**Revisiting the Administrative Justice Legacy of New Labour**

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**I. Introduction**

The period that New Labour was in power—13 years when taken to include both Blair and Brown’s time in No. 10—saw significant social, political, and economic evolution. Given the rich material the New Labour years produced for those with an interest in constitutional law and constitutional reform, it is perhaps unsurprising—especially given administrative law’s longstanding position as the ‘hard-working, unglamorous cousin laboring in the shadow of constitutional law’—that much more has been written by public law scholars about New Labour’s impact on the constitution than its impact on the system of administrative justice.[[3]](#footnote-3) Yet, a wide range of important reforms, as well as innovations, were put in place concerning the way administrative decisions by government departments are made and the avenues for challenging those decisions. For this reason alone, in order to comprehend fully the long-term impact of New Labour on governance and the constitution in the UK, it is important to consider the contemporaneous evolution of administrative justice across the same period. There are, however, other important reasons to pay specific attention to the experience of administrative justice under New Labour. Reflecting on this period can help us learn lessons and inform analysis of current and future reform proposals, including about how to approach reform. It can also assist in developing our understanding of the significant relationship between administrative justice and constitutional legitimacy, which remains a surprisingly underdeveloped link in the densely populated field of public law scholars interested in the performance of constitutions.[[4]](#footnote-4)

 In this chapter, we address the issue of how the legacy of New Labour’s administrative justice reform is best characterized. In what has been written thus far on New Labour’s development of the administrative justice system, the central narrative is one of a ‘rise’ before a post-2010 ‘fall.’[[5]](#footnote-5) This account—which we will call the ‘standard account’—runs broadly along the following lines. New Labour, in what many considered to be a revolutionary step, recognised the need for a coherent overall approach to the administrative justice system and that the system ought to be friendly for the ‘users’ (*i.e.* citizens) which depend on it. Due to this approach, the New Labour administrations were said to represent the first time that a government had set out a ‘vision for administrative justice that aimed to give it parity with civil and family justice’[[6]](#footnote-6) and, as a consequence, administrative justice had ‘emerge[d] from the shadows.’[[7]](#footnote-7) Eventually, New Labour established, as part of a wider reform package, the Administrative Justice and Tribunals Council (AJTC), to provide coherent oversight of the system and advance a principled, research-based approach to the area. The AJTC was an institutional solution, designed to provide coherent oversight of the system and advance a principled, research-based approach to the area. This body, along with its new functions, became an institutional symbol of progress. This apparent success story then transforms to a tragedy when the Coalition Government arrives in Westminster in 2010, reduces public spending under a programme of austerity, and makes multiple changes to decision-making and redress procedures.[[8]](#footnote-8) This fall was, in turn, also given institutional expression when the Coalition Government decided to abolish the AJTC under the Public Bodies Act 2011. In its place was put the lighter-weight Administrative Justice Forum (AJF), with a budget that rendered it incapable of being anything more than an occasional talking shop. The step from the AJTC to the AJF thus symbolized the end of ‘a brief period during which administrative justice had seemingly come of age… [the] revolution has been quelled, its vision of a transformed, and transformational, future consigned to the Whitehall archives.’[[9]](#footnote-9) Some suggested that the move provided ‘a strong case’ that a ‘Leggatt-style inquiry’ should consider ‘the wider administrative justice environment post-AJTC.’[[10]](#footnote-10) When the Ministry of Justice abolished the AJF in 2017, the narrative of the rise and fall of administrative justice, as articulated in institutional form, was seemingly complete.

While not disagreeing with the general thrust of the standard account, in this chapter we use the standard account as a springboard for further developing the existing understanding of New Labour’s influence on the administrative justice system. After explaining briefly what administrative justice is and introducing the standard account, we suggest four ‘sub-plots’ to the standard account which we think require and deserve attention by public law scholars studying the New Labour period. Each of them also sheds new light on the constitutional reforms discussed elsewhere in this collection. We do not suggest our account is comprehensive and are conscious that we are speaking at a high level of generality about a complex and fragmented system. Instead, our hope is to develop the existing narrative and enhance understandings of what the New Labour years represent in the ongoing development of administrative justice.

This chapter has three main parts. First, we provide an introduction to administrative justice, particularly for those who may be less familiar with this sub-field of public law. Second, we trace the standard account of the New Labour years. Finally, we set out four underexplored and important administrative justice developments from the New Labour years, with the aim of stimulating further discussion about the developments themselves and also how they relate to New Labour’s constitutional legacy.

**II. Administrative Justice**

In simple terms, administrative justice, which can be understood as a sub-field of public law but also engaged with a wider range of other disciplines, concerns the making of administrative decisions by public bodies.[[11]](#footnote-11) It also concerns the redress systems for challenging such decisions. The Tribunals, Courts and Enforcement Act 2007 defined the administrative justice system as: ‘[t]he overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including: (a) the procedures for making such decisions; (b) the law under which such decisions are made, and (c) the systems for resolving disputes and airing grievances in relation to such decisions.’[[12]](#footnote-12) Given the fact that much of the work of governing is, in practice, exercised primarily in the administrative domain, administrative justice remains an under-studied aspect of public law. The routine decisions that public officials take day-to-day and the redress options available when things go wrong shape many everyday experiences of justice in the modern state. In shaping these experiences, public law is interpreted, and indeed often made, not just by the ordinary courts but by a wide range of interpretative communities from tribunal judges through to frontline officials. This combined body of decision-making has a huge social and economic effect, and can be linked directly with seemingly distant themes of constitutional law, such as legitimacy and authority.

