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## *THE WILLI STEINER MEMORIAL LECTURE 2019*

# The Changing Legal Landscape

**Abstract:** The Willi Steiner Memorial Lecture 2019 was delivered at the British and Irish Association of Law Librarians' Annual Conference by Brenda Hale, Baroness Hale of Richmond, DBE,[1] the President of the Supreme Court of the United Kingdom. Lady Hale reflected upon some of the major changes in the law and access to justice since she was an undergraduate at the University of Cambridge and Willi Steiner was Law Librarian at the Squire Law Library. Her lecture coincided with BIALL's fiftieth anniversary year and focused on five significant developments: the explosion of judicial review of administrative action, the arrival of EU law, the growth of international human rights law, the recognition of gender and other equality, and devolution and the evolution of a new constitutional role for the courts.
**Keywords:** administrative law; judicial review; European Union law; gender; equality; human rights; devolution; constitutional law; access to justice

It is over fifty years since I was a law student in Cambridge and Willi Steiner was Law Librarian in the Squire Law Library there. I remember him well – a round little man with very thick glasses always busying himself about our lovely library. Those fifty years have seen the most remarkable changes in the law and in the prominence of judicial decision-making. There have been so many changes that I can only begin to describe their range in this lecture. But it seems to me that five developments stand out: the explosion of judicial review of administrative action, the arrival of EU law, the growth of international human rights law, the recognition of equality – at home, at work and in the market place – as a fundamental right, and, in the last twenty years, devolution and the evolution of a new constitutional role for the courts.

## EXPLOSION OF JUDICIAL REVIEW OF ADMINSTRATIVE ACTION

Nowadays it is uncontroversial that judicial review is necessary for upholding the rule of law by ensuring that public officials and authorities act in accordance with the law and for upholding the separation of powers by ensuring that the executive acts within the boundaries of the powers conferred by Parliament. Yet the importance of this role for the courts at the time I started my studies in 1963 was not so apparent.

The renaissance of the courts' supervision of administrative actions probably began with *Ridge v Baldwin*[2] in 1964. The House of Lords overturned the principle that the doctrine of natural justice should not be applied to administrative decisions, upholding a challenge from a Chief Constable who had been dismissed without an opportunity to respond to the allegations against him. The next important development was *Padfield v Ministry of Agriculture, Fisheries and Food*[3] in 1968, where the House of Lords identified a principle that a Minister could only exercise a discretion conferred upon him by Parliament in order to promote the policy and objects of the Act conferring it. The House made a mandatory order compelling the Minister to reconsider the exercise of his discretion, after he had refused to appoint a committee of investigation in relation to a complaint about milk prices. The House held that it was entitled to interfere to prevent the frustration of the policy of the Act.

A year later came the landmark decision of the House of Lords in *Anisminic v Foreign Compensation Commission*.[4] Section 4(4) of the Foreign Compensation Act 1950 provided that the determination by the Foreign Compensation Commission of any application made to them under the Act 'shall not be called in question in any court of law'. The House of Lords interpreted this to mean that only valid, not purported, determinations were immune from judicial review. If a jurisdictional error of law was made, the Commission's determination would be ultra vires and therefore void. In later decisions this was applied to all errors of law. The presumption against ousting the jurisdiction of the High Court has proved remarkably resilient. Only last month the Supreme Court held that a clause in the Regulation of Investigatory Powers Act 2000 in similar terms to that considered by the House of Lords in *Anisminic* also failed to have the effect of ousting judicial review of errors of law made by the Investigatory Powers Tribunal established by that Act.[5]

These landmark decisions developed the substantive law but the procedures were still back in the 17th

century, with all the technicalities of the old prerogative writs of certiorari, prohibition and mandamus, alongside the newer remedy of declaration. The Law Commission had come into being in 1965 and one of its first projects was to investigate the case for the reform of administrative law. In 1967, it considered whether the developing procedures and remedies could be rationalised into a systematic and comprehensive legislative framework.[6] In 1976, it produced a report on remedies.[7] There was a significant increase in the number of applications for prerogative writs in the Queen's Bench from the late 1960s. One reason for this was the restriction in the rights of Commonwealth citizens to enter the United Kingdom introduced by successive Immigration Acts and the growth of challenges to its application to individuals. The Law Commission's proposal to harmonise the prerogative writ procedures with ordinary civil claims for declarations and injunctions into one claim, an application for judicial review, was adopted. Thus a new Order 53 was brought in by the Rules of the Supreme Court (Amendment No 3) 1977.[8] The courts then devised a rule of procedural exclusivity to ensure that remedies against the unlawful acts and omissions of public bodies should generally be sought only via the new procedure in the High Court. This went against the traditional plurality of the common law, but it reinforced the discretionary nature of judicial review with its requirement for permission. The specialist judges who heard these claims were sensitive to the novelty of legal supervision in fields which in the very recent past had been regarded as concerning matters of policy, unsuitable for adjudication by a court.

