
1. Introduction

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The late 20th and early 21st centuries may well be marked as the Judicial Era. Courts have burgeoned across the globe. With this turn to judicial power has come the rise of judicial review—a court’s review of a legislative or executive act for constitutional compliance. Judicial review now exists in some form in more than two-thirds of countries worldwide (Dixon and Ginsburg, Chapter 3, this volume), including in many new and fragile democracies. And it has further expanded to the international arena, with judicial review by international courts of both supranational and national acts.

Accompanying this rise of courts has been a growth in academic commentary and discussion about the justifications for and the scope of judicial review. Oftentimes the focus has been a normative analysis of the role of a court in a specific national system, but recent work has showcased a more theoretical and comparative trend (see, e.g., Daly 2017; Ginsburg 2003; Gloppen et al. 2004; Hirschl 2004, 2014; Issacharoff 2015; Kapiszewski et al. 2013; Sadurski 2008; Yap 2017). This volume builds on the existing literature by providing a distinct interdisciplinary and global approach to the core questions surrounding judicial review: What accounts for the adoption of judicial review in various contexts, or justifies its normative foundation? What determines its scope and effectiveness? How is it structured, institutionalized and operationalized?

A key premise of this volume is that, to analyze courts and explore their constitutional role, we must situate them in a broader social and political context. The study of judicial review may logically and intuitively start with a focus on courts as institutions. But it cannot end there. To understand judicial review—its origins, its contexts, its effectiveness, its operation—we must look beyond the courts. We must look to the distribution of political power, the presence of religious and political cleavages, the role of individual members of the political elite, the nature of political parties and the dynamics of civil society, as well as the concerns of judges, lawyers and even, perhaps, the academy itself. In so contextualizing judicial review, we nevertheless retain a central concern for courts themselves and the role they may play in promoting constitutionalism, stability, the rule of law and democracy.

In the final chapter of this volume, Ran Hirschl argues that comparative constitutional law fails to engage sufficiently with the insights of comparative law, comparative politics, law and religion, international relations theory, and theories of diffusion, emulation and networks. Part of the aim of this volume is to respond to this diagnosis from Hirschl: It explicitly seeks to develop an interdisciplinary account of the origins, contexts, effectiveness and operation of judicial review. In the chapters that follow, we bring together leading comparative constitutional lawyers, political theorists and political scientists from around the world to summarize existing thinking and to offer new insights. The result, we believe, is a comprehensive introduction to judicial review

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that, from the outset, gives readers an appropriately interdisciplinary and empirically oriented approach to understanding the role of courts in constitutional systems.

A. THE ORIGINS AND FUNCTIONS OF JUDICIAL REVIEW

What explains the rise of judicial review in both new and established democracies, and what justifies its use? Myriad theories and accounts purport to answer these questions. For example, there are theories about judicial review as a method of deflecting blame from political actors, about judicial review as a response to popular constitutional movements and demands, and about judicial review as a reaction to transnational dynamics and pressures. Theories of rights-based constitutionalism, and the role of courts in advancing and protecting rights, can also provide important rationales for judicial review. As judicial review in a particular country often arises out of a mix of contextualized political dynamics, various accounts may explain different aspects of the scope or focus of judicial review or its evolution over time. This section provides four approaches to these questions—an argument for judicial review from political theory, an explanation drawn from political dynamics, a justification based on institutional structure, and a traditional legal account.

The opening chapter of the book, “The real case for judicial review,” provides a theoretical and normative justification for judicial review grounded in political legitimacy. For Alon Harel and Adam Shinar, judicial review is not a product of formal legal-institutional-political design choices; rather, it serves a fundamental non-instrumentalist function in a democratic society. Judicial review provides individuals aggrieved by particular government decisions with a right to a hearing. This right encompasses the opportunity to voice a grievance and requires that the state engage in meaningful moral deliberation about its decision and provide reasons for its actions. Finally, it ensures a reconsideration of that decision in light of arguments or defenses marshaled against it. This right to a hearing is grounded in the fundamental duty of the state to deliberate with its citizens on matters of rights. Harel and Shinar explain that judicial review is the instantiation of the right to a hearing, and that although the institution performing this hearing need not be a court, it necessarily will operate like a court by engaging in the judicial function. In reviewing several legal systems around the world, the authors find evidence that all aspire to provide the right to a hearing so defined. They note, however, that the robustness of the right varies, particularly when assessing whether systems fulfill the duty to reconsider the initial decision giving rise to the grievance. They conclude that weak judicial review may not be sufficiently protective of the right to a hearing.

