

Kári á Rógvi, *West-Nordic Constitutional Judicial Review: A Comparative Study of Scandinavian Judicial Review and Judicial Reasoning* (Copenhagen: Djøf Publishing, 2013)

The book is clearly organised, with a solid theoretical account of constitutional judicial review filling around the first half. Kári defines his study thus:

The term Constitutional Judicial Review implies an action with three components. First, the review is based on a superior legal norm – constitutional – the archetype being a written Constitution. Second, the review is performed by an independent forum – judicial – the archetype being a Supreme Court. Third, an action of evaluation – review – the archetype being (considering) invalidation of a statutory law (37).

The second half of the book shows this theory in action in the Courts of the selected legal systems and demonstrates the evolution of constitutional judicial review in the West Nordic countries from something that once seemed at best foreign, and at worst laughable, to a feature, albeit still peripheral, of West Nordic law (326). Kári's account is no simple recollection of cases but situates the legal developments in their unique historical contexts – something essential to any understanding of law, but especially comparative law. However, he also demonstrates wider scholarly foundations beyond the Nordic systems, in particular, an influence of common law legal theory (not least by virtue of his methodology of study – an examination of case law!).

One controversial premise lies at the heart of Kári's account: that the West-Nordics are “quasi-federal” owing to the influence on their Supreme Courts of the law and judgments of the European Union (EU) (notwithstanding that of the countries studied, only the Danish mainland is inside the EU) and the European Convention of Human Rights and its Court in Strasbourg (46). This view might not be readily accepted – or readily acceptable – to constitutional scholars in the Nordic States, or even be widely admitted by the EU institutions and European Court of Human Rights themselves, but in any case, Kári demonstrates the undeniable influence of the supra-national European Courts on constitutional interpretation in the West-Nordics. If any criticism can be levied at the book itself, they are of a formal nature: in places the editing is wanting and the index is rather thin. The case list is very clear but could have been strengthened by a bibliography of scholars cited, especially given the perfunctory referencing system.

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Comparative law is much neglected in West-Nordic legal education – as in most legal traditions – though the reasons for this in the West-Nordic schools are perhaps different: one traditionally learns “the laws” (of the realm) rather than “law” (as an academic discipline) (324). This leads to complacency. Law students are not encouraged to question the law: the law “just is”. An excess of critical thinking is frowned upon. But this comparative study – as comparative law more widely – forces the readers to rethink their legal techniques and revisit their pre-judgments. There is nothing natural or inherent about any particular legal process, let alone any specific legal rules. Law is a product of historical developments as Kári’s study shows, and, most importantly, a product of *choice*. “Law does not just happen.”^[1] This is not widely (enough) recognised in the Nordic legal tradition where law is often viewed as something passed down from generation to generation like some great immutable tablets of stone (73). Thus, by studying other systems, one learns not only those systems but one learns one’s own system better. Most importantly, one understands *law* better. Zweigert and Kötz have long argued:

It may indeed be that the mere interpretation of positive rules of law in the way traditionally practised by lawyers does not deserve to be called a science at all, whether intellectual or social. Perhaps legal studies only become truly scientific when they rise above the actual rules of any national system, as happens in legal philosophy, legal history, the sociology of law, and comparative law.^[2]

For that reason alone, Kári’s text should be standard reading for all constitutional scholars in the Nordic States, whether they call their field law or political science. This is nowhere more necessary than in those regimes considering radical constitutional reform, such as Greenland, the Faroe Islands and Iceland (though the latter appears to have quietened its calls for wholesale constitutional revision in recent months). But what Kári shows is that irrespective of grand national debates about formal constitutional amendments, constitutional reform is always going on; it is a continuous process. Indeed, Kári cautions against undue reliance on the legislature to maintain the contemporary relevance and aptness of law instead arguing that democracies need active Courts to bring an end to “uncommonly silly” laws (339-40).

Beyond this small corner in the North Atlantic, *West-Nordic Constitutional Judicial Review* is a

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welcome contribution to scholars of constitutional comparative law. Most English-language comparative law lumps the Nordic systems in with the Germanic systems – if, indeed, the literature refers to them at all. This may be a result of language barriers and a general want of competence in “skandinavísku” outside the region but this book unlocks that World to the English speaker. With that in mind, it is only a shame that it does not extend to Finland! The Nordic systems, as aptly demonstrated by Kári’s case selection and analysis, are neither simply civil law nor common law but of their own kind and it is time they received this attention.

Editor’s note:

On 14th February 2015, Kári á Rógvi passed away after a short illness. Kári will be sorely missed by the legal communities in the Nordic Countries, not least in the Faroe Islands where he was a leading light in constitutional reform and Professor of Law at the University of the Faroe Islands. This review was written before these sad events and has not been influenced by them but Kári had an opportunity to read it in draft and was aware of the significance of his original contribution to comparative constitutional law in the Nordic countries. Kári, 41, is survived by his beloved wife, Johanna, and three children, Bragi, Brest and Bryndís. The editorial staff and the reviewer extend their sincere condolences to his family.

1 S Vogenauer, ‘Sources of Law and Legal Method’ in M Reimann and R Zimmermann (eds), *The Oxford Handbook of Comparative Law* (OUP 2008) 877.

2 K Zweigert and H Kötz, *An Introduction to Comparative Law* (Tony Weir tr, 3rd edn, OUP 1998) 4.

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