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Review of 'The Judicial House of Lords  
1876-2009' by Louis Blom-Cooper, Brice Dickson  
and Gavin Drewry

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conglomerate of the three (with the monarchical thrown in, for good measure), something like the Australian platypus—composed of distinct parts, identifiable as belonging to different species, welded together into a strange, but perfectly workable whole. The historical tolerance of and provision for ambiguity, paradox, compatibility between the principles of separateness and belonging, between a national (and, for a time, trans-national) narrative and local loyalties—all captured in the model of Australian federalism—are valuable sources for modern reflection on forms of governance for diversity within unity, and even healthy correctives for those who seek pure forms and bright lines, which the messy business of politics simply does not allow. Aroney’s study shows that there are alternatives to either “pure” parliamentary sovereignty or simple unification and sets these out clearly and convincingly. A little patience in following the Australian story might even serve to demonstrate that the wheel need not be reinvented, yet again, in other parts of the world. This, in short, is a work with much to offer, rich and considered scholarship to plumb, a provocative thesis, and an ending that, enticingly, calls for a sequel.

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**The Judicial House of Lords 1876–2009**, by Louis Blom-Cooper, Brice Dickson and Gavin Drewry, (Oxford, Oxford University Press, 2009), pp.820+lxxxvi, hardback, £100.

The role of the House of Lords as the final appellate court of the United Kingdom came to an end with the entry into force of Pt III of the Constitutional Reform Act 2005. *The Judicial House of Lords 1876–2009 (“JHOL”)* was conceived in part out of the editors’ “strong desire to commemorate the achievements of a prominent legal institution in British society” (p.xxii). Not least among these achievements is the fact that the by the time of the demise of its judicial function, the House of Lords would be held in sufficiently high esteem to be considered worthy of such a tribute. For as several of the contributions in this volume discuss, the decision to retain the Lords’ jurisdiction in final appeals in 1876 stemmed (as Lord Bingham puts it in his contribution), not out of “respect for its quality or value but from a belief that removing it would diminish the standing of the House” (p.122). By contrast, the announcement in 2003 of the Government’s intention to introduce legislation establishing a Supreme Court was met in some quarters with a vocal defence of the Appellate Committee (although as Andrew Le Sueur’s contribution to this volume points out, the reasons were multi-faceted, relating in part to the manner in which the reforms were announced and to poor relations between the judiciary and ministers at the time).

The resulting volume is a collection of some 40 essays on the judicial work of the House of Lords, arranged into five parts. Part A brings together five historical and institutionally-focused essays on the origins the modern judicial function of the House, its administration, relations with the Court of Appeal, and finally its

replacement by the Supreme Court. In different ways, all of these essays shed new light on a long-standing anomaly of our legal system, namely a final legal appeal to Parliament, albeit acting in a judicial as well as parliamentary capacity.

Part B, “The Judges” is more varied in scope and focus of the contributions. Despite the expectations that follow from the title of this part, what unites the essays in this part of the book is the emphasis on institutional issues of continuing importance. Dawn Oliver considers the role of Lord Chancellor as head of the judiciary, one she concludes “...was a matter of convention and culture as much as of law” (p.110). The challenges of this role (by s.7(1) of the Constitutional Reform Act, now vested in the Lord Chief Justice) are clarified but in no way resolved by the Constitutional Reform Act. Chapters by Kate Malleson and Lord Bingham on the personnel of the Judicial Committee explicitly consider lessons for judicial selection. Blom-Cooper’s chapters pose enduring questions about the nature of precedent and of judicial style. Finally, the loss of the Law Lords as legislators (as Lord Hope’s chapter on the topic shows, their legislative role was in decline before their Lordships removal to the Middlesex Guildhall) exacerbates the ongoing challenge of securing expert legal input into the legislative business of the House.

Part C covers the development of the judicial function between 1876 and 2009, with the chapters organised chronologically. While the developments of the Law Lords’ role owes much to the usual suspects—unfolding institutional logics, the influence of powerful personalities, and the challenges posed by particular legal controversies—the essays in this part in different ways also demonstrate the influence of what one contributor to this part describes as “[t]he mood and temper of the times” (p.203): the alternate struggles for high principle and formalism in the Victorian era, concern about national security in the war and inter-war years, the growth of the welfare state, and the corresponding extension state, corporate and professional responsibility in the post-war years. Michael Beloff’s chapter shows an increasing exposure of the Judicial Committee to a variety of influences in the 1980s and 1990s: to European institutions, academic scholarship and to legislators’ opinion, as well as to the broader climate of social opinion, even as the legislative and judicial functions of the House were losing touch with one another. Tentatively, one might identify within this chapter an increasing tendency of the Law Lords to divide along liberal-conservative lines—in this too, the Law Lords reflected mood and temper. The section concludes with a chapter by Brice Dickson on the Bingham Court. Dickson’s emphasis is more narrowly institutional but nonetheless reflects one aspect of the *zeitgeist* of the noughties, namely an emphasis on innovation. This included experimentation in the use of collective and composite judgements and prospective overruling as well as the Law Lords’ response to the constitutional innovations of the Blair Government. Taken together with the historical chapters in Pt A, the essays in this part are among the most exciting in the collection, clearly demonstrating the analytical payoffs of historical analyses of legal institutions.

