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## “A great conspicuous tribunal...”? Reflections on the passing of the Appellate Committee and the creation of the new UK Supreme Court

James Hand

Department of Accounting & Law,  
University of Portsmouth

Email: [James.Hand@port.ac.uk](mailto:James.Hand@port.ac.uk)

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### Summary

With building work having begun on the new UK Supreme Court, this article looks at how the final court of appeal came to be part of the upper chamber of a legislature in the first place and, drawing on an analysis of the Law Lords’ attendance, considers what, if anything, stands to be lost in the change to a separate Supreme Court.

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## Introduction

“The supreme court of the English people ought to be a great conspicuous tribunal, ought to rule all other courts, ought to have no competitor, ought to bring our law into unity, ought not to be hidden beneath the robes of a legislative assembly”  
(Bagehot 1867, p 159).

The passing of the Constitutional Reform Act 2005 heralded the end of the House of Lords as the final court of appeal. On the 14 June 2007, Lord Falconer LC announced that building work on the new location of the UK Supreme Court had begun the previous day and that the set-up costs were currently estimated to be £56.9 million (col WS126). 140 years after the publication of Bagehot’s entreaty, its realisation is arguably in sight. From the start of the legal year in 2009, no longer will appeals to the Final Court be heard in committee rooms 1 and 2, located off a corridor in the House of Lords, with judgment delivered in the chamber, but instead the Justices of the Supreme Court will be housed across Parliament Square in a grade 2\* listed, dedicated court building revitalised through multi-million pound expenditure. This is described as a tangible symbol of the separation of powers between the legislature and judiciary (see e.g. Hope 2005, p 268; Lord Falconer 2007, col WS125). How, though, did the highest court in the land come to reside in the upper house of parliament and what, if anything, stands to be lost in the change?

## Early Origins

The judicial role of the House of Lords stems from its long and complex history. In Anglo-Saxon times, the Witenagemot (an assembly of wise-men who advised the king) had appellate jurisdiction. After the Norman Conquest, the feudal Curia Regis superseded the Witenagemot, taking on its appellate role and adding original jurisdiction over disputes between people of high status. The Curia initially had no fixed location, meeting wherever the king was at the time, but clause 17 of Magna Carta forced the judicial role of the Curia to cease its itinerant nature and so, in time, the whole Curia took up residence in Westminster Hall. As administration of the kingdom became a heavier task, the different aspects of the Curia became more distinct, the summoned nobles, knights of the shires, burgesses of the boroughs and citizens of the cities dealt with the making of law, the clerks dealt with the administration and the judges assumed greater responsibility for the judicial work. The Courts of the Exchequer Chamber, Common Pleas and King’s Bench emerged to deal with, respectively, financial matters, disputes between individuals and other matters (including errors from the Court of Common Pleas). However, the inner curia retained some jurisdiction, which in turn gave rise to the Court of Chancery. Although these courts were separate, the central location remained the same – with the Courts of the King’s Bench and Chancery occupying different corners of Westminster Hall from the 15th century (Aslett 1998, p 138).

The legislature, which around this time split into two houses, also retained some original jurisdiction, a feature in the early conflicts between the Crown and Parliament (see e.g. Rhys Lovell 1949, pp. 70-71), and some residual jurisdiction remains to this day (e.g. the power of both Houses of the High Court of Parliament to punish and imprison for contempt of parliament; the ancient original jurisdiction regarding impeachment, which, while not having been used since Viscount Melville’s case in 1806, has not been abolished and can also be seen in such ‘modern’ constitutions as that of the USA; and the House of Lords’ original jurisdiction in claims over peerages, on referral by the Crown, which dates from the reign of Charles II and was cited in the 1830s as a reason for the introduction of life peers, Harris Nicholls holding that life peers were necessary so as get a greater number of expert advisers on complex peerage law into the House (Turberville, 1958, p.208)). The jurisdiction to

amend errors was ceded from the Curia to the legislature in the mid-14<sup>th</sup> century and this was soon recognised as being vested in the Lords only, the lower house having sought a declaration from the king following the deposing of Richard II that “the judgements of Parliament appertain exclusively to the King and the Lords, and not to the Commons” (quoted by Lord Donaldson 1999, p.1).

