



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

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THE CENTRALITY OF JUSTICE:
ITS CONTRIBUTION TO SOCIETY, AND ITS DELIVERY

THE LORD WILLIAMS OF MOSTYN MEMORIAL LECTURE

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Introduction¹

1. It is a privilege and honour to give this lecture in memory of Lord Williams of Mostyn. It is made possible by the generosity of Farrar’s Buildings (where I was pupil as a barrister to His Honour Judge Monro Davies QC and of which my judicial pupil master His Honour Judge Sir Robin David QC was a door tenant). It is a privilege, as although Lord Williams and I never practised in the same area of the law, he was always most generous in his encouragement, wise advice and counsel. It is an honour as Lord Williams’ career spanned both the bar (for he was successively leader of the Wales and Chester Circuit and Chairman of the Bar) and the House of Lords (he was successively an Undersecretary of State, Minister of State and Deputy Leader of the House of Lords, Attorney General and Leader of the House of Lords). More importantly he was, as Lord Falconer described in the Dictionary of National Biography, a “committed reformer”:

He wanted to change the institutions of which he had been so successful a member. But he never lost the support of the two institutions where he achieved pre-eminence—the Lords and the bar.

2. It is with these words in mind that I turn to the subject this evening: explaining the centrality of justice in our nation State and addressing the urgent need for radical reform to safeguard and enhance that centrality through the better delivery of justice. This is a reform that must be achieved with the support of those engaged in

¹ I wish to thank Dr John Sorabji for all his help in preparing this lecture.

the justice system and others.

Democracy and the institutions of the state

3. It is appropriate to take democracy as my starting point. In particular it is to the reflections of the second President of the United States, John Adams, one of the great US Presidents and of Welsh descent.² In a moment of pessimism, he said:

Democracy never lasts long. It soon wastes, exhausts and murders itself. There never was a democracy yet that did not commit suicide.

4. Adams' observation is of continuing relevance. The commitment to democracy is a living commitment which must be secured by two pillars: the strength of its institutional pillars (the executive, parliament and the judiciary) and the assent and confidence in the institutions by those who are governed by them.³
5. Tonight I want to focus on one aspect of the first pillar – the judiciary and the justice system – and its central role in our democracy.
6. The warning of Adams is equally applicable to the justice system. We all know of the barbarity of the criminal justice system and the appalling delays and expense of our civil justice system before the reforms of the nineteenth century. These were good examples of how a system of justice can waste and exhaust itself. But although we rightly pride ourselves as having one of the finest judicial systems in the world, there are serious dangers to our system which demand reforms perhaps as radical as those of the nineteenth century. I want therefore to look at what reforms must be made to preserve public confidence in our system of justice and, more importantly, to enhance it, so that Adams' pessimism does not become a prophecy applied to that institutional pillar of the state.

The justice system: its contribution to society

Is it simply an adjudicative service?

7. Let me first turn to say something of the centrality of justice and the nature of our judicial system. You may wonder why I do so. There is an emerging view that our judicial system is simply nothing more than the provider of an adjudication service either between the citizen and the State, or between citizens. The view gains

² *Welshmen as factors in the formation and development of the US Republic* – the successful prize essay at the International Eisteddfod at the World's Columbia Exhibition, the Chicago World Fair of 1893.

³ K. O'Regan, *A Pillar of Democracy: Reflections on the Role and Work of the Constitutional Court of South Africa*, 81 *Fordham Law Rev.* 1169 (2013).

currency as it is perceived that individuals, businesses, local and central government come to the courts to use them as an adjudication service, just as they would go to a mediator, arbitrator or ombudsman or other private provider of such services.

