

unable to look after themselves. As such, the two areas of law must come into conflict and one will wax and the other will wane as the ideas on which they are based come into, or fall out of, fashion.

Overall, both of these volumes are of the same high quality as their predecessors in the Obligations series, and they certainly do not amount to the private law equivalent of *Tusk*. But neither, I think, does either of these books come close to reaching the heights of something like the *White Album*. Two weaknesses hold them back. First, many of the papers in these books are so much of their time that there is no chance that they will be read even 10 or 15 years from now. Private law scholarship generally is too concerned at the moment with reportage and analysis of what is being reported on and too little concerned with viewing private law *sub specie aeternitatis*; the volumes under review suffer from that same lack of balance. Secondly, there is a striking lack of reference to anything other than primary and secondary *legal* sources in most of the papers in this collection. Private law scholarship that hermetically seals itself off – aided by common law ideologies that dismiss the relevance of a vast range of human learning and experience, telling private scholars, “Move along, nothing to see here” – cannot sustain itself for very long.

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Constitutional Conventions in Westminster Systems: Controversies, Changes and Challenges. By BRIAN GALLIGAN and SCOTT BRENTON (eds.) [Cambridge: Cambridge University Press, 2015. xii + 275 pp. Hardback £69.99. ISBN 978-1-10-710024-4.]

This book seeks to offer a political approach – drawing on political theory, history and accepted practice – to the analysis of constitutional conventions operating in the UK, Canada, New Zealand and Australia. Constitutional conventions are fundamentally important to the operation of constitutions in Westminster systems. They are the customs and rules unenforceable in law that operate mostly behind the scenes and out of site, usually gaining public attention during challenging constitutional moments of national significance. The public generally have little knowledge about them and decision makers dispute their form, application and existence. Analyses of such disputes have often been confined to the realm of legal academic scholarship. This work succeeds in providing an eye-opening and interesting account of conventions in the four countries. It raises thought-provoking questions and draws conclusions from a fresh political perspective.

The book covers much ground. It consists of a collection of 14 chapters written by a number of contributors. First, in chs 1 and 2, it distinguishes the political approach undertaken in the book from the usual legal approach. Second, in chs 3–8, there are analyses of constitutional conventions which apply to – and are affected by – actors within the primary institutions of the Westminster systems; namely, the executive, both houses of the legislature and the judiciary. Chapters 9–12 offer an abundance of examples which illustrate the practical impact of the theory, history and practice of conventions in the four countries. The final chapters consider the issues of codifying and reforming conventions.

In ch. 1, Galligan and Brenton contend that conventions are more fundamental than laws because they govern the formation and basic functioning of the

Government – which then sets up the law-making institutions. In this regard, the authors define conventions and laws as separate social rules. Rather than defining conventions negatively as not being laws, they are defined positively as core parts of the constitutional system that govern ongoing political practice. This difference is explored in greater detail in ch. 2 by Aroney. He offers a thoughtful analysis of whether the distinction between law and conventions is conceptually coherent, morally justified and borne out by the practices of political actors and the courts. He also considers a number of important differences in the four countries analysed. Ultimately, the different constitutional contexts of written versus unwritten constitutions are paramount. For example, the desire to establish a convention that the Government should seek approval from the House of Commons in the UK before issuing military action abroad seems to have been influenced by the unwritten nature of the UK Constitution where there is more anxiety about controlling executive power. Having presented their criticisms of the legal scholarship on conventions, the authors of the first two chapters set the basis for a refreshing, and a more holistic, analysis of what conventions do, as opposed to what they do not do.

Specific analyses of the various institutions begin with the third and fourth chapters, which explore the executive and the Cabinet respectively. In ch. 3, Galligan considers executive conventions that limit the powers of the heads of states of the four countries. The heads of state enjoy limited reserve powers whose functioning is limited by conventions. He explores interesting examples of the Australian constitutional crisis of 1975 and the Canadian prorogation crisis of 2008 to demonstrate the contested character legal reasoning in case law. The observations show that reserve powers are more prominent in resolving disputes with governors-general than with the Queen. Nevertheless, in both cases, those powers exist to ensure that the political system continues to work in challenging times. In ch. 4, Weller examines the role of conventions in cabinet government. The conventions of individual and collective ministerial responsibility are analysed, as are cabinet handbooks. On the conventions, Weller determines that they are flexible and open to interpretation. On the handbooks, they are seen by Weller to offer a formulation of practices and an explanation of how conventions are to be applied. Further, illuminating case studies are provided. In particular, it is noted that the UK followed the example of New Zealand in devising the rules of a potential coalition government prior to 2010. The example illustrates how one country can learn from the experiences of another country to ensure that the political machinery continues to operate in more complicated times. In such circumstances, the expectations created by conventions could be more important than their precise meanings.

