

Tom Bingham and the Transformation of the Law

A Liber Amicorum

Editors

MADS ANDENAS

and

DUNCAN FAIRGRIEVE

Editorial advisory committee

Professor Sir Basil Markesinis, Professor Ewan McKendrick

and

Sir Bernard Rix

OXFORD
UNIVERSITY PRESS

9

The Bingham Court*

Vincenzo Zeno–Zencovich

For eight years Lord Bingham has presided over the Judicial Committee of the House of Lords. These have been years of intense legal change, not only in England but also in the Western world. These changes are reflected in the House of Lords' jurisprudence.

My reflections start from a simple question: is it possible to speak of what our American colleagues would call 'the Bingham Court'?

This is clearly an over-simplified label which cannot cover striking differences. One does not need to be a full-time comparatist to be aware of how much the Judicial Committee of the House of Lords is different from the US Supreme Court (even now that its name will soon be changed to 'Supreme Court'); how different the procedures of appointment to the two Courts; the role of Senior Law Lord in respect of that of Chief Justice; and how implausible it would be to call their Lordships 'brethren'.

However, once we have made all the necessary caveats and measured the distance between the Houses of Parliament and Capitol Hill, a comparatist cannot avoid noticing significant changes in the jurisprudence of the House of Lords since Lord Bingham has been at its summit.

Elegance and discretion forbid even to suggest the idea of a Judicial Committee moulded by the personality of its highest representative. But a comparatist—especially if he is a hard-to-die legal-realist—has the task of pointing out how legal ideas and models circulate, whether within a legal system or between different ones. And how this circulation happens, beyond—and even against—subjective intentions, and self-perception.

What one notices, strikingly, in the last eight years, which coincide with Lord Bingham's role as Senior Law Lord, is that the decisions it has taken not only indicate new directions in English law, but especially suggest different approaches

* This paper expands the *laudatio* that was read on March 14th 2008 in occasion of the bestowal of the honorary doctoral degree in law to Lord Bingham of Cornhill by the University of Roma Tre. The *Lectio Magistralis* delivered by Lord Bingham was, quite properly, on the subject on which he is a master, 'The Rule of Law' (published in the proceedings of the ceremony by University of Roma Tre Press, 2008, p 34ff).

to legal reasoning and deciding and pave the way, in many fields, towards a European *ius commune*.

The analysis has been conducted on the nearly 500 (475) decisions handed down by the House of Lords between mid-2000 and 2007.

Let us first look at the numbers: in nearly 250 decisions the issue is that of the interpretation and enforcement of some transnational or international piece of law, or foreign, transnational, or international law are used to solve problems of domestic law.

The largest share (over 100 decisions) is taken by the European Convention on Human Rights (ECHR), understandably an element of necessary reference after the enactment of the Human Rights Act in 2000.

One can explain the fact considering that for 50 years the UK contrary to many continental European countries—has refused to apply the ECHR directly in its courts considering it an international treaty which bound only the state towards other states, but did not create enforceable rights for British citizens or established obligations upon the government. Now that the floodgates have been opened there is an urgent need to direct the lower courts, enabling them to make consistent decisions. However, in the last years taken into consideration, the number is steadily growing: in practically two decisions out of three there is a more or less extended reference to the ECHR and to Strasbourg jurisprudence.

The second group—in order of number (over 50 decisions)—is that in which the House of Lords has to tackle EU law. Here we find not only direct interpretation of Regulations, but also several cases of referral to the ECJ under Article 234 of the Rome Treaty,¹ or of decisions following referral.²

If one looks at the areas of the law which are mostly affected, the foremost is that of individual freedom in its many facets: investigation,³ fair trial,⁴ sentencing,⁵ prisoner's treatment,⁶ asylum seekers and refugees,⁷ procedures concerning deportation of immigrants,⁸ extradition.⁹ An important area is also that

¹ *Ex multis* see *CPP, Sinclair Collins, Consorzio Prosciutto di Parma, Optident, Scandecor, Celtec I, ex p Barker, Siringer, Marks & Spencer*.

² *Ex multis* see *Wolverhampton Healthcare I & II, R v Minister of Agriculture, Celtec II, Innentrepreneur*.

³ E.g., *R v Sargent, Clingham, R v Commissioner of Police for Metropolis, ex p Amin, Attorney General Ref no 5/2002, In re McKerr, ex p LS, ex p Middleton, ex p Green, In re O, Laposte, In re Officer L*.

