

Lord Reed gives The Sir Thomas More Lecture for 2014

EU Law and the Supreme Court

12 November 2014

It is an honour to have been invited to deliver the Sir Thomas More Lecture. At the same time, I have to say that, for anyone invited to express his views on Britain's relations with Europe, Sir Thomas does not provide an encouraging precedent. While I do not expect this lecture to be followed by my head's being impaled and displayed on London Bridge, I nevertheless subscribe to the view that it is wise for judges to avoid speaking in public on controversial topics: a view which you may think is an unfashionable one on the Supreme Court. So perhaps I should stop now and allow you to proceed directly to dinner. For a judge who wishes to avoid controversy would be well advised at present to give a wide berth to our relationship with the EU. But a judge who has agreed to give this lecture can hardly avoid speaking about it.

One of the greatest challenges currently facing courts at the apex of national legal systems, throughout Europe, is to understand their role in an era when the law is permeated by rules and principles falling within the scope of the supranational courts in Luxembourg and Strasbourg, and to establish a successful working relationship with those courts. It is a challenge not because of any lack of goodwill or effort on either side, but because it inevitably takes time for everyone involved to adjust to such a major change, particularly during a period when the EU is undergoing development and it is uncertain where the developments will lead.

The subject of relationships with the Court of Justice of the EU has been the principal focus of discussions between justices of the Supreme Court and their opposite numbers in other EU member states at a number of recent meetings, reflecting the fact that the issue is not unique to the United Kingdom. Indeed, last year's Sir Thomas More lecture, given by the President of the German Federal Constitutional Court, Prof Dr Andreas Voßkuhle, was devoted to the

subject.¹ That court has taken a leading role in defining the relationship between EU law and the national legal system of Germany. I would like this evening to consider the issue in relation to the United Kingdom. I am going to speak about two recent cases in which the Supreme Court considered the relationship between our domestic legal order and that of the EU: cases which raised difficult questions, and in which the Supreme Court arrived at controversial conclusions. I should make it clear that I am expressing a purely personal view. I can say that with more than usual sincerity.

A point which should be emphasised at the outset is that a successful relationship with national apex courts is of vital importance to the Court of Justice in Luxembourg, as well as to the national courts themselves. As the scope of EU law has expanded ever more widely, and as the number of member states has grown, it has become increasingly clear that the Court of Justice cannot micro-manage. If it were to attempt to exercise the same sort of supervision of the application of the law by national apex courts that those courts exercise domestically - particularly under cassation systems such as those of France or Italy, where each apex court will deal with tens of thousands of appeals every year - the Court of Justice would soon be overwhelmed by the number of cases referred to it. But the Court of Justice does not have the same role: the preliminary reference procedure is not the same as a right of appeal, and a preliminary reference cannot be made whenever a point of EU law arises, without bringing the system to its knees. While the Court of Justice plainly has an essential co-ordinating role, the EU has to rely on national courts to secure the effective implementation of EU law within their jurisdictions, and the apex courts therefore have a critical role to play. So the national courts and the Court of Justice have interlocking roles, which have to operate in combination. But they can only do so successfully if there is a common understanding of what their respective roles are, and mutual respect for each other's approaches to the law.

¹ "European Integration and the Bundesverfassungsgericht", available at www.lincolnsinn.org.uk/index.php/education/euro-programme/events.

In January of this year a seven judge panel of the Supreme Court issued its decision in the *HS2* case.² This seems to me to be the court's most significant decision on EU law, and arguably on constitutional law. The judgments set out the court's current evaluation of the legal consequences of our membership of the EU. They also recognise the existence of constitutional principles which are given protection from implied repeal, possibly including repeal by virtue of the European Communities Act 1972. Although everything said about these matters was obiter dictum, it is nonetheless interesting and important.

The case concerned a challenge under EU environmental law to the Government's plan for a high speed rail network. The first remarkable feature of the case was the remedy sought, which was the quashing of the Government's decision to promote HS2 by means of a Bill in Parliament. Since *Factortame*,³ we have become used to the idea that EU law may require the granting of remedies which might not have been available under domestic law, but what the court was being asked to do in this case was to order the Secretary of State not to introduce a Bill in Parliament in his capacity as a Member of Parliament. It is difficult to imagine a more flagrant interference by the court with proceedings in Parliament.

