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### Book Review (reviewing Louis Favoreu & Loïc Philip, Les Grandes Décisions du Conseil Constitutionnel (1975))

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## CONSTITUTIONAL LAW

LES GRANDES DÉCISIONS DU CONSEIL CONSTITUTIONNEL. By Louis Favoreu and Loïc Philip. Paris: Sirey, 1975. Pp. xiv, 442.

Reviewed by James E. Beardsley\*

Since its inception in 1958 the French *Conseil constitutionnel* has issued approximately seven hundred decisions, declarations and opinions (collectively called "decisions" in this review) in the performance of the diverse missions assigned to it by the Constitution of 4 October 1958. Professors Favoreu and Philip have selected thirty of those decisions for reproduction in this volume together with their own extensive annotations, a valuable bibliography and several useful appendices dealing with the membership of the *Conseil* and the composition of its workload. The decisions selected by the authors offer a very full view of the *Conseil's* functions and methods. The adjudication of parliamentary election disputes (by far the most prolific source of business for the *Conseil*,<sup>1</sup> the rendition of advice in connection with the exercise of emergency powers by the President of the Republic and the declaration of a vacancy in the office of President are among the matters treated in the decisions included in this book. But most welcome to the foreign observer of this extraordinary institution are nineteen of the most important decisions taken by the *Conseil* in the exercise of its functions as judge of the legislative competence of Parliament and of the constitutionality of organic laws, statutes, standing orders and treaties. A fair sample of the *Conseil's* decisions relating to the limits of Parliament's subject matter competence (determined mainly by art. 34 of the 1958 Constitution) is accompanied by all of the decisions which, between 16 July 1971 and 15 January 1975, confirmed the *Conseil's* authority to examine the substantive constitutionality of legislation, particularly in relation to the fundamental rights affirmed by the Preamble to the 1958 Constitution.

Events since the *Conseil's* decision of 16 July 1971,<sup>2</sup> the first to invalidate a statute for infringement of fundamental liberties, promise continuing development of this most significant branch of the *Conseil's* work. An amendment to the Constitution late in 1974 made it possible for any sixty members of the National Assembly or of the Senate to refer newly adopted legislation to the *Conseil* for review.<sup>3</sup>

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1. The adjudication of parliamentary election disputes accounted for 487 of the 673 decisions which had been rendered by the *Conseil* through 15 March 1975. Favoreu and Philip, *Les Grands Décisions du Conseil Constitutionnel* 405-407 (hereafter cited as "Grandes Décisions").

2. *Grandes Décisions* at 267. See generally Beardsley, "The Constitutional Council and Constitutional Liberties in France", 20 *Am. J. Comp. L.* 431 (1972).

3. Constitutional Law No. 74-904 of 29 October 1974, [1974] *Journal*

Previously this privilege had been reserved to the President of the Republic, the Prime Minister and the Presidents of the two chambers of Parliament. The *Conseil* has already rendered four decisions in response to submissions by members of Parliament since the effective date of the constitutional amendment.<sup>4</sup> Two of these decisions involved issues of fundamental rights. One was the decision of 15 January 1975 which sustained the constitutionality of the abortion law reform adopted at the end of 1974. This is the most recent decision reproduced in the book under review. The second decision, rendered in July 1975, too late to appear in this book, invalidated a statute which would have authorized the president of the *tribunal correctionnel* to determine whether certain criminal cases were to be tried before a single judge or the traditional three-judge panel. The use of different procedures in like cases would, ruled the *Conseil*, infringe the constitutional guaranty of equality before the law. This guaranty, like the others which have figured in the *Conseil's* decisions, was attributed to the Preamble of the 1958 Constitution, which has thus come to life as a positive restraint on the legislative activity of Parliament. Our authors have enormously facilitated the task of students of this phenomenon both by making much of the relevant material more readily available and by their illuminating analyses of the early decisions in what must be seen as a new and vital stage in the evolution of French constitutional law.

Despite its important contribution to the study of emergent substantive constitutional review in France, this book is primarily concerned with the *Conseil constitutionnel* as an institution. The functions of the *Conseil*, its conception of its own competence, the "unity and coherence"<sup>5</sup> of its jurisprudence over time, the force and scope of its decisions and the question whether it may properly be classified as a *jurisdiction* (in the etymological sense: an organ which "speaks the law")<sup>6</sup> are the central preoccupations of the authors. Constitutional law, in the broader sense as a body of rules regulating relationships not only among the organs of the State but also between those organs and the citizen, was plainly a matter of subsidiary concern in the selection, organization and analysis of the materials presented in this volume. This is perhaps an appropriate orientation for a work of this kind at this stage in the history of the Fifth Republic, but the decision to deal with the *Grandes Décisions du Conseil Constitutionnel*

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Officiel, ed. Lois et Décrets, 11035, [1974] B.L.D. 344. The amended art. 61 is reproduced in *Grandes Décisions* at 382.