Gradually this supervisory jurisdiction has been held to extend to Ministers, to royal prerogative powers, and to regulatory bodies. Representative proceedings became permissible and third-party interventions can be made. The growth of judicial review claims has been extraordinary. In 1974, there were 160 applications for leave to seek judicial review in England and Wales. By 1998 the figure was 4,539.[9] In the early 2000s, the proportion of judicial review applications represented by asylum and immigration cases remain consistently at 50% or higher: in 2005 there were about 10,500 cases coming into the administrative court, of which 7,500 were immigration cases.[10]

Judicial review now forms a substantial part of the work of the Supreme Court. The best-known example is the challenge brought by Mrs Gina Miller and others to the assertion by the government that it was entitled to serve notice of the intention of the United Kingdom to withdraw from the European Union under article 50 of the Treaty on the European Union by using prerogative powers, without the prior authority of Parliament.[11] The sensitivity of the case was such that for the first time all 11 Justices of the Supreme Court sat to hear it. The legal issue took us back to the 17th century struggles between Parliament and the King. The claimants relied on the well-established rule that prerogative powers may not extend to acts which result in a change to UK domestic law. Whether the service of notice under article 50 would breach this rule depended on the proper interpretation of the European Communities Act 1972 and an analysis of the powers it conferred on ministers. The majority (8 of the 11 Justices) held that withdrawal from the EU would automatically make a fundamental change to the UK's constitutional arrangements by cutting off the source of EU law, which membership of the EU had brought with it, and would remove some existing domestic rights of UK residents. In the absence of clear words in the 1972 Act to indicate that ministers were intended to have the power to withdraw from the EU treaties, an Act of Parliament authorising triggering the withdrawal was required.

The *Miller* case did not break new ground for judicial review principles. But I suspect it did break new ground in terms of public awareness of what the court's role is in a claim like this. Indeed, the idea of a hearing of an administrative law appeal being broadcast worldwide, intensely watched and reported upon by the media, would have been unimaginable in my student days.

## THE EUROPEAN COMMUNITIES ACT 1972

I do not recall that the European Economic Community, created under the Treaty of Rome in 1957, featured at all in my University studies in the 1960s. The UK was not then a member. It only joined the EEC on 1 January 1973.

It took the courts some time to appreciate how revolutionary a step this was for our legal landscape, although the signs were clearly to be seen. The European Court of Justice had announced in the 1963 case of *Van Gend en Loos*[12] that the EU 'constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights'. The primacy of EU law and the doctrine of direct effect was established a year later in *Costa v ENEL*,[13] where the ECJ said that 'the transfer by the states from their domestic legal systems to the Community legal system of the rights and obligations under the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail'. My very first academic publication was a chapter in a book on *Common Market Law*, explaining how section 2 of the European Communities Act 1972 was designed to give effect to those principles. In 1980, Lord Denning famously declared, in a case about equal pay,[14] that 'Community law has priority' whenever there was an inconsistency with UK law, a priority which was itself given by the 1972 Act. But it was still thought that if Parliament deliberately passed an Act with the express intention of repudiating the Treaty or any provision in it, then it would be the duty of the courts to follow the UK statute.



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The watershed case on EU law was the Factortame litigation. In 1988 Parliament passed the Merchant Shipping Act under which the right to fish in British waters could be restricted to British citizens or residents. Factortame represented a number of Spanish nationals who argued that the Act was contrary to the Treaty right to establish businesses in any EU state. The High Court referred the question to the ECJ. In the meantime the Spanish fishermen requested an interim injunction. The House of Lords held that it had no jurisdiction in domestic law to grant such an injunction against the Crown as it would contradict the will of Parliament. But it also referred this question to the ECJ. In *R v Secretary of State for Transport, ex parte Factortame (No 2),*[15] the House of Lords responded to the answer from the ECJ by granting the injunction, disapplying the relevant part of the Merchant Shipping Act 1988 to permit the claimants to exercise their conflicting rights under the Treaty. After the second ruling of the ECJ confirmed that the Act violated EU law, it was permanently disapplied.

