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THE JUDICIARY OF ENGLAND AND WALES AND THE RULE OF LAW*

THE RT. HON. THE LORD WOOLF OF BARNES**

INTRODUCTION

This lecture was entirely due to the generous invitation of the most distinguished emeritus Dean, Jim White. Professor White's reputation is as high on my side of the Atlantic as it is on yours. His contribution to the development of legal systems has not been confined to jurisdictions with developed legal systems, such as those of my country and yours. It extends to the emerging democracies, especially those in Eastern Europe. For those countries, developing a credible legal system was and is critical for their economic development. Their economies will not flourish unless they can be shown to adhere to the rule of law. This will not happen if they do not have lawyers who have been properly educated and trained. In many countries the American Bar Association ("ABA") can be proud of the contribution it has made to providing that education. That the ABA's contribution was so successful is to a significant extent due the fact that for twenty-six years the ABA's consultant on legal education was James White. These lectures are intended to commemorate this achievement. I hope what I have to say will at least come close to being worthy of that objective.

It was through the ABA that I first met Professor White. In 1950, the ABA held their annual conference in London. At that time the ABA erected a monument to commemorate the execution of Magna Carta. In 2000, the conference was repeated and, again, a ceremony took place at Runnymede. On this occasion, Justice Sandra O'Connor spoke on behalf of the U.S.A. and I spoke on behalf of the U.K. Justice O'Connor is an old mutual friend, and Jim and I first met at Runnymede when she introduced us. It was an appropriate place for Jim and I to meet since Magna Carta is certainly one of the most important sources of both our legal systems.

In addition, Magna Carta was executed at approximately the same time as when the English judges, who were responsible for upholding justice throughout the kingdom on behalf of the King, began riding around the different circuits into

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** Former Lord Chief Justice of England and Wales.

which England and Wales were divided.¹ Although the mode of transport has changed, this still happens in very much the same way today. The judges who travel on circuit are now our High Court judges, and they are the backbone of our justice system. They have been responsible for developing our legal system so that it is capable of meeting the needs of the public in the Twenty-first Century. For example, they have played the most significant role in developing judicial review, without the benefit of an entrenched constitution, so as to make the legality of every activity of public bodies subject to review. They are the judges now primarily responsible for protecting human rights and ensuring that we have a legal system that is now rights based.

I. THE INFLUENCE OF MAGNA CARTA

It is an extraordinary fact that the fundamental common law principles that are such an important part of our own and many other legal systems can be traced back 790 years to Magna Carta. This was the time when John was King of England and was having difficulties with his barons due to the extortionate taxes that he had imposed. There had been ruthless reprisals against defectors, and the administration of justice was capricious. The result was that the barons became disaffected. They knew King John needed their support for his further military adventures which strengthened their bargaining power. The barons did not miss the opportunity, and in January 1215, the barons collectively decided upon industrial action. They insisted that, as a condition of their support, King John execute a charter that recognised their liberties as a safeguard against further arbitrary behaviour on his part.

On June 10, 1215, the barons and the King met at Runnymede and, in the meadow, compromised their differences and agreed to terms which were outlined in the Articles of the Barons to which the King's Great Seal was attached on June 15, 1215. The settlement which was reached was condemned by Pope Innocent III. He alleged that the Charter was exacted by extortion. However, fortunately for us and for the history of common law rights, King John met an early death in October 1216. So the Charter survived, and it remains a remarkable document even to this day.²

The Charter goes far beyond what was needed to resolve the immediate dispute between King John and his barons. It was intended to govern relations between successive kings and their most powerful subjects forever. It binds the Crown even today. Its long title indicates that it is "[t]he great Charter of the Liberties of England."³ It addresses, "all free men of our Kingdom," and grants them "for ever all the liberties written out below, to have to keep for them and

1. The English circuits are no doubt precedents for dividing the U.S.A. into different circuits.

2. HENRY MARSH, *BRITISH DOCUMENTS OF LIBERTY* 39-54 (First American ed., Associated Univ. Presses 1971).

3. The Petition of Right art. III (1628), in MARSH, *supra* note 2, at 107.

their heirs, of us and our heirs.”⁴ So while the settlement was made with the barons, the class which it purported to protect was much wider. As this was still feudal England, the rights protected were those of “all free men” as broad a category as was conceivable at that time.

