

Past and Present:
the 150th Anniversary of the Law Lords

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The Supreme Court opened its doors in 2009. So, in one sense, it is a modern institution; but a long history stands behind it, and has a continuing influence on its work. This combination of the past and the present is the theme of my lecture.

The occasion for my lecture is the 150th anniversary of the creation of the United Kingdom's first professional supreme court, the Lords of Appeal in Ordinary or Law Lords: a group of salaried judges appointed to the House of Lords in order to decide final appeals from all parts of the United Kingdom. The establishment of the Law Lords in 1876 was an innovative and controversial step, as I shall explain, but the Law Lords themselves inherited a tradition of final appeals being decided in Parliament going back 600 years. So their creation too was a combination of legacy and renewal, brought about, like the Supreme Court, by a combination of high principle and low political intrigue.

In this lecture I want to explain how the House of Lords came to be this country's highest court, how it came to be replaced by the Supreme Court, what has continued, and what has changed.

¹ President of the Supreme Court. This lecture was delivered at the Supreme Court on 20 October 2026.

The position before 1876

Parliament's role in deciding final appeals goes back to its beginnings. From at least the Norman conquest, subjects petitioned the monarch for the judgments of the courts to be reversed. The monarch decided the petitions with the advice of his council or *curia regis*, Parliament's ancestor. After Henry III began to summon Parliaments, that body advised the monarch on such petitions. By 1386, Parliament was described as "the highest court in all the land".² So, from the Norman conquest, appeals from the ordinary courts lay to a separate and higher body embodying ultimate royal justice. That remains the essence of today's final appellate system.

When Parliament divided into two Houses in the fourteenth century, petitions initially went to either House, but by the early fifteenth century the House of Lords alone considered them. Although Parliament's judicial work declined in the sixteenth century, its role continued to be recognised. An Act of 1584 stated that erroneous judgments of the King's Bench could be corrected only by the High Court of Parliament.³ Its judicial work grew substantially under James I and VI as the population and economic activity increased. From 1624 it heard appeals from the Court of Chancery as well as the King's Bench, so that it covered both common law and equity. Appeals ended when the House of Lords was abolished in 1649, but resumed upon its restoration in 1660. By that stage, the House of Lords had established its jurisdiction

² *Knighton's Chronicle 1337-1396*, GH Martin (ed and trans) (1995), p 357.

³ Error from Queens Bench Act 1584, Preamble.

over final appeals, the trial of peers on criminal charges – a jurisdiction abolished in 1948 – and disputed peerage claims – a jurisdiction abolished earlier this year.⁴

After the Parliament of Great Britain was created in 1707, the House of Lords accepted appeals from Scotland's Court of Session, as a right of redress to the Scottish Parliament had been recognised in the 1689 Claim of Right. That jurisdiction was confirmed by the 1876 Act establishing the Law Lords⁵ and continues today under the legislation establishing the Supreme Court.⁶ On the other hand, the House of Lords held that it could not hear Scottish criminal appeals because no right of appeal to the Scottish Parliament had existed before the Union.⁷ That remains the position today, although limited statutory appeals now exist in order to ensure compliance with the Human Rights Act and with the limits on the powers of the Scottish Parliament and Government.

Until 1801 Ireland had its own Parliament, and the Irish and British Houses of Lords disputed jurisdiction over appeals from the Irish courts. The conflict became so acrimonious that in 1717 the Irish House of Lords placed three Irish judges under arrest for following decisions of the British House of Lords. The dispute persisted until the Act of Union of 1800, which abolished the Irish Parliament and returned Irish appeals to Westminster.

⁴ By the House of Lords (Hereditary Peers) Act, such claims will in future be decided by members of the Supreme Court sitting as the Judicial Committee of the Privy Council.

⁵ Appellate Jurisdiction Act 1876, s 3(2).

⁶ Court of Session Act 1988, s 40.

⁷ *Bywater v Lord Advocate* (1781) 2 Pat 563. In civil cases, Scottish individuals and businesses proved to be enthusiastic litigators in the House of Lords, to the extent that it became to all intents and purposes a Scottish court. A study carried out of the years between 1794 and 1812 shows that over 80% of all appeals to the House of Lords came from Scotland. The figure remained at least 50% until well into the Victorian age.

