

# INTRODUCTION

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# 1

## Aims, themes, and structure

### Aims

This book provides an introductory account of the English legal system, how it has developed in recent years, and how it may develop in future. I want readers to think about the legal system and to question the extent to which it is fit for purpose. I also want readers to see how the legal system relates 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 reduce the risks associated with terrorism?

The book is primarily about the *English* legal system (which includes for most practical purposes 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 the phrases 'Great Britain' or 'United Kingdom' are used 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 exclusively about institutions located in England and Wales. The English legal system is subject to important external factors, in particular the law and institutions of the European Union and Council of Europe.

Many who study law in England come from other countries. I hope readers from overseas can both learn from the issues discussed here, and relate the questions raised to the situation in their home countries. Many 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.<sup>1</sup> Are the legal systems with which they may be more familiar fitted to their purpose? Are there lessons to be learned from the English experience? And, turning these questions around, what should the English be learning from experience elsewhere?

<sup>1</sup> 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).

## Themes

Although an introductory book, it seeks to address themes inadequately considered in other books with the same or similar titles:

- First, many current accounts of the English legal system are rather ‘practitioner-oriented’; they focus primarily on those parts of the system in which professionally qualified lawyers practise law. This book adopts a more holistic approach, designed to introduce the reader to activities and functions often ignored elsewhere. This approach is adopted, not just from a desire to be different, but also to ensure that students of law start to appreciate the enormous variety of contexts in which the legal knowledge and skills they are setting out to acquire can be used. Students should be encouraged to think about law and legal practice beyond the boundaries of the legal profession. It should also benefit students who are studying law for its own inherent interest, without necessarily intending to become practising lawyers.
- Secondly, other introductory accounts are somewhat descriptive and ‘static’ in nature, providing a snapshot of the system at the moment of writing. As already suggested, the English legal system is considerably more dynamic and more responsive to change than is often realized. A recurring theme is on change and the forces that have shaped and are shaping the English legal system. At the same time, questions are raised about the extent to which particular changes are desirable or should be resisted.
- Thirdly, the English legal system is often portrayed as something distinct from the British system of government. Indeed, one of the important claims 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. Understanding the constitutional function of the English legal system and the relationship of the legal system to other branches of government is therefore another theme underpinning the discussion in this work.
- Lastly, the assertion is often made that ‘we have the best system of justice in the world’. It may be a good system, indeed a very good system. But this conclusion should be arrived at on the basis of evidence, not mere assertion. This book is intended to provide a basis for thinking critically about the institutions and practices of the law and contemplating change where inadequacy or inefficiency is demonstrated to exist.

## Structure

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

Titled *Law, Society, and Authority, Part I* 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 what functions law plays in the way in which society is ordered, exposing the different and conflicting functions inherent in the phrase ‘law and order’. Having argued that law makes an important contribution to the ordering of society, *Chapter 3* goes on to consider how law is made, who makes it, and whence they get the authority for making it and imposing it on society. The role of Parliament, the senior courts and key European institutions are discussed.

*Part II* considers the institutional framework within which law is developed and practised. *Chapter 4* opens 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 the role of other government departments is also considered. *Chapters 5 to 8* look in turn at the four legal systems which, for the purpose of this book, make up the English legal system. The simple distinction made in most English legal system books between criminal and civil justice is here replaced by a more nuanced delineation of four separately identifiable justice systems: criminal justice, administrative justice, family justice, and civil and commercial justice. In each chapter, a ‘holistic’ approach is adopted. Thus there is consideration not only of 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 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.

*Part III* looks 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 also considers the 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 as well as others working in private colleges and other contexts in the formation of the legal professional. *Chapter 10* reflects on how legal services are (and should be) paid for, and considers in particular the enormous changes being made to the funding of civil litigation following changes to the system of legal aid.

Lastly, a short concluding chapter, *Chapter 11*, asks whether the English legal system is in fact fit for the purposes it is required to perform. Is the English legal system ‘the best in the world’ in need of little or no change? Or is the system simply not delivering what is required of it, and thus in need of fundamental change? If changes are needed, what are they? What are the forces likely to render change difficult, if not impossible?

## Questions



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## Blog items



See [www.martinpartington.com](http://www.martinpartington.com) (access via the Online Resource Centre)

Includes: comments on public legal education; the media treatment of legal issues; the televising of courts; court dress; young people and the legal system.

## Further reading



- BANKOWSKI, Z., and MUNGHAM, G., *Images of Law* (London, Routledge and Kegan Paul, 1976)
- COWNIE, F., BRADNEY, A., and BURTON, M., *English Legal System in Context* (5th edn, Oxford, Oxford University Press, 2010) (6th edn forthcoming 2013)
- ELLIOTT, C., and QUINN, F., *English Legal System* (13th edn, London, Longman 2012)
- GILLESPIE, A., *The English Legal System* (3rd revised edn, Oxford, Oxford University Press, 2011)
- GREENFIELD, S., OSBORN, G., and ROBSON, P., *Film and the Law: The Cinema of Justice* (2nd edn, Oxford, Hart Publishing, 2010)
- JACONELLI, J., *Open Justice: A Critique of the Public Trial* (Oxford, Oxford University Press, 2002)
- ZANDER, M., *A Matter of Justice: The Legal System in Ferment* (London, Tauris, 1988)
- *Cases and Materials on the English Legal System* (10th edn, Cambridge, Cambridge University Press, 2007)
- *The State of Justice* (London, Sweet & Maxwell, 2000)