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JUDICIAL LEADERSHIP: OVERHAULING THE MACHINERY OF JUSTICE

CONFERENCE ON THE PARADOX OF JUDICIAL INDEPENDENCE
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Introduction

1. Walter Bagehot described the "close union . . . of the executive and legislative powers" as the "efficient secret of the . . . Constitution".[1] By "efficient" he referred to the means by which it works: its rules and practices.[2] He might just as readily have said that its efficient secret was its evolutionary nature; how it develops over time, influenced by events, by social and political changes and that, in turn, its development yields further transformation. Rules and practices change, and in changing, they change us as well.
2. Over recent years our Constitution has evolved substantially. In *The Politics of Judicial Independence in the UK's Changing Constitution*, Graham Gee, Robert Hazell, Kate Malleson and Patrick O'Brien have set out a detailed and insightful examination of one of the central elements of that evolution: the changing role, practices and structure of the judicial branch of the State. I warmly commend it to you.

[1] W. Bagehot, *The English Constitution*, (Oxford, reprint, 2001) at 11.
[2] Ibid. at 7.

3. It is, as we all know, ten years since the Constitutional Reform Act entered into force, creating the new Supreme Court and the Judicial Appointments Commission, taking from the Lord Chancellor his historic role as speaker of the House of Lords and his role as head of the judiciary, and transferring the latter to the Lord Chief Justice. It is eight years since the creation of the Ministry of Justice and, separately, the unified Tribunals under the, then, newly created Senior President of Tribunals. It is four years since the Courts and Tribunals Services merged to form HMCTS. This was a unique constitutional development: an explicit partnership or, as I prefer to call it, a joint venture between the Executive and the judiciary, accountable to the Lord Chancellor, Lord Chief Justice and Senior President. And it is now two years since the Lord Chancellor's residual role in judicial appointments was, partially, transferred to the Lord Chief Justice and the Senior President.
4. This may give the impression that reform was focused entirely on the judiciary. Of course it went wider than this. But those other reforms are for other occasions. My focus today is, as Robert Hazell and his co-authors put it, the "the evolving relationships" between "judges and politicians" and the changes to the "hidden wiring" that governs them.[3] That I am doing so publicly, just as other judges, such as Lords Woolf, Philips, Neuberger, Dyson, Baroness Hale and Sir Jack Beatson have done before, shows that the wiring is no longer hidden. Our Constitution, its practices and its evolutionary approach are very much out in the open; and it is without doubt all the better for it.
5. I have considered aspects of these changes in a number of previous lectures. In a lecture given here at this Institute, I think from this very podium,[4] I considered the progressive divergence between the judiciary and

[3] G. Gee, R. Hazell, K. Malleson, P. O'Brien, *The Politics of Judicial Independence in the UK's Changing Constitution*, (Cambridge) (2015) at 2 (referred to as Hazell et al).
[4] Thomas LCJ, *The Judiciary, the Executive and Parliament: Relationships and the Rule of Law* (2014). See https://www.judiciary.gov.uk/wp-content/uploads/2014/12/institute-for-government.pdf.

the two other branches of the State in the years up to 2005 and thereafter. I also considered what I regarded as negative consequences, and why greater engagement between the judiciary, government and Parliament was needed, to remedy the problems it had caused. I illustrated what was being done by reference to changes in substantive criminal law and family law and I suggested some areas for future engagement.

6. I want this afternoon to look at reform to, or what I think is more accurately described as the overhaul of, the machinery of justice. I do so in part because the subject matter is topical, but principally because it illustrates four things: (1) the developing role of the judiciary in the leadership of change, (2) the way in which the judiciary engages with the Executive and Parliament, (3) the workings of judicial governance and (4) the need to address issues of judicial responsibility and accountability in respect of its evolving role.
7. Underlying what I shall say is that justice is central to the ongoing prosperity and fairness of our democratic society. For this reason, it is imperative to ensure that the judiciary is actively involved in leading and shaping our justice system in concert, of course, with the other two branches of the State.

