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THE RULE OF LAW AS THE FOUNDATION OF
GOOD INTER-FAITH RELATIONS

a lecture given at
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by

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I am delighted to be giving this lecture under the Chairmanship of my old friend and colleague, Lord Phillips of Worth Matravers and the auspices of the Oxford Centre for Islamic Studies of which Lord Phillips is the Azlan Shah Fellow. Having been given the opportunity to inspect the Centre's new home. I am confident the Oxford Centre will become the latest architectural star in the Oxford firmament of magnificent buildings. I also have high expectations that under the visionary leadership of its Director, Farhan Nazami CBE, the Centre, in so far as this is not already the position, will become a world leader in Islamic studies.

It is therefore no surprise that the Centre has received the support of the late Sultan of Perak, HRH Sultan Azlan Shah, who was a great friend of this country and a champion of the rule of law. Roles to which his son, the Sultan Nizarin, is now equally committed. Before his recent death, I had the privilege of knowing the late Sultan and his family. So I am pleased the lecture gives me an opportunity to express my great admiration for his HRH as a jurist and a champion of the rule of law. We had respectively been CJs of our countries. He of Malaysia and of England and Wales. We resigned our positions as Chief Justice for very different reasons – in my case, because of the passage of time; His Highness because he became King of Malaysia under the system of revolving the monarchy between the different sultans.

After I ceased to be Chief Justice I was proud to become patron of the Woolf Institute in Cambridge. Its role is to promote greater understanding between the three Abrahamic faiths. Although the focus of the Centre includes promoting a more informed understanding Islam --- its culture and civilisation.

The objectives of the Islamic Centre and the Woolf Institute coincide as they share a concern for the current state of interfaith relations particularly in this country and abroad. This explains my topic this evening.

In my talk I will first explain why the topic which was already of importance has become of much greater significance at the present time. Secondly, I will explain what is meant by the rule of law. Thirdly what is able to be done to improve inter faith relations in the present situation.

What has made interfaith relations so significant at the present time is the increase in the West in the number of hostile attacks on one religious community which are attributed to members of another religious community. It is sufficient if I draw attention to 2 recent events. The first was the killing of the 25 year old soldier Lee Rigby on the 22nd May 2013 in London. Those responsible were two young men born in this country of Nigerian descent who converted to Islam. They alleged the killing was revenge for actions of British troops in Iraq and elsewhere. When at the trial they were sentenced, Mr Justice Sweeney said their extremist views were a betrayal of Islam. The two defendants then became agitated and one shouted that is a lie and the other shouted "Allahu Akbar", (God is greatest) Regrettably the attack were followed by a marked increase in islamophobic incidents.

The other incident consisted of 2 linked attacks on the 9th January in Paris. One on Charlie

Hebdo and the other on a Jewish Delicatessen.

I am confident there is nobody in our audience who was not appalled by what happened during the two attacks. The assailants at the offices of Charlie Hebdo were two Krouachi brothers, by birth French citizens who became radicalised islamists. Young men bent on revenge. The brother had links with the gunman, Coulibay, at the Dele who made remarks that his motive was to protect the safety of the two brothers involved in the Charlie Hebdo attack.

These events require us to accept that there can be individuals brought up in advanced western societies who are well educated, even embarking on University courses, who are prepared to kill or maim their fellow citizens for motives, linked to their faith, which cannot be rationally justified.

Events of this kind are horrific because of the harm they cause to those directly subject to the violence. They are also deeply worrying because of the alarm they cause to those not directly involved.

I am afraid that there is no action that can be taken by the security services of any country, yet alone an institution or individual, that will guarantee there will be no repetition of events of this nature. However, in addition to the securities services there are steps that can be taken by Governments and other bodies that can help to undermine the radicalisation of young men such as those who were responsible for these attacks. Here I would include both the Islamic Centre and the Woolf Institute as bodies who could contribute. They, like any other body who can speak with authority as independent experts on the subject, are able to assist in making it clear that such attacks are a betrayal of Islam and foreign to its true belief. Thus undermining the alleged justification for the attacks. They can play their part in making it clear that Islam like all the other great faiths regard such conduct as totally unacceptable and promote a true understanding of the teachings of Islam.

