

Book reviews

A Court of Specialists: Judicial Behavior on the UK Supreme Court



Author: Chris Hanretty
 Publisher: Oxford University Press
 ISBN: 9780197509234
 Price: £64

This is an intriguing study of the legal and non-legal influences that affect decision-making in the UK Supreme Court. It is the first detailed work of its kind, a solitary pendant to the myriad of comparable studies relating to the US Supreme Court and to the few that focus on Canada's Supreme Court or Australia's High Court.

The 'judicial behavior' examined (the book prefers US spellings, since it was published there) relates to seven issues: how the Supreme Court grants permission to appeal; how it determines how many justices should hear an appeal; how it chooses which justices should sit in the appeal; who should write a judgment; the process of dissenting; whether patterns of dissent can identify 'left-leaning' and 'right-leaning' justices; and, finally, which categories of appellants tend to win their appeals.

Reassuringly for lawyers, the author's conclusions largely chime with less numerical assessments previously made by legal academics (Hanretty is primarily a political scientist). Applications for permission to appeal are more likely to be successful if the case is an 'important' one, if it involves public law and if in the court below the judges were divided. Hanretty measures importance partly by counting how often the decision appealed against was reported in generalist law reports: this is somewhat odd, given the role that digital reports now play in lawyers' lives. An extra-legal influence, he claims, is that if the government applies for permission to appeal it is much more likely to obtain permission than other applicants.

The same legal factors, along with the presence of a human rights claim, were found to influence whether appeal

panels should be larger than five, whereas the main factor determining which justices should sit, and who should write judgments, was 'specialisation'. Indeed the book's central contention is that the Supreme Court, more than its predecessor and apex courts in other common law countries, is essentially a collection of experts in different areas of law, although he labels Scottish and Northern Irish law as specialisms too, even though the substantive law is often identical to that in England and Wales and a judge from a devolved region may also be a *national* expert in a legal field, such as Lord Kerr in human rights law.

The book is a brave attempt to provide statistical evidence showing that Supreme Court judgments are much more influenced by legal factors than by other factors. At the same time Hanretty reinforces the view that our top judges are political in so far as they sometimes allow their view of what is fair and just in society to influence their judgments. He is honest enough to admit the limitations of his study (eg, it ignores the gender issue) and he concedes that a previous position he espoused was incorrect. The book has a number of minor legal and typographical errors, but it is a thoroughly rigorous piece of research that deserves a wide readership. **NLU**

Reviewer: **Brice Dickson** is Professor Emeritus at Queen's University Belfast.

The Law-Making Process



Author: Michael Zander
 Publisher: Hart Publishing
 ISBN: 9781509934546
 Price: £40.49 (Online price: £24.29)

Professor Zander is well known as a professor for many years at the LSE and the legal correspondent of *The Guardian*. He is one of the acknowledged experts on the English legal system. This book has a long provenance and it shows. It first appeared 40 years ago in the ground breaking *Law in Context* series and this is the eighth edition. The rather eccentric editing demonstrates an accretion over a long period of time. Part of it reads as a well written treatise but much of it seems like a collection of materials.

Range

The range of subjects covered is very catholic. What is valuable for law student and lawyer alike is that it considers all

aspects of law making from 'the Whitehall stage' through the Westminster stage and provides insights into what actually happens in practice. It then moves to Statutory Interpretation and the Doctrine of *Stare Decisis* and Precedent. The Nature of the Judicial Role in Law Making is in many respects the most original and important chapter, in particular the material on the Form of Judgment which is hardly covered elsewhere. There is also a realistic part of the book which considers how judges actually come to decisions. For example Zander quotes Lord Browne Wilkinson as recalling someone unnamed who told him when he started judging 'just remember Nick, dirty dogs don't win'. I do question the need for very long citations (sometimes

three pages at a time) from books by judges elaborating in many cases this simple nostrum.

Extraordinary

There are some extraordinary facts in the book. Did you know that the Second Reading of the Bill passing power back to Northern Ireland was held at 10pm on 23 February 1972 and the Royal Assent on 24 February at 2.11am and that 69 acts passed between 1979 and 1992 had not come into effect at all. Zander also puts delegated legislation into context by saying that several thousand sets are made every year compared with between 30 and 60 sets of Acts of Parliament.

The likely wide impact of Brexit on our legal system is covered but, of course, on a provisional basis. The two *Miller* cases are dealt with in appropriate depth as are the arguments of Lord Sumption in his Reith lectures. Full Brexit will require a further edition and I hope that will be more treatise and less materials. **NLU**

Reviewer: **John Bowers QC**, Barrister & Principal of Brasenose College, Oxford.