Foreword

A GLANCE IN THE JUDICIAL REAR-VIEW MIRROR:
1996–2017 FROM A JUDGE’S PERSPECTIVE

The Rt Hon the Lord Neuberger of Abbotsbury PC QC

1 Introduction

I became a Judge in October 1996 and stood down in September 2017. At least viewed from today’s perspective, the 21 years I spent on the bench seem to have been a pretty eventful, almost a revolutionary, period for the United Kingdom in terms of the constitution, politics, the rule of law, and the judiciary itself. When asked by the Editor to write a foreword for this volume, it therefore seemed to me to be appropriate to provide a brief review of those changes. About two-thirds of my judicial career was in England and Wales (over seven years as a High Court judge, three years as a Court of Appeal judge, and three years as Master of the Rolls) and about one-third as a United Kingdom judge (over two years as a Law Lord and nearly five years as President of the Supreme Court). Accordingly, my impressions, which inevitably reflect my experience, will tend to be rather Anglo-centric – and, to a lesser extent, Cymro-centric.

2 The judiciary and the legislature

In a constitutional system such as that of the UK, which has no coherent written constitution and enjoys parliamentary sovereignty, the relationship between the judiciary and the legislature is particularly significant for the judges. The changes made to the constitution and the consequential changes to that relationship over the past twenty years have been very significant.

The most notable change in terms of the constitutional structure of the United Kingdom, which occurred close to the beginning of the period I am considering, was the creation in 1998 of devolved governments in Scotland and Wales and the reformation of a devolved government in Northern

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Ireland. This represented a fundamental shift in constitutional power from the Westminster parliament to the devolved assemblies, and it appears to be a shift which is ongoing. Devolution gave the judges of the United Kingdom a constitutional role which is familiar in a federal system but has been hitherto unheard of in the UK: it is now for judges to decide what powers had been devolved or retained by the Westminster parliament. In a series of cases, the Law Lords (initially sitting in the Judicial Committee of the Privy Council) and then the Supreme Court laid down a number of important principles in connection with this constitutional innovation.

Towards the other end of the period, the 2016 referendum may well result in significant constitutional changes, most obviously from the UK withdrawing from the European Union, and some of those changes will have implications for the judiciary. At the time of writing, the UK remains a member of the EU. However, the process of withdrawing from the Union has already resulted in one case, namely Miller, which required the courts to rule on two fundamental constitutional issues. The first concerned the extent of the right of the UK executive to alter the domestic law without the formal authority of the UK legislature; the second concerned the extent of the right of the UK legislature to act without the agreement of the devolved legislatures. Such was the importance of these issues and such was the public interest that, uniquely, all eleven Justices sat on the Supreme Court hearing.

Apart from these constitutional developments, which are reasonably well known to non-lawyers interested in the political process, there have been other developments in the relationship between the judiciary and the legislature which were rather more technical, but were nonetheless important.

Parliamentary sovereignty has been traditionally understood, indeed remains generally understood, as meaning that the courts are bound by

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4 See eg the latest statutes cited in nn 1, 2 and 3.
7 There was a vacancy as Lord Toulson had retired but not been replaced; what would have happened if there had been twelve serving Justices is a matter of speculation.
A Glance in the Judicial Rear-View Mirror: 1996–2017 from a Judge’s Perspective

statutes: while Parliament can overrule the judges, the judges cannot overrule Parliament. A dent in this principle arose as a result of the European Communities Act 1972, whose effect was to require judges to disapply or ignore statutes which conflicted with EU law. (And, although that was the effect of the 1972 Act, it only fully permeated into domestic law consciousness in the 1990s as a result of the Factortame litigation.\(^8\)) At least in terms of public perception, a greater dent in the principle of parliamentary sovereignty was created by the Human Rights Act 1998 (‘the 1998 Act’), which introduced the rights created by the European Convention on Human Rights into the domestic law of the UK. The 1998 Act imposes on (or, depending on one’s taste, grants to) judges two complementary and constitutionally very novel powers. First, a judge who considers that a statute or statutory provision does not comply with the Convention can grant a declaration to that effect, and Parliament will then decide whether to alter the legislation accordingly (and in practice it almost always has done so).\(^9\) Secondly, and in some ways more revolutionarily, such a course should only be a last resort, because a judge should try and ‘interpret’ the legislation concerned so that it does comply.\(^10\) In other words, judges are positively encouraged to rewrite statutes to comply with the Convention, and therefore to act as legislators rather than interpreters.

