1. Aims, themes, and structure

Introduction to the English Legal System 2019-2020 (14th edn)
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1.1 Aims

When I was first asked to write this book, my instructions were that it should: be genuinely introductory; be not too long; be relatively uncluttered by footnotes; be accessible to the more general reader; and, at the same time, offer an approach to thinking about the English legal system and its place in society not found elsewhere.

It is now nearly 20 years since the book originally appeared. However, the fundamental aims of this 14th edition remain the same. Written for all those coming new to the study of law, it:

- provides an introductory account of the English legal system, examining how it has developed in recent years and how it is likely to change in future; and
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- considers how principles that underpin the legal system relate to some of the most difficult issues facing the modern world. (For example, how should the government’s need to protect civil liberties be balanced with its need to manage risks associated with terrorism?)

The book is primarily about the *English* legal system (which includes at least for the present the legal system in Wales). There is a quite different system in Scotland and a rather different system in Northern Ireland. There are times when it is not sensible to refer just to ‘England’; thus I use the phrases ‘Great Britain’ or ‘United Kingdom’ where they seem more appropriate. Nonetheless, the focus of the book is on the English legal system.

This does not mean that the book is only about institutions located in England and Wales. The English legal system is subject to important external factors, notably the European Union (at least until the process of Brexit is complete) and the Council of Europe.

Many who study law in England come from other countries. I hope you can both learn from the issues discussed here, and relate the questions raised to the situation in your home countries. Many of you come from other common law countries—whose legal systems are based on the principles of the English legal system, in particular that judges have power to make law; others come from civil law countries, whose legal systems are founded on principles of law and the codification of law developed in Roman times. Are the legal systems with which you may be more familiar fitted to their purpose? Are there lessons to be learned from the English experience? What do you think the English should be learning from experience elsewhere?

1.2 Themes

Although an introductory book, I address three themes inadequately considered in other books with the same or similar titles:

- **The holistic approach.** Many books on the English legal system are rather ‘practitioner-oriented’; they focus primarily on those parts of the system in which professionally qualified lawyers practise law. The holistic approach adopted here is designed to introduce you to activities and functions often ignored elsewhere. I have done this, not just to be different, but also to ensure that you start to appreciate the enormous variety of professional contexts in which the legal knowledge and skills you are setting out to acquire can be used. All students should be encouraged to think about law and legal practice beyond the boundaries of the legal profession. This approach also benefits those of you who are studying law for its own inherent interest, without necessarily intending to become practising lawyers.

- **Change and evolution.** Many other introductory accounts are somewhat descriptive and ‘static’ in approach, providing a snapshot of
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the system at the moment of writing. I think it is essential that you understand just how dynamic and subject to change the English legal system now is. The pace of change is so rapid that the professional world today’s new students will enter in five years’ time will be significantly different from what it is now. Thus a recurring theme is change and the forces that have shaped and are shaping the English legal system.

● Constitutional function. The English legal system is often portrayed as being independent of the British system of government. Indeed, one important claim made for law and its practice is that it is ‘independent’ of government. Yet the government of the country is based in law; the institutions of law derive their power and authority from the system of government. There is a symbiotic relationship between law and government. The legal system is simultaneously independent of and part of the system of government of the country. Understanding the constitutional function of the English legal system and the relationship of the legal system to other branches of government is another theme underpinning the discussion in this work.

(p. 4) 1.3 Structure

Having set out the themes that underpin the book, the structure of the book is as follows.

Titled Law, Society, and Authority, Part II contains two chapters that raise fundamental issues about the social functions of law and the legitimacy of law. It is impossible to study law without asking: what is the purpose of law? What impact does law have on society? Thus Chapter 2 considers the role law plays in the way in which society is ordered, exposing the different and often conflicting functions inherent in the phrase ‘law and order’. Having concluded that law makes an important contribution to the ordering of society, Chapter 3 considers how law is made, who makes it, and whence those who make the law get their authority for making it and imposing it on society. The role of Parliament, the senior courts, and key European institutions are discussed.

Part III considers the institutional framework within which law is developed and practised. I start, in Chapter 4, with an account of the role of government in shaping the institutions and practice of law. Primary attention is paid to the Ministry of Justice, but I also consider the role of other government departments. In Chapters 5 to 8 I look at the four legal systems which, for the purpose of this book, make up the English legal system. Most English-legal-system books draw a simple distinction between criminal and civil justice. I offer a more nuanced delineation of the constituent justice systems: criminal justice, administrative justice, family justice, and civil and commercial justice. In each chapter, a ‘holistic’ approach is adopted. Thus I consider not only the work of the formal legal institutions such as courts, but also the informal or other processes that do not catch the public eye (and, indeed, which are often
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not properly understood by professional lawyers) but which form an essential part of the framework of the English legal system when seen in the round.

In Part IV I look at the delivery and funding of legal services. Chapter 9 considers the role both of those professionally qualified to practise law and of other groups who provide legal services but who are not formally qualified as solicitors and barristers. It sets out the key changes currently being made to the ways in which the legal profession works and is regulated. It considers adjudicators and other dispute resolvers who play a very significant role in the working of the legal systems. And it reflects on the contribution made by law teachers, both those working in universities and others working in private colleges and other contexts in the formation of legal professionals. Chapter 10 reflects on how legal services are (and should be) paid for, and considers in particular the enormous changes being made to the public funding of litigation services following changes to the system of legal aid.

A short concluding Part V rounds out the discussion in the book by asking why the English legal system is currently undergoing so much transformation. What are the principal drivers of change? Will the changes undermine the system? Or will they help to adapt it to better meet the demands placed upon it in the twenty-first century?

(p. 5) 1.4 Questions

Use the self-test questions in the Online Resources to test your understanding of the topics covered in this chapter and receive tailored feedback: www.oup.com/uk/partington19-20/.

1.5 Web links

Check the Online Resources for a selection of annotated web links allowing you to easily research topics of particular interest: www.oup.com/uk/partington19-20/.

1.6 Blog items

See Spotlight on the Justice System, at www.martinpartington.com/category/chapter-1-2/. (p. 6)

Notes:

1 The distinction between common law systems and civil law systems is not discussed in this book; a helpful introduction can be found in Merryman, J. H., The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America (3rd edn, Stanford, CA, Stanford University Press, 2007).
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