

Speech by Baroness Scotland to the European Circuit

Speech for the inaugural conference of the European Circuit (Transnational Practice in Europe for Advocates)

A couple of years ago, the Lord Chancellor invited His Honour Judge George Dobry to conduct a survey of legal activities between the UK and other countries. This was in part to see what those activities offered the international community, to assess their importance to us, and whether, and, if so, how they might be improved and coordinated.

Many of you will have read Judge Dobry's report, presented in February 2000, in which, defining the objectives of International Legal Relations, he referred to the policy statement of the British Council. This has two main aims:

(1) to share UK experience of the law and the operation of the legal system, and

(2) to provide insights into the underlying values and aspirations;

these values include the significance of the rule of law, fairness and access to justice.

Let us break that down into its component parts:

First, the UK experience of the law and the operation of the legal system. This brings me promptly and directly to the keyword of this event today: practice. The strength of our law is its susceptibility to practice. It is not a dry, theoretical thing. It is adaptive, evolutionary, flexible, responsive to changing needs. A living thing, in other words. And the secret of that life lies in practice. Hence, it is important to bear in mind that in sharing the UK experience internationally we are sharing the experience of practice - the way we do things, the interaction between that doing and the bedrock of our common law.

This afternoon, in the "specific perspectives" part of the day, you are to hear about criminal and commercial law. Crime and commerce are both ever more international in character, so it is fitting - in fact, essential - that the legal frameworks constructed to deal with them are likewise international.

The internationalisation of legal frameworks does not occur naturally. To achieve it is a job of work. Legal systems are such fundamental parts of the history and culture of the countries they serve that it is not easy to lead practitioners and the public towards accepting the compromises which the internationalisation of law

entails.

We have only to look at the European Court of Justice. From time to time, that has a few to hesitate, because through it some of the notions which underpinned our legal education are brought out into the light and publicly examined against a different backdrop.

Europe itself - that is, the political entity - is at the same time in a stage of evolutionary growth. There are implications for us as lawyers in the process of enlargement of the European Union. A whole new range of jurisdictional experiences and insights will come on board. Of course, they will come in the wake of having gone through the business of the *acquis communautaire* - a kind of institutional licking into shape - but culture is not quite so compliantly licked into shape as institutions. To put it at its least disruptive, there will be a much wider range of legal thought processes in the European Union in a few years than there are now. This will not just effect the conduct of European law. Lawyers proliferate. They pop up all over the place, not least in parliaments and governments. The political institutions of Europe will therefore also be mightily influenced by these legally-trained newcomers.

The Lord Chancellor is interested in how these changes are taking shape. Our International Division is hard at work exploring how we can best influence the direction of change, through twinning bids and other programmes of work conducted abroad. Our Trade Division is engaged in the business of international trade negotiations about legal services - in the WTO and the European internal market.

The role of practitioners is crucial in how successfully we can influence change. The practical help the Bar has provided and continues to provide in an educational role in Europe and beyond is well known; and highly valued by us. It is this practical help that best conveys experience of the law and its operation. It is the most effective form of cultural osmosis. Working together with practitioners from other jurisdictions opens minds - both sets of minds, let it be said - a hundred times more effectively than discussing the notion of working together.

Which observation leads me to the next of our components:
Providing insights into underlying values and aspirations.

This is not where we have to abandon the realm of practice for that of philosophy. Underlying values and aspirations evolve too, because what we are talking about are the values and aspirations pertaining to a society in flux - whether they emanate from those providing a service for society, or from the service users - society's members.

UK society, like most others, is becoming ever more diverse. Much recent European history in many ways turns on societal diversity and its consequences. So how do we keep abreast of underlying values and aspirations? One of the ways we do it is through practice - for lawyers, that means interaction with those who instruct us, who want our help in finding justice. We know we can do this and this is what we have always done well as a profession. And that we should consequently see ourselves well equipped to convey insights into underlying values and aspirations, even while the ground shifts beneath our feet.

The importance of this, in the context of transnational practice in Europe, is that it positions us not only to be able to demonstrate that ours is a uniquely successful profession (and the invisible earnings are huge) which others might emulate to their advantage, but that it is based on pragmatism and adaptability. We can thus show the compatibility of success, liberalism in our own legal services regime, and readiness to take on board new ideas. That compatibility (success, freedom, adaptability) needs to be borne in on those - and there are those in Europe - who would sooner protect established positions and fear the incursion of the relatively unknown.

We in the LCD are seeking to persuade our European partners to adopt a more liberal stance in GATS negotiations. We have enjoyed the early fruits of the European Lawyers' Establishment Directive and we see no justification or sense in showing a grudging face to the world over the matter of practice rights. We want those rights broadly defined and uncluttered by needless restrictions about the way lawyers and law firms can do business internationally.

As a Government we welcome competition in legal services. It hones skills. It guarantees high quality services to the public. And it produces that quality of practitioner who, by his or her grasp of the fundamentals of the task and that ability effectively to interact with the wider public, can advertise the quality of UK law.

Let us not be bashful about this. We like the commercial success of our legal services sector. The launch of the European Circuit is one illustration of the strength and quality of this sector and I am sure the Circuit will play its proper part. It combines very nicely with the success of our financial services sector, and we like that too.

But looking long-term, to have confidence that all this success might perpetuate itself, we need reassurance that certain values will remain in the ascendant. However they might be voiced - and the voices do change over time - we need to be sure that the trading, travelling, communicating world sets its store by..the rule of law, fairness and access to justice.

In the recent past, we have seen all too graphically illustrated that when the rule of law is absent, no-one is safe, nothing can be relied upon. The rule of law - the system whereby we set out and compare our arguments, go through an agreed process of adjudication and have an agreed means of enforcing and living with the outcome - is at the core of all we do in what we deem a civilised life. Certainly it is at the core of commercial relationships. Negotiation, investment, the phased taking forward of transactions, future planning - none of this can happen without the rule of law.

Fairness is not always seen as the same thing. Some consider themselves dealt with unfairly, notwithstanding the rule of law. Situations like this can easily be imagined - the parent losing custody of a child, the assault victim whose assailant goes free, the company which goes out of business because others don't pay their bills or pay them late.

Linking fairness and the rule of law takes more than having systems in place. We turn again to practice. It is what we do and how we do it. People understand they can lose in court, but they need to see their case conducted fairly and openly, to know their case has been properly put and the opposing case subjected to proper scrutiny. They need proper explanations, proper advice. The medium for all this is practice. And the onus falls ever more heavily on the practitioner when jurisdictional nuances need to be explained. Because access to justice must be a universal aspiration.

I think I can fairly describe securing access to justice for all as the one corporate aspiration that best sums up what we want the LCD to be about, domestically and internationally. Access to justice of course begins at home, but in the same way that we can readily see that the parish boundary or the county boundary cannot be barriers to that access, so too, as international communities integrate, international boundaries must not be barriers to access to justice for the citizens of any state.

There is many a slip between cup and lip. Governments, even friendly governments, even governments bound together by international treaties, have to strive hard to prevent international boundaries being barriers to access to justice. We are striving hard within Europe. And with those countries wanting to join the Union. We are striving hard too as part of Europe to carry that exercise out to the wider world.

That is what we as a government are practising. It is what you are practising, domestically and transnationally. Together we are ensuring that those who want and need access to justice will find it.

I commend the objectives of the Circuit and I wish it well.

