understanding of copyright, a greater willingness to invest resources in addressing copyright issues and, above all, a greater willingness to rely upon risk management. As Hudson explains, risk management involves taking a principled and ethical stance towards copyright and its application to institutions' collections and practices, and accepting a degree of risk of infringement rather than simply determining to avoid risk. At least in part, this change appears to have been driven by the problem of dealing with orphan works. None of the legislation that has been passed to deal with this issue seems to work very well, but institutions have learnt through experience that, provided appropriate care is taken, the risk of being sued is minimal. As Hudson explains, however, problems remain with the requirements of funders and insurers. (Again, the reviewer can confirm this from personal experience, albeit experience dating from prior to 2008, of advising a film production company with respect to the use for dramatic purposes of quotations from published literary works: even though it seemed likely that the copyright owner would not sue even if it could, funders were reluctant to take any risk.)

Hudson ends this impressive contribution by considering what lessons can be learnt for the drafting of copyright exceptions. Although well-disposed towards fair use because it is open-ended and therefore easier to adapt to future circumstances, she accepts that caution is required before concluding that it is a panacea. While statutory language and the way in which it is interpreted by the courts are of course important, the law in action also depends on institutional and ethical norms, copyright management techniques and the historical and philosophical context. As she concludes, what constitutes the best form of legislative drafting is a deeply empirical question, the answer to which is informed by a range of factors including the costs of promulgating the legislation, the costs for users of learning about the law, the characteristics of users (such as how risk-averse they are) and the costs of enforcement. Thus reform is not a simple matter of amending a statutory text, but depends on user engagement, which in turn depends on the legal and wider cultures.

Writing this review on 30 March 2021, one is bound to wonder what effect the COVID-19 pandemic has had, and will have, on these questions. It seems likely that users will have been forced to place greater reliance both on exceptions and limitations and on risk management. It is too soon to tell whether this will lead to a permanent change, but it is possible both that user practices will alter in ways that require legislative catch-up and, paradoxically, that they will alter in ways that make legislative reform less imperative. I await Emily Hudson's report from her next phase of fieldwork with interest.

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The Anatomy of Administrative Law. By Joanna Bell. [Oxford: Hart Publishing, 2020. xlii + 258 pp. Hardback £75.00. ISBN 978-1-50992-533-9.]

Omnia vincit amor – so wrote Virgil in the first century BCE. But the same poet also wrote that *labor omnia vicit*. Either, or both, of these propositions could be applied to Joanna Bell's excellent new book, *The Anatomy of Administrative Law*. Through hard work, and an evident love for the subject, Bell provides important insights into the nature of administrative law and sets down challenges for those who study and teach it. In short, there is no alternative to putting in the effort to understand the

legislative scheme in play in the cases, and reference to an overarching theory of the subject is not sufficient.

Bell describes herself as "pulling apart" the case law in order to reveal the complexity inherent in it. The complexity arises from three causes: (1) the legislative detail in play in judicial review challenges, (2) the multiple normative goals pursued by administrative law and (3) the various relationships between applicants and decision makers. This tripartite framework for understanding complexity is carried through into three case studies: procedural fairness, legitimate expectations and standing. Bell sets out a forceful criticism of monistic explanations of administrative law, before providing a conclusion which explains some consequences of her research.

Following the initial, introductory chapter, Bell engages in a historical study of administrative law. She focuses on the twentieth century, undertaking a review of largely well-known cases and academic writing. Given that she later emphasises the benefits of getting beyond the leading cases (p. 255), it might be said that this is too superficial. However, Bell's historical survey in the second chapter can be seen as a means to an end: setting the groundwork for her explanation of the current law; the book as a whole is not a work of legal history. In terms of the lessons which are drawn from the historical review, it supports the argument that the history of administrative law is not tidy, and the modern law is "not the product of conscientious design" (p. 61). Additionally, the development of administrative law points to the importance of the legislative context, that there is no single normative vision (p. 62), and gives examples of the multiple relationships between challengers and public bodies (p. 63).