“Part D: Regional and External Perspectives” is by far the most eclectic part of *JHOL*, and considers the role of the House as seen from different jurisdictions (both within and beyond the jurisdiction of their Lordships) as well as from different points of view (including the views from legal practice, from the City, and from

the academic discipline of political science). It is trite to point out that the Law Lords did not operate in a vacuum. This part confronts in detail the implications of this truism, many of which are not obvious. Indeed, the Appellate Committee is uniquely multi-jurisdictional and in its alter-ego as the Judicial Committee of the Privy Council, international (as discussed by Sir Kenneth Keith's contribution, in particular). While one can have sympathy for the difficult editorial considerations in putting together a volume of this length and scope, this part arguably suffers from one omission: it would have been nice, especially given the tension that developed between the Law Lords and some ministers in the final years of the Appellate Committee, for the perspectives of executive government (both central, local and devolved) to have been represented in some way within this part.

The final part of the book is by far the largest, consisting of 15 chapters, each of which discusses the jurisprudence of the House of Lords in specific legal areas and in all cases authored by a recognised authority within each respective field. Considerations of space prevent any detailed discussion of the essays in this part individually. Collectively, they demonstrate the value in approaching legal scholarship through the lens of a particular court.

Finally, it is worth singling out for praise the careful work that has gone into the four appendices to the volume, which together provide detailed information on each of the Law Lords since 1876. These in themselves provide a valuable resource for those embarking on research into the Law Lords in future.

How well does *The Judicial House of Lords* fulfil its intention to be a tribute to the House of Lords as a judicial body? As the acknowledgements state, the standards by which such an enterprise must be judged is extremely high: "We knew that if the job was worth doing it had to be done well; in fact, very well indeed". The editors, Blom-Cooper, Dickson and Drewry are well placed to meet this exacting standard, each of them having made important contributions to House of Lords scholarship. Equally, the Notes on Contributors reads like a *Who's Who* of legal academia, the appellate judiciary and the senior bar, many of whom have themselves made significant earlier contributions to House of Lords scholarship. Not surprisingly, therefore, the contributions to this volume are of an extremely high standard. Moreover, by putting together the largest collection to date (and it is hard to imagine this being superseded by any time soon) on the judicial business of the House, the editors have also succeeded in producing a collection of unsurpassed breadth both in terms of historical coverage and the range of topics examined. Furthermore, in many ways, the volume is greater than the sum of its contributions: *JHOL* is a rich tapestry of cross-cutting themes and ideas (although only one contribution, Oliver's, seems to have explicitly drawn on the others to any great extent).

In one sense, the sheer eminence of the contributors stands as some kind of tribute to the high esteem in which the Judicial Committee had come to be held. One wonders, though, why the voices of junior scholars and counsel, and of the lower judiciary are not more in evidence. After all, many earlier seminal contributions to House of Lords scholarship have been made by scholars at the outset of their career: e.g. Alan Paterson, *The Law Lords*, (Basingstoke, Macmillan,

1983). Equally, the voice of the lower judiciary, for example, on the impact of the Law Lords' decisions on lower court practice might have been more strongly reflected given a slightly different selection of contributors.

Curiously, in setting the parameters for their work, the editors state that:

“...it would be impertinent for us, and in any event a nigh-impossible task, to evaluate the quality of judicial output over the 133 years...”

of the existence of the House of Lords in its modern form (p.xxv). Even in a commemorative work, it is hard to imagine such restraint in a collection devoted to the legislative or executive functions of government. A number of contributors, especially those of the final part of the book, in any case ignore this editorial pronouncement, albeit within a limited scope. Dickson himself ends his chapter on the Bingham Court by trying to identify some criteria of good law-making, and to assess the last years of Law Lords' presence in Parliament against them. The conclusion he reaches is that “...by whatever criteria one chooses to assess it, the performance of the court in [the Bingham] period was very good” (p.275). More wittily, Sir Derek Wood concludes his chapter by asking (and answering) the *Monty Pythonesque* question: “What did the House of Lords ever do for us [property lawyers]?” (p.699). While the verdict of such evaluations are overwhelmingly positive, it is worth noting that there exists a more critical tradition of scholarship on the House of Lords and on the senior judiciary more generally. (See, for example, David Robertson, *Judicial Discretion in the House of Lords*, (Oxford, Clarendon Press, 1998); J. A. G. Griffiths, *Judicial Politics Since 1920: A Chronicle*, (Oxford, Blackwell, 1993). Within *JHOL* this is perhaps best represented by Malleon's chapter.

Moreover, perhaps because such comprehensive evaluation is deemed impertinent by the editors, the volume could hardly be said to push the methodological boundaries to the extent required to make more comprehensive evaluation feasible. Robertson's *Judicial Discretion in the House of Lords* is explicitly evaluative (among other aims), and self-consciously addresses the methodological difficulties in such an enterprise. Admittedly he considers a much shorter time period than the present work, but his approach is in principle scalable. Patterson is more concerned with explanation and understanding than with evaluation, yet in its own way has something substantial to say about the methodological challenges in researching the Law Lords.

Overall, *JHOL* will be essential reading to those interested in judicial politics, in the evolution judicial institutions more generally, and to some legal historians. Perhaps more impressive than its crucial importance to *some* readers is the fact that *JHOL* will provide something of substantial interest to almost *all* scholars of law within the jurisdictions of the UK and indeed the Commonwealth more generally.

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