

'THE BLACK MUST BE DISCHARGED'

**Race Relations, the Common Law
and the Commonwealth**

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*M*y Lord Chancellor, you do us all a great honour by your presence here this evening, particularly me. I recall that our paths first converged in Edinburgh, at the highly successful 1977 Commonwealth Law Conference, on whose Organising Committee you served, as James Mackay QC, Dean of the Faculty of Advocates. I was able to tell the Conference then of my admiration for Scots lawyers and Scots law—to dissent from Lord Maugham’s invective against ‘those interesting relics of barbarism tempered by a few importations from Rome, known to the world as Scot’s law!’¹ I pointed instead to the role of the two Scots Law Lords who, with a Lord Chancellor of Welsh-Australian extraction, had been able to override the views of English brethren and ensure immortality, for reasons I will stress later, for what may or may not have been a snail pickled in ginger beer—and, in the process, vitality for the Common Law.²

Transformed both in name and in office, you were again in Commonwealth company when we met in Sri Lanka in 1983, at the triennial Meeting of Commonwealth Law Ministers. In private discussions, a number of Law Ministers confided that the meeting had shown that the lawyers did things rather well North of the Tweed, and how important it was to tap this well of ideas and enterprise in Commonwealth law-making. I can also confess now that your own contributions to the discussions in Colombo tempted the more rash among us at the Commonwealth Secretariat into realms of speculation. But on sharing these thoughts with members of the English Bar we were roundly debunked: no Scot—we were informed with that assurance which is the hallmark of the English barrister—no Scot could ever become Lord Chancellor! Not for the first time, Commonwealth thoughts were only wrong by being right too soon.

This is, of course, the Kapila Lecture. It does honour not to great luminaries of the law, but to a father and a son who were clearly very special in their own quiet ways. A father who was a teacher—as was my own—and one who throughout his long

life in India, in Africa and in Britain was concerned to foster racial harmony. A son who was a member of Lincoln's Inn and worked steadily here in Britain until he predeceased his father some years ago. The Lecture thus has its origins in the special concern with race relations of the Kapila family, who have founded the occasion, and whose members here this evening I acknowledge.

Yet it was not without some diffidence that I accepted the invitation extended by Mr Justice Steyn, as Chairman of the Bar's Race Relations Committee, to present the Kapila Lecture. The challenge to offer some observations on race relations in a forum such as this was obviously tempting, indeed inescapable; but I cautioned myself that it was a field of mines not of tulips through which I must tiptoe. And that was even before the experience of the Speaker of the West German Parliament, Herr Philipp Jenninger, whose primary offence seems to have been one of infelicity of language as he tried to recall how contemporary Germans had viewed the rise of Hitler. And, of course, I was not helped by the awareness that I would follow the masterly exposition given by Vice-Chancellor, Sir Nicolas Browne-Wilkinson, in this Lecture two years ago on the Race Relations Act.

In accepting the challenge, let me start, therefore, with what is obviously uncontentious: my deep admiration for so much that is best in Britain's heritage—a heritage shared with much of the world and especially with the Commonwealth. At the heart of that shared inheritance is the Common Law. It is one that has enriched all our societies. If anything in what I say implies criticism, let it be heard in a context in which I speak of these matters as part of a common heritage—one which we can impugn because it is in part our own.

At the risk of sounding a little like the late Professor Joad, it surely is the case that any discussion of race relations should properly begin with establishing what we mean, first by 'race' and, second, by 'racism'. "Race", wrote Charles Husband 'like love, is a word often used with innocent spontaneity, and yet it remains highly problematic to determine adequately the boundaries of its... meanings'.³ Today, when we speak of 'race relations' we tend to think only in terms of colour. Yet think on this passage written just over a century and a quarter ago:

I am haunted by the human chimpanzees I saw
along that hundred miles of horrible country. I don't

believe they are our fault, I believe there are not only many more of them than of old, but that they are happier, better, more comfortably fed and lodged under our rule than they were. But to see white chimpanzees is dreadful; if they ever were black, one would not feel it so much, but their skins, except where tanned by exposure, are as white as ours.⁴

