

The Supreme Court Ten Years On

The Bentham Association Lecture 2019, University College London

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6 March 2019

I am greatly honoured to have been appointed as President of the Bentham Association for 2019, and to have been invited to give the presidential address this evening. It is a great pity that Mr Bentham himself is unable to join us. He might have found the subject of my talk of some interest, as he was a vehement critic of the judicial role of the House of Lords. Recalling that the Roman emperor Caligula had planned to appoint his favourite horse, Incitatus, as consul, he wrote in 1790 that:

“It is beyond comparison better that a horse should have a voice in that house [the House of Lords] than that a judge should. ... Neighing in that house would not make a horse the worse for riding; but sitting and voting there makes a judge very much the worse for judging.”¹

Writing forty years later, Bentham was no more impressed by the judicial role of the House of Lords, describing it as “a complete mockery of justice”.²

¹ Draft for the *Organisation of Judicial Establishments, compared with that of the National Assembly [of France], with a commentary on the same* (1790), in *The Works of Jeremy Bentham*, Bowring ed (1843), Vol 4, p 381.

² *Constitutional Code* (1830), in Bowring (n1), Vol 9, p 473.

Bentham's principal objection was that the judges who sat in the House of Lords at that time also served in the courts below, and appear from what he says to have had no compunction about participating in appeals against their own decisions. He was also critical of the practice of lay peers taking part in the consideration of appeals, despite their being, in his words, "ignorant of the law" and "destitute of judicial aptitude, by indolence and carelessness".³ Those problems disappeared later in the nineteenth century, first with the ending of lay participation in appeals, and then with the appointment of professional judges as salaried peers specifically in order to hear the appeals. But Bentham would, I think, have agreed with those who considered that there remained a fundamental objection to the highest court in the land being constituted as a committee of the legislature: an objection based on the separation of powers.

As we all know, the Government eventually decided to establish a Supreme Court in place of the Appellate Committee of the House of Lords. The necessary legislation was enacted in the Constitutional Reform Act 2005, and the Supreme Court opened its doors on 1st October 2009. I think we can safely say that Jeremy Bentham would have been delighted.

Taking stock ten years later, what advantages, if any, have actually resulted from the highest court's separation from Parliament? Have there been any disadvantages? If so, what is the balance of advantages and disadvantages? Has the creation of the Supreme Court made any difference to the outcome of the cases which it decides? Has it made any other differences to the way in which the highest court operates? Those are the questions I am going to discuss. I do so from the perspective of a member of the court, who has served on it under all of its presidents to date, but I should make it clear that I am expressing a purely personal view.

³ Ibid.

It is only if we have an idea of the functions of the Supreme Court that we can decide how well it is performing them. So it is worth beginning by asking why we have a Supreme Court at all, or the Appellate Committee before it. After all, the Supreme Court of Judicature Act 1873 enacted that there would be no further appeal from the Court of Appeal, but was never brought into force. And in Scotland, criminal appeals have never proceeded beyond the Scottish courts, unless, under recent legislation, there is a devolution issue raised, or an issue of compatibility with Convention rights.

As I see it, the Supreme Court has three principal functions. The first arises from the fact that the intermediate appeal courts have to deal quickly and efficiently with thousands of cases each year. The great majority concern errors in the application of established law: either a failure by lower courts and tribunals to understand established principles correctly, or a failure to apply them correctly to the facts. The appeal courts dispose of them by sitting in panels of two or three, and allocating the judgment writing between the members of the panel in advance of the hearing. The result is that each member of the panel focuses particularly on the cases which have been allocated to him or her, usually on the basis of their experience and expertise. The Supreme Court operates very differently. Like the House of Lords before it, it grants permission to appeal in only a tiny fraction of the cases heard by the Court of Appeal and its equivalents in Scotland and Northern Ireland: around 75 to 80 cases a year, which it hears along with another 40 or 50 in the Judicial Committee of the Privy Council. The numbers are so low because it is not its function to correct errors in the application of established principles:⁴ that would simply involve a different set of judges repeating the exercise already undertaken by the Court of Appeal. Instead, although we have to adopt a different approach where questions of EU law are raised,

⁴ *R v Secretary of State for Trade and Industry, Ex p Eastaway* [2000] 1 WLR 2222, 2228 per Lord Bingham.

because of our duty to refer those questions to the European Court of Justice where the answer has not already been made clear, as a general rule the Supreme Court grants permission to appeal only where the appeal raises an arguable question of law of general public importance which the court ought to consider at that time.