As you would expect, in view of its background, in the Charter, pride of place is given to placing restrictions on the King’s ability to abuse his position by extracting extortionate taxes. However, the Charter also protected heirs who, while under age, were under the King’s control. King John had treated their inheritance as his own. However, under the Charter they were to have their inheritance “without ‘relief’ or fine,” and they should receive their land properly maintained and stocked.⁵ There was not to be the inheritance tax which is now imposed in the United Kingdom.

The medieval attitude towards women was not that of which we would approve today. However, again, the language of the Charter is remarkably liberal in relation, for example, to widows. The practice had been to treat them as in the King’s custody so their land would come under his control. If the King was short of money, he would auction off widows for marriage to the highest bidder. One noble lady who had been widowed and married three times was prepared to pay the King’s demand of £3000 to escape being married a fourth time.⁶ In contrast with this treatment, the Charter provided that widows were to have their “marriage portion and inheritance at once and without trouble.”⁷ What is more, no widow was to be compelled to marry “so long as she wishes to remain without a husband.”⁸

Even if a widow did want to marry, the marriage could be a lonely one.⁹ King John expected members of his court to dance attendance upon him unencumbered by their wives. One wife, apparently frustrated by this practice, offered John 200 chickens to enable her husband to spend one night at Christmas with her. John accepted.¹⁰ I hope that this was a worthwhile investment.

The provisions I have already cited, you may agree, are remarkable for a document negotiated 790 years ago, but they diminish into insignificance when compared to the chapters dealing with the individual’s rights to justice. Here I will let the articles speak for themselves. I use their original chapter numbers:

20. For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but

4. MAGNA CARTA ch. 1, in MARSH, *supra* note 2, at 41.

5. MAGNA CARTA chs. 3, 5, in MARSH, *supra* note 2, at 41-42.

6. As recounted by Lord Phillips in a speech on Magna Carta. Rt. Hon. Lord Phillips of Worth Matravers, Master of Rolls and Chairman, Magna Carta Trust, Address to the Pilgrims of the United Kingdom (Nov. 2003), available at <http://www.magnacharta.org/Pilgrims03.htm> [hereinafter Lord Phillips Address].

7. MAGNA CARTA, ch. 7, in MARSH, *supra* note 2, at 42.

8. MAGNA CARTA, ch. 8, in MARSH, *supra* note 2, at 42.

9. Lord Phillips Address, *supra* note 6.

10. *Id.*

not so heavily as to deprive him of his livelihood.

38. In future no official shall place a man on trial upon his own unsupported statement, without producing credible witness to the truth of it.

39. No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.

40. To no one will we sell, to no one deny or delay right or justice.

45. We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.¹¹

These are the chapters at the heart of Magna Carta.¹² They justify treating Magna Carta as a document of outstanding importance. They, together with the other provisions of Magna Carta, contain many of the core features of the numerous countries around the globe that today adhere to the rule of law. They became part of the core principles of both our countries' common law inheritance and explain why Professor White, Justice O'Connor, and other members of the ABA took part in the rededication ceremony in 2000 at Runnymede.

In Britain, Magna Carta has not always had the public appreciation to which it was entitled, but then Prime Minister Sir Anthony Eden assessed its importance in terms which I would endorse:

The 15 June 1215 is rightly regarded as one of the most notable days in the history of the world. Those who were at Runnymede that day could not know the consequences that were to flow from their proceedings. The granting of Magna Carta marked the road to individual freedom, to Parliamentary democracy and to the supremacy of the law. The principles of Magna Carta, developed over the centuries by the Common Law, are the heritage now, not only of those who live in these Islands, but in countless millions of all races and creeds throughout the world.¹³

If you live in countries such as ours, it is all too easy to be complacent about our freedoms. We cannot afford this. Complacency also probably explains the United Kingdom's approach to the European Convention of Human Rights ("ECHR"). The Convention is based on Magna Carta principles, but it was not until the year 2000, fifty years after it was ratified by the U.K., that the ECHR

