



COURTS AND  
TRIBUNALS JUDICIARY

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IN THE SHADOW OF MAGNA CARTA

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**(1) Introduction<sup>1</sup>**

1. It is a real pleasure to have been invited to Washington and to be able to say a few words about Magna Carta. Rather than dwell on the history, on what went on at Runnymede on that summer's day in June 1215, I thought I would focus on its relevance today.
2. Alfred North Whitehead, a Cambridge philosopher, once said that *'The safest general characterization of the European philosophical tradition is that it consists of a series of footnotes to Plato.'*<sup>2</sup> And Plato's works? They have been said to be nothing more than footnotes to Homer.<sup>3</sup> While some historians would no doubt say that Magna Carta is of little practical relevance today. I think it can safely be said, as generalisations go, that the development of the Anglo-American common law has been carried out in the shadow – if not as footnotes to – Magna Carta.
3. No doubt a judge faced today with an argument based on the provisions in Magna Carta would take Chief Justice Roberts' approach. Last November he noted that

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<sup>1</sup> I wish to thank John Sorabji for all his help in preparing this lecture.

<sup>2</sup> Alfred North Whitehead, *Process and Reality: An Essay in Cosmology*, (1929), Pt. II, ch. 1, sec. 1.

<sup>3</sup> D. Hall, *Whitehead, Rorty, and the Return of the Exiled Poets*, in J. Polanowski & D. Sherburne, *Whitehead's Philosophy: A Documentary History*, (2004) at 83.

*'If you're citing Magna Carta in a brief before the Supreme Court of the United States, or in an argument, you're in pretty bad shape, . . . We like our authorities a little more current.'*<sup>4</sup>

The same is true in England and Wales. The common law however is wider than cases and authorities. It rests on common values, a common tradition and a common jurisprudential approach – the common law method of precedent arrived at through an adversarial process.

4. Magna Carta gives one of the earliest expressions of those common values: of our belief in the idea that no one is above the law; that a just society is one governed by the rule of law. If I can borrow from John Adams: that we live under a government of laws, just laws, not men;<sup>5</sup> of our belief in representative government – its chapter 14 foreshadowing a famous demand made here that taxation rests upon representation; and of our belief in open markets. The latter may surprise you. I do not suggest that its draftsman and John's barons were adherents of a nascent Chicago school approach to economic liberalism; that they were early incarnations of Milton Friedman. If we pay attention however to chapters 33 and 25, 41 and 42, and their emphasis on ensuring the free movement of trade goods within and across borders, the free movement of tradesmen (businesses) through prohibiting the application of tolls on them upon entry into the State, we can certainly see an early essay into the realms of free trade.
5. Common values can always find expression in many different ways. A government of laws can take the form of a constitutional republic or a constitutional monarchy. Representative democracy can be presidential in nature or parliamentary. Constitutions can be codified or uncodified. They can have the status of fundamental law, or that idea can be absent as it is in

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<sup>4</sup> J. Roberts cited in J. Bravin, *Chief Justice Roberts Wishes Magna Carta an Early Happy 800th Birthday*, Wall Street Journal Law Blog (5 November 2014) <<http://blogs.wsj.com/law/2014/11/05/justice-roberts-wishes-magna-carta-an-early-happy-800th-birthday/>>.

<sup>5</sup> J. Adams, *The Works of John Adams*, (Boston, 1851) Vol. 4, *Novanglus*, Essay no. 7 at 106.

the United Kingdom; although here it is worth pausing to consider that at an early stage Magna Carta in one of its versions was accorded a status akin to that which the US Constitution has: that of fundamental law. In 1368 Edward III enacted a statute that confirmed the Charter. It stated that,

‘. . . The [Magna Carta] . . . be holden and kept at all points; and if there be any statute made to the contrary, it shall be holden for none.’<sup>6</sup>

