



HOUSE OF LORDS

Revised transcript of evidence taken before

The Select Committee on the Constitution

Evidence Session

with

**THE PRESIDENT AND DEPUTY PRESIDENT OF THE SUPREME
COURT**

Evidence Session No. 1

Heard in Public

Questions 1 - 8

WEDNESDAY 8 JULY 2015

11.15 am

Witnesses: Lord Neuberger of Abbotsbury and Baroness Hale of Richmond

Members present

Lord Lang of Monkton (Chairman)
Lord Cullen of Whitekirk
Lord Hunt of Wirral
Lord Judge
Lord Lester of Herne Hill
Lord MacLennan of Rogart
Lord MacGregor of Pulham Market
Lord Morgan
Lord Norton of Louth
Baroness Taylor of Bolton

Examination of Witnesses

Lord Neuberger of Abbotsbury, President of the Supreme Court, and **Baroness Hale of Richmond**, Deputy President of the Supreme Court

Q1 The Chairman: President, we are very grateful to you and the Deputy President for finding time to come and meet the Committee so early in the new Session. We much appreciate our contacts with you and the Committee had a very welcome visit recently to the Supreme Court, which was useful and practical. We have a series of questions to ask you, which I think you are fairly familiar with. I would like to ask you first about whether or not Parliament is sovereign. You have made a number of statements to this effect over the years but you have also indicated that there are embedded constitutional principles that sometimes Parliament would find it hard to override. Relating those, I wonder if you could clarify where you stand on that. Is there a hierarchy of constitutional statutes developing in the context of European law and our law? If so, how do you view it?

Lord Neuberger of Abbotsbury: In terms of our judgments, primarily in the HS2 case we had something to say about that. We did not use the expression “hierarchy of statutes” there, but we did indicate that, in a sense, all statutes are equal but some are more equal than others. I suppose one could put it that way. In the end, with parliamentary sovereignty, which we acknowledge, it is open to Parliament to repeal, override or modify any statute and, unlike in a country with a constitution, the courts cannot say primary legislation is wrong. Lady Hale in one case in the House of Lords canvassed an extreme possibility and others where different considerations might apply, but I hope and believe that will remain theoretical—an academic area. As far as we are concerned, subject to that exception, Parliament is sovereign. Therefore, if Parliament was to repeal one of the quasi-constitutional statutes or provisions, that would be something that we would respect, but—it is a topic Lady Hale and I were discussing and she

put it very well—it would require very clear words indeed in a statute before we were to accept that a fundamental provision, such as in the Bill of Rights, was being amended or repealed, and we would be very slow to accept it had been impliedly repealed. The precise point we were dealing with was whether the European Communities Act, which requires us to give effect to EU law, would override something as fundamental as Article 9 of the Bill of Rights, which involves the courts keeping their noses out of Parliament’s business.

The Chairman: Thank you very much. Lady Hale, would you like to add anything?

Baroness Hale of Richmond: I agree with everything that Lord Neuberger has said, which I do not always do. You referred to constitutional principles that are outside statute. I suppose the only thing to add is that there are various rules of construction of statutes that mean, for example, that we assume that Parliament did not mean to override fundamental rights unless it does so in clear and unequivocal terms so that the parliamentarians know what they are agreeing to. If they do in clear and unequivocal terms override fundamental rights, then we respect what Parliament has said.

Lord Lester of Herne Hill: The problem is that although it is clear with the Human Rights Act that Parliament intended that there should be no implied repeal—when an attempt was made to introduce implied repeal, it was rejected by Parliament—when you come to something like the Equality Act, which I would regard as fundamental, there is no similar provision. We do not have a very coherent view about what are organic or constitutional statutes and what are not from that point of view. Is that right?

Baroness Hale of Richmond: You are looking at me, Lord Lester.

Lord Lester of Herne Hill: I am trying to look both ways.