## Growth of Appellate Authority

A clash with the House of Commons regarding *Skinner v East India Company* (1666) 6 St Tr 710 saw the Lords fail to retain general jurisdiction as a court of first instance, but this was compensated by a development in their appellate authority. The jurisdiction to amend errors ceded by the curia to Parliament related to the King’s Bench, Exchequer Chamber and the common law side of Chancery. While the jurisdiction had almost become dormant during the Tudor period, only three cases are known of during the reign of Elizabeth I (Stoddart Flemion 1974, p.8), there was a resurgence under the Stuarts (reasons put forward for the resurgence include the struggle between Common Law and Equity, the desire to remedy slow justice and the struggle between the Crown and Commons over the Prerogative leading to the resurgence of impeachment (Stoddart Flemion, 1974)). Furthermore, between 1675 and 1677 the House of Lords established, following another clash with the Commons, the right to hear appeals from the equity side of Chancery as well (in *Shirley v Fagg* (1675) 6 St Tr 1120) and, on the Union with Scotland in 1707, the house assumed appellate jurisdiction from the Court of Session, although this had not been conferred on it by the Treaty.

In this role, as with impeachment, the appeal is to the whole House, with every member therefore having the right to vote. Judges could be, and were, summoned from Westminster Hall to give advice on judicial points that could arise, their being in receipt of a writ of attendance commanding them to attend (something which is still the case today, see House of Lords Standing Order 21, although now only manifested by the judges’ attendance at the State Opening of Parliament). They could not, however, vote and so, in the mid-eighteenth century, Hardwicke LC was for 19 years the only peer to be learned in the law until Lord Mansfield was ennobled in 1756 (Williams 1952, p. 58). The lay peers were free to vote against the advice of the legally qualified peers (and the judges) and thus the Lords Spiritual succeeded in reversing a decision of the lower court by 19-18 in *Bishop of London v Ffytche* (1783) 2 Bro P C 211 (cited in *Warrender v Warrender* (6 E R 1239 at 1249)). In 1834, moreover, the House decided a case without any lawyer present (Walker 1980, p.585). This was not the norm and usually the Lord Chancellor or an ex-Lord Chancellor would hear cases with 2 or more, probably lay, peers, thereby satisfying the quorum of three. Indeed, numbers of willing peers were so few that all peers who were not exempted through such factors as old age were, following an Order made in 1824, subject to be drafted as one of three peers available to hear appeals each day<sup>1</sup>. Failure to attend would result in a fine. This rota system was intended to reduce the backlog of cases that had built up, particularly due to Scottish cases being unfavoured and complex (Turberville 1958, p. 207), but had the effect of making the lay peers mere cyphers or make-weights as no two peers would be obliged to sit on consecutive days, leaving the Lord Chancellor as the only peer to have sat throughout.

## Dormancy of Lay Lords’ Right to Vote

The convention observed today that lay Peers do not vote was established in *O’Connell v R* (1844) 11 Cl & F 155. In this highly-charged appeal by an Irish leader who had been

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<sup>1</sup> eg., the Archbishop of Canterbury, Lord Dacre, and the Earl of Roseberry on Thursday 26<sup>th</sup> February 1824 and the Earl of Jersey, Viscount Gordon and the Duke of Clarence on Friday the 27<sup>th</sup> (Brightman 1999).

imprisoned for seditious conspiracy, the 'Law Lords' were split 3-2 in favour of the Irish leader. However, the majority of the advising judges, who had been summoned because of the political sensitivity, had supported the decision of the lower courts and this encouraged various lay peers to consider attempting to vote with the minority. The Lord President, Lord Wharncliffe, urged the House to "not divide...upon a question of this kind, when the opinions of the law lords have been already given upon it, and the majority is in favour of reversing the judgment". He went on to add

"In point of fact, my lords, they constitute the Court of Appeal, and if noble lords unlearned in the law should interfere to decide such questions by their votes instead of leaving them to the decision of the law lords, I very much fear that the authority of this House as a court of justice would be greatly impaired" (House of Lords 1997).

