

BINGHAM CENTRE FOR THE RULE OF LAW

Business Network Launch Event: Rule of law issues relevant to the business community

Wednesday, 18 January 2017

Introduction

1. It is a pleasure and a privilege to have been invited to speak at the launch event for the Bingham Centre Business Network. There can be no doubt that Tom Bingham was one of the greatest judges in the entire history of the common law world and his contribution was immense. I consider it a particular privilege to have appeared before him on many occasions – in fact, my first case in the High Court was against him (which was rather daunting) – and, when I became a judge, to have sat with him when he was Lord Chief Justice.

The importance of the rule of law to business

2. Most people when they think of Tom Bingham and speak of the rule of law think of fair trials, the defence of liberty, protection from arbitrary arrest and the requirement that the Government makes decisions in accordance with the law of the land and in a fair, open and impartial manner.
3. One does not necessarily think of Tom Bingham as commercial lawyer and we do not, at first blush, connect the rule of law with the proper operation of markets, the maintenance of fair and open competition and the enforcement of bargains. The connection of the rule of law and the prosperity of nations and the success of business and commerce is not an obvious one.
4. In our own country we are even more unlikely to appreciate the connection between the rule of law and business because we have, over the course of our history, been fortunate to have enjoyed seamlessly and imperceptibly the benefit of the rule of law in relation to the conduct of business and hence our prosperity.

5. Over the centuries, but particularly in the late 18th Century under Lord Mansfield and in the 19th Century under the great common law judges such as Abbot (Lord Tenderden), Park, Blackburn and Bramwell and in the twentieth century with Scrutton and Atkin, we modernised and developed our law without fully appreciating the benefit conferred and its dominance in the rest of the world. So much of international law is based upon the way in which our own law developed. That it all happened without fanfare or without strife marks the central importance of the rule of law to business.
6. However, as successive studies, particularly those of the World Bank, have shown, we were fortunate in acquiring this so seamlessly. We were very lucky. Our good fortune underpinned the development of the industrial revolution and formed the basic building blocks of much modern international commercial law. Others were not so fortunate. It is clear, however, that an economy based on the market, freedom of contract and the ability to enforce bargains cannot succeed unless the rule of law is paramount and justice is effectively delivered. Without these, you cannot begin to develop a modern economy properly. It is one reason why there is such an international interest in the development of our commercial and business courts, the substantive law, modern procedure and their efficient and effective operation by judges and lawyers who understand and are steeped in business and the markets.

The practical implications of the rule of law to business

7. The practical applications of this must be developed in a structured manner. It is clear that our rapidly changing economy and the changing world economy requires us to consider changes and developments that need to be made to keep the law up to date. In much of the last century it was possible to do this through international conferences led by governments of the type that developed the great conventions in relation to transportation by air and by sea. That is now part of history.

8. The increasingly rapid change in business and the economy and the unwieldy nature of the traditional international conference has led to more and more development being undertaken on the basis of private initiatives, though supported by governments or intergovernmental organisations. For example, there is much rethinking going on about the adaptation and categorisation of the substantive law in its traditional aspects and whether change is needed to make trading and dealing in the new data and digital economy fairer and more effective. Governments may help, but it is clear that such thinking is being led and developed by non-governmental institutions.

9. Similarly, just as substantive law may need more extensive adaptation in response to the new markets, the advent of technology and, in particular, the widespread use of the Smartphone in many parts of the world impels us to think more about procedure access to justice in a new way. Why can you not litigate over a Smartphone? There is no reason why you can't. I know there are a very few dinosaurs who still maintain a belief that everyone can attain access to justice through the traditional court structures and nothing needs to change, but for those in our own country who have day-to-day disputes where the values are not high and for many in other parts of the world excellent justice can be delivered by utilising modern technology to initiate and conduct cases without the need to come to a court house or a courtroom. This provides us with an enormous opportunity.

What is needed?

10. Although it is easy to spell out the possibilities that exist and which will be developed, they need coherent development that takes into account the enormous experience and expertise we have in our nation, the experience of the common law and the dynamic way we have always been leaders in moving the law forward.

11. We sometimes do not realise how lucky we are and the potential that we have. We can, indeed we must, lead developments of the rule of law at a pace with the revolutionary nature of the change the world faces. We must also discharge our responsibilities of leadership by making those developments available across the nations of the world and thus enhancing the growth of trade and international prosperity.
12. There is no better institution that can undertake this work from this perspective of the rule of law as applied internationally, than the Bingham Centre.

Will the Bingham centre deliver?

13. No-one will these days give money or provide resources to an institution unless it delivers. Funds are scarce. They need to be employed productively. No-one derives any benefit from an organisation that may engage in a lot of interesting discussion and thinking but produces nothing of practical value. These are questions that must be asked, even though there may be a whiff of *lese majesty* in asking these questions of the Bingham Centre. I would not ask the question if I could not provide the answer.
14. My direct experience of the Bingham Centre in its work has been in relation to what it did in helping improve the Administrative Court. As you know, the Administrative Court is at the centre of what is viewed as the heart of our system for the rule of law in holding the Government to account and ensuring decisions are taken in accordance with the law. If that court cannot act efficiently and speedily and have processes that enable the ordinary citizen to have access to justice, then the rule of law is at risk and our society is significantly diminished.

15. I was therefore enormously grateful when we were undertaking a detailed examination of the work of the Administrative Court for the speed with which the Bingham Centre assembled a team, with the absolutely top class nature of the team and the extraordinarily valuable report it produced with a number of important practical recommendations. The improvement in the processes of the court and the speed with which it can now make decisions has in significant part been due to what the Bingham Centre delivered.

16. So, the answer is plainly "It can." The Bingham Centre is, in my experience and in what is reflected in much of its work, a body we can be sure will deliver on this work that is so badly needed.

17. Support to the Bingham Centre is critical. We are world leaders in business law; we are becoming world leaders in adapting our court system to operate efficiently through the use of technology. I very much hope that the benefit to all our businesses, especially those whose operations in countries where the legal systems are not as developed, really will see the benefit of change. The opportunities are amazing. Many countries look to us as leaders. It is that long-term benefit to all our international companies that we should see as a prize we cannot let go. We therefore need a body like the Bingham Centre to give coherence to the great potential I have outlined.

18. I hope you give it as much support as possible.