ECHR), states accept responsibility *because* they are the first protectors of human rights (as is clearly shown by the subsidiary nature of these controls, well represented by the omnipresent condition of the previous exhaustion of domestic remedies). If, in light of this, the Court of Strasbourg rather than act like judges dons the clothes of an inquisitor, an improvement of the protection of human rights would be anything but certain.

Moreover, the very same hope (p.316) that a shared competence on migration between the EU and its members brings more visibility and, therefore, a "greater political and legal accountability", is frustrated from the outset: in migration matters, recent history (e.g. Frontex joint operations, the "agreement" on migration with Turkey) shows a lack of responsibility, in the scant clarity that, especially in this field, marks the borderline between EU and states' competences. Indeed, reading the 2011 Draft articles on the responsibility of international organisations (especially arts 14–17) would suffice to understand that shared competences are anything but a source of simplification. And, if this is not enough, one can look elsewhere, in the 2013 Draft revised agreement on the accession of the EU to the ECHR where the problem of shared responsibility is bypassed (rather than solved) with the creation of a second respondent mechanism.

Of course, my personal dissent on some points does not deprive this work of its two main qualities: the extraordinary amount of data; a solid rationale, which emerges slowly and clearly from page to page. These make it a very useful means for the legal scholar (and not only).

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## **From Dialogue to Disagreement in Comparative Rights Constitutionalism,** by Scott Stephenson, (Sydney: The Federation Press, 2016), xxv + 243pp., hardback, £58, ISBN: 9781760020675.

Comparative approaches to public law have started to enjoy a certain gravitational pull. No doubt this is largely thanks to the often seismic shifts in judicial review experienced throughout the world and the bedrock questions of constitutionalism these shifts throw to the surface. While Dr Stephenson's first treatise, *From Dialogue to Disagreement in Comparative Rights Constitutionalism* is, in many respects, a continuation of this trend in public law scholarship, the project distinguishes itself admirably from existing veins within this literature. It achieves success with this commendable effort by adopting quite a novel framework through which to view judicial review and constitutionalism. This becomes a framework Stephenson then applies in later chapters to four major Commonwealth jurisdictions—the UK, Canada, Australia, and New Zealand.

The first key component in Stephenson's framework is his focus on multi-stage rights review, asking: how is Commonwealth multi-stage rights review different? That is, the manner in which rights issues are evaluated and determined across the different governmental branches, as well as the different stages of the law-making process. For example, a jurisdiction may possess an initial, executive committee

at which possible matters of rights-compliance arising from a proposed statute can be considered and addressed before the Bill is subjected to parliamentary debate (during the legislative process). Judicial scrutiny follows, when the enacted statute comes before the courts in a rights-related dispute. This choice of focus is significant because it prevents examinations of constitutional and administrative law from fixating on the question of finality: in other words, the question of which institution has the "final word" on rights issues. This is because, as Stephenson argues compellingly, the various arenas of action over rights issues before any matter of "final word" arises have become increasingly important and relevant. This is a noticeable trend within those common law jurisdictions the book considers. The traditional, contrasting paradigms of legislative and judicial supremacy are ill-equipped to capture this trend precisely because they aim to find a conclusive final stage of determining rights issues rather than examine the complex institutional interactions that precede any such ultimate determination.

This brings us to the other key component in Stephenson's framework: his adoption of a model of inter-institutional disagreement. While—at a glance—this appears broadly similar to the various dialogue-based models found in popular constitutional and administrative law scholarship, the disagreement model has several significant differences. First, as Stephenson is keen to stress, dialogue models tend to be too closely wedded to the aforementioned legislative and judicial supremacy paradigms. This means that—despite their emphasis on back-and-forth interactions between different governmental branches—they tend to collapse back into the dominant question of finality on rights issues. Second, models of dialogue find themselves under-emphasising the compromises that different organs strike on rights issues, while trying to resolve the fundamental tensions to which such issues give rise: compromises that Stephenson views in terms of "normative trade-offs". For instance, one might encounter a tension in rights adjudication between the values of judicial independence and judicial accountability. More specifically, Stephenson aims to explicate the role and importance of *direct* inter-institutional disagreement; that is to say, those disagreements relating to "powers that are conferred on institutions to authorise, encourage and even require them to review other institutions' positions on rights" (p.101).

Here is where Stephenson's selection of four common law jurisdictions becomes both fascinating and illuminating. As he argues, each possesses the following stages of direct inter-institutional disagreement: executive review, legislative committee review, judicial review, and legislative override (pp.102–106). By examining these jurisdictions through the lenses of multi-stage rights review and direct inter-institutional disagreement, we can appreciate how the evaluation and determination of rights issues by these various institutions at the separate stages facilitates direct forms of disagreement over such rights-issues in a cumulative manner. Moreover, despite how disagreement between institutions may strike us as a sign of dysfunction, facilitating such direct forms of institutional disagreement can actually prove beneficial because it helps to avoid the costs associated with indirect forms of institutional disagreement. By this, Stephenson means situations in which there are conflicting standpoints between different institutions on rights issues, but these are not expressly framed as conflicting standpoints, such as when courts rely on traditional canons of statutory interpretation to construe an Act of

Parliament as in compliance with common law principles. As Stephenson puts it, direct inter-institutional disagreements "are more *pellucid, comprehensive, regular* and *contained*" than indirect inter-institutional disagreements (p.101). These characteristics are not necessarily correlative; powers can alter one characteristic while leaving untouched the others, for example. Stephenson's valuable contribution to the relevant debate at this juncture is the way by which he ties the pragmatism of minimal disruption—for example by declarations of incompatibility being non-binding—to a coherent framework of inter-institutional disagreement. By providing the common law reader with a tangible example of the incentives to resolve such disputes by dialogue, the importance of the *checks* in *checks and balances* becomes apparent: Stephenson's edict that disagreement is productive is quite compelling in this regard.

