

## **Rule of law : the backbone of economic growth**

(A lecture delivered by Deemster David Doyle at the Oxford Union on 17 July 2014 as part of the Small Countries Financial Management Programme)

### ***Introduction***

"By this Book and the Holy Contents thereof and by the wonderful Works that GOD hath miraculously wrought in Heaven above and in the Earth beneath in Six Days and Seven Nights;

I David Charles Doyle do swear that I will without respect of favour or friendship, love or gain, consanguinity or affinity, envy or malice, execute the Laws of this Isle justly betwixt Our Sovereign LADY THE QUEEN and Her Subjects within this Isle, and betwixt Party and Party as indifferently as the Herring Backbone doth lie in the midst of the Fish.

So help me God.

And by the Contents of this Book"

That was the judicial oath I first took in 2003 when I was appointed Second Deemster and again in 2010 when I was appointed First Deemster. I am sharing it with you this evening because it embodies the essentials of the rule of law.

Lord Hope, the former Deputy President of the Supreme Court of the United Kingdom, was kind enough to refer to the Manx judicial oath in the chapter he contributed to *Judge and Jurist Essays in Memory of Lord Rodger of Earlsferry* (2013 Oxford University Press) at pages 75-76.

Justice must be delivered according to the law, without surrendering to any improper influences and delivering equal treatment to everybody, "without respect of favour or friendship, love or gain, consanguinity or affinity, envy or malice". It is interesting that this extract from my oath is a list of some of the feelings and failings that make us human. So in many ways you could say that the rule of law must protect us from ourselves.

To make this possible no-one can be above the law, and there must be an adequately resourced independent and impartial judiciary who decide cases fairly according to the law.

### ***Definition***

A useful definition of the rule of law was provided by Tom Bingham, the much lamented former senior law lord, whose mother's family were, in his words, "entirely Manx", so that would go some way to explain his significant intellect and outstanding judicial qualities!

He asserted, in his excellent book on *The Rule of Law* (2010 Penguin Books) at page 37, that the core principle of the rule of law was that "... all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts."

I did not have the pleasure of meeting Tom Bingham but was privileged to receive an invitation to his Memorial Service in 2011. I will never forget people dancing out of Westminster Abbey at the end of the service to a New Orleans jazz band; a glimpse of the very human side of a man who made the law his life.

In my role on the Isle of Man a great deal of my life focuses on the law and the nature of the rule of law.

Recently there has been much discussion about the rule of law and economic development. For me, Kenneth Dam, who has served three US Presidents, including a period as Deputy Secretary of the Treasury, raised an important practical point in 2006 when he wrote:

"What is this thing we call the rule of law? Advocating the rule of law as a key to development is much too vague a prescription to be meaningful to policymakers in developing countries or to foreign assistance agencies in international organisations and individual developed countries ..."

[*The Law–Growth Nexus : The Rule of Law and Economic Development* 2006 Brookings Institution Press at page 13].

He believed that most rule of law discussions were so general and abstract that they could have little direct relevance to the formulation of economic development policies.

Professor Dam focused on how the protection of property and the enforcement of contracts could contribute to economic development. He referred, as many people do, to the difficulties in defining the rule of law and conceded that perhaps the rule of law is something that we just know when we see it.

However, Professor Dam gathered together [at page 16 of his book] from the vast literature on the rule of law three basic but key ideas that should be turned into a triptych to sit on the desk of every decision-maker worldwide:

- "1. Legal rules should be written down and available to all residents of the realm : No secret law.
2. Rules should apply, and be enforced, equally and dispassionately for all, regardless of position or status : Nobody is above the law.

3. Individuals must have a right to have rules that favor them enforced for their benefit. In other words, they are entitled to access to justice on a non-discriminatory basis no matter who they are and who the defendant may be." Equal access to justice.

Key ideas two and three, in particular, rely on judicial independence. The judiciary must be and must be seen to be independent from the legislature and the executive.

Dam was also clear in his findings that the degree of judicial independence is correlated with economic growth.

Lord Neuberger, President of the Supreme Court of the United Kingdom and lead judge in the Judicial Committee of the Privy Council, in his lecture entitled *Justice in the Age of Austerity* (15 October 2013) stated:

"2. Of course, the rule of law can mean different things. At its most basic, the expression connotes a system under which the relationship between the government and citizens, and between citizen and citizen, is governed by laws which are followed and applied. That is rule by law, but the rule of law requires more than that. First, the laws must be freely accessible; that means as available and as understandable as possible. Secondly, the laws must satisfy certain requirements; they must enforce law and order in an effective way while ensuring due process, they must accord citizens their fundamental rights against the state, and they must regulate relationships between citizens in a just way. Thirdly, the laws must be enforceable: unless a right to due process in criminal proceedings, a right to protection against abuses or excesses of the state, or a right against another citizen, is enforceable, it might as well not exist."