The prelude: a long evolution

8. In looking at the role of the judiciary in relationship to the machinery of justice, there has always been interaction that has changed over time.
9. Initially the relationship between the Executive and the judiciary was one of master and servant, with the latter holding office at the former's pleasure. The Crown exercised soft, and sometimes hard, power where the judiciary was concerned. Judges who failed to act in ways amenable to the Crown did so against a background where they could be and in fact were removed from office. That happened, for example, to Danby, Chief Justice

of the Common Pleas during the Wars of the Roses, and Colmeley, Chief Justice of the King's Bench in the reign of Edward VI (who inspired little more than the briefest mention by Lord Campbell in his lives of the Chief Justice on the basis he was neither eminent in the profession nor connected with the stirring times in which he lived. Hopefully, today's judiciary are very different.).[5]

10. One of the great political achievements of our constitutional settlement was the transformation of that relationship to one where the judiciary became properly independent of the Executive. The road was a long one: I have to mention Magna Carta, on to Gasgoigne CJ (who is believed to have sent the future King Henry IV to prison for contempt of court) asserting in *Chedder v Savage* that the courts were to function independently of the Crown, via the 1701 Act of Settlement.[6] Political and constitutional progress took time. It took place against and as part of the maturing of our institutions of governance. Each step along the way was a profound "political achievement", to borrow from The Politics of Judicial Independence.[7]

11. By the 18th Century, it can rightly be said that judicial independence was properly established, but, did not, however, produce an inseparable breach between judiciary and Executive. Rather than master and servant, judges interacted with Parliament and the Executive on a very fluid basis. Lord Mansfield CJ was, for a time, a highly influential cabinet Minister. Lord Ellenborough was a member of the Cabinet in 1806 whilst Chief Justice. Sir John Trevor was simultaneously Master of the Rolls and Speaker of the House of Commons at the end of the seventeenth century. Until the early years of the last century, political experience in the House of Commons played an important part in the appointment of the most senior judges.

[5] Sir John Baker, *An Introduction to English Legal History*, (Butterworths) (Fourth Edition) (2002) at 167; Holdsworth, *A History of English Law,* (1966) (Sweet & Maxwell) (7th Edition) Vol. 5 at 348.
[6] (1406) YB Mich. 8 Hen IV, fo. 13. Pl. 13, cited by Baker (2002) at 95.
[7] Hazell et al at 1.

There are, of course, other examples of what could be viewed as a continuum between the various branches of the State and their personnel.

12. Since the eighteenth century these various links between judges and the Executive have steadily been removed. I have no doubt however that each step along the road was met by the fear that the loss of flexibility, the informal mixing of judicial and parliamentarian or Executive roles, was detrimental to the proper running of the State. Each step has, however, properly drawn the judiciary and the Executive into their proper spheres. When we consider the changes that have occurred over the past ten years, we should bear these past reforms in mind. Each step has not only secured greater judicial independence, but also equally the independence of the Executive and Parliament from the judiciary. The recent reconfiguration of the Lord Chancellor's role, the removal of its role as a "buckle or linchpin" between the judiciary and Executive is just one more step along a well-trodden road.[8] It is a step that required the judiciary to adapt, just as previous reforms had done.

Reforming the machinery of justice: the contrasting approach

13. After that more general introduction, I turn to reform of the machinery of justice. The general pattern of reform over the last two hundred years prior to 2005 was for the Lord Chancellor to appoint a judge or judge-led committee or for the Executive to ensure that a judge-led Royal Commission was appointed to carry out a review. The Lord Chancellor's role was central. The initiative lay with him. He would of course have had ready access to the judiciary, and particularly the senior judiciary. He could take soundings from them as to the need for reform. If the need for action became apparent, the Lord Chancellor could act and make an appointment to carry out a review or appoint a judge to chair a Royal Commission.

[8] Hazell et al at 31.

Equally, he might decide not to do so. Then, a judge, once appointed, did not act as such, in contrast to judicial involvement in such reviews or inquiries in recent times. Previously, although the judge brought to bear his expertise and his understanding of the justice system, he was conducting an inquiry for the Executive; for the purposes of such an inquiry such a judge could be viewed as what I would like to describe as acting under the cloak of the Executive – of course, that cannot be, and indeed is not, the case now. However, then, as now, the recommendations made were a matter for, and responsibility of, the Executive and, if implemented via legislation, Parliament. The judge had no real means to ensure effective implementation of the report he had chaired.