That criterion enables us to hear a small number of cases raising important issues of principle, and because there are only a limited number of them at any one time, we can devote greater resources to them than an intermediate court of appeal can afford. The way we deal with them also reflects the fact that, unlike the Court of Appeal, we are not bound by precedent, and so an important aspect of our role is the development of the law, through our consideration of the cases raising the most important questions. The performance of that function requires a sense of the coherence of the law as a whole, an awareness of how it has developed over time, and an understanding of how it needs to develop now so as to respond to the evolving needs of our society. In order to meet those requirements, we have larger panels than in the lower court: at least five Justices, and sometimes seven or more. That larger panel also tends to even out the differences in judicial outlook and temperament which can be more significant on a smaller court. The panels are also constituted so as to ensure that there is a breadth of experience represented from across the law as a whole. As another matter of deliberate policy, judgment writing is not allocated in advance. So every member of the panel prepares every case with more or less equal thoroughness, and is expected to be equally engaged, whatever their previous experience may have been.

So, put shortly, the first function of the Supreme Court is to enable important questions of law to be considered with a degree of depth, time, combined intelligence, and breadth of legal experience, which the intermediate courts of appeal cannot normally be expected to devote to

them. Our aim is to ensure, so far as we can, that the law is clear, principled and suitable for our times.

Secondly, the Supreme Court is the only court for the United Kingdom as a whole, apart from a few tribunals. As the highest court for all three jurisdictions, the Supreme Court is the only court which can ensure that a consistent approach is followed in areas of the law which are identical across the UK, such as immigration and asylum, extradition, most aspects of taxation and social security, and in other areas which are largely common across the different legal systems, such as much of the law of contract, negligence, company law and corporate insolvency.

Thirdly, the Supreme Court has a statutory jurisdiction to determine references made to it in relation to the validity of devolved legislation, usually as a result of disputes between the UK Government and one of the devolved governments. It is also the final court of appeal in relation to other devolution issues, questions of EU law, questions of human rights, and other questions of a constitutional character. This makes it effectively the constitutional court of the United Kingdom.

So, the three functions I have identified are first, the consideration of the most important questions of law, and the development of the law; secondly, ensuring the coherence of law which is shared by the UK as a whole; and thirdly, acting as the UK's constitutional court. How has the establishment of the Supreme Court affected the way in which those functions are performed?

The most significant impact, in my view, has been on the court's function as a constitutional court. That is the area where the House of Lords' embeddedness in Parliament caused the greatest difficulty. The UK's membership of the EU, and the enactment of the Human Rights Act, have meant that the legislation enacted by Parliament can be challenged in the courts. Where such challenges are successful, the result can potentially place the Supreme Court in opposition to the views of Parliament: a situation which requires mutual respect and understanding between Parliament and the Supreme Court. But it is preferable to the situation which existed before the Supreme Court was established, when the Law Lords had to decide the lawfulness and compatibility with human rights of legislation enacted by a legislature of which they were themselves members, albeit in recent times not active participants.

