
Editorial

Judicial Intervention in the Political Process

Just as the Human Rights Act gives the judiciary a prominent role in the political process, leading to calls for confirmation hearings to be conducted by the joint Parliamentary committee on human rights, the Supreme Court of the United States (not to mention the state courts of Florida) provides us with an object lesson in judicial intervention in the political process.

The redistribution of power in the UK, according to Professor Conor Gearty of King's College, London, happened overnight when the Act came into force. In the States, the balance of power between the executive, the legislature and the judiciary has lent towards the judiciary for rather longer. The ultimate expression of the role of the judges came when George W Bush's election was decided not by the votes of a hundred or so electors in Miami Dade, but by the votes of a couple of the Supremes. The American system makes him president by a majority of one – Justice O'Connor or Justice Kennedy, take your pick.

The American judges are political appointments, vetted by the politicians in a very public process that has in recent memory rejected the brilliant author of *The Antitrust Paradox*, Robert Bork, and Clarence White. The late Lord Taylor, Lord Chief Justice at the time, said their treatment "gave us an object lesson in how not to proceed." But, such exceptional cases being precisely that – exceptional – Professor Gearty points to the fact that federal judges in the States feel their legitimacy enhanced by the process they are put through by elected representatives. To speak of a conservative majority on a court may sound

axiomatic to an English lawyer (surely small-c conservatism is an occupational requirement for the bench?), which presumably makes liberal judge onomatopoeic, we may have to concern ourselves with such matters in the future.

And Human Rights Act cases will not only arise in the family, criminal and immigration tribunals. Employment law will be more thoroughly infiltrated by this new creation than perhaps any other area of law. Businesses will find that the new Act has a great deal to say about their conduct towards their employees, as well as their customers and society at large. The political outlook of the judges will count for more and more.

Not that the judges – certainly not most of them, at any rate – have sought such powers. They have been dragged into rule-making to an extent that, the common law tradition notwithstanding, constitutes a dramatic change in the balance of power.

With this power to interpret Parliament's utterances by reference to a different set of ground rules comes, says Professor Gearty, an imperative in favour of accountability. One hopes that a way can be found to make the judiciary accountable to the society whose interests it is charged with upholding and protecting without the extreme manifestations of scrutiny of judicial appointments or of reliance on the judicial process that we have seen in the US. Senator Lieberman may have considered, as he announced without any hint of irony, that the endgame of the election was being sorted out in the American way, but let us hope that the example does not influence developments in the English courts too much.

Peter Groves

News

Court of Appeal Civil Division – Review of the Legal Year

The Master of the Rolls, Lord Phillips, handed down his *Review of the Legal Year 1999-2000* at the Royal Courts of Justice on 19 December 2000.

Lord Phillips took the opportunity to pay tribute to his predecessor, Lord Woolf, and to Lord Justice Nourse, who acted on his behalf between June and October while he fulfilled his obligations to the BSE Inquiry. Of Lord Woolf he said, "His time as Master of the Rolls was one of unprecedented reform. Under his leadership, the court emerged not only intact, but in a buoyant and positive position."

During the period covered by the *Review* the Court saw the introduction of fundamental and wide-reaching changes to the way in which appeals are handled, and also the implementation of the Human Rights Act. "The fact that the number of outstanding appeals dropped below 900 for the first time in well

over a decade," said the Master of the Rolls, "is a significant measure of success." The Master of the Rolls also announced that from November the Court has moved to a position where the target for disposing of all types of cases is 12 months or less.

In addition to illustrating the work of the court during the last legal year, the *Review* also anticipates the challenges of the year ahead. These include maintaining the enthusiasm for developing information technology, continuing to bear down on waiting times, hear-by targets and disposals, and the early hearing of cases raising important points under the Human Rights Act.