8. Differences, of course, do exist between the justice system and these other dispute resolution services. The justice system would, for instance, be viewed as a state monopoly, although it would no doubt be possible to conceive of an ombudsman service as a monopoly provider within the ambit of its jurisdiction. Equally, the justice system could be seen as providing an adjudicatory dispute resolution service, unlike the more facilitative process provided by mediator. But then again, arbitration and, to a certain degree, ombudsman services provide an adjudicatory process. Differences, and similarities, can be multiplied.
9. If the judiciary were looked on in this way as simply a provider of adjudication services, it would be impossible to see how the judiciary and the justice system could be conceived as a pillar of democracy. Conceived of as a service, and one that does no more than resolve disputes – whether civil, family, criminal, public law or private law – there is little perhaps to differentiate it from various forms of alternative dispute resolution. Any distinction between formal and informal justice begins, if it is not already on this view, to be lost. Worse than that, formal justice collapses into informal justice. Looked at this way, the fears expressed by writers such as Professor Trevor Farrow that the common law is in danger of privatising justice, can seem all too patent.⁴

The fallacy in viewing it as an adjudication service

10. The idea that the justice system does no more than provide a dispute resolution service, that in doing so provides merely private benefits to litigating parties, is fallacious. I agree with Chief Justice French of the High Court of Australia that “courts are not and should not be seen to be providers of a spectrum of consensual and non-consensual dispute resolution services”.⁵

⁴ See for instance, T. Farrow, *Civil Justice, Privatization and Democracy*, (2014).

⁵ R. French, *Essential and Defining Characteristics of Courts in an Age of Institutional Change*, (Supreme and Federal Court Judges Conference, Adelaide, 21 January 2013) at 3. See

<http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj21jan13.pdf>. Discussed in P. Spender, *Wavering alternations of valour and caution: Commercial and regulatory litigation in the French CJ High Court*, (2013) 2 J. Civ. LP 111 at 116ff.

11. The idea is fallacious because it undermines our constitutional settlement. A democratic state secures justice, in the widest sense, for its citizens through representative institutions of government – Parliament and the Executive – and through an independent judiciary and justice system. The latter ensures that those institutions, just as much as the state’s citizens, act within the law. A consumer service merely resolving disputes cannot play such a role. Mediation, for all its rightly recognised virtues, cannot do so. Nor can arbitration, nor any ombudsman.
12. If we conceive of the justice system as no more than a service provider, we plant the seeds for Professor Farrow’s feared privatisation. If the justice system is no more than a state monopoly providing exactly the same benefits to individuals as the London Court of International Arbitration, one of any number of mediation services, or, for instance, the Furniture Ombudsman,⁶ then the next logical question is why should the state maintain that monopoly? Its danger lies equally in the fact that it might facilitate the false belief that the justice system is in the same category of public services as education and the health service. It is not. It is in the same category as Parliament and the Executive. It forms part of the institutional framework which safeguards the rule of law and underpins democracy.
13. There is no suggestion that the justice system is to be privatised. But, as Professor Dame Hazel Genn has cogently and forcefully argued, the suggestion is there that the courts do no more than provide services that confer private benefits on litigants has more than found its way into mainstream.⁷ The position was perhaps best summed up in an article by Dingwall and Cloatre who concluded that:

Successive U.K. governments have decided that, although civil justice may be a public service, it is not a public good in the sense that Lord Woolf asserted in his first report. Although, as Lord Woolf notes, governments have been reluctant to defend the policy in public, their communications with the Civil Justice Council made it clear that they see the system as providing only private benefits for individuals rather than collective benefits for the society as a whole.⁸

⁶ An independent not-for-profit organisation established in 1992. It specialises in providing Alternative Dispute Resolution services for consumers and businesses in the retail, furniture and home improvement sectors.

⁷ See for instance, H. Genn, *Judging Civil Justice*, (2010); H. Genn, *Why the Privatisation of Civil Justice is a Rule of Law Issue*, (F.A. Mann lecture, 2012). See <http://www.laws.ucl.ac.uk/wp-content/uploads/2014/08/36th-F-A-Mann-Lecture-19.11.12-Professor-Hazel-Genn.pdf>.

⁸ R. Dingwall & E. Cloatre, ‘*Vanishing Trials?: An English perspective*’, *Journal of Dispute Resolution* 7 (2006) 51 at 67.

Institutions that simply confer private benefits on individuals are not one of the pillars of democracy and cannot safeguard the rule of law or the prosperity of our nation state.

