

## BUCHBESPRECHUNGEN / BOOK REVIEWS

*Anna Dziedzic / Simon N. M. Young (eds.)*, **The Cambridge Handbook of Foreign Judges on Domestic Courts**, Cambridge University Press, Cambridge 2023, 480 pages, AUD \$364, ISBN: 9781009098786

As a law student, I took up an internship at the Extraordinary Chambers in the Courts of Cambodia ('ECCC'). The ECCC is a hybrid tribunal composed of both local and foreign judges. I arrived in Cambodia to find the work of the Court in a stalemate. The foreign and local judges disagreed about whether the case I worked on should be brought before the Court, and the disagreement meant they were not able to issue decisions on the case. At the time, I mused that a fatal flaw in the design of the ECCC had led to this stalemate between the foreign and local judges.<sup>1</sup> But behind the Court's design lay a much wider phenomenon that the literature was yet to speak to: the influence, implications and impact of foreign judges sitting on domestic courts. Anna Dziedzic and Simon N. M. Young's *The Cambridge Handbook of Foreign Judges on Domestic Courts* ('Handbook') is therefore an exciting and important intervention that breaks new ground in studying foreign judges on domestic courts.

The Handbook seeks to understand foreign judging in domestic courts and its variants, and to lay the ground work for meaningful comparison of foreign judging around the world (p. 2). In chapter 1, Anna Dziedzic situates the Handbook as building on foundational comparative work on foreign judges in courts of constitutional jurisdictions (p. 1, fn. 1). It is a highly ambitious project; not limited by jurisdiction nor by type of domestic court, though this expansive framing does cause some conceptual confusion about the domestic character of international commercial courts (ch. 5) or regional courts (ch. 13). The contributors to the Handbook range from foreign judges themselves to researchers and academics. The editors have made a bold choice in structuring the Handbook by theme, allowing for a sophisticated cross-jurisdictional analysis of the drivers and impacts of foreign judging. The result is a 26-chapter, 480-page tour de force exploring foreign judging across the world, from multiple perspectives and through different points in time.

The Handbook is divided into two Parts. Part I explores the rationales and motivations for the use of foreign judges on domestic courts. It comprises a section on 'domestic drivers' and another on 'international influences'. The chapters center around the question: why do foreign judges sit on domestic courts? A number of comprehensive answers emerge. Foreign judges are used as a transitional measure where local judges are unavailable, where impartiality or the distance of foreignness is valued, to enhance the expertise of

1 *Natasha Naidu / Sarah Williams*, The Function and Dysfunction of the Pre-Trial Chamber at the Extraordinary Chambers in the Courts of Cambodia, *Journal of International Criminal Justice* 18 (2020).

a jurisdiction, or in post-conflict institution-building processes. Here, the strongest chapters are critical of these explanatory factors, by considering, for example, whether foreignness equates with expertise or impartiality. As such, Harry Hobbs' account (ch. 10) of the dual audiences of hybrid courts – both local and international – accounts for the accusations of apprehended bias leveled against both foreign and local judges in international criminal law (pp. 173-175).

Part II asks the question: what are the implications and impacts of foreign judging in law, politics and society (p. 3)? The first section comprises first-hand accounts by those who have been foreign judges or have worked with foreign judges. Some of the chapters here lack the academic rigour otherwise present throughout the Handbook. For example, one chapter combines personal reflections on foreign judging in the Caribbean with structured interviews via surveys with 23 participants (ch. 13). The chapter uses the survey results to conclude that foreign judges in Caribbean regional courts are well received by the public because of the perception that they promote objectivity and impartiality (p. 228). However, the author does so without accounting for the positionality of the survey's respondents, most likely foreign judges themselves, or countering other ethical considerations that arise in an interview or survey process, such as bias.

The second section of Part II includes chapters that scrutinise the impact of foreignness on judicial identity and the judicial role. In grappling with what it means to be foreign, the authors of the chapters in these two sections do so with reference to nationality and citizenship. Yet the most impressive chapters in these two sections develop a thicker conception of foreignness that account for the many ways that one can be rendered "foreign" on a court. Thus, Laurence Burgorgue-Larsen's account (ch 12) of being a young, French, female academic on the Constitutional Court of Andorra, with the ability to speak French and Spanish and read Catalan, effectively complicates what it means to be "foreign" on a domestic court, and how the many experiences of foreignness come to bear on the judicial role.

The final chapters of Part II consider the implications of foreign judging on adjudication, accountability and independence in authoritarian, democratic and transitional contexts. The chapters explore the role of foreign judges in avoiding manipulation of judicial appointments and in helping in the transition from authoritarian rule to a new democracy. Here, the most exceptional chapters are the ones that venture inside the law to consider how foreign judges influence the jurisprudence of domestic courts. In particular, Bal Kama's critique (ch. 25) of the legalistic tradition of foreign (Australian) judges inhibiting the development of a transformative, liberal constitutionalism in Papua New Guinea is a compelling example of how colonial hangovers persist through foreign judging.

Dziedzic and Young's Handbook brings new light to the stalemate between the foreign and local judges I encountered at the ECCC in Cambodia. This was not just an issue of institutional design, but of the identity crisis imbued on a hybrid court when it attempts to speak to both local and international audiences. The Handbook is a defining work in a nascent field of literature on foreign judges in domestic courts. The sheer volume, breadth

and scope of the Handbook is to be commended. The Handbook will be highly informative for academics and practitioners engaged in the question of who judges are and how judges judge. It will also be helpful for those who, like me, seek to locate and understand their encounters with foreign judges across a range of jurisdictions and subject-matters.

*Natasha Naidu*

Teaching Fellow, Research Associate and PhD Candidate  
University of New South Wales

*Diego Werneck Arguelles*, *O Supremo: Entre o Direito e a Política* (The Supreme Court: Between Law and Politics), História Real, Rio de Janeiro 2023, 255 pages, R\$59,90, ISBN: 978-65-87518-27-5

How do Supreme Courts function? What is behind their decisions? What do their design tell us about the incentives for the judges? Those are the sort of questions that Arguelles presents on his book, regarding the Brazilian Supreme Court (Supremo Tribunal Federal or “STF” in Portuguese). As I later show, while campaigning for its readership, this book offers a range of valid questions about the intertwining of law and politics in the STF, without demonizing the political character of the Court. The book always questions what the meaning of such political influence is, and what sort of politics should surround a Supreme Court.

Arguelles starts his reflections on the functioning of the STF stating how the perception of the Brazilian legal academy has shifted by the years: going from a collective naivety, that believed in a Supreme Court that was totally departed from politics and just applied the Constitution, to a widespread cynicism, that identifies the Supreme Court as a political institution as any other (p. 14).

In his first chapter, Arguelles analyses the question if „*can they do that?*“, referring to constant questions about the competences of the STF. He starts reflecting on how it is possible for the STF and its eleven judges to have that much power without being subject to people’s vote. And for that he highlights the importance of distinguishing what is actually strange about it, from what is a natural consequence of having an institution designed like the Supreme Court (p. 31). Considering being a judge in a court means applying criteria that you did not create to solve problems that you are not part of (p. 32), judges are much more defined by what they cannot do (p. 33), and so are the Supreme Court judges. Although in their case, there will always be disputes around the meaning of the Constitution (p. 36), so that the application of the criteria created by others may not be that obvious. Moreover, the power of the judges derives from the deference to the norms created by those elected and not from an abstract notion of justice or knowledge (p. 37). This is why the