BRIEF REVIEWS


The subject of judicial review (of statutes) has become most fashionable. Countless are the books and symposia that have been devoted to this issue in the last decade. In fact, the number of countries that have recently introduced such judicial review has also dramatically increased. In 1958, for the first time in its tormented constitutional history, France adopted a form of judicial review system. This system is now flourishing, especially since the political transformations of that country in the last years. The new democratic Constitution of Spain (1978) provides for a Constitutional Court, established two years later. This is also the case in Portugal, since 1982. The new Canadian Constitution (1982) has generated constitutional litigation unheard of in that country. Even Belgium has established a Cour d’Arbitrage in 1980 (functioning since 1983).

Edward McWhinney has been observing this phenomenon for a long time. He has previously examined Judicial Review in the English-Speaking World (1st ed., 1956; 4th ed., 1969) and Constitutionalism in Germany and the Federal Constitutional Court (1962). In the book under review, McWhinney presents a vast fresco of the basic problems involved in judicial review. This is certainly not a mere description of “foreign law” but in the true sense, a comparative law study. McWhinney is familiar not only with various legal systems, but also with the main actors in the various systems, i.e., the judges and their courts. This is probably the most interesting aspect of the book, which takes a rather personal approach to the subject, sometimes even an impressionistic one. In this respect McWhinney’s book is quite different from the most classical approach of Cappelletti-Cohen (Comparative Constitutional Law, 1979) or even the recent French studies published under the direction of Louis Favre (see the two books published under his direction in 1982 and 1986).

On the whole the book is well balanced and constitutes an excellent introduction to the problems of constitutional review. In twelve chapters, McWhinney gives us a remarkable synthesized description of the various problems raised by constitutional review. Especially important (and quite
new) are the chapters devoted to the internal problems of the various courts (such as: the structure of the courts, the appointment procedure, the Chief Justice and the Associate Justices). Here McWhinney provides us with material found elsewhere only scattered through a great number of books and articles. This is also true of the chapter dealing with “The Courts and the Constituent and Governmental Processes”, which provides valuable information about India and Canada (though, astonishingly enough, not referring to the important limitation imposed upon the amending power in the Federal Republic of Germany, a matter already discussed by the Constitutional Court in the famous eavesdropping case).

Three chapters are devoted to more substantial problems: “The Courts and the Electoral Processes” (a very “hot” issue in France, about to switch back to the majoritarians system, which we might be able to compare in due time with the Baker v. Carr approach of the U.S. Supreme Court); “The Courts and Economic and Property Interests”; and finally, “The Courts and Social Policy: Ethnic-Cultural and other Minorities”. McWhinney presents, of course, the classical exposé of the various decisions in the abortion cases decided almost simultaneously in the 70’s in West Germany, Austria, France, Italy and the U.S. His presentation of the affirmative action cases could probably have been more detailed; after all, it is one of the major issues and it is obvious that the Rehnquist Court will have some new message concerning it.

All in all this is an excellent introduction to the general problematics of judicial and constitutional review. It certainly impels the interested reader to go further and to know more about that new field of comparative constitutional law. This attests to the fact that the book fulfils its basic function.

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