On 20 June 2014 in a lecture at a conference on *The Future of the Bar* in Belfast, Lord Neuberger (at paragraph 5) added:

"... Lawyers have a special position in society not because they are loved or because they are particularly admirable people, but because they are responsible for the rule of law. That is true whether they administer law as judges, advise on law as legal advisers or act as advocates in courts and tribunals, whether independent, or employed. The rule of law is fundamental to a modern democratic society. The rule of law requires laws which satisfy certain criteria: they must be clear and accessible, they must protect society, and they must recognise the fundamental rights of individuals against each other and against the state. However, such laws are valueless unless they are also a practical reality, and therefore the rule of law also requires that all citizens have access to justice, and by that I mean effective access to competent legal advice and effective access to competent legal representation."

The Canadian Supreme Court in 1998 in the *Quebec Secession* case [1998] 2 S.C.R. 217 at 257-258 stated:

"At its most basic level, the rule of law vouchsafes to the citizens and residents of the country a stable, predictable and ordered society in which to conduct their affairs. It provides a shield for individuals from arbitrary state action ... the law is supreme over the acts of both government and private persons. There is, in short, one law for all .... The exercise of all public power must find its ultimate source in a legal rule ... the relationship between the state and the individual must be regulated by law ..."

Well that is a clear and distinct view from the well-established West.

To get a view from the early risers in the East I would like you to hear what Geoffrey Ma, the well-respected Chief Justice of Hong Kong, had to say at the Chinese University of Hong Kong 50<sup>th</sup> Anniversary Lecture last year:

"... the rule of law. This term sometimes means quite different things to different people .... My definition of that term is that the rule of law comprises two connected premises: first, the existence of laws that respect the dignity and rights (whether personal, proprietary or what are known as human rights and freedoms) of the individual; and secondly, the existence of an independent judiciary to enforce these rights and liberties."

Though there is a slightly different emphasis it would seem that both East and West are definitely on the same page when it comes to judicial independence. Without it there can be no viable rule of law and, I would contend, without the rule of law there can be no fair societies with sustainable economic growth.

I have quoted from Geoffrey Ma partly because I have a high regard for what he has to say, partly because he is the Chief Justice of an economically successful community, and partly because I had the pleasure of meeting him during a personal visit to Hong Kong with my two eldest sons in 2012. He entertained us at the Hong Kong Club and we watched the Hong Kong Court of Final Appeal in action. Riveting stuff, well for me at least.

On that visit I was presented with a signed print of the Hong Kong Court of Final Appeal which now takes pride of place in my chambers next to pictures of the Judicial Committee of the Privy Council, my dog, and my prize-winning pumpkin.

Judicial independence is undoubtedly the key to the implementation of the rule of law. But frequently judicial independence is claimed, when in reality it has as much depth as an oil slick.

In an article entitled *Judicial Independence* in the *Georgetown Law Journal* [2007 Vol 95, 903 at page 905] US Supreme Justice, Justice Breyer, referred to his visit to a convention of Russian judges in 1993. The then new President Boris Yeltsin

announced to the assembled judges that he intended to institute a large judicial pay rise. Not surprisingly, the Russian judges greeted this announcement with enormous cheers. He also remembered Yeltsin decrying the Russian practice of "telephone justice". And, loud as the cheers for the pay rise were, the applause that greeted this announcement was absolutely deafening.

Justice Breyer later found out that "telephone justice" occurred when the party boss called judges and told them how to decide the outcome of a particular case.

When the judges were asked why they would pay attention to the wishes of the party boss or even take his call, the judges explained that they needed apartments and that they wanted to put their children in good schools.

More recently in 2007 Genry Reznik, in his capacity as the President of the Moscow City Chamber of Advocates, openly expressed the view that : "The Rule of Law is especially important as an influence on economic development in developing and emerging markets."

It appears China also has some issues when it comes to judicial independence and interference with what we in the West refer to as due process. He Weifang, in an Open Letter to Legal Professionals in Chongqing 2011 [see He Weifang *In the Name of Justice : Striving for the Rule of Law in China* 2012 Brookings Institution Press Prologue pages 1–6], referred to so-called "three chief conferences" that had occurred in a number of cases.

This involved the chief judge, the attorney general and the police chief holding meetings so that the results of the cases could be decided before they even go for trial. When the case is finally heard, it is a mere formality. No due process.