It is of course true that the powers I have been discussing were conferred (and can be taken away) by Parliament. To that extent, it can fairly be said that there has been no change in the balance of power between the judiciary and the legislature as a matter of strict principle. However, there has undoubtedly been a change in the balance of functions: judges can for the first time ignore primary legislation (under the 1972 Act) and they can for the first time declare primary legislation ‘unlawful’ or rewrite primary legislation (under the 1998 Act). Furthermore, experience suggests that, once conferred, novel powers will have an effect on the mindsets of the people who exercise them, and their removal is most unlikely to lead to a simple *restitutio in integrum*. Whatever replaces the 1972 Act when the UK leaves the EU, and whatever happens to the 1998 Act, those statutes have expanded the judges’ horizons, and while they can be repealed, the conventions, the ways of thought, the experiences they have engendered cannot simply be forgotten. That must be true above all in a constitutional system based on convention and common law (whose life has famously been said to be experience\(^11\)). Genies can be educated, even partly tamed, but they

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\(^10\) ibid, s 3.

cannot be put back in their bottles.

Further, when it comes to interpreting statutes, the courts have been more generally emboldened by the effect of the 1972 Act and the passing of the 1998 Act, as well as by the developments in domestic administrative law in the last thirty years of the 20th century. Thus, Lord Hoffmann said in the 1999 Simms case\textsuperscript{12} not merely that the principle of legality means that `[f]undamental rights cannot be overridden by general or ambiguous words', but that `the courts of the United Kingdom, though acknowledging the sovereignty of Parliament, apply principles of constitutionality little different from those which exist in countries where the power of the legislature is expressly limited by a constitutional document'.\textsuperscript{13} It was this sort of factor which led the majority of the Supreme Court (albeit through two different routes) to conclude in the 2015 Evans case\textsuperscript{14} that the Attorney General was not free to overrule a decision of a court, even though the prima facie meaning of the statute concerned entitled him to do so.

3 The judiciary and the executive: in court

In terms of both the extent of the change and the frequency of its effect, even more significant alterations to the judges' constitutional role have been made in connection with their relationship with the executive branch of government. Over the past twenty years, both in court and out of court, there have been remarkable statutory changes when it comes to that relationship.

In court, a judge has no more important constitutional role than to enable citizens to challenge executive decisions and actions which infringe upon their rights or which otherwise contravene the law. Around 50 years ago, the previously rather supine attitude of the judiciary to this vital function started to change, and the change gathered pace over the ensuing years. The development was attributable to a number of factors, which were very well analysed by the late Tony King in his book on the UK constitution written ten years ago.\textsuperscript{15} However, the most obvious and momentous development in this area was created by Parliament. In October 2000, at the very beginning of this century (or, for pedants such as myself, at the very end of the last century), the 1998 Act came into force, and, as mentioned above, judges became obliged to give effect to the fundamental rights which the UK government had signed up to internationally almost fifty years earlier.