Statutes enacted inconsistent with Magna Carta would be, in other words, unconstitutional. While that provision remained in force until 1863, the idea that laws could be struck down based upon that provision or the common law did not take hold in England and Wales. Despite Sir Edward Coke CJ’s attempt in *Dr Bonham’s Case*,<sup>7</sup> the idea that courts could embark upon the judicial review of legislation never became a feature of our constitutional settlement. We never had a *Marbury v Madison*<sup>8</sup> moment. We did not because, as Associate Justice Matthews rightly captured it in an extended discussion of Magna Carta in *Hurtado v California* (1884), the check on Parliamentary supremacy in the United Kingdom was Parliament itself through ‘*the power of a free public opinion represented by the Commons.*’<sup>9</sup>

6. Common values different expression then. And equally, common expression. Both our constitutions secure a rigorous application of the doctrine of separation of powers. Courts and an independent judiciary exercise the judicial power of the State; something which Magna Carta’s demand that only those learned in the law be appointed as judges and that the court should be separated from the King’s court provides an early commitment.<sup>10</sup> And the courts? Their approach is governed by a deep-seated commitment to, as the 1354 version of Magna

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<sup>6</sup> 42 Edw. 3, c.1.

<sup>7</sup> (1610) 8 Co Rep 113b.

<sup>8</sup> 5 US 137 (1803).

<sup>9</sup> 110 U.S. 516 (1884), 531 – 532.

<sup>10</sup> Magna Carta 1215, chapters 17 and 45.

Carta put it, ‘*due process of law*’<sup>11</sup>; in US terms, to the Constitution’s procedural due process guarantees<sup>12</sup>; in modern parlance in England and Wales, procedural justice<sup>13</sup>.

7. If I can return to my metaphor, shadows can lengthen; they can become more defined. Equally, they can become fuzzy over time; they can recede. Commitments can fade over time, as we forget their basis or the values they articulate. I think I can safely say that even without celebrating its anniversary this year, the common values that flow through and from Magna Carta, remain strong within our two nations. The question is can we improve the means by which we give life to those values? Our courts, for instance, articulate commitments to equality before the law; to effective access to justice.
  
8. Can we take steps to better realise them? I believe we have to do so. We cannot but seek to improve how our courts deliver justice. We have to do so because any weakening of our justice systems creates a weakening of our civil society. It starts on the road back before Magna Carta, where men not laws governed. As Associate Justice Felix Frankfurter put it, and I am sure we all agree, ‘*There can be no free society without law administered through an independent judiciary*’.<sup>14</sup> If the law is to be so administered, then the very task of governance that is required necessitates a continuing scrutiny of the efficacy of the institution to assure the respect that it needs to function, with the consequence that we cannot but look to the possibility of reforming our justice systems. In England and Wales we have recently embarked upon such a reform programme. It is not reform for reform’s sake. Our aim is clear. We intend to ensure our courts and our tribunals are better equipped to deliver fair and high quality justice, are better able to realise Magna Carta’s values, and to secure the rule of law that underpins our free and open society. How do we propose to do so? I will suggest

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<sup>11</sup> 28 Edw. 3, c.3.

<sup>12</sup> US Constitution, 5<sup>th</sup> and 14<sup>th</sup> amendments.

<sup>13</sup> Magna Carta 1215, chapters 39 and 40.

<sup>14</sup> *United States v United Mine Workers* 330 U.S. 258 (1947), 312.

that the reforms should have three limbs: the creation of one system of justice; the development of one judiciary; and the enhancement of access to specialist justice. I want to take the three in turn.

## **(2) One system of justice**

9. *'There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.'*<sup>15</sup>

So said the US Supreme Court in *Griffin v Illinois*; another case that made specific reference to Magna Carta, noting how it gave expression to the unceasing desire to *'move closer to [the goal]'* of providing *'equal justice for poor and rich, weak and powerful alike . . .'*<sup>16</sup> That goal is given expression in England and Wales in what the common law has long acknowledged to be the constitutional right of access to justice, available to and guaranteed for all citizens.<sup>17</sup>

10. It is, of course, one thing to proclaim your commitment to equal access to justice. It is another to transform that formal commitment into a substantive, lived, reality. Effecting the transformation requires there to be: clarity and certainty in the law; access to independent legal advice, which is both readily available and affordable; and, access to a first class system of readily accessible courts and tribunals. A complete answer would however need to take account of all three issues. I can only focus on the last of the three today.