Not, it has been noted by one commentator, 'some imperialistic reference to an exotic tribe of albino Africans', but Charles Kingsley writing to his wife in 1862 on his visit to Ireland.⁵ He was writing of the Irish, a people who from the twelfth century had been denigrated by such Norman observers as Malachy of Armagh who, as he wrote:

discovered it was not to men but to beasts he had been sent; in all the barbarism which he had yet encountered, he had never met such a people so profligate in their morals, so uncouth in their ceremonies, so impious in faith, so barbarous in laws, so rebellious to discipline, so filthy in life, Christian in name but Pagans in reality.⁶

Nor, to put things in perspective, did the Normans have a very high opinion of the native Anglo-Saxons! Gerald of Wales, himself a literary scourge of the Irish, observed that the English were 'the most worthless of all peoples under heaven... In their own lands the English are slaves to the Normans, the most abject slaves'.⁷

Consideration of such antique authors leads me to the reflection that race is at heart 'otherness'—by which I mean a view of another individual which wrongly sees him or her as 'the other', alienated from the observer by perceived or imagined differences, without shared human qualities, and so not only unequal but also, at the worst extreme, less than human. And when the question of colour is introduced, it merely becomes a new and potent factor in distinguishing between groups of people, in identifying the types of behaviour expected of them, and in influencing perceptions.

As the European empires grew through the 17th and 18th centuries, the conquered lands provided wealth, power and glory. Commerce flourished; with access to over half the world's natural resources, Britain was transformed from an agrarian into a modern industrial society. The impact of all this on non-Europeans was, of course, both dramatic and traumatic. In Africa, many became forcefully subjected in their own lands to foreign masters, while many others were for two centuries plundered from West Africa—not without collaboration from African ruling classes. And if the trade in African slaves drained that continent of many of its able-bodied men and women, the Indian sub-continent too was not spared. Indians in large numbers were exported as cheap, almost slave, labour under the 'indenture' system that took my own forebears half-way around the world to Guyana on the South American coast, never to return—a flight into bondage;⁸ but a flight (let it be said) from bondage of another kind that caste and poverty imposed.

For Western societies, there had to be some philosophical justification for this barbarous treatment of human beings, and it was provided by the simple expedient of denying their very humanity. Books, tracts, newspapers and magazines: all caricatured the Black (as they did indeed, the Irish) to such a degree that their influence throws a shadow forward, even into the present and beyond. The views of the *Gentleman's Magazine* of 1788 were not in its time considered extreme, but if we listen to these words two hundred years on, do we not hear all the echoes of bigotry and racism?

The Negro is possessed of passions not only strong but ungovernable; a mind dauntless, warlike and unmerciful; a temper extremely irascible; a disposition indolent, selfish and deceitful; fond of joyous sociality, riotous mirth and extravagant shew. He has certain portions of kindness for his favourites, and affections for his connections; but they are sparks which emit a glimmering light through the thick gloom that surrounds them, and which, in every ebullition of anger or revenge, instantly disappear. Furious in his love as in his hate; at best, a terrible husband, a harsh father and a precarious friend. A strong and unalterable affection for his

countrymen and fellow passengers in particular seems to be the most amiable passion in the Negro breast As to all the other fine feelings of the soul, the Negro, as far as I have been able to perceive, is nearly deprived of them.⁹

This ribald stereotype was reinforced time and again by such writers as Carlyle and Trollope.¹⁰ On emancipation, Carlyle—who was later to support Governor Eyre's butchery of the former slaves in Jamaica's Morant Bay revolt of 1865—depicted the Black Jamaican—in what has been described as 'one of the most nakedly racist tracts to be laid before the English reading public'¹¹—as a 'black gentleman', 'with rum-bottle in hand ... no breeches on his body, pumpkin at discretion, and the fruitfulest region of the earth going back to jungle around him'.¹² For his part, Trollope ten years later saw the Black West Indian as 'idle, unambitious to worldly position, sensual and content with little.... He lies on the ground surrounded by oranges, bananas and pineapples'.¹³ It was a commentary as vicious in its denigration as it was unworthy of those who contrived and sustained it.

