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Publication Review

Constitutional Futures Revisited: Britain's Constitution to 2020

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Subject: Constitutional law

***P.L. 446** *Constitutional Futures Revisited* is an excellent book. It discusses in detail the theoretical and pragmatic implications of the on-going process of constitutional reforms (e.g. devolution and the creation of the UK Supreme Court) by constructing a series of explicative and predicative scenarios. The book's key contributions to present literature are both analytical and methodological. From an analytical perspective the past ten years of profound constitutional reforms are explained in a series of thoughtful and carefully articulated analyses that unravel their implications in theory and in practice. The second great strength of this book lies in its innovative methodology. The book adopts a heuristic approach called "future studies" developed by economists and adopted by corporations (e.g. Shell) that allows for a forecast of long term legal and socio-economic changes (e.g. the reform of electoral systems).

The book is divided into four sections: the first discusses the future implications of devolution; the second section engages the role of the central state in a devolved constitutional matrix; the third explains political and institutional accountability brought by, for instance, the Human Rights Act 1998; and the fourth section speculates over the reform of the electoral system. The four discussions are seamlessly interlaced; not a mean feat, given the heterogeneity of the themes under review. However, the section that discusses decentralisation and the role of the central state might have been slightly enriched by a greater level of overlapping.

Constitutional Futures Revisited entrenches a new heuristic approach to the study of the United Kingdom's Constitution. This method was first discussed in *Constitutional Futures: An History of the Next Ten Years* by R. Hazell (ed.), (Oxford: Clarendon Press 1999), and *Constitutional Futures Revisited* capitalises on the success of the previous endeavour by adding a new set of analyses. It is, thus, a "good sequel", which confirms its exclusive coverage of the cleavage between those constitutional studies that discuss what the UK Constitution has become (e.g. V. Bogdanor, *The New British Constitution* (Palgrave Macmillan, 2009)) and what a constitutional system ought to be (e.g. M. Loughlin, *The Foundations of Public Law* (Oxford University Press, 2010)). The descriptive and prescriptive approaches are, by all means, informative and a necessary compendium to *Constitutional Futures Revisited*, yet they are, by way of comparison, static explanations. *Constitutional Futures Revisited* focuses squarely on the dynamic contextual implications (in theory and in practice) of the recent constitutional reforms by considering them in their distinctive relational relevance. Specifically, the book has completed valuable work reviewing the outputs of each constitutional reform (e.g. the establishing of the UK Supreme Court) in relation to a reasoned selection of socio-political variables that are likely to affect the role of the new and old constitutional institutions.

***P.L. 447** One of the distinctive points of *Constitutional Futures Revisited* is that the legal narratives are not disembowelled of their prescriptive significance. For instance, in the first section of the book, an interpretation of the doctrine of parliamentary sovereignty (that is not considered either literally or figuratively) is inserted in a series of speculative scenarios that seek to predict the future of the UK as a decentralised constitutional policy. The analyses of the UK devolution is particularly variegated and complex. On the one hand, Alan Trench maps the evolution of highly complex and highly evolved Scottish, English, and Welsh constitutional narratives (Chs 2 and 3). On the other hand, Robin Wilson and Rick Wilford seek to carve an explanation and suggest some predictions of the present Northern Ireland constitutional cycle (Ch.2).

Similarly highly articulated are the analyses dedicated to the prediction of the future of the English Question (Ch.4) and "Britishness" (Ch.5). These are perhaps the most interesting chapters of the decentralised state section. The innovations brought by the UK devolution have attracted much interest in Commonwealth countries (e.g. Australia) and in Europe (e.g. Italy and Spain); however the

interplay between constitutional decentralisation and the identity of central state remains an unexplored topic. Specifically, it remains unclear whether decentralisation might stretch the concepts of equality to breaking point by creating two tiers of rights holders within and outside the devolved regions, and whether the British identity which was previously associated--albeit mistakenly--with the English identity, must be substituted by something else. In the two chapters dedicated respectively to the English Question and to the future of Britishness, Hazell (et al. ii) and Arthur Aughey propose a series of scenarios that might develop the role of central institutions and their projected identity.

The second section of the book reflects on the possible development of the judiciary, Whitehall, and the monarchy. The three studies show an outstanding understanding of their respective subjects and the ability to apply the future studies methodology in practice, yet some of the predictions might have gained persuasiveness by considering some of the Scottish Constitutional narratives.

For instance, Andrew Le Sueur and Kate Malleson (Ch.7) speculate on the future developments of the partnership between the UK Parliament and the judiciary. One of the issues discussed is whether the judiciary will capitalise on the trend that empowers constitutional jurisdictions across Europe. *Constitutional Futures Revisited* appears to answer the dilemma on the negative. Even if there are notable signs that suggest an antagonist realignment of the partnership that embraces North American and Continental European legalism, in the near future the UK Parliament and judiciary will retain a political conception of the irrespective constitutional role.

