Martje de Visser, *Constitutional Review in Europe. A Comparative Analysis,* Hart Publishing 2014, pp. 484.
Werner Heun, *Verfassung und Verfassungsgerichtsbarkeit im Vergleich,* Mohr Siebeck 2014, pp. 326.

With the end of communism in Europe, the spread of centralised constitutional courts seemed unstoppable. This institution very much fitted the needs of transitional democracies. In contrast to communist states, which denied the idea of the separation of powers, the new democratic forces very much favoured independent institutions. However, ordinary judiciaries were morally compromised as judges had tended to be hardliner supporters of communism. As a consequence, the values of the newly established constitutional democracies could not plausibly be protected by them. The model of the German Federal Constitutional Court (FCC), where the ordinary judiciary had also been morally compromised under the Nazi regime, seemed to be an obvious institutional choice. The traditional influence of German legal scholarship, strengthened by very conscious scholarship granting policy attracting foreign guest researchers to Germany for shorter periods, also contributed to the fact that German constitutional law and the FCC quickly became the most important point of orientation of these newly established constitutional courts in former communist countries. Other countries, however, with a different historical path, applied and apply different methods for upholding the constitution.

Martje de Visser's impressive contribution refocuses the debate exactly on these 'forgotten' countries where mainly non-judicial actors or ordinary judges are supposed to enforce the constitution, but also considers legal systems with classic Kelsenian constitutional courts. Eleven countries, all of them EU Member States, have been thoroughly analysed over 450 pages: Belgium, the Czech Republic, Finland, France, Germany, Italy, Hungary, the Netherlands, Spain, Poland, and the United Kingdom. In addition, the EU and the ECHR are also treated as the international or supranational context of these constitutional systems. In order to facilitate comparability, the volume is not structured according to countries, but according to issues. The seven chapters of the book focus on: 1. the role of non-judicial actors in upholding the constitution; 2. the rise of constitutional adjudication; 3. purposes of constitutional adjudication and access to constitutional courts; 4. the constitutional bench; 5. identifying the sources of standards for constitutional review; 6. testing and remedying unconstitutionality; 7. the interplay between constitutional courts and other actors. It would probably have been useful to include at least the US as a default *tertium comparationis*. It is mentioned on occasion and it has to be conceded that the book already reveals the upper limit of what is doable within one single volume and by a sole author. It would also have been instructive to consider analysis of a European country where the constitutional court does not work properly, like Russia, and see the differences and reasons for the failure.

The genre of the volume lies somewhere between a handbook (with its consciously descriptive style) and a thesis (it was actually a PhD thesis within the framework of the 2008-2013 ERC project on European and National Constitutional Law EuNaCon at Maastricht University). It's a perplexing combination. As a thesis, it argues a point convincingly, namely that it is the *shared responsibility* of non-judicial and judicial actors to uphold the constitution, both at national and at European level. But then the chapters apply a handbook-type encyclopaedic treatment of all upcoming questions, with full-page comparative tables, which detract from the thesis of the book, without an evaluation of the practice in different countries. Finally, a substantive conclusion is also missing at the end of the volume. We are overwhelmed (in the best sense) by the immense work of obviously many years that has been put into writing this 'handbook-thesis'. Normally such projects are done by a team of several scholars. The advantage of a single author is, however, that the quality is similar (in this case:

consistently high) and the style is similarly eloquent throughout the whole volume. The danger is, at the same time, that the required linguistic and cultural skills and the amount of material can be just too much for any single person to handle: as far as I can judge, the analysis of the German, the UK, the French, the Austrian and the Spanish situation is flawless. Only two minor mistakes concerning Hungary could be found: contrary to fn.137 on p.35, the Fundamental Law does make a reference to constitutional supremacy in Art R(1), just not with the word 'supremacy'; and contrary to fn.8 on p.2, the Hungarian Constitutional Court is still allowed to refer to its past judgments from the time before 2011, and actually does so in practice quite often.

The method ranges from a simple comparison of constitutional provisions to an analysis of case law and political context, which includes a discussion of the sociology of constitutional lawyers, e.g. the informal role of the Venice Commission and of the Conference of European Constitutional Courts. The latter discussion in the last chapter is probably the most interesting and most novel approach, which is normally only applied by political scientists, and largely ignored by constitutional lawyers.

What might be considered by some as an advantage, the equal attention that is given to all of the considered countries, can also be a disadvantage. The length of the treatment is not weighted according to the relative importance of any constitution-upholding institution. Some readers might feel that the most important constitutional court in Europe, the German FCC is disproportionately downplayed in de Visser's magisterial volume.

Which brings me to the second book of this review. Werner Heun's recent publication provides a specific and thorough analysis of the FCC from a comparative perspective. This book is a collection of essays, some of which have formerly been published only in English, with an addition of two new chapters. The chapters are organised into three parts: (1) 'historical foundations' charting 19th century German constitutional history, *Marbury vs. Madison*, and the birth of the FCC; (2) 'institutions and procedures', which examines the selection of judges at the FCC, its rules of standing, and its internal procedures depending on who initiates the procedures; (3) 'constitutional review and its effects', which looks at methods of interpretation (esp. originalism) at the FCC, the relationship between the ordinary judiciary and the FCC, and the FCC's relationship with the political branches of the government.

The book offers a comparative and historical discussion, traditional doctrinal and jurisprudential explanations, and statistical analysis. The chapters cover all of the major topics concerning the FCC, but following from the nature of the volume as a collection of former articles, the structure is somewhat less strict than in de Visser's book. The treatment is equally thorough and the coverage of the literature also seems complete. In any case, besides *Das entgrenzte Gericht* (2011) by Matthias Jestaedt, Oliver Lepsius, Christoph Möllers and Christoph Schönberger, this book seems to be the other seminal work showing the current status of the debates in German constitutional law on the FCC.

Both volumes reflect on the most recent literature on constitutional adjudication in a thoughtful manner. Because of their different foci, they provide perfect additions for anyone looking for thorough analyses on the past, present and possible future of constitutional adjudication in Europe.