Only Lord Bridge tried to reconcile the decision with parliamentary sovereignty, reasoning that the supremacy of EU law was established long before the UK joined the EEC and thus 'whatever limitation of its sovereignty Parliament accepted when it enacted the ECA was entirely voluntary'.

In *Thoburn v Sunderland City Council,*[16] the 'metric martyrs' case, Laws LJ made his now famous systematic attempt to reconcile Parliamentary sovereignty with EU law. The argument from the shopkeepers was that a 1985 statute which had permitted retention of imperial units of measurement for the purposes of trade had impliedly repealed any effect to the contrary of the 1972 Act. This relied on the established rule that an inconsistent later statute has the effect of repealing the earlier one. Laws LJ explained that the European Communities Act was one of small number of 'constitutional statutes' which were immune from the doctrine of implied repeal. He defined constitutional statutes as those which regulate the relations between the citizen and the state in some general matter or which change the scope of fundamental constitutional rights. He accepted that Parliament retained the capacity to override the 1972 Act but it would need to use express terms to do so.

The notion that our constitution is hierarchical is a profound change from the Diceyan view, to which I was introduced in Cambridge, that the Act of Union with Scotland had equal status to the Dentists Act. However, Laws LJ did not accept that Parliament could stipulate the manner and form of any subsequent legislation. Legislation does not become immune from implied repeal because of Parliamentary intention, but because of its constitutional status as interpreted by the courts.

A few years later I was part of the court which examined and expanded his approach in a case where there was a clash between two constitutional statutes: the 1688 Bill of Rights and the European Communities Act. In *R (HS2 Action Alliance) v Secretary of State for Transport*[17] the court was asked to question the adequacy of parliamentary procedure to meet the requirements of EU environmental law. Article 9 of the Bill of Rights prohibits the courts from calling in question proceedings in Parliament. In fact the Supreme Court found that this was unnecessary, so the discussion on this issue was obiter. But it was suggested that the UK courts would have to resolve any conflict between constitutional principles as a matter of UK constitutional law. There could be a hierarchy in terms of how fundamental the principles were to the rule of law.

The significance of these discussions extends far beyond the issue of the UK's relationship with the EU. The role of the courts in resolving clashes of constitutional principle will remain an important area of controversy and development.

## INTERNATIONAL HUMAN RIGHTS LAW

Human rights law is another subject which did not feature in my law studies in Cambridge. The UK was one of the first signatories to the European Convention on Human Rights in 1950 – indeed, UK lawyers had been closely involved its drafting and presumably thought that its provisions reflected the then state of UK law. But the Convention was not part of the international law curriculum in 1963. This may have been because the UK only opted to accept the right of individual petition to the European Court of Human Rights in 1966 (it did not become compulsory until 1994). That enabled the Strasbourg Court to examine UK law for compatibility with the rights protected by the Convention in real cases involving real people. These early cases must have been a shock to the complacent belief that UK law was already fully Convention compliant: the article 6 right to a fair trial implied a prior right of access to the courts, so denying a prisoner access to a solicitor for the purpose of bringing proceedings breached this right;[18] granting an injunction to prevent the Sunday Times reporting on the settlement of claims brought by thalidomide victims, as a contempt of court, infringed the right to freedom of expression;[19] criminalising homosexual acts between consenting men under Northern Ireland law was a violation of the right to respect for private life;[20] habeas corpus was insufficient to satisfy a patient's right of access to a court to determine the lawfulness of his detention under the Mental Health Act 1959;[21] immigration rules which made it harder for wives with indefinite leave to remain here to have their husbands join them in the UK than it would be for husbands in their position to be joined by their wives were found discriminated against them on the grounds of sex in the enjoyment of family life;[22] the absence of legal regulation of state interceptions of communications breached the right to respect for private life;[23] and the length of the court proceedings needed for a mother to obtain access to her child who was being



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placed for adoption breached both the right to a fair trial and the right to family life.[24]

These and other early decisions established the so-called evolutive approach to the Convention. The Strasbourg Court took a purposive rather than a literal construction of the language used. The Convention was a living instrument and the rights must be practical and effective rather than theoretical or illusory. These principles in turn led to substantive developments, implying rights into the Convention where necessary to give the express rights any meaning. Further, States might have positive obligations to protect rights as well as negative obligations to refrain from interfering with them.

