

constitutionalism, resistant in the sense that it resists political tendencies towards expediency, generality and under-enforcement of rights.

Any conclusion about the extent to which Gardbaum's case for the existence of a third way is or is not compelling should not diminish the significance of this book. It is a valuable contribution to the literature and should become a key point of reference from which the theory and practice of rights protection and constitutionalism might continue to be understood.

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*Current Problems in the Protection of Human Rights: Perspectives from Germany and the UK*, edited by KATJA S ZIEGLER and PETER M HUBER [Hart Publishing, Oxford, 2013, 276pp, (978-1-84946-124-5, \$100 (h/bk)]

The fourteen essays collected in *Current Problems in the Protection of Human Rights: Perspectives from Germany and the UK* edited by Katja S Ziegler and Peter M Huber are the result of papers presented at a joint conference of the Law Faculty of the Ludwig-Maximilians-Universität in Munich and the Institute of European and Comparative Law at the University of Oxford held in 2009. The conference, and the resulting volume, consider the challenges of constitutional law in the United Kingdom and Germany from a comparative perspective using Human Rights as a lens through which to consider the development of 'constitutionalisation' in both jurisdictions. Ziegler and Huber, in their joint introduction, argue that while 'the legal systems of the United Kingdom and Germany differ in essential respects, the current process of "constitutionalisation" is well recognised on both sides of the Channel' and that "'constitutionalisation" manifests itself in the evolution of a constitution and the influence of existing constitutional principles on the ordinary law'. (p 1) Their aim is to provide a comparative perspective on recent developments in this area with a focus on human rights and this is both welcome and overdue. The challenges which the ever-developing field of human rights law poses for the constitutional principles of individual jurisdictions, and to wider national and international law, cannot be underestimated and the comparative nature of the volume is particularly welcome.

The collection of essays, divided into four focused sections, includes chapters addressing three distinct but dependent themes. The first concerns those human rights questions which arise in both jurisdictions, for example, the tensions that exist between liberty and security, and how conflicts of rights should be both conceptualized and resolved. The second concerns the effect and impact of human rights on different areas of law, with authors providing perspectives on the intersection of human rights with administrative law, criminal law and labour law in particular. The third theme, arguably the most challenging yet particularly welcome in a comparative work, is the consideration of the role of and relationship between national, supra- and international human rights law. There is no doubt that it is ambitious to address these three divergent, yet dependent themes within a single volume. However, the comprehensive and diverse collection of essays which Ziegler and Huber have gathered, not only provide answers to the questions raised, albeit at times in conceptual form, but also raise further questions and challenge readers to really question the intersection of human rights law with national and international law and to consider the constitutional challenges which this raises.

Part One of the volume, the most lengthy, contains essays which approach constitutionalisation through a consideration of human rights protections in different areas of law. Frank Zimmerman questions the limitations and application of human rights in substantive criminal law. He contrasts the jurisprudence of the German Constitutional Court with that of the European Court of Human

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Rights and considers the impact of the resulting constitutional minimums and maximums. Andrew Ashworth takes a critical approach to reviewing human rights protections and the criminal justice process, expressing concern at the recent trend towards the watering down of absolute rights in some situations. He points for example to the prohibition of torture contained in Article 3 and contrasts this with recent interpretations of this by the European Court of Human Rights in cases of inhuman and degrading treatment. From a private law perspective, Anne Davies considers the challenges to and effect of constitutionalisation on labour law; Alison Young questions the impact of human rights in private relationships; Carsten Herresthal questions the influence of human rights legislation on contract law with a particular focus on the freedom and autonomy of contract and Peter Huber reflects on recent EU legislative developments in the area on discrimination, particularly sex discrimination and the somewhat restrictive Grundgesetz still in place in Germany. Finally in the first section, Anthony Bradley considers the impact of the Human Rights Act 1998 to the practical and conceptual constitutional life of the United Kingdom, emphasizing its significance given the lack of a single constitutional document and considers the constitutional role of courts in light of the Human Rights Act 1998. While the HRA has, for example, allowed the courts to protect the right to be heard, which is outside their jurisdiction in common law, he revisits the question of whether the reliance on the jurisprudence of the European Court of Human Rights allows UK courts to step beyond their constitutional role.

The second section stands back from specific areas of application, and considers how human rights are applied by courts in both jurisdictions and how the delicate balance is struck between individual rights and other interests. Paul Yowell does so by reconsidering the issue of proportionality and the ability of courts to deal with empirical evidence. Sophie-Charlotte Lenski turns her attention to decisions of the Federal Constitutional Court and considers how conflicting rights have been balanced in recent jurisprudence.

Part Three moves on to consider absolute rights as an expression of constitutionalism, with Sebastian Unger focusing on human dignity and Jan Kalbheim questioning the national identity of member states in light of recent jurisprudence, with a particular focus on the recent *Omega* decision of the European Court of Justice. The final section of the collection, with essays from Foroud Shirvani and Patrick Birkinshaw considers the complex and difficult relationship that exists between human rights and security, particularly with regard to anti-terror legislation. It is in this final section that the comparative nature of this volume really comes to the fore. Shirvani's analysis of German anti-terror legislation contrasting with Birkinshaw's account of equivalent UK legislation and its development provides not only a fascinating insight into differing but complementary approaches but also reinforces the importance of looking to other jurisdictions and learning from them as the development of the rights discourse continues.

It is difficult to do justice to the comprehensive and thought-provoking essays contained in *Current Problems in the Protection of Human Rights: Perspectives from Germany and the UK* in a short review. The volume demonstrates that two different jurisdictions face many of the same challenges, despite their differences. The essays collectively demonstrate that much can be learned from considering constitutional issues and the impact of human rights on legal systems from an international and comparative perspective. The comprehensive discourse and discussion contained in the collection is very welcome and certainly shows the need to encourage such dialogue in the future.

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