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IN MEMORIAM

LORD LOWRY OF CROSSGAR (1919–1999): A TRIBUTE

*J. Eric Smithburn**

In the Summer of 1985, I participated in a program in London on international judicial education, sponsored by the Judicial Administration Division of the American Bar Association. The keynote speaker for the program was Robert Lowry, The Lord Chief Justice of Northern Ireland. Lord Lowry noted that there was very little judicial training in Britain at the time and that before the 1960s judicial education didn't exist in Britain.¹ In his address, Lord Lowry boldly advocated compulsory judicial education courses for all judges through the Judicial Studies Board.² Our mutual interest in the judiciary and the education of judges began a friendship which was sadly halted by Lord Lowry's death on January 18, 1999.

Robert Lowry was born on January 30, 1919, the only son of William Lowry, who was one of the founding members of the Bar of Northern Ireland, held positions of Home Secretary and Attorney General in the Government and served as a High Court Judge. Lord Lowry was educated at The Royal Belfast Academical Institution, where he won academic honors and was named Head of School. He excelled at cricket and for four seasons played on the first eleven and served as captain his last two years. Robbie, as he was known to his friends, attended Jesus College, Cambridge, where he was later

* Professor of Law, Notre Dame Law School. Professor Smithburn was called to the Bar of England and Wales in 1989 as a member of Middle Temple. He is a door tenant at 1 Mitre Court Buildings in London.

1 For this Tribute, Britain refers to England and Wales and Northern Ireland and does not include Scotland.

2 For a discussion of recent developments in compulsory judicial training in Britain, see Frances Gibb, *Good Judges Can Be Taught to Be Better*, *TIMES* (London), July 13, 1999, at 43.

elected as an honorary fellow, and graduated with two first class honours in classics.

When World War II began, like most young men of his day, Robbie joined the military. In 1940, he joined the Royal Inniskilling Fusiliers and was later commissioned into the Royal Irish Fusiliers. He served in the Tunisian and Italian campaigns and attained the rank of major. In the 1960s, he was named Honorary Colonel of the Royal Irish Fusiliers and the Royal Irish Rangers. After the War, Lord Lowry read for the Bar. As Lord Chief Justice Carswell stated in his tribute to Robbie, "Lord Lowry undertook a short but clearly effective course of legal studies—he was later known to say privately that it was possible to learn the law in a little less time than most universities allotted to their students for their law degrees . . ."³ Robert Lowry was called to the Bar of Northern Ireland in 1947, and as a pupil of F.A.L. Harrison he found himself on a fast track to a successful law practice. In 1948, he became Junior Counsel to the Attorney General of Northern Ireland. In 1956, after only nine years of practice at the Bar, Lowry was appointed a Northern Ireland Queen's Counsel.⁴ Robert Lowry, Q.C., soon became one of the leading advocates of the Senior Bar. As Lord Chief Justice Carswell described him,

A complete advocate, whose practice covered a wide range of civil cases, he was a persistent and effective cross-examiner. His acute analytical mind fitted him particularly for appellate work and he was retained on one side or the other in almost every case which went to the House of Lords. It became increasingly clear that he was destined for the Bench . . .⁵

In 1964, Lowry was appointed to the High Court and became the youngest judge in Northern Ireland at the time. As when he was called to the Bar, Robbie again found himself on a fast track to success.

While a High Court Judge, Lord Lowry also served as Chairman of Belfast's Land Law Commission, Deputy Chairman of the Northern Ireland Boundary Commission (1964–71), Chairman of the Interim Boundary Commission for Northern Ireland Constituencies at West-

3 Robert Carswell, *Tribute Paid to the Right Honourable the Lord Lowry, Lord Chief Justice of Northern Ireland 1971–88*, 50 N. IR. LEGAL Q. 1, 1 (1999) (delivered at a special sitting of the High Court in the Nisi Prius Court, Jan. 18, 1999).

4 Queen's Counsel (Q.C.) is the highest professional recognition given to a barrister for competence as an advocate. The award is made annually by the Lord Chancellor to a select number of applicants. The barrister wears a silk gown in court, and thus being named Q.C. is referred to as "taking silk," and a barrister is often referred to in the legal profession as a "silk."