That is not the only respect in which it had become apparent before 2009 that the constitutional role of the highest court was difficult to reconcile with the intrinsic connection between the House of Lords as a judicial body and the House of Lords as a political body. That difficulty emerged particularly clearly when, under the legislation in 1998 establishing devolution, the function of deciding disputes over the powers of the devolved governments and legislatures was given not to the House of Lords but to the Judicial Committee of the Privy Council, or JCPC. But even that was not an entirely satisfactory solution. Until the establishment of the Supreme Court, the JCPC sat in the Privy Council Chamber at 9 Downing Street. Can one imagine how it would look to the general public in Scotland, Wales and Northern Ireland if legal disputes between the devolved governments and the UK Government, such as last year's litigation over the question whether the Scottish Parliament had the power to pass legislation addressing the consequences of Brexit, were decided in Downing Street?

The problems inherent in having a constitutional court situated within Parliament have become even more obvious since the 2016 referendum on EU membership, and the subsequent litigation over the powers of Parliament in relation to Brexit. How would it have looked to ordinary members of the public if the Gina Miller case, which turned on where the boundary lay between the powers of the Government and the powers of Parliament, had been heard in a committee room in the Palace of Westminster, with judgment handed down in the chamber of the House of Lords?

In cases of that character, there is a problem in having a final court of appeal which forms part of Parliament, if justice is not only to be done but to be seen to be done. Ten years on from the opening of the Supreme Court, its experience of EU and human rights cases, of devolution cases, and of other constitutional cases such as *Miller*, has demonstrated the wisdom of those who decided that the constitutional function of the UK's highest court called for the establishment of a new and independent body.

Are there any other respects in which the Supreme Court is better able to perform its functions than the House of Lords? As I never served as a Law Lord, I would defer to the views of those with experience of both tribunals. But I would draw attention to a number of consequences of the move which have, I think, assisted us in the way we do our work.

The Appellate Committee, although functionally a court, was formally a Parliamentary committee. That brought a number of advantages, which the Supreme Court has sought to preserve. So, for example, the room in which the committee sat did not have the appearance of a

traditional courtroom.⁵ As they were sitting as members of a Parliamentary committee, the Law Lords did not wear robes. They did not sit at a raised bench, but at a table at the same level as counsel and only a few feet away. The table was crescent-shaped, as in other committee rooms, so that the members of the committee could see each other. As a committee of the House of Lords, they had to report back to the House in order for their decisions to be given effect. One way they could do that, which was used only occasionally, was to prepare a joint report, which was then laid before the House and voted upon (the members of the committee being the only members to take part in the vote). The other way, which was almost always used, was for each member of the committee to prepare a speech. That is why it is a solecism to refer to the “judgment” of a member of the House of Lords. They had to be speeches, because that is how a member of the House conveys his views to its other members. And each member of the committee had to deliver his own speech: there could not be joint speeches, since members of the House speak one at a time.

I understand from former Law Lords that the members of the committee worked on their speeches largely independently of one another, and circulated their drafts in hard copy. The degree to which they commented on each other’s draft speeches, and responded to comments on their own draft, appears to have been relatively limited. The fact that members of the committee did not have their offices located together, or their own separate dining facilities, may have affected the degree of collegiality. Space was generally very limited, and the number of judicial assistants was correspondingly restricted.

⁵ The Appellate Committee sat in one of the committee rooms, normally Committee Room 1. It also sat from time to time (particularly during the Parliamentary recess) in the Chamber itself. I once appeared there as counsel. You stood at a small lectern, where there was scarcely room to place your papers. Senior counsel, as I was, were required to wear long-bottomed wigs. I felt as if I was appearing in *Iolanthe*.

When the Law Lords, or at least most of them,⁶ became Justices of the Supreme Court, they brought some of their old practices with them, but left others behind. The Justices are of course judges, not members of a Parliamentary committee. So they sit in courtrooms. But they continue to wear ordinary clothes.⁷ They continue to sit at a table at the same level as counsel and only a few feet away. The table remains crescent-shaped, so that the Justices can easily communicate. They continue to start hearings at 11 am on Mondays, rather than the 10.30 start adopted on the other days of the week: a practice whose original purpose was to allow the Law Lords time to return to town from their country estates – those were the days - but which nowadays allows us time for meetings and paperwork.

