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Being a Judge in the Modern World

Lionel Cohen Lecture 2014, Jerusalem, 3 November 2014

Lady Justice Hallett[*]

1. Introduction

It is a pleasure and an honour to have been invited to give this year's Lionel Cohen lecture, especially looking at the cast list of my predecessors. It has been a particular pleasure for me to return to Israel after nearly 50 years and to bring my husband to visit the grave of his maternal grandfather, who died in 1917 on the Gaza Strip. This was before my mother-in-law was born so it was something of a poignant moment for my husband, and I am extremely grateful to those who made it possible.

I turn to another grandfather, Jonathan Cohen's grandfather, the great man in whose honour this lecture series is held: Lord Lionel Cohen. He sat as a judge for over twenty years – from 1943, when he was appointed a judge of the Chancery Division, to 1966, six years after his official retirement as a Lord of Appeal in Ordinary. 1966 was an auspicious year in England. I do not refer to the result of a well-known football match that took place at Wembley Stadium between England and Germany. It was auspicious because it saw Lord Cohen, in his last case, hand down the decisive judgment in *Boardman v Phipps*,[1] a seminal case on trustees' duties and conflicts of interest. As any Chancery lawyer may tell you, that was a far more important event than England winning the World Cup.

Lord Cohen's entry in the *Dictionary of National Biography* suggests a very versatile judge. It is said that he often 'diverted to the wide field of public affairs'. He chaired the company law amendment committee, he was a member of the tribunal that assessed the issue of compensation arising from the nationalisation of the coal industry, and he chaired two Royal Commissions. He was a judge, and more.

The focus of this lecture is to look at the role of judges today, at judges in the modern world. What do we expect our judges to be? What is their role? Are modern judges, like Lord Cohen, more than judges, and if so in what way or ways?

The issue is one that the Judicial College (which is responsible for training approximately 36,000 lay and professional judges in England and Wales) set as its theme for its inaugural academic programme in 2013–14. We asked a number of senior judges, a human rights campaigner and a legal correspondent to give their takes on the theme 'Being a Judge in the Modern World'. As only a lawyer could, one of the judges first considered what 'modern' meant. For the

[*] I wish to thank John Sorabji for all his help in preparing this lecture.
[1] *Boardman v Phipps* [1966] UKHL 2; [1967] 2 AC 46; [1966] 3 WLR 1009.

avoidance of doubt, I use the term 'modern' to mean the judge of today, 2014. As you might expect, all of the judges focused (in part at least) on the constitutional role of the judiciary. I shall therefore begin there.

2. CONSTITUTIONAL ROLE

Some might suggest that being a judge in the modern world today is no different from being a judge in Lord Cohen's time. The judiciary remains the third arm of the state, ensuring that members of the executive do not set themselves above the law, that the citizen can enforce his or her rights, and that the criminal justice process operates fairly and effectively.

However, there have been so many significant changes in the judicial role that Professor Shimon Shetreet was moved to comment that the judiciary 'has developed from a dispute-resolution mechanism, to a significant social institution with an important constitutional role which participates along with other institutions in shaping the life of its community'.[2]

In England and Wales judges have long since played an important constitutional role in developing and maintaining the rule of law, and some have strayed far from the courtroom and dispute resolution. Lord Mansfield, Lord Chief Justice in the eighteenth century, for example, played an extremely active part in government whilst in office. After he was appointed Lord Chief Justice, Mansfield was an adviser to the King, a member of the Cabinet (twice), Chancellor of the Exchequer and, for a time, Lord Speaker of the House of Lords. Lord Ellenborough, Lord Chief Justice shortly after Mansfield, sat as a member of the Cabinet, and until the Constitutional Reform Act 2005 the Lord Chancellor was a member of the legislature and the executive, and was officially the most senior judge in the land. The point I suspect Professor Shetreet was making is not that judges have not always had an important constitutional role, but just how far we have travelled.

Back in the seventeenth century, Francis Bacon, Lord Chancellor, and his great rival and eventual prosecutor, Edward Coke, Chief Justice, expressed contrasting views. Bacon took what might be described as a minimalist view of the judicial role: judges were to decide cases and nothing more. In his essay, 'Of Judicature', he declared:[3]

> Judges ought to remember that their office is *jus dicere*, and not *jus dare*; to interpret law, and not to make law, or give law … Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident. Above all things, integrity is their portion and proper virtue.