The true ambit of the justice system

14. Why is the justice system therefore a pillar of democracy? There are a number of reasons. Time will permit me only to mention some of the more important: first, the safeguarding of the rule of law, second, maintaining the certainty of the law while allowing for its development, third, providing public access to the law, fourth, providing openness and accountability and fifth, making decisions independently of interests.
15. Let me say a word about each of those I have mentioned.

Safeguarding of the rule of law

16. First, the justice system safeguards the rule of law. The means by which it resolves disputes differs qualitatively from the approaches taken by the many mechanisms of informal justice. It does so through providing substantive justice by finding fact and applying it to law. It provides justice according to law. It does so through a fair process; one that guarantees equality of arms between the parties, which is neutral as between them. This plainly has value over and above the individual case. As Professor Fuller rightly noted the means by which the courts, through hearing and testing evidence and reasoned argument presented by disputing parties, is a fundamental means through which the rule of law is made real. It is of the essence of the democratic state.⁹

Maintaining the certainty of the law whilst allowing for its development

17. Secondly, the provision of substantive justice is not simply an end in itself. Its reach goes far beyond the immediate parties. In this respect, and unlike any aspect of informal justice, it is a continuous process that affects the other pillars of

⁹ L. Fuller, *The Forms and Limits of Adjudication*, (1978) 92 Harvard Law Review 353.

democracy just as it does all citizens.¹⁰

18. Decisions in individual cases clarify the law where it is obscure. They provide certainty where there has been doubt. They ensure that the norms provided by the law truly are norms, and not mere aspirations. They transform bare rules of law into a living framework guiding the lives of citizens, economic activity by small, medium and multi-national corporations, and government conduct:

Protecting legal rights (in other words) has value beyond what those rights are worth to any single (litigant).¹¹

19. The justice system achieves this transformation in two ways. First, through what could be described as the certain application of the law to individual cases. Through deciding cases consistently with precedent and under the guidance of an appellate structure, the judiciary maintains certainty in the law. Individuals, business and government can order their affairs on a sure legal footing. The consistent application and explication of the law enables all of us to know the legal framework within which we live our lives.
20. Secondly, it does so through judges developing the law. Judges can do so in appropriate cases, in accordance with established principle, as explained by Lord Diplock in *Home Office v Dorset Yacht Co. Ltd.*,¹² and more recently elaborated by Sir John Laws in his Hamlyn lectures,¹³ Substantive justice's achievement in any one case can result in the development of novel law. As any first year law student knows without this common law approach there would be no *Donoghue v Stephenson*.¹⁴ Equally, there would be no principled – and still developing – law of restitution or unjust enrichment. Without the court's ability to develop the law, without its creative function, the tort of negligence would have progressed no further than Esher M.R.'s decision in *Heaven v Plender*,¹⁵ and unjust enrichment would remain swimming in the confused and murky shallows of implied contract.

¹⁰ It does so because, in the words of James Madison, "law is . . . a rule of action". To be effective as such it must be known and fixed. J. Madison in A. Hamilton, J. Madison, J. Jay, *The Federalist Papers* (C. Kesler, ed.) (Signet, 2003), No. 62., at 379.

¹¹ D. Rhodes, *Access to Justice* (2004) at 11.

¹² [1970] A.C. 1004.

¹³ J. Laws, *The Common Law Constitution* (2014).

¹⁴ [1932] A.C. 562.

¹⁵ (1882 – 83) L.R. 11 Q.B.D. 503.