Turning to a more instrumentalist account of judicial review, the next chapter builds on and refines a leading theory that conceptualizes constitutions, and judicial review, as a form of insurance, through which political elites seek to protect themselves against a range of risks (Ginsburg 2003; Hirschl 2004; Finkel 2008). In “Constitutions as political insurance: variants and limits,” Rosalind Dixon and Tom Ginsburg argue that the dynamics of insurance go beyond the risks of losing office or influence in future democratic elections—they include the risks of reduced access to political power,

reduced policy influence and individual persecution or adverse treatment. By showcasing the complexity of the risks confronting political elites and against which they may wish to insure, Dixon and Ginsburg are able to assess the different possible forms of insurance that may be deployed in response, including a range of constitutional provisions and judicial structures. In addition to elaborating and refining the insurance theory, Dixon and Ginsburg recognize that the efficacy of judicial review as a form of political insurance depends on ongoing political tensions. They show that the threats of insurance cancellation or nullification are mitigated in those contexts in which insurance is bilateral rather than unilateral in nature, and where courts engage in forms of review that, through careful balance, are able to sustain political support for the enforcement of constitutional constraints.

In “Comparative constitutional law as a window on democratic institutions,” Samuel Issacharoff explores the creation of new constitutional courts in the context of democratic transitions, where courts are asked to meet the dual aspirations of preventing a return to an autocratic past and serving the newly formed democratic government. In these situations, he explains, a constitutional court offers a promise of controlled democratic renewal. Limitations on majority power through judicial review may serve to stabilize democratic governance more effectively than political solutions, such as formal power sharing. This judicial engagement begins with the transition to democracy itself: Constitutional courts can both facilitate the transition by relieving pressure on bargaining parties to negotiate all details to completion, and serve to ensure the bargain’s endurance by supervising the initial pact and protecting the political process. The judicial role expands beyond traditional judicial review, however, as these new constitutional courts often are given some form of administrative oversight over elections themselves. Courts tasked with these democracy-reinforcing roles deploy a range of strategies to accrue and maintain the authority necessary to achieve compliance, but the challenges are great and their ultimate success is uncertain. Nevertheless, creating a structural commitment to democratic stability through the judiciary should be understood and appreciated as a signal innovation of turn-of-the-century constitutional design.

As Dixon and Ginsburg note in their chapter, there are many theories of the origins of judicial review, and no one theory provides a comprehensive account that can satisfy the historical and contextual nuances of every jurisdiction. Heterogeneous theories often overlap, occasionally reinforce one another, and certainly add to the complexity of an individual constitutional creation story. To this end, Steven Calabresi, in “The origins and growth of judicial enforcement,” provides a traditional legal account of the relationships between law, courts and constitutional structure. He argues that the need for an independent arbiter of disagreements between national and state conflicts may require the adoption of independent judicial review. And, once established, courts that perform this umpiring function can often also be given additional, broader functions (see also Friedman and Delaney 2011). Calabresi also proposes a secondary dynamic that may underpin both the creation and expansion of judicial review: a desire to affirm a repudiation of certain historical wrongs. Judicial review in the United States, Germany and India, he suggests, can be understood as a combination of these two dynamics.

B. THE POLITICAL AND INSTITUTIONAL CONTEXTS FOR JUDICIAL REVIEW

As we noted above, there are many reasons why political leaders may empower judges to conduct judicial review, and the results of that empowerment will vary according to the context. Understanding the political and institutional contexts for judicial review serves to complicate and enrich our assessment of its viability. For instance, is judicial review being exercised in the context of democratic, authoritarian, deeply divided or religious societies? Is it being exercised against the backdrop of a battle for control of the basic identity of a society? What are the broader institutional constructs of the judiciary that might help (or hinder) the exercise of judicial review?

Hanna Lerner focuses on the specific context of deeply divided societies, or societies divided along religious or ethno-nationalist lines in “Interpreting constitutions in divided societies.” A common approach to constitutional design in such societies, Lerner notes, is one of permissiveness: a mixture of deferring controversial decisions, relying on ambiguity or vagueness in drafting, and even incorporating conflicting provisions. The strategy is to delegate many important constitutional choices to legislative constitutional actors or the domain of ordinary politics. Incrementalism of this kind, however, also shapes the context for judicial review. It means courts must exercise powers of review in the face of deep social conflict, so that whatever position courts take may be seen as unduly aligned with one or another set of political actors, or as an inherently political rather than legal form of intervention. Judicial review can thus serve to entrench or even further polarize existing conflicts, threatening both the legitimacy of the court and the stability of the broader constitutional settlement.

