How Has New Public Management Impacted on the Role of the United Kingdom Supreme Court Justices?

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Declaration

I declare that this is my own work. All materials from other sources have been appropriately acknowledged and referenced.

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Abstract

New public management was coined in the late 1980s to highlight a managerialist movement by the executive function of government. Decentralisation and a streamlined hierarchy akin to Taylorism was sought. The movement emphasised free market economics and resulted in a number of Parliamentary Acts being passed eroding the governments overt control over a number of functions. For instance, in-line with arguments for spurring competition, British Rail, British Gas, and British Telecommunications were let to the private sector. Subsequently, there continued to be a key interest in encouraging private healthcare, education and even welfare. Following this trend, there has been an emphasis on privatising legal functions. This has resulted in allowing some services historically reserved for lawyers only being available on the open market, accountants becoming legal partners, cuts to legal aid, and the privatisation of prisons for example. In 2005 the Constitutional Reform Act was passed which removed the (then) Law Lords from Parliament, and there were heavy reforms to decentralise the functions of the Lord Chancellor. Despite having sat in Parliament since 1399, the Law Lords became Supreme Court Justices and since 2009 now sit in a new building – Middlesex Guildhall. This paper conducts a qualitative study with current/former Lord Chancellors, Lord Chief Justices, United Kingdom Supreme Court Justices, Queens Council, as well as the newly appointed United Kingdom Supreme Court executive and non-executive team. The purpose of the study is to ascertain how new public management initiatives have impacted on the role of the United Kingdom Supreme Court Justices as well as the theoretical implications that this may have to social stability.

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List of Abbreviations

ABS	Alternative Business Structures
IT	Information Technology
KPI	Key Performance Indicator
MoJ	Ministry of Justice
MP	Member of Parliament
NPM	New Public Management
SRA	Solicitors Regulation Authority
TCE	Transaction Cost Economics
UK	United Kingdom
USA	United States of America
UKSC	United Kingdom Supreme Court

Contents

Chapter 1: Introduction

As noted in the Abstract, this thesis is concerned with how new public management has impacted on the role of the United Kingdom Supreme Court Justices. The thesis begins with the literature review. It is argued that to maintain 'good governance' there should be a separation of powers between the three branches of government – namely the executive, judiciary and legislative. Arguments for the separation of powers can be traced to Aristotle in the fourth century B.C. and have continued to steer many governments from dictatorship ever since (Robinson, 1903; Ervin, 1970). However, new forms of management were seen to emerge within the Regan and Thatcher era. This later became known as new public management (Hood 1989; Hood & Jackson 1991; Hood 2001; Pollitt 1993). The theoretical underpinnings of new public management (NPM) view the government as an institution whereby citizens are perceived as consumers much like in the private sector.

The literature review traces the origins and theoretical developments of new public management along with arguments both for and against the movement. It is suggested that some government organisations may work better in the private sector where competition is increased. For example, British Telecommunications and British Rail, where a market driven customer focus can indeed result in better service delivery. However, the focus on decentralising other functions such as healthcare, education and welfare calls into question the ethical role and responsibilities of the government for protecting the state. This becomes more sinister with a number of reforms to emphasise privatisation, free market economics and competition in the legal services sector. The privatisation of the police and prison services for instance questions the ethical nature of prisons which work on a business model that benefits from incarceration as opposed to reform. The court system has also experienced the impact of new public management which began with the lower courts and can now be seen in the United Kingdom Supreme Court.

Through tracing the history of law in the United Kingdom (which has the oldest standing legal system in the world) alongside sociological arguments pertent to the legal system the impact of new public management initiatives unto social stability is put forth. On the one hand – particularly in line with Marxism and neo-Marxism, the law is perceived as an instrument of capitalist control for the elite to rule the

proletariat (Wacks 2015; Pashukanis 1989; Balbus 1973; Renner 1949; Stone 1985). On the other, the law is celebrated as an ultimate victory of social control (Sumner 1934; also see Herbert Spencer's origins and evolution of the law: Spencer 1880, 1898, 1899). Whichever perspective, the law is ultimately perceived as a set of complex principles, applied by the educated to maintain social stability (see Weber 1949, 1950, 1958, 1969, 1978; Mommsen 1992).

In the United Kingdom, the law has stood as a bastion of structured social order since 1066. However, it should be noted that subsequent to the Norman Conquest of 1066 William I entered into an "already unified nation with a central government ruling through sheriffs answerable to the king" (Baker 2011: 12; see also: Loughlin 2013: 24). Under the new public management initiatives exercised in the UK and USA governments from the late 1970s, drastic changes have been made to the legal system. Some of those changes in the UK were to decrease public spending for legal representation, encourage privatised prisons and increase competition from legal providers. Moreover, there were drastic reforms to the court system and in 2005, the Constitutional Reform Act was passed without a green or white paper. The Act itself ultimately removed the Law Lords from Parliament and into an entirely new court – the United Kingdom Supreme Court. Despite the Law Lords having sat in Parliament since 1399, their removal into the new Supreme Court amidst executive agendas for new public management. However, to date, there is no research investigating the impact of new public management unto the role of the United Kingdom Supreme Court Justices. As such, this research intends to investigate "How has New Public Management Imacted on the Role of the United Kingdom Supreme Court Justices?"; with the aim of understanding the impact of New Public Management on the role of the United Kingdom Supreme Court Justices.

To achieve the research aim and answer the research question, the literature review critically discusses the importance of the law, how this has evolved and the role of the United Kingdom Supreme Court justices within this. Additional objectives include conducting a qualitative analysis through semi-structured interviews with Supreme Court Justices and relevant others; building a tentative framework for the impact of new public management on the role of the United Kingdom Supreme Court Justices; and reviewing the theoretical implications of the impact of new public management on the role of the United

Kingdom Supreme Court Justices.

The methodology itself justifies the need for a qualitative study into the impact of new public management initiatives on the role of the United Kingdom Supreme Court Justices. A constructivist ontology and interpretivist epistemology is adopted. Using semi-structured interviews, twenty-three relevant participants were interviewed. In line with the subjective nature of the research, key themes relating to the characteristics of new public management were discussed, also allowing for new themes to emerge.
The findings indicate that the role of the United Kingdom Supreme Court Justices has indeed been impacted by new public management. This falls under three key themes which pertain to new management and business practices; technology and citizen outreach; as well as a rise in agency.

The discussion makes arguments both for and against the uptake of public management initiatives in the highest court. Not only is it highlighted how the reforms are impacting on the role of the highest judges in the United Kingdom, but theoretical implications of how these infiltrates unto social stability are discussed. Finally, the thesis closes by providing a conclusion and suggestions for further research.

Not only is an investigation of this nature important for theoretical contributions regarding the uptake of public management; but it also of practical significance for the extent to which public management initiatives ought to be present within the United Kingdom's highest court. With the rise in public management across the globe and the international impact this is having on court systems, it is important to bring to the fore the relationship between the executive and judicial functions of governance (Robinson, 1903; Ervin, 1970). Learning from the study may assist in future strategies for 'good governance'.

Chapter 2: Literature Review

2.0 Chapter Introduction

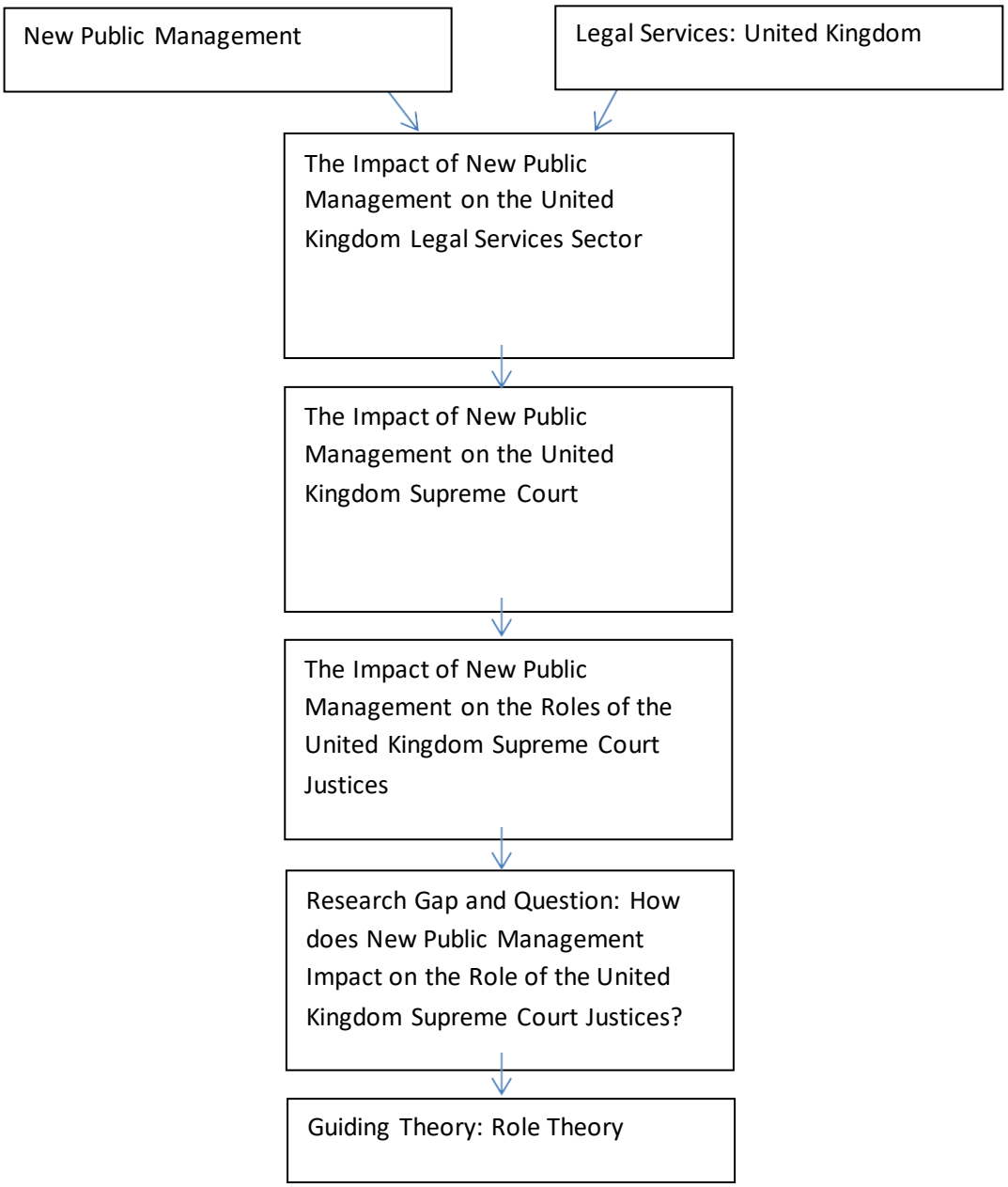
This chapter begins by introducing arguments for the separation of powers between the three branches of government, namely the: executive, legislative and judiciary. The independence of these three branches as a form of 'good governance' can be traced back to Aristotle in the fourth century B.C.; and acts as a foundation for government structures around the world today. The chapter then moves on to consider how, since the 1970s, governments are increasingly adopting New Public Management (NPM) agendas. To do this, the literature review traces the origins, theoretical developments and characteristics of NPM; before moving on to consider how various public services have been impacted, and how the roles of actors within these services are changing. The literature then narrows to focus on the impact of NPM unto legal services and makes the case that unlike other public services, the law, and indeed actors operating within the legal profession, are imperative to the fundamental stability of the state. Moreover, it is highlighted that the values espoused within the legal profession – particularly within the judiciary, fundamentally juxtapose those advocated by public management. In the former, there is a focus on justice, fairness, equality and a common good. In the latter, there is a focus on profit, consumerism, capitalism and marketization. The literature then narrows further to the creation of the United Kingdom Supreme Court, which at the time of writing, is the newest Supreme Court in the world, opening its doors in 2009. It is shown that political arguments for the creation of the new court are to show a clear separation of powers between the three branches of government. However, when placed within the context of public management, there are clear trends to reform the new court in line with public management agendas. For example, there have been moves to increase transparency and citizen involvement through the uptake of social media, open access to the court, and a newly appointed communications team; there has been an uptake of technology for efficiency and effectiveness; there has been the creation of an annual business plan, and budget restructuring; and there have been changes to the managerial style of the new court, namely to decentralise the structure to 'empower' an 'independent' ombudsman for appointments and complaints and to abolish the role of the Lord Chancellor. The latter was unsuccessful, with the powers of the Lord Chancellor being separated. This

restructuring is aligned with theories such as Taylorism that advocate a hierarchal chain of command and are characteristic of the NPM movement. However, unlike other public services, these reforms to the highest court arguably call into question the role of the United Kingdom Supreme Court Justices under public management initiatives espoused by executive agency.

Although NPM is clearly reforming the new court, there is no research to date that reveals how these changes are impacting on the role of the Justices working in the highest court. It is demonstrated that researching into this is imperative for two reasons. The first is that this research will contribute to current academic debate regarding the impact of public management through using the case of the United Kingdom Supreme Court. The second is because akin to public management agendas, the executive is potentially empowered in a hierarchal chain of command. Quintessentially, this threatens judicial independence of the highest court, and calls into question the constitutional role of state governance.

The literature review structure is illustrated in Figure 1 below:

Figure 1: Literature Review Structure



Source: Compiled by author.

2.1 The Separation of Powers

2.1.0 Section Introduction

The following section introduces arguments for the separation of powers which are traced back to Aristotle in the fourth century B.C. It is revealed that today, governments around the world have similar systems which separate the executive, legislative and judicial branches of government. Further, it is shown that whilst there is a separation of powers, this separation is not equal. Rather, the three functions operate on a series of checks and balances which limit a concentration of power into one source and consequently inhibit a dictatorship.

2.1.1 Constitution

Aristotle's treatise 'Politics' in the fourth century B.C. advocated that there are three agencies of government, namely: the general assembly; the public officials; and, the judiciary (Robinson, 1903; Ervin, 1970). This is a similar system to that in republican Rome whereby public assemblies, the senate and public officials operated on principles of checks and balances – thus restraining the concentration of power into one dictatorial source (Bryce, 1921; Ervin, 1970).

Subsequent to the fall of the Roman Empire, new government structures emerged within the fragmented nation-states throughout Europe. The dominant mode of governing rested with hereditary rulers and concentrated power (Ervin, 1970); with civil wars being rife. To resolve the issues of concentrated power, governments often wrote formal constitutions to bring stability to disjointed nation states. For example, the French constitution of 1791 was created during the French revolution; in the United States, the Thirteenth, Fourteenth, and Fifteenth constitutional amendments were passed between 1865-1870, immediately subsequent to the Civil War; and the German constitution of 1919 was enacted following the November Revolution of 1918.

However, unlike other nations, Britain – along with Israel and New Zealand – never set down the rules and procedures of the branches of government in a formal written constitution. This is primarily because the Israeli civil war (1947-1948) subsequently turned into the Arab-Israeli War in 1948. By contrast,

New Zealand, like Britain, has a collection of statutes. In New Zealand, the Constitution Act (1986), the Treaty of Waitangi, letters patent, Orders in Council, unwritten conventions and decisions of the courts form the unwritten constitution. Similarly, in Britain the relationship between the state and individual, as well as the role of the executive, legislative and judicial branches of government are comprised through works of authority, parliamentary conventions, statute law, and common law. In Britain, the Bill of Rights 1689 was passed following the Glorious Revolution of 1688. This Act of Parliament expresses constitutional settlement but is not a formal written constitution (Loughlin 2013: 50). Nevertheless, the Bill of Rights 1689 paves the way for parliamentary sovereignty; which essentially means that the statutes passed by Parliament are supreme and the final source of all UK law.

Whilst in the UK, there is no constitution acting as a sovereign text, John Locke's 'Two Treatises of Government' written in the same year (1689), still defines the three governing powers as the: legislative; executive; and, federative. It should be noted that Locke did not suggest that the branches were designed to operate independently, nor were they co-equal. Rather, Locke viewed the legislative branch as supreme, with the executive and federal functions (i.e. internal and external affairs, respectively) assuming control by the monarch. This, is seen to correspond to the dual form of government (i.e. the Parliament and the King), which was prevailing in England at that time (Ervin, 1970).

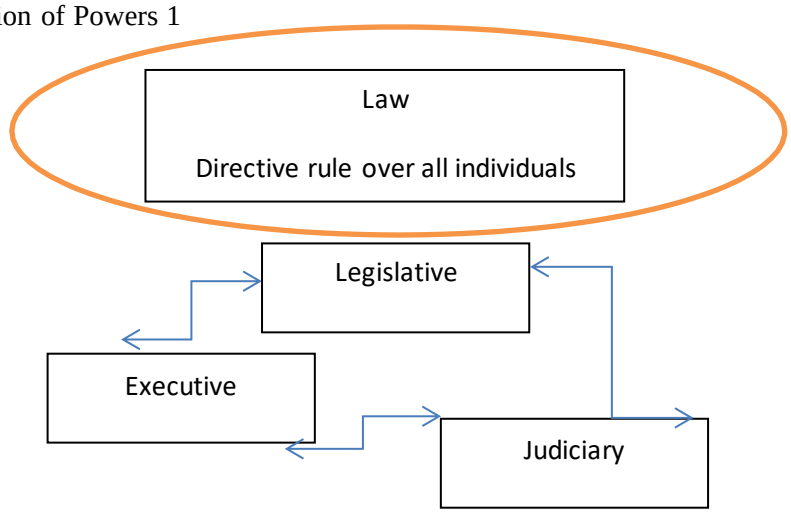
Locke's avocation for the separation of powers in a functioning government was furthered by Charles Louis de Secondat, Baron Montesquieu in the 18th Century. Montesquieu (1748; also see Vile 1998) noted that the powers of the legislative, executive, and judging should be separate. This is fundamentally to ensure that there are checks and balances in place to circumvent a concentration of power into one source:

> *"When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty…there is no liberty if the powers of judging is not separated from the legislative and executive…there would be an end to everything, if the same man or the same body…were to exercise those three powers".*
>
> Montesquieu (1748)

As such, although Britain does not have a written constitution, the separation of powers between the executive (Prime Minister and the cabinet), legislative (law-making – Parliament), and judiciary (Lord Chief Justice and other judges), has become integral for ensuring that power is not concentrated into one source. Along with the Bill of Rights, the Magna Carta 1215 (also see Carpenter, 2015), operates as part of the unwritten British constitution. This is because the Magna Carta 1215 empowers the law above all individuals, and therefore subjects the executive and legislative branches of government to judicial review. This essentially means that whilst parliamentary sovereignty remains supreme, the law is still above all else. Thus, the judiciary plays a key role in maintaining the separation of powers between the other branches of government. Furthermore, in other countries with a formal constitution, judges must interpret law in line with the constitution – and law may only be valid if it is consistent with this (Gibson-Morgan, 2014 p.85; also see Elliott 2014). However, within the context of the UK, the role of the judiciary is to interpret the law made by the legislative; but this is not to be interpreted in line with a formal constitution, as this does not exist in written form. Rather, although the highest court still deals with constitutional matters, there is no formal written constitution or a specific court for constitutional affairs.

Although it may be suggested that it is necessary to have some form of authoritarian leadership (Loughlin 2013), there is consensus that constitutionally, the law should be impartial and independent from the other branches of government. However, whilst the law is to be above all else: "Constitutionally, judges are subordinate to Parliament and may not challenge the validity of Acts of Parliament" (Benwell and Gay 2016: 5). Moreover, given John Locke's 'Two Treatises of Government' (1689), the legislative branch is perceived as being supreme due to its role of making the laws to which all else becomes answerable to. Quintessentially therefore, the checks and balances between the three branches limits agency being concentrated into one source. In this sense, the functioning government may be illustrated in Figure 2 below:

Figure 2: The Separation of Powers 1



Source: Compiled by author

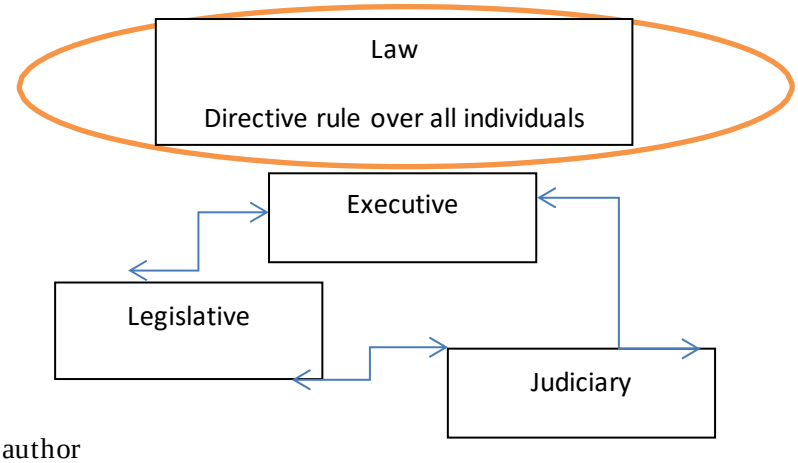
Figure 2 illustrates that, as laid out in the Magna Carta 1215, the law governs all else. This includes all members of society, even individuals operating in government, or residing within the monarchy. As expressed by Lord Denning's famous quote: "Be you ever so high, the law is above you" (The Spectator Archive 1979). Next, as expressed by Locke, the legislative branch of government is supreme due to its law-making role. This is followed by the executive whom maintains parliamentary sovereignty due to the Bill of Rights Act 1688/1699, and finally the law-interpreting role of the judiciary. However, none of these powers is given ultimate agency. Rather, as indicated by the arrows, each is independent and able to constrain the agency of other branches of government through checks and balances.

As aforementioned, these roles are typically formalised through a written constitution. However, Britain, like Israel and New Zealand, do not have a formalised constitution. Nevertheless, this notion of governing is adhered to but in an unwritten form. Whilst some countries do indeed have a formalised constitution to theoretically help to limit agency (for example the United States of America), it may be argued that this does not circumvent dictatorship through a concentration of power. Rather, it may be suggested that in complex societies, the law may be perceived as an expression of state power. Thus the law is power in itself and its rule restrains other power through judicial oversight.For instance, the actions of the executive are circumscribed under the rule of law. Furthermore, the law can shift power balances as various actors learn how to manipulate the law in the pursuit of advancing their own

interests; and, there are opportunities for advancement as regulators may use secondary law-making powers to pursue their own agenda (Deakin et al. 2016: 3-4). Essentially, this means that the law may be manipulated by other actors such as those with executive authority to advance personal interests. Whilst in others, some actors are seen to go beyond their assigned role. For instance, judges have been seen to go beyond their law-interpreting role and pass new laws known as Case Law or Judge Made Law (Law Teacher 2017). Further the impartiality of members of the judiciary is sometimes questionable, particularly in some developing countries with high levels of corruption; for example, in Turkey and Western Balkans (Transparency International 2017).

As aforementioned, it may be put forth that although there is a separation of powers, these powers are often not equal. In the UK, the executive is able to pursue its own will through making legislation in line with its own interests. In the UK, the War Damage Act 1965 following the Burmah Oil v Lord Advocate (1965) case was enacted to prevent others from receiving compensation. Further, trade union membership was banned following the Council of Civil Service Unions v Minister for the Civil Service (1984). Moreover, a Royal Prerogative was used instead of pending statutory power in R v Secretary of State for the Home Department ex p Fire Brigades Union (1995), to alter the Criminal Injuries Compensation Scheme. Essentially, this therefore empowers the executive branch of government over the seemingly more powerful legislative branch. This essentially restructures Figure 2 as Figure 3, below:

Figure 3: The Separation of Powers 2



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In addition to this, in other countries such as the US, Congress is empowered to select the Justices of the Supreme Court, with each new party elected. This has resulted in citizens questioning the legitimacy of the decisions of the Supreme Court. For instance, Nicholson and Hansford (2014) study citizen attitudes towards the decisions of the Supreme Court in the US. They suggest that there is an assumption that the public, at least to some degree, considers the Court as a legal institution which is different from the elected branches of government. However, their findings suggest that:

> *"…the public perceives the contemporary Supreme Court as similar to other partisan actors, at least with regard to public acceptance of its decisions…the public expectations for the Court and its decisions may be no different than expectations for the elected branches of government…the public appears to respond to the Court as a political institution…Given the increasing partisan polarization of the American political system and the partisan and ideological divisions on the contemporary Supreme Court, it is possible that the Court may be entering a new era in which it is less capable of persuading the public to accept its decisions"*
>
> (Nicholson and Hansford, 2014: 634)

Therefore, when the executive is able to select and influence judicial appointments, the decisions of the court as an independent judicator become questionable. As such, citizens come to distrust the legal system, seeing it as a political institution, and the role of justice becomes a question of political policy and power as opposed to the delivery of a common good.

2.1.2 Section Summary

In conclusion, written constitutions have been adopted by many countries to maintain social stability. However, the United Kingdom does not have a formal written constitution which the highest judges can use to hold government into account. This has become more concerning under the concept of 'New Public Management'; namely because pursuing self-interest has become a key driver in these recent government reforms. The moves are purported to increase transparency, efficiency and effectiveness in

the delivery of public services. However, studies have shown that the hierarchal control omitted strengthens executive power. In line with arguments for the separation of powers, constitutional concerns have thus been voiced within the academic community, as judicial independence may be threatened. The following section draws upon the rise in New Public Management onto executive agendas. It further considers the impact of this unto public services, before narrowing to consider the impact of this unto the legal profession, and more specifically unto judicial independence.

2.2 New Public Management

2.2.0 Section Introduction

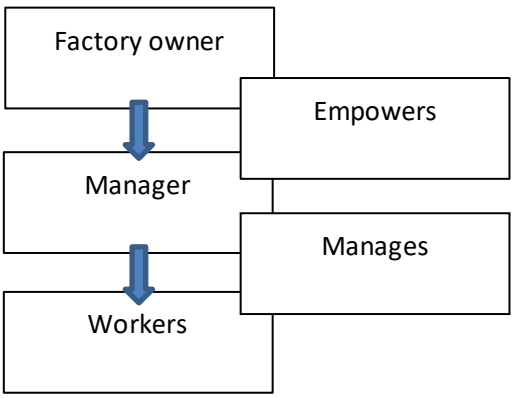
The following section traces the origins, theoretical developments and characteristics of New Public Management (NPM); as well as the drivers for these government reforms. The origins of NPM are traced back to the 1920s. The key theoretical developments include: Taylorism (Managerialism); Transaction cost economics; Public choice theory; Agency theory; and, Neo-liberalism. The characteristics of NPM are thus in line with these theories and include an emphasis on: efficiency; effectiveness; autonomy of managers and public organizations; accountability; performance measurement and management; decentralization; the economy; output and market orientation; and value for money. The literature then traces the impact of these characteristics unto a range of public services, including healthcare, education, and welfare; and presents empirical evidence for how these changes are impacting on the roles of actors working within these institutional contexts.

2.2.1 Origins and Developments of New Public Management

The roots of New Public Management can be traced to the progressive reform movement of the 1920s and the early science of public administration (Gruening, 2001: 3). This movement was heavily influenced by the works of Fredrick Winslow Taylor (1911). Taylorism, along with the works of Weber (1922a; 1922b) and Fayol (1916), may be perceived as some of the classical management studies. Collectively, classical management is concerned with scientific control to optimise efficiency and effectiveness. For example, Taylor focuses upon task time and a hierarchal chain of command, with

management improvements coming through empowered managers and a decentralised bottom-up approach. Taylor suggests that managerial efficiency could be optimised if factory owners operated a hierarchal system within which, the ruling elite (factory owners), empowered the subsequent chain of command (factory managers), and gave these managers autonomy of decision making over the workers (deskilled employees operating within routinized tasks). This hierarchal and vertical chain of command was perceived as optimising efficiency as tasks became routinized, managers became skilled in the process of producing commodities and were therefore able to advise factory owners on how to increase efficiency. Thus, although managers are empowered, they are essentially still operating within a hierarchal chain of command dictated by the executive. This can be illustrated as follows:

Figure 4: Hierarchal Chain of Command



Source: Compiled by author

By contrast, Fayol's works concern a top-down approach to educating management, and offers fourteen principles of management; namely: division of work; delegation of authority; discipline; chain of commands; congenial workplace; interrelation between individual interests and common organisational goals; compensation package; centralisation; scalar chains; order; equity; job guarantee; initiatives; team spirit. Further, Fayol offers five elements of management: planning; organizing; command (delegation); coordination; monitoring. Yet, unlike Taylor and Fayol, Weber emphasises the importance of bureaucracy which advocates hierarchal organisations, within which written rules underlie action taken (and recorded), officials require expert training, and career progression is dependent upon meritocracy, earned on the basis of technical qualifications.

Although different approaches are apparent in classical management studies, taken collectively, there is consensus for scientific order, structure, control, and the search for efficiency and effectiveness through controlling inputs and outputs.

This early scientific management became highly influential in the United Kingdom subsequent to World War I (1914-1918) as politicians sought to restore public trust in the political system. The early movement in the 1920s spurred academics and practitioners alike to promote progressive reform based on "the presupposition of loyal bureaucrats, honest politicians, and the politics-administration dichotomy" (Gruening, 2001: 3). Thus, within the early public administration movement, governments – particularly within the United Kingdom (UK) and United States (US), were influenced by the principles of scientific management and incorporated: "the division of work and specialization…homogeneity…unity of command…hierarchy with respect to the delegation of authority…accountability…span of control…staff principle" (Gruening, 2001: 3; Gulick, 1937; Urwick, 1937; Mooney, 1937; Graicunas, 1937). These principles were expected to be fundamental to the roles of public managers whom were working within organizational structures. In line, reformers expected public managers to perform the following: Panning, Organizing, Staffing, Directing, Coordinating, Reporting and Budgeting, alternatively known as POSDCORB (Gulick, 1937: 13).

Subsequent to this, the New Deal in U.S. public administration emerged in the 1930s. During the early administrative stage, governments such as in the US became more involved. Academic research into the role of the government purported increased government regulation, social-democratic ideals, a leniency towards scientific objectivity and material freedom (Gruening, 2001: 3; Egger, 1975; Waldo, 1948; Van Riper, 1987).

This early administrative stage is often referred to as the 'Classical Public Administration'. A key player in this progressive movement was the New York Bureau for Municipal Research; which was heavily

influenced by Taylor's scientific management (1911). This idea of public sector management has been furthered by Painter (1988), whom suggests that organizations, irrespective of whether public or private, share more similarities than differences. This inevitably means that management skills, methods and procedures may be applied across sectors (Pollitt 1998). Furthermore, this type of public sector management, or "managerialism", purports that resources and responsibilities should be devolved and managers ought to be given authority and discretion with decision-making. However, this 'discretion' should be within the context of straight-line hierarchal control, robust monitoring, incentives for performance and clearly specified outcomes (Christensen and Lægreid 2013: 22). In addition, the managerialist tradition assumes that individuals respond well to financial incentives and therefore performance related pay. There is also an emphasis on defining and measuring tasks, specified inputs and outputs, cost-effectiveness, efficiency and accountability, the customization of processes and procedures, job sizing and work planning (Christensen and Lægreid 2013: 22). Thus, the progressive reformers were the first to implement performance indicators for the purpose of benchmarking efficiency and identifying corruption (Gruening, 2001: 3; Schachter, 1989).

However, this form of mechanistic, scientific, hierarchal control began to raise criticism due to its dehumanizing focus. Subsequently the second stage 'Neoclassical Public Administration' emerged after World War II. Although, the entire public administration movement is often characterised as being within the post-war periods between the late 1940s until the 1970s (Butcher and Gilchrist 2016). The neoclassical stage is characterized by behaviourism, structural functionalism, and systems theory; as well as welfare economics and decision theory (Gruening 2001). It should be noted that Fayol does indeed focus upon human and "behavioural" characteristics, yet it was the later works of Herbert Simon that became highly influential during this period. Simon's 'Administrative Behavior' (1947) defines the task of rational decision making and suggests that an individual will evaluate all possible consequences and therefore select the most appropriate option given the information at hand. As such, neoclassical public administration separated facts from value judgements, divided science into pure and applied branches, and objectified scientific knowledge as a control to the social environment (Simon, 1976; Gruening 2001; Simon, Smithburg & Thompson 1962).

However, it should be noted that not all scholars fully embraced the movement. For instance, some did not accept that facts and values should be separated as this holds the potential to remove public administration "from political philosophy and the search for the public interest" (Guening, 2001: 5; Appleby, 1947; Waldo, 1965; Subramaniam, 1963; Harmon and Mayer, 1986). This invariably meant that there were two strands of research at the time, the classical and the neoclassical. Yet, despite their differences, both strands of research did agree that there was a progressive vision for objective knowledge and an active state.

In practice, governmental reformers largely remained true to the progressive movement (Lynn, 1996; Kramer, 1987), strengthening executive power (Gruening, 2001). However, there were some findings which questioned the neoclassical movement. In academia, the focus upon behaviour and systems became questionable as social science research was advocating that human beings are complex (Schein, 1965). Moreover, there are alternative forms of organisational structure from a directive style, such as organic as opposed to mechanistic (Burns and Stalker, 1971). In practice, the U.S. government formally terminated the Program, Planning, and Budgeting System (PPBS) in 1972. Based on microeconomic decision techniques, rational planning, systems analysis, central planning for successful optimization, and "the systems-theoretical vocabulary of inputs, throughputs, outputs, outcomes, programs, and alternatives…the implementation of the PPBS suffered serious shortcomings (and) the system never worked as intended" (Gruening, 2001: 4; Waldo, 1969; Schick, 1966, 1969, 1973; Greenhouse, 1966; Gross, 1969).

The Neoclassical stage emerged and gave birth to Public Administration in the late 1960s. This was a period where social tensions were at an all-time high, and citizens were seen to reject the established state ideologies. Women's rights movements, exploration with human sexuality and psychoactive drugs, as well as new 'hippie' lifestyles became commonplace. Within this social context, a gathering of young academics organized by Dwight Waldo, brought to the fore a fresh approach against what they argued were the injustices of government through discrimination, repression and alienation (Waldo,

1968; Harmon, 1971; White, 1971). Corresponding to this new movement for voices of citizens to be heard, the thrust of the public administration movement was to move administration both within and without public organisations, towards more democratic structures and social equality (La Porte, 1971). During the counterculture of the 1960s and 1970s, citizens revolted against the governments in the U.K., U.S., and much of the Western world, claiming excessive military action in Vietnam, 'Public Administration' was born in the late 1960s.

The notions of individual freedom, self-interest and market equilibrium can also be seen in other approaches which began to emerge. For instance, moral dilemmas are seen to arise in the principal-agent problem (Moe 1984) as an individual or entity (agent) is empowered to make decisions that are either on behalf of, or impact, another person or entity (principal). Eisenhardt defines agency theory as:

> *"...the ubiquitous agency relationship, in which one party (the principal) delegates work to another (the agent), who performs that work."*
>
> Eisenhardt (1989: 58)

Whilst agency theory initially focused upon firms and how managers were challenged to act in the interests of shareholders, it was later incorporated into political theory as voters (agents) empower certain government officials (principals) to act within their interests (Boston, 2013). However, when agents are motivated to act in their own interests, this creates a moral hazard. When applied to political theory, this suggests that governments may act in their own interests at the expense of their citizens and helps to explain the basis of the Progressive reform movement of the 1920s against dishonest politicians. As such, it is suggested that strategies must be imposed to increase transparency and accountability.

Although agency theory has played a key role in driving government reforms, other theories later emerged such as Stewardship theory (Donaldson and Davis 1991). Unlike agency theory, stewardship theory suggests that people are motivated beyond personal interest. For example, in the administration

of justice, judges are sworn to administer the law in an impartial and unbiased way; thus institutionalising notions of delivering a common good as opposed to individual self-interest. This type of thought has also been noted in wider management studies such as Hertzberg's Motivation-Hygiene theory (Hertzberg et al. 1959; Hertzberg 1964; Hertzberg 1966; Hertzberg 1968) which suggests that individuals are motivated by factors beyond material gain.

Nevertheless, despite the shortcomings of managerial styles which focus upon mechanistic, objectified structures that assume individuals are self-interested and that material rewards should be provided in line with performance, these ideologies are fundamental to the successive public management movement. Moreover, this can be seen with the adoption of public choice theory, which has, since the 1960s "influenced policy formulation in many jurisdictions across numerous policy domains, including constitutional and institutional design, regulatory policy and public management" (Boston, 2013: 23).

Similarly to agency theory, public choice theory espouses that human behaviour is driven by self-interest (Buchanan 1978: 17); and individuals pursue their own goals and preferences depending upon their knowledge of a given situation. As such, although individuals may have concern for others, they still "put their own interests ahead of others when these conflict…and pursue their goals in the most efficient manner given costly information" (Horn 1995:7; also see Boston, 2013: 23). Downs (1957), Olson (1988), as well as Buchanan and Tullock's (1962) landmark work, have been key to the development of public choice theory. Influenced by methodological individualism, public-choice theorists suggest that rationality is not bounded by a scientific theoretical optimum. Rather, social phenomena can be explained by a set of assumptions based on an individual's aims, plus the individual's information/knowledge of given situations (Tullock, 1965). This brings to the fore the questions of whether free individuals would choose to have certain political institutions and structures (Buchanan and Tullock, 1962; Buchanan, 1975). Linking this to democracy, notions of common good such as the welfare state, may actually lead to the exploitation of the minorities whom fund it (Downs, 1957; Buchanan and Tullock, 1962).

Further, Niskanen (1971) draws upon the works of Downs and Tullock to suggest that bureaucrats seek to maximise their budgets to advance their wider goals. This was highly influential to the public management movement, with Margaret Thatcher urging "senior officials in Whitehall to read Niskanen's work" (Boston 2013: 24). The misuse of power by bureaucrats to take more than their share of a nations resources; the short-term focus of political actors as opposed to wider interests; and the rent-seeking behaviours of pressure groups over the interests of citizens, taxpayers and consumers is believed to result in a larger, more inefficient and ineffective government (Boston 2013: 24).

The inefficiencies within bureaucratic organisations are enhanced by traditional styles of budgeting, accumulating tasks and resources, strong conservativism and law-like restrictions to achieve certain tasks (Tullock, 1965; Niskanen, 1971; Downs, 1966). Thus, to combat these issues, various suggestions regarding government transparency, political accountability, measures to limit budget maximisation, and the privatization of state owned commercial organisations came to the fore and have been characteristic of the public management movement (Boston 2013: 24; Buchanan and Tullock 1962; Buchanan 1986; Niskanen 1971).

Moreover, public-choice scholars argued for constitutional safeguards against exploitation and for a polycentric administrative system. In the former, safeguarding exploitation would mean that the sum of taxes an individual pays would not exceed the amount of service he/she receives. In the latter, there is a separation of public and private services, thus both private and public vendors would compete for production contracts. The polycentric system would incorporate fully transparent financing systems, with user charges and vouchers being common place. The highly decentralized and federal system advocated is regarded as leading to economies of scale and citizens as consumers would be free to make choices regarding public services (Ostrom, 1973, 1977; Ostrom and Ostrom, 1971; Savas, 1982).

Like public-choice theory, neo-Austrian economics is grounded in methodological individualism. Its roots can be traced to the works of Carl Menger (1871); however, it began to receive much attention after Friedrich Hayek's 1974 shared Nobel Memorial Prize in Economic Sciences (Meijer, 1995). The

works of Carl Menger amongst others such as Friedrich von Wieser, and Eugen Böhm von Bawerk were particularly influential. This is because citizens become consumers. In turn, this fundamentally revises the role of the government as a social steward, to the role of the government as a manager of public services.

By contrast, transaction cost economics is concerned with "an examination of the comparative costs of planning, adapting, and monitoring task completion under alternative governance structures" (Williamson 1989:2). Transaction cost economics also connotes self-interest. However, whilst agency theory focuses upon contract specification, transaction cost economics is more concerned with organisational boundaries. Further, attitudes to risk, information constraints and outcome uncertainty, act as independent variables in agency theory, transaction cost economics is concerned with the frequency of transactions, asset specificity, and uncertainty found within future contingencies (Boston 2013:28). Transaction cost economics assumes that some services may be more efficiently undertaken by rule-based, hierarchal public bureaucracies (Williamson 1975, 1985; Bryson and Smith-Ring 1990; also see Boston 2013:28-29). However, others are more effective if contracted out and competed for, particularly for "goods or services (that) are relatively easy to specify and measure, thereby making it simple and cheap to monitor and enforce contracts" (Boston 2013:29). As such, services such as "policing, diplomacy, national defence and tax collection" do not apply and ought to remain in-house.

Transaction cost economics is thus concerned with market efficiency and supply. Although it should be noted that transaction cost economics differs from neoclassical microeconomics in terms of: behavioural assumptions; discrete structural analysis; remediableness; unit of analysis; governance structure; problematic property rights and contracts (Williamson, 1996). Thus, where neoclassical microeconomics assumes that the firm is a production function, transaction cost economics perceives this as a governance structure. Moreover, neoclassical theory purports that property rights are clearly defined and does not consider the costs of legal action to enforce the said rights; whereas transaction cost economics negates that property rights and contracts are problematic.

In addition to this, the neo-liberalism movement shaped policy developments during the 1980s and early 1990s in many democracies, particularly in Britain and the United States. Key thinkers in the movement were Milton Friedman (1981) and Friedrich von Hayek (1960; also see: Hayek 1952a, 1952b) whose ideas heavily influenced the policy decisions of Ronald Regan (time in office: 1981-1989) and Margaret Thatcher (time in office: 1979-1990). The neo-liberalist tradition is characterised by the notion that markets should do more and governments should do less (Christensen and Lægreid 2013: 18-19). This essentially means that policy makers should reduce government activities, deregulate and liberalise markets to encourage competition, reduce regulations which 'protect' workers, eradicate subsidies to commercially oriented activities, and focus upon financial management by negating Keynesian demand management, exerting greater fiscal discipline, reforming welfare assistance, cutting marginal tax rates and broadening the tax base.

The impact of neo-liberalism onto government agendas became largely prominent in municipal governments of the United States of America "(e.g. Sunnyvale, California) that had suffered most heavily from economic recession and tax revolts"; as well as in the United Kingdom (Gruening 2001: 2). In the UK, the 'third-way' agenda was supported by labour and social-democratic parties (Hood 2001). However, it was indeed the Conservative party whom implemented the 'new right' movement under the 'policy entrepreneur' Margaret Thatcher, and her successor, John Major (time in office: 1990-1997).

