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**An Investigation of the Scottish Judicial System in the Light of
the 2005 Constitutional Reforms**

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Dedication

First and foremost, praise and thanks be to Allah who offered me the strength and to complete this research.

This work is dedicated to my “Dear Mother” for being my Lantern throughout this journey.

Mohamed Ali MAMMRINE

First, praise and thanks to Allah who gave me the strength and patience to complete this research, after a long journey of studies.

I dedicate this work to my parents, my family and friends and everyone else .

I also dedicate this dissertation to all my heart-loving persons whom my pen has forgotten.

Oussama MACHANA

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Nevertheless all the support we have enjoyed, any errors, omissions, or gaps, whether in content or methodology are solely our own responsibility.

Abstract

This research attempts to conduct an analytic study in order to investigate the impact of the 2005 Constitutional Reforms on the Scottish Judicial System. The significance of this research lies in the fact that despite Scotland, as a part of the United Kingdom, bases its political system on the separation of power, the role of the Lord Chancellor as a member of the three branches of power could undermine the independence of its local Judiciary. In order to conduct this study, three questions have been raised. The first question raises concerns on the role of the Scottish Legal System as a subordinate to the Executive before 2005. The second question investigates how the 2005 reforms have strengthened Scotland Judiciary. The third question asks whether these reforms have settled balance amongst the branches of power. To respond to these questions, three hypotheses have been formulated. The first hypothesizes relates between the laws preceding the reforms and Scotland Judiciary dependence on the Executive. The second hypothesizes that the adoption of the 2005 Constitutional Reforms could lead to an independent Scottish Judicial System. The third assumes that the reforms could have no effect on the Scottish Legal System. In order to investigate the validity of these hypotheses, the study used the historical-analytical method by analyzing the relevant documentary sources. The findings of the study revealed that the Scottish Judiciary System, before the Constitutional Reforms, was weak and controlled by the Lord Chancellor as a member of the Executive and Head of the House of Lords. The Constitutional Reform Act 2005 brought radical changes, including the establishment of a Supreme Court, the abolishment of the House of Lords' jurisdictional power. On the other hand, it contributed to the weakening of the power of the Lord Chancellor, and the creation of an independent Judicial Appointments Commission. Consequently, the Scottish Legal System became more independent and more powerful.

Keywords: The Constitutional Reform Act - The Judiciary - Lord Chancellor - The Scottish legal System

List of Abbreviations and Acronyms

ABS	ALTERNATIVE BUSINESS STRUCTURES
CRA	The Constitutional Reform Act
ECHR	The European Convention on Human Rights
EU	The European Union
HC	The House of Commons
HL	The House of Lords
HRA	The Human Rights Act
JAC	The Judicial Appointments Commission
LC	The Lord Chancellor
NIJAC	Northern Ireland Judicial Appointments Commission
QC	Queen's counsel
SOP	The Separation of Powers
UK	The United Kingdom

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General Introduction

1- Background of the Study

The Scottish Legal System is one of the oldest Legal Systems in the world. It has a long and complex history, dating back to the early middle Ages. The system has been influenced by both Roman law and common law principles, and it has also been shaped by Scotland's unique political and social development, and also influenced by The Treaty of Union between England and Scotland, which was signed in 1707, and which it had a significant impact on the Scottish Legal System. The Treaty created a single Legal System for the two countries, and it abolished the Scottish Parliament. Moving on to Prior the Constitutional Reform Act of 2005, the Scottish Judicial System was not fully independent from the Executive and Legislative branches of the UK government. The House of Lords, which also served as The Supreme Court for England and Wales, it was the Highest Court for Scotland. The Lord Chancellor, a political appointee, played a significant role in the administration of justice in Scotland (Clark & Keegan, 2012).

The Lord Chancellor before the 2005 Act devolved significant powers over the Scottish Judicial System, it allowed him to shape the course of the country Legal matters but all of that changed after the reforms. The Act also created the Scottish Court Service, an independent body responsible for the administration of the Scottish courts, and the Judicial Appointments Board for Scotland, which ensured that judges were appointed on the basis of merit and without political bias, and without interference or pressure (Masterman,2011).

The reforms brought about by the Constitutional Reform Act of 2005 significantly enhanced the independence of the Scottish Judicial System. It enhanced the Scottish Parliament position, which is responsible for making laws for Scotland and it has the power to pass laws on any matter that is not reserved to the UK Parliament. The Parliament also has the power to scrutinize the Scottish Government and to hold it to account. Moreover, the Scottish Parliament

now has the power to legislate on all matters relating to the Scottish courts and Judiciary. The Scottish Court Service is responsible for the day-to-day administration of the courts, free from political interference (Keating, M. 2010).

2- Research Questions

This study raises the following questions:

- To What extent did the 2005 Constitutional Reforms lead to the independence of Judiciary from the Executive ?
- How have the 2005 Constitutional Reforms boosted the independence of the Scottish Legal System?
- Have these reforms contributed to adjusting the balance amongst the three branches of power?

3- Research Hypotheses

- Maintaining the acts preceding the 2005 Constitutional Reforms could keep the Executive encroachments on the Judiciary.
- Incorporating the 2005 Constitutional Reforms could lead to a more independent Judiciary
- The implemented reforms may have no significant effect and maintain the Scottish Judiciary subservient to both the Executive and the Legislative branches.

4- Aims of the Study

This research endeavours to analyse the historical progression of the Scottish Judicial System both prior to and following the 2005 Constitutional Reforms. It also aims to shed light on how the various roles and responsibilities of the Lord Chancellor have influenced the Scottish Judicial System. Furthermore, it seeks to explore the concept of the interdependence or autonomy of the Judicial System and investigate the repercussions of the 2005 Constitutional Reform on this system.

5- Significance of the study

Previous research has explored the impact of the Constitutional Reform Act on the Scottish Judicial System before. Each study has approached the topic from a specific perspective. This particular study investigates how the Act influenced the development of the Scottish System, including changes within its chambers and structure. As a result, this research holds significance for historical analytical studies focusing on the Scottish Judicial System.

6- Research Methodology

This research employs a historical research method. Given that the study focuses on examining historical data pertaining to the Scottish Judicial System and its relationship of subordination or independence, it is appropriate to incorporate historical, descriptive-analytical, and comparative methods.

The analytical method will be particularly useful for explaining and discussing the collected data. The comparative approach will then be employed to assess how the Judicial System's relationship with external forces changed pre and post reforms. This combined approach will ensure well-founded responses to the research questions.

7- Structure of the Study

The research is divided into two sections. The initial chapter, titled “The Scottish Legal System before 2005 Reforms: Historical Overview” , delves into the origins of the Judicial System. It presents a historical account of the Judiciary, explores the court system’s structure prior to the Constitutional Reforms Act of 2005, discusses the sources of law, and sheds light on the diverse roles and duties of the Lord Chancellor.

The second chapter discusses the examination of the effects of the 2005 Constitutional Reforms on the Scottish Judicial System. It outlines the changes introduced by the Constitutional

Reform Act 2005, such as the creation of a Supreme Court and an independent Judicial Appointments Commission. Additionally, it provides an overview of the court systems in England and Wales, Scotland, and Northern Ireland, as well as the alterations made to the office and powers of the Lord Chancellor.

CHAPTER ONE

The Scottish Legal System before the 2005

Reforms: Historical Overview

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Introduction

The Scottish judicial system in the light of the 2005 Constitutional reform the Scottish legal system is a very broad and unique system in terms of its development, origins and structure. This chapter discusses the historical origins of the Scottish legal system .its divided into a three sections, and each one of them having its own sub-sections. The first section tracks the historical development of the Scottish Legal System and discussing the major influences and the key historical events that helped in shaping the Legal System .the second section speaks about the various sources that helped in the process of creation of time .finally, the third section focuses on the key and major institutions, and actors within the pre-2005 Legal System

1.1 The Judiciary: Concept, Power and Role

Broadly, the term Judiciary refers to the Legal System, specifically judges, their decisions, and practices. It encompasses the Judicial authorities of a country and the collective body of judges. The Judiciary is one of the three branches of government, alongside the Executive and Legislative branches. It includes judges, the Supreme Court, courts of appeal, Judicial councils, and tribunals. The Judiciary is responsible for administering justice, protecting people's rights and duties, resolving disputes, and interpreting laws and legislations enacted by the Parliament. It plays a crucial role in controlling societies, resolving conflicts, safeguarding individual rights and liberties, and maintaining social peace (coll , 2009 ; garner , 1999 ; wild, 2006).

1.2 Historical Overview of the Scottish Legal System

To provide a broader context for scots law, it is important to note that the Scottish Legal System can be classified as a "mixed" system. This classification arises from the fact that the Scottish Legal System falls somewhere between the two traditional types of Legal Systems: "civil law" (or "civilian") systems and "common law" systems. Civil law systems have historical roots in Roman law and are prevalent in continental Europe. On the other hand, common law

systems are derived from English law and are present in England, as well as in commonwealth nations and many US states. The key distinction between these two systems lies in the fact that civil law systems are based on Legal deduction, where rules are derived from general principles initially outlined by Legal scholars. In contrast, common law systems are built on Legal induction, where Legal principles are formed through court decisions in specific cases.

The terms "civil law" and "common law" have multiple meanings. "Civil law" can refer to laws that regulate relationships between private individuals in specific circumstances, such as contract law, property law, and negligence law. In contrast, criminal law establishes a minimum moral standard of behaviour set by the state, prohibiting activities like murder, rape, assault, and theft. On the other hand, "common law" refers to non-statutory laws that are primarily developed through court decisions rather than Legislation. Scots law, for example, is largely based on common law principles.

Regarding classification, scots law can be divided into two main branches: public law and private law. Public law consists of Legal rules that are directly related to the state. Examples of public law include constitutional law and administrative law, which establish regulations governing the powers of state entities and their ability to regulate the lives of the public. On the other hand, private law encompasses Legal matters that are not specifically connected to the state. This distinction between public and private law has a historical basis in Ancient Roman and Greek legal Systems. However, some experts question the significance of this division, as there is no essential distinction between the sources of private and public law, nor the procedures or courts used to determine rights under each branch .

The Legal System in Scotland is unique as it incorporates elements from both the civil law (Roman) and common law (English) systems. Although it currently leans more towards the common law model, the Scottish system is considered a "Mixed" system. The historical development of scots law reveals significant influences from both Legal schools, shaping the Scottish Legal System as it is today. This system has a diverse heritage and an intriguing historical

journey. While a comprehensive exploration of Scotland's Legal System is beyond the scope of this text, a summary of its evolution and key influencing factors is provided below (Clark & Keegan, 2012).