The constitutional problems did not end there. The ground on which the court was invited to grant the remedy was that Parliament's consideration of the Bill would inevitably fail to meet the quality standards set by an EU directive. That was so for three reasons. In the first place, the fact that the votes of Members of Parliament would be influenced by the Whips was argued to be contrary to the directive, on the basis that it implicitly required the members of the legislature to apply an independent mind to the proposal, and therefore required a free vote. Secondly, it was argued that Parliament would not subject the proposals to the level of scrutiny required by the directive, since MPs were unlikely to read and understand the complex and voluminous documentation, and could vote without even having attended the debates: debates

² *R (Buckinghamshire County Council) v Secretary of State for Transport* [2014] UKSC 3; [2014] 1 WLR 324.

³ *R v Secretary of State for Transport, Ex p Factortame (No 2)* [1991] 1 AC 601.

which would in any event be too short to enable the issues to be adequately addressed. Thirdly, although it would be possible for objectors to the project to petition a select committee, after the second reading of the Bill, that stage of the Parliamentary proceedings would come too late to comply with the directive, since the principles of the Bill would already be settled. Each of these grounds of challenge again conflicted with the constitutional principles governing the relationship between Parliament and the courts.

But the most remarkable feature of the case of all was that none of the parties proposed to address the Supreme Court on these issues. The only point taken by the Secretary of State was that it was premature to challenge the Parliamentary proceedings before the Bill had been passed, to which the court responded, in effect, that the violation of article 9 of the Bill of Rights 1688, which prohibits the questioning in court of Parliamentary proceedings, would be even plainer if the challenge were heard after those proceedings had been completed.

The directive which the claimants relied on⁴ was designed to secure public participation in environmental decision-making. It expressly provided that it did not apply to:

“... projects the details of which are adopted by a specific act of national legislation, since the objectives of this directive, including that of supplying information, are achieved through the legislative process.”⁵

The rationale for that exclusion is that when the decision is taken by the legislature, that in itself ensures public participation.

At first sight, one might have thought that, since HS2 was a project the details of which were to be adopted by a specific act of national legislation, it followed that the directive did not apply. The Court of Justice had however interpreted the exclusion as being subject to the proviso that the legislative procedure must achieve the objectives of the directive. In order to satisfy that proviso, the court had imposed two requirements: first, that the legislative process must be real,

⁴ The Environmental Impact Assessment Directive, 2011/92: [2012] OJ L26/1.

⁵ Article 1(4).

and not merely the ratification of a pre-existing administrative act; and secondly, that appropriate information must be available to the members of the legislature at the time when the project is adopted. In two cases the Advocate General had gone somewhat further. In one, Advocate General Sharpston had said that, in assessing whether a legislative process was adequate, the national court should consider whether the appropriate procedure was respected and whether the preparation time and discussion time were sufficient for it to be plausible to conclude that the members of the legislature were able properly to examine and debate the proposed project. Those remarks were echoed by Advocate General Kokott in another case. It was principally on those statements that the claimants relied in the *HS2* case in seeking, at the very least, a preliminary reference to the Court of Justice.

The Supreme Court doubted whether the statements of the Advocates General were intended to go as far as the claimants argued, and noted that they had not in any event been endorsed by the Court of Justice. The requirements which the court had itself laid down were satisfied by the proposed proceedings: they were not merely formal; adequate information would be available to members of Parliament; and there was nothing in the court's case law to suggest that members of the legislature must be given a free vote. The relevant issues of EU law could therefore be treated as *acte clair*.

Three aspects of the Supreme Court's reasoning are significant. First, it was said that it was inconceivable that the Council of Ministers could, when legislating for the directive, have envisaged close judicial scrutiny of the operations of Parliamentary democracy, and that the Court of Justice would also have been well aware of the principles of the separation of powers and mutual respect which govern the relations between the different branches of government in modern democracies. The Court of Justice could not have overlooked or intended to destabilise these. Secondly, the Supreme Court said that judicial oversight of the quality of the legislature's consideration of a Bill would pose a particular constitutional problem in the United Kingdom. In that regard, the court referred to a judgment of the German Federal Constitutional Court,

discussed by Prof Dr Voßkuhle in last year's lecture, where it was said that decisions of the Court of Justice must be understood in the context of the cooperative relationship which exists between that court and a national constitutional court, and therefore should not be read in a way that places in question the identity of the national constitutional order. The Supreme Court said that there was much to be said for that approach to the interpretation of judgments of the Court of Justice. Thirdly, it observed that, in the relevant preliminary rulings of the Court of Justice, including two judgments of the Grand Chamber, the court had repeated the same form of words time and again in response to different questions. It must therefore be taken to have set out the principles which national courts were to apply.

