



MASTER OF
THE ROLLS

LORD NEUBERGER OF ABBOTSBURY, MASTER OF THE ROLLS

12 TUNS OF WINE, HORSE PROVENDER AND A ROBE ALLOWANCE

LINCOLN'S INN

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1. It is always a pleasure to be asked to speak at Lincoln's Inn. Not least when the speech comes before dinner rather than after it. Before means that (a) you can relax and drink over dinner, and (b) you run less of a risk of outstaying your welcome, because you have what a real property lawyer might call a *terminus ad quem*.¹
 2. As you all no doubt now I've only been Master of the Roll since October last year; although, some times, it has seemed rather longer. But this evening I don't intend to dwell on interesting moments such as *R (Binyam Mohamed) v Foreign Secretary*. You may or may not be interested in a Judge's view of the experience of seeing one paragraph of a judgment being discussed in op-ed pieces, headlines. TV and radio bulletins and interviews, and, I imagine, the tweets. But my lips are sealed. Because judges must leave their judgments to

¹ I should thank John Sorabji for all his help in preparing this lecture.

speak for themselves. Perhaps one day, when I get round to writing – or having ghost written as appears to be the vogue now – my memoirs from a more distant horizon.

3. One thing the *Binyam Mohamed* case did teach me was that even a Master of the Rolls should not tempt fate. The day before we initially handed down judgment in the case, the Lord Chief Justice asked me how I was getting on with the new job after my first 20 weeks. Blithely ignorant of what was to happen the following day, tempting fate, I said that, for the first time I was beginning to feel in control of things. Let me tell you: one is never in control of things, above all when one thinks one is. As Woody Allen said, If you want to make God laugh, tell him your future plans. Although my favourite of his aphorisms is I'm not afraid of dying - I just don't want to be there when it happens. I suppose that that has some resonance for me now: I'm not afraid of changing my judgments – I just don't want to be there when I do.

4. Tempting fate is of course something that some of my predecessors as Master of the Rolls have done on the odd occasion. Some have got away with it; others have not. Perhaps the most famous of my predecessors to run out of luck was Sir Thomas Cromwell in the 1530s, who ended up finally annoying Henry VIII and joining many other of that monarch's victims on the chopping block- the only MR to have been executed; having mentioned tempting fate, I suppose I should say "the only MR to have been executed so far". John Clerk (Master of the Rolls from 1522 – 1523) was a rather more indirect victim of Henry VIII. While visiting the Duke of Cleves to explain why Henry was divorcing the Duke's sister, he was poisoned, and died as a result on his return to England.

5. In the following century there was an MR who was, at a time when separation of powers and judicial independence were not as Montesquieu fondly believed in England, also an MP and,

indeed, Speaker of the House of Commons. He was William Lenthall, who presided over the initial proceedings to impeach Charles I. After the restoration of Charles II, Charles I's son, he lost all his positions. He failed to get restored to the MR's job despite a bribe to the King of £3,000 (over £1m today), coupled with a letter referring to his "own baseness, cowardice and unworthy fear". At least he was not executed unlike some who were involved with the execution of Charles I.

6. Another who tempted fate, but lived to tell the tale was someone whose name is until last year might not have been so well known: Sir John Trevor. He was Master of the Rolls from 1685 to 1717. For part of that time, he, too, was also an MP and Speaker of the House of Commons. As Speaker, he accepted 1000 guineas (that's about £1.5 million in today's money) from the Common Council of London in return for supporting for the London Orphans Bill. He also accepted what were described as 'gratuities' from the East India Company. He was found guilty of a high crime and misdemeanour by the House of Commons, and removed from his Speakership in complete disgrace, avoiding impeachment for technical reasons. Despite his troubled relationship with moral integrity and respect for the law Sir John, a man too corrupt to remain in office as Speaker of the House remained in office as Master of the Rolls for the next 20 years. Perhaps he was in Jeremy Bentham's mind when that great 18th century philosopher referred to "Masters in Chancery, the Master of the Rolls and other rascals".
7. Later in the 18th century there was Sir John Leach, who, according to one of his successors and my predecessors², was "the most unpopular judge of his generation, displaying a vile temper and unwillingness to listen to argument that was particularly ill-advised as his

² Lord Phillips of Worth Matravers, *My Predecessors in Title*, Presidential address, Holdsworth Club, University of Birmingham 2002

knowledge of the law was scant". This tempting of fate was rewarded in the usual way as he was repeatedly overruled. More unusual tempting of fate was indulged in by Sir Archibald Smith, briefly MR at the beginning of the last century. Remarkably, he was 7 foot one inch tall. But it was before his judicial career that he tempted fate: when at Cambridge, he rowed in the boat race despite being unable to swim. Fate was tempted as it was one of those boat races when the Cambridge boat sank, but he was rescued.

8. None of this tells you why I chose the title 12 tuns of wine, horse provender and a robe allowance for tonight's talk. Well once upon a time the MR would have been able to look forward to certain privileges. At one time an Act of Parliament – the first to refer to the office by that title – exempted the Master of the Rolls from forfeiting that office if he failed to accompany the King to war.³ That Act has now been repealed, but, fortunately for me, the monarch no longer goes to war in person and judicial offices are held during good behaviour.