However, the NPM trend has not remained in only the UK and the USA. Rather, the NPM movement soon spread from the USA and United Kingdom to New Zealand and Australia (OECD 1995; Bevir 2012: 60). Subsequent to this, Canada, China, Korea, most of Europe, the Nordic countries (Milward et al. 2016: 312), and some developing countries have also moved towards various forms of public management (Borins 2000; Mongkol 2010). Whilst not all of these countries categorically adopt the same approach, it has been suggested that public management presents a menu for choices to be made (Manning 2001; Turner 2002), whereby different governments are able to select different options.

The origins of new public management are summarised in Table 1 below. Table 1:

Table 1: The Origins and Principals of NPM

Theory	**Author**	**Principals**
Managerialism (scientific management)	Taylor (1911)	Hierarchal system, vertical chain of command, decentralisation, time management, efficiency, Effectiveness
Agency theory	Moe (1984), Eisenhardt (1989)	Self-interest, focus on transparency and accountability
Public choice theory	Downs (1957), Olson (1965), Buchanan and Tullock (1962), Buchanan (1978), Tullock (1965)	Self-interest, transparency, accountability, budgeting, privatisation, free choice, decentralisation, consumerism
Transaction cost economics	Williamson (1985)	Comparative costs, planning, adapting and monitoring tasks, markets, contracting out some services, supply
Neo-liberalism	Friedman (1981), Hayek (1960; 1952a, 1952b)	Markets, competition, deregulation, financial management

Source: Compiled by author.

The five abovementioned theories have been instrumental in driving public management initiatives. Moreover, the principals espoused by these theories are seen to characterise the new public management trend. These characteristics are discussed below.

2.2.2 The Characteristics of New Public Management

Following the reforms which commenced in the late 1970s, academics observed the common characteristics associated with the movement and organized these under the label of New Public Management (Dunsire, 1995). New Public Management (NPM) was coined in the late 1980s to stress the importance of management in public service delivery; with 'production engineering' often being linked to economic rationalism (Hood 1989; Hood & Jackson 1991; Hood 2001; Pollitt 1993). Public management can be defined as: a rejection of the welfare state; opposition to a large public sector and public bureaucracy; sceptical of government capacity; supports private sector superiority; emphasises market competition, service delivery, economics and private management (Islam 2015: 142; also see Hughes 2003). NPM essentially "promises a leaner and better government, decentralization, empowerment, customer satisfaction and better mechanisms of public accountability" (Islam 2015: 142).

NPM is thus seen to be conceptually different from the New Public Administration (NPA) movement of the late 1960s and early 1970s. As argued by Bevir: "Public management is about making sure that the resources available are used as effectively as possible to realize state policy goals" (Bevir, 2012: 59). Bevir further suggests that the belief in markets grew as the belief in hierarchy declined, thus separating public management from public administration. Market-based reforms were adopted by policy-makers "in an attempt to downsize government and to make what remained more efficient" (Bevir, 2012: 59).

Hood also notes that the New Public Administration movement was intended to align the radical egalitarian agenda at US universities with academic public administration. By contrast, the New Public Management movement, which emerged a decade or so later, was firmly managerial. The NPM movement was concerned with the difference that "management could and should make to the quality and efficiency of public services" (Hood 2001: 12553).

Identifying the changes in governance which commenced in the late 1970s, academics began reflecting this in public administration literature. In 1992, Osborne and Gaebler's book "Reinventing Government" considered the application of innovation unto the public sector; as well as the National Performance Review under the Bill Clinton administration (Gore 1993). New Public Management and Reinventing Government emerged at roughly the same time and share many similarities. However, whilst Reinventing Government focused on entrepreneurship and innovation, New Public Management was concerned with public sector performance, public services, efficiency, effectiveness and accountability (Bertot et al 2016).

As noted by Gruening (2001: 2), the "undisputed characteristics that are almost always mentioned by academic observers" are: budget cuts; vouchers; accountability for performance; performance auditing; privatization; customers (one-stop shops, case management); decentralization; strategic planning and management; separation of provision and production; competition; performance measurement; changed management style; contracting out; freedom to manage (flexibility); improved accounting; personnel management (incentives); user charges; separation of politics and administration; improved financial management; more use of information technology. Gruening further uses the works of: Borins (1994, 1995); Boston, Martin, Pallott& Walsh (1996); Buschor (1994); Gore (1994); Hood (1991); Naschold et al. (1995); Reichard (1992); and Stewart and Walsh (1992), to identify "a few debatable attributes that are included by some but not all observers" (Gruening, 2001: 2). These are: legal, budget, and spending constraints; rationalization of jurisdictions; policy analysis and evaluation; improved regulation; rationalization or streamlining of administrative structures; democratization and citizen participation.

Whilst Gruening's efforts to identify the characteristics of NPM was done so in 2001, later publications are still recurring the said characteristics, noting that:

> *"NPM put new emphasis on topics like accountability, autonomy of managers and public organizations, efficiency, effectiveness, economy, value for money, output and market orientation, decentralization, and performance measurement and management. Given this*

emphasis, accruals accounting and budgeting, cost accounting, and output-based budgeting all became central in the implementation of the NPM agenda"

Anessi-Pessina et al., 2016: 494; for the said accruals, see: Liguori et al. 2012; Skelcher et al., 2005

It is believed that NPM may offer clear benefits to governments and their citizens. This is because privatisation encourages competition and therefore a focus upon the needs of the consumers of public services; decentralisation reduces costs and encourages smaller enterprises to specialise; and, innovation is increased, empowering smaller groups against an elitist concentration of power (Simonet, 2013: 806; also see: Hood 1991; Osborne &Gaebler 1992; Pollitt 1993; Cassen 1994; Borins 1994; Ferlie et al 1996; Dunn & Miller 2007). Additionally, greater responsiveness, improved performance standards, managerial autonomy and output controls for public sector resources are argued as being benefits of public management (Simonet 2013: 807; also see: Le Grand 1993; Dunleavy & Hood 1994; Hood 1996; Dahlstrom & Lapuente 2010).

Advocates of public management stress the ability for private enterprises to reduce costs to public spending. Furthermore, privatising public services arguably adds value to consumers and citizens through improved service delivery as opposed to an outdated and traditional 'bureaucratic paradigm' (Osborne & Gaebler 1992; Barzelay & Armajani 1992; Jones & Thompson 1999). Similarly, others highlight the ability for entrepreneurial public managers to skilfully add value to public services (see Moore's 1995 'strategic triangle' of political possibility, substantive value and administrative feasibility).

However, some academics have questioned whether NPM is neglecting the state (Hood and Dixon 2015, 2016; Millward et al. 2016); and the cost-cutting agenda associated with public management hasbeen accused of neglecting effectiveness (Watson 2008). Further, NPM has received much social criticism regarding higher individual costs (e.g. for healthcare).

Furthermore, some sceptics suggest that managerialism is a 'wrong problem problem' that diverts governments' attention away from difficult policy decisions (Federickson 1996). It has further been suggested that the overreliance on private sector business practices is too simplistic as the government has intricate responsibilities that fall outside of private sector business practices; thus raising criticism with regards to the implementation of private sector techniques into the public sector (Flynn 2002). Although, it has been suggested that private sector management practices are not always adopted into government operations and public management may not be appropriate due to the public sector having these more intricate accountabilities and objectives (Savoie 2002; Singh 2003).

By contrast, some have suggested that the limitation of state power – particularly by law – has meant that in some cases contracting out from the public to the private sector is more efficient. However, it has also been argued that the public sector has political, constitutional, social and ethical concerns which reach beyond that of the private sector (Pollitt 1990; Armstrong 1998); and there is less freedom in the public than private sector (Cheung and Lee 1995). This, ultimately beings to the fore wicked problems that run contradictory to the role of the government outside of capitalist private sector forces. Moreover, others have offered rent-seeking explanations of the reforms which put too great-an-emphasis on private sector management and business school perspectives (Dunleavy 1992).

In light of this, it may be argued that whilst some state services may benefit from the consumer focus and competition found in the private sector, the public sector is not a for-profit business as found in the private sector, nor is it a not-for-profit or voluntary organisation (Western, Edin, Atkins & Fitzgerald 2013). The public sector has responsibilities for state welfare which extend beyond private sector initiatives and increasing profit margins. Therefore, blanket-washing all state services with similar economics theories in line with capitalist objectives and free market forces may indeed lead to severe moral hazards.

In addition to the conflicting interpretations of New Public Management, the concept itself has not been fully embraced by all scholars. For instance, at the time of inception, some scholars focused upon

entrepreneurship and innovation in government (Osborne and Gaebler 1992) and "Reinventing Government" through these means. Further, others today argue that the movement has transgressed beyond public management, into new areas such as the digital age (Dunleavy et al. 2006); whilst others have suggested "that the NPM has actually been a transitory stage in the evolution from traditional PA *(Public Administration)* to what is here called the New Public Governance (NPG)" (Osborne 2006: 377). It is proposed that Public Administration and Management (PAM) has "passed through three dominant modes – a longer, pre-eminent one of PA, from the late nineteenth century to the late 1970s/early 1980s; a second mode, of the NPM, through to the start of the twenty-first century; and an emergent third one, of the NPG, since then" (Osborne 2006: 377). Yet, despite the various interpretations, academic journal articles have over the last three decades, been reflecting the changes in governance; with entirely new journals coming to the fore, such as the "Public Management Review" (PMR) commencing publication in 1999 (Osborne, 2017).

Today, NPM is regarded as one of the most outstanding international public management trends (Hood 1991, 1998, 2000; Hood and Lodge, 2004); and, as a domain of research NPM "is now roughly three decades old" (Milward et al. 2016, p. 311). These ideologies, which can be traced to the 1920s, are still largely prominent in government reforms. For instance, the Conservative party leader Theresa May, argued on 28th September 2017 that free market capitalism is "the greatest agent of collective human progress ever created" (Politics Home, 2017). However, the uptake of new public management has happened incredibly rapidly with little to no supporting empirical evidence for the reforms. Rather, of the empirical evidence available, there is a large consensus that the reforms are having negative impacts. This will be discussed in the subsequent section – the Impact of New Public Management.

2.2.3 The Impact of New Public Management

It has been noted that during the 1990s, governments began to look at privatizing public utilities (Simonet 2013: 808). For example, this can be seen with the privatisation of airline transportation, electricity generation and telecommunications. Additionally, during the 2000s, sectoral reforms of state services such as in healthcare and education were implemented. As highlighted by Simonet, these changes often made news headlines, namely due to public discontent. This is largely because there has been no public debate on these reforms, the values espoused, nor the drivers behind the changes. As a result, the legitimacy of NPM reforms have largely been weak (Simonet 2013: 808).

As noted by Simonet, there have been transitionary stages in the privatisation of public services. In line with public choice theory, transaction cost economics, and neo-liberalism, strong arguments may be made towards focusing upon markets and increasing the healthy competition of organisations in the first phase of privatisation. For instance, as consumers only pay for the services that they receive, it is purely reasonable for airline and rail transportation, telecommunication, and electricity generation to bebased within the private sector. Moreover, consumers can benefit from organisations competing and thus being more responsive to their needs, as opposed to the slow-moving bureaucratic structures associated with the public sphere.

Within the context of the United Kingdom, this can be seen with the privatisation of British Rail (Railways Act, 1993; 2005), British Petroleum (Petroleum Act, 1969; 1987; 1998), and British Gas (Gas Act, 1972; 1986 / The British Gas Corporation (Dissolution) Order, 1990). It should be noted that there is some discrepancy in terms of the dates indicated by Simonet; however the consistent stages identified remain true. British Rail was state owned since 1948 and was privatised during 1994-1997; although the privatisation of railway functions actually began in 1984. British Petroleum was majority state-owned and privatised in stages between 1979 and 1987; and British Gas was privatised in 1986. The early privatisation of state enterprises are unto organisations which also operate within the private sector. Thus it may be argued that innovation and competition brought with market forces would enable

such services to become responsive to the criticisms surrounding their slow bureaucratic nature. Thus the privatisation of 'utilities' may, as noted, benefit from market forces. However, the second phase of privatising other services such as healthcare, education, and welfare begin to raise some more ethical concerns.

One of the core criticisms with regards to the adoption of public management agendas is that the moves have been made with little or no empirical evidence. It has been noted that public management agendas have impacted upon "a range of domains such as civil service, education, and health care" (Hood and Dixon 2016, p.410). However, as highlighted by Gerrish (2016: 48), multiple governments have implemented performance management systems (for example) into public organisations under the belief that these will improve organisational effectiveness. Yet, there is very limited empirical evidence reviewing the impact of this.

Of the empirical evidence available, there are resounding indications that public management has negative impacts. For instance, empirical evidence on three decades of UK public management reform shows that running costs have rose substantially and that there is increased public dissatisfaction towards fairness and consistency in administration (Hood and Dixon 2016). Others have noted that: "Our findings provide little support for the OECD-NPM working theory of management control, and even suggest that NPM-consistent reforms may have had a negative impact on public sector performance" (Verbeeten and Speklé 2015). Moreover Gerrish's quantitative analysis uses 2,188 effects from 49 studies to conclude that the mere act of measuring performance does not necessarily improve performance, rather management practices themselves may have a noticeable impact on performance management systems.

Thus, sceptics have raised concern regarding the role of the state, how services are provided and ethical dilemmas towards citizens as consumers. These criticisms have more recently emerged with the privatisation of healthcare and education due to the headlines as identified by Simonet. Byrkjeflot (2013: 147) suggests that: "Scholars of public administration have noted that during the last 20-30 years,

hospital reforms have become a global phenomenon". Yet, in keeping with the aforementioned critiques, this has led to healthcare sectors being in a permanent state of 'dis-reorganizaion' (Stambolovic 2003, Pollitt 2007). As a consequence of NPM, healthcare systems have begun to converge on international levels. For instance, nations characterised by National Healthcare Systems (NHS) such as the UK, Southern European, and Scandinavian systems; as well as "between the NHS systems and the corporatist continental systems of healthcare (Germany and France) (Byrkjeflot 2013: 147). It has also been noted that the healthcare reforms in the US may also indicate a more prominent role of the nation-state in world-wide healthcare governance (Byrkjeflot 2013: 147; also see Tanne 2010; and Freeman 2000).

Additionally, the theoretical underpinnings of NPM can be seen within the healthcare sector as government intervention is reduced and decentralised systems are promoted to empower patients as consumers (Byrkjeflot 2013: 148). However, studies have shown that there are limits to consumerism, particularly in sectors where care and support is needed for the vulnerable; and it has been "revealed that people using public services in England were reluctant to identify themselves as consumers or customers" (Newman 2013: 352). Although it may be argued that citizens are given a 'voice' as consumers, Hood (1991) also identifies that there is an emphasis on incentives for managers, results orientation and a move towards quantification; thus echoing the driving forces of scientific management and public choice theory underpinning the NPM movement.

In addition to the overall macro structures changing in line with public management initiatives, it has also been noted that the roles of health care professionals are also changing. The management of professions and professional management are key to the debate on the impact of NPM on public hospitals (Byrkjeflot 2013: 149). Although the first initiatives towards the general management in UK hospitals began in the 1960s, it was the Griffiths Report of 1983 that catalysed "turning the NHS into an organisation similar to any large private corporation" (ibid). As many doctors declined taking up managerial posts, administrators or managers from the private sector were imported, making it even

more difficult for doctors to perform managerial functions; subsequently, a series of clinical management reforms sought to put clinicians into management (Kirkpatrick et al. 2009).

The idea that management ought to be perceived as an independent profession from traditional notions of a profession has been widely institutionalized in management development programmes on a national level (Jespersen and Wrede 2009). Although Scandinavian countries have not moved doctors and nurses away from management positions; in others such as Italy, there have been developments towards technical-managerial healthcare administration following the 1992 healthcare reforms (Mattei 2009); in France the 1996 health reforms empowered hospital directors (Freeman and Moran 2000); and in Germany during the late 1990s, the role of medical directors morphed into assistants of the executive board (Byrkjeflot 2013: 149).

Although the impact of NPM initiatives on the healthcare profession, and indeed the roles of healthcare professionals has been different in different countries; there are clear trends towards reforming national health services in line with public management agendas and the search for private sector managerialism. Such a trend can also be seen in the provision of other public services such as state education systems and welfare.

In the first instance, it has been recognised that: "Analyses of NPM are in their infancy in the field of education" (Anderson 2016: xv). Nevertheless, there is evidence to suggest that NPM is creating new professional identities within the education sector, notably in England, Chile and the US (Anderson 2016; also see: Anderson and Cohen 2015; Hall and McGinity 2015; Anderson and Herr 2015; Montecinos et al. 2015; Mungal 2015). As noted by Gunter et al. (2016) educational reform across Europe has shown that four 'factors': managers; managing; management; and managerialism are all connected with new tools and practices being implemented (Gunter et al. 2016: 6). For instance, managers as deliverers are seen to solve problems; "explicit standards, measurements and output controls" are akin to managing; management bases delivery on "a right to manage through contracts, line management and accountability processes"; whilst managerialism advocates hierarchy and

performance to espouse new forms of power relationships (also see Hood 1991; Pollitt and Dan 2011).

The roles of teachers, as well as others in the delivery of public services such as social workers, doctors and prison governors, as well as national policy makers and local and regional officers have now changed to work in line with accredited managers. These managers are appointed to undertake various roles including budgeting, contracting, purchasing, human resource management and marketing management (Gunter et al. 2016: 6; also see Newman and Clarke 1994: 25).

These new roles have indeed raised much criticism. In the first instance, empirical evidence of three studies conducted in Sweden between 2002 and 2014 suggests that New Public Management initiatives reduces teacher autonomy (Lundström 2015). When applying bureaucratic forms of managing such as Taylorism, the decrease in autonomy indicates a mechanistic deskilled role of frontline workers. Moreover, the study reveals that restructurings since the late 1980s have redistributed power to the state, as well as to municipalities and principals. Further, the school "market" redefines students as "customers" at the expense of teacher autonomy.

Although further empirical evidence is required, redefining knowledge workers such as teachers and empowering students as consumers seemingly shifts the power distance in favour of market forces, thus raising questions regarding the impact on professional standards. The emphasis on profitability over educational standards have caused controversy, with university academics notoriously voicing that educational standards in the United Kingdom are in decline at overcrowded universities (Telegraph, 2014). Further, whilst some suggest that decentralisation may "challenge inertia and unlock a frozen system", in the UK for example, decentralisation, as well as an emphasis on competition and a reduction in the role of local authorities have collectively isolated schools, reduced professional reflection and contribute to the failure of 'failing schools' (Tomlinson 2005: 303; also see Riley and Rowles, 1999).

The quality of other public services such as in welfare provision have also raised some controversy. Similarly to other New Public Management reforms, numerous countries have made changes towards reforming social welfare under public management initiatives. Norman (2013) notes the reform trends

across jurisdictions in Australia, New Zealand and Norway; and suggests that NPM has impacted the structure, governance and leadership systems as well as there being a major focus on agency and performance measures (Norman 2013: 188-189). Further, the uptake of computer technologies and culture change were rapidly adopted during the 1980s and 1990s by New Zealand and Australia for breakthrough change (Norman 2013: 191).

2.2.4 Section Summary

There have been a number of key theoretical contributions to the New Public Management movement, namely: managerialism, agency theory, public choice theory, transaction cost economics, and neo-liberalism. These theoretical underpinnings have formed core characteristics around hierarchal chains of command, decentralisation, privatisation, consumerism, market forces, and financial management – for the purposes of objectively, and scientifically, controlling inputs and outputs, as well as increasing efficiency and effectiveness. Furthermore, the belief that individuals operate within their own interests has led to mechanisms for increasing transparency and accountability. In some sectors, it may be argued that decentralisation and market forces increase innovation and healthy competition which may benefit consumers. For example, the privatisation of transportation, energy services, and telecommunications. However, for some services such as within healthcare, education and welfare, this poses more intricate problems. This is because, as identified, within healthcare, citizens largely resist being perceived as consumers when they are seeking healthcare support. In education, empowering students as consumers threatens professional standards. Moreover, in welfare services, the poor are further disadvantaged as they ironically cannot afford the services which they rely upon the state for. Collectively, this raises questions pertaining to the role of the state and its responsibilities to its citizens – on the one hand, providing "free" services disadvantages some members of society whom pay more in taxes for the services that they personally receive. On the other, aligned with public management, the state absolves responsibility of services and whilst there is still a clear chain of command as connoted through Taylorism; and parliamentary sovereignty remains supreme; within in neo-liberalist style, markets do more whilst governments do less.

As highlighted, some state services may benefit from private sector forces, whilst in others this may create moral hazards. However, there is one sector – the legal services sector – which has been impacted by public management initiatives and raises more concern than any other sector. This is predominantly due to theoretical arguments pertaining to the role of the law in maintaining social stability and therefore facilitating economic development; as well as the judicial role in the constitutional arrangement through the separation of powers. The following section will present this discussion in more detail.

2.3 United Kingdom Legal Services

2.3.0 Section Introduction

This section begins by considering core theoretical arguments in the sociology of law. Through doing so, it is shown that despite the varying interpretations on the role of the law within society, there is consensus that the law controls behaviour; thus, as individuals conform to the rule of law, this stabilises the state. The section then moves on to consider the origins and development of the oldest surviving legal sector in the world – that of the United Kingdom – which has stood as a bastion of social order since 1066. Following this, the section presents the recent impact that New Public Management is having unto the legal services sector. This is achieved by considering: a) reforms to how 'hired' legal professionals – namely lawyers and barristers – may operate; b) reforms to policing andprisons; c) and, reforms to the courts including access to legal aid. It is shown that under public management initiatives, there have been reforms to increase competition, marketization, privatisation and decentralisation; and there is a clear focus on budgeting, efficiency and effectiveness. The section then narrows to consider the creation of the United Kingdom Supreme Court under the Constitutional Reform Act 2005. It is shown that the political arguments for the creation of the new court are in line with the unwritten constitution to advocate a clear separation of powers. Further, these political arguments to create one of the world's newest supreme courts, purported that there would be no noticeable change to the role of the highest judges. However, further examination through this literature review shows that there have been clear moves to reform the new court in line with the characteristics of public management. The

literature review subsequently identifies a gap in public management literature to research into how new public management is impacting on the roles of the United Kingdom's highest judges. The significance of which is supported with reference to the fundamental role of administering the rule of law at the highest level in stabilising the state; as well as the constitutional role of the highest judges.

2.3.1 Sociology of Law

This part of the literature review traces key arguments in the sociology of law. It is noted that although there are varying interpretations regarding the role of the law; there is consensus that the law facilitates social order and the stability of the state. For some, this is perceived as catalysing economic development.

Anthropology speaking, 'laws' governing group conduct may be seen as biological and evolutionary survival mechanisms (Somit, 1968; Corning, 2002, 2005; also see Wuketits & Antweiler, 2004). Further, these laws are abstract, socially constructed, and change over time (Berger and Luckmann 1966). Systems of law today are evident on global scales, and may be traced to the Code of Hammurabi (Babylonian code of law) from approximately 1754 BC in ancient Mesopotamia. It is quite ironic therefore, that despite having such a prominent role, there is no conclusive definition of the concept "Law" (Treviño 1996: 5). This was noted by the German philosopher Immanuel Kant in 1781 (Kant 1933: 588) and is still true almost 250 years later. Nevertheless, the expression 'the rule of law' is often attributed to Dicey (1885); although, one should note that Aristotle's English translation does indeed make reference to the rule of law, noting: "It is better for the law to rule than one of the citizens…so even the guardians of the laws are obeying the laws".

In essence, the role of the law has, and still is, subject to interpretation. This raises issues in both legal writing and clarification (Neuberger 2012). However, there is consensus amongst sociologists that the law maintains social order. This can be seen through tracing the main "camps" of thought and the views

of the founding fathers in the sociology of law.

Durkheimian thinkers (alternatively known as Functionalist thinkers) celebrate the role of the law for maintaining social order. According to Durkheim, the law is seen to play a key role in maintaining social solidarity, whether for smaller communities under repressive law and mechanical solidarity, or in more complex and individualistic societies, through restitutive law and organic solidarity (Durkheim 1957, 1966, 1983). For Durkheim, morality is the basis of law: "Since law reproduces the main forms of social solidarity" (Durkheim 1984: 28).

However, this juxtaposes the successive left wing critical legal studies movement which began in America during the 1970s – around the same time as public management initiatives began to take hold. The critical legal studies movement is seen to argue for reforms and a more humane, democratic and egalitarian society (for example, see Kennedy 1976, 1979, 1980). Critiques of the role of the law may also be attributed to Marxist philosophies.

Although Karl Marx did not write extensively on the role of the law in the perpetuation of capitalist ideologies; himself and Engels did speculate that the law is entirely doomed and will completely disappear. This is because historical conflicts between the bourgeoisie (ruling elite) and the proletariat (working classes) would result in a revolution; and the law would ultimately 'wither away' in a classless communist society (Wacks 2015: 121-122). Neo-Marxist developments have furthered this critique of the legal system as a capitalist state apparatus designed to perpetuate the dominant ideologies of the ruling elite and act as a vehicle of oppression unto the falsely conscious proletariat (Pashukanis 1989; Balbus 1973; Renner 1949; Stone 1985).

Despite critiques of the law within the Marxist school of thought, it is still recognised that without forms of capitalist control there would be a lack of social order. This, in turn, would result in social disarray, alternatively known as social anomie. Therefore, whilst the legal system is discredited as a capitalist state apparatus, it is recognised that it does act as a control mechanism for social order.

Whilst neo-Marxists attack the legal system for perpetuating social inequalities, others have noted that the law oppresses other social groups. For instance, the legal system may be perceived as patriarchal and women either fear separation (cultural feminism) or fear intrusion (radical feminism) (see West 1988). The legal system can also be viewed as pre-judgemental of racial and ethnic minorities, whom are asked to "give up something of value, or unreliable, because it is based on presuppositions that do not correspond to our existence" (Delgado 1987: 303). Therefore although the law gives the image of social equality and justice, this social equality merely represents the ideas of those whom control it.

The less publicised Social Darwinist approaches agree that the law is oppressive, but celebrate the legal system as a symbol of the ultimate victory of the ruling elite (Sumner 1934; also see Herbert Spencer's origins and evolution of the law: Spencer 1880, 1898, 1899). Whilst for others such as Weber, it is suggested that the law as a form of domination or legitimate authority must be separate, and indeed supersede, other systems such as those intertwined with power and religion; if not, the law will have little social impact. Further, Weber suggests that legal professionals are ambassadors of professional legal values; and these values must be adhered to and nurtured so that the principles of these may be maintained (see Weber 1949, 1950, 1958, 1969, 1978; Mommsen 1992). The traditional ruler should base regulation upon welfare, utilitarian and absolute values. These should be applied by professionals within highly complex intellectual, rational, calculable and predictable systems; which in turn leverages the role of the law to protect the long term economic stability and financial development of the state.

Weber's focus upon 'rationality' distinguishes between formal and substantive systems. This concerns the extent to which a system is self-sufficient; in other words, the extent to which rules and procedures necessary for decision making are available within the system. Further, 'rational' and 'irrational' systems are separated and it is suggested that 'rationality' applies to the manner in which legal rules and legal procedures are applied by professionals within these highly complex systems. Thus, a judge operating within formal logical legal rationality will base decisions not upon personal opinion, but rather, based on an impartial system of legal rules and principles (Wacks 2015: 119-120).

By contrast, the role of legal professionals are perceived by some to be ambassadors of a social good – as the law should protect social interests (see the works of Pound 1906, 1907, 1908, 1910, 1927, 1938, 1942, 1943, 1959, 1971). However, it may also be argued that the law is a well-known profession and the purpose of the legal professional is to seek financial gain and a rewarding business (see the works of Holmes 1873, 1881, 1897, 1899, 1953). Yet others have noted that there ought to be a balance between the two (Mayson 2007). The role of the legal actors brings to the fore questions pertinent to issues of responsibility and accountability. This is because legal professionals operate under strict regulatory rules both within the public sphere such as judges, and the private sphere such as lawyers. In consideration of the aforementioned agency theory which underpins the New Public Management movement, one may suggest that moral hazards may occur when agents appoint seemingly impartial legal professionals as principals. This brings to the fore juxtapositions relating to the role of impartial legal professionals under a system that presumes individuals are self-interested.

In light of the core theoretical works in the sociology of law, there is consensus that the law – whether rightly or wrongly – acts as a form of social control. Taken collectively, both Neo-Marxist and Social Darwanist approaches purport that the law acts to legitimize an elitist class system; and, as noted by Weber, the law facilitates economic development, with a long-term focus. Moreover, the role of legal ambassadors working within these highly complex systems is therefore to adopt an impartial approach towards applying calculable forms of social justice. Yet, despite the fundamental role of the rule of law, the government of the United Kingdom, closely followed by the New Zealand government, have made drastic changes to their nation's legal system under New Public Management agendas. The following section considers the history and development of the UK legal system. It then reviews the impact of public management on the role of lawyers and barristers, the police and prison services, as well as the running of the courts and judges.

2.3.2 History of the United Kingdom Legal System

The United Kingdom is believed to have the oldest surviving legal system in the world, which was formalised subsequent to the Norman Conquest of 1066. Prior to this date, the multiple invasions upon Britain had led to an array of subcultural groups settling inland; each bringing with them conflicting ideologies and social rules. These often sparked rivalry and there was little by way of ruling social order, with past judicial rulings being absent in court hearings and sentencing (Baker, 2011). In consideration of Weberian theory, this essentially meant that there was an irrational legal system in place. However, one should note that Alfred the Great (c. 893 A.D.) did seek to unify Britain through developing a legal code. As noted by Baker:

> *"England became a single kingdom in the tenth century. The king had been responsible for establishing formal governmental authority…The laws of Edward the Elder (d. 925 A.D.) and Athelstan (d. 939 A.D.) make plain the duty of the king's reeves in borough and hundred to see that all men received the benefit of the customary law (folk-right) and the 'doom-book' (presumably Alfred's code) in those assemblies."*
>
> Baker 2011: 9

Consequently when - subsequent to the Norman Conquest of 1066 - "William of Normandy declared the entire land of England to be royal property" (Loughlin 2013: 24), William I entered into an "already unified nation with a central government ruling through sheriffs answerable to the king" (Baker 2011: 12). Although William I imposed a hierarchal structure of power through retaining 20 percent of the land himself, whilst awarding his chief vassals approximately 40 percent of the land (Loughlin 2013); the king's powers were limited by the established law of the land. Loughlin notes:

> *"The governing arrangements of the Goths, the argument ran, amounted to an ancient pre-feudal, and law-observing constitution that preserved liberty. At the core of the arrangements was the great meeting, the Witenagemote, where freeborn Anglo-Saxons met to make law and*

> *deliberate over the great affairs of the kingdom….advocates of the Gothic constitution rejected the Norman claim of absolute sovereign power: kings of England, including William I, occupied an office of limited authority and ruled according to the ancient fundamental laws of the land."*
>
> Loughlin 2013: 25

Following his predecessor's - Alfred the Great's - late 9th Century Doom book, William the Conqueror made advances towards unifying Britain and developing an effective legal and judicial system. Thus, under William I, a highly centralised system of government began to emerge (Loughlin 2013: 44). At the time: "There were three distinct systems of law in England: the law of Wessex, the law of Mercia, and the Danelaw" (Baker 2011: 13) and it was the initiatives of Henry II during 1154-89 to restore the firm government of Henry I that led to the foundations of common law (Baker 2011: 13). Later, in 1215, the Magna Carta established the law as independent from the king (Holt, Garnett & Hudson 2015). However, whilst the Magna Carta laid the foundations of this, judicial independence was actually reached in Britain with the Act of Settlement 1701.

In addition to this, one should note that parliament has not always assumed control of governing the nation, nor assumed power over the creation of law. Rather, the origins of parliament can be traced to the eleventh century (BBC 2017b); although parliament was not formally established until the thirteenth century (Loughlin 2013:44). In the fourteenth century: "Two distinct Houses of Parliament emerge - the Commons, composed of shire and borough representatives and the Upper House of religious leaders (lords spiritual) and magnates (lords temporal) (BBC News 2017a). However, the dissolution of the monasteries saw the abbots and priors removed from the Lords in 1539, meaning that only bishops remained as the spiritual side of the chamber.

The dissolution itself was a legal process between 1536 to 1541 enacted by Henry VIII. This came following the Act of Supremacy which was passed by Parliament in 1534 to make Henry VIII Supreme Head of the Church in England. The monasteries, priories, convents and friaries were seen to be suppressed of their income and assets, which were sold to fund Henry's 1540 military campaigns.

In 1399, the judicial role of the House of Lords as the highest court of appeal was formalised. Prior to this date, both Houses of Parliament were responsible for, and empowered to, hear petitions and reverse the judgements of the lower courts as deemed fit. Subsequent to 1399, the House of Commons ceased to consider these cases. The Appellate Jurisdiction Act was passed in 1876. This Act was designed "to regulate how appeals to the House of Lords were heard…(and)…provided for the appointment of 'Lords of Appeal in Ordinary', often known just as the Law Lords, who were highly qualified professional judges, to work full time on the judicial business of the House". Thus: "From that time, for practical purposes, the UK had a supreme court in all but name" (Arnold, 2014: 19).

Tracing the origins of the United Kingdom legal services system is important for three main reasons. In the first instance, it clearly shows that, in line with Weberian theory, a highly calculable and predictable system has been formed. Thus formal logical legal rationality has been created over the decades, which is based on an impartial system of legal rules and principles (Wacks 2015: 119-120). Moreover, the roles of legal professionals operating within this system are to apply these rules and principals that transcend beyond personal interest. In turn, this brings to light a clear juxtaposition between the institutionalised role of impartial legal professionals opposed to the theories underpinningNew Public Management which centre upon self-interest, decentralisation, and individual profit- centricity. In the second instance, it brings to the fore the role of the judicial system as being separate, and indeed, superseding hereditary rulers or members of parliament. Essentially, this gives credence toarguments for the separation of powers as aforementioned. Finally, tracing the origins of the law revealsthat the law can survive without politics as freeborn Anglo-Saxons met to make law and deliberate overthe great affairs of the kingdom in the *Witenagemote* meetings, meaning that the ruling office of government is limited. Quintessentially, this supports the assertion that:

> *"The relationship between the rule of law and democracy is asymmetrical: the rule of law can exist without democracy, but democracy needs the rule of law, for otherwise democratically established laws may be eviscerated at the stage of application by not being followed".*

Tamanaha 2004: 37

The quotation by Tamanaha indicates that the law is fundamental to democracy as without the rule of law, there is no enforcement or consequences for individuals whom choose not to adhere to political direction. There is consensus within the sociology of law that the law, whether rightly or wrongly, constrains behaviour. However, this invariably contradicts the underpinnings of public management which, as noted by Weber, focuses upon decentralised as opposed to highly complex and centralised systems; consumer choice as opposed to non-optional and universal rule of law; and capitalist market forces as opposed to a unified, codified nation state. Yet, despite these inherent institutional juxtapositions, radical reforms are being made to drastically reform the almost 1000 year old English legal system in line with public management initiatives. These changes are not only incredibly abrupt, but the reforms are being implemented with little or no empirical evidence.

2.3.3 Section Summary

In summary, it is widely acclaimed that the law assists in maintaining social order, acting as a bastion of social stability. However, under government reforms, there is a clear emphasis on free market economics, a hierarchal chain of command and individual agency. The overall impact of these reforms unto one of the world's longest standing legal systems has thus become questionable, raising concern regarding the overall prominence of the law in society.

2.4 The Impact of New Public Management on United Kingdom Legal Services

2.4.0 Section Introduction

This section considers the impact of New Public Management on the United Kingdom legal services sector. To achieve this, the section is split into three core areas which review the impact of NPM reforms on: a) 'hired' legal professionals such as lawyers and barristers; b) police and prisons; c) as well as the running of the courts and access to legal aid. For each section, the macro political reforms such as Parliamentary Acts are addressed, along with the wider noticeable changes being made under these reforms. Additionally, the impact that these reforms are having unto the institutional roles of legal professionals is addressed. The section then narrows to consider the impact of NPM and the creation of the United Kingdom Supreme Court under the Constitutional Reform Act 2005. It is shown that despite there being arguments that there would be no noticeable change to the role of the judges in the highest court; the new court has clearly been impacted by the characteristics of NPM. However, there is no research available that considers how these reforms are impacting on the role of the judges in the highest court. A case is made for further investigation into this to contribute to literature in public management, as well as to inform practical constitutional arrangements.

2.4.1 'Hired' Legal Professionals

As shown in the adoption of managerialism, public choice theory, transaction cost economics and neo-liberalism, marketization and decentralisation are key to the theoretical underpinnings of New Public Management. Akin to this, public management initiatives in Britain have brought a huge decline in state protection of the legal services sector. These political moves, supported by Thatcher and Reagan under the euphemised 'Reaganomics', can be seen for example, through the marketing of legal services. The marketing of legal services was historically prohibited in the USA and Britain; although, reforms to allow the marketing of legal services were enacted in 1977 (Bates v. State Bar of Arizona 1977) and 1984 (see Beke 2014), respectively.

Although other countries have made moves towards the removal of state protection and full privatisation of legal services, it is the United Kingdom, closely followed by Australia, that have been at the forefront of change. Within the UK, the moves were initiated by Thatcher, whom supported by Lord McKay, (then Lord Chancellor), pushed the higher courts to remove the Bar's monopoly of advocacy; with the Courts and Legal Services Act being enacted in 1990 (Goulandris 2015; Abel 2004).

More recently, in 2004, the Clementi Report (Clementi 2004) was archived by the Ministry of Justice. The Clementi Report is fundamentally predisposed to the notion of augmenting competition within the legal sector: "that is, competition for regulation and representation, for clients and work, and for ownership and capital" (Mayson 2007: 15).

The emphasis of the Clementi Report on 'putting consumers first', marketplace 'corrections' and ideas of 'Alternative Business Structures' (ABS); was subsequently followed by the UK government passing the Legal Services Act (Legal Services Act 2007). The Legal Services Act emphasises consumerism and competition, with the predominant justifications being to protect and promote the public interest and provide greater access to justice - whilst still adhering to professional principles.

However, the juxtaposition of consumerism and professional principles is somewhat exacerbated by the Act permitting 'Alternative Business Structures'. Through application to -and approval by - the Solicitors Regulatory Authority, ABS enables non-lawyers to form partnerships with lawyers (although 70% of any law firm must still be owned by legal partners); and non-lawyers to practice areas of law which were historically reserved for certified lawyers only. In essence, ABS removes the government protection of the self-regulated sector, allowing new entrants into the 'market', and emphasising immediate economic value.

Under public management initiatives, lawyers have experienced a decline in state protection to increase competition. Existing literature relating to the changing nature of legal services has tended to study how legal firms and legal professionals are operating within the developing context (Empson et al. 2013).

Moreover, this existing literature tends to provide suggestions for how these ought to be managed on a firm level to secure competitive advantages (Empson 2013; Mayson 2007), or predictions for how legal services will be delivered in the future through, for example, technology (Susskind 2010, 2013; Susskind & Susskind 2015).

In both management and legal literature, authors have connected the micro-level changes seen on both the firm and professional level to the notable changes seen on macro-levels. For instance, Empson, Cleaver and Allen's (2013) empirical management study reveals the institutional changes being made following the ability of non-lawyers to form partnerships with lawyers. Empson at al. study Managing Partners and Management Professionals as "key actors working in 19 of the largest international law firms operating in the City of London" (Empson, Cleaver and Allen, 2013: 810). The former are legal partners, whilst the latter Management Professionals are now being hired to manage the day-to-day operations and business activities of these 'firms'. The Management Professionals are predominantly from the accounting profession and bring with them alternative institutional logics which are being negotiated and integrated into traditional legal partnerships.

Building upon Lawrence and Suddaby's earlier work (Lawrence and Suddaby 2006), Empson et al suggest that this is resulting in new, corporatized partnerships through the phenomenon of sedimentation. Moreover, through linking "the micro-level actions and interactions of these institutional workers to more macro-level dynamics of institutional change" (Empson, Cleaver and Allen, 2013; 810), the authors are able to document how macro-level institutional change is evolving as a result of these complex dyadic relationships between Managing Partners and Management Professionals.

In addition to these new institutional logics as outlined by Empson et al., studies such as the empirical legal paper by Goulandris (2015) reveal that "Barristers have had to acquire new skills, marking a shift from the notion of an independent, self-employed practitioner to the new 'entrepreneurial barrister'". Goulandris highlights that the deployment of "marketing models and techniques" within this context is reported to be "reworking traditional notions of legal professionalism" (Goulandris, 2015: 2).

Moreover, it is suggested that changes can be seen on macro-levels: "The traditional, historic premises have given way to a more economic model, with emphasis on client need rather than barrister use" (Goulandris, 2015: 10).

When placed in the political context, macro-level changes such as the Legal Services Act 2007 are seen to be characterised by notions of decentralisation and increasing competition aligned to transaction cost economics, neo-liberalism, and public choice theory. In turn, these changes are impacting on the role of legal ambassadors within their institutional context. Whilst recent research is reporting such changes, the impact that these political moves are having unto citizen perceptions of the changing role of legal ambassadors, and their role of acting as impartial social stewards is yet to be seen.

Nevertheless, some law firms have embraced the change. For instance, law firms are now implementing visible profit-centric strategies such as trading publicly on the stock market. The first of whom was the 200 year old legal firm Gateley (established in 1808) "whose June 2015 IPO valued the firm at £100 million" (Chambers 2016). Thus showing signs that there is an increasing emphasis on individual agency and financial gain, which arguably juxtaposes stewardship and indicates a move away from tradition and universalism values, towards profit-centricity and self-direction (Schwartz 1992, 1994, 2001; Schwartz and Bilsky 1987; Schwartz and Boehnke 2004).

Furthermore, there has been an adoption of a new "Tesco Law" whereby non-lawyers are seen to be working in non-legal firms, yet offering legal advice (Dakers 2014). This has led to a rise in new entrants competing for legal work; along with unprecedented rises in 'consumer' claims such as accident at work and payment protection insurance. Records show that despite scandals such as the 2013 Co-operative Bank "uncovering a £1.5 billion capital shortfall, followed by its former chairman Paul Flowers making unfortunate headlines over his possession of illegal drugs" (Baksi 2015); hundreds of "ABS licences have been granted so far. Legal services are "now offered by the Co-op, the AA, Eddie Stobart, Admiral and KPMG" (Chambers 2016); with new non-legal entrants currently providing around 5 percent of services that were traditionally offered by legal firms (Baksi 2015). For Mayson, this places law firms

at a competitive disadvantage as: "Unregulated providers may be able to compete more effectively (*than small law firms*) in the non-reserved services, through the use of processes, technology, cheaper people, and the absence of regulatory costs and compliance" (Mayson 2007: 25; also see: 17).