Yet, this racial stereotype is not so very different from the prototype stage Irishman who emerged from Edmund Leach's study of anti-Irish 'jokes', not a mere figure of fun but an object of contempt merging into deep hostility:

He is a drink-addicted moron, reared in the bog, who wears his rubber boots at all times, cannot read or write, and constantly reverses the logic of ordinary common sense. His female counterpart shares the same qualities, except that she is sexually promiscuous, rather than perpetually drunk.¹⁴

Racism in clown's clothes!

Jean-Paul Sartre captured the process succinctly when he wrote:

How can an elite of usurpers, aware of their mediocrity, establish their privileges? By one means only: debasing the colonised to exalt themselves, denying the title of humanity to the natives, and defining them simply as absences of qualities—

animals, not humans. This does not prove hard to do, for the system deprives them of everything.¹⁵

Hand in hand with such an attitude went the systematic repression and destruction of the indigenous industries, economies and cultures of the colonised.

Racism as the hand-maiden of colonialism was not, of course, unique to the British Empire, or even to European empires of recent centuries. For evidence that it is endemic to the very philosophy of imperialism we need look no further than to the traumatic effect the three words of Saint Paul had on his gaolers when he uttered the magic sentence: '*Civis Romanus sum*'.¹⁶

But where stood the law in relation to racism in its heyday? Where did the Common Law, for example, stand in relation to the barbarity that was slavery? It is five years since we marked the 150th anniversary of the passing of the Abolition of Slavery Act, a monumental reform achieved by new economic realities aligning with the passionate crusade in this country of the Anti-Slavery Movement: a conjuncture of material self-interest and humanitarian impulse. Yet how was it that for 100 years before that Act, slavery had subsisted, sanctified under British law, Magna Carta notwithstanding?¹⁷

Lord Mansfield has asserted in *Somerset's* case as early as 1772 that 'the black must be discharged.'¹⁸ He might, of course, have declared: 'Let the slave go free!' But that would have been going rather further than Mansfield intended. Somerset was discharged on the return to a writ of habeas corpus not because slavery was untenable under English law; it palpably was not; but because within the metropolitan jurisdiction there was no apparatus of enforceability that would allow rights of property primacy over the liberty of the subject.¹⁹

Once Somerset had slipped the bonds of slavery there was no police power in England to shackle him in its name. Hence, 'the black', still a slave, had to be 'discharged'. In other words, Mansfield's judgement was essentially a commentary on life in England. It had no implications for life which English law ordained and enforced elsewhere.

Half a century later this fine distinction came to be explained in jurisprudential terms in the case of *The Slave 'Grace'*, who, having been brought by her owner to London and then taken back to Antigua, found that the freedom she had enjoyed while

in England had not liberated her from slavery. Seized on her return to Antigua she pleaded in vain the precedent of *Somerset's* case, only to have Lord Stowell assert in the High Court of Admiralty that Mansfield's judgement looked no further than to the peculiar nature, as it were, of British soil: 'the air of our island is too pure for slavery to breathe in'.²⁰ Not so the air of Caribbean countries, polluted by slavery's legitimation under English law.

These double standards in matters of high principle carry over well beyond colonialism. They represent a seamy side of human nature which allows us to inflict on others evils from which we scrupulously shield ourselves. What really is the difference between the inverted values of Lord Stowell's judgement and, for example, French nuclear testing in the Pacific or the export of sub-standard drugs to poor societies or, now, the dumping of toxic waste in developing countries?