14. The best known example where this happened was the fundamental reforms to the machinery of justice through the Judicature Acts of 1873 to 1875. Those reforms recast our historic great common law courts and the High Court of Chancery as a single, omni-competent High Court. They created the Court of Appeal. They produced a single, simply drafted procedural code. At the time, they were the most significant set of reforms that our justice system had seen. They were the product of a Royal Commission, which gathered evidence and produced five detailed reports.

15. The Commissioners were, in nearly all instances, leading members of the judiciary, or would become so: Lord Cairns, then a judge of the Court of Appeal in Chancery, and soon to be Lord Chancellor, the Commission's chair; Sir William Page Wood, Vice-Chancellor; Sir Colin Blackburn, then a judge of the Court of Queen's Bench, to name but three. The Crown, by the Lord President of the Council, formally appointed the Commission. The prime movers behind its appointment and then the implementation of its recommendations were, however, the Lord Chancellors: Chelmsford, Cairns, Hatherley, and Selborne.

16. The approach exemplified by the Judicature Commission was repeated

throughout the twentieth Century; and this was despite section 75 of the Judicature Act providing the judiciary with the power and responsibility to enquire into and provide reports for the Executive. That power was used once in the 1890s to propose the creation of the Commercial Court and of the Court of Criminal Appeal.[9] Its use on that occasion was very much the exception. The historic approach prevailed. Lord Evershed MR was, for instance, appointed by Lord Jowitt LC to lead a review of civil justice in the post-War years. Lord Woolf was appointed in 1994 by Lord Mackay LC to carry out his Access to Justice Review. More recently, Lord Justice Auld was appointed to carry out a review of the criminal courts. It was the responsibility of the Executive to take steps, and it did so regularly. Lord Chancellors took the lead in determining whether to carry out an inquiry, in appointing a judge to carry it out, and then determining whether to and, if so, how it should be implemented.

17. Since 2005 there has been a significant change. It of course remains entirely possible that the Executive may, in future, take the traditional approach; and appoint a judge or judges to chair a reform process of the historic kind that I have described. However, the changes in the 2005 Act have now given the judiciary its own distinct leadership role in respect of the machinery of justice, via the transfer of the role of head of the judiciary from the Lord Chancellor to the Lord Chief Justice, as President of all the courts in England and Wales. Under the Act the Lord Chief Justice holds leadership responsibilities, including a duty to make representations, not least in respect of the administration of justice, to both Parliament and the Executive, thereby establishing this constitutional rebalancing of responsibility.[10]

18. Taken together, in my view, these features of the 2005 settlement articulate

[9] Thomas LJ, *The Judges' Council* [2005] P.L. at 613ff.
[10] Thomas LCJ, *Judging in the Modern World: Judges beyond the Court Room* (Judicial College Lecture) (12 March 2014).

both the constitutional duty imposed on the senior judiciary to ensure that the courts are able to carry out their constitutional role, and the means by which they do so. The result: the judiciary no longer needs to wait for a Lord Chancellor to appoint a latter-day Lord Woolf. The judiciary – and particularly those with leadership roles – are required themselves to undertake the types of reform that had previously been initiated by the Executive.

19. Since 2005 the judiciary has done so on a number of occasions. We are all familiar with them. In 2008, Lord Clarke, as Master of the Rolls, appointed Lord Justice Jackson to undertake his review of the costs of civil justice. He did so with the support of the Executive.[11] In 2011 the President of the Family Division appointed the then Mr Justice Ryder to set out proposals for the Modernisation of Family Justice,[12] following on from David Norgrove's Family Justice Review. Much more recently, Lord Justice Briggs has carried out a review into Chancery Division modernisation at the request of the Chancellor of the High Court.[13] And more recently still, the President of the Queen's Bench Division, Sir Brian Leveson, has carried out a searching review of the operation of the criminal justice system.[14] There are of course other examples. But, the essential point is that judicial leadership in this area has emerged and can now be regarded as an accepted feature that upholds our constitutional settlement.

