HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: Ministerial Scrutiny: Human Rights, HC 548

Wednesday 14 July 2021

Watch the meeting

Members present: Ms Harriet Harman MP (Chair); Lord Brabazon of Tara; Joanna Cherry MP; Lord Dubs; Florence Eshalomi MP; Lord Henley; Baroness Ludford; Baroness Massey of Darwen; Angela Richardson MP; Dean Russell MP; David Simmonds MP; Lord Singh of Wimbledon.

Questions 1 – 14

Witness

I: Rt Hon Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice.

Examination of witness

Robert Buckland.

Q1 **Chair:** Good afternoon and welcome to this session of the Joint Committee on Human Rights. I am Harriet Harman, Chair of this committee of the House of Commons and House of Lords, which, as our title makes clear, is concerned with human rights.

We are very grateful to hear evidence this afternoon from the Lord Chancellor and Secretary of State for Justice, the right honourable Robert Buckland QC MP. We will be talking to Rob Buckland about the Human Rights Act review that the Government have initiated; their review of judicial review; the changes in the law in relation to the sentencing of young people; and about the right to demonstrate. We have a packed agenda of important issues to go through.

Lord Chancellor, I welcome you to this session of the committee. We are looking at the Human Rights Act to prepare a report to submit to the independent review that you have set up. The evidence that we have received is overwhelmingly positive about the impact of the Human Rights Act in enabling people in the UK to enforce their human rights. There was really no evidence in support of a case for change. Can you explain why you think it is necessary to look at our Human Rights Act?

Robert Buckland: I think that after 20 years of the Act coming into force—it was passed in 1998 and brought into force in 2000—it is our duty to make sure that that mechanism is working. It is absolutely right and timely, in accordance with the Government's manifesto commitment, to look at ways in which the Act can be updated.

The report of the committee is an interesting body of evidence. I noted the witnesses and the people who gave evidence. I did not really see quite the diversity of opinion that perhaps I would have expected, because there are differing views about the efficacy of the Act and, frankly, about our membership of the convention. I think that all of you know that as a former member of the committee I am very supportive of and a great believer in our membership of the European Convention on Human Rights, but there are plenty of people who disagree with that. I was a bit surprised that you did not take evidence from people who perhaps have a different view from mine about where the balance should lie.

Having said that, I think that it is incumbent upon me as the current Lord Chancellor to make sure that that Act is working as well as it possibly can. As I have said before, it is not about the fundamental rights themselves; it is about the mechanism by which the rights can be enforced and deployed in our domestic legal structure.

While I think that in many respects the Act is a very elegantly drafted piece of work, it was the result of a series of political decisions taken at the time. All of us will remember, for example, the particular balance that

was struck between freedom of expression and privacy in the Act, which perhaps was slightly different from the way in which the convention itself is drafted. That is just a very small example of how domestic politics did come into play when it came to the drafting of that Act.

Another area I can think of is the well-known phrase about courts being asked to take into account the jurisdiction and judgments of the Strasbourg court and how it has been interpreted over the years. That is why I think an independent, cool, professional and calm review such as the one that I have set up under Sir Peter Gross is very well equipped to carry out that sort of analysis to see whether that phrase is as robust as it should be, whether there are times when perhaps it has been interpreted in a very didactic way and perhaps times when it has been interpreted in a wider way.

Therefore, I think that for all sorts of legitimate reasons it is right at this stage for the review, within its terms of reference, which I think all members of the committee will know about, to look at that framework.

Chair: We did not take evidence from those who favour leaving our commitment to the European Convention on Human Rights because we heard assurances given by you and the Prime Minister on behalf of the Government that there was absolutely no intention to renege on our commitment to the convention.

You mention some people wanting us to leave the European Convention on Human Rights. Has the Government's position on that changed, or are we still to understand that their commitment to remain within the convention is as strong as ever?

Robert Buckland: The Government's commitment is very clear and strong. We remain absolutely committed to our membership of the convention, but you are a committee of Parliament and you are entitled to look at the wider context. You do not have to follow the framework that government set you—I would be concerned if you did. I am making the point that there are other voices out there who would say that the current framework is inappropriate for common law tradition such as the one that we enjoy in England and Wales, for example. I know that Scots law is slightly different in its tradition, but there are plenty of arguments that are of themselves respectable—I do not agree with them—that the committee might have wanted to hear to come to a view about whether the current framework was fit for purpose. Gently but firmly, I suggest that the witnesses from whom you heard were inevitably going to help you to come to a conclusion that I have read and noted in your report.

Chair: The evidence on which we drew was on the basis of the terms of reference that the Government had set down for the independent review of the Human Rights Act. We tried to draw on evidence that was relevant to the terms of reference so that we could be as helpful as possible to the independent review.

Would Joanna like to put a supplementary before we turn to our next question?

Joanna Cherry: Lord Chancellor, when you gave evidence to us last October, I asked you specifically about the United Kingdom Government's adherence to the ECHR in the context of the then ongoing discussions with the European Union. You said, "The EU has nothing to worry about when it comes to the UK's commitment to and wish to adhere to the European convention". That was what you told us in October. Can you understand why, your having told us that so recently, we concerned ourselves with the remit of your review rather than with something that you quite clearly said was off the table?

Robert Buckland: I think that other voices out there will say that the product of the review, whatever it might be, does not go far enough in revising the furniture or changing the structure; it does not deal with some of the arguments about whether aspects of the convention constrain the ability of legislatures in the UK to legislate as they see fit.

There are plenty of arguments. They are not just noises off; there are legitimate arguments, which we might disagree with but which are none the less sincerely held, that need to be heard. While I absolutely accept that the terms of reference that we set out are not about the fundamental rights themselves, there will be voices that say, "Is this structure so broke that you cannot fix it other than by withdrawing from the whole framework?"

That is the point that I make. It would perhaps have been interesting for you and others to cross-question people who hold those views.

Joanna Cherry: If you wanted that to be within the purview of this inquiry, why did you not include it in your terms of reference?

Robert Buckland: Because the Government's policy is clear. We want to look at the domestic framework, but you are a Joint Committee of Parliament unconstrained by the mandate of government—quite rightly so—and it might have been a moment for the committee to say, "Let's test some of these assumptions that are made and see whether or not they hold water".

I respect that you have not done that; you have addressed the terms of reference, but it does not, with respect, stop me or the Government working with an independent review that will produce its report later in the summer and, I hope you agree, is not only academically strong but geographically balanced to reflect not just the view from London, as it were, but the devolution dimension of the Human Rights Act and the convention itself that I know is so important to the other Parliaments and Assemblies and the jurisdictions of the UK.

