

SPEECH OF ACCEPTANCE AND THANKS BY THE R HON LADY ARDEN DBE IN
REPOSE TO THE CONFERMENT BY H.E. THE AMBASSADOR OF JAPAN OF THE
ORDER OF THE RISING SUN GOLD AND SILVER STAR

1 September 2022

May I thank you, your Excellency, for the conferment of this great honour on behalf of His Majesty the Emperor of Japan. I also thank His Excellency the Prime Minister of Japan and all those whose signatures appear on the beautiful letters patent which you have given to me to record the award. I also thank the Honourable Tokura Saburo, the Chief Justice of Japan, for his most generous message of congratulation by video. I would like to include in my thanks, your Excellency, all your predecessors in office and their officials, whom I have known over many years, for their unfailing courtesy and consideration, and I thank you especially for your kind opening words. With your leave I would like to express some thoughts on this occasion.

The evolution of my dialogue with Japan

I first went to Japan nearly thirty years ago after I had been appointed to the High Court of Justice here in the UK. The British Council in Tokyo, acting on an initiative by the distinguished Professor Tajima, a comparative constitutional scholar of the esteemed Tsukuba University, invited me to give some lectures.

The lectures were on a wide range of subjects, including procedure. I saw at first hand what great interest there was among Japanese scholars and practitioners in learning about our law, and the culture of scholarship in Japan. I met the redoubtable Justice Noda, then considering the reform of elder law in Japan. There were few other professional women whom I met on those visits but the position in the United Kingdom was then much the same.

On my second visit, the British Council arranged for me to go to the Tokyo High Court. We have a saying in English that the policemen look younger as one gets older and the Tokyo High Court judges really were younger than my colleagues because they were all career judges. However, they had a very wide preparation for their careers – a part of it as I recall was spent working in industry or in other jobs so that they could meet a wide cross-section of society and see how laws mattered and worked in practice. This general approach to the law is one which I have sought to adopt in my own judicial work by asking, when I can, questions about why a point matters to the users of the law. Professor Tajima also took me to see Justice Itsuo Sonobe of the Supreme Court of Japan, who was a friend of his. We saw him in his impressive Chambers in the Supreme Court, which is a vast and beautiful building. I recall a good conversation about public and constitutional law.

Those experiences led seamlessly to my work as first, Judge in Charge and then the Head, of International Judicial Relations for England and Wales for 13 years. It expands the mind to meet judges who share the same values but work in a very different context. As your Excellency has explained, the Supreme Court of Japan has for many years sent a young judge of the Tokyo High Court to London each year to complete a project on a subject chosen by the Supreme Court, such as the function of juries. I thank your Excellency for the Embassy's support for our visitors.

If I may say so, their visits seemed to me very much in line with the Meiji tradition of the late 19th century after the long isolation of Japan from the West came to an end. Japanese scholars were sent to parts of Europe to try to find the best legal system they could. The spirit is truly remarkable, as witness the extraordinary development of Japan in our lifetimes. I think that some of that spirit pervades judicial dialogue, and that dialogue has deepened.

I have also had the privilege of discussions with Japanese judges appointed to the International Court of Justice. Japan has a strong commitment to the international rule of law, as does the United Kingdom. The United Kingdom has maintained a close liaison with Japan in connection with that Court, and I hope, your Excellency, that that liaison will long continue. Japan has judges on the International Court of Justice, the International Tribunal of the Law of the

Sea and the International Criminal Court, as well as having a member of the International Law Commission. Your Excellency, it has never been more necessary in recent times than now to stand up and be counted for the international rule of law despite all the cost and consequent challenges.