Lord Wharncliffe's entreaty won the day and the convention was established. Despite this, lay peers were still used to make a quorum (notably, it is presumed, in *Rylands v Fletcher* (1868) LR 3 HL 330 as a third peer would have been necessary for the court to have been quorate). The last incident of a peer seeking to vote was in *Bradlaugh v Clarke* (1883) App Cas 354. Lord Denman, the son of a Lord Chief Justice (who, incidentally, had been in the majority in *O'Connell*), brother of a High Court Judge, and himself a senior barrister, "expressed his concurrence in the judgment of Lord Blackburn" (*The Times Law Reports* April 9<sup>th</sup> 1883) but had his vote counted he would have been asked to withdraw (Sir W Harcourt 1883, col 68).

However, despite the peculiarity of it, the concept of lay members having a say in decisions has some support (though not the particularly bizarre rota system). Lord Denning, in a lecture in 1959, acclaimed their role:

"You will have noticed how progressive the House of Lords has been when the lay peers have had their say, or at any rate, their vote on the decisions. They have insisted on the true principles and have not allowed the conservatism of lawyers to be carried too far" (Romanes Lecture, "From Precedent to Precedent" p.15 cited in Heward 1999, p. 93)<sup>2</sup>.

Nonetheless, the passing of the lay lords' right to vote on cases may have helped the House to overcome a move in the 1870s to remove its appellate jurisdiction.

## The Supreme Court of Judicature Act 1873 and the Appellate Jurisdiction Act 1876

As part of the Victorian rationalisation of the court structure (which saw the introduction of the High Court and its five, and then three, divisions), the Supreme Court of Judicature Act 1873 abolished the House of Lords' role as the final English appeal court through the creation of a Court of Appeal. However, under the 1873 Act, Scottish and Irish appeals were to remain with the House, an amendment transferring those two jurisdictions having been vehemently opposed and which threatened to breach Article XIX of the Act and Treaty of Union 1707. The fall of the Gladstone administration soon after, saw Disraeli's Lord

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<sup>2</sup> An attempt by Michael Shrimpton to put the 'metric matyr' case (where a greengrocer, Steve Thorburn, had been prosecuted for using imperial scales and selling by the pound) in 2001 before the whole house floundered early when the prerequisite, leave to appeal, was denied by Lords Bingham, Steyn and Scott. Such an attempt was most unlikely to have succeeded anyway given the convention following *Bradlaugh*.

Chancellor, Lord Cairns, try to improve on the Act. His Bill proposed an Imperial Court of Appeal, which could take on the Scottish and Irish appeals as well, but vociferous opposition led to it failing and the changed climate led to the postponement and then the repealing of the 1873 Act before it came into force. Lord Salisbury, for example, extolled the benefit that sitting in the House of Lords saved the judges “from to technical and professional a spirit” and helped give greater breadth to their decisions (Stevens, 1999 p.388). Rather than remove jurisdiction, Cairns and Disraeli settled on making the house more professional through the introduction of Lords of Appeal in Ordinary via the Appellate Jurisdiction Act 1876. Under the Act, the House would not be quorate for judicial business unless there were three Lords present who had either been appointed under the new Act or who had held high judicial office.

The Lords of Appeal in Ordinary, supported by those peers holding or who have held high judicial office (e.g. Lords Chief Justice, Masters of the Rolls, retired Law Lords under the age of 75), are, therefore, now the only peers who deal with appeals to the House. Further separation comes from the authorisation of the House to sit for judicial business when Parliament is prorogued or dissolved, allowing it to follow the law calendar and not to be curtailed by the parliamentary one. In 1948, 115 years after the Privy Council had set up a judicial committee, the House of Lords followed suit. While this was not a considered constitutional change – but in order to avoid the noise from the post-war reconstruction of the Commons – the appellate committee proved to be much more practical<sup>3</sup>, and allowed the chamber to be used for more legislative business, that it continued after the building work had finished and was, a decade later, joined by a second committee. Being committees they still have to report to the chamber and a vote formally taken, but it is a serving law lord and not the Speaker of the House of Lords who sits on the Woolsack during such business; much more so than in 1867, one can say of the judicial function and its place in the House of Lords that “it is so by a sleepy theory; it is not so in living fact” (Bagehot 1867). This separation is only one-way however, and while lay lords do not involve themselves in the judicial functions, law lords are able to participate in legislation, though they tend to follow a self-denying ordinance of not participating in politically controversial debates.

