

Anna Jasiak

# Constitutional Constraints on Ad Hoc Legislation

A Comparative Study of the United States, Germany and  
the Netherlands

Anna Jasiak

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Trinity House | Cambridge Business Park | Cowley Road  
Cambridge | CB4 0WZ | United Kingdom  
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ISBN 978-1-78068-017-0  
NUR 823

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Cambridge – Antwerp – Portland  
www.intersentia.com | www.intersentia.co.uk

Cover picture: United States Capitol, Washington, D.C., President's Room, detail of ceiling fresco made in 1850s showing figure symbolizing Legislation, Library of Congress, LC-USZ62-96817

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

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*In memory of Alis Koekkoek*

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## ACKNOWLEDGEMENTS

This book represents my Ph.D. research on ad hoc legislation, I have worked on at Tilburg University in the Netherlands, from a constitutional perspective. It was a special time of discovery. My stay at Georgetown University Law Center in Washington D.C., USA and at the Graduiertenkolleg “Verfassung jenseits des Staates” of Humboldt-Universität in Berlin, Germany have enriched me. It strongly influenced my manner of thinking and doing, and the experiences I gained at the time will always remain with me.

I had help from many people in writing this book, and they all deserve an expression of gratitude. A few of them I would like to mention in particular.

Professors Philip Eijlander and Rob van Gestel supervised this research. They gave me a lot of freedom, and were nonetheless always there for me. Discussions with them were inspiring and energizing. I greatly appreciated their dissatisfaction with what was good and the pursuit of what was better. I also attempted to work in that spirit.

The research periods I spent in America and Germany were meaningful through discussions with many academics and practitioners, and mainly through the discussions with professors Vicki Jackson, Timothy Westmoreland, Nicholas Quinn Rosenkranz, Dieter Grimm and Ulrich Karpen.

I would also like to express a word of thanks to professors Monica Claes, Dieter Grimm, Tim Koopmans, Roel de Lange and Richard Happé (for his last minute involvement) for their willingness to take a seat on my doctoral committee. I appreciate the fact that they read my manuscript so painstakingly and commented on it.

This book would not have materialized, or at any rate not in this form, if I had not gone to work for the late professor Alis Koekkoek as a student assistant. He placed a lot of trust in me and gave me the opportunity to develop academically in Tilburg. He inspired my love of comparative law and American law by quickly involving me in research. I am very grateful to him for this. It is an honor for me to dedicate this book to him.

Anna Jasiak

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## ABBREVIATIONS

### The United States

A.B.A. J. E-Report	American Bar Association Journal E-Report
AJPS	American Journal of Political Science
Alb. L. Rev.	Albany Law Review
Am. J. Legal Hist.	American Journal of Legal History
Am. L. Reg.	American Law Register
Ariz. L. Rev.	Arizona Law Review
CONG. REC.	Congressional Record
Conn. L. Rev.	Connecticut Law Review
Const. Comment.	Constitutional Commentary
CRS	Congressional Research Service
DePaul J. Health Care L.	DePaul Journal of Health Care Law
Ecology L. Q.	Ecology Law Quarterly
Geo. Immigr. L. J.	Georgetown Immigration Law Journal
Georg. L. J.	Georgetown Law Journal
Geo. Wash. L. Rev.	George Washington Law Review
Harv. Envtl. L. Rev.	Harvard Environmental Law Review
Harv. L. Rev.	Harvard Law Review
Hastings Comm. & Ent. L. J.	Hastings Communications and Entertainment Law Journal
J. Contemp. Legal Issues	Journal of Contemporary Legal Issues
J.L. & Econ.	The Journal of Law and Economics
La. L. Rev.	Louisiana Law Review
Marq. Elder's Advisor	Marquette Elder's Advisor
Mich. L. Rev.	Michigan Law Review
Nw. U.L. Rev.	Northwestern University Law Review
Or. L. Rev.	Oregon Law Review
Priv. L.	Private Law
Pub. L.	Public Law
S. Rep.	Senate Report
Stat.	United States Statutes at Large
St. Thomas L. Rev.	St. Thomas Law Review

