

Minoritarian Activism

Judicial Politics in the European Union

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Larsson, Olof. *Overriding the CJEU? The Legislative Fate of the Most Contested CJEU Judgments, 1997-2008*. Unpublished manuscript.

Larsson, Olof and Naurin, Daniel. *Split Vision. Multi-Dimensionality in the International Legal Policy Space*. Unpublished Manuscript.

Larsson, Olof et al. (2016). *Speaking Law to Power The Strategic Use of Precedent of the Court of Justice of the European Union*. In: Comparative Political Studies. First published online on April 11, 2016.

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Abstract

Is the Court of Justice of the EU (CJEU) best described as a run-away agent, free to influence the EU according to its own preferences, or as an obedient servant of EU member state governments? In this dissertation, Olof Larsson argues that neither description fits the CJEU. Rather, the CJEU is dependent upon the support of at least a minority of EU member states in order to be able to change the EU in ways counter to the wishes of the majority. The CJEU has not become one of the most powerful institutions of the EU because it has been insulated from government pressures, but rather because the governments of the EU have been divided on most of the important issues. Inspired by Separation-of-Powers theories developed to explain the Supreme Court of the United States, it is argued that these divisions among the member states has been an underestimated factor in explaining the independence of the CJEU. Correspondingly, the more united the governments are against the Court, the higher the risk of backlashes, i.e. political attacks against the Court or attempts to change the impact of its decisions.

The dissertation is composed of four empirical chapters, two of which have previously been published in peer-reviewed journals. In the first, Larsson and co-authors argue that the CJEU reacts to the stated preferences of the EU member states in ways which can best be explained as a strategic adaptation in order to minimize the risk of backlashes. In the second, Larsson argues that such backlashes have happened. In the third, Larsson and co-authors argue that the most fundamental division among the EU member states in regards to the issues the CJEU handles is one between Liberal and Social Market Economies. In the fourth and final empirical chapter it is argued that the CJEU also uses legal arguments, in the form of references to precedent, in order to convince recalcitrant governments of the validity of its judgments. In short, the CJEU both listens to and speaks back to EU governments. These governments are often divided along lines separating Social from Liberal Market Economies, but when they are sufficiently united, backlashes against the CJEU do happen.

Keywords: Court of Justice of the European Union, Judicial Politics, Courts and Law, European integration.