As an example of a publication that can make a modest but real difference, I cite the recent publication by the Woolf Institute of what it described as “*An Open Letter: a Call to Dialogue and Understanding between Muslims and Jews*”. It was drawn up by Muslim scholars at the Institute “with the support of Muslim scholars throughout the world”. Among a number of quotations from the Qur’an that it contains is one from Qur’an2.62 that so far as relevant states;

“Surely those who believe, and those who are Jews and the Christians, whoever believes in God and the Last day and does good, they shall have their reward from their Lord and there is no fear for them, nor shall they grieve”

The letter adds, “*Many Jews and Muslims today stand apart from each other due to feelings of anger, which in some parts of the world, translate into violence. It is our contention that we are faced today not with ‘a clash of civilizations’ but with ‘a clash of ill-informed misunderstandings.’ Deep-seated stereotypes and prejudices have resulted in a distancing of the communities and even dehumanizing of the ‘Other’. We urgently need to address this situation. We must strive towards turning ignorance into knowledge, intolerance into understanding and pain into courage and sensitivity for the ‘Other’.*”

I agree

The letter is certainly accurate in identifying the ignorance on the part of non-Muslims and some Muslims as a cause of unnecessary tension. Tension that can be exacerbated because there are passages in Qur'an which are capable of differing interpretations and thus capable of exploitation by those bent on inflaming conflict between Muslims and members of other faiths.

Here I should make a confession that my knowledge of different faiths falls far below what I would like to possess. In particular I am not as familiar with the Qur'an as I should be. My ignorance is shaming because when I was interviewed a number of years ago on "Desert Island Disc, at the end of my interview, I was asked what book would like to take with me to the Desert Island in addition to The Bible and the complete works of Shakespeare. I selected a copy of the Qur'an. While the BBC did not comply with my request 3 members of the public did respond and generously each sent me a copy. In addition a dear Saudi friend, Professor Malik Dahlan of the Lauterpact Centre of International Law sent me a copy of the "*The Message of the Qur'an*" by Muhammad Asad. I find it has improved my understanding of the Qur'an; but at almost 1000 pages it is not easily digested without being marooned on a desert island.

On the other hand, I can say with a degree of confidence that I have some expertise in the subject of the rule of law. This does not mean that I find it easy to define what is meant by the rule of law. Though this is precisely what I propose now to try to do because it is my firm belief that among the virtues of the rule of law is that it provides for societies that adhere to the rule of law a *structure* and *framework* that enables their members while practising different faiths to live in harmony together.

In deed I have gone further. In a previous lecture I have suggested that an explanation for the Arab Spring not achieving its potential was the fact that in all the countries involved there was no foundation for good government based on the rule of law. So absent the rule of law, they were missing a critical part of the infrastructure required for them to evolve into a modern properly governed state.

What can be confidently said of the rule of law is that it does *not* require rule by any particular religion. On the other hand it is protective of the practice of all religions. It can also be said that it is not a rigid concept and its requirements can change depending on the history and traditions of a particular country where issues as to its compliance arise.

However, guidance is provided by the fact that for a country to observe the rule of law it must at least possess many of the values that are usually associated with universal human rights. This is the position that will usually be found in a democracy. Indeed, the rule of law is critical to the wellbeing of democracy since without democracy the rule of law can descend into an elected dictatorship. So while during the majority of Nazi rule in Germany the government could claim to be a democracy, in the sense that the government was elected by the majority of its citizens, the holocaust provides irrefutable evidence of the absence of the rule of law. On the other hand an unelected ruler can govern in a way which is sufficiently benevolent for it to be accurately

stated that it complies with the rule of law.

So, chameleon-like, the rule of law takes its colour from the setting in which it is found. Like the proverbial elephant, while it may not be easy to describe, you have no difficulty in recognising it when you come across it - especially when this happens while you are crossing a narrow bridge and it is approaching in the opposite direction at the same time!

Despite the uncertainty of the definition of the rule of law, I know of no developed nation which does not claim to adhere to the rule of law. At the same time almost every nation can, at a particular period of time, be accused of failing in some respects to comply with its requirements. This is true of this country although our recognition of the rule of law can be traced back to Magna Carta. Although Magna Carta was the product of a struggle for power between the monarch and his nobles, in many countries it has become a symbol of the basic freedoms of their citizens. As Professor Malik Dahlan confirms in his paper, *"the New Saudi Arabian Kingdom and dreams of Magna Carta"* those countries can be situated in the Middle East. This may be part of the explanation for the fact that Jews and Christians lived amicably together with the majority Muslim population.

