

The Rule of Law

Perspectives from Around the Globe

General Editor
Francis Neate



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The Rule of Law Perspectives from Around the Globe

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Rt Hon Lord Bingham of Cornhill

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The Honorable Wayne Martin

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Foreword

The story of the creation of the International Bar Association (IBA) in 1947 began almost a decade and a half before. The American Bar Association (ABA), like its prominent European and Oriental counterparts, had for many years considered creating some kind of affiliation of national bar associations throughout the world. Towards the end of hostilities in World War II this idea hardened to a conviction that an organised 'Bar of the World' could make a substantial contribution to post-war reconstruction and assist in bringing about worldwide stability, understanding and peace.

Accordingly, in June 1944, the matter was discussed again at a meeting of the ABA, and a Special Committee was appointed to examine and report on the feasibility and desirability of forming an International Bar Association. On 12 September 1944, this committee presented a report which concluded that the formation of a 'truly international and representative bar association' was highly desirable and that it would be entirely feasible despite the unsettled world conditions.

In the spring of 1946, the Special Committee sent a copy of a tentative draft IBA constitution to the heads of the national or capital city bar associations of each of the 52 countries of the world in which one was known to exist. Accompanying it was a copy of a Resolution from the House of Delegates of the ABA passed on 23 December 1945 supporting the principle of cooperation among the organised bars of the world. Each bar association was asked to submit to the Committee its comments and suggestions in relation to the project.

The responses received expressed a keen interest in the proposal; none was opposed. Encouraged, the President of the ABA, on 2 August 1946, invited the heads of the national bar associations in each of the 52 countries to send representatives to a meeting to be held in New York City in October 1946.

On 8 and 9 October 1946, representatives of 21 countries in five continents met at the House of the Association of the Bar of the City of New York. Ten other national bar associations were unable to be present but forwarded their endorsement to the proposal of the organisation of an International Bar Association.

After a two-day meeting, a provisional Constitution was approved. The primary purpose of the Association was to be to support the establishment of law and the administration of justice by law throughout the world and to

promote the principles and aims of the United Nations. The first meeting of the Committee for the Organisation of the International Bar Association took place in February 1947. In 2007 the IBA celebrated its 60th anniversary.

Over the decades since its inception, the IBA has broadened its membership to include not just the world's bar associations and law societies, but also individual lawyers, judges, advocates, academics and law firms. Although the structure of the Association has changed, its core values and ethos remain unaltered. The Association continues to use its ability to bring together the global legal profession to further the use and application of law and to promote justice for all. For over half a century, these guiding principles have enabled the IBA to occupy a unique position of influence both within the legal profession and in the world community at large.

The IBA's growth reflects its understanding of the ever-changing landscape of the legal profession and its respect for traditional practices and values. After 60 years of expansion, the IBA is now comprised of two divisions, the Legal Practice Division (LPD) and the Public and Professional Interest Division (PPID), which are subdivided into 63 specialist committees and six regional fora representing each continent. The Human Rights Institute (established in 1995 under the honorary presidency of Nelson Mandela) does further valuable work focused on safeguarding Human Rights, the Rule of Law and the independence of the judiciary.

The IBA is truly established as the global voice of the legal profession. It plays an important role in enabling the various cultures of the world to meet and discuss the underlying principles of the Rule of Law. This work takes the form not just of conferences and discussion papers but also the provision of educational programmes for those with an interest in the legal profession on a global scale. The IBA aims in this way both to encourage an appreciation of the importance of core legal principles in developing countries and societies and to improve lawyers' skills in whatever jurisdiction or jurisdictions they practice.

It is intrinsic to any discussion of the skills and awareness required to be a lawyer today that we do not underestimate the importance of the Rule of Law. So much of modern commerce and society is dependent on the confidence placed in the availability and reliability of legal processes that anything which tends to undermine that confidence inevitably has a negative impact on our institutions, systems of government, and ultimately on society itself. But the Rule of Law is more than adherence to a code. Justice can and will only be achieved if the application of the Rule of Law goes beyond mere theory and becomes a reality present in every act.