There is, of course, a certain irony in the last sentence. Bacon was perhaps the last person to talk about judicial integrity given that he lost office as Lord Chancellor for taking bribes from litigants. However, the advice to be more 'learned than witty' was excellent advice and applies

[2] Shimon Shetreet, 'The Emerging Transnational Jurisprudence on Judicial Independence: The IBA Standards and Montreal Declaration' in Shimon Shetreet and Jules Deschenes (eds), *Judicial Independence: The Contemporary Debate* (Martinus Nijhoff 1985) 393, 393.

[3] Francis Bacon, 'Of Judicature', *Essays, Civil and Moral* (The Harvard Classics 1909–14).

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to the modern judge as much as it did to the seventeenth-century judge. Attempts at humour account for a significant proportion of the misreporting of judges in the popular press. Bacon went on: 'Let judges also remember, that Solomon's throne was supported by lions on both sides: let them be lions, but yet lions under the throne; being circumspect that they do not check or oppose any points of sovereignty'.[4]

For Bacon, then, the judge's role was straightforward. They were not legislators: they did not make or give law; they simply interpreted it. Taken literally, this view would not sit entirely easily with the long-established principle that the British judiciary can develop the common law, in which sense they were and are legislators. By lawmaking, though, I assume Bacon was referring to the enactment of policy by legislators as opposed to the development of the common law.

Bacon's approach can be contrasted with that of Chief Justice Coke. While Coke would not have demurred from the view that the role of the judiciary was to interpret the law, he took a decidedly different approach to statutory interpretation and the relationship between the judiciary and the Crown. The general view is that, for Coke, the judiciary were not lions under the throne. They were lions over the throne who, through the application of the common law, could set aside legislation. As he famously put it in *Dr Bonham's Case*:[5]

> In many cases, the common law will control Acts of Parliament and sometimes adjudge them to be utterly void: for when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such Acts to be void.

While Parliament's power and jurisdiction to make law, as he would later put it in his *Institutes*, was 'so transcendent and absolute, as it cannot be confined either for causes or persons within any bounds',[6] that power was subject to judicial control.

Coke's assertion has been criticised as invalid on numerous occasions. Whether or not he was correct in 1610, there are a number of good reasons why his view holds no water now. In *R (Jackson and Others) v Attorney General* a number of appellants with an interest in fox hunting sought to strike down the Hunting Act 2004, which was designed to abolish the hunting of foxes with dogs. In rejecting the challenge, the late, great and very much missed Lord Bingham observed: 'The bedrock of the British constitution is … the supremacy of the Crown in Parliament'.[7] Lord Mustill expressed the same principle in *Ex parte Fire Brigades Union* in these terms:[8]

> It is a feature of the peculiarly British conception of the separation of powers that Parliament, the executive and the courts have each their distinct and largely exclusive domain. Parliament has a legally unchallengeable right to make whatever laws it thinks right. The executive carries on the administration

[4] ibid.
[5] *Thomas Bonham v College of Physicians* [1610] 8 Co Rep 107, 77 Eng Rep 638.
[6] Jeffery Goldsworthy, *The Sovereignty of Parliament: History and Philosophy* (Clarendon Press 1999) 113.
[7] *R (Jackson and Others) v Attorney General* [2005] UKHL 56; [2006] 1 AC 262, [9].
[8] *R v Secretary for the Home Department, ex p Fire Brigades Union and Others* [1995] 2 AC 513, 567.

> of the country in accordance with the powers conferred on it by law. The courts interpret the laws, and see that they are obeyed.

The judges may develop the common law and interpret statutes, but judicial developments in the law are always subject to Parliament's power to revise, amend or set them aside through legislative action. United Kingdom (UK) courts cannot, in general, set aside legislation, although there have been a number of developments that have led some to argue that our Supreme Court will eventually evolve into a Constitutional Court.

We already have two situations in which the courts may engage in judicial review of legislation in the UK. The first arises under the European Communities Act 1972, the second under the Human Rights Act 1998. Under the former, the courts may review and, if necessary, strike down UK legislation that is contrary to European Union law, as the House of Lords affirmed in the *Factortame* case.[9] Under the second situation, the courts may review legislation to ascertain whether it is consistent with rights guaranteed by the European Convention on Human Rights. It may not strike down primary legislation, but it may declare it incompatible – thus leaving it to Parliament to decide whether to rectify the declared defect. In both cases the judiciary is not acting under a power granted by the Constitution; it is acting under a power conferred by Parliament itself.

Although to date there have been a number of final declarations of incompatibility, this power has not provoked as much controversy as reliance on the Human Rights Act to overturn administrative decisions in applications for judicial review.