\textsuperscript{12}R v Secretary of State for the Home Department, ex p Simms [1999] UKHL 33, [2000] 2 AC 115 (HL).
\textsuperscript{13}Ibid 131.
\textsuperscript{14}R (Evans) v A-G [2015] UKSC 21, [2015] 1 AC 1787.
\textsuperscript{15}Anthony King, The British Constitution (OUP 2007) ch 6 (`The Judges Come Out').
in the European Convention on Human Rights. The 1998 Act has resulted in the creation of new rights and freedoms (eg the right to privacy and the right to respect for one’s home) and the expansion of existing rights and freedoms (eg freedom from discrimination). This has required the judges to re-formulate much of the common law (as explained by Lord Reed in the 2013 Osborn case\(^{16}\), and to give effect to such rights in a way that a traditional domestic lawyer would find heretical (as considered by the Supreme Court in the 2011 Pinnock decision\(^{17}\) and the cases leading up to that decision). One only has to flick through the law reports to see the extent of the reach of the 1998 Act.

At least equally importantly, the 1998 Act has required judges to become more involved in the decision-making process. First, as Lord Sumption pointed out in the Lord Carlile case,\(^{18}\) in a case where a Convention right is claimed to have been infringed by an executive decision or action, the issue is necessarily justiciable: as a result of the 1998 Act\(^{19}\) there are no longer any complete ‘no-go’ areas for the judiciary.\(^{20}\) Secondly, in such a case, instead of simply reviewing an executive decision (as in classic judicial review), the court must ‘consider] the justification for the [decision or action] on its merits, regardless of whether the decision-maker had done so’ (per Lady Hale in the 2007 House of Lords Miss Behavin’ case\(^{21}\)). Indeed, this approach to executive decisions and actions is clearly emboldening the courts when carrying out their traditional judicial review functions – as Lord Mance explained in the Kennedy decision.\(^{22}\) Lord Sumption accurately said that, as a result of the 1998 Act, ‘traditional notions of the constitutional distribution of powers have unquestionably been modified’.\(^{23}\)

It would be wrong to pass on from the changes effected to the relationship between the judiciary and the executive by legislation without recording that there have been other statutes enacted over the past 21 years which have increased the judicial supervisory role, albeit that they are not as obviously directly constitutionally significant. Examples include the Freedom of Information Act 2000, the Regulation of Investigatory Powers Act 2000, and the Investigatory Powers Act 2016.

\(^{16}\) Osborn v The Parole Board [2013] UKSC 61, [2014] 1 AC 1115 [54]–[63].  
\(^{18}\) R (Lord Carlile of Berriew QC) v Secretary of State for the Home Department [2014] UKSC 60, [2015] 1 AC 945 [29].  
\(^{19}\) Human Rights Act 1998, s 6.  
\(^{20}\) See eg Rahmatullah v The Ministry of Defence [2014] EWHC 3846 (QB) [189] (Leggatt J); Ministry of Defence v Rahmatullah (No 2) [2017] UKSC 1, [2017] 2 WLR 287.  
\(^{21}\) Belfast City Council v Miss Behavin’ Ltd [2007] UKHL 19, [2007] 1 WLR 1420 [31].  
\(^{22}\) Kennedy v The Charity Commission [2014] UKSC 20, [2015] 1 AC 455 [51]–[54].  
\(^{23}\) Lord Carlile (n 18) [29].
A factor which has, I think, increased the perception that judges have a legitimate policy-making role is the appointment by the executive of judges to high-profile inquiries. Three such inquiries stand out over the past 21 years, namely the Stephen Lawrence inquiry resulting in the 1999 Macpherson report,\textsuperscript{24} the inquiry into the death of Dr Kelly, leading to the 2004 Hutton report,\textsuperscript{25} and the inquiry into the ethics of the press which resulted in the 2012 Leveson report.\textsuperscript{26} And just before the start of the 21 years there was the Arms for Iraq inquiry resulting in the Scott report,\textsuperscript{27} and now of course, there is the inquiry into the Grenfell Tower disaster headed by Sir Martin Moore-Bick,\textsuperscript{28} a retired judge, but nonetheless a judicial figure in terms of public perception.