Baroness Hale of Richmond: The answer that I would give is that we are at the very outset of deciding upon the ambit of the no-implied-repeal doctrine, which is what we are talking about when it comes to statutes, and how that would apply to the Equality Act has not yet hit our desks, so I would not like to predict.

Lord Neuberger of Abbotsbury: One of the strengths—and some people would say one of the weaknesses—of the UK system is that it is not entirely coherent and subject to a logical structure, and we tend to make it up as we go along. That has its strengths.

Q2 Lord Judge: You now have the right to make written representations to Parliament. Do you envisage that extending to observations about proposed legislation?

Lord Neuberger of Abbotsbury: In general, the judges should keep out of policy, which is a matter for Parliament when it is considering legislation. We have two justified functions in relation to proposed legislation. One is when it impacts on the rule of law, which would

include access to justice but is not limited to access to justice; and the other is where it would affect the workings of the courts. Otherwise, we have to be careful about involving ourselves in policy. First, that is Parliament's role, not ours, when it comes to what is in statutes and what is taken away from statutes; and, secondly, as we in due course may have to rule on what the statute means, it would be inappropriate for us to have expressed a view in advance.

Lord Judge: Do you expect to make representations about the way in which the courts in England, Northern Ireland and Scotland are running, or do you expect your observations, if you make them, to be confined to those matters that are of the utmost importance to the Supreme Court and the Supreme Court alone?

Lord Neuberger of Abbotsbury: One of the odd features of our system is that we have a President of the Supreme Court and a Lord Chief Justice and his equivalent in other jurisdictions. It is very important that we mutually respect each other's functions, and I am glad to say and believe that that has been achieved very well so far. It would be wrong for me to say in no circumstances whatever would I make representations in relation to, say, the courts of England and Wales, but I find it very difficult to think of any circumstances in which it would be appropriate for me to do that, save if I was invited by the Lord Chief Justice. Similarly for Scotland and Northern Ireland.

Lord Judge: Finally on this topic, would the representations be made by the President, representing the President's views, or would these be the views of the court itself? Would this be a matter of collecting all the justices together to see if there is a collective view of something that needed to be said?

Lord Neuberger of Abbotsbury: Both Lady Hale and I are very anxious to ensure that the Supreme Court is as collegiate as possible. Again, it would be wrong to say "in no circumstances", but I find it very difficult to think of circumstances where it would be appropriate for me to take advantage of my right to make representations without first discussing it with all my colleagues and taking into account their views.

Q3 Lord Hunt of Wirral: How important is it that Members of both Houses of Parliament and of the devolved legislatures understand the role of the Supreme Court? What steps can be taken to increase Members' awareness and understanding of the Supreme Court?

Baroness Hale of Richmond: We would say that it is very important that Members of the legislatures have a basic constitutional understanding of the different branches of government and the relationship between them, so it seems a fairly important thing to do. We do our best to make ourselves accessible and available so that people can come and visit us, meet us, find

out about what we do and how we do it, and so on. We would attach importance to it, but it is for parliamentarians to come to us rather than the other way round, probably.

Lord Neuberger of Abbotsbury: We have had visits such as the Chairman mentioned from parliamentary Committees both in this House and the other place on occasions, and we welcome them. We have raised the possibility of having some sort of meeting with new Members of Parliament but we have been told that their commitments and interests would be such that we would be unlikely to have many people coming. However, if we were persuaded otherwise we would be very happy to do it—and similarly with any of your Lordships and Ladyships. We also have tried to develop relationships with both Houses. Lady Hale and I are attending an informal breakfast, for example, with the Lord Speaker and whoever she is bringing along and, indeed, the Lord Chief Justice tomorrow morning, and we are trying to have meetings with the Clerk of the House—Robert Rogers as it was last year; David Natzler this year, I hope—to discuss matters of interest and exchange experiences.

The Chairman: I suppose the presence in this House of people like Lord Hope of Craighead, with their past Supreme Court connections, are also a valuable source of communication.