4. Decision of 30 December 1974, *Semaine Juridique* 1975.II.18037 (hereafter cited as "J.C.P.") (not reproduced in *Grandes Décisions*); Decision of 15 January 1975, *Grandes Décisions* 357; Decisions (2) of 23 July 1975, J.C.P. 1975.III.43130, 43131.

5. *Grandes Décisions* 1.

6. The problem of the institutional "nature" of the *Conseil* is treated at length by Prof. Marcel Waline in his preface to *Grandes Décisions*, and has received much attention in the literature. See especially Franck, *Les Fonctions Juridictionnelles du Conseil Constitutionnel et du Conseil d'Etat dans l'Ordre Constitutionnel* (1974).

instead of, say, the *Grandes Décisions de la Jurisprudence Constitutionnelle* has imposed certain unfortunate restrictions on the authors' undertaking. A book cannot, of course, fairly be criticized on the ground that the authors did not choose to write some other book which the reviewer might have found yet more valuable. But the scope which the authors of a sourcebook of this kind allow themselves in selecting the materials to be included has an important bearing on the utility of the book, especially, in this case, for the reader who is particularly interested in the phenomenon of substantive constitutional review. From this point of view the inclusion of certain additional kinds of material would be most welcome.

For example: in their note to the *Conseil's* decision of 28 November 1973,<sup>7</sup> Professors Favreau and Philip expose the conflicts which arose from the *Conseil's* observation that the Government might not in the exercise of its autonomous regulatory authority prescribe imprisonment as the sanction applicable for violation of regulations adopted by the Government. At odds with the case law of the *Conseil d'État*,<sup>8</sup> and reversing a position taken previously by the *Conseil constitutionnel* itself,<sup>9</sup> the decision produced a prompt, adverse response from the *Conseil d'État* in the form of an advisory opinion to the Government<sup>10</sup> and compelled the Court of Cassation to deal with a constitutional defense, based on the decision of the *Conseil constitutionnel*, in disposing of an appeal from a conviction for violation of such regulations.<sup>11</sup> The book under review would be greatly enriched by the inclusion of related decisions of this kind which are as much a part of the positive law of the Constitution as are the decisions of the *Conseil* itself. A similar point might be made in relation to the *Conseil's* decision of 15 January 1975 which should be considered together with the *Conseil d'État's* decision of 1 March 1968<sup>12</sup> (cited by the authors) and a judgment delivered by the Court of Cassation on 25 May 1975 (too late, in any event, to be included in this edition although there are comparable earlier decisions from the Courts of Appeal).<sup>13</sup> This sort of material is particularly important in relation to fundamental rights, for the decisions of the *Conseil constitutionnel* tell us nothing of the application of the constitutional

7. *Grandes Décisions* 309.

8. See *Société Eky*, Recueil Dalloz 1960.J.264 (Cons. d'Et., 12 Feb. 1960) (hereafter cited as "D").

9. Decision of 19 Feb. 1963, [1963] Recueil des Décisions du Conseil Constitutionnel 27.

10. Avis (advisory opinion) of 17 Jan. 1974, D. 1974.J.280 (Cons. d'Et., Sec. Admin.).

11. Schiavon, D. 1974.J.273 (Cass. crim., 26 Feb. 1974).

12. *Syndicat général des Fabricants de semoules de France*, A.J.D.A. 1968.235 (Cons. d'Et., 1 March 1968, conclusions Mme. Questiaux).