11. MAGNA CARTA, in MARSH, *supra* note 2, at 44-47.

12. They set out the sense, rather than the actual words, of the original Latin.

13. Letter from Prime Minister Rt. Hon. Sir Anthony Eden to the Inaugural Meeting of the Magna Carta Trust (Oct. 1956).

was expressly made part of our domestic law. This meant that we then had, for the first time, a document in addition to Magna Carta that was equivalent to the U.S. Bill of Rights. This did not mean that the United Kingdom had not previously adhered to the rule of law. A.V. Dicey, in *Introduction to the Study of the Law of the Constitution*, was adamant that the British Constitution is founded on the rule of law.¹⁴ However, the nature of the requirement to act in accordance with the rule of law is not precise. It is clear it goes beyond merely requiring everything to be done according to law.¹⁵ It is this to which Lord Justice Laws referred in an article, *Law and Democracy*, when he indicated, contrary to the then general assumption based on Parliamentary Sovereignty, that there has to be limits on our Parliament's power to abolish fundamental freedoms.¹⁶ This is because if the power of Parliament is in the last resort absolute, as Lord Justice Laws stated, "such fundamental rights as freedom of expression are only privileges, no less so if the absolute power rests in an elected body. The by-word of every tyrant is 'my word is law'; a democratic assembly having sovereign power beyond the reach of curtailment or review may make just such an assertion and its elected base cannot immunise it from playing the tyrant's role."¹⁷

II. THE DEVELOPMENT OF THE JUDICIAL ROLE

The change in the approach to the supposed principle of the sovereignty of our Parliament, which was generally accepted until fairly recently, is part of the explanation as to why the role of the English judiciary has been transformed during my judicial lifetime (which has entered its twenty-eighth year).

Until the 1970s, the judicial role had hardly changed in over a century. A judge's concern was to decide cases, but little more than that. The general attitude to reform was encapsulated in the oft-quoted remark by a judge of the previous century: "reform, reform, do not talk to me of reform; things are bad enough already." Trials were conducted almost exclusively orally and were extremely adversarial. Rumpole of the Old Bailey was not entirely a figment of a barrister author's vivid imagination. Such advocates could then be readily identified at the English bar. However, today oral advocacy has a lesser role, and written advocacy has become far more significant. Consequently, there is less scope now for the development of the eccentricities which were a part of the

14. A.V. DICEY, *INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION* 187 (The Macmillan Press Ltd. 10th ed., 1973) (1885).

15. In a case before the Hong Kong Court of Final Appeal, *Leung Kwok Hung & Others v. Hong Kong Special Admin. Region*, [2005] 3 H.K.L.R.D. 164 (C.F.A.), the Court, presided over by Chief Justice Li, said "Hong Kong's tradition of fundamental rights and freedoms took root long before the Bill of Rights was enacted and entrenched in 1991." *Id.* ¶ 130. (The Chief Justice was referring to Hong Kong's Bill of Rights.) The same statement is equally applicable to both our jurisdictions.

16. Sir John Laws, *Law and Democracy*, [1995] PUBLIC LAW 72 at 4.

17. *Id.*

flamboyant character of many celebrated advocates in the past. However, the changes in the judicial role, upon which I want to focus today, are even more significant than the changes that have taken place to the bar. Just as the common law has been evolving with increasing rapidity, so has the role of the common law judge. The judge's responsibility for delivering justice is no longer largely confined to presiding over a trial and acting as a neutral arbiter between the conflicting positions of the claimant and the defendant or the prosecution and the defence. The role of the judiciary, individually and collectively, is to be proactive in the delivery of justice. They have to be prepared to take on new responsibilities in order to contribute to the quality of the justice system.

III. THE NEW JUDICIAL RESPONSIBILITIES

At the forefront of these new responsibilities is achieving access to justice for those within the judge's jurisdiction. They include ensuring the observance of the rule of law by public bodies and the upholding of human rights. The responsibilities also have an international dimension, a dimension that I wish to stress. Chief Justice Murray Gleeson of Australia made reference to these new responsibilities in his admirable speech, *Global Influences on the Australian Judiciary*, at the 2002 Australian Bar Association Conference, when he said:

In an open society, a nation's legal system, and its judiciary, will always be exposed to international influences. Even when unrecognised, or unacknowledged, they will be reflected in the substantive and adjectival law applied by judges, in the structure and status of the judiciary, and in its relationship with the other branches of government.¹⁸

The judiciary, to which I am referring here, are not the judiciary of the growing number of international and super-national courts and tribunals that are being established in different parts of the world. This is not because I do not support the contribution those courts and tribunals are making towards upholding the rule of law. On the contrary, I recognise that their contribution is critical. For example, the long-established International Court at the Hague, the European Courts of Justice and of Human Rights, the new International Criminal Court, and the Special Court for Sierra Leone deserve our strongest support. We should provide that support by ensuring that international courts are properly resourced and are supplied with judges to serve upon them of the highest calibre from amongst the legal communities of all developed legal jurisdictions, and wherever practical, from amongst their own judiciaries.

