House of Commons

Political and Constitutional Reform Committee

Constitutional role of the judiciary if there were a codified constitution

Fourteenth Report of Session 2013–14

Report, together with formal minutes relating to the report

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The role of the judiciary within the UK's constitutional arrangements is not set out in a single document and, like the constitution itself, has evolved from a variety of sources including Acts of Parliament, common law precedents and conventions. The most recent significant changes to the role of the judiciary are to be found in the Constitutional Reform Act 2005, which enshrined judicial independence in law. We welcome the greater separation of powers between the judiciary, the executive and the legislature that the Act has brought about.

The report does not look at the advantages and disadvantages of a codified constitution; instead, it examines the potential changes to the role of the judiciary should the UK ever have a codified constitution. The role of the judiciary would undoubtedly change should the UK decide to adopt a codified constitution, but the precise nature of that change will be difficult to assess until there is an agreed definition of the current constitutional role of the judiciary.

Should the UK move towards a codified constitution, one way of addressing the question of what powers the judiciary should have if they held a piece of legislation to be unconstitutional, would be to introduce the concept of a "declaration of unconstitutionality", which could work in a similar way to the declaration of incompatibility used under section 4 of the Human Rights Act 1998.

The report also argues that, if the UK were to adopt a codified constitution, there would be no need for a separate constitutional court. The Supreme Court could act as a form of constitutional court.

1 Introduction

1. To supplement our ongoing inquiry on *Mapping the path to codifying—or not codifying—the UK's constitution,* we decided to consider how the judiciary's role might change if the UK were to adopt a codified constitution, and the challenges that any changed role would present. In doing so, we looked at other countries that already have codified constitutions and examined what these examples told us about how codifying the constitution could affect established constitutional and judicial doctrines and practices in the UK.

2. The Centre for Political and Constitutional Studies at King's College London has, since the early stages of this Parliament, been providing research support to us in our inquiry into *Mapping the path to codifying—or not codifying—the UK's constitution*. To date, the work of the Centre for the Committee has included the production of two research papers: a literature review and a consideration of the existing constitution. A third paper, considering constitution-building processes, drawing on a variety of case studies from within the UK and internationally, has been completed in draft form. The Centre is now working on three blueprints of a codified constitution, which it hopes to deliver to us later in 2014.

3. In this report we are not considering the merits or desirability of codifying, or not codifying, the UK's constitution; we are simply looking at the potential changes to the role of the judiciary should the UK ever have a codified constitution. The full terms of reference for the inquiry can be found at the end of this report.

4. During the inquiry, we visited the Supreme Court and had the opportunity to watch the closing arguments of a case. We also met informally with the President of the Supreme Court, Rt Hon Lord Neuberger of Abbotsbury, to discuss the inquiry. We received 16 pieces of written evidence and took oral evidence on six occasions, from a variety of witnesses including two retired Supreme Court Judges: Rt Hon Lord Phillips of Worth Matravers, the former President of the Supreme Court, and Rt Hon Lord Hope of Craighead, former Deputy President of the Supreme Court. We are grateful to all who contributed to our inquiry.

2 The current role of the judiciary

Overview

5. The role of the judiciary within the UK's constitutional arrangements is not set out in a single document and, like the constitution itself, has evolved and continues to evolve from a variety of sources including Acts of Parliament, common law precedents and conventions. Professor Roger Masterman, of Durham University, and Dr Jo Murkens, of the London School of Economics and Political Science, citing the nineteenth century constitutional scholar A.V. Dicey, stated:

> In the absence of a codified constitution guaranteeing its status the role and powers of the judiciary in the UK constitution have traditionally had to be inferred or induced from particular judicial decisions.[1]

6. The evidence we received supports the interpretive nature of the judiciary's role in the UK. Dr Patrick O'Brien, of University College London, stated that the judiciary "adjudicate disputes impartially and independently based on the law".[2] This traditionally interpretive role has evolved in the light of the different powers Parliament has conferred upon the judiciary. In some instances, this has led to a judicial role more akin to that in countries that have codified constitutions. Professor Andrew Le Sueur, of the University of Essex, gave us some examples of the role the judiciary already have in relation to constitutional matters in the UK. These include:

> determining legal disagreements about the respective powers of different institutions within the constitution, for example between the UK Parliament and the UK Government, or between the central and local government;
>
> dealing with legal questions about the division of powers between the UK and the European Union, under the guidance of preliminary rulings by the European Court of Justice;
>
> adjudicating on legal questions about the exercise of powers by executive and legislative institutions in Scotland, Wales and Northern Ireland in accordance with the devolution settlements created by the UK Parliament;
>
> protecting fundamental rights of individuals, including those in the Human Rights Act 1998, taking into account the case law of the European Court of Human Rights. [...]
>
> judicial review of executive action and delegated legislation, ensuring that public bodies remain within the powers conferred on them by Acts of

1 Professor Roger Masterman, Dr Jo Murkens (CRJ 003)

2 Dr Patrick O'Brien (CRJ 014)

Parliament and operate in accordance with judge-made legal principles of (for example) fairness and rationality.[3]

The Constitutional Reform Act 2005

7. The Constitutional Reform Act 2005 enshrined the independence of the judiciary in statute, but did not change the role of the judiciary. The Act included a duty on Ministers to uphold the independence of the judiciary and also made significant changes to the role of the Lord Chancellor, whose judicial functions were transferred to the Lord Chief Justice for England and Wales, who is the head of the judiciary in England and Wales and who is now responsible for the training, guidance and deployment of judges in England and Wales. An independent Judicial Appointments Commission was set up to select candidates for judicial office. An independent Supreme Court was also established, which replaced the House of Lords as the final Court of Appeal.[4]

8. Under the Constitutional Reform Act, serving Supreme Court judges are disqualified from sitting or voting in the House of Lords. Lord Hope, when commenting on the impact of this, said that he did not think that it affected the way in which judges did their jobs. He said: "for those actually serving as judges, I think it does not matter one way or the other, frankly, because the judges are not involved with the business of the House anyway".[5] Lord Phillips stated: "I would go a little further and say that the whole object of moving the judges out of Parliament into a Supreme Court was to make the separation of powers transparent."[6]

9. Whilst the Constitutional Reform Act brought about a more explicit separation of powers between the judiciary, the executive, and the legislature, we heard from Professor Le Sueur that the changes meant that "the judiciary no longer has serving members in the House of Lords able to contribute to debates there".[7] He made the point that Parliament may have lost some valuable input from the judiciary, stating: "I am sure many senior members of the judiciary feel that something important has been lost".[8]

10. Professor Robert Hazell, of University College London, stated that there is now a "much more systematic and constructive engagement between the judiciary and Parliament, mainly through parliamentary Select Committees,"[9] and that members of the judiciary have been much more willing to appear before Select Committees since the Constitutional Reform Act. Professor Hazell told us:

3 Professor Andrew Le Sueur (CRJ 009) para 10

4 In Scotland the general rule is that civil appeals come to the UK Supreme Court, but the High Court of Justiciary in Scotland sitting as an appeal court is the final court of appeal for criminal cases.