1.3 Sources of Scots Law

Scots law has evolved over the course of a thousand years, drawing influence from various sources such as customary rules, canon law, Roman law, feudal law, and English law. The development of legal rules in Scots law has been shaped by factors such as religious doctrines, social trends, political expediency, and economic efficiency. While these historical and philosophical influences explain the origins of Scots law, they do not address why specific rules are binding. To be binding, a rule must be derived from recognized sources of law, known as formal sources

1.3.1 The Common Law

The common law, which is rooted in the ancient customs of early invaders and settlers of England, serves as the oldest Legal foundation in the United Kingdom. This system of principles and rules, recorded by judges and shaped through court cases, stands apart from other Legal sources. Over time, the common law has emerged as a fundamental point of reference for judges in the UK's law courts, enabling them to adjudicate cases, interpret British parliamentary legislation, and settle various disputes (Hudson, 2018).

1.3.2 The Common Law / Judge- made Law

The Anglo-Saxons and Normans were aware of the important role law played in governing their societies. Therefore, law serves as a fundamental tool for regulating communities and helping individuals achieve their goals. Moreover, law consists of a set of principles, standards, and rules that are enforceable. These laws ensure that justice, peace, and order are maintained within the state, and any disputes are settled in the courts (Martin, 2006; Wild,

2006).The common law, also referred to as Judicial precedent or case law, is a body of laws that originates from court decisions rather than statutes or constitutions. It is a framework of principles and standards rooted in the traditions of early invaders and settlers of England, and it has evolved through the king's Court. It is recognized as the Legal System governing the everyday lives of the English people and has been shaped by various court cases. (Blackwell, 2008 ; Garner, 2004; Hudson, 2018; Tucker, 2007) multiple studies over time have presented varying viewpoints on the origins of the common law. In relation to this, f.w. Maitland regarded it as the result of the brilliance of henry ii and his advisors (as cited in Hudson, 2018, p.15). During his rule, King Henry II implemented the enforcement of laws, supplanting numerous local customary laws with new universal ones that were applicable and shared by all (Elliott & Thomas, 2020 ; martin, 2006) the judicial office international team, 2016 .

In addition, courts have dealt with numerous cases, with judges playing a crucial role in their resolution, whether involving individuals or conflicts between individuals and the state. The Senior Courts, responsible for handling significant cases, have documented and compiled these cases in Legal reports. These reports contain detailed information about the case, including the parties involved and the court's judgment. Over the years, the judges' decisions have served as the building blocks of the law, gradually constructing a robust body of Legislation referred to as "judge-made law". This term is commonly associated with the concept of common law, which signifies laws created by judges. In essence, common law (judge-made law) refers to a collection of Legal principles that originated from English and Norman customs and evolved in the hands of judges in the absence of formal law courts. These principles have developed over the centuries through the resolution of court cases. (Allermuir, 25 February 2022).

1.3.3 Roman Law

The historical influence of Roman law was felt at a later date and occurred in a number of ways. The infiltration of Roman law into Scotland began in the middle of the 16th century when scots law students travelled to France and later the Netherlands for Legal instruction due to limited

opportunities for studying law at Scottish universities. Upon returning home, scots lawyers would rely on their knowledge of Roman law to address Legal issues for which there were no applicable Scottish Legal principles .

In 1532, a significant event took place in the influence of Roman law on the Legal System of Scotland. The Court of Session, the first permanent civil court in Scotland, was established. This court, which still exists today in a different form, was based on a roman model and had a Judiciary primarily educated in roman and canon law. As a result, the impact of these schools of Legal thought was felt as the court developed and operated.

During the maturation of the court, Legal writing gained increasing significance. From the mid-17th century onwards, a significant body of work was produced by renowned Legal scholars known as "institutional writers". These influential works, which will be further discussed in the following chapter, became revered and influential enough to be considered a valid source of law on their own. They played a crucial role in shaping the evolution of scots law as it transitioned into a more modern era. Many of these early jurists were educated in roman law, which often influenced their work, evident in the hallmarks of roman law present in their writings (source: legal history and development, chapter 3). (Clark & Keegan, 2012).

1.3.4 Feudalism

During the mid-11th century, the Scottish Legal System experienced a significant influence from English feudalism, which was introduced to England by the Normans after the battle of Hastings in 1066. This influence reached its peak during the reign of King David I of Scotland, who ruled from 1124 to 1153. King David, having been exposed to the English system of governance during his early life in England, brought feudalism and other Legal institutions to Scotland, including the establishment of the office of sheriff, which still exists today. Feudalism is primarily a system of land ownership, where all lands are considered to belong to the Monarch. The Crown would grant land to noblemen in exchange for various obligations, such as monetary payments, military support, and other services. These noblemen, known as "tenants in chief,"

would then grant parts of their land to others called "vassals" in return for specific duties. The land could be further divided and granted to additional recipients, creating a hierarchical structure known as the "feudal pyramid," with the Monarch at the top.

From this feudal structure emerged not only a type of land ownership but essentially a system of hierarchical societal rule and authority. The distribution of political power through feudalism was reinforced as the tenants in chief, also known as "barons," established courts on their territories where they administered justice and resolved disputes. In addition to these local courts, a King's Court was instituted to extend the Monarch's authority, while sheriff courts were set up to oversee Legal matters, both civil and criminal, on behalf of the king throughout the realm. The sheriffs were supervised by "Justiciars," officials vested with significant Judicial powers in criminal and civil cases. Although the role of the Justiciar eventually faded away, their jurisdiction in criminal trials can be viewed as a precursor to the establishment of Scotland's primary criminal court, the High Court of Justiciary, in 1672, which continues to operate today. (Clark & Keegan, 2012).

1.3.5 Criminal Law and Civil Law

The discussion of the courts highlights a commonly misunderstood aspect of law. Law encompasses more than just criminals and illegal activities. In fact, the majority of the law has no connection to criminal matters or the courts. However, the existence of a separate court system dedicated to criminal law emphasizes its significance. Criminal law plays a vital role in maintaining social order, imposing punishment on wrongdoers, and safeguarding individual freedom. One crucial aspect of criminal law is the protection of the accused, which can often be a contentious issue. In 1999, the Scottish criminal cases review commission was established to examine potential miscarriages of justice in the courts and, when appropriate, refer them to the High Court of Justiciary for reconsideration.

According to Legal terminology, the parts of the law that do not fall under criminal law are commonly referred to as civil law. Lawyers distinguish themselves as either civil or

criminal practitioners. While there are various aspects that differentiate the two, it is important not to overemphasize these distinctions. Criminal law focuses on behaviours that should be avoided to evade punishment, whereas civil law provides guidelines on actions that should be taken to achieve specific outcomes, such as entering into a contract for the sale of a house or establishing a company. However, civil law also addresses undesirable conduct. Rather than punishing wrongdoers, it seeks to compensate individuals who have suffered harm or loss as a result of such behaviour, often through financial awards. For instance, civil law mandates that individuals fulfil their financial obligations, and if they fail to do so, the courts can intervene to enforce payment through the seizure of their assets. Conversely, criminal courts possess additional powers beyond punishment, such as ordering convicted individuals to compensate their victims. These courts are also encouraged to employ alternative forms of sentencing, like community service, to alleviate prison overcrowding. . (Dewart & Macqueen, 2016).

Both civil and criminal law can be utilized in response to specific events. For instance, imagine a scenario where i am driving carelessly and accidentally hit a pedestrian, causing severe injuries. In such cases, not only can there be a criminal prosecution, but the pedestrian also has the option to file a lawsuit in civil court to seek damages that would compensate for their losses and suffering after the incident. The reason why civil claims related to criminal acts are uncommon is because many criminals do not possess assets, making it impractical to sue them for damages. However, in road accident cases, pursuing civil action is worthwhile because drivers are required by law to have insurance. If the driver is uninsured, the injured person can still receive compensation from the motor insurers bureau, an organization established by the motor insurance industry in collaboration with the government another important distinction between civil and criminal law is that criminal prosecutions are typically conducted by the state, while civil court actions are brought by the person affected by the wrongdoing. In Scotland, criminal prosecution is ultimately in the hands of the Lord Advocate and the solicitor general for Scotland, who are the law officers of the Crown in Scotland. The Lord Advocate heads the Crown Office, which is a

central government department based in Chambers Street in Edinburgh <https://www.copfs.gov.uk/> criminal cases in the High Court are initiated in the name of the Lord Advocate (also known as her majesty's advocate). However, these cases are typically handled by advocates depute who are appointed from the faculty of advocates. Criminal Justice Scotland Act 2003, section 42(1) more commonly now being provided by several solicitor-advocates .

Private prosecution, typically initiated by the crime victim, is an exception to the unique feature of Scottish criminal law. It allows individuals to pursue legal action in Scotland when the public prosecutor chooses not to pursue a case for any reason. The significance of this exception was illustrated in the high-profile Glasgow rape case of 1982. In this case, the victim took it upon herself to bring charges after the Crown Office decided not to proceed due to concerns about her ability to testify.

In criminal law, juries are more commonly used compared to civil law. In civil cases, a jury is only utilized in specific instances in the Court of Session, such as personal injury cases, will reductions, and defamation actions. The all Scotland personal injuries court at Edinburgh sheriff court also allows for a jury in certain cases, although it is infrequently utilized. Conversely, all high court prosecutions in Scotland require a trial before a judge and a 15-member jury. In the sheriff court for criminal cases, it is more typical for the sheriff to preside alone rather than with a jury. Additionally, criminal proceedings in the justice of the peace court are always conducted summarily. Notably, in Scotland, it is up to the prosecutor to determine if a case warrants a jury trial, whereas in England, this right belongs to the accused. . (Dewart & Macqueen, 2016).

1.3.6 The Acts of Union 1707

The acts and treaty of union were shaped by the interests of the English and Scottish establishments. They aimed to safeguard the Scottish legal, educational, and religious systems, highlighting their privileged position in pre-union Scotland. Notably, these documents do not explicitly address sovereignty or supremacy nor provide a means for their judicial enforcement. The declaration in the treaty that it is applicable “for all time coming” is more of a political gesture

than a legally binding provision, a common practice in acts passed by the Scots Parliament. The act of union is not considered a quasi-constitution for the United Kingdom, as it predates the establishment of written constitutions in the late eighteenth century. Even those who believed these provisions to be unalterable did not think they were legally enforceable through the courts. To date, no successful case has invalidated an act of Parliament for breaching the terms of the act of union. (Ford, 2007).

Several provisions of the act of union have been violated, but the argument that it restricts legislative supremacy is now considered mostly theoretical. The debate about the Church of Scotland's position is also complex. While many members and ministers believe that the Church of Scotland act 1921 protects the church's independence from interference by the Judiciary and Parliament, Parliament still holds the legal power to make laws on such matters. As Dicey and Raitt claim .