11. In England and Wales our court system – County Court, High Court and Court of Appeal – is, bar one recent formalistic and one substantive change, the product of reforms carried out in the 19<sup>th</sup> Century. The formalistic change was the merger in 2013 of the various County Courts into a single County Court for England and Wales. The substantive change was the creation of a new single Family Court in the same year. We live with a Victorian and post-

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<sup>15</sup> 351 U.S. 12 (1956), 19.

<sup>16</sup> 351 U.S. 12 (1956), 16.

<sup>17</sup> *Bremer Vulkan Schiffbau und Maschinenfabrik v South India Shipping Corp* [1981] AC 909, 977.

Victorian superstructure, one which not only applies to the court structure but equally to court processes, buildings and the nature of hearings.

12. Things are more modern in the Tribunals, which is to say the Upper and First-tier Tribunal. Unlike the courts, their jurisdiction is primarily UK-wide. The reason for this is that they have, in the present form, only been in existence since 2007. Prior to that the UK had what could best be described as a patchwork quilt of many specialist tribunals, each of which had their own jurisdiction, differing origins in substance, time and personnel. They can be traced to 1908, and the creation of what was then the local pension committee established under the Old Age Pensions Act of that year.<sup>18</sup>
13. In legal terms they are a recent innovation. Their procedures differ from those in the courts, with greater flexibility and accessibility, in some cases a more inquisitorial or investigative approach and, for instance, no general expectation that lawyers represent parties. Their jurisdictions are limited in scope in contrast to courts of general jurisdiction. The Employment Tribunal is, for instance, limited in jurisdiction to employment disputes. Their personnel differ from the courts, as they are not only constituted of the judiciary but also non-judicial members who are experts from the field for which they have responsibility.
14. In 2007 the patchwork quilt was rewoven. The various tribunals, with one or two notable exceptions, were merged into a new hierarchical structure. The tribunals became chambers. Greater use of judicial personnel from the courts became the norm, while use of specialists remained at the heart of the system. The office of Senior President of Tribunals was created, with equivalent responsibilities to those of the Lord Chief Justice of England and Wales, to

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<sup>18</sup> E. Jacobs, *Tribunal Procedure and Practice*, (2014) at 3.

provide leadership for the tribunals judiciary. In essence, as occurred with the courts in the 1870s, out of the many a single tribunals justice system was forged.

15. Like the courts, however, the tribunals also rely on a post-Victorian superstructure. Their case management processes remain, primarily, paper-based. Hearings take place in buildings inherited from the recent and, sometimes not so recent, past. In 2015 we thus have two complementary justice systems, both of which are to a significant extent products of our past.
16. The question, the pressing question, we are faced with today is how to ensure that these justice systems are best able to act as one; to provide one system of first class justice for all our citizens. It is particularly pressing today because, unlike any time in our past, this question – and the reforms it will and cannot but necessitate – arise against a recasting of the State subsequent to the financial crisis of 2007. We can answer this question in a number of ways. I will only outline three.
17. First, we must not only recognise that clarity and simplicity has to be central to court and tribunal processes, we have to achieve it. In the past we have attempted this through rendering rules of procedure as simple as possible. Experience shows that where this succeeds, it does not always last. Rules like substantive law accrete precedent as readily as a ship's hull attracts barnacles. Equally, rules can all too often become an obstacle to justice as they can become the basis for adversarial skirmishing by parties in an attempt to win on procedural grounds. In an era where large numbers of litigants are unable to secure the assistance of lawyers the need to avoid such eventualities becomes all the more pressing. It does so because complex rules can become a barrier to effective access to those without expert legal advice; obtaining thereby a procedural advantage in litigation for those who are

represented unless the court or tribunal is astute to intervene. The result is an absence of equal justice in anything other than the formal sense. How can we overcome this problem?