But in other respects the establishment of the Supreme Court cleared the way for a reform of the way in which business was conducted, free from the historical traditions of the House of Lords. First, since the Justices are judges, they prepare judgments, not speeches. That change has made it possible for there to be joint judgments, or single judgments of the court. Single judgments, or at least a single majority judgment, are favoured where possible, so that the reasoning of the majority is expressed in a single text, so as to assist lower courts and legal practitioners.

Concurring judgments may be unavoidable where judges arrive at the same outcome by different processes of reasoning, but care is taken that the differences in reasoning are made plain, and do not lead to obscurity or argument about what the court has decided. There is a danger that judges repeat each other's reasoning with unintended subtle distinctions, on which academics and the legal profession then fasten, with unfortunate consequences for legal certainty. Ensuring that that does not happen is one of the responsibilities of the presiding justice. On the other hand, having a number of fully reasoned judgments is encouraged on occasions when the court

⁶ 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.

⁷ They have robes (against the wishes of some of the original Justices), but they only wear them on ceremonial occasions.

is uncertain how the law should develop and wishes to encourage a discussion among academics and other judges.

In practice, it has also become increasingly common in recent years for Justices to produce joint judgments. This can be a good solution where more than one Justice would like to write and their views of the case are broadly aligned, particularly where the case raises a number of issues which the Justices can divide between them. Indeed, in complex cases where a judgment has to be produced quickly, joint judgments can be a valuable way of dividing up the work.

Secondly, the Supreme Court has embraced the use of new technology. So Justices draft their judgments as Word documents, and the draft judgments are circulated by email. Comments on them are circulated in the same way. Because the Justices can access the judgments and emails wherever they are they are in the world, there are frequent conversations about the draft judgments, and a lively exchange of ideas. So the exchanges about a draft judgment prompt the preparation of a revised draft, which is then circulated, prompting further discussion, and further revision. And so the preparation of a judgment becomes an iterative process, to which other Justices besides the author will usually make a significant contribution.

This means that the use of single or joint judgments is not as limiting as might be thought. The single judgment is the product of a highly collaborative process, in which all the members of the panel are active participants. I would hope that bringing at least five intelligences to bear will tend to result in better judgments than most of us would prepare if we were working in isolation.

Thirdly, the Supreme Court building itself assists in this collaborative process. The Justices' offices are next to one another. We each have a spacious room with several chairs,

where colleagues can drop in to discuss matters. Most of us work with our doors open, encouraging that to happen. We normally have lunch together every day we are sitting, encouraging collegiality. We have conference rooms where we meet to discuss cases after the hearing. We usually have a brief discussion of the case in the presiding Justice's room 15 minutes before the hearing, focusing particularly upon how the hearing should be conducted. Any views expressed at that stage are usually tentative. Further discussions take place after each adjournment, and a longer discussion is usually held immediately after the hearing has finished. Sometimes, if we require time to consider the case further before expressing a view, we agree to meet a week or two after the hearing. We also sometimes have further meetings if agreeing a judgment is proving difficult. The discussion can be lengthy – sometimes an hour or two – and quite robust, but I have not yet had to deal with the situation reported to have occurred during the discussion of a case on the Wisconsin Supreme Court, where one member of the court was accused of choking another during their deliberations. He apparently admitted putting his hands on his colleague's neck, but said he was acting defensively.⁸

The flexibility we now enjoy would have been more difficult to achieve in the House of Lords, because of the limited availability of accommodation. There were no meetings before the hearings, and at the end of the hearing the clerk called out "Clear the Bar", and counsel and their solicitors quickly gathered up the books and papers and left the room, leaving the committee to its deliberations. After the leading draft judgment was circulated, there might be the odd informal discussion between two or three Law Lords, but very rarely any meeting of all five.

⁸ According to a report which can be found at <http://ideas.time.com/2011/09/12/justice-on-display-should-judges-deliberate-in-public/>.

