

Ian Mitchell's Law-related BOOK RECOMMENDATIONS

24 – *Senior Counsel*

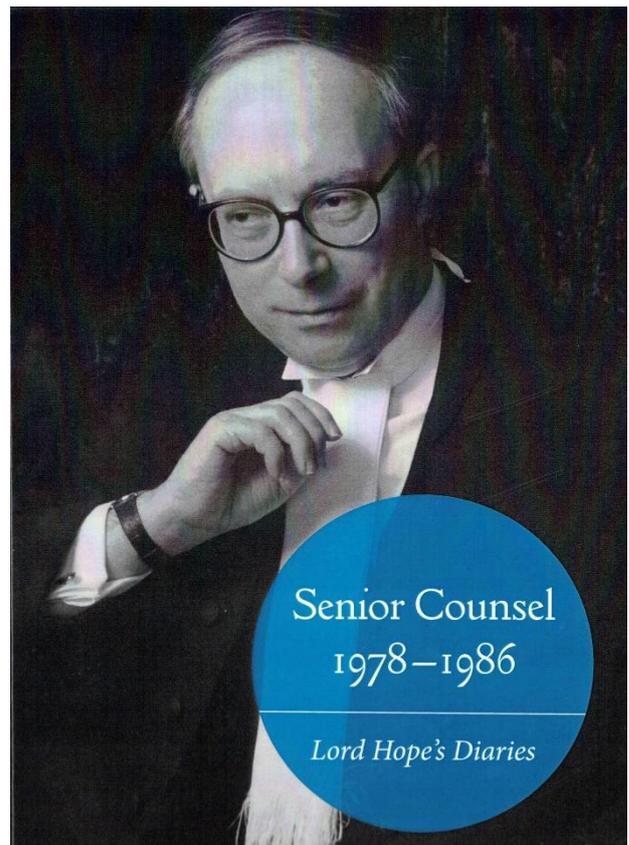
SENIOR COUNSEL, 1978-1986 – Lord Hope's Diaries

Author: Lord Hope of Craighead

Publication info: [Avizandum](#), 2017
(not available on Amazon)

Descriptor: Diaries of future Lord President and Deputy President of UK Supreme Court when he was Queen's Counsel

Reviewer: Ian Mitchell, 12 November 2018



Reason to read: For most people—none at all; this is an almost exclusively professional account. But for me, for Ian Hamilton up at North Connell and possibly for Bill Frain-Bell who is trying to be an e-advocate out on the Craignish peninsular, it is a must-read. It is a curiously fascinating account of one man's life at the senior Scottish Bar. There may only be the three of us in seaward Argyll who would be interested in this book, and I cannot imagine very many elsewhere, but that does not diminish its value one bit. I will not say it is “unputdownable” because it has no plot, but it is extremely pickupable, as you can dip into it anywhere and find something either amusing, interesting about the law and the lawyers of that period or an intriguing reminder of how different life was then. This book should perhaps be considered alongside the next one I shall be recommending: *The Remnants of the Rechtsstaat* by Jens Meierhenrich. If, as I have argued in [The Justice Factory](#), the best hope we have for retaining the rule of law in Britain is the *character* of our individual judges, then Lord Hope's diaries give us an important indication of how we stand in an age when the fashion, both internationally and in Scotland, is for bureaucratic authoritarianism, often with the added danger of a disguised version of a one-party state. Systems of government have their place, but at the highest levels, including law, it is individual *people* who make the difference.

Main talking points:

1. Lord Hope comes across as a profoundly *human* being, who can be paralysed by nerves, sometimes to the point of not being able to hold a sheaf of papers in his trembling hands. “I became assailed with self-doubt and felt my mind turning into a jelly of confused and inadequate

thought. At such times it seems inconceivable that I should do such things as handle a complicated proof or address the House of Lords, and I become all too aware of my fear of public speaking which I must now [in 1978, 2 days after taking silk] try to overcome.” (p. 4) This is not only in court. Sitting at his desk in the Crown Office he notes, “It is easy to move into a spin of near terror if one thinks too much about all that one is expected to do.” (p. 107) Even at a Sunday lunch party given by a judge in East Lothian, he writes: “I was seized, not surprisingly, with a fit of nerves as we arrived but fortunately Mary [his wife] was at hand to take my glass from me when it shook too much.” (p. 101) But he makes progress: “When at last the Faculty [of Advocates] meeting came I had a big struggle, but I got a place beside the clerks table and laid my papers on it. I knew my hands would not hold them steady, and indeed true to form they felt numb from the elbows down. However, I managed well once I was called upon, and surprised myself by being very full in my explanations... I made a relaxed and constructive little speech in a way which I could never have dreamed of doing earlier. What a relief – an enormous mountain has been overcome.” (p. 138)

