

***REMEDIES FOR HUMAN RIGHTS VIOLATIONS: A TWO-TRACK APPROACH TO SUPRA-NATIONAL AND NATIONAL LAW*, KENT ROACH (CAMBRIDGE, UK: CAMBRIDGE UNIVERSITY PRESS, 2021)**

Remedies are said to be under-studied compared to rights. Yet, as the latin maxim *ubi jus, ibi remedium* (where there is a right, there is a remedy) dictates, rights and remedies are interrelated. We should thus conceptualize them throughout their connection to each other. *Remedies for Human Rights Violations: A Two-Track Approach to Supra-National and National Law* is a brilliant attempt at shedding light on remedies and their importance in legal practice.¹ This 2021 book authored by Kent Roach is a must-read to fully comprehend how legislation and case law at both the national and supra-national levels have crafted the remedial options applied by courts nowadays, and to get an overview of the shortcomings and benefits of different jurisdictions' takes on remedies. The book presents an ambitious analysis of remedies for human rights violations by accounting for their legal and philosophical foundations as well as their contemporaneity and comparative application.

Roach's commitment to high-quality legal research and remedies for human rights violations has resulted in a piece of work that qualifies itself as nothing less than a reference on remedies. The author was already an eminent figure in Canadian law. With this work, he confirms another layer of his expertise by putting forward with great exhaustivity his two-track approach to remedies, which — as the title foreshadows — is applied to both national and supra-national legal frameworks. The book results from meticulous research reflected by the impressive and diverse bibliography (in terms of authors, jurisdictions, and date) and the quality of the arguments suggested. Like the two-track approach, *Remedies for Human Rights Violations* combines description and normative suggestions. Doing so, it reaches its goal of detailing the state of the law, the pitfalls litigants might come across, as well as possible amendments or changes of mentalities that would contribute to fulfilling remedies' dual objectives of redressing rights violations and preventing future ones.

Given the considerable breadth of topics covered in this massive handbook, Roach contributes to diverse trends in the literature. On the theory behind remedies, he engages notably with the work of Abram Chayes on public law litigation, the scholarship of Lon Fuller on polycentric issues before the courts, and the insights of Mark Tushnet on “weak” and “strong” forms of judicial review.² Not only does the author contribute significantly to the literature by dialoguing with various legal scholars, but his work is also welcomed in a post *Ontario (Attorney General) v. G. era*.³ While Roach does not propose a one-fits-all solution to finding effective remedies, he offers us many tools to address human rights violations. *Remedies for Human Rights Violations* is not only a masterpiece on remedies, but also a testament to Roach's dedication to human rights and the advancement of legal scholarship. Prior knowledge of Roach's work on constitutional remedies, the dialogic approach, suspended declaration of invalidity, and two-track approach to remedies helps to

¹ Kent Roach, *Remedies for Human Rights Violations: A Two-Track Approach to Supra-National and National Law* (Cambridge, UK: Cambridge University Press, 2021) [Roach, *Remedies for Human Rights Violations*].

² Not only in the first chapter which is more theoretical, but also throughout his arguments in subsequent chapters.

³ 2020 SCC 38.

connect this book within broader fields of literature, and to understand the value it brings to the author's global scholarship. Still, it is not a prerequisite to enjoy the read. This book illustrates itself as a general reference to which one can go back for research on remedies, just as *Constitutional Remedies in Canada*.⁴ It will, without any doubt, serve many law students and legal researchers interested in remedies for years to come.

Remedies for Human Rights Violations can be divided into three main parts: chapters 1 and 2 (contextualization of the approach), chapters 3–7 (remedies), and chapters 8–9 (remedies for human rights violations touching on specific issues). Chapter 1 is a clear introduction to the law of remedies. It provides an overview of the author's methods as well as objectives, principles, theoretical foundations in legal scholarship, and textual grounds for remedies. The subsections on separation of powers and the principle of proportionality are especially relevant to understand constraints and judicial discretion, and — along with other subsections — they advocate for a principled-based approach to remedies. The many aspects covered in this chapter also bridge national and supra-national perspectives on remedies. The latter is explained in further detail in chapter 2. There, Roach exposes his approach to remedies, one that combines — as its name lets us foresee — both individual and systemic remedies. This chapter consequently guides the analysis laid out in other chapters. In other words, this model attempts to do it all: compensate or otherwise redress the individual litigants while, at the same time, preventing repetitions of human rights violations.

Chapters 1 and 2 set the book's tone, but it is only in chapter 3 that a detailed comparative analysis of remedies starts. In the latter, Roach presents interim measures and argues that judges should be less preoccupied with prematurely adjudicating on a human rights violation at the pre-merits stage. He believes that given the possibility to reassess the situation upon gathering new evidence, there should be an expansion of this type of remedy. His expansion argument relies on the desire to prevent or stop human rights violations, which are objectives that are always worth it. The author uses the same logic to justify the importance of this type of remedy despite the non-compliance of states, especially in the international law scene, and hereby answers to positivist critiques. Any chance at stopping human rights violations deserves to be taken. These arguments, just as the ones in chapters that follow, are developed throughout a series of different subsections detailing either the approaches of specific jurisdictions or major considerations to ponder when studying the remedy accounted for.