9. I would also have been able to look forward to taking possession of the luxury of Rolls House on Chancery Lane, with a staff to match. The house was given over to the MR in 1377, the first year of Richard II's reign. It had previously been a home for Jews who converted to Christianity; the Jews were expelled from England in 1290, so presumably any converts had died by 1377, some 87 years later, so the house could be used for another purpose. I would also have apparently been entitled to receive, as the then Chief Clerk in Chancery, a tun of wine a month from the King's wine cellar, as well as an allowance from the King to pay for my robes, food for my horse, a luxury boat to take me to and from Westminster and such fuel as I needed to keep Rolls House warm. I'd also have been in line for 'extraordinary' financial rewards, pensions, licences 'wines from the butler of England' and benefices. It is perhaps unsurprising that given all this complaint was made in Parliament during Richard

³ 11 Henry VII, c. 18 (1494), cited in Megarry, *Miscellany at Law*, (1st Edition) (1986) (Stevens & Son) at 335

It's time against the Master of the Rolls and the other clerks in Chancery that, "*they were over fat, both in body and purse . . .*"⁴ And I imagine rarely sober if they worked their way through a tun of wine a month.

10. The past truly is a different country. I have to say that so far my time as Master of the Rolls has been a more sober affair than it clearly was in days gone by. And I imagine that if I had a horse, he'd not have been feasting on any royal provender. So my experiences as Master of the Rolls have been really very different from that of my well-fed and watered predecessors. What is it like then to be Master of the Rolls today?
11. In many ways, it is a daunting job. Not least because every time anyone mentions Lord Denning – a former Bencher and Treasurer of this Inn – I feel a mixture of pride and inadequacy in being one of his successors. My primary responsibility is of course judicial. I am President of the Court of Appeal's Civil Division - a position which the Master of the Rolls has held for some considerable time. Legend has it that the MR obtained this position out of fear of another of my famous predecessors, Sir George Jessel. A Master of the Rolls of such prodigious ability that he only ever reserved judgment twice, and only then out of deference to his colleagues on the Bench. The then Court of Appeal judges were too scared to sit in judgment on appeals arising from his first instance decisions, so Jessel was made President of the Court of Appeal and stripped of his jurisdiction to sit at first instance.
12. I remain primarily a judge then, as have successive Master of the Rolls been since at least 1265. But the Master of the Rolls retains a number of administrative responsibilities. Some are rather dull: I am, for instance, responsible for enrolling deeds poll. I'm also still

⁴ Spence, *The Equitable Jurisdiction of the Court of Chancery*, Vol. 1 (Stevens & Co) (1846) at 359, footnote f.

responsible for keeping manorial records, although I think they're kept on my behalf by the National Archives. Most famously I am, of course, Keeper of the Rolls.

13. There was some concern in the parts of the press last year that the Master of the Rolls would no longer have any Rolls to be Master of. Historically, Masters of the Rolls have been responsible for admitting newly-qualified solicitors to the solicitors' rolls. One consequence of the 2007 Legal Services Act has seen the Master of the Rolls stripped of this responsibility, which has passed to the Solicitors Regulation Authority. Those who were worried that I'd lost the rolls need not have feared. The Rolls of which I am Master are not the solicitors' rolls. The title refers instead to the rolls of the King's Chancery; later the Court of Chancery. There has, of course, been no Court of Chancery since 1873. So I am Master of the Rolls of a court that hasn't existed in nearly 140 years. But I am still responsible for them. They're kept in the National Archives.⁵

14. Perhaps because of this, I am Chairman of the Council on National Records and Archives; the body which, amongst other things, monitors the work of government departments in maintaining and selecting records to be preserved for posterity. I was completely unaware of this function until I got the job. It is very rewarding as it enables me to learn what goes on in government departments in terms of record-keeping. As usual, focussing on one aspect of an enterprise, in this case, Government departments, casts an indirect shaft of light on the whole working of the enterprise. It is also rewarding as it looks both backwards and forwards, including the release of records under the 30-year rule (currently to be reduced to 20 years). And the National Archives in Kew are a rich treasury of historical documents; forwards in the sense of learning about modern techniques of accessing, coordinating, selecting, retaining and storing electronic information. Additionally I chair the Magna Carta

⁵ *Public Records Act 1958.*

Trust, founded in the 1950s; of course, the Magna Carta is due to celebrate its 800th anniversary in five years' time, so we are preparing for the celebrations.

15. In the judicial system, I am both a judge and an administrator. Since the Woolf Reforms in the late 1990s the Master of the Rolls has also been given further responsibilities. I am now, as the somewhat Orwellianly named Head of Civil Justice, in modern terms required to provide leadership in the field of civil justice. I chair the Civil Procedure Rule Committee; the body responsible for the development of the rules of court. I also chair the Civil Justice Council, the body responsible for ensuring that the civil justice system is kept under scrutiny, for highlighting its failings and proposing solutions to them. I am number 2 to the Lord Chief Justice in the English and Welsh judicial pecking order, and am on the Judicial Executive Board, in effect his judicial cabinet responsible for managing the judicial system and engaging with the Courts Service and the Ministry of Justice on behalf of the Judges

16. I have therefore three distinct roles: judicial, administrative and policy. Finding the right balance between them is essential. It's still early days for me. Hopefully, I'll strike the right balance and hopefully history will treat me kindly. Hopefully, after I am gone, I won't receive a similar accolade to that which a former Lord Chief Justice received from Lord Devlin in 1985. Devlin said that Lord Hewart, LCJ from 1922 to 1940, "has been called the worst Chief Justice since Scroggs and Jeffries in the seventeenth century", and then added "I do not think that is quite fair. When one considers the enormous improvement in judicial standards between the seventeenth and twentieth centuries, I should say that, comparatively speaking, he was the worst Chief Justice ever."

17. Time will tell, as indeed it does tonight. Thank you.

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