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Constitutional Courts, Gay Rights and Sexual Orientation Equality (Hart Studies in Comparative Public Law)

Angioletta Sperti

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In the last fifteen years constitutional issues regarding the rights of gays, lesbians and same-sex couples have emerged on a global scale. The pace of recognition of their fundamental rights, both at judicial and legislative level, has dramatically increased across different jurisdictions, reflecting a growing consensus toward sexual orientation equality. This book considers a wide-range of decisions by constitutional and international courts, from the decriminalization of sexual acts to the recognition of same-sex marriage and parental rights for homosexual couples. It discusses analogies and differences in judicial arguments and rationales in such cases, focusing in particular on human dignity, privacy, liberty equality and non-discrimination. It argues that courts operate as major exporters of models and principles and that judicial cross-fertilization also helps courts in increasing the acceptability of gays' and lesbians' rights in public opinions and politics. Courts discuss changes in the social perception of marriage and family at national and international level and at the same time confirm and reinforce them, forging the legal debate over sexual orientation equality. Furthermore, by promoting the political reception of the achievements of foreign gay movements in their own jurisdictions, courts play an essential role in breaking the political stalemate.

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