ΕΚΤΑΚΤΗ ΣΥΝΕΔΡΙΑ ΤΗΣ 2ΑΣ ΑΠΡΙΛΙΟΥ 2002

ΠΡΟΕΔΡΙΑ ΜΗΤΡΟΠΟΛΙΤΟΥ ΠΕΡΓΑΜΟΥ ΙΩΑΝΝΟΥ (ΖΗΖΙΟΥΛΑ)

ΕΠΙΣΗΜΗ ΥΠΟΔΟΧΗ
ΤΟΥ ΑΝΤΕΠΙΣΤΕΛΛΟΝΤΟΣ ΜΕΛΟΥΣ ΤΗΣ ΑΚΑΔΗΜΙΑΣ
THE RIGHT HONOURABLE LORD BINGHAM OF CORNHILL

ΧΑΙΡΕΤΙΣΜΟΣ ΑΠΟ ΤΟΝ ΠΡΟΕΔΡΟ ΤΗΣ ΑΚΑΔΗΜΙΑΣ
ΣΕΒΑΣΜΙΩΤΑΤΟ ΜΗΤΡΟΠΟΛΙΤΗ ΠΕΡΓΑΜΟΥ κ. ΙΩΑΝΝΗ (ΖΗΖΙΟΥΛΑ)

Κύριοι Ὑπουργοὶ
Your Excellency the English Ambassador
Κύριε Πρόεδρε τοῦ Ἀρείου Πάγου
Κύριε Πρόεδρε τοῦ Ἐλεγκτικοῦ Συνεδρίου
Κυρίες καὶ Κύριοι Ἀκαδημαϊκοὶ
Κυρίες καὶ Κύριοι

Ἡ Ἀκαδημία Ἀθηνῶν ὑποδέχεται σήμερα ἐπισήμως μὲ πολλὴ χαρὰ καὶ ἰδιαίτερη τιμὴ τὸν Λόρδο Bingham τοῦ Cornhill ὡς ἀντεπιστέλλον μέλος της.

Ἄλλος ἁρμοδιότερος ἐμοῦ θὰ παρουσιάσει τὸ ἔργο καὶ τὴν προσωπικότητα τοῦ νέου ἀντεπιστέλλοντος μέλους τῆς Ἀκαδημίας.

Ὡς Πρόεδρος τοῦ πνευματικοῦ αὐτοῦ Ἱδρύματος ἐπιθυμῶ νὰ ἐξάρω τὴ σημασία ποὺ ἀποδίδει τοῦτο στὴν συγκαταρίθμηση μεταξὺ τῶν ἀντεπιστελλόντων μελῶν του μιᾶς τόσο διακεκριμένης προσωπικότητας τοῦ νομικοῦ καὶ δικαστικοῦ κόσμου τῆς Μ. Βρετανίας, στὴν ὁποία προσωπικότητα συνδυάζεται ἡ ἄνοδος στὰ ὕπατα δικαστικὰ ἀξιώματα τῆς χώρας του μὲ ἕνα γόνιμο συγγραφικὸ ἔργο ἐπὶ πολὺ εὐρέος

φάσματος θεμάτων. Τὸ ἔργο αὐτὸ δὲν περιορίζεται μόνο στὸ ἐσωτερικὸ Βρετανικὸ Δίκαιο, ἀλλὰ ἐπεκτείνεται στὴ συγκριτικὴ προσέγγιση τῶν Δικαίων, καθὼς καὶ σὲ θεμελιώδεις ἀρχὲς Δικαίου, ὅπως εἶναι ἡ δικαστικὴ ἀνεξαρτησία, ἡ δικαστικὴ ἠθική, ἡ προστασία τῶν ἀνθρωπίνων δικαιωμάτων, ἡ προστασία τοῦ ἰδιωτικοῦ βίου καὶ ἡ θέση τοῦ Δικαίου στὰ πλαίσια μιᾶς πλουραλιστικῆς κοινωνίας. Ἡ μετάβαση, ἐξάλλου, τοῦ τιμωμένου σήμερα ἀπὸ τὸ δικηγορικὸ στὸ δικαστικὸ λειτούργημα, στὸ ὁποῖο διακρίθηκεν ὡς δικαστὴς τοῦ High Court καὶ τοῦ Ἐμποροδικείου, ὡς Λόρδος δικαστὴς τοῦ Ἐφετείου καὶ Senior Law Lord μὲ θητεία στὰ ὕψιστα δικαστικὰ ἀξιώματα τοῦ lord Chief Justice καὶ τοῦ Master of the Rolls, τοῦ ἔχουν δώσει τὴν δυνατότητα νὰ ἐφαρμόζει στὴν πράξη τὶς θεμελιώδεις ἀρχὲς τοῦ Δικαίου, τὶς ὁποῖες μὲ σπάνιο ἐπιστημονικὸ κύρος προωθεῖ στὶς ὑψηλοῦ ἐπιπέδου μελέτες του.

It gives me great pleasure to welcome you today on behalf of the Academy of Athens as one of its most distinguished corresponding members. In your person our Academy wishes to honour an outstanding personality whose contribution to the application as well as to the theory of justice in our times is widely recognised and deeply appreciated in the United Kingdom and internationally. We are indeed very happy that you have accepted to join our Academy and to be present at this special meeting this evening.

Personally, as one who has the privilege of serving the academic community of your country for almost three decades, I feel depply touched and greatly honoured to address your Lordship on this solemn occasion, to congratulate you and to hand over to you the medal of our Academy. May God grand you many more years of active service to your country, to our Academy and to the wider human community.

Καὶ τώρα, παρακαλῶ τὸ ἀντεπιστέλλον μέλος τῆς Ἀκαδημίας καθηγητὴν κ. Μαρκεζίνη, νὰ ἔλθει στὸ βῆμα γιὰ νὰ προσφωνήσει τὸ νέον ἀντεπιστέλλον μέλος τῆς Ἀκαδημίας.