Rather than to the members of international courts and tribunals, I am referring to the judiciary who day by day in many jurisdictions are responsible for providing justice to members of their public. All judges in every jurisdiction are, by the way they undertake their domestic responsibilities, contributing to the

18. Murray Gleeson, Chief Justice of Australia, *Global Influences on the Australian Judiciary*, Address at the Australian Bar Association Conference (July 8, 2002), available at http://www.hcourt.gov.au/speeches/cj/cj_global.htm.

quality of justice internationally. Today, no country is cocooned from its neighbours. Human beings do not live in hermetically-sealed containers. While we remain citizens of our individual nations, what happens in any part of the globe can affect us all. We not only have a global economy, we are part of a global society. As Severe Acute Respiratory Syndrome ("SARS"), avian flue, and mad cow disease have dramatically demonstrated, the health of any nation can be at risk if an infection afflicts any other nation. The same can be true of justice and the observance of the rule of law. The process may be slower, and the rate of contagion not so high, but the spread of infection from one legal system to another is likely to be unstoppable unless a cure for the disease is found.

Terrorism and crime are no respecters of national borders. It is not countries which are subject to the rule of law which are the primary breeding ground of terrorism. Though, as recent events have demonstrated, even a country, such as my own, can have its home grown terrorists. Still it is usually where the rule of law has broken down that terrorism takes root. Crime, including terrorism, thrives where law enforcement is weakest. It is no accident that the citizens of countries which observe the rule of law do not have to seek asylum.

The observance of the rule of law is critical to progress in both the under-developed and developed worlds. The rule of law, based as it is on ECHR values, is the key which can unlock greater economic and ethical wealth. The problems confronting the different nations are far from identical. However, if real progress is to be achieved, it is necessary to improve the observance of the rule of law in every part of the globe.

James Wolfensohn the former president of the World Bank was very conscious of this. Amongst the things he said were: "[What] we know is absolutely critical . . . is that you have to have a legal and judicial system which functions equitably, transparently, and honestly. If you do not have that form of legal and judicial system, there is absolutely no way that you can have equitable development."¹⁹ And of Africa: "it needs strong, well-established rule of law regimes to enable it to trade itself into prosperity and out of poverty." This partly explains why I believe that the way in which the rule of law is administered by a judge in one jurisdiction either contributes to, or detracts from, the observance of the rule of law generally. Without taking away from the importance of this central thesis, a judge can, and English judges do, make an indirect contribution to the improvement in standards of justice in other jurisdictions as well as their own. An example of the type of contribution to which I am referring is that which the judiciary makes by commenting on the jurisprudence of other jurisdictions when it gives judgment. This is particularly true in the field of human rights because those rights represent international norms.

One of the reasons why I am personally enthusiastic about the ECHR having been made part of our domestic law is that it enables the judges in my jurisdiction, in the ordinary course of their duties of trying domestic cases, to make a contribution that previously would not have been possible. By their

19. James D. Wolfensohn, President, World Bank Group, Empowerment, Security and Opportunity Through Law and Justice, Address in St. Petersburg, Russia (July 9, 2001).

decisions in ordinary cases, they contribute to the evolving international jurisprudence of human rights. In the past, British judges could do this in the Privy Council which used to be the final court of appeal for one third of the nations of the world. However, most of the Privy Council's post-colonial jurisdiction have now been repatriated, so today this provides limited opportunities. As a member of the Privy Council, I had a limited exposure to the human rights jurisprudence of the countries which were then subject to constitutions that contained human rights codes, but not nearly to the extent I now have as a result of the ECHR becoming part of our domestic law. The additional exposure of our judiciary is of particular importance because, until the ECHR became part of our domestic law, there was no common law jurisdiction which directly gave effect to the ECHR in its courts. The Republic of Ireland had its Bill of Rights, of course, and has done an admirable job in keeping the common law flag flying in Europe, but its contribution to human rights has been largely based on its own constitution.