Chair: We will get to that, but I observe that it is a bit odd for you, Lord Chancellor, to complain that we have not looked at something within

our committee proceedings that you have chosen not to look at in your review. With respect, it seems to me that when it comes to the Government it is not about hearing arguments and voices; it is about the Government's policy and intention. You have left me with the impression that you are now leaning towards, in a way that you were not previously, the voices that you want to be heard that we should no longer stay within the European convention. I hope that is not the case and that the position is as you actually put it and Joanna Cherry has read out. Has there been a subtle shift in your position, or are you absolutely signed up to the European convention in the way you were when you appeared before us previously?

Robert Buckland: Chair, I can assure you that I know my own mind about these things, but I am not frightened about hearing the arguments people might have wanted to put.

Chair: But it is not about your mind; it is about government policy.

Robert Buckland: Your committee chose to call witnesses and have that body of evidence before it. I am afraid that I was struck by the fact that it seemed to be one-sided. Therefore, the report was inevitably going to come to a conclusion based on evidence of witnesses of one clear view. That is all I am saying. Therefore, in assessing where we go after the review, I need to look at all the evidence and remind myself that there will be other voices out there that might have stronger views in another direction. When I give weight to things, it is important that I am assured that a range of voices and opinions has been heard. That is all I am saying.

Chair: I must say that the voices that we heard were the voices of the judiciary. We do not pick and choose what they say to us; they are responsible for enacting the law and that was their view. We heard from the police, who are responsible for working within the Human Rights Act framework; they chose whom they sent to speak to us. We did not pick and choose. The same goes for the CPS and the issue about the relationship between Parliament and the Human Rights Act and the courts.

Much of our evidence was from office holders—people in the business of working within the Act; it was not about academic opinion from one side or the other; it came from those actually doing it. I am disappointed that you have chosen to throw up a smokescreen pre-emptively to discredit what was given in evidence to us.

Having said that, I would like to ask whether David wants to put a supplementary, and then we will move on to our next question.

David Simmonds: I put a question on the same topic. Lord Chancellor, you have been commendably clear about the position of the Government. As a serving member of the Congress of the Council of Europe, I am very aware that tensions between legislatures in other countries about what

the convention means in practice in those countries are quite common. Do you think it would be a good use of the committee's time to consider whether there are any commonalities in those tensions across the different 47 member states? Is there anything from that that should feed back into our input as members of the various assemblies of the Council of Europe or deliberations in the UK about what it means for us? [*Inaudible*.]

Robert Buckland: I think I lost Mr Simmonds. I do not know whether that is peculiar to me.

Chair: Did you get the gist of his argument?

Robert Buckland: I got the gist of Mr Simmonds's point. I think that the "comparison" point is a really powerful one. The Council of Europe is an important forum for the UK. We made another decision about the EU, but we remain firmly a member of the Council of Europe. I think that we are a leading member with a strong voice and rule of law and rights reputation that is second to none.

I think that if we claim to have a monopoly of wisdom that would be foolish. Other jurisdictions will have a lot for us to look at and digest. For example, I think of Germany and the role of its constitutional court and how that plays an important role in the way the margin of appreciation is interpreted by Strasbourg. I am not advocating that suddenly we replicate that here in the UK, but there are important parallels and interesting experiences that other jurisdictions have had where they have found domestic answers, if you like, to some of the challenges that can be posited to us by some of the judgments that emanate from Strasbourg. I say "some". I think you know my view that only now and again do we have a judgment that perhaps causes us real pause for thought or particular difficulty.

One of the things that strikes me about our relationship with the Strasbourg court is that many of the decisions on which our freedoms are based—for example, the right to vote itself—were made some generations ago and not necessarily in a way that perhaps a modern court would find the most accessible to interpret. Looking at the intentions of legislatures of the 1870s is quite a different business from perhaps looking at decisions made post war, for example.

The fact that Britain has a long history of constitutional evolution and development is sometimes a bit of a disadvantage when trying to explain the rationale for the particular approaches that we take.

That begs a wider question about what we do about that and feel about it. Therefore, your question is a very thought-provoking one, and I would strongly advocate that you and your colleagues pursue it further.

Chair: Are you suggesting that the review should propose a rewrite of the European convention on the basis of it being somehow out of date?

Robert Buckland: That is precisely what I was not saying. I was talking about the experience of other member states, their domestic legislative frameworks and the way in which convention law is interpreted domestically by them.

The convention itself is a very fine document. It was drafted largely by British lawyers—Sir David Maxwell Fyfe and others—in 1950 and has been added to with protocols since. There is always a case to be made for the judicial diplomacy and advocacy that, for example, my predecessor Lord Clarke of Nottingham undertook when he was Lord Chancellor, and the Brighton declaration of 2010 or 2011, which certainly helped to unblock some of the delays that the court was experiencing with the backlog of cases. While there is always room for improvement in form, fundamentally the drafting of the document itself, the convention, is sound.

Q2 **Dean Russell:** Lord Chancellor, thank you as always for appearing before the committee and for the work that you do generally.

As you will know, the Human Rights Act requires courts to take into account judgments of the European Court of Human Rights relevant to the proceedings before them. They are not bound by those judgments. Some of the witnesses and reports that were put together—in particular, our report—found that, if our courts could not take European Court of Human Rights cases into account, there would be more adverse findings against us by that court, in which case the European Court of Human Rights would not benefit from the views of our judiciary. Therefore, such changes to the Human Rights Act could result in our losing rather than gaining control. Do you agree or disagree with that statement? What are your thoughts in general on that point?

Robert Buckland: Mr Russell, I think that you hit upon one of the points that is raised in the terms of reference that talk about the dialogue, if you like, between Strasbourg and our own domestic court. I have always regarded that as a very important part of the work within this area. I have always encouraged it. I have encouraged an offline dialogue between judges of the different courts. I think that is a very healthy thing to do. We have some notable exponents of that. For example, Lady Justice Arden did a lot of work in this field, and many others within the judiciary worked very hard on those international relations and dialogues.

Let us see what the review comes up with. I cannot prejudge what it might say, but if there was a wholesale move to disregard or deliberately ignore the judgments of Strasbourg that would represent a potential breakdown in that dialogue. I do not know what the review will say, but I would be surprised if there was a move in that absolutist direction. I rather suspect that, whatever the outcome of the review and any subsequent proposals, that element of dialogue and understanding will still be very much part of it not just informally but formally when it comes to decisions that clearly engage rights under the convention that need to

be addressed by our domestic courts. I am pretty confident that that interplay will continue.

Q3 **Lord Dubs:** Thank you for coming to see us again, Lord Chancellor.

You will be aware that our report praises the balance struck by Sections 3 and 4 of the Human Rights Act between parliamentary sovereignty and the role of the courts in protecting fundamental rights. These provisions do not permit the courts to strike down primary legislation, even if they find that it is incompatible with convention rights. Does that not protect parliamentary sovereignty?

Robert Buckland: You are absolutely right to draw the distinction between the powers of the courts vis-à-vis primary legislation and powers that might relate to secondary legislation. That is not to say that Section 19 and declarations of compatibility are not very important. I want to assure you and the committee that the Government and Ministers take their obligations under Section 19 very seriously indeed. It is a very important part of the way in which decisions are reached before legislation is published.