The new market entrants, along with the rise in Managing Partners, brings to the fore questions relating to how the emphasis upon competition is effecting the provision of legal services. For Mayson, the "'spin' of consumerism" and "'*Putting consumers first…'*" does the Clementi Review a great disservice: "…Notice, it's not 'clients' or 'the public interest'…Consumer interest and public interest are not the same thing and might indeed conflict" (Mayson 2007: 17). However, whilst Mayson argues that the decline in government protection of the profession is pressurising the legal sector into adopting strategic transformations; he also suggests that there are other pressure sources. These pressure sources include the: new management forms (also see Empson 2013); increasing competition amongst rival firms; the rise in law graduates; technological advances (also see Susskind 2010, 2013; Susskind & Susskind 2015); and generational differences seemingly replacing social conformity and traditional values with self-gratification.

For Mayson these new 'market' pressures are elevated due to political change: "The Clementi Review and the Legal Services Act arguably represent the final dismantling of protection of the legal profession from market forces" (Mayson 2007: 14). This gives credence to a commercialised legal sector: "Perhaps the most profound commercial evolution in legal services in the past 30 years has been the emergence of law as a business…Consumers have more choice, more power and more protection" (Mayson 2015: 150-151).

The political justifications in support of the Legal Services Act 2007 are that consumerism helps to protect and promote the public interest and provide greater access to justice. However, the pre-eminent pressures for law firms to adopt a consumer-culture and commercialised practices to compete for market share raises ethical questions pertaining to the impact the changes in governance are having unto the provision of legal services. In line with the aforementioned arguments under the sociology of law,

Holmes suggests that legal professionals acting within their profession shall seek financial gain and a rewarding business (see the works of Holmes 1873, 1881, 1897, 1899, 1953). Nevertheless, the focus upon individual agency seemingly catalyses marketization and personal financial gain of the principals whom are empowered by the agents that employ them. In light of the works of Holmes for example, this has always been the case amongst 'hired' legal professionals. However, the extent to which these arguments hold true become more questionable when one considers salaried professionals deployed by the state to enforce the law through policing and prison services; as well as the role of judges to impartially administer justice, in what Weber terms formal logical legal rationality. Each of these areas are discussed below.

2.4.2 The Police and Prison Services

In line with public management agendas, there has been a rise in privatised prisons in the flowing countries: Australia, Scotland, England and Wales, New Zealand, and South Africa (Mayson 2013). Although there have been advocates, noting that this reduces public spending and there is little difference in the role of private and public prisons; others have raised concern about the increasing trend towards privatised prisons in the aforementioned countries.

In the first instance, concern has been raised due to the financial success of companies awarded prison contracts such as G4S, Serco, and The GEO Group's significant investments in international operations. Governments are increasingly giving thousands of detained and incarcerated individuals to for-profit prison schemes. Yet, these are resulting in substandard services as there is a focus on profit as opposed to quality services and reform, which in turn negatively influences public policy (Mayson 2013: 10). Furthermore, as there are budget cuts, staff are demotivated as a result of lower salaries, there is less training for police, and there are higher turnover rates. This creates "volatile environments that are more prone to abuse, violence, injury, and death" (Mayson 2013: 10; also see: Mattera, et al. 2003). Ironically, these cost cutting initiatives raise criticism as these may cost more than publicly-operated prisons. This has a knock-on effect as the business model of for-profit prisons essentially "leaves their financial success dependent on individuals being incarcerated and detained, regardless of the country in which

they are operating" (Mayson 2013: 11). Inevitably, this incentivises organisations to create policies that lead to higher incarceration rates and therefore more privatization contracts (Mayson 2013; also see: Mason 2012).

Within the UK, there is a clear impact on policing systems under public management initiatives. For example, the first privatised prison – Her Majesty's Prison (HMP) Altcorse – opened its doors on 1st December 1997 (Politics 2017). Further, there has been a rise in police targets to improve "performance measurement, monitoring and reporting processes" (Gov 2017). Both the UK and Australian governments have implemented budgeting systems, performance management techniques and target setting into the policing system aligned with public management agendas. For example, in 2013 the then Home Secretary Theresa May, informed police officers that their only target was to reduce crime (BBC News 2013). The hands-off approach from government saw different authorities adopting different targets and crime-prevention strategies. Whilst some such as Bedfordshire implemented priorities as opposed to targets, others such as Cambridgeshire noted a range of measures which aimed at reducing burglaries, whilst increasing the number of reported domestic abuse incidents, the number of prosecutions and increasing victim satisfaction. Leicestershire set the most targets at 26, Thames Valley Police set 10, and others such as the four police forces in Wales set general targets as opposed to specific ones (BBC News 2013). This echoes new managerialism styles in line with scientific management, where by the executive empowers local authorities to show a clear hierarchal form of command. Targets are then set by the executive and in puts, out puts, and performance management is monitored. New systems of "best practice" can be identified and budget setting may be effectively applied to the various local authorities.

Whilst on the surface performance measures and target setting to reduce criminal activity appears to be a good way of incentivising police and decreasing crime, this overlooks the fact that human nature cannot be measured in stringent terms. For example, if a city has 125 reported incidents of vehicle theft in one month, by the standards of performance measurement, this may lead to the assumption that the following month there should also be at least 125 reported incidents. However, ontological and

epistemological assumptions in line with a positivist methodological stance overlook inductive reasoning and the 'fact' that human nature is complex, inconsistent, and shaped by the social environment. Therefore, 'softer' managerial styles to understand and reform should be favoured. Such an argument may be put forth by the fact that countries with the highest number of private prisons have the lowest reform rates and highest incarceration rates (for example the USA). By contrast, prisons with an emphasis on investing to reform prisoners have the lowest incarceration and reoffender rates (for example the Netherlands); (Gilna, 2017).

Further, positivist epistemologies overlook underlying meanings which result in the reported figures. In turn, this questions the true validity of the findings as 'snapshots' are shown which fail to uncover the meanings behind the results. Following this line of thinking, the numbers of reported incidents of vehicle theft may not be accurately reported as police aim to meet their quota. This is exactly what Mann (2017) found in the study of police targets under new public management in Australia. Mann's "New public management and the 'business' of policing organised crime in Australia" "questions the discursive practices of NPM policing and raises questions about notions of 'accountability' and 'transparency' for effective police approaches to organised crime". This research indicates that the emphasis on target setting reduces transparency as police forge data to ensure that budgets are secured. Absolving state responsibility through decentralisation, the increase in target setting and the promotion of transparency aligned with public management initiatives is, empirically speaking, actually having adverse effects.

The impact of wider government strategies seen on a macro-level akin to public management initiatives are seemingly negatively impacting on the micro-dynamics of institutional police work on the micro-level; which, ironically, are contrary to the connotations of public management theory to increase transparency, efficiency and effectiveness.

In the United States, Judge Vonda Evans spoke out against these pressures in her sentencing of William Melendez. Melendez, a police officer, racially assaulted Floyd Dent by striking him sixteen times in the head for an unprovoked traffic offence. In her sentencing, Judge Vonda Evans condemned not only

Floyd Dent for his actions, but also spoke out about the system which pressurises as opposed to supports the role of police as social stewards, and hinders their ability to be able to provide superior service:

> *"…no support services for stress. No mandatory counselling for police officers. We'd rather put technology; money in technology by buying bait cars and surveillance cameras. But that doesn't reduce crime; it doesn't deter it. Properly trained police officers do. According to 'Law Enforcement Today', a publication, police officers had a highest rate of alcoholism, divorce, drug abuse, suicide. Their life expectancy is ten years less than the average American. Police are human beings too. They feel despair and they have ups and downs. Their job is made worse because they see on a daily basis, more than any other occupation, the worst behaviour that people can inflict on one another. They go to work everyday with the knowledge that some of the people that they are sworn to protect and serve want to kill them. The media and their bosses scrutinize their every move and they get paid worse than security guards at malls - where the worst crime that can be committed is shoplifting."*
>
> Evans 2016: 09:12-10:28

Judge Evans further blames the lack of resources and adequate training in supporting police to fulfil their role as being responsible for inappropriate police cultures. Considering the theoretical underpinnings of New Public Management, one may note that the mechanistic forms of management are negatively impacting on the roles of these institutional workers – and is indeed consistent with support for 'softer' and more organic management styles.

Furthermore, the role of the police officer, is, as noted by Judge Evans: "to protect and serve" the citizens of the state. This connotes an element of stewardship whereby the police officer acts in the interests of protecting citizens of the state as opposed to his/her own self-interest; thus fundamentally juxtaposing the adoption of agency theory undertaken by public management initiatives. Dissonance arising from the juxtaposed institutional logics can be further seen in the in the court system and the fundamental role of judges as social stewards, contrasting to that of the executive under public management initiatives.

2.4.3 The Courts

Under public management initiatives, the running of the courts has been impacted. This can be seen not just in Britain, but in other countries also. For example, Dumoulin and Licoppe (2016) study the introduction and institutionalization of the use of videoconferencing in French courtrooms. Aligned with public management arguments, they suggest that technology is changing the ways in which justice is carried out and link this to "parliamentary debates…(in which)…security reasons were raised to justify videoconferencing" (p.321). Moreover, cost-cutting emphasised the benefits of videoconferencing in line with public management and a Bill was passed in 2001 permitting the use of the said technology in France.

However, under public management agendas, Britain has pioneered in passing Acts of Parliament which are impacting upon the running of the courts. For instance, prior to 1971, there were three courts (Assizes – senior courts; Quarter Sessions – local government tasks, also known as Keepers of the Peace; and Petty Sessions). The latter took over from sheriffs, acquired the right to felonies (serious criminal cases) as well as the less serious offences which were out of sessions (also known as petty sessions). These petty sessions are now referred to as the magistrates' courts (Ryan, Savage & Wall 2001). Today, the structure of the courts and tribunal system deals with cases in specific courts. For example, criminal cases begin in the magistrates' court, with more serious criminal convictions sent to the Crown Court. Appeals from here will be moved to the High Court with the potential to move to the Court of Appeal or Supreme Court.

In 1989, the Le Vay Reports suggested that there was no coherent management structure in the magistrates' court system. Aligned with public management initiatives, it was suggested that control should be brought under an executive agency. Moreover, there should be a local delegation of administration. The report also noted that justices' clerks should concentrate more on legal work and the day-to-day administration should become the responsibility of court managers whom were responsible to the new agency (Ryan, Savage & Wall 2001; also see the White Paper (1992); and the Narey Report 1997).

Subsequent to the Le Vay Report (1989), the Police and Magistrates' Courts Act (1994) was enacted (see Part IV). This granted the powers to impose the merger of the magistrates' courts committees. The whole system was not brought under external control (as suggested in the Le Vay Report) but the Act did establish: a new justices' chief executive; a group of Petty Sessional Divisions, each with a justices' clerk (for the legal side) and a justices' chief executive (for the overall administration). Moreover, there was to be an administrative officer, employed to work alongside the justices' clerk to free the justices' clerk from administration so that they could concentrate on legal work. Additionally, a Magistrates' Court Service Inspectorate was appointed to carry out surveys and disseminate good practice. There was also to be a reduction in the number of magistrates serving on the new magistrates' courts committees (maximum 12, often to 10). The selection of magistrates would be at Bench Annual General Meetings, as opposed to members being elected by their bench colleagues. Further there were to be mergers post-1997 for co-terminocity amongst the Crown Prosecution Service, police and probation services and the magistrates' courts. Following this, the Courts Act (2003) abolished the magistrates' courts committees. The magistrates' courts' administration is now combined with the Court Service and renamed Her Majesty's Courts Service. In line with public management, the system for collecting fines was strengthened.

One criticism is that these changes have happened rapidly, with little empirical research to assist in incremental (if necessary) change. As the rule of law in the United Kingdom has stood as a bastion of social order far before the creation of parliament, such radical changes have been matched with much resistance by the justice community, and indeed some Conservative MPs. For instance, these reforms have raised concerns regarding "the impact of all of these changes on the fundamental nature of the judicial function at this level, for the boundaries between judicial and administrative duties are far from distinct (Joyce 2011: 104)". Moreover, it has been noted that changes to the Magistrates' Courts has raised fears "within the justice community that the independence of the judiciary might be compromised and that the constitutional doctrine of the separation of powers might be infringed" (Ryan et al. 2001).

Concerns regarding the infringement of the unwritten constitution have been further exasperated in the justice community by the creation of the Supreme Court.

2.4.4 Section Summary

Taken collectively, one may note that under public management initiatives, a number of Parliamentary Acts have been passed which radically reform the legal services sector. For instance, the Legal Services Act 2007, reformed 'hired' legal work, placing a greater emphasis on competition, market forces, and private sector business practices to increase efficiency and effectiveness. Similarly, local authorities have been empowered in the delivery of police services, with a rise in budgeting and target setting; and privatised prisons have been on the rise since the first private prison was opened in 1997. Furthermore, there have been reforms to the running of the courts system, to incorporate more managerial styles. The following section furthers this by looking at the creation of the United Kingdom Supreme Court under the Constitutional Reform Act 2005.

2.5 The United Kingdom Supreme Court

2.5.0 Section Introduction

The Constitutional Reform Act 2005, paved the way for the creation of the United Kingdom Supreme Court. This was imposed by the Strasburg Court to show a clear separation of powers between the judiciary and other branches of government. This section deliberates that this overlooks the fact that the creation of the new court occurred alongside many other reforms to the legal services sector under Blair's strategy to leave a 'Blair's Court Legacy'. Moreover, the court was imposed by the executive without appropriate formal processes or consultation; and is showing changes akin to the characteristics of New Public Management. Theoretically, these changes strengthen executive power over the judiciary, thus infringing judicial independence. One may therefore denote that these macro-level changes are ironically against, rather than in line, with arguments for the separation of powers which underpin the Constitutional Reform Act 2005. The paper then makes the case for investigating how characteristics of NPM on a macro-level are impacting on the roles of the United Kingdom Supreme

Court Justices on a micro-level. This is important for contributing to NPM literature, as well as for informing constitutional arrangements between the executive and judiciary.

2.5.1 Creation of the United Kingdom Supreme Court

As aforementioned, there have been radical reforms to the legal services sector under public management initiatives. This is noticeable in the 'hired' legal professions, police and prison services, as well as the running of the courts. Many of these reforms were spurred during the Thatcher era; however, some of the most drastic changes have occurred during Labour leader Tony Blair's time as Prime Minister between 1997 to 2007. During his time in office, Blair devised a strategy to leave a 'Blair's Court Legacy'. This led to a series of reforms from the first privatised prison in 1997 to the Legal Services Act 2007. Under this initiative the Constitutional Reform Act 2005 was enacted and the United Kingdom Supreme Court (UKSC) was created.

The Supreme Court of the United Kingdom is unique for a variety of reasons. In the first instance, opening its doors on 1st October 2009, the UK Supreme Court (UKSC) is one of the newest Supreme Courts in the world (Moran, 2017). Moreover, the new court represents a shift in institutional continuity which has landmarked the traditional British legal system as one of the oldest standing legal systems in the world. This has stood since 1066 AD, and the judicial role of the House of Lords since 1399 (Judicial Committee, 2017).

It may be argued that the creation of the UKSC is not aligned with public management agendas. Rather the new court came into effect to show a clear separation of powers between the judiciary and other branches of government. This is because when the United Kingdom entered the European Union in 1973, the (then) Law Lords, sat in Parliament – as they had done for over six hundred years. In this context, the Appellate Committee of the House of Lords was the UK's final court of appeal (Arnold, 2014). However, as the Law Lords were full Members of the House of Lords, they were able to vote on legislation. Essentially, this meant that the Law Lords were able to exercise both judicial and legislative

functions on behalf of the state; although, it was increasingly rare for them to exercise any legislative function, rather acting as lay members in the House.

After joining the European Union in 1973 under the Conservative Party leader Edward Heath (in office 1970-1974), there were unsuccessful repeated attempts by the British Government to better comply with the European Convention. For example, the Labour Party leader James Callaghan (in office 1976-1979) held unsuccessful referendums in Scotland and Wales; which Tony Blair of the Labour Party (in office 1997-2007) successively followed up with "three separate devolution statutes for Scotland, Wales and Northern Ireland in 1998…(and)…pre-legislative referendums…which aimed at securing popular approval and at enhancing the legitimacy of the whole process" (Gibson-Morgan, 2014 p.86). The European Convention on Fundamental Freedoms and Human Rights influenced the creation of the Human Rights Act which was enacted in 1998; and the Constitutional Reform Act 2005 was subsequently passed.

Political arguments for the Constitutional Reform Act 2005 called upon Article 6(1) of the European Convention on Human Rights. This was referred to by the Strasbourg Court whom declared that there was not a clear separation of powers within the United Kingdom government. In McGonnell v. UK (2000) it was found that there was not a complete separation of powers as within the British Isles (on the island of Guernsey), a judge was also a member of Guernsey legislature. The Strasbourg Court thus declared:

> *"(A)ny direct involvement in the passage of legislation, or of executive rules, is likely to be sufficient to cast doubt on the judicial impartiality of a person subsequently called to determine a dispute over whether reasons exist to permit a variation from the wording of the legislation or rules at issue".*
>
> McGonnell 2000: 307

Thus, separating out the Lords of Appeal in Ordinary (the Law Lords) so they are unable to sit in the legislator as well as act as the highest court of appeal in the UK shows a "full and transparent separation between the judiciary and the legislature" (HC Deb 2004).

However, the creation of the new court has raised serious constitutional concern. For example, in countries with a formal written constitution, judges interpret law in line with the constitution; thus law may only be valid if it is consistent with this (Gibson-Morgan, 2014 p.85; also see Elliott 2014). However, in the United Kingdom, there is no written constitution acting as a sovereign text. Therefore, the role of judges is to provide an interpretation of statutes in line with the intention and will of Parliament as well as to protect the fundamental rule of law and the rights of the individual. They do not pass judgements on the constitutionality of legislation. As such, to suggest a constitutional review through the Constitutional Reform Act 2005, is beyond the remit of the British courts where the role of the judges is to apply the law, not judge its compatibility with constitutional arrangements (Gibson-Morgan, 2014 p.85). Furthermore, to uphold constitutional review, there should be a court which is assigned presidency for checking norms in line with the constitution. As noted by Gibson-Morgan, 2014, the United Kingdom does not meet either of the aforementioned requirements for constitutional review.

In addition to this, as the UK was a member of the European Union, the European Convention of Human Rights was imposed and the Human Rights Act 1998 was passed – amidst reforms under the Blair Court Legacy. Essentially, although judges held the constitutional authority of interpreting law, the Act made provisions for how judges were to interpret law, as judges were to now scrutinize legislation in line with human rights. This shows a clear imposition of the executive unto the role of the judiciary, as judges are to interpret legislation and pass judgements in line with this – free from any other external influence (Courts and Tribunals Judiciary, 2017).

In addition to one questioning how a Constitutional Reform Act could be passed when there is no formal written constitution nor a separate court for constitutional matters; and constitutional concerns regarding the independence of the judiciary in interpreting legislation have been raised; parliamentary independence and sovereignty is also called into question. This is because whilst the unwritten British constitution is characterised by parliamentary sovereignty; in the context of European Union Law, this is highly questionable. Parliamentary sovereignty assumes that Parliament is supreme and there is no constitutional law presiding over all other law. This has not changed in light of EU membership, devolution or the Human Rights Act (Gibson-Morgan, 2014 p.85; Department of Constitutional Affairs, 2003). However, in cases concerning human rights, Parliament has been seen to urge the Court to interpret legislation in line with human rights, even though it is recognised that the interpretation is not necessarily the intention of the Parliament which enacted it (Lord Phillips 2012: 10-11). For example, in 2004, the Law Lords declared provisions of the Anti-Terrorism, Crime and Security Act 2001. The 2001 Act permitted foreign terrorist suspects to be detained without trial. The Law Lords voiced that this was incompatible with the Human Rights Act 1998. Not only standing up against the executive, but in doing so, using the very legislation which intended to change the ways judges interpreted legislation and reached verdicts.

Despite these inconsistencies, the United Kingdom Supreme Court was created under the Constitutional Reform Act 2005. However, one should note that threats to limit the powers of the Law Lords is not a new phenomenon. For instance, in 1909, crisis over the House of Lords erupted under the Liberal government. This is because peers rejected the proposed budget. In response, the Liberals passed laws which stripped the Lords of their power and ability to reject legislation that was approved by Members of Parliament. In 1911, the Parliament Act denoted that "money" bills were to become law within a month if peers did not pass them unchanged. Moreover, Members of Parliament could push through other bills after a two-year delay if these were passed in the Commons in three successive sessions (BBC News 2012). This supports earlier arguments that although there is a separation of powers, this

separation is not equal and the executive is able to concentrate power over the judiciary, thereby infringing the unwritten constitution.

In 2003, Blair's government announced that the role of the Lord Chancellor was to be abolished, a Supreme Court would be created and there would be an independent body to appoint judges (BBC News, 2003). This was heavily criticised by both Tories and even Labour Members of Parliament (MPs). Criticism largely focused upon the fact that the reforms were to be implemented incredibly quickly, without full and appropriate planning or consultation. Moreover, the reforms were seen to impose on the unwritten constitutional arrangement. For example, the shadow deputy prime minister David Davis claimed that Blair was acting as though the constitution was "his own personal bauble…The constitution, including the judiciary, is something that belongs to the country as a whole…It is not something to be pushed around by a sort of Labour Party managerial by-product" (BBC News, 2003). Further, Conservative MPs criticised Blair for using the judiciary as "another pawn on his cabinet board" (BBC News 2003).

The reform was also heavily criticised by Law Lords such as Lord Neuberger (who became Head of the Supreme Court):

> *"To change the Law Lords into the Supreme Court as a result of what appears to have been a last-minute decision over a glass of whisky seems to me to verge on the frivolous"*
>
> Cornes 2013: 2

It may be argued that the creation of the Supreme Court is aligned with the separation of powers and was enforced by the European Convention on Human Rights as Britain was a member of the European Union. Thus, as other countries have Supreme Courts, pressure was put on the UK to do the same. However, this seems to somewhat overlook the drastic reforms being made to the legal services sector as a whole; and the biggest change to the judiciary since 1215 occurring under the constitutional modernization programme which has been implemented since 1997 (Modernisation of the House of Commons 1997-2005, 2005).

Although arguments may be made for and against the creation of the United Kingdom Supreme Court, it was affirmed that despite the tensions erupting from judicial review, the Human Rights Act and devolution, "there would be no noticeable change in the new court's role" (Kettle, 2011). This point lies at the crux of the argument herein. This is because, if the intentions of creating the new court truly were to show a clear separation of powers then, as suggested, there would be no noticeable change to the role of the new court. However, subsequent to inception, the UKSC is showing clear changes which are characteristic of public management initiatives.

In the first instance, it is worth recapping that public management agendas are heavily influenced by economics theories such as agency theory, public choice theory, transaction cost economics and managerialism akin to scientific management. Furthermore, characteristics of public management include, for example, private sector business practices, managerial reforms to show a clear hierarchy, autonomy of managers within the hierarchal structure, budgeting, transparency, accountability, openness, efficiency, effectiveness, and the uptake of technology. If, as argued by the executive, the creation of the Supreme Court was in line with arguments for the separation of powers and there would be no noticeable change to the role of the new court, then it is reasonable to presume that characteristics of public management will not be seen to impact on the role of the new court. By contrast, if the creation of the UKSC shows a number of changes that are characteristic of public management, then it may be reasonable for one to suppose that the UKSC has been impacted by public management initiatives. Such arguments would invariably gain support when placed in the context of wider public management initiatives that have impacted on a range of public services including those in healthcare, education, and welfare; as well as other areas of legal service provision including legal firms, barristers, the police and prison services, the running of the courts, as well as access to legal aid. With this in mind, the following section considers macro-level impacts on the new court that are characteristic of New Public Management such as managerial reforms, business planning, and the uptake of technology; as well as the emphasis being imposed by the executive to increase efficiency, effectiveness, transparency, and accountability.

Prior to the Constitutional Reform Act 2005, the historical Head of the Judiciary was the Lord High Chancellor of Great Britain; followed by the second-highest judge – the Lord Chief Justice of England and Wales. However, akin to the theoretical underpinnings of New Public Management, managerial restructurings and focus upon task specialisation, has changed the roles of both. Firstly, the role of the Lord Chancellor was as a presiding officer both of the House of Lords and Judge of the Chancery Division of the High Court of Justice, as well as head of the judiciary in England and Wales. The initial proposals by Blair were to abolish the role of the Lord Chancellor proved difficult to achieve; thus the executive, legislative, and judicial functions embodied within this role were separated out by the Constitutional Reform Act 2005, and transferred to the Lord Chief Justice, the Lord Speaker, and the Chancellor of the High Court. The Lord Chancellor's Department was renamed the Department for Constitutional Affairs, and in 2007, this was transferred to the newly created Ministry of Justice. The removal of the judicial functions of the Lord Chancellor were bestowed upon the Lord Chief Justice, making 'him' the head of the judiciary. Furthermore, the attire of the Justices has altered:

> *"Justices have remained unrobed and, last year, advocates were invited to appear without wigs and/or gowns if they so wished. So far they have taken up the invitation enthusiastically, so the atmosphere of debate which has always marked out the Court from lower appeal courts is further emphasised….."*
>
> Phillips, N. The Right Honourable Lord of Worth Matravers, KG, PC (2012: 10-11)

It may be argued that these changes in line with 'modernization' are fundamentally impacting on the image of the traditional Law Lords to favour managerial styles likened to the private sector – and indeed public management initiatives. This can be seen on a macro-level, for example in the managerial restructurings, new presidential titles and a change in attire marking a shift from the traditional wigs and gowns to suits.

Another key feature is that under the Constitutional Reform Act 2005, the Lord Chancellor is no longer required to be from the legal profession. Rather, as the functions of the Lord Chancellor were separated out, the Lord Chancellor is now typically appointed as a member of the executive's own party. One should note that the Lord Chancellor has historically been appointed by the executive. However, traditionally stood as a representative of the high court judges. Lord Charlie Falconer was appointed as Secretary of State for Justice and Lord Chancellor (9 May 2007 – 27 June 2007). Immediately subsequent to this, for the first time since 1578, MP Jack Straw became the first Lord Chancellor and Secretary of State for Justice to stand as a member of the Commons (28 June 2007 – 11 May 2010). This is a stark contrast to the four hundred years of this role being only for a member of the House of Lords or its predecessor, the Curia Regis. It should be noted that both Jack Straw and his successor Kenneth Clarke (12 May 2010 – 4 September 2012) were both barristers. However, Christopher Grayling was appointed in 2012 (4 September 2012 – 9 May 2015), Michael Grove (9 May 2015 – 14 July 2016), Mary Elizabeth Truss (aka Liz Truss: 14 July 2016 – 11 June 2017), and David Lidington (11 June 2017 – 8 January 2018) – all of whom are MPs as opposed to being from the legal profession.

The executive restructuring to focus on task specialisation is purely akin to managerialism and scientific management. Further, there is a clear focus on strengthening executive power in a hierarchal form of managing the judiciary. This arguably threatens judicial independence as the executive appoints a member of 'his' own cabinet. Whilst historically this was always the case, the Lord Chancellor was of a legal profession and held the role of protecting the judiciary. However, the Constitutional Reform Act 2005 separated the role of the Lord Chancellor and in doing so, arguably devolved judicial protection. Quintessentially, the role of the executive, legislative and judicial functions of the Lord Chancellor are revised. The Lord Chancellor retains executive functions as an MP, whilst retaining responsibility for protecting the judiciary.

Managerial reforms akin to public management of this kind may be suggested a being detrimental to societal belief in the system, particularly if the Law Lords are seen to adopt more agency or partisan personas (Nicholson & Hansford, 2014). In turn, this holds the potential to threaten the theoretical

consensus within the sociology of law that the law controls social behaviour and may thus facilitate economic development. This supposition is supported as one considers wider literature which indicates that the government is strengthening executive power. For instance, in an article by Hill and Lynn (2005), it is suggested that the decentralisation of the government structure under public management does not show a decline in hierarchy. By contrast to earlier assumptions, it arguably shows an increase in government hierarchy, to which other services become controlled by – and subordinate to – parliament. Moreover, as aforementioned, Nicholson and Hansford's (2014) study of citizen attitudes towards US Supreme Court decisions finds that members of the public question the legitimacy of the US Supreme Court as the court is viewed as a political institution, and justices as partisan actors. This brings to the fore grave concern regarding future public acceptance of the decisions made by the UKSC.

In addition to the managerial restructurings, the way in which judges are recruited and appointed has changed. Historically judges were recruited from within close circles, with names of reputable judges being put forwards when a vacancy arose. Subsequent to the Constitutional Reform Act 2005, an 'independent' committee has been created that is answerable to the Lord Chancellor – whom is directly working for the Prime Minister as leader of the executive branch of government. On the selection commission, there is now the President and Deputy President of the Supreme Court as well as representatives of the appointment bodies for England, Wales, Scotland and Northern Ireland. The argument is that this is to increase transparency and therefore public confidence in judicial appointments. Furthermore, advertising the vacancies is believed to increase competition for the appointment. However, whilst it may be arguable that this promotes transparency, accountability (both characteristic of public management), and diversity in judicial appointments, the 'independent' committee works to the criteria set by the executive. Not only does the Judicial Appointments and Conduct Ombudsman work to the annual business plans set by the executive (JACO, 2017), but members of the committee are answerable to the executive. This therefore limits the independence of the judges being able to recruit from within their own circles of reputable candidates and empowers the executive over judicial appointments.

Furthermore, strategic plans are now outlined in newly created annual UKSC Business Plans. The first of which was created for the new court in 2009, with 'buzz' words typified in public management such as efficiency, effectiveness, transparency and budgeting, being repeatedly emphasised (UKSC Business Plan 2021/22). The budgeting system has also been revised to include a Spending Review aligned with the UKSC's Strategic Priorities document (UKSC Business Plan 2017/18: 6).

The emphasis upon increasing efficiency, effectiveness, transparency and accountability can also be seen in the executive decision to incorporate new technologies. This echoes similar trends such as the uptake of technologies into French courtrooms as abovementioned. The UKSC now has a dedicated Communications team that has been appointed to work inside the new court (e.g. see UKSC, 2021). The role of the Communications team is to outreach to citizens through means such as social media and dedicated tours with the objective of increasing transparency. The building itself is accessible to the public, there are now video recordings of judgements – with the aim to remove all paper based judgements. Furthermore, there are youtube videos, pod casts, a human rights blog, and a LinkedIn page for the court (e.g. see Wagner 2013; Davis and Taras 2017).

Although there are macro-level changes been seen to impact on the new court, there is no research to date which considers how these changes are impacting on the role of the UKSC Justices. Of the empirical evidence available, it appears as though public management initiatives to increase transparency are actually having the adverse effect. For instance, there is now an emphasis on technology – such as through the implementation of CCTV cameras in the court rooms (again, without consultation of the Justices). Although some suggest that "permanent television cameras in the four corners of each court (in the United Kingdom Supreme Court)…had been the right one" (Lord Phillips 2013); empirical evidence shows that in the pursuit of increasing transparency, the Justices are now meeting before court hearings and agreeing on verdicts prior to the hearing. Paterson (2015) comments on his late book: "By the time I had completed *Final Judgement* it was already clear that decision-

making in the Supreme Court had departed significantly from the practice in the House of Lords". Although Paterson does not characterise the macro-level changes under public management, he does note that the micro-dynamics of institutional work within the UKSC have changed. Paterson notes that:

> *"Teamwork had arrived – evidenced by more meetings before and especially, after, the hearings, and many more exchanges between the Justices. These changes brought unintended consequences: a loss of transparency in the Court, an exacerbation of power differentials between the Justices and ambiguities over the utility of the power to dissent."*
>
> Paterson, 2015

Paterson explains that by the summer of 2013 when he finished the manuscript of *Final Judgement*, decision-making in the new Court had departed significantly from that in the final years of Lord Bingham's House of Lords. The Judges began meeting prior to hearings, and there were more conferences (second and third) after hearings; there was more discipline on counsel's arguments; and there was more willingness to engage with arguments that were not put forward by counsel. In the new Court, Judges were collectively disinclined to write concurring judgements; there was a much greater commitment to single judgements; and there was significantly more engagement with the judgement writer(s) via email, which is a far cry from the role of the Law Lords in Parliament as many of whom were computer-illiterate.

The loss of transparency is particularly interesting, as in other studies there has also been a loss of transparency under public management initiatives (e.g. Mann, 2017). Paterson notes that: "This consequence is highly ironic since the court rightly prides itself on much increased transparency (as compared with the House of Lords)"; and further lists new occurrences purporting to increase transparency in the new Court, namely: the new building; hearings being streamed live on a new Court website, as well as being available on archive; judgements being available to view on You Tube, and a series of press releases. There are also other things which are not noted such as the implementation of a dedicated communications team, twitter feeds, and tours around the new Court.

Mirroring the macro changes associated with public management to increase transparency, has inevitably resulted in judges meeting prior to hearings and there being more unanimous decisions. Essentially, as noted by Paterson: "We know less than we did as to what the members of the court think in each case. Under Bingham only 20 per cent of cases resulted in a single judgement." However, from the time the new Court opened its doors in 2009, single judgements had sharply risen to 55 per cent in 2013. It should be noted that between 1981 and 1998, single judgements fluctuated between 40 and 70 percent and therefore single judgements alone cannot be a sole predicator for how decision making in the new court has been impacted. Although it does indicate a dramatic rise in single judgements in the new Court when compared to the preceding decade (1999-2009) when single judgements fluctuated between 10-30 per cent.

Paterson suggests that the steep rise in single judgements was due to the mounting workload of the court as well as due to the desire to guide hard-pressed judges in the lower courts. Further, Paterson reflects upon Lord Justice Carnwath's celebrated cri de Coeur in *Doherty* to suggest that single judgements should be favoured for the sake of the lower courts, the profession and for paying clients. Before long, as Judges "were promoted to the Supreme Court, those favouring single judgements gained ascendancy". Another reason indicated by Paterson for the incline in single judgements was due to the greater emphasis on teamwork and reducing disagreements.

The issue of decreased transparency is not only consistent with other empirical evidence that indicates public management reduces rather than increases transparency, but further echoes concern that these initiatives are neglecting the state; which in turn supports the assertion that ethics are compromised by the movement (Frederickson 1999; Chapman 1994; Chapman and O'Toole 1995). Moreover, in the wider literature as aforementioned, NPM has been seen to increase, rather than decrease costs (Hood & Dixon 2015, 2016). This has been shown with the increased costs in the running of the lower courts in line with NPM, as well as criticism that the creation of the UKSC saw the removal of the Law Lords (now referred to as Justices of the Supreme Court) from Parliament and into the Palace of Westminster

at a cost of £60 million to the UK tax-payers. Not only does this run contrary to the cost-cutting initiatives under public management but there are two courts of appeal meaning that the process is slower, more expensive and institutionally less reliable than it could be (Andrews 2011: 23).

Whilst we do know that the role of the new court is changing, there is no research which consolidates the characteristics of public management on a macro-level to assess the impact of these unto the role of the UKSC Justices. The role of the courts has historically been personified through judges, and the Justices of the highest court of appeal as leading representatives. According to Wacks: "Courts personify the law…judges are its custodians, guardians of its values: sentinels of justice and fair play…embodying fairness, evenhandedness, and impartiality" (Wacks 2015: 86). Wacks further expresses that:

> *"The role of judges is fundamental to the common law; the pivotal force of the judicial function drives the legal system both in theory and in practice…The judge is thus the archetypal legal institution. In his robed and exalted independence, he represents the very apotheosis of justice. The 'social service' that he renders to the community is, in the words of the English judge Lord Devlin, 'the removal of a sense of injustice'. The neutrality that informs his judgements in the settlement of disputes is nothing short of an article of faith in a free and just society. The dispassionate judge is the quintessence of a democratic system of government. And the ostensible delineation between legislation and adjudication is among its most celebrated hallmarks."*
>
> Wacks 2015: 88

Justices have, on the whole, adopted a persona representative of stewardship. For instance, Lord Chief Justice Phillips (2007), is known to have voiced: "A judge should value independence above gold, not for his or her own benefit, but because it is of the essence of the rule of law". Therefore, the connotations attached to judges as heads of the courts, lies at the foundations of the personification of the law. This physical attribute is arguably imperative to instilling concrete 'reality' of an abstract system. However,

these connotations fundamentally juxtapose those espoused by the theoretical underpinnings of public management initiatives which are centred upon individual agency, profit maximisation and consumerism. For instance, revisiting Table 1; one may denote:

Table 2: Juxtapositions Between the Principals of NPM and Judicial Values

New Public Management		**Judiciary**
Theory	**Principals**	**Principals**
Managerialism (scientific management) Taylor (1911)	Hierarchal system, vertical chain of command, decentralisation, time management, efficiency, Effectiveness	Law is above all else Magna Carta (1215)
Agency theory Moe (1984), Eisenhardt (1989)	Self-interest, focus on transparency and Accountability	'Social service' Wacks (2015), Lord Chief Justice Phillips (2007)
Public choice theory Downs (1957), Olson (1965), Buchanan and Tullock (1962), Buchanan (1978), Tullock (1965)	Self-interest, transparency, accountability, budgeting, privatisation, free choice, decentralisation, consumerism	Neutrality of judgements through the application of legal rules Weber (1949, 1950, 1958, 1969, 1978), Mommsen (1992); equality (although questionable: see Deakin et al (2016), and fairness
Transaction cost economics Williamson (1985)	Comparative costs, planning, adapting and monitoring tasks, markets, contracting out some services, supply	Justice, fair play, evenhandedness Wacks (2015)
Neo-liberalism Friedman (1981), Hayek (1960; 1952a, 1952b)	Markets, competition, deregulation, financial management	Tradition, centralised rules for social conformity and long term stability of the state (see Weber, above), focus on justice not profit, all citizens are equal (Wacks 2015; Magna Carta,

		1215; Lord Chief Justice Phillips 2007)

Source: Compiled by author

Comparing the theoretical underpinnings of New Public Management to the values espoused by the judiciary, one may suggest that the two diametrically oppose. Whilst outside of the scope of this research, this may theoretically help to explain the aforementioned tensions between the executive and the judicial branches of government. Nevertheless, the table does bring to the fore two different institutional logics, which with reference to Empson et al. (2013), may suggest that new institutional logics are been negotiated on a micro-level as a result of macro-level changes. However, there is no research available which consolidates the macro-level changes akin to public management and assesses how these structural changes are impacting on the micro-role of the judges within the UK's highest court. This is important because unlike other public services, the law is considered as fundamental to social control (see theories in the sociology of law above). Without the law, political decisions may not be enforced (Tamanaha 2004), yet there is the danger that strengthening executive power over the judiciary may call judicial independence into question. As noted by Deakin et al (2016):

> *"Modern societies proclaim equality before the law. But differential access to education, lawmakers and law enforcement creates an uneven playing field. Powerful actors can influence the making or implementation of law. Marxists are right to highlight the role of the rich and powerful. But law itself is power and not merely its instrument. The rule of law puts restraints on power by circumscribing the actions of the executive and subjecting them to judicial oversight, as well as providing opportunities for its advancement as regulators can use their secondary law-making powers to advance their own agenda. Law can shift the balance of power as different actors discover how best to use the law to advance their own interests."*
>
> Deakin et al (2016: 4)

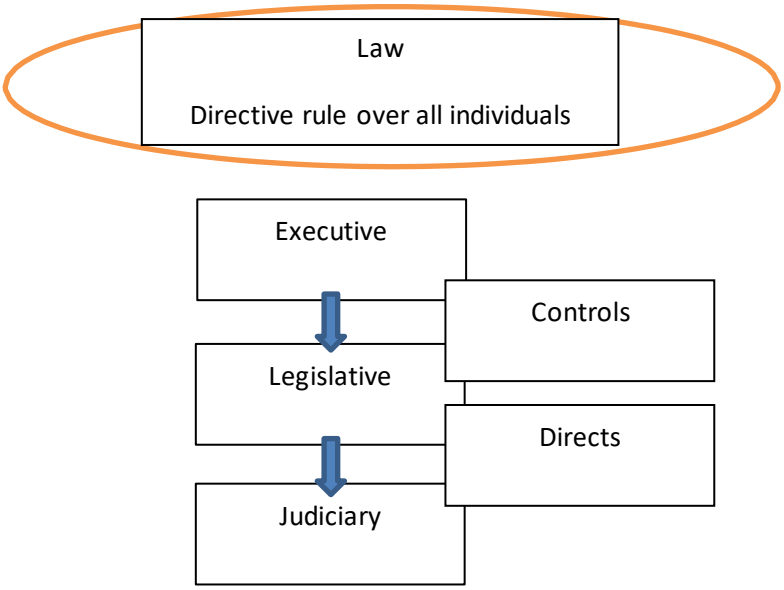
Whilst Deaking et al (2016) do note that the law is power and certain actors may use their law-making powers to advance their own agenda; they also suggest that the executive is subject to judicial oversight.

However, in line with public management initiatives which see the judiciary becoming subject to the hierarchal command of the executive, the checks and balances between the three branches becomes highly questionable. This may be illustrated by revisiting the arguments for the separation of powers, as shown above.

Early arguments for the separation of powers purported that the law was above all else. The legislative branch of government was supreme, with the executive and judiciary being subservient to this. Moreover, the separation of powers enables checks and balances between the three branches of government; which holds constitutional significance and is necessary for democracy. The paper moves to show how under public management, the executive function uses a Tayloristic hierarchal approach to enact legislation and intensify power over the other two branches.

