Preface and acknowledgements

GENESIS OF THE BOOK

‘Rights-Based Constitutional Review’ is based on the contributions originally presented at the Annual Seminar of the Society of Legal Scholars (SLS) held in Dublin in July 2013, organized by Marie-Luce Paris. The SLS is the oldest and largest society in the field of legal scholarship in the United Kingdom and Ireland. Its aim is to advance legal research and legal education. The strength of the SLS, which covers all areas of law, allows for the organization and funding of ambitious projects, often of comparative nature. The theme of the Seminar naturally emerged from the observation of the significant developments that several legal systems have experienced in seeking to adapt review mechanisms to a better constitutional protection of rights. These developments have taken different forms – whether as acts of incorporation of the European Convention on Human Rights (ECHR) in, for example, the UK with the Human Rights Act 1998 or Ireland with the European Convention on Human Rights Act 2003, or as incorporation of bills of rights in a non-European context such as, for example, the 2004 Australian Capital Territory Human Rights Act and the 2006 Victoria Charter of Human Rights and Responsibilities in Australia; these developments have also taken the form of constitutional revisions enhancing systems of constitutional review in, for example, Belgium and France with increased review powers vested in the Belgium’s Constitutional Court and the French Constitutional Council. The idea of furthering the discussion on the evergreen topic of constitutional review of legislation driven by the protection of fundamental rights was well received. Invited contributors and participants embraced the idea of joining an increasing body of events and publications in this particular field of comparative legal studies. The organizer of the SLS Seminar (and second author of these lines) has a special interest in the study of several of these legal systems. The British legal system was the object of her doctoral thesis dealing with the implementation of the ECHR in the UK; the Irish legal system was the topic of her dissertation presented at the Academy of

European Public Law and is part of her ongoing research; research on the Australian legal system was undertaken during her fellowship at the ANU Centre for European Studies of the Australian National University; her current research projects are about French constitutional law, and constitutional review in particular.

The Seminar was organized on the basis of targeted invitations to leading scholars in constitutional law and/or international and European human rights law. The Seminar led to inspiring and provocative discussions. Contributors then returned to their comparative studies with insightful feedback from their peers and participants. They were invited to finalize their chapters on the basis of a common template divided into two main parts, namely the evolution of rights-based constitutional review and the endurance of rights-based constitutional review – although some contributors departed from this structure. The common issue examined is how the existing system of constitutional review has evolved, from an institutional, procedural and substantial point of view, in its efforts to increase the efficiency of the politico-legal system of rights protection. The issue indeed deserves continuing analysis – even from the dominant perspective of liberal-western constitutionalism – in light of the challenges posed to the development of constitutional justice in the domestic and international context. An interesting feature of the chapters is the way in which the ‘civil law/common law’ distinction does not capture the main differences in approach to the protection of fundamental rights. Whatever may be true of the heartlands of private law, fundamental rights (and especially their constitutional protection) respond to traditions and contemporary imperatives which are more complex and diverse than anything captured by the common law/civil law distinction.

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The book itself is the culmination of considerable efforts and our first appreciations go to the contributors who have brought so much work and sharpness in their analysis, and contributed with their reciprocated comments to improve the chapters of fellow contributors. We are particularly grateful to Professor Michel Rosenfeld for accepting the invitation to deliver the keynote speech on the US system of rights-based review and whose thought-provoking piece on US exceptionalism features as the first country study.

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John Bell and Marie-Luce Paris
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