ΠΡΟΣΦΩΝΗΣΗ ΤΟΥ ΑΝΤΕΠΙΣΤΕΛΛΟΝΤΟΣ ΜΕΛΟΥΣ ΤΗΣ ΑΚΑΔΗΜΙΑΣ
κ. ΒΑΣΙΛΕΙΟΥ ΜΑΡΚΕΖΙΝΗ

Σεβασμιώτατε Κύριε Πρόεδρε τῆς Ἀκαδημίας Ἀθηνῶν,
Κύριοι Συνάδελφοι,
Κυρίες καὶ Κύριοι,

Πρὸ παντὸς ἄλλου, ἐπιτρέψατέ μου νὰ σᾶς εὐχαριστήσω – καὶ δι' ὑμῶν τὴν Σύγκλητον τῆς Ἀκαδημίας – διὰ τὴν ἀπόφασίν σας νὰ μοῦ ἀναθέσετε τὴν τιμὴν νὰ ἐκφωνήσω τὴν laudatio τοῦ Λόρδου Bingham. Ἡ τιμὴ αὐτὴ δικαιωματικὰ ἀνήκει εἰς τοὺς τακτικοὺς καὶ κατὰ πολὺ πλέον διακεκριμένους συναδέλφους τῆς Τάξεως, ποὺ ἀνήκω. Ἡ εἴσοδος, ὅμως, τοῦ Λόρδου Bingham εἰς τὴν Ἀκαδημίαν εἶναι ἡ πρώτη Ἄγγλου νομικοῦ. Ὡς τοιαύτη θὰ ἠμποροῦσε κανεὶς νὰ ὑποστηρίξῃ ὅτι συμβολίζει ἄνοιγμα τοῦ ἠπειρωτικοῦ Εὐρωπαϊκοῦ κόσμου, εἰς τὸν ὁποῖον ἀνήκουν οἱ Ἕλληνες νομικοί, πρὸς τὸν Ἀγγλοσαξωνικόν. Ἄνοιγμα διὰ διάλογον καὶ ἀνταλλαγὴν ἀπόψεων ἐπὶ θεμάτων, ποὺ ἀφοροῦν ὅλους μας.

Τύχῃ ἀγαθῇ τὸ ἔφερε νὰ ἀνήκω καὶ εἰς τοὺς δύο κόσμους, ἐφ' ᾧ καὶ τὸ ἔργον, ποὺ μοῦ ἀνετέθη. Διὰ τὸν αὐτὸν λόγον καὶ ἐπ' εὐκαιρίᾳ τῆς σημερινῆς τελετῆς, ἡ Βρεταννικὴ Ἀκαδημία, τὴν ὁποίαν θὰ ἐπισκεφθῆτε κ. Πρόεδρε τὸν προσεχῆ Ἰούλιον, μὲ παρεκάλεσεν, ὡς τακτικὸν αὐτῆς μέλος, νὰ διαβιβάσω τοὺς φιλικοὺς καὶ ἀδελφικοὺς αὐτῆς χαιρετισμούς.

Οἱαδήποτε παρουσίασις τοῦ Λόρδου Bingham θὰ ἀδικοῦσε τὰ ἐπιτεύγματά του καὶ τὶς διακρίσεις του, ἀφοῦ ἡ ἁπλῆ καὶ μόνον ἀναφορά των θὰ δημιουργοῦσε ἕναν ἁπλοῦν κατάλογον, ὅμοιον ἐκείνου τοῦ Διογένους τοῦ Λαερτίου διὰ τὰ ἔργα τοῦ Ἀριστοτέλους[1]. Τέτοιος κατάλογος δὲν ἁρμόζει εἰς τὴν σημερινὴν τελετήν. Οὔτε, ὅμως, διαθέτω τὴν ἰδιοφυΐαν τοῦ θείου Mozart, νὰ μετατρέπω καταλόγους ἐπιτυχιῶν εἰς ἀλησμόνητες ἄριες. Ἐν τούτοις, ὁ νέος συνάδελφός μας ἔχει ὄντως κατακτήσει κάθε κορυφὴν τῆς Βρεταννικῆς δικαστικῆς ἱεραρχίας. Ἐπέτυχε δὲ τοῦτο, συνδυάζων τὴν ἐπίπονη δικαστικὴν σταδιοδρομίαν του μὲ ἀξιοσημείωτες ἀκαδημαϊκὲς ἐργασίες, οἱ ὁποῖες προσφάτως ἐτυπώθησαν ὡς βιβλίον ὑπὸ τὸν προσφυῆ τίτλον «The Business of Judging»[2].

Κατέκτησε, πράγματι, ὁ τιμώμενος διαδοχικῶς τὰ ἀνώτατα δικαστικὰ ἀξιώματα τῆς Μεγ. Βρεταννίας. Τὰ ἀναφέρω ἀμετάφραστα, ἔχων ἐπίγνωσιν τῆς σοφῆς

1. Diogenes Laertius, *Lives of Eminent Philosophers* (R.D. Hicks ed. 1925), 22, V. 464-474.
2. Ἐκδοθὲν ὑπὸ τοῦ Oxford University Press τὸ 2000.

ἐξισώσεως τῶν Ἰταλῶν μεταξὺ "tradutore" καὶ "trahitore": "*Master of the Rolls*" καὶ "*Lord Chief Justice*" καὶ "*Senior Law Lord*", τὸ τελευταῖον ὁμοιάζον πρὸς τὸ δικό μας τοῦ Προέδρου τοῦ Ἀρείου Πάγου καὶ τοῦ Συμβουλίου τῆς Ἐπικρατείας, ἐφ' ὅσον εἰς τὴν Ἀγγλίαν δὲν ὑφίστανται ξεχωριστὰ Διοικητικὰ Δικαστήρια. Αὐτὴ ἡ ἀναγνώρισις ἐπῆλθε παρὰ τὸ γεγονὸς ὅτι ὁ Λόρδος Bingham συχνὰ ἐναντιώθηκε στὶς κατεστημένες ἀντιλήψεις. Καὶ συνωδεύθηκε μὲ τὴν προσφορὰν πολλαπλῶν ὑπηρεσιῶν ὄχι μόνον πρὸς τὴν ἰδέαν τῆς Δικαιοσύνης, ἀλλ' ἐπίσης πρὸς πολλὰ κοινωφελῆ ἱδρύματα ἀλλὰ καὶ τὴν Ἀγγλικὴν Ἀκαδημαϊκὴν ζωήν. Ηὗρε, πράγματι, χρόνον νὰ ἀναπτύξῃ δραστηριότητα ὡς Πρόεδρος τοῦ Κέντρου Νομικῶν Ἐμπορικῶν Σπουδῶν ("Centre of Commercial Law Studies" στὸ Queen Mary Westfield College καὶ ἀκόμη ὡς ἀνώτατος Ἐπόπτης (Visitor) τοῦ King's College καί, κατὰ τὸ τρέχον ἔτος ὡς High Steward τοῦ Πανεπιστημίου τῆς Ὀξφόρδης.