But the vindication of these rights took a long time. A claimant had to exhaust his or her remedies in the domestic courts before joining the queue in Strasbourg, and the process often took many years. From the mid-seventies, there were occasional proposals for a British Bill of Rights which eventually focused on incorporating the Convention into our law. The challenge was to combine enforceable rights with the sovereignty of the UK Parliament. It was taken up in the Human Rights Act 1998, which produced what many think is a very ingenious solution. It did four main things:

- It turned the rights in the Convention into rights which were enforceable in UK law;
- It required the UK courts to take into account the jurisprudence of the Strasbourg court and other Council of Europe organs in interpreting those rights;
- It required the UK courts 'so far as possible' to read and give effect to legislation in a way which was compatible with the Convention rights; subordinate legislation could be ignored if this was not possible; and
- It empowered the higher courts to make a declaration that a provision in an Act of the UK Parliament was incompatible with the Convention rights; alongside this, it required a Government Minister promoting a Bill to make a statement confirming whether or not its provisions were compatible.

The effect of the Human Rights Act was intended to be profound and so it has proved. The UK courts have generally been prepared to follow any 'clear and constant' line of jurisprudence from Strasbourg: it would be inconsistent with the Parliamentary objective of 'bringing rights home' for a claimant who was clearly going to win in Strasbourg to have to go there to vindicate her rights. If a statutory provision appears incompatible, the preferred remedy is to use the interpretative obligation (in section 3) to read and give effect to it in a way which is compatible, even if it is necessary to read in or read out certain words. Ministers are often prepared to live with conforming interpretations of existing law, perhaps because they prefer the courts to take the hit for what might be unpopular decisions, or perhaps because the courts will only do this if it will not impair the main thrust – go against the grain of – of the legislation. But if this cannot be done, we can make a declaration of incompatibility to let Parliament know that, in our view, there is a problem with our law (under section 4). It is a matter for Parliament what response it chooses to make. It is not obliged to address a declaration of incompatibility, although so far it (or the Government) has eventually always done so. On the other hand, if the court takes the view that there has been no violation of the Convention rights, it can now explain itself in terms which the Strasbourg Court will understand. The result is that that Court now finds very few violations.

Of course, the European Convention is not the only human rights treaty to which the UK is a party. In 1966, shortly after I was a student, the rights declared in the UN Declaration of Human Rights of 1948 were enshrined in two binding instruments, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, which came into force in 1976. The UK has since become a party to (amongst other instruments) the Convention on the Elimination of All Forms of Racial Discrimination of 1966, the Convention on the Elimination of All Forms of Discrimination against Women of 1979, the UN Convention on the Rights of the Child of 1989 and the UN Convention on the Rights of Persons with Disabilities of 2006. Unlike the European Convention, these rights are not directly enforceable in our courts (unless specifically enacted). But it has become more common for judges to refer to them, and insofar as they have also been relied on by the Strasbourg Court in interpreting and applying the European Convention rights, they have become increasingly influential in UK decisions.

## GENDER – AND OTHER – EQUALITY

The Universal Declaration proudly proclaimed that all human beings were born free and equal in dignity and rights. But it is only since my time as a law student that equality has become firmly embedded as a principle in our law.

Consider the situation of a married woman when I first studied family law in 1965. A husband could no longer lock his wife up to keep her at home, but he could not be guilty of raping her unless they were formally separated. This meant that he could force pregnancy on her if he wished. There was a strong presumption that any children born to a married woman were her husband's children. She had no rights or authority over them unless and until he died, or a court order gave her some. Recognition of and remedies for domestic violence and abuse were in their infancy and promoting reconciliation took priority over protecting the victims. Divorce and separation were based on fault and a wife's marital behavior was central to what she might expect if the couple parted. Even without fault, her financial



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remedies were very limited, leaving powerful incentives for the great majority of women to stay at home and in line.

