Accessories in Private Law invites comparison with Paul Davies's *Accessory Liability* (2015) (reviewed e.g. Lee (2016) 132 L.Q.R. 338) and potential readers may wonder if there is any point in buying or consulting both. Notwithstanding the commonality of subject matter, there are important differences between the books of which the following seem to this reviewer to be the most significant. Davies focuses primarily on English law while not overlooking other jurisdictions; Dietrich and Ridge range more broadly across the Commonwealth and the US. Dietrich and Ridge cover statutory accessory liability more fully than Davies. The treatment of defences in the two books is very different; Dietrich and Ridge do not share Davies's assessment of the merits of a justification defence to claims against accessories. Davies excludes equitable recipient liability from his model of accessory liability, as being essentially property-based and not participatory. As far as the general approaches of the authors of these books are concerned, Ridge and Dietrich by and large are more inclined than Davies to accept the accidents of legal history as our twenty-first century legacy and less disposed to reorganise the conceptual furniture of private law. Anyone with the slightest interest in the policies and principles governing different applications of participatory liability should therefore consult both books.

Joachim Dietrich and Pauline Ridge have brought a great deal of conceptual clarity to an area of law beset by doctrinal obscurity and casuistic distinctions. If they have not found the solutions to all the accessory problems they raise, then they have succeeded in the more critical task of providing a rigorous analytical framework for reaching logical and practical solutions.

Michael Bryan
University of Melbourne

Habeas Corpus in International Law. By Brian R. Farrell [Cambridge University Press, 2017. xxii + 257 pp. £69.99. ISBN 978-1-10-715177-2.]

The right to challenge the lawfulness of detention before a court is one of the most fundamental under international law. States are under an international obligation to protect the right under their domestic legal systems, and face severe condemnation from the international community when they fail to do so. Yet despite this, in times of real or perceived emergencies, states have shown themselves willing to circumvent the right by holding individuals incommunicado or in offshore prisons, or by carrying out enforced disappearances or extraordinary renditions. In peacetime, too, the right is often denied to non-citizens, who are at particular risk of being subjected to arbitrary and indefinite detention. The right also appears elusive in our current peacetime for millions of people around the globe who are being held unnecessarily or under conditions that fall short of international standards while awaiting criminal trial: Penal Reform International, *Global Prison Trends* (2016). And, as if this were not bad enough, there remains deep seated disagreement within the legal community over the outer limits of the right, including the procedural guarantees that it encompasses and its extraterritorial reach.

A book that considers the nature, scope and significance of the right to challenge the lawfulness of detention is therefore timely and important: *Habeas Corpus in International Law* does just that. In it, Farrell gives an account of the right – which he refers to as a right to habeas corpus – that weaves together its history, present status and possible future. In overview, he traces the development of the right in

domestic law (ch. 1) to its inclusion in major regional and international human rights declarations and treaties and outlines the way that the right has since been interpreted (chs 2–4). Farrell focuses on challenges to the right's effectiveness in his lengthiest chapter (ch. 5), wherein he considers the extraterritorial dimension of the right, its application during armed conflicts, whether the right is non-derogable and the procedural guarantees that must be secured in order to give effect to it. Farrell goes on to build a case for the contemporary importance of the right to habeas corpus (ch. 6), before reflecting on whether we might in fact talk about *an* international right, elevated above a particular treaty regime, and representing a general principle of international law or a *jus cogens* norm (ch. 7). He concludes with a brief assessment of various ways in which the right might be strengthened (ch. 7). In the long term, Farrell favours the creation of a new international court that could receive habeas corpus petitions, though he acknowledges that it may be difficult to convince states to accept its jurisdiction (p. 218). In the meantime, he argues that the best way to strengthen the right is to clarify its scope under existing treaties (p. 219).