You are right to say that the courts cannot strike down legislation, but there is the power to read down legislation in a way that the courts deem compatible with convention rights. I can think of one example with which the Chair will be very familiar. When Section 41 of the Youth Justice and Criminal Evidence Act 1999 was enacted, there was a leading authority in the House of Lords called A where the court did read down provisions in a way that all of us can agree, whether or not we agree with the merits of the case—we are not here to discuss that—nuanced or refined the particular wording of that legislation.

That was one example of quite an important read-down of legislation clearly designed to change the way in which complainants in sexual cases were to be cross-examined. It was a really important issue and is a live one to this very day, as the Chair knows all too well.

Therefore, we have to ask ourselves whether the read-down power is a safe or comfortable space for courts to inhabit. I do not blame the courts when things such as this happen because very often it is the responsibility of legislators to get it right and make it crystal clear so that the courts are not put into a position where they have to interpret things in a way that could be deemed to be political.

That is where the interplay between the function of the courts and the intention of this place becomes sometimes difficult and tense. Some tensions will always exist within our constitution, but it is our duty to make sure that we do not end up in a position where there is so much tension, imbalance and danger that the courts through the HRA in effect have to come to merits-based decision-making, as opposed to what I would regard as the more traditional, conventional role of our courts, which is to deal with any ambiguities and approach these matters in what I would regard as a much more conventional way. Lord Sumption, among

others, has identified that as a particular challenge that the HRA can throw up for our courts.

While I agree with you that I do not think that the sovereignty of Parliament is undermined by the HRA, there are times when the space that the courts have to inhabit can be a very tricky one indeed.

Lord Dubs: I have a couple of supplementaries. You virtually anticipated one of them, but I will ask it anyway. One of the powers that the High Court does have is to quash secondary legislation that is unlawful on human rights grounds. Do you agree with the view expressed in our report that this is a vindication of parliamentary sovereignty rather than a challenge to it?

Robert Buckland: I think that, on the face of it, you could argue it the other way, in the sense that the intention of Parliament is expressly delivered as much through SIs as it is through primary legislation. I think that a sensible distinction was drawn. You could argue it the other way by saying that this is just another invaluable check and balance upon an overweening Executive that can use negative procedures to get whatever they want through, if they are clever enough to draft primary legislation in a certain way. I have quite a lot of faith in the ability of your House and our House to make sure the Government do not get carried away with that sort of approach.

I am being careful because I am very mindful of the work of the review. The issue for me probably goes way beyond that. It is much more about the fundamental framework and the way in which Strasbourg case law can be used by our courts, interpreted and incorporated. That is probably a more fundamental question than the specific ability of the courts to strike down an SI. There are plenty of parliamentarians here who do not like it and are uncomfortable with it, but, speaking personally, it is probably a lesser issue than some of the other questions and matters that we have discussed this afternoon.

Lord Dubs: Our committee considers that it is crucial that there are adequate parliamentary and judicial controls on any decision to derogate from human rights safeguards. Do you agree? Will you agree to improve parliamentary involvement in overseeing any decisions to derogate from human rights protections?

Robert Buckland: That is really an interesting question. Ministers are always in a difficult position here because we cannot and should not start prescribing or dictating to Parliament precisely how it runs its processes and procedures.

With regard to the question of potential derogation, you can safely say that it would be a rare event, but I am always very open to ideas and proposals that can improve the scrutiny of this type of issue by parliamentarians. I know that you covered it in your report. It is a matter to which I will give even more consideration, but ultimately it is for

Parliament to make decisions about how to do that rather than for me to dictate to you the processes required.

Q4 **Lord Henley:** May I come to remedial orders? As you know, the committee scrutinises remedial orders very carefully for procedural and substantive propriety. On the whole, we have found that the Government have up to now used the mechanism sparingly and appropriately. Do you agree with that and that this structure is working pretty well?

Robert Buckland: In a word, yes. I thought that the observations made in the report were based on a sound footing. In the spirit of what I am trying to do, it is always important to make sure that the mechanisms are working, but, on the whole, I think that is correct.

Joanna Cherry: When I asked a wee supplementary question earlier, you mentioned the importance of geographical aspects of the Human Rights Act across the four nations.

Before I ask you a couple of questions about that, may I go back to the issue that we explored at the beginning of your evidence when you suggested that perhaps we had not taken the most diverse evidence? You will be aware that the committee's call for evidence was open to anyone who wanted to respond. Do you know that we took evidence from Professor Graham Gee, who is one of the prime movers at the Policy Exchange's Judicial Power Project, which has been pushing for the changes that the Government are now contemplating?

Robert Buckland: I am just looking at the list here. Forgive me if I implied that you did not hear from somebody with perhaps a different opinion.

I still think that the overall point that I made was a valid one. I hear what you say about the particular terms of reference and the committee wanting to adhere to them, but in general I think the point that I made was a reasonable one. I am bombarded all the time by people who tell me that I am too soft on these issues or that I am dangerous. I was described by my shadow the other day as the most dangerous Lord Chancellor in modern times, which was interesting. Therefore, I am well aware of the vast diversity of opinion on these issues. All I am saying is that as a committee I would have expected you to embrace that as well.

Q5 **Joanna Cherry:** My point is that we did.

To go on to the devolved aspects of the review, our report concluded that the UK Government should not pursue reform of the Human Rights Act without the consent of the devolved legislatures. What steps have you taken to engage with the Scottish, Welsh and Northern Irish Governments in relation to reform of the Human Rights Act?

Robert Buckland: It is important to remember where we are in the process. The independent review that is working on these matters is entirely separate from government, and you would expect me to let it get

on with its work in an independent and unfettered way. I made it clear and informed my counterparts in the devolved Administrations of the Government's intentions, but we are not yet at a stage where government has any hard and fast proposals to put to the devolved Governments.

That will be the process. You know that I take that aspect of my work very seriously indeed. I would wholly expect that, after the review is published and the consultation and response from government on that consultation process, not only will all that be told to the devolved Governments; they will be able to play their part in that process as well. We are well in advance of any potential legislative change. I will certainly not start to prejudge what might be in that, and I do not think that you would expect me to.

Joanna Cherry: That is very helpful. I think that you are confirming that you will consult the devolved Governments once you have a firm proposal.

Do you agree with our conclusion that the reform should not take place without the consent of the Scottish, Welsh and Northern Irish Parliaments?

Robert Buckland: It depends on in what form the proposals are put together. The LCM process is not necessarily automatic in every respect. We all know that. Clearly, the Government work very hard to make sure that things are done that are not perceived or that in actuality cross any lines here, but I hope you will forgive me for not committing to a particular approach without knowing precisely what the terms of any proposal would be.

Joanna Cherry: You do not rule out seeking a legislative consent Motion depending on the terms—[*Inaudible*.]