As Lerner suggests, divided societies may both seek out and be harmed by judicial review. Salma Waheedi and Kristen Stilt develop a related argument that, in debates over the role of Islam in a given polity, the structure of judicial review is both a cause and an effect of constitutional tension. In “Judicial review in the context of constitutional Islam,” the authors examine judicial review in countries that have some constitutional commitment to Islam—countries whose constitutions have (in increasing order of commitment to Islam): an “Islamic establishment clause,” which provides that Islam is the religion of the state; “a source of law clause,” which declares that Islamic Sharia or its principles are to guide legislation; a “repugnancy clause,” which invalidates any law that conflicts with Sharia law; or a clause that declares a country an “Islamic state.” Ultimately, they find that these commitments shape, but do not entirely predict or determine, the scope and contours of judicial review. Judicial review lies along a spectrum, from secular judicial review (where a constitutional Islam clause—usually an establishment clause—is simply one clause among many) to Islamic constitutional review (where the relevant clause—the Islamic state clause—controls all constitutional meaning and validity). Many countries sit along the continuum in a mixed or hybrid model that combines elements of secular and Islamic constitutional influence or control. Although some correlation may exist between the particular clauses of constitutional Islam and the judicial review structure, the authors are wary of drawing any sharp conclusions, given the fluidity and fragility of judicial review in contexts of shifting political power and strong Islamist movements.

Beyond foundational challenges, internal disputes and conflicts will emerge within any individual polity that may increase demands for judicial action and the expansion of the judicial role. In “New judicial roles in governance,” Robert Kagan, Diana Kapiszewski and Gordon Silverstein explore the contexts in which these new roles emerge. Conflict arenas include disputes between political incumbents and challengers, intergovernmental disputes about governing power, challenges to government stasis and maladministration, cultural and religious cleavages, and tensions between rights and equity. Judicial willingness (or ability) to play new roles within these arenas is conditioned by variations and change in national institutional and political structures, in contemporary political dynamics and in court-related factors.

As Kagan, Kapiszewski and Silverstein make clear, it is not only political and societal factors that condition the judicial role and concomitant success, but national institutional structures and court-related factors themselves also provide important context. Wen-Chen Chang and Yi-Li Lee develop this insight through a close analysis of the institutional factors that affect multi-court relationships in “Competition or collaboration: constitutional review by multiple final courts.” Although many systems provide for specialized constitutional courts distinct from ordinary courts that exercise general jurisdiction, the effectiveness of those constitutional courts will depend on a range of inputs. Chang and Lee argue that institutional design—including the apportionment of jurisdiction, the mechanisms of review (abstract or concrete), the appointments processes and the broader political context of a national system—will condition a constitutional court’s relationship, whether adversarial or collaborative, with parallel high courts of ordinary jurisdiction.

C. THE STABILITY AND EFFECTIVENESS OF JUDICIAL REVIEW

It is one thing to create independent courts with powers of judicial review. It is quite another to create constitutional courts capable of exercising effective powers of review and imposing binding constraints on political actors. This section presents a range of studies that explore the socio-political conditions under which judicial review is likely to be stable and effective and what the limits to judicial review might be.

In “Judicial review as a self-stabilizing constitutional mechanism,” Tonja Jacobi, Sonia Mittal and Barry Weingast identify three broad conditions they suggest are necessary for the “success” or stability of a constitutional system, describing a constitution that fulfils these conditions as “self-stabilizing.” A self-stabilizing constitution lowers the stakes of politics by limiting the scope of government action (the limit condition); it ensures elected officials’ constitutional compliance by facilitating coordination among citizens and generating shared understandings about constitutional meaning (the consensus condition); and it is able to adapt to changing conditions that threaten to reduce cooperation and increase instability (adaptation condition). The authors argue that, in the United States, judicial review has become an increasingly important means of advancing these conditions. By enforcing the limit condition, courts can generate or foster shared understandings about constitutional meaning, and thus advance the consensus condition. And, even as they may strain the limit condition or

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retard consensus building, the mechanics of judicial decision-making—from the practice of handing down multiple opinions to issue framing and applying interpretive methodologies—can advance the adaptation condition.

