ENGLISH CIVIL JUSTICE AFTER THE WOOLF AND JACKSON REFORMS

John Sorabji examines the theoretical underpinnings of the Woolf and Jackson Reforms to the English and Welsh civil justice system. He discusses how the Woolf Reforms attempted, and failed, to effect a revolutionary change to the theory of justice that informed how the system operated. He elucidates the nature of those reforms which, through introducing proportionality via an explicit overriding objective into the Civil Procedure Rules, downgraded the court’s historical commitment to achieving substantive justice or justice on the merits. In doing so, Woolf’s new theory is compared with one developed by Bentham, while also exploring why a similarly fundamental reform carried out in the 1870s succeeded where Woolf’s failed. Finally, he proposes an approach that could be taken by the courts following implementation of the Jackson Reforms to ensure that they succeed in their aim of reducing litigation cost through properly implementing Woolf’s new theory of justice.

John Sorabji is a practising barrister and also the current legal secretary to the Master of the Rolls, to whom he provides advice on a wide range of subjects, and specifically the English civil justice system’s development. Since 2012 he has taught University College London’s LLM. course on Principles of Civil Justice.
ENGLISH CIVIL JUSTICE
AFTER THE WOOLF AND JACKSON REFORMS:
A CRITICAL ANALYSIS

JOHN SORABJI
For
Clare and Helena
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FOREWORD

Until the final decades of the last century, civil procedure in this jurisdiction had been almost wholly ignored by legal academics as a serious topic in its own right, and it had been treated by the legal profession as being no more than a boring and unimportant, but unfortunately necessary, adjunct to litigation. Even now, civil procedure is still regarded as very much of an also-ran in the worlds of legal academics and legal practitioners. This is thoroughly unfortunate, because it represents a serious detriment to the legal process, and therefore to the rule of law. On thinking about it, anyone who has practised in the civil courts of this country would acknowledge how vital procedure is to the dispensation of justice – both in itself and taken together with substantive law. Procedural rules and decisions routinely influence, and not infrequently actually determine, the outcome of a dispute; and procedural law can no more be detached from substantive law than style can be divorced from content in a novel.

For that reason alone, a high-quality book on the subject of civil procedure is to be welcomed with enthusiasm by every civil legal academic and practitioner in England and Wales. However, there are other reasons for applauding John Sorabji’s book.

First, it is being published at a highly opportune time, when significant alterations in our civil procedure are under way. The Woolf Reforms, introduced some twelve years ago, have had time to bed down, and the Jackson Reforms are about to come on stream. As is explained in this book, although these are generally treated as two separate sets of reforms, they should in fact be treated as closely connected proposals, not least because many of the Jackson Reforms were put forward to cure the shortcomings of the Woolf Reforms. It is invaluable for practitioners and judges to have a book which points out and analyses the deficiencies in the conception and implementation of the Woolf Reforms which, as John Sorabji explains, were ‘not an unalloyed success’, in that, while they introduced a new theory of justice, they were unable to secure its
implementation. It is especially timely to be publishing this book just as
the Jackson Reforms are starting to be implemented.

Secondly, this book contains a very useful and important history of
past attempts at reform. Unless we understand the history of an insti-
tution or system, we will never properly understand the institution or
system itself. Furthermore, the experiences of previous attempts to
change the rules of court are instructive, if sometimes in a rather
depressing sense, to those seeking to introduce or implement further
changes.

Thirdly, this book includes an analysis of the purpose of civil proceed-
ings; in particular, this involves identifying and discussing Jeremy
Bentham’s utilitarian approach, and the change from what John Sorabji
calls substantive justice to what he calls proportionate justice. Such an
analysis is again vital to an understanding of the whole topic of civil
procedure and any changes being made to the court rules. More particu-
larly, by contrasting the intended change of approach embodied in the
Woolf proposals with the effect of recent decisions of the Court of
Appeal, this book gives much food for thought for advocates and judges
involved in cases on procedural issues in coming years.

Fourthly, for those many judges (including the writer of this foreword)
who have been referred on an incalculable number of times to CPR
rule 1, there is a valuable, original, critical and considered analysis of
the overriding objective, and, in particular, of proportionality, and the
implications of those concepts.

Fifthly, the book contains very useful guidance on what the Jackson
Reforms are intended to achieve and how they may operate, rightly
emphasising the ‘heavy duty’ on the judiciary ‘to implement the reforms
properly’. It is an important and difficult time to be a judge in the civil
courts of England and Wales. The introduction of the Jackson Reforms
certainly render the role more important. While the reforms may make
the role more difficult for a period, I believe that they will also make it
more interesting and rewarding, and, in the longer run, easier.

I can think of nobody with better credentials than John Sorabji to write
this important book. He not only has, and for some time has had, a foot
firmly in both the academic and the practical camps: he works both at
University College London and at the Royal Courts of Justice. But, in
addition, his work in both places is and has been largely concerned with
civil procedure. Unlike most academics, he has much first-hand experi-
ence of civil procedure: having qualified as a barrister, he has advised
successive Lord Chief Justices and Masters of the Rolls, and other senior
judges on civil procedure (and other legal and constitutional matters),
and advised, contributed to, and attended meetings of, the Civil Proce-
dure Rules Committee and the Civil Justice Council, and was one of the
main contributors to the Report on Super-Injunctions in 2011. As a
graduate and fellow at UCL (appropriate for someone who writes about
Jeremy Bentham), his experience as a lecturer and teacher in civil
procedure, who wrote his doctoral thesis on the topic, John Sorabji also
has an academic insight into the topic, a qualification which can be
claimed by very few, if any, practitioners.

In short, then, this is a book which I would unhesitatingly recommend
to all those concerned with civil litigation, whether as an academic or
in practice.

Lord Neuberger of Abbotsbury
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