5 Q226 [Lord Hope]

6 Q226 [Lord Phillips]

7 Professor Andrew Le Sueur (CRJ 009) para 15

8 Q29 [Professor Andrew Le Sueur]

9 Q58 [Professor Robert Hazell]

> We have done an analysis of judges being invited to give evidence to parliamentary Select Committees and I was very surprised at how frequent it is. Since 2006 when the Act came into force, there have been about 120 judicial appearances before parliamentary committees by serving judges. If you add in retired judges and international judges, it comes to 280 judicial appearances.[10]

In 2012, the Judicial Executive Board published *Guidance to Judges on Appearances before Select Committees*. This makes it clear that the appearance of judges before Select Committees is still regarded as unusual:

> For the most part parliamentary business, including the business of select committees, is conducted without the involvement of the judiciary, and without the appearances of judges before them. Such appearances should be regarded as exceptional. Indeed, until the last quarter of the twentieth century there were virtually no appearances by judges before parliamentary committees.[11]

11. Although serving Supreme Court judges cannot sit or vote in the House of Lords, those Supreme Court judges who are currently members of the House of Lords can resume an active part in proceedings after they retire. However, Supreme Court judges who were not previously members of the House of Lords will not automatically have a seat in the Lords on their retirement

12. **We welcome the fact that the Constitutional Reform Act 2005 enshrined judicial independence in law. We also welcome the greater transparency in the separation of powers between the judiciary, the executive and the legislature that the Act brought about.**

10 Q58 [Professor Robert Hazell]

11 Judicial Executive Board, *Guidance to Judges on Appearances before Select Committees,* (October 2012), p 2

3 Approaches to codification

Different models of codification

13. In the work they are doing for us, Professor Robert Blackburn and Dr Andrew Blick, of King's College London, are exploring three basic models for codifying the constitution. These are described below.

A constitutional code, which would be a non-legal code setting out the essential elements and principles of the constitution. It is envisaged that the document would be sanctioned by Parliament, but that it would not have statutory authority.

A consolidation Act, which would codify the major elements of existing constitutional law and practice into one Act of Parliament. It is not envisaged that this Act would have a higher status in law.

A fully written constitution, which would codify the major elements of existing constitutional law and practice into a constitution of the United Kingdom, with a higher status in law and special amendment procedure.

14. Throughout the inquiry, we considered the different ways in which these models could impact on the judiciary's role. In addition, some common threads of thinking emerged with regards to other models and devices that we should take into consideration when looking at the role of the judiciary if the UK were to have a codified constitution.

15. One of the main questions that emerged when thinking about models for codification is whether a codified constitution should have a higher status in law. Such a constitution is defined by Dr Mark Elliott, of the University of Cambridge, as: "One that has a status making it unique within the legal system." He continues:

> Within such a system, all other law exists in the shadow of—and may be valid only to the extent that it is consistent with—the constitution. Within a hierarchical constitution, it may (but is not necessarily) the role of the judiciary to determine whether other law is compatible with the constitution—that is, whether it is constitutional—and to hold unconstitutional laws invalid.[12]

He also told us that the current model for the UK's constitution, "may be considered to be 'flat' in the sense that the constitution itself has no status that makes it superior to any other kind of law".[13]

12 Dr Mark Elliott (CRJ 002) para 4

13 Dr Mark Elliott (CRJ 002) para 5

16. It has, however, been suggested that some statutes should be held in higher regard than others. For example, in *Thoburn v Sunderland City Council*,[14] in 2002, Lord Justice Laws stated:

> In the present state of its maturity the common law has come to recognise that there exist rights which should properly be classified as constitutional or fundamental. ... And from this a further insight follows. We should recognise a hierarchy of Acts of Parliament: as it were "ordinary" statutes and "constitutional" statutes. These two categories must be distinguished on a principled basis. In my opinion a constitutional statute is one which (a) conditions the legal relationship between citizen and State in some general, overarching manner, or (b) enlarges or diminishes the scope of what we would now regard as fundamental constitutional rights.[15]

Lord Justice Laws continued by giving the following examples of constitutional statutes:

> Examples are the Magna Carta, the Bill of Rights 1689, the Act of Union, the Reform Acts which distributed and enlarged the franchise, the HRA [Human Rights Act], the Scotland Act 1998 and the Government of Wales Act 1998. The ECA [European Communities Act] clearly belongs in this family. It incorporated the whole corpus of substantive Community rights and obligations, and gave overriding domestic effect to the judicial and administrative machinery of Community law.[16]

17. Another question that emerged was whether the UK should have a Bill of Rights—that is a document which would set out a list of the fundamental rights and freedoms of the UK's citizens—if it were to adopt a codified constitution. Lord Hope said that rights and freedoms are "absolutely the anchor of what the constitution is all about".[17] He added that a Bill of Rights could:

> either take the form of following what we have in the Human Rights Act here, or it can be redesigned—either a simplified or expanded version of what those rights are—but it should be at the forefront, because the individuals within the state are being protected by the constitution.[18]

Lord Hope and Lord Phillips agreed that a codified constitution without a Bill of Rights would be of only limited value. Lord Phillips stated: "To have a constitution without a bill of rights unless you have an alternative in place would horrify me".[19]

14 *Thoburn* v. *Sunderland City Council* [2003] Q.B. 151, Laws L. J

15 *Thoburn* v. *Sunderland City Council* [2003] Q.B. 151, Laws L. J

16 *Thoburn* v. *Sunderland City Council* [2003] Q.B. 151, Laws L. J

17 Q186 [Lord Hope]

18 Q186 [Lord Hope]

19 Q186 [Lord Phillips]

18. Sophie Boyron, of the University of Birmingham, indicated that a constitution without a Bill of Rights would have only limited scope. She told us that, "without a Bill of Rights, the courts would only be able to ensure compliance with the procedural requirements of the legislative procedures or the constitutional principles clearly enounced in the constitution".[20]

The degree of change to the judiciary's role

19. We considered the ways in which the role of the judiciary could change if the UK were to move towards a codified constitution, looking at the different models of codification mentioned above. Dr Michael Gordon, of the University of Liverpool, commented: "how the existing relationship between Parliament and the courts would be altered (if at all), would depend on the content of the codified constitution we chose to adopt".[21]

20. We heard that, if the UK were to move towards a fully codified constitution, the judiciary could be given a strong role in upholding that constitution. Professor Dawn Oliver, of University College London, stated that, "Most countries with written or codified constitutions do have supreme courts that have power to strike down legislation or to refuse to give effect to legislation that they consider to be unconstitutional".[22] For example, the judiciary in the USA and Germany have strong powers to strike down legislation which is found to be incompatible with their constitutions. We consider strike-down powers further in Chapter 4.