This, in many respects, is something for which the legal profession globally must take responsibility. To this aim the IBA strives to educate both lawyers and society of the importance of having robust legal judicial institutions rooted in the foundations of independence, professional conduct and the implacable defence of the Rule of Law. This book forms a part of that effort ...

Fernando Pombo, President IBA, 2007–2008

January 2009

Preface

The Rule of Law has emerged into the forefront of public discussion in the first decade of the new Century. This is not the place to speculate on the reasons for this: one merely records the observation. But the Rule of Law is a topic of special interest to lawyers, and one to which they should perhaps pay more attention. The International Bar Association is playing its part: in September 2005 the Association's Council passed an important and unprecedented Resolution, the text of which is reproduced in this book. Since then, the Association has convened four Symposia on the Rule of Law, the first with the American Bar Association in Chicago in September 2006; the second with the Moscow City Chamber of Advocates, the Federal Chamber of Lawyers of the Russian Federation and the Union (Commonwealth) of Advocates of the Russian Federation, in Moscow in June 2007; the third at the end of its Annual Conference in Singapore in October 2007; the last in Buenos Aires in October 2008. In addition, the Law Council of Australia arranged a Conference in August 2007 for the Bar Associations of the South Pacific at which the last day was devoted entirely to the Rule of Law. In each case, the focus tended towards perceptions of the Rule of Law in the region in which the Symposium was held. Most of the papers in this volume are based on addresses to one of these Symposia. Other papers have been included to contribute to a global perspective.

There can be little doubt that the Rule of Law is a developing concept. This is why we have also included a paper which attempts briefly to explore the historical development of the concept. It is also why, as explained in the commentary in Chapter 2, the International Bar Association has shied away from attempting a definition, despite calls from many of its members to do so. Others have been bolder, and we have included the text of the Sir David Williams' lecture given by Lord Bingham in November 2006 in the belief that it constitutes one of the most thoughtful attempts to define the modern concept presently available. However, this publication does not aspire to present a comprehensive review of the Rule of Law in the modern world – as its title makes clear, it seeks only to present a number of 'perspectives' from different parts of the world.

I have had the benefit of both friendly support and practical assistance from the College of Law in London and Allen & Overy LLP and their friends and colleagues. I am especially grateful to the following students of the College of Law, all now trainees with Allen & Overy LLP, who have helped to organise and edit the papers for publication: Russ Butland, Nick Charlwood, Lucy Cooper, Rebecca Copcutt, Sarah Cragg, Julian Ewart, Pearl Grover, Katie

Hickmett and Alexander Martin; and especially to Alex Tilley, who lead them with consummate efficiency and gave far more time to the project than I was entitled to ask for, and his principal assistant, Tom Bullock. Alex was also the principal contributor to the historical paper, along with Lucy Cooper, Russ Butland and Alexander Martin, with help from Rebecca Copcutt and Nick Charlwood. This was a collective effort, but I have to accept ultimate responsibility for the final version.

I am also grateful to my former secretary Margaret Carey, who shepherded me through my two years as President of the International Bar Association with consummate care and skill, typing my speeches, organising my travel and easing my path in so many ways; to my present secretary, Jane Radley, who has organised the assembly of the contents with extraordinary efficiency; and to the partners of Kirkland & Ellis for their support throughout my presidency.

I must also thank all the contributors to this volume and all those who helped to make the various Symposia on the Rule of Law such a success. I hesitate to name them all, not just because the list would be enormous, but also because I might cause offence by overlooking and omitting someone who should be included. However, I must record my gratitude to the staff of the International Bar Association, all unfailingly friendly and helpful, with whom it has been a huge pleasure to work for over 20 years; and especially to the Executive Director, Mark Ellis, who drafted much of the Association's Council's Resolution of September 2005 and encouraged me to make the defence and promotion of the Rule of Law the focus of my Presidency.