Lord Neuberger of Abbotsbury: Very.

Lord Norton of Louth: As a follow-up to that, is the reluctance to be more proactive in disseminating the work of the court one of principle or simply one of resources? It strikes me that one of the obstacles to understanding the role of the Supreme Court is the very name. There is a tendency to read in that, “We have got a Supreme Court; it must be like supreme courts in other nations.” I think there is an educative task there to explain what the role of the court is.

Baroness Hale of Richmond: We do have a lot of educational resources that have been developed by the court. They are mainly aimed at schools, but that does not mean to say that they could not be of use to other people as well, for exactly that sort of reason. Perhaps I should add that we also attach importance to relationships with the devolved legislatures and Governments. For example, there is a gathering called Legal Wales that both Lord Neuberger and I have been along to address, because we do not forget that we are the Supreme Court of the whole United Kingdom.

The Chairman: Do you encounter a degree of nationalism in those encounters? In relation to the Scottish Parliament, because of the dominance of the Scottish National Party in the Scottish Parliament and its general posture, which tends to be anti-United-Kingdom and anti-unelected-bodies, do you find it difficult to communicate with them, or do you have a direct and effective exchange of views?

Lord Neuberger of Abbotsbury: Our relationships in Scotland, at any rate, have mostly been with the Scottish judiciary. While I have met the First Minister recently, we have not had many dealings with the MSPs or the Government. Again, we would be perfectly happy to meet them and talk to them. We had a visit a couple of weeks ago from the Northern Ireland Justice Committee, for example, and we very much welcome that, and I have had meetings with the First Minister in Cardiff.

Q4 Lord Lester of Herne Hill: Can I ask you about your relations with each of the two European courts? How would you characterise your relationship, in the broadest sense, with the Strasbourg court and then with the Luxembourg court?

Lord Neuberger of Abbotsbury: In terms of our discussions, we talk on two levels. One is, as it were, officially, which is through judgments. If we have concerns about what the Strasbourg court or Luxembourg court has decided, we may express those concerns in the judgment; we may go so far as to take a different view and leave the parties, in the case of Strasbourg, to go to Strasbourg. With Luxembourg we cannot really express a different view; we are bound by Luxembourg decisions, but we can make our concerns clear in a subsequent case if we think it right. I hope we ensure that if we disagree we do so politely. We also have informal meetings. Judges of the Strasbourg court and judges of the Luxembourg court come to see us; we go and see them. We try to have meetings where we agree topics in advance, and we identify topics where we are concerned that the common-law voice or concerns in this country are not being taken in the way that we think they should be taken by the justices, and they similarly can either explain to us why they take the position they do or take up points of concern to them and ask us for our views on them. It is a genuinely constructive relationship.

Lord Lester of Herne Hill: We are the major common-law country in the system. We have Ireland and in Strasbourg we have Malta and Cyprus, and that is it. Are we at a disadvantage in our discussions, whether through judgments or meetings with the judges from the two European courts? The rest of Europe has written constitutions they can play against the European courts; the German constitutional court can say, “Awfully sorry, but we have a basic law which we give paramountcy to”. Are you at a disadvantage in upholding common-law principles because of the strange constitutional situation we are in?

Lord Neuberger of Abbotsbury: It can be a disadvantage. It was a point we touched on in HS2 and why we suggested that it may be that there are some statutory principles enshrined in the Bill of Rights, petition right, the Act of Settlement and so on, and possibly the Equality Act—as you mentioned, we would have to consider that—which we would treat as quasi-constitutional and say, “You cannot go there”. That was raised as a possibility in relation to

EU law. We have yet to decide it. The common law/civilian law difference is not so much a problem in Luxembourg. It is more of a problem in Strasbourg, where we have had decisions that we thought failed to give proper weight to the fact that we were a common-law system, the Horncastle case being an obvious example—hearsay evidence in criminal cases and the protection afforded to defendants. That was a very good example of a constructive dialogue with Strasbourg. Strasbourg said that our law did not comply with the convention and we, in a case in which Lady Hale and I were parties as judges—indeed, Lord Judge contributed more than we did to the judgment, it has to be said—gave a detailed judgment in which we explained why we considered Strasbourg was wrong. The Grand Chamber, the main Strasbourg court, effectively accepted that we were right. What we have to do is to do that extra bit, as you indicate, of explaining the common-law system to them. I do not think they have deaf ears, and I like to think that aspects of our system are now being engrafted into their way of thinking and we just have to work at it.