13. *Société des cafés Jacques Vabres c. l'Administration des Douanes*, D. 1975.J.497 (Cass., ch. mixte, 24 May 1975). The lower court decisions are reviewed in the *conclusions* of Procureur-général Touffait, published with the decision. See generally on this problem and on the developments in connection with the *Conseil's* decision of 28 November 1973, Beardsley, "Constitutional Review in France," [1975] *Sup. Ct. Rev.* (forthcoming).

principles it invokes in those individual conflicts between citizen and state which are judged by the *Conseil d'État* or the Court of Cassation. In the matter of the respective legislative competences of the Parliament and the Government, a satisfactory view of the constitutional problem and its resolution requires a look at the decisions of both the *Conseil d'État* and the *Conseil constitutionnel* for only the former can act to restrain the Government within its assigned sphere of normative competence. Perhaps the notion of a *jurisprudence constitutionnelle* encompassing the decisions of the administrative and judicial tribunals still seems too bizarre an idea to form the organizing principle for a work of this kind. Wishing that it might have been is perhaps merely the refuge of a reviewer who finds little to criticize in the materials which the authors have put at his disposition or the *Conseil* itself.

Taking the book on its own terms, I can end this review with high praise for the annotations and some petty criticism of the appendices. The annotations provide the indispensable background for the understanding of the *Conseil's* decisions, whose laconic and oracular style is plainly borrowed from the *Conseil d'État*, and offer analytical insights which are especially helpful to the foreign student of the *Conseil's* work. The general bibliography at the end of the work lists all of the published comments on *Conseil* decisions not reproduced in this book, a service which will be much appreciated by anyone who has attempted to track down these notes and the related decisions. A statutory appendix brings together all of the constitutional, statutory and regulatory texts applicable to the *Conseil*. This is most helpful, but it is to be hoped that future editions of the work might also include certain other important texts whose application forms the core of the *Conseil's* constitutional *jurisprudence*, such as art. 34 of the Constitution which defines the legislative competence of Parliament and the Preamble with its incorporated Declaration of Rights and the 1946 Preamble.

The tables in the appendices dealing with the composition and sources of the *Conseil's* workload provide a perspective on its varied functions not easily obtainable through case by case study. The 700 decisions rendered by the *Conseil* through 15 March 1975 are classified both under the constitutional provisions attributing their subject matter to the *Conseil* and in relation to the manner in which, or person or organ by whom, the matter was put before the *Conseil*. The appendices also include a table identifying each member of the *Conseil* since inception by name, age, term and appointing authority. The composition, recruitment and allegedly "political" character of the *Conseil* has received a good deal of attention recently, especially in the debates over the 1974 constitutional amendment.<sup>14</sup> Understanding of the concerns which are operative in this area would be aided by expansion of this table to indicate the educational and professional background, other offices and political affiliations of each member.

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14. See Beardsley, *id.* and parliamentary debates there cited.

In reviewing *Les Grandes Décisions du Conseil Constitutionnel*, it is, in sum, possible to wish for more, but at the same time it is impossible not to be grateful indeed for a work which so greatly facilitates access to the major decisions of the *Conseil* and which is surely the most useful work on the *Conseil* yet to appear. It is a worthy contribution to that genre of French legal literature which Henri Capitant originated in 1934 with the first edition of his *Grands Arrêts de la Jurisprudence Civile*.

## INTERNATIONAL LAW

AKTUELLE RECHTSFRAGEN DER WIRTSCHAFTSBEZIEHUNGEN SOZIALISTISCHER LÄNDER. By M.M. Boguslawski. Berlin: Staatsverlag der D.D.R., 1973. Pp. 272.

*Reviewed by George\* and Herta\*\* Ginsburgs*

Dr. Boguslawski (Boguslavskii) is, without a doubt, one of the most original and prolific minds in the USSR now working in the fields of public and private international law. His decision to address himself to the theme of the legal regulation of international economic relations is particularly welcome since the project offers him an opportunity to explore a phenomenon of critical importance, namely, the growth and evolution of the legal mechanism of economic integration within the "socialist Commonwealth" and to analyze the numerous problems strewn along the path of that historical enterprise. A fit testimonial to the significance of this treatise is the fact that the Russian edition appeared in 1970, before the adoption of the "Comprehensive Programme for the Further Extension and Improvement of Cooperation and the Development of Socialist Economic Integration by the CMEA Member-Countries," so that the publication of a German translation in 1973, well after that landmark event, confirms, as Prof. Seiffert makes amply clear in his introductory note, the enduring relevance and practical value of the study. Indeed, the only modifications in the initial version for the occasion were the insertion, at appropriate places, of references to the provisions of the Comprehensive Programme; otherwise the text stands intact, a rather remarkable achievement considering how much has happened in this area in the interim and an eloquent tribute to the author's prescience in diagnosing the cardinal issues and recommending ways of dealing with a wide range of questions, many of them posing legal conundrums of the utmost technical complexity.

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