



SPEECH TO ANNUAL BAR AND YOUNG BAR CONFERENCE

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Today's conference is about three very important themes: access to the profession, development and diversification. And an excellent programme awaits you, put together by our first ever Conference Chair from the Employed Bar.

Those themes are all about change. Change for the better. Change that will make us fitter for the future, while making sure that the Bar reflects the society we represent.

If we can do these things well, then have every reason to be optimistic about the future of the Bar; and I am optimistic, despite the threats that are ever present. Those threats have been building for many years, and may be the most serious we have seen for some parts of the Bar; but I still believe that we can face them down, and be their match.

Being sure of where we are and how we got here

But before you look to the future during the rest of today, I am a great believer in the idea that if we are to be sure of where we are going, then we need to know where we have come from, and how and why we have got to where we are.

So I hope you will forgive me if I set the scene for today by looking at a little history.

Nearly 40 years ago, in October 1979, the Royal Commission on Legal Services reported that their contacts abroad had left them in no doubt of the high standing of our legal profession in the eyes of the world.

In truth, we have been building that reputation for the Bar for a century or more.

But it has not always been easy.

60 years ago, in the 1950s, the Commercial Court had all but withered away. The Bar, too, shrank in size during the 1950s. Even as late as 1986, the Bar was reported as having so far been unenthusiastic in embracing international, and especially European, work.

But how things have changed.

Now, in the 21st Century, the Commercial Court, together with the rest of what are now called the Business and Property Courts, are powerhouses on the international stage.

So, too, is the Bar of England and Wales.

This is not just a commercial Bar phenomenon. You can find us everywhere that advocacy is practised. You will find our Criminal Bar deploying their skills to great effect, and to universal acclaim and respect, in a plethora of international courts and tribunals. So, too, our human rights Bar.

The same is true of those who practise in the one court from which we may soon be barred: the Court of Justice of the European Communities. When Brexit runs its course, they will truly be missed, both by the judges and by the litigants they serve.

What has brought us to where we are?

How is it that we have managed to fight our way to the front of the pack?

I believe it is through a resolute commitment to our integrity, our independence, our excellence, and the rule of law both at home and everywhere we go. It is also, I think, the result of our resilience and our ability to adapt. Building on all of those is what today is all about.

The future

Looking ahead, none of the current plans for Brexit offers much, if anything, for the future of our profession in Europe, or even for civil or commercial justice. But even with the current draft political declaration, the battle is not over – both for us and for the citizens and businesses that we serve – and we are not yet beaten.

Whatever the outcome, though, others will continue to struggle to match what we offer, and if we can keep ourselves and our common law ahead of the rest of the world, then we will meet their challenges.

Technology

Part of that will inevitably involve us embracing new technology. We will do so, in the interests of our clients, of our society, and of ourselves as professionals.

Indeed, technology does have the potential to improve access to justice. But it must be used as a tool, and not pursued as an end in itself, or as a misplaced attempt to supplant human advice and judgment. And it need not – and must not – mean compromising on justice itself.

A system that others seek to emulate

It is also our system and our judges that others admire. They too are what bring others to England and Wales, and lead others to emulate us.

To see the virtues in our system is not to say that we cannot improve. We can always improve, and we have been doing so. But we must not forget those virtues, and we should not ignore what others see in ourselves.

In Mexico, they are changing their criminal justice system, from a more inquisitorial one to an adversarial one. They are doing so to try to tackle their issue of the moment: corruption. They see that this needs something more, not least:

- 1) Proper focus by prosecutors on pursuing cases in the public interest.
- 2) Proper scrutiny of the evidence.
- 3) Robust challenge to each party's case, in effective oral hearings, by independent lawyers.
- 4) Justice delivered openly and transparently.

Those are all so familiar to us. We take them for granted. In Mexico, they are essential new tools.

They are striving, too, to build a self-governing profession of lawyers; because they also know that they will not root out corruption without lawyers – and especially advocates – of integrity and independence, dedicated to the best interests of their clients, and above all to the rule of law.

Again, perhaps it is only others who can remind us of the value of what we have already achieved.

A second strand – access to justice

But in looking back over 60 years, I suggest that there is also another reason for our success and our reputation, and that concerns our approach to access to justice.

On 18 February 1946, a former Lord Chancellor in the wartime coalition government rose in the House of Lords to ask his Labour successor whether his attention had been called to the Rushcliffe Committee report, presented in May 1945. The report was a cross-party exercise, prepared under the Chairmanship of a former barrister and Conservative MP. The report was unanimous, and it concerned the establishment of a new system of legal aid.

Lord Simon went on to remark that, *“If members of our community are to share equally in the value of the institutions of this country, and if they are, as George III, I think, said, to glory in the name of Britain, then the question of securing legal aid and advice for those who cannot afford to pay professional fees is one of enormous consequence.”*

When it was finally introduced in 1949, the Legal Aid and Advice Bill secured cross-party support; and during the 1950s, it was a Conservative Attorney General – who himself became Lord Chancellor – who led its expansion in scope.