Theunis Roux addresses stability from a different angle, by identifying the conditions under which a constitutional culture may transform from one in which judicial review is seen as the instantiation of law's autonomy from politics to one in which judicial review becomes an adaptable instrument to achieve policy goals. In "Losing faith in law's autonomy: a comparative analysis," Roux traces the evolution of the legalist-instrumentalist shift in the United States and India and notes how such transformations stalled in Australia, South Africa and Germany. From these systems, he derives two key factors—each necessary but not sufficient—that influence the likelihood of change: first, the existence of an exogenous shock which threatens the public's confidence and destabilizes the legitimating ideology of legalism; and second, either a broad-based intellectual movement or charismatic judges who will act to exploit a crisis and drive the transformation forward.

Although not developed thematically by Roux, his chapter rightly assumes the centrality to judicial review of the relationships between civil society and the judiciary. David Landau, in "Courts and support structures: beyond the classic narrative," addresses this issue explicitly by building upon Charles Epp's key insight that the success and effectiveness of judicial review are tied to a court's "support structures" (Epp 1998). Enriching Epp's approach, Landau first argues that support structures should be viewed broadly and appreciated for their heterogeneity. In addition to domestic civil society or nongovernmental organizations, support structures may include international civil society, domestic political parties, the ordinary, non-constitutional judiciary and generalized public support. The question becomes not whether a court has external support, but with which groups a court or its judges are most closely linked. Landau demonstrates the utility in disaggregating support structures by showing that courts themselves have the potential to affect the "external" environment or political context for judicial review. By interacting with various audiences or support structures in different ways, courts can affect the contexts in which their support is created and maintained. The agency that a court may have goes beyond its internal processes and staffing decisions to the framing of its opinions and the scope of its remedies. By approaching this descriptive analysis in a comparative perspective, Landau finds important normative benefits. Exploring how courts interact with their broader environments should allow scholars to build more nuanced theories about judicial behavior, judicial review and judicial empowerment and, eventually, to enhance the quality and range of normative advice for emerging judiciaries or judiciaries under threat.

The concept of support structures resonates with the relationships that Karen Alter explores in "National perspectives on international constitutional review: diverging optics." Alter investigates the rapidly developing new frontier of judicial review by international courts (ICs), and she argues that the effectiveness of IC constitutional review—particularly the review of national actions against international obligations—is intimately related to actions at the national level. National judges play a critical role in constructing the cultural context in which international law and the decisions of ICs are received. Identifying two "optics" through which national judges approach international

law, Alter provides a useful shorthand for conceptualizing this dynamic context: first, the “luxury good” optic, which sees ICs as external, superfluous and expendable; and second, the “fail-safe” optic, which sees ICs and IC constitutional review as an additional level of security to counteract national lacunae in protections. The choice in approach to international law will necessarily affect the legal authority of ICs and international law within the domestic realm. Through detailed examples of these optics in practice, as well as the exploration of an “intermediate position” taken by the German Constitutional Court, Alter maps out a variety of national approaches to IC review, highlighting the aspirations and weaknesses inherent in extending judicial review into the international sphere.

Focusing on the effectiveness of judicial review, Lee Epstein and Jack Knight tackle the problem head on with a menu of pragmatic options available to judges to ensure the short-term validity of decisions and long-term institutional legitimacy. In “Efficacious judging on apex courts,” the authors acknowledge that theoretical accounts of judicial behavior suggest that such tools are unnecessary, but they root their approach in real-world evidence to the contrary. Judges frequently challenge their governing regimes and face political attacks and threats to their power and independence—and they often lack perfect information about the relevant players in their system. Drawing on a set of methods for protecting the efficacy of their decisions and the legitimacy of their courts, judges seek to minimize conflict. From interpreting statutes dynamically to writing vague opinions to creating information-forcing rules, judges seek to anticipate and take account of the reactions of relevant external actors in the current political sphere. Some substantive decisions also seem to strategically anticipate the reactions of incoming external actors, conditioning some results on expected “political cover.” In other approaches, courts develop procedures and limiting doctrines to avoid collisions with a regime or to control the timing of a decision or its remedy. Finally, some judges might actively cultivate public opinion, through incorporating it into jurisprudence, going public about the reasons behind key decisions, or advancing the protection or entrenchment of key rights that have broad popular appeal. Epstein and Knight are careful to note that these various mechanisms raise both positive and normative critiques, and they identify many of the questions presented and call for further research.