This administrative justice system is constituted of myriad processes and vast amounts of law, including different types of soft law. This makes it a complex terrain to cover at a macro level. It could be seen to be constituted of (and therefore studied as) various different processes (*e.g.* judicial review, tribunals, ombuds) or different sub-areas of policy-tied activities (*e.g.* social security, immigration, housing). The scale of the administrative justice system is difficult to comprehend and what is known about how it works is, from one perspective, only a drop in the ocean. Collectively, millions of initial decisions are made by public officials each year, forging ‘street-level’ experience of policy.[[13]](#footnote-13) If public law is made meaningful for ordinary citizens, it is largely through adherence to it when these initial decisions are taken. Yet, we have very little understanding of the role of law in these processes. There is also a growing volume of internal reviews which take place within departments such as the Department of Work and Pensions, as well as many hundreds of thousands of tribunals appeals where the decisions of departments such as the Home Office are challenged.[[14]](#footnote-14)

The design of the administrative justice system is in practice under the control of multiple actors.[[15]](#footnote-15) Designers include multiple government bodies—at central, local, devolved, and international levels—as well as courts and other redress institutions, and their separate initiatives are often uncoordinated. Notwithstanding this complexity, Parliamentary sovereignty has continued preeminence in the UK’s constitutional order. As a result, a government with a majority in Parliament and with, what one may see to be, positive plans to change the administrative justice process, can usually act relatively quickly and easily. Indeed, the sense of ‘routine bureaucracy’ around many administrative justice issues may lead to less political scrutiny being provided, with the risk of any political frustration often being low. At the same time, a government often wears the two hats of being ‘designer’ and ‘player’ in the administrative justice system, creating obvious tensions around the maintenance of effective and fair process.[[16]](#footnote-16)

**III. The Standard Account of the New Labour Years**

Given the diversity of designers in control of the system and its scale, administrative justice is in constant flux. This makes it tough, though not entirely impossible, to track or identify coherent overarching changes in the system. Of those who have sought to identify the arc of the New Labour years *vis-à-vis* administrative justice, a ‘standard account’ has emerged, albeit one containing some differences of both substance and presentation, which we trace in this part of the chapter.

Michael Adler’ analysis of the New Labour years is the most extensive. In providing his account, Adler’s particular focus is both the ‘unique institution’ of the AJTC and the ‘successive emergence of different dominant conceptions’ of administrative justice.[[17]](#footnote-17) Adler starts his account of the New Labour’s administrative justice ‘cautionary tale’[[18]](#footnote-18) by noting the constitutional backdrop: that ‘a ‘progressive’ government with a majority in the House of Commons can pass ‘progressive’ legislation, but there is nothing to stop a ‘reactionary’ government, as long as it has a majority in the House of Commons, from reversing it.’[[19]](#footnote-19) A consequence of this constitutional framework is that dominant conceptions of administrative justice can be ‘transient.’[[20]](#footnote-20) It was through this constitutional framework that the AJTC was established by statute in 2007, ‘with a wider and more ambitious remit than its predecessor, the Council on Tribunals (COT), to keep the administrative justice system of the United Kingdom under review and to ensure that the relationships between the courts, tribunals, ombudsmen and alternative dispute resolution mechanisms promote justice and reflect the needs of citizens.’[[21]](#footnote-21) The AJTC was subsequently abolished under legislation enacted by the Coalition Government to reduce the amount of non-departmental public bodies.[[22]](#footnote-22)

Adler observes that, at the start of the New Labour years, administrative justice was a concept that few were familiar with in policy circles but also in the scholarly community.[[23]](#footnote-23) He contrasts this situation, to the field of administrative law, which had—in the decades since its very existence was questioned by constitutional lawyers—become ‘a recognised component of English (and Scots) law.’[[24]](#footnote-24) This was true in both scholarship and practice. Yet the lens of administrative law, as Adler understands that term, is narrow: for him, the concept ignores ‘the plethora of administrative tribunals, complaints systems and ombudsmen which very large numbers of people in the United Kingdom have occasion to use.’[[25]](#footnote-25) New Labour being in government saw a change to this, with Adler specifically pointing to the publication of the UK Government’s White Paper *Transforming Public Services: Complaints, Redress and Tribunals* in July 2004 as a defining moment.[[26]](#footnote-26) This White Paper had a whole chapter considering ‘The Administrative Justice Landscape’ and its recommendations were eventually enacted in the form of the Tribunals, Courts and Enforcement Act 2007. More scholarly interest emerged around the same time.[[27]](#footnote-27)

Adler saw these changes—the White Paper, the creation of the AJTC, and Tribunals, Courts and Enforcement Act 2007—as reflecting a fundamental shift in the dominant conception of administrative justice. One approach, as he conceptualizes it, ‘sees administrative justice in terms of the principles formulated by the superior courts and, to a lesser extent, by the top tiers of other redress mechanisms that come into play when people who are unhappy with the outcome of an administrative decision, or with the process by which that decision was reached, challenge the decision and seek to achieve a determination in their favour’ (something he calls the ‘traditional administrative law conception of administrative justice’).[[28]](#footnote-28) A second conception of administrative justice is one ‘that sees administrative justice in terms of the justice inherent in routine administrative decisions. This approach does not accept that the formulation of principles by the courts and other redress mechanisms is sufficient and emphasises the importance of efforts that aim to improve first-instance decision making directly, such as recruitment procedures, training and appraisal, standard setting and quality assurance systems’ (what he calls the ‘justice in administration conception of administrative justice’). The former approach he characterises as ‘top-down,’ with the latter being ‘bottom-up.’[[29]](#footnote-29) A third approach ‘sees the merits in both of the above approaches and seeks to combine them… It sees administrative justice as something that applies to an end-to-end process that begins with an administrative decision and ends, in a small minority of cases, with the decision of an ombudsman, a tribunal or a court’ (a conception Adler calls the ‘integrated conception of administrative justice’).[[30]](#footnote-30) This approach ‘places considerable importance on ‘feedback’, *i.e.* on first-instance decision-makers drawing lessons from judgments made in cases that are subject to challenge.’[[31]](#footnote-31)