Another opportunity of benefiting from the judicial exchange of views, the value of which I can vouch for personally, are those that now take place with increasing frequency at meetings between the judiciary of two or more jurisdictions. I know, for example, that some of my judgments have been influenced by the exchanges I have had with my colleagues from the U.S.A. I have also been made aware of possibilities that otherwise I would not have conceived were viable by the proactive approach of the Indian Supreme Court. I say straight away, its approach would not always be appropriate in either the U.K. or, I suspect, in the U.S.A., but in India it is seen by the Indian Supreme Court as being essential because of the Court's unique role in Indian society. For example, Justice Singh, who is now retired, certainly surprised me when he explained how he had come to make the particular order that he made on a day I visited him. He had read of a disturbing incident in his home State of the Punjab, so, on his own initiative, he went into court and ordered the local court to investigate and report back to him. He felt he had no option but to adopt this course because if he had not acted the incident may not have been investigated. I congratulated him for the initiative he had shown, which was no doubt justified in India due to the lack of alternatives, but such summary action could not be justified in the U.K.

Another recent and relevant example was provided by Chief Justice Barak of Israel in a lecture he gave in London. He held a distinguished British audience riveted for over an hour. His punch line was while considerations of security are important and relevant to a judge's decision in cases involving national security, as in any other case, judges still have the responsibility of upholding the rule of law. So even to detect the whereabouts of a ticking bomb, torture cannot be justified. In both our countries we have had to face the same responsibilities as the Israeli Supreme Court. Naturally, our senior judges have watched the decisions of your senior courts with interest, as your judges have no doubt been watching our courts' decisions. Immense though the difficulties which our judges face are, they do not compare with those faced by President Barak and his colleagues on the Israeli Supreme Court. Against the background of one terrorist incident after another, that court has made courageous decisions. In addition to

their ticking bomb decision, the Court has ruled upon the lawfulness of erecting a wall that will divide communities. In both cases, the way in which that Court came to its decision by applying established judicial principles and techniques was hugely impressive. You need to be a judge who has had to wrestle with this type of decision to fully recognise the quality of the decisions made by Chief Justice Barak and his Court.

I believe we have a responsibility to learn from each other not only in regard to substantive law, but also in relation to practice and procedure. When considering procedural reforms of our legal systems, it would be a foolish jurist who did not look at the experience overseas. I certainly did so for my report on Access to Justice and, as you would expect, I received most generous assistance wherever I turned—in particular, from the different jurisdictions in the U.S.A.²⁰

Another benefit that can result from judicial exchanges is an improvement in international judicial cooperation. Sometimes this can be achieved by establishing international conventions. Such an approach is ideal if everyone is willing to participate and agree. Then, the judiciary's role can be limited to merely providing advice on what would be the most appropriate form for the convention to take. However, there can be a particular reason for a country not being prepared to join a convention, even though there is a real need for practical cooperation between two jurisdictions. When this happens, we have found that the judiciary can themselves, through direct contact, achieve what may be necessary.

In the U.K. we now have a substantial Pakistani community. In the past, there have been difficulties because of the lack of a convention to which Pakistan is a party to regulate the situation when a marriage breaks up and a parent takes a child back to Pakistan. Until recently, there was no simple process of obtaining the return of the child. The court procedures could be slow and ineffective, causing the parent who was deprived of the child considerable anguish. Fortunately, a solution was found. The President of our Family Division made a visit to Pakistan, and a delegation of Pakistani judges made a return trip to England. Because of this exchange, a protocol was established between the two judiciaries on their own initiative. The protocol provided that, in the absence of special reasons, a child would be returned to its former country of residence so that issues as to care could be dealt with by the courts of that country. To ensure the smooth operation of the protocol, each country identified a senior judge to supervise the smooth operation of the protocol and to act as a liaison point if any difficulties should arise. My informant tells me that the protocol is working well with considerable benefit to the children involved. There are plans to replicate the model with other countries that are not parties to the Hague Convention.