Robert Buckland: I cannot rule it out, but I am absolutely clear that where an LCM is not necessary the Government should and must proceed. That is only appropriate. I know that at the moment we are having a bit of an argument and the Supreme Court is to pronounce judgment on the UNCRC legislation, to coin a phrase, but I regard that as part of the natural operation of our constitution. There will be disputes; frankly, it is an example of the health of our constitution that we are having that debate and that it is being conducted in our courts.

I would not want to suggest in any way that if I thought an LCM was not necessary I would proceed, but I do not know until I see the precise nature of the proposals, when an appropriate decision can be made.

Joanna Cherry: I want to focus in particular on Northern Ireland. We were particularly concerned to hear from witnesses of the possible impact of amending the Human Rights Act on what was described by one witness as the "febrile circumstances" of Northern Ireland, given the role that the

Human Rights Act has in fulfilling the commitments of the Good Friday agreement. Have you taken account of this risk in your plans for reform?

Robert Buckland: That is a very proper question. It is important for me to stress that the Government remain absolutely committed to the Belfast Good Friday agreement, the constitutional principles it upholds, the institutions it establishes and the rights it protects. I absolutely understand the importance of the HRA in the context of that agreement. That is why in the selection of members of the panel I was at very great pains to make sure that not only did it have someone in the shape of Baroness O'Loan, with great knowledge of all the communities of Northern Ireland, but also had a distinguished academic from the Republic. I was very keen to make sure that the full spectrum of opinion and perception on both sides of that border was reflected in the review, and I am confident that we will see that when the report is published.

Joanna Cherry: Therefore, you understand the importance of the Human Rights Act in the context of the Good Friday agreement.

Robert Buckland: Yes.

Q6 **Angela Richardson:** The duty on public authorities to act compatibly with convention rights contained in Section 6 of the Act is hugely important for enforcing rights. What are you doing to make sure that public authorities fulfil this duty? Do you consider that you have more to do in this respect?

Robert Buckland: Thank you very much indeed, Ms Richardson. It is good to see you again. I think that if public authorities do not understand it by now they really ought to. The operation of the Human Rights Act and all the convention rights it brings into domestic law is a vital consideration when policies are adopted by public authorities and decisions are made by them. I would expect that lawyers and every public authority would, among other things, turn their minds to the operation of convention rights in every instance. If they do not, the risks are all there to be seen: the risk of judicial review; the risk of challenge; the risk of having to revise, change or abandon a policy, with all the concomitant loss of time and cost that that problem would incur.

In the work I am doing I certainly have not detected any issue with regard to lack of awareness, understanding or unwillingness to take Section 6 and all the underlying principles into account. We see examples where errors of law are made, and that is where the courts come into play, as I said in the preface to the response to the IRAL report.

I regard that means of challenge as hugely important when it comes to our constitution and the rights of citizens. Therefore, it would be interesting to know whether your committee or other bodies have more evidence about any issue, perhaps even a systemic one, about the failure of public authorities either to engage with or understand Section 6 and its implications. I have not picked up any particular systemic issue, but I am

always open to and interested in any submissions or observations to the contrary.

Angela Richardson: When this committee took evidence, it appeared to be patchy from local authority to local authority. Therefore, my follow-up question is whether you would consider giving the Equality and Human Rights Commission power to investigate public bodies for possible breaches in human rights law and provide legal assistance in human rights cases.

Robert Buckland: It is important to remind ourselves that the HRC is already accredited at the UN with "A" status by the Global Alliance of National Human Rights Institutions. That means that it is already fully meeting the requirement to protect human rights, which includes the investigation and resolution of complaints, the mediation of conflicts, the monitoring activities and the promotion of human rights through education, outreach, the media, et cetera.

The EHRC already has a specific power to intervene in or apply for judicial review in relation to a breach of convention rights by public authorities. Indeed, the commission does not itself need to be a victim or somebody affected by that breach; it has that power already.

I note the issue about whether there should be an extension to enforcement powers relating to individuals perhaps, but the Taylor review conducted in 2018 did not recommend this. In essence, its findings were that the commission should focus first on resolving issues of effectiveness and impact. I agree with that. That is where I think its work is most important and why I would urge that approach rather than an extension of powers.

Angela Richardson: You have told us that it is "the job of all of us to consider whether there are other avenues and other means [to the courts] by which the citizen can obtain redress of grievance". What other means or avenues have you considered?

Robert Buckland: I think that they are all around us. Apart from the parliamentary route, for example, we have a whole series of ombudsmen and that system with regard to public institutions, which is an important part of making sure that public bodies learn from their mistakes and are accountable in that way.

We have a number of other inspectorates and other organisations that do invaluable work in holding public agencies to account and calling them out where things have gone wrong. Of course, the courts are an important part of means of redress, but they are not the only way in which things can be changed and improved. I am still a great believer in this place and your Lordships' House as a way of effecting change. I have seen it for myself; I have seen outcomes that we all should be proud of as individual parliamentarians, let alone government.

That is why I think that it is important for all of us to remember that, while our judicial system—our independent judiciary and court system—is a vital element of our constitution, there are other ways in which we can resolve disputes and gain justice.

Chair: The next area that we would like to explore with you is judicial review.

Q7 **Joanna Cherry:** If the Government breach the law laid down by Parliament, judicial review allows them to be called to account. Is it not right that the courts can require the Government to comply with the will of Parliament?

Robert Buckland: I am going to agree with you. I do not think that there is any difference between us on the fundamental importance of judicial review as a way in which the checks and balances in our constitution can be maintained. What I think is important, and what I am trying to work towards through the process that has been ongoing since last summer, is in some respects to make sure that the constitutional plumbing, if you like—in the past I have described myself as a plumber—and that balance is maintained as perfectly as possible so that we do not end up in a position where the courts are brought into a political arena in a way that I do not think is good for the judiciary or politics.

Having said that, I am not somebody who points the finger at the courts. Very often I will say to Parliament or government in regard to a certain piece of legislation, "Have you made yourselves clear with regard to what your intentions are? Is it drafted in a way that leaves no room for doubt or interpretation?"

I have to concede that far too often in the past that has not been the case and, therefore, the courts have had to intervene. I sometimes feel like the bad sailor blaming the sea. I do not want to sound like that. I want to be somebody with good intent to make the adjustments that I judge necessary to maintain that important balance within our constitution.

Q8 **Joanna Cherry:** In the foreword to the Government's response to the report of the Independent Review of Administrative Law they stated that the panel's analysis identified a growing tendency for the courts in judicial review cases to edge away from a strictly supervisory jurisdiction. When we put that to Lord Faulks in evidence to the committee, he said, "I have to say that was not the language used in our conclusions".

Robert Buckland: I noted that, but, as I read the report, there was inevitably through some of its conclusions, if not in direct language, an implicit acceptance that there were issues that could be solved. Indeed, the report did not say that all was well and that everything could stay as it is; it came up with either concrete proposals or some indications of potential avenues that the Government might wish to pursue.