21. However, we also heard that the judiciary in the UK would not necessarily have to have a more proactive role if the UK had a codified constitution. Professor Anthony Bradley QC told us that, "There are some sorts of written constitution that would not affect the judiciary at all, because it would be consolidating or re-enacting existing laws".[23]

22. We were also told that, even if the UK did not adopt a fully codified constitution, the role of the judiciary could still change. Dr Andrew Blick, of King's College London, told us that "the judiciary could develop a greater constitutional role for itself without full codification having taken place".[24] This is partly because there have already been some examples of aspects of our constitution being written down: for example, the devolution Acts.[25] When we asked Lord Hope about the status of the devolution Acts, he said:

> I think one has to regard them as a kind of constitution because they set out all the things you would expect to find in a constitution. They define the

20 Sophie Boyron (CRJ 008)

21 Dr Michael Gordon (CRJ 007) para 12

22 Q156 [Professor Dawn Oliver]

23 Q46 [Professor Anthony Bradley]

24 Dr Andrew Blick (CRJ010) para 8

25 Northern Ireland Act 1998, Northern Ireland (St Andrews Agreement) Act 2006 and Northern Ireland Act 2009, the Scotland Acts 1998 and 2012 and the Government of Wales Acts 1998 and 2006

> powers of the legislature, they define the powers of the Executive, they incorporate human rights by adopting the convention rights as part of the limitation on the powers of those two bodies, and they give powers to the courts to supervise the system. It is a complete package that contains everything that you would expect to find in a constitution. It does not describe itself as that, but that is the practical reality.[26]

23. As a result of the devolution settlements being written down in Acts of Parliament, actions of Ministers and processes within the devolved Administrations have been brought before the courts. One such example is the case of *Robinson v Secretary of State for Northern Ireland.*[27] The case arose from the failure of the Northern Ireland Assembly to elect a First Minister and a Deputy First Minister within a six-week period, as required by section 16(8) of the Northern Ireland Act 1998. A case was brought to establish whether the election of the First Minister and Deputy First Minister, after that six week period, was legal. This case is particularly noteworthy when considering the implications of a codified constitution as, for example, at UK Parliament level there would be no question of the courts getting involved and any difficulties would be resolved by political negotiation. However, as a result of 'codifying' the rules in the Northern Ireland Act 1998, it fell to the courts to decide whether or not the Northern Ireland Executive was properly constituted.

24. When asked whether writing down a constitution transferred power away from elected representatives to the judiciary, Lord Phillips stated:

> I think it does ... the minute you have a written constitution that is going, to some extent, almost inevitably, [to] impose restrictions on what Parliament can properly do. Then that opens the door to judges being asked to rule on whether or not Parliament has acted properly within the framework of the constitution.[28]

25. **The role of the judiciary would undoubtedly change should the UK adopt a codified constitution, but the precise nature of that change will be difficult to assess until there is an agreed definition of the current constitutional role of the judiciary. In our terms of reference we set out to explore the current constitutional role of the judiciary but this needs further work.**

26. **Even if a codified constitution envisaged no change in the role of the judiciary, writing down the current constitutional arrangements would in itself continue and build upon the current interpretative role of the judiciary in the UK's constitutional settlement.**

26 Q188 [Lord Hope]

27 [2002] UKHL 32

28 Q216 [Lord Phillips]

4 Impact of changes to the role of the judiciary

27. We also considered what powers the courts should have if they held that a piece of legislation was unconstitutional and what the impact would be of these powers on existing constitutional doctrines and practices, including executive and legislative power and judicial review. We also considered what we could learn, in this context, from the interaction between the UK courts and the European Court of Justice and the European Court of Human Rights.

Parliamentary sovereignty

28. We were told by Dr Michael Gordon, of the University of Liverpool, that "the present status of parliamentary sovereignty is the subject of vibrant constitutional debate in the UK".[29] Parliamentary sovereignty was defined by A.V. Dicey as follows:

> The principle of Parliamentary sovereignty mean neither more nor less than this, namely that Parliament thus defined has, under the English constitution, the right to make or unmake any law whatever: and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament.[30]

It could be argued that the lack of any meaningful separation of powers between the Government and Parliament renders the concept of parliamentary sovereignty otiose. In practice, a Government, with a strong majority, controls Parliament and parliamentary sovereignty could be seen as the vehicle for the will of the Government.

29. Dr Gordon drew our attention to the fact that "UK courts are now required to assess the compatibility of Acts of Parliament with EU law and ECHR rights, disapplying legislation that violates the former".[31] The devolution settlements have also had an impact by transferring power from Westminster to Holyrood, Cardiff Bay and Stormont. Dr Gordon stated: "the modern devolution of legislative power to Scotland, Wales and Northern Ireland can ostensibly be seen to challenge the traditional Diceyan notion that Parliament can make or unmake any law whatever".[32]

30. But Dr Gordon's examples do not alter the principle of parliamentary sovereignty, because a majority in Parliament can repeal any of the laws implementing the changes. A prime example of when it has done so is during times of political deadlock in Northern

29 Dr Michael Gordon (CRJ 007) para 4

30 A V Dicey *Introduction to the Study of the Law of the Constitution* (10th edn, 1959 by E C S Wade), p 39–40.

31 Dr Michael Gordon (CRJ 007) para 4

32 Dr Michael Gordon (CRJ 007) para 4

Ireland, when the UK Government abolished (1973) or suspended (2000, 2001 and 2002–2009) the Northern Ireland Assembly.[33] The introduction of a codified constitution in the UK could lead to a debate about the separation of powers.