Finally, judicial review may be approaching certain limits. In “Limiting judicial discretion,” Mila Versteeg and Emily Zackin identify an important counter-trend to judicialization—the increasing use of long, specified and flexible constitutions to constrain and limit judicial discretion. This approach to constitutionalism highlights a larger and omnipresent constitutional puzzle: How can a principal empower and yet control its agent? In reviewing constitutions both globally and at the state level in the United States, Versteeg and Zackin demonstrate that detailed and specific constitutional provisions have been used to exercise popular control over legislative processes and, in other contexts, to protect legislation from judicial attack by limiting the breadth of judicial review. They argue that this approach to constitutionalism provides an alternative theory of constitutional design to the traditional view of constitutions as deeply entrenched, broad-based statements of principle and raises important questions about the perception of courts and their roles in democratic society.

D. OPERATIONALIZING JUDICIAL REVIEW: TYPOLOGIES, DOCTRINES AND METHODOLOGICAL CHALLENGES

By focusing on the social and political contexts for judicial review, we gain a new lens through which to view some of the most well-established concepts or categories in comparative constitutional law. Of course, categories of this kind continue to have conceptual and organizational value: They allow us to see connections, as well as differences, between various constitutional systems which might otherwise be hidden.¹ They allow for the possibility of shared understandings and categorization of the kind that is necessary for large-n comparison. And they provide a useful starting point for a methodologically rigorous form of small-n comparison, which relies on relatively objective and transparent principles of case selection (Hirschl 2014). But long-standing constitutional categories also can frustrate our ability to innovate, expand and generate new insights. Part of the value of an expanded focus is that it may allow us to rethink these existing categories in ways that open up new lines of comparative inquiry.

One such categorization is that between the “US” and the “European” models of judicial review, a dichotomy developed along two axes—the presence of “concrete versus abstract review” and “decentralized versus centralized review.” As Virgílio Afonso da Silva explains in “Beyond Europe and the United States: the wide world of judicial review,” the US model entails judicial review in the context of concrete cases performed by all courts in the system (decentralized). The European model, in contrast, is judicial review over abstract questions about constitutional validity, conducted by a specific court with a monopoly over the declaration of unconstitutionality (centralized). Da Silva argues that a focus on social and political context in actually existing systems leads to the conclusion that this typology explains very little and ultimately requires the construction of a third (and large) category of “hybrid” approaches. Almost all constitutional systems engage in review that is effectively abstract *and* concrete, concentrated *and* diffuse. He presents a range of additional variables that could be taken into consideration to construct a new, and more useful, typology, including the timing of review; mechanisms of appointment; composition of the bench; length of judicial term; ways of accessing the court; deliberation and decision-making process; and effects of court decisions (such as the remedies employed). Da Silva does not suggest building a comprehensive matrix based on his variables, recognizing that typologies must reduce complexity in addition to identifying variations relevant in the real world. Rather, he concludes that “research goals should define how a given typology should be constructed, not the other way around.”

Shifting from typologies of judicial review to doctrinal tools for instantiating judicial review, Wojciech Sadurski’s chapter, “Judicial review and Public Reason,” resonates with da Silva’s frustration with binaries. Sadurski reconciles the supposedly distinct interpretive approaches used by the United States Supreme Court (“tiers of scrutiny” analysis) and by various other national courts (“proportionality analysis”) by recognizing that all of these courts share an attention to the motivations behind enacted laws. This motive analysis, effected in different ways in different systems, highlights the

¹ See, e.g., in this context de Visser (2013). We are indebted to Aziz Huq for his very useful comments on this question.

overarching centrality of a “Public Reason”-infused theory of judicial review. Public Reason requires that lawmaking be rooted in a set of public reasons exclusive of those to which members of society have good moral reason to object, and motive analysis constrains what reasons can be provided to legitimate laws. In evaluating these doctrinal approaches to motive analysis, Sadurski examines evidentiary challenges and the contrasts between motive- and effects-oriented scrutiny, harmonizing tensions where possible and otherwise suggesting normative resolutions. He questions the ability of courts to conduct review in terms of Public Reason and calls for further research along a number of positive and normative dimensions at the national and supranational levels.