Who decided appeals in the House of Lords? The Lord Chancellor presided in the Chamber and was often the only lawyer sitting, but as he also sat in the Court of Chancery, the amount of time he could devote to appeals was limited. Former Lord Chancellors and judges who had been elevated to the peerage might also take part. But there was no rule confining participation to peers who had held judicial office or were legally qualified. On the contrary, in the 18th century lay peers were enthusiastic attenders of appeals, which they viewed as an integral part of their Parliamentary duties. For example. It was recorded that on 11 June 1713 counsel addressed “6 bishops, 3 dukes, 26 earls, 6 viscounts and 20 barons”. Average daily attendance at that time was 70 peers.⁸ The leading legal writer of the 18th century, Sir William Blackstone, rationalised the judicial role of lay peers on the basis that the “delicacy of sentiment, so peculiar to noble birth” was sufficient qualification to decide appeals.⁹ There was a practice of seeking the advice of English judges, but their advice was not necessarily followed. Indeed, there was a case involving the Bishop of London in which the Lords spiritual succeeded in securing victory for the bishop, despite the judges advising that the case should be decided in favour of his opponent.¹⁰ In another case, in 1806, the Prince of Wales’s supporters in the House ensured that his companion, Mrs Fitzherbert, won an appeal against a decision of Lord Eldon, the Lord Chancellor, sitting in the Court of Chancery, despite Lord Eldon, presiding on the Woolsack, giving a speech in favour

⁸ Stevens’ *Law and Politics: The House of Lords as a Judicial Body 1800-1976*, p 13.

⁹ *Commentaries on the Laws of England*, Book I, 12.

¹⁰ *Bishop of London v ffytche* (1783) 2 Bro PC 211.

of upholding his own decision.¹¹ Lay participation did not end until 1844,¹² when Sir Robert Peel's government persuaded Tory peers not to overturn the legally qualified peers' decision in a case concerning the Irish politician Daniel O'Connell.

By that time, it had long been clear that the House needed more members who were qualified to act as judges.¹³ Another problem was that the House could only consider appeals when Parliament was in session, and it was usually prorogued for about half the year. The result was a backlog of appeals.

A number of reforms were introduced, but proved inadequate. For example, one of the reforms in the early nineteenth century was the introduction of a mandatory rota for lay peers' attendance, with a £50 fine for non-compliance. But the lay peers were uncooperative, as Lord Eldon recorded in 1824:

“the afternoon was employed in balloting for Lords to attend Scotch causes... It is amazing, in counting and calling them over, how many, looking fresh and lively, excused themselves as above seventy – how many ... could not, without fatal consequences bear three or four hours' confinement - unless it was confinement for 5 or 6 hours at White's or Boodle's at night.”¹⁴

¹¹ *Seymour v Lord Euston*. See Beven, "The Appellate Jurisdiction of the House of Lords" (1901) 17 L.Q.R. 357, 368.

¹² *O'Connell v R* (1844) 11 Cl & F 155; 8 ER 1061. Lord Denman, the eccentric son of a Lord Chief Justice, who had qualified as a barrister but never practised, expressed his concurrence with the dissenting judgment in *Bradlaugh v Clarke* (1883) 8 App Cas 354, but his vote was ignored by Lord Selborne LC.

¹³ In 1785 *The Times* commented that “the business of appeals in the House of Lords [is] making an increase of Law Lords a matter of necessity” (6 January 1783, col 3b); the earliest example I have seen of the use of the expression “Law Lords”.

¹⁴ Stevens (n 8), p 20.

Proposals to create a committee of life peers who were professional judges, as recommended by a royal commission, were repeatedly defeated, as the Committee for Privileges held that there was no prerogative power to create life peers.¹⁵

Matters came to a head following Gladstone's election victory in 1868. Gladstone seems to have held a sceptical view of judges, remarking privately that they were "generally second rate men". He also regarded the House of Lords as an anachronism and saw removing its appellate jurisdiction as a step towards its abolition. So the government introduced a Bill to reorganise the court structure, including the abolition of appeals to the House of Lords. The Bill also proposed to cut judges' salaries on the basis that they were "extravagantly high". Not altogether surprisingly, the Bill was opposed by the judiciary.

