



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

THE RIGHT HON. THE LORD BURNETT OF MALDON

BECOMING STRONGER TOGETHER

COMMONWEALTH JUDGES AND MAGISTRATES' ASSOCIATION ANNUAL
CONFERENCE 2018

BRISBANE, AUSTRALIA

10 SEPTEMBER 2018

(1) Introduction¹

1. It is a great honour and real pleasure to have been asked to give the opening speech this morning. This year's conference theme, and the focus of my talk, is '*Becoming Stronger Together*'. We were all probably taught from an early age that there is strength in numbers, that a rope made of interwoven strands is stronger than strands unwoven, that a successful team is more than the sum of its individual parts.
2. Superficially, these ideas would seem to stand in opposition to a fundamental principle that underpins all that we do as judges, namely judicial independence. As an institution the judiciary must stand apart and separate from the executive and Parliament. We must be institutionally independent. As individual judges we must decide our cases alone or only with those with whom we sit to hear a case. We do not seek outside opinion. We reach our decisions independently and uninfluenced by external pressure.

¹ I wish to thank John Sorabji for his invaluable assistance in preparing this lecture.

3. This might seem then to suggest that the judiciary and individual judges must exist in splendid isolation. If that were the case there might well be more to the claim of Alexander Hamilton that the judiciary is the weakest of the ‘*three departments of power*’ than even he suspected. He warned that ‘*as from the natural febleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced . . .*’.² The judiciary is separate from the executive and Parliament and without their resources. Without an ability to implement our own decisions and, as Hamilton well knew, where necessary to coerce. We can easily see why he was concerned.
4. Hamilton’s focus was largely on the influence or pressure that could be brought to bear by the other two departments of power, as he called them, on the judiciary. Today we would also be concerned with other sources of power or influence within the State: corporations, often multi-national, organised labour, political parties or groupings and the media, including social media. They all may challenge the judiciary, or seek to influence it in a way which undermines independence and even threatens to undermine the rule of law. That is entirely different from criticism of our decisions, or the way in which we work, which is entirely legitimate, indeed not unwelcome.
5. The question I have posed for myself is this: how can we become stronger together while remaining committed to institutional and individual judicial independence? I propose to explore that question today through four short topics:
 - first, independence and interdependence;
 - secondly, independence and cultural norms;
 - thirdly, independence and moral courage; and
 - fourthly, the judiciary standing together.

² A. Hamilton in A. Hamilton, J. Madison, J. Jay, *The Federalist Papers*, (Signet Classics, 1961), Federalist Paper No. 78 at 464 – 465.

6. Taken together these four points (there may be more) should show how as judges, as the judiciary, we can maintain a proper commitment to the separation of powers and the rule of law, while not standing in splendid isolation. Maintaining effective judicial independence is an absolute necessity. Without it we imperil our commitment to the rule of law and constitutional government. As Lord Reed memorably put it last year when giving judgment in the United Kingdom Supreme Court in the *Unison* case, which involved the substantial increase in court fees,

‘At the heart of the concept of the rule of law is the idea that society is governed by law. Parliament exists primarily in order to make laws for society in this country. Democratic procedures exist primarily in order to ensure that the Parliament which makes those laws includes Members of Parliament who are chosen by the people of this country and are accountable to them. Courts exist in order to ensure that the laws made by Parliament, and the common law created by the courts themselves, are applied and enforced. That role includes ensuring that the executive branch of government carries out its functions in accordance with the law. In order for the courts to perform that role, people must in principle have unimpeded access to them. Without such access, laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade. That is why the courts do not merely provide a public service like any other.’³

Without judicial independence, courts and judges could not provide that public service that is like no other.