For Adler, the New Labour years can be understood as taking the UK away from operating on the basis of an ‘administrative law conception’ and towards an ‘integrated conception’ of administrative justice. At the start, the ‘administrative law’ conception was dominant. Textbooks largely focused on judgments of the superior courts and policy officials were ‘relatively inactive.’[[32]](#footnote-32) A small but committed group of socio-legal scholars undertook empirical studies on different aspects of the administrative justice system, but there was limited focus on frontline-decision-making. With new New Labour’s stimulation, a new conception of administrative justice became dominant—demonstrated by how broadly the administrative justice system was defined in the Tribunals, Courts and Enforcement Act 2007.[[33]](#footnote-33) This integrated definition was underpinned by an integrated vision, with the White Paper approaching administrative justice through ‘the perspective of the normative expectations held by members of the public:’[[34]](#footnote-34)

We are all entitled to receive correct decisions on our personal circumstances; where a mistake occurs we are entitled to complain and to have the mistake put right with the minimum of difficulty; where there is uncertainty we are entitled to a quick resolution of the issue; and we are entitled to expect that, where things have gone wrong, the system will learn from the problem and will do better in the future.[[35]](#footnote-35)

There was a new policy mantra in town too: ‘proportionate dispute resolution.’[[36]](#footnote-36) This shift to an integrated conception of administrative justice was, for Adler, a ‘most welcome change and pointed the way to a real enhancement of administrative justice for millions of people who are on the receiving end of administrative decisions.’[[37]](#footnote-37)

 The implementation of this ‘integrated conception’ of administrative justice would require a proactive state, priorities being set, and administrative justice concerns being given precedence over (or at least a fighting chance next to) other operational pressure (*e.g.* cost and efficiency). Adler suggests that, to an extent, this vision was starting to be realized by New Labour administrations. There was an extensive review of the tribunals systems by Sir Andrew Legatt,[[38]](#footnote-38) followed by transformative legislation.[[39]](#footnote-39) There was the creation of the new office of the Senior President of Tribunals,[[40]](#footnote-40) with oversight of a more coherent tribunals system and under a duty to ‘innovate.’[[41]](#footnote-41) The AJTC set about researching the administrative justice system and devising principles for public bodies to improve processes, accompanied by a set of recommendations for ‘getting it right first time’ in decision-making.[[42]](#footnote-42) While, for Adler, this was all cause for ‘optimism,’ the mood changed when, as part of its overall Spending Review, the new Coalition Government reviewed the position of so-called ‘arms-length bodies’ and ultimately abolished the AJTC. The new conception of administrative justice was effectively trampled on in the pursuit of cost-cutting and less bureaucracy. For Adler, this action weakened both ‘government and civil society.’[[43]](#footnote-43) The new conception of administrative justice fell too: ‘as far as administrative justice in the UK is concerned, it looks very much as if the rise of the pendulum set in motion by the Leggatt Report …[was followed]… by its fall. The shaft of light which fell on administrative justice is likely to be followed by its renewed eclipse by civil justice.’[[44]](#footnote-44)

Adler’s account of the New Labour years has gone largely unchallenged and was reflected in many of the submissions to Public Administration Select Committee when the AJTC was abolished.[[45]](#footnote-45) Similarly, O’Brien conceives administrative justice as a ‘Cinderella’ area of policy and research.[[46]](#footnote-46) He too saw the decision to abolish the AJTC as bringing ‘to an end a brief period during which administrative justice had seemingly come of age.’[[47]](#footnote-47) The White Paper, for O’Brien, was, ‘for the first time in more than a generation,’ a worthy attempt at setting out:

[A] vision for administrative justice that aimed to give it parity with civil and family justice: it spoke ambitiously of an administrative justice ‘system’ that would comprise not just courts and tribunals, but ombudsmen and departmental first-instance decision makers, too; it proposed as the guiding principle for the construction of this ‘system’ the principle of ‘proportionate dispute resolution’…; and it elevated the ‘user’ of the system to a position of pre-eminence at the expense of judges and administrators, for whose benefit other parts of the judicial system seem so often to have been organised.[[48]](#footnote-48)

This all represented ‘a quiet revolution in administrative justice… With the abolition of the AJTC, that revolution has been quelled, its vision of a transformed, and transformational, future consigned to the Whitehall archives.’[[49]](#footnote-49) Now, O’Brien concludes, ‘[l]ike every other Cinderella, administrative justice awaits its invitation to the ball.’[[50]](#footnote-50) This narrative of rise under New Labour and fall when they left office appears to be the widely-accepted story.

**IV. Developing the Standard Account**

There is much in the standard account that we concur with. However, we do think there is space to develop further the story of New Labour’s impact on administrative justice. In other words, to add sub-plots to the story that the standard account offers. Some of these sub-plots add depth to the standard account while some challenge aspects of the standard account. Others propose new dimensions to it. In this part of the chapter, we suggest four such possible sub-plots to the standard account—the introduction of the Senior President of Tribunals (SPT), the increased focus on the user, the attempts to add a layer of oversight to the administrative justice system, and the devolution of the delivery of administrative justice—all of which demand further exposition and reflection by public law scholars.