In this country the difficulty in defining the rule of law is partly due to the fact that no legislation expressly states what its constituents are. As far as I am aware, there was not even a reference to the Rule of Law in our legislation until the Constitutional Reform Act of 2005. This Act places a clear responsibility on ministers of the government to uphold the rule of law.

The absence of any specific definition of the rule of law can create difficulties. While I was still LCJ, I travelled to China and gave a lecture to senior mandarins and academics. During the questions that followed a member of the audience astutely asked me to explain the distinction between the rule *of* law and the rule *by* law that she said was recognised in China. The best I could offer was that unlike the rule *of* law which was required to protect the basic values or freedoms of a country's citizens' rule *by* law had no such requirements.

Significantly, so that the rule the *of* law is effective one to protect those values its requires a right of access to justice for all, without discrimination, to independent courts to uphold their rights.(Article 6)

A holistic approach has to be applied when determining whether a particular country observes the rule of law. In addition the parameters of many of the rights are not rigidly fixed. As long as collectively sufficient protection is provided in a country the content of the rights provided can vary according to the particular circumstances in a particular country at a particular time.

Furthermore, with a few exceptions the individual rights involved are qualified and not absolute. How they are qualified depends on the terms of the particular right or be the consequence of a right being in conflict with another right. The rights primarily coincide with those rights which are collectively described as human rights. Examples of rights that can be in conflict one with another are a right to freedom of thought, conscience and religion or a right to privacy and the right to freedom of expression. There are a very limited number of rights that are unqualified or

absolute. The best example is the right to freedom from torture.

When determining whether a particular country is upholding the rule of law a country usually has a margin of appreciation when considering the validity of its compliance. This well known concept of a *margin of appreciation* means that a country has a measure of choice as to how it fulfils the requirements.

The rights to which I have been referring are included within the category of fundamental human rights recognised by the Universal Declaration of Human Rights adopted by the General Assembly of the newly established United Nations on the 10th December 1948. They were adopted by 48 votes in favour, 8 abstentions and no votes against. Reference can also be made to other documents of the highest status proclaiming Human Rights, including the European Convention 1950, the American Convention 1969, the African Charter 1981 and the Arab Convention 1994.

As there is almost universal unanimity of approach to the need to recognise fundamental human rights contained in these documents of high standing, these rights can be treated as the rights which a state is required to respect in relation to its citizens to conform to the rule of law;

in adopting this approach I follow in the footsteps of my predecessor as Chief Justice, Lord Bingham, in his admirable and authoritative work "The Rule of Law".

I now proceed to bring together the two limbs of my argument, reflected in my title of "The Rule of Law as the Foundation of Good interfaith relations". For this purpose I take as my starting point Article 9 (1) of the ECHR;

"Everyone has the right to freedom of thought, conscience and religion: this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private to manifest his religion or belief, in worship, teaching practice or observance"

Article 9, was made part of the law of this country by the Human Rights Act 1998. The language of Article 9 makes clear that the rule of law in this country protects freedom of religion in a manner with which it is difficult to quarrel. However, the freedoms referred to in Article 9 are supplemented by other legislation such as the Race Relations Act 1976 and the Equality Act 2010 which can be relied on when necessary. It is very important is to appreciate that the rights of freedom of speech should be exercised in a way which respects the sensitivities and needs of other individuals, groups or society as a whole. In other words, they should be exercised reasonably and in a manner that does not impinge disproportionately on the rights of others.

This responsibility is frequently overlooked. But its importance is obvious if it is appreciated Article 9(1) sets a standard which should enable the majority of members of different faiths to live together without unreasonably curtailing their freedom of others to practice their different faiths.