⁴ E.g., *R v A* [2001], *Loosely, R v Jones, Lyons, Attorney General Ref no 2/2001, Laval, R v H* [2003], *Sheldrake, Davidson, Connor, R v H* [2004], *A v Home Dept* [2004], *Scotcher, MH v Dept Health, Camberwell Green Youth Court, Mushiaq, R v Parole Board (ex p Smith), ex p Hasan, Courts*.

⁵ E.g., *Lichniak, ex p Anderson, Drew, ex p Giles, ex p Ustley, In re Hammond, Roberts, ex p Dudson, R v Home Dept (ex p Smith), Clift*.

⁶ E.g., *R v Governor HM Prison Brockhill, ex p Daly, Wainwright*.

⁷ The number of cases in this field is impressive. See *ex multis* *ex p Saadi, ex p Zegiri, ex p Thangarasa, ex p Anufrijeva, ex p Sivakumar, Sepet, ex p Razgar, ex p Hoxha, ex p Adam, Januzi, Home Dept v K* [2006].

⁸ E.g., *Rehman, Immigration Office at Prague Airport, ex p Ullah, N v Home Dept, ex p Bagdanavicius, Huang*.

⁹ *In re Guisto, R v Commissioner of Police for Metropolis, Montila, Armas, Dabas*.

of civil rights, ranging from sex discrimination¹⁰ to freedom of expression,¹¹ privacy rights,¹² protection of property,¹³ family relations.¹⁴

Obviously the decisions do not all have the same intensity, however the sheer number is impressive.

If one made a similar survey on other courts—whether ‘Supreme’ or ‘Constitutional’—it would not be easy to find equivalents.

This does not mean that the decisions in themselves are to be approved. Rather it indicates that the ‘Bingham Court’ is everything except ‘insular’. Nor does it mean that the use of EU, transnational, and foreign law and cases is, alone, a guarantee of judicial wisdom. A comparatist is not looking for that, but for the common way of reasoning, the willingness for the judge to be influenced by legal materials different from those which come from his own tradition.

If one tries to find a *fil rouge* that runs through the decisions that have been selected, a comparatist cannot help noticing the following features:

- (a) The House of Lords is in constant dialogue with the European Court of Human Rights. Its decisions, and not only those in which the United Kingdom is part, are scrutinized, commented, distinguished.¹⁵ To my knowledge no other ‘Supreme’ or ‘Constitutional’ Court of great European countries does so consistently use the ECHR jurisprudence not as *obiter dicta* or, worse, as a top-ping, but as *ratio decidendi*. It would surely be profitable for all if this dialogue were two-sided and that at least occasionally Strasbourg looked at London.¹⁶
- (b) The House of Lords is constantly construing EU law.¹⁷ It is a line indicated by the European Court of Justice to whom the House of Lords refers questions

¹⁰ See *Wolverhampton Healthcare I & II*, *Macdonald*, *Relaxation Group*, *A v Chief Constable of West Yorkshire Police* [2004], *Ghaidan, Percy*, *ex p Wilkinson*, *ex p Hooper*, *Secretary of State for Work and Pensions v M* [2006].

¹¹ See *Turkington*, *Punch*, *Shayler*, *ex p ProLife Alliance*, *ex p Rusbridger*, *Cream Holdings*, *In re S* [2004], *Campbell II*, *Polanski*, *Jameel*, *Miss Behavin*.

¹² See *Ashworth Security Hospital*, *R v Commissioner of Police for Metropolis*, *ex p Morgan Grenfell*, *Qazi*, *Campbell I*.

¹³ See *Benjafield*, *Marcic*, *Parish of Aston Cantlow*, *ex p Quark Fishing*.

¹⁴ See *In re B* [2001], *Bellinger*, *Rees*, *In re D* [2005], *In re J* [2005], *Down Lisburn Health and Social Services Trust*, *In re G* [2006], *In re M* [2007].

¹⁵ The issue is well worth a thorough analysis: one can start with the statement of Lord Bingham in *Qazi* according to whom ‘Strasbourg authority is of course the primary source of guidance on the interpretation and application of the Convention’ and compare it with the various opinions in *Al-Skeini*. In particular Lord Bingham’s when he states that national courts ‘must be slow to rule on the scope of an international treaty where its ruling, if correct, would apply to contracting states other than itself’. And again Lord Bingham’s opinion in *Key*: to the question ‘whether a court which would ordinarily be bound to follow the decision of another court higher in the domestic curial hierarchy is, or should be, no longer bound to follow that decision if it appears to be inconsistent with a later ruling of the Court in Strasbourg’ his reply is that ‘degree of certainty is best achieved by adhering, even in the Convention context, to our rules of precedent’.

