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In the Shallow End

Conor Gearty on the UK Supreme Court

Robert Reed became president of the United Kingdom Supreme Court on 13 January 2020, succeeding Lady Hale. By the end of 2021, the Supreme Court had produced 111 judgments since his appointment, 53 in 2020 and 58 in 2021, with Lord Reed himself sitting in 56 of these cases. These decisions give us an opportunity to assess how his Supreme Court is performing in the current malign political atmosphere. Reed has been a justice since February 2012, making him (with Lord Hodge, who joined in October 2013) by some distance the most senior member of the court, which is at present made up of ten men and two women, all white and all but one educated at some point at Oxford or Cambridge. Reed is not the outlier here, having completed a doctorate at Oxford after taking a law degree in his native Edinburgh. With Lady Hale and Lord Kerr no longer on the court, Reed is the only justice who has a proper seat in the House of Lords (as Baron Reed of Allermuir); the others are called lords and ladies merely as a courtesy. Unlike the US Supreme Court, the UK body does not sit as a full court; most cases are heard by five justices, though the number can be increased if the case is significant. The president and the deputy president, Lord Hodge, are involved in allocating justices to cases (though the registrar has the primary responsibility for this). Reed, who was born in 1956, can expect to serve another five years, or even ten if current plans to change the retirement age of judicial office-holders go through.

It is difficult for courts to hold government to account even when political leaders accept the fundamental need for legal standards. The New Labour leadership responsible for the Human Rights Act in 1998 was frustrated by the Act's inhibiting effect on the administration's actions. Few politicians can distinguish as intelligently as the former Conservative attorney general Dominic Grieve between deploring a particular decision made by a court and attacking that court's existence. Since he became prime minister, Boris Johnson has led a government that has devoted much of its time to undermining the capacity of the UK's political culture, media and civil society to oppose it. Johnson seems to regard the law not as a core part of our constitutional system but as an unnecessary obstacle to the exercise of executive power. Like the civil service, the BBC and the watchdogs he has treated with contempt, the law needs to be tamed; its demand that government stick by the rules is seen as old-fashioned nonsense.

In 2010 an early list of the quangos to be abolished by David Cameron's new coalition included the administrative branch of the Supreme Court. Now even more direct threats have been made, with government supporters openly questioning the need for such an adjudicative body and various reviews being conducted into judicial power, both in general and with specific regard to human rights. The *Daily Mail* in 2016 described as 'Enemies of the People' those judges who ruled that the government had to get the consent of Parliament before triggering Article 50. A later unanimous ruling, also Brexit-related, found that Johnson's advice to the queen that it was legal for her to suspend Parliament was unlawful. It is said that, though he is inconstant in so many ways, the prime minister has a long memory for slights.

Reed's Supreme Court has reached some judgments strongly assertive of traditional civil liberties and others that insist on the importance of access to justice. But in some areas the tone is markedly different from the one taken by the court under Hale's leadership. This has been clear in a series of decisions that have been very helpful to government on issues of equality, social policy and human rights. It should not be assumed that the lines the court has taken are in response (conscious or subconscious) to government pressure; it is entirely possible – indeed probable – that the change in direction is primarily driven by the judicial philosophy espoused by Reed and his colleagues, and would have happened even if the court (and the system of the rule of law over which it presides) were not being threatened. Johnson's Brexit administration is in many ways an exercise in nostalgia, a search for a lost England, and the Supreme Court under Reed is similarly backward-looking. It has reverted to an approach rooted in legal formalism, an extremely narrow reading of the rule of law, while displaying an old-school lack of interest in the lived experiences of those whose plights have brought them to the judges' attention.

In February 2021 the court unanimously overturned (in a single judgment written by Reed) the Court of Appeal's order that Shamima Begum be given permission to re-enter the UK in order to contest the decision to deprive her of citizenship made by the then home secretary, Sajid Javid. The case was controversial: Begum left the UK for Syria at the age of fifteen and married an Islamic State fighter there. She was now in a Syrian detention camp. The right-wing press was agitated by the prospect of her return. Reed's judgment may have been right in law – his criticisms of the approach of the Court of Appeal are severe – but what stands out is the mode of reasoning he deploys. His judgment is almost impenetrably legalistic, with multiple appellate routes simultaneously identified, each with its own legal framework and entailing a different standard of review in the court called on to assess its legality. If my students and I find the case nearly impossible to follow, what must Shamima Begum (or the general public) have made of it? Her situation is barely considered – the decision expressly does not 'turn on the facts'. These are in any case presented solely in terms of the advice given to the home secretary by his officials and the security services when he was about to make his decision. Individuals like Begum 'who were radicalised as minors might be considered victims', Reed writes, but even if they were, this did not 'justify putting the United Kingdom's national security at risk'. The court mentions in passing and without comment that she had three children while in Syria, all of whom died.