Independence and interdependence

7. My starting point is the nature of judicial independence. Some question its meaning. One scholar described it as being like the terms, free speech, equality,

³ *R (UNISON) v Lord Chancellor* [2017] UKSC 51, [2017] 3 WLR 409 at [68].

liberty or freedom. You could add ‘the rule of law’. They each mean different things to different people.⁴ But in a penetrating lecture given in 2016, Lord Hodge identified ten pillars which between them support and explain the concept of judicial independence.⁵

8. The first pillar is a ‘*clear constitutional commitment to the independence of the judiciary and the rule of law*’.⁶ At first blush this may seem to assume what it seeks to describe but further explanation can be found elsewhere in his lecture. The essential point here concerns the public and constitutional commitment to those concepts. It is not enough to assert, in a constitutional document for instance, judicial independence, separation of powers and the rule of law. The greatest tyrannies are often underpinned by constitutions containing generous but empty guarantees.
9. The position in the United Kingdom has, as ever, been unusual. The security of tenure of judges was recognised by Parliament as part of the constitutional settlement following the Glorious Revolution in 1688 which brought William and Mary to the throne and deposed her father, James II. But until the Constitutional Reform Act 2005 there was no statutory acknowledgement of judicial independence or the rule of law. That did not mean that before 2005 there was no rule of law and no judicial independence in the United Kingdom. On the contrary, they were deeply embedded, fundamental constitutional principles, both as constitutional practice, and political and public understanding and acceptance. The Act simply acknowledged that to be the case, as part of a shake-up of our structural arrangements which saw the replacement of the judicial committee of the House of Lords by the Supreme Court and substantial changes to the anomalous roles of the Lord Chancellor.
10. Linked to this is Lord Hodge’s sixth pillar: the separation of powers. This refers to both the formal separation of powers – institutional independence – and also functional separation of powers. By this he means the constitutional convention

⁴ S. Levinson, *Identifying “Independence”*, [2006] Vol. 86 Boston University Law Review 1297 at 1298.

⁵ Lord Hodge, *Judicial Independence*, (7 November 2016) <<https://www.supremecourt.uk/docs/speech-161107.pdf>>.

⁶ Lord Hodge *ibid* at [12].

that Parliament and the executive do not seek to influence judicial decisions other than through advocacy in open court as parties to, or intervenors in, litigation. Not for them, the approach said to have been taken in a case by President Lyndon Johnson in 1966. The US Supreme Court had before it a case concerning the merger of two railway companies. President Johnson wanted it to go ahead. Johnson phoned his friend, Abe Fortas, a justice who was hearing the case. He advised the President on the approach to take before the court. The judge is reported to have telephoned the lawyer instructed and told him how to make his submissions. Justice Fortas was the only judge to decide the case in the way Johnson desired when the Supreme Court ruled.⁷

11. In the United Kingdom the idea of a member of the government, never mind the Prime Minister, telephoning a Court of Appeal or Supreme Court judge for advice in respect of litigation the government was involved in, is unheard of. It could not happen. Nor would any minister seek to influence a judge in any case under consideration. Such behaviour could not occur because of the longstanding commitment to, and understanding of, this aspect of the separation of powers and judicial independence.
12. The separation of powers means that judges cannot advise the government on policy, draft legislation or give a view in advance about what would be lawful and what would not. That has, in the past, frustrated government, as was well known when Lord Bingham declined the invitation of the then Home Secretary to help arrive at counter-terrorism legislation that would satisfy the European Convention on Human Rights and the Human Rights Act 1998.⁸ Government and independently instructed lawyers provide legal advice. In the United Kingdom, judges have not done so for almost 200 years. In other words not since the separation of powers and judicial independence became fully established.
13. But in the United Kingdom the expertise of judges is occasionally made available to Government, through officials, to explain what the practical consequences for the operation of the courts would be were a particular policy adopted in legislation.

⁷ J. Zirin, *Supremely Partisan*, (Rowman & Littlefield, New York) (2016).

⁸ Lord Hodge *ibid* at [22].

14. The separation of powers in the United Kingdom before the 2005 Act, a classic British evolutionary muddle, achieved a new purity when our highest court was physically and structurally removed from the legislature, the Lord Chancellor stripped of his roles as head of the judiciary and speaker of the House of Lords and the few judges who are members of the House of Lords were barred from taking part in its proceedings whilst serving as judges.