Francis Neate

February 2009

Contributors

Francis Neate – General Editor

Francis Neate qualified as a solicitor in 1966 and became a partner in Slaughter and May in 1972. He retired in 1997 and joined Schrodgers as Group Legal Adviser. In 2004 he became Of Counsel to Kirkland & Ellis. He has spent all his working life as an international legal practitioner in a variety of fields.

He was born in 1940 and educated at St Paul's School in London, Oxford University (BA in Jurisprudence) and the University of Chicago (JD).

He has been involved in the management of the IBA almost continuously for more than 20 years, including as Chair of the Banking Law Committee, Chair of the Section on Business Law, Treasurer of the IBA and President in 2005 and 2006.

Olisa Agbakoba

Olisa Agbakoba was educated at Nigeria's premier university, the University of Nigeria Nsukka, and at the London School of Economics.

He is the president of the Nigerian Bar Association, which has a membership of about 100,000 lawyers. In 1987, at the height of military dictatorship in Nigeria, he co-founded the Civil Liberties Organisation, rated as Nigeria's premier Human Rights organisation. In 1998, he was admitted to the Inner Bar as Senior Advocate of Nigeria. In 2000 he was awarded Nigeria's National Honour as Officer of the Order of the Niger.

He was the founding President of the Nigerian Chamber of Shipping. He is a member of the presidential Electoral Reform Committee, reviewing Nigeria's electoral processes. He is also a member of the National Steering Committee on 'Vision 2020', which is aimed at making Nigeria the twentieth most industrialised nation by 2020.

Rt Hon Lord Bingham of Cornhill

Lord Bingham was educated at Sedbergh School, before reading Modern History at Balliol College, Oxford.

He became a barrister at Fountain Court Chambers in London, and was made a QC in 1972. He became a High Court Judge in 1980 and was promoted to the Court of Appeal in 1986. He became Master of the Rolls in 1992, and Lord Chief Justice of England and Wales in 1996. From 2000–2008 he was the Senior Lord of Appeal in Ordinary, sitting in the House of Lords.

In 2005 he was appointed a Knight of the Garter. He is currently also Chairman of the British Institute of International and Comparative Law.

Judge William Birtles

William Birtles is the Resident Judge at the Mayor's and City of London Court and a Deputy High Court Judge. He was formerly a lecturer in law at the Universities of London and Oxford. He is a Bencher of Gray's Inn and a Senior Associate Member of St. Antony's College, Oxford. He is the co-author of books on planning, environmental and local government law.

Sir Francis Gerard Brennan

Admitted to the Queensland Bar in 1951 he became a QC in Queensland in 1965 and subsequently in New South Wales, Northern Territory, Papua New Guinea and Fiji. Between 1974 and 1977 he was President of the Bar Association of Queensland and of the Australian Bar Association, a member of the Executive of the Law Council of Australia and a part-time member of the Australian Law Reform Commission.

He was the first President of the Administrative Appeals Tribunal in 1976, at which time he also served as a Judge of the Australian Industrial Court and an additional Judge of the Supreme Courts of the Australian Capital Territory and of the Northern Territory. In 1977 he became a foundation judge of the Federal Court of Australia. He became a Justice of the High Court in 1981, and was appointed Chief Justice in 1995, retiring in 1998.

Since then he has variously been Judge of the Hong Kong Court of Final Appeal, External Judge of the Supreme Court of Fiji, Chancellor of the University of Technology, Sydney and Foundation Scientia Professor of Law at the University of New South Wales. He has also been an Honorary Visiting Professor of Law at UNSW. He is presently the 10th Chief Justice of Australia.

Freddy Guevara-Cortez

La Universidad Catolica Andres Bello, Caracas, Venezuela

A recent graduate of the Law School of the Universidad Catolica Andres Bello, Freddy joined with other student leaders in organising the protests which followed the shut-down of Radio Caracas Television in May 2007, which led to the rejection of President Chavez's proposed constitutional reform which would have entrenched his presidency indefinitely.