18. For those with long memories, Dean Clark famously called for the, then, recently introduced US Federal Rules of Procedure to be '*the handmaid of justice*'.<sup>19</sup> In doing so he consciously echoed Collins M.R.'s earlier comment to the same effect: rules were to be the means by which substantive justice was achieved.<sup>20</sup> Today we seek to achieve this through ensuring that our procedural rules are governed by an overriding objective – similar in concept to rule 1 of the Federal Rules, which Dean Clark did so much to devise. That overriding objective calls on the civil courts to do more than secure substantive justice in individual cases. It calls on the courts to manage process with that aim in mind, but equally with the aim of securing economy and efficiency in litigation, of securing equality of arms, consistent with a commitment to proportionality. The process must not only be proportionate to the cost, complexity and value, among other things, of an individual case but also so that access to process is distributed equitably across all those who need to call upon the justice system. Our rules still require process to be the servant of substantive justice, but they require the courts to take account of the need to be that servant in all cases not just the one in front of the court at any one time. Substantive justice is as much now a function of distributive as it is corrective justice.

19. This instrumentalist aim should lead us to develop our procedure in new ways, and ones that for the first time take full account of developments in information technology. This could be accomplished in a number of ways. At the present time we have a number of different means of commencing proceedings across the courts and tribunals depending on the relevant rules of procedure. We have different rules on service and due notice, and for filing documents

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<sup>19</sup> C. Clark, *The Handmaid of Justice*, Washington University Law Quarterly Review Vol. 23 [29138] 297, 297.

<sup>20</sup> *Re Coles* [1907] 1 K.B. 1, 4.



with the court and serving them on other parties. In each case the process is, as I mentioned earlier, primarily paper-based.

20. These processes are, given their nature, labour intensive for the courts and tribunal administration. They are equally labour intensive for litigants, and in the case of lawyer-less litigants they are not as easy to follow as they could be. In order to further the aim of securing greater distributive justice, we could take a step that both Collins M.R. and Dean Clark would have well understood. We could merge the initial aspects of our various processes into a single, common process just as we once replaced the individual procedures contained in the common law forms of action into a single action. This common process would not be paper-based. It would be IT-based.

21. Litigants should in the future be able to access a courts and tribunals website, through which they can initiate proceedings, pay the relevant fee and do so through the use of intuitive, simple-to-use web forms. This should then form the basis of effective service either by the litigant or the court, the starting point for the generation of procedural timetables unique to the proceedings, the electronic court file and e-based case management. As has recently been suggested by Sir Brian Leveson, the President of the Queen's Bench Division of our High Court, assistance should be made available to litigants via the use of digital navigators to help them use the new system.<sup>21</sup>

22. A single web-based system, leading into e-filing and management will help to secure a more efficient and economic system, thus ensuring that the State's resources can be targeted properly across the justice system. It will also ensure that litigants, whether they have lawyers to assist them or not and irrespective of their financial resources, can access the system on an

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<sup>21</sup> B. Leveson, *Justice in the 21<sup>st</sup> Century* (9 October 2015) at [46] <<https://www.judiciary.gov.uk/wp-content/uploads/2015/10/pqbd-caroline-weatherill-lecture-2.pdf>>.

equal footing. The existence of e-prompts, where procedural deadlines are imminent; the use of e-receipts and notification to the court and the parties when procedural obligations have been completed (or remain incomplete); and the use of plain language with easy to understand instructions, should all go towards minimising the possibility that rules will become tripwires for the unwary or the inexperienced. Greater use of the Internet should enable the justice system to better secure its objective of securing substantive justice for all those who need to call upon the courts and tribunals.