A sovereign parliament, in short, though it cannot be logically bound to abstain from changing any given law, may, by the fact that an act when it was passed had been declared to be unchangeable, receive a warning that it cannot be changed without grave danger to the constitution of the country.

The 1921 act is deeply ingrained morally and politically. It is unlikely that its key provisions will be revised due to the significant constitutional and political implications that would arise from such action. This demonstrates how legislative supremacy is externally constrained. Additionally, it showcases the extent of political accommodation that Scottish institutions have undergone as part of the union, particularly in relation to legislative supremacy, rather than as a substantive limitation on the doctrine. Unfortunately, I couldn't find the specific source for this information. (Dicey & Raitt, 2016).

1.4 Key Institutions and Actors

The Scottish Judicial System is an integral part of the country's Legal framework, ensuring the administration of justice and upholding the rule of law. This section provides an overview of the key institutions and actors involved in the Scottish Judicial System.

1.4.1 The office of Lord Chancellor

The Lord Chancellor's position is one of the oldest in the United Kingdom, with roots that go back many centuries. The appointment of the Lord Chancellor is made by the Monarch based on the recommendation of the Prime Minister, and this individual holds a high-ranking position within the cabinet. Originally serving as the King of England's Secretary, the role evolved to encompass responsibilities across Parliament, government, and the Judiciary. Throughout the 20th century, the authority of the Lord Chancellor grew significantly. By 2003, this figure had become a key figure in Parliament, a member of the cabinet, and a judge. Additionally, they were authorized to lead as chairman of both the appellate committee of the House of Lords (the law lords) and the Judicial committee of the Privy Council. As head of the Judiciary, they were tasked with overseeing various Judicial appointments either directly or through recommendations and handling matters related to Judicial discipline.

In recent times, the most prominent example of overlap in the British constitution has been the role of the LC, which has been consistently used as evidence to support the argument that there is no clear separation of powers in the UK. Throughout History, the position of the Lord Chancellor was unique in that they held membership in all three branches of the government and wielded authority in each of them. The Lord Chancellor had the privilege of presiding as the speaker of the HL, representing the legislative branch, while also serving as the head of the Judiciary, representing the Judicial branch. Additionally, they held the esteemed position of a Senior Cabinet Minister, symbolizing their involvement in the Executive branch.

During most of the twentieth century, it was widely accepted that a combination of assignments involving both Judicial and Executive responsibilities was not controversial. This was mainly because the Judicial roles were considered to be more significant. However, in the later decades, it became clear that not only had the Lord Chancellor's Executive responsibilities increased significantly, but the focus of the office had also shifted away from the Judicial aspect and more towards political matters. However, on June 12, 2003, the government led by Tony Blair made a surprising announcement. They declared the abolition of the office of the Lord Chancellor, along with the introduction of a new system for appointing judges and proposed the creation of a supreme court to replace the House of Lords. This announcement was met with surprise by many. (Woodhouse, 2001).

1.4.2 Lord Advocate: Role and Functions

The Lord Advocate holds the highest position among the Scottish law officers. As a Minister in the Scottish government, she is entrusted with a significant and esteemed role that encompasses various responsibilities related to upholding the rule of law and ensuring the fair execution of justice.

The law officers have consistently maintained their independence when it comes to criminal prosecutions and death investigations, acting autonomously from other ministers and individuals. This responsibility is explicitly acknowledged. In s.48 (5) of the Scotland act 1998.

The solicitor general acts as the deputy to the Lord Advocate. In situations where the position of Lord Advocate is vacant, the Lord Advocate is unable to perform their duties due to absence or illness, or the lord advocate grants permission, the solicitor general is authorized to carry out any of the Lord Advocate's responsibilities as per the law officers act 1944, section 2.

The Scotland act establishes the Lord Advocate as an independent figure in the criminal justice system of Scotland. Her role as head of criminal prosecution and investigation of deaths is protected from interference by the Parliament (Scotland act 1998 s.48 (5)). This independence is further reinforced by the fact that it is outside the legislative competence of the

Parliament to remove the Lord Advocate from her position (SA S.29 (2) (E)). In addition to these responsibilities, the Lord Advocate also plays a role in ensuring that legislation passed by the Scottish Parliament is within its competence and has specific powers under the Scotland act to resolve Legal questions regarding devolved powers of Ministers and the Parliament.

1.4.3 Advocates

Advocates, who are fewer in number compared to solicitors, have traditionally been considered as the elite of the Legal profession in Scotland, although there are differing opinions on this. In the past, Advocates had exclusive rights to represent clients in the superior Scottish courts, reflecting their esteemed position. However, this monopoly was abolished when solicitor-advocates were granted the right to appear in these courts as well. (Clark & Keegan, 2012).

Advocates can be divided into two categories: "Junior Counsel" and "Senior Counsel", also known as "Queen's counsel" (QC). After acquiring the necessary experience and building a solid reputation, an Advocate can be promoted to the esteemed position of QC. This process is commonly referred to as "taking silk," as it grants the Advocate the privilege of wearing a silk robe when appearing in court. The profession of Advocates is collectively known as "the bar," a term derived from the bar located on one side of the Court of Session, where Advocates stand during court proceedings. <https://www.lawscot.org.uk/members/career-growth/solicitor-advocates> .

Advocates, unlike solicitors, are unable to form partnerships due to professional regulations, but they can collaborate on specific cases. Advocates are affiliated with "stables," which are clusters of advocates. Each stable has a clerk who receives instructions from solicitors and assigns tasks to the Advocates. Administrative and secretarial assistance is provided by a separate company called faculty services ltd.

A peculiarity of the system that might confuse readers is that typically, clients are unable to directly engage or communicate with a lawyer; they must do so through a solicitor's

office. Furthermore, it is usually required that a solicitor be present during meetings between a lawyer and their client. Nevertheless, individuals who are part of specific professional organizations, like architects, surveyors, and engineers, have the ability to instruct lawyers directly.

Legal advice also known as ‘opinions of counsel’ is frequently requested from lawyers. This refers to guidance sought by a party through their attorney concerning matters such as the interpretation of specific Legal areas or the analysis of contractual terms when there is uncertainty. Parties considering involvement in Legal proceedings may seek the opinion of a lawyer to gain a clearer understanding of their Legal position and assess their chances of success. (Clark & Keegan, 2012).

1.4.4 Solicitors

In Scotland, there are two main types of Legal professionals: solicitors and advocates. Solicitors are the most common Legal practitioners in Scotland and have a diverse range of responsibilities. They provide Legal advice to the public, draft Legal documents, handle the affairs of deceased individuals, manage property transactions (conveyancing), and represent clients in court. Solicitors are considered general practitioners of the law and can work in various settings such as private practices, partnerships, in-house for large companies, or as employees of public entities.

The Scottish Parliament approved the contentious Legal services (Scotland) bill on 6 October 2010, and it received royal assent on 9 November 2010.

The legal services (Scotland) act 2010 aims to eliminate previous constraints outlined in the solicitors (Scotland) act 1980 regarding the organizational structure of solicitors’ businesses. This legislation permits solicitors to establish partnerships with non-solicitors through alternative business structures (ABS). Commonly referred to as “Tesco law,” this act allows external investment from entities such as supermarkets, banks, and accountants. However, a majority share

of at least 51 percent in such enterprises must be held by solicitors or other regulated professionals. . (Clark & Keegan, 2012).

As mentioned earlier, some solicitors have the responsibility of representing their clients in both criminal and civil courts. In the past, solicitors were not permitted to have "rights of audience," which means they were not allowed to appear on behalf of their clients in the Higher Courts such as the Court of Session, High Court of Justiciary, and House of Lords. However, thanks to the implementation of the solicitors (Scotland) (rights of audience in the court of session, the House of Lords and the Judicial committee of the privy council) rules 2002, solicitors can now pursue additional training and become qualified as "solicitor-advocates". By obtaining this designation, solicitor-advocates are granted expanded rights of audience, allowing them to represent their clients in Scotland's Superior Courts. . (Clark & Keegan, 2012).

1.4.5 The Judicial Committee of the Privy Council

The Scotland act 1998 designated the Judicial Committee of the Privy Council as the final court for resolving disputes regarding the legislative authority of the Scottish Parliament and other matters related to devolution. However, this jurisdiction was transferred to the UK Supreme Court in October 2009. This shift includes cases involving the actions of the Lord advocate in their role as the public prosecutor for criminal offenses.

The jurisdiction involved Scottish criminal cases being heard in London for the first time. In 2000, thirteen appeals were filed, marking the inaugural year of this court's operation in this capacity. However, the number of appeals decreased significantly to only two or three annually thereafter. The Advocate General for Scotland plays a crucial role under the Scotland act 1998 by presenting devolution matters to the courts.

Conclusion

This chapter Presented and discussed the historical overview and development of the Legal System from starting point and what event that made the big impact on it .It focused on the major event that happened in the past and have affected the Scottish Legal System creation .Moreover, this chapter also mentioned the various sources of Scottish law arrangements or incidents that led to the changing of the law to its current state. Finally, the chapter discussed , key institutions in which the system is based on and the key actors which they are considered the Legal System high ranking officers wich the power is held in their hands .

CHAPTER TWO

Investigating the Impact of 2005 Constitutional Reforms on the Scottish Judiciary

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Introduction

The Constitutional Reform Act 2005 is a Legislation passed by the UK Parliament that brought about significant changes related to altering the role and office of the Lord Chancellor, establishing a Supreme Court, and eliminating the appellate jurisdiction of the House of Lords. The subsequent section delves into an analysis of the UK judicial system post the 2005 Constitutional reforms, with a specific emphasis on its characteristics and the revised framework of the UK court system, encompassing the jurisdictions of each Court. Lastly, this section concentrates on outlining the structure and jurisdictions of England, Wales, Northern Ireland, and Scotland.

The UK's Judiciary System before the Constitutional Reform Act 2005

During ancient times, the absence of a comprehensive legal system meant that the entire country lacked proper control due to the presence of isolated kingdoms that eventually formed the United Kingdom. Nonetheless, the Anglo-Saxon and Norman kings worked towards establishing a unified judicial system for England and its counties. Throughout the centuries, this judicial system has evolved into a vast collection of laws, encompassing various Courts with different jurisdictions, including Civil Courts, Family Courts, and Criminal Courts. Furthermore, it incorporates a wide range of Legal procedures, such as the utilization of a Trial by Jury. (Boyd & Harrison, 2006)

Creating Laws

For many centuries, The Judiciary in the UK was under the control and influence of the monarchy, the church, and the nobility. The English political system had a significant impact on the judicial entity in the country. Historical evidence suggests that judges during the reign of

King John made decisions based on his personal desires and orders, rather than following the laws. King John established his own court to maintain his authority in the judiciary (Blackstone, 1770). Additionally, the Nobility and Ministers, due to their traditional privileges and positions, had the power to interfere in judicial decisions and prioritize their own interests over the application of laws and customs.

