

**Remarks of Professor Shimon Shetreet in the  
Book Launch of the Second Edition of Judges on Trial at Middle Temple London  
on 13 Nov 2013**

His Lordship Lord Reed, member of the The UK Supreme Court

Dr. Turenne,

Distinguished Judges and Jurists,

Dear guests,

It was over 30 years ago since I came to the UK to do complimentary field-research and to conduct interviews with over 70 judges, barristers and academics to compliment my research on the English judiciary which was later published in 1976 under the title of "Judges on Trial"

It is for me a great pleasure and a moment of special excitement to be here to celebrate the second edition of "Judges on Trial" which Dr. Sophie Turenne and myself joined forces to complete over the last three years. I would like to express first on this happy occasion deep thanks and warmest greetings to all those who helped with the success of this project. The publishers Cambridge UP and the excellent persons on their behalf, my academic partner, Dr. Turenne, and the judges and jurists who generously gave time to answer our questions and inquiries.

Special thanks are due to the Lord Chief Justice, Lord Thomas, for his active support and during all the plans of the project before he recently assumed the high position of leader of the English Judiciary. Together with him we enjoyed the continuous support of Lord Justice Beatson.

On this occasion, I would like to mention a distinguished American jurist, who helped in the publication of the first edition, Prof. Phillip Kurland of the University of Chicago, Lord Scarman, Prof. Gordon Borrie and the publishers of the first edition, North Holland Elsevier. All of these distinguished institutions and jurists

put their academic trust, with all professional respect, on an unknown young foreign scholar who assumed a giant task of studying one of the most admirable judicial institutions in the world: The English Judiciary.

It is with great humility that I stand before you on this evening, all at the same time I am grateful to all the people who allowed me to go into the secrets and covert corridors and chambers of the judicial rules, practices, and conventions at a time that most of the knowledge in this area was based on informal traditions and unwritten norms and conventions.

Lord Lyndhurst, L.C., was once asked what considerations he weighed in the process of selecting judges. He replied, "I look about for a gentleman and if he knows a little law, so much the better." ("Judges on Trial", 1<sup>st</sup> ed. )

Lord Lyndhurst put in this statement personal character and common sense higher than the knowledge of law.

Jethro in the Book of Exodus and, based on that later, Maimonides, the Jewish philosopher and legal writer, also enumerated virtues that emphasized ethical qualifications and not intellectual qualifications of the judge.

Jethro advised his son-in-law, Moses, that he should appoint "able men such as fear God, men of truth, hating covetousness." (Exodus 18.21)

Maimonides enumerates seven virtues that should be offered by a judge: "wisdom, humility, fear of God, disdain of money, love of truth, love of his fellow man, and a good reputation." (Maimonides, Mishne Torah, Sanhedrin, Chap 2, 7)

Unknowingly Lord Lyndhurst accepted the greater significance of good character, ethical standards, and common sense in a judge. This is not to belittle the legal knowledge and intellectual virtues.

Over the decades the English judiciary has changed; the main changes include, among others, more administrative tasks, constitutionalism and institutionalization, more diversity and significant increase in the size of the judiciary, and movement toward written codes of judicial ethics. But the strength of the English judiciary remains in the high standards, ethical and intellectual, of the men and women who serve on the bench on all levels, and of course, particularly on the higher judiciary.

I repeat what I wrote in the first edition and it applies these days as well, “The overall picture of the English Judiciary is one of inflexible integrity and high standards of conduct.” It can be clearly stated that, “the culture of judicial independence in the UK is maintained by all branches of government and by professional and academic elites as well as by the public.” Admittedly there are failings which we discuss in the book, but as Lord Sankey, L.C., wrote in 1939 failings do occur, adding “perhaps when robots supplant men, outbursts will cease, but justice will not be so well administered.” (see “Judges on Trial”)

(1<sup>st</sup> ed. P 284 N. 1 Foreword to the Book of Life of Justice Swift, by E.S. Fay, 1939)

The independence of the judiciary is a cornerstone of good governance, of judicial review, and of the Rule of Law. We must stress the importance of judicial independence as an essential prerequisite of maintaining the substantive human rights.

As Lord Mackay said in a speech in the House of Lords in 1996:

“Judicial independence requires that judges can discharge their judicial duties in accordance with judicial oath and the laws of the land, without interference, improper influence, or pressure from another individual or organization.” (HL Deb. Vol 576, 16.12.96)

Lord Irvine said that, “the independence of the judiciary is a cornerstone of Britain’s Constitutional arrangements.” (1998 Commonwealth Conference)

To mention another lesson from biblical history, when Absalom was preparing the revolt against his father, King David, the Bible tells us that he went to the litigants who sought justice at the Jerusalem gate, and attacked the justice administered by his father the King. (II Samuel 15.2-6)

The justice system and the independence of the judiciary is essential for good governance, shaking public confidence in the judicial system was viewed as a way to shake the fabric of government.

And Absalom said unto him [to the litigant], “see thy matters are good and there is no reputed man of the King to hear thee.” Absalom said moreover, “Oh that I were made judge in the land, that every man which hath any suit or case might come unto me and I would do him justice.” (II Samuel 15, Verses 3-4)

The judiciary must enjoy personal, substantive, internal, and institutional independence in all its aspects; at the same time the judiciary should be accountable. No institution should be immune from criticism and scrutiny.

Likewise the judiciary should conduct respectful dialogue with the other branches of government, Parliament and the Executive.

To conclude, the judiciary which has been referred to as the least dangerous branch must pay respect to the holders of the sword, the Executive, and to those who control the purse, Parliament. All three branches should act in respect of each other; the dialogue is preferable for society than confrontation.

This is exactly what was done here in the UK in the Concordat which brought about the Constitutional Reform Act. And in the same manner the mini-concordat was also achieved. These developments show the way for a good future for the judiciary in the UK.

Thank you.