Disraeli, the leader of the Opposition, publicly supported the Bill but conspired behind the scenes to stoke resistance.¹⁶ His approach is nicely captured in a letter he wrote to Lord Cairns, the Shadow Lord Chancellor: "it is of great importance that the impotence of the government should be demonstrated to the country. This is the high political course which ought to [be] above all petty considerations of the merit or demerits of their measures."

¹⁵ In 1856 the Government prevailed on Queen Victoria to appoint one of the English judges as a life peer, but the Committee for Privileges held that there was no prerogative power to create life peers: *The Wensleydale Peerage Case* (1856) 5 HL Cas 958. Lord Wensleydale was then granted a hereditary peerage. Peerage. An oddity of this episode is that it was widely known that Lord Wensleydale had no sons, so it made little difference whether he became a hereditary peer or a life peer. But to defenders of the hereditary principle the point was of great symbolic importance. In 1856, a Bill was introduced to allow for the appointment of two salaried judicial officers in the House and four life peers, and for the House to sit judicially during prorogations. This time, the Bill passed through the Lords, but it was defeated in the Commons. In 1867 the problem of Scottish appeals was addressed when the most senior Scottish judge, Lord President McNeill, was raised to the peerage as Lord Colonsay on his retirement. In the same year, a Royal Commission on the Judicature proposed the creation of a Judicial Committee of the House of Lords; but the Bill introducing that reform was defeated.

¹⁶ *The Judicial House of Lords 1876-2009*, pp 18-19.

Nevertheless, legislation reforming the courts of England and Wales was enacted in 1873.¹⁷ The Judicature Act created a Supreme Court comprising a High Court and a Court of Appeal. The latter was to be presided over by the Lord Chancellor, and was to inherit the jurisdiction of the Judicial Committee of the Privy Council. The Court of Appeal was to include the most senior judges in Scotland, Ireland and India as well as England and Wales. The Act also included a section¹⁸ abolishing the appellate jurisdiction of the House of Lords in relation to England and Wales, leaving it with appeals from Scotland and Ireland, as it was thought to be too controversial for the Court of Appeal to hear appeals from the Scottish and Irish courts.

The 1873 Act was to come into effect on 2nd November 1874, but Gladstone's government fell shortly beforehand. Disraeli's incoming government delayed commencement¹⁹ while they considered how to proceed.

Their initial thinking was to establish an Imperial Court of Appeal for all parts of the United Kingdom and the colonies, with two divisions hearing first appeals, and a third division hearing second appeals. A Bill to that effect was introduced, but withdrawn following opposition in Scotland and Ireland, and from conservatives concerned to protect the status of the House of Lords.²⁰ A cross-party campaign to preserve the appellate jurisdiction of the House of Lords gathered support from MPs, peers and judges. Lord Salisbury also emphasised the contrast between hard working judges and lazy lay peers, telling Parliament:

¹⁷ Supreme Court of Judicature Act 1873.

¹⁸ Section 20.

¹⁹ Supreme Court of Judicature (Commencement) Act 1874.

²⁰ Supreme Court of Judicature Act (1873) Amendment Bill. (1874)

“I am afraid that the tendency in the present day is to dislike work more and more. The love of hard work for its own sake, which animated our fathers and those who went before them is in this generation very much confined to those who have been trained to hard work from their youth... if the Chiefs of the law are given seats in this House, they will, I am sure, enter upon the task of legislation with an energy which will astonish us laymen, who do not understand what work means.”²¹

The government’s initial response was to concede the retention of the Lords’ jurisdiction to hear appeals from Scotland and Ireland, while routing appeals from England and Wales to the imperial court. It changed course when it became apparent that majorities in both Houses favoured preserving the Lords’ jurisdiction for the whole of the UK: a jurisdiction which had been on the verge of extinction only two years earlier. This was a remarkable reversal of public policy within such a short time.

The establishment of the Law Lords

The result was the Appellate Jurisdiction Act 1876, which repealed the 1873 provision abolishing the Lords’ jurisdiction,²² and instead placed their jurisdiction on a statutory footing. Appeals remained, in form, petitions for the order appealed against to be reviewed before the monarch in the High Court of Parliament.²³ They were to be decided by Lords of Appeal, comprising the Lord Chancellor, any peers who had held

²¹ Hansard, 1 May 1873.