Shared Values

I have referred to shared values. The legal systems of Japan and the United Kingdom are in fact closer than people think. In 2015, we celebrated the 800th anniversary of Magna Carta. This secured for us liberty of the subject and access to justice. In 2032 Japan will celebrate the 800th anniversary of its equivalent, the Jōie Formulary. As I understand it, in 1232, the Kamakura Shogunate issued a document entitled “the List of Precedents on Judgment”. The judges were the High Council members, who had to take an oath in which they pledged to administer justice impartially, in line with “reason,” and as a united body. (So, no conflicts of interest and no dissenting judgments). This important document, now nearly 800 years old, guaranteed due process and impartiality. The origins of Magna Carta and the Jōei Formulary are different: Magna Carta was imposed by the barons on the monarch, whereas in Japan it was the other way around. But the values are the same.

Impartiality remains a core value of both our systems. Without judicial impartiality, there is no judicial independence and no guarantee of the liberty of the subject or indeed of any other right of the individual, whether against the state or any other person. With impartiality comes a proper legal process, the law of evidence, rights of appeal and consistency in the application of the law through following precedents. Judicial impartiality is the rock on which democracy is built, and our respective judiciaries share it.

There are many other instances where we have ideas in common. When I gave lectures all those years ago, we discussed procedural reform, elder law reform, criminal procedure and corporations law. There is also keen common interest in public international law. Scholars in Japan also study the work of leading jurists such as Dicey, Professor Goodhart and Professor Cross. Informed I hope by all those projects by the judges from the Tokyo High Court, there is also reform of the law which is modelled, with appropriate modifications, on UK law. So, we are closer than people think.

Value of Judicial Dialogue

In my career as a judge, I have very much sought to advance international judicial dialogue. I have described it as a process of learning and influencing.

As the relationship becomes deeper, we can take common issues facing both countries' judiciaries and discuss each other's solutions. Examples might be constitutional issues, mental health issues, and the rights of people with disabilities. It is a very common experience to find that although different laws are applied, the approach to the essential principles are not much different. It is also my experience from this discussion that you see a wider range of considerations and choices when you are later faced with the same or a similar problem in your own jurisdiction than you would otherwise have done. It has therefore given me great pleasure to see how the relationship with the Supreme Court of Japan has blossomed in recent years.

A possible additional reason for this dialogue is that there are more and more cases today in domestic courts which raise issues of public international law, such as the interpretation of conventions and treaties. As the world becomes more global, and domestic courts are more involved in these issues, it must make sense to have more dialogue.

Concluding thoughts on the Decoration of the Rising Sun

Another thing I have learnt from you is the importance of the love of nature. This is reflected in the name of the Decoration which you have kindly conferred on me. Cherry blossom symbolizes the national spirit, and your

Excellency has generously given of his time to donating and planting cherry trees from Japan in the United Kingdom, and we thank you for that manifestation of goodwill. In fact, cherry trees illustrate the give and take of dialogue. One of my fellow countrymen, “Cherry” Ingram, took an enormous interest in Japanese cherry trees and brought back numerous specimens to the United Kingdom, which he planted in his garden. With the industrialization of Japan some species were lost including the Great White Cherry, but Cherry Ingram sent cuttings from his garden back to Japan so the species could flourish again there. That is how dialogue should work with give and take on both sides!

But I want to finish with a reference to *the Great Wave* of Hokusai. In the United Kingdom this is probably the best -known work of art from Japan. The engraving, done when Japan was still isolated from the West, depicts a monster wave. If you look closely, there are three small skiffs or little boats making their way straight into the wave. You, the viewer, are also in the sea a few metres from this potentially disastrous scene. The wave is blue. Scholars say the blue paint was made in Europe, not Japan: you can form your own view on any significance of that. This picture instils both a sense of foreboding and a sense of hope. We do not know if the skiffs overcame the Great Wave, but the wave is not wholly menacing, and there in the background, serene and

snow-capped, is the famous Mount Fuji. The legal order with which both judiciaries must deal faces many challenges, but I hope that we can face them together and that we shall, in times of difficulty and danger, always see Mount Fuji as a stable partner in dialogue.

Thank you, your Excellency, for this great honour. I also thank your distinguished guests this evening. You have enhanced this occasion by your presence.