I accept that the work that I have done since in the consultation goes more widely than the report, but it is done in a way that is designed to be consultative rather than didactic. The position that we have come to is that, while Lord Faulks is absolutely entitled to make his particular interpretation of the findings of the report, I am entitled to say that it raises further questions that do support the concerns that I have.

Joanna Cherry: I am trying to get at your concerns. I was looking at the text of your speech to University College London's conference on the constitution, in which you said: "I hope that it is possible to open up a debate about the rule of law and what sovereignty means today. My view is that we diminish the former"—the rule of law—"by allowing it to be applied in that overtly political way and we damage the latter"—parliamentary sovereignty—"by expecting the courts to adjudicate on the express will and intent of Parliament". Can you give us an example of a case where the rule of law has been applied in an overtly political way, which is the sort of thing you are clearly worried about?

Robert Buckland: You want me to talk about Miller 2. I am going to be careful about that because I take the view that the way in which sometimes we as politicians characterise things is unhelpful, in that we have ended up in a position where somehow the rule of law is sometimes juxtaposed against parliamentary sovereignty itself, as if they are two entirely different philosophies at odds with each other and one has to win over the other.

Without going into the warp and woof of Miller 2 and the rationale of decision-making, the overall perception that that case created was a wall between the world of the rule of law and the world of Parliament and government. That worries me because I do not think that it is a correct characterisation of the rule of law itself. The argument that I put in my lecture was that the rule of law is hugely important, but that it is a political construct and is different from the law itself. In that argument I sought to achieve a happy balance between the compatibility of the principle of the rule of law and the principle of the sovereignty of Parliament.

Joanna Cherry: Are you suggesting that in Miller 2—the case about Prorogation, in which I declare an interest because I was the lead litigant in the Scottish case—the United Kingdom Supreme Court's decision is an example of the rule of law being applied in an overtly political way?

Robert Buckland: What I am saying is that it is an example of a decision that was inevitably going to be charged in a political way because it was dealing with a political issue.

Joanna Cherry: Does that mean that the UK Supreme Court should not have adjudicated?

Robert Buckland: Ms Cherry, I will not start to reopen the merits or otherwise of Miller 2. We know that the English and Welsh Divisional

Courts took a different view from the Supreme Court, which was precisely that. I will not start to take sides.

Joanna Cherry: With all due respect, Lord Chancellor, that was the lower court that was overruled on appeal by the full chamber of the Supreme Court. If we are to talk about lower courts, the lower court in Scotland, the Inner House of the Court of Session, unanimously ruled, albeit for slightly different reasons, in the same way as the Supreme Court, so it is important to be clear about what you are saying here. You have talked about a perception of Miller 2 being a political decision, but as Lord Chancellor what should matter to you is not the public perception but what the court actually said. Surely, it is your responsibility as Lord Chancellor to articulate what the court said perhaps to put right any incorrect perception.

Robert Buckland: What I did about Miller 2—you will remember this, Ms Cherry—without any prompting or hesitation was to defend the position of the Supreme Court, whatever one thought about the decision itself. I was right to do that and I would do it again.

It is not about the merits of the decision. It was a very strongly constituted Court of Session; a very strongly constituted English and Welsh Divisional Court also came to a different decision. I think that we can see that, whatever one's view, it was a vexed question.

I am saying that there are times when there is a danger of elevating what is a very important political principle, the rule of law—it is hugely important to me personally and to all of us who believe in democratic politics—in a way that can cause unnecessary tension by juxtaposing it against parliamentary sovereignty. I do not believe that the two are incompatible at all; the two go together.

Joanna Cherry: I understand that is what you are saying and I can see the text of your speech to UCL, but you have talked about situations where the rule of law has been applied in an overtly political way. I want you to give us an example of a case where that has happened, because if you think that there is a mischief here we need an example of it. You may well refer to Miller 2. I would disagree with that, but, if it is your view that Miller 2 was an overtly political decision, why not nail your colours to the mast and say so?

Robert Buckland: There are other examples. I can think of Privacy International, Nicklinson and other cases where you can see that there is a tension within the court itself about not just the merits of the case but the way in which it is approached. Judges are obviously put in a position where their own moral view becomes important. I do not think that the judiciary wants to be in that position, nor should it be. That becomes potentially political.

In the two lectures that I have given you will see a number of examples where I seek to draw out that type of issue from a number of cases.

Evans—the spider letters case—was another example. On the face of it, I can understand the rationale applied by the court in Evans, but it ended up in effect with the Freedom of Information Act and ministerial veto being overridden. A coach and horses were driven through a legislative provision by the court. These questions are not easy ones to deal with those tensions.

Joanna Cherry: Lord Chancellor, I hear you and am aware of different perspectives on the decisions that you have listed, but what we need to know today is what you think about them. Are you saying that the Privacy International, Nicklinson and Evans decisions are all examples of the rule of law being applied in an overtly political way, to use your words in the UCL speech?

Robert Buckland: I think they are examples of where the tensions can spill over. That is very different from my either attacking the rationale of the judges or suggesting that in some way they acted improperly. I would never say that about any of our serving judiciary. They do their jobs brilliantly and are world class.

What I am trying to do as a steward or custodian is make sure that the pitch on which everybody operates is as level and clear as possible. It is in that spirit of good will that I approach all of this. That is what I am trying to do in all my endeavours.

Joanna Cherry: I am not seeking to put words into your mouth; I just want to have from you, if we can, an example of a case where, to use your words, the rule of law has been diminished by being applied in an overtly political way.

Robert Buckland: I have given you quite a number of examples already and my lectures explain what I regard as some examples where some of those tensions come to the fore.

Joanna Cherry: Tension coming to the fore is different from the rule of law being applied in an overtly political way. I am sorry to labour the point. I want to move on so others can ask their questions, but this goes to the heart of what your Government are concerned about here. Can I take it that you consider Miller 2, Privacy International, Nicklinson and Evans to be cases where the rule of law was applied in an overtly political way?

Robert Buckland: They are cases where a space has been entered into by the judiciary that I think causes potential problems. I am here to protect the judiciary and make sure that everything we do as legislatures and as an Executive is designed to ensure that we do not end up with that sort of clash—that sort of conflict.

I believe it is achievable. I am not after a revolution or massive change; I believe in incrementalism. That is what I am seeking to achieve. I said it in the UCL lecture. What I am seeking to do is return things—you can

never fully return things—to the position we were in during the mid to late 20th century with regard to the relationship between the judiciary and other parts of the constitution. I do not think that is revolutionary; I would regard that, as the Americans would say, as a return to normalcy.

Joanna Cherry: Does that not mean repealing all the reforms of the 1997 Labour Government: getting rid of the Supreme Court; repealing the Constitutional Reform Act; and getting rid of the Human Rights Acts? If you want to return us to that position, would you not have to repeal an awful lot of the legislation passed by the first Labour Government in 1997?