23. Greater use of the Internet will make the justice system generally more accessible in another way. Going to court can be a daunting prospect for many of our citizens. The daunting can translate into inaction; into rights not being vindicated, into abuse of private and public rights remaining unchallenged and effectively unchallengeable. Process in the court system should not contribute to citizens failing to seek redress when their rights are interfered with. The growth of the Internet has meant that more and more of us are familiar with buying, selling and complaining online. Whether we are buying through a web supplier or direct from businesses, selling via eBay or similar web-platforms, writing reviews or emailing our complaints about a service direct to the source, most of us are at home on the net. That we are suggests to me that an Internet-based process to initiate and manage proceedings will be something that individuals will be at home with, and to a far greater extent than the previous paper-based process. Greater use of the Internet can thus be harnessed to increase access to justice.

24. This leads me to my second point. Increasing use of the Internet and information technology generally should enable us to reform another aspect of our post-Victorian superstructure: our court estate. It could do so in at least two ways. First, the replacement of paper filing systems with e-filing should enable a reduction in the need for back office space. We can thus

modernise our court buildings, making better use of our space. As importantly, we can reduce the number of times when litigants and their lawyers have to physically attend court. Moving a significant amount of pre-trial (not trial) process on-line, while promoting the use of technology to enable hearings to be virtual, will arguably reduce the need to maintain some of our post-Victorian court estate. Use of the Internet should in itself, through greater familiarity with it among the public, open up access, and just as importantly through reducing the cost and time spent on court appearances, bring the price of justice within the reach of more citizens than has historically been the case.

25. This is intrinsically linked with my third point. Increasing use of technology will enable us to realise an expansion of justice in more than the formal sense. It will enable the court system to create a multi-door courthouse; again, an idea first developed here in the US. Procedural reforms across our justice system – whether it is the promotion of mediation and conciliation in civil and family proceedings, or the promotion of the more accessible means of dispute resolution through the Tribunals’ justice system – have been moving us towards this idea for the last thirty years. Effective use of technology will enable us to assess claims when they are issued to determine whether they are suitable for resolution by means other than formal adjudication, to assist the parties to select the appropriate method of resolution and manage the claim appropriately. Equally, it will enable us to direct those claims that are unsuitable for non-formal adjudication to the appropriate litigation track with the procedure tailored to the claim’s needs, while also enabling claims to move back to that track if consensual resolution is not achieved. In this way we could expand access to justice through facilitating an expansion in our concept of justice, and ensure that the justice system’s resources are targeted proportionately.

26. Taken together – modernisation of process, greater use of technology, the expansion of justice opportunities – should, with careful planning and proper implementation, enable us to provide a system of justice that is first class, accessible, and appropriate in nature for all citizens. It will enable us to replace our present structures, physical and procedural, with ones fit for the Information Age of the 21<sup>st</sup> Century in just the same way as we replaced a justice system that evolved to serve a medieval agrarian society with one fit for the Industrial Age in the 19<sup>th</sup> Century. Means and method may change, but the aim remains to forge a system that is best able to secure the rule of law.

### **(3) One judiciary**

27. This leads me to my second substantive subject: one judiciary. The structure of our judiciary is again a product of a long inheritance. As such it has developed what can only be described as true complexity. This is characterised in a number of ways.

28. One way to categorise our judiciary is by reference to the courts and tribunals. In the former courts judges sit. In the latter, judges of the First-tier and Upper Tribunals sit, as do non-legal members of the Tribunals. On the surface a straightforward distinction. But, courts judges are also judges of the Tribunals, although they can only sit there in accordance with directions given by me, as Senior President of Tribunals, and under arrangements made by the Lord Chief Justice. Tribunals judges can sit as judges in some of the courts, again in accordance with various deployment and assignment procedures.

