BOOK REVIEWS

Comparative Judicial Review, edited by Erin F Delaney and Rosalind Dixon [Edward Elgar, Cheltenham, 2018, 449pp, ISBN: 978-1-78811-059-4, £180 (h/bk)]

This edited collection forms part of a series of Research Handbooks in Comparative Constitutional Law, bringing together interdisciplinary contributions from around the world on key aspects of constitutional law and theory. The focus here is on constitutional judicial review: the process of court review of executive or legislative action for constitutional compliance. This comparative focus is important, given the global rise in constitutions allowing or mandating judicial review which is not always reflected within a literature that can be dominated by theoretical models deriving from a relatively small number of constitutions. The collection brings together 20 contributions from scholars from around the world, (although most contributors are currently based within the United States) who engage with a huge diversity of systems of constitutional judicial review. Together they explore key questions of why and how constitutional judicial review is adopted and justified, the way in which political context and institutional design influence the way in which judicial review works, the different factors that make for stable and effective judicial review within constitutions, and the ways in which judicial review is carried out.

The first part comprises five contributions on the origins and functions of judicial review. These chapters are highly accessible to the non-expert in this field, and form a clear, comprehensive and useful introduction to a range of thinking about judicial review. Instrumental justifications, particularly Dixon and Ginsburg's 'insurance' approach, are explored thoroughly, but the collection begins with a persuasive piece by Harel and Shinar arguing that the real value of judicial review lies not in what it is supposed to improve within a constitutional order, but in the very process of giving citizens and constitutional actors a hearing to air their constitutional grievances. Issacharoff warns against the grand explanatory principle of 'generic constitutional law', and his study of the role of constitutional courts in weak democracies helpfully illustrates the way in which different justifications for judicial review may be used in different contexts.

This question of political and institutional context takes centre stage in Part II, which comprises discussion of different contexts and ways in which institutional design influences the scope and impact of judicial review mechanisms. Whether the tensions which judicial review needs to resolve are between different visions of the state (Lerner), between the establishment and new political challengers (Kagan, Kapiszewski and Silverstein) or between multiple judicial orders (Chang and Lee), different typologies are developed which allow for the analysis of a wide range of constitutional contexts and conflicts, and the role of judicial review in adjudicating them.

Part III covers the stability and effectiveness of judicial review, considering in particular the difficult balance between judicial review achieving good outcomes for citizens against the State, whilst maintaining the legitimacy and support of the institutions that are under review. Here, some of the discussion is narrower in focus and consideration of the US Constitution and Supreme Court is more apparent. Jacobi, Mittal and Weingast argue in particular that the US Supreme Court, showing an ability to engage with citizens (and civil society, as discussed by Landau) and adapt to changing circumstances, has been a central factor in the longevity of the US Constitution. Conversely, however, Versteeg and Zackin argue that the stability of a constitution ought not to be measured by the existence or otherwise of a long lasting single text: contemporary constitutions tend to be more specific and less entrenched, and whilst specific texts change frequently, the basic constitutional order is ongoing. Epstein and Knight suggest techniques for efficacious judging, by which they mean judging in a way that will be respected and accepted by government, and Alter considers the acceptance of international judicial review by domestic courts, as either a 'luxury' optional extra or a backup 'fail-safe', particularly when confidence in the national political authorities is on the decline.

The final part appears to make explicit what has been implicit throughout the collection: that a truly comparative approach allows for a broader and more nuanced analysis of the typologies of

[*ICLQ* vol 68, April 2019 pp 495–497] doi:10.1017/S0020589319000083

judicial review. By this stage, a reader of the whole collection in order is likely readily to accept da Silva's argument that the traditional distinction between US-style and European-style approaches to constitutional judicial review is inaccurate and unhelpful, because it fails to recognize the diversity of judicial review systems which have developed in different contexts for different reasons. Two pieces, from Sadurski and Jackson, consider approaches to reasoning within judicial review, looking respectively at the centrality of the notion of public reason with judicial review worldwide, and at the difference between treating proportionality as a general principle and as a structured test. Also in this section, a comparative approach is used by Greene and Tow to give insight into the use of historical arguments in judicial review and by Hirschl to discuss the use of international and foreign legal materials in different jurisdictions.

In many ways, the final section exemplifies most clearly the greatest strength of this collection, which is not only the breadth of perspectives but also the range of jurisdictions drawn from. A central message is that jurisdictional diversity within constitutional judicial review means that many of the received typologies and assumptions within the study of judicial review are being abandoned, and a much richer ecology of judicial review, supported by a high level of methodological diversity, is emerging. There is certainly much to be learned here for someone coming new to this literature, as well as a great deal of food for thought in terms of new areas of exploration, and proposed research directions and agendas, to inspire future work.

Chloe Wallace*

The Global Climate Regime and Transitional Justice by Sonja Klinsky and Jasmina Brankovic [Routledge, London and New York, NY, 2018, 196pp, ISBN: 978-0-415-78602-7, £115 (h/bk)]

This book analyses, from a socio-political and legal standpoint, critical issues of justice raised by climate change regulation, through the lens of transitional justice regimes. Similar to a transition from conflict to the peaceful functioning of an ordered society, climate change arguably compels a transition from a fossil fuel-based economy to a green system. Klinsky and Brankovic elaborate on such transitional analogies from both a past and future perspective and envisage possible solutions to societal disparities in the climate change regulatory regime.

The premise is that a self-differentiated approach fundamentally underpins mitigation and adaptation measures under the Paris Agreement: States have universal obligations, but can autonomously define their particular commitments, notably in terms of mitigation targets. This system erodes solidarity, because it does not adequately take into account historical greenhouse gas (GHG) emissions and their diverse impact on different countries. Klinsky and Brankovic thus argue that a tension between past responsibility and forward-oriented action underpins climate change regulation, like transitional regimes. Within this framework, specific structural analogies include interdependence among agents, diffuse and diversified harm, power imbalance and incremental reform. Despite critical differences, notably the temporary and localized nature of transitional justice as opposed to the possibly irreversible and global nature of climate change, analogies pave the way for applying transitional remedial mechanisms in the context of climate change. This makes a range of tools available to address climate change based on liberal thought and fundamental rights, for instance, truth commissions, reparation and institutional reform. Such remedies can help to resolve issues of slow, ineffective and expensive forms of accountability.

Concerning the applicability of transitional accountability mechanisms, such as amnesties or State and individual liability, in the context of climate change, Klinsky and Brankovic focus on responsibility for past and future GHG emissions. For instance, the authors consider that selective or blanket amnesties for GHG emissions could prompt cooperation by States that would

*School of Law, University of Leeds. c.j.wallace@leeds.ac.uk.

doi:10.1017/S002058931900006X