The Chairman: Lady Hale, would you like to add anything?

Baroness Hale of Richmond: Examples such as the Horncastle case, which Lord Neuberger has mentioned, are very few and far between. The idea that this is a serious problem is just not so. But there are occasions where we have to say, “No, you have misunderstood our system”—not only the Supreme Court but indeed the Court of Appeal, which has done so quite recently in the whole-life tariff cases, which is another example of that same dialogue going on. We do not know whether the Grand Chamber will agree on that one, but it is the same sort of question.

Q5 Lord Cullen of Whitekirk: The Lord Chancellor has a stated policy “to make our own Supreme Court the ultimate arbiter of human rights matters in the United Kingdom”. There may be questions as to what that entails, but have you been consulted in regard to this as to how it might be put into practice, or not?

Lord Neuberger of Abbotsbury: I have yet to have a formal meeting with the Lord Chancellor. That is not a matter of complaint; I have one fixed quite shortly. I have had one or two informal meetings with him. The previous Lord Chancellor had the courtesy to come and see me just before the Conservative document was produced explaining what their proposals were before the last election to tell me what they were doing, but as to consultation, no. We would be chary, for reasons I have mentioned that you will appreciate, of being consulted in the sense of being asked to give our views, but we would give our views in so far as a particular proposal would involve difficulties in terms of the judges or the courts in practical terms or if it affected the rule of law. Since this particular cat has many possible ways in

which it may be skinned, we are naturally very cautious about saying anything—even more cautious than usual—until we know what is proposed.

Lord MacLennan of Rogart: Do you anticipate that the changes to the Scottish devolution settlement might result in any more cases coming before the Supreme Court?

Lord Neuberger of Abbotsbury: Changes in the law almost inevitably lead to litigation in order to clarify points that may be obscure and the best-drafted legislation always leaves points open for that purpose; lawyers make sure they do. One noticed, for instance, a number of cases from Scotland after the last devolution settlement, and now the Scottish cases raising points of principle, although they are still coming, are smaller in number. The short answer is yes, one would expect some cases.

Lord MacLennan of Rogart: Would you expect the change to a reserved-powers model for Wales to affect the extent of the referral of legislation to the Supreme Court?

Lord Neuberger of Abbotsbury: That partly depends inevitably on quite how the legislation is framed. If it is framed similarly to the Scottish legislation in terms of principles, then the principles, I hope, are reasonably clear as a result of a number of cases already decided, but, as I say, it is almost inevitable that changes of this fundamental nature will lead to some points of principle that we will need to decide.

Baroness Hale of Richmond: There is an interesting difference between the Scottish and Welsh cases raising devolution issues, because no sooner did the Welsh Assembly get full legislative powers than we had three references by law officers for our view on whether the proposed legislation was within the scope of their powers. We have never had a reference relating to Scottish legislation. Whether Scottish legislation is within the scope of the devolved powers has always come up in real cases where somebody has been arguing that it is not—usually big business, like insurance companies or tobacco companies, but not invariably. It is an interesting difference between the two and it will be interesting to see whether this continues to apply.

