

“As your  
Highness has  
in the past  
observed,  
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is based upon  
a number of  
criteria.

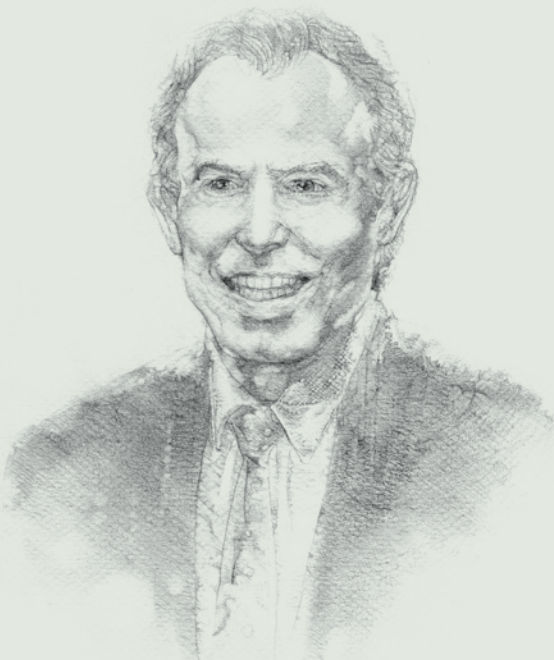
These include:  
judicial independence, the  
integrity of the adjudicator,  
and the impartiality  
of adjudication.”

**The Right Honourable Tony Blair**  
*Upholding the Rule of Law: A Reflection*  
22nd Sultan Azlan Shah Law Lecture, 2008



# The Right Honourable Tony Blair

## Upholding the Rule of Law: A Reflection



**Anthony Charles Lynton Blair**  
(b. 6 May 1953)

**B**orn in 1953 in Edinburgh, Scotland, The Right Honourable Tony Blair attended Fettes College in Edinburgh. Later, he attended St John's College of the University of Oxford, where he combined interests in religion and music with the study of law, and received a law degree in 1975.

He was called to the Bar by the Honourable Society of Lincoln's Inn the following year. Mr Blair then enrolled as a pupil barrister at the 11 King's Bench Walk Chambers founded by Derry Irvine, who later became the first Lord Chancellor appointed by Mr Blair.

It was during Mr Blair's legal career when he became increasingly involved in politics such that in 1983 he was elected to the House of Commons to the parliamentary



seat of Sedgefield, a constituency he represented till 2007. Mr Blair, at the young age of 44, became the Prime Minister of Great Britain and Northern Ireland after the Labour Party, the party he led from 1994 to 2007, won the 1997 general election.

During Mr Blair's tenure as Prime Minister, several major constitutional reforms were introduced. In 2003, Mr Blair announced his intention to abolish the constitutional post of the Lord Chancellor. The Constitutional Reform Act that was passed in 2005 greatly reduced the role of the Lord Chancellor in relation to the judiciary; further, the Lord Chancellor can now be appointed from either Houses of Parliament and is no longer automatically Speaker of the House of Lords. The Constitutional Reform Act 2005 also created a new Supreme Court of the United Kingdom to replace the Judicial Committee of the House of Lords, creating a new apex court of the United Kingdom that was separate and independent from the legislature.

Mr Blair was also responsible for incorporating the European Convention on Human Rights into English law by the introduction of the Human Rights Act 1998. This led to further legislative changes towards greater respect for human rights such as the introduction of the Civil Partnership Act 2004 by Mr Blair's government.

During Mr Blair's tenure, after the 11 September 2001 incident, anti-terrorism laws such as the Anti-Terrorism, Crime and Security Act 2001 were swiftly passed to counter terrorist threats. However, this Act was soon after declared to be incompatible with the Human Rights Act by the House of Lords in *A v Secretary of State for the Home Department* [2005] 2 AC 68. Subsequent to the terrorist attack in London in July 2005, various other anti-terrorism laws were enacted such as the Prevention of Terrorism Act 2005 and the Terrorism Act 2006.

Though subject to some strong criticisms, Mr Blair has always been a strong advocate of a values-based, activist and multilateralist foreign policy—an



agenda that combined tackling terrorism and intervention in Iraq, Afghanistan, Kosovo and Sierra Leone, with action on issues like climate change, global poverty, Africa and the Middle East Peace Process.

Tony Blair is also widely credited for his contribution towards assisting the Northern Ireland Peace Process by helping jointly to negotiate the Good Friday Agreement which created an elected, devolved power-sharing assembly in Northern Ireland for the first time since 1972.