Mansfield's judgement, of course, was of great importance for *Somerset*, the triumph of liberty over property. But in another sense, it confirmed, as one commentator put it, that 'English law was wonderfully flexible in accepting systems that were fundamentally different inside and outside the metropolis'.²¹ In the end, the Anti-Slavery Movement recognised that it was the legal framework, both metropolitan and colonial, which sustained slavery. What the Abolition of Slavery Act did was to change the law. It gave Magna Carta a reach beyond the banks of Runnymede—a reach that common lawyers had hitherto not felt that they lacked as they proudly viewed the legal order within narrow domestic walls.

This matter of the reach of the rule of law, the domain over which enforceable law rules, is central to both the reality of the civilised state and the quality of its civilisation. Its definition is among our most critical human challenges.²² It confronts every society unto this very day. The demise of slavery did not usher in an age of enlightenment; the law continued to allow racial prejudice and discrimination wide reign—both in Britain and in the colonies, even colonies on the brink of achieving their independence.

Little wonder, then, that confronting racism was accorded the highest priority by newly-independent countries, or that the emerging Commonwealth was offered a stark early choice—between accepting apartheid South Africa or the prospect of a wider, growing, truly global membership; between being a white

man's club of dwindling significance, or a truly multi-racial family with expanding reach and relevance. We can look back now and wonder that the choice should have been so agonising. But it was no small matter to see apartheid South Africa off in terms of Commonwealth membership. For some, like Britain, there were ties of kinship no less than of commerce. Yet choice was unavoidable, and without question the right choice was made.²³ It was a defeat for racism; but, alas, not a conclusive one.

From this turning-point, the Commonwealth's concern with South Africa has intensified; and not, as some would have it, from a desire to punish apartheid's perpetrators—though there are no limits to the punishments they inflict on those who oppose their own wrong-doing—but rather to end the evil system itself and allow a free South Africa to reclaim its place in the Commonwealth. It was not far from this hall, in the rooms of the Royal Commonwealth Society, some months ago that Oliver Tambo was asked: 'If you become the government of your country, will you apply for South Africa to be readmitted to the Commonwealth?' 'I don't understand your question,' the President of the ANC replied. 'We (black South Africa) never left'.²⁴

I will come back to apartheid, but let me, for the moment, look elsewhere. Even as the sun was setting on empire, and a modern Commonwealth was emerging in the light of a new day, a huge movement in population was taking place which was to alter irreversibly the nature and character of Britain and of other European imperial powers: the movement that gives rise to this series of Lectures.

In one sense, the former imperial powers were being confronted with the legacies of their empires—by colonised people of every shade. Some had served and fought loyally for 'King and Country' or its equivalent, and felt an affinity for its people—one reciprocated more freely in the trenches than in 'civvy street'. Others were young hopefuls who came with schoolbook images of a land of plenty in search of a new beginning in a context of boundless opportunity.

The amazement and disillusionment of one young West Indian in the 1950s has been described thus by Roy Sawh:

We came with innocent dreams and expectations of being treated as full citizens of our Motherland, a country which only recently we had fought for in

the Second World War. But we were quickly and starkly disillusioned and shocked by white racist rejection and cruelty. My own personal experience, which is similar to that of many black people i.e. personal attacks, being spat on, refusal to be served in pubs, not being able to find suitable accommodation, and which symbolises our common and shared experience of Britain, is that of harassment and false imprisonment. Our daily struggle and anxiety was to find a job and somewhere secure to live, but these basic human efforts were constantly thwarted. As Sam Selvon, the Trinidadian novelist wrote in *The Lonely Londoners*, 'after a while, we didn't even get on, we just wanted to get by!'²⁵

This experience is not, of course, unique to Britain, or unique to blacks. Throughout recorded time, migrants—where they have not also been conquerors—have moved into subservient economic and social positions for at least a generation. This tends to be masked where the outward differences are marked principally by language—for example, Greeks and Italians in Australia. But it is a condition which is exacerbated by colour. As the prophet Jeremiah rhetorically inquired: 'Can the Ethiopian change his skin, or the leopard its spots?'²⁶ The black in Britain wears a badge of difference unaffected by the more subtle rankings of school tie, dress and accent whose acquisition over time or over a generation can fudge social origins to the point of obscurity.