When Theresa May was home secretary, she promised that in cases such as Begum's the government would never act in a way that created the risk of someone being killed or

subjected to torture or inhuman or degrading treatment contrary to Articles 2 and 3 of the European Convention on Human Rights. This was stated as a matter of policy rather than law, since the UK Human Rights Act (which imposes legal obligations with regard to these rights) does not have jurisdictional reach into cases like Begum's. In her case, the legal question was not the factual one of whether the home secretary had followed his own policy, but rather the issue of the standard of review the courts should use in deciding whether that policy had been correctly applied. This is often the key issue when it comes to overseeing the legality of government decision-making: do you give a government decision a close, hard look, or do you hold back, check its lawfulness with a light touch and give the authorities an easier ride?

Reed has made himself the master of an approach to judicial review so light-touch as to be almost no touch at all. In *Begum*, the Court of Appeal said that the initial reviewing court, the Special Immigration Appeals Commission, should have decided the matter *de novo*. Reed disagreed, saying that all the court needed to check so far as the policy's application to the facts was concerned was whether or not the home secretary had acted in a way in which no reasonable home secretary could have acted. It would be quite a big thing – a thing hard to contemplate – for a court to say that the home secretary had taken leave of his senses.

The Supreme Court's approach in *Begum* was not solely or primarily motivated by a desire to please (or appease) the government, though it undoubtedly had this effect. A judgment that would have had the opposite effect was *DPP v. Ziegler* [2021] UKSC 23, which was decided four months after *Begum* with Reed not among the judges. A protest blocking one of the approaches to the Excel Centre, where an arms fair was taking place, was broken up by the police. The protesters were charged with the usual offence of wilful obstruction of the highway. At their two-day trial before District Judge Hamilton in the Magistrates' Court (and so without a jury), they argued that they had the right to protest and to freedom of expression. To the surprise of many, the judge agreed with them, finding that 'on the specific facts of these particular cases the prosecution failed to prove to the requisite standard that the defendants' limited, targeted and peaceful action, which involved an obstruction of the highway, was unreasonable.' This was not in the script, and order was duly restored in the Court of Appeal. The Supreme Court (by a majority) restored Hamilton's original order. The judges might not have made the order in these terms themselves, but they were not prepared to say that in doing so the district judge had gone off the rails: the discretion was his to exercise and appellate courts should respect that.

How many magistrates have Hamilton's inclination to look at things from the protesters' point of view? The authorities have long viewed district judges, unlike juries, as entirely reliable when it comes to controlling the protesting rabble. In the UK this lowest tier of the judiciary has seen off the suffragettes, the unemployed in the 1930s, Scargill's miners, CND protesters and all the rest who have sought to achieve change on the streets. The majority judges in *Ziegler* take a very positive view of the degree to which human rights law permits protest, and if any other Hamiltons exist, this ruling will encourage them to do their civil libertarian bit if such cases come before them.

The case shows how lazy it is to assume that appellate courts are invariably on the side of power. Early in 2021, in *Okpabi v. Royal Dutch Shell*, a court of five Supreme Court justices (again not including Reed) allowed the oil company to be pursued through the English courts for the pollution caused by its subsidiaries abroad (in this case, in Nigeria). This willingness to pierce the veil that has historically protected so much corporate destruction from public view was remarkable and the implications of the case could be dramatic – tactical litigation by environmental groups has the potential to wreak havoc. In February 2021 a seven-judge court – this time including Reed – unanimously characterised Uber drivers as workers, not independent contractors, and so able to avail themselves of various employment protections Uber had sought to dodge.

The Supreme Court has also decided cases against the government. Reed was part of the unanimous ruling in the *Miller* case that found the prime minister's prorogation of Parliament to be unlawful. He also joined in a unanimous ruling in 2016 that condemned as unlawful a piece of secondary legislation that imposed a residence requirement for access to civil legal aid. He wrote the lead judgment in a decision of 2017 (the court sat as a bench of seven, reflecting the seriousness of the issue) striking down the requirement for a large fee to be paid before a case could be brought before an employment tribunal – speaking for a unanimous bench, Reed castigated this as an unlawful denial of access to justice.