He suffered injuries in the violence which resulted from the efforts to suppress the protests.

Nicholas Cowdery

Nicholas Cowdery AM QC has been the Director of Public Prosecutions for the state of New South Wales in Australia since 1994. He was inaugural Co-chair of the IBA's Human Rights Institute from 1995 to 2000. He also served as President of the International Association of Prosecutors from 1999 to 2005.

He graduated in Arts and Law at the University of Sydney and in 1971 commenced practising as a public defender in Papua New Guinea after admission as a barrister in the same year. He entered private practice in Sydney in 1975 where he concentrated on criminal law, common law, administrative law and some commercial law. He became a QC in 1987 and served as an Associate Judge of the District Court between 1988 and 1990. He was appointed a Member in the Order of Australia in 2003 for service to the development and practice of criminal law and to the fostering of international co-operation in the area of human rights.

Dr Leandro Despouy

Dr Leandro Despouy was elected Special Rapporteur of the United Nations on the Independence of Judges and Lawyers by the then United Nations Commission on Human Rights in August 2003, and was re-elected by the current United Nations Council in 2006. Nationally, Dr Despouy is the President of the National Audit of Argentina, an office in which he has served since March 2002. In 2001, he chaired the then United Nations Commission of Human Rights while in 1987 he chaired the then Sub-Commission on the Prevention of Discrimination and Protection of Minorities. From 1985 to 1997, he was Special Rapporteur of the UN Human Rights Sub-Commission on Human Rights and States of Exception, in charge of establishing each year a list of countries under a state of exception. In 1996 he was Special Rapporteur on Human Rights and Extreme Poverty and in 1991 Special Rapporteur on Human Rights and Disability.

Rt Hon Lord Goldsmith QC

Lord Goldsmith was called to the Bar at Gray's Inn in 1972. He became a Queen's Counsel in 1987 and a Deputy High Court Judge in 1994 and was elected the youngest ever Chairman of the Bar of England and Wales in 1995. He was created a Labour Life Peer in 1999 and was appointed Her Majesty's Attorney General in June 2001. He became a Privy Councillor in 2002.

Lord Goldsmith has also held a number of posts in international legal organisations, including Council Member of the International Bar Association. From 1998, until his appointment as Attorney General, he was co-Chairman of the IBA's Human Rights Institute.

He is currently the head of European Litigation at the London office of the US law firm Debevoise & Plimpton.

S Jayakumar

S Jayakumar is currently Deputy Prime Minister and Coordinating Minister for National Security in Singapore. He was also Minister for Law from 1988–2008 (April). In 1964, he was admitted to the Bar in Singapore and furthered his education at the Yale Law School. He taught at the Faculty of Law in the National University of Singapore and became Dean of the Law Faculty in 1974.

In 1971 he was seconded to the Ministry of Foreign Affairs and served as Singapore's Permanent Representative to the United Nations and High Commissioner to Canada. From 1974 to 1979, he was a member of Singapore's delegation to the UN Law of the Sea Conference.

In 1980, he was elected Member of Parliament. Other portfolios he has held are Minister for Labour, Minister for Home Affairs and Minister for Foreign Affairs.

The Honorable Wayne Martin

After graduating from the University of Western Australia with a Bachelor of Laws with Honours in 1973, he completed a Master of Laws at King's College London and was admitted to practice in Western Australia in 1977. He was a partner of the law firm Keall Brinsden (now Corrs Chambers Westgarth) until joining the independent bar in 1988. He became a QC in 1993.

He is a former president of the Law Reform Commission of Western Australia, president of the Administrative Review Council, chair of the Defamation Law Reform Committee and President of the Western Australia

Bar Association. In addition, he is a former President of the Law Society of Western Australia and a director of the Law Council of Australia. Since becoming Chief Justice, Martin has spoken out about the need to enhance access to justice and improve the efficiency of the legal system. He has also come to the defence of the legal system in the wake of criticisms in some sections of the media that resulted from several high profile miscarriages of justice.

