



MASTER OF
THE ROLLS

LORD NEUBERGER OF ABBOTSBURY, MASTER OF THE ROLLS

OF SMOKE AND SNAILS

KING'S COLLEGE, LONDON'S BAR SOCIETY ANNUAL DINNER

13 JANUARY 2011

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1. It is a privilege and pleasure to speak at your annual dinner this evening. King's has an exceptionally strong legal tradition, with its world-wide reputation for legal research and legal teaching. In recent years, it has produced two very distinguished High Court Judges – the recently retired David Penry-Davey and David Foskett and two outstanding Lord Justices of Appeal – the recently retired Robin Auld, Patron of your Society and my leader this evening, and Jeremy Sullivan. I have no doubt that many of you sitting here tonight will carve out as equally rewarding and successful careers as they have, both in practice and perhaps on the bench¹.
 2. You are about to embark on your careers at a time when the legal profession is undergoing its greatest period of change for a hundred years. Many of those changes are aimed at ensuring that the profession is both better regulated and better able to serve the interests of consumers, that is to say clients. The future shape of the legal profession will be very much a product of the

¹ I should acknowledge all the help I received from John Sorabji in preparing this talk.

choices that you as its future members make in adapting to the challenges and opportunities which these changes bring with them. With that in mind I thought I might spend some time this evening touching on the issue of professionalism. I do so because professionalism – a commitment to professional ethics – ought to be both the starting point and the guiding principle of your careers. As you shape the legal profession, its structures and its practices across the coming years, the duty will fall on you to ensure that it remains a profession of which, as a society, we can continue to be proud.

3. The legal profession has been a long time in the making. When you enter the profession you will emulate what lawyers have been doing across Europe since at least the 13th Century. Prior to that date, it is debatable whether or not there was a profession for lawyers to enter. From the 13th Century though, to be a lawyer has required an individual, as Professor Brundage of the University of Kansas has it, to be '*formally admitted to practice in one or more courts and [who] at the time of their admission [have] pledged themselves to observe the rules of a special body of ethics peculiar to their calling.*'²

4. For seven hundred years then lawyers have been professionals. But what does that mean? Professor Brundage offers a definition. He says this,

*“A profession in the rigorous sense applies to a line of work that is not only useful, but that also claims to promote the interests of the whole community as well as the individual worker. A profession in addition requires mastery of a substantial body of esoteric knowledge through a lengthy period of study and carries with it a high degree of social prestige. When individuals enter a profession, moreover, they pledge that they will observe a body of ethical rules different from and more demanding than those incumbent on all respectable members of the community in which they live.”*³

² Brundage, *The Medieval Origins of the Legal Profession*, (Chicago University Press) (2008) at 2.

³ *Ibid.*

5. There is much to be said for this definition. As I am sure you know only too well – especially those of you who have exams lurking just over the near-horizon – entry to the profession certainly calls for mastery of a substantial body of esoteric knowledge; of proprietary estoppels; of incorporeal hereditaments; of Louisa Carlill and her struggles with the Carbolic Smoke Ball Company, of Mrs Donoghue and the famous, if possibly non-existent snail in the undoubtedly existent ginger beer bottle, and what Ms Carlill and Mrs Donoghue’s cases tell us about the law of contract and tort. And they are just the tip of the iceberg: to equity, land law and obligations, we can add are: the intricacies of international law (public and private); the technical delights of tax law; European law (both EU and Human Rights); and unjust enrichment, or is that restitution - a subject which seems to always be on the verge of burning bright like 17th Century phlogiston for a brief moment in legal time, before it is consumed by a wider theory of equity; by an equity which had, like oxygen, always existed.

6. For all the intricacy and esoteric knowledge, entry and success in the profession calls for more than a passing acquaintance with ineffective smokeballs and deceased snails. It requires – and here it may be necessary to part company for a moment with Professor Brundage – an understanding that you are not necessarily going to be afforded a *‘high degree of social prestige.’* Lawyers may not be the most popular of professionals in all quarters. That is certainly the view expressed in a recent article by Jonathan Rayner in *The Law Gazette*, entitled, *Why are lawyers so unpopular with the public?* Has said this,

“ . . . there was the time I introduced an old mate of mine to my partner, a solicitor. We had known one another for years and much of his income, as it happened, derived from work I was putting his way. That didn't stop him regaling her for the next half an hour with an account of why he loathed lawyers.

I'm no shrinking violet. I used to be a tax inspector, so I know what it's like to be unloved. Journalists, for that matter, are not universally admired and adored.

But how did lawyers get it so very, very wrong?⁴

I don't intend to try to discuss the correctness of that analysis or to answer that question. There are many possible views and many possible answers, and we would be here for far longer than an after-dinner speech justifies if we were to swim in such waters.