The courts were beginning to recognise that matters needed to be improved for women, particularly in relation to the matrimonial home. But with recommendations from the newly established Law Commission, Parliament began to step in and family law was transformed. Beginning with the Matrimonial Homes Act 1967, family law became sex-neutral, in that the same remedies applied both to husbands and to wives. The law could contemplate the equal sharing of homemaking and breadwinning roles. It also became much kinder to the homemaker and care-giver. Sharing of assets on breakdown became the norm, originally to cater for the needs of the children and their carer, but eventually as a standard in its own right. Marital conduct as such was rarely relevant to deciding what should happen after the relationship ended. The fault-based system of divorce was in practice abandoned. Married mothers, who remained the primary care-givers to children in the great majority of cases, became much more powerful than they had been because of the importance attached to keeping the children in a stable home with them.

The workplace was also changing. Equal pay was adopted in the civil service, teaching and local government in the 1960s. In response to mounting pressure, in the period when the UK was negotiating to join the EEC, which had equal pay as one of its founding principles, Parliament passed the Equal Pay Act 1970. This came into force in 1975, the same year that Parliament also passed the Sex Discrimination Act, which prohibited discrimination on grounds of sex or marital status in a variety of areas, including employment and vocational training.

This did not mean that enough had been done. Nothing in the Equal Pay Act prevented traditional practices whereby men and women were segregated into different jobs and the jobs done by women were paid less than the jobs done by men. The concept of equal pay for work of equal value did not find its way into the Act until the Commission of the European Communities had successfully taken the UK to the ECJ in 1982.[25] Another problem was that part time workers were not protected against discriminatory rates of pay, and the vast majority of part time workers were women. As for the Sex Discrimination Act, it did not apply to discrimination on the grounds of pregnancy, and again the ECJ had to put matters right. But much has since been done and inequalities in tax, social security and pension schemes have now largely been removed (although there are now inequalities in the operation of some welfare benefits). A recent example of these developments is the Supreme Court decision that female classroom assistants and nursery nurses employed by the council could claim that they were paid less than groundsmen, road workers, refuse drivers employed by the same council, albeit under different collective agreements.[26] If they could establish that the male comparators would receive broadly similar pay if they were transferred to undertake their current work in schools, it was not an answer for the council to say that no manual workers would ever be employed in schools. Otherwise, employers would be able to arrange things so that men could be employed at one establishment and women at another. The object of the legislation was to secure equality of treatment, not just for the same work, but also for work rated as equivalent or assessed by experts to be of equal value.

Laws designed to combat discrimination arising on grounds other than gender were built up piecemeal following the Sex Discrimination Act. We had the Race Relations Act 1976, the Disability Discrimination Act 1995, the Equality Act 2006 and associated regulations, now all brought together and rationalised in the Equality Act 2010. These statutes were largely prompted by European Union law, but the UK chose to gold-plate them – to go further than the EU required. They address the problem that providers of employment, education, accommodation, goods, facilities and services might well treat people less favourably on the ground of one of the protected characteristics – age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, and pregnancy and maternity. The principle is that these characteristics should be ignored by such providers because they are irrelevant to the decision to provide.

Article 14 of the European Convention is designed to secure equality in the enjoyment of the Convention rights. It differs from the Equality Act in a number of ways. It refers only to the Convention rights, whereas the Equality Act applies to all kinds of supply, whether by public or private providers. It has an open-ended list of protected characteristics. Both direct and indirect discrimination can be justified if they are a proportionate means of addressing a legitimate aim. But, unimaginable in my student days, article 14 has been invoked to attack government policy in relation to such things as welfare benefits, on the ground that they discriminate against women,[27] or lone parents,[28] or disabled people,[29] although disabled people have had more success than women and lone parents.

## DEVOLUTION

Finally, there is devolution. When I was a law student, the House of Lords might be called upon to decide whether the Northern Ireland Parliament had enacted laws which were outside its powers under the Government of Ireland Act 1920. But I think there had only ever been one such case: *Gallagher v Lynn* in 1937.[30] Real change came with the modern arrangements which began in 1998, with the Scotland Act and Northern Ireland Act, and then with the Government of Wales Acts.