Then there was the case of the 'black spider memos' in 2015, when Reed was a member of the majority judgment overriding the attorney general's effort to stop the implementation of a tribunal decision ordering the release of letters written to governments over the years by the Prince of Wales. If there is a pattern to these cases, it is that they all involve a determination to ensure that litigants' established statutory or common law rights are protected and their civil liberties secured. They are both radical (dramatic decisions) and traditional (clearly recognisable focal points for judicial engagement) at the same time.

But what about harder cases, the ones that challenge the justices to get involved in new arenas of contestation? The Human Rights Act 1998 provides a statutory basis for the courts to intervene in such matters, as do the UK's international human rights obligations, incurred by various governments (though these do not have automatic effect in domestic law unless legislation followed). Hale was asked after one dramatic decision whether the judges were out of their depth. Her reply was that they were 'waving not drowning'. Reed is, by contrast, a shallow-end man, and he has steered his colleagues in that direction.

Hale wasn't always successful in encouraging her judicial colleagues to reimagine what the law could do, but she had some successes. In *R (Tigere) v. Secretary of State for Business, Innovation and Skills,* she led a narrow majority in finding that there had been a breach of the right to an education, as laid down in the European Convention on Human Rights: a student had been denied a university loan because she had (for reasons beyond her control) not been able to apply for indefinite leave to remain. (Reed was one of two dissenters.) Hale was also involved in cases that advanced the civil partnership rights of different-sex couples – *R (Steinfeld and Keidan) v. Secretary of State for International Development*

[2018] UKSC 32 – and reduced discrimination against those not married to their partners: *re Siobhan McLaughlin* [2018] UKSC 48.

The move away from Hale's approach has been most obvious not in judgments on ethical questions like these but in cases that bear on social and economic policy, and especially its effect on children. The UK agreed to be bound by the United Nations Convention on the Rights of the Child and has translated some elements of it (but not all, and not always in rights-framed terms) into domestic law. Of more immediately intrusive effect is the European Convention on Human Rights, which was incorporated into UK law via the Human Rights Act. Article 14 prohibits discrimination on grounds of, among other things, 'sex, race … birth or other status'. In one case, Hale narrowly failed to secure a majority for the proposition that discrimination violating the Convention on the Rights of the Child needed special justification to the benefit of the claimants before the court, with her colleague on the progressive side, the late Lord Kerr, going so far as to suggest that a key provision in the convention – which insists that the best interests of the child be treated as a 'primary consideration' – should be regarded by the judges as directly applicable in UK law. A later attempt to achieve this during Hale's presidency also failed. This second case concerned the allegedly discriminatory impact of the benefit cap introduced by the Conservative-led coalition in 2012. The interests of children were especially important to Hale because of their vulnerability to government decision-making, which was often entirely indifferent to their claim to rights. On both these occasions Reed successfully led the fight against Hale and Kerr's approach, and as president, in *R (SC, CB and eight children) v. Secretary of State for Work and Pensions*, he has continued to move the court away from her position.

In this case, decided on 9 July 2021, the claimants set out to challenge the limit set by the Welfare Reform and Work Act 2016 on the number of children for whom child tax credit (and afterwards universal credit) would be paid. Those behind the litigation argued that restricting the benefit to two children amounted to a breach of human rights law. SC lived as a single parent with her three youngest children; CB was a single parent to five children. As in the *Begum* case, the lived experience of the litigants barely surfaces in Reed's 73-page judgment, in which all his colleagues who heard the case joined. All we learn of SC is that 'she managed but it was not easy'; the only example of deprivation mentioned by the court in relation to CB is that her children were unable 'to emulate friends who held their birthday parties at commercial venues'. The case had failed to persuade the High Court and the Court of Appeal. The latter had (as usual) declined to send the case to the Supreme Court, but a small panel including Hale and two colleagues had picked it out from the pile of supplicants trying to reverse their defeat. There was no reason to expect it to win in the Supreme Court, especially with Hale and Kerr off the bench, and it's not clear why it was necessary for seven judges to hear the case. For Reed, however, the case was clearly about more than the litigants before him.

