

## **BOOK REVIEW**

**Crina Ramona RĂDULESCU**  
**National School of Political Studies and Public Administration**  
**Bucharest, Romania**  
*radulescucrina@yahoo.com*

*Stephen Gardbaum (2013) **The New Commonwealth Model of Constitutionalism. Theory and Practice**, United Kingdom, Cambridge University Press, 262 pp., ISBN: 978-1-107-00928-8, 978-1-107-40199-0*

This book is part of a series which aim is to produce leading monographs in constitutional law. All areas of constitutional law and public law fall within the ambit of the series, including human rights and civil liberties law, administrative law, as well as constitutional theory and the history of constitutional law.

Stephen Gardbaum is the MacArthur Foundation Professor of International Justice and Human Rights at the University of California, Los Angeles (UCLA), School of Law. An internationally recognized constitutional scholar, Gardbaum received a B.A. with First Class Honors from Oxford University, a M.Sc. from London University, a Ph.D. in Political Theory from Columbia and a J.D. from Yale Law School. He is a solicitor of the Supreme Court of England and Wales, and teaches constitutional law, comparative constitutional law, international human rights, European Union law, and comparative law. His research focuses on comparative constitutional law, constitutional theory and federalism.

In this 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 also innovative techniques for protecting rights.

The aims of this book are twofold: (1) to present the new model as a novel and general model of constitutionalism in a more systematic and comprehensive way and (2) to assess whether and to what extent it is operating distinctly and successfully. To fulfill these twin aims, the book is divided into two parts (Part I - Theory and Part II - Practice), exploring respectively the theory and practice of the new model.

Chapter 2 (What is the new Commonwealth model and what is new about it?) is analytical in focus and has the goal of explaining what the new model is and what distinguishes it from the two traditional and previously mutually exclusive, institutional forms of constitutionalism. More specific, the author identifies the new model’s novel and distinctive techniques for protecting rights in a democracy. Chapter 3 (The case for

the new Commonwealth model) is normative and presents the general case for the new model as a third and intermediate form of constitutionalism. This chapter engages with the latest theoretical contributions to the debate about the merits of judicial or constitutional review. As the author states, if Chapter 3 can be said to present the “external” normative case for the new model as against the other two standards forms of constitutionalism, Chapter 4 (An internal theory of the new model) develops the “internal” normative case for it, in the sense of articulating an ideal theory of how the model ought to work.

In Part II, the book changes gear, from the theoretical to the practical aspects. Chapters 5 to 8 (Chapter 5 – Canada, Chapter 6 – New Zealand, Chapter 7 – The United Kingdom, Chapter 8 – Australia) describe the different versions of the new model adopted in Canada, New Zealand, the United Kingdom and Australia respectively, assess how successfully they are working as instantiations of the new model and in delivering its theoretical benefits presented in Part I, and identify any major practical problems or weaknesses that have emerged.

Chapter 9 (General assessment and conclusions) presents an overall assessment of the new model and an answer to the ink or eraser question. So, it evaluates the general success and distinctness of the new model in practice and critically examines skeptical claims of inherent instability and insufficient difference from judicial supremacy.

This book concludes by proposing a set of general and specific reforms that may help the new model to better achieve its normative goals in practice. And as the author says: “If it is not yet the time to call for the ink, it is also too soon to employ the eraser”. Finally, as important features of this book, we can underline the followings:

- Comprehensive study 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;
- Analysis 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.

Having in mind that this work is new and actual and of interest to an international audience, we invite you to read and raise questions starting from *The New Commonwealth Model of Constitutionalism. Theory and Practice* by professor Stephen Gardbaum.