



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

THE RIGHT HON. THE LORD THOMAS OF CWMGIEDD
LORD CHIEF JUSTICE OF ENGLAND AND WALES

DINNER FOR HER MAJESTY'S JUDGES
WEDNESDAY 6 JULY 2016

1. My Lord Mayor, Ladies and Gentlemen. It is my honour and privilege to thank you, once again, on behalf of Her Majesty's judges of England and Wales and your other guests tonight, for this simply magnificent feast tonight and for your most generous hospitality, we are truly grateful
2. Joseph Chamberlain is reputed to have said, once, that a fortnight was a long time in politics. We all know that Harold Wilson said that a week was a long time. Given recent events, it might be said following Andy Warhol, that 15 minutes is now a long time. Whatever may be the speed or nature of changes in matters political, the judiciary does not comment. The business of the judiciary is not politics. It is the business of upholding the rule of law.
3. And it is, my Lord Mayor, the rule of law that provides the certainty so necessary for the prosperity of the state. It underpins our just society by ensuring fair dealing, respect for individuals, particularly important at this time, and peaceful resolution of disputes through access to justice and fair trial. It is the means through which the citizen requires those that govern to do

so in accordance with the law. It provides the stability and the framework through which the political changes ahead can be undertaken and resolved.

4. But none of this could the judiciary properly do without the full continuation of the reform of our legal system. And it is about that reform that I wish to say a little this evening.
5. Three months ago, we began the central part of what has been described as the most radical and ambitious programme of courts and tribunal reform anywhere in the world. From our research, I am sure that is the case. That programme is not one that could have been secured without the support of Her Majesty's Government. Its success will not be achieved without working, as we are, very closely with Her Majesty's Government in the best of our constitutional traditions. And may I therefore warmly thank you, my Lord Chancellor, and your immediate predecessor, for securing the Government's and particularly Her Majesty's Treasury's commitment to the funding for the reform to the estate, the technology and helping with our changes to procedures. And may I particularly thank you for the continued commitment, after recent events, that you have made, that this reform will continue; and I also thank you for all that you and your Ministry are doing to achieve its delivery.
6. We are very fortunate in the quality of the reform team at Her Majesty's Court Service, and I am particularly grateful for the enthusiasm which the judiciary have undertaken what can only be described as immense extra burdens. I personally appreciate that and know how much we are asking of each and every one of you. It is a huge burden to which I shall in a moment return. I have no doubt at all that we shall be successful. We only have to look at the progress made in the IT systems deployed in the criminal courts

and the Rolls building to see that we are delivering something that is successful..

7. But successful reform is not simply a matter of the three branches of the state working together. In relation to the reforms necessary to strengthen the position of London as the leading world financial centre, My Lord Mayor, following close consultation and close working with the City, the reforms that we are introducing to the markets and to make special provision for them are working. Indeed, within two years of saying that we would do something, we have actually established the financial list, the market test case procedure and other innovations; they are successful, and I thank everyone who has worked so hard to achieve that, and in particular those in the City who have made that a success. And I thank you, My Lord Mayor, and I thank all members of the City here, for all you have done to make this successful. They are, I am sure, an indispensable part of our contribution to maintaining the prosperity of our state at this time.
8. But we must keep an eye on what is happening elsewhere in the world. Many states are now developing their own commercial courts. They are doing so not merely to increase their share of the profitable dispute resolution business, but to buttress their position and the position of their state in ever more closely interconnected international markets and economies. This is a development where our judiciary is now playing a central role, in the same way as the City is striving to maintain and buttress its position, and as you have said, My Lord Mayor, we are doing this through leadership and innovation. We have established with enthusiastic support from these other commercial courts, a Forum of International Commercial Courts. Its aim is to develop better ways of upholding the rule of law in international markets and commerce. Its first meeting will be in London next May. But what this demonstrates is the

judiciary's commitment to leadership, to innovation, and underpinning the prosperity of our nation.

9. But a reform plan that simply strengthened our international commerce would be a negation of the responsibilities of the judiciary. We have sought to be as innovative and as radical in the provision of justice for the citizen. What is called presently the Online Court is, I am absolutely sure, as far reaching a reform as it is currently possible to contemplate. It will restore access to justice in civil, family and administrative law which is denied, as I have said in the past, to so many across the entire spectrum of our society.
10. But we are also working, in parallel to what you, My Lord Mayor, are doing in the City, through our Diversity and Community Relations Judges, to extend justice into the communities; this complements the work you are doing, and we have seen the work of the City has been so successful. It is replicated, for example, in bringing the old and the new together. I look forward to being at the Quit Rents Ceremony at the Royal Courts of Justice in October, where you will be awarding a prize to the most successful student from one of your Academies; it is a very clear demonstration of what this City can do to bring our society and those who are less fortunate together. We warmly welcome what you are doing.
11. We are also streamlining our Administrative Court and developing a much closer relationship between the courts and Tribunals; and we are hoping thereby to redress the balance between the citizen and the state.
12. But all these reforms to our justice system and procedure cannot be the limit of what is now necessary to uphold the rule of law and to maintain our economic stability and prosperity. The law itself must also be effective, comprehensible and accessible.