31. We heard that there are political and cultural reasons why some countries with a codified constitution have moved away from the notion of a sovereign Parliament. Dr Michèle Olivier, of the University of Hull, told us that when South Africa was devising a constitution in 1996, it purposely "moved away from parliamentary sovereignty" because the Parliament lacked legitimacy. She commented:

> We had a Westminster system in place—parliamentary sovereignty, where the British constitutional law is common law—but because it was not a proper democratic system and it entrenched minority power, there was a lack of legitimacy in Parliament and in the courts. That is one of the reasons to move away from political control to legal control, where you have a Constitutional Court guarding the constitution and Parliament. [34]

32. Sometimes the move towards a model of constitutional sovereignty has come about because a dominant Parliament has acted in a way which would be seen by most people as contrary to basic human rights. An example of this is the actions of the German Parliament in and after 1933. After the Second World War Germany moved towards a system in where the constitution is sovereign because, Professor John Bell, of the University of Cambridge told us, of "the experience of dictatorship in which Parliament voted to support a government which seriously infringed fundamental rights".[35]

33. Neither of these reasons for moving away from the notion of a sovereign Parliament applies to the UK.

34. We heard that other countries have benefited from having a model of constitutional sovereignty. Professor Bell stated that:

> In countries such as France and Germany, for example, one of the roles of the Constitutional Court is to protect procedure in Parliament from being railroaded by the Government, so when there are challenges to procedure, they are often challenges to the way the Executive has tried to railroad legislation, or tried to pass legislation without proper parliamentary scrutiny.[36]

33 For more information see – *How Parliament Works,* Robert Rogers and Rhodri Walters Works, 6th edition, 2006

34 Q157 [Dr Michèle Olivier]

35 Professor John Bell (CRJ 013)

36 Q156 (Professor John Bell)

A codified constitution that retains parliamentary sovereignty

35. Some would argue that if the UK tried to retain parliamentary sovereignty alongside a codified constitution, there would be implications for the status of the constitution; others would argue that parliamentary sovereignty is incompatible with a codified constitution. Dr Gordon told us that, "the constitution would be open to amendment by simple Act of Parliament, rather than entrenched and subject to modification only in accordance with a special procedure of some variety".[37]

36. There are advantages in retaining parliamentary sovereignty. It would, for example, sit well within the UK's traditionally flexible approach to constitutional change. Dr Patrick O'Brien said:

> British constitutional culture is very attracted and committed to the idea of parliamentary sovereignty. I would find it very surprising if that did not persist under a move to a written constitutional model…

The other longstanding argument for attempting to retain parliamentary sovereignty is political legitimacy. It is seen as preferable to have democratically elected politicians rather than appointed judges having the final say when it comes to upholding the constitution.

37. As part of our inquiry, we explored the interaction between a codified constitution and European Community law. We asked:

> **Fabian Hamilton:** In the German case…Solange I, the German Federal Constitutional Court ruled that, in the hypothetical case of a conflict between Community law and the guarantee of fundamental rights under the German constitution, German constitutional rights prevailed over any conflicting European law. If the UK adopted a codified constitution, would we be able to take a similar position on Community law?
>
> ***Professor Bell:*** I do not think there would be a difficulty at all.
>
> **Professor Oliver:** What I think is interesting about the Solange case is that the response of the European Court has been, "You don't need to worry: we all share the same values. It is not going to be a threat." There is a sort of dialogue and repositioning going on between that court and the courts of the member states.[38]

38. The German notion that having a codified constitution may enable a country to take a stronger position in the case of a conflict between its own constitution and European Community law did not appeal to Lord Phillips who told us:

37 Dr Michael Gordon (CRJ 007) para 9

38 Q170 [Dr Patrick O'Brien]

> If you agree to set it up, as we did with the Strasbourg Court, and then say, "But we are not going to take any notice of it", then for my money you are disregarding the rule of law because you are simply tearing up the agreement you have made.[39]

This view is strongly held. Alternatively, there is a view that if the UK were to have a codified constitution, that could make it easier to argue that UK constitutional rights should prevail over conflicting European Community law.

Strike-down powers

39. As with parliamentary sovereignty, there are normally political, cultural and historical reasons for giving the courts power to strike down primary legislation and many countries with a codified constitution give the judiciary strong powers to decide whether legislation is compatible with their constitution and to strike down legislation which is found to be incompatible. Giving the judiciary the power to strike down unconstitutional legislation can be seen as the only way to give the courts the power fully to protect the constitution. We heard from Professor Dawn Oliver that one of the problems with judicial review of primary legislation, accompanied with strike down powers, is that it, "would expose the judges to political pressure and criticism, not only from politicians but also often from the press and sections of the public".[40]

40. Within the current constitutional arrangements in the UK, the idea of striking down primary legislation which is 'unconstitutional' has received limited support from some senior judges. In the case R (Jackson) v Attorney General[41] Rt Hon Lord Steyn said:

> In exceptional circumstances involving an attempt to abolish judicial review or the ordinary role of the courts, the … Supreme Court may have to consider whether this is a constitutional fundamental which even a sovereign Parliament acting at the behest of a complaisant House of Commons cannot abolish.[42]

This view has attracted a certain amount of controversy, and Rt Hon Lord Bingham in his book *The Rule of Law* stated:

> We live in a society dedicated to the rule of law; in which Parliament has power, subject to limited, self-imposed restraints, to legislate as it wishes; in which Parliament may therefore legislate in a way which infringes the rule of law; and in which the judges, consistently with their constitutional duty to

39 Q229 [Lord Phillips]

40 Professor Dawn Oliver (CRJ 15)

41 [2005] UKHL 56

42 [2005] UKHL 56, para 102 (also see Lord Hope, [2005] UKHL 56 at paras 104–5 and Lady Hale, [2005] UKHL 56 at para 159)

> administer justice according to the laws and usages of the realm, cannot fail to give effect to such legislation if it is clearly and unambiguously expressed.[43]

41. There is no power for the judiciary in the UK to strike down primary legislation, but the judiciary exercise wide statutory interpretative powers. Lord Phillips, when commenting on the strength of this interpretative role, said:

> One would be considering a constitutional crisis before you could envisage the courts purporting to strike down primary legislation. Before you got that, the courts would say, "Parliament couldn't possibly have meant that because—" and therefore would have given an interpretation to the legislation that it, faced with it, couldn't bear it, but would have chucked the gauntlet back to Parliament, saying, "We have pulled you back from the brink. Are you really going to persist with this?" That is what the House of Lords did as the Privy Council in Anisminic. They threw down the gauntlet and it was not taken up. Judges do have ways of finessing the intention of Parliament from time to time.[44]

Declaration of unconstitutionality

42. One possible way for the UK to attempt to retain parliamentary sovereignty, should it adopt a codified constitution, would be to use a 'declaration of unconstitutionality'. This would be a variation on the method that is currently used under section 4 of the Human Rights Act 1998, whereby the courts can declare that a piece of UK legislation is incompatible with a provision of the European Convention on Human Rights.

43. We were told that the main advantage of using a 'declaration of unconstitutionality' was that it would fit in well with the UK's political culture. Lord Lester QC said:

> The beauty of that very British and very parliamentary system is that it does not make the judges the sole guardians of basic rights and freedoms. It engages both Houses and the Executive.[45]

Professor Le Sueur commented that it would be "preferable [to striking down legislation] and politically realistic"[46] to use this method when a piece of legislation was found to be unconstitutional.