The growth in administrative work has been one of the major changes in my time as a lawyer. When I studied law, most judges would not see an application for judicial review from one end of their career to another. Today we have a flood of work. Some ministers (often at the sharp end of litigation) feel that too many claims are totally unmeritorious and should be curbed. Others argue that proposed limitations on judicial review could lead to injustice and would be contrary to the rule of law. In October 2014 the House of Lords debated the report stage of the Criminal Justice and Courts Bill and rejected provisions designed to limit judicial review. In legal and political circles it is a hot topic, and I do not intend to enter too far into the fray.

The power of judicial review (a review of the lawfulness of an administrative act as opposed to an appeal on the merits) has a long provenance. Judges in England and Wales have had such a role since the earliest development of the Court of King's Bench and the prerogative writs. The general principle was that a public official, or an administrator, must act fairly, reasonably and according to the law. Reasonableness was the watchword. However, thanks to the enactment of the Human Rights Act, British judges have had to adjust to a new concept: proportionality. Judges must grapple with concepts about which there is ample scope for disagreement, such as the right to a private and family life.

One man's claim to a family life is another man's headline – 'Catgate', for example. By way of explanation, in England there was a major political row between Cabinet ministers and a media

[9] *R v Secretary of State for Transport, ex p Factortame Ltd and Others* [1991] 1 AC 603.

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storm about whether a Bolivian national was allowed to stay in the UK because of his attachment to his pet cat. I do not intend to explore the rights and wrongs of that particular decision but simply to comment that courts are often faced with highly complex personal situations where legal training and precedent can take you only so far. How does a judge, in a way that will meet with universal approval, balance the interests of the public in deporting a dangerous criminal to his home country with the interests of the dangerous criminal himself who faces possible death if deported? How well equipped is a court – even the most senior court in the land – to decide whether the right to life encompasses the right to choose death, to decide whether a pair of Siamese twins should be separated in an operation that would save the life of one but kill the other, or to decide who should have the care of a child born to a surrogate mother? These are the kinds of decision which, as a result of the Human Rights Act and scientific developments, increasingly come the way of the modern judge.

I will say only this about the proposed limitations on judicial review. I hope that considered and constructive debate can produce a solution which meets the government's concerns (not all of which would be dismissed as groundless by a judge sitting in the administrative court or hearing appeals from it) without significantly undermining the principle of judicial review. It is generally accepted that in any well-functioning democracy there must be an effective mechanism through which executive action can be subject to scrutiny. Governments too are subject to the law and must act within it. To borrow from James Madison, co-draftsman of the United States Constitution, once government is established it must 'control itself'.[10] Individual judicial review decisions may be controversial and ministers may dislike them but this principle remains a constant.

A novel form of judicial review has recently supplemented these forms of judicial review, novel at least in so far as the UK is concerned. Since the late 1990s, the UK Parliament has devolved a number of powers to Scotland, Wales and Northern Ireland. Such devolution has provided legislative competence to the Scottish Parliament and the Welsh and Northern Irish Assemblies.[11] The devolution legislation provides the UK Supreme Court with a unique power to engage in *ex ante* legislative review. A law officer of the Crown – say the Attorney General for Northern Ireland – may refer a Bill from the Northern Irish Assembly to the UK Supreme Court before it completes its legislative passage. The aim of the review, which is not an appellate procedure, is to ascertain whether the Bill is within the legislative competence of the devolved legislature. If the answer is yes, then there is nothing to prevent the Bill from completing its passage. If the answer is no, the Bill stands in need of revision to bring it within the legislature's *vires*. This power has now been used a number of times.[12]

Questions of policy remain solely within the realm of the executive and legislature, but all three branches must conclude that the power to enact the legislation exists. In one sense it is a

[10] James Madison, Federalist Paper No 51 (1788).
[11] See, for instance, Scotland Act 1998, Northern Ireland Act 1998, and Government of Wales Act 2006.
[12] See, for instance, *Local Government Byelaws (Wales) Bill 2012 – Reference by the Attorney-General for England and Wales* [2012] UKSC 53, [2013] 1 AC 792.

variation of James Madison's Council of Revision. Because Madison was very much opposed to the idea of the judiciary being in the sole position to review enacted legislation and perhaps set it aside, he proposed a 'Council of Revision' consisting of members of the executive and judiciary. Acting together, they would determine whether proposed legislation was within the powers granted to Congress by the Constitution.[13] Only when they signed it would the law come into force. There would, as a result, be a balance of power between the three branches of government and, as he saw it, no place or power for the courts to review and strike down legislation. However, he lost that battle in the United States.