Moreover, the foundation of British Law can be traced back to its rich English history. The United Kingdom relies heavily on two significant legal systems: Common law and Statute law. Common law is built upon the customs and practices of the ordinary citizens, evolving through court rulings. On the other hand, Statute law pertains to legislation created by the English parliament. The establishment of Courts in the UK can be attributed to the growing number of crimes and conflicts within the Kingdom, involving disputes between individuals or between individuals and the government (Peter et al., 2010).

House of Lords' Role

Legislatively, the House of Lords played a role as a reviewing body, overseeing the European Community's laws, examining bills from the House of Commons, suggesting amendments to bills, and ensuring the government's work was in check. They also actively participated in the creation and shaping of laws alongside the Commons. In the realm of judiciary, the House of Lords, led by the Lord Chancellor, served as the highest Judicial Council in the United Kingdom. It also functioned as the final Court of Appeal for Civil and Criminal Law cases in England, Wales, and Northern Ireland, essentially acting as the Supreme Court for the entire UK. Additionally, the twelve Law Lords, also known as Lords of Appeal, were members of the Legislature and served as the highest Court of Appeal in the country. However, it's important to note that Judges did not have the right to run for Parliamentary elections. Instead, their role involved interpreting legislation within certain boundaries, contributing to the development of

Common Law. Unfortunately, their position in the British Constitution was largely marginalized (Carmichael & Dickson, 1998).

Lord Chancellor's Role

The House of Lords held authority in the Executive branch through the office of the Lord Chancellor. The Lord Chancellor, who is a senior minister in the Cabinet and Government, played a significant role in exercising this authority. This arrangement allowed the House of Lords to possess a variety of functions and powers, including legislative powers. As a result, the House of Lords had influence and involvement in the administration of the state's affairs, serving its own interests and aiming to limit the judicial power. The Lord Chancellor's position as the Head of Judiciary, head and speaker of the House of Lords, and a senior minister in the Cabinet and Government further emphasizes the interconnectedness of roles and authorities, indicating a lack of separation of powers in the UK prior to the Constitutional reform act 2005. (Jowell & Oliver, 2011)

The Courts' Structure

In the United Kingdom, there existed a variety of courts, including the Court of King's Court. This particular court, which operated under the Royal Common law system, initially accompanied the monarch on their travels throughout the land. Its primary purpose was to handle both criminal and civil cases that piqued the king's interest. Additionally, there was the Exchequer Court, responsible for managing cases related to royal revenues and tax collection. The Common Pleas Court, another royal court, dealt with common pleas and matters that did not capture the monarch's attention. These three courts held significant importance in the country for many centuries, and from them, several other courts emerged over time, such as Magistrates' Courts,

Crown Court, County Courts, and the High Court of Appeal, which catered to both criminal and civil cases separately (Barnett, 2002).

The establishment of these courts can be traced back to the English Kings who sought to solidify their authority as the rightful rulers of England by enforcing their laws through the courts. These courts were overseen by either the king himself or the Lords (Barons), which meant that these influential individuals directly controlled judges. The primary functions of these courts included collecting royal revenues and taxes to fill the royal treasury, safeguarding the Kings' personal power within the judiciary, strengthening their laws and positions in the country, and prioritizing the interests of both the Monarchs and the Nobles rather than serving the people (Barnett, 2002).

Courts and Judges

William the conqueror established the king's Court, also known as curia Regis, which was a highly influential and the earliest royal court in England's history. This court gave rise to three significant judicial bodies. The Exchequer Court was responsible for handling cases related to the collection of taxes and royal income. The Court of King's Bench focused on both civil and criminal matters that piqued the king's interest and eventually became known as the court of Queen's Bench (Hallam, 2015). Additionally, the Common Pleas Court was established to resolve disputes between private individuals and hear cases involving common people.

However, Alfred the great emphasized the importance of judges possessing sharp intellect, extensive legal knowledge, and proficiency in various skills, wisdom, and literacy. In contrast, King Henry ii introduced the concept of a jury comprising twelve local knights, and he enacted numerous assizes and laws. These advancements and accomplishments greatly contributed to the evolution and progress of the United Kingdom's judicial system. (Gee, et al., 2015).

It is important to emphasize that prior to the Constitutional Reform Act 2005, judges' rulings were frequently swayed by political pressures, individual biases, apprehension, or favoritism towards any involved party. The development of Common Law itself arose from a specific contest for political dominance. (Slapper & Kelly, 2016). Furthermore, the revolutionary conflicts in seventeenth-century England, which pitted the Monarchy against parliament, brought to light the glaring absence of autonomy within the English legal system in relation to the state. This lack of independence encompassed the structure, purpose, and individuals involved. Moreover, these struggles underscored the fact that judges were subject to appointment or dismissal at the sole discretion of the Sovereign. As a result, it can be inferred that the Judiciary system in the United Kingdom was intricately tied to the King and his government, further reinforcing their dependence (Slapper & Kelly, 2016).

The Constitutional Reform Act 2005

The Constitutional Reform Act 2005, a legislation passed by the UK Parliament, encompasses several key provisions. Firstly, it involves changes related to the role and duties of the Lord Chancellor, who was replaced by the Lord Chief Justice. Secondly, it includes the creation of a distinct Supreme Court of the UK to separate the judicial functions previously held by the Law Lords in the Upper House. Thirdly, it eliminates the Appellate Jurisdiction of the House of Lords. Fourthly, it establishes an independent judicial appointments commission. Fifthly, it defines the authority of the judicial committee of the Privy Council and its president, alongside various reforms concerning judicial appointments, disciplinary procedures within the judiciary, and other associated matters (the Constitutional Reform Act 2005 (c 4) p.1; Britain, 2005).

The Constitutional Reform Act (CRA) of 2005 is a significant piece of legislation in the UK that aims to modernize various aspects of the constitution, particularly focusing on the judiciary. Enacted on March 24th, 2005, it introduced several key changes to the judicial system.

The CRA brought about radical transformations, including the establishment of the Supreme Court as the Highest Court in the UK, replacing the House of Lords in this role. Additionally, it instituted a new judicial appointments commission (JAC) responsible for selecting judges independently, free from external influences. Furthermore, the Act reassessed the functions of the Lord Chancellor and their office (Barnett, 2013).

The UK Judiciary System after 2005

The UK government tackled the lack of a formal and independent judicial system by implementing Constitutional amendments that prioritize public needs and political functions. The Constitutional Reform Act 2005 was a pivotal decision that brought about significant changes in the UK's judicial system. Enacted in 2005, this legislation brought about three key modifications: redefining the role of the Lord Chancellor's office, establishing the Supreme Court, and eliminating the House of Lords' appellate authority. (Bogdanor, 2009)

The Lord Chancellor, as a Cabinet Minister, held the responsibility for overseeing the judicial appointments process, handling complaints against judges, enforcing disciplinary actions, and managing the court service. Furthermore, he had the authority to reject lower-level judicial candidates and oversee the operations of the court service. In cases where there is a significant violation of the separation of powers principle, it is essential for the judiciary to actively engage with the other branches of government rather than withdrawing from such interactions (Hazell, 2008).

The Constitutional Reform Act of 2005 eliminated the Lord Chancellor's role as the Head of the Judiciary, but the office itself remained. The Act detailed the responsibilities that would be transferred to the Lord Chief Justice, who would now serve as the Head of the judiciary in accordance with the concordat agreement from 2004. Consequently, the Lord Chief Justice is now responsible for overseeing the judiciary in England and Wales, including tasks such as judge

training, guidance, deployment, and representing the judiciary's perspectives to government officials and parliament. Prior to this reform, the Lord Chancellor held a unique position that involved significant authority in Legislative, Executive, and judicial matters. Therefore, with this Act, many of these duties were shifted from the Lord Chancellor to the Lord Chief Justice (Jowell & Oliver).

The establishment of the Supreme Court was a direct result of transferring the judicial authority from the House of Lords to a new court with extensive judicial powers. The Supreme Court serves as the highest judicial body in the United Kingdom of Great Britain and Northern Ireland, taking over the jurisdiction that was previously under the purview of the House of Lords. It functions as the final appellate court for both civil and criminal cases originating from England, Wales, and Northern Ireland (Tomkins & Turpin, 2007).

The Supreme Court is an essential component of the government's constitutional system. Its primary functions include reviewing appeals that involve controversial legal issues of significant public interest. Additionally, the Supreme Court prioritizes cases that have the utmost importance to the public and the constitution. Moreover, it upholds and advances the role of the Highest Court in the UK, establishing itself as a leader within the Common Law Community. (Fox et al., 2017) the removal of the House of Lords' authority to hear appeals has led to the establishment of a more independent, unbiased, and unified judicial system that operates separately from the Legislative branch. (Hazell, 2008).

The UK Judiciaries after the Constitutional Reform Act 2005

In the past, the UK has three distinct legal systems as a result of being a state with multiple separate jurisdictions. This means that England and Wales operate under one legal system, Scotland under another, and Northern Ireland under a third.

The Judiciaries of Scotland

Scotland operates as one of the three distinct legal jurisdictions within the United Kingdom, boasting its own legal system and court structure that sets it apart from the rest of the UK. The Scottish court system is comprised of four tiers, namely the Supreme Court, the Court of Session, the Sheriff Courts, and the district Courts (Grant & Sutherland, 2014).

The Supreme Courts handle appeals from the inner house of the Court of Session in Scotland and also hear appeals from the Judicial Committee. The Court of Session, which is the Supreme Civil court for Scotland, functions as a Court of Appeal. It comprises two houses: the inner house, which deals with appeals from the Outer House, Sheriff House, and other bodies. Appeals in the inner house are heard by three judges without a jury, and their decisions can be appealed to the Supreme Court (Grant & Sutherland, 2014).