In relation to that last point, what the Supreme Court was in effect saying was that, even if those principles were expressed in such a way that national courts had to form a judgment as to how they should be applied in a particular context, national courts nevertheless had to apply what the Court of Justice had said, rather than making further references. That, I think, reflects the Supreme Court's experience that, depending on the context, the Court of Justice may respond to a preliminary reference by formulating a precise rule or it may set out a more open-textured principle. In the latter situation, a further reference may add little or nothing to what could have been derived from the previous case law, and may merely lead to a further hearing in the Supreme Court at which both parties argue that the ruling was in their favour, or even request a further reference. There is, I think, a growing understanding that it is unrealistic to expect preliminary rulings always to set out a precise rule which leaves no room for the exercise of judgment by the national court, and that it is therefore a mistake to make a reference whenever a point of EU law arises and the way in which the case should be decided is not obvious.

I have explained how the *HS2* case was decided. Let me turn now to the obiter dicta. It was argued that, if the Court of Justice required national courts to scrutinise Parliamentary proceedings, then UK courts must do so, because of the primacy of EU law over national law, as

established by the jurisprudence of the Court of Justice.⁶ Most national constitutional courts have been unwilling to go that far, and have based the status of EU law in their legal systems on their national constitutions, as for example in France and Germany. That reflects the recognition by those courts of their own ultimate responsibility for the protection of the constitutional rights of those within their jurisdiction. The issue of primacy was not squarely addressed in *Factortame*⁷, but in *Thoburn*, the “Metric Martyrs” case, Laws LJ considered that the constitutional relationship between EU law and our domestic law was determined by the common law, and that the European Communities Act 1972 fell within a category of constitutional statutes recognised by the common law as protected from implied repeal.⁸ In *HS2*, the Supreme Court considered that the status of EU law in our legal system was derived from the 1972 Act, consistently with section 18 of the European Union Act 2011, and therefore depended upon the effect of the 1972 Act.

The next argument advanced was that, following *Factortame*,⁹ the 1972 Act required any other rule of national law to be disapplied if it could not be interpreted or applied consistently with EU law, and that the Bill of Rights should therefore be disapplied. That argument also was rejected: *Factortame* had not been concerned with a rule of the kind now in question.

The Supreme Court’s conclusion therefore was that, if there was a conflict between EU law and a principle of the United Kingdom constitution, that conflict would have to be resolved by our national courts as an issue arising under our constitutional law. It was said that, putting the point at its lowest, it was certainly arguable that there were fundamental principles, whether contained in other constitutional instruments or recognised at common law, of which Parliament when it enacted the 1972 Act did not either contemplate or authorise the abrogation. That argument is, I think, readily understandable. The 1972 Act is of the most general nature: it simply provides a basis for the reception into our law of legislation and case law emanating from

⁶ See for example Case 6/64 *Costa v ENEL* [1964] ECR 585.

⁷ *R v Secretary of State for Transport, Ex p Factortame Ltd (No 2)* [1991] AC 603.

⁸ *Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin); 2003] QB 151.

⁹ At 658.

another legal regime, and therefore not subject to Parliament's control. It is possible that, in providing that doorway, as it were, Parliament foresaw the possibility of conflicts arising between the law entering through that doorway and all the constitutional statutes which it had ever enacted, and intended those statutes then to be overridden, whatever their subject-matter and however important they might be, as the concomitant of membership of the European Economic Community, as it then was; but the contrary is also strongly arguable. And the same would of course apply, *mutatis mutandis*, to common law principles of comparable importance.