15. Judicial independence goes further than simply placing limits on what the executive and Parliament can properly do in their dealings with the judiciary. It also places limits on the judiciary. This is what Lord Hodge describes as ‘role recognition’: his eighth pillar. Just as the executive and Parliament should ensure they remain within their provinces, so too must the judiciary as an institution and as individuals recognise the limits of our constitutional role. Engagement in politics is thus forbidden to judges, unlike previous 18th and early 19th century Lord Chief Justices, including the great Lord Mansfield, who sat in the cabinet.⁹ Equally, it is not for judges to comment on matters of political controversy either in their judgments or extra-judicially. It is important to maintain a mutual respect for the proper roles of Parliament and the executive. As judges we avoid intruding on the proper sphere of activity of the other organs of the state. In different countries the boundaries may well be drawn differently depending on the constitutional arrangements. In each case though, role recognition requires the judiciary to ensure that courts remain courts of law and not courts of politics.

16. Both Lord Hodge’s first and sixth pillars illustrate essential elements of institutional independence. They also underscore the importance of institutional interdependence. For Alexander Hamilton, the judiciary was the weakest branch due to the separation of powers, and the inherent nature of the judicial power of the State. Nonetheless, there is a fundamental constitutional interdependence between

⁹ See the debate in the House of Lords on Lord Ellenborough’s position as Lord Chief Justice and Cabinet Minister, HL Deb 3 March 1806 Vol 16 Col 253 to 284.

judiciary, executive and Parliament.¹⁰ They collectively secure the rule of law; and in doing so they must provide each other with necessary support. The judiciary by applying and upholding the law: Lord Reed's point from the *Unison* case. The executive by acting within and enforcing the law. Parliament and the executive by supporting the judiciary to ensure that it has sufficient resources to carry out its responsibilities.

17. Here we see Lord Hodge's third pillar of judicial independence; that the judiciary is remunerated properly to support its integrity, impartiality and quality; that the judiciary is given sufficient resources to carry out its functions; and, that judges are provided with adequate security of tenure.¹¹ Each of these three is necessary in support of institutional and individual judicial independence; and each depends on co-operation with, and support of, the judiciary by the executive and Parliament. If the judiciary is to be able properly to carry out its role, then it must have this support. Just as importantly, without that proper support, the other branches of the state will be unable effectively to discharge their responsibilities. An effective judiciary underpins, indeed is essential to, the rule of law, and the rule of law underpins the well-being, prosperity and development of society. This is interdependence, or rather the three branches standing strong together by maintaining '*the mutual respect which each institution has for the other*'¹², as Lord Hope put it. Respect for their different constitutional roles; respect for the mutual support they must provide each other in order to enable each to carry out their roles, and secure the rule of law.

Independence and cultural norms

18. Institutional interdependence requires more than role recognition and interdependence. It requires the existence of '*political and public understanding and support*' for judicial independence: Lord Hodge's tenth pillar.¹³

¹⁰ Lord Thomas, *The judiciary within the state – the relationship between the branches of the state*, (Ryle Lecture, 15 June 2017) at [15]ff <<https://www.judiciary.uk/wp-content/uploads/2017/06/lcj-michael-ryle-memorial-lecture-20170616.pdf>>.

¹¹ Lord Hodge *ibid* at [15].

¹² *R (Jackson & Ors) v Her Majesty's Attorney General* [2005] UKHL 56; [2006] 1 AC 262 at [125].

¹³ Lord Hodge *ibid* at [33].