The Outer House handles civil cases related to tort, contract, intellectual property, and

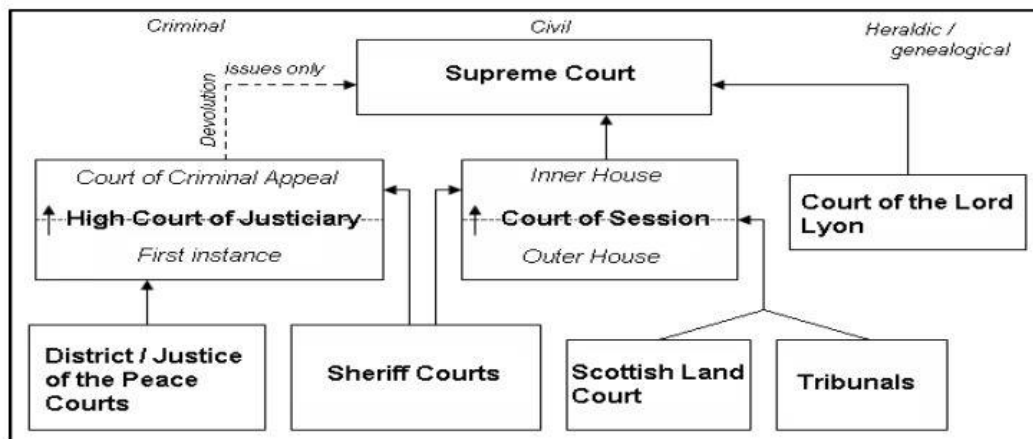


Figure 2.1.court system in scotland

commercial disputes. Appeals from the Outer House are reviewed by a judge and a Civil Jury. The Sheriff Courts manage significant criminal and civil issues like probate, adoption, and bankruptcy. Appeals from the Sheriff Courts are heard by a judge and jury; however, both criminal and civil cases can be appealed to higher courts such as the High Courts and the Courts of Session. The

district Courts primarily handle minor criminal cases like breach of peace, Assault, Theft, television licensing, and electricity fraud. They also oversee appeals from the Sheriff Courts. Cases in the district Courts are presided over by one to three justices of the peace without a jury. In 2007, the justice of the Peace Courts replaced the district Courts in Scotland (Grant & Sutherland, 2014).

Judiciaries of England and Wales

The Legal system in England and Wales is comprised of various courts, including the Supreme Court, the Court of Appeal, the High court, the Family Court, the County Court, Tribunals, and the Magistrates' Courts. The Supreme Court deals with appeals from lower Courts within each jurisdiction. However, a case cannot be heard by an appeal Court unless a relevant order has been issued by a Lower Court (Blackstone, 1770).

The Court of Appeal is divided into two sections: one for Civil cases and the other for Criminal cases. The High Court has three divisions, with the Queen's Bench division handling various Common Law cases and overseeing Lower Courts (Peter et al., 2010).

The Chancery division handles a broad spectrum of Civil cases, including land and property disputes, mortgages, trusts, estate administration, probate matters, bankruptcy, partnerships, company issues, and intellectual property. On the other hand, the family division specializes in intricate family law cases and has the exclusive authority to preside over international child abduction disputes and cases involving inherent jurisdiction (Carroll, 2017;2019).

The Family Court handles cases related to Family Law, such as divorce applications, dissolution or nullity petitions, matters concerning financial or child care arrangements post-relationship breakdown, and adoption requests. And the county court manages civil disputes, including cases where companies seek debt recovery, individuals claim compensation for injuries,

and landowners seek injunctions against trespassing. Also tribunals address certain civil issues like immigration, asylum claims, tax disputes, social entitlement matters, and property cases ,and in addition that the Crown Court presides over Criminal Law proceedings like murder, rape, and robbery trials. It also hears appeals against decisions made by Magistrates’ Courts (Carroll, 2017;2019).

The Magistrates’ Court primarily handles “summary offences,” which are minor criminal cases such as car crimes, minor vandalism, and common assault that does not result in serious injury. Additionally, the Court addresses certain civil matters like family disputes, licensing issues, debt recovery, and various legal orders concerning children (Lowe & Das, 2014).

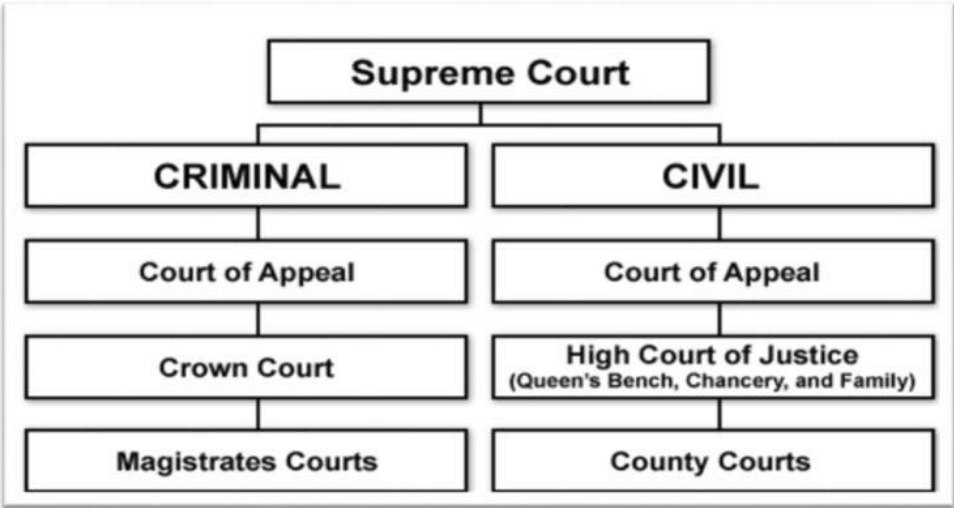


Figure 2.2.The court system in England and Wales

The Judiciaries of Northern Ireland

Northern Ireland, like the other regions of the UK, was initially part of the Irish Courts system. However, after partition, it established its own legal framework which includes the Northern Ireland Supreme Court, Court of Appeal, High court, Crown Court, and Magistrates’

Courts. The Independent Northern Ireland Judicial Appointments Commission (NIJAC) selects the Judges for these Courts. The Supreme Court is the highest judicial body in Northern Ireland and handles appeals from the Court of Appeal. The Court of Appeal is responsible for hearing appeals from the High Court and Crown Court, covering both civil and criminal cases. Additionally, it also deals with appeals from the county and Magistrates' Courts.

The Usual practice is for three judges to hear all cases, and their rulings can be challenged by appealing to the Supreme Court. Additionally, the High Court handles complex civil cases and appeals from the County Court, which are presided over by a single judge. In these instances, the decisions can be further appealed to the Court of Appeal. Furthermore, the High Court is comprised of three divisions: the Chancery division, responsible for cases involving wills, companies, land ownership, and trusts; the family division, which deals with matters such as marriage, adoption, and child welfare; and the Queen's Bench division, which handles other Civil Law cases. Lastly, the County Courts are responsible for both civil and criminal cases originating from the Magistrates' Court, including issues related to land disputes, partnerships, equity, trusts, estates, negligence, and trespass. A judge from the County Courts hears appeals from the County Courts, and their decisions can be further appealed to the appropriate division of the High Court. (Carroll, 2017;2019)

The Crown Court handles criminal cases, including those involving terrorism. In such instances, a judge presides over the case without a Jury. A judge alongside a 12-person Jury hears non-terrorism cases. Appeals from the Crown Courts go to the High Court, and their rulings can be further appealed to the Court of Appeal. The Magistrates' Courts manage all criminal cases, but serious offenses are transferred to the Crown Courts after an initial hearing. These Courts also oversee civil cases, such as family matters. A single Magistrate, who is legally qualified, presides over both civil and criminal cases in the Magistrates' Courts. It is essential to understand that decisions made in the Magistrates' Courts can be challenged in the County Court (Anthony, 2014).

The chart below offers specific information on Northern Ireland's Court system and its areas of authority.

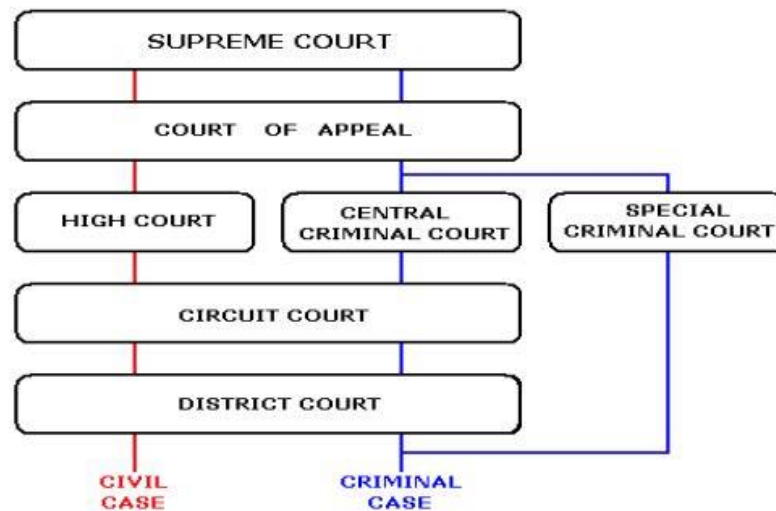


Figure 2.3. The Northern Ireland's court system 1

The Characteristics of the UK's Judiciary after the Constitutional Reforms Act 2005

The Judiciary system underwent changes after 2005 due to the Constitutional Reform Act of 2005, which established the separation of powers among the Executive (government), Legislature (House of Lords and House of Commons), and Judiciary (judges). This Act ensured that the Judiciary operates independently from the other branches of government, serving as a crucial element in upholding democracy and the Rule of Law. Consequently, judges are solely responsible for rendering decisions based on legal principles rather than personal beliefs. (O'Brien & Russell, 2001) judges are not answerable to anyone for their judicial decisions and are immune from prosecution for any actions taken in their judicial capacity. Furthermore, the independence

of the judiciary remains unaffected by external influences such as the media, politicians, or the government (Webb & Holland, 2016).

The Judicial system in the UK plays a crucial role in upholding the Rule of Law, Democracy, and Human Rights. According to (Jowell & Oliver), The establishment of the Judiciary is now enshrined within the constitution, thanks to the Constitutional Reform Act 2005. A significant aspect of this Act is the shift of the judicial function from the Lord Chancellor to the Lord Chief Justice, who now serves as the President of the Courts of England and Wales. Consequently, the Lord Chief Justice holds the responsibility for training, guiding, and deploying judges. They also serve as the representative of the Judiciary of England and Wales, sharing their perspectives with Parliament and Ministers.

The Second major change was the elimination of the Judicial role of the House of Lords. Instead, a new independent Supreme Court was established with its own methods for appointing judges, funding from the government, and separate institutions. The Primary goals of this reform were to create a clear separation between the Judiciary and the Legislative and Executive branches at an institutional level. Additionally, it aimed to redefine how the Judiciary, Government, and Parliament interacted to enhance the independence of judges (Masterman , 2011).

Furthermore, there is the creation of an autonomous Judicial Appointments Commission that holds a crucial responsibility in the process of selecting and appointing judges. Previously, these appointments were solely made based on the recommendations of the Lord Chancellor. The establishment of this commission aims to guarantee the independence and transparency of the judicial appointments. Additionally, there is the establishment of the judicial appointments and conduct ombudsman, whose role is to provide recommendations regarding complaints related to the functioning of the judicial appointments, as well as addressing any concerns about the conduct of judges (Masterman , 2011).

