The book under review represents collected studies, essays, articles, papers, and lectures of the renowned Austrian constitutionalist, political scientist, and philosopher Herbert Schambeck. Prof. Herbert Schambeck was born in 1934 in Baden bei Wien. In 1959, he went to the University of Vienna as an assistant of Prof. Dr. Adolf Merkl. After that, Prof. Schambeck moved to the University of Innsbruck as a professor of political science, constitutional law, and administrative law. In 1967, he moved to the University of Linz as a professor of public law, political science, and legal philosophy. From 1969 to 1977, Prof. Schambeck was a member of the Federal Council (Bundesrat). From 1975 to 1997, he was the President of the Federal Council (Bundesrat). He is a member of the Academy of Padua, Madrid, Düsseldorf, Mailand, and Rome.

The editors of the book have been successful in constructing the systematic division of the book. The collected studies, essays, articles, etc., are written in a clear language. Undoubtedly, the book fills many gaps that existed on the book market as far as literature from the fields of constitutional law, comparative law, philosophy of law, and European law is concerned.

Part I introduces concepts of the Constitution, politics, democracy, constitutional law, religion and history, rule of law, social state, and the development of the Austrian constitutional law. Part II is of particular interest to scientists in the field of comparative constitutional law. The second part of the book reviews deep scientific analyses of topical questions of constitutionalism and constitutional law, particularly as far as Austrian and German constitutions are concerned. Excellent scientific comparative analysis represents chapter nine “Zur Bedeutung des parlamentarischen Zweikammersystems - eine vergleichende Analyse des Bismarckismus” (pp. 147–164) and chapter ten “Der Bundespräsident und die Bundesregierung im Verfassungsvergleich Deutschland und Österreich” (pp. 146–177).

Part III deals with many important questions of the European unification and European law, i.e., basic principles of the European constitutionalism, constitutional law of EU member states, the idea and problems of the European Constitution, the significance and basic aspects of the Treaty of Lisbon, European Union and direct democracy, European Union and the development of basic rights, the origin, contents, system, and typology of the rights, freedoms, and principles set out in the Charter of Fundamental Rights of the European Union, the road to social Europe, and many other important questions of the unifying Europe.

In the center of our interest (conformably to the scientific qualification of the reviewer) will be chapter 11 and chapter 14. The title of chapter 11 is: “Verfassungsgerichtsbarkeit und Gesetzgebung in Österreich”. I highly appreciate the definitions of constitutional judicial review and constitutional law given by Prof. Herbert Schambeck in chapter 11: “Verfassungsgerichtsbarkeit ist das Messen der durch Gesetz rechtsrelevant gewordenen Politik an dem Maßstab des Verfassungsrechtes. Das Verfassungsrecht ist die normative Grundordnung des Staates, sie ist, wie Adolf Merkl..."
bemerkte, “kodifizierte Politik”. Das Verfassungsrecht ist ein Ausdruck der Selbstzähmung in der Politik eines demokratischen Staates; die Verfassungsgerichtsbarkeit steht in ihrem Dienste. Sie setzt sich für die Einheit der Staatsordnung ein. Da der Staat im Rechtssinn von der Kontinuität der Verfassungsrechtsordnung abhängt, erfüllt in dieser Sicht die Verfassungsgerichtsbarkeit eine für den Bestand des Staates und seiner Demokratie entscheidende Aufgabe” (pp. 179–180).

IV. 3. Definitions and characteristics of the role of the Constitution, Constitutional law and constitutional judicial review represents excellent stimulus for reviewer s comparative considerations. Any constitutional judiciary, whatever its concrete form, depends on the type and character of the country’s legal and constitutional culture. It forms an integral part of a democratic constitutional system and is one of the most important guarantees of the basic constitutional rights and freedoms.

I consider Kelsen’s concept of the constitutional court as an organ lifting the Constitution to the level of *ius strictissimum atque eminenter cogens* as still valid. It is symptomatic that in the CSFR the constitutional act on the constitutional court was adopted in close connection with the Charter of Fundamental Rights and Freedoms in the year 1991 as the first fully democratic constitutional acts after the velvet revolution.

IV. 4. In democratic legal cultures we can discern, generally speaking, three types of constitutional judiciary. They are: First, a general, diffuse constitutional judiciary. In its developed form we find the oldest model in the United States with its roots going back to the Privy Council of feudal England. This type of constitutional judiciary, identical in the US with the concept of “judicial review”, is implemented by all general courts and, in particular, by the US Supreme Court at which cases arrive by the most varied procedural routes, if they concern problems of federal constitutionality. Typical for this type is a single jurisdiction, that is, the subsequent incidental control of constitutionality.

The second type, which was developed only after the First World War, is a concentrated and specialized constitutional judiciary, established in the form of a special constitutional court endowed, as a rule, with multiple competences: Concrete, abstract, subsequent, preventive, incidental competence to deal with constitutional complaints, conflicts of competence, etc. The most typical representatives of this type include the Federal Republic of Germany, Austria and Italy.