Mr Blair continues to be active in public life after his retirement as Prime Minister in June 2007. He has many interests, not least his current role in the Middle East. He is the Quartet Representative for the USA, United Nations, Russia and European Union, helping the Palestinians to prepare for statehood as part of the international community's effort to secure peace. He also lends his extensive experience towards the development of African countries through the Africa Governance Initiative, which works closely with African countries to eradicate ingrained poverty and to establish sustainable economies independent of aid.

In addition he continues to be an advocate on issues such as religion and climate change. He launched the Tony Blair Faith Foundation to promote understanding between the major faiths, and increase understanding of the role of faith in the modern world. Mr Blair is also leading the Breaking the Climate Deadlock initiative in strategic partnership with The Climate Group to develop decisive political support for a new international agreement on climate change among major countries.

Mr Blair is married to Ms Cherie Booth QC, a leading barrister on human rights, employment and discrimination law in the United Kingdom. They have four children—Euan, Nicholas, Kathryn and Leo.

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existence. It  
lifts us out of  
the barbarous  
wastelands  
governed by  
brute force and  
lets us occupy  
the fertile terrain  
of predictable  
justice. It sets  
an ambition not  
just for our laws  
but for our souls.  
It civilises, it  
inspires. It takes  
us to a higher and  
better place.

The truth is that people can be indifferent to the Rule of Law, except when their own freedom is in jeopardy and then, by God, they value it. There is something indescribably uplifting about a system in which people are tried according to the Law: and something indescribably demeaning about a system where you know it is not the Law but money, influence or power that decides the outcome.

# 22 Upholding the Rule of Law: A Reflection


Tony Blair  
*Former Prime Minister of Great Britain and Northern Ireland*

**T**o His Royal Highness, Sultan Azlan Shah, to Her Royal Highness Tuanku Bainun, thank you for your warm welcome and for the honour of inviting me to give this the Twenty-Second Lecture. To the Crown Prince Raja Nazrin and Her Royal Highness Tuanku Zara, thank you also for your kindness to me and my family and may I offer many congratulations on the recent birth of your son. My thanks indeed to all the members of the Royal family I have had the joy of meeting.

And finally to the extraordinary Professor Visu Sinnadurai, also affectionately known as “Prof”, I believe, many thanks for your exemplary organisation of tonight’s speech.

I am ashamed to say this is my first time in Malaysia. If I have my way, it will not be the last. I have been overwhelmed by the beauty of the country and the warmth of its people. It is a privilege to be here.

*Text of the Twenty-  
Second Sultan Azlan  
Shah Law Lecture  
delivered on 1 August  
2008 in the presence  
of His Royal Highness  
Sultan Azlan Shah*



“ There was never at any time during those years of practice, a moment when I entertained the slightest hesitation about the sanctity, importance and validity of the Rule of Law.”

It is, as well, a delight to reflect on a subject I have seen from many angles—the Rule of Law.

I am a lawyer, born into a lawyer's family, married to a lawyer. My brother Bill has just become a High Court Judge, much to my pride, and my daughter, Kathryn, is now a law student. So it runs in the blood! My time at the Bar, I look back on with affection. The times I argued a case well and won, I look back upon with pleasure. The times my advocacy ended in disaster, I look back upon with pain.

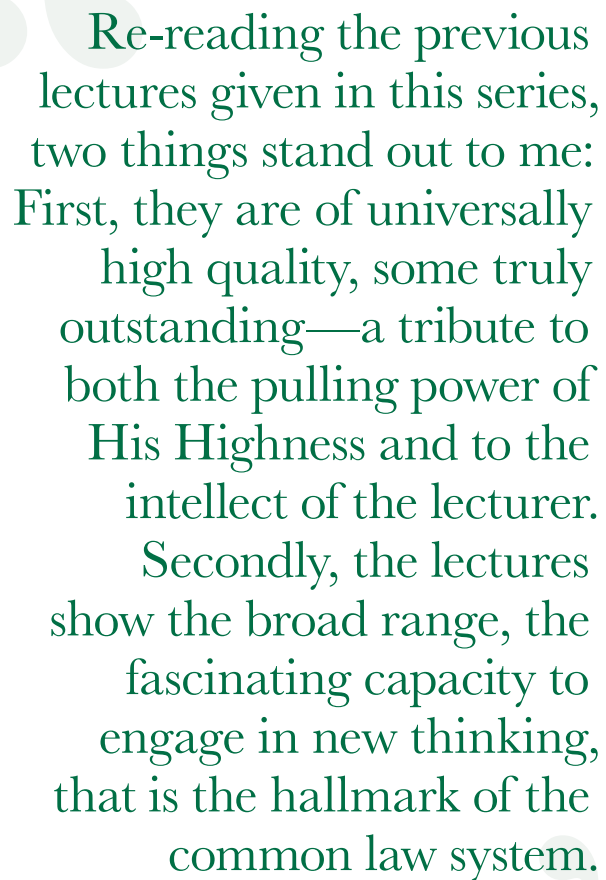
There is nothing—not even now, not even in the worst moments of Prime Ministers Question Time (and there were a few)—which compares to the humiliation meted out by an irritable judge to a young advocate.