In ch. 5, Menzies and Tiernan offer insights into caretaker conventions. These conventions become critical during the period between the dissolution of Parliament and a new government being commissioned. In practice, they are a subset of the convention of accountability of the Government to Parliament and their purpose is to moderate the role of the incumbency by constraining the power of the executive in the transitional period. The authors argue that certain guidance documents have become a means by which officials preserve institutional memory and have become an important means of pushing for restraint in partisan times. The risk to public officials is an illuminating aspect of this account. In all four countries, it is often public officials who are summoned to give evidence for events occurring in the intervening period and not the politicians who pushed the boundaries of the conventions. Linked to this chapter is Brenton's elucidating analysis of minority and multi-party governments in ch. 6. He explores the transition towards a consensus model of democracy in the four countries and examines two conventions that have been adapted to preserve the power of dominant parties. There are intriguing

facets to this analysis, such as the declining trend in all countries of the traditional two-party dominance, the influence of the respective electoral systems on the makeup of the Government and the exemptions allowed to the convention of collective cabinet responsibility when minority or multi-party governments are in power.

In ch. 7, Nethercote provides a wonderful overview of conventions that affect the workings of Parliament. The reader is steered on a flowing whistle-stop tour of conventions that affect the formation of ministries, the role of second chambers in making legislation, the location of the prime minister in the lower house, the second chamber as a parliamentary base of ministers, governments and the confidence of the house, individual ministerial responsibility, parliamentary design, the opposition, question time, the speakership and – an issue that might escape one’s immediate attention – the use of the colour green in Parliament. Each convention is supplemented with brief examples of their application in practice, which shows that they are best thought of as precedents. In ch. 8, Sharman examines conventions affecting upper houses of Parliament. Good illustrations of the key issues are offered via a particular focus on Canada and Australia. In Canada, conventions have been designed to further primacy of the House of Commons and the executive dominance over the Senate. In Australia, the power of the upper house has increased the potential for conflict with the lower house. As such, conventions have been designed to avoid conflict.

Chapters 9–12 are country-specific analyses. Hazell analyses the UK’s 20-year constitutional revolution in ch. 9. It is easy to lose sight of the many constitutional changes that have occurred since Tony Blair was elected prime minister in 1997. This chapter provides an excellent account of those developments covering ‘four waves’ running successive governments until David Cameron’s election in 2010: an account that will soon witness a ‘fifth wave’ when the UK exits the EU. The constitutional developments have resulted in changes to the main conventions governing the monarchy, executive, legislature and the judiciary. The most important development has been the codification of conventions in all branches of government and in particular the Cabinet Manual. The Canadian system is examined by Banfield in ch. 10. Conventions affecting the executive, elections, responsible government and the courts are covered with a more detailed focus on the constitutional crisis in 2008. The surprising series of events that occurred during the crisis left a lasting legacy of a call for conventions to be codified in a cabinet manual. Putting the crisis aside, a similar story to other countries arises with regard to the role of conventions. They evolve as they are needed, they play an important role in the day-to-day operations of the political system and they are poorly understood.

In ch. 11, Barry and Miragliotta note that there is little interest in Australia in codifying conventions because, amongst other things, there is a strong preference for a mixed constitutional system based upon written and unwritten pillars. This conclusion is preceded by a case study of the constitutional crisis of 1975 that was actually a series of four crises that resulted in the dismissal of the prime minister by the governor-general. The series of events is catalogued in a thorough account and the relevant conventions are helpfully highlighted. Duncan concludes the analyses of the countries in ch. 12 on New Zealand, which has an interesting and progressive history with regard to conventions. The change to the Mixed Member Proportional voting system, the development of the Cabinet Manual, the abolition of the upper house and the role of caretaker conventions offers an interesting illustration of the role of conventions on constitutional developments in New Zealand.

The book takes on a rather different approach in ch. 13 when Russel offers an account of a workshop involving practitioners and academics. The purpose of the

workshop was to discuss the idea of a cabinet manual in Canada. Essentially, the chapter is a call by the author to codify conventions in Canada. The underlying argument is reasonable but the description of the workshop does not sit comfortably with the rest of the book. As an example, it is not particularly instructive for the reader to know what was done to ensure candour among the participants at the workshop and the general description of the workshop could have been shortened. Finally, in ch. 14, Blick provides a good overview of the drivers for reform, the forms of change and the consequences of reform, concluding, on a thoughtful note, that conventions change so that other fundamentals of the Constitution can survive.

Whilst the chapters provide a generally excellent account of conventions, the style of presentation is at times distracting. One notable distraction is the repetition of basic points in the introductions of chapters. For instance, it is important to explain what conventions are, but their definition need not be repeated in every chapter. Taking another example, it is stated that caretaker conventions are a subset of the convention of the accountability of the elected government to Parliament (p. 91), while, on a following page (p. 93), it is explained that caretaker conventions are similar to constitutional conventions. Readers are unlikely to need that explanation, since caretaker conventions are clearly a subset of a constitutional convention. Sacrificing such material could have produced more concise chapters and avoided unneeded repetition and distraction from the arguments.

Nevertheless, the book excels as a thought-provoking, carefully considered examination of constitutional conventions in Westminster systems. The reader is taken on a focused tour of core institutions and the conventions that affect their operation in practice. This exploration is enriched by a fascinating historical account of key moments of constitutional significance in the four countries. The aim of providing a political account of conventions distinguished from a legal approach is easily achieved. The book provides a compelling read and is highly recommended for anyone interested in these subtle yet instrumental customs and rules that work in the background to ensure stable continuity in Westminster systems.

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