4 The judiciary and the executive: out of court

As a result of the 1998 Act, as well as the two 2000 statutes I have mentioned, the start of the new millennium represented something of a watershed in the relationship between the executive and the judiciary in court. But another statute, namely the Constitutional Reform Act 2005, has very significantly changed the relationship outside court. By taking the Law Lords out of the House of Lords, and by removing the Lord Chancellor from his traditional role as head of the judiciary, Parliament has inevitably had to engineer a relationship between the new Supreme Court and the executive, and (at least as significantly) to restructure the relationship between the judiciary and the executive.

The Law Lords had been a (physically and financially) small adjunct to the House of Lords, with allocated parliamentary staff, space and money. As a result of severing the link between the top UK court and Parliament, this has, of course, all had to change. In terms of finances, the Lord Chancellor has a duty to ensure that the Supreme Court is adequately funded, but, subject to that, the Court has to look to Whitehall and the devolved governments for its money (and it is right to record that, at any rate over the past five years, the relations have generally been very cordial and constructive). In terms of administration, the UK’s top court has its

\textsuperscript{24} Sir William Macpherson, \textit{The Stephen Lawrence Inquiry} (Cm 4262-I, 1999).
\textsuperscript{26} Lord Justice Leveson, \textit{An Inquiry into the Culture, Practices and Ethics of the Press} (HC 2012–2013, 780).
own chief executive and accounting officer, and its own staff, who are properly required to be independent of the executive (and who, it is again right to record, have all performed magnificently over the past five years). The extent, if any, to which this has encouraged the top court to become more constitutionally assertive is hard to assess partly because there are so many other factors at play and partly because it is difficult for me to assess the question as an insider for most of the Supreme Court’s existence. But there is no doubt but that the public is far more aware of the existence and functions of the UK’s top court as a result of its having a recognisable name and building and its own active and effective communications team, as well as the streaming of its proceedings and the written and televised summaries of its judgments.

In England and Wales, the Lord Chief Justice and therefore, inevitably, the judges more generally have been given much more extensive responsibilities and a far heavier administrative burden, as a result of the 2005 Act. These responsibilities extend to judicial and courts administration and strategy, judicial discipline and judicial education, all of which has added a very substantial extra burden on an already over-stretched judiciary. The courts of England and Wales are no longer run by a government department, but by an executive agency: Her Majesty’s Courts and Tribunals Service, a partnership between the judiciary and the Ministry of Justice, whose function is to ‘[enable] the rule of law to be upheld and [to provide] access to justice for all’.29

5 The judiciary and access to justice

I have so far been discussing changes at what may fairly be described as a relatively high level, and I now turn to changes which have impinged on judges when doing what may be called the day job, namely providing access to justice. In that connection, there have, I think, been three major areas of change, each of which seems to me to be of real significance. And, while my observations about each area relates primarily to England and Wales, I believe that both Scotland and Northern Ireland have faced, or are facing similar, but not identical, changes.

First, the very name ‘Her Majesty’s Courts and Tribunals Service’ demonstrates a significant constitutional development. Following the reforms made by the 2005 Act, the Tribunals, Courts and Enforcement Act 2007 radically overhauled the disparate tribunals (which deal with issues such as employment, asylum and immigration, social security, and tax) and brought

them all within the scope of the judiciary, thereby substantially more than
doubling the number of serving judges. The tribunals are now reorga-
nised into a coherent structure which is part of the courts system, and those
who were previously tribunal members are now integrated into the judicial
family as judges.

Secondly, in stark contrast with the relatively laissez-faire attitude to the
cost and pace of litigation during the preceding forty years, since 1996
pretty fundamental changes have been made to the ways in which civil and
family disputes have been resolved, and there have also been fundamental
to procedures in criminal courts. There has been one significant
development outside the courts: since 1996, when it was virtually unknown
among UK lawyers, mediation has been playing an increasingly significant
part in resolving civil and family disputes. With varying degrees of
enthusiasm, judges have been encouraging parties to mediate, and indeed
a mediation service has been provided in some courts.