²² Section 24.

²³ Section 4.

high judicial office, and a new kind of peer called Lords of Appeal in Ordinary, the words “in Ordinary” meaning that they were in full-time service. These Law Lords, as they became known, were to be life peers. They were to receive a salary of £6000 per annum²⁴ – the equivalent of £900,000 in today’s money, which their successors today might view with envy – with a generous pension²⁵ during their retirement. Like judges, but unlike other peers, they held office during good behaviour, and could be removed from office on the address of both Houses of Parliament.²⁶ They were also to be members of the Judicial Committee of the Privy Council. Provision was made for them to sit while Parliament was prorogued, if authorised to do so by an order of the House,²⁷ and to sit during a dissolution of Parliament.²⁸

So the Law Lords were members of the House, but functioned, in their judicial capacity, separately from other peers, sat at different times, had a different status from the other peers, who were hereditary, and had different terms of appointment, as the other peers did not receive a salary or a pension, or hold office during good behaviour. They were also given their own administrative support in the form of the Judicial Office.

Thus the appellate jurisdiction of the House of Lords was preserved, but it was now exercised by professional salaried judges. They sat in Parliament, and they disposed of appeals by making speeches and casting votes in the Chamber of the House. Nevertheless, in substance they were the UK’s first professional supreme court.

²⁴ Section 6.

²⁵ Up to £3750, payable after 15 years’ service: section 7. The maximum pension today is 50% of salary, payable after 20 years’ service.

²⁶ Section 6.

²⁷ Section 8.

²⁸ Section 9.

The reputation of the judicial House of Lords soon stood so high that there was no longer any doubt as to the value of a second level of appeal, focused on problems of particular difficulty and public importance. A few examples of their decisions are highlighted in the exhibition in the lobby, establishing the separate personality of a company from its shareholders,²⁹ the liability in damages of persons whose negligence results in foreseeable harm to others,³⁰ the presumption of innocence in criminal law,³¹ the possibility of marital rape,³² and the need for indefinite detention without trial to be rationally justified.³³ In each of those cases, the Law Lords reversed the court below them. Although only a tiny sample, each of those gives some idea of the influence that the Law Lords had on the rules governing our society.

There were initially four Law Lords, three from England and one from Scotland. In 1913 the number was increased to six, including a second Scot. The convention that there are two Scottish Law Lords has been followed ever since, and has been continued by the Supreme Court. In 1929 the number of Law Lords was increased to seven, in 1948 to nine, and in 1994 to twelve, which remains today the number of justices of the Supreme Court. From 1997, there was always one Law Lord from Northern Ireland, and that convention has also been followed by the Supreme Court.

²⁹ *Salomon v Salomon & Co Ltd* [1897] AC 22.

³⁰ *Donoghue v Stevenson* [1932] AC 562.

³¹ *Woolmington v Director of Public Prosecutions* [1935] AC 462.

³² *R v R* [1992] 1 AC 599.

³³ *A v Secretary of State for the Home Department* [2004] UKHL 56.

Until 1945 the Law Lords dominated the House of Lords timetable, occupying the chamber from 10.30 in the morning until 4 o'clock in the afternoon, before public business began at 4.30. As it was rare in those days for the Lords to sit much beyond 6.30 in the evening, and select committees were unusual, the Law Lords accounted for most of the time of the House.

This changed following the establishment of the Appellate Committee, as the result of the destruction of the Chamber of the House of Commons by bombing in 1941. The Commons then sat in the Chamber of the upper House, and the House of Lords sat in the Robing Room. After the war the noise of building work made the Robing Room unusable, so an Appellate Committee was appointed, as a temporary measure, so that the Law Lords could hear appeals in one of the committee rooms upstairs. This soon became a permanent arrangement. From 1960 two Appellate Committees sat in committee room 1, where counsel faced a painting of the *Death of Harold*, and committee room 2, where counsel faced a painting of Richard II haranguing an expiring John of Gaunt.