The new *ex ante* power to review legislation in the UK is a form of constitutional review but, given the absence of a written constitution, it is perhaps more apposite to describe it as a development of ordinary judicial review of public authority. However categorised, it sees the judiciary acting with the other institutions of governance to shape the life of the community. Equally, it is one that, consistently with Bacon, does not see the judiciary checking or opposing the sovereign power, but rather acting as lions to defend the scope of power provided by the sovereign. It will be interesting to see how this new jurisdiction develops.

I turn now to other developments in the courtroom.

3. The Modern Judge as Case Manager

The judicial role has, in recent times, undergone what could be described as an administrative turn. It is no longer confined, as it used to be in the common law world, to deciding cases based on the evidence and argument set before the court by litigants. The days of the judge as passive umpire are long gone. This change has occurred in a number of ways.

Since at least the 1990s in England and Wales, one aspect of party autonomy in litigation – the power to control the pace and nature of the proceedings – has been eroded and replaced by active case management by the courts.

In the civil courts we have the Woolf reforms, now supplemented by the Jackson and Briggs reforms. Case management powers enable judges to set the pace of litigation by fixing procedural and trial timetables, limiting the amount of evidence that is subject to disclosure, restricting expert evidence and encouraging mediation. The court is required to act, as Sir Rupert Jackson put it in his Costs Review, as a project manager. Claims are, on this analogy, akin to building projects.[14] Just as the one can be managed and priced from the outset, so can the other.

[13] Lynne Cheney, *James Madison* (Viking 2014) 312.

[14] Rupert Jackson, *Review of Civil Litigation Costs: Final Report* (TSO 2010) 46 ('Many respondents during the Costs Review have made the point that litigation is, in essence, a project. All participants in a project must be aware of the budget for the project and aware of the budgetary consequences of what they do. This analogy has limitations. Litigation is more unpredictable than a construction project. Neither an architect nor a contractor is battling against an opponent who is trying to knock their building down. On the other hand, this element of adversity is not a licence to disregard costs').

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This calls for the courts to engage in a new form of management – costs management. As Sir Rupert put it, '[a]ll participants in a project must be aware of the budget for the project and aware of the budgetary consequences of what they do'.[15] Both parties must submit costs budgets to the court and, as far as possible, are required to stick to them. In this way, it is hoped that costs will be managed prospectively rather than assessed retrospectively, it being easier to control costs before rather than after the event. This role inevitably draws the judge into the litigation process far more than case management did, and far more than was historically the case.

In the criminal courts we have embarked upon a programme of case management along similar lines – for example, in our handling of the Vulnerable Witness training programme we teach the judges that if vulnerable witnesses are to give of their best and to be treated fairly, the judges must control the questioning robustly. Traditional methods of advocacy will not be appropriate when questioning a five-year old child. This training has come as something of a shock to some. However, we are making significant progress. We must do so if we are to avoid being directed to take on a very different role and question the vulnerable witnesses ourselves.

The judges are also being drawn far more into the trial process by the increase in numbers of litigants in person (LIPs). Cutbacks in public funding have led to an explosion of LIPs in the courts. Again, I do not wish to enter the political arena but this does cause problems for the judge. Ours is an adversarial system (and a system which does not provide 'law clerks' for the vast majority of its judges, unlike other jurisdictions). It depends in general on the parties putting the case before the judge. However, even the most intelligent and educated LIPs may fail to understand how to put their case effectively and may take far too long to do it. What is the judge to do? He or she does not want to send away a LIP empty-handed if he or she has a good case, but the other side is entitled to fair treatment also. If the judge leans over backwards too far to help the LIP, the opponent may have cause for complaint. Judging cases with LIPs involves a whole new set of skills which our predecessors would have required but rarely.

4. DEVELOPMENTS OUTSIDE THE COURTROOM: LEADERSHIP AND MANAGEMENT

Developments in the judicial role are not confined to the courts and court process. They have a purely administrative and managerial aspect. Historically, judges have always been involved in certain aspects of the administration of the justice system. They have been involved in its reform through chairing Royal Commissions (as Lord Cohen did), conducting reviews, drafting rules, issuing administrative practice directions, and providing guidance to court officials.