¹⁶ Quite correctly Lord Rodger, in *Al-Skeini*, points out that ‘the judgments and decisions of the European Court do not speak with one voice’; and that ‘some of them [differences] appear much more serious and so present considerable difficulties for national courts which have to try to follow the jurisprudence of the European Court’.

¹⁷ *Ex multis* see *Berkeley*, *Imperial Tobacco*, *Cantabrica Coach*, *Consorzio Prosciutto di Parma*, *Opisdeni*, *Scandecor*, *White v Motor Insurers Bureau*, *Celtec* (I & II), *ASDA*, *Macdonald*, *Junstan*

which are not trivial and greatly contribute towards the clarification of often obscure and contradictory Brussels legislation.¹⁸ A European judge that does so on a regular basis shows that he is perfectly acquainted with one of the main sources of legislative law, but at the same time knows that it must fit in national traditions.¹⁹ And this is one of the most engaging tasks of today’s judges.

- (c) The House of Lords does not look at European law and jurisprudence only:²⁰ countless are the quotations of US cases from the Supreme and Federal Courts, together with decisions from other Commonwealth jurisdictions (especially Canadian). And if one is familiar with the north-American style one knows that its intellectual vivacity is difficult to resist.²¹ Solutions may not coincide but a substantive—rather than procedural or formal—way of reasoning inevitably seeps into their Lordships’ opinions.²²
- (d) Many decisions—and not only those that are already on the international hit charts (*Fairchild*, *Three Rivers*, *Diane Pretty*)—are in themselves a stimulus to comparative enquiry: accountability and rule of law (*Alconbury*); what is an ‘insurance transaction’ (*CPP*); good faith (*First National Bank*)²³; undue

Oy, *Johnstone*, *Borough of Bromley* (I & II), *Relaxation Group*, *Hoechst*, *A v Chief Constable of West Yorkshire Police*, *Archibald*, *Montila*, *Armas*, *Percy*, *Szoma*, *Stringer*, *Inntrepreneur*, *Majroski*, *Preston*, *Serco*.

¹⁸ EC VAT and taxation directives are under constant scrutiny: see *CPP*, *Liverpool Institute for Performing Arts*, *Sinclair Collins*, *Plantiflor*, *Smith Glaziers*, *Lex Service*, *Royal Sun Alliance*, *Beynow*, *Autologic*, *College of Estate Management*, *Grenalls*, *Marks & Spencer* (I & II), *Deutsche Morgan Grenfell*, *Pirelli Cable Holding*, *Boak Allen*.

¹⁹ As Lord Hoffmann, in *R v Lyons*, points out ‘In domestic law, the courts are obliged to give effect to the law as enacted by Parliament. This obligation is entirely unaffected by international law’.

²⁰ And for the joy of the lovers of Roman Law one finds an ample quotation of the Digest in *Mark v Mark* (per Lord Hope) on the distinction between ‘domicilium’ and ‘home’. Remarkable how Lord Rodger in *R v Bingham* disposes of the case simply by quoting Ulpian: ‘*Dominus membrorum suorum nemo videtur*’.

²¹ For some examples see: *Darker* (per Lord Cooke), *Loosely* (per Lord Nicholls), *Fairchild* (per Lord Bingham), *Cullen* (per Lord Bingham, dissenting), *A v Home Dept* (per Lord Bingham), *Deep Vein Thrombosis* (per Lord Scott), *Gregg v Scott* (per Lords Nicholls and Hoffmann), *Lesotho Highlands* (per Lord Steyn), *National Westminster Bank* (per Lord Nicholls), *Mushtaq* (per Lord Hutton), *Courts* (per Lord Bingham), *Jones* (per Lord Hoffmann).