19. Judicial independence, like democracy and the rule of law, is dependent on the existence of strong cultural norms. The concepts need to be understood. Society, as a whole, must believe in them and they must be supported by society. In the United Kingdom their evolution was the product of the development of our uncodified constitution over centuries.
20. The cultural norms which support judicial independence are not immutable and cannot be taken for granted. At the present time we can see developing in some countries what appears to be a gentle erosion of support. We have seen judges referred to as ‘so-called judges’. We see judges being criticised because their decisions fail to match the popular mood. I shall return to that issue in a moment. We have seen, as happened in England and Wales recently, privacy injunctions being undermined by widespread publication on the Internet; and even Members of Parliament using, or abusing, parliamentary privilege to do so. If we start to see more broadly a culture of non-compliance with court orders, we may see a culture of contempt for the judiciary, judicial independence and the rule of law develop. Such a culture does not just harm the judiciary. It harms society because it is incompatible with the rule of law.
21. We can also see the potential for eroding the support for security of tenure and judicial immunity from suit: Lord Hodge’s fourth and fifth pillars.¹⁴ Historic examples are not difficult to find of judges removed from office because they acted with impartiality and independence, or sued by the executive because they failed to decide cases in the ‘right’ way. In 2006, for instance, there was a public campaign in one US State called ‘*Jail 4 Judges*’. It sought a constitutional amendment that would enable the investigation and criminal prosecution of judges.¹⁵ It was animated by unhappiness with some judicial decisions. As two American academics have recently noted, the judiciary is an institution within the State designed to act as a neutral arbiter. Such institutions pose significant problems, as they put it, to ‘would-be authoritarians’.¹⁶ And so, security of tenure, and immunity from suit, will be the first thing to be eroded, or removed. Eroded to place improper pressure on

¹⁴ Lord Hodge *ibid* at [20].

¹⁵ For a discussion see Hallett LJ, *Judicial Independence under Threat*, (14 March 2012) <https://www.ucl.ac.uk/laws/sites/laws/files/hallett_12.pdf> at 6.

¹⁶ S. Levitsky & D Ziblatt, *How democracies die*, (Viking, 2018) at 78ff.

judges. Removed to make the judge entirely dependent on maintaining favour with those in power.

22. Judicial independence begins with the way in which judges are appointed: Lord Hodge's second pillar.¹⁷ Another means to produce a quiescent judiciary is to ensure that judicial appointments are made on a political basis. In many countries, appointment is an apolitical matter made by independent bodies, in others appointments are made on the recommendation of the judiciary itself. In the past, judicial appointments in England and Wales, even though made by the Lord Chancellor, who was deeply personally involved in senior appointments, were not politically motivated. But the creation of the Judicial Appointments Commission by the Constitutional Reform Act in 2005 put the matter beyond doubt. Appointments are made on merit, using criteria widely recognised in the Commonwealth and beyond. Transparent appointment on merit helps to develop and maintain public confidence in the judiciary as individuals and as an institution. Its erosion could not but weaken that confidence, and weaken the judiciary.

23. Each of these pillars ultimately does not depend on a country's institutional structures, although the right structures are important. They depend on the health of cultural norms, civic norms in support of the structures and the proper operation of the systems they create. That culture depends on institutional interdependence with the other departments of state unequivocally subscribing to and supporting judicial independence. More fundamentally however it depends upon public understanding and public support. That in turn depends upon public, civic education. In other words judicial independence is strong, when the public understands its importance and supports it.

24. There are two ways in which, as judiciaries, we can work to secure effective public understanding of our role. The first and most obvious is through our commitment to the constitutional principle of open justice. Our judgments, rulings, sentencing remarks and so forth are given in open court and may be reported. The advent of the internet has made it possible to make reserved judgments and transcripts

¹⁷ Lord Hodge *ibid* at [15].

widely available. The public is unlikely to hang on our every word, but the results of cases of significance, of controversy or simply of notoriety can be available readily to all.

25. All professions develop their own languages which can become impenetrable to outsiders. Lawyers are no different. In England and Wales there has been a concerted effort by many judges to make our judgments more understandable to non-lawyers by simplifying legal terminology and using straightforward language. There are efforts to avoid judgments that are needlessly long. Equally, our judgments need to contain sufficient information to provide clarity of exposition and show that they involve real people. There is a move in some jurisdictions, based perhaps on a technical interpretation of developments in data protection law, to anonymise almost all judgments. Doing so would seem to me to lead to a regrettable degree of abstraction in the law. Abstraction that undermines the accessibility of proceedings and abstraction that leaches democratic and public accountability from the law. That is Lord Hodge's seventh pillar:¹⁸ that effective public access is essential for the proper administration of justice. We should seek to reinvigorate public accessibility, subject to any necessary restrictions where openness would itself undermine the administration of justice. Reinvigoration may be done through the greater use of online publication of judgments, and online broadcasting of hearings. In the United Kingdom we are by no means in the vanguard of broadcasting but almost all Supreme Court hearings are broadcast. Many of those in the Court of Appeal can be broadcast. I look forward to a measured expansion of livestreaming and broadcasting of proceedings more widely.