13. The question was asked, rhetorically as it turned out, by Lord Denning, as to whether equity was past child-bearing; he asked the question of course rhetorically, because Lord Denning always tried to develop the law. Judges have a duty to develop the law, and we are fulfilling that. But seems to me that there are certainly areas of the law, where the common law's creative approach is no longer sufficient, and where we need to look again.
14. And may I turn to our criminal law. As many of you know, particularly those who serve in the Central Criminal Court, it is contained in a maze of innumerable, to some, but of course not those who are at that court, impenetrable, statutes and common law developments over the centuries, which it is difficult to defend as entirely rational. It is in my view long overdue clarification and simplification. We ought to be able to look to a single document that sets out the nature of criminal conduct, in other words, a modern code.
15. This is not to argue, as Jeremy Bentham once did, that each individual member of society should be their own lawyer. No one would suggest that we should all be our own physicians, even if what some describe as Dr Google is the modern neurotic's best friend. What I propose, as Bentham did, is that the rule of law and the law itself should be set out with clarity and certainty so that it can be reasonably and readily well-known in advance. He was codification's first champion.
16. His inspiration lay behind the first attempt, by the Criminal Law Commissioners, to introduce such a code here in the 1840s. Unfortunately, it failed.¹ Her Majesty's Judges were responsible for that failure. Professor Sir Rupert Cross described the attitude of my predecessor as this:

¹ S. Kadish, *The Model Penal Code's Historical Antecedents*, 19 Rutgers Law Journal 521 (1987) at 530.

The unanimously unfavourable judicial reaction [to the proposal] . . . resembled the clamorous protests that might be expected from a body of total abstainers asked for their views on a proposal to provide the pupils at state schools with tots of whisky instead of free meals . . . the attempt to reduce the common law into a statute was thought to be little short of lunacy.²

17. Codification was tried again by in the 1870s when Sir James Fitzjames Stephen, seeing in India that a codification of the common law could be achieved and introduced, produced a draft code that was then introduced to Parliament in 1879. Again, I regret to say it was judicial criticism that saw the end of that, particularly my then predecessor's criticism of it as not being complete enough to be viable. A little more recently, Professor John Smith and colleagues tried again. That again failed; it went no further. But failure here was not failure elsewhere in the common law world. It succeeded to varying degrees in jurisdictions such as many of the states of the United States; India; Australia; Canada.
18. Indeed, some of you may recall that, on this occasion at the Mansion House 18 years ago, Lord Bingham revived the call for codification.
19. Now why should I wish to return to this at what many might say is a difficult time? I think there are a number of reasons why one should look at this project. I have foreshadowed one – it is a necessary part of the overall reform to our legal system and an integral part of upholding the rule of law. Secondly, as my Lord Mayor has pointed out, we are looking at improving aspects of our law in relation to security, but it is much better that we do that as part of a coherent whole. Thirdly, the difficulties of change through the common law have all too recently been made all too apparent. Fourth, the Law Commission has successfully begun the necessary work of producing a

² R. Cross, *The Reports of the Criminal Law Commissioners (1831-1849) and the Abortive Bills of 1853*, cited in S. Kadish *ibid* at 530.

sentencing Code, and it appears that it is doing very well; the Law Commission is about to embark upon its 13th programme, and surely a code would be an excellent centrepiece for that programme. Fifth, and an increasing concern for me, is that increasing specialisation at the Bar and amongst the solicitor advocacy means there are fewer advocates than previously who enter criminal practice – the days of the mixed practice are on the way out. There are fewer criminal specialists and, more importantly, fewer potential criminal specialists. As it seems to me expertise is increasingly diverted elsewhere, we need to look at the recalibration of the criminal law.

20. In my view, My Lord Mayor, it is time that we heeded the calls, not merely of Bentham, but also much more recently of Lord Bingham. Our criminal law should be set out in a single, ‘clear, authoritative, comprehensive, accessible, modern, written statement’.³ As judges, in the finest reforming traditions of Sir James Fitzjames Stephen, we will do all to assist, ensuring that such a codification is drafted in as clear and as concise way as possible, even if that means putting to one side, part of the way in which current Parliamentary draftsmen approach matters.
21. By ranging over this vast canvass of reform, there is one factor without which this cannot succeed, and that is the position of the judge. The role of each judge, and in particular the judge who presides over trials at first instance, is absolutely central to the rule of law. I wish to pay tribute to the absolutely central role you play in upholding the rule of law, difficult though much of what we do in current circumstances is. Thank you all very, very much. We take it for granted, I think, at times, and we must ensure that we do not. My Lord Mayor, you have very generously tonight paid a special tribute to all of us, and we are deeply grateful. The judiciary has, as I have said earlier, shouldered an immense burden. But we must appreciate that without a

³ Lord Bingham CJ, *A criminal code: must we wait for ever?* Crim. L.R. 1998, Oct, 694 at 694.

judiciary that is recognised throughout the world for its excellence, and the continued recruitment to a diverse judiciary that is recruited from the best, all the reforms we are undertaking of which I have spoken will achieve nothing. As I have said elsewhere, this is an issue that must be addressed, but it would be inappropriate to say anymore this evening.

22. What, however, is entirely appropriate, My Lord Mayor, is to thank you, on behalf of all Her Majesty's Judges and our guests, you and this City for the continuing and generous and essential support that you provide to the judiciary, for the partnership between us in upholding the prosperity of London. And may I thank you and the City, once more, for providing me with this opportunity to look at an aspect of central concern to the judiciary and of central concern to our state, that is, the reform that is being successful and where it is taking us. May I thank you again finally for your enormous and most generous hospitality, Lord Mayor; thank you very much.