The three causes of complexity are unpacked further in Chapter 3. The importance of legislative context is such that the grounds of review are not "freestanding legal tests" (p. 66). Additionally, Bell notes the importance of policy in judicial review challenges. She also expresses doubt as to the theory that "administrative law is centrally, or even primarily, concerns with promoting the interests of the public as opposed to that of any one individual" (p. 80, footnote omitted). Her arguments on this point are further development in Chapter 7.

Having set out a framework for considering the complexity in administrative law, Bell proceeds in Chapters 4 to 6 to apply this framework in the context of three types of challenge. Chapter 4 concerns procedural review. She notes that the concept of fairness alone tells us little about how the courts determine what the law requires in terms of procedure in any particular case (p. 98). However, when scholars attempt to provide a "thicker" general account of procedural fairness, such as developing the idea of the "irreducible core" of fair process, this faces the difficulty that it is not borne out in all of the case law (pp. 98–100).

As Bell explains, common law procedural fairness does not operate in a vacuum (p. 101); indeed, it is often not even the most important factor in a process challenge. In terms of normative goals, Bell discusses the instrumental and dignitarian conceptions of procedural fairness, but notes (pp. 106–07) that the courts will consider whether process rights would undermine the purpose of the statutory scheme. In terms of the variety of legal relationships in play, Bell's work usefully contrasts the situation of a public consultee with a recipient of individual process rights, such as in a prison context (pp. 109–10).

Given the complexities she has described in litigation about procedural fairness, Bell considers whether there is a lack of structure in judicial reviews on procedural fairness. Using a sample of 127 appellate cases, she reaches the conclusion that, even without an "overarching account of procedural review", there are two sources of structure: (1) legislative and policy frameworks, and (2) supplementation from

the common law. This latter factor includes the presumption which the common law gives to persons being given notice, and the fact that the duties upon public authorities in giving people the chance to make representations is limited. The observation is persuasive and perceptive that, "[e]ven at the appellate levels, procedural review challenges . . . commonly raise narrow questions of construction" (p. 127). It would be an interesting question whether there is a higher proportion of cases considering "general principles" at the appellate level than in the Administrative Court.

Chapter 5 sees the doctrine of legitimate expectations subjected to the same analysis. Bell notes the challenges of providing a "general account of legitimate expectations", and observes that some accounts provide very little explanatory function, whilst some are too ambitious and not borne out in the case law. The three causes of complexity are again considered. As she did in Chapter 4 with procedural fairness case law, Bell carries out a review of cases considering legitimate expectations, decided over a ten-year period (albeit in this review, she also considers decisions of the Administrative Court). From this study, she draws out four main types of situation. Cases falling within these situations have their own distinct characteristics, which are capable of giving the law a degree of structure and predictability (pp. 163–64). Bell also gives some comfort to those concerned about judicial activism in this area, given that it appears that success rates of legitimate expectation challenges are not high, when compared to judicial review in general (pp. 164–65). This approach needs some care, as the cases considered in this study are substantive cases going to final judgment (not including cases which were refused permission, or conceded pre- or post-action). Whilst Bell does not claim that her approach is comprehensive (p. 165), she does go a long way to providing an explanation of case law as a whole.