44. Another advantage of 'a declaration of unconstitutionality' is that it would prevent a gap from emerging in the law. Lord Lester QC told us:

> if you strike down a piece of legislation, you create a gap in the system. If you make a declaration of incompatibility, there is no gap because the offending

43 Tom Bingham, *The Rule of Law,* 2010, Penguin Books p168

44 Q208 [Lord Phillips]

45 Q49 [Lord Lester]

46 Professor Andrew Le Sueur (CRJ 009) para 7

> piece of legislation remains in force until it is struck down. In that sense, you have the advantage of continuity but an advantage that is flawed because the provision has been found to be defective, to be unlawful.[47]

45. We also heard about one disadvantage of the current system of declarations of incompatibility, which could also apply to a system of declarations of unconstitutionality. When a declaration of incompatibility is made under section 4 of the Human Rights Act, there is no legal obligation on Parliament to repeal or amend the piece of legislation in question. Rt Hon Lord Hoffmann explained in the case of *Ex Parte Simms*:[48]

> Parliamentary sovereignty means that Parliament can, if it chooses, legislate contrary to fundamental principles of human rights. The Human Rights Act 1998 will not detract from this power. The constraints upon its exercise by Parliament are ultimately political, not legal.[49]

46. Thus, if the courts were to declare a piece of legislation unconstitutional, there would not necessarily be an obligation on Parliament to rethink that piece of legislation. The South African constitution offers a model that could address this issue. Dr Michèle Olivier explained how the South African model works:

> We now use various methods of interpretation to avoid a legal vacuum. It [the Act] is referred back to Parliament to make arrangements to bring the legislation in line with the constitution within a period of six months or whatever. In the meantime, they will use what we called "reading in" to indicate how the provision should be interpreted in the meantime to regulate the situation in a way that will not violate the provisions of the constitution.[50]

47. **Should the UK move towards a codified constitution, one way of addressing the question of what powers the courts should have if they held a piece of legislation to be unconstitutional would be to introduce the concept of a 'declaration of unconstitutionality'. This could work in the same way as the declaration of incompatibility used under section 4 of the Human Rights Act 1998 for situations in which UK legislation is held to be incompatible with the European Convention on Human Rights.**

The rule of law

48. Section 1 of the Constitutional Reform Act refers to "the existing constitutional principle of the rule of law". However, there is no statutory definition of the rule of law and there is considerable scholarly disagreement about what exactly the term means. The

47 Q52 [Lord Lester]

48 [1999] UKHL 33

49 [1999] UKHL 33

50 Q165 [Dr Michèle Olivier]

House of Lords Constitution Committee stated in its report on *Relations between the executive, the judiciary and Parliament* in July 2007 that "the rule of law remains a complex and in some respects uncertain concept."[51]

49. Amy Street, in the Constitution Society report *Judicial Review and the Rule of Law* said that the differing views on the meaning of the rule of law can currently be divided into two theories:

> Formalist or 'thin': under these theories the concept requires that laws must merely comply with certain formal rules in order to be valid, irrespective of their content; a repressive and murderous regime could meet the rule of law under this definition.
>
> Substantive or 'thick': this version of the rule of law judges the content as well as the form of 'law', requiring substantive rights to be recognised.[52]

50. Lord Bingham, who discusses various interpretations of the rule of law in his book on the subject, describes the "core existing principle of the rule of law" as follows:

> that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts.[53]

He also explores eight suggested principles of the rule of law:

- The law must be accessible and so far as possible intelligible, clear and predictable.
- Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.
- The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.
- Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.
- The law must afford adequate protection of fundamental human rights.
- Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve.
- Adjudicative procedures provided by the state should be fair.

51 House of Lords Constitution Committee, *Relations between the executive, the judiciary and Parliament,* Sixth Report of the 2006-07 Session, para 24

52 Judicial Review and the Rule of Law Who is in Control?, The Constitution Society, Amy Street 2013

53 Tom Bingham, *The Rule of Law,* 2010, p 8

- The rule of law requires compliance by the state with its obligations in international law as in national law.[54]

51. Richard Gordon QC told us:

> If you don't have a rule for what the rule of law means, some kind of broad yardstick for what it means, you are going to get the judges possibly being able to hold, in some shape, size or form, that the rule of law is not being upheld in certain contexts and that paves the way for tension.[55]

52. **Before the UK could move towards a codified constitution there would need to be a precise definition of the 'rule of law'.**

Judicial review

53. This section examines how a codified constitution could change the judiciary's current role with respect to their judicial review powers. Judicial review is an aspect of the rule of law in action and is a process by which individuals, businesses and other affected parties can challenge the lawfulness of decisions or actions of public authorities. If the judiciary were to be given a role in upholding a codified constitution, it might follow that they would have powers to judicially review primary legislation on constitutional grounds: in other words, the judiciary could be asked to rule on whether an Act of Parliament conformed to the provisions of the codified constitution.

54. There are already some precedents for judicial review of primary legislation in the UK. Membership of the European Communities since 1972 has given the UK courts power to judicially review Acts of Parliament which are thought to be in conflict with European Community law. Whilst the courts do not have the power to strike down primary legislation which is found to be in conflict with directly effective European Union law they do have the power to disapply an Act of Parliament should it be found to be in conflict.[56]

55. With regards to the Human Rights Act, a case for judicial review of primary legislation can be brought if someone thinks that their convention rights have been infringed. The courts then have the power either to read the legislation in line with the European Convention on Human Rights or to declare the piece of legislation incompatible, as discussed above.

Little or no judicial review powers

56. Whilst some countries give the courts the power within judicial review decisions to strike down primary legislation (as discussed above), other countries with codified

54 Tom Bingham, *The Rule of Law,* 2010

55 Q143 [Richard Gordon]

56 See R v Secretary of State for Transport, ex parte Factortame *(No 2)* [1991] 1 AC 603.

constitutions have only limited judicial review powers—notably, the Netherlands, Finland and Norway—but these countries normally have a higher level of parliamentary scrutiny before legislation is passed. For example, Professor Oliver told us:

> Finland relies heavily on intra-parliamentary scrutiny of bills for constitutionality before they are enacted. Their uni-cameral Parliament has a highly respected Constitutional Law Committee consisting of members of the chamber, which includes some eminent lawyers. They scrutinise bills for compatibility with the constitution, they call experts to give evidence to them, they operate in a non-party political way, and they report to Parliament. Their reports are respected by government, which will normally amend the provisions that the Committee has found to be unconstitutional before the bill is passed.[57]

57. Again, when considering whether limited judicial strike-down powers and a higher level of parliamentary scrutiny would work in the UK, we considered the current nature of UK politics, which is significantly different from what Professor Oliver describes as the "fairly consensual political system"[58] seen in some of the countries where this system works. Professor Oliver told us: "Given the adversarial nature of politics in the House of Commons, continued reliance in the UK on intra-parliamentary scrutiny, even on the Finnish model, would only work in the second chamber, and then only if the second chamber were not politically adversarial."[59]

58. Other constitutional models provide examples which are more likely to be suited to the UK, such as the South African model of a system of judicial review with limitations on the power of the courts to strike down legislation. The Canadian model, whereby the constitution places certain limits on the types of legislation that the courts can judicially review may also be a model which would be more acceptable in the UK if there were a codified constitution.

