of political community. The case demonstrates the emotional power of secondary rules, and the difficulty of resolving conflict in the absence of common rule-making practices.

**Does Increased Litigation Increase Justice in a Second-Best World?**

Jeremy Kidd and Todd J. Zywicki

in The American Illness: Essays on the Rule of Law

Published in print: 2013 Published Online: October 2013
Item type: chapter

This chapter discusses the theory of the second best, which urges caution in deciding questions of increased access to the courts. It presents the reasons why procedural rules that increase litigation levels are undesirable. The chapter also discusses the external costs of excessive litigation, lawyer advertising and third-party financing of lawsuits.

**A Tamer Tort Law**

Michael Trebilcock and Paul-Erik Veel

in The American Illness: Essays on the Rule of Law

Published in print: 2013 Published Online: October 2013
Item type: chapter

This chapter explores the Canadian tort system and how it differs from American tort law. The areas for comparison are amount of tort litigation, liability standards, quantum rules, and procedural rules. The chapter also suggests modest forms to lower the direct costs of the tort regime.

**Banning War**

Mark Raymond

in Social Practices of Rule-Making in World Politics

Published in print: 2019 Published Online: March 2019
Item type: chapter
This chapter questions standard interpretations of the interwar period as one of failed utopianism. It demonstrates that the Locarno agreements and especially the Kellogg-Briand Pact were part of a larger rule system originating in the late nineteenth century that sought to curtail the state’s right to use force. In particular, it shows that secondary rules can create unintended outcomes. Neither Kellogg nor Briand sought to create a multilateral treaty banning war except in self-defense and collective security. Rather, in seeking to manipulate procedural rules to force each other into abandoning the treaty, both men came to genuinely embrace it. This norm clearly informed subsequent state practice, despite being imperfectly adhered to, and was reasserted in the UN Charter. The case also shows the robustness of social practices of rule-making, which were adhered to consistently even by new states like Japan and states like the Soviet Union that had renounced international institutions.

Refining Religious Arbitration in the United States and Abroad
The Jewish Experience

Michael J. Broyde

in Sharia Tribunals, Rabbinical Courts, and Christian Panels: Religious Arbitration in America and the West

Published in print: 2017 Published Online: June 2017
Publisher: Oxford University Press
DOI: 10.1093/acprof:oso/9780190640286.003.0008
Item type: chapter

The general framework established by American arbitration law creates various basic requirements for arbitration agreements to be recognized and arbitral awards to be enforced by courts. Even if faith-based arbitrators have observed all the formal legal requirements, they must still convince state courts and judges that their religious dispute resolution processes are genuinely fair, effective, and worth upholding as an alternative form of just adjudication. This chapter uses the Jewish-American arbitration experience to identify six measures that religious arbitration organizations can and should take in order to ensure an effective, legally viable, and judicially enforceable arbitration process, namely publication of formal, sophisticated rules of procedure; development of an internal appellate process; respect for both religious and secular legal norms; acknowledgment of commercial customs and general equity; reliance on arbitrators with broad dual-system expertise; assumption of an active role in internal communal governance, and external communal representation.
This chapter shows that secondary rules help to explain the emergence of active practices of great power management of the international system after the Napoleonic Wars. Actors were aware of themselves as joint participants in a practice of rule-making and interpretation. They presented proposals according to the rules of that practice, both criticizing and justifying proposals on procedural grounds. The chapter covers the initial creation of great power management in the Congress of Vienna, and its development in the initial conferences of the Concert of Europe at Aix-la-Chapelle, Troppau, Laibach, and Verona. Actors who more skillfully employed secondary rules were more successful in obtaining their goals. Talleyrand secured France’s readmission to the ranks of the great powers, and Metternich and Castlereagh consistently employed procedural rules to achieve their objectives. Procedural rules also help explain the failure of the Tsar’s proposed Holy Alliance in contrast to the substantively similar Quadruple Alliance.

Introduction

This chapter begins by identifying a gap in International Relations scholarship. Despite many proposed mechanisms by which actors create and change various forms of shared knowledge (such as persuasion, norm contestation, and strategic social construction), the field lacks clear knowledge about how these mechanisms relate or compare to one another, and about how actors know how and when to engage in them. It then introduces the central argument of the book—that participants in world politics are also simultaneously engaged in an ongoing social practice of rule-making, interpretation, and application. This practice, itself governed by specialized procedural rules, provides an instruction manual that enables actors to engage in contextually appropriate
ways of making and interpreting rules. These procedural rules shape outcomes, and thus help to explain change in international rules and institutions. The chapter concludes by introducing the case studies and by providing an overview of the plan of the book.