Karen Mathis

Karen J Mathis, a partner in the Denver office of McElroy, Deutsch, Mulvaney & Carpenter, LLP, is a former president of the American Bar Association. One of her presidential initiatives was the rule of law.

Mathis earned her law degree from the University of Colorado School of Law in 1975 and her Bachelor of Arts from the University of Denver in 1972, cum laude. She has received honorary degrees from Siena College, the University of Denver, Michigan State University College of Law and Southwestern Law School, and an honorary Order of the Coif from the University of Colorado. She is the third woman to serve as an ABA president and the first president from Colorado. She has served as a member of the House of Delegates of the ABA since 1982. She is also a member of the ABA Board of Governors and has served on its Executive Committee, Operations Committee and Program and Planning Committee.

In September 2008, she became the executive director of the CEELI Institute in Prague, Czech Republic.

Sternford Moyo

Sternford Moyo is a Zimbabwean who has practised law there for over 27 years specializing in litigation, corporate law and project finance work. He received his degrees from the University of Zimbabwe, earning the Butterworth Prize as the most outstanding post graduate law student in 1981 in addition to receiving other awards for academic excellence during the course of his law degrees. He is a senior partner in the firm of Scanlen & Holderness, a chairman of a leading commercial bank, a director of four other companies and a former director of the Posts and Telecommunications Corporation of Zimbabwe. He is a member of the Judicial Service Commission and a former board member of the Judicial College of Zimbabwe. He is also a former president of the Southern African Development Community Lawyers' Association and the Law Society of Zimbabwe. He is a vice chairperson of the Human Rights Institute of the International Bar Association.

Professor Hisashi Owada

Professor Hisashi Owada is a judge of the International Court of Justice (a position he has held since 2003) and honorary professor at Leiden University. He was a professor of international law and organization at Waseda University Graduate School. He has also served as senior advisor to the President of the World Bank.

He graduated from Tokyo University and pursued post-graduate studies in international law at Cambridge University in England. He entered Japan's Foreign Service in 1955, serving in various posts in the Legal Department of the Ministry of Foreign Affairs in Tokyo. From 1976 to 1978, he served as Private Secretary to the Prime Minister of Japan. He served as Japanese

Ambassador to the OECD from 1988 to 1989 before returning to the Ministry of Foreign Affairs where he served as Deputy Minister and Vice-Minister until 1993. He served as Permanent Representative of Japan to the United Nations. During his tenure as UN Ambassador, he served twice as United Nations Security Council President.

He has also taught as professor for three decades at the University of Tokyo. He has also been professor at Harvard Law School, New York University Law School, Columbia Law School, and the Hague Academy of International Law. He is a member of the Boards of Directors of the Nuclear Threat Initiative and of the United Nations Foundation. He has received honorary degrees from Keiwa University and Waseda University in Japan, and Banaras Hindu University in India.

Fernando Pombo

Fernando Pombo graduated from the University of Madrid with a Philosophy and Law Degree in 1965. He subsequently received an LL.M. in philosophy and law from the Universities of Oviedo and Madrid and a Ph.D.

He is Chairman and Founding Partner of Gómez-Acebo & Pombo, an independent law firm in Spain. He lectured in CPE Law between 1965 and 1968, and subsequently taught at the CEU University in Madrid (1974–1975). He has been a professor at the University of Salzburg School of Law since 1985. He was President of the International Bar Association in 2007 and 2008.

Andy Prozes

Andy Prozes is CEO of LexisNexis Group, a division of Reed Elsevier plc. He is a Bachelor of Mathematics from the University of Waterloo, Ontario, Canada, and gained an MBA from York University, Ontario, Canada. He began his career developing systems and services for aspects of Canada's financial industry. He was later Executive Vice President and Chief Operating Officer of West Group, part of the Thomson Reuters Corporation. He has also served on numerous industry boards.