The president and his judicial troops had four targets in their sights. First, the public interest groups that are not directly affected by a decision or a government policy but get involved on behalf of those trying to establish its unlawfulness. These groups had increasingly been using the judicial process to secure outcomes they could not otherwise achieve, sometimes working as claimants' solicitors, as in *SC and CB*, and sometimes

intervening as organisations with permission (there were three organisations involved in this way in *Begum*). In 2018, making clear his view of such behaviour, Reed denied permission to the statutory Northern Ireland Human Rights Commission to become a litigator in an important decision on abortion, on the basis that the legislation did not allow it.

In the court's view, the human rights aspect of *SC and CB* meant that this sort of advocacy was more likely to be employed: since 'almost any legislation is capable of challenge under article 14,' such litigation has become 'increasingly common' and is 'usually brought by campaigning organisations which lobbied unsuccessfully against the measure when it was being considered in Parliament'. Deploying to good effect a quote from a couple of Strasbourg judges, Reed wrote that 'judicial independence is accepted only if the judiciary refrains from interfering with political processes. If the judicial power is to be independent, the judicial and political spheres have to remain separated.' The case of *SC and CB* had been driven by the Child Poverty Action Group, with an intervention by the Equality and Human Rights Commission, a body mandated by Parliament to protect human rights. This wider involvement in legal argument does not appeal to Reed, who prefers straightforward litigation with a party on each side and close scrutiny of a particular pre-existing rule of statutory or common law. But removing these interveners has the inevitable consequence of shifting the spotlight away from government policy, and makes it more difficult for relatively vulnerable litigants to get their cases to court in the first place.

Reed's second and related target was the use of parliamentary materials in litigation, something courts have never liked. This had, he said, 'been taken to extreme lengths in some recent cases, where counsel have trawled through debates in an effort to establish whether or not the government complied with the United Kingdom's obligations under unincorporated international treaties', an activity he described as 'an illegitimate exercise'. Judges, Reed believes, should look to the text before them and not to the swirl of political conversations around it, including talk of international human rights.

His third target was a larger one, the idea that international law is 'law' for the purposes of legal reasoning in UK courts. Ours is a dualist system, he claims, 'based on the proposition that international law and domestic law operate in independent spheres'. This is 'a necessary corollary of parliamentary sovereignty'. In other words, these treaties don't count unless the legislature has chosen to turn them into proper (i.e. domestic) law. While Parliament did this with the European Convention on Human Rights (via the Human Rights Act 1998), that does not mean that all *dicta* from the Strasbourg court about this or that international obligation can be imposed on UK law. The European Convention should not be a back door for treaty obligations that have not been explicitly translated into domestic law. The Convention on the Rights of the Child might be relevant when it comes to deciding whether a particular form of discrimination is justified, but that's as far as it goes: 'There is … no basis in the case law of the European court, as taken into account under the Human Rights Act, for any departure from the rule that our domestic courts cannot determine whether this country has violated its obligations under unincorporated international treaties.'

SC and CB were doomed to defeat because their arguments required the judges to get involved in the deep-end issue of social and economic policy, Reed's fourth target. As in *Begum* and *Ziegler*, the key question was what standard of review the courts should use when deciding whether a piece of legislation or a ministerial directive infringed human rights, particularly when the key argument was based on that potentially pervasive criterion, discrimination. Building on earlier cases, Reed and his colleagues decided in *SC and CB* that, in the ordinary run of cases in the area of social and economic policy, the legal provision or decision being challenged usually had to be 'manifestly without reasonable foundation' if it were to fall. In law the exact wording matters enormously: this test was clearly not the same as whether the judges thought the decision was right or wrong, or even whether it was reasonable. Nor was it a test of unreasonableness or proportionality, the former being the usual standard in judicial review, the latter in human rights law. There are caveats scattered about in the *SC and CB* decision, especially in relation to particularly important kinds of undesirable discrimination (when the test will be tougher), but the overall effect of what's known as the MWRF test is to insulate the decision-maker from judicial review. The government does many silly things, often without reasonable foundation, but to establish that this is manifestly the case is very tough for claimants. It may be possible to do so, when, for example, a policy seemed reasonable at the time it was formulated but has become manifestly unreasonable as our culture and views about right and wrong have changed. Even when a government embraces irrationality and wears it as a badge of pride, as the present administration does, it's exceptionally hard to bring it down on this basis.

