

Survey article: the legitimacy of Supreme Courts in the context of globalisation

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Abstract

The objective of this article is to present an overview of the state of the art concerning the legitimacy of Supreme Courts in the context of globalisation. In recent years, there has been much discussion about the observed increase in both the references to foreign decisions in matters of domestic adjudication, as well as the alleged and precipitate rise of 'transjudicial dialogue', or formal and informal communication between the domestic courts of various national jurisdictions. A central concern is whether Supreme Courts possess the necessary authority, and thus the legitimacy, to adopt a more 'internationalist' disposition. This article will demonstrate how there are various coexisting discourses of legitimacy, each with their own particular features. These various discourses are not always compatible or easily commensurable. It will argue, moreover, that the basic dilemma regarding judicial legitimacy in a globalised world is a species of a more general problem of globalisation studies, namely how to reconcile a conceptual vernacular which is permeated by domestic, state-centric notions with a political reality which is increasingly non-national in its outlook.

Keywords

judicial legitimacy; globalisation; transjudicialism; transjudicial dialogue; constitutional comparativism

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ISSN 1871-515X