In my early days at the Bar, I used to specialise in “returns”, that is cases of other more senior barristers returned to me because they did not want them or could not do them. Unsurprisingly they were normally the really tough ones. So rather too frequently I was in front of the Court of Appeal arguing the unarguable. I remember one time, by mistake and still in my final six months of pupillage, sitting in the Queen's Counsel row much to the amusement of the rest of the Bar crowding in for the next case

On another occasion I suffered the ultimate disgrace, beaten by a litigant in person.

The worst was in front of a Court of Appeal headed by the famous and irascible Lord Justice Megaw whose very





Re-reading the previous lectures given in this series, two things stand out to me: First, they are of universally high quality, some truly outstanding—a tribute to both the pulling power of His Highness and to the intellect of the lecturer. Secondly, the lectures show the broad range, the fascinating capacity to engage in new thinking, that is the hallmark of the common law system.

<sup>1</sup> HRH Sultan Azlan Shah, “Supremacy of the Law in Malaysia”, in *Constitutional Monarchy, Rule of Law and Good Governance: Selected Essays and Speeches*, 2004, edited by Dato’ Seri Visu Sinnadurai, Professional Law Books and Sweet & Maxwell Asia, page 13.

look used to turn the advocates knees to water. I put my hopeless case, I fear somewhat repetitiously rambling on. His look got darker and darker. Finally he interrupted me and said: “Mr Blair that’s the sixth time you have made that point. And let me tell you something: it wasn’t a very good point the first time you made it. So can you kindly spare us a further reiteration and conclude?”

But whatever the experience I enjoyed or suffered as a barrister, I took the independence of the British Judiciary for granted. I took the integrity of the Bar as a given. It never even occurred to me to doubt either. Occasionally when I collided in the course of my practice with legal systems less sound than my own, I marvelled at how lucky we were and how unfortunate were those who lived under those poorly run and alien jurisdictions. There was never at any time during those years of practice, a moment when I entertained the slightest hesitation about the sanctity, importance and validity of the Rule of Law. As you, Your Highness once said, in a phrase that has all the admirable simplicity of a political sound bite—if you do not take that as an insult—“the Rule of Law means literally: the rule of the law”.<sup>1</sup> It implies legitimacy, fairness, independence, integrity, justice.

That was my calling. Those were the principles governing it.

Re-reading the previous lectures given in this series, two things stand out to me:



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feeling and indeed,  
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First, they are of universally high quality, some truly outstanding—a tribute to both the pulling power of His Highness and to the intellect of the lecturer.

One of them of course was my own dear wife Cherie. It is sometimes said that we both could have gone either way: she the politician and me the lawyer as opposed to the other way round. I rather think we both made the right choice! She was too prone to speak her mind for a politician. And she was a far better lawyer than me! I am afraid I always had something lacking as a lawyer.

I recall even as a student, never quite getting it. In one of the early lectures that I attended (they tend to stand out since I did not attend many), the professor was describing the ground-breaking tort case of *Donoghue v Stevenson*, where the House of Lords held there was a duty of care on the part of a manufacturer of ginger beer to a lady in a cafe whose ginger beer turned out to contain part of a decomposed snail. Various students asked various proper legal questions. Suddenly I could contain myself no more and asked: “Yes but couldn’t she have got over it? I mean alright it’s not nice but all the way to the House of Lords over a bit of snail?” The professor looked at me very sadly.

Secondly, the lectures show the broad range, the fascinating capacity to engage in new thinking, that is the hallmark of the common law system. Lawyers are not always thought of as creative thinkers or philosophers, at least outside of their creativity in presenting a case. Yet these

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vital component of  
economic success.

