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BOOK REVIEWS

Judicial Review of Administrative Action Across the Common Law World: Origins and Adaptation BY SWATI **JHAVERI** AND MICHAEL **RAMSDEN**, eds [Cambridge: Cambridge University Press, 2021. liv + 391 pp. Hardcover: £78.76]

Judicial Review of Administrative Action Across the Common Law World: Origins and Adaptation is an important achievement in comparative administrative law. While comparative constitutional law enjoys significant attention and has developed a sizeable and sophisticated body of academic literature, the field of comparative administrative law is relatively much less well-traversed. This volume is therefore much to be welcomed as an effort to give comparative administrative law the attention it deserves—both as an important milestone in comparative administrative law scholarship itself, and as a foundation for further scholarly work in this regard.

The essays in this volume each reflect upon the legacy of English administrative law in a wide variety of jurisdictions across all continents where the common law took root, going well beyond the usual range of jurisdictions (such as Australia, Canada and the US) and including within its scope jurisdictions which have received comparatively less attention (such as Kenya, Malaysia and Bangladesh). As noted in Swati Jhaveri's introductory chapter, this compilation of essays is intended "to expose the diversity of common law systems by illuminating the multi-event, multi-author, and multi-causal nature of the development of common law administrative law in a broader catchment of common law systems than has been studied to date" (at p 23), thereby challenging the view that there is an overall convergence in administrative law systems across the common law world. A new narrative is proposed in response: that "there is much diversity in common law systems that is worth exploring for a richer understanding of the plurality of 'common law administrative law"' (at p 11).

A preliminary observation one might make upon perusing this volume is that despite the impressively wide variety of jurisdictions selected to illustrate the diverse legacy of English administrative law, there is an obvious familial resemblance between all the jurisdictions discussed within. Indeed, as noted in Margit Cohn's concluding chapter: "[t]he affinity between the systems was readily obvious during the conference that generated this collection: all participants, representatives of a diverse set of legal systems, evidently spoke the same language—not only was English common to all but, more importantly, all basic aspects were easily grasped by the participants" (at p 373). While seeking to underscore diversity in administrative law in the common law world, the volume serves also as an interesting

testimony to the enduring nature of the habits of mind that English administrative law has bequeathed to the world.

Yet, notwithstanding the familial resemblance between the various jurisdictions studied in this volume, its expressed objective to expose the diversity of common law administrative law systems around the world has been resoundingly met. The book makes it readily apparent that the foundational ideas of English administrative law have developed in an astounding variety of ways in response to the unique sociological and political circumstances obtaining in each jurisdiction. For instance, Dian A H Shah and Kevin Y L Tan's contribution to the volume details how English precedents in administrative law have been modified in Malaysia "by particular exigencies surrounding the role of Islam in the political and legal order" in cases involving Syariah law (at p 234). Farrah Ahmed and Swati Jhaveri's discussion of the Indian experience also usefully highlights the overshadowing of administrative law in India by the arbitrariness doctrine in Indian constitutional law, pointing out that this may be an outcome of widespread lack of confidence in the lower judiciary in India as a means of redress against executive action, leading to a preference for challenges in constitutional law going straight to the higher judiciary (at pp 280-281). The influence of unique sociological and political circumstances on the reception and adaptation of English administrative law is also made abundantly clear through the experiences of New Zealand and Bangladesh. As Hanna Wilberg and Kris Gledhill explain, the Treaty of Waitangi has shaped New Zealand's administrative law in a unique direction—the New Zealand courts have interpreted statutory powers affecting Treaty rights as "being subject to implied mandatory considerations or to a presumption of consistency with the Treaty" (at pp 329-330), while Cynthia Farid suggests that the judicial approach to administrative law in Bangladesh has developed in response to "the absence of stable and effective representative institutions" (at p 306).

Even where sociological and political circumstances provide less of an impetus for evolution, the volume illustrates that variations from English administrative law principles can nevertheless exist as judges in assorted jurisdictions mull over the best possible functional doctrinal solutions to shared problems. Indeed, departures from English administrative law can be observed in jurisdictions as historically and geographically close to England as Scotland—as Stephen Thomson's chapter on Scottish administrative law describes, Scottish courts do not draw a distinction between public and private functions in demarcating the scope of judicial review, as English courts do, but have instead preferred to focus on confining bodies to their jurisdiction whether they are public or private in nature (at pp 83-85).

Beyond variations in the substance of administrative law principles across the common law jurisdictions surveyed in this volume, an interesting further dimension of variance that can be observed relates to perceptions of the normativity of English administrative law. In some jurisdictions, deviation from specific English administrative law principles is perceived to be normatively desirable—for example, Thomson suggests that a reason Scottish courts have preferred not to adopt the English public/private distinction in marking out the scope of judicial review could simply be that the Scottish solution is viewed as normatively superior (at p 94). In other jurisdictions, the normative appeal of English administrative law at a systemic level is somewhat questionable. For instance, the Kenyan experience as described

by Migai Akech suggests that English administrative law has historically been perceived as "an instrument of power" —the province of the elites and ineffective as a recourse for ordinary people disaffected by administrative abuses (at p 202).