5 Carswell, *supra* note 3, at 2.

minster (1967), and Chairman of the Permanent Boundary Commission for Stormont (1969–71). He also served as Deputy Chairman of the Lord Chancellor's Committee on the Northern Ireland Supreme Court.⁶ In 1971, upon the retirement of Lord MacDermott, Robert Lowry was appointed as Lord Chief Justice of Northern Ireland.

The challenges for Sir Robert Lowry during these times of political and social upheaval were enormous. If serving as head of the Northern Ireland judiciary wasn't enough, in 1975 Sir Robert agreed to serve as Chairman of the Northern Ireland Constitutional Convention, whereby the political parties attempted to agree upon a constitution for Northern Ireland. Despite Lowry's formidable skills of fair process and patience, no agreement was reached. Lowry was appointed Lord Chief Justice just one week before the start of internment. As a specialist in civil law, he was faced with a wide range of criminal law issues, many of which were connected to larger problems of civil disorder in Northern Ireland (euphemistically described as the "troubles"). Lord Chief Justice Carswell described the situation as follows:

Attacks upon the Security Forces and the destruction of property by bombs were incessant and the incidence of murder and maiming was distressingly high. Members of the judiciary did not escape. Five were murdered, another judge was seriously wounded and Lord Lowry himself narrowly escaped an assassination attempt when arriving to give a lecture at Queen's University (typically robust, he went ahead and gave the lecture as scheduled). For many years they lived under constant threat in siege conditions and their devotion to duty was severely tested. That they came through this period with their morale intact is very largely due to the example set by Lord Lowry and his fostering of an esprit de corps which sustained them.⁷

In a lecture in 1987, Lord Lowry reflected on administering justice during the "troubles": "In such circumstances the rule of law is under threat. In a civil war situation Cicero proclaimed, '*inter arma silent leges.*'"⁸ As a trial judge, Lord Lowry recalled this and stated,

"Amid the clash of arms the laws are silent": so Cicero exclaimed over 2000 years ago. During the greatest conflict of our history Lord Atkin bravely ventured to contradict this assertion. Now, too, peace, order and society itself are under fierce and constant attack and that is why we must remember Lord Atkin's famous dictum: "In this country, amid the clash of arms the laws are *not* silent. They

6 See Obituary, *Lord Lowry*, *TIMES* (London), Jan. 16, 1999, at 22.

7 Carswell, *supra* note 3, at 2.

8 Robert Lowry, *Civil Proceedings in a Beleaguered Society*, 1987 *DENNING L.J.* 109, 109.

may be changed, but they speak the same language in war as in peace."⁹

Lord Lowry continued,

This war is being waged by organisations which style themselves armies and observe military procedures, but it has not invaded and will not be allowed to invade, the courts. The rule of law has prevailed and will continue to prevail there. We will accept but one standard of proof in criminal cases, namely, proof beyond reasonable doubt. This is a concept difficult enough to describe, but easy for an honest man to recognise, which brings to criminal adjudication, whether by a jury or by another tribunal, a certainty and a finality which can be absent from civil proceedings.

It is a statement of the obvious that maintaining the rule of law means deciding cases according to law, and the paramount law in criminal cases is that guilt cannot be established save by proof beyond reasonable doubt.

In the same 1987 lecture, Lord Lowry went on to state,

[T]he rule of law . . . is the mark of a civilised society. That rule involves a respect for impartial justice. It protects the weak against the strong and the individual against the state. It is most at risk, and therefore most in need of protection, when the state itself is in danger. You may ask whether the rule of law ought to be upheld at the risk of the safety of the realm: my answer is, first that the judges are sworn and obliged to judge according to law; if doing that truly endangers the state, then the *law* must be changed, but conflict between the rule of law and the public good is more apparent than real: a heavy price can be paid, in terms of stability, if the state itself, through its judges, spurns the rule of law.¹⁰

As one who believed strongly in the fair application of the rule of law, Sir Robert Lowry's mettle was put to the test in the 1970s, with the introduction of legislation creating the unfamiliar system of non-jury trials in terrorist offense cases (known as the Diplock Courts). Lowry sought to limit the inroads of the judge-alone Diplock Courts into the fabric of the common law. As Lord Chief Justice Carswell stated,

[H]e strove successfully with determined independence to preserve the traditional standards of justice from distortion or dilution. Under his leadership the judges preserved a reputation for impartiality and integrity by administering the potentially draconian powers entrusted to them with fairness and humanity, consistently