Even if the right legal rules are written down and available and those rules give access to justice on a non-discriminatory basis, there will be no justice if there is no judicial independence and integrity.

### ***Financial relevance of the rule of law***

Having established that independent judges with integrity are the vital ingredient of the rule of law, no surprise there coming from a judge, I would like to develop the financial relevance of the rule of law.

The American ex-Deputy Secretary of the Treasury I mentioned earlier, Professor Kenneth Dam, is confident that institutions and the rule of law in particular, provide the keys to unlocking the full growth potential of the developing world.

Dam also asserts that it is widely agreed that the judiciary is a vital factor in the rule of law and more broadly in economic development.

In fact, the rule of law underpins everything you have been considering over the last two weeks, from delivering change in the public sector and risk assessment, to financial crime and the management of regulation and tax issues.

I was particularly interested in Tim Cullen's presentation on negotiation, especially in the area of persuasion. This got me thinking about the persuasive qualities of the rule of law.

The video you saw this afternoon provided an interesting view of the inner workings of the World Bank and the International Monetary Fund in their bid to reduce the burden of debt in developing countries. With the example of Uganda we saw the balancing act between health, education and roads, versus the need to fund the civil service and defence. Though the rule of law was not specifically identified as a factor in the funding equation, the question of whether the funding could, and would, be appropriately administered was. There can be no doubt that local respect for the rule of law by politicians and others would have been a reassuring and persuasive factor to both the World Bank and the International Monetary Fund.

Early on in this year's programme some of you saw an example of the rule of law in action when on Monday 7 July 2014 (which must seem like a lifetime away now) you attended the open air ceremony on Tynwald Hill at St Johns where the two Deemsters promulgated the statute laws publicly in the presence of members of the public. This was a very public display of the rule of law in action. No secret law.

### ***Warnings***

When talking about the rule of law and its impact on national economies, I must warn you that I am not an economist. I am a judge whose job it is to interpret and apply the law. I know that you know far more about economics than I do.

Over the years I have learned to step carefully when speaking to people who know more than I do. So I do end up doing a lot of tip-toeing around.

However, I do know something about legal systems and the law. I also communicate with, visit and receive visits from judges in other jurisdictions. Additionally, I have over the years had the opportunity of observing human behaviour under extreme pressure within the legal process.

But I am just a judge, and it is very broadminded of you to listen to someone who knows little about economics or successful financial management of a country. I just decide the legal issues of the day and part of my job is to keep out of politics.

So imagine my reaction when I picked up the Isle of Man Examiner dated 13 January 2014 and read the following:

"Mr Cullen said this year the programme will include some input from the First Deemster, Deemster Doyle. He will be an evening speaker during the Oxford week when he will talk on the subject of the rule of law being an essential

ingredient for economic growth. The Deemster first touched on this when he addressed delegates during a reception at Government House last year. Mr Cullen said: 'We are thrilled he has agreed to speak because he's a terrific speaker'."

A terrific speaker? I think there is an obvious typographical error, the evidence for which stands before you.

However, putting this aside, the real reason I am standing here before you is because at the reception I hosted at Government House last year some of your fellow participants in this programme were foolish enough to clap and shout "hear, hear" when I addressed them on the lawn, covered in glowing Manx sunshine, and asked them not to forget in their deliberations that the rule of law adds economic value. I always feel good when the rule of law gets a big round of spontaneous applause. So you only have previous participants and yourselves to blame. Next time do not clap so loudly or you may again end up in front of a boring judge lecturing you on the rule of law.

The rule of law does however deserve applause.

Without the rule of law, anarchy would prevail. Rights and responsibilities would not be determined by independent judges within a fair public hearing but by the use of physical force, by behind-the-scenes meetings, by secret telephone calls and by corruption.

As I described in the form of "telephone justice" and the "three chief conferences", there are many undesirable activities between real justice delivered by the rule of law and complete anarchy.

### ***Chief exhibit***

By now, if you are still awake, you will have guessed that my contention tonight is that the rule of law is a positive influence on economic growth. I will expand upon the further evidence in support of this shortly, but let me now refer to the following chief exhibit.

The chief exhibit is a question and a short answer.

Question to Alan Greenspan, the former Chairman of the Federal Reserve Bank of the United States of America and an economist - "what do you consider the single most important contributor to economic growth?"

Alan Greenspan's considered answer? Just 4 words – "the rule of law".

[see Tom Bingham *The Rule of Law* at page 38]

As you now know this is Mr Greenspan's stance on the rule of law, you will not be surprised if I refer to him again.

