**Judicial Independence: What is judicial independence? Politics.co.uk (2012)**

Most constitutional theories require that the judiciary is separate from and independent of the government, in order to ensure the rule of law - that is, to ensure that the law is enforced impartially and consistently no matter who is in power, and without undue influence from any other source.

The doctrine of the "separation of powers" has traditionally proposed that the state is divided into the separate and distinct arms of Executive, Legislature and Judiciary, whereby each arm acts as a "check and balance" on the others.

However, until recently this doctrine was not observed in the UK, with the Executive (the Government) drawn exclusively from members of the Legislature (Parliament), while in the office of the Lord Chancellor the three arms were fused: the Lord Chancellor was a Cabinet Minister, a member of the House of Lords and head of the Judiciary.

In July 2003, the Government announced plans to abolish the post of Lord Chancellor (making the Lord Chief Justice head of the judiciary, as "President of the Courts of England and Wales"); abolish the system of Law Lords sitting in the House of Lords and replace it with a separate Supreme Court; and to establish a new Judicial Appointments Commission.

These plans provoked considerable controversy and eventually the then Prime Minister, Tony Blair, decided to modify rather than abolish the ancient role of Lord Chancellor. The reform of the Lord Chancellor's role has separated its different responsibilities and made a clear distinction between government, Parliament and the judiciary.

**Background**

The independence of judges in the UK is protected in several ways: judges are independent of the executive and the legislature - and vice versa - and do not get involved in political debate. Apart from modern rules relating to age and health, judges of the High Court and above cannot be removed from office without an address passed by both Houses of Parliament. And judges are almost entirely immune from the risk of being sued or prosecuted for what they do in their capacity as a judge.

The Constitutional Reform Act 2005, which came into force in April 2006, considerably modified the role of the Lord Chancellor and in so doing, strengthened the independence of the Judiciary.

In April 2006 a new Judicial Appointments Commission began to operate. This ended the Lord Chancellor's position as head of the judiciary (courts of law in England and Wales) and power to appoint judges. And in July of that year, members of the House of Lords elected their first Lord Speaker. This new role assumed some of the Lord Chancellor's responsibilities, such as chairing debates in the Lords' chamber and speaking for the House on ceremonial occasions.

The Ministry of Justice was created in May 2007; it has responsibility for courts, prisons, probation and constitutional affairs. The present Lord Chancellor combines his role with that of Secretary of State for Justice.

The judicial function of Parliament ended in 2009, when an independent UK Supreme Court was established. The court assumed the jurisdiction of the Appellate Committee of the House of Lords and the devolution jurisdiction of the Judicial Committee of the Privy Council. It is an independent institution, presided over by twelve independently appointed judges, known as Justices of the Supreme Court.

**Controversies**

Constitutional reformers have long held the UK's "fusion of powers" to be unsatisfactory and the position of the Lord Chancellor anomalous in a modern democracy. However, as with most of the UK's constitutional anomalies, the longstanding apparent evidence that the status quo "works", has meant that this argument had little appeal amongst the wider public.

Nevertheless, to the surprise of many, in July 2003, the Government announced radical plans to reform the judicial system. The speed with which they were brought out led many to suggest that the plans were not well thought through: some claimed that the proposals were brought forward purely as a political manoeuvre to unseat the incumbent Lord Chancellor, Lord Irvine, who was opposed to any reform.

In July 2004, the House of Lords overturned provisions in the Constitutional Affairs Bill to abolish the historic post of Lord Chancellor. However, the House accepted those elements of the Bill relating to the appointments commission and the end of the Lord Chancellor's active judicial role.

The past 25 years have seen a growing judicial activism. Part of this stems from the growing body of supranational jurisprudence growing out of the UK's entry into the European Union, and part from the abandonment by governments of the postwar political and legal consensus. However, the Human Rights Act 1998 has had a profound impact in this sense. Notably, in the case of R (on the application of Q and others) v Secretary of State for the Home Department [2003] 2 All ER 905, Justice Collins, sitting in the high court, criticised the provisions of the Nationality, Immigration and Asylum Act 2002, stating that the removal of benefits from asylum seekers who did not apply on arrival in the country was unfair and breached their human rights.

This and similar cases, and an increasing willingness on the part of judges to speak out on political issues (notably that of the former Lord Chief Justice, Lord Woolf), have led Ministers to accuse judges of attempting to usurp the democratic process. Nevertheless, this trend predates the Human Rights Act: under the last Conservative government Home Secretary Michael Howard was publicly criticised by the Lord Chief Justice Lord Taylor on minimum sentencing, and by Lord Donaldson on the 1997 Police Bill.

Proposals to broaden the diversity of the judiciary by selecting more women and ethnic minority candidates have raised concerns about jeopardising the independence of the appointments system.;  the Crime and Courts Bill included in the Queen's Speech in May 2012 includes provisions to increase judicial diversity. However, the Judicial Appointments Commission has insisted that candidates for judicial office are "selected on merit, through fair and open competition, from the widest range of eligible candidates," although it also notes that it has a responsibility to "have regard to the need to encourage diversity in the range of persons available for selection for appointments."

"It is vitally important in a democracy that individual judges and the judiciary as a whole are impartial and independent of all external pressures and of each other so that those who appear before them and the wider public can have confidence that their cases will be decided fairly and in accordance with the law. When carrying out their judicial function they must be free of any improper influence. Such influence could come from any number of sources. It could arise from improper pressure by the executive or the legislature, by individual litigants, particular pressure groups, the media, self-interest or other judges, in particular more senior judges."

Judiciary of England and Wales - 2012