21. Individual decisions do not therefore merely provide a service to the litigants; they play an essential part in the maintenance and development of the law. They are a fundamental aspect of our common law constitutional settlement, since they help create the framework of law.¹⁶
22. The contrast with the methods of informal dispute resolution is clear. No means of securing informal justice could legitimately play such a role. There are, of course, limits to the justice system's creative role. It is, broadly speaking, incremental. It is evolutionary not revolutionary. And most importantly, it is subordinate to Parliament, which is rightly sovereign within our constitution. Subject to these limits, the justice system speaking through individual decisions is an institution of the State, not a mere service provider.
23. The contrast can again be seen by reference to the impact of arbitration. Up until 1979 a substantial contribution had been made to the development of commercial law by appeals by way of special case (in effect a case stated) from decisions of arbitrators. A substantial amount of my own experience as a young commercial lawyer was to request the arbitrator to state the award in the form of a special case on a point of law; if I lost the arbitration, I could appeal to the Commercial Court. It is undeniable that the practice, as applied not only to the maritime market but also to the commodities market, produced far too many appeals. So in 1979 an Arbitration Act restricted the right of appeal. That restriction is now embodied in the Arbitration Act 1996. Many have felt that the restrictions are too tight and have stultified the development of English commercial law. As long ago as 2004 in delivering the Sixth Cedric Barclay Lecture, Sir Robert Finch, then the Lord Mayor, called for a widening of the scope of appeals from commercial arbitrations as a need to help the modernisation of English commercial law so that it kept in tune with the developments of the commercial world. Eleven years on, the need is even greater. One of the central defects of arbitration is that the process by which the law is developed in a way (which I shall now turn to describe) cannot take place within the privatised system of arbitration.

¹⁶ In the words of Lord Nicholls: "The common law is judge-made law. For centuries judges have been charged with the responsibility of keeping this law abreast of current social conditions and expectations. That is still the position. Continuing but limited development of the common law in this fashion is an integral part of the constitutional function of the judiciary". *National Westminster Bank v Spectrum Plus* [2005] A.C. 680 at [32].

Providing public access to the law

24. A third fundamental aspect of our judicial system is that decisions are made available to all citizens so that they can plan their lives on the basis of the law.
25. Jeremy Bentham once entertained the idea that if we could render law simple, through codification, everyone could be their own lawyer.¹⁷ Codification would in fact never have produced the answer he wanted; codes stand in need of interpretation and explication just as do other forms of law. There is vastly more to German contract law than is found in the BGB – *Bürgerliches Gesetzbuch*. There is more to the US Constitution than its bare words.¹⁸
26. Bentham had two reasons for thinking that it was important that everyone could be their own lawyer. The first reason would not be popular to some. Bentham considered making the law simple was a means by which the necessity of resorting to – and having to pay – lawyers could be avoided. Where legal disputes arose everyone could be a litigant-in-person well-versed in the law, and well able to fight their corner before the courts. The second reason was to ensure that, if the law was well-understood by all, they could take steps to ensure that legal disputes did not arise. It had a preventative function. Understanding the criminal law, and the penal consequences that flow from breaching it, would play an essential role in ensuring that society would be peaceful. Understanding the operation of contract law, the extent of a duty of care, would enable individuals and businesses to avoid the adverse consequences of breaches.
27. As disputes are avoided through proper planning, society's resources can be directed in ways which are neither "wasteful" nor "disruptive".¹⁹ Again it is not possible for arbitration or mediation to play such a preventive role. Resolution reached by such methods is necessarily private as between the parties. It is not binding either on other parties to arbitrations or mediation. It cannot clarify or develop the law. Insofar as decisions circulate, they often circulate to a narrow range of lawyers who may then gain special knowledge of the way in which groups of arbitrators decide issues. It therefore lacks the features that would enable it play the wider normative role of decisions reached in litigation before the courts.

¹⁷ J. Bentham cited in P. Schofield, *Jeremy Bentham: Legislator of the world*, in M. Freeman, *Current Legal Problems 1998* (1988) at 137.

¹⁸ For a discussion see A. R. Amar, *America's Unwritten Constitution* (2012).

¹⁹ *D v NSPCC* [1987] AC 171, 232.

28. Ombudsmen, it might be said, may play a similar function to the courts. As an academic in the Netherlands has pointed out, they and their decisions can both inform and educate.²⁰ But here too there is a problem. Ombudsman and their decisions play this role against the background of norms established by the courts. As with arbitration and mediation, it presupposes the framework of law provided by the justice system.²¹ ADR rests upon the robust health of the justice system if it is to play its proper role. Absent the justice system, absent ADR. And that is as true for ombudsmen as it is for mediation, arbitration and any other form of ADR.

Providing openness and accountability

29. Fourth, it is a clear principle of the justice system that justice must be delivered publicly and openly in a court so that what is argued and the evidence on which the court proceeds is known. That members of the public can attend and scrutinise our courts ensures that justice, whenever it is being carried out, is on trial. As Lord Atkin recognised justice cannot long survive as a cloistered virtue.²² It must be public and open, save in a very restricted number of circumstances.

