

BOOK REVIEWS

***Parliamentary Practice in New Zealand*, David McGee CNZM QC, Dunmore Publishing, Wellington, 2005, 3rd edition**

David McGee's text, now in its third edition, remains the definitive user's manual to New Zealand parliamentary practice. *Parliamentary Practice in New Zealand* describes the mechanics of the fundamental principles of democratic representation, executive accountability and parliamentary supremacy. By presenting a comprehensive range of sources in a pragmatic and focused manner, the text makes the processes of Parliament readily accessible for a broad audience.

Structured as a reference tool, the text moves methodically through an account of the historical, constitutional and physical setting, the electoral process, the main players and sources of parliamentary procedure, before turning to its core focus, the operation and activities of Parliament and its constituent parts. The text provides detailed account of the sittings of the House of Representatives, select committee and legislative process, financial matters, communications to and within Parliament, and chapters on functions of inquiry, international relations and emergency powers, finishing with a study of parliamentary privilege. Notable developments since the last edition include the recognition of political parties in the *Standing Orders of the House of Representatives*¹ (included in the appendices to the text), developments in case law concerning parliamentary privilege and recent amendments to the Public Finance Act 1989. The early pages devoted to outlining the main forms of procedure governing Parliament emphasise the text's endeavour to make accessible not only Parliament's functions, but how it goes about this business.

The text provides an entry to the various sources containing the details of Parliament's conduct of its proceedings and exercise of its powers. This guidance is necessary in light of Parliament's occupation of a unique collection of roles in New Zealand society, and its exclusive cognisance over its proceedings, both of which play out in a necessarily political environment and translate into a significant degree of specialisation in its activities and process (although the referencing to other states' practice, particularly in the chapters on privilege, suggests little is lost in translation between legislatures; whether this requires qualification is unanswered by the text). Such guidance is also valuable when Parliament's procedure is distributed through a variety of sources. These include statutes, the *Standing Orders*, Speakers' rulings and other references to the *Parliamentary Debates (Hansard)*, relevant reports, historical sources, case law and practice.

To take one instance, described as the most important business transacted by the House, the text devotes five chapters to various forms of legislation and the legislative process, with particular attention to public finance in a later section. The chapters on legislation draw on the procedures laid down by the House in the *Standing Orders* and in Speakers' rulings and other precedents published as the *Speakers' Rulings 1867 to 2005 inclusive*.² The book contextualises the points of procedure in the orders and rulings with description of their practical application, underlying purpose, and legislative examples. In this way throughout the book, McGee lifts the institution from the sources constituting its powers and process.

¹ Brought into force 20 February 1996, last amendments with effect from 12 August 2005.

² David McGee CNZM QC (ed), House of Representatives, Wellington, 2005.

Another of the text's central strengths is its express recognition and incorporation of "practice" as a legitimate source of procedure. Armed with the Clerk of the House of Representatives' working knowledge of the institution, the text reads with decision and lends a sense of immediacy to Parliament's operations. The incorporation of practice also indicates its centrality to the voice of the text.

The text's style derives from its broad audience: members of parliament, members of the public, public officials, legal professionals and students, who engage with the institution of Parliament in its various functions for different purposes. With a sustained practical tone, the book successfully combines the roles of both guide for the participant or observer, and source of examples, observations and commentary on the activity of Parliament. Those looking for sustained legal commentary and case analysis, found in other of McGee's publications, will find instead a wealth of references to primary resources and reports for further investigation.

Given this approach, readers would benefit from more descriptive references to support the statements of procedure. These could include greater detail of the issues surrounding cited legislation and the points of debate referred to from the *Parliamentary Debates*, as well as simply providing the titles of reports contained in the *Appendices to the Journals of the House of Representatives* as a uniform practice. Incorporation of this detail would provide background to the procedural point and retain an element of the vibrant social, political and legal narrative influencing the House's process.

On a grander scale, two factors suggest the publishers might usefully consider reformatting future editions of the text. First, derived from a variety of sources, including case law and the turn of events themselves, Parliament's practice is in constant development. This is apparent from the accrual of changes since the 1994 edition and again from the first edition in 1985. Secondly, there is a wealth of publicly available resources. The Parliamentary website contains searchable versions of many of the publications to which the text refers, and the introductory pages of the book include a section dedicated to other internet resources. For a practice-oriented text covering the extent of Parliamentary activities and subject to constant amendment, presentation of the text as an electronically available serviced commentary would ensure its currency, with the added utility of direct links to the resources and related references. Alternatively, a supplement available at intervals between editions could perform the first of these functions in a more modest manner.

The suggested improvements in no way detract from the valuable public service the book performs. *Parliamentary Practice* stands alone as a comprehensive reference to parliamentary procedure in New Zealand, with David McGee combining his experience and varied resources to provide a knowledgeable and practical guide for his wide readership.

Lisa Fong

***The Rights of Refugees Under International Law*, James C Hathaway, Cambridge University Press, Cambridge, 2005**

James C Hathaway's recent work, *The Rights of Refugees Under International Law*, is as much a manifesto as it is a textbook. The over-arching message of the work could not be clearer – refugee law is black letter law and nothing else. Hathaway's ringing purpose is to ground any legal debate about refugees in positive legal terms.

Hathaway is the James E. and Sarah A. Degan Professor of Law at the University of Michigan, and is among – if not the most – prominent legal thinkers in the area of refugee law. His "Michigan Guidelines" have paved the way for the interpretation of the refugee definition as has his 1991 work, *The Law of Refugee Status*.

In this work, however, he turns his focus to the legalities that lie beyond the refugee definition set out in article 1A of the Convention relating to the Status of Refugees, 1951. The idea is that refugees, upon arrival in a country of asylum, lay claim to progressively greater and more elaborate rights as their status is clarified.