The explicative and predicative scenario suggested by Le Sueur and Malleson is convincing, yet it partially overlooks the role that devolved institutions might have on shaping the partnership between Parliament and the judiciary. For instance, Neil Walker, in a recent review of final appellate jurisdiction in the Scottish legal system (commissioned by the Cabinet Secretary for Justice) suggests that Scottish cases that cover a common UK and Scottish issue should be heard by the UK Supreme Court (preferably in Scotland) and those Scottish cases addressing distinct questions of Scots law should be heard by a putative Scottish court. A scenario *P.L. 448 that suggests a "wandering UK Supreme Court" might appear very odd indeed. However, in an analysis of the narratives that retrieved the historical relevance of the Act of Union 1707 Walker's submission is well reasoned. It develops the future implication on distinctive features of Scottish regional and UK central constitutional traditions and, secondly, assesses the potential implications of those differences on the interplay between the judiciary and devolved institutions. The House of Lords, Walker explains, was the final appellate jurisdiction on Scottish civil law cases because Scottish public law traditions regarded the pre-Union Scottish Parliament as the final appellate jurisdiction in those matters. In 1707, the Union of the Parliaments transferred the jurisdictional prerogative to the UK Parliament, and the role of final appellate jurisdiction in Scottish civil cases was taken over by the House of Lords. It was unavoidable, at least from a Scottish perspective, that the clear separation brought by the Constitutional Reform Act 2005 between Parliament and judiciary would have raised the question, as it did, of whether the Supreme Court could be considered the final appellate in Scottish civil law. In contrast with Le Sueur and Malleson, Walker's scenario draws attention to the persistent implications of (Scottish) historical narratives on the partnership of a potentially English Supreme Court.

Chapters 8 and 9 discuss respectively the constitutional roles of the civil service and the monarchy. In the near future, both institutions--albeit for different reasons--are likely to change. Scott Greer notes that the present working practices of the civil service might change as one of the possible effects of an increasing level of public access to information. A different type of popular pressure might also change the monarchy. Following the scandals of the nineties, the British public has progressively perceived itself as the effective "proprietor" of the British monarchy. This perception, Bob Morris notes, might in the near future hinder the stability of the monarchy as a constitutional institution.

The third section of *Constitutional Futures Revisited* offers an extended and convincing account of the United Kingdom's human rights culture, the widening of public access to information, the activity of constitutional watchdogs, and the media pressure on political institutions. At first sight, the Human Rights Act 1998 combined with the quasi pacification of Northern Ireland might suggest that the UK is set in the path to a full constitutional endorsement of human rights declarations. However, Colm O'Conneide's chapter explains in detail the concerns generated by a statutory entrenchment of rights in British common law systems. The scenario developed by O'Conneide suggests that human rights are still perceived as not fully integrated aliens in the UK legal culture.

Chapter 11 discusses the potential effects of an ever increasing exchange of information between the public and civil servants. The analysis (Ch.12) of the futures of constitutional watchdogs, such as the Comptroller and Auditor General, provides instead a detailed diagram of the different factors that

might condition the future of the United Kingdom's constitution. Deserving a specific mention is, perhaps, the constitutional pervasiveness of the relationship between the media and politics (Ch.13). In the background of an ever increasing media scrutiny of politicians (which is probably good) there is increased concern over the pervasiveness of large media corporations that have already reduced the commercial viability of independent outlets in France and Italy.

***P.L. 449** In the fourth and last section Meg Russell, Hazell, and Justin Fisher discuss (political) representation. In this sense, the present book comes at the right time and makes an important contribution to the present debates. However, a few speculations in this section have lost significance either because the deductions extracted from the predictive scenarios have materialised (e.g. the formation of a Coalition Government between the Liberal Democratic Party and the Conservative Party), or because a referendum on May 5, 2011 will give a strong indication of which voting system the UK is likely to have in 2020.

In conclusion, *Constitutional Futures Revisited* is an enlightening read. It might have overlooked some (Scottish) constitutional narratives but, considering the book on the whole, this is only one small criticism. *Constitutional Futures Revisited* paves the way for the methodology of future studies as one of the United Kingdom's leading constitutional narratives. The book combines a series of rich articulated analyses of key constitutional debates (e.g. devolution and the role of the judiciary) with a convincing predictive method that has already been proved successful (e.g. the implication of a post-election coalition government). At a time in which the UK constitutional structure is changing at an exceptional rate, *Constitutional Futures Revisited* should be considered an essential read that deserves a place on the book shelves of public law lawyers and some of its chapters should be recommended in the reading list of Public Law undergraduate and postgraduate modules alike.

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