In saying that, I do not mean to suggest that the arguments put forward by the Court of Justice in support of the primacy of EU law are other than relevant and important. It can be argued that EU law has to be accorded primacy in order to achieve the objectives of EU membership. On the other hand, it can also be argued that not every provision of EU law should be regarded as automatically taking priority over every principle of our own constitutional law. Most national courts place some limits or qualifications upon the extent to which EU law will be accorded primacy, as for example in Germany. But it also has to be borne in mind that some constitutional principles are more important than others, and that they may be capable of development. The particular subject of judicial scrutiny of Parliamentary proceedings is one where it might be argued that a nuanced approach can be taken. It would be a mistake to think that Parliamentary proceedings are a no-go area for the courts: in particular, proportionality assessments under the ECHR can involve a consideration of the information placed before Parliament.¹⁰ I should add that the judgments in *HS2* do not go into the question, much discussed by academic lawyers, whether Parliament *could* abrogate fundamental constitutional principles, if it did so expressly or by unequivocal implication.

It is interesting to speculate as to what might have happened in *HS2* if a preliminary reference had been made. In the first place, it would have been essential to explain the

¹⁰ See for example *R (Animal Defenders International) v Secretary of State for Culture, Media and Sport* [2008] UKHL 15; [2008] 1 AC 1312; and, for discussion, "Proportionality and Parliamentary Debates: Exploring Some Forbidden Territory" A Kavanagh OJLS (2014) 34(3) 443.

constitutional issue as clearly as possible, not only because it would be largely peculiar to the United Kingdom, but also because the Court of Justice might be unwilling to make any allowance for the UK's difficulty unless the constitutional principle was understood to be truly fundamental. It might have been said that most European constitutional systems provide for the review of acts of the legislature by constitutional courts, and that our own system does so in substance in relation to the conformity of legislation with EU law and the ECHR. The court might have sought to draw a distinction, which Advocates General Sharpston and Kokott may have had in mind, between judicial review of the process in Parliament – checking whether there was a meaningful debate, meeting the procedural requirements of the directive – and on the other hand judicial assessment of the quality of the debate. One difficulty with that, however, is that the extent of Parliamentary scrutiny of a proposal is not necessarily reflected in the length of the debate. More fundamentally, it might have been said that the UK Government had agreed to the directive, and that it repeated the terms of an earlier directive which the Court of Justice had interpreted in the same way. That might have been treated as a signal that the UK did not regard the interpretation as interfering with a fundamental constitutional right. One difficulty with that from the perspective of our constitution, however, is that the Government cannot alter the UK constitution at its own hand. If the outcome of a preliminary reference had been a ruling to the effect that article 9 of the Bill of Rights must be overridden, there would then have been the possibility of an argument before the Supreme Court, in which Parliament might be represented separately from the Government, as to whether the ruling should be implemented. On the whole, while some may think that the failure to make a reference was a wasted opportunity, others may think that it was a wise exercise of judgment.

The discussion so far leads to the question how one identifies constitutional principles, whether contained in constitutional instruments or in the common law, whether a distinction can be drawn between those that are fundamental and those that are not, and how one resolves conflicts between them. These issues were not discussed in the arguments in the *HS2* case, and

consequently were not addressed in detail in the judgments. The court mentioned a number of examples of constitutional instruments besides the Bill of Rights and the 1972 Act: Magna Carta, the Petition of Right 1628, the Scottish Claim of Right 1689, the Act of Settlement 1701, the Act of Union 1707, the Human Rights Act 1998 and the Constitutional Reform Act 2005. That was not an exhaustive list: I would, for example, add the devolution statutes, and the statutes governing the franchise. The basis for identifying such instruments was not discussed in *HS2*, but some valuable ideas were put forward by Laws LJ in the *Thoburn* case, and have been developed in the academic literature, particularly by Prof David Feldman. The category of common law constitutional principles has been discussed to some extent in recent cases concerned with human rights¹¹ and in academic commentary on those cases, and lies beyond the scope of this lecture, but it would include such matters as open justice and judicial independence. Of course, it is important to recognise that fundamental principles of a constitutional character are reflected in the ECHR and the Charter of Rights, and should therefore also be reflected in the judgments of the Court of Justice. To the extent that the possibility of conflict exists, I would like to think that the Court of Justice as well as the courts of the UK would exercise restraint in order to avoid it.

The judgments in *HS2* are also notable for their criticism of the Court of Justice. Lord Neuberger and Lord Mance in particular were critical of its creative interpretation of the directive I have mentioned, and also of another directive which featured in the case.¹² The court has of course been doing this sort of thing for a long time, and in the case of the former directive, at least, its approach might well be defended. But in *HS2* the Supreme Court made some general points about the consequences of interpreting legislation in a way which fails to respect the legislator's intentions. It undermines the democratic legitimacy of EU law. It undermines the principle of legal certainty. It fails to respect the compromises and concessions

¹¹ See for example *R (Osborn) v Parole Board* [2013] UKSC 61, [2013] 3 WLR 1020; *Kennedy v Information Commissioner* [2014] UKSC 20; [2014] 2 WLR 808.