Q6 Lord Norton of Louth: This question, in a way, touches upon what I was covering earlier and the status of the court. Certainly in relation to devolution legislation it could be said that the court in relation to Scotland, Wales and Northern Ireland is the Supreme Court for those parts of the United Kingdom, because you have to determine whether something is in the devolution legislation. I am wondering if it extends beyond that. You may have already touched upon the impact of—as have been mentioned already—the Human Rights Act and the European Communities Act. Coming back to the point, Lord Neuberger, you were touching upon, if there was something that impacted upon Article 9 as a result of the

jurisprudence of the ECHR or something like that, is it the case that the court is acquiring the form of a constitutional court? If so, do you see any parallels with constitutional courts elsewhere?

Lord Neuberger of Abbotsbury: It is inevitably a topic that we have discussed. We are undoubtedly, as you say, for the various reasons—internally devolution and externally Europe—developing constitutional characteristics, but unless and until we have a constitution and unless and until that constitution, as is the case with almost all constitutions, gives the court power effectively in exceptional cases to override Parliament, we are not a constitutional court. At the moment, we have the control—the safety net—of knowing, whatever we do and however confident we are it is right, Parliament can say, “Sorry, we do not like this. We are changing it.” In that sense, we are no nearer to being a constitutional court than we ever were.

Baroness Hale of Richmond: I agree with all of that. We do constitutional things, so in that sense, yes, we are a constitutional court. We do those things because Parliament has told us to do those things, otherwise we would not be doing them. We are not like a continental constitutional court, which is a separate body from the ordinary courts of the land, usually to which the constitutionality of legislation is referred, because it is a specialist in that. We do not have that role, save in relation to the devolved legislatures, where we do. It is much more familiar to us in a common-law jurisdiction to deal with problems in the context of real cases. It has been a very strange experience dealing with them in the abstract.

Lord Norton of Louth: There is a fundamental difference, then. You are saying that the authority of the court derives from Parliament, not from some higher law document.

Baroness Hale of Richmond: That is right.

Lord Morgan: This is all very British; it is all rather informal and a matter of agreement and permission. In France, as I understand it, there is a constitutional court, which deals with matters such as whether statutes breach human rights and matters of that kind, and there is a quite different administrative court that deals with issue that are not constitutional. Do you, as Supreme Court justices, feel constrained in that there are areas in which you have to be very circumspect before you embark on them?

Baroness Hale of Richmond: As I said, we do the jobs that this Parliament has given us to do. In relation to European Union law, Section 2 of the European Communities Act says we have to give primacy to European Union law, even over acts of the UK Parliament. This Parliament can repeal or amend the European Communities Act, but unless and until it does, we do that job. But that is a very limited area. In other areas it is not a question of treading

carefully; we do not have power to do it. The Conseil Constitutionnel in France is an interesting body, which does deal with the constitutionality of legislation, but, as I understand it, the ordinary courts in France also have jurisdiction in relation to human rights questions that come up in individual cases.

Lord Morgan: That is correct, yes.

Lord Neuberger of Abbotsbury: Your point is an interesting one. We are conscious that over the past 20 years, for reasons that we have been discussing, the court, perhaps particularly a supreme court, has almost been backing into the limelight a bit. I think we are fairly comfortable—in answer to your specific point—with where we are. Judges vary in the same way as everybody else, but I do not think there is a hunger for more power and a feeling that we are being constrained. I like to think—I suppose I would say it, would I not?—that we are trying and making a reasonable job of making it work in a British system in which, as we are given roles, as Lady Hale says, we adapt to them and we make the most of them, but I do not think we are hungry for more power. We are fairly comfortable where we are—and I think it is our job to be comfortable where we are.

Lord Morgan: Yes. As you know, we are very much in a process of very rapid constitutional change, and it might be that your constraints might have to be looked at rather quickly. One of the areas I was thinking of, which we discussed earlier, is, in relation to devolution, the question about your powers of what might be called conflict resolution. Some issues have emerged in Wales and they might in the future in Scotland. Would that be an area where perhaps you might have to be more extensive in your role?