Ἐνῶ ἡ δικαστικὴ σταδιοδρομία του εἶναι πηγὴ εἰλικρινοῦς θαυμασμοῦ, ἡ Τάξις Ἠθικῶν καὶ Πολιτικῶν Ἐπιστημῶν ἐνδιαφέρεται κυρίως διὰ τὸν Λόρδον Bingham, ὡς ἀκαδημαϊκὸν συγγραφέα. Ἡ συγγραφική του ἐνασχόλησις ἐκτείνεται σὲ τομεῖς μεγάλου εὔρους, ὅπως τὸ Ποινικὸν Δίκαιον, τὸ Ἐμπορικὸν Δίκαιον, τὸ Συγκριτικὸν Δίκαιον, ἡ Ἱστορία τοῦ Δικαίου καὶ τὸ Δίκαιον τῶν Ἀνθρωπίνων Δικαιωμάτων. Ἐκ πρώτης ὄψεως τοιοῦτο εὐρὺ φάσμα θὰ ἠμποροῦσε ἴσως νὰ προκαλέσῃ δυσπιστίαν. Ἂν πρὸς στιγμὴν προκληθῇ τοιαύτη ἀντίδρασις, ταχέως ἐν τούτοις μετατρέπεται εἰς θαυμασμόν, καθὼς ἡ γαλήνια αὐθεντία τοῦ δικαστοῦ συμβαδίζει στὰ ἔργα του μὲ τὴν ἀνικανοποίητη ἐρευνητικότητα τοῦ ἐμβριθοῦς μελετητοῦ. Πέραν αὐτοῦ, τὰ ἔργα του ἀποκαλύπτουν κριτικὸν νοῦν, ὁ ὁποῖος ἐλάχιστα πράγματα ἢ ἴσως καὶ οὐδὲν θεωρεῖ δεδομένον, ἐκτὸς ἂν αὐτὸ ἱκανοποιῇ τὰ δικά του ὑψηλὰ πρότυπα. Διότι εἶναι πολὺ δύσκολον νὰ ἱκανοποιηθῇ τὸ διερευνητικό του πνεῦμα.

Εἰς τὸ ἔργον μὲ ἑλκύει ὡσαύτως ὁ κοσμοπολίτικος προσανατολισμός του. Εἶναι δὲ τοῦτος προφανὴς εἰς τὴν ὁμιλίαν του, ποὺ ἔκανε πρὸς τιμὴν τοῦ διαπρεποῦς νομομαθοῦς Francis Mann[3]. Εἰς αὐτήν, ὡς νέος Ἀπόστολος Παῦλος, δὲν ὁμιλεῖ μόνον περὶ τοῦ Ἀγνώστου Θεοῦ, ἀλλ' ὑπαινίσσεται μὲ αἰσιοδοξίαν καὶ γνῶσιν τὴν ἀνάγκην νὰ κατακτήσωμεν «*αὐτὸν τὸν ἄλλον κόσμον οἱεσδήποτε κι ἂν εἶναι οἱ διαφορὲς ὀνοματολογίας, διαδικασίας καὶ αἰτιολογίας τῶν δεδομένων λύσεων καὶ νὰ προχωρήσωμεν εἰς στενώτερον διάλογον μὲ αὐτόν*»[4]. Ἀναφέρεται, βεβαίως, εἰς τὸ Ἀστικὸν Δίκαιον

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3. "*There is a World Elsewhere: The Changing Perspectives of English Law*" ἐδόθη τὴν 21 Νοεμβρίου 1991 καὶ ἀνεδημοσιεύθη εἰς τὸ βιβλίον του σελ. 87 ἑπ.

4. Ὅ.π. σελ. 100.

τῆς Ἠπειρωτικῆς Εὐρώπης. Καὶ τοῦτο πράττων, ἀναζωογονεῖ μὲ ὅλον τὸ βάρος τῆς αὐθεντίας του τὸ ἐνδιαφέρον διὰ τὸ Γαλλικὸν καὶ Γερμανικὸν Δίκαιον, τὰ ὁποῖα οἱ περισσότεροι Ἄγγλοι τοῦ 20οῦ αἰῶνος εἶχον παραμελήσει, ἀλλ' οἱ Ἄγγλοι νομικοὶ τοῦ 19ου αἰῶνος ἰδιαιτέρως ἐθαύμαζαν. Διότι ἐδῶ, εἰς τὴν Ἑλλάδα, δὲν γνωρίζομεν, καὶ εἰς τὴν Ἀγγλίαν λησμονοῦν –ἴσως σκοπίμως, ἀλλά, πιθανώτερον, ἐξ αἰτίας τῆς τόσον κοινῆς ὑποβαθμίσεως τῆς γενικῆς ἐκπαιδεύσεως τῶν καιρῶν μας– ὅτι οἱ νομικοὶ τοῦ κύρους τοῦ Λόρδου Blackburn, τοῦ Sir George Jessel, τοῦ Sir Frederic Pollock καὶ τοῦ William Maitland εἶχον βαθεῖαν τὴν γνῶσιν τῆς Γερμανικῆς Πανδεκτιστικῆς Ἐπιστήμης, ποὺ ὑπῆρξε τόσον σημαντικὴ καὶ διὰ τὸ Ἑλληνικὸν Δίκαιον[5].

Βαθεῖα γνῶσις ἀλλὰ καὶ ὑψηλὴ ἐκτίμησις τῶν εὐρωπαϊκῶν ἰδεῶν ὡδήγησε πολλοὺς ἀπὸ τοὺς προαναφερθέντες Ἄγγλους συγγραφεῖς νὰ εἰσαγάγουν Ρωμαϊκές, Γερμανικὲς καὶ Γαλλικὲς ἰδέες εἰς τὸ Ἀγγλικὸν Δίκαιον καὶ νὰ πράξουν τοῦτο τόσον ἐπιτυχῶς, ὥστε λίγοι στὶς ἡμέρες μας ἔχουν ἔστω συνείδησιν τοῦ μεγέθους αὐτῶν τῶν πνευματικῶν δανεισμῶν. Ἡ ἀξία τοῦ ἔργου τοῦ Λόρδου Bingham ἔγκειται ὄχι μόνον εἰς τὴν μέθοδον, ποὺ ἔχει ἀκολουθήσει, ἀλλ' ἐξ ἴσου εἰς τὴν ὥθησιν, ποὺ ἔδωσε εἰς τὴν μελέτην τοῦ ἀλλοδαποῦ δικαίου στὴν Ἀγγλίαν. Τὸ «ποῖος» ὁμιλεῖ εἶναι συχνὰ πλέον ἐνδιαφέρον ἀπὸ ὅσον ἐκεῖνο τὸ ὁποῖον λέγει. Εἰς τὴν συγκεκριμένην περίπτωσιν ὅμως, καὶ πρόσωπον καὶ ἰδέες ἦσαν ἐξαίρετοι.