In the aftermath of the Brixton disorders, Lord Scarman conducted his searching inquiry with customary genius and insight, and his conclusions remain pertinent, perhaps even more pertinent today than when he wrote almost exactly seven years ago. After rightly observing that the plight of young blacks was no reason for releasing them from the responsibilities for public order, which they share with the whole community, he observed:

Although there is evidence to suggest that the position of the ethnic minority groups has seen some improvement relative to the rest of the population in recent years, overall they suffer from the

same deprivations as the 'host community' (i.e. the white population), but much more acutely. Their lives are led largely in the poorer and more deprived areas of our great cities. Unemployment and poor housing bear on them very heavily: and the educational system has not adjusted itself satisfactorily to their needs. Their difficulties are intensified by the sense they have of a concealed discrimination against them, particularly in relation to job opportunities and housing. Some young blacks are driven by their despair into feeling that they are rejected by the society of which they rightly believe they are members and in which they would wish to enjoy the same opportunities and to accept the same risks as everyone else. But their experience leads them to believe that their opportunities are less and their risks are greater. Young black people feel neither socially nor economically secure.²⁷

That is a penetrating analysis. Proceeding from there, it cannot help black people in this situation if they perceive ambivalence in the attitudes of a substantial segment of the British population towards apartheid—the very apotheosis of racism—in South Africa. They see incongruity and an inherent inconsistency between a society which purports to oppose racial discrimination at home whilst tolerating its most outrageous manifestations in South Africa. It is the same ambivalence to which I referred in the context of slavery under the law—the situation in which slavery was unlawful in Britain yet practised under, and ordained by, law in the colonies.

My comment would be that you cannot separate the two, and it is wrong to do so. Attitudes towards apartheid inevitably impact upon domestic race relations. I know that the Government of which you, Lord Chancellor, are such a distinguished member, is strongly and irrevocably opposed to racial discrimination everywhere; and particularly to the perversities of apartheid. It is with the nature of the response to the problem both at home and abroad that your friends in the Commonwealth, bilaterally and multilaterally, have had serious difficulties. My point concerns perception of a need, and communication; the need for your opposition to apartheid, and your sense of outrage at it, to

be communicated effectively to that significant section of the population which, to one degree or another, experiences racial prejudice in their everyday lives. I sometimes feel, for example, that if British voices could be raised with as much passion against apartheid and racism generally as they are sometimes raised against sanctions, the British Government's opposition to the latter would at least be better understood.

I said much earlier that racism was not merely a matter of colour but resulted from the curse of 'otherness'. I speak today of race relations in a British context, for this is the Kapila Lecture. But 'otherness' rears its ugliness in many a Commonwealth country—including my own. Each society has to struggle to suppress unworthy impulses; each community of people—especially a majority community—has to be vigilant lest it diminishes itself by denying to those perceived as 'others'—rather specially ethnic minorities (black or white or brown)—the rights of equal opportunity, genuinely equal rights, that in many cases they have struggled to secure for themselves against earlier usurpers. In the end, that vigilance is truly assured only when a sense of 'oneness' replaces 'otherness' not just in the statute books but in our hearts—here and in all countries.

And, of course, the picture is far from being wholly negative. A generation of white British children has grown up unaware, in urban areas, at any rate, of how mono-cultural Britain once was. Integration is obviously a fact of life for many children, who do not see anything threatening in schoolmates from African, Caribbean, Asian or Middle Eastern homes. In a recent survey to ascertain the person urban school-children would most like to be, Daley Thompson topped the list²⁸—anecdotal evidence, to be sure, but evidence which has what we lawyers sometimes describe as 'the ring of truth'. The stalwart efforts of Prince Charles's Trust to support incipient black businesses is a tangible expression of determination to help. His is a lead which others must surely follow in taking affirmative action, such as leaders in the business community and in the professions.