Lord Neuberger of Abbotsbury: Yes. As Lady Hale says, in the end our job is, subject to common-law principles, to do what Parliament asks us to do. If there is a new role of a somewhat different nature, then certainly we would want to be consulted about it in terms of feasibility and practicality, but, if it was decided that we would do it, then it is very difficult to think of circumstances where we would not do our best to do it. I hope we would rise to the occasion, as I like to think we have done so far.

Lord Lester of Herne Hill: In the previous session with the Chancellor of the Duchy of Lancaster, Mr Letwin, when I pressed him—or tried to—about the absence of core rights such as free speech across the whole of the union because of the problems in the devolution legislation, I think what he implied was, “If the judges do not like it, they will tell us and then we can do something about it”. Would I be right in thinking from what you have both said that at most you would say it in a lecture but it would be beyond your powers at the moment

to say it in a judgment, because it would mean violating the separation of powers without any lawful authority?

Lord Neuberger of Abbotsbury: We sometimes express a view on the unsatisfactory nature of legislation, but it normally tends to be on lack of clarity in the drafting or omission. I am uncomfortable about commenting on what Oliver Letwin said without seeing it, but I would have thought that we would be unlikely to comment on the desirability of legislation on a certain issue, save on the whole for technical reasons because an Act worked in a certain way and there was nothing about how one was to administer it or whether it was to apply in certain circumstances. I am conscious that I am being cautious, but it is partly because one would want a specific example to get one's teeth into. You can then say, with some justification, if you gave me a specific example I would then have to duck it because I would have to say that we might have to consider it. So, I am slightly cautious, but in general we would be unlikely to tell the Government what legislation to do, and the more fundamental it was, the less likely we would be to mention it in a judgment, although—you are quite right—we may mention it in a speech, but normally with a degree of diffidence.

Q7 Lord Norton of Louth: It is clear from your answers the importance of the relationship between the courts and Parliament. I wonder if I could tease out how you would see that relationship. It strikes me there are different models. One would be a detached model where each sees its role as distinct: you are doing your job; Parliament is doing its. Another model would be adversarial, where there is a conflict: Parliament disagrees and you are challenged. The other would be what Alison Young has called the democratic dialogue model, where you see it more as an exchange and a discourse, and a productive one. I wonder which of those three you would feel applied to the relationship as it exists.

Lord Neuberger of Abbotsbury: It has tended to be the first, but we have got more of the third, and that is a good thing provided we respect each other's boundaries. I would hope that we can avoid the second. So far we have, and I hope that will continue.

Lord Norton of Louth: How do you see the third model then developing if you are now acquiring that relationship? How do you see that proceeding and how should it proceed?

Lord Neuberger of Abbotsbury: So far, we are doing it on a relatively informal basis—but not secretly—in the sense that we have got this informal meeting with the Lord Speaker and one or two Members of this House; we have informal meetings with the Constitution Committee and with the Justice Committee, and we would be happy to have them with other Committees and groups of MPs; and we have meetings with the Clerk of the House and his clerks. They are informal discussions, but I do not think anything that is said we would be

embarrassed by on either side. It is a question really, as I say, coming back to the UK approach to these things, of doing it on an experimental basis, taking things to new stages as and when it seems necessary and not having any very clear structure and long-term aim in mind but just seeing how it works and steady as she goes.

Lord Hunt of Wirral: As we reflect on all that you have been saying to us, I remember Lord Reid once said, “Those who believe judges have no role in law-making have a belief in fairy tales”.

Lord Neuberger of Abbotsbury: He did indeed.

Lord Hunt of Wirral: As you describe this role, are you able to explain what is fit for law-making only by legislators and what is fit for law-making by judges? If you were just to share with us your simple answer to those questions.

Baroness Hale of Richmond: There are no simple answers to that question, Lord Hunt, as you perfectly well know. I wrote a lecture about it many years ago, which I delivered in Dublin. I have just been re-reading it and thinking, “Yes, that is probably right”. There are some very clear boundaries about the sorts of law that it is appropriate for judges to make and the sorts of law that it is appropriate for Parliament to make, but there are some very fuzzy edges as well.

