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ABOLITION OF THE HOUSE OF LORDS AND OTHER REFORMS: A BRITISH REPUBLIC?

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A final curtain descended on Britain's Law Lords[1] in July 2009, the sad but the inevitable sequel to a series of measures, ushered in by the Constitutional Reform Act 2005. In their place the UK has a new Supreme Court which opened for business at the beginning of October. The recently sworn Justices have taken up occupancy of the Middlesex Guildhall, a limestone building with a mock baronial façade and *art deco* touches, the lines of which, as I discuss later, run parallel to the more abstract architecture of the new court's philosophy. The Supreme Court remains in Westminster but has moved across Parliament Square to its fabulously revitalised new home.[2]

The changes have been greeted with mixed feelings by many including, as Lord Hope of Craighead acknowledged recently, interested observers well beyond the borders of the United Kingdom.[3] This article began life as an address to one such group. Then, as now, I set out to discuss factors that stimulated the reforms before turning to some of the more radical developments particularly the newly forged Supreme Court its constitution and constituents.

BACKGROUND

Britain[4] continues to evolve politically over the centuries. It is a well known history. The gradual and, some might say, egregious assimilation first of the home islands and then global expansion, until it became the epicentre of a world empire[5] rivalling, if not exceeding, the power and reach of the Roman Empire 2,000 years earlier. Nevertheless, it is only as late as 1707 that Scotland and England became a Union and Wales (a principality as distinct from a kingdom) combined to form the Kingdom of England and Wales.[6] The British legal system bears the very clear imprint of imperial past with its characteristic flexibility and pragmatism; to which may be added the associated pomp and circumstance. Saying that, however, the same evolutionary process left very little conceptual room for any theoretical foundations. Such constitutional rules as might exist have been explained by Bagehot as the "fusion of power"[7] rather than the expression of any coherent juridical theory. The *Enlightenment* doctrine of the separation of powers for example is, according to Professor George Jones, alien to the English Constitution. He describes the British system as "the mixture of powers".[8] The much earlier theorist Thomas Paine's insistence that England did not have a constitution informed much of his writing and was the basis of his admiration for developments in the New World.

By the same token there is one theory that, up to now at least, everyone is agreed upon.[9] The article of faith is of course parliamentary sovereignty, an idea that separates the United Kingdom constitutionally from all other members of the European Union, the United States, and those former countries to which it granted independent constitutions.[10] But that hegemony may also change in the wake of the present measures, as I hope to discuss shortly.

ROOTS OF REFORM

It has been suggested by some writers that the impetus for the present reforms lies in the expanding role played by the higher courts in the UK over the last thirty years,[11] the combined effect, it is said, of the growth of judicial review, the development of the EU and, more recently, the Human Rights Act. The enlargement of their jurisdiction has thus given the courts a more central place in the British constitution. It is also argued along the same lines that the senior judges are now required to police constitutional boundaries and determine sensitive human rights issues in a way which would have been unthinkable forty years ago.

In the light of those changes, the main provisions of the Constitutional Reform Act — reforming the office of Lord Chancellor, establishing a new Supreme Court and restructuring the judicial appointments process — were designed according to some commentators to bring the institutional relationships between the judiciary and the other branches into line with the changing substantive role of the courts.

Powerful as those arguments are, the rationale for change, identified by Kate Malleson and others, could equally, it has