Pre-enactment review

59. We also looked at whether, if the UK were to adopt a codified constitution, the courts should be able to assess the constitutional validity of a Bill—that is to say, whether the Bill accords with the constitution—before it becomes an Act. In his written evidence Lord Neuberger, President of the Supreme Court, highlighted this as an area "which needs to be looked at very carefully".[60]

60. The devolution settlements already provide for a limited form of pre-enactment judicial scrutiny when deciding whether proposed legislation is within the legislative

57 Professor Dawn Oliver (CRJ 015)

58 Q161 [Professor Dawn Oliver]

59 Professor Dawn Oliver (CRJ 015)

60 Lord Neuberger (CRJ 017)

competence of the devolved institutions. Dr Gordon told us that "the Supreme Court now has the power to assess whether Acts of the Welsh Government, Scottish Parliament and Northern Irish Assembly are within legislative competence in advance on a reference".[61]

61. We heard that there are potentially some benefits to pre-enactment review. Lord Hope said:

> The great advantage is that these issues will be resolved before the Bill is enacted and before anybody does anything. It is far better that these challenges, if they are to be mounted, should be put right at the front before the thing becomes law rather than have somebody challenging the measure after it has become law.[62]

Sophie Boyron said that pre-enactment review may prevent constitutional damage, "in the sense that no unconstitutionality will have taken place prior to the Bill being declared to be unconstitutional or incompatible."[63] This makes it less likely that someone would be put in a position of disadvantage because of a piece of unconstitutional legislation.

62. We also heard that there are some disadvantages to having a system of pre-enactment review. A significant disadvantage would be that the mechanism could be used by opponents of a measure as a political tool to try to stop a Bill. Sophie Boyron told us: "in many countries where it exists, pre-enactment review is regarded to be the last obstacle the opposition can put across the path of a bill".[64] She went on to say that it was unlikely that extending pre-enactment review in the UK would suit the UK's political culture given the "abstract nature of the litigation and the politicized environment in which it often operates".[65]

63. Another issue is that it could prove difficult to decide in abstract whether a Bill was constitutional. Issues might arise after enactment that simply were not thought about at the pre-enactment review stage. Lord Phillips stated:

> Pre-enactment review could work well in that scenario [talking about devolution issues]. I am much more doubtful about it if you are dealing with an issue that might involve a particular factual scenario, because it is not always easy to decide issues in isolation from particular facts.[66]

Dr O'Brien told us that the constitutional model in the Republic of Ireland allows for a system of pre-enactment review where, "if the Bill is found to be constitutional, it is immunised from scrutiny for ever thereafter".[67] He continued that the difficulty with this

61 Q107 [Dr Gordon]

62 Q202 [Lord Hope]

63 Q107 [Sophie Boyron]

64 Sophie Boyron (CRJ 008)

65 Sophie Boyron (CRJ 008)

66 Q205 [Lord Phillips]

67 Q161 [Dr Patrick O'Brien]

was that "You can end up with bad statutes, or statutes that are good but are implemented badly, being immunised, and that's a problem".[68]

64. **Whilst the UK already has some forms of limited pre-enactment review in relation to devolution issues, it is unlikely that extending this to all legislation, in the event that the UK adopted a codified constitution, would suit the UK's political culture.**

68 Q161 [Dr Patrick O'Brien]

5 A separate constitutional court?

65. We considered whether, if the UK were to have a codified constitution, there would be a need for a separate constitutional court to rule on constitutional matters or whether the Supreme Court could take on the functions of a constitutional court.

66. We heard that there may be some limited benefit to having a separate constitutional court. Professor Bell commented that, if the UK had a codified constitution, "the question would arise whether those who are experts in commercial law, property law or administrative law are the best people to adjudicate on matters which are constitutionally sensitive".[69] Professor Bradley QC told us that "The creation of such a court would be justified only if, for whatever reasons, judges sitting in the ordinary courts were thought to be unsuitable for, or incapable of, deciding constitutional questions".[70] Having judges with specific constitutional and political awareness in a separate constitutional court may be advantageous from the point of view of expertise.

67. Overwhelmingly, however, we heard that there would be major advantages to allowing the Supreme Court to adjudicate on constitutional matters. Lord Neuberger, President of the Supreme Court, told us:

> Whilst it is the practice in many civil law countries to have separate Supreme Courts and Constitutional Courts (and sometimes also separate Supreme Administrative Courts), that is not the pattern in common-law countries. Rather, the practice is for constitutional issues to be considered by the Supreme Court. That would certainly be the model we would prefer. It works perfectly well in countries whose judicial systems are very similar to ours, such as Canada. Indeed, we already perform a constitutional role, both in the Supreme Court (albeit to a limited extent) and the Judicial Committee of the Privy Council.[71]

68. Lord Lester QC was also opposed to creating a separate Constitutional Court because he believed that the best judges should be knowledgeable about all areas of law, not simply constitutional issues. He stated:

> Once you have a constitutional court, first of all, you are separating something called constitutional issues from ordinary law. I believe that constitutional issues are not so specialised that they require a court specially appointed to deal with them. You cannot be a good public lawyer or constitutional lawyer if you cannot interpret a contract. It is very important that the judges who are interpreting the constitution know and understand

69 Professor John Bell (CRJ 013)

70 Professor Anthony Bradley QC (CRJ 011)

71 Lord Neuberger (CRJ 017)

> about general law, about tort or contract law, criminal law and so on, and bring all that knowledge and experience to interpret the constitution.[72]

Lord Phillips told us: "There is a limit on judicial talent, and you might be spreading it a bit thin if you said we have to have a completely separate court to deal with constitutional issues".[73]

69. We considered the question of how constitutional cases could be brought before the courts. Professor Bradley QC told us:

> There would need to be legislation about what the powers of the lower courts would be. The powers of the Supreme Court is one thing but one does not want every district magistrate striking down, or pretending to strike down, provisions of the constitution.[74]

Professor Le Sueur told us that one method to be considered would be, "Requiring constitutional law claims to start in the High Court with the possibility of further courts [which]would enable legal arguments to be refined if a case proceeds up the court hierarchy".[75]

70. **Based on the evidence we received, if the UK were to adopt a codified constitution, there would be no need for a separate constitutional court. The Supreme Court could adjudicate on constitutional matters.**

72 Q65 [Lord Lester]

73 Q199 [Lord Phillips]

74 Q66 [Professor Anthony Bradley]

75 Professor Andrew Le Sueur (CRJ 009) para 30

6 Consultation with the judiciary

71. We also considered what forms of consultation with the judiciary would be necessary to ensure that the legal and judicial implications of codifying the constitution were taken into account.