Εἰς τὴν ὁμιλίαν του ἐπ' εὐκαιρίᾳ τῆς νέας Χιλιετίας ὁ Λόρδος Bingham προωθεῖ περαιτέρω τὴν ἀνάγκην τῆς μελέτης τοῦ Εὐρωπαϊκοῦ Δικαίου. Προέβη, πράγματι, εἰς τὴν ἐξόχως σπουδαίαν δήλωσιν, ὅτι ἡ ἐν ἐξελίξει σύγκλισις τῶν νομικῶν συστημάτων τοῦ Common Law καὶ τοῦ Civil Law εἶναι ἀξία μελέτης, ὅπως καὶ τὰ ἰδιαίτερα χαρακτηριστικὰ τοῦ Common Law καθ' ἑαυτοῦ. Γράφει ὄντως[6]:

> *«Εἴμεθα ἕτοιμοι νὰ συνεχίσωμε νὰ προβληματιζώμεθα γιὰ τὶς μικρὲς διαφορές, ποὺ ἐξακολουθοῦν νὰ μᾶς χωρίζουν. Ἀλλ' ἐκεῖνα ποὺ μᾶς ἑνώνουν εἶναι σπουδαιότερα ἀπ' ὅσα μᾶς χωρίζουν. Ἡ αὐγὴ τῆς νέας χιλιετίας πρέπει ἀναμφιβόλως νὰ ἀποτελέσῃ κίνητρον περαιτέρω προσπαθείας ἀλληλοκατανοήσεως...».*

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5. Προσεπάθησα νὰ καταδείξω αὐτὴν τὴν πνευματικὴν ὀφειλὴν μὲ διάλεξιν δοθεῖσαν εἰς τὸ Πανεπιστήμιον τοῦ Μονάχου καὶ δημοσιευθεῖσαν ὑπὸ τὸν τίτλον "Homage an das deutsche Recht" εἰς τὴν *European Review Law 1999*, σελ. 429-444.

6. "A New Common Law for Europe" εἰς *The Coming Together of the Common Law and the Civil Law* (ed. Basil Markesinis) (2000), σελ. 27, 35.

Ἡ σύγκλισις τοῦ Common Law μὲ τὸ Civil Law ὀφείλεται σὲ πολλοὺς παράγοντες[7]. Τόσον ἡ νομολογία τοῦ Δικαστηρίου τῶν Εὐρωπαϊκῶν Κοινοτήτων, ὅσον καὶ τοῦ Δικαστηρίου τῶν Ἀνθρωπίνων Δικαιωμάτων στὸ Στρασβοῦργο ἀποτελοῦν δύο μεγάλες πηγὲς ἀλλαγῆς, ἄλλοτε εὐπρόσδεκτης, ἄλλοτε ἀμφιλεγόμενης, ἀλλὰ πάντοτε ἀπὸ πνευματικῆς σκοπιᾶς ἑλκυστικῆς. Εἰς αὐτὴν τὴν νομολογίαν καὶ τὸν φιλελευθερισμόν του ὁ Λόρδος Bingham εὗρε πηγὴν ἐμπνεύσεως γιὰ τὴν ἐπίπονη προσπάθειά του νὰ εἰσαγάγῃ μεγαλύτερη προστασία τῶν Ἀνθρωπίνων Δικαιωμάτων εἰς τὸ Ἀγγλικὸν Δίκαιον. Τώρα πλέον, ποὺ συνετελέσθη αὐτὸ μὲ τὴν ψήφισιν τοῦ νόμου τοῦ 1998 γιὰ τὰ Human Rights, ὁ κίνδυνος δὲν εἶναι τόσον νὰ λησμονηθῇ ἡ συμβολή του, ἀλλὰ τὸ θάρρος του νὰ ἐπιμείνῃ, αὐτὴ ἡ ἀλλαγὴ νὰ τονισθῇ εἰλικρινῶς καὶ ἐντίμως. Διότι ποτὲ δὲν ἐτάχθη ὑπὲρ τῆς ἀπόψεως, τὴν ὁποίαν ἀσπάζεται ἀριθμὸς διαπρεπῶν Ἄγγλων δικαστῶν[8], ὅτι τὸ Ἀγγλικὸν Δίκαιον ἦτο τόσον πλῆρες καὶ ἀποτελεσματικόν, ὅσον καὶ ἡ Εὐρωπαϊκὴ Σύμβασις Ἀνθρωπίνων Δικαιωμάτων, ὥστε νὰ καθιστᾶ αὐτὴν περιττήν. Ἔτσι, ὅταν ἡ Βουλὴ τῶν Λόρδων διεκήρυξεν ὅτι δὲν ὑπῆρχε κατ' ἀρχὴν διαφορὰ εἰς τὸ πεδίον τῆς Ἐλευθερίας τοῦ Λόγου μεταξὺ τοῦ Ἀγγλικοῦ Δικαίου καὶ τοῦ ἄρθρου 10 τῆς Εὐρωπαϊκῆς Συμβάσεως[9], ὁ Λόρδος Bingham ὤρθωσε τὸ ἀκαδημαϊκόν του ἀνάστημα καὶ ἔγραψε[10]:

> *«Ἐὰν πράγματι τὸ Common Law, ὅπως ἔχει, ἦτο εἰς θέσιν «νὰ δώσῃ εἰς τὰ δικαιώματα τῶν πολιτῶν τοῦ Ἡνωμένου Βασιλείου, τὴν ἰδίαν προστασίαν, ποὺ παρέχει ἡ (Εὐρωπαϊκὴ) Σύμβασις –στὸ σύνολόν της, καὶ ὄχι μόνον καθ' ὅσον ἀφορᾶ στὸ ἄρθρον 10– εἶναι ἄξιον ἀπορίας διατί οἱ ἐνδιαφερόμενοι διάδικοι προτιμοῦν περισσότερον νὰ καταφεύγουν εἰς τὸ Δικαστήριον τοῦ Στρασβούργου καὶ ὄχι εἰς τὰ Ἀγγλικὰ Δικαστήρια».*

Ὁ νόμος περὶ Human Rights τοῦ 1998 ἐδικαίωσε τὴν προσέγγισιν αὐτήν.