20. In each case the judge appointed brought to bear judicial expertise, but he consulted widely. Each drew on and obtained available evidence. Each formulated ideas. The practical approach taken has little differed from that taken by previous, Executive-appointed, inquiries. The key difference is

[11] Jackson LJ, *Review of Civil Litigation Costs: Preliminary Report* (May 2009, Vols. I & II); R. Jackson, Review of Civil Litigation Costs: Final Report (TSO) (December 2009).
[12] Ryder J, *Judicial Proposals for the Modernisation of Family Justice*. See https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Reports/ryderj_recommendations_final.pdf .
[13] Briggs LJ, *Chancery Modernisation Review – Final Report*, (Judicial Office) (2013). See https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/CMR/cmr-final-report-dec2013.pdf.
[14] Sir Brian Leveson PQBD., *Review of Efficiency in criminal proceedings* (Judicial Office) (2015). See https://www.judiciary.gov.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf.

that the Judiciary now has a clear responsibility and acts on it. It does not however overstep the mark constitutionally. Where necessary, implementation requires proper discussion with, and in many cases, action by the Executive and by Parliament. For example, the reforms proposed by Lord Justice Jackson, like the Woolf reforms before them, required primary legislation. They were subject to proper scrutiny. They required both the Executive and then Parliament to accept them. The same is true of the more recent reforms recommended by Sir Brian Leveson; the proposal contained in Chapter 10 are proposals for the Executive to consider and, if adopted, for Parliament to legislate on.

The overhaul of the machinery of justice

Judicial leadership

21. Each of the reports to which I have referred has addressed an aspect of the administration of justice. However, it had been clear for some time that much more wide ranging reform was needed to the entire machinery of justice. It was generally recognised that maintaining court files on paper was outmoded; that IT could be used more extensively and effectively to improve processes and the court estate needed the kind of full scale review that had taken place in much of continental Europe where, as in the UK, courts had been positioned for a different era of travel and communication.
22. It is to this reform, or what can be more accurately described as the overhaul, of the machinery of justice I now turn. The details of the plans are not for this lecture, as my focus is on the four topics I wish to cover. I will, however, begin with judicial leadership, as the way in which the judiciary now can lead can be seen in the development of the plans for the overhaul of the machinery of justice,
23. As I have mentioned, part of the evolution after 2005 involved the creation

of a new model of governance for Her Majesty's Courts and Tribunals Service. Effective participation by the judiciary in the operation of the court administration had been raised by Sir Nicholas Browne Wilkinson, the then Vice-Chancellor, in his 1987 Francis Mann Lecture entitled "The Independence of the Judiciary in the 1980s".[15] No change was made. When unsuccessful attempts were made in the late 1990s and early 2000s to introduce modern IT, the judiciary had no effective voice in the governance of the court service; in retrospect, it was plainly one of the causes of the failure.[16] It was no doubt this failure and the continued influence of the ideas of Sir Nicholas Browne-Wilkinson that led Lord Woolf to propose that as part of the 2003-5 reforms, the judiciary should assume a real and effective role in the administration of the courts. The proposal was rejected by the Executive at that stage, but that changed in 2008 with the adoption of the current model of governance of court administration which placed the court administration in the joint control of the Executive and the judiciary,[17] leaving the day to day management in the hands of a board chaired by an independent chairman and an independent chief executive.

24. It was, however, apparent by the end of 2012 that the decision of Parliament to approve the Executive's budget strategy in light of the 2008-2009 financial crisis would mean a significant year on year reduction in the funds that would be provided for court administration (as well as to other aspects of expenditure on the justice system such as legal aid). The prospect for the courts was either reform to the court administration or managed decline to a state within a comparatively short period of time when the court administration would no longer be able to support the

[15] The 11th FA Mann Lecture [1988] P.L. 44.

[16] I traced the history of this in the annual lecture I gave to the Society for Computers and the Law: "IT for the Courts: Creating a digital future" (May 2014): See https://www.judiciary.gov.uk/wp-content/uploads/2014/05/lcj-speech-it-for-the-courts.pdf.

[17] Explained in Hazell et al at p 42-3.

delivery of justice. Reform was put forward with an initial focus on the introduction of modern IT and the reconfiguration of the estate and the deployment of the court staff. Various means of financing and future governance were examined, a task in which the judiciary actively participated.

25. It became clear, however, that this would on its own be insufficient. IT could of course improve the existing way in which justice was delivered and make it more cost effective. A reconfigured court estate could be supplemented by the use of video technology. However this would not tackle more fundamental issues. For example, successive cuts to legal aid and the escalating costs of lawyers had put access to justice out of the reach of the overwhelming majority of the population. No successful attempt had been made to think of using technology to address this issue. A more radical and comprehensive overhaul to the administration of justice was in fact needed. Instead of technology being used merely to make the traditional ways of delivering justice more efficient, the technology needed to be used to devise a new way of delivering justice.