72. Given that the judiciary would have some role in upholding a codified constitution, it would seem sensible to consult them. In its report on relations between the executive, the judiciary and Parliament, the Lords Constitution Committee raised concerns about circumstances in which the Government had announced a policy or introduced a bill without apparently being sufficiently aware of the impact of the initiative on the fundamentals of the constitution. The Committee referred specifically to the announcement in 2003 that the office of Lord Chancellor was to be abolished and that a Supreme Court of the United Kingdom was to be established, stating that this announcement "took place without any apparent understanding of the legal status of the Lord Chancellor and without consultation with the judiciary (or anyone else outside government)."[76]

73. However, the judiciary may be reluctant to comment on the content of a codified constitution. Lord Phillips stated that "the judiciary tend to be a bit coy about expressing views in relation to proposed legislation that has a political aspect."[77] Lord Hope stated that "I think that judges would be very reluctant to become involved in anything that would give rise to risk to their judicial independence, so they would rather leave it to you to deal with that".[78]

74. In his written evidence, Professor Brice Dickson, of Queen's University Belfast, states: "It would be unwise for judges to comment on potential provisions in a codified Constitution because they might then have to recuse themselves."[79] He highlighted that asking the judiciary in Northern Ireland to comment on proposals would be difficult given that "it would inevitably involve them in issues that are even more politically sensitive in Northern Ireland than in Great Britain". It would be likely that if the UK were to have a written constitution there would be a separate Bill of Rights for Northern Ireland, which could put the judiciary in a more politically sensitive position.

75. Lord Phillips said that the judiciary may be more willing to comment and express opinions under 'Chatham House rules'. He stated: "You can perhaps get UCL or somebody

76 Constitution Committee, Sixth Report of Session 2006-07, Relations Between the Executive, the Judiciary and Parliament, HL Paper 151, para 12

77 Q225 [Lord Phillips]

78 Q225 [Lord Hope]

79 Professor Brice Dickson (CRJ 016)

to set up a discussion under Chatham House rules to which judges are invited, which gives you some indication of how judges would feel about proposals."[80]

76. While the judiciary may not be willing to comment on what a codified constitution should contain, they may be more willing to comment on the implications of the proposals. Professor Bradley QC stated:

> My advice would be different when the general structure of a new constitution had been settled through the political process, and a subsidiary question arose of fitting the existing judiciary within that structure. Plainly the judges would protest if, for instance, a new constitution were to erode their independence or to diminish their existing role, for instance by taking away the power of courts to interpret legislation or the sentencing of criminals.[81]

77. **Consultation with the judiciary about constitutional change that affects them is vital. However, it is also difficult, because the judiciary are rightly wary of commenting publicly on legislation that they may have to interpret. It would be understandable if the judiciary were unwilling to comment on the contents of a codified constitution, but it would be important to find a way of hearing their views on the implications of the proposals once the general structure of the constitution had been agreed. If necessary, some of the discussion could take place under Chatham House rules. Retired members of the judiciary would also be likely to feel freer to offer their opinions than those still serving as judges.**

80 Q225 [Lord Phillips]

81 Professor Anthony Bradley QC (CRJ 011)

Annex A–Terms of Reference

1) What is the constitutional role of the judiciary and in what principal respects would the role of change if the United Kingdom were to move towards a codified constitution?

2) What forms of consultation with the judiciary would be necessary to ensure that the legal and judicial implications of codifying the constitution were taken into account?

3) If the UK were to have a codified constitution, what powers should the courts have if they held that a piece of legislation was unconstitutional?

a) What would be the implications of these powers on existing constitutional doctrines, including parliamentary sovereignty and judicial review?

b) In the context of question 3, what can we learn from the interaction between the UK courts and the European Court of Justice and European Court of Human Rights?

4) If there were a codified constitution, should the courts be able to assess the constitutional validity of a Bill before it becomes an Act? What would be the advantages and disadvantages of such a system?

5) Would a Constitutional Court function best as part of the Supreme Court, or should it be separate? If the latter, how should it be appointed?

6) When considering the constitutional role of the judiciary in the context of a codified constitution, are there any particularly instructive lessons to be drawn from other countries with common law jurisdictions and written constitutions?

Conclusions and recommendations

The current role of the judiciary

1. We welcome the fact that the Constitutional Reform Act 2005 enshrined judicial independence in law. We also welcome the greater transparency in the separation of powers between the judiciary, the executive and the legislature that the Act brought about.(Paragraph 12)

Approaches to codification

2. The role of the judiciary would undoubtedly change should the UK adopt a codified constitution, but the precise nature of that change will be difficult to assess until there is an agreed definition of the current constitutional role of the judiciary. In our terms of reference we set out to explore the current constitutional role of the judiciary but this needs further work. (Paragraph 25)

3. Even if a codified constitution envisaged no change in the role of the judiciary, writing down the current constitutional arrangements would in itself continue and build upon the current interpretative role of the judiciary in the UK's constitutional settlement. (Paragraph 26)

Impact of changes to the role of the judiciary

4. Should the UK move towards a codified constitution, one way of addressing the question of what powers the courts should have if they held a piece of legislation to be unconstitutional would be to introduce the concept of a 'declaration of unconstitutionality'. This could work in the same way as the declaration of incompatibility used under section 4 of the Human Rights Act 1998 for situations in which UK legislation is held to be incompatible with the European Convention on Human Rights.(Paragraph 47)

5. Before the UK could move towards a codified constitution there would need to be a precise definition of the 'rule of law'.(Paragraph 52)

6. Whilst the UK already has some forms of limited pre-enactment review in relation to devolution issues, it is unlikely that extending this to all legislation, in the event that the UK adopted a codified constitution, would suit the UK's political culture. (Paragraph 64)

A separate constitutional court?

7. Based on the evidence we received, if the UK were to adopt a codified constitution, there would be no need for a separate constitutional court. The Supreme Court could adjudicate on constitutional matters. (Paragraph 70)

Consultation with the judiciary

8. Consultation with the judiciary about constitutional change that affects them is vital. However, it is also difficult, because the judiciary are rightly wary of commenting publicly on legislation that they may have to interpret. It would be understandable if

the judiciary were unwilling to comment on the contents of a codified constitution, but it would be important to find a way of hearing their views on the implications of the proposals once the general structure of the constitution had been agreed. If necessary, some of the discussion could take place under Chatham House rules. Retired members of the judiciary would also be likely to feel freer to offer their opinions than those still serving as judges. (Paragraph 77)

Formal Minutes

Thursday 8 May 2014

Members present:

Mr Graham Allen, in the Chair

Mark Durkan	Robert Neill
Paul Flynn	Chris Ruane
Fabian Hamilton	Mr Andrew Turner

Draft Report (*Constitutional role of the judiciary if there were a codified constitution*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 77 read and agreed to.