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7. Ἐπεσήμανα ὡρισμένους ὁ ἴδιος εἰς τὴν μελέτην μου "Learning from Europe and Learning in Europe" εἰς *The Gradual Convergence. Foreign Ideas, Foreign Influences, and English Law on the Eve of the 21st Century* (1994), 1 ἑπ.

8. Ὅπως ὁ Λόρδος Goff εἰς *Att. Gen v. Guardian Newspapers Ltd.* (No 2) [1990] 1 AC 109 at pp. 283-4 καὶ ὁ Λόρδος Browne-Wilkinson εἰς "The Infiltration of the Bill of Rights" [1992] *Public Law*, σελ. 397 ἑπ.

9. Ὑπόθεσις *Derbyshire County Council v. Times Newspapers Ltd.* [1993] 1 AC 534.

10. "The European Convention on Human Rights: Time to Incorporate" in *Human Rights in the United Kingdom* (eds. Richard Gordon and Richard Wilmot-Smith) (1996), 1 εἰς σελ. 9.

Κατὰ τὴν γνώμην μου, ὁ χρόνος θὰ τὸν δικαιώσῃ ἐπίσης καὶ εἰς τὶς θέσεις του ἐπὶ ἄλλων ἀμφιλεγομένων νομικῶν προβλημάτων, ὅπως: Ἡ προστασία τοῦ ἰδιωτικοῦ βίου[11], ἡ ἐνδεχομένη εὐθύνη τῶν δημοσίων ἀρχῶν γιὰ ζημιογόνες ἐνέργειες τῶν ὑπαλλήλων του[12] καί, ἴσως, κάποτε, τὸ ζήτημα τῆς «ὁριζοντίας ἐφαρμογῆς» τῶν ἀνθρωπίνων δικαιωμάτων, ποὺ πρόσφατα υἱοθετήθη ὑπὸ τοῦ Ἑλληνικοῦ Συντάγματος καὶ ἐπὶ τοῦ ὁποίου, ὁ πρώην Πρόεδρος τῆς Ἀκαδημίας μας κ. Γεώργιος Μητσόπουλος τόσον εὔγλωττα ἔγραψε[13].

Μὲ τὰ λόγια αὐτά, Κύριοι Συνάδελφοι, ἤγγισα ἁπλῶς τμῆμα τῆς ζωῆς καὶ τοῦ ἔργου του. Ἀλλὰ μὲ τοὺς μεγάλους ἄνδρες ἠμπορεῖ κανεὶς νὰ ἔχῃ μόνον φευγαλέες ματιὲς τοῦ πολυσύνθετου ταλέντου των καὶ νὰ ἀφήνῃ εἰς τὸν χρόνον τὴν ἀποκάλυψιν τῆς διηνεκοῦς ἀξίας των.

Lord Bingham,

It is, for me, a rare privilege but also a source of great pleasure to have been selected to introduce you to our Academy today. The President of the Academy, as a divinity scholar of great distinction, will be the first to acknowledge that no one can serve two masters: God and Mamon. But in matters of culture and cross fertilisation of ideas, I hope he will allow room for qualification. For people like me, born in Greece, of Venetian origin, and now permanently residing in my mother's country, trained in the Civil Law and teaching the Common Law, are here to encourage mutual borrowings and push for greater understanding between States. Such endeavours are not only in keeping with the demands of our times; they provide proof of intellectual maturity and confidence for all those who espouse them. For all great civilisations – of ancient Greece, Rome, Medieval Grenada, Renaissance Italy, Victorian England – have shown how

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11. Διὰ τὴν ὁποίαν βλ. μεταξὺ ἄλλων τὴν ἰδικήν του "Opinion: Should there be a Law to Protect Rights of Personal Privacy" εἰς *The Business of Judging*, σελ. 141 ἑπ.

12. Ἐπὶ τοῦ θέματος αὐτοῦ ἐξέδωσε πειστικὴν καὶ προφητικήν, θὰ ἔλεγον ὡρισμένοι, ἀπόφασιν. Βλ.: *M. v. Newham London Borough Council and v. Bedfordshire County Council* [1995] 2 AC 633 εἰς 651 ἑπ.

13. «Τριτενέργεια» καὶ «ἀναλογικότητα» ὡς διατάξεις τοῦ ἀναθεωρηθέντος συντάγματος, εἰς Πρακτικὰ τῆς Ἀκαδημίας Ἀθηνῶν, 2001, τόμος 76ος, τεῦχος Α΄, σελ. 122 ἑπ.

beneficial it can be to graft new shoots onto the trunk of your own tree and grow new and differentiated products. It is only those lacking in confidence who dare not look elsewhere for inspiration and innovation[14]. Thus, we serve our country by serving others. We promote our own ideas by respecting those of others. We teach by being willing to learn. This is the path you chose to pursue in your life's work. If something had to change because new conditions demanded this, you have supported change and did not succumb to the "great force" of inertia. No matter if the change had to come in tort law, the legalisation of drugs, the reform of the English bar, the greater protection of human rights, you would champion change wherever it was needed, bringing to the cause your great learning and stubborn determination and drawing, whenever appropriate, on foreign experiences. This is the sign not only of the true comparatist; it is the sign of the wise and open-minded man. No one expressed the thought better than a man who was a Judeam, who wrote in Greek, and became a Christian Saint: Saint Paul. For it was he who said in his Second Epistle to the Thessalonians[15] "Probe everything and retain the best". Through your work as a scholar and a judge you have given a new meaning to this advice. For you have put it into practice with the kind of calmness and impartiality that we expect from judges but also with the kind of courage of great men who, as Democritus once put it, "courage is at the root of every act even if fate determines the outcome". When the Academy of Athens decided to invite you – so far as I know, the seventh ever Englishman – to join its ranks, it did so for all the above reasons. And by accepting its offer to become one of its Corresponding Fellows, you have enriched its standing as the kind of centre of international excellence that it wishes to be.

I now have the pleasure of inviting you to give your inaugural address.

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14. Lord Annan made this point eloquently in his "The victorian Intellectual Aristocracy" in *Studies in Social History. A Tribute to G. M. Trevelyan*, ch. 8 (ed. Plumb 1995).