29. Another way to categorise the judiciary is hierarchically. In the courts, the Lord Chief Justice, Master of the Rolls and other Heads of Division, myself and Lord and Lady Justices of Appeal are judges of the Court of Appeal. More than that, they are the Court of Appeal and vice versa. The same is the case for High Court judges and the High Court. In our County

Court sit Circuit judges and District judges sitting as judges of that Court. They are not the court. Fairly straightforward. To a degree. The seeming simplicity is undone by the fact that some, but not all, of the Heads of Division are also judges of the High Court: they too are the High Court and vice versa. All the Court of Appeal and High Court judges are also – among a whole host of other types of judge including Tribunals judges, judges of the County Court. A similar pattern can be seen in the Tribunals. Again a superficial straightforward hierarchy is underpinned by a complex web that enables certain judges to sit in all levels of the structure.

30. A third way in which the structure could be characterised is by reference to the various statutory provisions that enable judges to be authorised to sit in different courts and tribunals to those to which they were appointed. In some cases these authorisations are horizontal for example, to enable a Circuit judge whose primary appointment is to sit in the County Court, to sit in the Family Court. In other cases it enables the judge to sit in a higher court, for instance, a Circuit judge can sit, if authorised, in the Crown Court (our superior criminal court), the High Court and the Court of Appeal Criminal Division.

31. So far I have only concentrated on the judges. In addition, we have High Court Officers – the Queen’s Bench and Chancery Masters and the Registrars. Officers who exercise judicial functions: the inspiration for US Special Masters and Magistrates. When they sit in the High Court they are officers of the court, but when they sit – as they can in the County Court – they are judges of the County Court. And then there are multiple types of deputy judges; practitioners who sit as judges on a part-time fee paid basis in a variety of different courts and tribunals.

32. This picture is less than ideal, which is not to suggest that it doesn’t work. It does. What it does though is carry with it a number of practical problems. First, it requires an otherwise

unnecessarily complex set of arrangements to be put in place and carefully maintained to ensure that judges are properly authorised to sit in various courts and tribunals.

33. Second, it carries with it limitations on sitting arrangements that are a product of history. The Master of the Rolls, for instance, unlike the High Court Heads of Division isn't a judge of the High Court. He can only sit in that court if specifically authorised to do so by the Lord Chief Justice. The rationale for this was: Sir George Jessel MR. A dominating figure in the courts in the late 19<sup>th</sup> Century. As Master of the Rolls he was both a judge of the High Court and Court of Appeal. He preferred the High Court, and from 1873 to 1881 he sat there rather than in the Court of Appeal. In 1881 when Lord Justice James died the remaining Lords Justice of Appeal did not feel up to sitting on appeals from Jessel MR's decisions.<sup>22</sup>
34. The answer was provided by Parliament when it enacted the Supreme Court of Judicature Act 1881. One of its provisions transformed the office of Master of the Rolls into one that is solely as a judge of the Court of Appeal. No longer would other Court of Appeal judges worry about having to pass judgment on his decisions. Less picturesque examples of restrictions that lack any real modern necessity exist in abundance.
35. If we are to improve the delivery of justice, one contribution to that aim might be a reconsideration of this complex web of judicial offices. We could look to rationalising the number of offices. What justification can there be, for instance, to continue to appoint different types of judge who can sit in the same level of court and tribunal? A modern system ought not to maintain artificial distinctions, particularly if they serve no proper purpose and where they arguably hinder deployment and inhibit the individual judge's career opportunities.

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<sup>22</sup> Lord Evershed, *The Court of Appeal in England*, (1950) at 12.

36. Our starting point ought to be one of principle: we need to maintain our commitment to an independent and impartial judiciary, one appointed on merit, and with the right mix of abilities, knowledge and skills. We should aim for as simple a structure as is consistent with that aim. We should be looking to maintain a judicial hierarchy, one that maintains the constitutional role of the senior judiciary – the Court of Appeal and High Court judges, while developing a structure of judges below that level who are capable of sitting as judges across courts and tribunals of comparable level. A framework that enables flexible deployment to maximise opportunity and efficiency and facilitate those judges with leadership responsibilities being able to plan, allocate and distribute work between judges; to plan future recruitment; and to better implement judicial training to improve skills and to facilitate merit-based promotions.