Another example is provided by the arrangement which exists between France and the U.K. to achieve better judicial cooperation in relation both to criminal and civil matters. Each country now sends a liaison judge to the other country to facilitate cooperation between the two legal systems. This has made

20. RT. HON. LORD WOOLF, ACCESS TO JUSTICE: FINAL REPORT (1996), *available at* <http://www.dca.gov.uk/civil/final/index.htm>.

a significant contribution to an improved understanding between the two jurisdictions, one of which is, of course, civil and the other common law. We have realised that, not only do we have much to learn from other common law systems, but also from the civil systems.

I regard it as important that, where we can, we harmonise our legal systems, again not only with other common law jurisdictions, but also with civil jurisdictions. In this regard, it is without doubt true that the European Union and the ECHR are acting as catalysts. This is not, as is sometimes suggested, to the disadvantage of the historic links with other common law jurisdictions. In fact, it enables us to bring added value to our interchanges—perhaps a continental flavour. Our civil procedure is now much closer to that of the French. As I like to describe it, our system is situated somewhere in the middle of the English Channel.

I turn now to what is becoming increasingly part of the role lawyers, including judges, play. This is a responsibility which is *primarily* that of well established legal systems, though it can be of benefit to all. The responsibility is to provide support when it is needed to other legal systems. The position, as I see it, is as follows. Legal systems of different jurisdictions are dependant upon each other. The standards which exist in one legal system can have an influence on the standards of other systems. Their ability to do this is influenced by the standards that they set in their own legal systems. Individual judges and lawyers have in the past, and I hope this will continue in the future, made significant contributions to other jurisdictions, especially in enhancing the observance of human rights.

In this regard, it is with hesitation that I point out that even in the United States there can be a need for assistance. I would suspect most lawyers would be prepared to agree that there is a lack of legal resources for those languishing on death row that is regrettable. So I am especially proud of the work done *probona* by the English bar and solicitors to help to obtain justice for those on death row in the United States.

Other examples of judicial cooperation also exist. Members of the Australian and New Zealand judiciary go and sit in the small jurisdictions in the Pacific area which do not at present have the resources to provide the quality of justice that they themselves would wish to provide from amongst their own citizens. The United Kingdom is, I believe, the only jurisdiction providing judges prior to retirement to sit on the Final Court of Appeal in Hong Kong (although Australia and New Zealand provide very distinguished retired members of their judiciary). In this way it is ensured that the standards of justice that existed prior to China regaining sovereignty over Hong Kong continue. Additionally, the Special Court of Sierra Leone has amongst its judges a number of judges of other African States. These examples should be precedents for other smaller jurisdictions to follow. If they extend an invitation to an overseas judge to sit on their Court, the presence of that judge demonstrates that the jurisdiction has a judiciary that has the necessary quality and independence, by a method which is not inconsistent with national pride—which was a real disadvantage of appeals to the Privy Council in London.

In addition, I am sure we could do more to help each other by providing training. The training of judges needs to be in the control of judges from the

country concerned, but judges from other jurisdictions can provide assistance when required. I know a great deal of valuable assistance is being provided already by and to different jurisdictions. I am particularly impressed by the contribution being made by Australia's Federal Court to the Indonesian judiciary and was extremely grateful to Chief Justice Michael Black for allowing me to witness the 'graduation ceremony' for the members of the Indonesian judiciary who most recently completed a training course in Australia. For the new democracies of Eastern Europe, whose judicial and legal systems are still recovering from the cold war days, there are already many similar programmes in place. Many of these programmes are supported by United States judges and lawyers as well as judges from other jurisdictions. Outstanding among the U.S. judges is an ageless appellate judge who has taken senior status and, who, in many undeveloped countries, is a byword as a source of constructive advice. He is the Honorable Clifford Wallace, who has worked tirelessly (you could not work harder) to improve the standards of justice throughout the world. He has made a suggestion that I would warmly endorse. He suggested that each developed jurisdiction should pair up with one of the jurisdictions of the emerging democracies to mentor that jurisdiction for as long as necessary. I believe he had very much in mind the precedent of the relationship between Indonesia and the Federal Court of Australia to which I have already referred. He would welcome volunteers.

It should not be thought that the benefits of such programmes are not reciprocal or that it is only small countries that have need of assistance. I have had the good fortune relatively recently to visit three large jurisdictions—much larger than my own—at particularly opportune times. In each case, I have witnessed the start of a process of change prompted by those countries realising that adherence to the rule of law is of critical importance to their future development.