After establishing the advent of multi-stage rights review throughout the Commonwealth in Ch.2 and elaborating on his choice of framework based on inter-institutional disagreement in Ch.3, Stephenson goes on to substantiate the inadequacies of judicial and legislative supremacy as conceptual models for understanding rights protection (Chs.4–5). This positions Stephenson well to elaborate on both the descriptive and normative advantages of multi-stage rights review marked by direct inter-institutional disagreement (Ch.6), and to explicate six principles and values that exist in tension within such disagreement (Ch.7), namely "bureaucratic independence, responsible government, the separation of powers, the rule of law, the hierarchy of laws and comity" (p.123). In addition to the already noted descriptive advantages of avoiding the oversimplification of supremacy-based models and capturing the significant compromises on rights issues struck by different institutions before any "final word", Stephenson argues that adopting a multi-stage rights review model is normatively preferable. This is because it provides a diversity of institutional perspectives and multiple opportunities for public participation, in addition to less obfuscation, selectivity, irregularity, and lack of containment (p.210).

With his framework in place, Stephenson proceeds to apply it to each of the four aforementioned common law jurisdictions in sequence, starting with the UK (Ch.8) and ending with his home jurisdiction of Australia (Ch.11). For each country, Stephenson outlines the jurisdiction's practices of legislative and executive review, judicial review, and legislative override, and analyses these practices in terms of inter-institutional disagreement. Through this approach, he brings the normative trade-offs between each jurisdiction's institutions on rights issues into sharper relief. This substantive part of Stephenson's work is worth reading fully in order to appreciate the nuances he provides.

In all, Stephenson's work makes an important contribution to the existing literature. We commend his excellent comparativism—especially with respect to the nuanced exposition of inter-institutional disagreements, which are common across the four jurisdictions. *From Dialogue to Disagreement* will undoubtedly become familiar to law librarians everywhere, and can be recommended to socio-legal scholars, those focused purely on constitutional doctrine, and the well-read general reader. Those seismic shifts may not cease anytime soon, but at

least we have new tools to examine whatever rises from the deepest constitutional strata.

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## **Access to Justice: Beyond the Policies and Politics of Austerity,** by Ellie Palmer (ed.), Tom Cornford (ed.), Audrey Guinchard (ed.) and Yseult Marique (ed.), (Oxford: Hart Publishing, 2016), xix + 311pp., hardback, £40, ISBN: 978-1849467346.

It might be thought that it requires a certain level of masochism for a legal aid practitioner to want to read a book which details the recent cuts to the justice system. Nonetheless, there are a growing number of recent publications that can be described as falling into the category of "misery lit for legal aid lawyers". From Steve Hynes and Jon Robins' concise but forceful 2009 polemic, *The Justice Gap*, and 2012 follow-up *Austerity Justice*, to the more recent publication of *Access to Justice and Legal Aid* by Asher Flynn, the spotlight is finally being shone on the effect of austerity on access to justice.

The latest contribution to this growing sub-genre is *Access to Justice: Beyond the Policies and Politics of Austerity*. It comprises of a series of papers from both academics and practitioners, which collectively aim to address the central question of whether "the absolutist approach to the dictates of austerity and the promise of new technologies that have driven the Coalition Government's policy, can be squared with obligations to protect the fundamental right of access to justice, in the unwritten constitution of the United Kingdom" (p.ii).

Resolving the tension between the public spending and ensuring that justice remains available to all those who have need of it, is not a new issue: "I have especially in mind those persons who, for no reward, spend a full evening one or more times a week after a busy day, on a hard chair, in an ugly room, in an inaccessible neighbourhood, listening to stories of everyday tragedies and follies and bringing relief to harassed minds by their sympathy and kindness" (Matthew, "Legal Aid and Legal Advice in England and Wales: the Rushcliffe Committee Report" (1946) 7(1) *Howard Journal of Criminal Justice* 39). It is easy to imagine these words as just another one of the empty commendations so often given to those who do publically funded legal work, usually said by some junior minister or other, before the inevitable reminder of the need for swingeing cuts to the legal aid budget. But these words were spoken in 1945, by the then Director of Public Prosecutions, Theobald Mathew. He was addressing an audience at the Howard League for Penal Reform on 20 July 1945, in the wake of the Rushcliffe Commission's report, which was to establish the basis for the modern legal aid system (*Report of the Committee on Legal Aid and Legal Advice in England and Wales* (HMSO, 1945), Cmd.6641).