In today's world, it is  
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society.

lectures chart a series of extraordinary legal developments over the years showing how with skill, determination but also sensitivity, doctrines of administrative law originated, new commercial law processes were brought into being, equitable concepts fashioned to bring fluidity to the often arid rigidity of the common law itself.

If you are like me and spend time in the company of a young child, you will have watched the wonderful movie “Ratatouille” about a rat that became a great chef in partnership with a young man in Paris. The rat’s father is horrified at the fraternising with the humans, who will always be to him, the enemy: “You can’t change nature”, he shouts at his son.

“Dad,” the son replies, “change is nature.”

What the lawyers have accomplished, at their best, is to get the law to change with the times. Today the context of change in which the law operates is greater than ever before. Indeed the predominant characteristic of today’s world is the pace, scope and scale of change. From the rise of China and India—now a fact and throwing into chaos some of the traditional ideas about political power residing in the West—to the Sovereign Wealth Funds now accumulating many times the financial wealth of the traditional global institutions; to the development of whole new business sectors and industries with extraordinary speed, many of whom were barely glimpsed even ten years ago; the world has its finger on the fast forward button.

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Adapt or fall behind. That is increasingly the message for companies, countries or people.

Into this melange of shifting economic and social forces, where fits the Rule of Law? It might be thought with its traditions, history and formulations, often of an archaic nature, that it would be swept away by the same tide of change. Instead, on the contrary, as I shall argue, the Rule of Law occupies a place today not less important but more so, in ensuring globalisation is benign in its effects. So far from losing relevance, the Rule of Law has gained it.

When later in life I became a Member of Parliament and then Prime Minister, I saw the Rule of Law from a completely different perspective. I saw it as a lawmaker and then, as Prime Minister, as the head of the Executive branch of government. As a lawmaker, I had to come to terms not with interpreting the law but designing it. I started to understand the complexities of balancing intricate interests with legal clarity, started to imagine the impact of the law on people, not from the point of view of a lawyer arguing a case, but from the point of view of the person in the street asking whether a law was just or unjust, sensible or foolish, wise or ignorant.

As Prime Minister however, the application of my commitment to the Rule of Law was sometimes severely tested. The hardest thing about being Prime Minister is not making the decisions; it is implementing them. Constantly you come up against the rigidity of the



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bureaucracy, the defiance of vested interests, usually if not always masquerading as the public interest; and you come up against the insistence of the Rule of Law that the law comes first, and the law is the law interpreted by judges. So whereas the Prime Minister and government want to go crashing through these obstacles, desperate to implement change in the face of the public impatience that the change come quicker, the Law sometimes stands in the way, hand upraised, saying until there is due process there will be no due progress. Sometimes the Law will say no: this far and no further. And it is all very well to say: that is obvious; of course the Law should do that; anything else is totalitarian. But take some specific examples and you will see how open to challenge this is, when you are in the harsh reality of politics.

In the aftermath of 11 September 2001 we passed new anti-terrorist laws. Some years later these laws were subject to a legal case under the Human Rights Act. We had sought to say to suspected terrorists: you can leave this country freely; but if you stay in Britain, you stay locked up. We could not be sure that we could successfully prosecute these people. We could not forcibly deport these suspected terrorists to their countries of nationality either, as the European Court of Human Rights had some years earlier imposed restrictions on us in that regard, where there was a threat that they would be subjected to ill-treatment upon return. In designing the anti-terrorist laws we were careful to ensure we respected previous judicial decisions. But we were sure, as an Executive, that these people posed a risk

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<sup>2</sup> *A v Secretary of State for the Home Department*  
[2004] UKHL 56; [2005] 2 AC 68.

to our security. I have no doubts they did. But the fact is we could not prove it, beyond reasonable doubt, in order to secure a conviction in law. So we passed legislation allowing us to detain them. If they wanted to leave Britain, they were free to go. But they could not walk free on our streets.

The British public are greatly attached to the Rule of Law. But overwhelmingly they supported our position as a government. They believed that the terrorist threat justified suspending the normal processes of the law. They believed that usually those processes should be upheld. But they thought these circumstances were unusual. And I agreed wholeheartedly.

The House of Lords held that these anti-terrorism laws were contrary to the Human Rights Act.<sup>2</sup> I remember being absolutely furious. I could see the terrorist threat. The intelligence about it was daily. The capacity of these people to do evil, to sacrifice the lives of innocent people in pursuit of an unnegotiable cause was manifest. I was trying to protect the public. The House of Lords, I felt, seriously misjudged the threat and misunderstood the only practical way of dealing with it. Indeed a few months later terror struck London and over 50 innocent people died in the worst terrorist attack London ever saw.

