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## Law and Politics: The House of Lords as a Judicial Body, 1800-1976

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LAW AND POLITICS: THE HOUSE OF LORDS AS A JUDICIAL BODY, 1800-1976. By *Robert Stevens*. Chapel Hill: University of North Carolina Press. 1978. Pp. xviii, 701. \$30.

This ambitious book studies the evolution of the House of Lords from an eighteenth-century legislative, executive, and judicial body into a modern appellate court. In just over six hundred densely foot-noted pages, Robert Stevens attempts to set forth the entire sociological, jurisprudential, and political history of the House of Lords since the end of the Napoleonic wars (pp. xvi-xvii). The result, though not quite the definitive history that Stevens sought to write, remains the most comprehensive and engaging account of these years yet available to the American reader.

The first half of the book describes the House's highly political and unprofessional judicial behavior during the nineteenth century, and the resulting early twentieth-century reforms. Most nineteenth-century Lords were laymen either unqualified or uninterested in hearing appeals. The House therefore often failed to muster quorums, faced huge case backlogs, and rendered poor decisions. While impeachment trials preoccupied many Lords, Scottish appeals based

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on Roman law further clogged the docket. All of these failures made the Lords vulnerable to outside pressures: on several occasions, the judicial functions of the House were nearly abolished (pp. 52-67). A desire for self-preservation led the Lords toward reform. At one time, for example, the House literally forced peers to sit at appeals (pp. 19-21). The House eventually restricted seats at appeals to special Law Lords who had studied law and were competent to render professional opinions (pp. 32-34). By the turn of the century, professionalism was becoming increasingly important. When the Lords lost virtually all of their legislative powers, the balance of law and politics in the House shifted toward law. Law Lords were then chosen on the basis of their legal abilities, not their politics.

Politics soon disappeared from the Lords' opinions (p. 320). Central to Stevens's analysis of the post-World War II period is a doctrine that he calls "substantive formalism." Formalists believed that judges should avoid making political judgments in deciding cases: they should rely strictly on precedent, even to the point of denying themselves the power to reverse their own prior decisions, no matter how anachronistic. Stevens criticizes this excessive restraint. Indeed, the Lords' rigid refusal to depart from precedent usually made a final appeal to the House an unnecessary formality and gave rise to yet another movement to abolish the House's judicial capacity (pp. 321, 415).

New reforms followed. Obeisance to precedent became less important. By distinguishing — and in some cases dramatically limiting — the application of earlier cases, the Lords began to make policy decisions. The 1966 Practice Statement formally recognized this development. The statement announced that henceforth the Lords might reexamine precedent where its value had diminished over time or where its strict application would produce undue hardship (p. 419). But Stevens cautions that this announcement was only symbolically important (p. 621). The Practice Statement simply made it easier for the Lords to do directly what they had previously done indirectly.

With the rise of the Law Lord's policy-making authority came a new set of political problems, best characterized as problems of constitutional powers. The controversy over *stare decisis* (and a parallel dispute over statutory interpretation) only typify the Lords' difficulties. After all of the reforms of the past quarter century, the Lords still remain uncertain of their power to interpret acts of Parliament (pp. 621-27).

*Law and Politics* should interest every legal historian. Much of

the book is cast in the form of capsule biographies that contain concise appraisals of the views and accomplishments of the more important Chancellors and Law Lords. To the extent that Stevens's attempts to find order and progressive development in one-hundred-fifty years of impossibly complicated history fails, it is because the capsule biographies reveal that none of the periods discussed is as homogeneous as his historical analysis suggests. The limited tenure of many of the Law Lords and the few cases that they decided in any particular area of law make it difficult to trust some of Stevens's generalizations, and the treatment of the many events and cases used in the biographies often seems disjointed. Few, in sum, will dispute the importance of Stevens's work. But many will question the suitability of the method to the task.<sup>1</sup>

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1. For other reviews of *Law and Politics*, see Boudin, Book Review, 93 HARV. L. REV. 452 (1979); Gardiner, Book Review, 17 AM. BUS. L.J. 584 (1980); Hiller, Book Review, 14 VAL. U.L. REV. 171 (1979); Jacob, Book Review, 43 MOD. L. REV. 89 (1980); Recent Publications, 16 HARV. J. LEGIS. 681 (1979).