



SANT'ANNA LEGAL STUDIES

STALS RESEARCH BOOK REVIEW

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**Lucio Pegoraro, Sistemi di giustizia costituzionale Giappichelli
(Torino 2019) Astrea (Buenos Aires 2020)**

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Book Review “Lucio Pegoraro, Sistemi di giustizia costituzionale Giappichelli (Torino 2019) Astrea (Buenos Aires 2020)”

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The book is part of the leading effort by L. Pegoraro and A. Rinella to offer a comprehensive body of knowledge in the field of Comparative Constitutional Law.¹

As per other works edited in the same series, this book provides a wide-ranging methodological framework and a critical rethinking of the major scholarship regarding Comparative Constitutional Law, in this case focusing on the judicial review of legislation. In doing so, the volume gives the reader three main key-stages of understanding and/or “levels of use”: 1) as a major collection of the main doctrinal elaborations; 2) as a comprehensive source of bibliographical references; 3) as “prompter” of alternative approaches.

The analysis starts from the hypothesis that constitutional justice (or judicial adjudication) could be considered as a legacy of Western legal thought, nourished by the events connected to the development of the liberal state, in spite of not having been adopted everywhere and having been diversely accepted and adapted in distinct European countries.² Judicial review shares the common fate of several other legal transplants or migrations, in which the acceptance within a legal system obliges to change and reshape the prior legal tool or model. Such events led scholars to set a twofold approach: on the one hand, the diachronic and the synchronic points of view of the different phenomena impose to highlight the peculiar analogies and differences of each domestic experience; on the other hand, the attention to legal details (some of them more likely to be considered as prominent features) reveals the impossibility to include a significant range of different judicial reviews in structured and static models. Thus, the author suggests to explore judicial review as it is, rather than as it was, should or would be according to the previous and old-fashioned models.

The second chapter focuses on the role that politics played in shaping constitutional adjudication,³ exposing the leading theses regarding the definitions of jurisdiction, legislation and administration.

¹ The reviewed book is the volume No. 5 of the series *Derecho Constitucional Comparado* (Buenos Aires: Astrea 2016). At the time being, the still developing series published L. Pegoraro, *Derecho constitucional comparado* (2016); L. Pegoraro & A. Rinella, *Sistemas constitucionales* (2018); L. Pegoraro & A. Rinella, *Constituciones y fuentes del derecho* (2019); L. Pegoraro, *Sistemas de justicia constitucional* (2020). These books are also available in Italian: L. Pegoraro, *Diritto costituzionale comparato. La scienza e il metodo* (Bologna: BUP 2014); L. Pegoraro & A. Rinella, *Sistemi costituzionali comparati* (Torino: Giappichelli 2017); L. Pegoraro & A. Rinella, *Costituzioni e fonti del diritto* (Torino: Giappichelli 2018); L. Pegoraro & A. Rinella, *Sistemi costituzionali* (Torino: Giappichelli 2020).

² Chapter 1, *Modelli e classificazioni; profili storici* (pp. 1-17).

³ Chapter 2, *Declino e resurrezione del controllo politico* (pp. 19-72).

After showing the main judicial review experiences and their outcomes (such as the supremacy of the Parliament in the United Kingdom, the non-judicial control on legislation, the socialist doctrines and the religious ones, the French metamorphosis), the chapter illustrates the different outlines of the political control on legislation, with respect to judicial control (external, internal and *a latere*). According to the author, these different experiences led to altered “genetic contaminations” in jurisdictions and functions, such as in the appointment of the corresponding judges, the access to courts and the right to stand, as well as the style and effects of the judgments.

Chapter three explains and questions to what extent concrete experiences of judicial review fit in traditional taxonomies.⁴ The starting points are set by the US archetype⁵ and the Kelsenian model put in place in Austria. The circulation of these two models, that correspondingly influenced the common law systems and the civil law ones, reveals the pragmatic need for their functional combinations and/or evolutions. In particular, the analysis emphasizes the different dissemination and reception of the Kelsenian model, highlighting the Italian (mostly) “Incidental Method”⁶ of judicial review, the “functional” German control, the Spanish rejection of the indirect jurisdiction, and some remarkable examples from Latin and North America, Africa, Asia, Central and Eastern Europe.

After describing the structure and the main accepted models and their variations, the book focuses on the structure, functions, and the procedure/trial explored through the lenses of jurisdiction and politics.⁷ This part contains a wide set of notions, from the access to the courts to the style of judgments and their effects, as well as the available tools to introduce a case before such courts and the different objects. The heterogeneous composition of this chapter, along with the theories exposed in the previous ones, serves the proposal of plural and dynamic classifications of judicial review according to seven major items: 1) political or judicial nature; 2) entitlement and the structure; 3) functions and the legally protected objects ; 4) enlargement of the constitutional yardstick with the inclusion of other legal sources (in addition to the constitution itself); 5) object of the judicial control; 6) subjects and access; 7) styles and effects of the judgments.⁸

⁴ Chapter 3, *Il controllo giurisdizionale: la dicotomia concentrato/diffuso e la pulsione verso l'accentramento* (pp. 73-119).

⁵ The author questions and contests the “purity” of this model, some common shared doctrinal features, and its spread in other constitutional systems.

⁶ Some methodological concepts are widely used in Italian studies in spite of having a little circulation in overseas academic scholarship, thus leading to a difficult translation of these notions without losing part of their theoretical framework.

⁷ Chapter 4, *La struttura, le funzioni e il processo: tra giurisdizione e politica* (pp. 121-192).

⁸ Chapter 5, *Per una classificazione plurale della giustizia costituzionale* (pp. 193-207).

The last chapter offers an outline and a practical application of the critical rethinking of the main theories of judicial review.⁹ As expressly stated by the author, the path defined by the book traces an assessment of the main models, the classifications based on models and systems, the definition of no-rigid but fuzzy classifications, the selection of arrangement parameters (previously neglected, such as the object of the judicial review). Thus, the author suggests a three-dimensional tool of classification at the intersection of the aforementioned elements.

Overall, the book (also available in Spanish) is an extraordinary toolbox for scholars, experts, and students, full of research hints and methodological assets, and is definitely an insightful instrument for anyone interested in Comparative Constitutional Law and the judicial review of legislation. The in-depth analysis of the traditional approaches to constitutional adjudication followed by their rethinking and re-elaboration is one of the main features of this book, along with the understanding of the contemporary evolution and challenges of judicial review that offer relevant elements for study and comparison in legal scholarship.

⁹ Chapter 6, *The most dangerous branch* (pp. 209-215).