26. As a result of the change in 2005 that had been used by the judiciary to produce the four judicially-led reports to which I have referred, the judiciary did not have to ask the Executive to establish a review or commission to take this forward as had been done in the 200 years preceding 2005. The judiciary could now itself formulate proposals for reform, but it could also encourage others to come forward with ideas that could use modern IT. There was a need for ideas that would not simply make the existing processes better, but would recast the delivery of justice so that it became again accessible at a cost people could afford and therefore use.

27. There are two recent examples which demonstrate this. The Civil Justice Council produced a report Online Dispute Resolution for low value civil

claims,[18] through a Committee chaired by Professor Richard Susskind; and the organisation JUSTICE produced a report entitled "Delivering Justice in an Age of Austerity",[19] through a committee chaired by Sir Stanley Burnton, a retired Lord Justice of Appeal.

Engagement with the Executive and Parliament

28. Although the judiciary has formulated proposals, no overhaul could be contemplated without the acceptance of proposals by the Executive, without the finance approved by Parliament and without the ability to implement the ideas through a court administration with the right capacities and capabilities.
29. In March 2014 the then Lord Chancellor, Senior President of Tribunals and I jointly announced that more than £700m was to be invested in Her Majesty's Courts and Tribunals Service. Since then, judges and the HMCTS have been working on proposals for reform. The business case is about to be presented to the Treasury explaining in detail how the money would be invested. With a commitment to the resources in place, I hope that we can create a new, better court system, with rules and procedures to ensure that the right work is carried out proportionately by the right judge, with a modernised court and tribunal estate which uses technology to ensure that cases are dealt with efficiently, speedily and above all justly.
30. The agreement on the principles for the overhaul has therefore only been achieved by the closest cooperation of the judiciary, the Executive and HMCTS as the joint venture accountable to both. For example, the original concept for significant modernisation and investment in HMCTS was put forward by HMCTS' chairman, Bob Ayling, in 2012. The basic preparation of the original financial case was carried out by the then Chief Executive of

[18] https://www.judiciary.gov.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf.
[19] http://2bquk8cdew6192tsu41lay8t.wpengine.netdna-cdn.com/wp-content/uploads/2014/06/JUSTICE-working-party-report-FINAL-inc-corrections.pdf .

HMCTS, Peter Handcock, working with the Senior Presiding Judge, Lord Justice Gross, as well as officials within the Judicial Office.

31. Since then, the formulation and the bringing together of a much more radical vision has been carried out by the recently appointed Chief Executive, Natalie Ceeney, in conjunction with the Judicial Executive Board. The engagement of the other arms of the Executive was carried out by Ministers and the Permanent Secretary of the Ministry of Justice, Dame Ursula Brennan, and other senior civil servants, some of whom are here today. The judiciary, as I have said, not only brought proposals for the reforms to which I have referred, but engaged in all other aspects of the work I have described. In addition they are engaged with the procedural rules committees for example, and other committees for the respective jurisdictions.

32. Having witnessed what happened to the plans for reform prior to 2008 when the circumstances of the UK public finances were not as difficult, I am sure that the overhaul of the machinery of justice now to be delivered would never have occurred without the judiciary assuming its new role of leadership and without its active engagement with the Executive, particularly through the joint venture that is HMCTS.

Judicial governance

33. The Constitutional Reform Act by and large vested in the Lord Chief Justice most of the old powers that had been exercised by the Lord Chancellor as head of the judiciary in relation to England and Wales and most of the new powers to be conferred on the judiciary in relation to the delivery of justice in England and Wales. The Act was essentially silent on the exercise of these powers by the Lord Chief Justice and on the governance of the judiciary. This has fortunately enabled the judiciary to develop its own leadership and governance.

34. The structure that has been developed enables decisions on issues that arise in relation to the judiciary itself or matters on which it is engaged with the Executive or Parliament to be made by the Judicial Executive Board.[20] It meets formally each month and generally less formally each week. For example, although it is the Lord Chief Justice who formally signifies his assent or otherwise to the budget proposed for the running of HMCTS, the advice given by the Board of HMCTS is considered by the Judicial Executive Board as a whole before the decision is made. It is possible under the legislation for the Lord Chief Justice to take such decisions without the agreement of the Board, but it is extremely unlikely that he, or she for the future, would be able to do so. In practice therefore, the powers in relation to the governance of the judiciary are exercised entirely through the Board.