*A. A Senior President of Tribunals*

One significant part of tribunal reform undertaken in the New Labour years which has had a lasting impact was the introduction of the Senior President of Tribunals (SPT).[[51]](#footnote-51) The SPT is a lawyer appointed by the Queen on the advice of the Lord Chancellor, who himself operates on the recommendation of the Judicial Appointments Committee. The SPT’s key job is to maintain the functioning of the large tribunals judiciary and to oversee the system itself. In carrying out his mandate, the SPT is statutorily mandated to ‘have regard’ for the need for ‘tribunals to be accessible,’[[52]](#footnote-52) for ‘proceedings before tribunals to be fair and handled quickly and efficiently,’[[53]](#footnote-53) for ‘members of tribunals to be experts in the subject-matter of, or the law to be applied in, cases in which they decide matters,’[[54]](#footnote-54) and for ‘the need to develop innovative methods of resolving disputes that are of a type that may be brought before tribunals.’[[55]](#footnote-55) The SPT also has the role of reflecting the views of tribunal members to Parliament, the Lord Chancellor, and government ministers. Thus far, there have only been four holders of this office: Lord Carnwath; Sir Jeremy Sullivan, Sir Ernest Ryder, and Sir Keith Lindblom.

 The Office of the SPT was ostensibly part of the widely discussed tribunal reforms carried out by New Labour and the post was recommended by Sir Andrew Leggatt in his review of tribunals. The explanatory notes accompanying the legislation which brought the Office into existence explain that the ‘post is intended to provide unified leadership to the tribunals judiciary.’ However, the Office also fits into other attempts by New Labour to reconfigure the structures surrounding the separation of powers, judicial independence, and judicial leadership.[[56]](#footnote-56) From this wider constitutional perspective, the creation of the SPT’s Office is not just an artefact of the tribunal system but a critical part of a new, or at least finessed, constitutional settlement between the senior judiciary, Parliament, and the executive—a settlement which also involved reformed roles for the Lord Chancellor and Lord Chief Justice. These are all reforms that have not only survived the fall of the New Labour Government but which have become important tools through which subsequent administrative justice policy-making has been channeled.

 The latest judge to hold the Office for a number of years (at the time of writing), Sir Ernest Ryder, was the most publicly prominent SPT to date. This is in part because Ryder himself was a dynamic figure, open to new, evidence-based approaches to administrative justice and in search of solutions to improve access to justice. He also seemed to fit the ‘administrative’ and ‘leadership’ demands of the role particularly well, with journalist Joshua Rozenberg describing him as a ‘technocrat who has several different computer systems running in his room, he is well used to managing staff and resources.’ Ryder speaks to diverse audiences across the country. Through his many speeches, though designed principally to inform audiences about ongoing reforms, he sought to outline a new approach. In 2018, he set out ten principles underpinning judicial leadership from the SPT’s Office: open justice; accountability; accessible justice; democratic participation and civic engagement; diversity and inclusivity; specialism and expertise; localism; proportionality, including speed and efficiency; innovation that is evidence-based and tested; and coherent governance.[[57]](#footnote-57)

Not only was Ryder a reform-minded judge, but he was in office at a time when some of the largest reforms to the tribunal system, as well as the justice system more broadly, were occurring. He, with the Lord Chancellor and the Lord Chief Justice, was one of three names signing-off on the *Transforming Our Justice System* policy, which paved the way for an ongoing £1bn+ reform of the entire justice system.[[58]](#footnote-58) These reforms—including court closures, high court staff reductions, and a globally-pioneering project to introduce technology to dispute resolution—are an attempt to modernise the entire justice system while reducing how much the government spends.[[59]](#footnote-59) Within this context, Ryder oversaw many important changes to tribunals, including the introduction of ‘continuous dispute resolution’ and new online processes, in key jurisdictions such as social security and immigration.[[60]](#footnote-60) He also has to ensure that smaller tribunal jurisdictions are not left behind. Moreover, with the reform programme coinciding with a change-over in Lord Chief Justice and a whole string of Lord Chancellors (due to tumultuous post-Brexit referendum politics) coming and going, Ryder was the most constant figure in reform leadership. If anyone was the ‘public face’ of these reforms in the legal community, it was him. As part of his leadership, he proactively set up the Administrative Justice Council to promote research and discussion of the system. Designed to mirror the influential Civil Justice Council, the SPT became the first Chair, attempting to bring together practice, policy, pro bono, and academic communities. It is so far proving to be more active than the Administrative Justice Forum.

 As with any public office, much hinges on the approach of the office holder. It could well be the case that more sanguine, less innovative replacements follow in his wake. Yet, Ryder has demonstrated the dynamic potential of the Office of the SPT to exercise real and influential leadership over administrative justice, as well as the wider justice system. The SPT’s Office is proving to be one of the most important legacies of New Labour’s institutional reforms around administrative justice and is now a key constitutional player. Despite this, the role of the SPT remains far more marginal in public law thought than the reforms carried out under the Constitutional Reform Act 2005.

