

O DIREITO NO SEU CONTEXTO SOCIAL: NOVAS DIRECÇÕES NA FORMAÇÃO JURÍDICA

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OUTLINE

1. Objectives
2. Means
3. Examples
4. Conclusions

1. OBJECTIVES

To introduce the contextual study of EU law

To give examples of the contextual method in operation

Nb this is about approaches within EU law, not about the typical research methods of other disciplines, eg survey research, participant observation, how to conduct interviews

2. MEANS



- 2.1 Assumptions
- 2.2 General introduction
- 2.3 Two varieties of law in context
- 2.4 A road map

2.1 Assumptions

Law matters – it has effects on political, economic and social life outside the elaboration of legal doctrine

The form, as well as the content, of law is significant

But this does not mean that law has the effects often ascribed to it by legislators or judges: law plays a significant role in social life, but it is rarely determinant

2.2 General introduction

Positivist legal study ('black-letter law') is useful, indeed essential

But it is not sufficient: we must study EU law in its economic, social, political and cultural contexts

A study of EU law in action is a necessary complement of a study of EU law on the books

We need both practical knowledge and theoretical insights

This is essential for excellent teaching, research and law practice

2.3 Two varieties of law in context

Use scientific literature and perspectives from other disciplines

Take theoretical approaches and questions from other disciplines

2.4 A road map

- 2.4.1 Themes
- 2.4.2 Tools
- 2.4.3 Questions

2.4.1 Themes

Relations among institutions, rules, ideologies and processes

Role of law in economy and society

Place of EU/EC law in the international political economy

EU law and legal pluralism, within EU and internationally

2.4.2 Tools

Understand the *interests* expressed or crystallised in or neglected by law

Investigate the *assumptions* which are implicit in legal ideas, principles,

rules and decisions

Be aware that the meaning of law and its operation in practice are *socially negotiated*, involving conflicting perspectives, based on different, often unequal interests, and therefore frequently contested

Be sensitive to the fact that the structure, function and operation of *institutions* and the development and application of *substantive law* are intimately intertwined

3. EXAMPLES

3.1 EU constitutional law

3.2 EU foreign trade law

3.1 EU Constitutional Law

3.1.1 What is the EU Constitution?

3.1.2 How do EU institutions ensure the effectiveness of EU law?

3.1.3 What kind of EU legal culture do legal periodicals [law journals] produce?

3.1.1 *What is the EU Constitution?*

Law is necessary but not sufficient

A model of the EU constitution

Constitutional principles

Constitutionalising processes

Constitutional (legal) culture

The EU has an unfinished constitution

3.1.2 *How do EU institutions ensure the effectiveness of law?*

Ensuring the effectiveness of EU law

Distinction between legal effectiveness and social effectiveness

Effectiveness as a social process

Institutions, processes, tools and techniques

Going to court as part of the Commission's negotiating strategy

Judicial development of a liability system

3.1.3 *What kind of EU legal culture do EU law periodicals (journals) produce?*

Legal scholarship and legal culture:

Statistical method

Focus on law journals as producers of legal culture

Models: international, transnational, national

The dilemma of national scholarly communities

The dilemma of the English language

3.2 EU Foreign Trade Law

3.2.1 How is globalisation governed?

3.2.2 Can anti-dumping law govern global markets?

3.2.3 How do sites of governance regulate relations with other sites?

3.2.4 How are soft law and hard law used to govern relations between the EU and China?

3.2.1 How is globalisation governed?

Toys

Going beyond traditional public international law

Focus on international production networks based on contract

Start with social and economic organisation, then analyse role of law

Look at law in action and its use by strategic actors

Drawing on other disciplines, eg international relations, economic history, economic sociology

Theory of sites of governance and global legal pluralism

Sources: polity, market, hybrid

3.2.2 Can anti-dumping law regulate global markets?

EC-China anti-dumping: Bicycles

Law as a process, including legislation and judicial decisions over >15 years

AD law from (a) regulation of international competition to (b) regulation of global market

Role of business associations

Competing ideas, perspectives and definitions of legal concepts, eg circumvention: AD law and cross-cultural interaction

Government and business strategies using the law

Three levels of analysis of AD law: government, companies, workers ie international relations, profits, jobs

3.2.3 How do sites of governance regulate relations with other sites?

Relations between EU and WTO

Two types of international integration

Three generations of inter-site relations

Legal techniques for ensuring indirect effect

EU judiciary as the gatekeeper

3.2.4 How are soft law and hard law used to govern EU-China trade

relations?

Soft law = measures which are not legally binding but nevertheless have practical and often legal effects

Emphasis on soft law

Interaction between soft law and hard law

Distinction between legal force and legal effects

Levels of interaction between EU and China

New model for EU-China relations

4. CONCLUSIONS

Remember that lawyers have many roles

Master the positive law

Use perspectives from other disciplines

Pay attention to the law in action

Think outside the box: Ask new, clear research questions and go below the surface

Strive for original thinking and deep knowledge

Use EU law to learn more about law and society in general