26. The second thing we can do is promote education through engagement with schools by judges and lawyers and by helping to provide materials on the legal system for use in schools. The English and Welsh judiciary and Magistracy are very actively engaged in this work for the benefit of the schools they visit and the judges who visit them. We cannot complain that the public does not understand what we do, and its importance, if we do not take steps to lift the veil a little more and explain what we do. More broadly, we should be less retiring than has traditionally been the case in

¹⁸ Lord Hodge *ibid* at [26].

our dealings with the media. Whilst we cannot engage in political discussion, or discuss individual cases we can explain our role and the place of the judiciary and court system in upholding the rule of law, and why that matters. The judiciary invites misunderstanding or incomprehension if it stands completely apart and aloof from society. Engagement within proper constitutional bounds will benefit society and the judiciary.

Independence and moral courage

27. This leads me to my final point concerning independence. It is one that does not primarily focus on institutional independence. It looks to individual judges. It does so because institutions are only as effective as the individuals who operate them. An effective judiciary is one constituted of effective judges. That, most obviously, means judges who are well-qualified and appointed on merit. But it means more than that. A judge with these essential characteristics is not necessarily a good judge if he or she is not willing, when necessary, to make difficult decisions which upset powerful people and may be unpopular. A good judge will not let ambition influence the outcome of a case or play to the crowd in the expectation of praise. A good judge must demonstrate good character beyond the sense of an absence of questionable behaviour. He or she must be capable of showing moral courage when making difficult decisions.

28. Lord Clarke of Stone-cum-Ebony explained:

‘individuals who are likely to be swayed by public opinion, who might not make the right, the just decision because it is an unpopular decision or because it is adverse to their interests cannot properly be seen as having good character.’¹⁹

Judges who allow their decision-making to be swayed in order to maintain their popularity or to protect their own interests singularly fail to demonstrate good character in this broader sense. But, he added, that good character centres on one

¹⁹ Lord Clarke, *Selecting Judges: Merit, Moral Courage, Judgment & Diversity*, The High Court Quarterly Review, Vol. 5, No. 2, 2009: 49

particular aspect of individual independence: moral courage. Its importance cannot be understated. Lord Judge, as Lord Chief Justice, stressed its importance when he said:

‘Judges must also have moral courage – it is a very important judicial attribute – to make decisions that will be unpopular whether with politicians or the media, or indeed the public, and perhaps most important of all, to defend the right to equality and fair treatment before the law of those who are unpopular at any given time, indeed particularly those who for any reason are unpopular.’²⁰

29. In 2016 there was a judicial review claim about the process through which the United Kingdom’s withdrawal from the European Union could be effected lawfully.²¹ The judges, and the parties, were concerned with the legal question and only the legal question. It raised profound, controversial and not altogether easy constitutional issues. The academics had a field day.

30. Outside the proceedings, there was a febrile public atmosphere. The decision to withdraw had been the subject of a national referendum. The judicial decisions arising from the case produced the type of comment that had previously been unheard of in the United Kingdom. The judges involved at first instance (my predecessor, Lord Thomas, the Master of the Rolls and Sales LJ) were referred to in the media as ‘Enemies of the People’, a phrase used by tyrants throughout history to justify the persecution and death of those who do not toe the line. There were other remarkably inappropriate things said by people who should have known better.

31. There was one telling element in all this. A newspaper ran a story, with pictures of all the Supreme Court Justices who were to hear the appeal, exploring their

²⁰ I. Judge, *Diversity Conference Speech*, (London) (March 2009) (<http://webarchive.nationalarchives.gov.uk/20131203072734/http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/lcj-speech-diversity-conf.pdf>) at 2.