In line with the theoretical underpinnings of New Public Management, managerialism connotes a hierarchal structure. As illustrated above, this sees the executive ruling over the judiciary and brings to the fore questions regarding the role of Justices in the highest court. This is because not only does the executive oversee the 'independent' ombudsman for judicial appointments, the executive controls the business planning for the UKSC, and the Lord Chancellor no longer must be a member of the legal profession, rather this role has been revised and assigned to members of the cabinet. These characteristics of public management echo wider structural changes which have been seen in various public services such as healthcare, education and welfare; as well as within the legal profession including within the 'hired' legal services, the police and prison services, as well as the running of the lower courts and access to legal aid. However, unlike other public services, these reforms theoretically alter the constitutional arrangement to:

Figure 6: Theoretical Impact of NPM unto the UKSC



Source: Compiled by author.

Although there may be strong arguments against this, the fact that the Supreme Court was created without a green or white paper under Parliamentary Sovereignty, does, in this instance, clearly indicate directive power of the executive over the other two branches. The hierarchal chain of command sees the executive branch of government being empowered. This seemingly places the executive in an authoritarian position, able to control the legislative branch. Moreover, the legislative branch passes the laws which the judiciary (prior to the Human Rights Act 1998 that meant Human Rights law must be interpreted alongside other law) was free to interpret independently. Essentially, this means that the legislative branch is placed above the judiciary and, as historically the case, directs which laws the judges interpret.

Theoretically the hierarchal chain of command espoused by public management initiatives reworks the traditional notions of democracy (as outlined above); with the separation of powers transforming into a dictatorship. This centralised unity of the three powers highlights Montesquieu's (1748) assertion that: "there is no liberty if the powers of judging is not separated from the legislative and executive" (Montesquieu, 1748). Thus jeopardising the unwritten constitutional arrangement through hierarchal

management brings to the fore grave concern regarding how democracy is maintained. It is noted that more research is required into this, and in particular, into the role of the Justices in the United Kingdom's highest court. As framed in the Lord Chief Justice's Report 2017:

> *"(More work)…is needed, to promote understanding of the role of the judiciary in the constitution and reaching out to all communities to build a better understanding of the centrality of the justice system."*
>
> The Lord Chief Justice's Report 2017: 6

This paper aims to contribute by investigating how, if at all, the role of the UKSC Justices has changed subsequent to the Constitutional Reform Act 2005; and more specifically, the impact of New Public Management. This is because NPM is seen to impact on an array of public services (e.g. healthcare, education, welfare, the hired legal professions, police and prison services, and the running of the lower courts). However, to date, there is no existing research into the impact of NPM on the UK's highest court. This is needed due to constitutional concerns regarding the role of the UKSC and more specifically, regarding the role of the Justices as: "the archetypal legal institution" (Wacks, 2015). In this sense, managerialism and the formation of a hierarchal chain of command akin to public management may potentially impact on the role, and the independence, of the UKSC Justices.

2.5.2 The Role of the United Kingdom Supreme Court Justices

Despite the new restructurings under public management initiatives, judges have historically played a significant role in the United Kingdom as well as in global arenas. Judges are seen in all existing countries in the world and many are overseen by other various bodies such as, amongst others, the Court of Justice of the European Union, the European Court of Human Rights, and the International Court of Justice. Resident judges are expected to apply the rule of law which stands within that country at that particular time; whereas world judges in the International Court of Justice apply international law. In addition to this, judges in many countries, including the United Kingdom, are expected to adhere to the

principals outlined in the separation of powers. Thus, judges are not permitted to interact with political matters, or speak of them.

Laws of different countries– and within different periods of time – may drastically vary. For instance, in some countries, (The Secret Barrister, 2018) a judge may declare that if an individual was found guilty of blinding someone then he too should be blinded. In the United Kingdom, during the Tudor period, the removal of one's limbs such as the cutting off of a thief's hand was commonplace (Barrow, 2020). Capital punishment for murder still exists in the United States of America, whilst in Saudi Arabia if a woman is raped, she may be publicly stoned to death for sex outside of marriage. Therefore, the role of judges – and indeed Supreme Court Judges – can differ quite largely in terms of their legal demands, constraints, choices and expectations.

Judges have been documented as passing judgements for punishment within the rule of law for centuries. For example, in the Old Testament, also known as the Hebrew Bible, the sacred scriptures of the Jewish faith are written at various times during approximately 1200 and 165 BC (Drane, 2011). Within these ancient scriptures, there are eleven judges noted in the Book of Judges whom are seen to "judge" Israel. Religion has played a huge role in the formation of laws on a global basis and often underpin the social consensus associated with the laws passed. If a judgement is passed which undermines social consensus then this may spark social upheaval – as seen with the creation of the New Testament following the crucifixion of Jesus Christ.

Additionally, judges can be seen within native tribes. In these communities, the judge is often an older, male leader. Judgements may often include materialistic punishment for crimes such as a penalty of the perpetrator's cattle. However, the role expectations of judges in all countries and communities does not necessarily follow the route of punishment. For instance, in some countries – notably the Netherlands – there are strong systems in place to rehabilitate offenders. Whilst others, particularly those driven by new public management and reducing public spending in the legal system, have punishment systems and fines for some criminal behaviours, along with some of the world's highest reoffending rates.

Nevertheless, the role of judges in the United Kingdom is to apply the rule of law. This should be done independently, applying complex legal systems (Weber, 1922). Judgements should be free from bias and equally applicable to all members of society. Although, whilst objectively detached to the cases, judges are expected to detect human emotion such as remorse for a perpetrator's actions and inductively bring forth information to formulate a judgement.

With regards to the role of the twelve highest judges in the United Kingdom – formerly Law Lords, now Supreme Court Justices – their role too is to pass judgement on points of law. However, whereas in the lower courts, litigants are expected to appear in person. They may have a legal representative (i.e. a lawyer or a barrister) appointed to argue points of law on their behalf. Although one may wish to note that due to there has been a huge rise in litigants-in-person due to the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Prior to this Act, if a litigant could not afford a legal representative, one would be provided by the state. Yet, again in line with new public management initiatives, the Act removes legal representation for what is viewed as lesser crimes. Moreover, in some cases, these may be settled out of court and thus a judge is not required – for example in family law or accident at work claims.

In the Supreme Court, the Justices are not presented with individual cases as aforementioned. Rather, the President, Deputy President and one other Justice will review cases submitted to the court after the case fee has been accepted. If they believe that a case should be heard because it has significant societal importance, they will accept it. If they do not believe that it is of significant societal importance, it will be rejected. Once accepted, the case will be delegated to the Justices who are the most appropriate for hearing the case – for example, one may have a greater specialism in tax law, another in family law. To hear the case, the Justices sit on a panel of odd numbers (five, seven, nine, or eleven), with higher numbers for more severe or high profile cases. Litigants are not present, rather legal representatives present cases from each side which are argued on points of law. The Justices then write their own judgements and later collaborate to pass the final judgement – which is based upon the highest number of judges agreeing.

2.5.3 The role of Judges in Maintaining Social Stability

The role of judges, particularly in the United Kingdom has been built upon notions of justice, morality, fairness, and equality. However, this has been questioned by a number of social scientists. For instance, some studies have indicated that judges may be inherently biased towards black people, women, or the poor.

Nevertheless, to maintain social stability, the role of the judges in the United Kingdom has been built upon a "gentlemanly code" of doing "the right thing". It is largely acclaimed that judges should be free to judge without bias, they should not be threatened for passing judgement, and that they should be impartial from politics. However, the changing political environment within the context of new public management, has seen MPs as opposed to legal professionals being appointed to the role of Lord Chancellor. This has caused some controversy, for instance during the Brexit case where judges felt threatened and unprotected by the Lord Chancellor (Bowcott, 2017) – who's position was formally to protect the judges. Similarly, the impartiality from politics has been brought into question under public management initiatives despite the move into the new United Kingdom Supreme Court building - the Middlesex Guildhall. This was said to show a clear separation of powers between the executive and legislative branches of government. Although, it is worth noting that by contrast, in other countries, for example in the United States of America, Supreme Court Judges are elected by the President with each new turn of government. There have also been cases where the role of "independent" judges has been questioned such as that of the Chilean judges approving immoral political practices during the Pinochet regime (Hilbink, 2007).

However, within the United Kingdom, judges are largely seen as upholding the rule of law. As bastions of social order, their professional code of conduct both within and outside of the work place should represent this. Connotations espoused by their role represent a gentlemanly code and an authoritarian level of education. Moreover, the personification of what it means to be a judge is celebrated through theatrical performances and attire worn. For example, the theatrical performance during the swearing in ceremony of the highest judges highlights the expected role of the justices as they take their oath of

allegiance (The Supreme Court, 2021). As such, the adoption of this professional role has, throughout centuries, seemingly circumvented judges to act inappropriately, rather enticed judges to act out their role as upholding the rule of law. Thus, it has been incredibly rare for any United Kingdom justice to have ever been discharged, although there have been some minor cases of misconduct. In terms of the United Kingdom's Supreme Court Justices, their role is to interpret cases of national importance on points of law; whilst acting as a representative pillar of social order transcending through the lower courts and ultimately society.

2.5.4 Section Summary

The Constitutional Reform Act 2005 paved the way for the creation of the United Kingdom Supreme Court, which opened its doors in 2009. Political arguments for the creation of the new court were that this was imposed by the Strasbourg Court under Article 6(1) of the European Convention on Human Rights; as it was put forth that there was not a clear separation of powers within the United Kingdom government. However, this overlooks the fact that the United Kingdom holds one of the world's oldest surviving legal systems which was formalised in 1066, and the judicial role of the House in 1399. The Law Lords sat in Parliament from this date until the Constitutional Reform Act 2005, which removed the highest members of the judiciary into a new court in 2009. This drastic change was amidst the many changes to restructure the legal services sector – instigated by Margaret Thatcher, and heavily reformed under Tony Blair. Moreover, the Constitutional Reform Act itself is questionable since the UK does not have a formal written constitution, nor a separate court for constitutional affairs. Additionally, the imposition from the Strasburg Court calls into question Parliamentary sovereignty; thus the very creation of the new court is questionable. Furthermore, it was declared that there would be no noticeable change to the role of the new court. However, when placed within the context of public management, the role of the new court is being heavily impacted by public management characteristics such as managerial restructuring, business planning, and an uptake of technology, with an emphasis on efficiency, effectiveness, transparency and accountability. The restructuring of the new court under the

hierarchal rule of the executive brings to the fore questions regarding the role of the UKSC Justices in the highest court of appeal, the threats to judicial independence and the ability for the UKSC Justices to maintain their constitutional role.

2.6 Research Gap and Question

2.6 Research Gap

The literature review has identified a gap in existing knowledge for understanding how new public management has impacted on the role of the United Kingdom Supreme Court Justices. This is particularly relevant given the Constitutional Reform Act 2005 which was argued to show a clear separation of powers, namely between the executive and judicial functions of government. Not only is an investigation of this nature important for theoretical contributions regarding the uptake of public management; but also of practical significance for the extent to which public management initiatives ought to be present within the United Kingdom's highest court.

2.6.1 Research Question

How has New Public Management impacted on the role of the United Kingdom Supreme Court Justices?

2.6.2 Research Aim

To understand how New Public Management has impacted on the role of the United Kingdom Supreme Court Justices.

2.6.3 Research Objectives

- To understand from a thorough literature review the importance of the law, how this has evolved and the role of the United Kingdom Supreme Court justices within this.
- To conduct a qualitative analysis through semi-structured interviews with Supreme Court Justices and relevant others.

- To build a tentative framework for the impact of new public management on the role of the United Kingdom Supreme Court Justices.
- To review the theoretical implications of the impact of new public management on the role of the United Kingdom Supreme Court Justices, providing suggestions of theoretical and practical use; along with suggestions for further research.

2.7 Guiding Theory

2.7.0 Section Introduction

A number of guiding theories could be utilised to answer the research question: "How has New Public Management impacted on the role of the United Kingdom Supreme Court Justices?" This section deliberates between the strengths and weaknesses of potential guiding theories and identifies role theory as being the most appropriate in line with answering the research question.

2.7.1 Potential Guiding Theories

As noted in the wider literature review, a number of scholars have reviewed the impact of New Public Management on a range of sectors (e.g. healthcare, education, welfare), as well as on the roles of organisational actors (e.g. doctors adopting more managerial roles – see: Kirkpatrick et al. 2009; Sarto, 2019). Researchers have made theoretical contributions, as well as offered insights through empirical evidence. To achieve this, a number of guiding theories have been utilised. For example, institutional theory has been adopted to inform investigations into how organisational forms are morphing under public management initiatives.

Although there is "no single and universally agreed definition of an 'institution'" (Scott, 1995: 235), institutional theory is concerned with how institutions as embedded social structures encompass routines, artifacts, symbolic systems and relational systems (Scott, 1995; 2001). Thus, institutional theory studies how rules, routines and norms become reworked over time; and how rational myths, legitimacy and isomorphism shape behaviours, decisions, and organisational practices (Scott, 2008).

Institutional theory has therefore been used by researchers of organisational behaviour interested in how macro-level changes imposed through government reforms and legislation have impacted upon organisational behaviour on micro-levels. For instance, Empson, Cleaver and Allen (2013) study how new institutional logics are being formed through a process of sedimentation between Managing Partners and Management Professionals within UK law firms following the Legal Services Act 2007.

In line with this, one may propose that institutional theory is an appropriate guiding theory for investigating how New Public Management has impacted upon the role of the UKSC Justices. This is because the utilisation of institutional theory may assist in exploring how macro-reforms through the Constitutional Reform Act 2005, are impacting upon the institutional dynamics within the UKSC on a micro-level. One could therefore apply this theory to investigate how organisational behaviours are being affected as the Law Lords in Parliament transitioned into the UKSC Justices. Further, this theory could also be applied to explore the change in dyadic relationships between the Justices and the Lord Chief Justice, through for example the process of sedimentation (Lawrence and Suddaby 2006; Empson, Cleaver and Allen 2013).

Institutional theory could indeed yield some interesting insights with regards to organisational behaviour within the new court. However, this theory is limited in so much as it is concerned with how new institutional logics are formed on an organisational level. For example, how institutional logics are sedimented through didactic interplay between institutional actors. For this reason, whilst this theory may support an investigation into how New Public Management is impacting upon the institutional logics formed within the new court, it is less concerned with the specific role and role behaviours of the Justices within the new court.

Other theories may therefore be adopted which are concerned with social behaviour. For example, social action theory (Parsons 1937; 1968) could be deployed to consider how personal identities are shaped within the UKSC, which then have a profound impact on wider society (Tuomela, 1984). However, like institutional theory, social action theory falls short when answering the research question. This is

because social action theory focuses upon individual motives for behaviour, and thus constrains the ability to uncover how roles are being impacted by executive agendas.

As such, one may consider using alternative theories such as agency theory and stewardship theory. This is because the wider literature review has identified that public management initiatives are underpinned by agency theory. It is thus theoretically presupposed that public management may indeed be changing the roles of the UKSC Justices from being social stewards into self-interested agents (revisit section 2.5.1; Table 2). Therefore, whilst being mindful not to completely disaggregate the two (Davis, Schoorman& Donaldson, 1997; Arthurs &Busenitz, 2003); theories such as agency theory and stewardship theory could be utilised to ascertain if there are juxtapositions within institutional logics between the executive and judicial branches of government (Donaldson & Davis, 1991). Should empirical research yield evidence that there are conflicting ideologies, institutional theory could be used to consider if new institutional logics are being formed on an organisational level to reflect a greater degree of agency within the new court. This would also be interesting due to wider literature indicating that other Supreme Courts – such as in the US, are potentially entering into a new era that is less able to persuade the public of the legitimacy of its decisions (Nicholson and Hansford, 2014).

Additionally, other behavioural theories such as labelling theory (Becker, 1952) could be utilised. For instance, to ascertain if new labels are being ascribed to the Justices of the new court, and if behaviours are modified as individuals seek to live up to their assigned roles.

Becker's (1952) famous sociological study of the 'ideal pupil' purports that teachers are more inclined to spend time assisting higher middle class pupils, and those of a lower class background were frequently labelled as trouble-makers (even if this was not the case). This leads to what is termed a 'self-fulfilling prophecy', whereby pupils internalise the assigned label and then act in the way expectedof them (O'Byrne, 2011). Labelling may thus be defined as: "the process by which others – usually those in powerful positions – come to impose an identity upon us" (O'Byrne, 2011).

Whilst there are critics, for instance, Haralambos and Holborn (2013) note that there is insufficient evidence to suggest that individuals whom are assigned labels as being deviant will act accordingly; and some individuals may act in a deviant way even if a label has not been assigned. Further, it may be proposed that individuals may change from being deviant to being law-abiding. Despite criticism, labelling theory has had a profound impact upon how individuals adopt assigned roles, and adapt their own identities and behaviours in line with the label imposed by others around them (Bartlett & Burton,2012). With regards to deviant or criminal behaviours, Becker (1963) also suggests that police are more likely to make arrests within poorer areas even if the same crime were to be committed by wealthy people in a richer area. For example, two men fighting in a poorer area are more likely to be arrested than two men fighting in a wealthy area, whom are more likely to receive a warning.

When applied to the creation of the UKSC, one may investigate how new labels may be assigned by the executive, and how new identities are being formed by Justices within the new court. Whilst this theory is particularly interesting, it does hold limitations as labelling theory is concerned with how individual behaviours are adapted to reflect a self-fulfilling prophecy in line with assigned roles. To uselabelling theory as a guiding theory would assume that new labels have been assigned to actors of the newly created court. It may be suggested that there have been reforms which indicate new labels are being assigned. For example, there have been symbolic changes such as: the uptake of technology; the Justices are now appearing unrobed; the roles of the Lord Chancellor were transferred; and the role of the Lord Chief Justice was changed; there are now new roles for the 'independent' complaints ombudsman, there is a communications team within the new court, and the recruitment of the Justices has been altered (revisit section 2.5.1). However, to apply labelling theory there should be evidence of: 1) new (e.g. managerial) labels being imposed; 2) how one behaved prior to the new label; 3) how one behaves subsequent to the label being ascribed. These criteria cannot be met due to limitedempirical evidence of court behaviour prior to the creation of the UKSC. Furthermore, due to the number of retirements and recruitments, as well as labelling theory being concerned with self-fulfillingprophecies as opposed to roles, the application of labelling theory to answer the research question ultimately falls short.

Whilst there are a number of guiding theories which could be used to investigate the impact of New Public Management on the UKSC Justices, this paper is specifically concerned with the impact unto the role of the UKSC Justices. The predominant reason being that one must first understand if/how NPM is impacting on the role of the UKSC Justices. If empirical evidence suggests that this is the case, then further investigations may consider, for example, how new institutional logics are being formed (institutional theory), if there is a move towards a greater degree of agency (agency theory / stewardship theory), as well as if there are characteristic changes in the individuals whom apply for and are recruited into the role of a UKSC Justice (e.g. social action theory). However, if empirical evidence shows no characteristic changes unto the role of the Justices in the new court then it is reasonable to presume that there would be little need for further investigation into, for instance, behavioural or organisational change. As such, to answer the research question: "How has New Public Management impacted on the role of the United Kingdom Supreme Court Justices?" role theory is the most plausible option.

2.7.2 Role Theory

The origins of role theory are believed to have emerged prior to the 1900s; although the term "role" became prominent in the 1930s (Biddle & Thomas, 1966; also see: Encyclopedia.com, 2021). Following the cross-disciplinary works between social and clinical psychologists in the 1920s, George H. Mead and sociologists from the University of Chicago proposed what was later termed a 'dramaturgical metaphor'.

Dramaturgy focuses upon microsociological accounts of social interaction (Goffman 1959; 1980). The theatrical term is used to emphasise how individuals are merely actors playing out particular roles. As quoted from Shakespeare's character Jaques:

> "All the world's a stage,
>
> And all the men and women merely players:
>
> They have their exits and their entrances;

And one man in his time plays many parts"

Shakespeare, 1603; also see: Smith, 2004: 56

The idea that individuals are assigned, and indeed act out roles is central to role theory. Role theory maintains that roles are allocated to socially defined categories. For example, a mother, a lawyer, a dentist, will be assigned a set of expectations, norms, and duties. Behaviours are therefore modified in accordance with social expectations of the role, as well as individual interpretations of acting out the role. In this sense, behaviour is seen as predictable, since patterns of behaviour are acted out according to the rules assigned to certain roles (Tajfel & Turner, 1979, 2004; McLeod, 2019).

When applied to the case of the UKSC, this suggests that roles are ascribed to, for example: the Lord Chancellor; the UKSC Justices; the communications team within the UKSC; the 'independent' selection committee for appointments; and so forth. This brings to the fore the impact of the function of the executive branch of government in role ascription and thus the impact of this unto the predictable behaviours acted out by Justices within the new court.

Although role theory may facilitate a greater understanding of role behaviours being acted out under ascribed roles, role theory itself is an umbrella term, under which various researchers have taken differing approaches. For example, at the time of inception in the early 1930s, three key contributors to role theory took differing approaches. Mead's (1925; 1934) social-philosophical stance maintained that roles evolve as coping mechanisms of social interaction. It is considered that as individuals interact, it is important to understand the perspectives of others (i.e. role taking). However, for the anthropologist Linton (1936), roles reflected social positions (i.e. status), and therefore role theory may be utilised to analyse social systems since roles reflect the dynamic aspects of socially recognised positions. By contrast, the contributions of psychologist Moreno (1934) were that role playing may be carried out as individuals learn new roles, with his works becoming influential in psychotherapy and training. Roles may thus present habitual behaviours as individuals imitate others within primary relationships. This may also lead to harmful behaviours being carried out.

Over the two decades subsequent to the 1930s, social scientists began considering how attributed "roles" shape interpersonal behaviours. For example, Newcomb's (1950) adoption of role concepts in social psychology; Sherif's(1936) works on social norms; Merton's (1948) self-fulfilling prophecies, as well as on role structures and role processes; Sarbin's (1943) role behaviours in enacting hypnotic behaviour; and Hughes' (1951; 1956) studies on occupational roles. Another approach was Cameron's (1947) analysis of role enactment of disordered individuals. Cameron proposed that people are not only assigned roles but there may be faulty role enactment, for instance through incompetence to play out one's assigned role, or inability to take the role-of-the-other.

As the notion of role grew in popularity, various perspectives began to emerge. One approach was the development structural functionalism proposed by Parsons (Parsons 1951; Parsons &Shils, 1951; also see: Alexander, 1984). This theory focused upon a macro-lens of society, which is shaped by micro-level norms, values and traditions. However, the structural perspective has since become popular amongst structuralists and network theorists, whom tend to work from positivist epistemologies (e.g. Winship and Mandel 1983; Burt 1982). The emphasis of structuralist theory tends to lie with the rational organisation of social systems through, for example, social positions and assigned roles, and thus refutes notions of expectations or norms. Others such as Gross et al. (1958) and Kahn et al. (1964) for example, focused upon role conflict and organisational roles. Whilst others still used role in cognitive social psychology to explore how individual actors adopt particular attitudes, preferences, self-beliefs, self-fulfilling prophecies, instrumental and moral norms, as well as beliefs about others, and the norms attributed to others (Bank et al. 1985; Biddle 1986). Although, whilst some effort has been made to link individual cognition to wider social systems (e.g. Biddle 1979), cognitive perspectives tend to focus upon the individual as opposed to the wider social context.

Another perspective under role theory is concerned with symbolic interactionism. Symbolic interactionists such as Cooley (1902, 1918; also see: Jandy, 1942), Mead (1934)and Blumer (1969) are concerned with how symbols that we interpret (e.g. attire, body language, colours, etc.) shape how individuals interpret their view of reality. For example, a poised individual wearing expensive clothes and jewellery, may be intending to give the image of being within a higher social class. The ways in

which others then interpret this will reflect their own view of reality. Roles are adopted within certain contexts as various forces shape roles and behaviour. For example, pre-existing beliefs, attitudes, self-perception, and norms of social position; as well as how situations are perceived and defined through context-specific social interaction. In this sense, roles do not necessarily have structured or shared elements, rather as actors face similar issues in similar contexts, the roles adopted are likely to also become similar. Moreover, as role behaviours are internalised, the roles adopted by individuals are not static, rather, these evolve over time (Turner, 1979; 2004).

Despite varying approaches, the most appropriate guiding theory for the study at hand is role theory. According to Stewart (1982), role theory facilitates the ability to evaluate the demands, constraints, and choices surrounding and indeed imposing upon the role of a given individual. Essentially, there are certain demands of a job which shape the role of the actor carrying this out. Job demands relate to things which an employee must do to achieve a predetermined standard of performance. This may relate to demands from a range of sources such as manager-imposed, peer-imposed, self-imposed, staff-imposed, as well as system-imposed and externally-imposed demands. All of these shape role expectations and how one conducts his/her job role. Furthermore, constraints refer to things which limit what an individual is permitted to do in a certain job role. For example, there may be resource limitations or legal requirements. By contrast, choices refer to the (often unconscious) decisions as to the work being done. For example, a manager may exercise choice by emphasising certain aspects of a job whilst neglecting others.

Role theory has successfully been used in a number of management studies (Broderick, 1998; Sluss et al., 2011; Matta et al., 2015; Solomon et al., 1985) for instance. As this thesis is concerned with how the roles of the United Kingdom Supreme Court Justices have been impacted by new public management initiatives, Stewart's Demands-Constraints-Choices (DCC) model is an appropriate guiding theory for the study at hand (Stewart, 1982; 1989; 2012). As a guiding theory, this may be used to theoretically determine how new public management initiatives are impacting on the role of the United Kingdom Supreme Court Justices.

2.7.3 Section Summary

This section has reviewed potential guiding theories and selected role theory as the most appropriate for answering the research question.

2.7.4 Chapter Summary

The literature review has traced the origins and theoretical arguments surrounding new public management initiatives. It is suggested that some public sector organisations may benefit from free market economics underpinning the movement. However, it is also suggested that governments have a responsibility for the welfare of the state and within this, the necessity to uphold the rule of law. As such, the connotations historically attached to the justice system become questionable. This is because the law and indeed judges as a personification of this, are brought into question due to the juxtaposition between a gentlemanly code of conduct versus agency espoused by free market economics and public management. The following chapter details how further investigation into this is sought through primary data collection.

Chapter 3: Research Methodology

3.0 Introduction

The preceding chapter identified a research gap for the question: "How has New Public Management Impacted upon the Role of the United Kingdom Supreme Court Justices". Subsequently, Chapter 3 details the methodological approach taken to answering the research question. In the first instance, a constructivist ontology and an interpretivist epistemology are justified as being the most appropriate for answering the research question and achieving the research aim. A subjective, qualitative research design using semi-structured interviews with (current / former) United Kingdom Supreme Court Justices; as well as relevant others is selected. Relevant others include (current / former) Lord Chief Justices; Lord Chancellors; Queen's Counsel; plus members of the United Kingdom Supreme Court executive and non-executive teams. The chapter details how themes are framed in line with the literature, yet the adoption of an inductive approach allows for new themes to emerge. Consideration is given to the tools for data analysis, ethical procedures, and provisions for testing the research design through a pilot study. The pilot study consists of one United Kingdom Supreme Court Justice and two relevant others. This is because it reflects just over 10% of the final sample, which stands at 23 participants in total. The sampling technique is purposive snowball sampling which is justified in line with the nature of the research as well as the researcher's ontological and epistemological stance. The reliability, validity, and generalizability of the study are noted, along with reference to- and justification of- any identified limitations; highlighting the strengths and weaknesses of the overall design.

3.1 Research questions

The main research question for the thesis is: How has New Public Management Impacted on the Role of the United Kingdom Supreme Court Justices?

In order to answer this question, sub-questions have been framed. These are:

1) What is the role of the United Kingdom Supreme Court Justices?

2) Has this role changed under the key themes and characteristics of new public management identified in the literature? If so, how are these themes and characteristics of new public management evident in the new court being perceived?

3) Aside from the themes and characteristics of new public management identified in the literature, are there any new themes or characteristics emerging with the move into the new court?

4) Akin to role theory, are there any rising demands, constraints or choices being placed on the role of the Justices, particularly subsequent to the Constitutional Reform Act 2005 and the move into the new court?

Quintessentially, this study intends to explore the role of the United Kingdom Supreme Court Justices and whether this role has been impacted by new public management initiatives. Moreover, if the aforementioned is affirmative, it is important to ascertain whether the impact to the role of the Justices is perceived as being positive or negative. In doing so, the study aims to make a valuable contribution to both existing literature and policy implications for the degree to which the characteristics of new public management ought to be present in the United Kingdom's highest court.

3.2 Philosophical Perspective

All forms of research are open to philosophical critique. This is because how one views reality "i.e., ontology, what exists that we can acquire knowledge about"; along with how knowledge is acquired "i.e., epistemology, how we create knowledge" directs how the said individual chooses to design and construct research (Moon, et al., 2019 pp.296). As such, there are a variety of research approaches which may be selected dependent upon the mediation of the researcher along with the ontological and epistemological position being worked from. In line with answering the research question, the researcher's mediation is from a double hermeneutic, with a constructivist ontology and an interpretivist epistemology; as detailed below.

According to Saunders, Lewis and Thornhill (2012), there are four main research philosophies in business studies which assist in the formation of the 'research onion'. These are: pragmatism; realism;

positivism; and interpretivism. Pragmatism accepts that there may be multiple realities but concepts are only relevant if they are supportive of action. By contrast, realism is more scientific and can be divided into two groups: direct realism; and critical realism. In the former, personal human senses (i.e. what one "sees") portrays reality; whilst in the latter, humans do indeed experience the world through sensations and images, yet these may be deceptive and not necessarily a 'true representation' of the 'real world'. Furthermore, positivism is highly scientific, deterministic and mechanistic, dealing with empiricism and using specified methods to test theory or hypothesis.

Each of the aforementioned research philosophies (pragmatism, realism, and positivism) fall short for this research investigation. This is because this research intends to inductively interpret underlying meanings which are socially constructed to create reality.

This contrasts to pragmatism in what Cunliffe terms "intersubjectivism". Where objectivist research such as positivism has a syntagmatic epistemology; intersubjectivism values reality as fleeting moments with pragmatic knowing. This "in-situ, knowing-from-within" or "withness" (Cunliffe, 2011; Shotter, 2008) has a micro-level focus. Social reality may be ontologically perceived as relationally embedded or socially constructed with the mediation of the researcher being embodied within a reflexive hermeneutic. Ultimately, whilst pragmatic intersubjective knowledge can value social constructionism, the foci upon the micro-dynamics of institutional work (for example, a single conversation can be deconstructed to create knowledge) essentially narrows the research direction to such a degree that the researcher becomes embedded and embodied in the research. This constrains the ability to work from a double hermeneutic and subjectively interpret a number of responses. Due to the nature of the research, whilst induction is of course important, intersubjectivity constrains the ability for the researcher to subjectively acquire a level of understanding from a range of perspectives – which is imperative to answering the research question.

Opposing this, the realist and positivistic quest for an objectivist stance, where the mediation of the researcher in the latter clearly adopts a detached single hermeneutic and a syntagmatic epistemology are also inappropriate for the current study. This is because the core ontological assumptions of research

methodologies akin to realism and positivism, respectively, largely either: 1) favour reality as a process of interrelated elements which are generalizable or context dependent; or 2) further towards 'hard science' view reality as concrete structures, subject to patterns, rules and laws (Cunliffe 2011). The philosophical underpinnings of the former are typically akin to research approaches such as critical realism, critical theory, and institutional theories for instance; whilst the latter seeks A-temporal laws, validity criteria, rational choice and 'pure' deduction. As such, research approaches such as positivism, post-positivism, empiricism and functionalism are examples of potential research approaches underpinning the research design (Cunliffe 2011).

Objectivist approaches do yield some benefits, particularly when seeking large data sets, looking for processes and patterns, and justifying the generalizability of data as well as the replicability of the study. As such, several authors have indeed adopted these ontological and epistemological stances in a number of fields such as quantitative psychology as recognised by the American Psychiatric Association (2019), anthropology (see for example Bernard, 2006) and management, including new public management (see for example Nakrošis, 2017; Asif & Mamoon, 2018). Quantifiable data sets are often favoured in business fields and highly used in management journals such as the International Journal of Operations and Quantitative Management.

However, whilst there are clear benefits to these studies, the thin data descriptions acquired (Devanga, 2014) ultimately means that an objectivist approach falls short when answering the research question. This is because the current study is specifically concerned with interpretations on the role of the United Kingdom Supreme Court Justices. As such, generalizability is not sought, rather situated validity is purported by uncovering underlying meanings through rich, thick descriptions of role interpretation within a specific context at a specific time (for further reference see: Ryle, 1949; Geertz, 1973; Lincoln & Guba, 1985; Holloway, 1997). Moreover, it is increasingly noticed that a move away from pure objective, deductive research is gaining prominence within the business/management sphere with entirely new journals such as Qualitative Research in Organizations and Management being created. Moreover, a constructivist ontology and an interpretivist epistemology have often been used in not only

forming management theory, but also more specifically, in new public management and within government from the late 1970s:

> *"…interpretive work on public administration continued to receive little attention…in contrast to the growing interest in public choice theory and cost-benefit analysis…However, increasingly, the ability of interpretivists to offer a plausible account of policy failure, implementation gaps, overspend, and unpredictability in public policy was bringing them into the mainstream of public administration scholarship."*
>
> Needham & Mangan 2016: 340

As noted by Needham & Mangan, journals such as Policy Sciences; as well as the works of Bevir and Rhodes (2003) and Hajer (1995) brought forth the need to explore more interpretivist work within their home countries – the US, UK and Netherlands.

An interpretivist epistemology is favoured for answering this research question due to the assumption that reality is relative, and that there are indeed multiple interpretations of reality (Hudson &Ozanne, 1988). As aforementioned in the 'guiding theory' section within role theory, human nature is characterised by actors as interpreters and sense-makers. Interpretations of reality lie with interactions between people and their contextual setting; thus rationality sees people "reflexively embedded in their social world, influenced by and influencing discursive practices, interpretive procedures etc." (Cunliffe 2011: 654). As people are perceived as being reflexively embedded, being shaped by, and indeed shaping their own reality, the research philosophy is in line with interpretivism.

It is difficult to interpret 'fixed realities' as these multiple realities are not independent, rather, they are influenced by a range of factors (Lincoln &Guba, 1985). As there are a number of realities which are socially constructed (Berger & Luckman, 1966), the core ontological assumptions are constructivist (Hall, Griffiths & McKenna, 2013). Reality is perceived as being interpreted and shaped by symbolic as well as linguistic meanings; with interpretations being contextualised within social sites (Cunliffe, 2011: 654).

Opposing the macro-level focus of objective research, intersubjectivity views social reality as being experienced within living moments (see: Bracken, 2019). Whilst this philosophical position does have some strength, it seeks to reveal how knowledge is created through interactions, and therefore like objectivism, the stance falls short when answering the research question. This is because the reflexive embedment of the researcher sways the philosophical and theoretical underpinnings towards research approaches focusing upon micro-dynamics (Pihkala, & Karasti, 2016). It should be noted that there is a 'fuzzy logic' which blurs the distinction between subjectivity and intersubjectivity (as well as with subjectivity and objectivity – see Cunliffe 2011). For example, there is some overlap with ethnographic, constructionism / constructivism and inductive research approaches. However, intersubjectivity spans towards alternative approaches such as hermeneutic phenomenology.

Approaches such as this ultimately fall outside of the scope of the research because of the intensity on the micro-analysis of social reality; which ultimately inhibits the researcher's ability to engage and reflect on role perception from a double hermeneutic. Opposing the objectivist stance, research approaches which philosophically and theoretically underpin intersubjectivism align with hermeneutic phenomenology, relational constructionism, and dialogism (Cunliffe 2011: 655). Whilst intersubjecivism does shed light upon how people create meanings through shared experiences, the heavy focus upon micro dynamics (for example, this could be an in-depth analysis of one conversation) constrains the interpretive procedures necessary for understanding how subjective realities are interpreted, which is necessary for answering the research question.

As noted, objectivist approaches fall short in line with answering the research question. This is because objectivist approaches view reality as a science, independent and structural, either concrete (positivism), or as a process (post-positivism). The epistemological stance of both positivism and post-positivism is that objective knowledge is syntagmatic, espousing "interdependent or dependent relationships between structural or linguistic elements" (Cunliffe, 2011: 654). This relies upon a mainly macro focus; which opposes the more micro focus necessary to understand the changing roles of Justices within one context – that of the United Kingdom Supreme Court. This differs still to the experienced, embedded, and embodied, reality is formed of fleeting moments within time and space that is associated

with inersubjectivism. This pragmatic stance views research as a craft with meanings inductively emerging as opposed to being tested and deduced by a removed as opposed to an involved researcher mediation.

One should note that epistemologies associated with subjectivism may be pragmatic or syntagmatic; which differ still to the pragmatic "in-situ, knowing-from-within" (Cunliffe, 2011: 654; also see Shotter, 2008). Objectivism is concerned with reality as concrete or processes, subjectivism with people being influenced by and influencing their embedded social world, and intersubjectivism with the micro focus on the interactions and dialectical interplay emerging through the interrelationships and inbetweeness of people (Cunliffe 2011).

The core ontological assumptions of interpretivism oppose those of other approaches such as positivism and post-positivism. In the former, positivist epistemologies connote that reality exists independently, with concrete structures and mechanisms, which transcend time in a linear fashion (Cunliffe 2011: 653). The positivist paradigm and 'naïve realism' (Guba & Lincoln, 1994), is associated with experimental methodologies, the verification of hypotheses and quantitative methods (Denzin & Lincoln, 2011: 100). As relationality within objectivism is perceived as network mechanisms, systems and information processes, this constrains the ability to uncover how the roles of actors are interpreted and shaped by their contextual surroundings.

Although intersubjectivism can hold characteristics of subjectivism, such as an interpretivist epistemology, a constructivist ontology and an inductive approach to knowledge acquisition; role theory is more closely aligned with a subjectivist stance which encapsulates methods such as dramaturgy and story analysis for instance. Scripts, plots, performances, and roles are aligned with subjectivism Cunliffeand thus for a clear, coherent, logical research design, a constructivist ontology and interpretivist epistemology is favoured under a subjectivist approach.

In conclusion, as this research is focused upon interpretations of how NPM initiatives have impacted upon the role of the UKSC Justices, these experiences and interpretations are – and indeed have been – lived. As such, subjectivism under a constructivist ontology and interpretivist epistemology is the most

appropriate. This is because it facilitates depth of meaning from those whom have direct interactions with, and experience of, the role of the UKSC Justices. Intersubjectivist ontologies and epistemologies lie with fleeting moments, withness, and living experience constrain the ability to perceive research participants as actors, interpretators and sense makers. By contrast, objectivism inhibits depth of meaning and understanding through the quest for generalizable knowledge and thin descriptions using large data sets. As such, the most plausible approach is aligned with a subjectivist stance.

3.3 Research Design

As aforementioned, positivist epistemologies in line with objectivism are inappropriate for the current study. This is because these approaches favour thin descriptions using large, generalizable data sets that can be empirically tested to support or disprove hypotheses. The focus upon a mathematical, scientific, quantifiable knowledge is inappropriate to a subjective study that focuses upon interpretations of role. By contrast, intersubjective approaches ultimately fall short for the opposite reason due to their intense focus upon micro-dynamics thus restricting the ability for subjective role perceptions to be uncovered. According to the nature of the study, it is important to ascertain rich thick descriptions of role perceptions. This is necessary to enable interpretations of the Justices' role under new public management initiatives to emerge. For these reasons, a subjectivist approach is the most suitable because it facilitates a "common sense knowledge" (Cunliffe, 2011) whereby the nature of social reality is interpreted, symbolic and contextualised in a social setting. These shared meanings, discourses and texts are: "Perceived, interpreted & enacted in similar ways but open to change". Moreover: "People are reflexively embedded in their social world, influenced by and influencing discursive practices, interpretive procedures, etc." (Cunliffe, 2011).

In line with a constructivist ontology and interpretivist epistemology; a subjective approach is favoured, allowing for indepth perceptions, meaning and understanding of role to emerge. A quantitative approach is incongruent with the identified preceptions of the nature of social reality. This is because a

quantitative stance is akin to a positivist epistemology, seeking large, generalizable data (Su, 2018) – which falls outside of the scope of this research investigation.

Whilst objectivist approaches are generally more favoured in management journals; indepth approaches such as intersubjectivity are rapidly gaining notable credence. For instance, entirely new journals have emerged which promote reflexively embedded researchers to understand deep and underlying meanings as opposed to macro generalisations and "naieve realism" (Cunliffe, 2011); and there have been significant advances towards progressing qualitative research in management (Bluhm et al., 2011). Intersubjectivity is becoming much more popular in shaping management theory with an emphasis on novel approaches towards the micro-dynamics of sense making. A core underlying argument for intersubjectivity is that whilst objective approaches favour macro data sets for mathematical manipulation, as well as rigour through replicability and generalizability; objective approaches inherently rely upon subjectivity to be able to generate interpreted hypotheses from a socially constructed environment. Arguments for "studying management in the making" through, for example, ethnographically-grounded approaches are indeed strengthening arguments for promoting intersubjectivity in management theory. However, the large focus on reflexively embedded micro-dynamics of institutional work restrict the ability for the researcher to explore subjective interpretations of the Justices' changing role under public management initiatives.

According to Tracy, there are "eight key markers of quality in qualitative research including (a) worthy topic, (b) rich rigor, (c) sincerity, (d) credibility, (e) resonance, (f) significant contribution, (g) ethics, and (h) meaningful coherence" (Tracy, 2010: 837; also see Gordon & Patterson, 2013). In quantitative research "(b) rich rigour" is achieved through quantifiable results and the ability to replicate the study with similar findings. However, whilst quantitative studies have yielded some interesting results, this type of analysis is limited when understanding interpretations through depth of meaning. This is because the scientific and mathematical approach taken to deduce meaning from testing predesigned hypotheses inhibits the ability to uncover underlying feelings towards changing roles. This type of understanding is encouraged in qualitative research whereby a researcher is at liberty to work from a double hermanutic (a reflexive in intersubjectivity; a single on objectivity), and subjectively probe and interpret

more emotional responses. However, there are some limitations with this approach. In the first instance, the participant may provide responses based upon their current mood, intentionally be dishonest, or unintentionally provide inaccurate information through a lack of memory. However, it should be noted that these issues also lie with quantitative research. Although, to mitigate this, anomalies are removed. Further, another limitation is associated with potential researcher bias, researcher misinterpretation, or inaccuracies of the researcher in relaying information. By contrast, although there are various statistical analysis tools which may be used in quantitative research, the ability to test hypotheses from a single hermeneutic is often seen to limit researcher bias. Yet, one should note that statistical analysis tools may also manipulate data to achieve certain results. Although it should be noted that hypotheses are evidently formed from subjective research and interpretation, thus ironically questioning the formed hypotheses through the same arguments against the qualitative research which fundamentally led to their 'existence'.