The third type is the so-called hybrid type of constitutional judiciary in which the exercise of constitutional adjudication is entrusted to a special department or tribunal of the general supreme court. Switzerland is an example for this type, but it is known with certain modifications also in other countries. It is also widespread in countries which have absorbed continental European legal culture either entirely or partly.

For Czechoslovakia as a typical continental European country, it was natural to adopt the system of a concentrated and specialized constitutional judiciary. The 1920 Constitution of the pre-Munich Czechoslovak Republik introduced a constitutional judiciary, which was very close to the model of the contemporary Austrian Constitutional Court. The constitutional judiciary introduced by the Constitutional Act on Czechoslovak Federation of 1968, but never implemented in practice, primarily followed the model of the Federal Republic of Germany.

The Constitution of the Czech Republic (1992) introduced Constitutional Court which is very close both to the model of the contemporary Austrian Constitutional Court and German Federal Constitutional Court.

IV. 5. Statistical data recording the performance of constitutional judiciaries qualitatively and quantitatively have convincingly proved that the activities of constitutional judiciaries, whether in the American form, i.e. the general constitutional judiciary, or in the continental European form, i.e. the concentrated and specialized constitutional judiciary, concern to an ever increasing extent the protection of fundamental human rights and freedoms of the individual. In the concentrated and specialized constitutional judiciaries it is primarily the institution of constitutional complaint initia-
ated by individuals or legal persons that has acquired decisive significance in terms of the number
of cases involved. The quality of the institutional solution for constitutional complaints together
with the standard of legal culture and legal tradition of the country, are the decisive factors for the
high quality of this most important procedural guarantee of human rights.

If we compare the procedure for constitutional complaint in the Czech Republic with those in
Switzerland, Austria and Germany, we shall find some significant differences. Under the solution
adopted in the Czech Republic, a constitutional complaint can only be directed against individual
legal decisions, measures or interventions of administrative authorities which are claimed to have
violated the complainant’s rights guaranteed by the Constitution.

In Germany, Switzerland, and Austria, on the other hand, the constitutional complaint is possible
both against individual legal acts and against generally binding normative legal acts. In respect of
the constitutional complaint against a generally obligatory normative legal act there is a marked dif-
ference between the Austrian and German solutions on one side and the Swiss solution on the other.
While German law makes it possible to contest a generally obligatory normative legal act by a con-
stitutional complaint, if the complainant proves that he is personally and directly affected in his
rights by this normative act,2 Swiss law also permits a constitutional complaint in case a vital legal
interest of the appellant is affected, which means that the individual may file a constitutional com-
plaint not only because his rights have been violated by the application of the normative act against
himself, but also because the normative act could violate his rights in the future.

In Austria, the possibility of an individual constitutional complaint against statutes was introdu-
ced by a constitutional amendment in 1975.3 In addition, even where a constitutional complaint is
directed against administrative decisions, the case law of the Austrian Constitutional Court permits
the filing of such a complaint not only by an individual who is directly addressed by the decision but
also by any person whose legal sphere was affected by the act or decision.4

The subsidiarity of the constitutional complaint is generally identical in all aforementioned coun-
tries including the Czech Republic.

IV. 6. Chapter 14 of the book under review concentrates on the philosophical and constitutional ques-
tions on human rights and basic rights. The title of the chapter 14 is “Die Grundrechte im demokratise-
chen Verfassungsstaat”. I highly appreciate the scientific concept of basic rights given by professor H.
Schambeck: “Die Grundrechte sind Ausdruck des Strebens des Menschen nach Rechtsicherheit, Freiheit
und Gerichtigkeit ... Grundrechte sind Schutzrechte, welche dem Einzelnen, sei es als physische oder
juristische Person, gegenüber dem Staat oder in dem Staat zustehen ... Die Idee der Würde des Menschen
begleitet die abendländische Rechtspolitik seit ihren Anfängen” (pp. 277, 279).

V. Part four of the book under review in composed of two biographical studies devoted to excellent
scientists Hans Kelsen and Adolf Julius Merkl. The studies are quite informative and fact - oriented.
Both of the studies are very valuable from the scientific point a view.

VI. The book under review is an excellent in - depth study of the democracy, Constitutionalism, Philo-
sophy of law, Constitutional law, Political science, constitutional judicial review, basic human right, structure
and organization of the European Union and European law. I find the book to be a great contribution, unique
in Europe and worldwide, as nothing this extensive has been contributed in the fields mentioned above.
Both in respect of analysis and evaluation, the book breaks a new ground and is a welcome addition to our
existing knowledge namely on Constitutional law comparative constitutional Law and Political science.

Many chapters of the book under review also provide inspiration for the future development of
european constitutions and European Union.

Josef Blahož*

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2 Cf. BVerfGE 3,2; 3,36; 4,11; 6,277; 10,380; 12,316; 13,246; 16,147.
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