But in fact I do Greenspan a gross injustice with just 4 words, he was often much more forthcoming on this subject. He has been heard to say that if he could wave a magic wand and establish a single institution that is necessary for the growth of underdeveloped nations, he would create a judiciary that would decide contract cases in a manner that was neither corrupt nor dishonest. That is to say that he would create an impartial judiciary that possessed the independence to dispose of financial cases fairly and consistently. Without independent, impartial and trustworthy judges deciding contract cases, Greenspan is certain that citizens in developing nations will not make investments because those investments would be insecure and subject to the vagaries of an arbitrary judiciary. And without investment, of course, there can be no economic prosperity.

[See Justice Breyer's article *Judicial Independence* in the *Georgetown Law Journal* 2007 Vol 95, 903 at page 905].

### ***Some meat on the bones***

The existence of the rule of law in a country can provide stability that undoubtedly encourages investment from internal and external sources because there is the expectation that the investor will be protected by an independent judiciary applying laws that ensure fairness.

Equally, the very existence of the rule of law provides every citizen with an expectation of fairness that potentially fuels his belief in lasting self-betterment through education, work, wealth and liberty that cannot unfairly be taken away.

In the broadest sense, the existence of the rule of law provides the vital reassurance and motivation needed by individuals, businesses and investors to stimulate economic growth.

As Lord Phillips (the former President of the Supreme Court of the United Kingdom) stated in a lecture entitled *Judicial Independence & Accountability : A View from the Supreme Court* delivered at the UCL Constitution Unit on 8 February 2011:

"The rule of law requires that the courts have jurisdiction to scrutinise the actions of government to ensure that they are lawful. In modern society the individual citizen is subject to controls imposed by the executive in respect of almost every aspect of life. The authority to impose most of these controls comes, directly or indirectly, from the legislature. The citizen must be able to challenge the legitimacy of executive action before an independent judiciary."

I would add that if the citizens of a country believe the rule of law can only be accessed by a small number of the privileged elite they will lose the motivation to strive for better. Ultimately this will be because they feel certain that any success will be short lived without the rule of law to protect them. In situations like this they must either knuckle under and do nothing, or step outside the law. Here starts anarchy.



As long as there exists the possibility of an arbitrary invasion of any citizen's right and absence of any court to which they can safely and fairly access for redress, no one is going to undertake the risks inherent in all economic enterprises. Max Beloff makes this very point in *An Historian in the Twentieth Century* (1992 Yale University Press) at pages 35–36.

It is essential that every individual citizen can be assured of fair treatment. The motivation of the individual is the economic engine of every country. Individual success leads to national prosperity.

Until a country has a legal system enabling property to be protected, and contracts to be enforced, real economic progress, shared by all members of the community, is not possible.

This is why every country must strive to create and maintain a justice system that protects individual citizens. Because in doing so the active implementation of the rule of law will encourage local investors and will attract inward investment and instil confidence in those looking to do business in that jurisdiction.

From this we know that motivation of the individual and inbound investment are vital for prosperity, but so is collaboration between nations, and that too is only possible with the common foundation stone of the rule of law.

Therefore a jurisdiction which does not trumpet its support for the rule of law and invest time and effort to ensure the quality and integrity of its judiciary and legal profession cannot, and will not, prosper. [See Michael Todd's presentation delivered in Grand Court No 1 Cayman Islands March 2012 reported in the *Commonwealth Judicial Journal* Vol 20 No. 1 June 2012].

Lord Neuberger, in a paper delivered on 20 January 2012 to the Chancery Bar Association conference in London entitled *Developing equity – a view from the Court of Appeal* also recognised the importance of the rule of law in relation to economic growth when he stated at paragraph 5:

“A successful capitalist economy, as Adam Smith pointed out, depends on a trusted and effective legal system. This is particularly true of an economy with an emphasis on financial and associated services.”

Michael Kirby (Justice of the High Court of Australia 1996–2009) in *Judicial Integrity* (speech delivered January 2012) stated:

“... The strengthening and improvement of the judiciary is important, given that it contributes, in a marked way, to secure economic growth.”