## The Law Lords' Contribution to the House

What advantages do the Law Lords bring to the House in being able to participate in its activities? They are a highly valuable source of legal advice. A law lord is by custom Chairman of sub committee E of the European Union Committee and of the Joint Committee on Consolidation Bills, both dealing with areas that are highly technical. They also give the House the benefit of their knowledge and experience in, mainly non-controversial, legislative matters, and particularly how it may be applied in the courts. Cooke (2003, p.63) cites Lord Bingham's maiden speech in 1996, where he gave “a consummate and succinct analysis of the relationship between the British courts and the European Court of Human Rights” as a “a perfect model of the kind of contribution a serving Lord of Appeal in Ordinary can make”. Some argue that as the House of Lords, like the Commons, has a high number of lawyers, there are many others who can provide advice (see e.g. Lord Goodhart 2004, col. 1209). However, Lord Wilberforce (1999) attests that those with current judicial experience can provide unique assistance and this was recognised by the government in their early proposals for reform of the Upper House by exempting Law Lords from the limited term appointments then proposed for other members of the House (White Paper 2001).

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<sup>3</sup> Hope (2005, p.255) adds that, with views over the River Thames, it was also much more congenial.

The Law Lords can also use their position to help protect principles of justice and law (e.g. Lord Lloyd's warning over the Terrorism Bill and its effectiveness and compatibility with the European Convention on Human Rights (Stevens 1999, p.389; cf. Wakeham 2000, p. 93) and Lord Hutton's non-partisan advice on the apparent scope for political interference in a new system of local senior judicial appointments in Northern Ireland (Cooke 2003, p.62)). Their "complete integrity and formidable power of intellect" has not been questioned in Lord Longford's many years in the House (Longford 1988, p.135) and notable contributions were made during the passing of the Scotland Act and the Human Rights Act, both "statutes of constitutional significance where the opinions of eminent jurists have self-evident merit" (Cornes 1999, p.3). They are, however, constrained by two factors: time and the convention that they do not participate in matters which are politically controversial, this latter point becoming the subject of a statement of principles issued by the Senior Law Lord in 2000 (Lord Bingham 2000, col. 419)<sup>4</sup>.

While instances can be cited where this convention has been broken or disavowed (e.g. by Lord Carson, notably in his opposition to the Irish treaty in 1921/1922 and in the subsequent debates; Lord Sumner and India; Lord Merriman's opposition to liberalisation of divorce law; and the responses to the Mackay reforms (see, e.g. Bradney 1983, HL Deb 29 March 1922 vol 49 cols 931 –973, Stevens 1999)), "occasions when, with the benefit of hindsight, it might be better if a Law Lord had not participated in a particular debate are few and far between" according to the Lords of Appeal in Ordinary in their submission to the Wakeham Commission (Slynn 1999, p.4). It is worthy of note that the greatest issue of political bias to affect a hearing of the House of Lords, *R v Bow Street Metropolitan Stipendiary Magistrate ex parte Pinochet Ugarte* [1998] UKHL 41, concerned the outside interests of Lord Hoffmann and not any activity of his in the House.

The pressures on their time, however, mean that they do not sit much when they are serving law lords, but former law lords, although into their 70s, are able to play a fuller role. Serving Law Lords hear appeals from 10.30 to 4.00 four days a week, another panel hear appeals to the Privy Council across the road at Downing Street, two are members of the panel for the Hong Kong Court of Final Appeal (as appeals ceased to go to the Privy Council after the handover), and often some are required to chair commissions or inquiries (e.g. Lord Saville and the long-running 'Bloody Sunday' inquiry).