And when it comes to court proceedings themselves, very significant
changes have been implemented with a view to updating legal proceedings,
and making them more efficient and proportionate – and most of those
changes are still ongoing. In the civil field, the Woolf reforms, enshrined
in the Access to Justice Act 1999, resulted in the abolition of the old rules
of court and the introduction of the new Civil Procedure Rules, and the
more recent 2010 Jackson reforms, enacted in the Legal Aid, Sentencing
and Punishment of Offenders Act 2012 (`LASPO 2012'), made significant
amendments to the CPR. Both sets of reforms were aimed at streamlining
civil litigation, an aim which has been partially successful. More radical
proposals, including online dispute resolution, have now been put forward
in the 2016 Briggs Civil Courts Structure Review. In the field of family
law, the 2014 Family Justice Reforms, described by the President of the
Family Division as representing `a revolution', have a similar aim, namely

30 See the discussion in *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576,
[2004] 1 WLR 3002 and *PGF II SA v OMFS Company 1 Ltd* [2013] EWCA Civ 1288, [2014]
1 WLR 1386.
31 Lord Justice Jackson, *Review of Civil Litigation Costs: Final Report* (Her Majesty’s Stationery
Office 2010). This has now been extended by a 2017 supplemental report – Lord Justice
1 <https://www.judiciary.gov.uk/wp-content/uploads/2014/05/family-justice-reforms-
29042014.pdf> accessed 26 October 2014.
to streamline family court litigation. A 2015 Review of Efficiency in Criminal Proceedings,\(^{34}\) which has very similar aims in the criminal law field, has been produced by Sir Brian Leveson.

The third aspect of the judicial function which has been subject to significant change over the past 21 years arises from the government’s approach to the funding of litigation. The 1999 Act provided for a very substantial reduction in the scope of civil legal aid, and its replacement by a system, with substantial recoverable uplift and insurance,\(^{35}\) which was so unsatisfactory that it caused Lord Clarke (then Master of the Rolls) to take the unusual step of commissioning what became the Jackson report.\(^{36}\) This led to provisions in LASPO 2012, which in many respects further reduced the scope of civil legal aid and also resulted in a pretty drastic reduction in legal aid in private family law cases. The introduction of a modest uplift and the possibility of what was effectively contingent fees was apparently thought to be a sufficient \textit{quid pro quo} to justify these reductions. On top of that, the government thought it appropriate to increase most court and some tribunal fees generally and, in many cases, substantially. So substantially in some cases that in the 2017 \textit{Unison} case,\(^{37}\) the Supreme Court held that the decision to increase Employment Tribunal fees involved setting them at such a high level that it was unlawful.

## 6 The judiciary at work

From the more parochial judicial perspective, a number of other important changes were effected by the 2005 Act, the most significant being (i) the way in which judges are selected and (ii) the increased administrative burden. (In this connection, my remarks again relate to the position in England and Wales – and the Supreme Court – although I believe that the position is not that different elsewhere in the UK).

In early summer 1996, out of the blue, I received a letter from the secretary to Lord Mackay of Clashfern, the Lord Chancellor, asking me to call on him in his magnificent room in the House of Lords. I duly did so, and he invited me to become a High Court Judge, an invitation which I accepted. My promotion to the Court of Appeal some seven and a half years later was


\(^{36}\) See n 31.

initiated by an unanticipated letter from 10 Downing Street more or less
telling me that the appointment was to be made, and I first heard about my
subsequent promotion to the House of Lords when I was told by the Lord
Chief Justice that it was going to happen. In fact, as had been the established
practice for many decades, even centuries, all three appointments were
ultimately decided on and initiated by the Lord Chancellor (Lord Falconer
in the case of my promotions), albeit after consultation with senior judges.

