

The transformation of the role of the judiciary in the 20th and 21st centuries

Abstract

This work is about the fundamental questions of law, judges, society, and liberal democracy from theoretical social perspective. This study is mainly from the fields of state science and political philosophy.

Due to the complexity of the topic, I decided to devote the first chapter to the philosophical starting points. The second and third chapters deal with the role of the courts as political actors. To a large extent, I deal with the criticism of this phenomenon. Important sections are those on the essence of democracy, policies and the role of experts in the process of governance. Equally important is the critical view of human rights inflation in modern societies.

In the last chapter, I focus on the various forms of doctrine of judicial restraint, which I see as a realistic solution to the outlined problems. Frequently, the argumentation for criticizing the Judicial Restraint is the creation of a cartoons and its subsequent majestic defeat. I think that this approach is not fair, because in my opinion the judicial restraint can be debated objectively without prejudices and without a priori rejection.

Meaningful division of roles in the state is as important as the division of power. The division of power is classically divided into three parts: legislative, executive and judicial. In my opinion, the division of roles must work with different categories - political, expert and judicial. Each of these categories has different attributes that predispose them to different activities, and we should try to prevent the transfer of activities to institutions that are not inherently appropriate.

Attributes and role of judicial role are different from professional and political. Consequently, their merging is a negative phenomenon, as it exacerbates the functionality and effectiveness of a democratic liberal system. Therefore, turning back to its original position is something I would personally consider desirable. It is also the most important conclusion of this work, which thoroughly analyses this phenomenon on many dozens of pages.