Turning to another subject, one of the most important effects of setting up the Supreme Court has been to make the court much more accessible to the public. Although the public were allowed access to Committee Room 1 of the House of Lords, getting there required the navigation of a maze of corridors in the furthest reaches of the Palace of Westminster. It is much easier to step into the current building. Some 80,000-90,000 people do so every year, including a great many school children and students. We have a front of house team who organise visits and put on open days and other events to encourage members of the public to visit the court and learn about what it does.⁹ We also hold events for schools and universities after court hours, and for schools which are too far away to visit we have a scheme under which pupils can have a discussion with a Justice via a video link. Those sorts of activities were not possible in the House of Lords.

There is another aspect of the Supreme Court which would have appealed to Jeremy Bentham. In the work of 1790 which I quoted previously, he wrote:

“Publicity is the very soul of justice. It is the keenest spur to exertion, and the surest of all guards against improbity. It keeps the judge himself, while trying, under trial.”¹⁰

I would add that publicity is not only important as a safeguard against impropriety. If you ask why the public accept decisions made by the judiciary, the answer, I would suggest, rests in confidence or trust. The greatest challenge of judging is perhaps to ensure that all segments of the community have confidence that the administration of justice is independent and impartial.

⁹ There is also an exhibition space in our basement with interactive displays performing a similarly educational function.

¹⁰ Fn 1, p 316.

One of the challenges the judiciary constantly face is to maintain that confidence, especially when they have to deal with cases involving issues on which public opinion is sharply divided. The danger is that people who do not understand what judges do may assume that they simply apply their own political or moral views: a misunderstanding which is sometimes encouraged by the way in which cases are reported.

An example was the Gina Miller case, where the High Court's decision came as an unwelcome surprise to a section of the media, and was reported in one of the newspapers with photographs of the judges under the headline "Enemies of the People". The appeal to the Supreme Court was preceded by analyses in the media of how pro-EU every member of the court was thought to be, based on our backgrounds and on social media postings by members of our families. In the event, the predictions of which way we were each likely to decide the case proved to be hopelessly wrong. What some of the media had not understood was that the fact that a judgment has political implications does not mean that the judges are deciding a political question. They are deciding a legal question, in that case about the effect of the European Communities Act, and they decide legal questions by applying their legal expertise.

I have mentioned the work of our front of house team. We also have a communications team. Through them, we have an active involvement in social media. Although we scarcely register as a social media presence in the context of figures such as Kim Kardashian, we nevertheless have a substantial number of loyal followers. Our communications team maintain relationships with bloggers who cover our work, recognising the importance of their role in the media landscape. We also engage with the traditional media to a greater extent than the House of Lords did, recognising that the court operates in an intensive media environment, where journalists are under pressure to provide an instant response to our judgments. So our communications team

maintain relationships with the journalists who cover the Supreme Court, keeping them informed of newsworthy decisions on applications for permission to appeal, hearings and judgments, and assisting them with briefings in appropriate cases. This has had a significant impact on reporting of the court's work, which is more frequent, and I think better informed on the whole, than it was in the days of the Appellate Committee. They also follow up the media coverage of our decisions, and will occasionally point out factual errors, so that, for example, a mistake on the BBC website is corrected before the item makes the lunchtime news. They also organise interviews of Justices from time to time by different media outlets.

However, what has probably made the biggest impact on the general public is the fact that we livestream our hearings. We are the only court in the UK to do so, and as far as I know the only common law supreme court in the world. Videos of previous hearings are also available on our website. We also livestream the delivery of our judgments, when the Justice who has written the lead judgment gives a short explanation of the decision in ordinary language. Footage from our proceedings is also used by the media on television and on newspaper websites.

