

BOOK REVIEW

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Sedley, S. (2015) Lions under the Throne: Essays on the History of English Public Law, Cambridge University Press, ISBN 978-1-107-55976-9

The public law of England and Wales, as comprising constitutional and administrative law, according to Sir Stephen Sedley, does not have a panoptic history. Through a collection of 14 essays, delivered for the most part at Oxford University, Sedley seeks to address, in part, some of that deficit.

As a collection of essays, initially delivered as lectures, the book is not written in a conventional style. The chapters are of varying lengths and there is a use of multiple headings. Sometimes a section may seem slightly irrelevant to the one preceding because it does not lead into it in a way anticipated. However, this does not detract from the overall readability of the book, which remains very accessible throughout. Sedley manages to consistently interest the reader, weaving into the text points of legal interest not commonly discussed, for example, on the origin of the concept of *ultra vires* or on the use of royal prerogative to grant or rescind monopolies in Tudor times. The text is replete with interesting quotations from various legal actors throughout history, the title of the book itself emanating from a quote from Francis Bacon in 1625. This quote is used regularly throughout the text to describe the relationship between the judiciary, Parliament, and executive.

The book is structured into two parts. Part I contains a series of 'Histories' of public law from different eras. In this part, Sedley discusses the development of public law, from its genesis, through to its period of 'sleep' in the early 20th century and its rebirth in modern times. He also dedicates time to discuss the conditions through which the public law gained strength in its ability to curtail the abuse of power. Of particular interest is the chapter 'The dark satanic mills: the Victorian state' where Sedley discusses the growth of the regulatory state as a response to public health issues of the time, including discussions on the use of child labour in factories and in sweeping chimneys.

In 'New corn from old fields: the Hanoverian harvest', Sedley outlines a series of attempts in the 18th century by government to halt public criticism and the subsequent backlash from the courts. His discussions of the *North Briton* cases of *Wilkes* and *Entick and Carrington* [1765] EWHC KB J98, which include informative historical and contextual content, breathe new life into the already well-examined cases. Chapter 4 contains an exploration of the Interregnum years, between the execution of Charles I in 1649 and the start of the reign of Charles II in 1660. This is an area often overlooked within legal history, but Sedley provides interesting commentary on the importance of this period for legislative reform, before the revocation of this reform during the Restoration. It includes an evocative exploration of the

first law commission, as well as a discussion of the introduction of the Instrument of Government – the country's first and only written constitution which appointed Cromwell as Lord Protector and had influence on the creation of the Bill of Rights 1689.

Part II is broken down into a series of themes each looking at a different legal facets, concepts, or principles. In 'The royal prerogative', Sedley interrogates the use of the prerogative powers of the Crown from historical to modern times. He notes with criticism its potential to be used where democratic decisions should be made, for example, in committing the state to an act of aggression, or allowing ministers to make decisions without any legislative control – such as Jack Straw's decision to take away the right of exiled Chagos islanders to return to their home. In Chapter 8, Sedley discusses the historical evolution of the right to be heard, illustrating its origins not only in public law, but in private law, before turning to explain the development of the concept of due process. The chapter 'Public law and human rights' is of particular interest - in it Sedley argues that the landmark privacy cases of *Douglas v Hello! Ltd* [2001] 2 AC 127 and *Campbell v MGN* [2004] 2 AC 457 could have been decided as they were without the introduction of the Human Rights Act 1998 (HRA). He argues this is because the law of confidence and privacy had developed in the law of England and Wales prior the introduction of the HRA. Sedley contends that this is demonstrative of the historical development of human rights and civil liberties in the United Kingdom prior to the HRA, and this has implications for a future where the HRA could be repealed (p. 205). Whether this is true or not is arguable, but his confidence in the judiciary in protecting human rights in a post-HRA world is uplifting.

In 'Law without courts: the tribunal system', Sedley considers whether other methods of resolving legal disputes are second-class to ordinary courts. In this chapter he notes with approval how tribunals enable expertise to be used in resolving specialist cases, while helping to alleviate the pressure on the ordinary courts. Time is given to evaluating the substantial overhaul of the tribunal system following the Leggatt Report and the impact that this has had on public law cases. In the last chapter in the book, Sedley discusses the rule of law, providing critique of not only Dicey's articulation of what the rule of law means, but Bingham's also, arguing that Bingham's contribution could have included references to democratic polity, the separation of a state's powers and an independent judiciary.

This book covers a vast array of topics – this review can only but provide a flavour of its content. It is an enjoyable book to read, well-researched, and stimulating. It undoubtedly provides some much needed commentary on the history of public law in England and Wales. There is much to recommend for his intended audience of judges, practitioners and students, and academics, all of whom will undoubtedly find interest in his essays.

References

Bill of Rights 1689

Campbell v MGN Ltd [2004] 2 AC 457.

Douglas v Hello! Ltd. [2001] 2 AC 127.

Entick v Carrington [1765] EWHC KB J98.

R v Home Secretary, ex parte Daly [2001] 2 AC 532.

Wilkes (unreported).