I recall in Number 10 Downing Street, straight after hearing the news of the court ruling, pacing up and down the study, berating the court and expostulating at the ludicrous way they sought to substitute their judgement

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for mine. A member of staff concurred and added: “They should be stopped from ruling in these cases.”

Immediately I turned round to him and said: “Oh no, no that would be completely wrong. I profoundly disagree with them but I profoundly believe in their right to do it. I think they have made the wrong judgement. But I think it is right that they can; that they are above me, not me above them.”

So there is an essential tension, perhaps natural tension, that exists between those exercising political power and the judiciary exercising the Rule of Law. I was frequently accused as Prime Minister of trampling over inalienable rights, despite introducing the Human Rights Act, probably the most far-reaching extension of judicial capacity to hold the Executive to account in recent British history.

When I removed some of the traditional appurtenances of the Lord Chancellor, I did it principally so that the House of Lords could elect its own Speaker and most vital of all for the government, so that the Lord Chancellor could concentrate on running the vast Department of State that runs the Court system, rather than spend hours a week on ceremonial duty. We also made judicial appointments into a transparent and infinitely more objective system. But it did not stop the accusations being made.

For my part, I was frequently angry with what I saw as a creeping judicial tendency to make the law rather than to

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interpret it. Justice Heydon of the High Court of Australia has stated that judicial activism, taken to extremes, can spell the death of the Rule of Law. Someone else once said: judges should indeed make law but better keep silent about doing it.

But the explosion in administrative law and human rights cases has blurred the lines of demarcation between law and politics. Especially when governments are carrying out their responsibility with regard to national security or making decisions clearly and plainly in the political domain and doing so not out of caprice but a genuine appreciation of public interest, courts should be reluctant to intervene. Notice I do not say: should never intervene. But they should take on a self-regulatory presumption that guards against substituting their political judgement for that of the elected politician. It must be remembered that judges simply do not bear any direct responsibility if as a result of their decisions government cannot, for example, stop a terrorist attack. The buck stops with the government, not the judges.

And with the ultimate responsibility should come the ultimate power.

Lord Woolf, another very eminent former speaker here, has observed that in the context of the Human Rights Act:

It is Parliament's responsibility to legislate. The task of the court is to interpret that legislation. But the courts should not treat section 3 [of the Human Rights Act] as a licence



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<sup>3</sup> Squire Centenary Lecture:  
“The Rule of Law and a Change in Constitution”,  
3 March 2004.

<sup>4</sup> *Vriend v Alberta* [1998] 1 SCR 493 at [136].

to intrude into Parliament's role ... in the final analysis, [it is] ... "only a rule of interpretation. It does not entitle the judges to act as legislators".<sup>3</sup>

Mr Justice Cory in the Canadian Supreme Court put it like this:

In carrying out their duties, courts are not to second-guess legislatures and the executives; they are not to make value judgments on what they regard as the proper policy choice ...<sup>4</sup>

But of course it is easy to say, hard sometimes to do. With cases of claims to asylum in Britain on the grounds of persecution, we faced a similar issue. Our asylum laws are governed by the Geneva Convention on Refugees, itself formed in the wake of the Holocaust. The presumption is with the person claiming asylum. The overarching memory is that of Jews turned away when fleeing Hitler and the Nazis. The same mindset fashioned the European Convention on Human Rights. The trouble is the context today is completely different. Bluntly, most asylum claims today are those of economic migrants. They may well have a good case for economic migration; but their claims to persecution are often farfetched. Yet time and again when we toughened the laws on asylum, the courts would strike them down. When, finally, we sought to oust the courts' jurisdiction in such cases the judiciary rebelled.

In the course of that debate, we actually had an interesting dialogue, formally and informally between

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Executive and Judiciary, and in the course of the dialogue at least understood each other's concerns.

It might seem such a notion of dialogue—which, of course, eschewed individual cases—is inconsistent with the Rule of Law. In fact, done properly, it sustains it. It allows the law to evolve with sensible appreciation of real life, political practicality.

So let us be clear: the adherence to the Rule of Law can give governments a serious headache. And courts are made up of humans, not divines. Their own instincts and beliefs can play a part in their judgement. A 50/50 case can turn on their subjective views, not some objective yardstick and such views can easily translate into personal prejudices.

There are dangers in judicial activism, but they are ultimately outweighed by the benefits of a free and independent judiciary, feeling and indeed, on occasions, asserting that freedom and independence.