Many others worldwide have spoken in favour of the proposition that the rule of law has a positive influence on economic growth, including:

- *The Rule of Law Reform and Development* Michael Trebilcock and Ron Daniels (2008 Edward Elgar Publishing);
- Satyajit Boolell *The Rule of Law as a Key Guarantee for Investors* April 2011 conference held in conjunction with the Supreme Court of Mauritius;
- Charles Mkandawire, Registrar, Southern African Development Community Tribunal, in an article published in the Journal of the Commonwealth Magistrates' and Judges' Association Vol 21 No 2 December 2013 13, argues that human rights and good governance play a pivotal role in economic development;
- Geert Corstens, President of the Supreme Court of the Netherlands, at a conference in January 2014 at the Hague Peace Palace focussing on "the interaction between the rule of law and prosperity";
- Chief Justice Janice M Pereira Chief Justice address to mark the opening of the law year 2013/14 Territory of the Virgin Islands the Eastern Caribbean Supreme Court *The Role of the Court in the Region's Socio-Economic Development*.

In 2011 the present Australian Chief Justice Robert French in *The Judiciary in an age of global interdependence* (15 March 2011) clearly captured the importance of the rule of law in nation building when he said:

"The principle that the Legislature makes the laws, the Executive carries them into effect and the courts interpret them and resolve disputes relating to them, provides an important check and balance between different and powerful institutions in any society.

It means also that domestic and international investors can be confident that the rule of law will be applied impartially in disputes however powerful the other party may be and whether or not the government is part of the dispute ...

The judiciary of any country in today's world is a critical part of the economic and social infrastructure. The interdependence of nations also means that it is part of the infrastructure of dealings across national borders. Because of this more is demanded of us as judges in our own societies and in the global community of which we are part."

[See also *The Rule of Law as a Many Coloured Dream Coat* 18 September 2013, Singapore lecture by Australian Chief Justice French).

I would draw your attention to the emphasis on the interdependence of nations that would be built on collaboration. The nature of global trading requires participants to demonstrate respect for, and adherence to, the rule of law. Interdependence is only possible if each trading partner has respect for the rule of law, and the law continues to evolve as a means of avoiding conflict.

Although judges must be independent we are dependent on public support to maintain the rule of law. In addition to the interdependence of nations, there is an interdependence between judges and the communities they serve. Judges cannot be expected to be the sole guardians of the rule of law. We need your help, the help of decision-makers, the help of regulators and economists. In a modern democracy, parliament, the legislature, the executive, the civil service, the police, the private sector, the legal profession, the media, the educators, indeed all law-abiding members of the community, must all respect and protect the rule of law.

To ensure continued economic development every country must be prepared to invest in the rule of law. At a time when so many nations are cutting back in an attempt to demonstrate economic prudence, I would urge you not to cut back on the structures and processes that support the rule of law. Often it is at the very moment when economic times are tight that extra care must be taken to ensure that the fundamental rights of people, especially vulnerable people, are respected and maintained.

As Lord Neuberger said in *Justice in a time of economic crisis and the internet* (18 October 2011) at paragraph 35:

“It is all very well and good to refer to the economic situation and the need for cuts, but the fundamental rights of the people must be respected and maintained, just as the fundamental duties of the government must be performed ... maintaining the rule of law.”

Moreover, in good and bad economic times there will be occasions when the judiciary make decisions in accordance with the law that are against the government. On such occasions we should remember the wise words of Tom Bingham in *The Rule of Law* at page 65:

“There are countries in the world where all judicial decisions find favour with the powers that be, but they are probably not places where any of us would wish to live.”

I also refer to an article you may have read already. The following is an extract from the article entitled *Economics and the Rule of Law: Order in the Jungle*, which appeared in *The Economist* 13 March 2008, pages 95–97:

“The rule of law is usually thought of as a political or legal matter ... But in the past ten years the rule of law has become important in economics too ... The rule of law is held to be not only good in itself, because it embodies and

encourages a just society, but also as a cause of other good things, notably growth.”

Respect for the rule of law is important for economic growth. However, respect for the rule of law is far more important than simply the pursuit of economic growth. Heresy? I am not sure, but certainly a risk when a judge says this to a room full of economists and those who financially manage countries.

The economy is important to our financial well-being, but respect for the rule of law goes well past pounds, pennies, dollars or cents to the very core of society.

With that said, I am sure that some of you are starting to think of places where the rule of law may not be very robust but the country is enjoying an economic upturn. Well, I am ahead of you.

### ***China***

When last year I discussed with Tim Cullen (now Tim Cullen MBE), the founding inspiration of this fantastic programme, the topic of ‘the rule of law adds economic value’, Tim immediately raised the pertinent question : what about China? Other commentators have noted that neither China’s legal nor financial system is well developed by existing standards, yet it has one of the fastest growing economies.

That got me thinking, and that got me researching the position in more detail. My heart told me that the rule of law added economic value, but what would my head discover? Would the example of China dent my confidence in the economic value of the rule of law? In a word - ‘No’ - and I am supported by Professor Dam in this conclusion.