30. Openness also provides for accountability in the application and development of the law. A court is not a deliberative assembly. Not since the abolition of the Court of Star Chamber has England and Wales had a court of policy.²³ Our courts are courts of law. This is not to say however that the law does not develop, within established and principled boundaries, in the light of changes in social and public policy, as I have explained. The law must evolve in order to remain relevant to society. The extent to which the courts can and do develop the law in these ways is necessarily a matter of debate. This must be done in a manner that is acceptable – debate primarily between the parties but which is conducted openly so that it can afford the opportunity for wider debate which is facilitated by journalists and court

²⁰ M. Remac, *Standards of Ombudsman Assessment: A New Normative Concept?*, Utrecht Law Review Volume 9, Issue 3 (July) 2013, 62 at 73 – 74.

²¹“Ultimately the collaborative paradigm falters if not grounded upon an absolute”. Professor Jeffrey Wolfe, *Across the Ripple of Time: The Future of Alternative (or, is it ‘Appropriate?’) Dispute Resolution*, (2001) 36 Tulsa Law Journal 785 at 794.

²² *Amard v Attorney-General for Trinidad and Tobago* [1936] AC 322 at 335, “. . . justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful...comments of ordinary men”.

²³ F. W. Maitland, *The Constitutional History of England*, (Cambridge) (1909) at 263.

reporters making public the issues which are being debated.

31. That wider debate informs and is informed by public views. As is evident, they can sometimes have a material effect on the decision on the law. Any particular development by the courts can inform and enable public debate and discussion, and through that political debate. The outcome of that debate can, of course, be corrective steps by the government and Parliament. The justice system is not itself above the law. As such, just like Parliament and the government, the justice system is accountable through its reasoned decisions and its appellate process.²⁴
32. Accountability goes further. In a democratic state, institutions of governance must be accountable to its citizens. This form of accountability necessarily differs across such states. And it differs within states depending on the pillar of government in question. Here our Parliament is accountable via free and fair general elections now held every five years. Our Executive is accountable through Parliament and through the electoral process. The judiciary, in order to preserve judicial independence and thereby the rule of law, is not directly accountable through elections, but this is not to say that it is not democratically accountable. It is, in ways which neither mediation nor arbitration or ombudsman could be accountable. I have already mentioned one way: open justice. A second direct accountability comes through direct participation of all citizens in our criminal process. Lay juries and lay magistrates (justices of the peace) lie at the heart of our criminal justice system.

Making decisions independently of interests

33. Fifth, decisions made by the judiciary are indisputably independent. Each judge, as you all know, takes an oath that he or she will decide all cases without fear or favour, affection or ill will. That obligation is buttressed by the requirement that the judge must avoid any perception of conflict of interest by any material association with the subject matter in issue. The judge is beholden to no party for payment of salary or for the provision of further work. The judge is in no sense beholden to a trade organisation, an industry or a regulatory body. The judge is not therefore at risk of “capture”. The judge is truly independent.

²⁴ C. Turpin & A. Tomkins, *British Government and Constitution*, (Cambridge) (2011) at 567.

Conclusion

34. These five reasons are some of the main reasons why justice provided through our judicial system is an essential feature of a democratic state: it is a manifestation of our commitment to the rule of law; it is not an end in itself, but rather the means by which the framework of law is clarified, developed and given normative force; it provides the bedrock upon which all forms of ADR rest. It is thus more than the public good argued for by Professor Dame Hazel Genn and others. It is in this way an essential pillar of our democracy.
35. There can therefore in my view be no doubt of the centrality of the justice system to the modern, democratic state. If the State is to carry out its core duty, of securing justice, for its citizens through the elaboration, vindication and execution of their and its rights and duties, it cannot but ensure that the justice system is understood to be as important as parliament and the executive, and that it is supported accordingly.
36. Our society rests on three pillars. Should anyone of them fall, we will all fall with it. I have already made clear the need for radical reform. The question then becomes how we carry out such reform to the delivery of justice so that it retains that centrality and its vital role as a pillar of our democracy and does not fall victim to Adams' observation. It is to that I now turn. I do so on the assumption that proper funds will be provided to enable reform to take place.