It could fairly be said that judicial appointment and promotion were in the
hands of the executive (although the Lord Chancellor was, anomalously
and uniquely, a member of all three branches of government, he was
and is appointed and dismissed by the Prime Minister). The effect
of the 2005 Act was to sweep this away, and to provide for judicial
selection by an independent Judicial Appointments Commission, and
for judicial promotion by panels whose membership was pretty tightly
defined (although in each case the Lord Chancellor and indeed the Prime
Minister retain a residual power to reject, but only with good reasons).
All judicial posts are now openly advertised and are the subject of open
competition. So, out has gone the cosy (albeit speedy) ‘tap on the
shoulder’ by a government minister, and in has come the more rigorous
(if time-consuming) competition by a panel independent of government.

Once on the bench, a new judge in 2017 will find his or her role
rather more onerous than that of a new judge in 1996. First, the
effect of the 2005 Act is, as I have explained, to increase the amount
of administrative work for judges generally, and many judges now have
specific administrative responsibilities, which carry a very substantial
workload. Secondly, the severe cuts in legal aid in civil and family cases
has resulted in a mushrooming of litigants in person, most notably at first
instance in civil and family cases: this throws a substantial burden on the
judge, as this takes longer and is more taxing, and involves more work.
Thirdly, one of the consequences of the changes in procedures in all types
of case, which I have summarised above, is to throw more work on the
judges. In civil litigation, case management under the Woolf reforms and
cost management under the Jackson reforms are just two examples. In civil
and family litigation, the introduction of skeleton arguments 25 years ago
heralded an increase in written submissions both before and after a hearing
and this in turn inevitably casts more work on the judge hearing the case.
Fourthly, the enormous volume of criminal law statutes between 1997 and
2009 threw a very significant extra burden on criminal judges.

It is not as if judges are being compensated for these increased burdens. Far
from it. Since 1996, a High Court judge has had to serve for 20 years to
earn a full pension, and the judicial pension was a real attraction of a job
which was otherwise financially very unappealing to a successful lawyer. Indeed, the pension was worth between 35 and 40% of the total judicial annual remuneration according to the Ministry of Justice. In the past five years, owing to a misconceived Treasury decision to change the status of the judicial pension scheme coupled with changes in the way in which pension contributions and pension ‘pots’ are taxed, the remarkable and unfortunate truth is that for most newly appointed judges, it is financially beneficial to disclaim the right to a judicial pension altogether than to claim it. In other words, judicial pay has been slashed for most newly appointed High Court judges by over a third. On top of that, judicial pay, in common with the pay of public servants generally, has fallen in real terms every year since 2009.

It is unsurprising in these circumstances that the recent High Court competition failed to fill a significant number of vacancies. A number of first-class lawyers who would otherwise have applied were put off not simply by the financial disincentive but by the devaluation of the judicial role which it implies. Quite rightly, the JAC decided not to lower the standard. One of the consequences of this unfortunate state of affairs may be that the United Kingdom will edge more towards a career judiciary, as it is almost inevitable that the JAC will look more favourably on applicants from the Circuit and Tribunal Benches than before. Indeed, I note that a fairly high proportion of the new High Court appointments are already judges. Provided that this does not lead to a dilution in quality and provided that there is always a majority of late entry appointees, I see nothing wrong in increasing the proportion of High Court appointees who are already judges. It should help maintain the quality of the Circuit and Tribunal judiciary and it should also assist in increasing diversity in the senior judiciary.

Indeed, while there is obviously substantial room for improvement, the senior judiciary is significantly more diverse than it was when I first became a judge. Thus, over 20% of High Court judges and over 20% of Court of Appeal judges are women, which is a very substantial change from 1996, when the proportion was not even 5% among either judicial group. And, of course, the Supreme Court has two women, one of whom is President, whereas there were, and had been, no female Law Lords as at 1996. Ethnic diversity has been slower to achieve, but there is an Asian member of the Court of Appeal and an Asian High Court judge, which is two more senior ethnic minority judges than there were in 1996.