Claimants to Reed's court would be sensible to downplay not only international law but international guidance on it. The case of *R (AB) v. Secretary of State for Justice* was decided on the same day as *SC and CB*, and once again Reed led a unanimous band of colleagues (four of them on this occasion). Here, an over-ambitious argument by the claimants (that solitary confinement for young offenders was inherently inhumane and degrading and so a breach of the Human Rights Act) was used by Reed to push his wider argument about international law. He reiterated his belief that unincorporated international human rights instruments shouldn't have a decisive influence on cases and that committee reports should be disregarded. (I remember eighteen years ago putting a note before the law lords – this was before the establishment of the Supreme Court – on the way the treatment of our young client had infringed his rights under the Convention on the Rights of the Child. Lord Hobhouse asked where the paper had originated and when told it was a junior counsel's snapshot of international children's rights law let it fall from his fingers with ostentatious distaste. Perhaps we'll see more of this attitude.)

Reed has a very un-Scottish veneration of parliamentary sovereignty. This is the idea dreamed up to sanctify England's 17th-century revolutions, and reworked when Scotland's Parliament was absorbed within Westminster in 1707. The whole thing was given a sprinkling of academic stardust at the turn of the 20th century by that epitome of Englishness, the Oxford professor Albert Venn Dicey. There are still rumblings in Scotland that it is an English fix, but devolution has not been able to liberate the country from it, as Reed (once again with the agreement of all the other justices) demonstrated in a decision of 6 October 2021, denying that the Scottish Parliament had the power to incorporate into its domestic law international treaties to which the UK is a signatory where that would serve to undermine the sovereignty of the UK Parliament.

Many judges over the years have realised that parliamentary sovereignty is an empty shell, that Parliament is a creature of the executive, and never has this been truer than after the Brexit landslide election of December 2019. Reed was a dissenter earlier in 2019 when the Supreme Court by a narrow majority saw off a government scheme to use parliamentary sovereignty as a device to limit the jurisdiction of the courts. (The case, brought by the charity Privacy International, was a challenge to a section of an Act that seemed to insulate from judicial review a tribunal concerned with national security.) It seems likely that the Johnson administration will try something similar very soon: the Judicial Review and Courts Bill 2021 currently going through Parliament restricts the power of the courts to quash subordinate legislation and seeks to insulate certain tribunal rulings from judicial review. The recent consultation paper on reforming human rights law issued by the secretary of state for justice, Dominic Raab, suggests there may also be similar moves in the field of human rights law. Nearly twenty years ago judges on the old appellate committee of the House of Lords contemplated being able in extremis to strike down parliamentary legislation. One of these judges was Lady Hale, a fairly recent appointment, but bold enough even then to wonder out loud whether the courts would let government get away with 'removing governmental action affecting the rights of the individual from all judicial scrutiny'. Where will Reed and his colleagues stand if parliamentary sovereignty is used further to emasculate their judicial powers? Perhaps his robust defence of access to the courts will push him towards a radical conservative position that reasserts the rule of law even at a price of democratic conflict. But it's possible that his respect for orthodox parliamentary sovereignty will triumph.

The day after Raab's human rights paper was issued, and with Reed once more speaking for the four colleagues who heard the case with him, the Supreme Court unanimously rejected an authority from the pre-Supreme Court House of Lords that had seemed to allow the court to push human rights further than Strasbourg was prepared to go, 'an encroachment on parliamentary sovereignty which Parliament [was] unlikely to have intended', as Reed described it. His Supreme Court is unlikely to indulge litigants who have ambitions to redress socio-economic imbalance or to persuade the court to indulge novel forms of judicial law-making. A commitment to formalism is a consistent thread in the case law, characterised by a desire to avoid the grand sweep in favour of the highly particular and historically rooted. It isn't likely either that the Reed court will be moved by the human stories that might have caught its eye. In a case in 2014 the late Lord Toulson

vehemently denied that the common law, the body of law created by judges, had become an ossuary, but the Reed court seems set to prove him wrong.

Letters

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Conor Gearty is right to say that the UK Supreme Court has lately adopted a more restrained approach to cases challenging the exercise of executive power (*LRB*, 27 January). He is also right that this marks an important change of judicial mood. But he trivialises the reasons for it when he attributes it to the advent of Lord Reed as president of the court in place of Lady Hale. In the process, he misunderstands the real significance of the change.

In the last few years there has been an almost complete turnover in the personnel of the Supreme Court at every level. In the three decades which began in about 1985, the appellate courts were dominated by a highly interventionist generation of judges. The generation that has succeeded them is well placed to look back on the achievements of their predecessors, and to review them in the light of experience. This is a perfectly normal process in the life of any deliberative institution.