Reforming the delivery of justice

The principled basis on which to approach reform

37. The proper basis for reform, as a means of securing the better delivery of justice, must be a principled one. It must be one that is predicated on the understanding that the justice system is a pillar of democracy; that it succeeds only in so far as it secures substantive justice and the concomitants to that, which I outlined earlier; and that it does so consistently with a number of constitutional principles. Those principles, which I am sure you well know, are, to name a few: the constitutional right of access to the courts, to equality before the law, to open justice, to timely and affordable justice, and its delivery by an independent and impartial judiciary. These principles are the balance upon which proposed reforms must be weighed. Let me therefore turn to some of the areas in which radical reform is essential.

Technology

38. Reform to the court infrastructure is essential. There is no way in which the present system can continue. Reform is therefore predicated on the better use of modern technology to provide the basis of a modernised infrastructure.
39. Part of this will be the increased use of technology as a means to access the court process. However, as reform must proceed in accordance with principle it will require steps to be taken to ensure that that is accessible. If, for instance, the means to commence a claim is by issuing it online the technology must not simply have to work, but it must be available to everyone in a simple enough way that it can easily be used. We cannot, in the name of increasing access to justice, create a new barrier to entry. Equally, if we are to move a large number of hearings online we cannot do so at the cost of open justice. If we undermine open justice we reduce judicial accountability and, crucially, an aspect of participatory democracy. Technology must be a means to enhance not undermine.

Procedural reform

40. This leads me to procedural reform. I need not speak about the reforms that have taken place in the family justice system. Further reform awaits IT. In the criminal justice system, the steps to be taken are clearly laid out in Sir Brian Leveson's report; digitalisation is underway.
41. As to reform of the civil courts, I can well imagine that one not unreasonable response to any suggestion of further procedural reform from those who practice in the civil courts would be, as they say in America, "stop already". Constant tinkering undermines certainty, increases satellite litigation, and through that increases litigation cost and delay.
42. There is, however, no alternative to further and more radical reform. That is because technology-based reforms to administrative processes will necessarily lead to radical procedural reform. If, for instance, the default position becomes that claims are issued and served online, procedural rules must be made that underpins this. But those rules, given sufficient resources and expertise, must enable procedure properly to be simplified in a large number of areas. Anyone who doubts this should read Lord Justice Richards' masterly and magisterial *Barnard's Inn*

Lecture.²⁵

43. Could the use of technology go further than procedural reform to facilitate online hearings and e-process? In two recent Reports both the *Civil Justice Council* and *JUSTICE* suggest that that is so. Taken together they propose a new online court and the introduction of a new class of quasi-judge, a Registrar. This new class of court officer (in the United States they would describe it as a member of the Adjunct Judiciary) would be able to carry out case management, to screen claims so that they were allocated to an appropriate dispute resolution mechanism, amongst other things. They would therefore have to be experienced, skilled and well-trained. The review by Sir Michael Briggs will be considering how far such proposals can properly be taken. For example, it will be necessary to ensure that justice remains open and that the development and clarification of the law will take account of all types of case. Reducing the number of claims determined by way of judgment could reduce the courts' ability to develop precedent. Such an approach would have meant no *Donoghue v Stephenson*.
44. This is an important consideration. I have already referred to the effect of the curtailment of appeals from arbitration. The more disputes that are and have been determined by private forms of adjudication, the fewer opportunities the courts have had to develop commercial law. And the consequence of this is that the law can ossify. It cannot work itself fine; correct errors; make clear the content of rights. Its ability to provide a sure framework for the development and carrying out of social relations, business dealings and so on is undermined. It thus undermines our democracy.
45. One example of how we can properly effect such reform is the approach that has recently been taken in the Chancery Division and the Commercial Court. They have seen the introduction of both a new Financial List and a Shorter and Flexible Trials Procedure. I should also add that these courts together with the Technology and Construction Court are also moving fast in the direction of electronic processing. In all three instances it provides a model for reform.
46. The introduction of the Financial List is of particular importance, as it will provide a more efficient and economical means to resolve financial disputes. It will thus help to secure greater access to the courts here. Equally it will provide access to the