15. I, Thessalonians, 21: Πάντα δοκιμάζετε, τὸ καλὸν κατέχετε.

THE LAW AND THE INDIVIDUAL

THE RIGHT HONOURABLE LORD BINGHAM OF CORNHILL

Mr President, Academicians, Ladies and Gentlemen,

To those reared in the classical tradition there can be no body more illustrious than the Academy of Athens. I come from a country which has long prided itself –as perhaps all civilised countries do– on its close affinity with ancient Athens, and also on its close and enduring ties with modern Greece. To be admitted to your select company is the greatest of honours, for which I am most sincerely grateful. It is the benign although often misleading practice in the United Kingdom for judges and advocates to describe each other as "learned" –but we are humbled when we find ourselves among the truly learned, those scholars for whom the search for truth, however unfashionable, remains the central purpose of professional life. It is accordingly in a mood of profound gratitude, but genuine humility, that I address you today.

> In *Ancient Law*, published in 1861, Sir Henry Maine observed that:
> "we may say that the movement of progressive societies
> has hitherto been a movement *from Status to Contract*"[1].

It was an aphorism that made him famous and contributed to the success of *Ancient Law* as (probably) the legal best-seller of all time in Britain[2]. But his generalisation was widely and systematically destroyed by academic critics, and even one of his admirers recorded a fellow-professor as observing that soon all that would be left of Maine would be his literary style[3].

The fate of Sir Henry Maine should be enough to deter a latter-day commentator, lacking his erudition and without his study of early legal systems, from risking a similar generalisation. But the generalisations of Maine – like

1. At 170.
2. Cocks, *Sir Henry Maine*, 1988, 1.
3. Holdsworth, *A History of English Law*, Vol. XV, 366.

those of Dicey after him, with whom he shared the dangerous gift of translucent literary expression – by provoking controversy and challenge sharpened and enriched the course of public debate, at any rate in Britain. And people are generally inclined to be indulgent towards the foolhardy. So I will take the great risk of suggesting two very broad generalisations.

In the first, I adopt the language of Maine by suggesting that the movement of progressive societies has hitherto been a movement towards the enhanced recognition of individual human rights. The second is that the most potent spur towards this movement has been war, rebellion and political turmoil.

Now I must face up to the more difficult task of seeking to justify my generalisations. I start with the first. And I acknowledge at once that distinguished scholars trace the source of modern human rights jurisprudence to the societies of ancient Greece and Rome[4]. When Creon reproached Antigone for burying her brother despite his prohibition, she justified her conduct (according to Sophocles) by reference to the "unwritten unchanging laws of the gods". Cicero spoke of one eternal and unchangeable law, valid for all nations and for all times[5]. But there have been contrary views. Isaiah Berlin quoted Condorcet as saying that

> "the notion of human rights was absent both from the legal conceptions of the Romans and Greeks; this seems to hold equally of the Jewish, Chinese, and all other ancient civilizations that have since come to light. The domination of this ideal has been the exception rather than the rule, even in the recent history of the West"[6].

It is however plain that in the debates which preceded the Declaration of the Rights of Man and the Citizen in Paris in 1789, appeals were frequently made to

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4. See, for example, H. Lauterpacht, *International Law and Human Rights*, 1950, Chapter 6. Professor Honoré subtitled his work on *Ulpian* "Pioneer of Human rights" (2nd ed., 2002) and says that he "expounds Roman law as a law based on the view that all people are born free and equal and that all possess dignity" (p. 76). Jean Gaudemet, by contrast, poses the question "Des 'Droits de l'Homme': ont-ils été reconnus dans l'Empire Romain?" and begins "A une telle question, une réponse négative semble s'imposer sans grande discussion". These are deep waters for the unlearned.

5. *De Republica*, bk III, s.xxii.

6. "Two Concepts of Liberty", in *Four Essays on Liberty*, 1970, 129.

models derived from classical Athens and Rome[7], and for my part I would readily accept that the taproots of almost every great idea reach down to those societies in which most serious modern thinking finds its source.

But it is surely true that notions of individual right did not loom large in the legal systems of ancient times. One of the earlier codes to spring to mind is that promulgated by (or through) Moses in the Ten Commandments. Of the ten, four (the first four) were directed to religious belief and observance, two to moral conduct (the honouring of father and mother, the prohibition of coveting the possessions of others – or three if one includes the prohibition of adultery), and four to the maintenance of public order (the prohibitions of killing, stealing, adultery and perjury or slander). If this is discounted as a somewhat unrepresentative example, it would nonetheless seem to me that the focus of early legal systems was in the main on the preservation of public order; the regulation of rights of property and tenure; citizenship; the regulation of relations between those entitled to enjoy service and those bound to give it; the regulation of commerce, navigation and maritime trade; and the regulation of family relations and inheritance. I do not doubt that this focus was reasonable and necessary, but it did not give individuals much scope to assert what would now be called their human rights.

Nor, I would suggest, was much help given, until relatively recent times, by the Roman Catholic Church. Its theology did, very importantly, insist that each individual soul is infinitely precious in the sight of God, and mediaeval philosophers developed theories of natural law. But the emphasis was on the duties of the Christian believer rather than on his rights, on his salvation in the next world rather than on his rights in this. The Church looked, understandably enough, to the needs and interests of the community. It was blessed to do acts of mercy and compassion but the beneficiaries of these acts had no right to receive them. St Paul, it is true, pronounced one of the world's first promises of non-discrimination:

"There is neither Jew nor Greek,

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7. S. Marks,"From the 'Single Confused Page' to the 'Decalogue for Six Billion Persons': The Roots of the Universal Declaration of Human Rights in the French Revolution", *Human Rights Quarterly* 20 (1988), 471.

there is neither bond nor free,
there is neither male nor female..."[8].

But overall his message was more mixed. His adjuration that all accept subjection to the higher powers, resistance to whom would lead to damnation[9], was not a recipe for self-assertion, and he did not encourage recourse to law:

"Now therefore there is utterly a fault among you, because ye go to law with one another. Why do ye not rather take wrong? Why do ye not rather suffer yourselves to be defrauded?"[10].

With the revival of Hellenistic ideas at the renaissance and with the reformation both the role and the soul of the individual came to loom larger, and I have the authority of a distinguished Jesuit scholar for asserting that

"the Protestant churches have had significantly less difficulty in accepting human rights norms than has Roman Catholicism"[11].

My purpose is not in any way to discount the religious motivation which (for instance) inspired abolition of slavery and the slave trade and prevented abuse of child labour in factories and coalmines, nor to disparage the role of the Roman Catholic Church in recent times as the champion of the poor and oppressed in many parts of the world. I simply suggest that in the movement towards recognition of individual human rights the driving force has not on the whole been mainstream religion.