Robert Buckland: I make no bones about the 2005 Act. I think it was a rushed and botched piece of legislation that has created many problems. I have committed to review it; I want to look at it carefully. I can assure you that I will not make the same mistake as that Government and bring something forward without proper consultation. There will be a proper consultative process for any potential changes, but I do think we can do better. I make no apology for wanting to return things to a more balanced position and one that I think was undermined by some of the legislation of that Government.

Q9 **Lord Brabazon of Tara:** In his evidence to this committee, Lord Faulks told us that the report of the Independent Review of Administrative Law found that "overall, the way that judicial review worked was satisfactory". Lord Faulks also told the committee that "any decision to do something about [judicial review] radically would be wrong and potentially contrary to the rule of law". Do you agree with him?

Robert Buckland: It is no secret that I am an incrementalist and am very wary of bold and sweeping proposals that try to achieve things that I believe would be either undesirable or unachievable. You will notice in the proposals that we look to consult upon, without revealing anything that might be in any Act, I resisted the urge to try to reduce the eligibility and standing of those applying for judicial review, as it is described by those who operate in this field. I have resisted that particular approach. I do not think it is the right one.

What is more interesting are questions about the nature of remedies that can be available to the courts in adjudicating on judicial review. There has been a lot of discussion about that both in the IRAL itself and subsequently.

There is also a question about ouster clauses—a well-worn and well-discussed issue in committees such as this and elsewhere. Frankly, difficulties have been encountered by the enactment of ouster clauses that have then been proved to be ineffective. It is one of those classic examples. I do not think that it is right to blame the judiciary for the problem with ouster clauses. Very often it is about the intention of the legislature and executive and lack of clarity perhaps when it comes to the deployment of such clauses. Those issues are far more important when it

comes to doing what I seek to achieve here with regard to the question of balance.

Therefore, the short answer to your question is that I agree with Lord Faulks about that, which is why any proposals that come forward will be in the best traditions of an incremental approach.

Q10 **Lord Singh of Wimbledon:** Lord Chancellor, why are you proposing to discontinue Cart judicial reviews? The number of judicial reviews has been falling over the years.

Robert Buckland: The Cart procedure is, with respect to those who in effect created it, an unnecessary additional avenue of redress that I believe is properly maintained through the existing appeal system for the First-tier Tribunal. It is important for all of us charged with responsibility for the administration of justice to make sure that our systems are fair and provide due process in compliance with all the obligations that we have to undertake willingly, and that we have an efficient system that does not place undue burdens on those who administer it.

I take the view that the Cart jurisdiction does not add anything qualitatively to that procedure. We have taken evidence on and listened to those who are closely involved with its operation. I have taken the view that it is time for Parliament to indicate clearly its position on it and come to the conclusion that it is unnecessary.

It is for that reason I would seek to remove it. I would not be doing it if I thought that the jurisdiction was an essential part that filled a gap in the law that allowed applicants a route of appeal from unjust or irrational decisions. My simple reasoning for the removal of Cart is that it is unnecessary and that we have enough procedures in place to cover the concerns that applicants might have.

Lord Singh of Wimbledon: You have been very clear about that. Why are judicial reviews becoming more infrequent?

Robert Buckland: You will remember that there was a change to the law in 2015 with regard to procedure. That was in response to what was seen as quite a big rise in judicial reviews relating to immigration cases that were at that time absorbing more and more of the proportion of the work done in public law. I think that it is right to acknowledge that that position has changed since then.

It is tempting to say that because the overall number of judicial reviews is not great it does not pose any sort of issue or problem, but it goes beyond that. The system itself, its reputation and its overall health can sometimes be affected by a relatively small number of cases. While I absolutely accept the adage that hard cases make bad law—I am a great believer in that principle—as a person charged with responsibility for the overall health of the system, it is important for me to check it and take

action if I think that particular aspects of its operation could cause a longer-term issue.

That is why, balancing all those points, I have come to the conclusion that it would be right and appropriate for me to take some incremental action with regard to judicial review.

Q11 **Baroness Ludford:** My question perhaps links to the earlier discussion that you had with Joanna Cherry. I also want to reference the speech you gave at UCL, in which you described the rule of law as a political principle and not a legal concept; indeed, you seemed to come close in that speech to suggesting that the will of Parliament, or even the will of the people, can override the rule of law. Will you enlarge on why you think that the rule of law is not a legal concept?

Robert Buckland: The rule of law is a hugely important principle that underpins our democracy and way of life. It is a vital political principle that most of us believe in wholeheartedly and adhere to. I am a passionate believer in it; I have lived it all my working and political life, but it does not mean it is the same as the law itself. The law itself is a separate construct; if you like, it is the material that is then used by applicants, respondents or the courts themselves, as opposed to the political construct of the rule of law.

What I was seeking to do in that speech was calm down the perceived division or conflict between belief in the rule of law and belief in parliamentary democracy and supremacy. I think that they are two sides of the same coin. Anybody who believes in the rule of law as deeply as you or I do will believe equally in parliamentary democracy and the will of Parliament, a democratically elected body, to govern and to be the source of authority for government.

What I sought to do in that speech was restore the balance here and say that they are not two colliding worlds. We are all part of the same constitution and construct, and what we should be doing is making sure that the balance between the different parts of the constitution reflects these general principles. I sought to provide a constructive way of looking at a principle that is often invoked but sometimes not fully understood.

Baroness Ludford: I am still somewhat puzzled. I hear you say that you were trying to reconcile arguments, but my worry is that you appear to be implying that Parliament in its sovereignty, or even the people in their sovereignty, can disregard the rule of law. It sounds like that. Parliament can get it wrong, so we need the courts to safeguard the rights that Parliament may, in its wisdom or lack of it, sometimes not respect.

Do you agree with the late Lord Bingham, who stated that one element of the rule of law was that the law must give adequate protection to human rights? If Parliament has not done so in its sovereignty, do you agree that the courts must fulfil that function of the rule of law as identified by Lord Bingham?

Robert Buckland: The truth is that we know we are in trouble when we have lost the independence of our judiciary.

Baroness Ludford: I did not know that we had lost the independence of our judiciary.

Robert Buckland: I did not say that. I said that we know we would be in trouble if we lost the independence of our judiciary, but that would happen because of a prevailing political environment that would clearly be anti-democratic. I do not accept that separating out the two and saying that somehow the judiciary is alone and inviolate as the sole guardian of our constitution is at all healthy.

Of course, we get it wrong in politics. I am sure that you would not agree with the outcome of every general election, but the point is that whatever one ends up with politically it is the result of a democratic expression; it is the result of a free and fair election, so we should not be shy as parliamentarians or in any way hesitant about saying that we are an important part of the constitution; we are the part that works with an independent judiciary to provide the democracy in which we all believe.