²² For some examples see Lord Bingham’s opposition in *Dabas*, to ‘reintroducing an element of technicality which the Framework Decision [on arrest warrant] is intended to banish and by frustrating the intention that a warrant in common form should be uniformly acceptable in all member states’. Or Baroness Hale’s opinion in *In re M*—a child abduction case—where after having described the appalling conditions of life in Zimbabwe, the balance is that ‘against all this... the policy of the [1980 Hague] Convention can carry little weight’. But for a less substantial approach towards humanitarian reasons see *N v Secretary of State for Home Dept* (per Lord Nicholls): ‘An AIDS sufferer’s need for medical treatment does not, as a matter of Convention right, entitle him to enter a contracting state and remain there in order to obtain the treatment he or she so desperately needs.’

²³ ‘Good faith in this context is not an artificial or technical concept; nor, since Lord Mansfield was its champion, is it a concept wholly unfamiliar to British lawyers. It looks to good standards of commercial morality and practice’ (per Lord Bingham); and for the opposite, more traditional, view ‘Any purely procedural or even predominantly procedural interpretation of the requirement of good faith must be rejected’ (per Lord Steyn).

influence in financial practice (*RBS*); interpretation of contracts (*Amoco*)²⁴; the balance between fair trial and dignity of the victim (*RvA*); when is a proceeding or a penalty civil or criminal (*Clingham, Benjafield*); what is a 'bodily injury' (*Bristow Helicopters*)²⁵; rights of the accused and court-martials or trial *in absentia* (*Boyd, Jones*); mandatory life sentences (*Lichniak*); the privilege against self-incrimination (*Lyons, Mushtaq*); official secrets versus freedom of the press (*Shayler*); reasonable time in criminal charges (*Attorney General no 1/01*); the problems related to trans-sexualism (*Bellinger, Chief Constable of North Yorkshire*) and homosexual relations (*MacDonald, Ghaidan, In re D, In re G, Secretary of State for Work and Pensions v M*); liability of public bodies (*Matthews, Transco*); unwanted children (*Rees*); sale of goods *a non domino* (*Shogun Finance*); the privacy of famous people (*Campbell*)²⁷; evidence procured by torture (*A v Home Dept* [2005]); loss of a chance (*Gregg v Scott*); prospective overruling (*National Westminster Bank*); limitation period and knowledge of negligence (*Haward*); negligent misrepresentation in contractual negotiations (*Hamilton*); Islamic veil at school (*Begum*). These are questions with which judges, lawyers, scholars, legislators around the world are confronted every day. A comparatist finds in the House of Lords reports a *bonanza* for his classes and casebooks.

- (e) It would be short-sighted not to see that on certain aspects the House of Lords continues to be the strenuous defender of views that have long outlived their time. In the field of the law of torts—if one sets aside the white-elephant decisions in *Lister v Hesley Hall*, *Fairchild v Glenhaven Funeral Services*, and *Chester v Afshar*—liability, especially of public bodies,²⁸ is denied on very formalistic and contortionist arguments that would be—and generally are—disregarded in any other jurisdiction, whether of common law or of civil law (*McGrath*,

²⁴ One should 'construe the agreement in a way that is consistent with its commercial purpose and the context in which it was entered into' (*per* Lord Hope); and see also Lord Hoffmann's reference to 'performative utterances'.

²⁵ The interpretation of the Warsaw Convention 'should, if possible, be consistent with the mainstream views expressed in leading overseas authorities' (*per* Lord Nicholls); and in the same sense see Lord Mackay's opinion: 'The Warsaw Convention should have a common construction in all the jurisdictions of the countries that have adopted the Convention, [therefore] I attach crucial importance to the decisions of the United States Supreme Court in *Eastern Airlines Inc v Floyd* (1991) 499 US 530 and *EL Al Israel Airlines v Tseng*, particularly as the United States is such a large participant in carriage by air.' Lord Steyn devotes a whole paragraph of his opinion to an analysis of comparative case law.

²⁶ 'A man does not by becoming a soldier cease to be a citizen' (*per* Lord Bingham).

²⁷ 'The time has come to recognize that the values enshrined in articles 8 and 10 [of the ECHR] are now part of the cause of action for breach of confidence' (*per* Lord Nicholls).

²⁸ And not only in tort cases: see *ex p Wilkinson* (a tax case) 'In any claim against a public authority for financial compensation in respect of past discrimination, it must be remembered that the general public (often the general body of taxpayers) will be footing the bill' (*per* Lord Brown). There has not been time or space to examine the decisions delivered by the House of Lords in the last seven months of Lord Bingham's appointment as Senior Law Lord. Therefore his vigorous dissent in *Smith v Chief Constable of Sussex Police* remains outside this review. The majority's restrictive position on the liability of police forces, however, confirms the critical comment presented in this paragraph.