7. There is, of course, nothing new in lawyerly unpopularity as those with a classical turn of mind will well know. Whatever they've been getting wrong lawyers have apparently been getting it wrong for quite some time. Around the second century AD, Apuleius, having referred to lawyers as "cattle of the courtroom", then expressed the view that they were no more than '*vultures in togas*.'⁵ Around the same time, the poet, Juvenal took the view that lawyers were forensic pirates.⁶ While Ammianus Marcellinus two centuries later took the view that lawyers were '*a greedy and debased lot, who conspired with judges to rob the people of justice*.'⁷
8. From Roman times to today then, lawyers – and I must admit, judges, – were and are at least perceived to be a '*sometimes ignorant, lazy and venal lot*' as another famous Roman critic had it⁸, the profession you are about to embark upon, just like the judiciary, has not always been a well-loved one. Popularity, or a high degree of social prestige, is thus something you should not necessarily expect. But then prestige, like popularity, is something which it would be nice to earn as a by-product: it is not something for which a professional should strive to attain.
9. A striving for popularity or for respect at best is a distraction and at worst risks undermining a lawyer's basic duty. That duty has two components - to act in the best interests of one's client, and to promote the proper administration of justice and the rule of law. To seek prestige or

⁴ <http://www.lawgazette.co.uk/blogs/news-blog/why-are-lawyers-so-unpopular-public>

⁵ Apuleius, *The Golden Ass*

⁶ Brundage, *ibid* at 34 – 35.

⁷ As Brundage paraphrases him at Brundage, *ibid*, at 34.

⁸ Brundage, *ibid* at 33.

popularity is hardly consistent with the fundamental professional requirement, set out in the Bar Code of Conduct, with which you will all become familiar, and which requires a barrister to

“. . . promote and protect fearlessly and by all proper and lawful means the lay client's best interests and do so without regard to his own interests or to any consequences to himself or to any other person (including any professional client or other intermediary or another barrister). . .”⁹

Just as judges have to adjudicate without fear or favour according to the law, the professional duty imposed on barristers requires them to act without fear for their own interests in the proper promotion of their client's best interests. In carrying out this basic duty you will be doing something valuable and romantic: you will be contributing to the rule of law, which is so very fundamental to a modern democratic society, and you will be wielding the sword of justice.

10. Such a duty is incompatible with an X Factor approach to professional practice. Like the other professional and ethical duties, this duty must continue to exist and be rigorously followed. As such those duties will enable you to maintain the highest traditions of the Bar. Without an adherence to those traditions, you will not be able to promote the public interest, nor properly your clients' best interest. You will not, as lawyers collectively should do, promote the interests of society as a whole.
11. And here is the point which demands emphasis from Professor Brundage's definition of the profession you intend to enter: entry will no doubt serve you well, but that is not its only function – or frankly its most important function. Practice at the bar will at times be: interesting; challenging; frustrating – not least when perhaps the judge you have been trying to persuade all day still won't see the wisdom of your submissions or the witness you've been cross-

⁹ Bar Code of Conduct, paragraph 303

http://www.barstandardsboard.org.uk/standardsandguidance/codeofconduct/section1codeofconduct/partiii_fundamentalprinciples/

examining just won't give you the answer you're desperate to elicit. In some ways the most important characteristic for success at the bar is high spirits. But, in general, life at the bar will be exciting and fun, as doing anything which you enjoy should be. As such it will make you a better barrister, one better able to argue your client's case to the best of your ability.

12. But entry to the profession does not simply serve you well. It serves society well, and it does so even if lawyers are often the butt of criticism and cruel jokes – whether justified or unjustified. It does so because without a vibrant legal profession, one committed to its professional duties, and one reflective of society as a whole, our open, liberal democracy would be diminished. A society committed to the rule of law requires lawyers willing and able to ensure that due process is afforded to all; to ensure that Justice has a voice and a voice which speaks on behalf of us all. Without such lawyers, lawyers able to act on behalf of any and all, from the most morally repugnant to the most morally deserving, Justice has no voice. And if Justice has no voice, we cease to be a society where lawyers can be criticised: we cease to be a free society.

13. In the coming years, I hope that you can help to give Justice a voice – a voice as clear and as strong as our commitment to the rule of law and as clear and strong as your commitment to the professional ethics and duties which have underpinned the legal profession for over seven hundred years. You may not make lawyers more popular. But you may through your actions be a constant reminder why, popular or not, without lawyers we cease to be a society governed, as US President and constitutional thinker, James Madison, put it, by laws not men.

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