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書評 BOOK REVIEW

***Constitutional & Administrative Law* by Anthony
Bradley, Keith Ewing, Christopher Knight
(London: Pearson, 2015) pages i-lxviii, 1-753.
Price: £38.99 (paperback). ISBN 978-1447904212.**

Virak Prum

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名古屋大学大学院国際開発研究科

GRADUATE SCHOOL OF INTERNATIONAL DEVELOPMENT
NAGOYA UNIVERSITY

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In *Constitutional & Administrative Law*, two well-established experts of constitutional law in the UK have teamed up with a rising star of administrative law to produce yet again an excellent textbook on these two legal fields which deeply affect law and governance system of a country. Most important topics are thoroughly examined and critically expanded to provide readers with the latest developments in these fields while still keeping enriched discussions on theoretical insights on how the three branches of government work and should work.

On the Constitutional Law side, I particularly find Part I which elaborates on the Sources, Structure and Principles to be intellectually most entertaining as this part keeps law students and practitioners of the common law world marveling at the so-called unwritten British Constitution. The coverage on the unique character of the Parliamentary Supremacy — which results from the unwritten constitution — is unmatched and is presented with a thorough analysis on its historical roots and its present-day consequences. Although the traditional understanding would have followers of Dicey believe that a parliament cannot bind later parliaments, this constitutional rule would now have to be settled in the specific context in which the discussion occurs. In practice, the book has revealed many instances in which a previous parliament did actually succeed in binding later parliaments. In fact, the reader will gradually notice that the Parliamentary Supremacy is no longer the primary rule of constitutional law in the United Kingdom.

Another equally important constitutional concept is the Rule of Law which British courts have often held that no Acts of Parliament can infringe upon. The authors provide authoritative account of the classical meanings of the rule of law. However, in questioning the relevance of what Dicey was teaching about the rule of law, the current authors have added to the literature several fresher views on the aspects affecting this fundamental rule and conclude that the “rule of law ... thrives only alongside values of human dignity, liberty and democracy” (p. 85), which values having been steadily accepted by judges.

On the issue of the Responsible and Accountable Government, the explanation comes with details on

¹ LLB (Cambodia), LLM (Japan, Nagoya University), PhD (Japan, Nagoya University); Dr. Virak Prum is Honorary Adjunct Lecturer of Law at the Royal Academy for Judicial Professions (Cambodia).

political and legal theories as well as real practices which ought to capture the attention of law students and academics of any legal tradition that adopts a parliamentary government model. Thus, although it is often said that the King can do no wrong, ministers of the Crown do assume both collective responsibility and individual responsibility to Parliament in so many ways. Though legally not binding, the Ministerial Code ultimately provides an effective framework to govern the relationships between ministers and parliament.

Furthermore, the section on the increasingly complex relationships between the UK law and the EU law sends strong signals to any country which either already is a member of a supra-state arrangement or is considering entering one. This is partly due to the fact that the UK's recent European Union Act 2011 has made this point both "controversial and novel" (p. 140). By requiring, for instance, that any future UK government's support for any extension of the EU's powers be approved first by Parliament and then by a positive referendum, this British constitutional invention interestingly puts the traditional French notion of national sovereignty (parliament) and popular sovereignty (people) in direct competition with one another. This, on the one hand, explains the persistent struggle between the necessity to meet international obligations and the need to satisfy local politics but, on the other hand, shows how the British model may generate practical lessons.

With the creation of the UK Supreme Court in 2009, the role played by the courts in upholding the rule of law has been enhanced, generating a better protection of human rights and freedoms. Benefiting from their judicial independence, courts are in a good position to ensure that the government does not exceed the limits of its power.

On the Administrative Law side, the book adequately examines the increasing complexities surrounding the necessity of delegated legislation which in all practical reasons amounts to vesting in the Executive a real legislative power. The types of remedies available to victims of wrongful governmental action depend on the court finding whether any such action is wrong on substantive or procedural grounds. Within the usual causes of defects such as ultra vires and unlawful use of discretionary power, courts have gradually devised many tools they can employ to invalidate administrative decisions, including, to cite a few, error of law, error of facts, irrelevant considerations. Strange though it may appear, British ministers may from time to time be given power to amend or repeal parts of an act of Parliament. Consequently, the chapters on judicial review critically explain the ultimate purpose of judicial oversight: to ensure that administrative decisions taken by or on behalf of ministers meet standards of fairness and legality. An important contribution by courts is the growing use of proportionality as another tool to use for invalidating an administrative decision. With the direct effect of the decisions of the European Court of Human Rights, the administrative law in the UK will need to make adjustments.

Constitutional & Administrative Law is an engaging reading for those interested in law and governance in general and with a particular focus on the British common law system. With very extensive

references to cases and respected scholarships throughout every chapter, this book should be read by students, academics and practitioners alike.