Support for this approach to the rights in Article 9 is expressly provided for by the law in many

jurisdictions. Usually the rights are combined with a prohibition against discrimination, such as that contained in Article 14 which provides:

“The enjoyment of the rights and freedoms..... shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

This approach enshrined in our law as to the exercise of our freedom to practice our religion without discrimination should reassure minorities in this country that they can exercise their religion without interference. If there is interference they must be able to obtain protection. Laws are worthless if they cannot be enforced. So it is important that access to justice is protected by the rule of law. Though it is a freedom that is not bolstered in this country as it was in the past by a generous legal aid scheme. However we still have the independent judges of undoubted integrity on which access to justice depends.

An independent judiciary which is also of high calibre is necessary when the courts are required to find the correct balance between conflicting freedoms, for example freedom of expression and privacy. This is also an aspect of the rule of law as is set out in Article 10. The right to freedom of expression is set out in Article 10(1) of the Convention in generous terms. The right is then qualified in Article 10 (2) that provides that its exercise carries with it duties and responsibilities and may be subject (and I read the relevant parts):

to such restrictions...as are prescribed by law and are necessary in a democratic society...in the interest of...public safety, for the prevention of public disorder...or rights of others.

The reference to the “rights of others” means the provisions of Article 10 are meant to strike a sensible balance between freedom of expression and other rights including freedom of religion. Despite the importance of the right to free speech you are not intended to exercise it regardless of the rights of others.

In practice the courts cannot be invoked whenever there is a risk of a clash between the two rights. In most circumstances the protection of the courts should be made unnecessary by those involved showing respect, courtesy and restraint for each other’s rights. Here again, we are fortunate in this country because of the tolerance that we normally show to each other.

The power of the pen can be mighty and even cartoonists who rely sometimes on gross exaggeration to make their point do need to exercise self restraint particularly in sensitive areas where religion is involved. This is a situation where reasonableness by all concerned is of the greatest importance particularly where freedom of expression and religion are involved. In a common law system such as ours the courts are working out where the balance lies. Each case will depend on its own facts, but if you know as you should do Islam is very sensitive to depictions in media of the Prophet you should take care not to depict the prophet in a grotesque way unless there is no alternative to either being gagged or doing so. By now it must surely be appreciated that depicting the Prophet in derogatory way will cause grave offence among many Muslims and can lead to an explosive reaction with dreadful consequences. Usually the same point could be

made equally forcefully in a different way. If it is thought that some Muslim reaction is over sensitive, as certainly can be the case, we must not forget that even in this country it was not until 2008 by the Criminal Justice & Immigration Act that we abolished the offence of blasphemy. And that in the distant past heavy penalties were imposed for that offence. Incidentally, in Scotland a young man of 20 years of age was even hanged for blasphemy.

In addition the public and government need to be alert as to how they react to terrorist acts. They must not do so in a manner which conflicts with the rule of law. Terrorists are bent on creating terror. The natural reaction to such acts can understandably be righteous indignation but that may be just the response the terrorists want. What happened in Paris was horrendous. The response was worldwide, including in this country. The seriousness of the consequences of the actions of the terrorists must not be underestimated. We have heard of alarm among the Jewish Community in this country. It is accepted that some Jews are considering emigrating not least because of the rise in the number of further minor copy cat acts of anti Semitism. I have also heard of a Jewish primary school head teacher telling her pupils if there is an incident that they should lie on the floor under their desk and then asking the children to practice this. The position is worse in France. Given time I expect the fears giving rise to this sort of reaction to subside though I regard the reaction as being wholly understandable.

The government whose difficult duty it is to protect us has introduced in Parliament. The Counter-Terrorism & Security Bill. This is being subject to line-by-line scrutiny by the House of Lords. We must hope that the results are wise and the right balance is struck after, in particular, heeding the concerns of universities that undue burdens are being placed on them.

If my summary of the requirements of the rule of law is correct I suggest that it sets out a standard which is reasonable and proportionate. It is a standard that should be conducive of good inter-faith relations. It is a standard that needs to be promoted in conjunction with the message that acts of terrorism are as abhorrent to Islam as they are to all serious religions. In the past for over a thousand years Jew and Christians were able to live safely in Arab countries contributing to the well being of all. This was a reflection of the true message of Islam and should be an antidote to the mistrust and fear that the terrorists wish, by their merciless acts, to generate. Insha'Allah that with the support of all those of goodwill we see the same situation once again in the West as well as in the Middle East.