

# Revolutionary changes

by Sally J. Kenney

*Building the UK's New Supreme Court: National and Comparative Perspectives*, edited by Andrew Le Sueur. Oxford University Press. 2004. 376 pages. \$90.

For a system that revels in tradition, makes only the smallest incremental changes, and thinks modernizing is a dirty word, the changes in the judiciaries of the United Kingdom in the last 10 years have been nothing short of revolutionary. Devolving powers to Scotland, Northern Ireland (where the Assembly is currently suspended), and to a lesser extent, Wales, has made those jurisdictions the vanguard of electing women legislators, instituting judicial nominating

commissions, and attempting to operationalize the concept of a representative judiciary.

Clearly on the agenda for a new supreme court in the United Kingdom is the constitutional issue of determining the relationship of the parts to the whole. How will Scotland's independent civil law system fit into a system of appeals, formerly the purview of the Privy Council? Should a judge from Northern Ireland have a guaranteed seat on the House of Lords? Passage of the Human Rights Act of 1998 has brought into sharper focus the relationship with the U.K. as part of international and supranational institutions and the judicial systems they created, the Council of Europe (European Court of Human Rights) and European Union (European Court of Justice), respectively.

Many of us who advocate for

reform, such as modernizing the arcane (and discriminatory) system of selecting judges, utilizing judicial staff more effectively, curtailing unlimited oral argument, and developing control over the appellate docket hope that the debate engendered by the passage of the Human Rights Act and more recently in 2003 the abolition of the office of the Lord Chancellor will place some of these other reform issues squarely on the public's agenda.

Into this milieu steps Professor Andrew Le Sueur and his co-authors. *Building the UK's New Supreme Court: National and Comparative Perspectives* offers lesson-learning from the highest constitutional courts in the United States, Canada, Germany, and Spain as well as the European Court of Justice and European Court of Human Rights. The project on which this book is based (the Consti-

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tution Unit) started in 1999 and this volume includes the papers presented at two seminars in 2001. They are relevant to the current debate but, as they preceded it, do not engage it directly.

## What are the lessons?

Who is the audience for this text, I wondered repeatedly as I read each chapter. High-level civil servants considering models of reform? The higher judiciary itself? Scholars such as myself specializing in judicial selection and the U.K.'s legal systems more generally? Or scholars and students of comparative law? Even the most devoted in each group will find it tough going reading from cover to cover. Do we really need to know the history of Scottish law from several centuries past to figure out the route of appeal of a new supreme court? I'm not sure Scottish highlanders are really comparable to native peoples of Canada, or those in Northern Ireland to the Quebequois, but I'm willing to be persuaded of the relevance of the comparative example. Alas, like too many volumes of so-called comparative work, comparison means considering a country other than the dominant, in this case, the

United Kingdom. So we have interesting articles about Spain, Germany, Canada, and the United States, but the chapters leave all lesson drawing to the reader.

Several of the articles also have a second flaw of much comparative work: the authors are overly smitten by their own countries marvelous success in solving problems, in this volume, from federalism to managing their caseloads. Happily, we have a less sanguine view from Canada. If policy makers are going to borrow from one another, they need accurate, even critical, assessments of policy as implemented, not the propagandist's. Likewise, English judges and defenders of the English legal profession need to broaden their perspective from the untested and uncritical assumption of "the best in the world" to consider the lessons of other jurisdictions. Several of the fine essays in the volume, such as Le Sueur's ("Choosing Cases"), Kate Malleson's ("Judicial Appointments in the Era of Human Rights and Devolution"), and Richard Gordon's ("Relationships between Bench and Bar") encourage them to do just that.

*Judicature* readers who are not academics might be interested in a

chapter or two on a relevant topic. I learned something interesting and important from each chapter, although if I had not been a reviewer I probably would have skipped over more than half. Those who are teaching about the U.K.'s legal systems have a relevant (if somewhat dry, and descriptive rather than analytical) compilation that will serve them well. Other teachers of comparative law will simply have to compare the individual chapters to what they already have on the jurisdiction in question. The essays are relevant and competent, but I am not in a position to say that the chapter on Spain, for example, is the best overview in English.

Despite these criticisms, I look forward to further work by the team at the Constitution Unit. 373

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