In addition to his role as CEO of LexisNexis Group, Andy currently serves on the Board of Reed Elsevier, is a director of the Cott Corporation, an Executive Board Member of the American Bar Association Central European and Eurasian Law Initiative, a Board Member of the Atlantic Council of the United States and on the board of the Bruce Museum of Arts and Technology.

Anne Ramberg

Anne Ramberg was appointed Secretary General of the Swedish Bar Association in 2000. She obtained the degree of Bachelor of Law from the University of Stockholm in 1976 and became a partner at Advokatfirman Mattsson-Ramberg in 1985 where she stayed until 1994. Between 1995 and 2000 she was a partner at Advokatfirman Ramberg.

Between 1993 and 1999 she was a member of the Swedish Press Council and from 1999 to 2005 chaired the Lawyers Association of Stockholm. She is currently a Council member and treasurer of the International Legal Assistance Consortium (ILAC), as well as a Council member and member of the Management Board of the International Bar Association. She has written extensively on a variety of legal issues both in legal and general publications.

Genry Reznik

Genry Reznik was educated at the Kazakh State University until 1962 and is now a partner in Reznik, Gagarin, Abushakhmin and Partners in Moscow. His main practice areas include civil law, civil litigation, mass media law, defamation, criminal law, criminal procedure, intellectual property and administrative law.

He is the author of: 'Inward Conviction Applied to Assessment of Evidence', Jurizdat, 1977; 'Right to Defence', Moskovski Rabochiy, 1976 and 'Constitutional Right to Defence', 1980.

He was a lecturer in Law at the All-Union Legal Academy from 1982 to 1998 and at the Academy of Int. Ministry from 1975 to 1982. He became vice-president of the International Union of Lawyers in 1997, President of the Moscow Chamber of Lawyers in 2003 and a Member of the Council of the Federal Chamber of Lawyers in 2004.

Mary Robinson

Mary Robinson was the first female President of Ireland, serving from 1990 to 1997, and the United Nations High Commissioner for Human Rights from 1997 to 2002. She first rose to prominence as an academic, barrister, campaigner and member of the Irish Senate (1969–1989).

She serves on many boards including the GAVI Fund. Her newest project is Realizing Rights: the Ethical Globalization Initiative, which promotes equitable trade and development, more humane migration policies and better responses to HIV/AIDS in Africa. Since 2004, she has also been Professor of Practice in International Affairs at Colombia University, where she teaches international human rights.

Justice Albie Sachs

On turning six, during World War II, Albie Sachs received a card from his father expressing the wish that he would grow up to be a soldier in the fight for liberation.

His career in human rights activism started at the age of seventeen, when as a second year law student at the University of Cape Town, he took part in the Defiance of Unjust Laws Campaign. Three years later he attended the Congress of the People at Kliptown where the Freedom Charter was adopted. He started practice as an advocate at the Cape Bar aged 21. The bulk of his work involved defending people charged under racist statutes and repressive security laws. Many faced the death sentence. He himself was raided by the security police, subjected to banning orders restricting his movement and eventually placed in solitary confinement without trial for two prolonged spells of detention.

In 1966 he went into exile. After spending eleven years studying and teaching law in England he worked for a further eleven years in Mozambique as law professor and legal researcher. In 1988 he was blown up by a bomb placed in his car in Maputo by South African security agents, losing an arm and the sight of an eye.

During the 1980s working closely with Oliver Tambo, leader of the ANC in exile, he helped draft the organisation's Code of Conduct, as well as its statutes. After recovering from the bomb he devoted himself full-time to preparations for a new democratic Constitution for South Africa. In 1990 he returned home and as a member of the Constitutional Committee and the

National Executive of the ANC took an active part in the negotiations which led to South Africa becoming a constitutional democracy. After the first democratic election in 1994 he was appointed by President Nelson Mandela to serve on the newly established Constitutional Court.

