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Cover Page Footnote

Author is listed within this publication as The Right Honourable The Lord Bridge.

THE SEVENTH ANGLO-AMERICAN EXCHANGE

THE RIGHT HONOURABLE THE LORD BRIDGE*

These few words of mine follow the admirable Foreword to this Symposium by Chief Justice Burger and precede the outstanding analytical and learned contributions that make up the body of the Symposium. I suppose that, as leader of the English team taking part in the 1984 Exchange, it was inevitable that I should be invited to make my modest contribution. But, being a natural procrastinator, and having insisted that I should have the opportunity to see what others had written before putting pen to paper myself, I find myself at the end of the day in the happy—or is it unhappy—position of discovering that everything, or nearly everything, that could be said has been said by others far more felicitously than I could hope to say it.

I echo every word to be found in Chief Justice Burger's Foreword extolling the virtues both of the study of comparative law in general and of the particular study of our comparative systems of law on each side of the Atlantic for which the series of Anglo-American Exchanges have provided, and, I devoutly trust, will continue to provide, a unique opportunity. He rightly points out that there can never be an effective substitute, if one is to learn the comparative merits and demerits of a system different from that with which one has grown up, for first hand observation of that system in practical operation. It is rather like languages. The best way to learn to speak and understand a foreign language is not to go to school, but to live and be obliged to communicate with those who speak no other tongue. So, I believe, the Exchanges enable us to absorb, not academically but practically, the language of each other's different systems.

I also agree wholeheartedly with Chief Justice Burger's statement that "[t]here is much to learn on both sides." The only note of dissent that I timidly venture to express from anything said in Chief Justice Burger's Foreword, recognising that his experience of

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the Anglo-American Exchanges has been much greater than mine, is to question his opinion that the American side has profited more from the Exchanges than the English. What indirect effects the 1984 Exchange may have on our respective systems of administrative law must yet remain to be seen. But I have no doubt that the earlier Exchange on the same subject, in which I took part in 1969, was enormously influential in the contribution it made to our system of administrative law in the ensuing fifteen years. After that Exchange, Lord Diplock wrote a report to the Lord Chancellor on the lessons we had learned from it. That report, in turn, had two significant consequences.

There was a school of thought at that time that the field of administrative law in this country was ripe for comprehensive study, either by the Law Commission or by a Royal Commission, with terms of reference embracing the whole spectrum of both substantive and adjectival aspects of the law. If such a study had been undertaken and wide-ranging reforms recommended, they could have been given effect only by statute. Lord Diplock, Lord Widgery, and I, and the other members of the 1969 English team were unanimously of the opinion, in the light of our American experience, that the substantive administrative law of England was in course of active and beneficial development through the judicial process and that the advantages of leaving that development to continue, free of the limitations that statutory formulae might impose on it, outweighed any advantage to be derived from direct statutory intervention to effect desirable improvements in the law. We were still more firmly convinced, however, that our procedural law in the administrative sphere was in urgent need of reform and rationalisation, and this opinion was firmly based on much that we had seen of United States administrative law procedure. I cannot say how great a part Lord Diplock's report played in the outcome, but I believe it was considerable. In any event, a proposal by the Law Commission to undertake a comprehensive study of administrative law was not approved. The Commission, however, did investigate and report on the reform of administrative law procedures.¹

1. See LAW COMMISSION, REPORT ON REMEDIES IN ADMINISTRATIVE LAW, 1976, CMD. 6407, No. 73.

It is through this necessarily abbreviated account that I claim to trace to the Anglo-American Exchange in 1969 a significant influence on two important aspects of the subsequent development of English administrative law. The first was the freedom left to the judges to develop the substance of the law without either statutory assistance or statutory restraint. The extensive use the judges have made of this freedom is fully discussed in Lord Justice Woolf's paper which follows. The second was the introduction in 1977 by the new Order 53 of the Rules of the Supreme Court of the new procedure by way of application for judicial review, a single procedure whereby all necessary remedies in the field of administrative law were obtainable. I do not, of course, attribute to the participants in the 1969 Exchange, as such, any responsibility for the controversial decision in *O'Reilly v. Mackman*,² which is discussed in the paper that follows by Professor David Williams. It just so happens that Lord Diplock and I were both parties to that decision and Professor Sir William Wade Q.C., another participant in the 1969 Exchange, is one of its severest critics. Perhaps the less I say about the decision the better!

Apart altogether from the professional value of the Anglo-American Exchanges, I hope it is not out of place in such a serious-minded publication as this for me to record my belief that the Exchanges also have been universally regarded by those fortunate enough to take part in them as immensely enjoyable social occasions. In this respect, I hope and believe that the 1984 Exchange succeeded in maintaining the standards of its predecessors. Certainly it gave us unqualified pleasure to entertain our American guests in July. As was to be expected, we enjoyed uniquely warm and generous hospitality on our return visit to Washington in September. One of the happiest aspects of every Anglo-American Exchange has been its capacity for forging enduring friendships.

Looking back over the whole series of Exchanges since their inception, two names stand out as having contributed in unique measure to their quality and success: Chief Justice Burger and Lord Diplock. Nothing less than failing health would have induced Kenneth Diplock to retire from his role as organiser and leader of the English side of the Exchange. I was greatly honoured when I was

2. [1983] 2 A.C. 237 (1982).

invited to succeed him, and throughout the preparation for the 1984 Exchange I had the advantage of his advice and guidance behind the scenes. His death last year was a grievous loss to all who had the good fortune to enjoy his friendship and a loss to the common law world of one of the great outstanding judges of the twentieth century. We have this to be thankful for on his behalf, that he was able to continue working until two days before he died.

In England we look forward to the next Exchange, probably in 1988. We do not know if Chief Justice Burger will feel able to continue. But if not, we are comforted by the hope and expectation that Justice Sandra Day O'Connor, who has participated in the last two Exchanges and already has established her firm place in our admiration and affection, will be ready to take over the reins for him. The great tradition that previous Exchanges have established will be in safe hands.