Orders had to be made by the House on a report from the committee. This was usually done at 9.45 on a Wednesday morning, as in the Supreme Court today. After prayers, the members of the committee reported to the House, with the Senior Law Lord presiding on the Woolsack and moving to the benches as his role changed from chairing the proceedings to speaking as a member. The House then nominally voted on the outcome of the appeal. You can watch an example of this ceremony, the case of General Pinochet, on YouTube.

As the Chamber was now available to the House earlier in the day, it began its business at 2.30 in the afternoon; and, as the Lord Chancellor was expected to be on the woolsack, it was difficult for him to sit on appeals, and his judicial role diminished. Lord Simon warned in 1949 that if the Lord Chancellor was prevented from sitting judicially, this was liable to lead to the creation of a Ministry of Justice, whose minister would never be one of the great offices in cabinet.³⁴ The Law Lords continued to hear appeals in the Chamber when Parliament was not sitting. You can watch what was I think the last such hearing on YouTube.

As well as gradually withdrawing from sitting on appeals, the Lord Chancellor also withdrew from organising judicial business, for example by deciding which Law Lords should sit on particular cases. By the 1980s, these matters were decided by the two Senior Law Lords together with the head of the Judicial Office and the Registrar of the Privy Council – much as listings are decided today by the President and Deputy President of the Supreme Court with the Listing Officer in our Registry. As the Lord Chancellor disengaged, there evolved the position of Senior Law Lord. From 2000, when Lord Bingham was appointed to the role, it ceased to be determined by length of service, and carried the authority and leadership responsibilities held today by the President of the Supreme Court.

Another development was the creation in 1958 of life peers other than the Law Lords. This intensified pressure on space. When the Houses of Parliament were built, it was not envisaged that peers would require rooms to work in. That need was understood

³⁴ *The Listener*, December 1949.

when the Law Lords were first appointed, and they were provided with rooms in what became known as the Law Lords' Corridor, leading from the Peers' Lobby to the Library Corridor. But as the number of Law Lords increased, pressure on space became acute; and other working peers also expected space to work.

The possibility was then mooted of moving the Law Lords into Middlesex Guildhall, where the Supreme Court sits today. The proposal was not supported by the Law Lords, as it would make it more difficult for them to take part in debates, and it was also thought that it would require legislation in order for the jurisdiction of the House to be exercised outside Parliament. Instead, the Law Lords moved to the second floor of the Palace of Westminster, where they had space for staff and a conference room on a new Law Lords' Corridor.³⁵ Nevertheless, the pressure on space continued.

As part of Parliament, the Appellate Committee was not subject to Treasury constraints; but its resources were very limited. For example, a request was made for "the lady who types for the Law Lords" to be provided with a dictionary. The Clerk of the Parliaments was unwilling to authorise expenditure on a dictionary, but asked that the House of Lords Library might permit the typist to consult its dictionaries. However, female members of staff were not allowed access to the Library. After negotiations, it was agreed that the typist could consult the dictionaries before 1pm on sitting days, with unrestricted access on non-sitting days. That was in 1965.³⁶

³⁵ The rooms on one side of the old Law Lords' Corridor were incorporated into the Peers' Dining Room.

³⁶ J Valance White, "The Judicial Office", in L Blom-Cooper, B Dickson and G Drewry eds, *The Judicial House of Lords 1876-2009* (2009), p 41.

The abolition of the Law Lords

As the twenty-first century dawned, final appeals still broadly followed the medieval model. The only substantial change had been the transfer of the judicial function from hereditary peers to legally qualified life peers. However, by the end of the twentieth century a number of the Law Lords questioned the combination of judicial and legislative roles. The Appellate Committee's facilities and working conditions also lagged far behind those of other supreme courts, and the Judicial Office needed professional legal staff.³⁷

Following Labour's victory in the 1997 general election, reform to the House of Lords was anticipated. However, the new Lord Chancellor, Lord Irvine of Lairg, was a supporter of the judicial House of Lords, and a Royal Commission reported in 2000 that the existing system of appeals worked well and, with some minor modifications, should be left as it was.³⁸ That view was repeated in a White Paper published the following year.³⁹

However, the commencement of the Human Rights Act in 2000 virtually ended the Lord Chancellor's participation in appeals, because of the difficulty of excluding any possibility of a challenge on the basis of the government having an interest in the outcome of the case. The last time on which the Lord Chancellor sat on the Appellate Committee was in December 2001.

