

*The Politics of the Common Law: Perspectives, Rights, Processes, Institutions.* By Adam Gearey, Wayne Morrison, and Robert Jago. London, England: Routledge-Cavendish, 2008. x, 416 p.: ill. Includes bibliographical references and index. ISBN: 978-0-415-48153-3 (Paperback) \$65.95.

*The Politics of the Common Law* places English common law into its contemporary context and provides an engaging introduction to the English legal system. Although this is considered an introductory text the authors take an approach that is different from what one might find in a traditional textbook. They are generally critical of past teaching practices and feel the conventional approach has provided a “whiggish” description of the law, its procedures and legal institutions. So instead of simply delivering another dull recounting of legal history, where the common law is portrayed as a gradually improving and rational system of law, they have tried to identify the complex web of political and legal tensions encouraging the reader to consider how the common law “actually works” in modern society.

The authors note that the impact of the Human Rights Act, introduced in 1998, has caused a “shift in the constitutional balance” augmented recently by the constitutional reforms of 2005 and the legislative responses to terrorism. The “deference of an unelected judiciary to a sovereign Parliament” is not as clearly defined as it once was and is affecting the relationship between law, democracy and human rights. The independence of the judiciary and the degree to which they are engaged in a dialogue with Parliament raises questions about the proper role and legitimacy of the law in modern British society. External forces, manifested in the European Convention on Human Rights and the “reality” of the evolving legal processes of the European Union, have also been influencing change in English common law. The authors examine these changes and evaluate the common law in relation to the current international standards that emphasize human rights and due process.

As the authors indicate studying the common law through the lens of human rights can be problematic. The role of the common law has been understood in different and often conflicting ways throughout its history and the historical principles of common law had not been “framed in the language of human rights”. The application of human rights to the legal process is a relatively recent development and the authors found that using this language allowed them to apply a “focused analysis of the principles of procedural law” and common law practices.

One feature of this book that I really appreciated are the thoughtful references to works of art and images found throughout the text. The authors used these to illustrate legal concepts and historical moments which complemented the often narrative character of the text. I must admit that when I received and unwrapped this book I was immediately struck by the black and white image on the cover (see <<http://www.routledgelaw.com/books/The-Politics-of-the-Common-Law-isbn9780415481533>>). I spent some time trying to interpret this image in terms of the book's content, but I could not find any mention of the cover art anywhere.

I decided to contact Dr. Adam Gearey to see if he could shed any light on this remarkable cover image. In his reply he mentioned that the publisher had inadvertently left out the acknowledgement and that the image was from a series of photographs by Welsh photographer Peter Finnemore. He said it is from an exhibition that dealt with the house that the photographer was brought up in and he thought the two men in the image were his father and his uncle, and that the dress belonged to his grandmother.

*“I managed to persuade Wayne [Morrison] that there was some link between this [image] and the book -- but I cannot now quite remember what -- something about the spirit or spirits of the common law, perhaps ... We were trying to get away from conventional images of scales, judges, courts, etc. My*

*experience from using the image is that it's a little like the ink blot test in psychiatry -- if you suggest to someone that this is an image of law, they provide a meaning that reflects some assumptions that they have about law -- this is itself quite intriguing."*

The interpretation that I settled on considered the dress representing human rights and the two gentleman the "historical experience" of the common law with its legacy of enforcing the rights of white males and enabling colonialism through the centralization of power. Plausible on some level, but not entirely satisfactory. Lying on the ground behind the gentleman on the left there is a white cane providing perhaps a subtle reference to the traditional notion of blind justice?

All in all a refreshing and creative text with a thorough and cogent interpretation of contemporary common law. The authors provide a useful appendix at the end of chapter 7 on the institutions of the European Union and the book includes an extensive bibliography and index. Definitely a recommended addition to your library and an excellent read for anyone interested in the history of the common law and where it might be going.

*F. Tim Knight  
Head of Technical Services  
Osgoode Hall Law School Library  
York University  
Toronto, ON*