The importance of filming our proceedings was illustrated when the Miller appeal reached us. The hearing in our court, unlike the hearing in the court below, was livestreamed on our website, and, with our permission, a number of media organisations also livestreamed the proceedings on their own websites. The number of people watching was over 300,000. In addition to those people, a much greater number saw highlights on the television news. There were even some late night programmes devoted to the case, where pundits commented on the footage. The result was that a large element of the public saw that what was being discussed was an issue of constitutional law. It was dry and technical, but the important point was that it was entirely different from the political debate over Brexit. The media worked out from our questioning of

counsel how the decision looked likely to go. The result was that, when our decision was issued, there was no sense of shock, no concern that the court might be interfering in politics, but an acceptance that that was how the court understood the law. The case illustrates how an intelligent approach to communication, making use of the possibilities offered by modern media, can help to promote public understanding of our work.

This discussion of accessibility and communications illustrates how the establishment of the Supreme Court provided an opportunity to reflect on how a modern apex court should operate and to put those arrangements into place. Another illustration is the development in the role of judicial assistants. There were judicial assistants in the House of Lords, but they were few in number, and not every Law Lord had one. It was not easy to find accommodation for them, and it tended to be in out of the way places. In the Supreme Court, we currently have eight judicial assistants. The four senior Justices, who preside in hearings and in panels considering applications for permission to appeal, have one each, and the other Justices have one between two. Later this year we will be expanding the number of JAs so that the Justices will have one each. They share an office, so that they can work collaboratively, and their office is close to the Justices' rooms. They carry out research for the Justices, and assist us with the preparation of lectures, and some Justices also allow them to play a part in the preparation of judgments: not drafting them, but proof-reading and providing comments on their clarity and coherence. They also play an important role in the court's approach to accessibility and communications. It is they who draft the explanatory material given to visitors, and who draft the press summaries which appear on our website. It is also they who deal with inquiries about our work from foreign courts, and provide our responses to European networks for sharing legal information.

That brings me to the subject of the court's relationships with other courts, both overseas and within the UK. With its many meeting rooms, the establishment of the Supreme Court has greatly facilitated exchanges with the judiciary of Luxembourg, Strasbourg and national courts around the world. It has made it possible to welcome visiting judges from the states and territories which use the Judicial Committee of the Privy Council, and from elsewhere in the UK. In maintaining good relations with the English and Welsh, Scottish and Northern Ireland judiciary, it is also helpful that we can appoint Acting Judges to sit with us, as a number of senior judges from all three jurisdictions have done from time to time. That could not have happened in the House of Lords unless the judges happened to be peers.

Another innovation following the establishment of the Supreme Court has been particularly important. As I explained earlier, it is a UK court, exercising jurisdiction over the whole of the United Kingdom. As it is based in London, it is most conveniently visited by people with easy access to London. We provide access to people in the rest of the UK through the internet, for example through the livestreaming of our hearings, and through our use of video links for Justices to have discussions with schools, as I mentioned earlier. Justices also make frequent visits to Scotland, Northern Ireland and Wales, to give lectures and to take part in events there. Nevertheless, the physical presence of a court in a community, and the ability of members of that community to attend the court, remain important. With that in mind, the Supreme Court sat in Edinburgh in 2017 and in Belfast in 2018. This year it will sit in Cardiff. Travelling to other parts of the UK has now become an established part of the court's calendar.

So the establishment of the Supreme Court has 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 a number of changes for the better in the internal

workings of the court; it has been a catalyst for changes in relation to public accessibility and communications; and it has encouraged the final court to do more to be recognised as a court for the UK as a whole. Has it made any difference to the outcome of appeals? Before the Supreme Court began work, fears were expressed that the Justices would behave as if they were sitting in the United States Supreme Court, thinking themselves above Parliament and generally behaving in what critics would call a more “activist” manner. Have those fears turned out to be well-founded?