*B. The rise and rise of the ‘user-focused’ administrative justice system*

One trend which was made prominent during the New Labour years, and a key part of the standard account, was further focus on ‘users’ in administrative justice (*i.e.* the citizen, as well as others who use decision-making and redress processes). From one perspective, this was New Labour carrying on the focus on ‘customer service’ which was inculcated by New Public Management and market-inspired approaches to governance that came to prominence in the 1980s.[[61]](#footnote-61) Arguably, the standout early moment for the recognition of the user-perspective was John Major’s Citizens’ Charter initiative in 1991,[[62]](#footnote-62) when it was briefly heralded as ‘becoming part of both a philosophy of government and a means of government.’[[63]](#footnote-63) By the time New Labour came to power, the Citizens’ Charter had largely faded from all official language to be replaced by the brand ‘Service First,’ but the underlying philosophy of being user-focused remained a big part of New Labour’s approach to public administration and its modernisation agenda.[[64]](#footnote-64) The policy language deployed by New Labour may have been less market-orientated, but it effectively took the idea of user-focus from the Charter and ran with it.

Multiple policy initiatives evidence New Labour’s continuation of the same underlying consumer-driven premises of the Major government that preceded it. For instance, it was visible in the ‘choice agenda’ that Blair’s government pushed in schools and the health sector,[[65]](#footnote-65) the basing of public provider targets on user-based metrics,[[66]](#footnote-66) and the introduction of the NHS Constitution.[[67]](#footnote-67) This ethos was advanced in particular administrative justice reforms too. For instance, in his landmark report on tribunals, Leggatt suggested the need for a tribunal system that was centred on empowering the user: ‘[i]t should never be forgotten that tribunals exist for users, and not the other way round. No matter how good tribunals may be, they do not fulfil their function unless they are accessible by the people who want to use them, and unless the users receive the help they need to prepare and present their cases.’[[68]](#footnote-68) Similarly, 2004 White Paper on *Transforming Public Services* sought to set out a vision of a user-focused administrative justice system.

Rather than falling away after New Labour left office, the emphasis on designing justice systems for users has, if anything, increased. The important *Transforming Our Justice System* proposals, discussed above, directly explained that new online tribunals should be ‘specifically designed to meet user needs’ and be ‘focused around the needs of individuals so that claimants can be more confident that their needs will be understood.’ On top of this, the user-focused approached to administrative justice has now found a new method of design to accompany it—so-called ‘agile’ design—which uses techniques premised on the user being central.[[69]](#footnote-69) There is no precise definition of the agile method. However, the core of the approach appears to rest on emphasising the perspective of ‘users’ of systems, developing prototype systems, and consistently testing systems with users.[[70]](#footnote-70) These core tenets are commonly expressed in the five-part, non-linear design method of: empathising with users; defining the problem; ideating; prototyping; and testing.[[71]](#footnote-71) Within this framework, multiple tools to support each of these exercises have also been developed.[[72]](#footnote-72) For instance, the use of ‘journey mapping’ tools are increasingly common in the design of administrative justice system. These tools help system-designers trying to understand how users come to use a service and what they experience at each step of the process. The agile approach has been influential in many sectors, including architecture, business, and management.[[73]](#footnote-73) It has been particularly prominent in technology circles and in UK government the approach has been most prominently pushed by technologists in government, including the influential Government Digital Service. Academic research trends in administrative justice have now also turned toward emphasising the importance of engaging with users and their viewpoints.[[74]](#footnote-74)

 It would be wrong to think, however, that the connecting thread between the New Labour years and the subsequent and previous administrations is straightforward. There appears to be different conceptions of this movement towards ‘user focus’ operating beneath the surface.[[75]](#footnote-75) This was particularly evident in the recent UK Supreme Court decision in *UNISON*, which appeared to offer a critique of focusing on users.[[76]](#footnote-76) Lord Reed, in striking down a tribunal fee on access to justice grounds, stated that:

The importance of the rule of law is not always understood. Indications of a lack of understanding include the assumption that the administration of justice is merely a public service like any other, that courts and tribunals are providers of services to the ‘users’ who appear before them, and that the provision of those services is of value only to the users themselves and to those who are remunerated for their participation in the proceedings. The extent to which that viewpoint has gained currency in recent times is apparent from the consultation papers and reports discussed earlier. It is epitomised in the assumption that the consumption of [tribunal] services without full cost recovery results in a loss to society, since ‘[tribunal] use does not lead to gains to society that exceed the sum of the gains to consumers and producers of these services.’[[77]](#footnote-77)

In contemporary administrative justice policy discussions and commentary, finding similar criticism of the phrase ‘user’ is not difficult, despite the fact that having user-friendly justice processes is widely seen as a universal good. Therefore, although government of different political orientations now seem ready to maintain a commitment to user-focused public services, the nature of that commitment—as manifest in the patterns of thought, texts, and actions of designers of the administrative justice system—appears to be subtly shifting. What the New Labour years represent in the overarching story of ‘user-focus’ is therefore more ambiguous than it may seem.

 *C. The Oversight Cycle*

As noted above, the standard account has it that New Labour brought to the field of administrative justice a fresh strategic approach which included an independent statutory advisory body that could oversee and offer critical advice on how to enhance coordination, not just of tribunals, but of the sector as a whole.[[78]](#footnote-78) In aspiration, this was potentially a major step forward as for the first time, independent of Parliament and the executive, there was a standing body with sufficient resources, expertise, and reputation that was capable of offering continuous reflection on the government’s delivery of its administrative justice obligations. To perform this role, the AJTC was made up of a specialised body of relevant professionals, with practitioner or academic experience. The body was staffed by permanent civil service posts and had sufficient budget to commission research and produce reports.[[79]](#footnote-79) In something of a bipartisan coup for New Labour, the first Chair of the AJTC was Lord Newton, a senior Conservative politician with a long-standing interest in administrative justice issues from his time as Health and Social Security Minister. He was replaced in 2009 by Richard Thomas, a public lawyer and former Information Commissioner. The introduction of this body was, according to the standard account, a serious public policy signal in the direction of bringing the profile of the administrative justice system into line with the civil and criminal justice systems. However, two important qualifications need to be made to the ‘rise and fall’ narrative of the standard account: the lack of evidence that the AJTC ever fulfilled its worthy aspirations; and the subsequent cyclical process of oversight which suggests that the ‘fall’ has not been so straightforward.