Changes to the Office of the Lord Chancellor

The Constitutional Reform Act 2005 made significant changes to the role of the Lord Chancellor in response to concerns. The Lord Chancellor no longer Heads the Judiciary or presides over the House of Lords. Since 2007, the position has been merged with that of the Secretary of State for Justice. While some responsibilities regarding judges' appointments remain, the Lord Chancellor is now also tasked with upholding judicial independence and the Rule of Law (The Constitutional Reform Act, 2005).

The Appointment of the Lord Chancellor under the Constitutional Reform Act 2005 involves a new process. Section 2 of the act states that individuals must meet certain qualifications to be recommended for the position. These qualifications include being deemed qualified by the Prime Minister based on their experience. Relevant experience may encompass serving as a Minister of the Crown, a member of parliament, a legal practitioner, or a law teacher at a university. Additionally, any other relevant experience deemed suitable by the Prime Minister can also be taken into consideration (Gay, 14 November 2005).

The Document titled "guarantee of continued judicial independence" mandates the Lord Chancellor, other Ministers, and all individuals responsible for matters concerning the judiciary or the administration of justice to ensure the ongoing independence of the Judiciary and uphold the Rule of Law. It requires ministers to uphold the Rule of Law to prevent any attempts to interfere with or influence specific judicial decisions through privileged access to the Judiciary. The Lord Chancellor is obligated to consider the importance of safeguarding judicial independence, upholding the Rule of Law, providing necessary support for the Judiciary to carry out their duties, and ensuring that public interest is represented in judicial and justice administration matters. These responsibilities encompass all courts within the UK and international Courts like the European Court of Justice in Luxembourg and the international war crimes tribunal (Russell & Sciara, February 2006).

Section 5 of the CRA 2005 outlines the primary method for addressing concerns regarding the Judiciary. The Lord Chief Justice, for England and Wales, has the authority to submit written representations to parliament regarding issues that he deems significant concerning judicial matters or the administration of justice (Lords, 26 July 2007).

In a similar manner, the Lord President of the Court of Session is granted new authority concerning significant matters that fall outside the jurisdiction of the Scottish Parliament and Executive (Russell & Sciara, February 2006)

The Lord Chief Justice holds the position of Head of the Judiciary in England and Wales and serves as the President of the Courts of England and Wales. With the implementation of the Constitutional Reform Act 2005 in 2006, the Lord Chief Justice assumed most judicial functions previously held by the Lord Chancellor. In this role, they are responsible for representing the views of the Judiciary to parliament and the government, managing court affairs, overseeing judge training and deployment, and allocating work (The Constitutional Reform Act, 2005).

Prior to this reform, the Crown on the Prime Minister's nomination appointed the Lord Chief Justice. However, since then, a judicial appointments commission panel that operates independently has made appointments. This change was established to ensure a more impartial appointment process. (Constitutional Reform Act 2005 explanatory notes, n.d.).

Sections 8 and 9 of the 2005 criminal justice act introduce new high-ranking judicial positions known as Head and deputy Head of Criminal justice, as well as head and deputy Head of Family Justice. The President of the family division of the High Court will typically hold the title of head of family justice, while the Lord Chief Justice, in consultation with the Lord Chancellor, has the authority to appoint judges from the Court of Appeal to these roles (Constitutional Reform Act, 2005)

Section 12 of the CRA 2005 states that the Lord Chief Justice holds the authority to establish rules regarding court procedures, which can only be done with the agreement and

consultation of the LC and can be revoked by either house. Section 13 and schedule 2 grant a similar power to the Lord Chief Justice, in agreement with the LC, to issue practice directions that typically complement procedural rules, but without parliamentary oversight (Constitutional Reform Act, 2005)

One aspect of the reform plan outlined in the Act involves changes to the process of judicial appointments. Currently, the power to make these appointments is held by either the Lord Chancellor (for appointments below the High Court) or the Queen, based on the advice of the Lord Chancellor. Under the new scheme, the Lord Chancellor will no longer have many of these powers, but judicial appointments will still be made in the name of the Queen. As a result, the Queen will now be responsible for making these appointments, although the exercise of this formal power will be subject to the recommendation of the Lord Chancellor for the appointment of district judges and the involvement of the Judicial Appointments Commission in the selection of candidates. One significant consequence of the changes to the role of the Lord Chancellor is the separation of the functions he previously held as a senior Judicial Officer from his responsibilities as a member of the government involved in the administration of the justice system. Many of these functions have been eliminated, such as the Lord Chancellor's role as a judge under the habeas corpus act 1679. Other duties have been assigned to the Lord Chief Justice, while some have been transferred to the Lord Chief Justice acting jointly with or after consulting the Lord Chancellor (Constitutional Reform Act, 2005)

The Constitutional Reform Act of 2005 contains detailed provisions regarding the role of other senior judges in carrying out the duties of the Lord Chief Justice in situations where the office is vacant or the holder is unable to fulfill their responsibilities (section 16). Additionally, section 17 introduces a new oath for the Lord Chief Justice, emphasizing their commitment to upholding the rule of law, defending the independence of the Judiciary, and ensuring the efficient functioning of the Courts (section 17). Furthermore, the act allows the House of Lords to elect its

own speaker by replacing references to the Lord Chief Justice in certain statutes, such as the parliamentary publications act of 1840 and the Statutory Instruments Act of 1946, with references to "the Speaker of the House of Lords" (section 18 and schedule 6). In addition to the extensive schedule 4, which reassigns the Lord Chancellor's statutory responsibilities, section 19 grants the Lord Chancellor the authority to issue various orders such as transferring, altering, or abolishing his current duties. The House of Lords, when insisting on retaining the position of Lord Chancellor, aimed to ensure that the office and its fundamental tasks were not subject to the Prime Minister's power under the Ministers of the Crown Act 1975 to establish new ministerial roles and departments and transfer powers among ministers. Section 20 of the Constitutional Reform Act (CRA) provides safeguards against this by protecting the statutory duties of the Lord Chancellor outlined in schedule 7 (Constitutional Reform Act, 2005)

The Creation of Supreme Court

After the House of Lords served as the Highest Court in the UK for centuries, the Supreme Court was established in 2009, marking a significant shift towards greater accountability and transparency within the Judiciary. This change signified the end of the institutional link between the House of Lords as a Legislative institution of government and its judicial duty, as carried out by the 12 Lords of Appeal in ordinary. According to section 23 of the Constitutional Reform Act 2005, at an undetermined point in time, a Supreme Court of the United Kingdom would be formed, consisting of no more than 12 judges, who would be referred to as "justices of the Supreme Court of the UK." The President and Deputy President would also be part of this esteemed body. Notably, the first members of this new Supreme Court were to be the 12 individuals who held that position immediately prior to section 23's implementation (Jones, 2013).

The Constitutional Reform Act 2005 brought about substantial changes to Britain's Constitutional framework. Among these changes was the creation of an independent Supreme Court that replaced the Appellate Committee of the House of Lords as the final Court of Appeal

for civil cases in England and Wales. These Reforms signified a major step towards enhancing accountability and transparency within Britain's judiciary system. By establishing a separate entity for judicial matters, it broke down any lingering ties between legislative and judicial duties within parliament (Garne, 2009).

Section 23 of this act outlined that at some point in time, a Supreme Court would come into existence with no more than twelve justices. These justices would include a president and a deputy president. Prior to this legislation coming into effect, those individuals who held positions as Law Lords were slated to become members of this new Supreme Court. This transition ensured continuity while introducing much-needed reforms within Britain's legal framework (Garne, 2009).

Before 2005, the legal requirements for appointment necessitated either holding a High judicial office for two years or practicing as a qualifying practitioner for 15 years. The introduction of the CRA 2005 brought about a completely new selection process.

- A. To inform the Prime Minister of the name for the appointment to be finalized.
- B. To reject the name if he considers that the person is unsuitable;
- C. If he believes there is insufficient evidence on certain key matters, the commission must be required to reconsider the selection (section 29).

(Lords, 26 July 2007)

After a rejection, the Local Commission (LC) may not propose the same name again for consideration in respect of the same vacancy. However, following reconsideration, the LC may once again propose the same name. It is important to note that each vacancy affords the LC only one opportunity to reject a proposed name, and only one opportunity to request reconsideration. If at the initial two stages, these opportunities are utilized, then at the third stage, the LC must notify the Prime Minister (PM) of the name ultimately selected by the commission. The LC also has the option to notify the PM of a previously considered person whom they had requested be reconsidered, provided that individual had not been rejected thereafter (Lords, 26 July 2007).

The Tenure of a judge at the Supreme Court remains unchanged after the enactment of the reform act. Like before, a judge will hold office during good behavior, but can be removed if both houses of parliament address the issue (section 33). Judges also have the option to retire or resign, and there is a procedure to declare their office vacant if they are permanently disabled or unable to resign (section 36). In certain cases, the president of the Supreme Court may request judges from the Court of Appeal and equivalent Courts in Scotland and Northern Ireland to sit as acting judges. Additionally, a supplementary panel consisting of individuals who have recently held High judicial office and are under the age of 75 may also be appointed. (Lords, 26 July 2007).

Judicial Appointments and Discipline

In general, the independence of the Judiciary is crucial for upholding the rule of law and maintaining public trust in the legal system. It ensures that people can have confidence that their rights will be protected and that justice will be served. Judicial independence also plays a role in sustaining international confidence in a country's stability and reliability for business. To secure judicial independence, it is important to have an appointments process that avoids politically biased judges and ensures that the appointing body or any individual or organization does not influence judges. This allows appointed judges to act independently and without improper pressure in their roles (Commons, 10 February 2004)

The enactment of the Constitutional Reform Act 2005 led to the establishment of a new Judicial Appointments Commission. Prior to the implementation of this act, the process of appointing judges relied on the recommendation of the Lord Chancellor, who also held a government position. To ensure independence, the legislative body of the government created a separate and independent Judicial Appointment Commission for England and Wales. While judges are included in the commission, they do not hold a majority, and the commission must have a lay chairperson. The commission is responsible for recommending candidates to the Lord Chancellor, who possesses limited veto power. Notably, the act mandates the commission to actively promote

diversity and inclusivity by considering a wide range of individuals for judicial appointments.
(Gay, 14 November 2005)

The Act establishes a Judicial Appointments Commission that will have a significant role in appointing judges in the future, excluding those for the Supreme Court. The commission will consist of a non-judicial chairperson (referred to as “lay,” meaning they have no prior judicial or legal experience) and 14 other members.

