

Lifting the Lid on the Law Lords: The Workings of England's Highest Court

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Alan Paterson, [*Final Judgment: The Last Law Lords and the Supreme Court*](#) (2013).

In *Final Judgment* [Paterson](#) makes a triumphant return to the subject of his PhD undertaken forty years ago: the operation of the highest court in England and Wales. This update covers the transition required by the Constitutional Reform Act 2005, giving effect to a rhetorical separation of powers. The relevant part of this legislation as far as this account is concerned is the abolition of the jurisdiction of the House of Lords and its reconstitution, outside of Parliament, as the Supreme Court.¹ (It is worth reading this in conjunction with [Richard Moorhead's review of Hanretty's *Political Preferment in English Judicial Appointments*](#).)

The substance of the book draws on a number of sources, including over 100 interviews, many with members of both the House of Lords and the Supreme Court.² Primarily it illuminates process issues, from the way that judges interact with the advocates appearing before them to how they come to their decisions.³ Indeed, the structure of the book is based on dialogues the court has with others and among its own members. Paterson details how the exchanges with counsel in the court progress and, importantly, the difference good advocacy can make to the outcome of a case. We get insights into how the justices own discussions shape the ultimate judgments and what importance is given to dissents in terms of individualism versus collegiality. To bolster this Paterson provides some statistics on justices' voting patterns over the last 15 years. He also touches on politically sensitive dialogues the Court has with other courts as part of the UK belonging to the European Union. In this respect the UK Supreme Court mediates between the pan-European courts and the polity of the UK. Recent discussions on human rights and membership of the EU highlight the difficulties.⁴ The depth and quality of this material is sufficient to make this work important without more. However, the authenticity of the accounts, and Paterson's honest handling of the material, by which I mean that he reports what he found, warts and all, adds to its value.

Such a rigorous post-mortem of either the high end skills of lawyering or of judicial decision making at the highest level would be valuable in their own right. Together they provide a revealing panorama of the legal appeals process. The book covers court conventions, such as the appeals court not basing decisions on points not argued by counsel and how it has been dealt with by the judges putting arguments to counsel so that they can have their say. This leads into issues such as whether and which counsel are listened to when arguments are put and why. It examines the questions of how the judges approach their task and how and why they change their initial views of the case.

Combined with these useful insights into the judicial process there is fascinating material concerning the individuals involved. Such detail derives from the extraordinary candour of some of the interviewees and their willingness for it to be attributed. This gives additional material for analysis since it illustrates just how important human agency is in any legal process. It shows how, even at the highest levels, and in an institution as bound by tradition as the judiciary, individual personalities make a huge difference to outcomes.

As well as humanising the subject of inquiry the focus on personalities affords the reader a level of

interest in the material that is unusual in academic work. It is not always an edifying view of the conduct of business in such an august institution. Following the difficulties in the Pinochet case, caused when Lord Hoffman failed to mention a potential conflict of interest, relationships between two of the Lords and Hoffman were said to have broken down completely. (For Lord Hoffman's role as judge and legislator [see Hugo Young's analysis](#).)⁵ For quite different reasons, two of the other members of the court were on such bad terms that they always made a point of disagreeing with the other. Counsel whose argument was endorsed by one could expect a hard time from the other. Others of their Lordships had reputations as intellectual bullies. In one case junior counsel, having observed the battering taken by his senior, on being asked if he wished to address their Lordships replied "Not without a helmet".

The reader is also given an introduction to the politics of the chamber, from high to low. At the high end the constitutional tensions between the House of Lords and the executive over detention of terrorist suspects is an important insight into the realities of the rule of law. At the low end, Paterson describes how the siting of each of their Lordships' offices potentially affects their views and the outcome of cases. Finally, we see how even this most important of institutions is under pressure to cut cost and to change ways of working. Therefore, the senior judges are under pressure to not to indulge advocacy, to work as a team and to produce single judgments. This, it is not surprising to hear, means that some members of the Supreme Court are less and less able to perform their role as they would wish.

1. The Constitutional Reform Act 2005 s.23 created the Supreme Court and s.40 transferred the jurisdiction of the House of Lords to the new body. Under s.24 of the Act the judges of the House of Lords became the judges of the Supreme Court but were no longer able to sit or vote in the House of Lords, the second legislative chamber, while serving.
2. Interviewing elites has its own sets of problems as discussed in [Researching Amongst Elites: Challenges and Opportunities in Studying Up](#), (Luis L.M. Aguiar and Christopher J. Schneider, eds., 2012).
3. The Supreme Court now has its [own YouTube channel](#)
4. See, for example, Conor Gearty, "[On Fantasy Island, British Politics, English Judges and the European Convention on Human Rights](#)".
5. David Luban discusses the Pinochet case and Lord Hoffman's role in "Law's Blindfold" in *Conflict of Interest in the Professions* (Michael Davis and Andrew Stark, eds., 2001) at 29.

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