



SCARMAN WELCOME ADDRESS

DELIVERED BY SIR DAVID BEAN, CHAIRMAN OF THE LAW COMMISSION

26 JUNE, GRAY'S INN

- 1.1 Welcome to the Law Commission's Sixth Scarman Lecture. May I particularly welcome five of my predecessors as Chairman; many former Commissioners including Lady Hale, who is also the current Treasurer of this Inn; my opposite number Lord Pentland, who chairs the Scottish Law Commission; and Lord Keen of Elie, former Dean of the Faculty of Advocates and now the Ministry of Justice's spokesperson in the House of Lords. He will, subject of course to the Lord Chancellor, be responsible for the Ministry's relations with the Law Commission and I look forward to working with him.
- 1.2 Many of you were present a year ago at the Supreme Court when we launched the consultation for the Commission's 13th Programme. We had more responses than ever before – over 1300, on 220 different topics; and many thanks to those of you who contributed your ideas.
- 1.3 The 2010 Protocol agreed by the Commission and the Government provides that for a project to be included in the Programme there must be an indication from the Government Department with policy responsibility that there is a serious intention to take forward reform in the relevant area. Our discussions with a number of Departments were reaching an advanced stage when just after Easter the Prime Minister announced an election. This led, as it always does, to the imposition of a state of purdah on the public service. That meant firstly that we could not publish anything about anything. If, for example, our draft pre-consolidation amendments paving the way for the new Sentencing Procedure Code had come out before 8 June, who knows how the election result might have been affected? Secondly, the purdah rules meant that Ministers could not sign off on any indication of a serious intention to take forward law reform. We are not expecting any new Minister who has only been in office for two weeks to do so either. We hope, however to be in a position to submit a draft Programme to the Lord Chancellor in the autumn.
- 1.4 But that doesn't mean we have been idle or unproductive. Already this year, two laws have received Royal Assent which were shaped directly by our recommendations. The first was Part 6 of the Policing and Crime Act – updating the law of firearms. The second was the Intellectual Property (Unjustified Threats) Act, which was passed under the special procedure for Law Commission bills just before the dissolution of Parliament.
- 1.5 Last week, the Queen's Speech announced a new Goods Mortgages Bill based on our Bills of Sale report. This should protect innocent buyers of second hand cars from

having them towed away by the seller's finance company – a practice which we were told is particularly prevalent in South Wales.

- 1.6 We intend to keep adding to our flow of reports. We are proud that more than two-thirds of our recommendations have been accepted in whole or in part. We also intend to stick to our well known motto: consultation, consultation, consultation. As the country prepares to leave the European Union, getting the details of law right has never been more important. We are ready to support that work in any way we can.
- 1.7 Like the judiciary, we carry on our work whatever the political complexion of the Government and whether its majority is large, small or non-existent. (The Law Commissions Act 1965 itself was passed when the Government of the day had a majority of 3.)
- 1.8 However, being in the public service, we have not been immune from the age of austerity. Our core funding was, in round figures, £4 million in 2010, £3 million in 2015 and £2.6 million for the year to March 2017.
- 1.9 When David Ormerod and I appeared before the House of Lords Select Committee on the Constitution last December, Lord MacGregor of Pulham Market, a former Chief Secretary to the Treasury in Margaret Thatcher's Government, commented that he was astonished by the figure for core funding we had quoted in our evidence and thought it must be a misprint. It was clear from the context that he found it astonishingly low, not astonishingly high.
- 1.10 In the past year, we have reduced our administrative support staff by half and any further budget cuts would mean reducing the number of our lawyers and the quality of our work suffering.
- 1.11 To supplement our core funding in the past few years we have taken on references from other Government Departments. We can charge for this work, though by Treasury rules we cannot make a profit on it.
- 1.12 But if we become dependent on reference income, we would be like barristers waiting for the next brief. We would have no choice in the work we take on, which would seriously damage our independence. It would also make it impossible to maintain a stable organisation. This is not the time for a period of managed decline.
- 1.13 It is a great privilege to chair the Commission and to work with fellow Commissioners, lawyers and research assistants of such remarkable talent. When I was appointed, several previous Commissioners told me that this is the best job in the system: and so it has proved. But perhaps all of us stand in the shadow of Lord Scarman.
- 1.14 Leslie Scarman was called to the Bar by Middle Temple in 1936 and was apparently a briefless barrister for his first three years. He joined up at the outbreak of the Second World War and in 1945, as an RAF staff officer, was present at the signing of the German surrender. He returned to civilian life in what is now Fountain Court Chambers and built up a dazzling practice ranging from planning to aviation law. In 1961 he was appointed a judge of the Probate, Divorce and Admiralty Division. As you all know the Law Commissions Act 1965 received Royal Assent on 17th June 1965, the 750th anniversary of Magna Carta. For Mr Justice Scarman it was an ordinary

working day: more precisely it was day 57 of the 93 day trial of a probate action, *Re Fuld*, with 11 silks and 20 juniors. No wonder he was glad to be appointed the first Chairman of the Commission.

- 1.15 In due course he was promoted to the Court of Appeal and the House of Lords. When he was a Law Lord he was asked by the Home Secretary to conduct a public inquiry into the Brixton disorders of April 1981. The report which he produced only seven months later was described by a national newspaper as “one of the great social documents of our time”. The following year I had the honour of meeting Lord Scarman. I vividly remember his combination of wisdom, intellect, quiet authority and charm.
- 1.16 40 years later the Commissioners, led at that time by Roger Toulson, decided to establish a series of Scarman lectures to honour his memory. The first four lectures were given by judges of exceptional distinction from other common law jurisdictions. Justices Aharon Barak, Edwin Cameron, Ruth Ginsburg and Michael Kirby. The fifth was given by Sir Geoffrey Palmer, a former Prime Minister of New Zealand who became Chairman of the New Zealand Law Commission. But for this year’s lecture my colleagues and I thought we should for the first time look to a great reformer closer to home.
- 1.17 Lord Thomas is approaching the end of an immensely successful term as Lord Chief Justice of England & Wales. He has been (among many other things) a doughty defender of the independence of the judiciary and a vigorous proponent of courts reform. When it was proposed that Gray’s Inn should commission a portrait of Lord Thomas, the then Treasurer, Lord Justice Maurice Kay, told his fellow Benchers:- “Don’t worry about the cost. The artist charges by the hour and the subject has never been known to sit still for longer than five minutes.” The portrait, as you can see, is a very fine one. But the point which Sir Maurice was making was that the Lord Chief’s energy and dynamism are remarkable, indeed legendary.
- 1.18 I am confident that when Lord Thomas embarks this October on the third phase of his career, which will include (but not be limited to) participation in the work of the House of Lords, his reforming zeal will be undiminished. We are greatly honoured that he has given up his time to deliver the Scarman Lecture. His title is “Law Reform Now in 21st Century Britain: Brexit and Beyond”.

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