- There are a total of five judges, consisting of one judge from the Court of Appeal, one judge from the High court, one judge from either the Court of Appeal or the High Court, one circuit judge, and one district judge.
- Two practicing Lawyers
- Five lay members
- One member of a legal tribunal
- One lay magistrate
(Lords, select committee on the constitution, 2005)

The section of the CRA 2005 deals with complaints regarding the appointment process.

- The duration of the appointment as the ombudsman should not exceed 5 years, and an individual cannot serve as the ombudsman for more than 10 years.
- Complaints regarding the appointment process can claim maladministration by either the judicial appointments commission or the Lord Chancellor's department
- Complaints lodged within 28 days of the incident must undergo investigation by either the commission or the department. This timeframe is important as it ensures that complaints are addressed in a timely manner and allows for a prompt resolution of the issue at hand .(Lords, House of Lords select committee on the constitution)

Provisions Related to the Judiciary

For many years, it has been a rule that judges are not allowed to serve in the lower chamber of the House of Commons. This rule is outlined in the House of Commons disqualification act 1975. However, this disqualification does not apply to the Law Lords, as they are already disqualified from the Commons due to their life peerages. The new Supreme Court will also have a similar disqualification rule, where judges of the Supreme Court will not be allowed to serve in the House of Commons. Similarly, members of the House of Lords will be

disqualified from sitting and voting in that house if they hold a judicial position that disqualifies them from the commons. So, if the existing Law Lords become judges of the new Supreme Court, they will not be able to participate in the House of Lords until they retire from the Supreme Court. Once the Supreme Court is established, its judges will be unable to take part in the proceedings of the house. This rule also applies to the Lord Chief Justice and other senior judges who have been granted a life peerage. (Lords, select committee on the constitution, 2005).

Position of the Lord Chief Justice

The establishment of the Lord Chief Justice office was a significant change brought about by the Constitutional Reform Act 2005. In this new role, the Lord Chief Justice of England and Wales serves as the Head of the Judiciary and the President of the Courts in England and Wales. The modifications made to the office of the Lord Chief Justice will have a direct impact on the individual holding that position. The Department for Constitutional Affairs (DCA) has indicated that they do not plan to release an updated version of the concordat that was agreed upon between Lord Woolf and Lord Falconer in January 2004 (Carroll, 2017;2019). This Concordat was primarily aimed at gaining the Judiciary's agreement on the provisions to be included in the Constitutional Reform Bill, and that objective was successfully achieved. Under the new system, certain responsibilities that were previously held by the Lord Chancellor as the Head of the Judiciary will now be shared or decided upon jointly by the Lord Chief Justice and the Lord Chancellor, or through consultation between them. These responsibilities include matters related to judicial discipline and the handling of complaints against judges. Additional responsibilities will be given to the Lord Chief Justice. Senior judges will be required to assume administrative duties that were previously handled by the LC and his team. It remains uncertain whether this council will represent the entire Judiciary or if it will have a wide range of functions similar to the Judicial Conference in the USA, which has been active for several decades. However, it is essential to establish a well-defined structure within the Judiciary to effectively address government

proposals for legislation that impact the Judiciary. Furthermore, the support from such a body could enhance the Lord Chief Justice's influence when dealing with the government. (Lords, select committee on the Constitution, 2005).

The Act's impact on expanding the responsibilities of the Lord Chief Justice may result in a demand for increased judicial responsibility and openness towards parliament. The Lord Chief Justice serves as the representative of the judiciary of England and Wales to both Parliament and the Government. Furthermore, they are entrusted with the duty of overseeing judicial complaints alongside the Lord Chancellor's office, which investigates grievances lodged against judicial office-holders. As the president of the Courts of England and Wales, the Lord chief justice has the authority to preside over cases in any English or Welsh court, including Magistrate's Courts. (Lords, select committee on the Constitution, 2005).

Measuring the Constitutional Reform Act 2005 Changes

The primary objective of Constitutional Reforms in the UK is to enhance democracy by strengthening the participatory aspects of a robust democratic system that upholds the doctrine of separation of powers. While the implementation of the separation of powers principle has varied globally, parliamentary systems of government have traditionally merged the Executive and Legislative branches for the sake of convenience. However, under Tony Blair's government, there was a shift towards a formal division of powers within the judiciary through the Constitutional Reform Act of 2005. On numerous occasions, the labor party has argued that the core principle of the Constitutional Reform Act is centered around the allocation of powers among the three branches of the state. Each branch is assigned specific functions that are exclusively carried out by them. These three key branches include the Legislative responsible for creating laws, the Judiciary tasked with resolving legal disputes, and the Executive responsible for implementing and adhering to the Law.

The Constitutional Reform Act 2005 focused on the Judiciary branch of the government. This Act had a significant impact on the political landscape of the UK, as it aimed to enhance the separation of powers between the Judiciary, the Executive, and the Legislative. Although the act succeeded in increasing the independence of the Judiciary, the separation of powers between the Executive and the legislative remained unchanged. The primary objective of the Constitutional Reform Act was to ensure the autonomy of the Judiciary.

Towards an independent judiciary

Undoubtedly, the majority of Constitutional Reforms and modifications related to the concept of separation of powers necessitate a judiciary that is completely autonomous and distinct from the government. This is crucial to guarantee that the law is upheld in an unbiased and consistent manner, regardless of who holds power. The main objective of the Act was to establish a clearer separation of duties and redefine the connection between the Judiciary and the other branches of government, bringing it up to date. This has been accomplished by implementing three significant changes that have had a profound impact on the political system governed by the doctrine of separation of powers. (politics.co.uk, 25/05/2019)

The Constitutional Reform Act of 2005 has brought about significant transformations within the Judiciary, resulting in three major changes that greatly affect its functioning. These changes include the restructuring of the LC'S office, the establishment of the Supreme Court of the UK, and the formation of the Judicial Appointments Commission.

Outcomes of the CRA 2005

The Constitutional Reform Act of 2005 successfully establishes a separation of powers between the parliament and Judiciary by clearly defining their roles and responsibilities. Additionally, it grants the Judiciary various measures to protect itself from any unconstitutional

influence or interference from the parliament. As a result, the Act strengthens the accountability of the Judiciary, as it operates under a more formal and structured framework

There are numerous arguments to support the assertion that the Constitutional Reform Act 2005 holds significant value in bolstering the institutions of power in the United Kingdom.

The primary modifications implemented by the CRA 2005 can be summarized as follows:

- The reform act imposes an obligation on government ministers to uphold and safeguard the autonomy of the Judiciary, prohibiting them from any endeavor to meddle or exert influence on judicial rulings through privileged interactions with judges.
- The restructuring of the position of the Lord Chief Justice involves transferring the judicial responsibilities to the President of the Courts of England and Wales. This change includes a new title for the Lord Chief Justice. As a result, the Lord Chief Justice now oversees various aspects related to judges, such as their training, guidance, and deployment. Additionally, the Lord Chief Justice serves as a representative for the judicial system of England and Wales, conveying their perspectives to Legislative bodies and Government officials.
- The Supreme Court of the UK has become independent and separate from the House of Lords. It now has its own appointments system, staff, budget, and building
- An independent commission called the Judicial Appointments Commission has been established to select candidates for judicial appointment and recommend them to the Secretary of State for Justice. The commission's main objective is to ensure that merit is the sole criterion for the appointment of judges and that the appointments system is modern and transparent
- A Judicial Appointments and conduct ombudsman is responsible for conducting investigations and providing suggestions in the event of grievances regarding the process of appointing judges. Additionally, they oversee the handling of judicial complaints in line with the guidelines outlined in the constitutional reform act of 2005.

(Judicial appointments, n.d.)

Several of the aforementioned alterations were implemented successfully to tackle the concerns raised by Human rights organizations and align with the requirements of the European Court of Human Rights (ECHR). According to the ECHR, the Judiciary system must not only project the image of independence but must genuinely function independently. Prior to these reforms, the LC was affiliated with all three branches of the government, undermining the autonomy of the Judiciary and the fundamental principle of Separation of Powers (SOP).

The CRA 2005 introduced a significant change with the establishment of the Supreme Court of the UK. This move was aimed at ensuring a more independent and transparent Judiciary, separate from the Parliament. The main purpose of creating this Court was to replace the Appellate Committee from HL and serve as the final court in the country. By doing so, it aimed to establish a stricter separation between the Judiciary and the Parliament, reducing the potential for accusations of impartiality. Moreover, this change also aligned with Montesquieu's concept of a strict separation of powers, strengthening the idea of a separation between the Judiciary and the Legislative. Additionally, the Constitutional Reform Act 2005 reduced the involvement of the LC in the affairs of the new Supreme Court.

The Constitutional Reform Act of 2005 has not significantly impacted the relationship between the Executive and Legislative branches in the UK. The functions of the Legislative and Executive have always been considered overlapping, and this is not unique to the UK. The Prime Minister still serves as the Head of the Executive and the Leader of the majority party in the House of Commons (Norton, 2002).

The Constitutional Reform Act 2005 codified the autonomy of the Judiciary and brought about significant changes to the criteria for judge appointments. In the United Kingdom, the process of selecting and appointing judges now rests solely with the independent Judicial Appointment Commission. Although there have been some adjustments to the arrangements for judicial appointments since the implementation of the CRA 2005, the government allows for a broader Constitutional perspective in considering these changes. Consequently, The Reform Act has greatly curtailed the influence of the Executive branch on the Judiciary, particularly in relation to the appointment of judges connected to the Lord Chancellor, who holds a position in the Prime Minister's Cabinet. (Constitutional Reform Act 2005)

The Constitutional Reform Act 2005 is a significant step towards achieving a transparent and independent Judiciary in the UK, as well as a stricter application of the principle

of separation of powers. This reform disperses the concentration of power by reforming the Lord Chancellor's responsibilities in the Judiciary, Executive, and Legislative. The establishment of the Supreme Court reflects a full separation between the Legislative and Judiciary. The creation of the Judicial Appointment Commission has also contributed to greater transparency and specialization in the selection and appointment of judges, further enhancing the doctrine of separation of powers. However, despite these achievements, there are still overlaps between the Judiciary and the Legislative and Executive branches that have not been fully recognized. (Justice may 2008).

Conclusion

Since the UK does not have a codified Constitution with a clear definition of Constitutional change, its Constitution is implemented through statutes, conventions, practices, and underlying principles such as parliamentary sovereignty and the Rule of Law

The LC'S office, whose position was questioned due to its numerous functions, faced an overloaded role that disregarded the doctrine of SOP. This clouded the practices of the office and hindered potential modifications, transfers, and abolitions of existing functions. Consequently, the LC had to undergo significant changes in their positions to clarify the controversial views.

