**BOOK REVIEW
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**Mance, Rt Hon Lord and Turner, J. (2017) *Privy Council Practice*, Oxford, Oxford University Press, ISBN 978-0-19-879849-1**

The Privy Council can trace its roots to Norman origins, as an advisory body to the sovereign. It is the Judicial Committee of the Privy Council (JCPC) which acts as the court of final appeal for jurisdictions including the British Overseas Territories and Crown Dependencies, and for those Commonwealth countries that have retained the appeal to Her Majesty in Council.

Despite being situated in London, the decisions of the JCPC were of little concern to the UK law student save for a brief period (1998-2009) when appeals relating to devolution matters were entertained by the Privy Council, which are now heard by the UK Supreme Court. Indeed, various textbooks on English Legal System give scant reference to this court as might be expected, likewise I imagine will the constitutional textbooks of Australia, Canada or other jurisdictions who have dispensed with the JCPC as a final court of appeal.

This volume aims to explain the Committee’s history, practices and procedures, and, for a few select topics, jurisprudence arising from its decisions. The three initial chapters on the history and the sources and grounds of jurisdiction are of greater interest to the academic, along with the final two chapters on precedent and constitutions. However, the largest chapter of the book is concerned with rules and practice directions which may appeal more to the practitioner.

The first chapter on Constitution and History of the JCPC focusses on the reforms of the Judicial Committee Act 1883 which still governs the role and function of the modern JCPC. Interestingly, this first historical chapter ends with a brief nod as to the future of the Committee, for example noting the introduction of the Caribbean Court of Justice which Barbados, Guyana, Belize and Dominica have already adopted as their final court of appeal.[[1]](#footnote-1)

Chapters 2 and 3 are concerned with the Sources of Jurisdiction and the Grounds of Jurisdiction for the various categories of overseas territories where the Queen is Head of State, such as Dominions and British Territories, and strikingly a small number of independent republics (Mauritius, Trinidad & Tobago and Kiribati) who have maintained final appellate jurisdiction in the JCPC. Indeed, so varied is the JCPC’s jurisdiction it includes the monarchical state of Brunei. Readers will have to look elsewhere for critical commentary on this perculiar set of arrangements, but the book does reference such work and the extensive footnotes permit a critical reader to reach beyond a simplified version of practice and procedure. Chapter 3 is more technical in expanding upon the Grounds of Jurisdiction, taking a thematic and doctrinal approach rather than addressing singular jurisdictions sequentially. Topics such as leave to appeal and appeals as of right are covered in depth, and less well exercised appeals are also noted in relation to the Disciplinary Committee of the Royal College of Surgeons or appeals from the Church Commissioners under ecclesiastic law.

Whilst chapter 4 has a very practice oriented structure, the composition of the panel (as with the composition of a UK Supreme Court panel) remains opaque, having only 8 lines of text devoted to this process which remains at the discretion of the Registrar, subject to review by the President and Deputy President of the Supreme Court. An issue addressed in the Supreme Court Year Book 2016 by Clarry and Sargeant,[[2]](#footnote-2) following the en-banc sitting of the Supreme Court in *R (Miller and Dos Santos) v Secretary of State for Exiting the European Union*.[[3]](#footnote-3) Indeed, out of the 670 strong membership of the Privy Council, those able to sit on the JCPC are members of the Privy Council who hold, or have held, high judicial office. This may well mean that there are significantly more eligible Privy Councillors than the 12 Supreme Court Justices: chapter 1 noted the rare occasions that the UKSC justices have been supplemented by judges either from the English Court of Appeal or from other jurisdictions.[[4]](#footnote-4) This chapter explains the technicalities of e-bundles, cost orders and other prcedural matters leading into the meatier topic of chapter 5 Precedent, Evidence and Judgments. Of more interest to the UK lawyer is how JCPC decisions are to be interpreted domestically when the JCPC does not even hear appeals arising domestically, and likewise for lawyers in other JCPC jurisdictions how on-point decisions from one jurisdiction are to be applied across the board. Dissents and separate assents have been permissible since 1966, apparently as a result of pressure from Australian jurists, which was previously a concept not in keeping with the actual purpose of the JCPC which was to ‘humbly advise His Majesty’[[5]](#footnote-5) in order for the Monarch to approve such advice, or not.

Chapter 6 covers a far more interesting academic topic, goes beyond what the title may suggest it is limited to a focus on practice. Judicial review, tenure and security of judges, constitutions and the separation of powers bring about some interesting discussion before the controversial matter of the death penalty is addressed over 15 pages, which is half of the chapter itself. The authors are to be commended for addressing this matter with coverage of JCPC decisions on mandatory/discretionary death penalties, the criteria required and the implementation or delay of such a penalty. The question of inhumane or degrading punishment or treatment is not ignored, and care is given not to deride the sovereignty of jurisdictions who retain the death penalty yet appellate decisions concerning such are taken by a body generally located in and presided over by decision makers in the United Kingdom.

Overall, this book identifies and describes many constitutional questions, not just for the United Kingdom but for all states and territories within the jurisdiction of the JCPC, but it does not go into critical analysis or discourse, which might be expected from such a title *Privy Coucil Practice*. Yet, it is not a dry tome exclusively focussed on curent practice and procedure.

An interesting read, well referenced, accessible and comprehensive, as one might expect from Lord Mance, the Deputy President of the Supreme Court and his former judicial assistant Jacob Turner.

1. The Agreement Establishing the Caribbean Court of Justice was signed by 14 jurisdictions (<http://www.caribbeancourtofjustice.org/wp-content/uploads/2011/09/ccj_agreement.pdf>) however final appellate jurisdiction was effected for Barbados and Guyana in 2005, Belize in 2010 and Dominica in 2015. [↑](#footnote-ref-1)
2. Clarry, Daniel and Sargeant, Christopher (2016) Judicial panel selection in the UK Supreme Court: bigger bench, more authority? In: UK Supreme Court yearbook. Appellate Press Ltd, London, pp. 1-16. [↑](#footnote-ref-2)
3. [2017] UKSC 5 [↑](#footnote-ref-3)
4. A former Chief Justice of Jamaica sat in *Matthew v State of Trinidad and Tobago* [2004] UKPC 33 and a New Zealand Court of Appeal judge sat in Arklow Investments Ltd v Ian Duart Maclean [1999] UKPC 51 [↑](#footnote-ref-4)
5. s.3 Judicial Committee Act 1833 [↑](#footnote-ref-5)