I do not think that there was ever any rational basis for thinking that a new home and a new name would affect the way in which senior judges behaved, and that apprehension has not turned out to be well founded. However, there is what might be called a “branding” issue about the words “Supreme Court”, because they bring the American court to mind. So it is important to make clear to the media and the public that the two courts are very different. In Britain, Parliament has the last word. It is true that what Parliament says has to be interpreted by the courts, but deciding the meaning of the words Parliament used is not the same as making the law or overriding what Parliament has said. The position is different from in the United States, where it is the Supreme Court that has the final word: its decisions cannot be reversed by Congress, other than by a constitutional amendment. Hence the power of the Supreme Court of the United States to effect major and controversial changes to American life. For example, it was not Congress that guaranteed abortion rights to all American women, or that allowed same-sex couples in every state to marry, but the Supreme Court.¹¹ In Britain, on the other hand, it was Parliament that liberalised abortion law in 1967, and the UK and Scottish Parliaments which passed laws permitting same-sex marriages. The UK Supreme Court does not have the power to change the law in that way, and the Justices would not want to have that power.

¹¹ *Roe v Wade*, 410 US 959 (1973); *Obergefell v Hodges* 135 S Ct 2584 (2015).

Some critics would however argue that in a number of its decisions, mostly taken under the Human Rights Act, the Supreme Court has involved itself in political questions, concerning for example the criminalisation of assisted suicide, or the impact of the cap on social security benefits, or abortion law in Northern Ireland. My answer is that, to the extent that judges have involved themselves in questions of that kind, it is because they have been made into legal questions as a result of legislation enacted by Parliament. That is not a consequence of the establishment of the Supreme Court. EU law and the Human Rights Act have enabled individuals and companies to challenge legislation and administrative decisions on a range of grounds which did not previously exist, and it is the duty of the courts to decide those cases when they come before them. The fact that the context of the legal question may be an assessment of social or economic policy is reflected in the wide margin of appreciation allowed to political institutions by the legal criteria which have to be applied by the courts, such as the “manifestly without reasonable foundation” test under the ECHR.

In fact, the Supreme Court’s approach to cases of that kind has also been criticised as excessively deferential towards the assessments made by the Government and Parliament. The challenge to the law on assisted suicide was rejected, and we recently refused permission for a second challenge to be brought before us. The challenge to the benefit cap was also rejected, on the basis that the Government’s assessment of proportionality was not manifestly without a reasonable foundation. And the challenge to abortion law in Northern Ireland was rejected, because the body which brought the proceedings was held not to have standing to bring them. It has also to be said that there is nothing new about judges having to decide cases whose implications may be politically sensitive, and sometimes doing so in a way that may be inconvenient to the Government. I suspect that the Government of the day was more dismayed

by the case of *Entick v Carrington* in the eighteenth century, than present-day Whitehall has been by the decisions of the Supreme Court.

Have there, then, been any disadvantages resulting from the move across Parliament Square. I would mention two. The first, which has not so far posed a serious problem, concerns the court's finances. Whereas the Appellate Committee was part of Parliament, the Supreme Court is a non-ministerial department. It is administratively independent of Government and ministers, but it has to negotiate its budget with the Treasury, under arrangements set out in an agreed concordat. Over the past decade it has had to endure the same austerity as most other departments.

The second concerns the loss of daily contact between the country's most senior judges and its politicians. The departure of the Law Lords from Parliament is one of a number of developments which have weakened the links between judges and politicians. Those links were valuable in nurturing mutual understanding and respect. To make up for their loss, other steps have to be taken to ensure that the Government and Parliament understand and respect the role of the courts, and vice versa. With that in mind, the Supreme Court engages with Parliament through meetings with Parliamentarians and officers of Parliament, and through appearances before Parliamentary committees, at which each side can get to understand better the role of the other and the problems which they face.

In conclusion, I would say that the creation of the Supreme Court has led to a significant change both in the UK and overseas in the image of British justice. It has become a visible and accessible focal point, and a symbol of the judicial system in the UK. As such, it helps to

promote confidence in the common law and its values. Perhaps above all, by comparison with the judicial House of Lords it has become more evidently a court for the whole of the UK, visibly and accessibly serving its citizens. These, I think, are all developments which would have been warmly welcomed by Mr Bentham.