The emergence of blacks in small businesses, in literature, in entertainment and on the sports fields, points to the new and exciting well of creativity—dare I say enterprise?—which post-war migration has introduced to a country whose long history had already been marked by the enrichment which successive

waves of immigration have brought: a London, in particular, which has, over centuries now, absorbed waves of newcomers and made them all in time its own, is already working its immemorial magic changing immigrants into 'Black Londoners' and then into 'Londoners' simply; and changing London itself in the process. I venture to suggest that coming generations will look back at this period of Britain's social history and see it as a time of transition: awkward as all periods of adjustment are, but a transition to an era of multiculturalism enriching in every sense of the word—economic, social and cultural. But there is a long road to travel and much to be done before these gains are secured. Without conscious thought and action, things will not simply work themselves out.

One conspicuous area in which blacks have yet to make a significant contribution is the law, and as a result the legal system has attracted considerable public criticism; both as regards the profession and regarding the way the courts treat the black population. Again this is a situation which is far from unique to these islands, and one which finds echoes as far away as New Zealand, albeit for very different reasons. The concept of 'equality before the law' can be an extraordinarily difficult one to realise in a multicultural society where law is, inevitably, and for reasons of history, in the hands of a single dominant culture.

For these reasons, particular importance lies in the steps taken recently by the Bar of England and Wales (of which, of course, I am a member) in accepting an overriding commitment to ensure that all its members are treated fairly, regardless of race, and actively to counter the degree of racial disadvantage which exists at the Bar.²⁹ The creation of the Bar's Race Relations Committee, to focus on practical reform, was another major advance,³⁰ as was the revision of the Bar's Code of Conduct to set standards for members of the profession in their dealings with each other.³¹ The survey you are undertaking to establish the nature and extent of racial disadvantage, too, is a bold one—as searching self-examination is never a comfortable exercise.³² Particularly important, also, are the practical steps you are taking both to ensure that black barristers receive a fair share of prosecution briefs and to draw them into consultations on judicial appointments. I applaud the amendments to the Race Relations Act which the Bar is promoting and which seek to extend the ambit of the Act to both the Bar itself and to solicitors,

and to prohibit, absolutely, racial discrimination in relations between solicitors and barristers.³³

All this is the more remarkable as our profession—here and everywhere else in the Commonwealth—has never been notable for its pursuit of social engineering. I hope that what we have seen in recent times, especially in the work of the Race Relations Committee under the leadership of Mr Justice Steyn, may be a portent for broader and more adventurous action. The proud boast of the common law throughout the ages has been 'no wrong without a remedy', and it found its highest expression in Lord Atkin's judgement in *Donoghue v Stevenson*,³⁴ for what Lord Atkin adumbrated was an extension of the rule of law to relations between individuals by a truly giant step; confirming, as it did, that we all owe a duty of care to our neighbour, a duty to act in a reasonable way to avoid injury to him or her. In Lord Atkin's judgement, who is our neighbour is anyone we ought reasonably to have in contemplation as being affected by our actions.³⁵ What is reasonable, is what ordinary people—'the man on the Clapham omnibus'—understand to be reasonable: like not selling an opaque bottle of ginger beer contaminated by the remains of a snail. In a general sense, that had always been 'unreasonable'. After that decision of the courts, however, it was 'unlawful'—and that has made all the difference.

Quite clearly, the black communities in Britain are 'neighbours' now; some, indeed, would be among those riding on the Clapham omnibus, or driving and conducting it. They, too, have their duties; but does it not lie primarily with the powerful and the strong, the dominant and the secure, to accommodate the humanity of these newcomers?