A look at the Public Whip<sup>5</sup> website shows that of the twelve current Lords of Appeal in Ordinary, as of June 2007, only one, Lord Scott of Foscote, has voted more than 10 times since 1999 (the data only going back to 1999). Lords Hoffmann and Hope have voted eight and three times respectively with the rest having voted only once or not at all. The eleven

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<sup>4</sup> "As full members of the House of Lords the Lords of Appeal in Ordinary have a right to participate in the business of the House. However, mindful of their judicial role they consider themselves bound by two general principles when deciding whether to participate in a particular matter, or to vote: first, the Lords of Appeal in Ordinary do not think it appropriate to engage in matters where there is a strong element of party political controversy; and secondly the Lords of Appeal in Ordinary bear in mind that they might render themselves ineligible to sit judicially if they were to express an opinion on a matter which might later be relevant to an appeal to the House. ... In deciding who is eligible to sit on an appeal, the Lords of Appeal agree to be guided by the same principles as apply to all judges. These principles were restated by the Court of Appeal in the case of *Locabail (UK) Ltd v. Bayfield Properties Ltd* [[1999] EWCA Civ 3004]" (Lord Bingham 2000, col. 419).

<sup>5</sup> Public Whip ([www.Publicwhip.org.uk](http://www.Publicwhip.org.uk)) is a project which aims to make voting records freely available to the public so that the public can better understand, and influence, the voting records of MPs and Peers. Its figures are derived by a program written by the founders which reads through and extracts the votes from Hansard as published on the UK Parliament website (<http://www.publications.parliament.uk/pa/pahansard.htm>).

other lords who are eligible to sit on the appellate committee by virtue of holding or having held high judicial office have similarly low voting records, with the exception of two political peers (Lord Irvine of Lairg, the former Lord Chancellor, who has voted in over 50 per cent of votes and Baroness Clark of Calton, former Labour Advocate-General and current Lord of Session, who has voted in over 10 per cent of possible votes) and the newly ennobled Baroness Butler-Sloss, the former President of the Family Division, who has voted 22 times in less than a year. While the retired Law Lords, i.e. those who have reached the age of 75, generally have higher voting figures, very few have voted in more than 10 per cent of the possible votes (a notable exception is the late Lord Ackner who voted in nearly 25 per cent of possible votes). Propensity to vote, however, does not necessarily equate with involvement in the House as an analysis of the attendance figures shows (e.g. Lord Ackner's average attendance for the 5 years 2001/02 to 2005/06 being just over 95 per cent).

The attendance figures for the Lords of Appeal in Ordinary are relatively low, which is as expected due to their heavy workload. An analysis of Lords attendance shows the average attendance of the Lords of Appeal in Ordinary for the 1998-99 session was 19.3 days (see table; figures are compiled from information within the annually published House of Lords Members' Expenses and the separate Law Lords expenses). This rose to 49 days for those holding or having held high judicial office (or 35.4 days if the Lord Chancellor is excluded) and 43.6 days for those over the age of 75 (and thus ineligible to serve on the judicial committee), against an average for the House of 66.9 out of a total 163 days. Figures for 2004-05 show that the Lords of Appeal in Ordinary attended only 12.4 days on average, with the other categories attending 20.1 days and 28.4 days respectively against an average attendance by all Lords of 73.3 out of 152 days. The constitutional reforms (e.g. devolution, the Human Rights Act 1998 and the reform to the House itself) may be responsible for the drop in attendance by serving Law Lords, but the reduction is only slight in percentage terms. A reason for the significant decline in attendance by the "retired" law lords is the reduced attendance in his later years of Lord Brightman and the death of Lord Wilberforce, the latter having regularly attended over 100 times a year, even when in his mid 90s. However, Lord Woolf's retirement as Lord Chief Justice in 2005 saw his attendance rise exponentially (from a regular attendance of around three to five times a year to 39 times in the year of his retirement) and Lady Butler-Sloss's record suggests that the decline is not terminal, subject, of course, to the awaited reform of the House. (In the table, the marked drop in the others holding high judicial office category in 2001/2002 reflects the appointment of Lords Hardie and Mackay of Drumadoon to the Court of Session in Edinburgh and Lord Cooke of Thorndon's ineligibility to sit on reaching 75.)