²⁵ See http://www.gresham.ac.uk/sites/default/files/25jun15stephenrichards_civillitigation.docx.

expertise of specialist High Court judges, thus increasing access to high quality justice. And as importantly, it will enable the development of the law through enabling market test cases to be decided for the benefit of all. It is a reform that not only enhances our ability to implement constitutional principle, but it is one that enhances our ability to secure the normative value of the law. It is to be strongly contrasted with the damaging effect of the use of arbitration in other markets to which I have earlier referred. Perhaps the availability of a test case procedure for the financial markets will lead to an urgent re-consideration of the test for appeals from arbitration in other city based markets, particularly the maritime, insurance and commodities markets, or the provision of a similar facility for important issues in those markets.

47. The Shorter and Flexible Trials procedure is another example of principled reform. Our historic approach to process is that it is prescriptive. Directions are made within the boundaries set by the rules. Other jurisdictions have taken the view that procedure should contain the option for parties to opt for greater procedural flexibility. For instance, to agree for their claims to come to trial within a short period of time, to agree to limit certain procedural obligations, such as the extent to which disclosure should apply or the length of time available for trial. The aim remains to secure substantive justice. The parties can, to a certain extent, agree to reach that goal in different ways that previously permitted. Again, such a development, through facilitating access to justice, is one that enhances the courts' ability to act consistently with principle, and secure increased participation through reducing litigation time and cost.
48. The task for both reform to the court system and the review by Sir Michael Briggs is to consider how best to structure reform within the principles I have outlined; to work out how far we can properly use Registrars and how far we can properly create a multi-door courthouse that both promotes appropriate dispute resolution whilst ensuring that the court's adjudicatory function is enhanced rather than undermined.

Court location

49. Another essential component of reform is the importance of local justice. The proposals for court closures have, rightly, caused significant concern in many areas, including Wales. As I have said on other occasions, consideration of such closures

can only proceed if we use modern technology to put in place a real alternative that can produce proper local justice. I need not repeat what I have said on other occasions, most recently in Cardiff. There is one other aspect to local justice to which it is necessary to refer.

50. At the core of my description of the centrality of justice is the principle that the system of justice is one of the three powers of the State. While there can be debate about the extent to which the police and the prosecution should be organised and be accountable on a local basis, the same is not true of our system of justice. Not only would it be contrary to constitutional principle and the principles on which our system of justice has been organised for many centuries, but independence of all local interests is essential to maintain the integrity of our system of justice and as importantly to maintain the integrity of local government and its freedom from improper influences.

The structure of the courts

51. Our court structure is the product of the 1870s and the 1970s; the former creating the High Court and Court of Appeal, and the latter creating the Crown Court, and seeing the present three Divisions of the High Court come into existence through the creation of the Family Division. More recently we have seen the creation of a new single Family Court and the consolidation of the county courts into a single County Court.
52. The overall structure of the civil courts has not however been subject to detailed scrutiny to ascertain whether it remains appropriate for the 21st Century. In one sense that this has not happened is remarkable. When the High Court was created it was never intended that its Divisions would remain as they were. Bar the early consolidation of the three original common law Divisions to create what is now the Queen's Bench Division and the reform of the Probate, Division and Admiralty Division to create Family Division, they have. The creation of Divisions and the power to revise them was intended to ensure that the High Court's structure would reflect the changing business needs of the courts.
53. That such scrutiny is long overdue is made all the more pertinent given two further issues. First, since the introduction of the Woolf reforms, and more recently the implementation of the Jackson and the Briggs reforms to the Chancery Division, the boundary between the County Court and the High Court's jurisdiction has

become increasingly blurred. Work that would traditionally have been reserved, due to its complexity and financial value, is now and increasingly becoming and is the province of the County Court. Secondly, technology. This may now enable us to create what has been described as an online court for certain types of civil claims. Less dramatically, although of equally far-reaching consequences, proper use of information technology should enable us to put in place fully electronic case management and progression systems. E-filing, e-bundles, e-issuing of claims and so on should become the norm, as in a significant number of cases, virtual case management and other procedural hearings.