2. British Rail was *awful*: “Returned to Edinburgh on the 7.30pm train. It was very cold indeed because, as with most trains out of Aberdeen these days, it was unheated.” (p. 34) Again in 1979: “This was the so-called high-speed train. My fortunes on journeys by train to London have been all one-sided, being late almost always by between one and two hours.” (p. 68) Then there was the train from Aberdeen in which the windows were so filthy that Lord Hope could not see the scenery outside. And there are cases delayed because counsel from Edinburgh could not get to Glasgow on time due to the third-worldish train service.
3. Hotels were *awful*: At the North British Hotel in George Square, Glasgow, in 1981, “there were some energetic lovers in the next room for two nights, which was more than a little disturbing, for the walls are rather thin and little of their sounds was concealed from me. The following night they were replaced by a madman who had an argument with his telephone at 3am.” (p. 157) “The hotels in Dundee [in 1979] were not particularly pleasant. The Angus Hotel for one night, with a pillow that reeked of cigarettes and drink, and the Queen’s Hotel for the second with a pillow that was too hard and a noisy visitor to the bathroom at 5.45am.” (p. 37)
4. Glasgow jobs were *awful*: “To Glasgow on the Sunday night train. It was rowdy with hooligans who invaded the first-class, shouting, swearing and being thoroughly unpleasant... Fortunately it was just noise and four-letter words and other obscenities, such a ‘Nae wuman in Glasgow’s a virgin’... What a horrible place Glasgow sometimes seems.” (pp. 111-2) “Another gang of youths with a rowdy tape recorder were making themselves objectionable on the train journey home. I was thoroughly fed up with the bad language and the venomous behaviour of so many of our young people by the time I reached Edinburgh.” (p. 114)
5. Socialists were *awful*: “A feature of this winter has been strikes—or industrial action as it is called—mainly by public service workers.... Next week the clerks of the court are to go on indefinite strike... [24 February 1979] The strike in court is upon us! ... The Lord president signed an Act of Sederunt and an equivalent Act of Adjournment on Thursday closing down the business of the courts until further notice. I gather from my father that the last time the Court of Session closed indefinitely was in 1745 when Bonnie Prince Charlie was approaching Edinburgh.” (p.36) 10 March: “No sign of any break in the strike. If anything attitudes are hardening. Lord Emslie made a public statement condemning the strike, but the strike

committee—socialists to a man, no doubt—had the brass neck to condemn him in return for attacking ‘their integrity.’” (p. 40) 29 April: “On the strike front, the end is in sight.... The High Court will probably be able to resume trials on 21 May, after a break of eight weeks.” (p. 45) Two years later the clerks went on strike again resulting in “untried prisoners languishing in jail for six months or more.” (p. 135)

Thought(s) provoked: “Show me the judge and I’ll tell you the law.” This is the theme, as uttered by Ian Hamilton QC, of *The Justice Factory*. “... a stiff sentence, characteristic of Lord Wylie.” (p. 65) “Lord Kissen has been against me from the start. I always seem to be on the losing side when he is on the Bench” (p. 99) “Lords Cameron and Kissen reacted out of prejudice at an early stage and carried the President with them...” (p. 108) “Lord Dunpark’s sentences were distressingly low, considering the horror of the attacks and the danger which a persistent rapist presents to the community.” (p. 112) “The jury came back with a guilty verdict and Lord Dunpark, no doubt partly because of the antics in the gallery, packed the rogue off for eight years.” (p. 116) A jury found a group of people, who had stabbed a stranger in Glasgow, either not proven, not guilty, or guilty on a reduced charge of culpable homicide: “They had considerable doubts about the Crown witnesses’ evidence, and who can be critical of them for that? Lord Kincaid was angry at the verdict, however. Sentences of ten and seven years produced sobbing from the gallery.” (p. 133) “Lorne Cowie was the judge. He was anxious to go fishing that day, so he was not able to turn his mind to my rather subtle argument.” (p. 161)