The first country was South Africa, which I visited in 1994 soon after Mandela had been released. I went to Bloemfontein with three colleagues for a conference on human rights at the South African Court of Appeal presided over by their Chief Justice. The conference was between the judges of South Africa and the judges of other African jurisdictions. We met for the first time in the library of the Court—the visiting judges (most of whom were black) were in their lounge suits and the white judges of South Africa in their black robes. Initially the two groups stood apart, but then merged and started to talk avidly. From that meeting, I believe, grew the tree which now flowers as one of the world's great courts, the Constitutional Court of South Africa.

The second country was China. I made two visits about sixteen years apart. The change was dramatic, brought about, I believe, by exposure to foreign legal systems. On the first visit, although the Vice President (who was head of the Supreme Court) was interested in the western legal systems, he had no conception of how a legal system could operate. On the second visit in 2001, there was a hunger for advice so as to develop a system of justice which would support China's growing trade. I again visited last September, and I was astonished by the progress that had been made.

The final country was Russia. The World Bank held a conference there last

year on reforms of legal systems. As a result of the visit, I was convinced that Russia was committed to adherence to the rule of law. Although the conference was due to be opened by President Putin, he could not attend. I was one of a privileged few flown in his private jet to meet him in Moscow at the Kremlin. I was astonished to find that this was not a private meeting, but it was to be broadcast on Russian television. I had been told that the President would welcome a question on human rights, and the question I posed on capital punishment certainly received a positive response.

But to return closer to my chosen subject. A case in the United Kingdom which I believe demonstrated a defining realisation of the importance of the interactive responsibilities of our different judiciaries was provided by the General Pinochet litigation. Omitting the reasons for the two hearings or the appeal, I believe the result of the case sent a strong message as to how different jurisdictions, Spain and the United Kingdom, could require even one of the most powerful citizens of another state to return home to be held accountable for his possible guilt of crimes against humanity.

My Scottish colleagues have recognised the need to be innovative in order to overcome geographical hurdles to achieve justice. I refer to their response to the Lockerbie terrorist incident. The decision to sit in a Scottish enclave in Holland was a remarkably imaginative way of enabling justice to be achieved for the relatives of the victims on the flight which happened to be passing over Scotland at the time the bomb exploded.

The fact that challenges posed by novel situations of this nature can be overcome makes the judicial role today so rewarding. Novel solutions are achievements for the jurisdictions involved, but more importantly, they contribute to the accumulated experience across all jurisdictions. If it has been done once, it can be done again. These contributions result in the reach of the rule of law extending more rapidly today than ever before.

We must not, however, be complacent. In recent years, there have been deeply worrying threats to the independence of the judiciary in some jurisdictions. Commendably, in a few other jurisdictions, and particularly in South Africa, the senior judiciary have publicly joined the protest of the United Nations rapporteur, politicians and the media. Others have, in private, provided support. However, it could be helpful if, in these situations, the collective voice of, say, the chief justices could be heard. But how could this be done? There is no organisation of chief justices in existence at present to take on this responsibility.

After much thought, I have come to the conclusion that it is doubtful whether such an organisation is practical or even possible. The need is intermittent, but when it arises, it is urgent. There is a regular turnover in those who hold the office of chief justice. It is most unlikely that any general mandate could be given without a meeting of those in office at the relevant time. Opinions could differ because the nature of the problems differ. Any intervention could be seen as being unjudicial. Despite this, certainly the desirability of finding an answer requires this issue to be on the agenda.

CONCLUSION

I appreciate that I have travelled over a vast amount of territory in course of this talk. So much so that I am reminded of a vacation job I had when I was attending University more than fifty years ago. I was a courier for thirty U.S. students, mainly girls, who were travelling around Europe for the first time. In the course of a few weeks we went to about fifteen countries in about thirty days. We could not get more than a taste of the countries we visited. However, that taste was enough to convince us that we would all benefit greatly from returning to each of those countries because we still had much to learn. I am convinced that the position is very much the same with judges of different legal systems. No one jurisdiction has a monopoly on truth and when the judiciaries in so many jurisdictions are facing unprecedented challenges, we need all the help we can get.