³⁷ Particularly in dealing with issues such as jurisdiction to hear appeals and security for costs.

³⁸ *A House for the Future*, Cm 4534 (2000), recommendation 57.

³⁹ *The House of Lords – Completing the Reform*, Cm 5291 (2001), para 81.

A stricter view of the separation of powers also led to a disinclination among some of the Law Lords to speak in the House except when disposing of appeals. After Lord Bingham became Senior Law Lord, in 2000, it became generally accepted that it was inappropriate for a serving Law Lord to participate in the legislative process. Changes in sitting times and heavier judicial workloads reinforced that separation.

A number of lawyers and judges, including some Law Lords, also expressed their support for the replacement of the judicial House of Lords by a supreme court. Lord Bingham gave a number of lectures in which he highlighted inadequate accommodation, and the potential for actual or perceived conflicts of interest where Law Lords were considering challenges to decisions taken by Parliament,⁴⁰ or devolution cases concerned with the boundary between devolved and reserved legislative powers. In 2002, a House of Commons Select Committee recommended that the Law Lords should leave the upper House.⁴¹

By contrast with the prolonged debate which preceded the creation of the Law Lords in 1876, and the usual practice by the late twentieth century of preceding important constitutional changes with green and white papers, the announcement in June 2003 that the appellate function of the House of Lords would be transferred to a supreme court was completely unexpected. The government statement was expected to be concerned with a Cabinet reshuffle, and the political rationale appears to have been the replacement of the Lord Chancellor's Department by a Department for Constitutional Affairs, and what was seen as the consequent abolition of the position of

⁴⁰ For example, *Jackson v Attorney General* [2005] UKHL 65.

⁴¹ House of Commons Public Administration Select Committee, 5th Report of 2001-2002, *The Second Chamber: Continuing the Reform* (HC 494), para 153.

the Lord Chancellor. The policy to have a supreme court was for some reason linked in the minds of ministers and officials with the abolition of the Lord Chancellor, later revised to a reforming of that office. The policy was apparently not considered by the Cabinet. Neither the judiciary nor the Lord Chancellor was consulted.⁴²

However, the policy was in many ways conservative. The new court was to have the same powers and the same jurisdiction as the Appellate Committee. It would also take over the devolution jurisdiction exercised at that time by the Law Lords sitting as members of the Judicial Committee of the Privy Council. It would consist initially of the same judges as the Appellate Committee. All that was changing, in practical terms, was a move to new premises, with administrative support from civil servants rather than Parliamentary staff, a budget which had to be negotiated with government, and appointments on the recommendation of an independent commission rather than the Lord Chancellor, which became a purely political office.

In the discussion and debates that followed, the principle of a supreme court independent of Parliament was supported by most of the judiciary, including the Lord Chief Justice and the Judges' Council, while political debate focused principally on the reform of the office of Lord Chancellor. The main concern in relation to the court, besides the suitability of the Middlesex Guildhall and the cost of its refurbishment, was whether the proposal would undermine the independence of the judiciary, because of

⁴² See Lord Phillip of Worth Matravers' 2010 Gresham Lecture: <https://supremecourt.uk/speeches/lord-phillips-at-the-gresham-special-lecture-at-lincolns-inn>

the court's being dependent on the government for its budget and on the civil service for its administrative support.⁴³

The Supreme Court

The Supreme Court was established by the Constitutional Reform Act 2005 and opened its doors on 1st October 2009, when the Law Lords moved across Parliament Square.⁴⁴

Taking stock now, what has changed, and what has remained the same?

Considering first what has changed, the establishment of the Supreme Court provided an opportunity to reflect on how a modern apex court should operate. The result has been a greater focus on the Court's responsibilities to the public, and on the opportunities arising from the Court's separate institutional identity.