54. I await the outcome of the review by Sir Michael Briggs, and its recommendations as to how our civil court structure ought to be reformed in order to best enable it to deliver justice today. Its recommendations will, of necessity, have to be tested by reference to constitutional principle just as much as by reference to how, and the extent to which, they will render the justice system more economical and efficient.
55. It is also necessary to give further consideration to the relationship between the courts and the tribunals. There can be no doubt about the huge success of the reforms to our system of tribunal and administrative justice that has been brought about as a result of the report of Sir Andrew Leggatt. Over the period since that report was implemented, there has been a gradual coming together of the way in which the judges in the courts and the judges in the tribunals work. For example, a significant amount of judicial review work is carried out in the tribunals; the way in which courts and tribunals deal with cases has been influenced by the respective practices. This influence will only increase as courts and tribunals share the same buildings.

Other reforms

56. There are many other radical changes that must be made but time does not permit.

Working together

57. I must therefore turn to a further principle: to emphasise that this is not reform that can be successfully carried out unless all those interested have a role in carrying forward the reform.
58. For the criminal justice system to work optimally, interaction between the courts, prisons, the Crown Prosecution Service and other such bodies needs to run as

efficiently as possible. If the courts are to be in a position to deliver timely justice, cases need to come on at the right time, which requires well-briefed and well-prepared lawyers to be present in court, witnesses to be there on time and defendants to be present, at the right time and place. This is the approach that has underpinned the report of Sir Brian Leveson and will underpin carrying it into effect.

59. The same is true for both the civil and family justice systems. The courts and the judiciary are not islands unto themselves. The delivery of timely and effective justice requires close working between them and a host of external agencies, individuals and legal representatives.
60. In answering the question how we ensure that we can improve the delivery of justice we cannot therefore simply focus on the courts and judiciary. Governments at one time talked about having joined-up policy-making. The sentiment was undoubtedly correct: if reform is to work as well as it can, it has to be coherent across the piece. It is no good improving one aspect of a system in order, for instance, to improve its speed if unreformed elements mean you can never attain that improvement.
61. The delivery of justice needs to be understood as requiring a close working relationship between the courts and judiciary and a number of other institutions and individuals. Real improvement will come when all aspects of the system can work together more effectively and efficiently. In the delivery of reform we must retain the support of the professions and all others engaged in the system.

The anticipated benefit

62. Taken together these reforms will not simply prevent the decline and ultimate decay of our system of justice but will improve the system's ability to operate as a pillar of democracy. That is why I highlight them. In doing so I realise that some may say that it is all well and good to improve access to justice for businesses; that improvements more urgently need to be made to improve access for the less well-off. That is undoubtedly the case: principle requires it of us. Equality before the law cannot simply be a matter of form. It must be made real. The justice system must deliver for all within society. That is why the senior judiciary and I are committed to ensuring that this latest stage of reform is carried out as carefully and in as considered a way as possible.

Conclusion: the centrality of justice

63. I started this lecture with the warning given by one US President of Welsh descent about the vitality of democracy. I should end therefore with something that has often been attributed to his some-time friend and rival and another US President of Welsh descent: Thomas Jefferson. He is believed to have once said that “on matters of style, swim with the current, on matters of principle, stand like a rock”.
64. The present style, if it could be put that way, is for radical reform. Tomorrow’s justice system will, if funds are provided for reform, undoubtedly differ in many ways from the one I knew when I started life as a barrister. How it develops must be shaped by matters of principle. On this we cannot move. That is the bedrock. Those principles are: that the justice system is an indispensable pillar of our democracy; that each of our citizens must be provided with equality before the law secured by ready access to a fair process before the courts; that the achievement of substantive justice through adjudication conducted by an independent and impartial judiciary is the *sine qua non* of the rule of law and cannot be equated with or reduced to a mere service akin to that providing by mediation, arbitration or any other form of alternative dispute resolution process. If we stand by our principles we will shape our justice system so that it can fulfil its proper role, and ensure that our commitment to liberal democracy is never at risk of going out of style.

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