In addition to his work on the Court, he has travelled to many countries sharing South African experience in healing divided societies. He has also been engaged in the sphere of art and architecture, and played an active role in the development of the Constitutional Court building and its art collection on the site of the Old Fort Prison in Johannesburg.

Julio Maria Sanguinetti

President of Uruguay 1985–90 and 1995–2000 Lawyer, Journalist and Politician, first elected as a member of the national parliament in 1963, he was Minister for Industry and Commerce from 1969 to 1971 and Minister for Education and Culture from 1972 to 1973. Banned from political activity during the period of military rule in the 1970s, he had a major role in the negotiations leading to the peaceful return to democracy and was then elected President for a five year term starting in 1985. He was elected for another five year term in 1995.

Geoffrey Vos QC

Geoffrey Vos was Chairman of the Bar Council of England and Wales in 2007, having served as Vice-Chairman in 2006. He has been Chairman of the Professional Standards Committee and a Member of the General Management Committee of the Bar Council since 2004. He was Vice-Chairman of the Professional Standards Committee of the Bar Council from 2001 to 2003.

He was Chairman of the Chancery Bar Association from 1999 to 2001, having served as Vice-Chairman from 1997 to 1999 and Secretary from 1994 to 1997.

He is a judge of the Courts of Appeal of Jersey and Guernsey.

Valery Zorkin

Valery Zorkin is the first and current Chairman of the Constitutional Court of the Russian Federation, which was established as the first independent judiciary in Russian history.

In 1964, he matriculated from the Law Department of Moscow University, in which he delivered lectures until the late 1980s. In October 1991 he became a judge of the Constitutional Court of Russia and on 1 November was elected the court's first (and only) chairman with unlimited tenure.

After the new Constitution of the Russian Federation was promulgated in 1993, Zorkin resumed his work as a judge of the Constitutional Court. In 2003 he was re-elected as the Court's Chairman.

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INTRODUCTION: A BRIEF HISTORY OF THE DEVELOPMENT OF THE CONCEPT OF THE RULE OF LAW

1.1 The concept of a system of law to which everyone, even the most powerful, is subject, has existed for a long time. Moses brought the Ten Commandments down from Mount Sinai. The Torah (the legal rules contained in the first books of the Old Testament) was binding on all, even kings, and served as a restraint on their power. The kings neither made these laws nor administered them. The Old Testament describes how the laws were administered by the judges, who were independent of the king. Later, the development of the Sharia under Islam was not dissimilar.

Thus, two fundamental principles of the Rule of Law have been in existence from earliest times : those in power should not make the laws (the separation of powers), and all people (including those in power) should be bound by the laws. This thinking was not exclusively linked with religious belief. A more secular approach to the Rule of Law was adopted by Socrates who, when convicted by the grand jury of Athens for corrupting youth with his teachings, chose despite the possibility of escape to accept the verdict of death, in order to demonstrate his fidelity to the supremacy of the Rule of Law. Less than a century later, Aristotle stated in *The Politics* that ‘the Rule of Law is preferable to that of any individual’. Since the time of Socrates and Plato (427–347 BC) and Aristotle (384–322 BC) the quest for ‘goodness’ or ‘justice’ under the law has been a recurrent theme.

Nevertheless, for a long time the predominant thinking was religious: they were God’s laws which bound all.

1.2 The movement in England towards principles that form part of the modern, more secular definition of the Rule of Law began at least as early as 1215, with the signing of the Magna Carta. The Magna Carta, in theory at least, challenged the untrammelled powers of the King, by placing the monarch and all his subjects under the law. Indeed, one of the main purposes of Magna Carta was to create a fairer and more consistent justice system. It introduced into English law the fundamental concepts of *habeas corpus* and *trial by jury of one’s peers*. However, it took many centuries for the legal system to develop towards more widespread implementation of these principles. Several centuries later, at the end of the first English Civil War, the