On current expectations, we shall not see the same again in our time; but I still hope we can defy those expectations.

What have we been doing to our system?

For in truth, in the last two decades, we have been following a course that has set its face against justice, by political design, political folly and political expediency.

Everyone here knows what has happened to legal aid, particularly in the 21st Century. This now presents a huge threat to access to justice in our country.

We have managed to keep our family and criminal courts going only through the same combination of strengths at the Bar that have led to our success internationally, and which unite us all: not least our resilience, our adaptability, and our commitment to justice come what may. But this has also preyed on our goodwill.

This is not just a betrayal of our own citizens and of what our forebears built after the horrors of the first part of the 20th Century. It is also a threat to our respect and reputation abroad.

If we can no longer deliver access to justice of which we can be proud – even worse, if our systems of family and criminal justice start to fail – then justice and rule of law are at risk.

As we are urged once again – like Lord Simon’s George III – to “*glory in the name of Britain*”, can we truly do that? Can we afford to tolerate this state of affairs?

If the Treasury were willing, then the impending LASPO review would present us with an opportunity to show our mettle in a post-Brexit world.

If we let the opportunity pass us by, then we face a future in which we are relegated to the world’s second division, at the worst possible time. There are competitors abroad who would rejoice at our demotion.

A ray of light

There is finally a ray of light, and that concerns criminal legal aid, which has suffered years of turmoil. I have seen and I welcome the Lord Chancellor’s announcement this morning of additional funding for the Advocates’ Graduated Fee Scheme, following the most recent consultation. I do have the sense that in relation to criminal justice, at least, we have at last turned a corner with the current Ministry in terms of engagement and understanding, and I shall be listening very carefully to what he has to say to us later today.

This is not just about legal aid, but about justice as a whole

But this is not just about legal aid. Over the last decade, with one qualification, political choices have not favoured any part of our justice system.

During Justice Week, we published new research by Professor Martin Chalkley, which shows what has really happened in the last 10 years.

You might think that the cuts in funding were the inevitable consequence of a decade of austerity. You might think that, but you would be wrong.

You might also think that the cuts to justice are comparable to the experiences across all publicly funded services. You might think that, but you would again be wrong.

In the last decade, the economy and government spending have grown by 13% in real terms. Health spending – a huge proportion of the total budget – has been the major beneficiary. It has risen by 25% in real terms.

Justice, by contrast – by which I mean our prisons, courts, judges, prosecutors and legal aid – has gone the other way. It has been cut by 27% in real terms; and yet it amounts to just 1% of total spending by the taxpayer. The damage has been reduce only by huge hikes in court fees.

The qualification on this is the programme designed to bring more technology into our courts. We welcome the introduction of the right technology, for the right purposes, used in the right way; but it is difficult to see how this is the panacea that some would have you believe.

What has happened? Well, as Professor Chalkley has put it, what we have seen amounts to *“a huge withdrawal of public financial support from ... a fundamental ... part of the state’s functions and obligations.”* It also indicates that this is the result of a conscious decision.

If Brexit does not go well, then we must fear the consequences for justice of any further pressures on the public purse.

This is not a party political point. This has been done to us by politicians on all sides.

It is also not a point that affects only one part of our system. It affects every part of the system, and of the Bar, and we must fight this together, as one Bar.

It should be of serious concern to everyone. But it seems that it is not.

Finally, a little more history

So where are we headed? The current senior team at the Ministry of Justice do seem to recognise what previous choices have caused, and we have managed to maintain a constructive dialogue with them even during such a difficult year. For the future, the crux of the problem, and its solution, lie elsewhere.

Those who have the power to change all this would do well to remember that it was not a task of mere years to create a system of fair, independent and open justice, with excellent judges, free from corruption, and supportive of the rule of law.

On the contrary, it has taken us:

- 800 years since Magna Carta.
- 400 years, since Chief Justice Coke told King James I that even the king was subject to the law.
- 300 years since the Bill of Rights.
- 200 years of developing the rights of defendants to a proper fair trial.

It has been a huge endeavour. It has all been done for a reason.

Crucially, just because something is long-standing does not mean that it, or the people in it, are unbreakable.

Lest we forget our reasons, we should not think only about our own experience. We should think, too, of the recent experience of others:

- Of this week's exchanges between the President of the United States of America and the Chief Justice of those States regarding the independence of American judges;
- Of the interim order issued just last month by the Court of Justice of the European Communities against Poland, in defence of the independence of Polish judges; and
- Of the experiences of so many lawyers in the world who are subject to oppressive state action – including on the edges of Europe, not least in Turkey.

The independence of judges and lawyers, and the rule of law that they protect, are our most precious inheritance. So too is a system of justice in which our citizens can have confidence.

Our objection to justice being downgraded and demeaned has been passionate and unwavering, and so it must continue.

But our politicians and the public have a choice to make. They must make it wisely. If they take all this for granted, then I fear that we will all pay the price.

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