Whilst the case studies in Chapters 4 and 5 concerned two grounds of judicial review, Chapter 6 is about the issue of standing, applicable in any judicial review challenge. The chapter starts with a review of the development of the case law, and once again Bell notes that there is no overarching approach to the topic in the case law (p. 186). The tripartite explanation of complexity is again put to work. Bell makes interesting observations, including that there is case law suggesting that not all modern decisions are liberal (giving the example of *R (DSD) v Parole Board* [2018] EWHC 694 (Admin), [2019] Q.B. 285). Her discussion of the relevance of the legislative context to determining issues of standing is also illuminating, in particular the decision in *R. v Birmingham CC, ex parte Millard & Connolly* (1994) 26 H.L.R. 551. However, there is a sense in which this chapter is less forceful than the two preceding it. Bell acknowledges difficulties in researching standing (p. 197), including the fact that the issues are often considered at the permission stage and therefore largely opaque to scholars reading substantive decisions. That said, there is no review of cases in the same way as in Chapters 4 and 5. There are also some slips in expression which cause problems (a missing word (p. 177), another missing word (p. 180), either missing word(s) or an erroneous comma (p. 196)). Finally, when considering the issue of standing in cases depending on an assurance made to a particular individual, it might be interesting to compare this with an aspect of the law on consultation: "I accept the submission that, in a case of this kind, it will only be in a rare or (at least) comparatively rare case that a claimant who has the opportunity of making detailed representations will be able to rely upon a failure to consult others" (*R. (Wainwright) v LB Richmond upon Thames* [2001] EWCA Civ 2062, at [47] (Clarke L.J.)).

In Chapter 7, the book turns away from specific issues and zooms out, to consider the question as to whether the theoretical tendency to monism (or what might be thought of as the tendency to reductionism), in simplifying the basis of

administrative law to be about one issue. The analysis in *The Anatomy of Administrative Law* indicates that the reality must be more complex than this.

Bell engages in a detailed scrutiny of the public interest conception of judicial review, and finds it lacking (pp. 212–20). History shows that the development of administrative law is messy, and does not demonstrate there being one single organising concept; there is a blur between individual and public interests; the public interest can be important even in human rights cases; the individual is important in much of administrative law; the public interest conception gives rise to deficient accounts of various areas of administrative law. This critique is persuasive, but might be strengthened by consideration of two matters. First, it is likely that the high number of immigration judicial reviews in the Upper Tribunal will to a great extent concern individual rights, and Upper Tribunal decisions are not considered in detail in the book. Second, it is questionable as to whether it is even coherent to say that the "purpose" of administrative law is to protect the public interest. Purpose according to whom? The reality may be that the purpose of administrative law will depend upon the perspective from which it is viewed (similar to the visions of the British Constitution(s) explained in David Feldman, "None, One or Several? Perspectives on the UK's Constitutions(s)" [2005] C.L.J. 329). Different perspectives may include that of a claimant disappointed when seeking a particular benefit; a claimant seeking to challenge a grant of planning permission; a defendant justifying its decision; an interested party seeking to defend the valuable right it had been conferred; a judge trying to resolve a dispute.

After the public interest conception, Bell also reviews the jurisdiction theory of administrative law and likewise finds it wanting (pp. 220–27): the courts are not answering a single question as to whether a decision maker had jurisdiction to reach the conclusion it did. The jurisdiction theory gives a problematic account of doctrines, including nullity, collateral challenge and ouster. Indeed, even apart from the public interest and jurisdiction explanations for judicial review, the attractions of monism are not found to be worth the problems that it cases (pp. 230–45).

In the concluding chapter, Bell notes some practical implications. Students should read cases as a whole, not just looking at the paragraphs which talk about grounds of review (pp. 252–53). There are implications in relation to teaching about general principles and particular legislative contexts (pp. 253–54). Bell considers that general administrative scholarship is worthwhile, and indeed elements of this book demonstrates why (her review of legitimate expectation cases is a good example). However, it is necessary properly to consider the legislation and policy in play, and to get beyond simply reading the leading cases (p. 255).

The Anatomy of Administrative Law is a major contribution to modern scholarship. It does not simply rake over familiar ground, such as the constitutional foundations of judicial review, or the status of unlawful administrative actions. Instead, it tells us how to approach the law, and how to approach scholarship. It is clear that Bell's work reveals a real love for her subject, and an enthusiasm for best revealing it to others. But sometimes love takes hard work, and her approach suggests that there are no shortcuts to administrative law scholarship done well. Perhaps, in the early stages of the development of administrative law, it was sufficient to refer to generic statements of principle. Now, however, it is important to work harder to understand the context of a case, before seeing to what extent there are lessons to be applied elsewhere.

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