Chapter 4 delves into remedies for laws that violate human rights, including interpretative remedies, suspended declaration of invalidity, and the Hong Kong approach of temporary validity. Roach argues that there are ways to ensure that the two-track approach is complied with when granting this type of remedy. Chapter 5, dealing with damages, covers a vast array of concerns going from proportionality analysis, a model brought forward across most of Roach's book, to the relation between damages and deterrence for wrongful state conduct and to the suggestion to rely upon aggravated damages to fulfill the systemic approach to remedies. The chapter delves into appropriate quantum with wisdom by outlining that if damages awarded are insufficient, they risk trivializing rights, whereas they may need to be reduced in light of competing social interests. Chapter 6 is entirely dedicated to remedies in the criminal process and touches on the rights of the accused, the presumption of innocence,

⁴ Kent Roach, *Constitutional Remedies in Canada*, 2nd ed (Toronto: Thomson Reuters, 2021) (loose-leaf updated 2021, release 2).

habeas corpus, exclusionary jurisprudence, stays of proceedings, and sentence reductions. The section on balancing social interests against the rights of the accused, which is complemented by the demand that courts refrain from relying too heavily on public opinion when granting remedies throughout the criminal process, is incredibly compelling. In chapter 7, Roach outlines declarations and injunctions. He then proposes to make use of a new remedy intended to compensate for the absence of concrete remedies resulting from declaratory reliefs, the discomfort of some courts to use a remedy as blunt as an injunction for human rights violation on pre-merit, and the difficulty for courts to deal with polycentric issues: the declaration plus. He argues that this allows providing a better remedy than a declaration alone, while respecting the strengths of both the judiciary and the executive. According to Roach's analysis, which is especially persuasive in this chapter, supra-national courts are more receptive to a two-track approach than domestic judges who often prefer individual remedies that are granted on a single occasion rather than retaining jurisdiction.

Chapters 8 and 9 take two types of rights and examine how remedies heretofore have been applied in cases attempting to assert these said rights. Chapter 8 focuses on social, economic, and cultural rights. The analysis of the decision *Chaoulli v. Québec (Attorney General)* is a great way to step into the delicate exercise of balancing systemic and individual rights and the enforceability of social, economic, and cultural rights.⁵ As for chapter 9, it focuses on Indigenous rights, which the author suggests "is perhaps the most challenging of all the topics examined in [the] book."⁶ This instructive chapter covers an impressive scope of considerations going from remedial provision under the *United Nations Declaration on the Rights of Indigenous Peoples* to the states' duty to consult and ways to ensure it remains more than a theoretical concept with no practical application.⁷ The author also discusses the need for remedies that stem from bi-jural or even tri-jural frameworks and powerfully critiques the courts' balancing of public interest in Indigenous rights cases.

Chapter 10 then ties the book together by exploring the methodology used, recurrent issues, and final thoughts. On my end, I will remember the extensive comparison between jurisdictions and its value in understanding more fully remedies, the advocacy of Roach for a proportionality analysis that ponders public interest with caution, and the better receptivity of supra-national courts to the two-track approach. One critique that I could envision was the ambition of the two-track approach. One could argue that courts should refrain from pursuing individual and systemic approaches simultaneously given namely scarce judicial resources or judicial competence. It is true that courts are not perfect at either of these approaches and that combining them is a challenge. However, it would be false to state that the author does not provide exhaustive and detailed examples to support his claim that it can be a viable option.

There is nevertheless one issue that, as I kept reading, I thought could have benefited from further unpacking: access to justice. Yes, the dual approach could be a viable option with the prerequisite that people have the means to bring their claims before courts. If no litigants can go before the courts, the right will not be asserted, and no remedy will be granted. To be fair to the author, some of his arguments allow recognizing the issue of access to justice and mitigate or partially address this critique. For instance, Roach denounces that privileged

⁵ 2005 SCC 35.

⁶ Roach, *Remedies for Human Rights Violations*, *supra* note 1 at 513.

⁷ GA Res 61/295, UNGAOR, 61st Sess, UN Doc A/RES/61/295 (2007).

litigants might obtain better redresses and highlights that class actions can benefit litigants who otherwise might not have had the resources to bring a claim. We must also note that his attempt at preventing future violations through his two-track approach could benefit large groups of individuals, including groups that cannot be heard before courts. Despite these different arguments that can be collected across chapters, I believe that dealing directly with the issue of access to justice would have been welcomed in a book relying so heavily on courts. This caveat should, however, not distract from the tremendous substantive value of this volume.

Sandrine Ampleman-Tremblay
DCL Candidate & Joseph-Armand
Bombardier Scholar,
Faculty of Law,
McGill University