

## Research Space

Journal article

**Enemies of the people? How judges shape society by Joshua  
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**Enemies of the People? How Judges Shape Society**  
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## Enemies of the People? How Judges Shape Society

By Joshua Rozenberg, Bristol, Bristol University Press, 2020, 227 pp. £14.99, (paperback)  
ISBN 978-1-5292-0450-6.

This is a book which shows how the theory of law is applied. The author uses a number of high profile, and in some cases controversial, judicial decisions to illustrate this, including the case of *R (Miller) v The Secretary of State for Exiting the European Union* [2016], from which the title of the book originates; as it was a headline which appeared in *The Daily Mail* on the morning after the first instance judgment was handed down. Or, more recently (probably Lady Hale's greatest hour as President of the Supreme Court), the unanimous judgment in *Miller and Cherry* delivered in September 2019 which ruled the proroguing of parliament unlawful; the first time that 11 judges sitting in a UK court had agreed unanimously. A clear example of the judiciary 'reigning in' the executive. It is through a series of such practical case examples, many of them recent, that the book shows first year students of law how judges 'make law' and shape society. It is also arguably a 'must read' for newcomers to law (as the first chapter is entitled) as it helps to explain how our common law system operates.

The book is written in an accessible way which helps to make sense of some quite complex principles of our system of common law and how it operates, and exposes the nuances and intricacies of a legal system which has no written constitution. For instance, the separation of powers principle in chapter 1 is easy to follow for those who might not have any legal experience or knowledge whatsoever. This chapter therefore provides foundational groundwork for what Rozenberg then embarks upon in later chapters, which is to explore the function of the third branch of our institution of state, namely the judiciary, its independence and its functioning through a series of high profile and familiar superior court decisions.

A seasoned journalist, broadcaster, and highly respected legal commentator, the book is written in typical Rozenberg presentation style. As one reads, those familiar with Rozenberg's broadcast work, will hear his words as they would be spoken on BBC Radio 4's *Law in Action* for instance, a show which he has presented for nearly 40 years. Some critics might therefore suggest that the book reads like a series of cases written in a journalistic reportage style. That is to miss the point of the book, for it is much more than that. The case studies are used to thematically illustrate the workings of our common law system of justice and many readers, even those new to the study of law, will recognise the cases used, particularly the high profile cases which received recent media attention. In this way, the book is very much a social commentary of our time viewed from the perspective of the judiciary. Despite being a relatively short book at 190 pages (excluding notes) the author is able to find time to 'get inside the minds' of some of our senior judges and provide his own views on the reasoning behind their decision-making.

Rozenberg brings the discipline to life and in many ways breathes new energy into the study of law. The book is therefore a pleasant departure from the more academically styled text books, although I was forever turning to the Notes section at the rear of the book for the references. With one eye on legal education however, Rozenberg poses questions about judicial decision-making; what would you do? He says, after explaining the legal issues involved in one of the hard cases discussed, before revealing the outcome of the case.

The book is useful for law students in understanding the development of certain areas of law, which over the years have been the subject of judicial law-making. Assisted suicide, same sex marriage, civil partnerships, discrimination, privacy and freedom of information are all topics which attract the author's careful attention. And it is perhaps the *Human Rights Act* 1998, with its provisions under sections 3 and 4, the latter allowing the court to issue a declaration of legislative incompatibility with a Convention right, which demonstrates how

1 through judicial activism the courts are able to influence the rule of law and constrain  
2 parliament and its legislative function. In this regard, the chapter on privacy is of particular  
3 interest to Rozenberg as a journalist and illustrates just how an area of law has, over the past  
4 30 years, made giant leaps. Latterly in the context of the conflict and tension between freedom  
5 of expression and the right to a private life using the *Human Rights Act* as the legislative  
6 battleground.  
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9 On occasion, when considering the activity of our highest appeal court, Rozenberg has  
10 the opportunity to ask whether its judges are truly independent or, in delivering its more  
11 controversial judgments, are exercising judicial overreach or simply protecting the rule of law.  
12 In the chapter on *Access to Justice*, the *Unison* case is a prime example of where these  
13 questions arise. This was a case where Unison challenged the fees order requiring claimants  
14 in employment tribunals and employment appeals tribunals to pay fees for the first time, on the  
15 ground that to do so was a breach of EU principles of effectiveness and equality as well as  
16 being discriminatory.  
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19 In the final chapter of the book, entitled *Friends, Actually*, Rozenberg enters the debate  
20 about claims of unfettered judicial power and the usurpation of parliament's authority due to  
21 unaccountable judicial activism. He challenges Lord Sumption's views in support of these  
22 claims, whose concerns were articulated when suggesting that the judiciary have developed a  
23 broader concept of the rule of law in claiming a wider supervisory authority over other organs  
24 of state. The author summarises his position by suggesting that we should certainly leave  
25 judges to continue to make law. But we are still entitled to consider how activist they are – or  
26 should be. This chapter raises other important questions such as whether there should be  
27 political vetting of judges if their decision making ultimately has political implications.  
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30 *Enemies of the People? How Judges Shape Society*, undoubtedly has relevance for  
31 aspects of the legal education curriculum which involve the study of our common law system  
32 and its mechanisms. Themes considered in this book such as judicial activism, judicial  
33 interpretation and social justice all have a presence. English Legal System and Public Law  
34 (Constitutional & Administrative Law) modules would benefit from this book being suggested  
35 to students as recommended reading. For students of Politics, this book is of interest from the  
36 perspective of judicial encroachment into areas of politics and political debate. The book could  
37 even form the basis as inspiration for developing an undergraduate Law module which  
38 specifically deals with the judicial function and so would be of interest to academics and  
39 students of law alike. But anyone interested in judicial statutory interpretation, political public  
40 policy decision-making and the tension between judicial overreach and upholding the rule of  
41 law, should find this book a good read.  
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