In his paper, *China as a Test Case : Is the Rule of Law Essential for Economic Growth?* (2006), which forms the substance of the relevant chapter in his subsequent book to which I will refer in a moment, Professor Dam referred to China’s growing economy and commented that the level of China’s adherence to the rule of law is frequently criticised. Dam asked whether we should conclude, at the very least, that legal institutions and the rule of law in particular, are not important?

I ploughed through Dam’s thorough and heavily sourced 52 page paper on Easter Monday -the day my pumpkin seeds from Canada arrived, a memorable day. The plants are now growing and I still remember when the first one burst out of the soil on the 29 April 2014. I have high hopes for my pumpkin this year, because last year I won the Wood’s cup for the heaviest pumpkin on the Isle of Man. I must stop bragging. I digress - back to Dam.

Much to my relief Dam concludes:

“...with considerable confidence that there is little thus far in the Chinese experience to lead to the conclusion that Rule of Law issues are not important in economic development.”

I would respectfully agree with this and add that when a country's economy is on the up, the rule of law is not as rigorously tested as when the economy is flat or failing, because at this point everyone under economic pressure is looking to the law to ensure they get what is rightly theirs and governments are looking to make cuts which may impact adversely on the rule of law. A financial down-turn without the rule of law could get messy.

The rule of law is vital when creating robust social and economic environments that will be able to stand strong during the natural social and economic ups and downs that every country must weather.

In April of this year I was in touch with Professor Dam. He had no updates to his paper to bring to my attention, but he did recommend his book.

The book is *The Law-Growth Nexus : The Rule of Law and Economic Development*. Needless to say, I bought a copy. It makes interesting reading and I recommend it. As you might imagine from the title, he addresses the key concept that the rule of law is essential to economic development.

When you grow pumpkins you spend a lot of time outside reading and watching your precious pumpkins grow. It is a wonderful way to spend a weekend. Please understand I do not read out loud to them, now that would be ridiculous especially as they much prefer Mozart.

While sitting out enjoying the Manx fresh air and reading about the rule of law in China I noted that Professor He Weifang put it very simply: "... we still need to make ... [the Chinese Communist Party] love the rule of law." [see video and the transcript available online of the proceedings on 28 March 2012 Brookings Institution one day event in Washington DC entitled *The Rule of Law in China : Prospects and Challenges*.]

What a wonderful way of putting it – we must make those in authority, the decision makers, love the rule of law.

### ***Hong Kong***

On the Chinese coast is Hong Kong.

Hong Kong's economy includes an important services sector, and the importance of the rule of law to economic growth is recognised by leading figures in Hong Kong, including Chief Justice Geoffrey Ma.

The continual upholding of the rule of law, especially in difficult times, ensures his jurisdiction's competitive edge and maximises its strength as a leading international financial centre alongside the Isle of Man commanding confidence of both local people and international investors alike.

Geoffrey Ma, in his speech delivered on 17 March 2014, *A Respect for Rights and a Respect for the Rights of others*, stated:

“Adherence to the law, to legal principle and to the spirit of the law, and the concept of equality before the law, are key to the existence of the rule of law.”

He referred to Aristotle’s *The Politics*. Aristotle refers to absolutism being objectionable on the basis that the individual becomes “arbitrary and corruptible” contrasting these with the law, as he pithily put it, “which is not”. Chief Justice Ma adds “what really matters is confidence in the system of law, in the way courts arrive at their decisions (here, the important aspect is that the courts act in accordance with the law) and in the belief that the courts are independent.”

Shakespeare would have been 450 this year if he had lived. Shakespeare’s *Henry VIII* was resurrected at the Globe in 2010. Geoffrey Ma refers to *A Man for All Seasons*. This was the play written by Robert Bolt about Sir Thomas More, a member of Lincoln’s Inn, who was Chancellor in England during the reign of Henry VIII. Geoffrey Ma continues as follows:

“In this scene, More is conversing with his future son-in-law, William Roper, who is trying to persuade Sir Thomas to arrest Richard Rich, whose perjury against Sir Thomas would eventually lead to his being sentenced to death. Sir Thomas insists he cannot do this since Rich has broken no law. He says that even the devil should be free until he broke the law. Roper is exasperated with the idea even the devil should be given the benefit of the law. Sir Thomas says to him (and this, I believe, represents how all lawyers regard the law):

“What would you do? Cut a great road through the law to get after the Devil? ... And when the last law was down, and the Devil turned round on you – where would you hide, Roper, the laws all being flat? This country is planted thick with laws from coast to coast, Man’s laws, not God’s, and if you cut them down – and you’re just the man to do it – do you really think you could stand upright in the winds that would blow then? Yes, I give the Devil benefit of law, for my own safety’s sake!”