Despite the inherent limitations of the chosen research design, it still stands as the most appropriate in comparison to the aforementioned alternatives for answering the research question and achieving the research aim. Thus, a subjective approach is deemed to be the most viable option for uncovering role interpretations, necessary for answering the research question.

3.4 Research Approach

Due to the identified ontological and epistemological stance taken for understanding the phenomenon at hand, an exploratory as opposed to explanatory approach is adopted. This is because explanatory research requires a priori reasoning or knowledge which facilitates theoretical deduction. Approaches which may be utilised in applied research include exploratory or formulative research, descriptive research, and causal or explanatory research (Akhtar, 2016).

Taken in reverse-chronological order, explanatory research is unsuitable for answering the research question because the objective is to test hypotheses based upon validity criteria; and causal research seeks to uncover cause and effect relationships through experimentation as well as simulation.

Objective, scientific and mathematical research is incongrugent with the ontological and epistemological stance required for uncovering the underlying meanings and interpretations associated with the impact of NPM on the role of the Justices.

In addition to this, descriptive research falls short for this research investigation. This is because this research investigation is not seeking to describe various characteristics such as demographics or attitudes towards a particular phenomenon. Although this type of research has yielded some interesting results, it falls short in line with answering the research question.

By contrast, exploratory research, otherwise referred to as formulative research, seeks to gather preliminary information about the phenomenon at hand. Indeed, this information may be later used for hypothesis testing. However, hypothesis testing falls outside of the scope of the investigation at hand. As such, exploratory research is required to uncover the underlying meanings ascribed to role, which both descriptive and explanatory research fall short in achieving.

Additionally, both quantitative and qualitative approaches to social enquiry may utilize either primary or secondary sources. The former, for example, may use secondary sources and calculate how many times certain words feature in a document. By contrast, the latter may scope existing documents for particular themes and interpret how these themes are being portrayed for instance.

According to Salkind: "A primary data source is an original data source, that is, one in which the data are collected firsthand by the researcher for a specific research purpose or project" (Salkind, 2010: 1). This contrasts to secondary data which refers to data that already exists. Secondary data has usually been collected by persons other than the researcher and for alternative purposes than that of the research investigation at hand.

This research investigation is concerned with how the characteristics of public management are impacting on the role of the UKSC Justices. Thus, due to the nature of the study, primary data collection is favoured over secondary data. This is because there is no current data which specifically looks at answering this research gap. As noted in the literature review, there currently does exist some, albeit rather limited, empirical research on the UKSC. Moreover, there are some secondary reports from news

articles. Additionally, there are a small number of studies on other Supreme Courts. Indeed, as highlighted in the literature review, some of the studies which research into the UKSC do highlight some changes in the new court; as do some news reports and evidence from UKSC publications such as the new business and financial plans along with information on the current website. As such, secondary sources may be used to build a case study (Reddy & Agrawal, 2012). However, as the research question asks: "How has New Public Management Impacted on the Role of the United Kingdom Supreme Court Justices?" essentially means that secondary sources alone limit the ability to answer the question. This is because these existing materials do not specifically look at interpretations of the impact of NPM on the role of the Justices – which this investigation seeks to uncover. Therefore, primary data is favoured to specifically gather perspectives on how public management initiatives have impacted on the ways in which the role of the Justices in the newly created Supreme Court act out their role and how this is reflexively interpreted.

3.5. Inquiry Logic

Research approaches such as positivism, functionalism, and empiricism rely upon A-temporal laws, hypotheses testing, validity criteria, and deductive reasoning. A largely macro-perspective which requires statistical equation modelling and the manipulation of large data sets inhibits the ability to answer the research question. This is because the thesis intends to uncover how roles are subjectively interpreted and carried out. As the durability of social realities are regarded as "constructed yet experienced as objective and relatively stable. Perceived, interpreted & enacted in similar ways but open to change" (Cunliffe, 2011: 654); induction is necessary to provide rich thick descriptions of howroles are interpreted and acted out. The thin descriptions acquired through quantitative analysis constrain the ability to understand how realities are interpreted, and thus inhibit the ability to answer the research question.

As opposed to the *a priori* temporal laws associated with a positivist epistemology, this investigation adopts an *a posteriori* inquiry. This is because the investigation seeks to uncover the meanings

associated with role interpretations and behaviours, as opposed to enforcing presupposed hypotheses, subject to testable measures.

3.6 The Research Context

In line with investigating the impact of new public management on the role of the UKSC Justices, the research context is concerned with current and former UKSC Justices, particularly those who have experienced both being a Law Lord in Parliament as well as a UKSC Justice. This is because the research context must be reflective of the investigation at hand. In addition to this, relevant others who have direct experience with the role of the Justices are also deemed to be part of the research context. For example, members of the newly appointed executive and non-executive team, personal assistants, Lord Chancellors, Lord Chief Justices and Queens Council all have a direct interaction with the role of the Justices therefore hold the potential to reveal new insights for a more holistic approach.

3.7 The Wider Context

As aforementioned in the literature review, the United Kingdom Supreme Court was created in line with the Constitutional Reform Act, 2005. The removal of the Law Lords from the House of Lords and into the newly created Supreme Court (which opened it's doors in 2009) caused much controversy. Without a green paper, white paper or any formal negotiation, and indeed without a formal written constitution or a court for constitutional affairs, the Law Lords were removed from Parliament and into the new court.

The executive justification for the move was that, despite the Law Lords residing in the House of Lords since 1399, there was not a clear separation of powers between the three branches of government. To resolve this, it was deemed necessary to create a Constitutional Reform Act which showed a clear separation between the judicial branch of government and the other two.

However, the decision, described by Lord Neuberger as a "last minute decision over a glass of whisky"

came at a time of increasing tensions between the executive and legislative branches of government (revisit section 4.3.2). For instance, following the Parliament's European Communities Act 1972, without holding a referendum, the United Kingdom became part of the European Economic Community on 1st January 1973. In line with European Union legislation, the Law Lords were 'forced' to incorporate the Human Rights Act 1998 into their decision making processes. Under increasing tensions, the Human Rights Act was used to limit executive power during the Iraq war, 2003. In 2005, the Constitutional Reform Act was passed which removed the Law Lords from Parliament.

Interestingly, the Constitutional Reform Act 2005 comes under wider new public management initiatives. Instigated by Thatcher to reform the courts (revisit section 2.4.3), Thatcher openly claimed that the greatest achievement was Tony Blair and New Labour (Komlik, 2018). The research context thus provides a fruitful environment for investigating the impact of new public management on the role of the United Kingdom Supreme Court Justices.

3.8 Level of Analysis

The level of analysis for this study focuses on the role of the United Kingdom Supreme Court Justices and if, at all, this role has been impacted by new public management initiatives. It should be noted that in political science, there are three common levels of abstraction. These include the individual, state / society, and international system.

Radical scholars inclusive of Marx and Lenin for example also account for wider economic issues through the focus upon social class. Nevertheless, the concept of power and how this is perceived, distributed and utilised is potentially one factor which unites political theorists. By contrast, idealism predominantly focuses upon the individual level. For example, how individual moral principles may infiltrate that of nations or governance. This is particularly found in democratic governments whereby the transfer of societal moral principles are reflected in the international system. For example, Idealist thinkers include Neville Chamberlain, Woodrow Wilson, and Immanuel Kant.

The level of analysis associated with realism relates to the state. Notable realist thinkers include: Niccolo Machiavelli, Thomas Hobbes, Thucydides, Henry Kissinger, Martin Wight, E.H. Carr, Hans Morgenthau, Reinhold Nieburgh, Pat Buchanan, and George Kennan. Realist thought encompasses the notion that state power essentially translates into national interest of the state concerned. In this idea, states are widely acclaimed to be power-seeking entities who compete in the absence of a centralised power. Thus, states may be viewed as "black boxes", whereby the form of government and state politics become somewhat irrelevant for the understanding international society. This essentially creates anarchy in light of theorists such as Hobbes' Leviathan in which all states would pledge their allegiance.

Furthermore, alternative theorists have subscribed levels of analysis. For example, the Marxist level of analysis is associated with class. The predominant foci is upon the bourgeois and the proletariat. As the aforementioned is perceived as driven by a capitalist ideology that is motivated by profit centricity this is argued as an increasing alienation of the latter mentioned. It is assumed that the tensions caused will ultimately result in the realisation of the proletariat and a subsequential revolution.

Whilst the Marxist level of analysis is congrugent with wider theory as suggested in the literature review; this level of analysis falls short for the investigation at hand. This is because whilst the focus upon class does hold the potential of yielding some interesting results, it is not the focus of the investigation. Rather, this investigation is concerned with the roles of the Justices and the impact of wider public management initiatives. Therefore, to focus solely upon class dynamics will not negate the requirements at hand for answering the research question and achieving the overall research aim.

Similarly, the finance-capital level of analysis associated with Marxism-Leninism which is associated with the accumulation of the bourgeois from the richest nations through "hording" falls short for similar reasons. The capital is believed to largely form a financial oligarchy whereby banks and / or dominant industrial corporations are seen to merge in a domination of underdeveloped portions of the world.

The level of analysis for this study is concerned with the role of the Justices. Therefore, whilst the Supreme Court Justices judge cases of national interest thus their decisions impact upon the state / society, and indeed judgements may be made through an odd number of collective judgements, the role

lies at the individual level. There are role expectations which transcend the twelve justices and with the move to the new court in 2009, there were more collective / unanimous decisions (revisit section 2.5.1). However, the level of analysis for role perceptions lies at the individual level. This also contrasts to the international system which is particularly interesting given that Supreme Courts may work together on international levels (e.g. EU Law) and there are initiatives towards socially constructed joined up governance. Yet, for the purposes of this research, the level of analysis lies at individual role perceptions.

3.9 Unit of Analysis

The unit of analysis defines the entity that is being analysed as opposed to the unit of observation. The unit of analysis for this investigation is individual as opposed to groups because the study intends to investigate the role of the Justices and how the role has been impacted by new public management. As the perspectives of both the Justices and relevant others lie within this, the entity is at the individual level.

3.10 Time Horizon

Time horizons are believed to be required for the research investigation, independent of the particular research methodology adopted (Saunders et al 2007). It is acclaimed that there are two predominant types of time horizon. These are cross-sectional and longitudinal. The former mentioned are constrained to a specified time frame whereas the latter is used to repeat studies over an extended period. For example, Lo and Yeung (2018) use hierarchical linear modelling to review the panel data of manufacturing firms. The longitudinal study was required to document that increasing institutionalisation matched steadily increasing revenues of ISO 9000 certified firms. Longitudinal studies are also used in a number of alternative fields, such as psychology and sociology. A recent study into deviant behaviour for instance utilised a longitudinal birth cohort study (Alm & Estrada, 2018) to investigate future prospects, deprivation, and criminality.

By contrast, cross sectional research typically adheres to a shorter specified time frame. Indeed, this may instigate later longitudinal research and longitudinal research may terminate after a number of years, for example two decades. Similarly, to longitudinal studies, cross sectional studies may be utilised in various forms of exploratory, explanatory and descriptive investigations.

This research investigation is exploratory and is to be achieved within a specified PhD timeframe. Therefore, a maximum of two years is allocated to data collection. Moreover, with regards to the purpose of the research, and to achieve the research aim, a longitudinal study is not necessary. This is because the research investigates the impact of new public management on the role of the United Kingdom Supreme Court Justices through exploring a range of interpretations from those with direct contact with the role. As such, a cross sectional approach which qualitatively seeks to uncover the underlying meanings and perceptions associated with role interpretation in a particular context at a given "moment" in time is more akin to achieving the research aim than a longitudinal study.

3.11 Sample

It is widely acclaimed that research samples must be selected for their relevance to the study. Due to the nature of the study, interviewing people whom have direct interaction with the role of the Justices is plausible for achieving the research aim.

Indeed, as aforementioned, alternative forms of data collection could have been utilised such as document reviews, historical analysis and ethnographic research. However, secondary data is limited in so much as role perceptions cannot be thoroughly investigated. Despite the limitations of the chosen approach, such as interviewee and interviewer subjectivity and bias, semi-structured interviews are the most appropriate for answering the research question. In line with the said approach, an appropriate sample of individuals whom have direct experience with the role of the Justices is sought.

Individuals whom have such experience include the Justices themselves. Those whom have experience as both Law Lords in Parliament as well as Supreme Court Justices are particularly relevant given the experience with the transition at hand. Additionally, any "Justice" whether a former Law Lord or

Supreme Court Justice has a valid account which may be utilised for an indepth understanding of the role of the "Justices" and how this has evolved and indeed been impacted by public management initiatives.

Furthermore, relevant others whom have experience with the role of the Justices may be used. These relevant others include Lord Chief Justices as well as Lord Chancellors; particularly those whom were incumbent at the time of the Constitutional Reform Act 2005. This is because these individuals have also experienced the transition from Law Lords into Justices of the Supreme Court and have witnessed the impact of public management initiative unto the role of the Justices under the Constitutional Reform Act 2005.

Other relevant others whom have a direct interaction and account of the role of the Justices also include the UKSC executive and non-executive teams which were created in part of, and subsequent to the CRA 2005. For instance, the office of the Chief Executive was a direct imposition of the CRA 2005, with the latter being created as an independent body under the advice of the first Chief Executive of the Supreme Court. These individuals, along with the personal assistants of the Justices have a direct interaction with the court agenda which ultimately impacts upon the role of the Justices in the new court.

For a holistic approach, Queens Council members whom put forth cases to the Justices are also deemed relevant. This is because whilst the Justices may provide an account of their role from personal experience, QC's can offer an objective account of the impact of public management initiatives unto the role of the Justices. Thus, QCs, particularly those whom have extensive experience of putting forth cases when the Law Lords were in Parliament, as well as in the newly created Supreme Court, are therefore relevant. These individuals are able to provide a witnessed account of how the role of the Justices has evolved under public management, thus enriching the data with accounts of those whom put cases forth for judgement to be passed.

3.12 Sample Selection

As aforementioned, the semi-structured approach adopted for the research questions is consistent with both the ontological and epistemological stance of the researcher as well as with wider literature (see Empson et al., 2013; Kirkpatrick et al., 2009). Unlike the large data sets sought in quantitative research, qualitative research typically has a much smaller sample. This is predominantly due to the foci on uncovering underlying meanings through rich thick descriptions as opposed to thin, generalizable data. In intersubjective research, a single conversation may be classified as worthy research. However, in subjective research, the sample size may vary (Cunliffe, 2011).

For the research at hand, it is typically acclaimed that data should reach saturation and a sample of twenty participants is predisposed as being sufficient dependent upon the nature of the study. A sample of twenty participants whom have experienced the role being studied or indeed have direct contact with the role are thus justified as both an appropriate sample selection and a sufficient number to provide credibility and credence to the findings. In accordance with the suggestive literature, the sample is selected as follows:

Table 3: Sample Selection

Role	**Number Interviewed**	**Participant Number**
Current UKSC Justice	3	1-3
Retired UKSC Justice	4	4-7
Lord Chancellor Lord Chief Justice	3	8-10
UKSC Executive Team	7	11-17
Non-Executive Director	2	18-19
Personal Assistant	2	20-21
Queens Council	2	22-23
Total		**23**

Source: Complied by Author

3.13 Methods for Data Collection

In line with a constructionist ontology and interpretivist epistemology, semi-structured interviews are the most appropriate for the study. This is because this type of data collection enables themes around the characteristics of NPM to guide the interviews, whilst allowing new themes to organically emerge.

To gain access to the identified sample, the author utilised personal contacts with members of the executive team as well as within the House of Lords. Snowball sampling was then used as participants referred the researcher to other prospective participants. This was achieved through two different streams. For members of the executive team, non-executive team, personal assistants and incumbent United Kingdom Supreme Court Justices – contact was made via direct referral within the Court. For access to speak with Lords (i.e. retired Law Lords, Lord Chief Justices, Lord Chancellors, Queens Council), personal contacts from members of the House of Lords were used. In both instances, snowballing was used.

To collect the data, the author visited each participant at a location of their choice (usually their office or a hired room). With the consent of each participant, all interviews were recorded with a voice recorder. These interviews were then transcribed, enabling access to the full interview as well as a paper-based copy for analysis. It is acknowledged that alternative data collection techniques may have been used. For example, rather than voice recording, some researchers have favoured video recording. This has been beneficial because unlike voice recording alone, video recording facilitates a more detailed analysis as body language itself "tells a story". However, the author does not seek to analyse body language, which is more akin to intersubjective approaches in which knowledge is formed in living conversations. As the researcher is looking for themes inductively emerging from the data, interview transcripts are sufficient.

Face to face interviews were adopted as opposed to other possible techniques such as telephone or Skype. The reason being that being physically present often facilities in building rapport – which interviews conducted over technological means may inhibit. Although, not all theorists agree, some

have suggested that technology may provide a platform whereby participants feel more relaxed in their own surroundings and less threatened by a researcher's presence. This may ultimately result in more reliable data as participants are more inclined to speak freely, rather than a reserved discomfort through interviewer presence. However, whilst there are arguably some benefits to using technology in this way for data collection, along with the more obvious time and cost savings; face to face interviews were favoured. The predominant reasons being that unlike telephone interviews, face to face interviews enable the researcher to respond to a participant's body language which telephone interviews limit to tone of voice. Moreover, whilst Skype enables visual as well as verbal communication, there are risks of the technology failing; and as noted in the literature review, some key participants may not necessarily be technologically savvy. Furthermore, the "culture" of some identified participants overtly adheres to a traditional, gentlemanly code whereby "time for visiting…." is often favoured.

Additionally, through face-to-face meetings, some paper-based documents were presented to the researcher by participants. Due to their sensitivity, it is highly likely that these documents would not have been shown over technological platforms. It is hereby worth noting that document reviews have been used by a number of researchers and are oftentimes useful in building a case (i.e. in this instance a single case study). However, in this case the documents presented to the researcher are secondary. Whilst some were interesting and helped to add depth to the semi-structured interviews and perspectives towards these, the documents are not designed for the purpose of empirically answering the research question. As such, the author accepted the documents for the purposes of aiding the interview discussion as opposed to utilizing the documents for thematic analysis – which lies beyond the scope of the research at hand. The researcher remained open to empirical data to be collected through written answers to the questions should a participant be unable to attend for an interview. However, this was not necessary, with all participants being open to the interview process. Moreover, written answers are not ideal because they inhibit the researcher's ability to ask direct questions and build upon information in living conversation.

3.14 Non-Elite and Elite Interview Characteristics

This study uses elite interviews since the target sample population consists of current/former United Kingdom Supreme Court Justices, Lord Chancellors, Lord Chief Justices, and Queens Council. Moreover, personal assistants, as well as the executive and non-executive team may fall into this category due to expressing similar characteristics as noted by Kakabadse and Louchart (2012):

Table 4: Non-Elite and Elite Interview Characteristics

Characteristics	Non-elite interviews	Elite interview
Access	Relatively easy Negotiated through formal channels	Difficult Negotiated through networks
Common interview style	Structured or standardised open-ended questions Semi-structured or guided interview In-depth informal conversation and/or life histories	Open or unstructured conversation Semi-structured or guided interview
Sampling method	Convenience, quota, theoretical, non-probability	Opportunistic, snowballing, non-probability
Ethical safeguards	Explicit responsibility of inquirer	Implicit process based on inquirer's credibility
Interview protocol	Important – use of interviewing guides	Less important – may or may not be used, but useful for inexperienced researchers

Interviewer's initial knowledge about interviewee and vice versa	Minimal	Considerable, including professional and personal information
Expert knowledge (i.e. balance of power) with...	Interviewer	Interviewee
Scrutiny/selection of particiants rests with...	Interviewer	Interviewee

Source: Kakabadse and Louchart (2012)

As noted above, elite interviewing differs rather substantially from non-elite interviewing. Theoretically, the application of Kakabadse and Louchart's table holds true to the investigation at hand.

3.15 Interview Themes

As aforementioned, guiding themes were drawn from the literature (see Appendix 1). According to the literature, key themes associated with new public management relate to: Management, Business Planning & Recruitment; Technology; Citizens; Finance; Politics & Administration. These themes are underpinned by "buzz words" to promote efficiency, effectiveness, transparency and accountability for instance.

Indeed, one may have focused upon just one of these themes, for instance to ascertain the impact of technology on the roles of the Justices in the new court. However, such an approach would have been limited as this would have siloed the foci onto one theme. This would have limited the ability to answer the research question as the restriction to one theme alone may not be indicative that public management initiatives have impacted upon the new court and more specifically the roles of the Justices working within the UKSC. Therefore, to answer the research question, it is essential to judge if the range of characteristics associated with public management are indeed evident. If a number of themes associated with public management are present in the new court – which dissipates life as Law Lords in Parliament – this would suggest that public management initiatives are having a profound impact on the role of the

Justices in the new court.

As noted in the literature review, public management offers a "menu" for governments on a global scale to select which initiatives they wish to pursue. If a range of themes related to public management are emerging in the new court and becoming integral to the roles of the Justices, this would indicate that public management is indeed impacting upon the Justices of the new court. Researching one theme alone would not be sufficient to answering the research question.

Due to this, a range of themes associated with public management have been drawn out of the wider literature. Moreover, these themes are consistent with moves in the lower courts under public management initiatives. These aforementioned themes have been investigated by a range of authors (revisit section 2.2.2) and are necessary to provide some organisation to the semi- structured interview technique adopted. As such, the adopted semi-structured interview technique usedthese key themes to deduce whether the characteristics of public management were present in the new court.

Indicative questions are subsequently developed in line with these themes. However, as the research is inductive, the semi-structured method facilitates a more conversational style with questions being shaped both during the interview, as well as upon reflection to probe future interviewees as the researcher's knowledge develops. In addition to this, some participants quite naturally have varying experiences with certain themes. For example, the executive team consists of individuals who have assigned and specific roles. There is a finance team, a communications team, and a human resources team for instance. As such, some individuals may have more experience with certain themes such as new financial plans, citizen outreach, or recruitment, respectively. It should be recapped that the researcher's ontology values the social construction of knowledge, with an interpretivist epistemology to gather knowledge. Therefore, the ability to interpret and adapt questions in the particular socially constructed interview site is in line with the stance of the researcher in achieving the research aim.

Although the themes identified facilitate some form of deductive reasoning to ascertain whether public management initiatives have impacted on the new court and the roles of the Justices, the mediation of the researcher is purposefully aligned to organically pose questions with the research participants.

Consequently this will encourage inductive reasoning as to the participants perceptions towards the impact of the identified themes. This is important as unlike unstructured interviews which are more closely akin to intersubjectivity or the binary opposite of structured interviews akin to objectivity and hypothesis testing; the open themes being drawn from the literature facilitate a conversational style, where perceptions and new themes are inductively drawn from the interview. This is important as although there are themes identified in the literature, such an approach enables new themes to be inductively sought.

3.16 Methods for Data Analysis

In line with answering the research question, thematic analysis using NVivo software to assist with the analysis is selected. This method of analysis is vastly different from techniques in quantitative analysis. In the latter mentioned, there is an ascription to mathematics, objective measurements, as well as numerical, statistical and computational techniques. The varying designs include: descriptive, correlational, quasi-experimental, and experimental (CIRT, 2021); with correlation, Analysis of Variance (ANOVA), and regression analysis being examples of basic inferential statistical tests. These analysis techniques are beneficial for large data sets whereby statistical manipulation is required due to the vast quantities of thin descriptive data.

However, these techniques are inappropriate for the study at hand. This is because rich thick data is sought in the qualitative approach identified. Indeed, there are a number of data analysis techniques that may be used to analyse qualitative data. These methods of analysis greatly differ from quantitative analysis methods which encourage deductive as opposed to inductive reasoning. For example, interview transcripts, audio and video recordings, images, text documents and notes may be used and analysed in qualitative research using a variety of techniques such as content analysis, discourse analysis, narrative analysis, grounded theory (although there are two types of grounded theory, one being inductive, the other deductive), and framework analysis.

For the purposes of this study, thematic analysis from interview data is selected. This is because, as

noted in the preceding section, themes are drawn from the literature. It is necessary to include themes from the literature in the semi-structured interviews to ascertain if the characteristics attributed to new public management are indeed evident in the new court. This is arguably some form of deductive reasoning as themes are drawn from the literature and questioned. However, the interview approach allows for inductive themes to emerge. As such, whilst there is some categorisation to guiding the interviews, participants are actively encouraged to share their perspectives on the role of the Justices in the new court and if they have noted any changes to this role. This allows for inductive themes to emerge which may not already be present in current literature.

As aforementioned, the key themes associated with public management relate to Management, Business Planning & Recruitment; Technology; Citizens; Finance; Politics & Administration. Therefore, the template analysis facilitated these hierarchal codes to direct the research questions. However, as these are unconstrainted new themes were able to emerges. Successively narrower codes relate to the "buzz words" underpinning public management initiatives such as the ability to promote efficiency, effectiveness, transparency and accountability. The a priori themes overarched the investigation inline with the literature on public management but new themes and indeed sub-divisions of these themes were able to inductively emerge. This is predominantly seen in Politics and Administration whereby broader constitutional concerns arose. These were seen to be underpinned by theoretical debate of government Agency versus Stewardship (Theme 3).

The three key themes were predominantly formed from the literature review. To show that there was an impact of public management, it was important to incorporate broad themes underpinning the public management movement. Choosing one theme alone (e.g. technology) would not indicate that this was pertinent to public management, rather the investigation would become specific to that particular theme.

Section 2.2.2 The Characteristics of New Public Management; identifies the "undisputed characteristics that are almost always mentioned by academic observers" Gruening (2001: 2). Taken collectively, these form the overarching themes underpinning the investigation. Some of the core characteristics are noted in the table below along with how they are grouped to form the underlying themes.

Theme	Characteristics
1) Management Style	Budget cuts; vouchers; accountability for performance; performance auditing; improved accounting; improved financial management; strategic planning and management; performance measurement; management style; freedom to manage (flexibility)
2) Citizen Outreach and Technology	Customers; more use of information technology
3) Agency versus Stewardship	Decentralization; separation of provision and production; separation of politics and administration

One may also wish to note here that (as identified in section 2.2.2), later publications have continued to use the abovementioned characteristics. To reiterate:

> *"NPM put new emphasis on topics like accountability, autonomy of managers and public organizations, efficiency, effectiveness, economy, value for money, output and market orientation, decentralization, and performance measurement and management. Given this emphasis, accruals accounting and budgeting, cost accounting, and output-based budgeting all became central in the implementation of the NPM agenda"*

Anessi-Pessina et al., 2016: 494; for the said accruals, see: Liguori et al. 2012; Skelcher et al., 2005

The first phase of coding used the broad overarching themes. The second phase looked specifically at the underpinning characteristics in line with these overarching themes. Some of the identified characteristics in the literature were clearly evident from the inductive findings. For example, there was a clear emphasis on new management styles such as a new managerial team, business committees as

well as financial and business planning. Directly relating to management, business and financial planning found in the private sector, there is a focus on the underpinning justifications of public management such as a focus on each of the aforementioned in line with efficiency and effectiveness. Allowing for perspectives to organically emerge, the coding of Theme 1, also evidenced an increased collaboration between the executive team and the Justices ultimately impacting on the role of the Justices to become more managerial as a result.

As identified in the wider literature, technology and citizen outreach are also characteristic of the public management movement. It may be suggested that these are two separate themes. However, during the coding process, it was difficult to separate the two. This is because the findings indicated a clear overlap from the communications team (in Citizen Outreach) to use technology. For example, the communications team relied heavily upon technology for outreach in terms of Skype-a-Justice, media communications and facilitating the application of cases to the court. Moreover, the uptake of technology showed new organisational practices emerging whereby the roles of the Justices were being transformed to adopt more technology in their daily activities and become much more tech-savvy than the Law Lords ever were. In one sense this represents new role pressures to uptake technology both in the recruitment process as well as pressures from new Justices which 'expect' the technology to be available due to being accustomed to this in alternative institutions. Moreover, there are the pressures from younger clerks, as well as wider social pressures such as that aligned with the media accessibility for openness and transparency.

Theme 3: Agency versus Stewardship initially focused on decentralization; separation of provision and production; separation of politics and administration in the first phase of coding. However, as inductive themes were subsequently sought, it was evident that there were much graver concerns to the role of the Justices – particularly their constitutional role. One should note that the Justices – particularly practicing Justices – are not at liberty to speak of politics which resides in the executive branch of governing. However, those directly akin to this role – i.e. Lord Chief Justices, Lord Chancellors and Supreme Court Justices (particularly retired Law Lords) were much more vocal about the detriment to

their overall constitutional role as a result of executive decisions (i.e. the Constitutional Reform Act 2005). Whilst wider literature characterised a separation between politics and administration, and this is indeed evident from the findings herein, the second phase of coding saw arguments between agency (underpinning public management) and stewardship (underpinning connotations of justice to emerge – revisit Table 2: Juxtapositions Between the Principals of NPM and Judicial Values). This highlights flaws in public management whereby the executive, under Parliamentary Sovereignty, is able to make political decisions without a green or white paper to constrain the voices of the Justices. Ultimately, Theme 3 brings to the fore severe constitutional concern when aligned with a hierarchal reform akin to public management initiatives as noted in section 2.5 of the literature review. On the one hand, it may be argued that the Justices have more role authority due to a clear separation of powers through their removal from Parliament. On the other, aligned with public management initiatives, the executive function has gained greater dictatorship over the highest Justices, threatening the separation of powers between the three branches of government. This is concerning when the constitutional role of the highest judges is limited by parliament, particularly when the law can govern without politics but politics cannot govern without the rule of law (Tamanaha 2004).

Taken collectively, the three themes were derived from the literature but through using thematic analysis, allowed for inductive new themes to emerge – this is particularly evident in Theme 3 as noted above.

With interviewee consent, each semi-structured interview lasted for approximately thirty minutes – one hour. The interviews are tape recorded and transcribed. The transcripts are then uploaded into NVivo and themes are coded for thematic analysis. NVivo software is favoured due to its reliability. It is able to easily and accurately create nodes enabling cross analysis to form categories. Whilst other analysis techniques do also allow for this, NVivo's simplicity for categorisation enables the researcher to accurately ascertain emerging inductive themes as well as similarities and discrepancies in interviewee perceptions across data themes. For instance, as the nodes are coded, themes emerge which can then be grouped. In the case of this research, three key themes emerge to show the impact of new public management on the role of the United Kingdom Supreme Court Justices (please refer to the Findings chapter below).

3.17 Trustworthiness and Replicability

As aforementioned, Tracy (2010) identifies eight big tent criteria for qualitative research. It is suggested that validity is sought in quantitative research through mass data sets which may be statistically manipulated to 'prove' or 'disprove' hypotheses. Reliability is achieved through the ability to replicate data with similar results – which quintessentially leads to the ability to generalise results outside of the given sample. This greatly differs from qualitative research, particularly from a stance of intersubjectivity whereby a single conversation may be analysed through narrative discourse for instance and classified as worthy research.

In the study at hand, as with other forms of subjective research, the research is situational. Thus, the purpose of the study is to ascertain perspectives of the role of the Justices by an exclusive and specific sample (UKSC Justices and relevant others), in a particular context, at a certain moment in time. As such, validity is situational, with reliability sought through research rigor and replicable, generalizable data is not sought as the fundamental purpose of the study.

Moreover, in qualitative research, trustworthiness and replicability are equivalents for the abovementioned. According to Nowell et al. (2017), striving to meet the trustworthiness criteria essentially means that the researcher is an instrument for analysis thus meaning that it is the responsibility of the researcher to assure rigor and trustworthiness. In the research at hand, the researcher gains credibility in the findings through remaining unbiased and reaching data saturation. In addition to this, the replicability of the study is plausible. Given that public management has impacted on the decision making process of governments on a global scale, the impact of the characteristics unto the role of Supreme Court Justices on an international scale indicated that the research is indeed replicable. However, unlike quantitative approaches, this research does not seek generalisability from replicability, rather it is inductive, using snowball sampling to ascertain perspectives pertaining to the impact of public management unto the role of Supreme Court Justices. As such, in line with Lincoln and Guba (1994), this research is trustworthy and reliable.

3.18 Limitations

There are a number of limitations associated with qualitative research. For example, the smaller sample size negated to quantitative research or the lack of 'pure' induction associated with a more intersubjective stance. However, both critiques towards the sample size fall short as each would hinder the ability to answer the research question. This is because in the former, the thin descriptions sought would hinder the ability to subjectively understand role perceptions; whilst the latter would inhibit the ability to work from a double hermeneutic, thus constraining the research through in-depth reflexivity (Cunliffe, 2011).

There are also limitations in terms of the sample obtained. For instance, not all members of the Supreme Court were able to be interviewed, and indeed, not all members associated with the Constitutional Reform Act 2005 participated. However, the sample did suffice in so much that 23 participants who had experience with the role of Supreme Court Justices within the give context were interviewed and data saturation was achieved.

Another limitation pertains to researcher bias. In quantitative research, this issue tends to be mitigated by mathematical equations and the replicability of data. Due to semi-structured interviews being chosen, the researcher ensured that themes were put to participants, with open ended questions. This ensured that coercive or leading questions were not apparent. Rather, the interviewees were able to speak freely, with their views later guiding the inductive grouping of themes.

3.19 Ethical Considerations

According to Miles and Huberman: "Specific ethical issues are, explicitly or not, nested in larger theories of how we decide that an action is right, correct or appropriate" (1994 pp.289). Building upon Deyhle, Hess, and LeCompte's five general theories (1992) it is suggested that a researcher may adopt any of the following approaches: teleological; utilitarian; deontological; critical theory; and, covenantal view. Furthermore, reference is given to Flinders' (1992) relational ethics which emphasises "issues of attachment, caring, and respect" as well as ecological bases for ethical decisions which considers "the

impact of actions on a complete, interdependent system" by considering the broad context (Miles and Huberman, 1994 pp. 289). Indeed, the researcher's stance in terms of how data could, and should, be collected, used, and ultimately destroyed will determine the approach taken. For example, if the researcher chooses covert as opposed to overt research under the premise that the end justifies the means.

As suggested by the author in the author's 2010 publications (Scott & Macmanus, a 2010; b 2010), theories may be limited by considering how the researcher may feel in a given situation and apply this to the research participant. However, as argued by Scott and Macmanus, this overlooks the fact that people have different perspectives, thus how the researcher may feel in a given situation does not mean that the participant will feel the same. Therefore, to reach Kholberg's (1981) highest level of ethical judgement, the researcher should ascertain how the participant feels in a given situation and apply theories of ethics to facilitate this understanding. Although, it should be noted that taking this subjective stance is limited as one can never truly know the perspective of the other. Moreover, as the researcher is only in contact with the participants for the purposes of the research, little background knowledge of the thoughts, feelings and opinions of the participants.

With these potential quandaries in mind, the researcher endeavours to adhere to ethical standards through adhering to the University of Reading ethics procedures. Prior to any data collection, the researcher applied to the University of Reading Ethics Committee and received favourable approval to conduct the research. All participants received an Information Sheet, Interview Guide, and signed a Consent Form prior to any data being collected (see Appendix 1-3). The Consent Form details the role of the researcher in ensuring confidentiality and anonymity; as well as how the data will be collected, used, and ultimately destroyed. It also details the rights of the participant such as their participation is voluntary and they are free to withdraw at any time without detriment.

Not only is the research overt, showing an 'ethical' level of transparency but as per the request of very influential individuals over the running of the Court, any direct quotations were returned to the said individuals for consent prior to appearing in the thesis.

3.20 Pilot Study

The subsequent sections relating to the pilot study justify the need for the pilot study to test the research method, researcher's approach and data analysis technique. Lessons from the pilot study and their implications to the main study are then highlighted.

3.20.1 Purpose of the Pilot Study

It is widely acclaimed that pilot studies should be conducted prior to the data collection process. This applies to both primary and secondary data collection. The purpose of pilot study is to test the research method to, as much as possible, eliminate any raising issues prior to proceeding with the full data collection (Anesthesiol, 2017). Moreover, pilot studies enable the researcher to determine the viability of the research question(s), the research theme(s), as well as the order and flow of the themes posed. In the case at hand, how participants respond to the researcher's approach may also be used to ascertain if, for example, respondents were hesitant towards being tape recorded or found particular topics sensitive and uncomfortable. Furthermore, the pilot study yields an indication towards suitability of the time allocated for each interview, along with the appropriateness of the location.

The results and findings from the pilot study may then be used to make any necessary modifications to the research design prior to the final study. Theoretically, this facilitates the ability to, as much as possible, apply the "best" data collection and analysis techniques

3.20.2 Pilot Study Sample

This study aimed at an overall sample size of twenty participants, consisting of UKSC Justices and relevant others – 23 participants were finally reached. As noted by Connelly (2008), pilot studies should aim to use a sample of 10% of the overall sample population. This primary pilot study should be sufficient to indicate if modifications to the research design are required prior to the final data collection (Bell, Whitehead & Julious, 2018; Gillham, 2005; Huberman &Miles, 1994). Should major revisions be required follow up pilot studies may be conducted until the researcher is satisfied with the proposed research design.

Due to the nature of the research, one UKSC Justice and one relevant other is deemed appropriate for trailing the research approach, research questions, as well as the data analysis technique in line with answering the research question.

3.20.3 Pilot Study Data Collection

The researcher relied upon personal contacts to be introduced to participants in both the overall sample population as well as for the pilot study. A personal contact of the researcher was previously employed to work in the UKSC. This contact introduced the researcher to the Chief Executive of the Supreme Court. A 1-to-1 meeting was arranged for the researcher to visit this individual at the court. An interview was conducted which lasted for fifty minutes.

Through establishing rapport and explaining the importance of the research, the Chief Executive then contacted the President of the Supreme Court. This Supreme Court Justice was subsequently interviewed also during a 1-to-1 meeting at the court, which lasted for forty minutes. Both the President of the Supreme Court and the Chief Executive then suggested other people within the court who may be interviewed for the final study. It should be noted that all participants volunteered, with no pressure being placed and ethical standards including confidentiality and the right to withdraw at anytime were clear.

Prior to the pilot studies being conducted, informed consent was obtained. This was achieved using the same consent form and information sheet used in the main study. In addition, the researcher asked whether the participant was comfortable with the research being tape recorded, reassuring the interviewees of their data collection rights.

Furthermore, the researcher explained the purpose of the research and provided participants with a document showing the various interview themes guiding the questions. These themes related to themes identified in the new public management literature and were underpinned by “buzz words” associated with new public management (such as the focus on efficiency, effectiveness, accountability and transparency). Interviewees were encouraged to speak freely during the course of the interviews, thus enabling new themes to emerge which may not have necessarily been identified in the wider literature.

3.20.4 Pilot Study Data Analysis

The researcher tape recorded and transcribed the pilot study data. For the purposes of the researcher being immersed with the data, the recordings were listened to several times and the transcribed data was then read before being uploaded into NVivo 10 software. Key themes from the literature were sought and coded with subsequent coding being developed in a bottom-up inductive manner. This tookthree phases. The first phase coded data in line with wider public management literature. The second phase coded data in relation to the 'buzz words' associated with public management such as value for money; efficiency; effectiveness; openness; transparency; and accountability – paying attention to any 'new' words arising. The final phase sought for new themes unspecified from the literature by the researcher.

The data was then assessed in line with the guiding role theory to ascertain any impacts of public management on the role of the Justices.

3.20.5 Pilot Study Findings

The pilot study 'confirmed' that the key themes drawn from the new public management literature were in line with changes being made to the new court. Moreover, the findings indicated that new themes may emerge around the constitutional role of the Justices as well as how their role may be impacted in line with government agendas on international levels. Despite the changes bringing new role expectations, it was repeatedly reinforced that the role had not changed as the role was to make excellent decisions and judge on points of law. The defence against any change to the role was largely supported in line with the characteristics of public management – for example, to increase efficiency, effectiveness and transparency.

3.20.6 Learning Points from the Pilot Study

The pilot study revealed several interesting results. In the first instance, the pilot study effectively tested the research design and found that the themes emerging from the literature were seen to be found in the new court. As such, this validated the supposition that new public management was indeed impacting on the United Kingdom Supreme Court.

The pilot study also served to assist in the flow of information and how themes were addressed. As the semi-structured interviews progressed, it became apparent that the themes guiding the conversation should be addressed in a flexible manner allowing for inductive information to emerge.

Furthermore, the pilot study served to test the methods for data transcription and analysis. It was verified that the length of each interview (approximately 45 minutes) was sufficient to yield an appropriate level of information for data. Moreover, the use of NVivo software was appropriate for the analysis.

3.21 Chapter Summary

In conclusion, chapter three details the overall methodological approach taken to answer the research question. A constructivist ontology and an interpretivist epistemology are identified as the most appropriate for achieving the research aim and answering the research question. Moreover, a qualitative study using semi-structured interviews with United Kingdom Supreme Court Justices and relevant others is necessary to understanding the roles of the Justices and if the overall role has been impacted by new public management initiatives. To achieve this, key themes are drawn from the literature with the ability for participants to speak freely, thus allowing new themes to inductively emerge. The data is transcribed and NVivo software is used to assist with the analysis. A pilot study is conducted to test the research approach. Although there are identified limitations, the research design is justified against possible alternatives as the most appropriate in line with answering the research question and achieving the research aim.

Chapter 4: Findings

4.0 Chapter Introduction

The findings indicate that the role of the United Kingdom Supreme Court Justices has been impacted by characteristics associated with new public management. These characteristics are grouped under three key themes herein this chapter: Theme 1) Management Style; Theme 2) Citizen Outreach and Technology; Theme 3) Agency versus Stewardship. The findings section summaries by drawing on the main conclusions from each theme and presenting a model for the impact of new public management on the role of the United Kingdom Supreme Court Justices.

