

Thursday, August 06, 2009

Top British judge Lord Bingham on the rule of law

Thursday, August 06, 2009



Lord Bingham is the top judge in Britain. He was Master of the Rolls, Lord Chief Justice, and is Senior Law Lord. He was interviewed by Joshua Rozenberg on July 1. Here are excerpts chosen by [The Daily Star](#), from the full interview at www.biicl.org

Q: Why is the rule of law so important today?

A: We live in a world and, to some extent, in a society, in which great differences exist – of race, of nationality, of religion, of wealth etc. No simple principle is going to transmute all these differences into universal harmony, but it seems to me that observance of the rule of law is perhaps the nearest we can get to a universal, secular religion.

Q: And, looking at some of these international aspects – it's a very broad topic isn't it?

A: It's a very broad topic. Are there, for example – and this goes to conflict, not post-conflict situations – weapons that

ought to be outlawed? From time to time in the history of international law various weapons have been thought to be so cruel as to be beyond the pale of human tolerance. I think cluster bombs and land mines are the most recent examples. It may be – it may be, I'm not expressing a view, that unmanned drones that fall on a house full of civilians is a weapon the international community should decide should not be used.

Q: And what about this question of the accessibility of legislation?

A: Well there have been important exercises in trying to clarify and simplify legislation. The Australians for example carried out an interesting exercise by which a bill was rewritten and reduced in length by about half, without any of the essential provisions that were in it to begin with, being omitted.

Q: What about equality before the law? The importance of minorities having a fair hearing and so on? How do you balance, though, protection for minorities against protection from the majority? I mean, it's a classic question, but sometimes people feel that the rule of law is enforced by minorities at expense of the majority.

A: I think you're really talking about the international protection of human rights, and there are two points I'd make in response: the first is that any Charter or Convention of rights no matter what it's called, is fundamentally there for the protection of minorities because majorities are represented in Parliament, they can make their voices heard, and to a very large extent they can look after themselves. It's the oppressed, unpopular minorities that have struggled to make their voices heard.

But the second point I'd make in response is a very important one, and it is that in the European Convention, which is the Convention that operates in this country and in a large number of other countries, it has been said time and time again that there needs to be a balance between the rights of the individual and the rights of the community of which the individual is part. Now there are some rights like the right not to be tortured, in which there is no balance to be struck, but for most of the rights in the Convention there certainly is and the European Court of Human Rights referred repeatedly to the search for balance which is inherent in the Convention.

Even when one is dealing with an alleged terrorist, account has to be taken of any fair legal system that he or she is an alleged terrorist and insofar as any procedure exists, as it does, in this country and in other countries, to

determine whether it is appropriate to detain somebody, to keep them in prison and behind bars, the Convention requires that there should be a fair hearing.

Now, fair hearing doesn't necessarily mean that all the protections of a full-blown criminal trial should be afforded to the individual but it does mean the thing should be fair in the sense that the person knows broadly what the thrust of the case against him or her is and has a reasonable opportunity to answer it.

So the difficult question here is to draw the line between a hearing which is fair and a hearing which isn't. And the judges have struggled, I think on the whole successfully but some may think unsuccessfully, to draw the line in the right place and the place which Convention authority indicates.

Q: How do we compare with the other countries at the moment?

A: I don't think that any country could claim perfect compliance any more than anybody could claim perfect goodness in a sort of spiritual sense but I think our own record compares extremely well with most countries in the world and perhaps with all countries in the world. It is after all an expression that a British lawyer invented, the first reference to the rule of law in 1885, was Professor Dicey, and we've remained the leader.