35. But no system of judicial governance could rest on a top down hierarchical structure with the Judicial Executive Board and Lord Chief Justice at its apex. The Judges' Council, which represents the entire judiciary of the courts, tribunals and the magistracy, fulfils the essential function of enabling the judiciary to participate in decisions that have a wide ranging effect on the judiciary as a whole.[21]

36. The initial work in relation to HMCTS reform and its subsequent development into what must now be described as the overhaul of the machinery of justice was led through the Judicial Executive Board in the manner I have described. It was essential for the Heads of Division, the Senior President of Tribunals and the other senior judges (including the Judge responsible for Diversity and the Chairman of the Judicial College) who comprise the Judicial Executive Board to examine the proposals as they came to the Board and agree on them and on the overall aims. In the light of the ideas that have been put forward, consensus on the overall aims

[20] The description by Hazell et al is at p 141-2.
[21] The description by Hazell et al is at 142-3.

and on the principles for an overhaul were achieved. This is an excellent illustration of the central role now played by the Judicial Executive Board, even though the powers are all formally vested in the Lord Chief Justice (or, in the case of some powers, the Senior President).

37. However, as it was clear that even the most modest proposals would affect the entire judiciary, it was both right and necessary to engage with the Judges' Council. The Council meets regularly three times a year, but it met specially to consider the vision for the reform programme in addition to the regular meetings. It would, in my view, have been impossible to make the commitment to the significant overhaul envisaged, unless the Judges' Council had been made aware of what was proposed and were in agreement with this vision.

Accountability

38. With the increased responsibility and leadership which I have described, comes however accountability. Where the Executive and Parliament are concerned, accountability is straightforward. Ministers are accountable to Parliament. They are subject to scrutiny by the courts where questions arise concerning the legality of their actions. Parliament is accountable to the electorate, which if it disagrees with its policies, programme or legislative developments can alter its composition accordingly at the next election.

39. The judiciary has, I think it is fair to say, traditionally been very wary of accountability. This is entirely understandable and constitutionally appropriate. Judicial independence, both institutional and personal, is an essential pre-requisite of the rule of law. A judge or judiciary accountable to Parliament or the Executive for their decisions is one that is subject to their influence and instruction would be wrong: and such a judge or judiciary is no real one. We rightly, as I noted earlier, had rejected such an approach by the eighteenth Century.

40. However, judicial independence has never been incompatible with accountability in a wider sense. Accountability has always come in the form of judicial decisions being subject to appellate review and in some cases to judicial review. It also comes through the constitutional commitment to open justice: the judiciary are subject to the scrutiny of the public in the courts and through our public judgments. In addition, High Court Judges are subject to Parliamentary accountability for good behaviour and, as such, can be removed from office should they not act in ways consistent with 'good behaviour'. Other judges have accountability for misconduct through a process which may culminate in a decision made jointly by the Lord Chief Justice and the Lord Chancellor.
41. However, the judiciary, having assumed responsibilities has acknowledged an increased accountability.[22] First, the judiciary is now more accountable, in terms of explanatory accountability, to Parliamentary and its scrutiny in respect of the areas in which the judiciary now takes a leading role.
42. The Lord Chief Justice has from time to time since 2005 submitted a report to Parliament under section 5(1) of the Constitutional Reform Act; I believe that the disputes in relation to the use of this section are a matter of history. In the light of the increasing responsibilities of the judiciary, I have taken, with the agreement of the Judicial Executive Board, the position that the Lord Chief Justice should present an annual report to Parliament. The first report was submitted in the Michaelmas term of 2014 and the intention is to submit such a report at that sort of time every year. It enables the judiciary to explain in what it is hoped is a relatively short and readable document what the judiciary is doing in the areas in which it has a responsibility for the delivery of justice, the problems it faces and what needs to be done to address them.
43. In addition to that, the Lord Chief Justice now attends annually before

[22] For a description, see Hazell et al at pages 17-22 and 99-101.

