



LORD CHIEF JUSTICE  
OF ENGLAND AND WALES

THE RT. HON. THE LORD JUDGE

LORD MAYOR'S DINNER FOR THE JUDICIARY  
THE MANSION HOUSE SPEECH

MANSION HOUSE

14<sup>TH</sup> JULY 2009

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My Lord Mayor, My Lord Chancellor, My Lords, Master of the Rolls, Aldermen, Recorder, Sheriffs, Ladies and Gentlemen.

My Lord Mayor, you assumed your ancient office last autumn in the eye of a financial hurricane. Life must have seemed much easier for your famous predecessor, Dick Whittington, who on 23 November 1415 rode out to Blackheath, accompanied by 24 Aldermen, all fully and gloriously caparisoned, to greet Henry V after his famous victory at Agincourt and to lead him into the City. The celebrations were wonderful, the chroniclers were made merry. They were the Venerable Joshua in the *Troubadour Gazette* and the Blessed Frances in the *Merry England Times*. They were united in saying that the day was extremely convivial. What a lovely word. So evocative. I'll bet it was convivial. I don't think that on that day there was too much concern about ASBOS, Health and Safety issues, and it was a day when we can be sure that not a single human right was infringed.

It's easy to forget that Henry V's French campaign had been funded by loans from the City. If it had ended in the predicted disaster the financial crisis which would have engulfed the City would have been shattering. As every child knows, or as I hope every child still does know, it was only courage and determination, inspired by the sound of blessed church bells, that converted Dick Whittington's poverty into plenitude. So my Lord Mayor, this is not the first occasion when the City that you lead has faced a crisis

Some of you will remember an occasion when England had batted themselves into a crisis – indeed most of your guests will remember numerous such occasions, and it is rather as well that we did not have as many financial crises as batting crises – but on this particular occasion a fast bowler, I think from Derbyshire, my Wife's beloved county, picked up his bat and announced to his England team mates in the changing room, "cometh the hour, cometh the man". And in those words, my Lord Mayor, he was referring to you and the moment when you assumed your ancient office. The difference between you and the fast bowler in my story is that he was sadly run out very quickly. You on the other hand are still there, not out – our very own Monty Panesar.

So may I thank you and the Lady Mayoress for your magnificent hospitality this evening, but may I also be allowed to acknowledge the tireless and continuing efforts you are both making to address and alleviate the financial crisis with its alarming personal consequence for national prosperity which, whether we like it or not, will be with us for years to come. You have indeed earned more than our formal gratitude.

As if the financial crisis was not enough, this mayoralty has coincided with a crisis of a different kind, and as with the financial crises, much depends on how it is addressed. We are, are we not, in the middle of, if not a constitutional crisis, then at the very least a constitutional problem and that has arisen at a time when our constitutional landscape has recently undergone heavy changes. In his recent book, Professor Vernon Bogdanor describes “The New British Constitution”. Notice the “New”. He says how, during these last few years, a new British constitution is being created and the old constitutional order being replaced. I quote –

“This new constitution is as yet incomplete and its final outlines are at present only partially discernable. The description therefore, cannot be complete because the new constitution is not yet complete”.

I believe that the route to constitutional change is found somewhere between two conflicting statements. The first comes from Viscount Falkland in 1641 suggested that:

“when it is not necessary to change, it is necessary not to change”

- the ultimate conservative – in a non-political sense – position. As against that:

“if we want things to stay as they are, things will have to change”

a more recent observation in a novel by Giuseppe di Lampedusa, speaking of ensuring vibrant continuity. Both have a kernel of truth: neither, standing alone, provides a complete answer. But I do suggest that change for its own sake does not begin to provide an answer, and there is a danger of confusion between activity and action.

One possibly very minor consequence of the significant constitutional changes which govern the relationship between the judiciary with the executive and the legislature is that with effect from 1<sup>st</sup> October this year the Lord Chief Justice of the day will no longer have the opportunity to speak in the House of Lords.

My Lord Mayor, I hope you and the City will not mind, if I treat this annual Banquet as an opportunity, where it is appropriate to do so, to say a few words publicly which I shall not be able to say at greater length to Parliament itself on issues which affect our constitutional arrangements and the administration of justice.

We all understand the convention that Her Majesty’s judges do not comment on political issues, nor discuss legislation which we may have to interpret, nor appear to support the views of one political party against those of another. But where constitutional arrangements are engaged, these are of direct importance to the judiciary, not least because any changes which have constitutional implications may affect the relationship between the citizen and the state. Even if we have not been consulted, I believe that we are entitled to speak, and there are some who think we have a duty to speak. Some indeed would think that we have a duty to speak.

And even as I speak, the Parliamentary Standards Bill is currently being debated this very evening in the course of a rapid legislative process. I comment with due deference because, as it seems to me, and the law for many years has been that Parliament alone must decide how it should be governed, and how it should govern itself.

The Bill has changed in numerous different ways during its passage through both Houses. The eventual Act will be significantly different from the original Bill. In other words the parliamentary process has been working. I am not commenting on what I have not seen. But I do suggest that in our constitutional arrangements it is imperative that ultimate

responsibility for the governance of Parliament should remain with Parliament. Perhaps I may be allowed to reflect a very personal view that on these issues perhaps members of both Houses may be able to vote in accordance with their consciences and their personal judgment.