And if we cannot extend the hand of neighbourliness at home, what hope can there be for the wider world—an interdependent world which is increasingly a global neighbourhood? Our closely-knit, interlinked human society is a contemporary reality, however much the instincts of yesterday recall us to old nationalisms and summon up the adversary habits of crude sovereignty and separateness. What interdependence means in the global context is that we all need each other, in some measure: for prosperity, for subsistence, for survival even. Our shrinking world holds no human sanctuaries. There are no shelters that insulate anyone, anywhere, from disease, from

poverty, from nuclear holocaust, from environmental collapse. The rich might be able to prosper in a world from which the poor had vanished; the poor might be less poor in a world without the very rich; the West might be able to dwell in harmony if from the East there came neither torment nor threat; the East, the centrally-planned economies, might be able to accept a procrustean bed if capitalism were not there to provoke envy. The simple truth is, however, that these are wholly irrelevant scenarios; for neither rich nor poor, West nor East, have the option to go it alone—as all are finding. For better or worse, all of us must share this planet, acknowledging our mutual needs, and acknowledging too that in their fulfilment lies a mutual interest.

And what is true of the world is, *a fortiori*, true of its several parts. Especially to the lawyer, therefore, the words of WH Auden have special meaning—when he wrote:

All I have is a voice
To undo the folded lie,
The romantic lie in the brain
Of the sensual man-in-the-street
And the lie of Authority
Whose buildings grope the sky:
There is no such thing as the State
And no one exists alone;
Hunger allows no choice
To the citizen or the police;
We must love one another or die.³⁶

‘We must love one another or die.’ In those seven words the poet encapsulates for us precisely what must have been the concerns that moved Krishna Dev Kapila and his son Sudarshan Kumar Kapila, and the Kapila family. For in a real sense, the more we face up squarely to the challenge of race relations the better, the healthier, race relations will be—until they are seen not as a profound worry but a true wealth, a source not of problems but of pride.

Notes and References

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16. *The Holy Bible*, Acts of the Apostles, Ch. 22, vrs. 25-27.
17. See generally, Eric Williams, *Capitalism and Slavery* (Andre Deutsch, London, 1964) Chs. 1, 2 and 3: 'The Origin of Negro Slavery', 'The Development of the Negro Slave Trade' and 'British Commerce and the Triangular Trade'. See also Lord St Vincent on the eve of the abolition of slavery, presenting to the House of Lords a petition of merchants, traders, planters and others: 'The slave trade had existed as long back as the time of Queen Elizabeth, and in the reign of William 3rd an Act was passed to encourage the African trade, which, while it imposed a tax on almost every article of commerce, left the importation of negroes free of duty. In the 13th and 14th of George 3rd, a statute was passed encouraging foreigners, as well as the people of this country, to invest their money in colonial securities: specifying those securities to be 'lands and slaves.' Mortgages were effected upon the faith of

the Act; and Parliament would not be acting justly if, in making arrangements for the liberation of the slaves, they neglected to give a fair consideration to the claims of both the mortgagees and the mortgagers. By the 58th of George 3rd, the manner in which these mortgages should be effected was particularly specified; and in another very important Act, ... the Act of Registration, the right of property in slaves was expressly acknowledged.... It was not only in the colonies that the existence of slavery had been recognized by Act of Parliament; it existed in Scotland up to 1775, at which period it was abolished, as the preamble of the Act stated, not because of the grievances suffered by the bondsmen, nor for the sake of principle, but for the sake of the owners of the mines to which these bondsmen were attached.' (1833) *Hansard's Parliamentary Debates*, Third Series, Vol. 18 (May 30 to July 1, 1833), 361.

18. *The Case of James Sommersett, a Negro, on a Habeas Corpus*, AD 1771-1772, in *Howell's State Trials*, Vol. XX: A.D. 1771-1777, pp. 1-82, at p. 82.
19. See E.V. Goveia, *The West Indian Slave Laws of the 18th Century*, *Chapters in Caribbean History* 2, Douglas Hall, Elsa Goveia, Roy Augier (Eds.), (Caribbean Universities Press/Ginn, Aylesbury, 1970): 'The idea that slaves were property was as firmly accepted in the law of England as it was in that of the colonies. It was not for lack of this concept that Somerset had to be freed. What was lacking in England was the superstructure raised on this basis—in the form of police laws governing the slaves as persons with wills of their own who were, nevertheless, to be kept in their fixed status as the legal property of their owners. It was the absence of these police laws which made it impossible for Somerset to be held in slavery by force in England. However, before and after the Somerset case, slaves were taken to and from England, as the case of the slave Grace shows; and, so long as they continued to serve without recourse to public coercion, it may be said that they remained property and did not become subjects in fact, as Somerset succeeded in doing by his refusal to serve.' pp. 21-2.