4.1 Theme 1: Management Style

4.1.0 Section Introduction

The findings indicate that there are new management practices in the Supreme Court which are vastly different from when the Law Lords resided in Parliament. Prior to the move into the Supreme Court in 2009, the Law Lords had assistants who would help with the day-to-day role of the highest judges. However, in the new court, there is a new management team, appointed to alleviate the Justices' involvement in the running of the new court building. Additionally, there are a number of new managerial styles, business planning, financial planning and meetings to discuss strategy – all of which are characteristic of new public management initiatives and have impacted upon the role of the Justices. The findings in this section suggest that the Justices are becoming much more managerial and quite ironically juxtaposes the 'need' for these characteristic reforms. These findings are consistent with wider literature that shows how under public management initiatives, hybrid forms of management are emerging. This hybrid between Judge-Manager is consistent with literature found in the lower courts as well as in other professions impacted by public management. Moreover, new managerial styles are evident in the new court – particularly amongst the executive team. Although it may be argued that

these forms of management are separate from the Justices independent "just judging", the collaborative forms and neo-normative styles may be seen to indirectly impact on the role of the Justices.

4.1.1 Management Structure

The Constitutional Reform Act 2005, created a new atmosphere for the Law Lords to work in. This is because it paved the way for the Law Lords to become Supreme Court Justices and move into an entirely new building – Middlesex Guildhall, in 2009. The findings indicate that this is significantly different from the House of Lords, where judicial assistants were there only to help the Law Lords to carry out their day-to-day judicial business.

> *It's very different from the House of Lords because there we were a committee. we did have our own staff….and we had more resources than other departments…but we were part of the whole set up and that included their IT, their website, their personnel, their building but when we moved here we of course had to do that all ourselves so we have to run this building, we have to manage this building and manage our own resources….we had to have staff to help to run the building which we didn't have before, we just used to have staff to help to run the judging. So that changed dramatically…*
>
> UKSC Justice 3

Thus, subsequent to the Constitutional Reform Act, 2005 an entirely new management team was created. This consists of both executive and non-executive directors. The purpose of the former was believed to be necessary in order of managing the new building and any other business aside from the role of judging. To alleviate the managerial role of the Justices, executive roles were created for the: Chief Executive; Director of Corporate Services; Registrar; Deputy Registrar; Director of Finance; Head of Communications; Head of IT and Building Services; Head of Human Resources; Head Judicial Assistant; Librarian and Departmental Records Officer. However, whilst the President of the United Kingdom Supreme Court remains a Supreme Court Justice, s/he can delegate administrative functions to the Chief Executive:

> *The CEO's role is within an office which the Constitutional Reform Act set up and within the Act, the President has total responsibility for the Court but the President can delegate administrative functions.*…..a formal instrument was signed delegating those functions to the CEO and this is for the protection of the judiciary so that if there is anything which happens in relation to the finance or the security then it becomes the responsibility of the CEO so it doesn't come back on the judiciary or them taking responsibility of those things….
>
> UKSC Executive Team 11

The creation of a new managerial team, consisting of executive and non-executive directors was said to remove the non-judicial business of the court away from the Justices. This was under the intention that there would be new managerial responsibilities when the Justices moved into an entirely separate building. In theory, a management team was necessary so that the Justices could concentrate on their identified role – to hear cases and pass judgements.

> *They are released from staff management, resource management, security management, building management, all of that side of things so they (the Justices) can concentrate on what they're appointed for and their expertise which is delivering excellent judgements and hearing cases so it is very much like a front of house and a back of house operation….The CEO is in charge of what should happen for the working of the court….In some court models the senior judiciary or the head judiciary do an awful lot of administrative duties and that takes them away from their judicial function….It changes with the personality (of the CEO and President) so that can make a difference in the margins but the basic structure is there.*
>
> UKSC Executive Team 11

Additionally, there was a common consensus amongst almost all participants interviewed that the Justices were independent and quite separate from the administration.

> *So there is a distinction between the justices and their role and the administration and their role. Although we like to keep the communication open….Their role (the justices) is primarily*

to produce the judgements that go out….There are distinctions between the administration of the court and even for the (president), there are delegated powers which is given to the (ceo) and the justices shouldn't be involved in the day-to-day running of the administration but they might like to have an overview so if they feel like it's necessary then they can influence change if they think that it's required.

UKSC Executive Team 14

This is quite interesting as it suggests that although there is a blurring of role distinction between the executive team and the Justices through an open dialogue, it was stressed that the Justices should not have involvement in day-to-day running of the court but can have an input. Moreover, the creation of a management team is consistent with wider literature which suggests that new managerial styles are emerging under new public management initiatives, with a focus on 'independent' groups managing their own resources.

Although the executive team came into effect under the Constitutional Reform Act 2005, created by the executive branch of government and agreed in parliament; it is the President, as the highest Justice of the Supreme Court, who is responsible for appointing the Chief Executive. This creates new role demands of the highest Justice for appointing the most suitable 'head of management'. This is also consistent with evidence from the lower courts which suggests that new management teams were created with the intent of alleviating judges from managerial roles but that this actually resulted in increased levels of managerial involvement.

4.1.2 Managerial Team

The increased levels of managerial involvement have emerged both organically and as a result of wider pressures. For example, it was noted that there was personal interest by at least some of the Justices, in the running of the court. Also, it was noted that whilst the first Chief Executive was very clear that the Justices should be separate from the executive team, the second Chief Executive was much more collaborative and saw the benefit of involving the Justices, at least to some degree, in the management

of the court. Thus, the collaboration between the Justices and the executive team has increased over time as well as in accordance with the personality of the Chief Executive Officer. As indicated:

> *In several years, things have changed. Most notably when (the former CEO) retired and then (the current CEO) came in. (The former) was very clear to keep the Justices and the administration quite separate (the former CEO) didn't want the Justices getting involved in the administration at all and was very clear about that. The Justices at the time – and bearing in mind that fifty percent of them have changed – wanted to be involved in the management board and sitting in more of a strategic setting of the court. (The former CEO) was always against that idea and told the Justices so. (The current CEO) however is far more collaborative and saw the value in setting up a strategic advisory board including some of the Justices so that they are involved in the direction that we're going. They're involved in IT, so they're more linked in….that's quite a big change because it meant that the Justices are more part of the family so instead of just running at their own speed it's closer and it also gives (the CEO) an opportunity…if judgments were falling behind then (the CEO) could say in a professional way, one of the issues that's come up for us is in the administration is that because this hasn't been done, we've had a lot of media attention, we've had a lot of phone calls coming through, we've had people in contact with the registrary….*
>
> UKSC Executive Team 14

As indicated, this shows an increase in managerial involvement from the Justices which is quite separate from when the Law Lords were in Parliament and had no managerial responsibilities. According to role theory, this indicates new role opportunities emerging under the new CEO to become involved in management, strategy and IT for instance.

4.1.3 Increased Collaboration Between the Executive Team and the Justices

Whilst the front and back offices (i.e. the executive team and the Justices, respectively) are predominantly separate, there is the ability for members of the executive team to approach the Justices

directly.

> *Lord (XX) who was the Deputy President came to visit me because there was a query….I really felt that I was being tested….but that wasn't true, (Lord XX) just wanted to know my opinion but that's very rare. On a day-to-day basis, my interaction with the Justices isn't there. They know that I am are there if they had an issue….The justices are involved with the administration for the recruitment of judicial assistants.*
>
> UKSC Executive Team 14

There is much more managerial interaction with the Justices than ever before in the House of Lords. This may be through judicial assistants, although, as noted, members of the executive team are at liberty to contact the justices directly should they deem it necessary to do so. This is gravely different than in the House of Lords where there was no managerial team. The increased collaboration between the executive team and the Justices indicates new role opportunities emerging within the new court. As noted by one participant:

> *People may ask whether the law applies in Scotland and it is clear that the answer is yes as this is part of our jurisdiction but if (the communications team) have questions outside of their knowledge then they can speak with the Justices repeatedly….so (the communications team) can check with the Justices about the implications of the judgement.*
>
> UKSC Executive Team 15

Furthermore, the Chief Executive of the court meets with the President of the Supreme Court every Monday. This is for the purposes of informing the President about the running of the court and actively asking for the input of the President as a representative of the Justices. This clearly indicates a change in the role of the highest Justice in the court to not only be informed of the management and business practices but also to have the ability to offer their advice.

> *The main point of contact for the CEO is through the President and there are meetings every week….but the CEO is in touch with the President everyday….the CEO keeps the show on the*

road as it were but the Justices can come in and talk to the CEO.

UKSC Executive Team 11

This is further emphasised as not only is a clearer management structure evident (revisit section 4.1.1) but roles are blurred between management and the Judiciary.

The president and deputy president have a lot of day-to-day contact with the chief executive on the running of the place. There is also a strategic advisory board and X serves on that. On the strategic advisory board there is the chief executive, the corporate director, the registrar, the librarian is the minute taker, and then there is the president, the deputy president and X represents the justices on it.

Not long ago I suspect in the court both in England and Wales and in Scotland the senior judge with one or two officials would've managed the system in a rather ad hoc way. Well now things are a lot more structured and even in a small court like ours where we have these bodies with proper minutes taken and regular meetings to review what we're doing.

The fundamental role of the justice, particularly in the supreme court, is organising the law, keeping it coherent, sorting out problems that develop and giving guidance to the courts below on how to apply the law. So that's the fundamental job. But there is no doubt that in recent years judges have been drawn much more into the management of the court system.

UKSC Justice 2

The increased collaboration arguably blurs the distinction between the role of the Justices as strictly judging when there is much more of an organic involvement with the running of the court. Although there is a clearer management structure in the new court, the increased collaboration between the Justices and management ultimately creates new role opportunities but also role expectations. Following on from the collaboration noted above, one may wish to note that the Chief Executive prepares reports for the Justices to keep them informed about the main developments in the running of the court. For example, a management board was set up to involve the Justices (namely the President and Deputy President) in the planning of the court direction, and for the first time the Deputy President appointed

held a position from a business background.

4.1.4 Chief Executive Report

It is the role of the Chief Executive to be responsible for the management of the court, as well as responsible to Parliament. However, for the purposes of informing the Justices about the management of the court, the Chief Executive Officer condenses the plans for the Justices' 'quick reading'. This has enabled the Justices to remain informed about the management and business planning of the court in a quick and efficient manner.

> *There is a report from the CEO which explains (to the Justices) what is going on….by and large, management has not been within the role of the Justices, it needs to be presented in what is not the 'hard core civil service way of operating' so one can get their message across and get involvement. So, the CEO produces a chief executive's report which is essentially a load of side headings saying what's happening in relation to the income, the budget, the accommodation, IT, and all of these sorts of things….and this was seen (by the CEO) as very important as otherwise they're working very much in the dark, in a vacuum….*
>
> UKSC Executive Team 11

As such, the Chief Executive Report enables the Justices to remain informed about the running of the Court. This is vastly different from in the House of Lords where they were part of Parliament's IT, budget, building management, etc. Thus, in the House of Lords, the Justices (then Law lords) had absolutely no involvement in these types of things at all. In the Supreme Court, new role opportunities have emerged for the Justices to be informed and consequently involved in management outside of their ascribed role of judging. This is rather ironic given that the executive team was employed to alleviate the Justices from this.

4.1.5 Business Committees

Business committees have been set up by the executive team to strategically discuss the management on the Court. For instance, the management board was created with the intention of involving the

Justices – namely through the involvement of the President and Deputy President.

> *Through the structure we have obviously the management board meeting, we have the audit committee, we have a renumeration committee, and we have a strategic committee. The strategic committee is the basis of how we manage the Court. The management board is clearly all of the Heads of Departments, basically HR, Communications, Finance, and Registrary…..The strategic committee involves the Judiciary, (the President) chairs….will look at the Court in a more strategic level, whether to improve the IT, whether we need to consider our position regarding fees, so the Judiciary don't get too involved in the details but they're obviously aware of what's going on and their link is (the CEO) who will meet with them on a monthly basis to talk about the Court but it doesn't involve the rest of us, that is done independently.*
>
> UKSC Executive Team 11

> *The strategic advisory board was set up (as the CEO is common to both the administration andthe Judicial functions). This board is chaired by the President, it has two Justices on it, it has the three senior staff and the two non-executive directors and that is to talk about things of a general strategic nature which span both the administration and the Justices….we've talked about Brexit, we've talked about financing – it's not a decision making body….that has provedbeneficial for everyone participating and hopefully for the organisation as well.*
>
> UKSC Executive Team 11

This indicates that the Justices are more involved in management than they were previously in the House of Lords. This can be seen rather overtly, with the creation of the strategic committee (also known as the strategic advisory board) and open involvement of two of the Justices in strategic meetings. However, there are also additional subtle changes which are impacting on the role of the Justices. For instance, during the management board meetings – which involve the Heads of Department – Key Performance Indicators (KPIs) are discussed. As such, the strategic advisory board (committee) clearly impacts on the role of the Justices as some of the Justices are physically present and indeed able to comment on business matters concerning the court. However, other meetings such as the management

board meetings indirectly impact on the role of the Justices. This is because in these meetings KPIs in line with the court's business and financial plans are discussed. These KPIs may be to increase citizen outreach for disadvantaged schools for example. Therefore, the Justices may be expected to have more interaction with schools in certain areas through means like Skype-a-Justice (see citizen outreach below). Thus some of the meetings directly impact on the role of the Justices whom are physically present and able to comment on the business of the court. Whilst others have an indirect impact if the executive team deems that there should be more outreach, for example.

> *So in terms of key performance indicators that (the communications) team have is making sure that (the communications team) keep targeting certain groups of people like law students….*
>
> *In terms of KPIs – we publish our business plan every year so probably in the Autumn, we will be led by corporate services to think about what is the business plan for the following year and the process typically is that we (the management team) will propose what we think our objectives, our KPIs, should be and our metric system for the following year – what is it that we are committed to deliver – how many people do we hope to reach…..*
>
> UKSC Executive Team 15

Key Performance Indicators are typically found in the private sector. Although, under new public management initiatives, they have been increasingly found in the public sector. This has put pressure on the role of many public sector professionals. For example, the police force both within the United Kingdom as well as on international levels, have been faced with new KPIs creating new role demands.

Although, one should note that whilst there are KPIs now present in the UKSC, it is widely acclaimed that the Justices should remain independent and hold meetings themselves to organise their own workload. As such, the Justices' meetings are typically of a Judicial nature such as for the appointment of particular Justices to certain cases.

> *There are also Judges' meetings which the President chairs which the CEO attends and they happen about twice a term….and they discuss matters relating to the Justices' and the running of the cases which we have here…..There are some aspects of administration which are very*

much the Judges' territory around listing or case management or anything in that sort of area….

UKSC Executive Team 11

This may arguably facilitate the independence of the Judiciary and is not necessarily different to when the Law Lords were in Parliament. For instance, as noted by one participant:

They (the Justices) will be aware of cases – they are very aware of the pressures which are on from the media and a political perspective and the significance of actually this case….if a judgement isn't given for three months then the consequences are going to be minimal whereas another case needs to be immediate….so they've got to react to that. We (the administration) monitor cases and we are aware of when a judgement hasn't been given and would then question why is that….There might be something happening in the European courts which might then influence what should happen next….so it might be a case of, hold up a minute before we make this judgement we need to see what is happening here because that might then impact upon our judgement….and the same with the lower courts….but they're (the Justices) are acutely aware of that and it's not really for the administration to then come in and say come on, that case you heard two months ago, we really need that judgement sorted out, it's far more subtle than that but their awareness is quite acute so that decision will have been made early on – we need to get this one out….They (the Justices) will prioritise (cases) amongst themselves….The lead judge might say, there are some pressures here so what I would like to do is get my judgement out as soon as possible to share with you (the other justices on the panel) to see if there's anything that you agree or disagree with….it's not really up to the administration, it's up to the judges how they then prioritise.

UKSC Executive Team 14

This indicates that the management team do not necessarily put new role demands on the Justices in terms of case management. Rather, the Justices prioritise cases amongst themselves, much the same as when they were Law Lords in Parliament.

With the independence of the Judiciary in mind, the administration, despite their KPIs, maintain that the Judiciary is not being monitored.

> *The other thing was to introduce more statistical information into those meetings. There was a great concern about it not feeling right for the administration to monitor what the judges are doing…..they are independent….The idea that the executive is monitoring what they're doing is just wrong in principal. However…..there is more interest in the judiciary….people have changed in their views of service delivery and what's being done…..there isn't anything in terms of 'You need to work harder' but more information is provided (from the administration) for them (the Justices) to police their own activities….The CEO picks things which would be of interest to the Justices and what is perceived that they would want to know about.*
>
> UKSC Executive Team 11

According to role theory, there appear to be emerging opportunities for the Justices to be involved in the management of the Court, as well as more subtle role opportunities changing the role of the judge into a more managerial mindset. Furthermore, there are increasing external pressures from the executive team to develop KPIs which creates more role demands by the newly created management team. However, not all role demands are created by the executive team. For instance, the Justices prioritise cases amongst themselves with consideration of external social demands, much the same as they would have in the House of Lords. Although, it should be worth highlighting that the increased media attention may indeed have correlated to an increase in social demand for particular cases to be prioritised. For a further discussion, please visit the section on "Citizen Outreach" below.

4.1.6 Deputy President

As suggested, the strategic advisory board (committee) was deliberately formed with the purpose of having the input of the two highest Justices in the court – the President and Deputy President. In addition to this, one should note that the Deputy President, has for the for the first time, been appointed from a business background. Thus, echoing the more business and managerial approaches taken in the lower

courts.

> *Judges just as people, and not as a cast are more managerial and more involved in the business….If one looks at the Royal Court of Justice and what the senior judges are doing there compared to what they did twenty five years ago – they're on boards, the court service board, they manage a lot of the business but here (the United Kingdom Supreme Court) is smaller and more niche….Perhaps the same managerial pressures have not evidenced themselves. Having said that, some of the things which have changed over the last few years have morphed in that direction….The new Deputy President (Justice of the Supreme Court) comes from a much more – or has had – a managerial post….which the outgoing Deputy President has never had and it would be interesting to watch that because the Deputy President role could well be one of those roles which is more on the managerial side….Sometimes it's forces which you are not aware of, sometimes it's changes which are imposed, sometimes it's just personalities getting into different jobs which make differences….here it's not so structured that it cannot (the managerial side) flex so it will be interesting to see.*
>
> UKSC Executive Team 11

The appointment of a Deputy President from a business background is consistent with the increased management styles seen in the lower courts since the adoption of new public management agendas. The decentralisation of governing under public management initiatives has arguably contributed to hybrid roles of Judge-Manager, which is consistent with public management literature of professional service firms. For instance, on a wider scale, new public management initiatives have been seen to transform the role of professions such as doctors (Kirkpatrick et al. 2009). This has reportedly resulted in new hybrid-styles of management, whereby doctors are taking on much more of a managerial role. Although not always, results have often indicated that this has decreased efficiency and resulted in increased workloads.

4.1.7 Non-Executive Team

The management team consists of both an executive team as well as two non-executive directors. The appointment of two non-executive directors was brought in by the first Chief Executive. The Chief Executive runs the administration and is responsible to Parliament. However, the non-executives share the responsibility for ethical oversight.

> *The Chief Executive runs the administration…(and)…is responsible to Parliament….To report to Parliament (the Chief Executive) produces a report every year which is basically a set of accounts. A detailed report goes to Parliament, it is filed in Parliament and is about basically how the Court has behaved in all sorts of areas other than finance but is obviously a detailed set of accounts of well which is filed with Parliament. So, within these committees that we sit on, we run, what I can say, is the ethics of the Court…it's run to a very strict code of normally accepted conduct in terms of financial prudence to make sure that all budgets are met….they (the executive team) do keep detailed budgets, they do do business plans, they are reporting monthly – roughly…all expenditure against budget. We a running within our plans which the Treasury monitors.*
>
> UKSC Non-Executive 19

It is further noted that:

> *When they formed the Supreme Court they decided – because they moved out of the House of Lords – and made it independent…they set it up almost as it's own mini-government department – because it has it's own accounting officer….and (the CEO's) responsibilities are to report to Parliament. At the same time when they structured it, they decided to bring in – and make the board have some independent members….non-executive directors and (they) sit on the management board. Now, the management board is chaired (by the CEO), who is in charge of running the court, we are not involved in any of the legal aspects whatsoever. The Justices obviously do their various work in terms of appeals….It is the first time that we have had a Supreme Court in this country but the way that they structured it was so that it had it's own*

independence – and that is the key.

UKSC Non-Executive 19

The purpose of the non-executives is very much akin to the justification of non-executives in the private sector. These private sector initiatives are in correlation to the underpinning theoretical justification of public management which values market-based reforms (revisit section 2.2.2). The role of the non-executive directors is to act as impartial to the executive team with the purpose of ethical oversight. As suggested:

The role of the non-executive directors is to give scrutiny to the conduct of the Court, the way that it's structured, the way that it's run in terms of administration… If we feel like there are any concerns we (as the non-executives) would ask to speak to the President (of the UKSC) independently….which has never occurred as such but if we have concerns about the CEO or how the administration is run we would then ask to speak with the President.

UKSC Non-Executive 19

Although the non-executives are appointed for ethical oversight, one may wish to note that both of the non-executives as well as the Chief Executive are – at the time of writing – all accountants. This indicates an increase in financial awareness and accounting. Thus, the Chief Executive as accounting officer, values the input of the two non-executives.

The management board has senior staff, there are two non-executive directors and they advise the CEO in the role of accounting officer.

UKSC Executive Team 11

It is interesting to note that the non-executive directors are said to be employed for ethical oversight. Yet, with them being certified accountants, they are essentially streamlined under the free market economics underpinning new public management. This is consistent with reforms to other legal service providers impacted by new public management. For example, Empson et al.'s (2013) study of the uptake of management professionals into legal service firms under Alternative Business Structures instigated

by the Legal Services Act 2007. These management professionals were seen to be predominantly certified accountants. Financial planning, value for money and accountability for spending are all consistent with free market economics underpinning new public management initiatives.

4.1.8 Financial and Business Planning

The Chief Executive Officer – as accounting officer – is accountable for the budget in Parliament. Although some things such as the Justices' salaries are not fully within the Chief Executive's remit.

> *The total running costs are 12.9 million and we get 1.3 from fees, 6.6 from the contribution from the three jurisdictions, 4.9 million from the treasury and 100 thousand on (independent) activities….We are a civil service organisation….(which) means that our finance structures are pretty standard….we have two non-executive directors, both with a finance background so they keep a good watch on how everything is operating….we are governed by the civil service central pay control….the cabinet office come out with guidance.*
>
> UKSC Executive Team 11

Prior to the Constitutional Reform Act 2005, the Law Lords in Parliament drew upon the budget from the House of Lords. However, as the Supreme Court Justices became independent from the House of Lords, they were bestowed with their own budget. This comes mainly from 'the tax payer', although there are other means of revenue generation.

> *From the House of Lords….the finances were all part of the House of Lords….here we have our own budget which is negotiated with the Treasury (by the CEO).*
>
> UKSC Justice 3

> *Most of our money comes from the tax payer. We get a certain amount from the treasury, we also get an amount from the three jurisdictions – England, Wales, Scotland and Northern Ireland who pay into the costs of the Court and that is based upon a historic model of the proportion of cases which come to the Court. We also charge fees for people who come to the*

Court….and then we have more entrepreneurial things – So, we rent out some of our premises….have the sale of gifts, mementos, etcetera (for the general public) but that accounts to a small amount of the income….Under the treasury rules, anything up-to a million that you generate through your own activities, you can keep.

UKSC Executive Team 11

As the CEO as accounting officer is responsible to Parliament, there is inevitably an increase in accountability for the budget. This is in line with new pressures as a result of public management initiatives which ultimately creates new accountability measures.

In addition to the increased accountability measures in line with spending subsequent to the Constitutional Reform Act 2005, annual business and financial plans came into effect. These are the responsibility of the Chief Executive, who then reports to Parliament.

As noted:

We have an annual business plan which is published every year and is on the website. This is seen by the President and Deputy President but it is not approved by them in the details. That is important to the administration because it sets out what they (the administration) are doing….There is an annual report which was set out by the statute (the Constitutional Reform Act, 2005).

UKSC Executive Team 11

We have an annual business plan and it's quite wide in some respects….we can have someone wandering in and wanting to find out about the court to a delegation from china coming and spending a couple of days with us – so some of it is quite wide but we (the administration) have to prioritise.

UKSC Executive Team 14

The annual business and financial plans created by the Chief Executive are as a result of the meetings held – namely the management board meetings (committee) as aforementioned. Moreover, the President

of the Supreme Court is at liberty to comment on the finance operations.

> *We are a government department….the CEO (as accounting officer)….It is not right for the Justices to make budgeting decisions but obviously the CEO is in touch with the President about these issues as the President will obviously have their own issues. So there is an open dialogue between the CEO and the President of the Court….but the budget decisions, authorisations and all of the rest of it is down to the CEO and the administration. So, the Justices don't really get involved in the detail.*
>
> UKSC Executive Team 11

> *How finance and budgets are managed is comparable to other government departments – there are strict measures in place to make sure that we are getting the best value for money – we get a number of quotes for work and evaluating what is best value for money is not that you automatically go with the cheapest option because one has to weigh up what they are getting for this….the staff is a rich resource for us.*
>
> UKSC Executive Team 15

Budgeting, accountability for spending, value for money are all buzz terms associated with public management. Yet, despite a managerial team being implemented to alleviate the Justices from business and financial planning, the findings clearly indicate that the Justices have more involvement with financial and business planning than ever before. For instance, in the House of Lords, the Justices (Law Lords) had no involvement in financial or business planning – it simply was not part of their role. However, in the new Court, business and financial plans akin to the private sector and new public management initiatives are not only evident but underpin the direction of the Court. In turn, this creates new role demands on the Justices in terms of accountability for spending as well as new role opportunities to be involved – at least to some degree – in these plans.

4.1.9 New Management

The findings provided above suggest that the Constitutional Reform Act 2005 has been a catalyst in the changing role of the United Kingdom Supreme Court Justices from the Law Lords in Parliament. In line with role theory, the findings are largely consistent with wider literature on new public management which suggest that there are new pressures on public professionals to adopt more managerial styles. This comes from both the adoption of new management teams as well as new managerial opportunities and pressures resulting in hybrid Judge-Manager roles. What is rather interesting is that, as noted, the findings quite explicitly show that that there have been changes to the role of the Justices in line with the characteristics of public management. However, there is a common consensus amongst almost all participants involved in the research that the role of the Justices has not changed at all from when the Law Lords were in Parliament. Although one should note that the vast majority of the participants interviewed did not have experience with the Law Lords role in Parliament, the overwhelming agreement was that the role was the same.

> *The role is the same. We judge cases according to law. Parliament makes the law – that bit of the law which isn't made by the judges – but Parliament makes the laws and it is our job to interpret and apply them….Parliament is Supreme, Parliament is Sovereign and so Parliament makes the law and we cannot strike down that which is the big difference between us and Supreme Courts in other countries with a written constitution.*
>
> UKSC Justice 3

> *The role of the Justices is to decide cases which involve arguable points of law which are of general public importance which come from the whole of the United Kingdom….and we (the Justices) do that in collaboration with one another….the minimum number of Justices that would sit on any one case is five….we have many other roles (which extend beyond this)….the day job is hearing and deciding cases which involves a lot of reading in, sitting in court and listening to arguments and then deliberation and sometimes writing the judgement….(the President) has certain administrative responsibilities, mainly it is to do with allocating*

Justices….and keeping them happy….there is an outward facing role (for) public speaking – some formal lectures and some less formal….there's the liaison with other courts as well….we've had meetings with Justices from the European Court of Human Rights.

UKSC Justice 3

I tell my colleagues that I'm just judging…which means that my work at the moment is one hundred percent on live cases, reading the papers, hearing the parties arguments, discussing the case with them, discussing the case with my colleagues, but before and after the hearing and depending on who is chosen to write the lead judgement, either writing the lead judgement or a follow up one if a follow up one is necessary or a dissenting judgement if I disagree.

UKSC Justice 1

It is hereby noted that without a written constitution, Acts of Parliament cannot be struck down as Parliament is Supreme. This is much the same as when the Law Lords were in the House of Lords. Moreover, the role of the Justices is to decide cases of general public importance as well as provide lectures and lease with other courts – again, this is not dissimilar to their role as Law Lords (for a further discussion on the changing outward facing role, see Theme 2 below).

However, as aforementioned, the role of "just judging" is not necessarily true with new hybrid Judge-Manager roles emerging. Moreover, Tayloristic approaches which underpin new public management initiatives are clearly evident amongst the executive team structure. As one Head of Department noted:

I have a number of people working for me. They report to me, I report to the Director of Corporate Services and then he reports to the Chief Executive.

UKSC Executive Team 15

The findings thus far have indicated a clear hierarchy within the executive team and is consistent with Taylorism. Moreover, the Chief Executive then reports to Parliament. However, there is also a more collaborative approach with the Justices – namely the President of the UKSC whom the Chief Executive

speaks with every Monday, as well as with the Deputy President. The indication that both the President and Deputy President are more managerial and in collaboration with the Chief Executive shows that the Chief Executive acts as a 'gateway' between the executive and judicial functions of government. Whilst s/he may be in collaboration with the judiciary, the reporting system to Parliament, holds Parliament supreme in a more hierarchal, structured and managerial way than prior to the Constitutional Reform Act 2005.

As noted, this hierarchy is consistent with public management initiatives and calls into question the separation of powers as noted in the literature review. However, there are also new forms of management emerging which juxtapose Taylorism in a new management style known as neo-normative control.

Coined by Fleming and Sturdy in 2009, neo-normative control is thought to move away from hierarchal management at the beginning of the 20th Century, whereby theories such as Taylorism were highly bureaucratic. The shift then focused on culture management, normative management and ultimately neo-normative management. The latter depicts managerial styles whereby there is a blurring of the distinction between roles such as work and home-life; there are activities to make 'work fun'; and individualism is promoted but in a controlled way – i.e. one can 'be themself' providing that it is consistent with the managed ideologies of the organisation. This evidently juxtaposes Taylorism which has an overt, hierarchal control. However, neo-normative management still has control mechanisms, but these are more covert. For example, organisations such as Google and Facebook have fun, open office spaces to encourage employees' individualism and engagement with the organisation as well as the opportunity to mix with all forms of management.

This type of neo-normative management can be seen within the new court, particularly amongst the executive team. It is noted that the organisational form is small, like a family, with informal ties.

> *We're a mini-mini-mini-government department. There's only fifty to sixty employees….and is totally independent. Therefore it is independent of Parliament and it is independent of the*

Ministry of Justice….and any other Courts.

UKSC Non-Executive 19

Some take a pay-cut to be here….We are under the restrictions of the cabinet office and treasury. We are still a government department, a non ministerial government department hence that is a good example of some of the challenges where it's nice to think of ourselves as quite exceptional, almost like a family business so the organisation is able to be agile and work well but we still have to stick within the guidelines and the rules….

UKSC Executive Team 14

Moreover, consistent with literature on neo-normative management, staff turnover tends to be relatively low.

Any organisation is going to change and evolve. Our staff engagement scores each year are about eighty percent so they are very high….staff turn over is generally very low….We had a few senior people leave and because it's such a small organisation it felt like it completely changed.

UKSC Executive Team 14

In addition to this, there are fun activities to encourage staff engagement outside of work.

We have a choir…we call ourselves the can't sing choir…we were singing in latin and german and wore hats….we're a very small organisation and everyone's really busy but we do have different engagements which take place….it's a really good example of staff engagement and it's a lot of fun aswell….it's funny for humiliation but it's good fun! On Fridays we have a football event, we've done pilates before, we have a book club, we have a film club but sometimes even to get five or six people it is a success because you're not really going to get all of the court at the same time because there are different demands at different times….the

Justices are not as involved, sometimes for some of the parties they will be invited to those…we have language classes and have even done some ballroom dancing.

UKSC Executive Team 14

Although these neo-normative styles of management are shown amongst the executive team, there is some filtered impact unto the role of the Justices. For example, one of the participants suggests that the Justices are invited to some of these activities.

We have a quarterly staff meeting….(XX) produces the agenda for that and (XX) always invites one of the Justices along, it's a great opportunity for the Justices to say how appreciative they are and thank the staff. I think that it's genuine….they really like the environment and the fact that they get to know staff well.

UKSC Executive Team 14

As well as the Justices being invited to speak at some of the events which the administration team hold, there is also some informal (as well as formal) interaction between the administration and the Justices. These interactions between the Justices and the administration team is something that the Law Lords in Parliament never experienced – given that they were part of the budget of the House of Lords and there was not an assigned managerial team specifically for the Law Lords in the House of Lords.

It may be argued that these new forms of neo-normative control are emerging within the environment of the new Court (i.e. the front office/executive team) and therefore not necessarily impacting on the role of the Justices. However, there is now an open dialogue between the Justices and the administration on both formal and informal levels. The Justices are invited to quarterly staff meetings and it is purported that "they really like the environment and the fact that they get to know staff well". Thus, it is reasonable for one to suggest that – at least to some degree – their role has evolved to lease with a new "family" (i.e. the administration). In turn, this creates new role choices for the Justices to engage with colleagues outside of the judiciary – which was not an option in the House of Lords.

Additionally, one may wish to note that the Justices' role echoes other characteristics of neo-normative management such as the blurred distinction between work and home life.

> *The justices don't switch off because they are thinking…we as mere mortals can.*
>
> UKSC Executive Team 14

This can be compared to work overload in professional service firms (Empson, 2013). Although this is not empirically shown to be different from when the Law Lords were in Parliament. However, new technological advances are enabling the Justices to take work home; therefore, facilitating an increased distinction between work and home life. Whilst this is reforming the role of the Justices and creating new role demands, it is not necessarily attributable to public management alone. For example, prior to the introduction of cloud computing and laptops, almost all of the work was paper based and in huge files so it was almost impossible to take it away from the office. However, new technological advances are seen to blur the distinction between work and home-life (for a further discussion, see Theme 2 below).

Furthermore, it is worth noting that there is increased pressure on the role of the justices to perform more efficiently and effectively with regards to time and financial constraints under public management agendas:

> *The government has always been very keen to put pressure on judges to be more productive and so on and so forth. In working out what facilities the court needs, obviously the Ministry of Justice works with the Lord Chief Justice, the senior judges, working out how much can be afforded, how priorities are to be determined and so on.*
>
> *Judges have to work very much harder. In the old days it was a very soft life being a judge because you didn't have to do much reading around the case before hand. You would be in court from around 10:30 until 4:15. You would tend to write the judgement as the case went along. Judgements were rather shorter. In most civil cases (not criminal), the judge would deliver the judgement orally – extemporary it was called – at the end of the hearing. Today it is very unusual for a case of any size for the judge to give the judgement as soon as the case finishes hearing.*

Depending on the size of the case. So as a judge, not only do you spend your time in court but you have to spend time reading before the hearing and writing the judgements afterwards. So the life of a judge now is very hard work indeed. Fifty or sixty years ago it was a doddle.

When I started as a barrister, the House of Lords, and indeed all of the courts, moved very slowly because there was no modern technology. When you referred to a case, the books would be heavy, they would have to be opened up and read. The whole thing moved very slowly and you had cases where the oral hearing would go on for two or three weeks. Now, and this is at the appellate level, now it's very rare to have an appeal that goes on for more than two or three days at the most in the Court of Appeal or in the Supreme Court. A lot of the work is done reading in advance where as again, go back sixty years when I started in law, no judge read anything in advance. It was almost a matter of policy that you shouldn't. You should come to the hearing with a completely fresh mind and then listen to what the barristers had to say. We didn't prejudge the issues. Now there's an awful lot of written submissions that are prepared before the hearing and judges are expected to do a lot of reading so that they've worked out what the case is all about, what are the issues that they're interested in before they hear the advocacy. This was a gradual change. I don't think that it was anything to do with government, it was the judges.

UKSC Justice 7

Under public management initiatives and with reference to role theory, one may suggest that there are increasing role demands on the Justices. The new management styles for efficiency and effectiveness are seen to be key drivers for this. Facilitated by technological advances (discussed in section 4.2 below), concerns arise regarding the quality of Justices selected for the highest judicial positions (see section 4.3 below).

4.1.10 Section Summary

In summary, the findings of Theme 1 have shown that the role of the Justices has been impacted by new public management initiatives, namely under the following characteristics: the creation of an executive and non-executive team (with a focus on accounting, value for money and a hierarchal reporting to

Parliament); new business and financial planning, including KPIs; as well as an increased adoption of managerial styles morphing the role of the Justices as "just judging" into hybrid Justice-Manager roles.

Theme 2: Technology and Citizen Outreach

4.2.0 Section Introduction

This section reveals that there has been a huge increase in the use of technology in the Supreme Court compared with the rather limited amount of technology used when the Law Lords were in Parliament. For example, there is more technology used in the courtrooms, by the Justices themselves, in the appeals process, and in citizen outreach programmes. However, the findings indicate that technology is not necessarily a characteristic of public management. Whilst there are correlations between new public management and the adoption of technology under buzz words for efficiency, effectiveness, and reducing costs, the findings indicate that the adoption of technology is largely attributable to social pressures. These extend to both internal and external pressures as revealed below.

4.2.1 Ministry of Justice Information Technology

When the Law Lords initially moved into the UKSC, they were on the MoJ's IT. In line with the public management initiative of decentralisation and the independence of organisations, technology in the new court was brought in house.

> *So we were on the MOJ's IT and it didn't work, it was very expensive, it had a security wrap around it that we didn't need and that made it very difficult to log on. So it became the case that it was just appalling, it was costing us money. The MOJ said that you can't just leave but XX said, well yes we can. It soon developed. Because we run the IT in house, it has become much more central to what we do. But it also means that we're increasingly able to provide IT that the Justices want. That they can now use, which they wouldn't have done before.*
>
> UKSC Executive Team 13

Prior to the move, the Law Lords were part of Parliament, they used the same resources, including the

IT. However, when the Law Lords moved into their own building, they were able to stand as an independent institution and bring their IT systems in-house as opposed to being part of a wider, more ineffective system. The decentralisation of technology to create their own in-house systems for efficiency, effectiveness and cost savings is akin to new public management initiatives. Moreover, this created new role opportunities for the Justices to adopt technology.

> *We had the advantage of investing in new equipment (from the move) where there wasn't any before…so the advent of IT has gone fairly well and being able to do electronic bundles etcetera which makes things much easier to handle…I'm not sure that we could have done that in the House of Lords because we would've had to try to persuade parliament to invest money in equipment which they might not have been willing to do but the resource could have saved money in doing it that way.*
>
> UKSC Justice 5

This indicates that although some of the Justices may have been willing to adopt technology for efficiency and with cost savings, it would have been difficult in Parliament as they would have had to persuade Parliament to invest in it.

4.2.2 Increased use of Technology

Prior to the move into the United Kingdom Supreme Court, there was a rather limited use of technology. On one hand, this is perceived as being attributable to the fact that the Justices were largely accustomed to using paper based hard copies when reading cases and passing judgement. However, one should note that technology was, at least to some degree, adopted by some of the Law Lords prior to the move into the UKSC - although, not by all. Some were open to technology, some were not, and others were in between.

> *When the Justices first came over to the supreme court, there were 12 Justices, and some of them had no interest in using IT at all. One of them even said "I don't want a computer on my desk, pen and paper is good enough for me and that's it". On the other end you've got people*

like Lord XX who are very IT savvy and doesn't like paper, just wants to do it all electronically. The range is from one extreme to the other.

UKSC Executive Team 13

Technology is used extensively by some justices, others are into paper, others use a bit of both.

UKSC Justice 3

….all law reports, yes. Nowadays we do so much electronically but in the past people would use them.

UKSC Justice 2

Yet, there has been a gradual adoption of technology into the new court. This, has in part been due to the rise in opportunities presented by the executive team. Although, another factor in the adoption of new technologies has been due to internal pressures by the Justices themselves. This has assisted in the transitioning a traditional paper-based system of working into a more digital one. Thus, whilst some of the Justices who moved from the House of Lords into the Supreme Court were using some technology, it is apparent that internal pressures to adopt more technology have arisen from the Justices themselves.

We're increasingly able to provide IT that the Justices want. That they can now use, which they wouldn't have done before….. Also, the IT that we provide, unlike the old IT, works, it's easy, it's simple. They can logon on a laptop or a desktop and they will get the same experience. It's easy to log on, it's quick, it's reliable. So gradually there has been an increase in the use of IT. If one of the Justices says to another "I use IT for this and this is how it works", they listen to their own. So gradually there has been an increased uptake of IT.

UKSC Executive Team 13

The idea that the Justices speak amongst themselves, generating internal pressures to adopt technology is echoed throughout the findings.

There certainly is from discussions at Justices' meetings the justices who are in the lead…are cheering their colleagues along to make more use of it. There are training sessions. There is no one I would say who is "I'm just not going to do it", but people are just less familiar with itand less comfortable with it and feel that making notes…you can do it on IT…they just feel more comfortable to handwrite.

UKSC Executive Team 11

Whilst there is resounding evidence that the Justices were not actively against technology, some of the former Law Lords who were 'set-in-their-ways' were seen to be unlikely to change regardless of new internal pressures.

Technology is one of the things that has changed – one of the major changes. I don't remember - when I was sitting in the Appellate Committee - that anyone was using laptops or other equipment. They'd just write down with their pen their notes but now at least some of them look at a screen and recall documents. They take notes on their laptops, so it has changed. Not all of them. It has changed not just for the judges, there's a lot of council as well who use technology. There are some dinosaurs, but I don't think those at the moment who use paper are likely to change. Some like to have the document, find it easy to read, highlight it, make notes on it – you can do those sorts of things on a computer, so it has changed.

Queens Council 23

Nevertheless, technology has been seen to be incrementally changing the role of the UKSC Justices to be more tech-savvy than the Law Lords ever were.

Technology is always going to be a bit difficult in a transitional people where some people are used to it and some are not and I suppose we were just at the right point where the two senior people who would never have touched it at all left before we moved over and we had one or two people who were really quite used to this – particularly Lord Kerr from Northern Ireland – who was used to living on laptops in court and Lord Phillips who became the President was

doing the same thing. So it was quite easy for us to adapt to the thing because people were already using it and others like myself who didn't use it all that much saw the value of it because we could see what's called electronic numbering which numbers all of the way through the case from start to finish…its all part of the sequence so a councillor could say if you look at page whatever number 759, you could go straight to the page. It's very quick, you're not trying to work through large files.

UKSC Justice 5

As a result, some of the Justices themselves are seen to be internally creating new role opportunities, pushing others to adopt the same technology. However, one ought to note that it is not only a collegial notion to push technology, but as Justices retire and new Justices come in, they bring with them new role expectations to use technology, thus reinforcing this collegial tech-savvy approach.