Standing in contrast to these perceptions of the normativity of English administrative law are jurisdictions such as Hong Kong, where the influence of English law is seen in a very positive light. This may be very much shaped by Hong Kong's unique geo-political context. As Michael Ramsden suggests in his chapter on Hong Kong: "[f]or so long as Hong Kong is able to remain outward looking, and positive about the virtues of a common law system, English law will continue to be a guiding light in a small part of an authoritarian state" (at p 272). Ahmed and Jhaveri's contribution to this volume may be seen as another example of a positive view towards the normativity of English administrative law—indeed, their proposal for a reform of Indian public law centres around a reinvigoration of administrative law in India centred around classical common law administrative law (at pp 281-282).

It is interesting to note that this variance in perspectives as to the normativity of English administrative law extends even to commentators on English administrative law itself. On one hand, Christopher Forsyth sees strong normative appeal in what he calls "classical administrative law" in England. Indeed, Forsyth's chapter in this volume tracks the movement of English administrative law from "its classical principles and conceptual form of legal reasoning towards a pragmatic mode of reasoning in which judicial discretion is paramount" (at p 46)—a movement that Forsyth expresses deep concern about, in view of his conviction that it was the clarity and principled quality of classical English administrative law that gave it broad influence and applicability around the world. On the other hand, Ramsden's chapter on the impact of international influences upon English administrative law is much more optimistic about the evolution of English administrative law, and indeed considers how "the English courts can profit from progressive approaches towards the use of international law found in the common law world so as to augment the development of its common law rights jurisdiction" (at p 61). Paul Craig's contribution to the volume underscores the diversity of perspectives towards English administrative law that exists within England itself, attributing this diversity to various misconceptions of administrative law in England in both the empirical and normative domains.

The central claim of this book—divergence in the common law administrative law world—is therefore amply made out and well-supported. One might wonder whether the daunting variance between common law administrative law systems as illustrated in this book will dissuade would-be scholars of comparative administrative law from entering the field. It is suggested, however, that this volume should have the opposite effect. Indeed, this work presents an immensely valuable foundation for comparative administrative law research.

For instance, the volume helps to highlight patterns in common law administrative law systems that can be fruitfully interrogated. One such pattern that might be noticed is a multi-jurisdictional movement towards assessing administrative action on the basis of reasonableness, rather than whether such actions are made within jurisdiction. As Peter Cane's chapter on American administrative law illustrates, American administrative law has developed such that it is "concerned primarily with whether decisions are well-reasoned", rather than whether they are "authorised by law", as is the focus of classical English administrative law (at p 135). A similar trend

can be observed in Canadian administrative law—as Paul Daly describes, "reasonableness has become the dominant standard of review in Canada" (at p 150). The emergence and prominence of doctrines of reasonableness in Israel and South Africa, as documented by Daphne Barak-Erez and Cora Hoexter respectively, fits within this pattern as well. And Forsyth's chapter highlights the very same movement occurring within English administrative law itself. This movement is by no means a universal one—indeed, as Matthew Groves and Greg Weeks point out, Australian administrative law has doubled down on the idea of jurisdictional error as the organising concept around which judicial review in Australia is approached (at p 319). An interesting direction of inquiry which this volume therefore opens up is to examine the reasons for this broad movement towards reasonableness as a central concept in judicial review across various common law jurisdictions, assess why other jurisdictions have not embarked upon the same pattern of development, evaluate the normative desirability of such a movement, and also to study in detail the various forms that this movement has taken in different jurisdictions.

Another means by which this volume serves as a fruitful foundation for further comparative administrative law research is to open up new possibilities of jurisdictions from which useful lessons can be drawn to develop one's domestic administrative law. For example, one might be struck by the parallels between the Singapore and Irish experience of administrative law, as described by Daly in this volume. As Daly notes, the Irish Constitution has been accepted as the supreme norm justifying judicial review of administrative action in Ireland, in contrast to parliamentary sovereignty serving as the theoretical foundation for judicial review (at p 101)—a feature of the Irish legal landscape which mirrors the position in Singapore. Crucially, the Irish courts have worked out the consequences of this idea for their approach towards legislative ouster clauses. Daly documents that as a consequence of the constitutional justification for judicial review in Ireland, "any legislative attempt to oust the judicial review jurisdiction of the High Court is therefore constitutionally dubious" (at p 102)—a conclusion which the Singapore courts have themselves been moving towards, a shift that Jhaveri notes in her chapter on Singapore administrative law (at pp 224-228). Given these parallels between Singapore and Irish administrative law, one might wonder whether the Singapore courts may be able to draw fruitfully from the Irish courts' approach towards ouster clauses—an analysis structured as a balance between conflicting considerations (at p 102)—and also whether there may be other areas of Irish administrative law which Singapore administrative law may usefully take reference from.

In sum: by advancing and successfully substantiating a fresh narrative of diversity across administrative law systems in the common law world, and by offering a variety of fruitful possible lines of inquiry for further research in comparative administrative law, *Judicial Review of Administrative Action Across the Common Law World: Origins and Adaptation* cements itself as a must-read for any scholar interested in comparative administrative law or administrative law more broadly.

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