Marcic, Rees, Matthews,²⁹ *Thomson, Tomlinson, Transco*,³⁰ *Adams, Gorringer, Brooks, Scott v Gore*). And in the field of the law of contract the door is closed on suggestions to update it in the light of European harmonization (*Shogun Finance*)³¹. From this point of view a comparatist notices that the huge opening made by the Human Rights Act does not bring significant changes to the core subjects of private law which are still governed by tradition.

- (f) The 'Bingham Court' has had to face one of the main dilemmas of modern democracies after the 2001 tragedies: are anti-terrorist laws, regulations, and administrative and police decisions compatible with the standards of human rights and civil liberties that are guaranteed in Western societies?³² To what extent is the 'war on terrorism' an entirely political and military issue, exempt from judicial scrutiny?³³ One can easily understand that this is an extremely delicate field, where balancing requires both an extremely attentive analysis of the facts and a very broad and clear view of the general interests at stake. In the many cases in which, directly or indirectly, the House of Lords is confronted with these problems, Lord Bingham's opinions generally take the lead and set the general principles which are, generally, followed by the rest of the court. But it is easy to notice that practically all the Law Lords feel it necessary to give their contribution to the development of the law in these difficult circumstances. It is sufficient to quote the conclusion of Lord Nicholls' opinion in *A v Home Dept* [2004]: 'The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws such as these. That is the true measure of what terrorism may achieve. It is for Parliament to decide whether to give the terrorists such a victory.' A comparatist immediately is brought to examine the parallel case law of the House of Lords and of the US Supreme Court, which has rendered, in these same years, several decisions on the rights of the Guantanamo detainees.³⁴

²⁹ 'I think it is well arguable that human rights include the right to a minimum standard of living, without which many of the other rights would be a mockery. But they certainly do not include the right to a fair distribution of resources or fair treatment in economic terms—in other words, distributive justice. Of course distributive justice is a good thing. But it is not a fundamental human right.' (*per* Lord Hoffmann).

³⁰ Although Lord Bingham acknowledges that a 'fault-based rule would increase disparity between English law and laws of France and Germany' he prefers that activities under a strict liability rule be selected by Parliament.

³¹ 'To attempt to use this appeal to advocate, on the basis of continental legal systems which are open to cogent criticism, the abandonment of the soundly based *nemo dat quod non habet* rule (statutorily adopted) would be not only improper but even more damaging.' (*per* Lord Hobhouse). Lord Millet's dissent is to no avail: 'Our inability to admit such an exception compels us to adopt a different analysis, but it would be unfortunate if our conclusion proved to be different. Quite apart from anything else, it would make the contemplated harmonization of the general principles of European contract law very difficult to achieve.'

³² See *A v Home Dept* [2004], *A v Home Dept* [2005], *Dabas*.

³³ See e.g., *Rehman, Jones v Minister of Interior of Saudi Arabia, R v Jones, Al-Skeini*.

³⁴ For the latest decision, which recalls all the precedents, see *Boumediene v Bush*, 558 US (2008). The outcome of the challenges to the Patriot Act of 2001 has, however, been different: see *Doe v Gonzales*, 546 US 1301 (2005).

(g) The Rule of Law is a constant and guiding principle in a great number of decisions, and not only in Lord Bingham's opinions in e.g., *Anderson, Davidson, A v Home Dept* [2005]. For a few examples one needs only to peruse the decisions in *Alconbury* (per Lords Hoffmann³⁵ and Nolan³⁶), *R v Loosely* (per Lord Nicholls), *Clingham* (per Lord Steyn)³⁷, *Matthews* (per Lord Hoffmann)³⁸, *Anufrijeva* (per Lord Steyn)³⁹, *A v Home Dept* [2004] (per Lord Nicholls). A comparatist—and even more so a legal-realist—even if he may harbour the impression that the Rule of Law is a portmanteau expression, must understand how the concept is in practice used and the result it brings forth. It would be easy to write a handbook on the subject looking only at the House of Lords' jurisprudence.