As Geoffrey Ma, a fellow Gray’s Inn Bencher, adds:

“It is the law that protects and governs us, and it is the law, and only the law, that courts apply.”

Geoffrey Ma, in his speech at the Ceremonial Opening of the Legal Year 2014 (13 January 2014), underlined the importance of the rule of law as follows:

“Last year, I focused on the essence – or heart – of Hong Kong’s system of law. I called it the integrity of the law. It is worth repeating the salient features of this integrity : a truly independent judiciary, judges who look no further than the proper application of the law both in letter and in spirit, and the importance of ensuring transparency in all that the courts do in order to

demonstrate the integrity of the law ... the existence of the rule of law ought to be assessed by a critical examination of objective features that are relevant to be considered. Principal among these are the reasoned judgments of the courts ...

It is recognised by [the Chief Executive and the Executive authorities] that an efficient and independent Judiciary is cardinal to the rule of law, and that the executive authorities, ought to render all necessary support to promote the effective, efficient and fair administration of justice in Hong Kong. The importance of the rule of law in Hong Kong and the administration of justice is, I believe, recognised by the community."

Secretary for Justice in Hong Kong, Mr Rimsky Yuen SC, stated:

"In any civilised society, the rule of law ensures that the government will not act in excess of its legal power. On the part of the Department of Justice, we would endeavour to do our utmost to maintain and uphold the rule of law in Hong Kong ...

When the courts come under unwarranted attack, it is the constitutional responsibility of the Government to explain and defend the fundamental principle of judicial independence."

Ambrose Lam, President of the Law Society of Hong Kong, neatly summed up the economic value of the rule of law when he stated:

"An independent and competent legal profession, coupled with a robust legal system and an independent judiciary, constitutes a major factor in establishing Hong Kong as a world-renowned international financial centre. It gives investors the confidence and comfort that they can safely transact and invest in a fair and just business environment with the support of high quality legal services."

Last month the State Council in Beijing published a white paper which seemed to suggest that Hong Kong's future judges should be selected on political criteria. The media reported that it categorised judges as administrators, like the chief executive and top officials, and said they had a "political requirement" to love the country. It was reported that 1,800 of Hong Kong's lawyers marched on 26 June 2014 to defend the independence of the judiciary and the rule of law. Dennis Kwok Wing-hang, legislator for the legal sector stated:

"... It is too precious ... too important for us not to come out and not send a very clear message to the Central People's Government. Do not damage the rule of law. Do not interfere with it. It is too precious to the Hong Kong people and our nation."

[See *South China Morning Post* 27 June 2014 and *The Guardian* 1 July 2014].

## ***Singapore***

Hong Kong is not alone in its recognition of the importance of the rule of law to economic development.

A good example of the growing awareness of the positive influence of the rule of law on economic growth comes from another country which has witnessed economic growth in recent years. On 23 May 2014 a one-day symposium in the Supreme Court of Singapore took place on "the importance of the Rule of Law in promoting development".

## ***Malta***

In May 2014, it was my great privilege to represent the judiciary of the Isle of Man at an international judicial conference in Malta organised by the Furth Foundation. Those attending were senior judges including Chief Justices, Presidents and members of Supreme Courts and Constitutional Courts from over 35 countries from Albania to Uruguay. On the agenda was the rule of law in diverse cultures, and it was recognised that the rule of law was a central pillar of democratic countries which underpinned fair and prosperous societies. The following definition of the rule of law was produced at the conference for discussion:

"The rule of law is, thus, the framework of rules and rights that enables a fair and prosperous society based on four core principles:

1. The government and its officials and agents, as well as private persons and entities, are all accountable under the law.
2. The laws are clear, public and just; they protect fundamental rights, including the security of persons and property; and are applied equally to all.
3. The processes of enactment, administration and enforcement are accessible, equitable and efficient.
4. Justice is delivered in a timely manner by competent, ethical, and independent officials who are sufficient in number, have adequate resources, and reflect the makeup of the communities."

## ***Bingham Centre for the Rule of Law***

Another example of the increasing awareness of the rule of law is the centre within the British Isles specifically dedicated to the rule of law.

The Bingham Centre for the Rule of Law was founded in 2010 and it was established in memory of a fine man with good Manx roots. Amongst other purposes it is stated to exist to:

"demonstrate how the rule of law upholds respect for human dignity and enhances economic development and political stability."