The devolution issues which have reached the Privy Council[31] and, now, the Supreme Court fall into three broad categories. The first, and most numerous, concern



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the compatibility of the actions of devolved Parliaments and Governments with the Convention rights. This sort of challenge will normally arise in a concrete case, on an appeal or, in the case of Scotland, on a compatibility issue. In this way, aspects of Scottish criminal procedure may be challenged in the Supreme Court, though there is no ordinary right of appeal in Scottish criminal cases (something which has proved controversial in Scotland).

An example is the *AXA Insurance* case.[32] The Damages (Asbestos-related Conditions) (Scotland) Act 2009 provided (with retrospective effect) that pleural plaques, pleural thickening and asbestosis constituted actionable harm, reversing the effect of a recent decision of the House of Lords which had held that pleural plaques did not.[33] The insurance industry complained that this was an unjustifiable breach of their property rights, protected by article 1 of the First Protocol to the European Convention. The Supreme Court agreed that there had been an interference with their property rights but held that it was justified: it was a proportionate means of achieving a legitimate aim. The court recognised that this was a matter of social and economic policy in which weight should be given to the judgment of the democratically elected legislature as to how the balance between the various interests should be struck.

But there was another element in the case. The insurance companies had argued that the Act was irrational, seeking to apply the ordinary principles of judicial review to Acts of the Scottish Parliament. Even though the issue was not pursued by the insurance companies by the time of the hearing in the Supreme Court, the Court heard interventions from both Northern Ireland and from the first Minister in Wales and dealt with the question fully in the judgment. The Court recognised that the Scottish Parliament was not to be regarded in the same light as a local authority, so that the wider grounds for judicial review of administrative action did not apply. However, it did not rule out the possibility that Acts of the Scottish Parliament might be subject to review in exceptional cases on grounds other than non-compliance with the terms of the Scotland Act.

Human rights apart, Acts of the devolved Parliaments may be invalid because their subject matter is outside the powers which the UK Parliament has given them. Under the devolution settlements (now including Wales) every subject which is not reserved to the UK Parliament is devolved. There is inevitably some degree of overlap between these categories and it is for the court to determine what the purpose of a measure is, in order to decide whether it 'relates' to a particular subject-matter. The Supreme Court has heard a series of cases in which it has developed the principles to be applied to these disputes.

Then there is the third category, perhaps the most novel change. The Law Officers in each part of the United Kingdom can refer Bills, after they are passed by a devolved Parliament but before they are sent for Royal Assent, to the Supreme Court for a ruling in the abstract on whether or not they are within the scope of the Parliament's powers. So far there have been three references from Wales, one from Northern Ireland which was withdrawn, and – finally – one from Scotland last year. Two of the Welsh Bills were held to be within scope, and one (a private member's Bill making employers and their insurers pay the costs of NHS treatment for asbestos-related diseases caused by the employers' negligence) was found to be outside scope:[34] it did not relate to the devolved matter of 'funding for the NHS in Wales' and it was unjustifiably retrospective in its effect upon employers' and insurers' property rights. The UK Withdrawal from European Union (Legal Continuity) (Scotland) Bill 2018, which sought to make provision for legal continuity in Scotland following the UK's withdrawal from the EU, was held to have been generally within competence when it was passed, apart from one provision which impermissibly modified the Scotland Act 1998. But then the UK Parliament passed its own European Union (Withdrawal) Act 2018, which added itself to the list of statutes which the devolved legislatures cannot modify. This meant that rather more of the provisions of the Scottish Bill were outside the Scottish Parliament's competence (and it has since been abandoned).[35]

## CONCLUSION

This has been a rather breathless tour of the legal developments of the past five decades. Let me try to draw out some overarching themes. First, there has been a massive expansion of the law into all areas of our lives, partly as a result of the increasing demands on the state as the provider of minimum standards of welfare and the growing complexity of our modern social and economic structures. In particular, the hugely increased role of the executive in decisions affecting individuals has led to the predominance of public law in the higher courts, where once it would have been wholly eclipsed by the sort of private law disputes on which my legal studies mainly focused. The constitutional role of our highest court has become much more prominent, most obviously in the sphere of devolution, but also when we are asked to grapple with the constitutional impact of events such as the UK's accession to or withdrawal from the European Union and the enactment of the Human Rights Act. We do still deal with a number of tax, commercial and big private law disputes, as the House of Lords did in the 1950s. But we now also deal with all sorts of other cases which would have been unimaginable in those days.