Fundamentally we politicians are better below the law than above it. And this is where the whole question of the Rule of Law takes on a new and even greater meaning for today's world. The proper place of the Rule of Law in a nation has an impact and import far wider than constitutional principle.

I have argued strongly here in favour of reverence for the Rule of Law, irrespective of its irritation to political

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leaders, regardless of its inconvenience, regarding as an imperative that the law is administered without “fear or favour”. So I have argued this from principle.

Let me step down from that high pedestal for a moment and descend to the realms with which I am more familiar in my latter years: practical politics.

My view is that, in today’s world, obedience to the Rule of Law is not just right in itself; it is an important part of creating a successful country. In today’s world, it is a vital component of economic success. In today’s world, it is integral to a well-functioning society.

I believe adherence to the Rule of Law applies in all circumstances and at all stages of development. Perhaps, before saying why, I should explain what I understand by the Rule of Law.

To me, it means the following. It means an independent judiciary, one that is independent of government and not dependent on it or subservient to it. Unless the public accepts that the judiciary are independent, they will have no confidence in the honesty and fairness of the decisions of the courts. This independence is exemplified in the judicial oath. Lord Bingham explained the elements when he said:

First, the judge must do what he (or, of course, she) holds to be right ... But secondly, and vitally, he must do right

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A judiciary that has  
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<sup>5</sup> “The Courts and the Constitution”, Lecture delivered  
at King’s College on 14 February 1996, at page 18.

according to the laws and usages of the realm. He is not a free agent, who can properly give vent to his own whims and predilections, or even (save within very narrow limits) give effect to his own schemes of law reform ... Thirdly, the judicial oath makes clear ... that in administering the law the judge must act with complete independence, seeking neither to curry favour nor to avoid any form of vindication. And fourthly, so far as humanly possible, judges must decide cases with total objectivity, having no personal interest beyond that of reaching a just and legally correct solution.<sup>5</sup>

This judicial independence has a corollary: a government that accepts such independence and would not interfere with it. It means judges free from any taint of corruption. A corrupt judiciary is the mark of a country that is not yet mature. A judiciary that has become corrupt is the mark of a country in decline. As your Highness has in the past observed, public confidence in the judiciary is based upon a number of criteria. These include: judicial independence, the integrity of the adjudicator, and the impartiality of adjudication.

The Rule of Law also means a Bar of quality and integrity, where certain standards are considered not optional but absolute.

These principles are clear and obvious. Less clear and less obvious are those things that go to make up the content of the Rule of Law. You can have a legal system that is



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independent of the Executive, where the judges are honest, but where the processes of justice are slow, ineffective and outdated. This is where reform of the judicial system is not a betrayal of the principles of the Rule of Law but can often be the only way of salvaging them.

A legal system where cases take years to be heard, where justice is only available to the wealthy, the legally aided or the obsessive is not a system capable of delivering the Rule of Law, however much, in theory, it may be compatible with it. In the United Kingdom, in recent years, there has been fundamental reform of the civil process, led in an exemplary way by Lord Woolf; and there have been various, somewhat less successful, attempts to reform the criminal law process. But, as in the old adage, justice delayed is justice denied. *Bleak House* was a novel not about lawyers who were corrupt in the way we would understand it, but about a system corrupted instead by desuetude.

The Rule of Law also means laws that are clear, that can be understood, and therefore complied with. It means rules of procedure that are transparent; rules of evidence that make sense and are fair; and a process that as a whole, not just in the letter of the law, tends towards the efficient and proper relationship between law and real life.

So that is what I mean by the Rule of Law. And I daresay there are qualities or aspects that can be added to it and that a variety of national circumstances will produce a variety of ways in which principle becomes practice. But



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I think those basic principles apply universally and that without them, the Rule of Law means little or nothing.

Why is it so important today? Why should we elevate it even higher than it has been, now, as a governing guide?

The answer, very simply is because today, more than ever, the Rule of Law is an essential part of stable and good governance, and stable and good governance is an indispensable accompaniment on the journey to a modern and successful country.

This arises from the globalised nature of the 21st century world. Today, our economies are subject to huge forces of globalisation, changing, churning, creating new industries in place of old, new ways of working, new technologies, new paradigms of success that take root in an unbelievably short space of time. In such a world, a number of consequential developments are happening. Capital is footloose, vast amounts of it. It is true that right now the West faces the credit crunch, and a financial malaise. But do not ignore the past decade that has seen a huge expansion of financial liquidity, new financial instruments dragging enormous corporate, economic and then social change in their slipstream. You may agree or disagree with these developments but it is impossible to deny their salience.