Vicki Jackson delves deeper into both the doctrine and principle of proportionality in “Pockets of proportionality: choice and necessity, doctrine and principle.” She outlines the generalized appeal of the concept of proportionality as something akin to the promise of constitutional democracy itself: that government, monitored by the judiciary, be proportionate in its impositions on the people. In a detailed analysis of case law from multiple jurisdictions, Jackson develops the possibility that judges face a choice whether to use the general principle or a structured doctrinal approach. She argues that the instantiation of the proportionality principle into structured doctrinal tests brings with it strengths and weaknesses that may, in certain circumstances, complicate adherence to the underlying principle itself. In particular, she notes how the application of the sequential questions of proportionality analysis asked under the Canadian *Oakes* test may have perverse results, and she raises questions about how and to what extent judges should take into consideration the costs of their adherence to a rigid test.

Transforming broad constitutional principle into concrete doctrine requires constitutional interpretation, and there is a familiar set of debates over modalities of constitutional argument that occurs in national contexts. Approaching this question from a comparative angle, Jamal Greene and Yvonne Tew look at the use of history in constitutional interpretation in “Comparative approaches to constitutional history.” Greene and Tew explain that courts use history in a variety of ways for a multiplicity of purposes, rendering history’s salience contingent on a particular nation’s political and historical circumstances. Understanding this variation allows them to introduce a helpful taxonomy of historical approaches. Dividing the uses of history into three broad categories, they demonstrate that history may be used to shed light on a text’s purpose, to elucidate the intentions of the drafters or the understanding of the ratifiers, or to explain what ongoing constitutional norms or institutions may exist as a “backdrop” behind a new text. In drawing on history, judicial invocations may be interpretive or merely rhetorical; courts may treat history as dispositive or as one of many sources of interpretive guidance; and history may factor in differently for the interpretation of constitutional rules versus standards, or for provisions that differ in the determinism of their semantic content. In light of this schema, Greene and Tew assess eight jurisdictions and conclude that while history is consistently deployed across countries in some way, its use in specific countries varies from rhetorical to purposive to dispositive.

In a similar vein, Ran Hirschl takes up the question of how courts engage with foreign and international legal materials in “Judicial review and the politics of

comparative citations: theory, evidence and methodological challenges.” He highlights the steady and increasing interest in constitutional migration, breaking down this “pollination” into distinct spheres that include constitutional structure, modes of interpretation and comparative jurisprudence. Focusing on the latter sphere, Hirschl proposes a range of factors that may explain comparative reference and its rise, from need-based rationales to political, structural and institutional reasons, including the desire to construct broader judicial and constitutional identities reflecting the judges’ position in their own society and their view of that society’s place in the world. In elaborating these themes and theories, Hirschl presents a rich set of examples across history. He concludes by raising a number of methodological challenges to the difficult study of foreign references by constitutional courts, exhorting scholars to consider interdisciplinarity, collaborative work and a greater attention to research design.

One of the important questions in any work on comparative constitutional law, including comparative judicial review, relates to the geographic or jurisdictional scope of the project. As editors, our aim has been to encourage broad coverage of different jurisdictions; a focus on the socio-political context and functioning of judicial review clearly necessitates attention to a wide range of constitutional cases. Together, the various contributions to the volume satisfy this criterion: They are highly diverse in terms of the regions and the types of courts and constitutional systems they cover.

The chapters also adopt a variety of methodological approaches in engaging with the selected topics and case studies. Chapters range from a focus on a single case study as a means of illustrating a broader political–institutional dynamic (Jacobi, Mittal and Weingast) to comparisons of two countries (Chang and Lee), to the use of a relatively small number of case studies (Calabresi; Lerner; Jackson). Still others could be described as “large small-n.” These chapters use a larger number of cases through a qualitative approach in order to explore broader patterns and dynamics (Alter; Hirschl; Greene and Tew; Waheedi and Stilt). Other contributors arguably deploy what Hirschl calls a form of “prototypical” approach—an identification and interrogation of cases deemed “prototypical” by the literature (da Silva; Landau). Finally, the chapter by Versteeg and Zackin draws on true large-n empirical techniques, supplemented by historical, case-study-based methodology.

This robust jurisdictional and methodological pluralism is critical to engaging with the rich set of questions posed in the study of comparative judicial review. We hope it will inspire future scholars to reflect on their own approaches and to engage across disciplines and through new methods. As the authors in this book have highlighted, many questions are yet to be explored. There is more work to be done.

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