What dismays me is the suggestion that somehow it is a "them and us" situation: that "them" over there—as I sit here I am looking at the Supreme Court—somehow occupy another world and naughty old Parliament cannot do what it likes. That is a really unhealthy way to look at the relationships within our constitution.

I think that the fundamental issue is that we do not live in a separation of powers constitution. We have a constitution of checks and balances with independent elements such as the judiciary playing a vital role within them, but that is not the same as a separation of powers constitution with all that that entails. If we accept that—one can agree or disagree with it; one can say that we need to do better and have a separation of powers constitution—it follows that, while all of us operate within the rule of law and equality before the law, which is one of the central tenets of the rule of law, it is ultimately a political expression and principle, just as much as the sovereignty of Parliament is a political expression.

Baroness Ludford: I agree that it is a political principle that we must uphold the rule of law. I do not see how you can make the case that the rule of law is a political and not a legal concept. I worry that some Aunt Sallies are being put up here. Like Joanna Cherry, I ask whether you can cite any examples of where the courts have not respected parliamentary sovereignty or the proper rules of Parliament. I feel that arguments are being made that are not based on factual examples.

Chair: Lord Chancellor, before you answer that, may I call Joanna Cherry to ask a quick question?

Joanna Cherry: Sarah asked you specifically about principle 5 of Lord Bingham's eight principles of the rule of law. Principle 5 is that the

law must afford adequate protection of fundamental human rights. I think that you agreed with that. Do you agree with all eight principles that Lord Bingham set out, or do you think that we should revisit them? I thought that they were holy writs in English law; they are certainly accepted in Scotland.

Robert Buckland: You have hit upon the very problem. The rule of law is a vitally important political principle that we as democrats all believe in. If we sacrifice that we are in big trouble, but it is not the law itself. There is a difference between the two. I think that the rule of law is a political mechanism by which the law is respected, and we all accept equality under it. "Be ye never so high, the law is above you" is something in which we all believe, but there is a difference between the two. What I am seeking to do in the lectures I am giving is simply point that out and have a mature debate about it rather than set up an Aunt Sally or be accused of either reneging on or resiling from a fundamental tenet of our free society.

Joanna Cherry: But, surely, to understand the nature of the rule of law we need to look at its content. Lord Bingham set out eight principles of the rule of law, which I think it is fair to say have international recognition and respect. I am trying to establish whether you want to depart from any of them.

Robert Buckland: What I will say is that there is a danger that in eliding these principles with the law itself we do a disservice to the law and those responsible for it. One of the problems that we face is that there is a tendency—as lawyers we are perhaps guilty of it ourselves sometimes, although perhaps I should speak for myself—to regard the law and those responsible for it as guardians of a sacred flame that becomes more inaccessible to the people we serve than it should be. What I am seeking to do through the series of lectures that I am giving is to try to reflect on how far we have come and where we are, and whether we are in absolutely the right place.

Nothing pains me more than any perception that somehow judges and politicians—all of us—are anything other than servants of the people and of our country rather than those who are in any way above us. The rule of law is, but ultimately it is a political construct that takes its part alongside other important democratic principles.

Joanna Cherry: Joshua Rozenberg, the highly respected legal commentator, having heard your speech to UCL, commented that maybe you had it in mind to repeal the 2005 Act and set out your own statutory definition of the rule of law. Is that what you are planning?

Robert Buckland: A statutory definition of the rule of law would immediately contradict the very argument that I have just made, so that would not be something I seek to do.

Joanna Cherry: I am quite exercised by the Bingham principles. I used

the phrase "holy writs"; perhaps it was the wrong one to use, but they are very widely respected in the legal profession, in your jurisdiction and mine. I am not clear whether you are now seeking to depart from them. It is a valid question. You shake your head, Lord Chancellor, but let me read principle 8: "The state must comply with its obligations in international law as in national law". The Government, of which you are a part, planned to break international law last year in the internal market Bill until they got their way. Is that not an indication that you are departing from the Bingham principle?

Robert Buckland: I thought you might mention that. I utterly reject the contention you made. The introduction of the unenacted provisions was not a breach of international law. As I readily accepted at the time, there was potential for a conflict, but that stage was not reached. I think that the position taken by the Government to make sure that the enactment of those provisions would not be before any parliamentary trigger was a clear reflection of the exceptional situation in which we found ourselves and the difficult set of choices that had to be made. Ultimately, it was a political controversy rather than something that I regarded as leading to an inevitable breach of the Bingham principles or our international law obligations. There is quite a difference between the characterisation that some people have given it and what actually happened.

Chair: Could we now move on from that topic to the sentencing of young people?

Q12 **Florence Eshalomi:** The sentencing guidance says that the approach to sentencing should be individualistic and child-focused, not offence-focused. This is an area that is close to my heart, representing an inner-London constituency where, unfortunately, a number of young people have died as a result of stabbings and gun-related crime and have been caught up in county lines. Young people from my constituency have been found as far away as Liverpool. We should be very clear that these young people are being exploited by adult criminals. There should be greater focus on criminal exploitation of children in the same way as, rightly, there is a focus on child sexual exploitation.

Do you feel that we have a high proportion of children offenders who are seen as victims of child criminal exploitation? Why are the Government proposing to make it even harder for judges to take into account the individual circumstances of children who commit offences?

Robert Buckland: Thank you very much for that question, Ms Eshalomi. I strongly agree with your point about children being victims. With regard to the way in which county lines are now being policed, we are seeing a much more nuanced and sophisticated approach by British Transport Police and other agencies. When they identify an unaccompanied young person, perhaps on a train or lost in an unfamiliar city, they do not automatically assume that they should be arrested, charged and put on trial. Many of these young people are victims and need to be safeguarded. You will know that there are lots of mechanisms in place to

help that happen. Increasingly, we are seeing that approach being taken where young people are being exploited and are themselves victims.

The provisions in the Bill relating to children utterly respect the different way in which the court should view them and sentence them in a different way from adults. That principle is preserved. What I sought to do in only a very few number of the most serious cases—those involving murder—was to try to reflect the fact that the sentencing of a child of 13 or 14 will be a very different exercise from the sentencing of a child of 17. For too long, there was just one size fits all when it came to the starting point for the court to consider when imposing a life term of detention with a minimum term for a young person who, sadly, is convicted of murder.

What I sought to do was better to reflect the inevitable changes that occur throughout a young person's life in terms of maturity, but that is not to say the courts cannot reflect it the other way. There might be somebody who has reached the age of 17 but might be very immature for various reasons: a learning disability or other challenges. The courts are perfectly free to and should reflect all those factors when coming to the right sentence.

I sought to tighten the criteria for youth remand to emphasise the point that it should be used only as a last resort. I want to see greater intelligent and sensible use of bail packages and other support mechanisms to avoid our children ending up in custody in the first place.

