

# **JAPANESE BRITISH LAWYERS NETWORKING RECEPTION**

**16 November 2022**

## **Speech of the Rt Hon Lady Arden of Heswall**

Former Justice of the Supreme Court of the United Kingdom

Your Excellency

Distinguished guests

I am honoured to be asked to say a few words on this occasion. I start by thanking His Excellency and Madame Hayashi for their generous invitation for this evening. I was particularly happy to read that this was a networking occasion and to see that the event was being held again, despite the lapse of three years for reasons which we all know. In Japan a popular song was written to commemorate the victims of recent tsunamis and COVID. The main line of the lyrics is “The flowers will bloom again.” In a world facing the aftermath of the pandemic, war and climate change, as His Excellency noted, it is important to be reminded that, if we keep on the straight path, we will be able to celebrate the blooming of flowers again.

### **AIM OF THIS OCCASION**

The aim of the occasion today is to promote mutual understanding and communication between Japanese, British and international lawyers and judiciaries. I pay tribute to this very distinguished audience, especially those from the Judiciary and legal professions of our countries, the government lawyers and prosecutors, academics and charities. I have also on previous occasions like this met officers of multinational corporations who have generously sponsored co-operation between Japan and the UK in so many ways. I thank you all.

## LEGAL LINKS WE SHARE

I wish to direct focus on the important legal links that we share, and that I hope will blossom as a result of the work of the British Japanese Law Association.

At first sight you may not think that there could be many things that our legal communities share. After all, Japan is at the other side of the world and has a completely different history and mythology.

But we are both island states. We both have vibrant parliamentary democracies. I suggest that deep down there is a sense of *connectivity* between our legal and judicial professions. We have shared some key *milestones* in the development of our legal systems.

## RELEVANCE OF STONE

You might think that the word “stone” (*viz milestone*) is inappropriate to a concept like law. But stone provides me with a graphic analogy to the law. We have in this country the world-famous Stonehenge – constructed some 5,000 years ago. If you go to Japan, you can find stone circles almost as old. Both stone monuments allow for ascertaining the winter solstice and face the sunset in the summer solstice, yet they were built by people who obviously could not have met. They had similar ideas despite being thousands of miles apart.

I think we can find the same pattern of similar ideas in aspects of the legal system of Japan.

I wish to mention three examples.

## **1. WE SHARE LONG-ESTABLISHED DOCTRINES OF JUDICIAL INDEPENDENCE**

First, we share our belief in the independence and impartiality of judges. In Japan, this is a very ancient concept. English lawyers think back to Magna Carta in 1215, signed by King John at Runnymede and securing the Rule of Law and the right to security of the person. Clause 29 of Magna Carta provides that a person may not be arbitrarily imprisoned by the King. Imprisonment can only be by a lawful judgment or by law. The lawful judgment was thus expected to be free from influence by the King.

Not many years later in 1232, the Kamakura Shogunate in Japan 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 were permitted).

This important document is now nearly 800 years old. It guaranteed due process and judicial independence and impartiality. The origins of Magna Carta and the Joei Formulary are different: Magna Carta was imposed by the barons on the monarch, whereas in Japan it was the other way around. Magna Carta and the Joei Formulary were the product of very different societies thousands of miles apart. But the values identified in these documents

were fundamentally the same. They both proceeded on the basis of the Rule of Law and a concept of judicial independence and impartiality, principles which both countries hold dear.

### ***Special thanks to His Excellency***

This first point of connectivity, being about judges, gives me the opportunity to thank His Excellency, his predecessors and his officials for all the generous support and encouragement that they have given in particular to exchanges between the Japanese judiciary and the UK judiciary. We have for many years had a young Japanese judge (a different one each year) working on a report on a particular aspect of the English legal system here in London. In fact, I think this has been happening for so long that some of the judges who came are now very senior judges in Japan. The present judge is Judge Mori and he has been sitting with Lord Justice Dingemans, the Judge in charge of International Relations for England and Wales.

There has also been at least one joint meeting – in the cybersphere – between senior judges of the UK and judges of the Supreme Court of Japan, and there will, I hope, be many others.

### ***Why judicial dialogue is important***

Of course, it is important to have dialogue throughout the legal system – practitioners, academics and judges. But the judges are often overlooked, or they are not treated as a separate group. Yet no-one would I think deny that in both our systems they make very

important decisions which have enormous impact on the development of the societies they serve.

Judges must listen hard to advocates who appear before them. They may read, and find helpful, many academic works. But what they must do is different from the work done by practitioners and academics. They must find the facts, work out the legal rules and their boundaries, and then apply them to the particular circumstances of the case. This is a different role from preparing legal commentaries.

So, judge-to-judge discussions are valuable. Judges can exchange views on how they approach the relevant rules of law and where they find the boundaries to be. I warmly thank His Excellency for attaching importance to judge-to-judge discussions. There can be a read-across from these exchanges and both judiciaries can learn. The knowledge which they gain may have a critical importance in the development of both legal systems and have impact for both our democracies.

## **2. WE BOTH HAVE A PLACE FOR EQUITY**

I will take my second and third points about connectivity between our two legal systems shortly.

The second point is this. Both Japan and the UK at different times had feudal systems. The law in Japan was not judge-made law as with the English law. It tended to be in legislation but interestingly it was the practice of judges to apply this written law with discretion in hard cases. For instance, there was a law that if you did not farm your land properly you could be punished but this law was applied with common sense. Later there was a law

which prohibited farmers who farmed tobacco from using any of it for their own purposes.

In one case, a man had supplied himself with tobacco for his own consumption. The Japanese courts robustly held that the legislature could not have intended to criminalise such a trivial matter.

In other words, Japan developed a body of principles which has some parallels with what we call equity, that secondary system of law developed in the courts of chancery in England to provide remedies for hard cases.

### **3. WE SHARE OUR BELIEF IN THE RULE OF LAW**

My third point concerns the present day. Japan and the UK share a strong belief in the Rule of Law, and to me this is the most important point for working together.

Our shared interest in the Rule of law is not simply in domestic law. It is also in the international sphere. Japan's commitment to the international Rule of Law is shown by the fact that it has a judge or jurist on the International Court of Justice, The International Criminal Court, The International Tribunal for the Law of the Sea and the International Law Commission. This illustrates the importance which Japan, like the UK, attaches to the international rules-based order.

I like to think that the spirit of Meiji age is still working itself out. Japan is constantly seeking to extend its understanding of what a modern state is required to do, and that is for the good in this world.

## **CONNECTIVITY EXISTS AND SO TO THE TOAST THIS EVENING**

No doubt there are many other points of connectivity between our two countries and systems that could be identified. Just recently, for instance, some say that the UK seemed to be following the Japanese practice of frequent changes of Prime Minister.

However, I would now like to propose a toast:

*To the increase in understanding between our two legal systems, and the strengthening of the relationship between the UK legal community and that of Japan, through the work of the British Japanese Law Association.*