7 The judiciary and the rule of law

The very substantial reduction in the powers of the Lord Chancellor effected by the 2005 Act was accompanied by a change in the qualifications
and experience of the individual who held the post. Prior to the 2005 Act, the Lord Chancellor had always been an eminent lawyer (occasionally a former judge) with real experience of the legal system, and with a proper understanding of, and commitment to, the rule of law and the independence of the judiciary. He could be expected to speak up in and outside cabinet for these vital constitutional principles. The 2005 Act contains a rather pallid section which limits the post to someone who ‘appears to the Prime Minister to be qualified by experience’, and some of the appointees to the post demonstrate that this is not merely pallid, but toothless. As a result, it is no longer possible to assume that there will be a senior member of the government who can be relied on to speak up for the rule of law or the independence of the judiciary – although these principles are ironically for the first time statutorily enshrined in the 2005 Act itself. The problem this throws up was well demonstrated by the feeble reaction from the government following the press coverage of the High Court decision in the Miller case. This is a worrying development, not because the judiciary lack the resilience to handle criticism (they don’t – even when the criticism is unjustified, as it was following the Miller decision), but because it undermines the rule of law.

Unfortunately, this is happening at a time when the risk of unjustified attacks on the rule of law and on the judiciary is increasing. The problems facing the rule of law and the judiciary as a result of what is written and said in the media have increased markedly over the past twenty years as a result of the explosion in electronic communication. The Internet affords an easy forum for those who wish to disseminate inaccurate and ill-informed stories and comments, as well as for those who wish to read such material. And many parts of the printed media appear to consider that the best way to meet this competition is to emulate it.

The reaction to the decision of the Supreme Court upholding the High Court’s decision in Miller was, it is fair to say, much more measured and appropriate than in relation to the High Court. This was due, in part, to another new development in the courts, namely the transmitting of the hearing to the public. Filming proceedings in any court has long been a contempt of court, but the Supreme Court has regularly streamed all its

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38 Constitutional Reform Act 2005, s 2.
39 Constitutional Reform Act 2005, ss 1(a) and 3(1).
42 Miller (UKSC) (n 6).
43 Criminal Justice Act 1925 s 41. See also the Contempt of Court Act 1981, s 9; and the Crime
proceedings on its website from the time that it opened in 2009, and the Court of Appeal has allowed filming since 2013. To me at least, this is the logical extension of open justice, although indiscriminate filming would be inappropriate.

Media reactions to cases such as Miller mean that, on top of all the other demands now made on them as a result of the developments discussed earlier in this foreword, judges, as guardians of the rule of law, are now under pressure to do what they can to reduce the risk of the public misunderstanding the constitution and the judges, and to encourage public understanding of the rule of law and the independence of the judiciary. That this is happening is evident from a further development since I became a judge, namely the very substantial increase in the number of public speeches, and participation in seminars and Q&A sessions by members of the judiciary. It is a development which has its dangers as well as its demands, but it seems to me to be one which is not merely desirable but inevitable in the present world of wall-to-wall coverage of news and current affairs.

8 Conclusion

There is always a tendency to overestimate the degree of change which is occurring or which has just occurred in one’s own particular world. And I acknowledge that, viewed through the lens of 2050, let alone 2100, the period through which I have served as a judge may well not appear as full of significant constitutional and administrative changes as it appears to me to have been, when viewing it through a contemporary lens. Nonetheless, I would suggest that the above discussion does demonstrate that the period between 1996 and 2017 has been one of significant and fundamental change so far as the governance of the United Kingdom is concerned, and that the judges have suffered (or, as the case may be, enjoyed) their share of this change. These changes have undoubtedly given rise to testing times for the judges, but it seems to me that, so far at least, they have passed such tests reasonably well, and have survived the times with their reputation intact. But I would think that, wouldn’t I?

—and Courts Act 2013, s 32.