

Media Release

For immediate release (Issued: 8 November 2016)

WE NEED TO TALK ABOUT THE RULE OF LAW

As the dust settles on the High Court's decision last week, the media coverage that pitched judges as enemies or opponents of the people, a mix of responses from within government and opposition, UKIP calls for "democratic controls" on the judiciary, and the clamour for the intervention of the Lord Chancellor, one thing is clear: we need – urgently – to talk about the rule of law.

When the High Court found last week that, under our constitution, the government can trigger Article 50 only with the authority of parliament, it explicitly invoked the rule of law in its reasoning.

When the Daily Mail's 'Enemies of the People' headline appeared, it rightly attracted criticism for, among other things, its impugning the motives of judges, portraying the decision as being one made on the basis of judges' personal 'Europhile' preferences. The Mail's [leader](#) did not mention the rule of law at all.

The Lord Chancellor's brief statement in response noted that, "The independence of the judiciary is the foundation upon which our rule of law is built." But, like so many before her, she did not elaborate on what, exactly, the rule of law is or how it operates in practice.

One of the problems with much talk about the rule of law is that it is easily invoked as a high-level principle or thrown around as a rhetorical flourish. That is problematic because, especially, at times of tension and disagreement – the time of Brexit – we cannot rely on rhetoric. We need concrete points of reference. As Lord Bingham emphasised a decade ago, the rule of law is clear and practical. One of its central pillars is judicial independence. The substance of the rule of law is too seldom articulated in public debate.

With that in mind, and continuing our work in the area, the Bingham Centre for the Rule of Law has invited the Lord Chancellor to deliver a public lecture, to be hosted by the Centre, under the following title: "What is the rule of law? What does it require?"

The Lord Chancellor's role in the current debates is obviously of central importance because the Lord Chancellor has a constitutional and statutory duty that is unique within government. The

Constitutional Reform Act 2005 sets out the duty, encapsulated by the Lord Chancellor swearing an oath to “respect the rule of law” and “defend the independence of the judiciary.”

A Lord Chancellor’s lecture would be neither the beginning nor the end of the national conversations that we need to have in the wake of last week’s decision and the response to it. It would, however, be a vital step forward in giving the conversation the depth and prominence it needs in national life, and in giving substance to what the rule of law is, the Lord Chancellor’s role, and what it means to respect the rule of law.

There will be many rule of law issues in Brexit before we leave the EU, and there is a plethora of others that are unrelated to Brexit but which warrant attention. The conversation must start now, in the relative calm before the Supreme Court decision, because it is about a fundamental value in our society and not the legal rights and wrongs of any particular case.

We need to talk. We hope the Lord Chancellor will join us.

ENDS

The above statement is published at:

www.binghamcentre.biicl.org/news

For comment or interviews with the Bingham Centre Director or staff, contact:

Carmel Brown, Marketing Manager

E: c.brown@biicl.org

T +44 (0)20 7864 5435

Sandra Homewood, Bingham Centre Manager

E: [s.homewood@binghamcentre biicl.org](mailto:s.homewood@binghamcentre.biicl.org)

T +44 (0)20 7862 5154

NOTES TO EDITORS:

1. The Bingham Centre for the Rule of Law is independent and non-partisan. Its Director is Professor Christina Murray.
2. The Centre was launched in December 2010 to honour the work and career of Lord Bingham of Cornhill KG – a great judge and passionate advocate of the rule of law. The Centre is dedicated to the study and promotion of the rule of law worldwide. It does this by defining the rule of law as a universal and practical concept, highlighting threats to the rule of law, conducting research and training and providing rule of law

capacity-building to enhance economic development, political stability and human dignity. The Centre's founding Director was Professor Sir Jeffrey Jowell QC. The Centre is a constituent part of the British Institute of International and Comparative Law (BIICL). BIICL was established in 1958 and is a registered charity in England and Wales. www.binghamcentre.biicl.org

3. The Bingham Centre has an extensive record of working in rule of law issues in the UK and internationally. It has worked in over 20 countries and has been influential in contributing to the way that law and policy in the UK and abroad should be informed by the rule of law.
4. One of the Centre's core areas of focus has been securing judicial independence as an integral part of the rule of law. The Centre's work includes:
 - A major study of Commonwealth frameworks for judicial appointments, tenure and removal:
<http://binghamcentre.biicl.org/projects/commonwealthcompendum>
 - The Cape Town Principles on the Role of Independent Commissions in the Selection and Appointment of Judges:
<http://binghamcentre.biicl.org/projects/capetownprinciples>

