# BOOK REVIEW

**Final Appeal.** LOUIS BLOM-COOPER & GAVIN DREWRY. Clarendon Press, Oxford, 1972. Pp. xvi, 584. $34.00.

A great deal of research in the sense of identifying and analyzing substantial amounts of raw data has produced an admirable work which, despite its overemphasis on statistics, is surprisingly scholarly. The dramatic title, *Final Appeal*, is prominently qualified by the subtitle, *A Study of the House of Lords in its Judicial Capacity*. Thus the reader is immediately placed on notice that the work is not a courtroom "gripper" and may be instead a dry and detailed analysis of a rather technical subject matter.

Dry and detailed it is. However, the subject matter, although technical, is potentially strong with historical insight. Unfortunately, the authors are overly concerned with statistical data and mechanics. This, they say in the first sentence of their introduction, was their intention; and in this they have succeeded. Insofar as they are insufficiently concerned with historical perspectives and comparative analyses, they fail to provide a work of lasting or general value. They leave the reader gasping from the sheer burden of data which they present.

Yet, surprisingly, the book is not entirely tedious. Although the British or, perhaps, statistical idiom throughout furnishes a basic blandness, the broth is spiced with occasional bits of flavor. The book arises from the controversy surrounding recent proposals that the judicial function of the House of Lords be abolished, and its primary purpose is to justify the place of that House in the British judicial system. This in turn entails an evaluation of the merits of a two-tier appellate system. To place the problem oversimply in perspective for the American reader, it is like suggesting that the United States Supreme Court be abolished. The similarity ceases at the threshold, however, for the House of Lords in its judicial capacity is totally different from the Supreme Court in every way: in structure, in function, in position in the governmental and jurisprudential scheme of things.

It is perhaps inconceivable to the American reader in these days of ever-increasing burdens of caseload and complexity of litigation upon our appellate courts, that a suggestion for abolition of any of them, most surprisingly the highest, could be seriously advanced. What we hear, instead, are proposals for the creation of meaningful intermediate appellate courts in states which do not have them or the improvement of that function where it exists on a relatively nominal

basis. Furthermore, this country is presently embroiled in a controversy of no small proportions over the proposal to create another intermediate appellate court, a "super court of appeals," on the federal level as a means of easing the terrible burdens now placed upon the Supreme Court. Occasionally we hear cries of impeachment directed against this or that justice and occasionally proposals to limit, in some small way, the appellate jurisdiction of the Court. But, even in these days of some dissatisfaction with the decisions or functioning of the Supreme Court, no responsible suggestions for abolition of its institutional role are ever made.

This contrast in the proposals made on opposite sides of the Atlantic highlights the one basic difference, at the highest level, between our system and the British. That difference is caseload. Imagine the highest appellate court of any American jurisdiction hearing an average of only 33 full appeals per year and considering an average of only 40 applications for leave to appeal during the same period. Yet, this is the caseload of the House of Lords during the period 1952-68. The relative absence of caseload has many effects, not the least of which is the admittedly minimal influence of the House on the day-to-day development of the law. Another predictable result is the movement for abolition of such a minimally utilized tribunal.

The authors are proud to be apologists for the judicial function of the House of Lords, and, even more basically, they are apologists for the theoretical advantages of a two-tier appellate system. They are to be admired, therefore, for their ability to recognize and identify meaningful shortcomings in the British system as it is presently constituted.

The main thrust of the book is, for the casual observer across the ocean, of fairly remote academic interest. There are, however, two sections of more catholic importance. The first is the chapter entitled "The Nature of the Appellate Process," in which the authors analyze the general concepts of appeal which have developed throughout the world, particularly in nations with Anglo-Saxon heritages. They briefly describe and compare the appellate procedures in the United States, South Africa, Australia, New Zealand, Canada, France, Italy, the Netherlands, Norway and Israel. The thumbnail sketches which they develop are quite adequate for their purpose which is a quick philosophical evaluation of the question whether any legal system, particularly the British, ought to have a one-tier or two-tier appellate procedure or none at all. Their conclusion, predictably, is that a two-tier system is preferable to "upsetting the equilibrium" of the "delicately balanced and highly complex socio-legal mechanism" which they posit.

It is lamentable that the brief analysis and comparisons of appellate systems served the authors' purpose so well, for it is easily the most interesting portion of the book. One can only hope that the authors may feel motivated by their research to undertake another study which would produce thorough and detailed analyses and comparisons of appellate systems throughout the world. Clearly the scholarship and erudition of the authors equips them for the task.

The other section of this work which commends itself to broad jurisprudential interests is entitled "Conclusions: Reform of the Judicial House of Lords." Here the authors face the consequences of the facts they have so exhaustively laid out. They cannot justify the continued existence of the judicial functions of the House of Lords unless a number of very basic changes occur. They recommend reforms which are both procedural and structural in nature, but most of which are addressed to obviating one valid criticism: the Law Lords do not work hard enough. The categories of cases in which appeal to the House of Lords lies as of right should be broadened. Anachronistic and tedious procedures which result in too much time being expended on each appeal should be eliminated, thus enabling "the House of Lords to treble its case-load to about 100 cases a year[!]." The availability of legal aid in cases to be brought before the Lords should be expanded. Modes of argument should be revised so that lesser reliance will be placed upon oral arguments, to which the present procedure is wholly geared. In this connection, the authors suggest that the rules require submission of briefs in advance of argument. They discuss the relative importance of briefs and oral arguments in the United States Supreme Court, but opt for the South African system in which "heads of argument" are submitted four days in advance of oral presentation. These "heads of argument," although rather extended, are not as extensive as briefs customarily are in this country. The authors do not wish to be too revolutionary in this regard, however, for they would permit the present practice of oral argument without time limit to continue.

One of the most far-reaching suggestions for reform is incorporated in an amusing observation:

> Another undesirable feature of the present system is that counsel spend a great deal of time in reading authorities (some of them at inordinate length) to their Lordships. We feel that, notwithstanding the recent failure of a similar experiment in the Court of Appeal, it would be a useful innovation if the Law Lords could make it an invariable rule to read some of the authorities before oral argument begins.
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> It must be acknowledged that giving their Lordships a large

> amount of additional "homework" could wreck havoc with the current timetable of appeals. It might be necessary, for example, for the House to have a "reading day" once a week.

Most of the remaining recommendations are structural or technical and therefore most meaningful only to students of the British system. Another, however, which has meaning for us as well is the suggestion respecting law clerks. The authors propose in this instance that the House of Lords emulate the United States Supreme Court. In an endeavor to allay anticipated fears of traditionalists, the authors raise the question whether there might be a danger of law clerks "exerting a pernicious influence on the decisions of the court of last resort." They answer the question by pointing out that the Law Lords are judges of long experience and considerable independence and that law clerks would come from the ranks of newly qualified barristers. Thus, presumably, they would have little opportunity to exert influence. On the basis of our experience in the United States we might advise that the question cannot be so glibly answered. The problem of the "pernicious" influence of youth and inexperience would depend in large part, there as here, upon how hard the Law Lords are willing to work in their revised roles. The historical record is very poor in this regard. Thus, the "breath of youth" to which the authors allude might become attempts at resuscitation which, in the light of history, might in this instance be very welcome.

As a matter of general evaluation, the authors are to be commended for their substantial efforts which are apparent on the face of this book. It is doubtful that they ever expected it would become a volume of general interest to the legal profession even in Great Britain. As a vehicle for expressing all the important considerations attending the controversy surrounding the judicial role of the House of Lords, and as an apologia for a two-tier appellate system in Great Britain, it is quite well done.

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