²¹ *R (Miller) v Secretary of State for Exiting the European Union (Rev 1)* [2016] EWHC 2768 (Admin), [2017] 1 All ER 158; *R (Miller) v Secretary of State for Exiting the European Union (Rev 3)* [2017] UKSC 5, [2018] AC 61.

supposed European links. The simplistic, indeed facile, point apparently being made was that the judges in question could be expected to decide the case in line with the strength of those links. The way in which the majority and minority opinions lined up, in the result, did not support that analysis.

32. It took moral courage in the face of such comments before and after the various hearings to apply the law without fear or favour. Without it, the decisions made would not have been based on an application of the law. Justice would not have been done. And the institutional independence of the judiciary, and of our democratic structures would have been weakened. As an institution the judiciary would have been seen to be capable of being swayed by public and political opinion; along that road lies arbitrary justice – which is no form of justice at all.

33. Moral courage by individual judges is also required to protect the institutional integrity of the judiciary in another way. A clear example of this was Sir Edward Coke's clash with the King whose Attorney-General he had been earlier. In the *Case of Prohibitions* in 1607 Coke, one of the greatest of Chief Justices, took a stand against James I.²² Contrary to any (still to be properly developed) notions of judicial independence or separation of powers, James as sovereign – as the Executive – took it upon himself to sit in adjudication in a property dispute. Sir Edward Coke overturned the decision because the King was not a judge and not learned in the law. As Montesquieu would later put it,

‘ . . . there is no liberty, if the judicial power be not separated from the legislative and executive. . . . Were it joined to the executive power, the judge might behave with violence and oppression.’²³

Sir Edward lost his job but lived to fight another day.

34. His courageous stand was mirrored 70 years later by one of his successors as Chief Justice of the Common Pleas, Sir Thomas Jones, under James II. The King wanted

²² *Prohibitions del Roy* (1607) 12 Co Rep 63.

²³ Montesquieu, *De L'Esprit des Lois* (1748), (Cambridge), Book XI, 6.

a unanimous decision in a court packed with quiescent judges, rather than attempt to act as a judge himself. James II exerted pressure on the court to secure a judgment that would have given him free reign to dispense with the law at his pleasure. Jones stood firm.²⁴ He was the only one of twelve judges who did so.

35. These were shining examples of moral courage in support of judicial independence and the rule of law at a time when the potential consequences for not following the instructions given by the executive were severe and could have been fatal, yet his is not just an historical problem. I have deliberately used historical examples to avoid straying into contemporary controversy. Nevertheless, each of us will be able to recall recent instances around the world where judges have found themselves in conflict with executives seeking to usurp or expand power. Or having to make very difficult decisions in heated political circumstances. There are examples of judges showing moral courage in support of the rule of law, notably in the Commonwealth. Equally and regrettably there are countries where the judges appear not to enjoy institutional or personal independence.

36. There is another side to taking a stand by making a difficult decision which involves resisting pressure. It may be difficult on occasion to do nothing when doing something would undermine judicial independence or trespass into areas reserved for the executive or Parliament.

37. It can be tempting for a judge to consider straying into such areas from the perceived safety of a judgment, or a lecture. It can be particularly tempting when public opinion, or at least voluble parts of it, seems to suggest that a judicial view would be welcome. But that cannot justify a judge in going beyond the proper, constitutional, boundaries and straying into political matters. This may lead to criticism. But the damage that it can do to the judge – in terms of public confidence in his or her ability impartially to exercise the judicial function – and for the judiciary as a whole can be serious. Judges inevitably hold opinions; and on many subjects of controversy our judicial work provides insights not widely available. Yet there may be times where the courageous thing to do is to remain silent. A recent

²⁴ *Godden v Hales* (1686) 11 St Tr 1166.

example arose in our Supreme Court concerning the availability of divorce to a separated couple where one refuses consent.²⁵ The law in England and Wales allows a divorce after two years with consent but five years without consent unless a conduct-based ground for divorce is established. There has been a long running campaign to replace the current arrangements with no-fault divorce, the details of which have generated keen debate. The Supreme Court contented itself with suggesting that the time had come for Parliament to look again at what is now rather antique legislation given developments in society over the last 50 years rather than prescribing a suggested policy solution.