But what this means is that this investment looks for an outlet. Moreover, it is matched by an equally large expansion of global skills, global know-how and global


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intellectual capital also looking for a place to locate. It is why good universities are today a major part of a strong economy.

I often say to people that whereas our eldest three children went to United Kingdom universities and would not really have thought of anything else, at least for their first degree, our youngest, Leo, now eight, when in a decade thinking of his choice of university, will in all likelihood think globally.

There is out there taking shape before our eyes, a generation of young global citizens, with an open attitude to other people, cultures and countries, with the desire to travel and the means to do it, with minds better informed and more inquisitive than their grandparents could have dreamt of. They will search for the place to go. And they will choose that place without prejudice but with precision, a choice based on the opportunities certainly, but also the values of the place they choose.

Likewise the global footloose capital is searching for a stable place to invest. It wants to know that its investment will be properly protected by proper rules, properly administered. It wants to be sure that if it enters into a contract, its contractual partner, who can, if things go wrong, be known hereinafter as “the defendant”, if I can borrow the old phrase from pleading, is going to have to argue the case on the merits, not be able to purchase it. A business looking to invest wants to know there are laws and they will be obeyed.



“ There is an essential tension, perhaps natural tension, that exists between those exercising political power and the judiciary exercising the Rule of Law.”

Now, of course resource-rich nations are sufficient honey-pots that these strictures can often be laid aside in pursuit of the opportunities for exploitation. But increasingly that is not the case. There is a trend, starting with the Extractive Industries Transparency Initiative, which I helped establish as British Prime Minister, towards ensuring global rules for such global players. But more than that, the players themselves prefer the certain and the fair to the arbitrary and the unfair.

Likewise for those young people, the ones who, over time, will develop the technological breakthroughs, the exciting new business ventures, who will help enlarge the pool of global talent still further as their efforts multiply, they will go where the open face of merit, not the hidden face of influence, is rewarded. They will go where they feel at home. And that will be where there are rules, and where the rules are the same for everyone, and are fairly and evenly applied.

So what is happening is that to the high-flown tenets of principle in support of the Rule of Law are being added arguments of very practical, real life expedience.

I see this the whole time in my new life. True, some countries offer opportunities so great their shortcomings in the Rule of Law are minimised. But for others, the absence of the Rule of Law means the loss of business. It means a poor reputation. It means that that nation ceases to be an attractive prospect in which to invest, to work, to live.




I was frequently  
accused as  
Prime Minister  
of trampling over  
inalienable rights,  
despite introducing  
the Human Rights Act,  
probably the most  
far-reaching extension  
of judicial capacity  
to hold the Executive  
to account in  
recent British history.

Frequently in the work I do now, not least in Africa, I am asked how to help poor nations. Many of these have received billions of dollars of aid over many decades and not always to the best effect. I reply: get good governance. Get a proper judiciary; proper laws. Get a reputation as a place where there is a commercial and criminal legal system that operates fairly and with proper speed. Do the same with your tax system. And then just wait for the businesses to come. They will; but not to nations that treat the Rule of Law as an optional extra, or even worse, as an impediment.

This is, if you like, an almost utilitarian argument for the Rule of Law. It makes an analysis of the wave of globalisation and it argues that from self-interest the Rule of Law should be accorded respect. The whole point about globalisation is that it is pushing the world together. The term “global community” is a cliché precisely because it is true. Such a community only functions, as indeed any community does, through common values. Societies do not work unless together they represent some common social attitudes, standards and norms. Society is something we share. That is impossible to do without a shared purpose or at least, shared values. Otherwise how do we govern ourselves consistently or sensibly?

If this is true, then the global community, no less than that of the national community and countries like Britain and Malaysia, must hold values in common in order to function effectively and cohesively. The Rule of Law is surely one such value.



