

BOOK REVIEWS

Lord Bingham and the Transformation of the Law: A Liber Amicorum. Edited by MADS ANDENAS AND DUNCAN FAIRGRIEVE [Oxford University Press, Oxford, 2009, lxxii + 892. pp, ISBN 9780199566181 (h/bk £95.00)]

Lord Bingham made a huge contribution to the development of many fields of law. His judgments manifested intellectual clarity and humanity. His extra-judicial writing is free from emotive flourishes, yet carries conviction, and never loses sight of the key values. Baroness Hale (pp 209–220) describes him as ‘a supreme judicial leader’. He led by example, quietly, politely and tolerantly. His views were highly influential but ‘never sought to dissuade others from expressing theirs’. They were ‘the product of a great intellect with . . . the mind of a scholar who was first trained in history, who has a deep respect for the enduring traditions and fundamental principles of the common law, who understands what international cooperation is all about, and above all, who believes in Parliamentary democracy and the rule of law’ (at p 220). In the portrait by David Poole reproduced on the dust-jacket he looks relaxed, but there is no mistaking his intellectual power. Yet he was considerate towards everyone, and without self-importance. He encouraged worthwhile developments without sacrificing core values. As Senior Law Lord he led the Appellate Committee deftly through the introduction of human rights and devolution and the vicissitudes of terrorism, and became one of the architects of the politico-legal compromise that produced the Constitutional Reform Act 2005 and the new Supreme Court of the UK.

The editors have achieved the remarkable feat of bringing together authors in sufficient numbers and with enough expertise and eminence to do justice to this remarkable man. Many highly distinguished scholars, practitioners and judges from Australia, Canada, France, New Zealand, the UK and the USA contributed to the collection, and the quality of the 53 essays is correspondingly high. They give a rounded impression of the law, its political milieu, and the man who did much to make them what they now are.

Some essays are devoted wholly or largely to Lord Bingham and his work. For instance, Sir Ross Cranston sketches Lord Bingham’s early years (pp lii–lxii), including a photograph of Bingham in front of the Matterhorn which calls to mind Sherlock Holmes at the Reichenbach Falls. Other authors focus on either Lord Bingham’s contributions to specific areas of law or his influence in other parts of the world.

The book is in five parts: The Rule of Law and the Role of Law; The Independence and Organization of Courts; European and International Law in National Courts; Commercial Law and Globalization; and Comparative Law in the Courts. These headings alone make clear the range of fields to which Lord Bingham contributed judicially and extra-judicially.

In view of the number and variety of essays, I shall concentrate here on those concerned with international and comparative law. Colin Warbrick (pp 533–559) provides an incisively critical analysis of the interaction of public international law and UK constitutional law, policy and practice in relation to decisions to undertake military action. In arguing that it should be possible to review the aims of the any deployment of force if not the means employed by reference to good arguments of international law, he shows how military concern about even a very small risk of international criminal liability may cause political difficulties.

Four essays build on Lord Bingham’s approach to the rule of law and judicial method in relation to public international law. Gillian Triggs (pp 509–531) examines a paper he published in this journal on the Alabama Claims Arbitration, as well as his judgments on torture, the effect of UN Security Council Chapter VII resolutions, and other aspects of international law, to identify his techniques for balancing legal arguments against each other on the basis of a rigorously evidence-based approach to establishing the content of international law. Philippe Sands and Blinne Ni Ghrálaigh (pp 461–476) reflect on the retreat from any notion of an international rule of law in State practice of the early 21st century, and outline what will be needed if international law

and relations are to move back from the use of force to legal norms and procedures as the main way of resolving inter-state disagreement. Vaughan Lowe develops a theory about the relationship between public international law and municipal law through an incisive analysis of the way courts in the UK use international law when deciding questions of municipal law. Robert McCorquodale (pp 137–146) fittingly discusses Lord Bingham's contribution to the field through his role in the British Institute of International and Comparative Law, and Lord Collins of Mapesbury (pp 347–362) addresses the issue of justiciability as it arises in international law.

Marrying public and private international law, Horatia Muir Watt (pp 751–759) draws attention to the curious way territoriality has become less important as a criterion of state sovereignty in international and in a globalized economy whilst it has become ever more significant in private international law. Sir Roy Goode (pp 649–664) looks at a methodological crossover between public and private international law: the growing impact of international treaties concerning ways of dealing with private-law disputes on the structure of private international law. Several contributors examine issues of private international law, including Steven Gee (pp 635–647) on injunctions restraining parties to arbitration agreements from pursuing legal actions in parallel with arbitration.

Part 5 is particularly rich in comparative law. For example, Michael Kirby examines the relationship between Lord Bingham and Australian law. Jane Stapleton anatomises the problems of comparative tort law. In their own contribution (pp 831–866), the editors, starting from Lord Bingham's contribution to comparative law, develop a sevenfold typology of comparative law and consider how the field could develop further. It is appropriate that the book should end as follows: 'In his 1992 article [(1992) 41 ICLQ 513], Lord Bingham says "we should not expect too much too quickly" but warns that judges may seek more foreign adventures. There is still room for adventure.' It is sad that the man himself will not be able to lead us through it, but it is good to know that he lived long enough to see how widely and how well he was, and still is, admired, respected and liked.

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The Confluence of Public and Private International Law: Justice, Pluralism and Subsidiarity in the International Constitutional Ordering of Private Law by ALEX MILLS [Cambridge University Press, Cambridge, 2009, ISBN 978-0-521-73130-0, 395 + xxiv. pp., £24.99 (p/bk)]

In this important new book, Alex Mills, Slaughter and May Lecturer in Law at Selwyn College, Cambridge, marshals a grand historical narrative of the relationship between public and private international law and a detailed analysis of the constitutional dimensions of private international law in federal systems, in support of his case for a renewed 'international systemic' conception of private international law to service a coherent, 'harmoniously pluralist' international legal order.¹

Mills' central argument is his claim that a rigid disciplinary separation between public and private international law sustains a flawed understanding of private international law as essentially municipal law, concerned with domestic notions of substantive justice and individual fairness. In place of this 'conflict of laws'—a term the book uses in a pejorative sense—Mills proposes a conception of private international law that is systemic, international, public and constitutional in nature. It is *systemic* in its concern with the structure of the international legal order rather than with substantive results in individual cases. Its *international* character is claimed to inhere, not in its status as 'really international law' in the traditional sense of 'not national' law (this being a dichotomy that Mills rejects) but in the sense that it is 'the embodiment of diverse, imperfect strategies which aspire to the universal value of reducing conflicts in the exercise of private law regulation'.² It is *public* in its focus on effectuating an ordering of States' regulatory

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¹ Page 303.

² Page 308.

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