	Average Attendance		
	1998/99	2001/2002	2004/2005
Lords of Appeal In Ordinary	19.3 (11.86%)	12.3 (9.34%)	12.42 (8.17%)
Others Holding High Judicial Office (excluding sitting Lord Chancellors)	35.4 (21.72%)	7.1 (5.36%)	20.07 (13.2%)
Those debarred as Over 75	43.6 (26.79%)	37.0 (28.03%)	28.43 (18.7%)
All Lords	66.9 (41.04%)	67.60 (51.2%)	80.78 (53.2%)

## Reciprocal benefit

Although the serving Lords of Appeal in Ordinary attend a fraction of the sitting days, there is a widely claimed benefit to the Law Lords in having the right to sit in the House as it gives them direct contact with legislative policy, the rationales behind the statutes, awareness of current interest and a wider perspective, necessary after the narrowness inherent while in the High Court and Court of Appeal (Cornes, 1999, Slynn, 1999, Wilberforce, 1999, and as recognised by Wakeham, 2000). The Lords of Appeal in Ordinary “believe their judicial work would be poorer without this” (Slynn, 1999, p.7), a point reiterated by the majority of the Lords of Appeal in Ordinary<sup>6</sup> in their response to the Government’s consultation paper on the Supreme Court: “they believe that the Law Lords’ presence in the House is of benefit to the Law Lords, to the House, and to others including the litigants” (Lords of Appeal in Ordinary 2003, p.1). While the Human Rights Act and the consequences of devolution might make the political/non-political line harder to draw, leading to greater restraint on the part of the judges, they also make the virtues of their presence in the Lords greater - both their legal insight into the consequences of, and for, legislation and the greater awareness that sitting in the House gives them (see, e.g. Lloyd, 1999). Lord Woolf (1999) makes the point that the Lord Chief Justice and the Master of the Roles have different responsibilities to the other Law Lords, and while holding it to be highly desirable for all Law Lords to be able to speak to, inform and advise the House directly, such is particularly the case with respect to the two top judges (neither of whom necessarily take part in the judicial functions of the House, as both sit elsewhere and, more specifically, have administrative functions to perform). Indeed, all 14 Law Lords who gave submissions to Wakeham (out of a possible 41) value the role of the Law Lords to varying extents, as does the Law Society of Scotland. So much is it valued that the Law Lords, in 1998, rejected the offer of the old Public Record Office building in Chancery Lane to be the site of the final court of appeal, fearing that it may have signalled their expulsion from the House of Lords as a legislative body (Stevens, 1999 p.398). Similar considerations, with regard to the reduction in the likelihood of participation in debates, ruled out a move to Middlesex Guildhall in 1965, the Guildhall having become available following the abolition of Middlesex as a county on the creation of the Greater London Council (Hope 2005, p.262).

Section 137 of the Constitutional Reform Act 2005 will disqualify judges (including Justices of the Supreme Court) from sitting in the House of Lords, and will thereby deprive the Justices of the benefit of sitting in the chamber. However, those Justices with peerages will be able to sit in the Lords on their retirement and so the legislature will be able to retain their unique insight. In the long term, however, as Le Sueur (2003, p.371) puts it “how palatable will starting an entirely new parliamentary career at the age of 70 [or even 75 if they wish to be on the additional panel of Justices] be for the appointees?”, notwithstanding any future reform of the House. So, the change to the Supreme Court threatens to cut off, or at the very least reduce, the benefits that the Law Lords can bring to the less partisan, advisory House.