On the first qualification, through no fault of its own the AJTC was never allowed the opportunity to grow into the institution that it was designed to be. In its brief life, we suggest that the AJTC operated through three short phases. First, an ‘establishment phase,’ during which the AJTC landscaped the terrain. Amongst other things, this phase produced a report that provided insight into hitherto under-mapped areas of the administrative justice system.[[80]](#footnote-80) Second, there was an ‘action phase,’ which involved the AJTC identifying issues for special attention, providing guidance, and disseminating information and proposals through reports, quarterly newsletters, an annual conference, and general lobbying activities. Notable reports included *Administrative Justice Principles* (2009); *Right First Time* (2011); *Patients’ experiences of the First-tier Tribunal* (Mental Health) (2011); *Securing Fairness and Redress: Administrative Justice at Risk?* (2011); *Putting it Right (Proportionate Dispute Resolution)* (2012); and *Guidance on Schools Admissions and Exclusions Appeals* (2012). This phase represented the beginnings of a role that might have made a difference in the long term, if such studies could have been used as vehicles to influence public policy based on a detailed evidence base. Indeed, the AJTC was beginning to organise itself as a body capable of demonstrating a clear voice[[81]](#footnote-81) and helped to raise the profile of important issues.[[82]](#footnote-82) However, this period of activity was too short to evidence lasting impact.

By 2008, the New Labour government had been forced to refocus its energies due to global economic crisis. By 2010, a new coalition government had been formed with a goal of reducing the number of public bodies in operation. Tellingly, during the Parliamentary debates on the AJTC’s abolition, little concrete evidence could be presented of its impact, though there were strong defences.[[83]](#footnote-83) This is not a critique of the members of the body, but a simple consequence of the brevity of its existence and its lack of opportunity to make a difference. A final ‘closure phase’ of the AJTC, therefore, was largely spent fighting its abolition and securing a legacy arrangement for its services,[[84]](#footnote-84) but the battle was finally lost on August 19 2013.[[85]](#footnote-85) A sister advisory council lasted slightly longer in Wales (the Committee for Administrative Justice and Tribunals, Wales (March 2016)),[[86]](#footnote-86) as did an interim Scottish Tribunals and Administrative Justice Advisory Council before it too was disbanded in November 2015. The AJTC was a low-cost outfit, and the financial benefit gained from abolition was small but the value of the policy being pursued was seen as sufficient to justify the decision.[[87]](#footnote-87) In any event, there was little evidence that the Coalition Government was going to be heavily influenced by its work. The AJTC, therefore, might have appeared to its advocates as a bold step forward, but it never got up to full speed, still less did it get close to becoming settled as a quasi-permanent fixture of the constitutional architecture. In such circumstances, it would seem unwise to rest too much of any evaluation of New Labour’s impact on administrative justice on the AJTC’s contribution.

Likewise, care should be taken not to claim too much about New Labour’s approach to administrative justice as being more systematic than any predecessor government. Save for the review of the tribunal service in the 2004 White Paper and the aspiration of the AJTC,[[88]](#footnote-88) the links between the different components of the administrative justice system were often as uncoordinated during the New Labour era as any other, with the complaints sector, for instance, overseen through a range of different government departments and multiple ombudsman schemes.[[89]](#footnote-89) Where there were attempts at widespread systematic reform, such as of the ombudsman sector[[90]](#footnote-90) or the introduction of public law monetary remedies,[[91]](#footnote-91) they did not always go very far.

A more positive narrative, however, could perhaps be drawn from the lasting, albeit subtler, impact that the idea of the AJTC has had on the sector. Certainly, the goal laid out in Sir Andrew Leggatt’s original proposal, within which an advisory council would become the ‘hub of the wheel of administrative justice,’ was a long way from being realized.[[92]](#footnote-92) However, notwithstanding the clear loss for those advocating independent administrative justice scrutiny, the idea that administrative justice should be seen as a coherent field of policy which would be better coordinated has not evaporated from public policy. The Ministry of Justice, for instance, still organises its work around administrative justice being a distinct policy area. As for the demand for independent oversight of the administrative justice system, this remains strong and has resurfaced on multiple occasions.

Since 2012, there has been an almost cyclical pattern in which successive efforts have been made to acknowledge the oversight needs of the administrative justice system. Initially, the Ministry of Justice committed to retain a government-sponsored advisory service, by establishing an Administrative Justice Forum (AJF), an advisory group composed of stakeholders with an interest in the tribunal system which met twice a year. The AJF was chaired and managed by the Ministry of Justice and lacked any realistic ability to develop a collegiate identity. Nor did it possess its own website or ability to generate research, and as a result left little footprint before being abolished in March 2017. Its budget was pocket change in government spending terms. As had been widely anticipated, the AJF’s existence was little more than a cosmetic exercise.