38. So, if the judiciary is to maintain its moral authority, Lord Hodge's ninth pillar,²⁶ it must maintain its moral courage. Sir Edward Coke and Sir Thomas Jones stood alone. If collectively we are to ensure that judges and judiciaries are able to act with moral courage in the exercise of their duties, we must stand together. We must do so within our respective jurisdictions. Judges in positions of leadership will set the tone. They can lead by example in court and outside it; in their relations with Parliaments and governments. They can build and maintain a judicial culture which encourages independence, which provides support for judges and helps maintain their individual resilience; which helps foster collegiality, and in these ways helps to secure the rule of law. In that way, individual judges will be able to demonstrate moral courage safe in the knowledge that they do so with unequivocal support.

Conclusion – Judiciaries standing together

39. Yet we can do more. We can help each other to maintain moral courage throughout our judiciaries by continuing to work together across the Commonwealth and across the wider world.

40. Just as individual judges standing together are better able to support each other so too can judiciaries support each other. We have seen examples of this recently where in Europe judicial organisations have expressed their support for the judicial independence in Poland. I say no more about it because there is a process underway according to European Union law which will seek to adjudicate the question of

²⁵ *Owens v Owens* [2018] UKSC 41; [2018] 3 WLR 634

²⁶ Lord Hodge *ibid* at [31].

judicial independence. But should the judges in any jurisdiction find themselves under attack, their independence imperilled and the rule of law undermined, the support of fellow judges around the world would be of profound significance. It would show that individual judges and judiciaries do not stand alone. Courage can be drawn from that.

41. Equally, we can stand together, in less pressing circumstances. We can support each other through the promotion of judicial exchanges. Through sharing ideas, expertise and experiences on how best to operate our systems of justice. Through learning from each other's jurisprudence. We welcome judges from around the world to England and Wales and assist with their training. We hope to provide insight into lessons we have learned on how to improve practice and procedure and obtain valuable insights in return. We have been able to provide support for training in a number of jurisdictions through our Judicial College; and we have established the Standing International Forum on Commercial Courts whose Commonwealth and non-Commonwealth membership continues to grow. Its purposes are to share best practice to ensure that all our courts keep pace with rapid commercial change; to enhance the rule of law internationally; and to assist in maintaining confidence for investors in developing countries that they offer an effective means of resolving disputes.

42. The judiciaries of the Commonwealth have a special affinity, a collegiality, not least because we share the traditions and strengths of the Common Law. This was apparent when those judiciaries, through the Commonwealth Magistrates and Judges Association, played a crucial role in the development of the Latimer House Principles,²⁷ developing and then helping each other to maintain a common framework to understand judicial independence. That common understanding flows through the appointments process and then into our conduct as judges. Our Judicial Appointments Commission is refining its process with Commonwealth principles particularly in mind. And we may more readily come to the aid of the judges in other jurisdictions if under attack when they can show adherence to the high common standards of behaviour that the Latimer House principles promote.

²⁷ See <<http://thecommonwealth.org/sites/default/files/news-items/documents/LatimerHousePrinciplesPH7Jul17.pdf>>

We demonstrate our interdependence through conferences such as this, and I do not doubt that the many jurisdictions of the Commonwealth can work together for our mutual benefit.

43. However we do it, if we stand together in our pursuit of judicial independence – as individuals and as institutions – we help maintain the rule of law. When we work effectively with the executive and Parliament, each of us within our own constitutional sphere, and garner the understanding and support of the public for what we do, collectively we sustain something that is precious – liberty under the rule of law.

Please note that speeches published on this website reflect the individual judicial office-holder's personal views, unless otherwise stated. If you have any queries please contact the Judicial Office Communications Team.
