



The Art of Legislating

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Monografía

Any contemporary state presents itself as committed to the rule of law, and this notion is perhaps the most powerful political ideal within the current global discourse on legal and political institutions. Despite being a contested concept, the rule of law is generally recognised as meaning that government is bound in all its actions by fixed and public rules, and that these rules respect certain formal requirements and are enforced by an independent judiciary. This book focuses on formal legality and the question of how to achieve good laws—a topic that was famously addressed by the 18th century enlightened thinkers, but also by prominent legal scholars of our time. Historically, the canon of good legislation demanded generality, publicity and accessibility, and comprehensibility of laws; non-retroactivity; consistency; the possibility of complying with legal obligations and prohibitions; stability; and congruency between enacted laws and their application. All these are valuable ideals that should not be abandoned in today's legal systems, particularly in view of the silent revolution that is transforming our legality-based states of law into jurisdictional states. Such ideals are still worth pursuing for those who believe in representative democracy, in the rule of law and in the dignity of legislation. The idea for the book stemmed from the author's parliamentary and governmental experience; he was responsible for the Government of Spain's legislative co-ordination from 1982 to 1993, which were years of intensive legislative production. The more than five hundred laws (and thousands of decrees) elaborated in this period profoundly changed all sectors of the legal order inherited from Franco's dictatorship, and laid the foundations of a new social and democratic system. For an academic, this was an exciting experience, which offered a unique opportunity to put the theory of legislation to the test. Reflecting and elaborating on this experience, the book not only increases scholarly awareness of how laws are made, but above all, improves the quality of legislation and as a result the rule of law

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