

Making the Rule of Law a Daily Reality

Lord Anthony Hughes - Treasurer of The Inner Temple UK

10 September 2019

The Institute for Judicial and Legal Studies had the immense pleasure to welcome Lord Anthony Hughes - the current Treasurer (President) of The Inner Temple, and Justice of the Supreme Court of the United Kingdom between 2013 and 2018 - to give a talk on 'Making the Rule of Law a Daily Reality' at 2:30pm on 10 September 2019. The Chief Justice and Justices of the Supreme Court of Mauritius as well as Magistrates of District Courts and the Intermediate Court attended the lecture. The Director of Public Prosecutions, Presidents of both the Mauritius Bar Council and Mauritius Law Society, and around 60 members of the legal profession were also present.

Mrs Cheong, the Chairperson of the IJLS, introduced Lord Hughes to the audience by emphasising the important contribution that he has made to the justice system of the UK and beyond. She then highlighted how the Rule of Law can be traced back to the times of Aristotle. Though Aristotle formulated the question of whether it was better to be ruled by the best man or the best laws, he approached that question realistically, noting that it depended not only on the type of law one was considering but also on the type of regime that enacted and administered the law in question.

Lord Hughes began his talk by praising the IJLS for the crucial role that it plays in being a platform for bringing together judges and members of the legal profession under one roof. He drew a parallel with the UK Judicial College which is the official body responsible for the training of judicial office holders in England and Wales and some tribunals around the UK. He also stated that the Inns of Court in the UK are essential for the proper functioning of the legal system by putting a robust structure in place for the profession, comparable to what the Bar Council does in Mauritius. Lord Hughes then analysed the principles which are encompassed in the concept of the Rule of Law. He recalled how influential and contemporaneous the work of Aristotle still remains on the development of the Rule of Law. For Lord Hughes, the Rule of Law can be dissected into two components: (i) there must be a body of law which defines the relationships between private individuals, and between private individuals and the State; and (ii) there must be a system which can effectively and independently settle disputes.

Speaking from his experience as an advocate, a trial judge and a judge in the Supreme Court of the United Kingdom and Judicial Committee of the Privy Council, he conceded that judges will inevitably have opinions about what the law *ought* to be. However, the Rule of Law is not about what should be the right solution to a particular situation. The Rule of Law is about the law as it currently stands and the judge is not free to do as he or she wants. It follows that the law must be applied in a dispassionate manner. This is why Lord Hughes laid particular stress on how the Rule of Law is about method, and not content inasmuch as the content of the law is always subject to change but not the method. It is on the basis of this line of

reasoning that the independence of the judiciary becomes apparent and provides an insight on what that entails for cases of high public or political interest. This also means that the office of the judge prevents him from deliberately basking in the limelight of the media. Lord Hughes also drew the distinction between legality and merits.

Lord Hughes spoke of the separation of powers postulated by Montesquieu as requiring the three limbs of the state to be rigorously separated such that a system of check and balances is created. Lord Hughes compared the US legal system which has developed drastically differently under the classic Montesquieu model from the Westminster model of the UK, even if espousing the common law system where traditionally Parliament retains supremacy over the other limbs of government. He noted that the US legal system is apparently a segregationist model with the institutions being separate but that the judges of the US Supreme Court are appointed by the President. He also looked at different models of final courts of appeal.

He finally addressed the relationship between advocates and the judiciary and its crucial significance for the Rule of Law. He noted that an additional component of the Rule of Law is the legal profession which makes the legal system function properly. And it is the cases that are heard at first instance which are the most important insofar as it is the point where lay people meet the law. It is also important for there to be good collaboration between judges and advocates and their opponents. The overriding duty of an advocate is to never mislead the court. Lord Hughes concluded his talk by quoting the only statute on legal misconduct which dates back to 1275, Statute of Westminster I, chapter 29:

“... if any Serjeant, Pleader, or other, do any manner of Deceit or Collusion in the King’s Court, or consent [unto it,] in deceit of the Court, [or] to beguile the Court, or the Party, and thereof be attainted, he shall be imprisoned for a Year and a Day, and from thenceforth shall not be heard to plead in [that] Court for any Man; and if he be no Pleader, he shall be imprisoned in like manner by the Space of a Year and a Day at least; and if the Trespass require greater Punishment, it shall be at the King’s Pleasure. (3EdI c29)

Mrs Cheong thanked Lord Hughes for his talk and in particular the simplicity with which he addressed such a complex topic. Lord Hughes highlighted how institutions contribute to the essential relationship between advocates and judges. The latter can make the Rule of Law a daily living reality by taking stock of the importance of the function of the legal machinery in the administration of an efficient justice system.

Report written by
Neel Purmah
Legal Researcher IJLS
12 September 2019