I do remain concerned at the possibility of any kind of judicial review of any aspect of the governance of Parliament. Such a process would have the potential to bring the judiciary into conflict with Parliament, and in particular the House of Commons. This would be an unpalatable clash, and dangerous for our constitutional arrangements, and the understandings which enable them to work.

I am not being portentous; these dangers are not imminent, but it is sometimes easy to forget that the future is long as well as short. It is wholly unrealistic to believe that constitutional changes are fixed forever as at the date when change formally takes place, or that the constitution is then bound to ossify in the form intended by the successful proponents of change. I wonder whether the devolution arrangements for Scotland and Wales – different devolution arrangements let it be remembered, will stand forever where they now stand, and if they do not, whether the West Lothian question is now resolved never to be resuscitated.

As I have said the judiciary should not be involved in the parliamentary process and that is underlined by this; the ordinary law of the country applies to members of Parliament as it does to everyone else. Responsibility for ensuring that our parliamentary arrangements are satisfactory is vested directly in the High Court of Parliament itself, and it is and should remain accountable, not to the judiciary but to the electorate which, in our democratic process, ultimately hires and fires both the executive and the major legislative body.

And by this time next year, My Lord Mayor, the process of hiring will have been completed. The electorate will have spoken.

There are many requests I can make of the government and legislature which the electorate will give to the nation in 2010. Tonight, I identify two.

The major constitutional changes which affected the judiciary in June 2003 were proclaimed without so much as the courtesy of a letter or even a telephone call to the Lord Chief Justice. The equally important structural changes of 2007 were proclaimed by a Minister of the Crown in an article in a Sunday newspaper. My Lord Mayor, the Statute of Proclamations was enacted in the reign of King Henry VIII: it was repealed in 1547, presumably after Henry's death. In our new constitutional arrangements there should, I respectfully suggest, be an understanding that the judiciary should, at the very least be consulted, about proposed constitutional changes which may impact, directly or indirectly, on the role of the judiciary within the constitution. Anything which relates to the mechanics of government is likely to have such an impact.

Before coming to my second point, the judiciary has been exceptionally lucky to have had a Lord Chancellor for the past two years who has an understanding of the constitution. The Lord Chancellor has a great sense of humour which accompanies his great understanding of constitutional issues.

My second request is one which has been frequently addressed, but so far without success. Can we possibly have less legislation, particularly in the field of criminal justice.

May I take as an example the year 2003. In that year we had criminal statutes with the following titles:

- Crime (International Co-operation) Act
  - Anti-Social Behaviour Act
  - Courts Act
  - Extradition Act
  - Sexual Offences Act
  - Criminal Justice Act.
- The Crime (International Co-operation) Act had 96 sections and 6 schedules containing 124 paragraphs.
- The Anti-Social Behaviour Act had no less than 97 sections and 3 schedules containing 8 paragraphs. 97 sections in an Act which is merely making provisions "in connection with anti-social behaviour".
- The Courts Act contains 112 sections and 10 schedules with 547 paragraphs.
- The Extradition Act has 227 sections and 4 schedules containing 82 paragraphs.
- The Sexual Offences Act has 143 sections and 7 schedules with 338 paragraphs.
- But finally, the great Daddy of them all, the Criminal Justice Act has 339 sections and 38 schedules with a total of 1169 paragraphs. This analysis excludes schedule 37 which sets out no less than 20 pages of statutory repeals – and that's not the end of it. No less than 21 Commencement and Transitional Savings Orders have been made under this Act, the first in 2003, and the last in 2008. Plenty of provisions have not been brought into force. Many will not be, or so we are told. They will go into some sort of statutory limbo. But this year the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Savings Provisions) (Amendment) Order of 2009/616 was made, amending the 8<sup>th</sup> Commencement Order. Each of these orders produced different starting dates for different statutory provisions. All for a single Act.

My Lord Mayor, I'm getting a little confused.

This (*indicating*) My Lord Mayor is the Criminal Justice Act 2003 one of 6 major pieces of legislation. This (*indicating*) on the other hand is the Criminal Justice Act 1972. The only other piece of legislation affecting criminal justice in that year was the well known Matrimonial Proceedings (Polygamous Marriages) Act which ran to all of 5 sections and for some unaccountable reason lacked any schedules at all.

My Lord Mayor, in a rough and ready calculation, it seems to me that if every line of recent criminal justice legislation had been guaranteed by a payment to the Bank of England of £10,000 a line, the credit crisis would have been funded. We might have had another Dick Whittington moment and conviviality unbounded.

My Lord Mayor, thank you for allowing me the opportunity to speak about one or two matters of consequence to the judiciary.

May I through you thank my colleagues who are here tonight, and indeed the men and women of the entire judicial family for their tireless commitment to the rule of law. As I come to the end of my first year in this office I should like to publicly to record the innumerable kindnesses and unswerving support that my colleagues throughout the country have offered me. Without them this job could not be done.

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