This must mean that the range of sources and resources which must be available in any properly equipped law library is far wider than it was in my days in the Squire. Whether that makes your lives more difficult, or just more interesting, only you can say. I know how grateful we are in the Supreme Court for the superb service which we get from our own law library.



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## Footnotes

[1] With grateful thanks to my Judicial Assistant, Penelope Gorman, for her thoughts and her research.
[2] [1964] AC 40.
[3] *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 1072.
[4] [1969] 2 AC 147.
[5] *R (Privacy International) v Investigatory Powers Tribunal and others* [2019] UKSC 22, [2019] 2 WLR 1219.
[6] Law Commission, *Exploratory Working Paper on Administrative Law* (1967).
[7] Law Commission, *Report on Remedies in Administrative Law* (1976).
[8] SI 1977/1955, rule 5.
[9] Treasury Solicitor, *The Judge Over Your Shoulder, A Guide to Judicial Review for UK Government Administrators*, 3rd edn, 2000.
[10] Evidence of Collins J to the Home Affairs Committee, *Immigration Control*, 23 July 2006, HC775-111, 2005-6, Q343-343.
[11] *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, [2018] AC 61.
[12] [1963] EUECJ R-26/62, [1963] ECR 1.
[13] [1964] EUECJ R-6/64, [1964] ECR 585.
[14] *Macarthys Ltd v Smith* [1981] QB 180.
[15] [1990] UKHL 13, [1991] 1 AC 603.
[16] [2002] EWHC 195 (Admin), [2003] QB 151.
[17] [2014] UKSC 3, [2014] 1 WLR 324.
[18] *Golder v United Kingdom* (1978-79) 1 EHRR 524.
[19] *Sunday Times v United Kingdom* (1978-79) 2 EHRR 245.
[20] *Dudgeon v United Kingdom* (1982) 4 EHRR 149.
[21] *X v United Kingdom* (1982) 4 EHRR 188.
[22] *Abulaziz, Cabales and Balkandali v United Kingdom* (1985) 7 EHRR 471.
[23] *Malone v United Kingdom* (1985) 7 EHRR 14.
[24] *H v United Kingdom* (1988) 10 EHRR 95.
[25] *European Commission v United Kingdom,* Case C 61/81, [1982] ICR 578.
[26] *North v Dumfries and Galloway Council* [2013] UKSC 45, 2013 SC (UKSC) 298.
[27] *R (SG) v Secretary of State for Work and Pensions* [2015] UKSC 16, [2015] 1 WLR 1449.
[28] *R (DA) v Secretary of State for Work and Pensions* [2019] UKSC 21, [2019] 1 WLR 3289.
[29] Eg *Mathieson v Secretary of State for Work and Pensions* [2015] UKSC 47, [2015] 1 WLR 3250; *R (MA) v Secretary of State for Work and Pensions* [2016] UKSC 58, [2016] 1 WLR 4550.
[30] [1937] AC 803.
[31] Before the creation of the Supreme Court, such cases were heard in the Judicial Committee of the Privy Council rather than the Appellate Committee of the House of Lords.
[32] *Axa General Insurance Ltd v HM Advocate* [2011] UKSC 46, [2012] 1 AC 868.
[33] *Rothwell v Chemical and Insulating Co Ltd* [2007] UKHL 39, [2008] AC 281.
[34] *Re Recovery of Medical Costs for Asbestos Diseases (Wales) Bill* [2015] UKSC 3, [2015] AC 1016
[35] *Re UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill* [2018] UKSC 64, [2019] 2 WLR 1.

## Biography

**Brenda Hale** is the most senior judge in the United Kingdom. In 1994, she was appointed a High Court Judge (assigned to the Family Division), after teaching at the University of Manchester for 18 years and then promoting the reform of the law at the Law Commission for over nine years. In 1999, she was promoted to the Court of Appeal and in 2004 to the Appellate Committee of The House of Lords. In 2009, the Appellate Committee was transformed into the Supreme Court of the United Kingdom. She became its Deputy President from 2013 to 2017 and is now its President. Her principal interests are in family, social welfare and equality law. She is President of the United Kingdom Association of Women Judges and a past President of the International Association of Women Judges.



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