I readily accept the challenge that faces me now, which is that, although thankfully we have a vastly reduced number of children in detention—it was about 3,000 10 years ago and is now down to about 500—the proportion of young people on remand from a black, Asian and minority-ethnic background is too high. I want to see that change. One of the reasons I want to undertake reforms to remand is that I think we can do better particularly for youngsters from a BAME background with regard to support on bail rather than always resorting to remanding to detention.

I hope to see a change of emphasis when that law takes effect. I want to reassure you that the way in which we approach children in the criminal justice system is distinct and has to be from an adult approach.

Q13 **Baroness Massey of Darwen:** I have a particular interest in children's rights. I want to ask about the evidence that we heard on sentencing. We heard that some of these measures are inconsistent with the UN Convention on the Rights of the Child. The UK is bound by the convention, having ratified it in 1991, but without incorporation children are unable to enforce their rights under it. Should not children whose rights are breached be able to enforce them? Why will the Government in England not incorporate the convention into law as Wales has done and Scotland is trying to? What is the problem?

Robert Buckland: Thank you very much for that question. I think that in essence it is unnecessary. We have in our domestic legislation very robust protections and safeguards for children that go well beyond the provisions within the convention. We are signatories to it. Article 4 of the convention says that the way in which the rights are to be enforced is a matter for the signatory state. That could be done via legislation if it chooses to do so, but not always.

It is important to remember how far we have come with legislation on children and remind ourselves that we have some of the most rigorous safeguarding procedures in the world. We quite rightly are progressively removing archaic or inappropriate references to children. As Solicitor-General, I can remember removing the phrase "child prostitute" from the statute book because it was clearly anachronistic and inappropriate. That work will continue under this Government. That is why I think incorporation of the UN convention is, with respect, unnecessary.

Baroness Massey of Darwen: We have come a long way, but I would challenge that optimism. We do have problems in that the age of criminal responsibility in the UK is 10. That is unjust and we are not doing enough yet to face the online harm situation. I do not need an answer to that; I am just making a comment.

I want to follow up what Florence asked about. According to the most recent figures, 54% of children in the secure estate are black or from other minority groups. Does not this Bill risk exacerbating the problem? What steps are being taken to address this disproportionality?

I go back to the UNCRC. I think the issue of children in youth justice has been a problem for many years and is not yet solved. I think that inspections by UNCRC inspectors would emphasise that.

We heard evidence that youth court proceedings are not recorded, making it harder for defendants to appeal and analyse whether there is any race discrimination. Would it not make sense to record these proceedings?

Robert Buckland: On the latter question, I will certainly look carefully at the recording of proceedings. Progressively, we have seen an increase in recordings. It all helps with regard to an accurate and agreed account of what happened in sometimes very important proceedings. I will undertake to look at that very carefully because I appreciate the seriousness very often of proceedings in the youth court.

I will not repeat what I said to Florence Eshalomi. It is important to remember how far we have come, in that the number of children involved in 2009 was 3,000 and is now about 500. That is progress. It is now my duty to look at disparity. I believe that the provisions set out in the Police, Crime, Sentencing and Courts Bill, which will be in your Lordships' House in a few months' time, help to address that and improve the position with regard to the disparity, but I will keep a very close eye on

this with a view to making sure that, wherever appropriate, particularly in the field of organised crime and gang exploitation, our children are treated as victims rather than defendants and that they are safeguarded and kept away from that cycle of criminality that is all too familiar to us.

In the absence of the Chair, Joanna Cherry took the Chair.

Q14 **Chair:** Lord Chancellor, I will ask the last question and then we can let you go. Thank you for your time.

I am looking at the committee's comments on the right to peaceful protest under the Police, Crime, Sentencing and Courts Bill. We recommended that the right to peaceful protest be set out in statute. One of the reasons for that is that we heard evidence that the right to protest is a very important one and is part of the right to freedom of expression, which the Government were very exercised about this week—in my opinion, rightly so—in relation to freedom of speech in universities, but freedom of expression cuts across the board.

We heard evidence during our inquiry that Articles 10 and 11 of the ECHR impose both negative and positive obligations on the state to facilitate the right to protest, but there are limits to it. We felt that it would be a good idea to enshrine that in the statute and give it clear statutory protection. Do you agree that the right to peaceful protest is fundamental in a healthy, democratic society and therefore should be afforded clear statutory protection, perhaps the kind of statutory protection that you are to give to freedom of speech in universities?

Robert Buckland: You are right to say that freedom to protest is very much part of freedom of speech. Freedom of expression, I suppose, is a good way of putting it and we are familiar with it in any ECHR context, but I do not believe that these measures have effects that perhaps some members of the committee fear. This is all about making sure that the police get the balance right between freedom of expression and the rights of others who are trying to go about their everyday lives. I think that in the Bill and any ensuing guidance or regulations you get a very clear sense of the need for the police to balance those particular rights and take into account the right of freedom of expression. The police cannot at the drop of a hat proscribe, circumscribe or even prevent a protest. This is all about extending to static protest what has been well-established law and procedure with regard to marches for many years.

I was genuinely puzzled by the degree of some of the noise and dissent about these provisions. In the main, when it comes to public nuisance, they are bringing into force the recommendations of the Law Commission published about four or five years ago—that body, with which I think we are all familiar, does excellent objective, calm and considered work—and codifying, if you like, and bringing together the law in a more coherent way to make it very clear not just to those who organise protests but the police themselves what to do when faced with a particular proposal.

The truth is that, of the thousands of demonstrations and protests that happen every year, only a very small number ever engage the police with regard to safety or security issues. I am sure that will continue to be the case. That is why I think that the current draft is more than adequate with regard to the balance of rights that you rightly identify.

Chair: Setting aside all the sound and noise about a variety of issues in relation to the Bill, I am asking you specifically about our recommendation to put in statute a statement about the right to peaceful protest being fundamental in a healthy, democratic society. It is interesting to read the comments of independent commentators such as Joshua Rozenberg, who said, "I don't normally favour statutes that make no change to the law, but, as the committee says, a provision of this kind would 'signal the fundamental importance' of the right to protest in a democratic society". Can you see some force in that?

Robert Buckland: Joshua makes the important concession that sometimes declaratory legislation is not appropriate. I think that it is a finely balanced point.

Chair: But he thought it was important.

Robert Buckland: I do not think that it is necessary. Inherent in the structure of this proposal is a respect for, acknowledgement of and adherence to freedom of expression. I would be extremely concerned if somehow this was used carte blanche by the authorities to prevent entirely appropriate and lawful static demonstrations. I am confident that we will see plenty of vigorous freedom of expression. It is just bringing static protests into line with mobile protests and creating greater consistency and, frankly, greater clarity, which I think is good for everybody.

Chair: Thank you very much, Lord Chancellor. You have been generous with your time this afternoon. I am sure that we are all very grateful to you for that. I will formally close the meeting in a moment, but before I do that, I want to thank the broadcasting team for its assistance this afternoon.