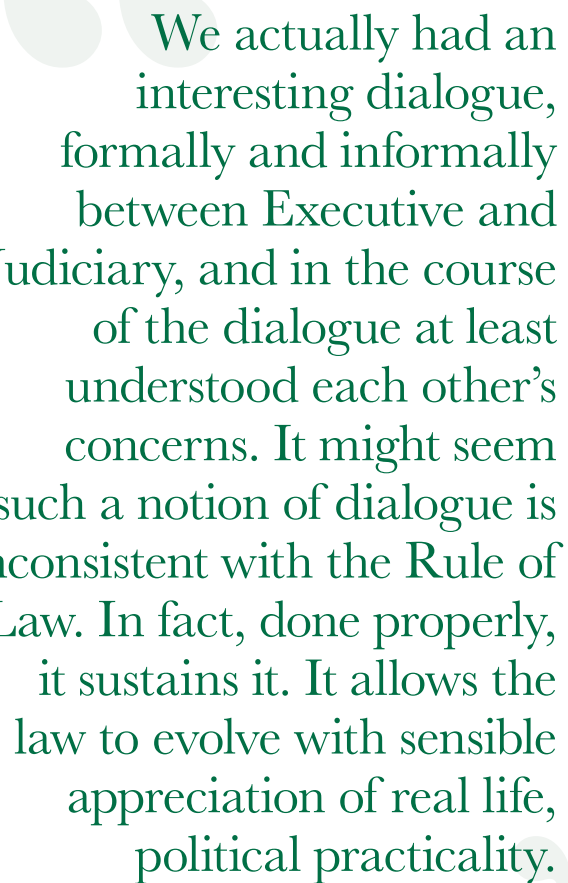
“The Rule of Law also means laws that are clear, that can be understood, and therefore complied with. It means rules of procedure that are transparent; rules of evidence that make sense and are fair.”

A final reflection, however: I would never want to justify the Rule of Law solely on utilitarian grounds. I believe there is a more profound reason for its centrality. I believe the Rule of Law fundamentally dignifies human existence. It lifts us out of the barbarous wastelands governed by brute force and lets us occupy the fertile terrain of predictable justice. It sets an ambition not just for our laws but for our souls. It civilises, it inspires. It takes us to a higher and better place.

It does so because it democratises power. It democratises money and influence. All those things we invariably crave as fallible and selfish human beings and all those things that we know in our better selves need to be constrained by something more equalising and more just.

The Rule of Law is an arbiter. It is also a guide. Of course, it is itself highly fallible. It is bound to be. It is executed by those selfsame human beings with human faults and inadequacies. But the inadequacies are not born of corruption and the faults are not deliberately designed for gain. Where there is error its source is not wilful, it does not originate in malice or the perverting of the proper course of justice; and the errors pale in to insignificance once alongside the virtues.

In the end these two arguments for the Rule of Law—the practical and the principled—come together. Though, in exceptional cases, it is possible to have the Rule of Law without true democracy, it is impossible to



We actually had an interesting dialogue, formally and informally between Executive and Judiciary, and in the course of the dialogue at least understood each other's concerns. It might seem such a notion of dialogue is inconsistent with the Rule of Law. In fact, done properly, it sustains it. It allows the law to evolve with sensible appreciation of real life, political practicality.

have true democracy without the Rule of Law. The Rule of Law is an indispensable part of good governance and good governance is an indispensable part of a successful nation state. It is morally right and politically wise. It is, in short, not the past but the future. It casts a light to lighten our road to it. And like any light, it shows the things we would prefer not to see as well as the things we rejoice in seeing. But it allows us to move forward as free and sentient citizens.

The values that predominate in a decent and worthwhile society are not owned by West or East, Christian or Muslim, rich or poor. Yes, different nations are at different stages of development. Yes, you cannot impose holus-bolus one system from one country onto another system in another country. All of that is true.

But I long ago learnt to distrust the myth that some people love democracy and some are at ease with dictatorship; that some revere the Rule of Law and some are indifferent to it; that some prize liberty and some despise it. No people have ever chosen freely to remove their democracy. Dictators are called dictators precisely because the people have not chosen them. No one who has ever talked to those who have experienced arbitrary law enforcement, the secret police, the indiscriminate or sometimes very discriminating arm of an unaccountable state, can ever feel comfortable with such mythology. The truth is that people can be indifferent to the Rule of Law, except when their own freedom is in jeopardy and then, by God they value it. There is something indescribably

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uplifting about a system in which people are tried according to the Law: and something indescribably demeaning about a system where you know it is not the Law but money, influence or power that decides the outcome.

Applying the Rule of Law takes persons of courage. The true judge finds the facts as he or she sees them. A simple statement, is it not? But what it means is profound. It means the courage to decide according to the truth as you perceive it, not according to the conventional wisdom, not according to the convenient, the popular, the expedient, but what you believe is true and right. Doing the right thing is the hardest duty of a political leader. It is also the supreme duty of the judge. In this sense leaders are judges, and judges leaders. This is the principle I took from my earliest days at the Bar into political life. It is what I owe the Rule of Law. It is why I believe in it still. 