The essential feature of the Supreme Court's recent decisions on public law has been a renewed emphasis on the centrality of Parliament in our constitution, not just as the supreme legislative organ of the state but as the ultimate source of the political legitimacy of governments. Some of the more aggressive judicial interventions of the past have had the effect of appropriating to the courts the right to decide where the public interest lies. This approach has cut across demarcation lines which are fundamental to the democratic state. It is absurd to describe this as 'legal formalism'. We are only a democracy because ministers are responsible to the elected Chamber of Parliament for the formation and execution of policy.

This was the real message of the two *Miller* decisions on Brexit, both of which were decided before Lord Reed became president of the court. Both of them arose out of attempts by the government to limit parliamentary scrutiny of the process of leaving the European Union. Both involved a profound examination of the roots of legitimacy in our informal constitution. Gearty applauds them, as I do. But he does not seem to appreciate that the centrality of Parliament in our constitution has implications not just for governments trying to escape parliamentary control but also for individuals and NGOs trying to challenge government policy in the courts.

What the Supreme Court has done is to require judges to have more regard than hitherto to the proper distribution of constitutional responsibilities in the state. Responsibilities which are conferred by law on ministers politically answerable to Parliament should not be shifted to judges politically answerable to no one. The function of the courts is not to review the social or economic merits of government policy. It is to determine whether it had power in law to act as it did, whether it has acted contrary to some principle of domestic law (including human rights law), and whether the decision-making process was legally defective. The Supreme Court has

done nothing to undermine any of these basic principles of public law. If the decision-making process passes muster by those standards the fact that the judge may strongly disagree with the outcome is neither here nor there.

SC and CB, the Supreme Court decision in July 2021 which is the centrepiece of Gearty's criticisms of the current court, is a classic illustration of the problem. It was an attempt by the Child Poverty Action Group to use the courts to force an increase in the level of financial provision for large families above that sanctioned by Parliament. It failed, essentially because the allocation of resources is a matter for Parliament and for ministers answerable to Parliament. As Lord Reed observed in his judgment, 'the answer to such a question can only be determined, in a parliamentary democracy, through a political process which can take account of the values and views of all sections of society.'

Naturally, this will not satisfy Gearty. He believes that Parliament is the creature of the executive, a view which is hard to sustain in the light of recent history. He also believes, as he makes clear in his book *On Fantasy Island*, that policy decisions are better made in court than in a political forum, because court decisions are more likely to be based on evidence and rational argument. The difficulty is that in Gearty's world there would be no place for democratic input into major social and economic decisions. The answer to governments that espouse objectionable social and economic policies is to vote them out or, better still, not to vote them in. But judges are not voted in and cannot be voted out. They should therefore be careful not to exceed their proper role.

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Jonathan Sumption takes issue with my assessment of the recent record of the United Kingdom Supreme Court, particularly in the field of human rights (Letters, 10 February). Sumption was a judge on that court for some six years, during which time he gave a series of excellent judgments on how best to balance the power of judicial interpretation with the (rightful) demands of parliamentary sovereignty. His satisfaction that the 'highly interventionist' activism of earlier cohorts of judges has come to an end sits awkwardly with the fact that these judges (including himself) were obeying Parliament in exactly the way he says they should: there was (and still is) a Human Rights Act, enacted in 1998, which demands that the judges do what is possible to ensure that laws are interpreted compatibly with the European Convention on Human Rights; there are European Court of Human Rights judgments that the British courts are required to take account of in coming to their decisions on the rights set out in the convention; and there is a prohibition on unjustifiable discrimination in the 1998 Act drawn from the convention, interpreted broadly by the European judges in a way that was well understood when Parliament enacted this law.

In doing all this expansive human rights stuff, it was these activist judges who were the loyal servants of parliamentary sovereignty, not the current Supreme Court, whose modest interpretation of its remit is stifling Parliament's intent. The honest thing for the government to do (and perhaps Sumption would support this) would be to repeal the Human Rights Act and withdraw from the European human rights system entirely. In further taking back control

in this way the government would be unlikely to be overly bothered by a Parliament over which it enjoys control. The Lord Sumption who has been appearing on our television screens over the past two years inveighing against the government's Covid regulations and the abasement of the parliamentary process that this has involved would understand the risks.

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