updating (3–068 and 6–059 where latest figures date back to respectively 1995 and 1998, and 13–035 where reference is made to the 1994–5 Yearbook of the ICJ for a list of recent treaties which provide for jurisdiction of the Court).

The next edition may provide an opportunity to take care of a few lacunae (the NATO Strategic Concept is missing in 6-067 on the relation between NATO and the UN; there is no mention of the 1996 Clarifications and the 1999 conclusions on the World Bank Inspection Panel in 13–185 and 13–186), to correct some errors (p 364, n 91: the 1971 Advisory Opinion on Namibia resulted from a request submitted by the Security Council), perhaps to add some useful information (13–020, on the cases brought before the PCA) and to expand the coverage of some aspects or organs (for instance 13–088 and13–090, on the ICTR and the ICTY).

As a general introductory textbook this fifth edition provides a useful instrument for undergraduate law students. For more detailed description of individual international organisations readers may turn to the successive contributions to Volume I on Intergovernmental Organisations of the International Encyclopaedia of Laws.

Jan Klabbers's *Introduction to International Institutional Law* (2002) is a key textbook for advanced-level students.

KAREL WELLENS

On Law, Politics and Judicialization. By MARTIN SHAPIRO and ALEC STONE SWEET [Oxford: Oxford University Press, 2002. xi + 417 pp. ISBN 0–19–925647–0 Hbk; ISBN 0–19–925648–9 Pbk]

The Power of Judges. By CARLO GUARNIERI and PATRIZIA PEDERZOLI [Oxford: Oxford University Press, 2001. ix + 235 pp. ISBN 0–19–829835–8. Hbk]

As Shapiro and Stone Sweet note, 'the study of law and courts is dominated by lawyers not political scientists' (p 5). The interest of these two books is that they offer the perspectives of eminent political scientists, from whom lawyers have much to learn in terms of methodology and analysis. The books provide a contrast between the perspectives of American and continental European political scientists, even though each group is aware of the debates which interest the other.

Shapiro and Stone Sweet are leading American scholars of the judicial function. Coming from different generations and experiences, they have combined in this work to offer a conspectus of their contribution to the field. This is not simply a collection of essays, but a combined view of salient issues. There are introductory sections to each chapter, followed by works by each author. Shapiro's work is more classical political science in style, while Stone Sweet makes greater use of statistics, and even econometrics to prove a point. As their distinctive contribution, these political scientists do not simply study judges as one group of political actors among many. They try to analyse the judicial role in terms of its distinctiveness. In the first chapter, they note the importance of judicial forms of reasoning and justification. Stone Sweet also argues that Third-party Dispute Resolution constitutes a special form of governance, through which both social cohesion and social change can be achieved. He illustrates this by reference to the GATT panels and the French *Conseil constitutionnel*.

Their understanding of the distinctiveness of judges as political actors is illustrated through a discussion of precedent. Shapiro argues that, by examining the reasons which lawyers give to each other, rather than just the decisions themselves, one can understand law as a communicative system which has an impact far beyond the hierarchical relationships between courts. Stone Sweet notes the way previous decisions, in law and elsewhere, locks decision-making onto a particular path of development into which analogies for future expansion have to be fitted. These discussions take account of some writings in legal theory, but would have benefited from reference to MacCormick and Summers, *Interpreting Precedent*.

Inevitably, a consideration on judges as political actors spends much time on constitutional law, but these authors do try to look more broadly at other branches of law. In chapter 5, they

examine at length the development of *lex mercatoria* through private transactions and arbitration. There is less original detail in these studies, but they are able to suggest that political science needs to look beyond public institutions in order to understand the development of law in society. The chosen subjects of Shapiro and Stone Sweet are distinct from those of Guarnieri and Pederzoli. The latter reflect European developments in criminal prosecutions as a way in which judges and prosecutors undertake political roles.

Political scientists have focused heavily on analysing the American Supreme Court. Shapiro and Stone Sweet discuss constitutional review at some length, although the final chapter on abstract review uses a European perspective to provide new insights into the US system. Their work also has the merit of offering studies of some European national jurisdictions (France and Germany) and extensive discussion of the European Court of Justice. Shapiro suggests that constitutional courts need to claim legitimacy more on the basis of enforcing the separation of powers than the enforcement of fundamental rights (p 182). Independence is easier to maintain and the consequences of 'adversary legalism', where opponents assert rights as a political weapon to limit government agencies, may not always be desirable.

An interesting feature of Shapiro and Stone Sweet is the study of the comparative method. Shapiro considers that comparative material may serve to refine or falsify a hypothesis developed from the study of one political system. He illustrates this with the example of the duty to provide reasons. Taking the American experience, he aims to predict the lines of development in European Community law (which were supported by subsequent actual events). Stone Sweet uses econometric analysis to explain why references to the ECJ are more frequent from some countries than others. His theory suggests that patterns of intra-community trade, rather than bargaining between different governments, provide a better explanation of the path of European integration, especially as this is assisted by decisions of the ECJ. Shapiro and Stone Sweet offer a work of political science which is not simply of interest to legal theorists, especially those interested in the judicial function. The pervasive and substantial examination of the ECJ and the discussions of the comparative method make this a very readable and an important work for European and comparative lawyers alike.

