

Written evidence from Lord Judge (SCC0025)

I have read and admire the paper from Paul Evans.

“Contempt” covers a vast range of conduct, from a stupid outburst during proceedings to deliberate violence towards a Member or a member of staff. It can take place in the Chamber, in Committee, in the precincts of the House or outside. I am sure that we all think that we know what contempt covers but I suspect that our views would not all be identical.

However it is defined (and a definition is essential) it should extend to both Houses, the Chambers and the Committees.

It should not be left to some vague semi-medieval concept dependent on the principle that Parliament is the High Court of Parliament. Contempt of Court is now and for 40 years or so has been a statutory offence, and is already thought by some to be out of date. There are new contempts, like a juror consulting social media to discover whether the defendant has a previous conviction, or to find out what some other expert thinks of a point in issue at the trial. Old forms of contempt have been abolished, most recently “murmuring judges”, which covered vituperative criticism of a judge or judges which would bring the judiciary as a whole into public disrepute.

Of course there must be an immediate remedy against the vocal outburst, and power to remove the offender from the Committee, or the Chamber. But what powers are there to deal with the interruptor who throws a punch and strikes the nearest member of the Committee, or in Central Lobby? Is there a power of arrest? Vested in whom? And where, physically, is the nearest person vested with those powers? And how, and by and through what process should the violent offender be dealt with?

Apart from immediate control, like adjourning the Court if an interruptor will not leave or desist, and, in Courts where there are cells, (but not all Courts have them) keeping the contemnor in custody until the end of the day. In the event of a more serious contempt the days have gone when the judge could immediately pass an appropriate sentence. Apart from anything else, he or she would be acting as the judge in his or her own cause. Similarly, the House, the Speaker, the Committee, or the Chair of the Committee.

The famous case of the Welsh Language demonstrators disrupting proceedings in England in their noble cause would nowadays have required a different process. It would not be a public advantage for the individuals to explore the limitations on the powers of Parliament or Parliamentary Committee through litigation. The question whether dishonest claiming of parliamentary expenses was not amenable to the ordinary criminal process had to be finally decided in the Supreme Court, although most citizens will have thought it absurd that the answer to the question could possibly be uncertain. Again, could Article IX be relied on to dissuade the Court from examining the decision of the Committee?

In short, statutory clarity is essential. And where the conduct in question would be covered by the ordinary criminal law, perhaps it should normally be allowed to take its ordinary course.

21 September 2020