¹² The Strategic Environmental Assessment Directive, 2001/42.

between different interests which have to be respected in a stable European Union. It makes it more difficult to agree on EU legislation, since member states cannot be confident that the legislation will be given its intended effect. It makes it more difficult for national courts to apply the *acte clair* doctrine.

That criticism was balanced by an emphasis on mutual cooperation between the Supreme Court and the Court of Justice. That appeared most obviously in the statements to the effect that the court's judgments should if possible be interpreted, in a spirit of cooperation, so as to avoid conflict with national constitutional principles. That approach is also consistent with article 4(2) of the Treaty on European Union, which provides that the Union shall respect the national identities of member states, "inherent in their fundamental structures, political and constitutional".

Finally, in relation to the *HS2* case, the references to comparative constitutional law, and in particular to judgments of the German Federal Constitutional Court, reflect the value of the regular meetings which the Supreme Court now has with a number of apex courts in other EU member states, and the much more frequent contact which exists between individual Justices of the Supreme Court and their opposite numbers. Discussions with the Court of Justice have not always been as productive, but the *HS2* judgments were themselves the subject of a worthwhile discussion between Justices of the Supreme Court and judges of the Court of Justice at a meeting last month.

The other case I would like to discuss, much more briefly, is less well-known, but also bears on the relationship between the UK legal order and that of the EU.

As I have mentioned, most national courts have been unwilling to accept in an unqualified form the Court of Justice's view of the primacy of EU law. Some have in addition been unwilling to cede to the Court of Justice the ultimate jurisdiction to determine the scope of EU powers: the *Kompetenz-Kompetenz*, in the jargon. As is well-known, this is the position in particular of the German Federal Constitutional Court, which reserves the power to adjudicate

upon the scope of the EU Treaties and to reject any decision of the Court of Justice which goes beyond their scope.

This issue arose in the Supreme Court, somewhat tangentially, in the case of *HMRC v Aimia Coalition*,¹³ decided last year. It is worthy of attention, as it is the only case in which the Supreme Court has not given effect to a preliminary ruling by the Court of Justice.

The case concerned VAT, an area of law where decisions are highly fact-sensitive. Without hearing the appeal, the House of Lords agreed to make a preliminary reference, and the reference was then drafted by one of the parties, seemingly with little input from the other. When the case got to Luxembourg, the Court of Justice considered that the reference raised no new point of law, and that there was therefore no need to obtain an opinion from the Advocate General. The court also reformulated the questions so that they no longer asked about the interpretation of the VAT directive, but instead asked specifically what the VAT treatment was of the payments in issue in the particular case. The court then answered that question.

When the case returned from Luxembourg, the Supreme Court considered that the Court of Justice had not understood what the point was that was actually in dispute, and had not taken account of all the relevant facts. The problem appeared to be that the reference had not made clear to the Court of Justice the central issues in dispute, and had not directed its attention to all the relevant facts. Indeed, the court had itself remarked on the limited nature of the reference, and on its failure to touch on an aspect of the facts which the domestic courts had treated as important. As a consequence, the court had left out of account a number of findings by the VAT tribunal which the Supreme Court would ordinarily be bound to take into account.¹⁴

So, without going any further, this case already illustrates a familiar point which nevertheless bears repetition, namely the responsibility of the referring court for deciding whether it requires to make a reference, and for the terms in which the reference is made. That

¹³ [2013] UKSC 15; [2013] 2 All ER 719.

¹⁴ Para 49.

requires the active involvement of the referring court. During the time I have been a Justice of the Supreme Court, references have only been made after hearing the appeal, and there has been considerable judicial input into the drafting of the reference. The court has in addition issued judgments setting out the Justices' view or views on how the referred question should be answered, and why it should be answered in that way,¹⁵ reflecting the clear indications from the Court of Justice that it values the views of the national court. If that process had been gone through in the *Aimia* case, it is possible that no reference would have been made, and in any event the reference would have been more likely to have identified all the relevant facts and issues.