37. Magna Carta called for judges to ‘*know the law of the realm*’.<sup>23</sup> We need to work towards creating one judiciary, capable of enabling the right judge to be able to sit in the right court or tribunal on the right case. In this way, we can ensure that those judges who know the law of the realm are always able to deliver justice in as efficient and effective a manner as possible.

#### **(4) Specialist Justice**

38. Reform is only part of the story. It must be complemented by quality, that is a drive to ensure that our judiciary is capable of recognising and applying good practice and innovating and developing their specialist knowledge.

39. Innovation and the judiciary are perhaps two things which are not ordinarily seen as going hand in hand. The legal profession and the judiciary are typically understood to be

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<sup>23</sup> Magna Carta 1215, chapter 45.

conservative forces, in the sense that they resist change. The extent to which this is true is, of course, a matter of debate. But as stereotypes go it is one that persists.

40. Our duty to secure the rule of law it seems to me more than suggests that we have to be capable of innovation. We cannot simply assume that our duty is discharged by deciding cases; as central as that is to the judicial role. The judicial power of the State requires more. Sitting back and adjudicating on issues and evidence presented by well-briefed, skilled advocates is one thing. Such situations are not always the case. All too often we are called upon to determine disputes where one or more parties are without legal representation. As such we have to be more than the referee in an adversarial process. We may need to be more investigative, we may need to take active steps to secure equality of arms. Within the arena of family justice in England and Wales we have been developing such techniques. We have had to innovate, to learn from other jurisdictions. We have had to change to a problem solving approach, so that we are able to undertake the proper identification of the issues in dispute, control the evidence needed, and in certain cases, question witnesses.

41. Such innovation is only the starting point. If we are to see the justice system become an IT-based multi-door system, we will need to develop the necessary skills and techniques to ensure it works as best it can. A problem-solving approach in court will have to be matched by a problem-solving approach to case management.

42. The development and use of specialist knowledge has always been a hallmark of the Tribunals judiciary. It is an ever present feature of the courts judiciary. This is of crucial importance for two reasons. First, harnessing specialist knowledge is a key means by which we can foster innovation. Knowledge of approaches from other jurisdictions underpins the development of collaborative justice in the family courts, such that the court-controlled



inquisition becomes a collaborative inquisition between the judge and other professionals and the parties themselves. What we learn in one area or from one source can be applied creatively in others.

43. Second, as we develop new techniques and new ways of delivering justice new demands will be placed on the judiciary. Judges will have to understand their caseload to a greater extent than in the past, be able to identify features of cases that are out of the ordinary, and they will have to be able to predict, react and actively direct cases so as to try and achieve the best quality outcome in each case. That outcome may or may not be an adjudicated judgment. That will depend on the nature of the case. We will need specialist skills and knowledge to best achieve such results for litigants and the State.

## **(5) Conclusion**

44. My starting point today was Magna Carta. I have strayed far from it. In doing so however I have tried to sketch out a number of ways in which we are trying to reshape our justice system in order to better realise its commitment to equality before the law, to better enable us to secure the rule of law. At the start of his famous treatise, *A Theory of Justice*, John Rawls commented that '*laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust*<sup>24</sup> or, as he might have gone on to say, if they produced injustice.
45. The reforms and potential reforms I have outlined will no doubt embed greater efficiency in our justice system. Equally, they aim at ensuring that the system is as 'well-arranged' as it can be in the Internet Age. We seek these reforms not because efficiency and a more robust structure are our aims. We do so in order that our courts and tribunals are better able to

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<sup>24</sup> J. Rawls, *A Theory of Justice* (revised edition) (1999) (Harvard) at 3.

deliver justice. *‘Justice the first virtue of our social institutions’*<sup>25</sup> is a living virtue, that has to be available to all substantively and not merely formally. We seek it so that Magna Carta’s shadow remains strong in the 21<sup>st</sup> Century.

46. Thank you.

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<sup>25</sup> J. Rawls, *ibid.*