Here I move on to my second foolhardy generalisation, that the most potent spur towards recognition of individual human rights has been war, rebellion and political turmoil. Most British and American commentators would, I think, see Magna Carta, the Great Charter of 1215, as an important milestone in the modern evolution of individual human rights. Much of the charter was by no means novel, it was quickly annulled by the Pope and the barons cannot be portrayed as a team of altruistic liberals. But they did exact from a tyrannical

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8. *Galatians*, chap 3, v. 28.

9. *Romans*, chap 13, vv. 1-2.

10. *1 Corinthians*, chap. 6, v. 7.

11. John Langan S J., "The Individual and the Collectivity in Christianity", in *Religious Diversity and Human Rights*, ed. Bloom, Martin and Proudfoot, 1996, p. 169.

and unaccountable king promises that were important, partly for what they said and partly for what, in the course of later political controversy, they were believed to have said. These were the royal promises that no free man should be seized or imprisoned or deprived of his rights or possessions except by the lawful judgment of his equals and by the law of the land, and that to no one would the king sell, deny or delay right or justice[12]. If King John did not in 1215 promise equality before the law, as King Magnus VI of Norway is said to have done in 1275[13], he went further than King Andrew of Hungary was constrained to do in his Golden Bull of 1222 and at least may claim to have provided posterity with a text to work on. Posterity was not slow to make the most of its opportunity when the need arose. Express reference was made to it in the Petition of Right of 1628, when the objection was strongly made to our last absolute monarch that

> "divers of your subjects have of late been imprisoned without any cause shown; and when for their deliverance they were brought before your justices by your Majesty's writ of *habeas corpus*, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your Majesty's special command signified by the Lords of your Privy Council, and yet were returned back to several prisons without being charged with anything to which they might make answer according to the law"[14].

It was after the English Civil War, in the course of debate among officers of the victorious army, that one of them (Colonel Rainborough) made a statement which still resonates as one of the pithiest human rights declarations of all time: "for really I think", he said,

> "that the poorest he that is in England has a life to live as the greatest he;..."[15]

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12. Chaps 39, 40 of Magna Carta, 1215.

13. See Lauren, *The Evolution of International Human Rights*, 1998, p. 13.

14. Article V.

15. "The Putney Debates: The Debate on the Franchise (1647)", conveniently found in *Divine Right and Democracy : An Anthology of Political Writing in Stuart England*, ed. Wootton, 1986, Penguin Books, p. 286.

Scarcely less celebrated is the prohibition, in the Bill of Rights 1688, of cruel and unusual punishments and the requiring of excessive bail.

It would however be hard for even the most prejudiced and hidebound of British commentators to deny pride of place, in the evolution of modern notions of individual human rights, to three eighteenth century instruments: the American Declaration of Independence in 1776; the French Declaration of the Rights of Man and the Citizen in 1789; and the first 10 amendments to the United States Constitution, adopted in 1791. In asserting that all men are created equal and are endowed with certain inalienable rights the first of these instruments distilled much eighteenth century philosophy, but it also made particular complaints against the King of Great Britain which have a distinctly modern resonance: for instance,

> "He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries..."

The French Declaration, drawing heavily on its American prodecessor, described "ignorance, neglect or contempt of the rights of man" as "the sole cause of public calamities and of the corruption of governments". In the first 10 amendments to the Americal Constitution are found several rights now embodied in international instruments. To some extent these documents no doubt promised more than they delivered in the short term. American practice offered little protection to slaves, women, the unpropertied and the indigenous people of the expanding republic[16]. In France political rights were restricted not only for slaves, Jews and women but also for actors and executioners, and although slavery was abolished in all the French colonies in 1794 it was re-established by Napoleon in 1802[17]. It would be anachronistic to cavil at these blemishes. The effect of these great instruments was to move the recognition of individual human rights very much closer to effective legal protection. All were the product of rebellion, war and political turmoil.

So too was the Universal Declaration of Human Rights 1948, the first in the great series of human rights instruments which have punctuated the last half

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16. Lauren, *op. cit.*, p. 31.

17. Hunt, *The French Revolution and Human Rights*, 1996, pp. 18, 21, 26.

century. Following President Roosevelt's enunciation in 1941 of four freedoms (which began life as four fears, and might have been five freedoms had the president not forgotten one of them)[18], the international protection of human rights was gradually if spasmodically adopted as a war aim of the Allied powers[19]. Before 1939 there had been no international protection of individual human rights[20], and the Universal Declaration was the response of the newly established United Nations to the tyranny, inhumanity and denial of human rights which had disfigured much of the world over the preceding decade. If, however, it was the Universal Declaration which proclaimed the ideal, for member states of the Council of Europe – including both Greece and Britain – it has been the European Convention which has in practice operated to secure performance. Its influence has been both direct, through the decisions and judgements of the commission and the court, and indirect, through the inclusion of the convention rights in many national constitutions[21]. The result of all these developments is, I think, that to an extent without parallel in history the protection of individual human rights has become a central preoccupation of courts throughout the world.

Now it is doubtless apparent from the trend of my observations that the development which I very sketchily describe is one which I also warmly welcome. But of course there are others who take a different view. I am aware of four main lines of opposition.

The first is that judges, who are in almost every country appointed and not democratically elected, should not be entrusted with power to make sensitive and far-reaching value judgments on the balance to be struck between individual and communal interests, a matter properly (it is said) the subject of democratic not judicial decision. The second is that in making such decisions, judges are inevitably drawn into areas of political controversy, thereby endangering the reputation for complete political neutrality which is today, in most countries, regarded as a necessary condition of holding any judicial office.

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18. AWB Simpson, *Human Rights and the End of Empire*, 2001, pp. 172-173.

19. *Ibid.*, chaps 4-8.

20. *Ibid.*, p. 91.

21. See Demerieux, *Fundamental Rights in Commonwealth Caribbean Constitutions*.

The third is that these human rights instruments (and others which I have not mentioned) concentrate on the rights of individuals without any recognition of the duties which, it is said, should be the price of enjoying these rights. The fourth ground of opposition is perhaps the most potent. It is that the rights enshrined in these international human rights instruments, however deserving of protection in developed westrern countries, are of subordinate importance in developing countries where other needs are much closer to the real needs of the people. Dr Mahathir Mohamad, the Prime Minister of Malaysia, is a proponent of this view. He has suggested that

> "a review should be carried out on the [Universal] Declaration [of Human Rights], which was formulated by the superpowers which did not understand the needs of poor countries"[22].

He has further said that

> "[t]he west believes individuals are supreme irrespective of what happens to the majority... The people cannot do business, cannot work because of the so-called expression of the freedom of individuals... In a country like ours where stability is important to provide a good life to our people, we consider the good life of people as the right of the people"[23].