Suffolk U. L. Rev.	Suffolk University Law Review
Tax L. Rev.	Tax Law Review
Temp. Pol. & Civ. Rts. L. Rev.	Temple Political and Civil Rights Law Review
Tex. L. Rev.	Texas Law Review
Tul. J. Int'l. & Comp. L.	Tulane Journal of International and Comparative Law
Tul. L. Rev.	Tulane Law Review
U.C.D. L. Rev.	University of California, Davis Law Review
U. Cin. L. Rev.	University of Cincinnati Law Review
U. Col. L. Rev.	University of Colorado Law Review
U. Pa. J. Const. L.	University of Pennsylvania Journal of Constitutional Law
U. Pa. L. Rev.	University of Pennsylvania Law Review
U.S.C.	United States Code
U. Tol. L. Rev.	University of Toledo Law Review
Vand. L. Rev.	Vanderbilt Law Review
Wash. U. L. Q.	Washington University Law Quarterly
W. Va.L. Rev.	West Virginia Law Review
Widener J. Pub. L.	Widener Journal of Public Law
Wis. L. Rev.	Wisconsin Law Review
WL	Westlaw
Yale L. J.	Yale Law Journal

## Germany

AöR	Archiv des öffentlichen Rechts
BGBL	Bundesgesetzblatt (Federal Bulletin of Acts and Decrees)
BR Drs.	Bundesrat Drucksachen (printed documents, Bundesrat)
BT Drs.	Bundestag Drucksachen (printed documents, Bundestag)
BVerfGE	Bundesverfassungsgericht (Federal Constitutional Court)
BVerwGE	Bundesverwaltungsgericht (Federal Administrative Court)
DÖV	Die Öffentliche Verwaltung
DRiZ	Deutsche Richterzeitung
DVBl.	Deutsches Verwaltungsblatt
FAZ	Frankfurter Allgemeine Zeitung
GG	Grundgesetz (German Basic Law)
GVBl	Gesetz- und Ordnungsblatt
JuS	Juristische Schulung
JZ	JuristenZeitung
MDR	Monatsschrift für Deutsches Recht
NJW	Neue Juristische Wochenschrift
NVwZ	Neue Zeitschrift für Verwaltungsrecht
RGBL	Reichsgesetzblatt
SGB	Sozialgesetzbuch
UPR	Umwelt- und Planungsrecht
U. Toronto L.J.	Univeristy of Toronto Law Journal

VBIBW	Verwaltungsblätter für Baden-Württemberg
ZG	Zeitschrift für Gesetzgebung
ZRP	Zeitschrift für Rechtspolitik
ZZP	Zeitschrift für Zivilprozeß

## The Netherlands

AB	Administratiefrechtelijke Beslissingen
ABRvS	Afdeling Bestuursrechtspraak van de Raad van State
Appl. no.	Application number
BNB	Beslissingen in belastingzaken Nederlandse Belastingrechtspraak
CBb	College van Beroep voor het bedrijfsleven (Trade and Industry Appeals Tribunal)
CRvB	Centrale Raad van Beroep (Central Appeals Tribunal for the public service and for social security matters)
ECHR	European Convention on Human Rights
ECTHR	European Court of Human Rights
Eur. J.L. Reform	European Journal of Law Reform
HR	Hoge Raad (the Supreme Court of the Netherlands)
ICCPR	International Covenant on Civil and Political Rights
M&R	Milieu & Recht
NJ	Nederlandse Jurisprudentie
NJB	Nederlands Juristenblad
NJCM	Nederlands Juristencomité voor Mensenrechten
RMThemis	Rechtsgeleerd Magazijn Themis
Stb.	Staatsblad (Stb.) (Netherlands Bulletin of Acts and Decrees)
Stcrt.	Staatscourant
Trb.	Tractatenblad (Trb.) (Netherlands Treaty Series)
VN	Vakstudie Nieuws