As matters were, however, was the Supreme Court bound to apply the preliminary ruling? The court noted that article 267 of the TFEU confers on the Court of Justice jurisdiction to give preliminary rulings concerning the interpretation of the Treaties and of acts of the EU institutions. That is reflected in section 3(1) of the European Communities Act.¹⁶ On the other hand, the evaluation of the facts of the case, and the application of EU law to those facts, are functions of the national courts, as the Court of Justice has explained in its own jurisprudence¹⁷ and in its recommendations in relation to the initiation of preliminary reference proceedings.¹⁸

The Supreme Court was therefore bound by the Court of Justice's analysis of the legal issues focused in the reference. A minority of the Supreme Court considered that it should also apply the ruling on the facts, on the basis that the parties must be taken to have accepted that the account of the facts and issues given in the reference should be definitive. The majority on the other hand considered that the Supreme Court's responsibility for the decision of the case on the basis of all the relevant factual circumstances required it to take into account elements left out of

¹⁵ See eg *Test Claimants in the FII Group Litigation v Revenue and Customs Commissioners* [2012] UKSC 19, [2012] 2 AC 337; *St Prix v Secretary of State for Work and Pensions* [2012] UKSC 49, [2013] 1 CMLR 38.

¹⁶ As amended.

¹⁷ See eg C-30/93 AC-*Atel Electronics Vertiebs GmbH v Hauptzollamt München-Mitte* [1994] ECR I-2305, paras 17-18.

¹⁸ Recommendations 2012/C 338/01.

account by the Court of Justice, and to consider arguments which had not been reflected in the questions referred.

In these circumstances, the majority of the Justices concluded that the Supreme Court should not treat the preliminary ruling as dispositive of its decision, but that it must nevertheless reach its decision in the light of the guidance as to the law which could be derived from the judgment of the Court of Justice. Applying the principles laid down by the Court of Justice to the facts found by the tribunal, a different conclusion was reached. The court considered whether to make a further reference to the Court of Justice, but was unanimously of the view that that was unnecessary, as the Court of Justice had already set out the relevant principles in a number of judgments, and the problem was how to apply those principles to the facts.

This was an exceptional case, and I would not want to make too much of it. It does however illustrate the significance attached by the Supreme Court to the limits to the scope of a preliminary ruling, set by article 267 and section 3(1) of the 1972 Act. It sits with a number of other recent decisions in which the Supreme Court has been willing to consider for itself the scope and effect of EU law, including *HS2* and, perhaps equally controversially, the case of *Stott v Thomas Cook*.¹⁹ a case which will have to be left over for some other lecture. It also highlights the importance of the court's asking itself, when it is considering whether to make a preliminary reference, whether the EU aspect of the case genuinely raises a question of interpretation of EU law, or is simply a matter of applying established principles, even they are expressed in a way which leaves room for argument as to their application to the facts.

Drawing these threads together, it is important to remember that the entire edifice of EU law is constructed on the foundation of the national courts. It depends on the existence of an effective and independent national judiciary to ensure respect for EU law in each of the member states. It is the national court that hears the case, finds the facts, and applies the law, including

¹⁹ [2014] UKSC 15; [2014] 2 WLR 521.

EU law. The national court may of course refer questions to the Court of Justice for a preliminary ruling, but even then it is the national court which applies the answer to the referred questions and decides the case.

In carrying out its function as the highest appellate court of the UK, the Supreme Court is, I believe, as conscious as ever of the importance of maintaining a cooperative relationship with the Court of Justice, but it is also conscious of its own responsibility to uphold our constitution. The role of the Court of Justice in securing the implementation of EU law at the national level is not in doubt. The reciprocal role of national apex courts in patrolling the limits of EU law, as illustrated in the cases I have discussed, should I think be regarded, in the parlance of *1066 and All That*, as a Good Thing. It helps to ensure that national constitutional principles are respected, and may also help to foster the sense that domestic and supra-national courts are all part of a European legal community: what German judges call *Gerichtsverbund*. A collaborative rather than a hierarchical or competitive relationship between national apex courts and the Court of Justice can involve delicate and complicated issues, as in the cases I have discussed. Those issues have to be addressed in a spirit of co-operation and respect, and with an awareness of each court's respective responsibilities. Approaching matters in that way, the Supreme Court should continue to command confidence at home as the highest court in our national system, while also making an important contribution as part of the network of interwoven systems which constitute the modern legal world.