House of Lords Constitution Committee, and the House of Commons Justice Committee, to answer questions in accordance with established conventions. That, in my view, is only right. If Parliament is to be properly informed, and if necessary enact legislation to cure problems concerning the effective operation of the justice system, the judiciary must provide Parliament with the information it requires. This must however be done in accordance with conventions and guidance that safeguard the impartially and neutrality of the judiciary. The judiciary must also provide an annual report which can be the basis of a meaningful dialogue between the Lord Chief Justice and Parliament when the Lord Chief Justice answers questions.

44. Second, the increased responsibility concerning the administration of the justice system seems to me to bring with it a concomitant duty placed on the Lord Chief Justice (and Senior President of Tribunals) to superintend the way in which justice is delivered and to correct errors, flaws or problems that arise from reforms the judiciary brings about. It has been described as an amendatory or remedial accountability.[23] For this form of accountability to work properly, it means that effective mechanisms for the scrutiny of justice system must be put in place, for the proper collection of statistics, of evidence. I mentioned, for example, in the 2014 Report the work that is being done to improve the governance of the magistrates' courts and the process put in hand for direct accountability to the Judicial Executive Board for performance by Magistrates' courts.

45. However, the judiciary cannot, of course, do this on its own. There is the essential need to work with and draw from the experience of others: with HMCTS with its responsibility to provide the court administration and the necessary statistical records in relation to the work of the courts; advisory bodies, such as the Civil, Family and Criminal Justice Councils;

[23] C. Turpin & A. Tomkins, *British Government and Constitution*, (Cambridge) (2011) at 567.

independent advisory bodies; citizens advice bureaux; consumer bodies; and, of course, the professions play an important part; and above all the Executive and Parliament.

46. An example is given by the unstinting work of the President of the Family Division. Not only has he worked with the Executive and a range of other interested bodies to carry out a fundamental reform to family justice; he has also maintained a detailed scrutiny of the implementation of those reforms. The Master of the Rolls and Chancellor are making similar efforts in terms of civil justice reform. And I have no doubt that President of the Queen's Bench Division will take an equivalent approach to criminal justice reforms as and when they are implemented arising from his review. And in each case that scrutiny means the judiciary is in the position to take remedial action at the earliest possible opportunity if performance is not what it should be or if reforms are not carried out.

47. The growth in these two forms of accountability was inevitable given the nature of the 2005 reforms. Increased responsibility cannot but be matched by an increased accountability. But I must sound a warning. It is possible to see a situation where in order to produce a pliant judiciary an aggressive use of these mechanisms of accountability could be used. I hope I am not optimistic when I say that I cannot see such a situation coming to pass in the United Kingdom and I hope that that view is well-founded; but it is a possibility no matter how remote it might be that the judiciary, the Executive, and Parliament must guard against. Accountability can go so far, but not farther.

Conclusion

48. I have during the course of this address only been able to touch on a small number of issues, ones that form but one aspect of the discussion within *The Politics of Judicial Independence*. I have welcomed the study and have

welcomed it again today as a very important contribution to an on-going discussion, and, more importantly, an on-going debate about a series of constitutional developments.

49. What appears clear is that over the first ten years since the reforms of 2005, the judiciary has evolved a new way of working. It has developed a capacity and a will to lead reform itself. It has forged a new method of engagement with the Executive and Parliament in this task so that all can work together to bring about an overhaul of the machinery of justice. Some will no doubt continue to regret the passing of the old way of doing things, we always do: the removal of the Lord Chancellor as the linchpin between the two branches of the State.

50. However, by 2005 far reaching change was inevitable. Rather than all the weight being placed on the Lord Chancellor, we now have, as I hope I have illustrated, an effective multi-faceted hinge in the shape of the Lord Chief Justice, the Judicial Executive Board and the Judges' Council, which can lead reform and work with the Lord Chancellor and the other Ministers. Consequently, provided proper finance is made available by Parliament through HM Treasury, the judiciary will be better able to lead and drive the overhaul of the machinery of justice that is so badly needed, in the way I have described. By doing this, I very much hope that the centrality of justice to our national life will be strengthened through securing the fair, impartial and cost effective delivery of justice in a way which everyone, whether a business or a consumer, can more easily access and use. As we celebrate the 800th anniversary of Magna Carta, the ongoing task of the judiciary is to make clear the centrality of justice for the benefit of society, and to contribute to, and where possible lead, its ongoing improvement.