Most of the issues canvassed in the book have already been the subject of significant scholarly consideration. Farrell's point of distinction is that he considers these issues together in the one work and across different treaty regimes (e.g. the International Covenant on Civil and Political Rights; the European Convention on Human Rights; and the American Convention on Human Rights). Farrell hopes that, in doing so, the reader will come away with a holistic account of the right and an appreciation of its significance and the major challenges to its effectiveness (p. 9). He also wishes to clarify the parameters of the right – a more ambitious goal that requires him to weigh into several significant, long-standing debates of its scope (p. 204). Given the breadth of the book's coverage, it is most helpful as an introduction to each of the issues that it touches upon and it will no doubt be of assistance to students and practitioners as a starting point for further research.

The tracing of the development of the right in domestic law to its inclusion in the Universal Declaration of Human Rights is particularly useful. Farrell gives a condensed account of the development of the writ of habeas corpus in England, the spread of the remedy throughout the common law world, and the development of similar remedies under civil law systems. He convincingly argues that the right had become one of universal importance by the end of World War II: by that time, it had come to be protected under the domestic law of many states (p. 25). Despite this, the right to habeas corpus was not explicitly included in the final text of the Universal Declaration, adopted by the United Nations General Assembly in 1948. Farrell relies upon the drafting history of the Universal Declaration to argue that the right was not explicitly mentioned owing to concerns about the text's brevity, but that it was encompassed implicitly under Article 8, which deals with the more general right to a judicial remedy for acts that violate fundamental rights (p. 45). Less convincing is his suggestion that the inclusion of the right under Article 8 is particularly important because, unlike human rights treaties, the Universal Declaration does not contain a jurisdictional clause and therefore applies "in all situations" (p. 47). Given that the Universal Declaration is not a treaty, it does not directly bind states in any situation, unless it can be shown that one or more of its provisions represents customary international law, or reflects some other rule of international law binding upon states. If Farrell wishes to convince the reader that Article 8 applies in "all situations", he would need to directly address its status.

Farrell's overview of the drafting history and interpretation of major human rights treaties is more humdrum. It is done with the rather modest aim of providing the reader with an account of what he sees as the core, non-contentious aspects of

the right, but the heavy and often uncritical reliance on the decisions of human rights bodies somewhat diminishes the force of his assessments. Nonetheless, by dealing with each regime separately, Farrell is able to show that each treaty has generated a somewhat unique and complementary body of jurisprudence: for instance, complaints brought under the European Convention on Human Rights have helped better to define the procedural aspects of the right to habeas corpus, while complaints brought under the American Convention on Human Rights have focused on guaranteeing the right's availability (p. 115). One might have hoped that Farrell would also consider whether and when the interpretation of the right to habeas corpus under one treaty might influence its interpretation under another.

In a work of such breadth, it would have been difficult for Farrell to dedicate the time required to fulfil his greater ambition of furthering or resolving debates regarding the right's parameters. Take, for instance, the discussion of the interaction between international human rights law and international humanitarian law in situations of armed conflict, and the consequences of that regime interaction for the right to habeas corpus (pp. 117–40). Those unfamiliar with that topic will appreciate that the section covers seminal cases and works, such as the International Court of Justice's *Israeli Wall Advisory Opinion* (I.C.J. Rep., 2004) and the International Committee for the Red Cross's study on customary humanitarian law. Those already familiar with the topic, however, might have hoped for an engagement with more recent case law, such as the Strasbourg Court's decision in *Hassan v United Kingdom* (Application no. 29750/09) (2014) 38 B.H.R.C. 358, and the string of UK domestic court judgments in the *Serdar Mohammed* case, which culminated in a much awaited ruling by the Supreme Court earlier this year (*Mohammed v Ministry of Defence (No. 2)* [2017] UKSC 2; [2017] 2 W.L.R. 327) (although this final judgment appears, unfortunately, to have been handed down just as the book was published). These cases consider whether the right to habeas corpus under Article 5(4) of the European Convention on Human Rights might be disapplied or modified during an armed conflict, so long as certain procedural safeguards remain in place that prevent detention from becoming arbitrary. Farrell argues that, during international armed conflicts, the less rigorous forms of detention review required under international humanitarian law apply to the exclusion of the right to habeas corpus as a matter of *lex specialis* (p. 132). By contrast, he argues that the right to habeas corpus generally persists during non-international armed conflicts because there are no directly competing rules of international humanitarian law that govern detention review (p. 137). Farrell acknowledges that states may struggle to uphold the right during non-international armed conflicts: for instance, states may be unable to conduct habeas corpus review *without delay* if thousands of people are detained (p. 134). Given this, Farrell might have considered whether the right to habeas corpus might be modified under these conditions, something contemplated in the aforementioned cases. He hints that this might be done, but does not elaborate (p. 230).