## TABLE OF CASES

### The United States

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*Antonio v. Wards Cove Packing Co., Inc.*, 275 F.3d 797 (2001)/n.318  
*Apache Bend Apartments Ltd. v. U.S. Through IRS*, 964 F.2d 1556 (1992)/II.4.2, n.316  
*Armstrong v. Manzo*, 380 U.S. 545 (1965)/n.327  
*Allied Structural Steel Company v. Spannaus*, 438 U.S. 234 (1978)/n.173  
*Bartnicki v. Vopper*, 532 U.S. 514 (2001)/n.931  
*Bellsouth Corporation v. FCC*, 162 F.3d 678 (1998)/n.221, n.232  
*Board of Education v. Pico*, 475 U.S. 871 (1982)/n.893  
*Bolling v. Sharpe*, 347 U.S. 497 (1954)/n.299  
*Bowen v. Gilliard*, 483 U.S. 587 (1987)/n.309  
*Brokaw v. Mercer County*, 235 F.3d 1020 (2000)/II.1.1.2.1, n.42  
*Buckley v. Valeo*, 424 U.S. 1 (1976)/II.2.3.2, n.177  
*Burgess v. Salmon*, 97 U.S. 381 (1878)/II.3.2.1, n.250  
*Bush v. Schiavo*, 885 So.2d 321 (2004)/n.62, n.65  
*Calder v. Bull*, 3 U.S. 386 (1798)/II. 3.2.1, n.246  
*Case of Hayburn*, 2 U.S. 408 (1792)/II.3.4.1, n.277  
*Central State University v. American Association of University Professors*, 526 U.S. 124 (1999)/n.937  
*Cherokee Nation v. United States*, 270 U.S. 476 (1926)/n.279  
*Chicago Professional Sports Limited Partnership et al. v. National Basketball Association*, 961 F.2d 667 (1992)/n.209  
*Chicago & Southern Air Lines, Inc.*, 333 U.S. 103 (1948)/II.3.4.1, n.275  
*City of Boerne v. Flores*, 521 U.S. 507 (1997)/n.931  
*City of New Orleans v. Duke*, 427 U.S. 297 (1976)/n.314, n.881  
*City of New York v. Beretta U.S.A. Corp.*, 401 F. Supp.2d 244 (2005)/n.1007  
*City of New York v. Beretta U.S.A. Corp.* 2008 U.S. App. LEXIS 9309 (2d Cir.)/n.1007  
*Cnty. Serv. Broad. Of Mid-America, Inc. v. FCC*, 593 F2d.1102 (1978)/n.912  
*Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833 (1986)/n.58  
*Common Cause v. State of Maine*, 455 A.2d 1 (1983)/II.2.2.2, n.125, n.895  
*Consolidated Edison Co. of New York, Inc. v. Pataki*, 292 F.3d 339 (2002)/n.218

*Cummings v. Missouri*, 71 U.S. (4 Wall) 277 (1866)/n.60, n.213, n.230  
*Dandridge v. Williams*, 397 U.S. 471 (1970)/n.309  
*District of Columbia v. Beretta U.S.A. Corp.*, 2006 WL 1892023 (D.C. Super. Ct.)/n.1007  
*District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d. 163 (2008)/n.1007  
*Ex Parte Bakelite Corp.*, 279 U.S. 438 (1929)/II.2.3.1.1, n.153  
*Ex Parte McCardle*, 74 U.S. 506 (1868)/n.253  
*FCC v. Beach Communications, Inc.*, 508 U.S. 307 (1993)/n.309, n.310, n.311  
*Fletcher v. Peck*, 6 Cranch 87 (1810)/n.110  
*Foretich v. U.S.*, 351 F.3d 1198 (2003)/II.1.1.2.1, n.22, n.24, n.38, n.220, n.229, n.231, n.232, n.234, n.237, n.330  
*Frothingham v. Mellon*, 262 U.S. 447 (1923)/n.175  
*Garland*, 71 U.S. (4 Wall) 333 (1867)/n.230  
*Goldberg v. Kelly*, 397 U.S. 254 (1970)/II.5.3, n.328  
*Graham v. Goodcell*, 282 U.S. 409 (1931)/n.341  
*Helvering v. Davis*, 301 U.S. 619 (1937)/II.2.3.2, n.176  
*Hodges v. Snyder*, 261 U.S. 600 (1923)/n.341  
*Hurtado v. People of State of California*, 110 U.S. 516 (1884)/II.2.1, n.107, n.109, n.324  
*In re Guardianship of Schiavo*, 2000 WL 34546715 (Fla.Cir.Ct. Feb 11, 2000)/n.52  
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*Pension Benefit Guaranty Corporation v. R.A. Gray & Co.*, 467 U.S. 717 (1984)/n.339  
*Personnel Adm'r of Massachusetts v. Feeney*, 442 U.S. 256 (1979)/n.901



*Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995)/II.1.2.3.1, II.3.4.1, n.64, n.75, n.269, n.273, n.278, n.279, n.280, n.978, n.979, n.986, n.988  
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*Portland Audubon Soc. v. Lujan*, 494 U.S. 1026 (1990)/n.84  
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*Seattle Audubon Soc. v. Robertson*, 914 F.2d 1311 (1990)/n.85, n.94  
*Seattle Audubon Society v. Robertson*, 931 F.2d 590 (1991)/n.85  
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*U.S. v. Schooner Peggy*, 5 U.S. 103 (1801)/II.3.3, n.252  
*United States v. Sioux Nation*, 448 U.S. 371 (1980)/n.279  
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 ABRvS December 21, 1995, E03.94.1381/n.632  
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 CBb October 3, 1989, AB 1990/398/n.700  
 CBb March 6, 1990, AB 1990/399/n.700  
 CBb January 26, 2000, AB 2000/372/n.700  
 CRvB October 23, 1980, AB 1981/137/n.763  
 CRvB June 26, 2001, AB 2001/277/n.750  
 CRvB September 3, 2002, AB 2003/69/n.748  
 CRvB June 18, 2004, AB 2004/296/n.763  
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## ECtHR

*Adamogiannis v. Greece* (Appl. no. 47734/9) ECHR 14 March 2002/n.837  
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*Mellacher and Others v. Austria* (Appl. nos. 10522/83; 11011/84; 11070/84) (1989) Series A no. 169/n.833  
*National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, (Appl. nos. 117/1996/736/933–935) ECHR 1997-VII/IV.5.2.2, n.628, n.788, n.798, n.805, n.806, n.808, n.810, n.821, n.823  
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*Pressos Compania Naviera S.A. and Others v. Belgium*, (Appl. no. 38/1994/485/567) (1995) Series A no. 332/n.786, n.787, n.808  
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*Ryabykh v. Russia* (Appl. no. 52854/99) ECHR 2003-IX/n.851, n.852, n.982  
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*Smokovitis and Others v. Greece* (Appl. no. 46356/99) ECHR 11 April 2002/n.820, n.823, n.830

*Stran Greek Refineries and Stratis Andreadis v. Greece*, (Appl. no. 13427/87) (1994) Series A no. 301/IV.5.2.1, n.628, n.797, n.801, n.802, n.804, n.811, n.820, n.893

*Stubbings and Others v. United Kingdom* (Appl. nos. 36–37/1995/542–543/628–629) ECHR 1996-IV/n.809

*Sukhobokov v. Russia* (Appl. no. 75470/01) ECHR 13 April 2006/n.988

*Zielinski and Pradal and Gonzales and Others v. France* (Appl. nos. 24846/94 and 34165/96 to 34173/96) ECHR 1999-VII/IV.5.2.3, n.628, n.799, n.814, n.820, n.822, n.828, n.829, n.967

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*Danning v. The Netherlands*, April 9, 1987, Communication no. 180/1984/n.746

*Gangadin v. The Netherlands*, April 4, 2007, Communication no. 1451/2006/n.746