The stated reason for the change and the location across Parliament Square is not so much to guarantee judicial independence or ensure impartiality, Cooke (2003, p.65) points out there is little scope for advancement for a Lord of Appeal<sup>7</sup>, nor to remove a source of informed criticism, but to

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<sup>6</sup> Lords Nicholls of Birkenhead, Hoffmann, Hope of Craighead, Hutton, Millett, Rodger of Earlsferry; Lords Bingham of Cornhill, Steyn, Saville of Newdigate, Walker of Gestingthorpe took a different view.

<sup>7</sup> Whereas there could be the, unjustified, perception that an un-ennobled Justice of the Supreme Court might be acting in a particular way so as to receive a life peerage or other equivalent honour.



“symbolise the separation of powers between the judiciary and legislature [and, at the same time, seizing] an opportunity to breathe new life into a fine historic building and to keep the building, which otherwise could not have continued in the long term as a Crown Court, in use as a centre for justice” (Lord Falconer 2007, col. WS125).

That is, not to create a separation of powers, for the powers have been separate for many years, but to “symbolise” the separation. Any such change is thus superficial. That is not to say that imagery and symbolism cannot be important, but imagery and substance must bear different weights when considering the costs and benefits of any change.

## Conclusion

Indeed, Bagehot was dealing with the symbolism back in 1867 when he said that “the supreme court of the English people ought to be a great conspicuous tribunal” and that it “ought not to be hidden beneath the robes of a legislative assembly”. The location at Middlesex Guildhall certainly fulfils the latter. But will it be “a great conspicuous tribunal”? Its location near to other great institutions of state, Westminster Abbey, Parliament and Whitehall, again certainly seems fitting. But a redundant early-20<sup>th</sup> century municipal building, in the shadow of the Queen Elizabeth II Conference Centre, and which, according to Lord Falconer, is no longer suitable to house the lowest superior court of record, would not appear to be a fit and proper setting for the highest court in the land. In terms of symbolism, it does not match the status or grandeur of the buildings representing those other institutions, even with the many millions of pounds that are being spent on it. The cost of renovation and setting up the court is currently estimated to be £56.9 million with an annual running cost of £12.3 million (which is some £2 million more than the 2004 estimate which in turn was £5 million a year more than the Law Lords current running costs (Lord Falconer 2007, col. WS125; Lord Falconer 2004, col. 1215)). While this money will address some of the concerns raised by Lord Hope (2005), for example by bringing in light to remove the dark and gloomy aspect and by ripping out the old court rooms and replacing them with something more akin to the current committee rooms, the Supreme Court nevertheless risks appearing very much as the poor relation in contrast to its illustrious neighbours. Indeed, Lord Bingham, one of the prime-movers for a separate Supreme Court building, has said that “the Guildhall site [let alone the Supreme Court] deserves a building very much more distinguished than the Guildhall is or can ever hope to be” (cited in Hope 2005, p.269). However, the Guildhall’s listed status has meant that refurbishment is the only option for the site. The superficial benefit in removing the Law Lords from the House of Lords is thus somewhat tarnished by the Government’s choice of location and comes at a cost to the individual Law Lords, to the House and, by no means least, to the taxpayer. Building work has begun. The cost of the new Supreme Court will be considerably more than twice that of the old, but the same cannot be said of its value.

## Bibliography

Aslett, C (1998) *Inside the House of Lords* (London: HarperCollins).

Bagehot, W (1867) *The English Constitution* (London: Oxford University Press).

Lord Bingham (2000) HL Deb vol 636, col 419, 22 June 2000.

Bradney, A G D (1983) ‘Façade: the Poplar Case’ 34 *Northern Ireland Legal Quarterly* 1.

Brightman, Lord (1999) Submission to Royal Commission on Reform of the House of Lords in Wakeham, Lord (2000) *Royal Commission on the Reform of the House of Lords: A House for the Future* Accompanying CD to Cm 4534 [CD-ROM] (London: The Stationery Office).

Cooke, R (2003) 'The Law Lords: An Endangered Heritage' 119 *Law Quarterly Review* 49.

Cornes, R (1999) 'The Role of the Law Lords (briefing paper)' in Wakeham, Lord (2000) *Royal Commission on the Reform of the House of Lords: A House for the Future* Accompanying CD to Cm 4534 [CD-ROM] (London: The Stationery Office).