There are a number of other challenges that come with a work of such breadth. One is that it makes it difficult for the author to develop an overarching thesis that ties together all the various threads of argument that run through the book. That is unfortunate given that many of the issues discussed in the book are interconnected in ways that are not fully acknowledged. For instance, if one adopts the view, as Farrell does, that the right to habeas corpus may apply extraterritorially (p. 167), that might influence one's view of whether a state may permissibly derogate from its obligation to uphold the right in that setting. The case for an extraterritorial derogation may be even stronger when the state is involved in a non-international armed conflict on foreign soil, particularly if it is said that the right cannot be tailored to

deal with the exigencies of the situation (p. 137). Perhaps Farrell does not think that these factors ought to modify the position that he takes, viz. that the right is non-derogable (pp. 148, 227–28), but it would strengthen his case if he explicitly considered (and refuted) that possibility (as to which, see Milanovic, "Extraterritorial Derogations from Human Rights Treaties in Armed Conflict", in Bhuta (ed.), *The Frontiers of Human Rights* (2016)).

Ultimately, the book leaves one with the impression that there remains much work to be done to clarify the scope of the right to habeas corpus under international law and that this is a task that is critically important. As Farrell observes, the right not only safeguards individual liberty, but also protects other substantive rights, most notably the right to be free from torture and cruel, inhuman and degrading treatment or punishment, insofar as it requires detainees to be brought before a court where they can complain about ill treatment (pp. 180–82). The right also serves as a "unique and powerful check on executive action", something that Farrell illustrates with examples throughout the book. It is a shame, then, that promises of the right often do not hold in practice. Farrell's book spurs us to consider how we might be able to make the right more effective, and, eventually, to fulfil the desire of those who, in the aftermath of WWII, hoped that the right's inclusion in major human rights declarations and treaties might lead, in the words of Zechariah Chafee Jr (p. 180) to a "world-wide barrier against the knock at the door at 3 a.m.".

Trina Malone
St John's College

UK, EU and Global Administrative Law: Foundations and Challenges. By Paul Craig [Cambridge University Press, 2015. xiii + 830 pp. Paperback £24.99. ISBN 9-781-10756-308-7.]

UK, EU and Global Administrative Law is a magisterial work, in the most positive meaning of the term. It builds on Paul Craig's Hamlyn Lectures, delivered in 2014, considerably embellished for the purposes of this publication. It deals with each of the three distinct, if related, administrative law regimes with the clarity and confidence borne of an impressive level of knowledge and in a degree of detail that is remarkable given the breadth of the work.

The book repays reading from beginning to end, to understand how administrative law, broadly conceived, applies at the multiple levels of government that affect the UK as a whole. It is long, however, at above 800 pages, and not everyone has interests that span all three regimes. Many readers may prefer, instead, to refer to it as a source on particular aspects of administrative law. The book is well adapted to use in either way. It is organised around six main chapters, two of which are devoted to each regime, dealing respectively with "foundations" and "challenges". The chapters on "foundations" pursue common themes, which usefully include not only the relatively familiar topics of concepts and doctrine but also sections on the nature and structure of the "administration" that is subject to the relevant body of law. Each of these provides an essential basis on which to understand and evaluate the administrative legal regime as it is now and as it has evolved over time. The chapters on "challenges" necessarily vary but deal, in each case, not only with the practical, procedural, substantive and design issues that Craig identifies as significant within each regime, but also with the vertical challenges that derive from interaction between