20. *The Slave Grace*, High Court of Admiralty, 2 Hagg. 94, Vol. II: 1825-1832, in 166 E R 179, at p. 184.
21. M. Craton, J. Walvin and D. Wright, *Slavery: Abolition and Emancipation. Black Slaves and the British Empire: A Thematic Documentary* (Longman, London 1976), Chapter 3, 'Slavery and the Law' Introduction, pp. 157-158, at p. 157.
22. See *Inseparable Humanity*, op. cit., 'Making Human Society a Civilised State', pp. 365-383.
23. See J.D.B. Miller, *Survey of Commonwealth Affairs: Problems of Expansion and Attrition, 1953-1969* (Oxford University Press, 1974), Ch. 8, 'The South African Problem', pp. 126-166.
24. Dr Oliver Tambo, President of the African National Congress of South Africa (from 1985), after an Address to a Meeting at the Royal Commonwealth Society, London, on Monday, 23 June 1986. Dr Tambo explained: 'The oppressed have never regarded themselves as having been thrown out of the Commonwealth. We are not racists—it was an action taken against racists. We hope our place in the Commonwealth is reserved, and we hope we are going to occupy that place.'
25. Roy Sawh, *From Where I Stand* (Hansib, London, 1987), quoted in the 'Epilogue', by Dr David Dabydeen, p. 93.
26. Winthrop D. Jordan, *White over Black: American Attitudes toward the Negro 1550-1812* (University of North Carolina Press, Chapel Hill, for the Institute of Early American History and Culture at Williamsburg, Virginia, 1968) Ch. 1, 'First Impressions: Initial English Confrontations with Africans', pp. 3-43 at p. 15 quoting from the *Holy Bible*, The Book of the Prophet Jeremiah, Ch. 13, vrs. 23.
27. *The Brixton Disorders 10-12 April 1981: Report of an Inquiry by the Rt. Hon. The Lord Scarman, OBE*, (HMSO, London, 1981) Cmnd. 8427, p. 15, para. 2.35.
28. Findings of a Research Business Survey commissioned by Barclays Bank which examined the financial, career and

lifestyle aspirations of 3,000 young people aged 11 to 15, out of 13,000 who answered a questionnaire commissioned by Barclays Bank. See *The Times*: 2 September 1988 (3a); *The Guardian*: 7 September 1988 (38c).

29. The Hon. Mr. Justice Steyn, Chairman, Race Relations Committee (10 October 1987 to 31 December 1988), 'Race Relations at the Bar', in *Counsel*, the Journal of the Bar of England and Wales, November/December 1988, pp. 9-10, at p. 9.
30. The Race Relations Committee was created by the Senate of the Inns of Court and the Bar (now the General Council of the Bar) in 1985.
31. The Code of Conduct which now, *inter alia*, prohibits racial and sexual discrimination was revised in 1988 to include, in an annex, guidelines affecting applications for pupillages and tenancies and the distribution of work in Chambers. The General Council of the Bar has recommended that these be adopted by all Chambers, which should, where necessary, revise their procedures in the light of the Code of Conduct.
32. The survey work is being carried out for the Race Relations Committee by Coopers and Lybrand assisted by Social and Community Planning Research, under the supervision of Michael Hill QC.
33. The Hon. Mr. Justice Steyn, *op. cit.*, p. 10.
34. *Donoghue v Stephenson* [1932] A.C. 562.
35. *Ibid.*, p. 580.
36. W.H. Auden, 'September 1, 1939', *Selected Poems*, Edward Mendelson (Ed), (Faber and Faber, London, 1984), p. 88.