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978-1-107-06695-3 - The Politics of Judicial Independence in the UK's Changing Constitution

Graham Gee, Robert Hazell, Kate Malleson and Patrick O'Brien

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THE POLITICS OF JUDICIAL INDEPENDENCE IN THE UK'S CHANGING CONSTITUTION

Judicial independence is generally understood as requiring that judges be insulated from political life. The central claim of this work is that far from standing apart from the political realm, judicial independence is a product of it. It is defined and protected through interactions between judges and politicians. In short, judicial independence is a political achievement. This is the main conclusion of a three-year research project on the major changes introduced by the Constitutional Reform Act 2005, and the consequences for judicial independence and accountability. The authors interviewed over 150 judges, politicians, civil servants and practitioners to understand the day-to-day processes of negotiation and interaction between politicians and judges. They conclude that the greatest threat to judicial independence in future may lie not with politicians' actively seeking to undermine the courts, but rather with their increasing disengagement from the justice system and the judiciary.

GRAHAM GEE is a Senior Lecturer at the University of Birmingham.

ROBERT HAZELL is Professor of Government and the Constitution and Director of the Constitution Unit at University College London.

KATE MALLESON is a Professor of Law at Queen Mary University of London.

PATRICK O'BRIEN is an LSE Fellow in Law.

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PREFACE

This book is the product of a three-year research project carried out between 2011 and 2013, funded by the Arts and Humanities Research Council (AH/H039554/1). The project set out to explore the implications for judicial independence and judicial accountability of the profound constitutional changes which have taken place in the UK in recent years.

To enable us to understand the full impact of those changes, which are still working their way through the system, we interviewed over 150 people. These included judges, government ministers, parliamentarians, senior civil servants in the Ministry of Justice and other parts of Whitehall, officials in Parliament, the Courts Service and the Judicial Appointments Commission, plus a similar range of people in Scotland and Northern Ireland. Most of the interviews were carried out on the basis of anonymity and so we cannot name the interviewees here; but we are immensely grateful to them for their time and trouble, and for subsequently commenting on our chapters in draft. One person we can name is Lord Judge, who as Lord Chief Justice generously gave us a great deal of his time and encouraged his colleagues to do likewise.

During the course of the project we held ten seminars conducted under the Chatham House Rule and attended by senior judges, politicians, officials and academics. Each seminar had a panel of speakers and addressed one particular aspect of the project. The topics covered were: separation of powers, judges and the media, judges and Parliament, judicial appointments, the Supreme Court, Northern Ireland, judges and the executive, tribunals, the Lord Chancellor and Scotland. We are grateful to the Northern Ireland Attorney General for hosting a seminar in Belfast, to the Faculty of Advocates for hosting an event in Edinburgh, to the Clerk of the House of Commons for hosting us in Parliament, and to the Supreme Court for hosting an event there. In January 2014 we held a closing conference at St George's House, Windsor Castle, which followed a similar format.

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PREFACE

We are grateful to all our speakers and participants. The views expressed at these seminars by very senior figures from the judicial, legal and political worlds, who had personal and detailed knowledge of the topics covered, provided us with rich data which has informed this book. We owe special thanks to our Advisory Committee of twenty-eight people who formed a core group at the seminars and provided invaluable advice and input, individually and collectively, as the work progressed.

Brian Walker, the Constitution Unit's media adviser, patiently attended all our project meetings and reminded us of the wider picture whenever we risked becoming too narrowly academic. A succession of Constitution Unit interns did huge amounts of library and Web research for us, and we owe a special debt to John Adenitire, Will Allchorn, Srijaanee Bhattacharyya, Stephen Clark, Jack Connah, John Crook, Eleanor Forbes, Matt Gayle, Shyam Kapila, Ed Lucas, Ruchi Parekh and Nick Perkins. Our thanks also go to Vicki Spence and Ben Webb, Constitution Unit administrators, for managing the project's finances and creating its Web pages. The Web pages are at ucl.ac.uk/constitution-unit, and contain blog posts and other project outputs.

Finally we should thank Jane Robertson, our copy-editor, and Finola O'Sullivan, our commissioning editor at Cambridge University Press. The book went to press in early 2014, and we have tried to update it to end 2013.

*Patrick O'Brien
Kate Malleson
Robert Hazell
Graham Gee
March 2014*

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ABBREVIATIONS

CAFCASS	Child and Family Court Advisory Support Service
CRA	Constitutional Reform Act 2005
DCA	Department for Constitutional Affairs
HMCS	Her Majesty's Courts Service
HMCTS	HM Courts and Tribunals Service
JABS	Judicial Appointments Board for Scotland
JAC	Judicial Appointments Commission
JACO	Judicial Appointments and Conduct Ombudsman
JCHR	Joint Committee on Human Rights
JCIO	Judicial Conduct Investigations Office
JCO	Judicial Communications Office
LCD	Lord Chancellor's Department
LCJ	Lord Chief Justice
LCJ-NI	Lord Chief Justice of Northern Ireland
LCO	Lord Chancellor's Office
MoJ	Ministry of Justice
NAO	National Audit Office
NICTS	Northern Ireland Courts and Tribunals Service
NIJAC	Northern Ireland Judicial Appointments Commission
NMGD	non-ministerial government department
OJC	Office for Judicial Complaints
SCS	Scottish Court Service
SNP	Scottish National Party
SPJ	Senior Presiding Judge
SPT	Senior President of Tribunals
SSRB	Senior Salaries Review Body
UKSC	United Kingdom Supreme Court