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Book Review

***102** J.W.F. ALLISON. THE ENGLISH HISTORICAL CONSTITUTION: CONTINUITY, CHANGE AND EUROPEAN EFFECTS. CAMBRIDGE: CAMBRIDGE UNIVERSITY PRESS, 2007. IX, 275 PP. £50.00 (CLOTH), £18.99 (PAPER)

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The title of this book properly reflects its essence. Allison describes an evolutionary process of English constitutional change, where innovation is always incremental. He reveals both English peculiarities and European influences over the English constitution. To him, Europe's dominant influence on the English constitution did not begin with Community law but is centuries old. The United States' influence is scarcely mentioned and its model is generally considered as the antithesis of the English constitution.

The author analyses the characteristics of the English, rather than the United Kingdom's, constitution. Thus, he barely discusses the devolution of the last decade or its implications for parliamentary sovereignty. He rejects recent suggestions that a constitutional revolution occurred with the adoption of the Human Rights Act 1998, the Constitutional Reform Act 2005, and, even further back, the ***103** enactment of the European Communities Act 1972. Rather, he treats them as part of England's centuries-long constitutional development. Allison predicts that, even were England to adopt a full-fledged formal constitution, the historical constitution would be highly relevant for both its interpretation and modes of change.

Allison rejects Dicey's analytical approach, and its dominance in legal scholarship of the twentieth century, in favor of the historical method. To him, Dicey's is a static description of the constitution, focusing on form rather than processes of formation, which renders it unable to explain current development. Allison acknowledges, however, that Dicey did rely heavily on both historical precedents and works, which might suggest that his criticism was overstated. Also, Allison mainly discusses Dicey's *Law of the Constitution* [\[FN1\]](#) and thus does not capture Dicey's broader approach as revealed in his many scholarly articles. Additionally, Dicey's book actually seems quite relevant to Allison's analysis, since Allison focuses heavily on reevaluating Dicey's twin constitutional pillars: parliamentary sovereignty and the rule of law.

Allison's historical constitution describes the past with the present in mind. It is abridged and openly selective to make it accessible and instructive. It alludes to hundreds

of years of history--back to the seventeenth century-- described in a nutshell over a few pages. Allison is faithful to the unfolding story of constitutional development as it actually happened and is thus not pre-committed to a normative or prescriptive account. As such, his approach is also juxtaposed against a liberal normativist account of the English constitution depicted by Trevor Allan's *Law, Liberty and Justice*, [FN2] which construes the constitution as founded in substantive values of the rule of law. Being contextual, not merely theoretical, and treating the constitution as a legal, and not just political, enterprise, are among the virtues the author attributes to his approach.

Allison asserts that the English constitution maintained old institutions, such as the Crown and parliamentary sovereignty, but transformed their substance. The former was transformed to accommodate representative democracy through the King-in-Parliament and the latter to enable Britain to join the European Union and thus accept the supremacy of Community law. In both cases, the historical constitution enabled continuity by minimizing and disguising the scope of change, while maximizing the appearance of continuity.

Allison treats the Crown as the constitution's centerpiece--indeed, it is the only institution to which he dedicates a chapter--while accepting its modern symbolic role. He discusses in detail the remains of Crown immunities, while omitting to discuss whether any true constitutional powers are still available to the Crown.

Allison believes both England and Europe share a commitment to separation of powers, but that each manifested this commitment differently. England lacks total separation, due to its parliamentary system, but enjoys judicial independence, which was enhanced by the Constitutional Reform Act 2005. In contrast, European countries, such as France, formally require--through statute and Constitution--total separation of the different branches of government. Allison believes that separation of powers has largely evolved as an English constitutional convention. But, despite the book's focus on historical development as a form of constitutional legitimacy, he does not offer any new general understanding of the status of constitutional conventions and whether we should treat them as binding.

***104** Though British courts ascribe supremacy to Community law over inconsistent parliamentary enactments, Allison does not treat this judicial development as revolutionary. [FN3] Rather, he suggests that it manifests common law development under which parliamentary sovereignty is maintained in form through judicial interpretation that requires express statutory language to override Community law.

Analyzing Sir Edward Coke's famous paradoxical description of both a controlling common law and a transcendent Parliament, Allison explains that the contradiction is only theoretical, because in practice Parliament was originally the highest court of the land and later, courts have accommodated both through doctrines of interpretation. Allison emphasizes, however, the ultimate historical triumph of parliamentary sovereignty. The complexity of legislative and judicial supremacy is seemingly revealed anew in Dicey's exposition of both parliamentary sovereignty and the rule of law. Allison argues however, that for Dicey, the rule of law sets formal, and not substantive, criteria and thus is ultimately subject to parliamentary sovereignty. Nonetheless, Allison argues that this complex duality enabled the English historical constitution to develop in the twentieth century towards a more substantive understanding of the rule of law and ultimately to the adoption of the Human Rights Act 1998. From Coke, through Dicey, to the Human Rights Act 1998, Allison

beautifully describes the modes of gradual change of the English historical constitution.

[FN1]. A.V. DICEY, AN INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION (10th ed., 1959).

[FN2]. T.R.S. ALLAN, LAW, LIBERTY, AND JUSTICE: THE LEGAL FOUNDATIONS OF BRITISH CONSTITUTIONALISM (1993).

[FN3]. Cf. W.H.R. Wade, *Sovereignty--revolution or evolution?*, 112 L.Q.R. 568 (1996).
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