Mr President, if it were my purpose to disparage the virtues of democracy I would not choose, as the place in which to do it, this great city whose supreme achievement it has been to bequeath the democratic ideal to mankind. But I would assert that the legal protection of individual human rights, far from eroding or undermining the democratic process, supplements and strengthens it. This it does in a number of different ways: by providing a yardstick against which the omissions and defects of national laws, hitherto unnoticed, may be measured; by securing the observance of certain standards even in favour of those whom the democratic process, inevitably dominated by the popular opinion of the day, is apt to neglect; and by ensuring that national law and practice keep very broadly in step with the changing values of the people over time and with the standards observed in other states.

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22. S Marks, *op.cit.*, at p. 461.

23. *Ibid.*, pp. 461-462.

I need not attempt to list the occasions on which British law or practice have been found wanting by the European institutions in Strasbourg. They are many. But I do not regard the story as dishonourable. It is evidence of a popular belief that rights matter and of a popular willingness to seek redress. And while some European decisions are criticised, few would question that the resulting changes have been, on the whole, for the better. The case for entrenched constitutional protection of human rights has been nowhere more eloquently expressed than by the Constitutional Court of South Africa, in the vexed context of the death sentence, which was neither expressly preserved nor expressly abolished when a new constitution was adopted in 1993. Giving the judgment of the court the President said:

> "Public opinion may have some relevance to the enquiry, but in itself, it is no substitute for the duty vested in the Courts to interpret the Constitution and to uphold its provisions without fear or favour. If public opinion were to be decisive there would be no need for constitutional adjudication. The protection of rights could then be left to Parliament, which has a mandate from the public, and is answerable to the public for the way its mandate is exercised, but this would be a retreat from the new legal order established by the 1993 Constitution. By the same token the issue of the constitutionality of capital punishment cannot be referred to a referendum, in which a majority view would prevail over the wishes of any minority. The very reason for establishing the new legal order, and for vesting the power of judicial review of all legislation in the courts, was to protect the rights of minorities and others who cannot protect their rights adequately through the democratic process. Those who are entitled to claim this protection include the social outcasts and marginalised people of our society. It is only if there is a willingness to protect the worst and the weakest amongst us that all of us can be secure that our own rights will be protected."[24]

It was this same concern for the interests of minorities, liable to be overridden

24. *State v Makwanyane*, 1995 (3) S A 391, para. 88.

by the exercise of majority power, which prompted adoption of the early amendments to the American constitution.

It is true that human rights instruments concentrate on rights to the neglect of duties, although the main author of the Universal Declaration has recorded that he intended to include a brief statement of the duties of man, only to be thwarted by the United Nations Commission on Human Rights, and in particular its president Mrs Eleanor Roosevelt[25]. But I do not regard this as an important point. It is open to states, if they wish, to define the duties which citizens own to the state or to each other. But there are certain rights so fundamental that citizens shoud be entitled to enjoy them, whether or not they perform such duties as may be laid upon them.

The accusation, already noticed, that human rights instruments represent a form of Western cultural imperialism, is not one to be lightly dismissed. But it is in my opinion repelled by consideration of the rights which the instruments protect. As was said in a recent British judgement on the European Convention,

> "Those who negotiated and first signed the convention were not seeking to provide a blueprint for the ideal society. They were formulating a statement of very basic rights and freedoms which, it was believed, were very largely observed by the contracting states and which it was desired to preserve and protect both in the light of recent experience and in view of developments in Eastern Europe. The convention was seen more as a statement of good existing practice than as an instrument setting targets or standards which contracting states were to strive to achieve"[26].

The right to life, to protection against torture and inhuman treatment, to security of the person, to a fair trial, to freedom of expression and belief and other protected rights are scarcely less important in developing than in developed countries, and arguably even more so.

The impact of changing values, heavily influenced by international human rights jurisprudence, is strikingly illustrated by contrasting decisions of the Judicial Committee of the Privy Council, a court which, sitting in London, once

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25. Rene Cassin, "From the Ten Commandments to the Rights of Man" (1969).

26. *Dyer v Watson, K v HM Advocate* 2002 SLT 229, 240, para 48.

exercised an extensive imperial jurisdiction and still exercises a residual jurisdiction in relation to some surviving colonies and some, mostly small, independent states. In one case in 1966 the Privy Council upheld a mandatory death sentence imposed in Rhodesia on a defendant convicted of attempting to set fire to a house used for residential purposes[27]. In another, in 1980, it upheld mandatory death sentences imposed in Singapore on defendants convicted of trafficking in more than 15 grams of heroin[28]. I am not concerned with the correctness of these decisions, made when they were. But they are to be contrasted with a more recent decision in which a mandatory death sentence on conviction of murder by shooting in Belize was quashed. Relying on judicial decisions in the Caribbean, South Africa, India, the United States, Canada and, of course, Europe, and on a volume of non-judicial opinions, the Privy Council concluded not that the death penalty itself was contrary to the constitution of Belize – an argument precluded by the express terms of the constitution – but that the denial of any opportunity to a defendant, in court, to show reasons why he should not be condemned to die "is to treat him as no human being should be treated and thus to deny his basic humanity, the core of the right which [the prohibition on inhuman or degrading treatment or punishment] exists to protect"[29]. Thus the requirement to impose sentence of death, even in a limited class of cases, was held to be incompatible with the constitution.

In making such decisions the court is exercising a weighty and sensitive function, but nonetheless a strictly judicial and not a political function. It has instruments which it must interpret. It has jurisprudence to which it must have regard. And, above all, it has the experience and learning of other countries on which to draw and from which to learn. I say this with the greater confidence in the distinguished presence of Professor Markesinis, a scholar at home not only in Greece and the United Kingdom but in most of Western Europe also, whose writings have done so much to remind us all that we are citizens of one legal universe, a universe in which ideals, values and even modes of thought are shared to an extent of which our fathers would never, I think, have dreamed. For centuries national laws were cherished as badges of national distinctiveness. In the

27. *Runyowa* v *The Queen* [1967] 1AC 26.

28. *Ong Ah Chuan* v *Public Prosecutor* [1981] AC 648.

29. *Reyes* v *The Queen* [2002] 2 WLR 1034, 1055-1056, para 43.

modern world this has become increasingly anomalous. It is indeed absurd that the fundamental rights of an individual human being should vary significantly depending on whether he or she happens to live in Ireland or Italy, Greece or the United Kingdom. I can think of nowhere more appropriate than the Academy of Athens to celebrate the ever-growing recognition of this glorious fact.