Annex and Summary agreed to.

Resolved, That the Report be the Fourteenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Thursday 5 June at 1.45 pm

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page at http://www.parliament.uk/business/committees/committees-a-z/commons-select/political-and-constitutional-reform-committee/inquiries/parliament-2010/constitutional-role/

	Question number
Thursday 30 January 2014	
Lord Phillips of Worth Matravers, retired Supreme Court Judge, and **Lord Hope of Craighead**, retired Supreme Court Judge	Q183-230
Thursday 9 January 2014	
Professor Dawn Oliver QC FBA, Professional of Constitutional Law, University College London, **Dr Patrick O'Brien,** University College London, **Professor John Bell, Director,** Centre for Public Law, University of Cambridge, and **Dr Michèle Olivier,** Reader, Law School, University of Hull	Q156-182
Thursday 12 December 2013	
Sophie Boyron, Senior Lecturer in Law, Birmingham Law School, and **Dr Michael Gordon,** Lecturer in Law, Liverpool Law School	Q101-155
Thursday 5 December 2013	
Stephen Hockman QC; Nat Le Roux, Director, Constitution Society	Q68-100
Thursday 28 November 2013	
Professor Sir Jeffrey Jowell KCMG QC, Director, Bingham Centre for the Rule of Law, **Professor Anthony Bradley QC,** Research Fellow, Institute of European and Comparative Law, University of Oxford, **Lord Lester of Herne Hill QC,** and **Professor Robert Hazell,** Professor of Government and the Constitution, and Director of the Constitution Unit, University College London	Q38-67
Thursday 21 November 2013	
Dr Andrew Blick, Lecturer in Politics and Contemporary History, Kings College London, and **Professor Andrew Le Sueur,** Professor of Constitutional Justice, University of Essex	Q1-37

Published written evidence

The following written evidence was received and can be viewed on the Committee's inquiry web page at http://www.parliament.uk/business/committees/committees-a-z/commons-select/political-and-constitutional-reform-committee/inquiries/parliament-2010/constitutional-role/. INQ numbers are generated by the evidence processing system and so may not be complete.

1 Mark Ryan, Senior Lecturer in Constitutional and Administrative Law at Coventry University (CRJ0001)

2 Dr Mark Elliott, Reader in Public Law, University of Cambridge (CRJ0002)

3 Roger Masterman (Durham Law School, Durham University) and Jo Murkens (Department of Law, London School of Economics and Political Science (CRJ0003)

4 Student Law Think Tank, Northumbria University (CRJ0004)

5 Professor Ian Cram, School of Law, Leeds University (CRJ0005)

6 Dr Michael Gordon, Lecturer in Law, Liverpool Law School, University of Liverpool (CRJ0007)

7 Sophie Boyron, Senior Lecturer in Law, Birmingham Law School, University of Birmingham (CRJ0008)

8 Professor Andrew Le Sueur, Professor of Constitutional Justice, University of Essex (CRJ0009)

9 Dr Andrew Blick, Lecturer, Centre for Political and Constitutional studies, King's College London (CRJ0010)

10 Professor Anthony Bradley QC (CRJ0011)

11 Stephen Hockman QC (CRJ0012)

12 Professor John Bell (CRJ0013)

13 Dr Patrick O'Brien (CRJ0014)

14 Professor Dawn Oliver (CRJ0015)

15 Brice Dickson Professor of International and Comparative Law, Queen's University Belfast (CRJ0016)

16 Rt Hon Lord Neuberger of Abbotsbury, President of the Supreme Court of the United Kingdom (CRJ0017)

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–12

First Report	Parliamentary Voting System and Constituencies Bill	HC 422
Second Report	Fixed-term Parliaments Bill	HC 436 (Cm 7951)
Third Report	Parliamentary Voting System and Constituencies Bill	HC 437 (Cm 7997)
Fourth Report	Lessons from the process of Government formation after the 2010 General Election	HC 528 (HC 866)
Fifth Report	Voting by convicted prisoners: Summary of evidence	HC 776
Sixth Report	Constitutional implications of the Cabinet Manual	HC 734 (Cm 8213)
Seventh Report	Seminar on the House of Lords: Outcomes	HC 961
Eighth Report	Parliament's role in conflict decisions	HC 923 (HC 1477)
Ninth Report	Parliament's role in conflict decisions: Government Response to the Committee's Eighth Report of Session 2010-12	HC 1477 (HC 1673)
Tenth Report	Individual Electoral Registration and Electoral Administration	HC 1463 (Cm 8177)
Eleventh Report	Rules of Royal Succession	HC 1615 (HC 586)
Twelfth Report	Parliament's role in conflict decisions—further Government Response: Government Response to the Committee's Ninth Report of Session 2010-12	HC 1673
Thirteenth Report	Political party finance	HC 1763

Session 2012–13

First Report	Recall of MPs	HC 373 (HC 646)
Second Report	Introducing a statutory register of lobbyists	HC 153 (HC 593)
Third Report	Prospects for codifying the relationship between central and local government	HC 656(Cm 8623)
Fourth Report	Do we need a constitutional convention for the UK?	HC 371

Session 2013-14

First Report	Ensuring standards in the quality of legislation	HC 85 (HC 611)
Second Report	The impact and effectiveness of ministerial reshuffles	HC 255
Third Report	Revisiting Rebuilding the House: the impact of the Wright reforms	HC 82 (HC 910)
Fourth Report	The role and powers of the Prime Minister: the impact of the Fixed-term Parliaments Act 2011 on Government	HC 440 (HC 1079)

Fifth Report	Pre-appointment hearing: The Chair of the House of Lords Appointments Commission	HC 600
Sixth Report	Introducing a statutory register of lobbyists: Government Response to the Committee's Second Report of Session 2012-13	HC 593
Seventh Report	The Government's lobbying Bill	HC 601
Eighth Report	Parliament's role in conflict decisions: an update	HC 649
Ninth Report	House of Lords reform: what next?	HC 251
Tenth Report	The Government's lobbying Bill: follow up	HC 891
Eleventh Report	Impact of Queen's and Prince's consent on the legislative process	HC 784
Twelfth Report	Parliament's role in conflict decisions: a way forward	HC 892
Thirteenth Report	Fixed-term Parliaments: the final year of a Parliament	HC 976