The charitable and academic sectors have subsequently intervened. In 2014, the Nuffield Foundation awarded the University of Essex a grant to fund the establishment of the UK Administrative Justice Institute (UKAJI), a research-focused enterprise which had a remit to ‘kickstart the expansion of empirical research on administrative justice in the UK.’[[93]](#footnote-93) UKAJI has built up an extensive database of up-to-date knowledge and commentary on the administrative justice system, and remains platform for debate. This initiative has been followed by the establishment of the Administrative Justice Council (AJC), supported by the charity JUSTICE, an organization with a long-standing interest in administrative justice affairs. Currently, it also has support from the Ministry of Justice. The aspiration of the AJC is different to UKAJI, describing itself as the successor body to the AJF. Chaired from the beginning by Sir Ernest Ryder, now the former Senior President of Tribunals, and made up by a wide cross-section of relevant stakeholders, it is akin to the Civil Justice Council. It has been very active in its short life span so far. The potential capacity and longevity of the AJC should not, however, be over-estimated. Its long-term funding is uncertain and its work is reliant on a large amount of pro-bono and voluntary contributions. Without formal power, its capacity to effect change may be limited. Even so, the initiative illustrates the lasting power of the AJTC idea.

 Within our constitutional order, an oversight body is permanently vulnerable to the politics of the day and any short-term objectives. Added to this, there is a clear and powerful incentive for government to prefer to regulate internally its own decision-making. This incentive will always be likely to rankle with accepting the need for independent oversight.[[94]](#footnote-94) Nor can it be safely presumed that a future government of the left would be any more interested in replacing the AJTC than governments of a right-leaning disposition. Not only did the Coalition government, partially formed of Liberal Democrats, reject the idea that independent oversight of the sector was a priority, but once austerity provided a cost-based rationale for abolition, the Scottish and Welsh governments also rejected the model despite being made up of parties of very different political persuasions. The 2015 discontinuation of an equivalent governmental body in Australia, the Administrative Review Council, a body with a 40-year history, provides another example of the challenges of sustaining political support in this context.[[95]](#footnote-95) There are thus complex lessons to be learnt about general-level administrative justice oversight from the New Labour years. Yes, there was a ‘fall’ as Adler characterises it. However, the reasons for this are perhaps not as straightforward as just changing governments with new politics.

*D. Devolution of administrative justice*

Of all the themes that could be explored around New Labour’s contribution to administrative justice, perhaps the most influential area of activity in the long term is devolution. The shift during the New Labour period of office towards separate, territorially distinct spheres of policy and implementation represented a concrete and lasting institutional change. Many of the areas of policy devolved involve key parts of the administrative justice system and the result has been an incremental movement towards a different approach towards administrative justice in the devolved nations. If anything, this institutional difference has become more pronounced since the New Labour years came to an end than during them. Three areas of difference illustrate this growing divergence.

First, there is now an organisational difference towards administrative justice under devolution. An early distinctiveness that occurred on devolution was the settling of the perennial debate about how best to organise ombudsman offices.[[96]](#footnote-96) Rather than splitting different functions between multiple specialised offices, in the devolved nations the trend was towards integrating functions into a single office with the aim of reducing the complexity of the system. A key part of the acceptance of the single-ombudsman model had to do with the difference in scale involved, a devolution factor that also lay behind the Crerar Review in Scotland.[[97]](#footnote-97) The Crerar Review examined the structure and distribution of public bodies across a broad spectrum of public sector regulation and governance, and recommended a wholesale restructuring and merging of institutions. For administrative justice, an important organisational difference that was emphasised by the Crerar Review process was a perceived need to interlink administrative justice scrutiny agents more firmly with legislators. In Scotland, a series of bodies were set-up as Commissioners and made directly accountable to Parliament not the executive. A similar set-up is developing in Wales, with the embedding of the Commissioner network within the Assembly’s sphere of influence also being proposed, albeit as yet not followed through.[[98]](#footnote-98)

The Welsh example illustrates a second potential distinct outcome of devolution: a cultural difference in approach towards administrative justice.[[99]](#footnote-99) In Wales, a sympathetic approach towards broader administrative justice values has evolved through a willingness to recognise those values institutionally.[[100]](#footnote-100) Thus the investigative and guidance roles of the Language Commissioner, Future Generations Commissioner and Older People’s Commissioner are distinct to Wales, and sit alongside institutions such as the Children’s Commissioner, the Equalities and Human Rights Commission and ombudsman that exist elsewhere in the UK.[[101]](#footnote-101) The impact and efficiency of such institutional solutions will always require ongoing evaluation, but their introduction is indicative of a distinct statement of intent to integrate into the Welsh administrative justice system a firm commitment towards such issues as language rights, environmental protection, and the safeguarding of vulnerable sections of society. Further evidence of Welsh distinctiveness can be seen in the moves in recent years towards constructing a separate legal and tribunal jurisdiction for Wales.[[102]](#footnote-102) Local researchers have also observed that contrary to the individualistic and user-focused cultural bias that dominates in Whitehall, in Wales a more egalitarian cultural bias is evident, one which is more ‘driven by accountability and dialogue’[[103]](#footnote-103) than marketisation. Another example of cultural difference that has been encouraged by devolution comes from Northern Ireland. In Northern Ireland, human rights legislation is not seen purely as a reserve mechanism for the purpose of protecting individual rights but has become engrained in the methods of accountability agents seeking to promote good administration. For instance, through a partnership between the Northern Ireland Human Rights Commission and the Northern Ireland Ombudsman, guidance has been produced on good administration which positively promotes the human rights connection.[[104]](#footnote-104) By way of contrast, none of the other UK based ombudsman schemes use human rights concepts in their work to any great degree.