9 Lowry, *supra* note 8, at 110 (quoting *Rex v. Gibney* [1983] 13 N.I.J.B.).

10 *Id.*

interpreting them in a way which kept as close as possible to the long-established principles of the criminal law.¹¹

Lowry's judicial opinions in many areas of the law tell us why he gained a reputation for being committed to the rule of law and a fair application of the law. As he wrote in *In re Cook*,¹² it is the duty of the court "to decide the point at issue according to the law and without fear of favour, affection or ill-will." In an application to quash an order by the Secretary of State forbidding Mr. McCartney, who was serving a life sentence for a terrorist offense, to receive a visit from an elected Sinn Fein Councillor, Lord Lowry wrote,

It is natural to ask why the respondent's decision should be deemed reasonable when this Court has held that members of local authorities cannot lawfully take steps to prevent Sinn Fein councillors from participating in local government business. The difference is that Sinn Fein councillors are, in the present state of the law, entitled as individuals to take their seats and that other members of the council have no legal power to prevent them from doing so, whereas the respondent here has a right under Rule 58(1) to regulate visits to prisoners according to the discretion conferred on him by that rule, so long as the discretion is reasonably exercised within the meaning of the *Wednesbury* case. The anomaly is explained by the absence of a statutory power in the one case and its presence in the other.¹³

The courts of Northern Ireland often considered applications seeking judicial review of council decisions to exclude Sinn Fein councillors. In one such case, Lord Lowry stated,

I do not subscribe to the view that Sinn Fein has to be regarded as a lawful organisation (or by necessary implication as a "legitimate political party") just because it has been allowed since 1975 to operate as a political party without being proscribed. That is a different thing from saying, in the present state of the law, that individual members of Sinn Fein, if not otherwise disqualified, cannot legally stand for election and take their seats as councillors, if elected; but they are entitled to do so despite their membership of Sinn Fein and not because of it.¹⁴

Lord Lowry's well-crafted and tightly reasoned judgments earned him much praise. The delay which often ensued from cases taken under advisement was due in part to the extraordinary amount of off-

11 Carswell, *supra* note 3, at 3.

12 Lowry, *supra* note 8, at 123 (quoting *In re Cook* [1986] 1 N.I.J.B. 43, 89).

13 Lowry, *supra* note 8, at 120 (quoting *In re Pius McCartney* [1986] (unreported decision)).

14 *Id.* at 122 (quoting *In re Neeson* [1986] (unreported decision)).

bench service he undertook. Lord Chief Justice Carswell described it humorously:

[L]awyers familiar with the Book of Common Prayer were known to mutter the phrase from *Urbs Fortitudinis* "Yea, in the way of thy judgements, O Lord, have we waited for thee"—but when they finally appeared they were so cogent in reasoning and clear in expression that little remained to be said, as tributes from the House of Lords testified.¹⁵

One such tribute was in *R v. Maxwell*.¹⁶ Lord Edmund-Davies, sitting in the House of Lords on a Diplock-trial appeal, referring to Lord Lowry's judgment in the Northern Ireland Court of Appeal, wrote, "Instead I'm more than content to adopt that judgement and only wish it were my own. I express the strong hope that it will be reported in its entirety." A few days after Lord Lowry's death, a friend of mine from Belfast, Willie McCarney, J.P., wrote the following to me: "The general consensus, in legal circles, is that Lord Lowry's judgements were slow, slow, slow in coming but, when they came, were invariably masterpieces [H]e was highly regarded by his judicial colleagues and well respected by barristers and solicitors."¹⁷

In 1979, Lord Lowry became a life peer and sat in appeals to the House of Lords,¹⁸ while continuing to fulfill his duties as Lord Chief Justice of Northern Ireland. In 1988, he was appointed a Lord of Appeal in Ordinary¹⁹ and served as a full-time member of the Judicial Committee of the House of Lords until his retirement in 1994. His extraordinary range of judicial experience, intellectual rigor, exceptional writing skill, and commitment to the rule of law made him a valued member of the U.K.'s highest court. Lord Lowry continued to serve as a cross-bencher²⁰ in the House of Lords. His wealth of experi-

15 Carswell, *supra* note 3, at 3.

16 [1978] N.I.L.R. 42, 42-72.