However, this administrative role has expanded exponentially as a consequence of the Constitutional Reform Act 2005 (CRA). The CRA transferred a wide range of duties formerly carried out by the Lord Chancellor to the Lord Chief Justice (LCJ). The LCJ has been obliged to establish what could be called a judicial administration or executive, known as the Judicial Office. Judges at every level spend significant amounts of their time on the Courts and

[15] ibid.

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Tribunals Service Board, committees and working parties, considering every aspect of efficient judicial administration, which include working conditions, morale, appointments, budgeting, policy, deployment and diversity. The Master of the Rolls announced recently that 30 to 40 per cent of his time is spent on administration. The LCJ and the Senior Presiding Judge sit hardly at all. The number of judges remains static and the court work has gone up, not down; the same number of judges are having to fulfil these additional functions to the same high quality at the same time as doing the day job. That is not a complaint, merely a statement of fact.

5. MODERN TECHNOLOGY

To some extent we are assisted in our court and out-of-court functions by the provision of IT. I would hate to destroy your picture of the crusty port-soaked British judge sitting in his full-bottomed wig and wielding his quill pen, but many of us are relatively switched on when it comes to technology. Maybe not as switched on as the average 10-year old but perhaps as switched on as the average 50-year old.

We beg for modern technology to improve our service to the public and to reduce costs. Many of us encourage the parties to send us documents in electronic form, use technology to present evidence and use video links where possible. In the Court of Appeal Criminal Division, where I preside, we have been piloting paperless courts. However, I cannot say the technology we have been given, to date, is the most up to date. My son, who is in the internet business, saw the equipment provided for me and questioned if Noah had used it in the Ark. Harsh, but I took his point. We are promised better soon.

Technology is also changing the nature of the cases before of us, particularly in the area of crime. We face new criminal offences such as online bullying, identity theft by hacking, jurors who research the cases they are trying on the internet and, worst of all, online sexual exploitation of children.

Also, the investigation of crime has changed radically – not just developments in DNA testing but also the use of social media, the spread of closed circuit television (CCTV) cameras and mobile telephones. In a recent case a young woman thought she recognised her boyfriend's attacker. In the ambulance on the way to hospital she went onto Facebook and by the time the police arrived she had a name and a face for this person. Good for the investigation, but a bit more difficult for judges who are used to carefully controlled identification procedures developed over decades.

As for mobile telephone evidence and CCTV, hardly a criminal trial comes to court these days without one or both. In one appeal five men were convicted almost entirely on mobile phone evidence. Analysis of calls made, messages left and cell sites off which mobile phone signals had bounced showed an unmistakeable pattern, as the mobile phone users plotted the crime, drove out of London to a small town in the country in three cars to commit the crime, and drove away discussing what had happened on their way home.

6. COMMUNICATION AND RELATIONSHIP WITH THE PUBLIC

Advances in technology have also changed our relationship with the public. We live in a world of instant communication and a demanding media – our link with the public. While preparing this lecture I asked a newly appointed friend what she felt was the most difficult thing about being a judge in the modern world. She felt that it was getting the balance right between being open and approachable to the court user, the press and the public, and maintaining the appropriate level of judicial reserve. Bacon had his advice 'more reverend than plausible'.

There are still some journalists who mistake that reserve for being out of touch. In any event, they prefer the stereotypical image of the crusty, out-of-touch judge to which I referred earlier. It makes for a better story. Sadly, reporting is not always constructive and sensible. There are those who will leap on a decision of which they disapprove or an ill-advised judicial comment (hence the earlier reference to heed Bacon's advice about avoiding the temptation to be witty). Some descend to personal abuse.

Couple that with the fact that many stories are reported without facts being properly checked and the damage is done, as any victim of defamation can confirm. A judge's reputation is sullied and there is another nail in the coffin of public confidence in the judiciary. I give one example. A judge gave what was in effect the maximum sentence he could in accordance with the law; he was pilloried in the press and by politicians for being overly lenient. His family were door-stepped. His experience was not uncommon. That is increasingly the life of the modern judge.

We try to head off this kind of attack by making our decisions and our reasoning as clear as possible. We allow tweeting in court, we issue summaries of the decision where appropriate and alert the Judicial Communications Office to high-profile cases so it can offer the press assistance in understanding what has happened. We have allowed some broadcasting of appeals. Yet, the misreporting, and sometimes abuse, continues. I do not suggest we are above criticism – far from it. It is the terms of the criticism to which I object and the failure to check facts.

It is also the impact upon public confidence which concerns me. We have one of the best justice systems in the world – a system the government rightly intends to flaunt next year when we celebrate the 800th anniversary of the signing of the Magna Carta. It is a system worth billions each year to the UK economy. It is a precious thing, yet justice is not a protected department.