In many ways, Guarnieri and Pederzoli offer a more classical political science study. For them, the ultimate explanation for increased judicialization is the political context. In their view, three factors affect the judicial role: the judges themselves, the judicial system in which they operate (especially access to justice), and the characteristics of the political system. In terms of the influence of judges themselves, the authors focus on the selection, education and promotion of judges, especially in the US, Germany, France, and Italy. The influence of politicians on the advancement of judges is important in the hierarchical, bureaucratic structures common in continental Europe. But the authors note the ways in which judges may be given independent roles in selection and promotion through judicial councils. In terms of the wider political environment, the role of the judicial corps in the prosecution and trial of criminal offences committed by politicians has become a major issue in much of Europe, and has given the judges a distinctive contribution to the political scene. Constitutional review is also an obvious growth area in Europe. But the character of the political role of judges depends very much on the structure of the legal system and the way it related to the political system. There has been an inconsistent and varied development of judicial power in Europe. For Guarnieri and Pederzoli, factors promoting judicialization include the evolution of the political system towards consensualism (rather than majoritarianism) and the capability of the judiciary to meet political demands, eg by judicial activism or dealing with corruption (p 167). It is the political context and the ability of judges to play a successful role in these, rather than judicial career structures, which ultimately determine the scope of judicialisation. Such judicial activism requires independence, but there also need to be checks to avoid unrestrained judicial power.

Both books suggest that the study of the judicial role needs to be contextualized, and that the analysis of political and economic factors which affect the role of political institutions in general offers the best avenue for explanations and limits. Merely documenting judicial decisions is not enough. At the same time, as Shapiro and Stone Sweet recognize, the constraints within which judges have to justify their actions is also important. To that extent, a 'hermeneutic' legal perspective has an important place in a study of the political role of the judiciary, and

one which can lead to fruitful collaboration between jurists and political scientists. These two sets of political scientists provide major agendas for interdisciplinary study of matters about which lawyers, especially comparative lawyers, are much exercised.

JOHN BELL

Human Rights Under the Australian Constitution. By GEORGE WILLIAMS [Oxford: Oxford University Press, 2000. xxvi + 316 pp. ISBN 0–19–554111–1]

Human rights are, to a limited extent, protected *in* the Australian constitution. The extent to which they are protected *under* it is far greater, and the difference between these two ideas is a central theme of this book.

The choice of title of George Williams's work is deliberate: this is a book about the role of constitutional rights in a democracy; it is also a book about the Australian High Court's recognition of rights beyond those enshrined in the text of the Constitution. Although primarily based on the caselaw of the High Court, Williams's work includes a theoretic analysis of the nature of human rights protection under the Australian constitution, examining various sources of protection, and the possibility of an Australian Bill of Rights. This book touches on all of the essential dimensions of human rights pertinent to Australian law, including public international law obligations, the relevant provisions of the federal and state constitutions, and the rights and duties of individual citizens. Substantial emphasis is placed on the development of implied rights by the High Court, despite its long adherence to a strict textualist approach, epitomized in the landmark *Engineers* case (1920), the influence of which still endures. The analysis traces the interpretative jurisprudence through to the present day, by way of what might be termed the 'high water mark' decision in Queensland Bar Association (1989).

Williams's analysis makes clear, however, that the evolution of human rights protection under the Australian constitution has not constituted a linear progression, and indeed that it continues to display elements of legalist and textualist interpretative methodologies, alongside approaches which embrace context and the reality of choice implicit in constitutional adjudication of rights. The interpretative approach advocated by the author highlights the importance of a philosophical or normative framework for the coherence and viability of a human rights jurisprudence, taking into consideration the historical framework of the constitution, the centrality of text and the pivotal role of context, culture and politics.

Chapter 1 begins by examining 'modern' conceptualizations of human rights embodied in the Universal Declaration of Human Rights (1948) and the two Covenants (1966). Chapter 2 is devoted to the drafting history of the Australian Constitution, providing an indispensable backdrop for the ensuing chapters, since a number of the most significant decisions of the High Court have relied explicitly on the proceedings of the constitutional Conventions of the 1890s, and the influence of English conceptions of parliamentary sovereignty at that time. The rights enshrined in the text of the Constitution and their interpretation by the High Court are the subjects of chapters 3 and 4 respectively, which tackle the problem of implied rights and the question of which political, philosophical and even cultural choices determine a court's approach. It is also in these chapters that Williams confronts the core question of what role the Australian Constitution has in protecting human rights. The chapters which follow examine, in greater detail, the form and content of express rights under the Constitution, looking first at civil and political rights (ch 5), and then at economic rights (ch 6).

The immense significance of implied rights is extrapolated in chapter 7 which considers the implied rights 'discovered' in the principle of representative government, the most famous of which emerged during Murphy J's tenure. Rights implied from the separation of judicial power are the subject of chapter eight which explores the doctrine of judicial review (as affirmed in the *Communist Party* case (1951)), and the guarantee of due process and equality under the law as defined by Deane and Toohey JJ. Chapters 9 and 10 look more generally at