

## SUPREME COURT UK-STYLE

One person who will have been pleased at recent announcements is Lord Bingham, the senior law lord. Known more recently for his campaign to be Chancellor of Oxford University, he has also been a courageous campaigner for an independent supreme court. In the Constitution Unit spring lecture given in May 2002 he summarised his reasons as follows: "The law lords are judges not legislators and do not belong in a House to whose business they can make only a slight contribution".

The Lord Chancellor can also sit as a judge in the House of Lords, but the other law lords disliked it and Lord Irvine will have been the last Lord Chancellor to do so. The government is now planning to change all that. In the press briefing issued to announce the new Department for Constitutional Affairs headed by Lord Falconer, No 10 stated that this was part of a substantial package of further reform measures including an independent Judicial Appointments Commission, and creation of a new supreme court. The statement promised a consultation paper on both reforms before the end of July.

Speed will reduce the range of options. One thing definitely not on the agenda is a US-style Supreme Court. Even in a new supreme court the law lords will not have power to strike down legislation. Nor will they be selected as "liberals" or "conservatives" in the way that American presidents pack the US Supreme Court. And, unlike their American counterparts, it is highly unlikely that they will have to face confirmation hearings before a parliamentary committee. Bypassing the new Judicial Appointments Commission, the law lords will probably still be selected by Lord Falconer from the best of the judges in the Court of Appeal, and formally appointed by the Queen as they are now.

Rational reform would include merger of the Appellate Committee of the House of Lords with the Judicial Committee of the Privy Council. Lord Bingham has acknowledged that would be simplest and neatest. But it is unlikely to happen in the near future. The law lords would love to lose their overseas jurisdiction (especially the death row cases from the Caribbean), but the independent states which now appeal to the Privy Council would have to agree. New Zealand is planning to drop out, but a Caribbean court of final appeal seems as far off as ever.

The most likely reform is to establish the law lords as a court in their own right, renamed and re-housed, but with its powers unchanged and with the Privy Council continuing alongside so long as overseas demand for its services continues. Possible homes for the new supreme court could be a wing of Somerset House, almost opposite the law courts, or Middlesex Guildhall (currently a crown court), which is just across Parliament Square. Moving there would help overcome the law lords' acute shortage of

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space, which prevents them having adequate support staff: in the House of Lords their office needs have to give way to the needs of the legislature.

The law lords will undoubtedly gain from a move to better accommodation. So should litigants, who will gain from a better resourced supreme court. The main loss is to the House of Lords, which has benefited from the legal expertise of the law lords in debates, and in the work of its committees. But the law lords have been increasingly constrained in contributing to debates, even on law reform, in case the issues subsequently come before them judicially. Nor is the House of Lords short of wise and experienced lawyers: there are about 80 lawyers there who are not law lords, and if necessary more with specialist expertise could be appointed.

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