Donaldson, Lord (1999) Submission to Royal Commission on Reform of the House of Lords in Wakeham, Lord (2000) *Royal Commission on the Reform of the House of Lords: A House for the Future* Accompanying CD to Cm 4534 [CD-ROM] (London: The Stationery Office).

Lord Falconer (2004) HL Deb vol 667, col 1215 14 December 2004.

Lord Falconer (2007) HL Deb vol 692, col WS125, 14 June 2007.

Lord Goodhart (2004) HL Deb vol 667, col 1209 14 December 2004.

Sir W Harcourt (1883) HC Deb vol 278, col 68, 12 April 1883.

Heward, E (1997) *Lord Denning: a biography* (2<sup>nd</sup> ed.) (Chichester: Barry Rose Law Publishers Ltd.).

Hope, D (2005) 'A Phoenix from the Ashes? Accommodating a new Supreme Court' 121 *Law Quarterly Review* 253.

House of Lords (1997) *The Judicial Work of the House of Lords* HL Information Sheet No.8.

House of Lords (1999 – 2006) *House of Lords Annual Reports 1997-1998 to 2005-2006* (London: The Stationery Office) (available online at: <http://www.publications.parliament.uk/pa/ld/ldlordsrep.htm>)

House of Lords (1997 – 2006) Members of the House Lords Attendance Expenses 1997/98 – 2005/06 (London: House of Lords Information Office) (some years available online at: [http://www.parliament.uk/about\\_lords/holallowances/hol\\_expenses04.cfm](http://www.parliament.uk/about_lords/holallowances/hol_expenses04.cfm))

Longford, Lord (1988) *A History of the House of Lords* (London: Collins).

Lords of Appeal in Ordinary (2003) The Law Lords' response to the Government's consultation paper on Constitutional reform: a Supreme Court for the United Kingdom (available at: <http://www.parliament.uk/documents/upload/JudicialSCR071103.pdf>)

Le Sueur, A (2003) 'New Labour's Next (Surprisingly Quick) Steps in Constitutional Reform' *Public Law* 368-378.

Rhys Lovell (1949) 'The Trial of Peers in Great Britain' *The American Historical Review*, Vol 55, No 1, pp 69-81.

Slynn, Lord (1999) Submission to Royal Commission on Reform of the House of Lords in Wakeham, Lord (2000) *Royal Commission on the Reform of the House of Lords: A House for the Future* Accompanying CD to Cm 4534 [CD-ROM] (London: The Stationery Office).

Stevens, R (1999) 'A Loss of Innocence?: Judicial Independence and the Separation of Powers' *Oxford Journal of Legal Studies* vol.19 366-402.

Stoddart Flemion, J (1974) 'Slow Process, Due Process, and the High Court of Parliament: A Reinterpretation of the Revival of Judicature in the House of Lords in 1621' *The Historical Journal*, XVII, 1 pp. 3-16.

Turberville, A S (1927) *The House of Lords in the XVIII<sup>th</sup> Century* (Oxford: Clarendon Press).

Wakeham, Lord (2000) *Royal Commission on the Reform of the House of Lords: A House for the Future* (London: The Stationery Office) Cm 4534.

Walker, D (1980) *The Oxford Companion to Law* (Oxford: Clarendon Press).

White Paper 2001 *The House of Lords – Completing the Reform* (London: HMSO) Cm.5291.

Wilberforce, Lord (1999) Submission to Royal Commission on Reform of the House of Lords in Wakeham, Lord (2000) *Royal Commission on the Reform of the House of Lords: A House for the Future* Accompanying CD to Cm 4534 [CD-ROM] (London: The Stationery Office).

Woolf, Lord (1999) Submission to Royal Commission on Reform of the House of Lords in Wakeham, Lord (2000) *Royal Commission on the Reform of the House of Lords: A House for the Future* Accompanying CD to Cm 4534 [CD-ROM] (London: The Stationery Office).