The Supreme Court: Radical change or business as usual?

"Adapt or perish", wrote H.G. Wells. The interior of the Supreme Court building seems to have been conceived with this maxim in mind. Almost self-consciously modern, lawyers sit at eye-level with judges, and the glass/veneer aesthetics appear more suited to a corporate boardroom than the highest court in the land. Even the carpet has been the subject of debate. However, the sight of barristers decked out in their wigs and gowns, made famous by Rumpole and Kavanagh, contrasts starkly with the Court's new contemporary form, and serves as a pleasant but potent reminder that in the British Legal System, tradition dies hard.

The change from the 'Appellate Committee of the House of Lords' is far from a 'radical change'. No 'radical change' was ever needed. The geographical and linguistic alterations that formed the substance of the transformation were directly intended to solve the problems that Tony Blair allegedly identified on the back of a cigarette packet in 2003. Indirectly though, these changes may have begun to crack the constitutional ceiling that has limited the Judiciary's remit for 700 years.

The cigarette packet has, understandably, never been published. However, from the subsequent analysis of the proposal in 2004, it seems that The Supreme Court was introduced for two main reasons. The first of these was the perception amongst the political class that the Law had an image problem. Commentators from Dicey to Raz have insisted that Justice must be visible. Whilst the pomp and splendour that informed the public's understanding of the House of Lords may have given the impression of legal competence, it also presented the image of a judicial clique, distanced from the public by their surroundings, nobility and, most importantly of all,

fervent adherence to antiquated formalities. In reality of course, this was far from the truth. The Law Lords have sat in business dress for many years, but the public have not been able to see them doing so. Alas, the myth lived on.

To this end, much of the estimated £56.9 million transformation budget appears to have been spent on so-called 'access features', intended to make the court more visible. These include a café with television screens showing footage *recorded in the courtrooms*. The italics are easily justified. The new courts on Parliament Square are the first in the UK to film proceedings, and will be the first to broadcast these to the public. This is no small step. Until now, the sum total of the public's exposure to the highest echelon of the legal system, and the decisions it makes, has been a few pithy sentences read from the benches of the House of Lords and broadcast on BBC Parliament. Decisions of major constitutional significance passed by without extra-legal comment, as did the appointments of the judges making them.

This seems set to change. Both the Guardian and The Times picked up on the 'will-he won't-he' controversy surrounding the application of Jonathan Sumption QC to become the 12th Supreme Court Justice, and only the fifth person in a century to be appointed directly from the Bar. The story never made the front pages, and would likely have been deposed from print altogether had a new judge been appointed to 'X-Factor' or 'Strictly Come Dancing', but the debate surrounding the 12th place on the Supreme Court was a vocal one, and most importantly, it was played out in the public arena. Even though the application and selection processes remain largely shrouded in mystery, the public are now more aware of the role that the judges and the court play, and increased levels of attention will surely mean increased levels of scrutiny. The

differences in name and location may not be constitutionally significant in themselves, but they have raised the court's profile, and this in turn may lead to changes that impact on more than the address and letterhead.

Wherever there is press, there is normally politics. Following the Sumption episode, a fear emerged within the legal profession that future appointments to the court might be increasingly politicised. This fear flies in the face of the second reason for the creation of the court: the re-emphasis of the Separation of Powers. The Baron de Montesquieu wrote that, "the independence of the judiciary has to be real, and not apparent merely". Whilst in practice the great, but unwritten, British constitution ensured that judges remained in their seats during political debates, their presence in the upper House was a source of concern; a very visible reminder of the way things used to be. The Constitutional Reform Act of 2005 contained two major steps to abolish this ancient overlap between the judiciary and the government. The first was the curtailing of the Lord Chancellor's role and powers. The upheaval of the Law Lords from the Palace of Westminster is the second. With the separation of powers re-cemented, whilst the media may now pay more attention to the judicial selection procedure, the fear of an American style process emerging is, for the moment, an irrational one.

That is not to say that all such concerns are overreactions. Whilst the anticipated publicity impacted on the opening court's schedule, *R. v. JFS* certainly calmed fears that their Lordships would get carried away in their new surroundings and start to act *ultra vires*. We must remember that for the moment, the Justices of the Supreme Court have all sat in the House of Lords; they know the form. When future Justices sit

in their chambers, admiring Sir Charles Barry's architecture from across Parliament Square, they may not feel so constrained by tradition and unwritten rules. In *Jackson* (2005), Lord Steyn introduced the possibility that, in the future, the court may be willing to strike down an Act of Parliament as unlawful. Parallels with 'the other Supreme Court' may not be justified currently, but there is quite a lot in a name.