First, the Supreme Court is much more accessible to the public than the Law Lords were. Few members of the public found their way to the Committee Rooms of the House of Lords, or past the gates of Downing Street to the Privy Council courtroom at Number 9, now the government's media centre. By contrast, over a million members of the public have visited the Supreme Court. The facilities for members of the public

⁴³ The Law Lords who supported a supreme court, and most of those who opposed it, did not take part in the debates, feeling that their involvement in the legislative process would be inappropriate. Interestingly, the debates coincided with an appeal to the Law Lords concerned with the application of the Parliament Acts, in which they were asked to review the legality of the legislative process in Parliament: something which might be viewed as making them, as members of the legislature, judges in their own cause. The same problem would have arisen in the Brexit cases concerned with the need for Parliament to approve any notice of withdrawal (*R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5) and with the purported prorogation of Parliament (*R (Miller) v The Prime Minister* [2019] UKSC 41).

⁴⁴ Lord Scott of Foscote retired the day before the Supreme Court began business. Lord Neuberger resigned to become Master of the Rolls. He subsequently joined the Supreme Court, as its second President, in 2012.

are also much better, including courtrooms that can accommodate far more people than the committee rooms in Parliament.

Secondly, the Supreme Court is much more transparent than the Law Lords were. A professional communications team maintain an active presence on social media, and support media coverage of our work, by providing journalists with facilities and assistance. As a result, the Court is much more visible, and has a much higher media profile, than the Law Lords, who rarely received much publicity. Public understanding of our work has also been increased by livestreaming hearings and the delivery of judgments, with footage of the most high-profile cases being widely used on television and the internet.

Thirdly, the Law Lords did not hear appeals outside the Palace of Westminster. The Supreme Court has sat in Edinburgh, Belfast, Cardiff, Manchester and Glasgow, engaging with local communities and demonstrating that it serves the whole of the UK.

Fourthly, the clarity of the judgments has improved. Each member of the Appellate Committee had to deliver his own speech. There were often five different speeches in a single case, resulting in a lack of clarity as to the reasons for the decision. In the Supreme Court, the reasoning is usually set out in a single judgment, often written by a number of justices working together. The result of that collaboration is judgments which are more focused on the essential points in a case and are more representative of views across the Court as a whole.

Fifthly, the Supreme Court has embraced the use of new technology. This proved its value during the Covid pandemic, when the Court was able to move immediately to

hearings online. A study published by Harvard University found that the Court had coped with the pandemic better than any other supreme court in the world.

Sixthly, the Court has improved the service offered by the Judicial Committee of the Privy Council. Online hearings have ended the necessity for lawyers from overseas to travel to London, although they can do so if they wish. The old practice of having judges from overseas appointed to sit on the Privy Council has also been resumed, ensuring a stronger relationship with those countries and a better understanding of local conditions.

Seventhly, greatly improved accommodation and resources have made it possible to provide more judicial assistants, a larger registry with legally qualified staff, a professional communications team, an events manager and an IT team. This has enabled the Court to do far more in terms of public engagements, legal education and international relations.

Eighthly, the Supreme Court's separate institutional identity, and the space available to host visiting delegations, have enabled the UK's highest court for the first time to play a full part in international judicial relations: indeed, a leading part, as our reputation stands high among our peers. The Court, often working in cooperation with the Ministry of Justice and the FCDO, has been able to support the UK's international reputation for law and justice, a matter of considerable importance to the UK's economy and its international influence.

Ninthly, and most importantly, the new arrangements make our constitution much clearer. The Law Lords were already independent salaried judges, whose role in

the legislative process had virtually ended, and who had separate staff and a separate library from the other members of the House. At the same time, the fact that they were judges operating independently of politics might not have been obvious to members of the public who heard that a controversial issue had been decided by the House of Lords. The importance of that consideration is illustrated by the Brexit cases. In a highly charged political climate, how would it have been depicted by the media, and how would it have looked to the general public, if those cases had been heard in the House of Lords, with judgment being handed down in the chamber?

The other significant constitutional changes are the Court's dependence on civil servants for administrative support, and on the government for finance. The former change has not caused significant difficulties. The Court administration is a non-ministerial department, independent of Whitehall. The appointment of the chief executive, officers and staff is by the President, in accordance with Civil Service Commission best practice. Under a concordat between the President and the Lord Chancellor,⁴⁵ the chief executive is answerable to, and operates under the day-to-day guidance of, the President, who is her line manager. As far as finance is concerned, the Court has to negotiate its budget with the Treasury, under arrangements set out in the concordat. It is not as generously funded as the supreme courts of comparable countries, but it has been able to do much more than the Appellate Committee could.