Curiously, despite the attacks on the judges, the judiciary remains the first port of call for a politician with a hot political potato. It is nothing new to set up a judicial inquiry, but there is an increasing tendency to call on our services. I have done two inquiries in recent years: I was asked to act as the coroner to inquire into the deaths of the victims of the 7/7 London bombers and I was asked to conduct a review into a practice which evolved from the peace process in Northern Ireland, whereby those on the run could discover if they were wanted by the police. I felt comfortable in both roles because they involved investigating, finding facts, reaching a conclusion and making recommendations. However, my friend and colleague, Brian Leveson, was asked to go a great deal further as far as his report into the press was concerned. Some believe his terms of reference required him to consider issues of social policy better suited to Parliament than a serving judge.

7. EXTRA-CURRICULAR JUDICIAL COMMENT

Like the sentencing judges to whom I have already referred, Brian came in for some personal attack. Before the CRA 2005 it would have been the Lord Chancellor's job to speak up for the wrongly maligned judge. It would also have been his job (it has always been a 'he') to speak up for the judiciary generally. The Kilmuir Rules prevented judges from speaking up for themselves. The Rules date back to 1955 when Lord Kilmuir, then Lord Chancellor, declined a BBC request for judges to participate in a series of programmes on the basis that[16]

> the overriding consideration in the opinion of myself and of my colleagues is the importance of keeping the judiciary in this country insulated from the controversies of the day. So long as a judge keeps silent his reputation for wisdom and impartiality remains unassailable: but every utterance which he makes in public, except in the course of the actual performance of his judicial duties, must necessarily bring him within the focus of criticism. It would, moreover, be inappropriate for the judiciary to be associated with any series of talks or anything which could be fairly interpreted as entertainment: and in no circumstances, of course, should a judge take a fee in connection with a broadcast.

Note the assertion that judges will only maintain their reputation for wisdom if they keep their mouths shut. In 1987 the Lord Chancellor, Lord Mackay, abolished the Kilmuir Rules. British judges now have greater freedom to speak in public outside the courtroom.

There then followed such a flow of speeches and lectures from judges that Lord Neuberger, then Master of the Rolls, in 2012 cautioned against too many of them. 'There are rather a lot of judicial speeches being made at the moment', he acknowledged. 'I wonder whether we are not devaluing the coinage, or letting the judicial mask slip. In the light of the fact that I may be characterised as a serial offender, perhaps the less I say about that point, the better'.[17] Lord Neuberger does speak out quite frequently and sometimes quite controversially. Is he right to do so? Some think not for the reasons he himself gave.

The problem is that if the likes of Lord Neuberger and other serving judges do not speak out on important issues which impact upon the justice system, who will? There are a few retired judges and a few ennobled lawyers, such as Lord Pannick QC, who can and do use the House of Lords as a platform, but the serving judiciary, who encounter the problems day in and day out, have no obvious forum to air their views. The Lord Chancellor is no longer top judge and able to represent their views in Cabinet, and serving judges have been removed from the House of Lords. It is not surprising, therefore, that so many want to speak out in public lectures and interviews.

However, they must be cautious. The vast majority of issues are likely to have a political dimension; I have touched on two this evening: legal aid cuts and the Human Rights Act. A sensible but

[16] The text is found in AW Bradley, 'Judges and the Media – The Kilmuir Rules' [1986] *Public Law* 383, 384–86.
[17] Lord David Neuberger, 'Where Angels Fear to Tread', Holdsworth Club 2012 Presidential Address, 2 March 2012.

difficult balance needs to be drawn between legitimate judicial comment and straying too far into the political arena.

8. CONCLUSION

I would like to conclude today's lecture by recalling something Aharon Barak, former President of the Supreme Court of Israel, said in his book, *The Judge in a Democracy*. He said: 'It is hard to be a judge. It is even harder to be a good and worthy judge'.[18] It is, of course, hard to be a judge. It is also hard to be a politician, a soldier, a poet, a doctor, a teacher, a shop worker, a factory or any other type of worker, particularly in times of austerity and reductions in resources. So many are being asked to do more for less. As judges we should never lose sight of this fact.

We may be asked to do more for less and the roles we perform may be different from those that Lord Cohen performed when he sat as a judge over half a century ago, but being a judge remains one of the most worthwhile jobs in the modern world.

[18] Aharon Barak, *The Judge in a Democracy* (Princeton University Press 2006) 310.

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