The New Commonwealth Model of Constitutionalism

Theory and Practice

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About the Book

Stephen Gardbaum argues that recent bills of rights in Canada, New Zealand, the United Kingdom and Australia are an experiment in a new third way of organizing basic institutional arrangements in a democracy. This ‘new Commonwealth model of constitutionalism’ promises both an alternative to the conventional dichotomy of legislative versus judicial supremacy and innovative techniques for protecting rights. As such, it is an intriguing and important development in constitutional design of relevance to drafters of bills of rights everywhere. In developing the theory and exploring the practice of this new model, the book analyses its novelty and normative appeal as a third general model of constitutionalism before presenting individual and comparative assessments of the operational stability, distinctness and success of its different versions in the various jurisdictions. It closes by proposing a set of general and specific reforms aimed at enhancing these practical outcomes.

About the Author

Stephen Gardbaum is the MacArthur Foundation Professor of International Justice and Human Rights at UCLA School of Law. He is currently a Fellow at New York University’s Straus Institute for the Advanced Study of Law & Justice and was the 2011/12 Guggenheim Fellow in constitutional studies. An internationally recognized constitutional scholar, his research focuses on comparative constitutional law, constitutional theory, and federalism. Having previously identified “the new Commonwealth model of constitutionalism” as a novel general approach to bills of rights, he was the keynote speaker at the 2009 Protecting Human Rights conference in Australia, part of the major debate in that country about adopting this model through a national human rights act. His scholarship has been cited by the U.S. and Canadian Supreme Courts and widely translated.

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Key Features

• First book-length treatment of an important recent constitutional experiment to forge a new way of protecting rights in a democracy will appeal to those who are dissatisfied with the two existing approaches and are looking for an alternative

• Exploration of the theory and practice of the new Commonwealth model of constitutionalism includes and integrates normative and empirical, legal and political approaches to the subject

• Systematic comparative analysis of the recent rights revolutions in Canada, New Zealand, the United Kingdom and Australia suggests what can be learned or borrowed from each

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