Hathaway aims to ground refugee law firmly within the laws of international obligation as a palliative branch of human rights law based on the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights. Hathaway's purpose is to put right the misconception of governments that "refugees [are] little more than the beneficiaries of humanitarian discretion" and those scholars and lawyers "who too readily assume that generic human rights law is a sufficient answer to the needs of refugees". That is to say, the rights that refugees have on arrival are refugee-specific and real.

Rodger Haines QC of New Zealand says that:

Professor Hathaway has not set out to preach to the converted or to rail against the perfidious state party. Instead, with complete intellectual rigour, he has stripped away much of the nonsense written about the Convention both by states and by academics. He has endeavoured to engage with the practical dilemmas which states and decision-makers encounter and to suggest how refugee law should guide their resolution.

As a textbook, *The Rights of Refugees Under International Law*, is accessible and clear. The first chapter begins with a discussion of international law and its roots in modern positivism. From there, the focus of the second chapter moves toward the international refugee regime itself. Chapters 3-7 focus on the entitlements that refugees have upon arrival. Hathaway grounds his analysis by investigating the different rights that a refugee gains depending on where he is in his determination process – physical presence, legal presence and lawfully staying. Each stage has its own set of rights that the refugee accrues as the process continues. The leitmotif is that the longer a refugee stays in a country the more substantive are the rights he has at his disposal.

The value of this book to students cannot be overstated. Although there is nothing in the work on the refugee definition found in article 1A of the Convention, students will be greatly assisted by much of the discussion found in the book. As mentioned above, Hathaway grounds his work in a specific conception of international law. This is not a step that many academics care or dare to make. This often weakens discussion on refugee law as it is not clear from which position the author is writing. Hathaway's clarity on this point will not only give the student a concise overview of international law but it will also inform her further reading on the subject.

The greatest value of this textbook lies in the fact that it is intentionally broad and touches on many issues – for example, Hathaway’s discussion on whether the duty of *non-refoulement* has become customary international law and his treatment on the right to family unity are compelling and would serve as a perfect starting point for any further research on these topics. Hathaway succeeds in making a broad analysis dense and rich.

The manifesto comes in the introduction and conclusion and for that reason they make the most interesting reading in the book. The focus of the introduction is to cement the understanding of refugee law as a palliative branch of international human rights law. Here he succeeds without fault. However, the conclusion is more problematic as he strays more into the realm of public policy than in other areas of the book. Hathaway writes that “none of the legitimate concerns of governments amounts to a good reason to question the underlying soundness of responding to involuntary migration in line with the rights-based commitments set up by the refugee convention and other core norms of international law”. Hathaway suggests that the Refugee Convention 1951 requires a free-standing mechanism to monitor compliance as many other conventions have.

As a black-letter lawyer writing a legal text Hathaway is unlikely to indulge in arguments around governments and public policy. However, the “legitimate concerns of governments” sounds like short hand for “legitimate *legal* concerns”. Refugee law, however, is a political football *par excellence*. It can win or lose elections and whip-up a talk-back furore as few things can.

The problem from a legal point of view is that in terms of the international human rights obligations of states that have signed up to the Refugee Convention there is no simple answer for this. In that sense, Hathaway’s book is a triumph. His purpose is to outline the rights refugees have at different stages of determination because these rights were once more or less unquestioned by signatory states. That unquestioning application is changing. *The Rights of Refugees Under International Law* sheds an enormous amount of light onto an area that has previously attracted little academic attention in time to meet the demands that this area of law is currently facing.

In the words of Rodger Haines QC, Hathaway’s latest “will change the way in which decision-makers, policy makers and academics think about refugee rights”.

David Dickinson

Research Index

LLB (Honours) dissertations placed at University of Auckland's Davis Law Library from 2005 to date in 2006:

Anderson, *Workplace bullying: towards a legal definition* (2005).

Bainbridge, *Debating the use of torture: what is it, is it justified, and if so, in what circumstances?* (2005).

Barlett, *Historic and cultural heritage protection in New Zealand* (2006).

Bonney, *Bioprospecting, marine scientific research and the biological resources of the deep sea in areas beyond national jurisdiction: the current legal regime, its inadequacies and suggestions for the future* (2006).

Bowles, *Judicial review of public bodies: the "public function" test in Dunne v Canwest* (2006).

Earl, *Ascertaining the criminal liability of a corporation* (2006)

Finn, *Imposing liability on development company directors for leaky buildings: advice to the leaky-home claimant and suggested areas of law reform* (2006).

Gray, *Electricity generation and supply: sustainable management and the way ahead* (2006).

Hallett-Hook, *Rivers north of the future: assessing the draft Plant Variety Rights Amendment Bill 2005* (2005).

Harrison, *Family assistance in New Zealand: are the child tax credit and in work payment unlawfully discriminatory against beneficiaries and their children?* (2005).

Jones, *Taxing married women in New Zealand* (2005).

Khoo, *China's emergence as a capital exporter: a shift in tax treaty policy?* (2006).

Mayes, *Duties of senior employees: fidelity or fiduciary?* (2006).

McCall, *Sovereignty theory and international conflict resolution in the 21st century* (2005).

Mills, *History of the influence of canon law on marriage from the time of the early Roman Empire to 12th century England* (2006).

Nathan, *International law challenge to the Foreshore and Seabed Act: the right to culture and an individual complaint to the Human Rights Committee* (2005).

Pilkington, *Salary caps in professional team sports in New Zealand: an unreasonable restraint of trade?* (2005).

Sage, *Extrinsic evidence in the construction of written contracts* (2005).

Sunderland, *Trespass, unlawful detention and conversion: how the New Zealand government acquired the Finnish barque Pamir* (2006).

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