The Bingham Centre has been instrumental in developing awareness of the advantages of the rule of law worldwide. It was heavily involved in the Singaporean symposium.

### ***Global challenge***

The implementation of the rule of law is a national, regional and global challenge, and that is why I was delighted to have been given the opportunity to speak to you this evening. You occupy important positions in many jurisdictions worldwide. Over 20 countries are represented on the programme. Your support for the rule of law is essential to economic growth in your own countries and indeed globally.

### ***United Nations/World Bank***

Only two years ago the General Assembly of the United Nations held its first ever high level meeting on the rule of law. The declaration adopted by member states highlighted the rule of law as:

“essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realisation of all human rights.”

One of the co-chairs of the high level panel, a leading English politician (or perhaps his speech writer) had the good sense to describe the rule of law as “one of the building blocks that take countries from poverty to prosperity.” He also spoke about the “golden thread” of “conditions that enable open economies and open societies to thrive : the rule of law, the absence of conflict and corruption and the presence of property rights and strong institutions.”

The United Nations and the World Bank recognise the importance of the rule of law for those nations seeking international support and economic growth.

### ***Responses of participants***

From your responses to my request for information I am aware that you also recognise this. I greatly appreciated you taking the time to respond because it helped me clarify areas of interest and how you felt the rule of law related to your country.

The feedback that particularly resonated with me but I have not yet mentioned are:

- How the rule of law can be eroded if government and private sector agencies fail to comply and yet remain unchallenged by the courts, and the need to keep laws updated to ensure they remain locally, regionally and internationally relevant.

- Some obvious areas where you felt the rule of law can directly impact growth included the collection of revenues and the regulation of financial and non-financial bodies. But I was also interested that you felt more basic values such as respect for the ownership of property can have a significant social and economic impact.

Overall I was delighted to see you broadly agree that social and financial development must be built on the bedrock of the rule of law.

### ***Conclusion***

For many years we've been told, "knowledge is king", however over recent years it has become clear that collaboration is queen, and we know how powerful the queen is on the chessboard.

Internationally we should try to work together to achieve shared environmental, financial and social goals. However, collaboration only really works if there are common standards. One of these should be a formal definition of the rule of law that is clear, objective and calibrated against internationally accepted criteria.

The rule of law requires adherence to certain minimum standards of fairness, both substantive and procedural, in the enforcement of rights and responsibilities.

A formal definition of the rule of law needs to be measured by conformity to explicit standards. As I mentioned earlier, figures such as Tom Bingham, Lord Neuberger, Geoffrey Ma, Stephen Breyer and Kenneth Dam recognise there may be differences in the formal definition as well as specific standards.

However, the rule of law as an absolute minimum must deliver just laws:

- which are clear, certain, predictable and accessible to all;
- which apply to everyone equally (except where different treatment is objectively justified such as in the case of children);
- which are enforced openly;
- which provide for fundamental human rights and responsibilities;
- which provide timely and cost effective access to justice; and
- which ensure that countries comply with their international obligations and co-operate with other law-abiding countries

all this alongside an independent and adequately resourced trustworthy judiciary that is empowered to review governmental action.

Formal definitions help to create certainty and reduce the risk of subjective judgments including the exercise of personal discretion. As such they give external investors, national businesses and citizens confidence in the rule of law. Confidence and certainty assist economic growth.

The rule of law is both a condition and a consequence of social development. The law cannot stand still, obvious areas such as regulation of the internet and the management of financial institutions must keep pace with social development if a country is to continue to grow.

In facilitating growth politicians and other decision-makers need to appreciate that the rule of law including an independent judiciary is for the benefit of, and to protect, both business and the community.

The rule of law is, and will continue to be, the social and economic backbone of every society. A backbone that enables countries to fully evolve, and irrespective of size, stand shoulder to shoulder when it comes to the international collaboration needed to fuel economic growth.

But for me the rule of law is much more than just money and economics. It directly impacts on the quality of all our lives. It goes to the root of a civilised existence.

For this reason I would ask that all politicians and other decision-makers worldwide learn to love the rule of law. In fact, let us all change our status and tell the world that we are in a positive relationship with the rule of law. We must cultivate a love for the rule of law.

So let us be excited, happy and passionate about the rule of law. Let us adore it, embrace it, nurture it, protect it and respect the rule of law. Much as it is essential for economic growth it is also essential for a decent and dignified human existence.

Participants in the Small Countries Financial Management Programme 2014, may you and your countries all prosper under the protection of the rule of law.

David Doyle  
First Deemster and Clerk of the Rolls of the Isle of Man  
17 July 2014