…That has changed gradually over the past few years as we've got newer justices coming in and they have got used to using IT elsewhere, they expect it here.

UKSC Executive Team 13

The internal pressures thus intensify towards the immediate benefits of technology epitomised by the underpinning connotations of efficiency, effectiveness, time and cost savings pertinent to the public management movement. These collegial pressures are furthered with the role expectations of those recruited into the positions of retired Justices.

In the job spec there is willingness to accept IT, technology, that's part of the appointment.

UKSC Executive Team 11

As a result of new Justices coming in whom possess expectations of technology being adopted to facilitate the Justices' role and retired Justices who are 'set-in-their-ways' of using traditional paper-based files, a new tech-savvy breed of Justices is seen to emerge.

> *In terms of judicial working, I have no doubt that there's more that could be done however, we've been at the cutting edge of attempting to move the process forwards. Away from the perception, no matter how right or wrong that the law was a fairly paper based industry, stuck in its ways and not particularly efficient. So for example in the presentation of cases, the paper work which parties put before court there is an expectation that it is presented in electronic form we're gradually working towards trying to eliminate paper filing at all in time and exchanging it for solely electronic working. Some justices are more comfortable with that than others which is why there hasn't been a complete change all at once and I think that's to be expected.*
>
> UKSC Executive Team 16

This suggests that there is some form of institutional isomorphism (DiMaggio & Powell, 1983) whereby the new organisational form of the UKSC is gradually adopting new technologies that are impacting on how the role of the Justices is acted out.

Moreover, not only are there new role opportunities, collegial pressures to adopt technology, and recruitment expectations to be tech-savvy, but there are also internal pressures from other members of the organisation i.e. the management team. For instance, the Justices are taking a much more active role in the creation of the website.

> *The Director of Corporate Services gave a presentation in a Justices' meeting about building a new website and the project being put in place for that. We have user research going on about what people what and the programme for actually building the website and putting it in place so we talk about things like that….We will talk to them about the website for example as they might have views about what should be on the website.*
>
> UKSC Executive Team 12

The Justices' meeting here refers to the strategic advisory board (committee) whereby the senior management, non-executives, President and Deputy President are able to comment on issues of a

strategic nature for the direction of the court as noted in Theme 1 above. As aforenoted, this indicates that the Justices are adopting a much more managerial role, partly through their interactions with the management team. Their input on technological advances indicates new ventures as a collaboration between the senior management team and senior Justices.

4.2.3 Technology and the Presentation of Cases

As noted, there are new role opportunities to adopt technologies as well as new role expectations from the Justices themselves, in the recruitment process as well as by the management team. Furthermore, many of the barristers presenting cases to the Justices use technology in court.

> *It's not just us, the council can come along and the court is specially constructed so as they can plug all of their IT and stuff in there so they're dependent on it as well.*
>
> UKSC Executive Team 11

Which is further echoed by juniors shadowing older barristers, using technology to facilitate their role. As noted:

> *…old fuddy-duddy like me…his junior from a laptop…most colleagues from a laptop and paper – they are in the transitional phase…one judge only uses paper*
>
> UKSC Justice 1

Although, one should note that this pressure does work both ways. On the one hand, those presenting cases to the Justices are more familiar with technology, on the other, the Justices themselves are seen to be more proactive in the use of technology as the older generation of traditional paper-based judges declines. As such, it is quoted:

> *I guess that the most visible change from three or four years ago is if you have a panel of five Justices, you might have one of them using a laptop in court. Now, it's almost all of them.*

They're far more comfortable using electronic case bundles now then they were. So you are gradually seeing a change.

UKSC Executive Team 13

There are a couple of the Justices who are still simply more comfortable using paper and because they're not confident in accessing an electronic bundle, despite having extensive training on more than one occasion, they just don't seem comfortable with it. They are used to using paper, it's their comfort zone and that's what they want to do. But particularly as you see the newer justices come in, they are all very comfortable using the IT provided.

UKSC Executive Team 13

…increasingly the younger justices are happy to use technology in court.

UKSC Executive Team 12

The Justices here have always been very progressive regarding IT. The legal profession hangs on paper…quickly moved to laptops…transitional period…now pretty much it's all electronic data, bundles…once the court case has finished, it is stored electronically so we can immediately retrieve it. We are leaders in terms of technology. In recruitment we want people to be more technologically savvy…Justices want to be leaders in technology.

UKSC Non-Executive 19

This further emphasises a gradual move towards adopting new technologies. However, this is seen to come from external pressures such as new Justices – or, as previously noted, juniors and barristers – as opposed to being a direct result of public management alone. Furthermore, technology facilitates the ability to access information quickly and remotely.

….we've managed to put bundles onto memory sticks or onto the shared drive so that they can access that from home. Technology comes into it, they can embrace that and use that.

UKSC Personal Assistant 21

I think that the supreme court happened at a time when technology was invading the law. If we'd stayed in the House of Lords arrangements had to be made in the 2 committee rooms where the Law Lords sat to accommodate modern technology. I think the fact that we moved into the Supreme Court made it very much easier to accommodate modern technology. One of the things that changed was that our proceedings were televised or you can go and view any past hearing online. That was fairly radical…not as well because we were designing the technology from scratch so I think that the move made it very much easier to accommodate the demands of modern technology – that they would have had to have been accommodated somehow.

UKSC Justice 7

According to role theory, the move into the new court opened role opportunities for adopting technology. This is primarily due to the new court being unconstrained by the physical building of the Houses of Parliament, as well as a reconstructed budget meaning that Parliament would not need to be persuaded in the same way. However, as noted, "the demands of modern technology" implies a wider impact on the role of the Justices. Thus, one may argue that technology, whilst seen to be a characteristic of public management (revisit section 2.2), is attributable to wider social and organisational role demands. This is echoed in the aforementioned quotation that technological demands "would have had to have been accommodated somehow". This is further interesting as according to Stewart's role theory (1982, 1989, 2012), not only have role opportunities been highlighted but new role demands are evident. This is because role demands to uptake technology "have had to have been accommodated". As such, whilst role opportunities create choices to use technology, it is seemingly evident that it is not necessarily choices and opportunities alone, rather there are also role demands.

In addition, technology has taken a notable, visible change, revolutionising one of the oldest professions, in the oldest standing legal profession in the world, into the technology age. Many have noted that this provides positive changes, towards a more efficient, effective judicial system. For instance:

The general view would be that technology has had a positive impact on the role of the Justices as well as other members working in the Supreme Court. It means that you can do a lot more things quickly if you're not bogged down with paper everywhere which needs to be transported,

which needs to be received in, it needs to then be stored physically in the building. It's cumbersome because quite often the volume of material that is put before the Court can be really quite extensive.

UKSC Executive Team 16

There is an emphasis not only on efficiency and effectiveness in the use of technology, but also the ability to reduce the amount of physical space required.

So yes, electronic delivery is key and is why we spent a lot of effort in making sure that we prioritise building up our electronic resources….the physical space that we have to grow into is finite and it won't be long before it's full and then we have to make decisions as to whether or not materials can be stored elsewhere.

UKSC Executive Team 16

The use of electronic devices to reduce the necessity to store large paper cases in a physical location has been seen to be a further driver to push for a more online tech-savvy system.

I have noticed in my time at the Supreme Court an increasing appetite for material to be delivered electronically which is of no great surprise. But rather than it being a nice to have, it's becoming the preferred way of working. There is a greater familiarity and comfort with email, using standard things like Word and all of that so when the librarians are asked for things, the expectations are that they deliver it electronically because quite often the Justices are working remotely and won't have physical access to the building. Certainly if they are doing deeper research they tend to do that away from the building. Or if they're in a vacation period they wouldn't necessarily be here and sometimes we have to support them when they're overseas, providing material delivery for them.

UKSC Executive Team 16

One justification for this is due to the accessibility of information, particularly when working remotely. This is inline with the aforementioned neo-normative styles of management noted in Theme 1, which

blur the distinction between work and home life. Additionally, as the physical space of storing hard copies of materials is finite and the use of technology helps to improve the issue of physical constraints. This has been echoed throughout the research. For instance:

> *The principal benefit (of technology) is that it breaks the tyranny of paper – the Court of Appeal – and for this Court, a full six box of papers…it is easy to carry the laptop and a charging lead so I don't have to do the case in one place.*
>
> UKSC Justice 1

In addition to the uptake of technology being justified for breaking 'the tyranny of paper', it is also perceived as an effective tool for cases to be heard electronically.

> *So yes, electronic presentation of material is definitely being preferred. But of course, it's merely a second support to oral advocacy. In the UK, the tradition is that barristers present cases orally in court. All of the cases are not decided just by barristers writing down what they think, giving it to the judges who then go away into an office, think about it and then out comes a judgement. There is a tradition of oral advocacy and therefore the two things always come together. So the written and the oral presentation is an important part of our process and one should not replace the other. Although, I don't think it ever would. I am sure that the process of judgements has been assisted by a greater use of technology.*
>
> UKSC Executive Team 16

Internal pressures have been seen within the court to provide more facilities for the Justices to adopt more technology, again providing greater role opportunities than in the House of Lords.

> *The other interesting thing as well is that since we've upgraded the wifi provision and made it stable, more and more parties are bringing IT into court. That's because they have become aware that Justices are looking at things electronically more and more so it certainly makes sense for them to be able to deal with that and also because they can now, before they couldn't rely on the wifi provision but now they can.*

UKSC Executive Team 13

Through the increase in technology and wifi provisions, more and more parties are seen to bring IT into court. Furthermore, IT is increasingly being used for court hearings to be heard online.

> *We now encourage parties to appear in front of us by video. So, yesterday we had a case from Mauritius, one of the parties flew over here to do it face-to-face. The other party said: "Now we don't want to spend that money on lawyers – it's the Christmas sales at Harrods – we're going to do it from Mauritius". It was perfectly fair. There was a huge screen in the place where his barrister would have otherwise been and the public in our court could also see on another huge screen what was going on in the courtroom out there…or hotel room…it doesn't matter and they could see us in perfect synchronicity, no time lag, everything crystal clear and I / we believe is a level playing field so it doesn't matter if only one party is by video and the other party is here but we can do it with both parties by video. So there we were livestreaming the case to anybody who wanted to see it…video party attendance and all documents were on electronic files so simply by using electronic page numbers we could all be on the same page when someone else was talking to us. You can't get anymore electronic than that.*
>
> UKSC Justice 1

> *That's why you start doing things, making better use of Skype for example so we now do Skype hearings for some of the cases that come from the judicial committee jurisdictions, so the Bahamas and Mauritius, if it's a one day or half day hearing, why drag people to London from Mauritius or Kingston or wherever when you can do it over Skype. There's no cost for us, it's part of our licence package anyway. And you make better use of the technology and it also means that it has an impact on costs for the parties. They're not running up a bill to send people here.*
>
> UKSC Executive Team 13

This indicates that the use of Skype is able to reduce the costs of people physically appearing in court. This is believed to have many advantages if the technology works effectively. Moreover, it has become

apparent that Skype is being increasingly used in court. One may wish to note that this can be physically seen during the coronavirus pandemic, which has shifted all court hearings onto the online platform (UKSC, 2021). Whilst many have revelled in the efficiency, effectiveness and cost savings that this provides, along with being party to the benefits of working remotely, during the interviews some voiced more sinister concerns. One of these concerns relates to the issue of hackers violating the system.

> *The big risk of technology is leaks / hackers…the audit committee has pushed for cyber-security which has been a big buzz word for five or six years...we've been attacked quite a few times…malicious emails…malware…corrupted data…we're still trying to sort it out…cyber threat is a big threat – our systems are up-to-date but people who are trying to hack in are always one step ahead, picking up new ideas…we had an incident of malware six months ago…we can't retrieve the deleted files…we are under pressure all of the time…you do, I do at home, we know that we can be attacked.*
>
> UKSC Non-Executive 19

However, not all agreed that the risk of hacking presented major concerns to the UKSC. For example, it was noted that:

> *Part of the reason why we left the MOJ IT was because of the high security. We looked at the data that we had, we looked at the information that we had, and with the exception of one or two cases for example which involved the security services which we very rarely get, most of the cases, the vast majority, are sensitive to the degree that they may contain personal data but you're not looking at nuclear defence planes or ministerial correspondence, they're cases that have been heard in at least two lower courts, they're heard in open court here.*
>
> UKSC Executive Team 13

> *…we've got a good security wrap around it but you can't have the security prohibiting or making it difficult what people can access. So security is not so much a concern. If for example a system was breached, or a Justice lost their laptop and somehow somebody managed to hack into it, at most it would be embarrassing for instance if someone could see a draft judgement*

for a case, we wouldn't want someone seeing draft judgements before it was handed down. But it wouldn't be a security risk in terms of national security. We've agreed with the cabinet office and government secretariate that we do not form part of the critical national infrastructure. In other words if our data was breached it wouldn't really pose a risk to the country. So we need to have security to make sure that people can't just hack into your data and cause chaos, it doesn't have to be the same kind of security wrap that you would find around a bigger government department where they've got top secret papers, cabinet papers, we're just not in that business….

UKSC Executive Team 13

This suggests that although people may hack into the files held by the UKSC, these are predominantly cases which have already been heard. As such, apart from very rare cases, the data held is not sensitive and thus does not warrant the constraints of the security wraps held by the Ministry of Justice IT. However, whilst IT security is not perceived as a huge risk, precautions are in place for minor cases which may be viewed as such.

If the Justices had to pass judgement on a high security case we have very specific arrangements in place so that it doesn't go on our electronic system, well a case record will but the actual papers, basically we've got a secure room upstairs, one person has the key and the code, the other person has the key to the secure safe that has been provided. Two men in grey suits would usually turn up with a bundle of papers, the registrar takes it, we keep it locked in the safe and when the hearing is over, they come and they take it away. We don't retain it. We don't have it on our electronic system. It's less than 1 percent of cases that we have like that. I think that we've had 4 cases like that in the last eight or nine years. So, you don't base a whole IT system around were you may only have a few cases like that and that is what the previous system at the MOJ was designed to do and it didn't work.

UKSC Executive Team 13

As abovementioned, the security system at the Ministry of Justice was incompatible with the needs of the UKSC. Moreover, with national security risks being covered, any hacking would result in

embarrassment as opposed to a severe security breach. However, security alone is not the only issue. Although back-ups of technology can be made, this is not 100% reliable and there is always the risk that something may fail. The risk of technology failure has been experienced by the court.

> *…technology…is integral to the core working now and when the IT goes down which it very rarely does, but we did last summer have a period where it was down. Fortunately, it wasn't when the court was sitting, you would see that it's very difficult to function.*
>
> UKSC Executive Team 11

> *There are some things which are just better done with paper. If you want to take something away and really think about it, read it and digest it properly, sometimes it's better to have it in front of you so you can annotate it. So the core working documents that need to be referred to in court it's quite easy to have those in electronic form so long as they're well indexed and the technology works. That's obviously very important because the last thing that you want to be doing in a large room full of expensive lawyers and barristers is wasting everyone's time.*
>
> UKSC Executive Team 16

Thus, the move towards a more technologically focused court is seen to have merit for efficiency and effectiveness; but this also comes with the risk of hacking and/or technology failure. Additionally, some participants noted that paper-based versions are – by nature – sometimes more effective. Nevertheless, there have been incremental changes to increase the amount of technology used. This has been seen to come in a number of formats from the use of laptops by the Justices, how bundles are used and even the use of Skype in court. Moreover, there are increased role opportunities to adopt technology as well as role expectations from the Justices themselves, in the recruitment process and through other interactions with barristers and members of the management team. As such, the UKSC as an institutionis shaping the Justices' role to be more tech-savvy. This comes as a result of institutional isomorphism (DiMaggio & Powell, 2013) from the entrance of new more tech-savvy Justices and the collegial approach to social consensus amongst the twelve Justices. Some of the new technologies include an increased use of laptops; technology for the website and applications process; as well as technology forthe use of visitors

to the court inclusive of increased power points, wifi and Skype. Technology is also used extensively in the Supreme Court as opposed to the House of Lords to communicate with citizens. This is done in many ways such as in the delivery of judgements for the media, information on the website, educational initiatives such as Skype-a-Justice, and the live streaming of hearings, as discussed in Citizen Outreach below.

Although, before addressing this, one may hereby wish to note that the United Kingdom not only has the longest standing legal system in the world (formalised in 1066, revisit section 2.3.2); but it is at the forefront of advancing technology when compared with other counties around the world:

> *I would say that – and I've done some work on this – that the Supreme Court and the judicial committee of the privy counsel which is legally the same body of people from over twenty courts – countries around the world – is the most IT advanced court both in the UK and it's the most advanced Supreme Court that I've come across anywhere in the world.*
>
> UKSC Justice 1

Not only is this interesting from a public management perspective due to the UK and USA being at the forefront of initiating a public management agenda under the Reagan and Thatcher eras; but the United Kingdom's legislative system has, for centuries, been used as a benchmark for other countries to follow. One of the key reasons is due to its longstanding history, with another being due to colonialisation and the law being used for competitive advantage (Porter, 1990). As such, not only has this section demonstrated changes to the role of the United Kingdom Supreme Court Justices in the role opportunities, expectations and indeed demands to uptake technology, but this raises questions for the role of Supreme Court Justices on a global scale to mimic these progressions.

4.2.4 Citizen Outreach

Prior to the move into the UKSC, the Justices very rarely communicated with the media. This is because this was the role of the Lord Chancellor, acting as a gateway to protecting the judiciary. However, the Constitutional Reform Act 2005 drastically changed the role of the Lord Chancellor, allowing more

exposure of the Justices to the media. Additionally, again in line with the Act, there are new role pressures on the UKSC Justices to embrace in more citizen outreach in line with the KPI's of the communications team.

As noted by one participant:

> *The Supreme Court uses technology to communicate with the outside world far more than the appellate committee dreamt of doing.*
>
> Queens Council 23

This is seen to be done through new role opportunities. For instance, the personality of the President of the Supreme Court embraces citizen outreach:

> *Lady Hale is a champion of going out and speaking to young people…sometimes referred to as the Beyonce of the legal world…popularity amongst young women…not a celebrity like Kim Kardashian but in the legal world everyone knows her.*
>
> UKSC Executive Team 15

Moreover, the role is transforming to adopt more social media for outreach. Although, it is clearly noted that role constraints remain such as the inability to speak of politics:

> *We try to keep the newspapers well informed about what we're doing but if the young are not reading the newspapers and are getting a lot of their news on social media one of the challenges which we face is how do we get onto and explain ourselves on social media without becoming a political participant because we have no right to participate in politics but it may well be that we should encourage a charity like "Justice" which is a very good rule of law charity to indulge in more citizenship education work because we shouldn't be out there advocating a political position – I don't mean a party political position but a wider political position because that's not out role but we've got to find some way of making sure that future citizens or young citizens know how our system works….judges aren't perceived as political players because it would lose the*

trust of the politicians and the public if we were interfering in the political sphere.

UKSC Justice 2

This suggests that the role of the Justices is becoming more pressurised into adopting social media for citizen outreach to the younger generation. Citizen outreach is a clear characteristic of public management (revisit section 2.2.2) and technology is hereby seen to play a pivotal role in this. However, the role is still constrained in so much as the Justices are not permitted to interfere in the public sphere (revisit section 2.1.1).

The emphasis on adopting social media for outreach is transforming the role of the Justices into a more outward facing and celebrity-like status; with the immediate gratification arguably juxtaposing the long-standing traditional system.

This is further seen with the Justices expecting to "perform" an outward facing role which they were never expected to do prior to the move into the Supreme Court:

In the old days what happened is you paid people a large sum of money to turn up to hear a judgement and they do absolutely nothing. It was seen that this was just a waste of public money to expect them to come. Very often you would go up there and deliver a judgement and the court appears to be empty but it isn't really because there are cameras so you're actually delivering it to an audience which is helpful too because it means that you do perform, you do it properly and put an emphasis on what is happening.

UKSC Justice 5

The celebrity-like outward facing role arguably questions new role demands unto the Supreme Court Justices under public management initiatives. According to Schwartz's theory of basic human values, this short-lived individual gratification personified through a celebrity-like status fundamentally juxtaposes the historical, traditional connotations of the legal system (for further reading see: Schwartz, 1992; 1994; 2001; Schwartz & Bilsky, 1987; Schwartz & Boehnke, 2004). As the legal system has evidently stood as a bastion of social stability in the United Kingdom for over a millennium, the new celebrity-like status of the Justices entices questions pertinent to the future role of the Justices in

maintaining social stability. This is largely because in a fast-paced capitalist society underpinned by technology, whereby prominence is given to individualism over tradition, questions arise regarding the fundamental traditional and historical rule of law (see Weber 1922 (a), (b); 1949; 1950; 1958; 1969; 1978). As such the role of the Justices in maintaining future social stability in light of growing globalisation, international trade, technology and hedonism – particularly under public management initiatives – brings to the fore questions regarding the overall belief in the socially constructed rule of law and the role of the Justices in maintaining this.

In addition to the new celebrity-like status, as part of the recruitment process, Justices are now expected to conform to the communications team's KPIs. This creates new role pressures, forcing the Justices to communicate with citizens:

> *…in terms of KPIs, these are in line with our annual business plan…we will propose what our KPIs should be…there is a metric system for the following year…typically around resources and what should be delivered so a certain number of debate days, certain number of moots, open evenings… increasing engagement with schools outside of London…*
>
> UKSC Executive Team 15

These new role pressures are, along with the personality of the individual Justice, are transforming the traditional role of the Justices into a more individualistic one (Schwartz, 1992), with a focus on a more short-lived celebrity-like status. This can be exemplified in the Brexit case where there was huge media coverage. For some, the large amount of media coverage through the case being televised was a positive thing:

> *…perhaps the best example of that is the Miller case….a very large number of people watched the proceedings, they saw what was going on and…the court judgement led to outrage…but the Supreme Court judgement got a much more favourable response and I think that it's because – at least in part – because people were able to see what the Supreme Court was doing. They were able to watch either the live up to the minute broadcast or the edited extracts that were on the television and if people can see what's going on and its done properly then that removes*

concerns and suspicions and diffuses criticisms. That is an enormously positive thing.

Queens Council 23

However, one may wish to note that the livestreaming of Brexit resulted in Twitter feeds whereby members of the public questioned the attire of the Justices and became quite disillusioned with the Court.

Miller's appeal was gripping stuff and people were really on the edge of their seats listening to how that was going…it was available on Sky everyday. We couldn't construct a visual image of robes and you can't force people to wear something that they don't want to wear. We do have ceremonial robes but people don't really think of that when thinking of us. We wanted to make sure that people could get in and there were no complaints about it being stuffy and old fashioned and defensive – we weren't trying to do that at all.

UKSC Justice 5

They were robed in the House of Lords…when they came here they said that if one side wants to be robed then everyone has to be but if you can agree that you don't have to be then you can just wear normal clothes. When we had the Article 50 case, it was quite interesting watching the Twitter feed at the same time as the case was coming on because the curtain went up and they were all on the screens and people were saying: "Where are the wigs?" "Where are the gowns?" "Where are the gavels?" and I think that quite a lot of people moved on at that stage because it wasn't as dramatic as they were imaging. But when you get into it and hear what they're talking about and see the way it operates, it feels entirely right and comfortable because it's like a sort of legal seminar…there are no witnesses or juries, this is a discussion about points of law and for people to be dressed as they might be for a legal seminar just feels entirely right.

UKSC Executive Team 11

Although one may be of the opinion that this "feels entirely right", another may question whether the new high profiling of the court and the change from tradition can result in social disillusionment, particularly due to the quite rapid change from the House of Lords. It may be suggested that the change in tradition such as perceived attire and the transitioning from a traditional highly powered pinnacle of social authority, towards a more media-focused institution is perhaps not beneficial for long term social stability. Whilst one may argue that the 'dinosaurs' (see above) stuck in their time are less efficient, their authority does become more questionable. As noted:

> *There is an erosion of authority in our society – where a judge years ago would have more respect from people and the media…*
>
> UKSC Executive Team 14

> *…as time has gone one, the Supreme Court has a much higher profile then the Law Lords ever did or could have due to accessibility…now litigants can turn up and protest outside the court.*
>
> Lord Chancellor/Chief Justice 9

Negative media coverage during the Brexit case through profiling the Judges resulted in threats being made to the highest judges in the country.

> *There are press reviews, live streaming, people allowed into court during the Brexit case to show that it was being done on points of law…they weren't voting on whether to stay or leave, they are impartial, it is experience…they (the Justices) can pick up to the phone to the police but people can send nasty letters.*
>
> UKSC Personal Assistant 21

Not only does increased media coverage expose the Justices but due to the Constitutional Reform Act 2005 reforming the role of the Lord Chancellor, they are less protected than ever before. As shown in the Brexit case where the then Lord Chancellor – not of a legal profession – failed in this role.

> *I gave a similar lecture looking at the litigations of Brexit and how the Lord Chancellor failed to support the judiciary when she should have and how whether and to what extent this created*

a long term problem.

UKSC Justice 2

This is further supported by the reference to the court being a public institution – one open to public scrutiny:

I think that nowadays you've got to reach out as a public institution. People aren't as deferential to institutions because they are institutions. You have to justify the role of the institution within the country as a whole. We have trips to Scotland, Northern Ireland and Wales. This is terribly important because otherwise we are seen as another institution of the House of Lords was rather than the UK institution which is what we are – I'm quite in favour of going to the north of England because I've said for quite some time that one of the most neglected parts is the north of England.

UKSC Justice 2

The courts as an institution – because it is a court – is far keener – and rightly so – in involving citizens in their activities and so they have regular visits to the court from schools and other institutions, they have exhibitions in the courtroom, they are much more welcoming to people coming in off the street, tourists or visitors to London, school classes, more than the appellate committee ever did. The appellate committee had no interest in this, they wouldn't turn people away but it wasn't welcoming in the same way and the problems of getting access to parliament were far, far greater than just walking in the door of the Supreme Court which is open. You can go through the security system and then people are there to welcome you and point you in the right direction – hand you out information about what's going on….that's an enormous change in accessibility and transparency and the court has under its successive presidents made a feature of that. It has emphasised just how important transparency is and I think that has been greatly welcomed…All of these things are partly the consequence of having a court – and institution – which is able to make up its own decisions and decide its priorities and its objectives. The appellate committee never did. The appellate committee was just a group of very distinguished lawyers who operated by and large on their own, then they came together and heard cases in panels of five. This is court is an institution, it has an ethos, objectives and goals which it seeks to implement and one of them is transparency and involvement of citizens.

As aforementioned in section 4.1, the new court is much more managerial than the Law Lords in the House of Lords ever experienced. The impact of private sector management agendas unto the role of the Justices suggests a fundamental change to their role. Not only are the Justices seemingly adopting more Judge-Manager roles (as noted in section 4.1), but citizen outreach as a characteristic of public management (revisit section 2.2.2) is exposing the Justices to increased media and citizen scrutiny.

The large emphasis on citizen outreach has arguably taken the Justices from "just judging". It has transitioned their role to adopt a more citizen outreached, celebrity-like persona. This is significantly different from when the Law Lords were in Parliament and very rarely communicated with the press. Rather, it was the role of the Lord Chancellor to speak on behalf of the highest judges. However, due to the Constitutional Reform Act 2005, this role was separated; and an individual with no legal background could be appointed as Lord Chancellor. As the findings suggest, the effects of this could quite clearly be seen in the Brexit case.

4.2.5 The Role of the Lord Chancellor

The change to the role of the Lord Chancellor and the emphasis on role expectations for the Justices of the highest court to adopt a more media focused persona does raise questions in relation to the erosion of the perceived authority of the traditional judges, whom have stood as a bastion for social order since 1066.

Nevertheless, in line with public management initiatives, there is an emphasis on increasing the media exposure of the Justices through citizen outreach programmes. Not only was the Brexit case livestreamed but all cases are now televised and available to view on the UKSC website.

> *....we also decided that we should be visible by using television. For televising hearings taking place so if anybody wanted to watch they could do so as it happened. Judgements would be on*

YouTube and accessible visually as well as on paper so people could actually see what we're doing. None of this would've been possible in the House of Lords but running our own building we were able to design it and develop it to make it much more accessible to the public as a private institution.

UKSC Justice 5

The fact that the Law Lords made the decision to have their proceedings televised has given it a much higher profile and with that, given them a much greater sense of who they are and what they want to do…coupled with judicial activism which was there before the Human Rights Act but more celebrated since.

Lord Chancellor/Chief Justice 9

This indicates that the Justices are much more exposed to media coverage than they ever were in the House of Lords. On the one hand, this can be viewed as positive in line with public management agendas for openness and transparency. On the other, grave concerns have emerged regarding the increased attacks on the highest justices through negative media profiling, which theoretically, may result in societal disillusionment.

4.2.6 Judgements for the Press and Public

How judgements are handed down has changed to incorporate not only the main judgement, but a report for the media and perhaps anybody of the legal profession who would be interested, as well as a summary for the 'lay' person.

We explain ourselves in three different ways – the main document, a short two page summary, and then piece to camera which anyone could understand…it is good for open justice.

UKSC Justice 3

This again creates new role demands on the Justices to be more open with the media and the public

which is significantly different from when they were Law Lords in Parliament, whereby only the main judgement was required. One should note that not only is the website being used for increasing the media profile of the UKSC, but it is actively being used as the main source for applications and payments.

> *There is information on the website about the cases, about what's coming up, what the documents in the case say with links to various items and then the judgements are available. The records of the hearings that you can watch… it has enabled the courts to communicate with the outside world so that people know what is going on.*
>
> Queens Council 23

> *Technology is very good in terms of citizen outreach. It enables us to broadcast and archive…With the new website, we want people to be able to file cases online…big firms probably have the technology to provide electronic bundles of cases but small high street firms don't so we want people to be able to file cases online, pay fees online, so the Justices can just look it up.*
>
> UKSC Executive Team 12

As aforementioned, there is an executive team specifically tasked to promote greater citizen outreach, which inevitably impacts on the role of the Justices. For example, previously noted, the Justices use more technology that they ever did in the House of Lords, televising cases, inputting on ideas for the website, using Skype in court etc. There is also an increased pressure to adhere to the executive agenda for greater citizen outreach programmes. For instance, in the House of Lords, the Law Lords were accustomed to giving lectures and commenting on the occasional school moot. However, in line with the communications team's KPIs, there are new role demands to extend citizen outreach, transforming the traditional role of the Justices.

> *…the judges have always given lectures…there is far, far more of that now than ever before. If you spoke to the Justices they would probably say that they do too much of that – it is very time consuming. But I think that its quite important that they all do it.*

> *…their (the Justices) bread and butter is of course deciding cases. So reaching a clear and as well considered verdict on the legal issues in the case – as is possible to do given that there are always circumstances around it such as a limit on everybody's time. But coming to be best conclusions that they can. Their role is also to sort of be spokes people for the justice system. In that the Supreme Court is obviously a well-regarded institution, there's a lot of media attention and academic focus on the Supreme Court as an institution itself and by extension the Justices are sort of ambassadors for how the English and UK system works. So they're quite often invited to give lectures, speeches, anything where speaking to a justice is helpful. So for example that can be in a law setting but it can also be in an education setting.*
>
> UKSC Executive Team 16

The findings herein suggest that whilst the Law Lords did provide lectures in the House of Lords, these were done on an occasional basis and through invitation. However, the move into the UKSC has created more role demands on the Justices of the highest court to provide additional lectures for citizen outreach programmes in terms of the executive team's (communication department) KPIs.

> *So, we have launched a relatively new initiative this year through the communications team called Skype-a-Justice. Which is quite exciting because it means that Justices can have half an hour or an hour, I'm not quite sure how long it is but with a class of A-Level or GCSE students and just answering questions which is really good because you don't have that kind of access to figures in the British constitutional world at all I wouldn't have thought. So, there is that educational outreach angle to it but primarily of course it's case law. Also deciding what cases come here, granting permission to cases that truly meet the criteria of general public importance and then deciding those cases fairly.*
>
> UKSC Executive Team 16

As noted above, there is a new initiative – Skype-a-Justice. This was created by the communications team for the purpose of outreaching to schools and enabling students of a less privileged background

or, from schools which are rather far away from London, to communicate with the Justices.

> *One of the things that we've just completed the pilot for because we have the technology for it is Skype-a-Justice. That worked really well. It's really good for schools that are remote from London who because of budget cuts, it becomes difficult to justify the expense of a day trip to London and therefore don't always have the opportunity to come here, to actually give them the chance to spend an hour or so with the Justices and ask questions and see what goes on.*
>
> UKSC Executive Team 15

One may argue that initiatives such as Skype-a-Justice have a positive impact on citizen outreach. However, others may argue that the strong emphasis on encouraging the Justices to engage with schools should proceed with caution:

> *…when it comes to school outreach, we've tried to get away from Oxford and Cambridge…they do like to go to the lesser schools in deprived areas…One of the Justices…went to a polytechnic which turned into a University, he almost got mobbed because they'd never had someone of his level go there.*
>
> UKSC Personal Assistant 20

The findings here suggest that there has been an increased emphasis on the Justices to increase the level of citizen outreach – particularly with less advantaged schools. This has been done through a number of outreach programmes in line with the KPIs of the communications team. One may suggest that this is beneficial for increasing openness and transparency. However, it does become theoretically questionable when the legal system has historically been regarded as the ultimate victory of the elite (Sumner, 1934) based upon complex and exclusive systems (Weber 1949, 1950, 1958, 1969, 1978; Mommsen 1992).

4.2.7 Section Summary

This section has considered how the role of the justices has transformed under the characteristics of public management. It has found that the uptake of technology has astronomically increased when compared to the use of technology in the House of Lords. This has brought new role opportunities but also new role pressures for the Justices to use technology. Additionally, the role of the Justices has been transformed in the new court to promote much greater citizen outreach. Whilst it has been noted that their "bread and butter" is predominantly deciding cases, there are clearly new role demands for a much more outward-facing judiciary than ever before. One may suggest that this is positive in terms of public management buzz words for openness and transparency, although there are also many risks associated with this. For example, creating media attention has arguably caused some disillusionment with the authority of the court – such as the attire in the Brexit case. The transformation of the traditional court into a new era under public management brings with it questions of social respect for the authority of the role of the highest judges. This is concerning due to the law maintaining social stability for over a thousand years in the United Kingdom – especially when the law can survive without politics; but politics cannot survive without the law.

Theme 3: Agency versus Stewardship

4.3.0 Section Introduction

The third and final theme in the findings section considers the impact of public management on the role of the Justices in terms of it's constitutional soundness. It is argued that the Justices are less protected than they were in the House of Lords. Moreover, consistent with the literature review, it is revealed that the reasons for the creation of the court were political as opposed to constitutional.

4.3.1 Separation of Powers: Middlesex Guildhall

As noted in the literature review, the justification for the creation of the United Kingdom Supreme Court was to show a clear separation of powers. This was personified with the creation of a new building – Middlesex Guildhall – to purport a visual separation between the three branches of government –

namely the executive, legislative, and judiciary. Although, one may wish to note that the move into Middlesex Guildhall actually represents the four pillars of governance in Parliament Square, including Westminster Abbey.

> *When they were Law Lords they used to get mixed up with the Lords but they didn't sit in chamber and vote, people used to think that they were sitting in Parliament. The UKSC is to show a clear separation of power, if you look at this area you have all four corners…*
>
> UKSC Personal Assistant 21

The removal of the Law Lords from Parliament was justified to show a clear separation of powers. However, having been Law Lords since 1399, many of them were hostile to the move.

> *Before the move I would say that the majority of the Law Lords were hostile to the move. After the move, after they got used to having civilised premises and all of the benefits of being in the Supreme Court, there's much better facilities for consultation, judicial assistance, nice rooms, a dining room where we can all eat together – they changed. Those who had been opposed to it, I think that all of them changed their mind. Maybe Lord Rodger didn't – he was never keen on it.*
>
> UKSC Justice 7

Nevertheless, subsequent to relocating into Middlesex Guildhall, it was largely purported that the Justices perceived the move as boosting their independence from Parliament.

> *I think that psychologically for them it has made them feel much more independent. I think that the other thing is that it looks like from the outside world that they are more independent.*
>
> UKSC Non-Executive 18

The research findings indicate that the common consensus – particularly amongst the executive and non-executive teams was that the move into the Supreme Court has been beneficial to show a clear separation of powers between the executive and judicial branch of government. However, some members of the judiciary noted that there is an argument that the Justices are less protected by moving

into a new building.

The new building – Middlesex Guildhall was identified as the visible pinnacle of the 'independent' UKSC. This is largely due to the argument that the Law Lords were not seen as independent of Parliament, thus for a clear separation of powers, they should be removed from the House of Lords. This is consistent with the arguments made by government (as detailed in the literature review).

> *In the House of Lords we were independent – only problem that it could be misinterpreted cosmetically by people who didn't understand.*
>
> UKSC Justice 4

> *I don't think that the creation of a Supreme Court has made any difference at all to the division of powers between the executive and the judiciary. If anything the move has made much clearer the divide between the role of the final court of appeal and the role of the legislature in parliament because for the man on the street there was total confusion about who the Law Lords were, what they did and so on. One of the great benefits of setting up a Supreme Court was that it showed a quite clear independent supreme court. With the use of television and making the court user friendly, we're slowly getting across to the British public that there is the existence of the Supreme Court.*
>
> UKSC Justice 7

In addition, some suggested that the Supreme Court came at a good time as the court was having to deal with some difficult constitutional issues. By being separate from Parliament, the Justices were able to visually show their independence from Parliament.

> *I think that the Supreme Court has represented a separation of powers. It came at a good time because politics at the moment are in disarray and the Supreme Court is finding itself having to act as a constitutional court dealing with some quite difficult constitutional issues. The Miller case is obviously the best example and I think that it's very much better that the supreme court is out of the Houses of Parliament and in it's own building when being faced with these types*

of constitutional issues.

UKSC Justice 7

However, whilst the justification by Parliament (as noted in the literature review) was to show a clear separation of powers between the executive and judicial branches of government, some members of the judiciary strongly disagreed. One may wish to note that those currently serving as Supreme Court Justices did not voice an opinion. Supreme Court Justices are not permitted to either vote or speak of politics as they must be seen as independent. However, some of the looks when questioned about the Constitutional Reform Act 2005 said it all. Retired members of the judiciary were much more vocal.

4.3.2 The Constitutional Separation of Powers

Following on from the above, the role of the Lord Chancellor is brought into question, along with the constitutional arguments put forth by the executive for the removal of the Law Lords from Parliament. The justification of which was to show a clear separation of powers and passed under Parliamentary Sovereignty without a green or white paper.

…they would not talk about cases when they were in Parliament and they do not talk about them now in the UKSC. Now that they're retired, they can make comment and they do have opinions but as a judge they can't voice them – they need to appear unbiased, that's their reputation and they have to maintain that. For instance, in the Brexit case the judges would not respond. If a statement came it'd be from the MoJ, not from the Justices. The Chancellor would put something out to protect the justices, rather like how royalty would put their message across. It's not something that they have part of, it's the MoJ or the Chancellor defending the Justices. We've had a few Lord Chancellors who probably should not have been in that position because they should have been there to protect the Justices.

UKSC Personal Assistant 21

Those who were at liberty to speak often reinforced Lord Neuberger's opinion (revisit section 2.5.1):

"To change the Law Lords into the Supreme Court as a result of what appears to have been a last-minute decision over a glass of whisky seems to me to verge on the frivolous"

(Cornes 2013: 2)

The idea for the Supreme Court was Tony Blair's and his idea alone, alright there were people who were advocates of it. There was no government decision to have a Supreme Court – Tony Blair decided to have a Supreme Court. He didn't consult anybody – didn't even tell the Lord Chancellor who was Lord Irvin. What Blair had wanted to do was to abolish the Lord Chancellor's role altogether, he didn't tell cabinet who was incumbent that that is what he was planning on doing. He did it because he knew that there would be a lot of opposition to it if he said that is what he was going to do so he announced it out of the blue so that there was no opposition. He didn't manage to abolish the role of the Lord Chancellor, he took away his judicial role…It was done overnight.

UKSC Justice 7

This is consistent with new public management initiatives which seek to separate the functions of government into separate entities. Thus, the move actually aesthetically indicates the earlier separation of government functions such as British Rail, British Gas, British Telecommunications; and later reforms to privatise the NHS, education system, welfare, and prisons for example (revisit section 2.2.3). Moreover, the attempts to abolish the role of the Lord Chancellor are consistent with Taylorism which underpins the new public management movement. This is because 'top management' are removed and lower management are empowered. However, the naivety of applying this model to these roles quickly became evident, with the Lord Chancellor's role so ingrained into legislation that it was virtually impossible to abolish this role. Instead, the various functions of the role were separated.

We don't have a separation of powers. We've just physically removed the Law Lords into a different building and given them a different name. That's all that has happened. The Constitutional Reform Act hasn't followed the logic, the justification. The Lord Chancellor as a judge very rarely sat here but he was a judicial figure and as a legislature as he was a member

of the House of Lords and as a cabinet minister was very valuable because there's one further and absolutely crucial change which is that there's nobody in the cabinet who is responsible for the constitution. So, the old Lord Chancellor, of course he was a member of the government but in fact – and I've heard this from a number of different Ministers – from the early days, from Thatcher's days and Major's days – that the Prime Minster always treated the Lord Chancellor as different. If the Lord Chancellor spoke, she would recognise – particularly Maggie, - that he was not speaking as a politician, he was saying constitutionally, is this legislation sound? But he's not there now, he is now Secretary State for Justice and Lord Chancellor, and his responsibilities mean that he doesn't actually have the responsibility that the old Lord Chancellor had for the administration of justice – that's been handed over to the Lord Chief Justice. So in cabinet, there's nobody there and you can tell what they think about the constitutional arrangements because the Minister for the constitution exists – he/she isn't a member of the cabinet, he/she is a junior minister and one of the things going on – for example Brexit – is that there's no one around the table to say but constitutionally I'm worried about this, or constitutionally this should mean this or that – and that's a very serious change so there's no neutral figure in the cabinet who represents the constitution and that's not a good idea and that's why we get so many laws which give more and more power to the government – to the executive all of the draft boards have huge executive powers.

Lord Chancellor/Chief Justice 10

In addition to this, the reason for the creation of the United Kingdom Supreme Court was voiced as being a political move as opposed to a constitutional one.