The independent Supreme Court was established to create a distinction between the highest Appellate Court and the second House of Parliament. The House of Lords (HL) served as the Highest Court, known as the Supreme Court of appeal, which had the authority to make final decisions on legal matters for the entire United Kingdom, including England, Wales, and Northern Ireland, particularly in criminal cases. The Lower Courts were obliged to follow the rulings of the HL. In addition to presiding over cases, the judges of the HL had the privilege of participating in debates and contributing to the development of government Legislation. The new Supreme Court is a separate entity in the UK, with no legal ties to the Courts in England and Wales. Consequently, it operates independently from the Lord Chief Justice of England, who serves as the Head of the Judiciary in England and Wales.

According to government legislation, her majesty now has the authority to appoint civil district judges and grant the Lord Chief Justice the power to assign them to their respective districts. The newly established Supreme Court in the UK operates independently from the England and Wales Courts and falls outside the jurisdiction of the Lord Chief Justice of England, who serves as the Head of the Judiciary in England and Wales. This development ensures that civil district judges are aligned with district judges in Magistrate's Courts and other senior members of the Judiciary. Additionally, certain functions previously held by the Lord Chancellor have been

transferred to the Lord Chief Justice of Northern Ireland, allowing him to delegate these responsibilities to other office holders, ensuring flexibility while he fulfills his primary role as a judge. The Lord Chief Justice is also consulted by the Lord Chancellor in the formulation of rules without the need for a committee, representing a crucial element of the new Judiciary system (Barnard, 2023).

General Conclusion

Over centuries, this judicial system has developed to constitute a great body of laws, multiple-jurisdictional courts; for example, criminal courts, in addition to multiple legal procedures, such as a trial by jury (Rivlin, 2012). This study aimed to investigate the Scottish judicial system in the light of the 2005 Constitutional reform. It also sought to highlight the changes that happened in the House of Lords' authorities and the Lord Chancellor's multifarious roles and responsibilities. Moreover, it aimed to examine the idea of the dependence or independence of the judicial system and investigate the impact of the 2005 constitutional reform on the system. For synthesizing the major studies to the research, relevant literature review has been conducted. The first chapter was concerned with the beginnings and the development of the judiciary in Scotland for the sake of getting a clearer and deeper understanding to the topic and the how things were before the constitutional reform act 2005. The second chapter analyze the impact of the reform on the judicial system in detailed. As a conclusion, it can be said that the UK legal system was not born strong, but rather it developed over time to become more powerful, more independent and more authoritative the constitutional reform act of 2005 significantly reshaped the Scottish judicial system. It transferred authority over criminal justice matters to the Scottish parliament, allowing it to enact laws and policies related to crime, sentencing, and court operations. Additionally, it established the Scottish court service as an autonomous organization responsible for managing the courts. The act also granted the Scottish Ministers the power to appoint judges, previously held by the UK government. Other modifications included the creation of advisory bodies for judicial appointments and civil justice matters, as well as a new system for appointing and dismissing sheriffs. These reforms have enhanced the Scottish judicial system's transparency, accountability, and responsiveness, leading to a positive impact on justice administration in Scotland. Historically, the Scottish judicial system has evolved over centuries to encompass a

comprehensive body of laws, various courts (including criminal courts), and legal procedures (such as jury trials). This study analyzed the Scottish judicial system in the context of the 2005 constitutional reform, specifically examining the changes it brought to the authority of the House of Lords and the diverse roles of the Lord Chancellor. It also explored the concept of judicial dependence or independence and assessed the impact of the 2005 reform on the system. A comprehensive literature review was conducted to synthesize relevant research findings. The first chapter delved into the origins and development of the Scottish judiciary to provide a historical foundation for understanding the topic and the pre-reform landscape. The second chapter thoroughly analyzed the impact of the reform on the judicial system.

In conclusion, the UK legal system has undergone significant evolution over time, becoming more robust, independent, and authoritative. The Constitutional reform act of 2005 played a pivotal role in this transformation, enhancing the Scottish judicial system's effectiveness and accountability..

References

- The Privy Council Office. (n.d.). Privy Council Office
- Law Society of Scotland. (n.d.). Law Society of Scotland.
- Scottish Government.(2022, April 1).Lord Advocate: Role and functions.
<https://www.gov.scot/publications/lord-advocate-role-and-functions/>
- Liddell, H. M. (2018, December 11). Roman Law. World History Encyclopaedia.
- The Open University. (n.d.). An Introduction to Public Law OpenLearn.
- Scottish Criminal Cases Review Commission. (n.d.). Scottish Criminal Cases Review Commission.
- Encyclopædia Britannica. (n.d.). What is the difference between criminal law and civil law?
Britannica.
- Colin Turpin Adam Tomkins .(2007) .*British government and the constitution text and materials* .Cambridge university press.
- David Lowe ‘Dilip K .Das .(2014) . *Trends in the judiciary_ interviews with judges Across the globe, volume two* .crc press.
- Catherine Barnard 02) .May , 2023 .(*Monarchy and the courts* .
/ukandeu.ac.uk: <https://ukandeu.ac.uk/monarchy-and-the-courts/>
- Constitutional Reform Act*.(2005) .
- Constitutional Reform Act 2005*.(2005) .
- Constitutional Reform Act 2005 Explanatory Notes*.legislation.gov.uk Great Britain. (2005).
- Constitutional Reform Act 2005 [Explanatory notes]. [legislation.gov.uk](https://www.legislation.gov.uk)

David M .O'Brien Peter H .Russell .(2001) .*Judicial independence in the age of democracy: critical perspectives from around the world* .Google Books: Gary Slapper †David Kelly .(2016) .*the English legal system 2016-2017* .-Routledge.

Graham Gee †Robert Hazell †Kate Malleson †Patrick O'brien .(2015) .*The politics of judicial independence in the uk's changing constitution* .Cambridge university press.

Great Britain .(2005) .*Constitutional Reform Act 2005* .The Stationery Office.

Hilaire Barnett .(2013) .*Constitutional & Administrative Law* .Routledge.

House of Lords .(2005) .*Select Committee on the Constitution* .The Stationery Office.

House of Lords 26) .July 2007 .(*House of Lords Relations between the executive, the judiciary and Parliament* .
House of Lords Select Committee on the Constitution .The Stationery Office.

JEFFREY JOWEL , DAWN OLIVER .*The changing constitution* .
:2011 Oxford University Press.

Keegan, G. (2021). Scottish legal system essentials. In *Edinburgh University Press eBooks*. <https://doi.org/10.1515/9781474466486>

Judicial appointments .judiciary.uk: <https://www.judiciary.uk/about-the-judiciary/Our-justice-system/jud-acc-ind/jud-appts/>

Julian S .Webb †James Holland .(2016) .*Learning Legal Rules: A Students 'Guide to Legal Method and Reasoning* .books:

Meg Russell †Maria Sciara).February 2006 .(*The House of Lords in 2005: A More* .

Melis Basmaci †6) .December, 2013 .(*Constitutional Conventions and Codification* .
blogs.kcl.a

Basmaci, M. (2013, December 6). Constitutional conventions and codification [Blog post]. King's Student Law Review. blogs.kcl.ac.uk

Ministry of Justice) .May 2008 .(*Ministry of Justice Departmental Report 2007/08* .

Natalie Fox ,Jakub Firlus , Piotr Mikuli) . January , 2017 .(*Models of Courts Administration: An Attempt at a Comparative Review* .

researchgate: Gay, O. (2005, November 14). Models of courts administration: An attempt at a comparative review. In [Book Title] (pp. xx-xx).

https://www.researchgate.net/publication/332436343_ResearchGate

Robert hazell .(2008) .*Constitutional futures revisited* .Palgrave macmillan.

Roger masterman .(2011) . *The separation of powers in the contemporary constitution _ Judicial competence and independence in the united kingdom* .Cambridge University press.

The constitutional reform act 2005 (c 4) p.1.

Sutherland, E. E. (2011). *Law making and the Scottish Parliament*. Edinburgh University Press.

Clark, B., & Keegan, G. (2012). *Scottish legal system essentials* (3rd ed.). Edinburgh University Press.

Macqueen, H. L. (2012). *Studying Scots Law*. A&C Black.

Boyle, A., Hemsworth, C., Macqueen, H., & Loux, A. (2002). *Human rights and Scots law: Comparative Perspectives on the Incorporation of the ECHR*. Bloomsbury Publishing.

"The Dearest Birth Right of the People of England" : The Jury in the history of the Common Law. (2002). <https://doi.org/10.5040/9781472559241>

The House of Commons 10) .February 2004 .(*House of Commons constitutional Affairs committee judicial appointments and a supreme court (court of final appeal)* .

ملخص

يسعى هذا البحث إلى إجراء دراسة تحليلية من أجل التحقيق في النظام القضائي الأسكتلندي في ضوء الإصلاح الدستوري لعام 2005 من أجل إجراء هذه الدراسة، طُرحت ثلاثة أسئلة. ويتناول السؤال الأول السمات التي يتسم بها النظام القضائي الأسكتلندي قبل عام 2005. وتتناول الثانية النظام القضائي الأسكتلندي بعد عام 2005 من النظام القضائي السابق على الإصلاح. وللإجابة على الأسئلة السابقة، تم صياغة ثلاث فرضيات. تقترح الفرضية الأولى أن اعتماد الإصلاح الدستوري لعام 2005 يمكن أن يؤدي إلى استقلال النظام القضائي، والحفاظ على نظام قانوني قضائي قوي؛ إلى أن خصوصيات قانون الإصلاح الدستوري لعام 2005 يمكن أن تحدث تغييرات جذرية في النظام القضائي من حيث هيكل المحاكم والوظائف وتعيين القضاة. أما الفرضية الثالثة فتتص على أن اعتماد قانون الإصلاح الدستوري لعام 2005 يمكن أن يمنح السلطة والسلطة للسلطة القضائية. ومن أجل التحقق من صحة فرضياتنا، استخدمنا الأساليب التحليلية التاريخية والمقارنة. كشفت نتائج الدراسة أن النظام القضائي الأسكتلندي، قبل الإصلاحات الدستورية، كان ضعيفا وتخضع لسيطرة السلطات الواسعة للسيد المستشار. وبعد التحليل تبين بالتغييرات جذرية قد حصلت في النظام القضائي الأسكتلندي منها هيكله المحاكم. وإنشاء محكمة عليا منفصلة، إلغاء السلطة القضائية لمجلس اللوردات، تعديل دور اللورد المستشار ومكتبه، إضافة إلى إنشاء لجنة تعيينات قضائية مستقلة، ونتيجة لذلك فقد أصبح النظام القضائي في اسكتلندا أكثر قوة واستقلالية وذا سلطة و نفوذ على غير ما كان عليه سابقا.

الكلمات المفتاحية: مجلس اللوردات، اللورد المستشار، القضاء، قانون الإصلاح الدستوري