This last feature points at a further element that should be stressed. It would be at best *naïf* to present the 'Bingham Court' as the result of some kind of judicial superhero. It is instead very clear—if one goes through the various decisions—that there is a widespread agreement between their Lordships in tackling the problems in a broader (i.e., transnational, EU, comparative) perspective.⁴⁰

Lord Bingham is surrounded by Lord Nicholls, Lord Hoffmann, Lord Steyn, Lord Hope, Baroness Hale, and other Law Lords, who share—albeit with variable intensity⁴¹—the same approach. Dissents are rare and do not, generally, illuminate the aspect that we are here considering. There is nothing even vaguely similar to the vigorous and even scorching dissent against the use of comparative law of Justices O'Connor and Scalia in the US Supreme Court case of *Roper v Simmons*.⁴²

³⁵ 'The principles of judicial review give effect to the rule of law'.

³⁶ 'Electoral accountability alone is, of course, plainly insufficient to satisfy the rule of law'.

³⁷ According to whom there is a risk of 'prejudice of liberal democracies to maintain the rule of law by the use of civil injunctions'.

³⁸ 'Article 6 [of the ECHR] is concerned with standards of justice, the separation of powers and the rule of law. It would seem to have little to do with whether or not one should have an action in tort.'

³⁹ 'In our system of law surprise is regarded as the enemy of justice'; and Lord Bingham, dissenting: 'It is however a cardinal principle of the rule of law, not inconsistent with the principle of legality, that... effect should be given to a clear and unambiguous legislative provision.'

⁴⁰ It is therefore surprising to note that in two bioethics cases (*ex p Quintavalle I & II*) there is no reference nor to the Oviedo 1999 Convention on Human Rights and Biomedicine, nor to the Nice Charter on Fundamental Rights.

⁴¹ It would be incorrect to state that Lord Bingham plays the role of the ECHR hard-liner: see e.g., the differences of opinions between him and Lord Hope in *Attorney General Ref no 2/2001*, in which the former provides a broad notion of the 'reasonable time' rule in Article 6 of the ECHR, and the latter dissents from a conclusion that 'empties the reasonable time guarantee almost entirely of content'.

⁴² 543 US 551 (2005). One can compare the US judicial style with the following statements: 'I regard the idea of a conventional award in the present case as contrary to principle. It is a novel procedure for judges to create such a remedy. There are limits to permissible creativity for judges. In my view the majority have strayed into forbidden territory. It is also a backdoor evasion of the legal policy enunciated in *McFarlane*. If such a rule is to be created it must be done by Parliament. The fact is, however, that it would be a hugely controversial legislative measure... I cannot support the proposal for creating such a new rule.' (*Rees*, per Lord Steyn). 'The lack of any consistent or coherent ratio in support of the proposition in the speeches of the majority is disturbing.' (*Rees*, per

Here again the results are uneven, but what is interesting is the overall direction the House of Lords is taking.

One could explain the present state of things and make the simple observation that what is happening is not surprising. After all, in the year 2000 the Human Rights Act of 1998 came into force and it was inevitable that it influence also the House of Lords.

But the objection appears to be formalistic. On the one hand one must not forget that Lord Bingham has been one of the most respected advocates of the Human Rights Act and therefore he is now harvesting what he sowed. And on the other hand that—not only in the Common law tradition—general and high-flying principles need to find a judge that puts them into practice. And that judge happens to be not in some local jurisdiction or the judge of first instance, but the House of Lords in its full representation.

This brings us to the core of the argument: the 'Bingham Court' is profoundly different from the House of Lords we have known and admired through the last—shall we say—two and a half centuries and to whose decisions we look at as the pillars of the common law.

In its role of adjudicator of fundamental rights it is moving towards models scholars have studied comparing the US Supreme Court with the Constitutional Courts of Germany and Italy. Something similar has already happened with the Canadian Supreme Court since the enactment of the Canadian Charter of Rights and Freedoms in 1982.

An Act—or even a written Constitution—however, is not in itself sufficient to change a legal system. Ideas walk on the legs of women and men. And so, at the end of day, it is of them we must speak.

In this light, and observing the role that the House of Lords has and will have in the British constitutional system, the initial proposition—the envisaging of a 'Bingham Court'—may not appear far-fetched, especially if seen in a historical perspective when it will be necessary to compare the first decade of application of the Human Rights Act and its impact on British institutions, with what will happen in future times and in the novel Supreme Court for the United Kingdom which will be inaugurated in 2009.

Lord Hope). The highest level of internal criticism seems to be reached in Lord Bingham's opinion in *ex p Anderson*, where, he states that following the argument that the Home Secretary should be excluded from the parole procedure 'would not be judicial interpretation, but judicial vandalism'.