The idea that the Law Lords were not independent of government because they happened to sit in the same place as Parliament was an absolute fiction, an obfuscation to try to justify some extraordinary constitutional changes. The biggest flaw in it is this – the justification was "it's the separation of powers" but when I said to the person responsible for this – so that means that the Prime Minister won't sit in the House of Commons does it? And the Lord Chancellor

won't sit in the House of Lords? He told me that that was absurd; but I said that if we're talking about the separation of powers there's a much more significant separation of powers needed if we want it which is not to have the executive in the House of Commons legislating.

Lord Chancellor/Chief Justice 10

This point became evermore paramount with further justification.

…as it is there's one hundred and twenty members or so of the executive in the House of Commons everyday of the week so the justification that it was a separation of powers was a nonsense. That was the intellectual justification of what was done. The fact is that it was a political decision. But the Law Lords never changed in the sense that somehow they got away from the building and that made them independent – it didn't, and there were lions under the throne using the old phrase before and then there were many lions under the throne as Supreme Court Justices.

Lord Chancellor/Chief Justice 10

This is consistent with the literature review, which suggests that the Constitutional Reform Act 2005 was not to show constitutional soundness. Rather, under political moves to adopt new public management, the Law Lords (whom had sat in Parliament since 1399) were unlawfully removed "overnight" without any green or white paper. The findings continue to support this:

There is an argument about the separation of powers but who are you to be separated from? In Parliament we were completely separated from the government and there was no way that the government could cut our money for running our own affairs because it was all run by Parliament which is by tradition quite independent – it reports to the treasury but the government doesn't tell Parliament what to do it's up to Parliament so we were completely independent from government. When we moved over into the Supreme Court we were being run by the executive. In the House of Lords we were thought to be part of the legislature and that was the separation which some people thought was odd – why are you as judges sitting in the

body that is making the laws that you have to apply? So that separation of course was achieved. But the worry was that we were moving from the frying pan into the fire and there was a real concern initially that we were going to be subjected to all sorts of financial constraints by the executive which would make our lives extremely difficult. But it worked out that our independence was recognised that we were a separate item which was negotiated by the Chief Executive (of the UKSC) and that was identified as a line item in the budget for the whole Ministry. It took a lot of doing to get that all across. Separating from the legislature is a very interesting thing. In some ways being in the house of lords as judges was very helpful because you would meet an awful lot of people. We would never discuss our cases with the other people around but you were very much involved and heard a great deal of what's happening in Parliament and we all had monitors which would show us what was going on and you could go down to the printing office and get all of the current papers from the bills, amendments, andkeep up to date just as a matter of interest to see what was happening. The Law Lords were entitled to speak in debates on legal matters providing that you kept politics out of it and someof us did do that so we were very well informed. Whereas in the Supreme Court it rapidly became clear that we were quite separate and although initially there were members of the House who would come across here it was so difficult to find the time to do that you just lost touch with the place. I think that there is a slight worry that the quality which one had as a LawLord in Parliament a sort of an indefinable awareness of the movement in parliament to keep up with current affairs is lost because you're a hermit sitting in a separate building with newspapers just like anybody else. We had an added value by being in in the house of lords butother people didn't see it that way.

Lord Chancellor/Chief Justice 10

This is supported by one participant noting that there was absolutely no consultation prior to the Act.

When the news was broken to the senior members of the Lord Chancellor's department – quite fortuitously, the senior members of the judiciary and of the Lord Chancellor's department were

all having a conference over at the Cotswold and they were absolutely astonished. There had been no consultation. The Lord Chief Justice hit the roof because there was no idea that this was going to happen. The Lord Chancellor discovered this through a leak in one of the newspapers and with regards to Blair being asked: "Is it right that you are thinking of abolishing the role of the Lord Chancellor?" To which Blair replied: "Well actually now that you mention it – yes." To which he replied: "Well you can't – it would need primary legislation"...Blair's response was: "It's not illegal – it's politics."

UKSC Justice 7

As such, Parliament – expressing pure agency in line with the theoretical underpinnings of new public management, used parliamentary sovereignty as a political justification for the move. This is gravely different from the public justification to show a clear separation of powers.

The shock of the Constitutional Reform Act was the announcement. What happened was that there was a bust up in the cabinet. The previous Lord Chancellor – Lord Irvine – disagreed with Lord Blunkett. Blunkett disliked judges – he was the Home Secretary – he thought that the judges were interfering in his job and he decided that the only way to live was to get the judges out of the House of Lords. Lord Irvine as Lord Chancellor said: "No you're not" – over my dead body really – so Tony Blair had to decide who to support and he went for Blunkett and Lord Irvine resigned. That happened all at once. Then Lord Falconer became Lord Chancellor and the idea was that his job would last for twenty four hours – they then realised how much the Lord Chancellor did and it wasn't possible to eliminate the Lord Chancellor because all sorts of stuff relating to the statutes would have to be altered so they had had just a snap shot image of removing the Lord Chancellor and starting afresh and that's why we had this long process and although the announcement was in 2003, the Act didn't come until 2005 so it took a long time to go through the Lords, committees siting on it, votes – trying to sort it all out. And then of course once the Act was passed you then needed to invest in the building which I don't

think we identified until 2006. So, it was a long process all of the way through to getting the transfer across in 2009.

UKSC Justice 5

The shock of the announcement was reiterated amongst many of the retired members of the judiciary.

It was a huge shock. Nobody had been consulted not even Lord Bingham who was our leader. Nobody had been told at all. In fact I saw it announced on the television. We had no idea what it meant. We thought that we were all just going to be sacked and it wasn't until about two or three days later that we realised we were actually going to keep our jobs and just be moved sideways into a new building. When the announcement was made it was a real shock and trying to just unravel what they really meant took a bit of doing because they hadn't really thought through what they really meant. There was no pre-planning until we got down to work to plan it properly. We had enough time to do it and we were fortunate that the money was available for us to have a place to go to. There were twelve of us and we were divided six by six. So that's how it was. It wasn't really our decision. The decision was taken for us.

UKSC Justice 5

The fact that the Law Lords were removed from Parliament, without consultation, upon the quick decision of two members of the executive function – Tony Blair and David Blunkett does raise severe constitutional concern. The predominant reason being that when the theoretical underpinnings purporting agency and a clear hierarchal force in line with Taylorism are applied, the executive branch of government is able to increase its power over the other two branches of government. Centralising this type of force is concerning on national levels where the judicial branch of governing has maintained social stability prior to politics ever entering into societal direction (i.e. prior to 1066 – revisit section 2.3.2). However, despite the opposition from the judicial branch of government, legally, there was a limit to what powers they were able to exercise and therefore had to accept the decision based on parliamentary decree – one may hereby wish to note that decrees are primarily used by dictators as to within democratic nations.

Tony Blair's announcement was about two years before the Constitutional Reform Act…it was about two years between Tony Blairs announcement and the Constitutional Reform Act, maybe a little less but quite a long time…the House of Lords were not in favour of the change but there was a limit to what they could do – they had to face reality so once all of this negotiation took place then ultimately the deal was kind of sowed up and people agreed to it…Lord Woolf was adamant that the Justices were part of the negotiation because he was Lord Chief Justice at the time.

UKSC Justice 7

Despite the Law Lords having to legally comply with the decision made to remove them from Parliament under the Constitutional Reform Act 2005, there was a lot of negotiation.

Tony Blair having decided what he wanted to do couldn't do it without getting Parliament onside so although he decided that it's what was going to happen there was a lot of infighting and horse trading before he was able to…he had got his government behind him but Parliament was not prepared to go along with everything that he had got in mind and it took quite a long time to get a building for the Court,. To convert it almost took five years between the decision and Tony Blair announcing that there would be a Supreme Court and the court opening its doors.

UKSC Justice 7

He couldn't do it without an Act of Parliament so there was a lot of delay in negotiation and the judges were involved in working out the deal and working out the terms under which the Supreme Court would be set up and more specifically the terms under which the role of the Lord Chancellor would change so if you read the Constitutional Reform Act you will see that it specifically provises that the Lord Chancellor is responsible for upholding the rule of law. That's because the judges in particular as opposed to Parliament insisted that the Minister for

Justice should have this as his primary responsibility….

UKSC Justice 7

The abovementioned findings indicate that the removal of the Law Lords from Parliament was not due to constitutional soundness, rather it was a political move. This political move pertained to the disagreement between the Law Lords opposed to the Iraq war. Under the European Human Rights legislation 1998, a rift was caused between the government (namely, Blunkett's ideals) and the Law Lords. This promptly saw the Law Lords being removed from Parliament into an entirely new building – Middlesex Guildhall – under Parliamentary Sovereignty.

Despite the Law Lords having to legally oblige to the decision made, there was a strong consensus amongst the retired members of the judiciary who were at liberty to speak, that Parliament had lost a very important input from the Law Lords in how legislation would be interpreted. This is because without effective judicial oversight, legislation may be passed which is incompatible for judicial interpretation, move up through the lower courts, reach the Supreme Court and then have to be rewritten. The process of which was deemed to be time consuming, ineffective and costly – thus echoing the negative impacts that new public management initiatives had on the lower courts (revisit section 2.5.1).

The loss is a loss to Parliament, not to the Supreme Court and I think that when my generation of old Law Lords either retire or die, the House of Lords is going to miss having experienced lawyers as members of the House…They could always appoint members of the Supreme Court to the House of Lords and I hope that they will.

UKSC Justice 7

Parliament has definitely lost something because when there were debates in the House that involved legal matters, the Law Lords used to take a part providing that it was going to come back to them in litigation and they also used to chair committees so they played quite a valuable part in the business of the House of Lords. So, there is that loss and they're not replacing the

> *old Law Lords by making those who retire from the Supreme Court – unless they were previously Law Lords.*
>
> UKSC Justice 7

It is believed that there is some benefit – particularly in the ability for the new generation of Justices to adopt technology; although one should note that the incremental changes towards a reliance upon technology is not without risk (revisit Theme 2 – above). However, under the Constitutional Reform Act 2005, the overall removal from the House of Lords has further limited the powers of the Judicial branch of government (already unable to speak of politics) to communicate with the executive branch.

> *Of course there has been a difference, some to the good, some to the less so. To the good I suppose is the use of technology, that they have their own court as opposed to using Parliament, and so they can, and they have very wisely, used the initiative that that has given them and I am strongly in favour of that. But there is a disadvantage too which people overlook. The main disadvantage is that they could no longer speak in the House of Lords and there are very few returning Law Lords left and I say that with some determination. Even the Lord Chief Justice lost the right to speak in the House of Lords and there were occasions when the Lord Chief Justice would have liked to have spoken in the House of Lords. However, what was offered as part of the Constitutional Reform Act was the ability to write a letter to Parliament saying: "This isn't very good". Have you ever tried writing a letter which you know is going to make absolutely no difference? You'd be laughed at. You have to be there to say why you disagree with something in the government's legislation – and so that has been lost.*
>
> Lord Chancellor/Chief Justice 10

The erosion of judicial powers coincides with the increased agency of the executive branch of government in a streamlined hierarchy akin to new public management initiatives. Quintessentially, this places the social stability of the state at risk due to social disadvantage.

What has also been lost is that when the new Justices were appointed they would not be able to become Lords but the promise was that when they retired they would. That hasn't been fulfilled so the House of Lords itself has fewer and fewer of us in the House of Lords to look at the legalities of legislation. The legislation is packed with things that are wrong. I don't mean policy wrong, policy is up to the government but packed with things we don't want or what will give the government too many powers. A whole lot of powers were given to how the role of the Lord Chancellor, about how the court system would run, not recognising the constitutional change that the Lord Chief Justice is responsible for the running of the court now – not the Lord Chancellor – and allowing it be consulted. Consultation is as a constitutional weapon negligible, such as thank you so much for telling me but upon reflection I think that I'll carry on doing what I want – so we've lost that connection too and it's a very important consequence of these reforms. I thought that the reforms were unnecessary. They have worked, although I am not happy about it, they have had some very serious consequences which are not of a societal advantage.

Lord Chancellor/Chief Justice 10

The findings herein indicate that the former Law Lords (prior to the creation of the UKSC) are able to return to Parliament upon retirement. However, new UKSC Justices are not permitted to enter into the House of Lords. Essentially, this means that there will be fewer of the highest judges sitting in Parliament, offering advice, until the role itself becomes obsolete. This is a vast difference from the historical role, where most members of Parliament were of a legal background and the highest Justices sat as advisors in the House of Lords.

4.3.3 Recruitment

The findings below suggest increased agency in the recruitment process which theoretically coincides with decreased stewardship. This is rather alarming, given that the very premise of the judiciary – and the United Kingdom Supreme Court Justices – is to act as a social steward. The findings below do not

necessarily suggest that Justices are now failing to act as social stewards. However, there is a clear move towards increasing individual agency through the recruitment process.

Prior to the Constitutional Reform Act 2005, Justices were selected on recommendation to the Lord Chancellor. To be selected was perceived as a great honour and many would take a pay-cut for the privilege of appointment. This echoed a strong sense of a gentlemanly code and stewardship over individual profitability and agency. However, in line with agency theory, which underpins new public management (revisit section 2.2.1), the more structured recruitment processes with an emphasis on openness and transparency in appointment, has had an adverse effect. Many of the judicial members interviewed suggested that good judges would not apply for the position – for three predominant reasons. The first being that if one was not appointed, the openness in the recruitment process would leave them exposed to criticism and would not only be embarrassing but may affect their future judicial work. Another reason was that – in line with agency theory – the removal of honour in appointment would certainly lead to many reaching the conclusion that the pay-cut would not be worth it. Finally, the large media exposure and increased inability to choose the workload would become an essential deterrent. As such, the consensus amongst the highest judicial members interviewed was that the best judges would not apply for the position to be a UKSC Justice, namely due to the structured process associated with the public management movement, openness and transparency in appointment and cost cutting initiatives. The knock-on effect of this may well be astronomical. Furthermore, such a movement which emphasises agency reduces the gentlemanly code of stewardship which underpins the fundamentals of the rule of law. As noted:

> *...can be doing very well financially but they then need to make an application. Now if you make an application it can be refused and if it's refused although it's supposed to be secret but everybody knows that John Robinson has applied to become a High Court Judge – well not everybody but enough people know – and he doesn't get it, well then his solicitors may say I don't want to have him, I don't want to brief him, he wasn't successful, let's move to the young man or young woman in Chambers. So, you're taking a very big risk if you apply and anyway if you feel as though – look I'm fifty years old how I've behaved, my record, the cases I've done,*

my intellectual ability – all of that has been examined for thirty years, why should I apply? So we are undoubtably having a problem in getting people to apply from the barristers and solicitors to becoming high court judges.

Lord Chancellor/Chief Justice 10

The recommendation to the Lord Chancellor and dignity in appointment is further emphasised by the fact that Justices – in line with stewardship as opposed to agency – would typically take a pay cut for the honour of becoming a Supreme Court Justice (then Law Lord).

…if you're a successful barrister, you can pick and choose the work that you do and don't have to take a paycut.

UKSC Executive Team 14

In relation to the high court of appeal and the supreme court, the problem with the new system – and I'm not saying that you should go back to the old system – but the problem with the new system is that if the Lord Chancellor didn't send for me in the old days, I'd think silly old fool…you'd be upset, disappointed. But now you have to make an application in competition with your friends , your colleagues, your contemporaries, and the selection panel included the Lord Chief Justice and the Master of the Rolls and they have to choose along with lay commissioners who are the majority so they have to say whether they choose X rather than Y and again everybody knows that you've applied and they've said that we're going to have you as opposed to me and it's very damaging to the thing that really does matter in the court system in that the judges all work together so it's damaging in that sense. There's a bit of an idea that's false about the old system. The Lord Chancellor didn't wake up one morning and say I'm in a conservative mood today…there would be folders and files of people who might be considered and they were discussed but in the end only the Lord Chancellor decided but it wasn't him waking up one morning and saying lets be adventurous today…people would take a pay cut,

being a judge is a fantastic responsibility.

Lord Chancellor/Chief Justice 10

Whilst one may argue that the openness and transparency in appointment is beneficial to eliminate accusations of favourism in appointment, the reality was that the appointments were through a gentlemanly code of honour and appointing the best person for the job.

….the bigger issue for me about the Constitutional Reform Act is the way in which the senior judges are appointed – previously the Lord Chancellor had the final say. There was some controversy about this but in practice it was done on a consensual basis with very few complaints. The CRA removed the Lord Chancellor from this all but a tiny say now. At this level there are some politics and you can't get away from that and they know it. My view is thatthe Lord Chancellor should have a bigger role in appointments…it isn't all political…quasi-political….

Lord Chancellor/Chief Justice 9

This was justified as when an "independent" appointments team is created (acting under executive control), those on the panel will not necessarily have the tens of years of experience working in close proximity with those who are potentially appointed. The Lord Chancellor, acting on behalf of the judiciary knew of possible recruits to the highest court, knew their capabilities and could predict their ability to perform at this level. Upon recommendation, the (then) Law Lords were appropriately selected.

Your political approach with a small p…I know these people so I can predict what X is going to do and what Y is going to do as do most of the practitioners so there is a case for demystifying it…not like the full hearings that you have in the States – useful for senior positions…However, Parliament is Supreme and can overthrow the decision.

Lord Chancellor/Chief Justice 9

Additionally, to remove the judicial role of the Lord Chancellor under the restructuring, further emphasised the decrease in trust and stewardship, with severe consequences.

> *In the original plan, the role of the Lord Chancellor was to be abolished – there was a massive fuss about this, not just from the Law Lords but in the House of Lords more generally…it became apparent that the Lord Chancellor's role is embedded into all sorts of legislation so there was an agreement that there is a Justice Secretary who has a set job but double hatted as Lord Chancellor and that was important for the judiciary. They saw having a legally qualified or very senior cabinet minister as a protection of their independence (this is in section 2 of the CRA)…the Prime Minster is supposed to follow this when it comes to the appointment of the Lord Chancellor and they're supposed to be legally qualified or be otherwise seen qualified by the Prime Minister…Jack straw and Kenneth Clarke both had legal experience…it became very apparent rather quickly that Chris Greyling did not, neither did Elizabeth Truss…*
>
> Lord Chancellor/Chief Justice 9

As aforementioned in Theme 2 (above), Elizabeth Truss failed to protect the Justices during the Brexit campaigns and they were subjected to a torrent of impolite media and citizen attention. In line with this, it was suggested that the move has exposed the United Kingdom Supreme Court Justices far more than they would have been in Parliament and without the appropriate judicial protection of the Lord Chancellor.

> *I suppose the there is a slight risk if you are on your own (in a separate building) that you might be less protected than we were when we were cushioned in the Lords.*
>
> UKSC Justice 4

However, it was suggested that there is an erosion in this gentlemanly code associated with stewardship as a result of new public management initiatives.

> *The judiciary are an unusual breed in that they have set routines even so much as they have tea at four O'clock in the afternoon but that is a judicial thing and some of them have come over*

here (i.e. into the UKSC) and wanted to continue that because it's what makes them feel like a judge – it is something that they had since they started, in the lower courts that's what they did, they had tea at four O'clock served on a tray with a teapot and that to them is their working environment…There has been a change in tradition – slightly because some of the older Lords like to have tea at four O'clock because it makes them feel like a Judge – it's an old fashioned profession and although it has been dragged into the twenty first century there are still elements…If you go to the INNs, there is a lot of tradition in their profession and they find it hard to drop everything…they want to embrace the modern times and technology but there is that bit that they want to retain…we will have lost about 90% of the Justices soon so and we will have a complete new set of Justices so we will only have one or two of the old ones left and those coming in are substantially lower in age but still have some of the similar traits…which are traditional.

UKSC Personal Assistant 21

As suggested, the findings indicate that tradition is diminishing with the new generation of Justices that are moving into the United Kingdom Supreme Court. Thus, bringing with them new roles more akin to agency – particularly in the recruitment process where the lack of honour in appointment essentially means that the best judges will not apply. One may argue that the openness in appointment and emphasis on board diversity has many representational benefits. However, the findings indicate that the overall consequence of new public management initiatives on the highest court promote agency in appointment and an erosion of a gentlemanly code. This code, akin to stewardship, underpins the very premise of the legal system which has stood as a bastion of social order for more than a millennium.

4.3.4 Section Summary

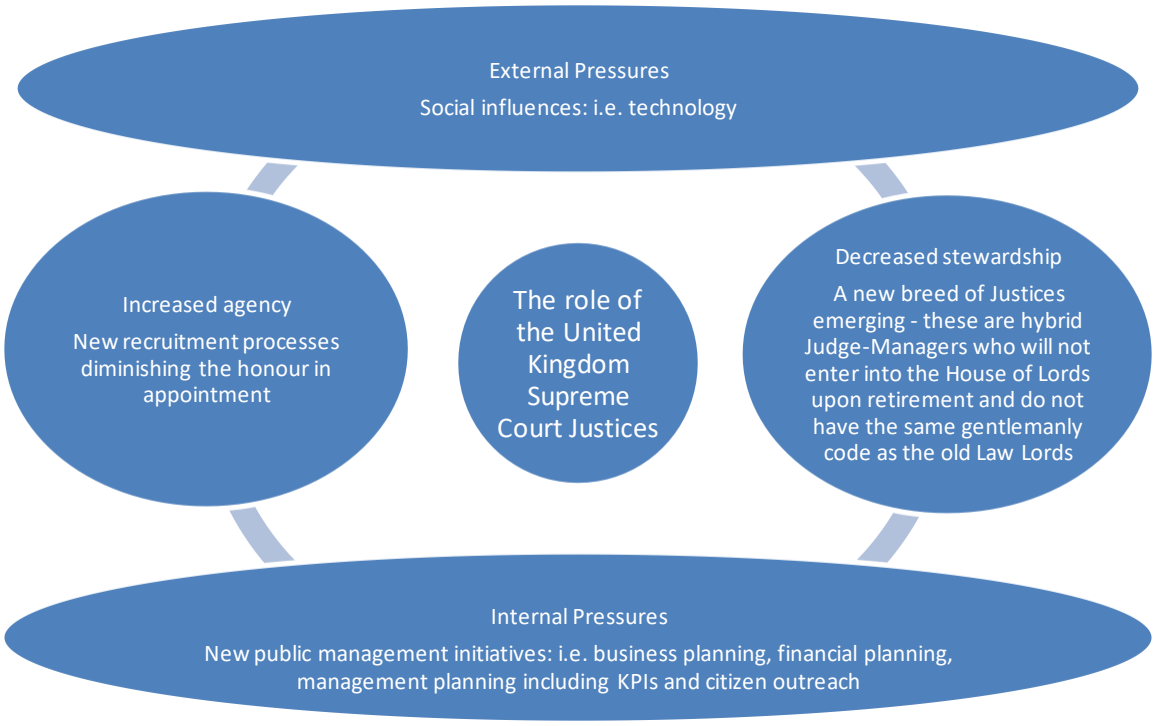
The findings herein suggest that, akin to public management initiatives, there is a greater focus on individual agency. This, theoretically, juxtaposes the very premise of the judicial branch of governing which is personified in the role of the highest judges, namely, that the Justices are less protected than

they were in the House of Lords. Moreover, consistent with the literature review, it is revealed that the reasons for the creation of the Court were political as opposed to constitutional.

4.4.0 Theoretical Model

Taking the above findings collectively, it may be suggested that there are many new pressures on the role of the UKSC Justices which are aligned with public management initiatives. The outcome of these pressures potentially results in more managerial justices and an erosion of the former Law Lord's gentlemanly code. One may suggest, when the three themes identified are taken collectively, there are both external and internal pressures on the role of the UKSC Justices. These new pressures seemingly result in isomorphism which changes the role of the Law Lords in Parliament to how they work in the UKSC. The findings suggest that the overall result is an increase in agency and more managerial Justices.

Figure 7: Theoretical Model for the Impact of New Public Management unto the Role of the United Kingdom Supreme Court Justices



Source: Compiled by Author

The above model indicates that there are a number of internal pressures as a result of new public management which are impacting upon the role of the United Kingdom Supreme Court Justices. For example, there are new business plans, financial plans, management plans – including Key Performance Indicators and increased citizen outreach. However, whilst some characteristics of public management (such as technology) are evident, these are arguably attributable to wider social pressures as opposed to to new public management alone. In addition, the model suggests that there is an increase in agency amongst the highest judges, theoretically coinciding with a decrease in stewardship. This mainly comes through the new recruitment processes which advocate openness and transparency in appointment and are consistent with new public management agendas. Whilst one may argue that this a positive and more 'fair' practice; the reality is that agency is increased. Many good judges will no longer apply for a position when they may not 'get the job'. This is because it would not only be embarrassing, but leading solicitors' firms may not employ them as a result. Additionally, the role would require a pay- cut, more media coverage and scrutiny, and the Justices are not at liberty to choose their cases as they would if they were a barrister. Quintessentially, the impact of new public management initiatives to increase openness and transparency actually diminish the honour of appointment and the fundamental premise of stewardship which underpins the legal services sector as a bastion of social order. One may of course argue that judges, lawyers, barristers – have indeed adopted a paid profession and therefore stewardship would always be negotiable in line with some form of agency for individual profitability (Sumner, 1934). However, public management initiatives increase agency akin to free market economics. Revisiting Table 2; one may suggest that this theoretically undermines stewardship in the pursuit of individual agency aligned with public management initiatives. From a social constructionist perspective, when applied to the highest judges this raises grave concerns regarding societal belief in the rule of law.

4.4.1 Chapter Summary

The themes identified in the findings highlight a clear transition from the role of the Law Lords in Parliament to the United Kingdom Supreme Court Justices. There are of course, arguably many benefits aligned with public management agendas. However, in this old profession, which has stood as the world's longest bastion of social order since 1066, the consequences of implementing quick change under new public management initiatives becomes questionable. The subsequent chapter will review the findings herein and evaluate them with consideration of public management and social theory as outlined in the literature review.

Chapter 5: Discussion

5:0 Chapter Introduction

The findings do indeed indicate that there has been an impact on the role of the United Kingdom Supreme Court Justices under initiatives which are characteristic to new public management. These are predominantly associated with the themes outlined in Chapter 4 above. The Chapter herein will discuss each of the aforementioned findings in relation to wider literature. Moreover, consideration will be given to how this theoretically affects the role of the Justices on a societal level as well as what this theoretically means in terms of national and global governance.

5.1 The Impact of New Public Management on the Role of the UKSC Justices

The United Kingdom Supreme Court Justices act as the highest judicial level in the United Kingdom. Their role is to interpret cases on points of Law which are of societal importance. Moreover, the highest judges act as a role model to the lower courts; and on a societal level are historically perceived as a pinnacle of social justice. This can be traced prior to 1066 where William the Conqueror entered the United Kingdom with established laws maintaining social democracy (revisit section 2.3.2). Additionally, the law was perceived as prominent above all else and documented in the Magna Carta 1215. More recently it has been ascribed that the law as a bastion of social order can survive without politics (for example, when there are Hung Parliaments) but Parliament cannot survive without the rule of Law (Tamanaha 2004; revisit section 2.5.1). Despite the overarching embedment into socially constructed reality (Berger and Luckmann 1966); maintaining prominence through complex systems (Weber 1949, 1950, 1958, 1969, 1978; Mommsen 1992); which are perceived as essential to societal belief (Nicholson, S. P. & Hansford, 2014); new public management initiatives are reforming the role of the highest judges. This predominantly comes under the theoretical underpinnings of new public management that advocates agency as opposed to stewardship – the latter of which – is fundamentally interwoven with the personification of the law (revisit Table 2 of the literature review). It may, of course, be argued that the law itself may be rewritten to purport the interests of those who write it, and

in doing so, may be perceived as the ultimate victory of the elite (Sumner, 1934; revisit section 2.3.1). Additionally, actors within this such as legal service providers in the context of solicitors or barristers may act within their own self-interests. These self-interests are arguably augmented by executive moves towards agency and free market economics under new public management initiatives (as seen with Alternative Business Structures and the Legal Services Act 2007; revisit section 2.4.1).

Nevertheless, the law has historically maintained social stability. One may denote that this was apparent subsequent to 1066 whereby there were multiple different cultures residing on British soil due to invasion (revisit section 2.3.2). Moreover, the Rule of Law acted as a prominent force in colonial Britain, whereby not only was a comparative advantage sought but this was attained through an intellectual competitive advantage (for a further analysis see Porter, 1990). Such competitive advantages are seen to not only maintain social stability; but facilitate an environment for economic growth.

This research indicates that the role of the highest judges is being bought under question as a result of executive agendas favouring public management initiatives.

This has been embodied through, for example, the Brexit case. Whilst it was noted that there were benefits for society to view the Court as disparate to Parliament; there was also an increase in media profiling of the highest judges as a result. Moreover, there was an increase in societal disillusionment. To reiterate:

> *Justices have remained unrobed and, last year, advocates were invited to appear without wigs and/or gowns if they so wished.*
>
> Phillips, N. The Right Honourable Lord of Worth Matravers, KG, PC (2012: 10-11)

> *Where are the wigs?" "Where are the gowns?" "Where are the gavels?" and I think that quite a lot of people moved on at that stage because it wasn't as dramatic as they were imaging.*
>
> UKSC Executive Team 11

Overall, the findings indicate that the role of the Law Lords into Supreme Court Justices has changed inline with characteristic reforms of public management. In the first instance (Finding 1); there has been an increase in managerial and business planning. These plans are largely ascribed to the newly found executive team and echo private sector practices. In the second (Finding 2): there is an increase in citizen outreach. Whilst this may be perceived as a positive reform in terms of openness and transparency, there have also been detrimental effects due to increased media coverage and less protection of the highest judges. Moreover, the advocation of technology (interestingly from wider societal expectations; amongst the Justices themselves; as well as pressure from the executive team) has increased. Althoughtechnology may not be attributable to new public management alone, there are reforms to adopt technology in the highest court (which is also a driving characteristic of public management). The thirdfinding (Finding 3) suggests that as a result of the changes from the Law Lords in Parliament into Supreme Court Justices, the most qualified judges for the position will not apply. Board diversity may have an outward – and indeed inward – facing role to play. However, the change in recruitment has reformed the position as a pay-cut for honour in appointment to structured recruitment for outward diversity; essentially penalises the best judges for the highest appointment. The Justices were once of an elite profession who were renowned for their excellent work and moved up through the lower courts over several years and appointed on principal to the highest court for their profound work. However, under the new public management initiatives, people from a diverse range of backgrounds can apply –and indeed have been appointed (e.g. academics – without several years of judicial scrutiny). The samecan be said for the appointment of Lord Chancellors subsequent to the Constitutional Reform Act 2005.

Quintessentially, taking the findings collectively, there has been an increase in agency as a result of structured public management initiatives in the highest court. For example, the increase in citizen outreach and decrease in honour of appointment may equitably lead to the best judges not being applying, nor being appointed. By contrast, in line with overarching agency, there is a deterrent for the best judges to be in the highest position when more money and less media coverage is to be sought as a leading barrister.

Moreover, newly appointed UKSC Justices cannot enter Parliament when they retire leading to a dying breed of the old Justices and a great loss of knowledge to Parliament. One may also argue that today, laws are being rewritten due to incompatibility and having to work their way up from the lower courts, causing a backlog of work. This ultimately causes a more ineffective, costly, and time consuming system. The overarching results for societal belief may only result in further disillusionment of the system.

5.2 National Scale

The findings indicate that new public management initiatives have indeed impacted on the role of the United Kingdom Supreme Court Justices. Whilst it is noted that some of these changes – for example the uptake of technology – are aligned with wider social pressures as opposed to public management alone; there is clear evidence that public management advocated by the executive branch of government is reforming the role of the Justices. According to the literature review, this causes concern on a social constructivist level. For instance, there is an emphasis on increasing diversity. On the one hand, this may be incrementally sound as board diversity has proven benefits (Ferreira, 2010; Hillman, 2015; Miller & Triana, 2009; Mahadeo et al., 2012). However, within the context of the United Kingdom Supreme Court Justices under public management, the emphasis on openness and transparency undermines the level of stewardship historically assigned to the role. Quintessentially, this results in a dilution of elitist power (Sumner, 1934; revisit section 2.3.1). The consequences of which on a national level may of course result in the dilution of power and disillusionment of established authority. Moreover, it has been 'proven' that the United Kingdom has resided to a state of competitive as opposed to comparative advantage (Porter, 1990) for the facilitation of economic growth; particularly since decolonisation from 1945. As noted by Weber, the law plays a key role in social and economic stability. A disillusionment in the highest Justices from a social constructionist perspective may indeed have detrimental effects to wider national social and economic stability.

5.3 Global Governance

New public management has been used as a means for joined up governance (Carey & Harris, 2016; Haque 2007). Not only has this been seen on national levels but also on international levels (Keast, 2011; Alford & Hughes, 2008). In some instances, this has proved beneficial; however, in others this has failed. Upon joining the European Union, United Kingdom law became party to EU law. Moreover, there are a number of other international treaties which bind the United Kingdom on an international level. Revisiting the literature review (section 2.2.1), one can denote that the countries at the forefront of public management initiatives were the United Kingdom and the USA, under the Thatcher and Regan governments of the 1970s. This was closely followed by the uptake of correlating initiatives by Australia, amongst other countries. Although not all countries have, or indeed are, adopting exactly the same strategies, when executive functions of government are 'singing by the same hymn sheet' this raises ethical concerns pertinent to the joining up of legal governance. On the one hand, it is arguable that joined up legal governance may assist in country disputes, thus avoiding unnecessary wars (see for instance the World Court of Human Rights, 2021). However, for others this raises serious ethical concerns which advocate a dictatorship of a minority on a global scale.

6.0 Conclusion

In conclusion, the research has verified suppositions brought forth within the literature review – namely that the creation of the United Kingdom Supreme Court was a political decision made by Tony Blair defending Blunkett amidst the Iraq War crisis. The justifications for the removal of the Law Lords from Parliament was under the argument for a clear separation of powers despite the Law Lords having resided in Parliament since 1399. The abrupt decision under public management initiatives saw a complex disorder in which the role of the Lord Chancellor could not be dissolved and a loss to Parliament through the highest judges no longer being able to contribute to Parliament upon retirement.

The overall impact of public management initiatives unto the highest judges suggests an increase in citizen outreach, media scrutiny and personal agency. Moreover, the foci upon business and financial

planning is transforming the role of the highest judges from "just judging" into hybrid Judge-Manager roles with a focus upon business and financial planning, reporting and accountability.

The overall effect of this is yet to be seen; although, theoretically, one may put forth the supposition that the change to the highest judges is potentially matched with social disillusionment in the system which has stood as a bastion of social order in the United Kingdom since 1066.

The implications of the research show a clear contribution to new public management theory and the ethical considerations which should be addressed when reforming the legal system. The findings suggest that there are outside pressures – particularly with regard to technology – which are transforming the role of the United Kingdom Supreme Court Justices and are not necessarily attributable to public management alone. However, the characteristics of public management can be clearly seen in the role transformation of the highest judges. For instance, the emphasis on citizen outreach for transparency and new Judge-Manager roles emerging. Quintessentially, the impact of public management initiatives unto the role of the United Kingdom Supreme Court Justices brings to the fore the dilemma of an executive system executing parliamentary sovereignty which theoretically threatens the separation of powers between the three branches of government (executive, legislative and judiciary). With an emphasis on public management which is arguably focused upon agency over stewardship, constitutional concerns arise. Thus research findings herein suggest that the impact of public management unto the highest court will inevitably entice the question of how trust in the judicial system for future social stability may be maintained. This may act as a practical guide not only for the United Kingdom government but as a starting point for other governments on a global scale. This is because new public management is becoming a global phenomenon, with many countries following the initiatives started by Thatcher and Regan almost five decades ago. As such, whilst the world moves towards global governance, the role of the judiciary in good governance must be questioned.

6.1 Recommendations for Future Research

Through using a qualitative analysis, it has been shown that there is an impact of public management on the role of the United Kingdom Supreme Court Justices. However, to take the research further, it

would be interesting to ascertain how other Supreme Court Justices in countries whereby governments are advocates of public management initiatives – are being impacted by the movement. In the first instance, it is recommended that there is a replica of the current study which would the yield light for further quantitative analysis. The quantitative analysis could be used to cross-analyse differences regarding the impact of new public management on the role of Supreme Court Justices in various countries. In line with this, it would be interesting to further examine the perceptions of society in comparison. Quantification is predominantly used from induction thus facilitating testable hypotheses (Xiao et al., 2017). Therefore, it is reasonable for one to suggest that qualitative studies akin to social constructionism are conducted to engage public perception. Subsequently, quantitative analyses may be formed which cross-analyse the impact of public management on the role of Supreme Court Justices and how this is ultimately perceived by members of society. Not only will this contribute to literary theory but also to government strategy in ensuring the stability of the state. The final recommendation aligned with this would be to consider the cost/benefit of joined up governance on a global scale and the role of the judiciary within this.

6.2 Personal Reflection

The PhD experience is one that I will never forget! There were times when it was incredibly interesting and others when it was frustrating. One of the most memorable being when executive arguments for the creation of the Supreme Court fundamentally juxtaposed those of the judiciary. It certainly taught me about perseverance and remaining unbiased.

The creation of the literature review itself was very insightful and through personal reading I learnt a lot. For instance, researching into the history of law in the United Kingdom, sociological arguments for the purpose of this, the relationship between the executive and judiciary in the separation of powers, and public management literature - all gave me a new and well-informed perspective.

Through the research methodology, I learnt how to design an appropriate technique for data collection – in this case, elite interviewing through snowball sampling. The data collection itself was a fabulous

experience and I made some amazing contacts for future research. Although, I did notice that some individuals took a very long time before they could be interviewed and there were tight gatekeepers. Fortunately, having friends who were able to facilitate greatly helped.

I also grew as an individual, learning the importance of co-operation with my supervisors. Their kindness and help is second to none – I truly am blessed to have had them guiding me (they put up with a lot)! Hopefully I can repay them and make them proud in future endeavours.

Overall, the experience has been fantastic. I have grown not just intellectually, but as a more understanding person.

Thank you Nada and Andrew – couldn't have done it without you!

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Appendices

Appendix 1: Interview Guide

Interview Guide

Please note that these questions are to gain <u>perceptions</u> of the role of the United Kingdom Supreme Court (UKSC) Justices – from the Justices themselves as well as from relevant others. There are no right or wrong answers. The questions provided are as a guide only and may not be applicable to all participants.

Context & Role Perception

What is your role? How long have you been in this role for? What is your relationship with the UKSC Justices? In your opinion, what is the role of the UKSC Justices? What are their responsibilities and what do they do on a day-to-day basis?

Themes

Management, Business Planning & Recruitment

How are tasks managed within the UKSC? For example, are there any business plans or managerial objectives? How are the Justices recruited? In your opinion, what role do the Justices play in managing tasks, business planning and recruitment? Has this changed over recent years?

Technology

How is technology used in the UKSC? What is the role of the Justices in using technology? Has this changed over recent years?

Citizens

Are there any plans for improving citizen outreach? What is the role of the Justices in citizen outreach? Has this changed over recent years?

Finance

How is finance within the UKSC managed? Does financial planning impact on the role of the Justices? Has this changed over recent years?

Politics & Administration

Does the UKSC show a separation of politics and administration? What is the constitutional role of the Justices? Is there a clear separation of powers? How are checks and balances maintained? Has this changed over recent years?

Appendix 2: Information Sheet

Information Sheet

Lisa Scott (BA, MSc) is a doctoral researcher at Henley Business School, University of Reading; under the supervision of Professor Nada Korac Kakabadse and Professor Andrew Kakabadse. Lisa's PhD thesis investigates: How has New Public Management Impacted on the Role of the United Kingdom Supreme Court Justices?

New Public Management has been on executive agendas since the 1970s, and has driven a number of public sector reforms. Secondary data indicates that the characteristics of these reforms are apparent in the United Kingdom Supreme Court (UKSC). However, there is very limited empirical research available on the UKSC and the role of the UKSC Justices. More specifically, no comprehensive study into how, if at all, these reforms have impacted on the role of the UKSC Justices currently exists.

Understanding the role of the Justices in one of the newest Supreme Courts in the world is important for improving citizen outreach. Moreover, it is fundamental to promoting citizen understanding regarding the constitutional role of the UKSC Justices, and how this role is maintained.

As noted in the Lord Chief Justice's Report:

> "(More work)…is needed, to promote understanding of the role of the judiciary in the constitution and reaching out to all communities to build a better understanding of the centrality of the justice system."
>
> (The Lord Chief Justice's Report 2017: 6)

The PhD thesis aims to contribute to existing knowledge by conducting semi-structured interviews with present and former UKSC Justices, as well as with relevant others*. The intention is to combine this empirical data with existing secondary data to provide a holistic account of the role of the UKSC Justices.

Your involvement would be to participate in a face-to-face semi-structured interview at an agreed time and place subject to your availability. The research is exploratory with non-intrusive questions and each interview should last for no longer than one hour. Participation is entirely voluntary and participants have the right to withdraw at any time without detriment by contacting the researcher or her supervisors via the details provided above. The research has been approved by the University Research Ethics Committee and will conform to strict ethical guidelines for confidentiality, anonymity, and the collection, use, and disposal of data (please see the attached Consent Form).

Your help and support with this research investigation, and in promoting a better understanding of the role of the UKSC Justices is very much appreciated.

Appendix 3: Consent Form

Consent Form

1. I have read and had explained to me by *Lisa Scott* the accompanying Information Sheet relating to the project on: How has New Public Management Impacted on the Role of the United Kingdom Supreme Court Justices?

2. I have had explained to me the purposes of the project and what will be required of me, and any questions I have had have been answered to my satisfaction. I agree to the arrangements described in the Information Sheet in so far as they relate to my participation.

3. I understand that participation is entirely voluntary and that I have the right to withdraw from the project any time, and that this will be without detriment.

4. I understand and agree to the interview being tape recorded.

5. I understand that my identity will remain confidential. Pseudonyms will be used to ensure that data is non-identifiable. Software data (i.e. on Microsoft Word and NVivo) will be secured by password and deleted after use. Hardcopies of data will be stored securely in a locked filing cabinet within a private room at the University. Hardcopies will be destroyed using a paper shredder after use and securely disposed of.

6. I understand that this project has been reviewed by the University Research Ethics Committee and has been given a favourable ethical opinion for conduct.

7. I have received a copy of this Consent Form and of the accompanying Information Sheet.

Participant

Name: ……

Signed: ……..……

Date: ……..……

Researcher

Name: ……

Signed: ……..……

Date: ……..……