A third difference in administrative justice that has flowed from devolution has been a degree of *legislative* willingness to engage in reform in all three devolved nations to a degree only intermittently apparent in Whitehall and Westminster. Thus, whereas in the UK and English jurisdictions the public services ombudsman sector has struggled to obtain scraps of legislative amendment through both the New Labour and later Conservative periods of government,[[105]](#footnote-105) in the devolved nations bold reforming legislation has been passed.[[106]](#footnote-106) Partly this has come about through the powers of select committees in the devolved chambers to promote legislation,[[107]](#footnote-107) and may well be a facet of the lighter burden carried by lawmakers in devolved bodies. But the outcome also potentially demonstrates a greater executive willingness in the devolved nations to experiment in forms of autonomous administrative justice oversight than in Whitehall. The Welfare Funds (Scotland) Act 2015 is an example of such innovation. This Act made the Scottish Public Services Ombudsman responsible for reviewing welfare fund decisions made by local authorities, a service normally considered to belong in the tribunal system. Further, the Public Services Reform (Scotland) Act 2010 established the Scottish Public Services Ombudsman as a complaint standards authority, a function normally retained in the regulatory sector if provided at all. Meanwhile, in Northern Ireland not only has the integrated approach towards ombudsmanry been expanded across most of the public sector, but the complaint standards authority model has been borrowed from Scotland, demonstrating the learning potential inherent in the devolution enterprise as multiple platforms for experimentation are created. Similarly, the Northern Ireland Ombudsman has become the first to be granted a power to launch inquiries into administrative practice even in the absence of a complaint, again a practice that has been previously rejected in the UK on the basis that it crosses over into a regulatory function.[[108]](#footnote-108) In Wales, additional legislative ombudsman reform has recently been passed mirroring developments in Northern Ireland and in Scotland the ombudsman has been given a new role as the Independent National Whistleblowing Officer for the NHS.[[109]](#footnote-109) All these developments stand in stark contrast to the glacial response to ombudsman reform in Whitehall, where a relatively timid effort at legislative reform pushed by various branches of government has regularly run into the sand due to a combination of institutional resistance and the challenge of finding legislative time.[[110]](#footnote-110) What has possibly evolved in the ombudsman sector, therefore, is an example of the experimental potential in devolution.

Constitutional lawyers have been wrestling with the implications of devolution during the New Labour years and afterwards. The new territorial constitution and the public law tangles it has wrought are underpinned by rapid developments in devolved administrative justice. At the present time, it is clear this is by far the most significant New Labour administrative justice reform. We are only just beginning to understand the implications, both within devolved administration and at a UK-wide level.

**V. Conclusion**

This chapter has sought to add layers to the standard account of New Labour’s administrative justice legacy, including by challenging some aspects of it, adding depth, and suggesting new dimensions. Overall, the analysis presented here suggests we should be more positive about New Labour’s contribution to administrative justice than some of the earlier commentaries on the subject imply. Ten years on, we cannot ignore the dramatic scale of change to administrative justice imposed by governments that have followed. However, if we focus on certain institutional structures of the New Labour administrative justice system and certain policies that have been implemented, we can see that New Labour did have a lasting and significant influence on the way that administrative justice has evolved. In one area examined here in particular, devolution, the legacy looks set to be one of radical and long-lasting institutional change. Soft influences, such as a continued drive for user-friendly processes and system-level oversight, also maintain traction. Other examples of the lasting influence of New Labour on administrative justice were not considered here (but considered elsewhere in this book) also form important parts of the same legacy, such as the enactment of the Freedom of Information Act 2000 and the Human Rights Act 1998. This is an important and influential legacy. It deserves further consideration by public law scholars as much as the constitutional legacy of New Labour, of which it is also a critical part.

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100. Sarah Nason ‘Administrative justice in Wales: a new egalitarianism?’ (2017) 39(1) *Journal of Social Welfare and Family Law* 115. [↑](#footnote-ref-100)
101. A. Sherlock, J. Williams, and E. Royles, ‘A Welsh Model of Commissioners’ 45 (2015) *Cambrian Law Review* 74. [↑](#footnote-ref-101)
102. See: S. Nason, *Understanding administrative justice in Wales* (Bangor University, 2015); D. Gardner, *Administrative law and the administrative court in Wales* (University of Wales Press, 2016); Law Commission, *Form and accessibility of the law applicable in Wales* (Law Com No. 366, 2016). [↑](#footnote-ref-102)
103. P. Williams, *Commission on public service governance and delivery* (2014). [↑](#footnote-ref-103)
104. Northern Ireland Public Service Ombudsman and Northern Ireland Human Rights Commission, *Human Rights Manual* (2016). [↑](#footnote-ref-104)
105. Examples include The Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007 and the Local Government and Public Involvement in Health Act 2007. [↑](#footnote-ref-105)
106. See *e.g.* the Public Services Ombudsman (Northern Ireland) Act 2016 and the Public Services Ombudsman (Wales) Act 2019. [↑](#footnote-ref-106)
107. #  The Public Services Ombudsman (Northern Ireland) Act 2016 was piloted through the Assembly by the Committee for the Office of the First Minister and deputy First Minister as a non-executive Bill. Likewise, in Wales it was the Finance Committee that introduced the Public Services Ombudsman Bill, and the Equality, Local Government and Communities Committee that piloted the Bill through the Assembly.

 [↑](#footnote-ref-107)
108. Cabinet Office, *A Public Service Ombudsman: Government Response to Consultation* (December 2015), pp.17-18. [↑](#footnote-ref-108)
109. The Public Services Reform Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020. [↑](#footnote-ref-109)
110. For the latest example, see Cabinet Office, *Draft Public Services Ombudsman Bill 2016* (Cm. 9734, 2016). [↑](#footnote-ref-110)