Incidental interest:

1. Re: Lord Hailsham as Lord Chancellor, 1979: “The hearing proceeded in a very leisurely fashion indeed, mainly—indeed almost entirely—due to Lord Hailsham’s very relaxed and talkative manner. Lord Wilberforce spoke only once all day and the others were fairly quiet too. Every so often, there was a noise like a rusty gate swinging open. One realised that this was because the Lord Chancellor was laughing at a joke which he had just made.” (p. 67)
2. “Lord Robertson was apparently out of touch as ever, while Lord Ross wrote busily and every so often threw out a pointed question which suggested that he was the only one following the drift of the argument. Lord Avonside’s red pencil is a constant fascination. The point which scores with him can be spotted by his slow, deliberate taking up of the red pencil and either marking in the margin a large, visible ‘NB’ or making a series of underlinings or side-linings in his notebook.” (p. 117)

Negative issue(s): I would have preferred some explanation of the legal and/or jurisprudential background to some of the more interesting cases. Obviously as this is a diary, they would have to be in explanatory boxes or something of that sort. I hope that in future volumes, His Lordship will be able to include that. The other point is that the interest declines after the author leaves the Crown Office. The work of a civil advocate in Edinburgh is dull beside the squalid drama of the Glasgow High Court.

Publishing quality: Excellent. I spotted only one typo (p. 102: “7 June 1970” should be 1980)

Smile(s): “I went with Mary to the House of Lords for lunch with John McCluskey. Very kindly he had asked us to have lunch with him there—but on condition that I paid.” (p. 29)

Staying at the Royal Northern and University Club in Aberdeen, “I found that in my hurry to get away I had left my shaving gear and toothbrush at home. The Club, obviously well used to dotty old men who do likewise, produced a razor and shaving cream for me and were apologetic about the toothbrush. *Their toothbrush was already let out*, the man said.” (p. 61, emphasis added)

“Lord Wheatley [who was in his mid-seventies] refused the appeal against the sentence of eight years in prison, so this particular thug was given his just rewards. His reaction was to shout as he was hustled from the court: ‘Wheatley, I hope you drop before I finish my sentence.’ The judges didn’t quite catch his words. Lord Stott remarked with a chuckle, ‘He’ll have to speak more distinctly if he wants us to hear him.’ The macer told me later that as they reached the retiring room Lord Wheatley pressed him to say what the man’s words were. ‘I just couldnae do it, Mr Hope,’ he said—but he added that he was saved from further embarrassment by Lord Wylie who chipped in: ‘Just asking after your health, John.’” (p. 127)

Author: David Hope, Baron Hope of Craighead, KT, PC, FRSE was the first Deputy President of the Supreme Court of the United Kingdom from 2009 until his retirement in 2013, having previously been Lord President of the Court of Sessions from 1989-96. In 2015-6 he was Lord High Commissioner (the Queen’s representative) with the General Assembly of the Church of Scotland. He is a keen birdwatcher. “I had to retire to walk at Duddingston Loch in deep despair and exhaustion. My morale was restored somewhat by the sound of a chiffchaff singing near Prestonfield House...” (p. 98)

Link(s): There is a lot on Lord Hope on the internet, as he survived long enough to be recorded in the new but potentially infinite archive of YouTube. He appears quite a lot in this fascinating film about judging in the House of Lords: <https://www.youtube.com/watch?v=PZtYENfNa7k&t=1998s> Here is a very interesting, and more personal, discussion in his *alma mater*, Cambridge University: <https://www.youtube.com/watch?v=JsnEMQBNQio> And here he gets involved in a good debate on the important issue of judicial accountability: <https://www.youtube.com/watch?v=G5sLZ18RSOg> Finally, may I recommend this debate with Michael Howard, Joshua Rosenberg and Charles Moore on the critically important subject of judicial accountability: <https://www.youtube.com/watch?v=G5sLZ18RSOg>

Overall recommendation level: HIGH (for Ian, Bill and their ilk all round the world)

About the reviewer: Ian Mitchell is the author of four books, including *Isles of the West* and *The Justice Factory*. He is writing a multi-volume study of Russian and Western constitutional history to be called *Russia and the Rule of Law*. He lives in Campbeltown and can be contacted at ianbookrec@gmail.com. For other reviews in this series, see: <https://www.moffatrussianconferences.com/ian-mitchell-s-russia>