Q8 Baroness Taylor of Bolton: The one thing that we have not mentioned is the Executive, who initiate most of the legislation. In all these questions, that is a separate dimension, and yet it cannot be separate because it is the basis on which we spend most of our time legislating.

Lord Neuberger of Abbotsbury: That is entirely true. Although we talk about separation of powers and the three branches of government, there is, in a sense, a hierarchy. It is a curious hierarchy because some people would say it does not reflect reality, but Parliament is on top; in the end, you can override us. We can review the Executive and tell them what they can do and cannot do, albeit on a case-by-case basis. In that sense, the Executive come bottom of the pile, but in reality, as you say, they have an enormous amount of control and to some extent the force is on the side of the big battalions and they have many more of them. The question about the common law is a very important one. We have talked about the common law, but the point that we have not made because we have been concentrating on what Parliament gives to us is that we do have a role in law-making. Five hundred years or 600 years ago almost all the law was made by judges; now we have the areas of law that Parliament lets us have because it chooses not to legislate and, to some extent, the common law develops in filling in the gaps that legislation has left. The power of the Executive and the influence of the Executive are something that none of us should forget, I agree.

Lord Morgan: Could I just ask one question? It arose in passing about the Legal Wales conference that you mentioned. This might be an area where the Supreme Court would have to extend its interest or its remit. Part of the point there is that I know one or two people who were in this Legal Wales conference and they were very concerned that there should be a thing called Welsh law, which perhaps might need a Welsh judge on the Supreme Court. I was wondering quite what Welsh law would consist of. I speak Welsh and I can acknowledge that legislation dealing with the Welsh language might need a different approach, but the jurisprudence would remain the same even if the language changed. Could you foresee an area in which something called Welsh law had a legal conceptual strength of its own?

Lord Neuberger of Abbotsbury: In Scotland they do not have the common law; they have a different legal substratum and then they have statutes, many of which are the same as ours but many of which are not. They have always had their own courts and their own law. Northern Ireland has the common law and is quite like us, but it has its own traditions. The statutes are very similar—almost all of them—to ours, but they have some local statutes. Wales up until recently, as you say, has really been part of English law, but it is developing its own law. For instance, there are some interesting developments on housing law. In a sense it is the same fundamental legal concept as ours, but the legislation and the protection given to residential tenants is different. In that sort of way, I suspect Welsh law will develop, in that the statutes applicable to residential tenants, to agricultural workers and to various other groups and various other principles will develop and change. To that extent, Welsh law, I suspect, if the present path is proceeded with, will become more different from English law.

Lord Morgan: Yes. I see. One of the areas that the French constitutional court, or some aspect of that structure, has commented on is the demand that emanated in Brittany for people to look at whether French should be the only official language in France. Could that be an area in the future where the Supreme Court might have to take a view, or would you leave that simply to Parliament?

Lord Neuberger of Abbotsbury: Unless there was, say, a human rights point involved, it would be a matter for Parliament.

Baroness Hale of Richmond: There could be a human rights point in fair trials, for example. If you cannot understand what is going on, then you probably are not going to have a fair trial, so either the trial has to be able to be conducted in your language, which is the situation in Wales, or there has to be interpretation. That sort of point could come up.

Lord Cullen of Whitekirk: Could I make a small addendum for clarification? In Scotland we do not have “the common law” in the sense of the English common law, but we have our own common law, which is the result of a whole number of influences over many centuries.

Lord Neuberger of Abbotsbury: I blush.

The Chairman: I saw Lord Cullen react earlier, so I knew he wanted to come in. You have been extraordinarily open and very lucid with us, and very informative. I think we are all extremely grateful. We have managed to finish just about on time, which is unusual for us but it demonstrates the conciseness of your answers. Thank you very much indeed to both of you.