17 Letter from Willie McCarney, J.P., to author (Jan. 19, 1999) (on file with author). See generally Antoinette Curran, *Tribute Paid to the Right Honourable the Lord Lowry*, 50 N. IR. LEGAL Q. 7 (1999) (delivered at a special sitting of the High Court in the Nisi Prius Court, Jan. 18, 1999); Brian Fee, *Tribute Paid to the Right Honourable the Lord Lowry*, 50 N. IR. LEGAL Q. 5 (1999) (delivered at a special sitting of the High Court in the Nisi Prius Court, Jan. 18, 1999).

18 The highest appellate court in the U.K. is the Judicial Committee of the House of Lords, usually referred to in legal context as the House of Lords. It serves the same purpose as the United States Supreme Court.

19 Members of the Judicial Committee of the House of Lords are officially known as Lords of Appeal in Ordinary. They are usually referred to as Law Lords.

20 A cross-bencher is not aligned with any of the political parties represented in the House of Lords. Cross-benchers are seated at the end of the House chamber between the Government and members of the opposition parties.

ence and knowledge made Lord Lowry a valued voice in the House of Lords. Having lunch with Robbie at the Lords, chatting about law and politics and the state of English cricket and rugby, was a special pleasure which I'll greatly miss.

Lord Lowry and his first wife, Mary, were married for forty-two years and had three daughters, Sheila, Ann, and Margie, before Mary's death in 1987. In 1992, through the activities of Middle Temple,²¹ Robbie met Barbara Calvert, Q.C., whose husband, John, had also died in 1987. In 1994, Robbie and Barbara married. Lord and Lady Lowry had both been twice blessed, and their many friends and colleagues shared in their happiness and the warmth of their company. Robbie was, as Barbara described him, "the most unselfish person I've ever known." Whether it was traveling around the world in connection with Robbie's judging showjumping competition, enjoying their Cornish home by the sea, or socializing with friends at Middle Temple, Robbie and Barbara lived retirement to the full. Lady Lowry, no doubt, will continue to do so, as evidenced by her diligent compilation of Lord Lowry's judgments, which it is hoped will one day be published.

When those judgments are read and re-read, Lord Lowry will again emerge as a judge's judge in respect to his reverence for the rule of law. In 1987, as he reflected on his career as Lord Chief Justice, he concluded a lecture by quoting Lord Devlin's book, *The Judge*:²²

In the first place, justice according to law by imposing a norm also secures it. Against the number of cases in which the law hinders the good judge from expressing the *aequum et bonum*, there must be put the number in which it prevents the bad judge from giving effect to idiosyncratic notions. For most of the law's history the public has looked upon it as a protection against corrupt or stupid judges. When the public thinks of the law as obstructive, it is a high mark of confidence in the judiciary.

Akin to this consideration is the thought that the law is a protection for the judges themselves. For the law does and ought to embody the collective wisdom. No judge who applies it can be accused of partiality. A judge who has to reach his conclusion without

21 The Honourable Society of the Middle Temple is one of the four Inns of Court in London, through which barristers are called to the Bar of England and Wales. Lord Lowry and Barbara Calvert, Q.C., were both Benchers of the Middle Temple, senior members honored for service to the Inn.

22 LORD DEVLIN, *THE JUDGE* (1979).

its guidance or who feels sufficiently confident to reject the guidance puts his personal reputation at stake.²³

No doubt Lord Lowry's views on the role of the judiciary, the responsibilities of the courts and the importance of the rule of law were greatly affected by the social and political environment in which he worked. This seems evident from Lord Lowry's description of some of the lessons he learned during his career in Northern Ireland:

1. The courts must be seen to act independently of the Executive and not to be its servants and agents.
2. The courts should not make policy, particularly in a community where even people of goodwill are not agreed on the social and political means to salvation.
3. Nor must we bend the facts or the law to achieve what looks like a fair result. "Justice" achieved for one side by this method amounts to injustice for the other.
4. The rule of law must be seen to prevail.²⁴

Lord Lowry was a steady judicial hand during troubled times in Northern Ireland, and his leadership on the bench has been an inspiration for many who aspire to judicial service. Lord Lowry's hallmark was his belief that the judge should draw his inspiration from consecrated principles of law and for this and more he will long be remembered.

²³ Lowry, *supra* note 8, at 127 (quoting DEVLIN, *supra* note 22, at 88).

²⁴ *Id.*