What has remained the same? The powers that Supreme Court judges exercise, and the kinds of legal problems they consider, are the same as those of the Law Lords.

⁴⁵ [Microsoft Word - UKSC MOJ Concordat final October 2024](#)

It is sometimes said that the Supreme Court is more assertive and interventionist than its predecessor, but that is a mistake. Independent academic commentators consider the opposite to be true: that the Supreme Court has taken a more cautious approach to public law since the former Law Lords retired. Those who believe the Court to be more interventionist may not be aware of the “activism”, as they might have regarded it, of some of the Law Lords appointed by Lord Chancellors in the past, and they may also be unaware that the judges of the Supreme Court included former Law Lords until the last of them retired in 2020. The judges who have been appointed to this court, on the recommendation of a selection commission comprising both senior judges and experienced lay people, have been rigorously assessed against criteria which include their understanding of the constitutional relationships between the Supreme Court, Parliament and the government. Another factor which is sometimes not appreciated is that the Law Lords’ lack of transparency meant that important decisions rarely attracted political or media attention. The Supreme Court’s greater visibility means that there is more awareness of its decisions, as is desirable, even if it sometimes results in criticism.

Have disadvantages resulted from the move across Parliament Square? There seems to me to be one that is significant. The departure of the Law Lords is one of a number of changes which have weakened understanding in Parliament and in the judiciary of each other’s work and each other’s role. The Law Lords played an important part in the work of some of Parliament’s committees. They will have gained a wider perspective from that experience, and their presence in the House must have been valuable in nurturing mutual understanding and respect between the judiciary and the other arms of the constitution. Other steps now have to be taken to ensure that

Parliamentarians understand the role of the courts, and vice versa. With that in mind, the Supreme Court engages with both Houses through meetings with Parliamentarians and officers of Parliament, and contacts both formal and informal with Parliamentary committees. We have been generously supported in this by the Speakers of both Houses and by successive chairs of the relevant committees.

What is the balance of advantages and disadvantages? In my view, on balance the advantages outweigh the disadvantages. The establishment of the Supreme Court addressed what would otherwise have been a growing problem in connection with the constitutional role of the final court of appeal so long as it remained in Parliament; it has resulted in improvements in the internal workings of the court; and it has brought about greatly improved public accessibility and communications. The Court has become a flagship of the UK's judicial system, helping to promote confidence in the common law and its values. In reality, the establishment of the Supreme Court was merely the final step in a process which had long been under way.

Conclusion

The judicial House of Lords was an anomaly in the modern world: a survival from the days when decisions of the courts could be appealed to the monarch and decided on the advice of his counsellors. We take it for granted now that legal disputes should be heard in a courtroom, with adequate facilities for the parties and their lawyers, and to which the public have easy access. It is also very much in our national interest that the highest court of our country, which is responsible for the development of the English common

law and equity that regulate trade and commerce around the world, and which sets standards of excellence and integrity which are regarded worldwide as second to none, should be a visible flagship of our legal system, well resourced and able to play a prominent part in international judicial relations. The idea, sometimes heard, that we should resurrect the judicial role of the House of Lords is not only impractical but would be against our national interests.

Nevertheless, some of us look back at the judicial House of Lords with nostalgia. Its atmosphere, a combination of comfortable club and academic seminar, was unique. Its intellectual standards were challenging. Its rituals were harmless: counsel standing outside the committee room as the presiding Law Lord led his colleagues along the corridor, each pausing to exchange a bow with counsel before entering; then counsel being summoned with a cry of “counsel” and entering the room in order of seniority. For some of us, the committee rooms still echo with the judicial voices heard there. But the doorkeepers’ cry of “Clear the Bar”, which brought each hearing to an end, was heard for the last time 17 years ago. Counsel and judges alike have been cleared away, and have settled in their new home across Parliament Square. But this 150th anniversary is an occasion for reflection on the enduring legacy of an important British institution.