

## TRANSCRIPT

# "FIVE IDEAS TO FIGHT FOR: HOW OUR FREEDOM IS UNDER THREAT AND WHY IT MATTERS"

*A conversation with Anthony Lester and Chris Stone  
Recorded Sep. 26, 2016*

### **ANNOUNCER:**

You are listening to a recording of the Open Society Foundations, working to build vibrant and tolerant democracies worldwide. Visit us at [OpenSocietyFoundations.org](http://OpenSocietyFoundations.org).

### **CHRIS STONE:**

Ladies and gentleman-- we're going to begin. And thank you all so much for joining us here this evening. My name is Chris Stone. I have the privilege of serving as president of the Open Society Foundations. And-- I have the double privilege-- this evening of-- introducing and joining in conversation, Anthony Lester.

Our plan-- this evening after-- I'll-- I'll introduce our guest, he will say a few words. And then-- we'll have a brief conversation. A few-- cover a few topics in his-- in his new book, *Five Ideas To Fight For*. And-- then I hope we can engage all of you-- in some conversation with Anthony.

We will-- I'm sure all be the better for it. I-- I-- I didn't-- I went on search of Anthony Lester. In search of him-- many decades ago. I'm not sure he knows this whole story. But-- I had been working as a public defender in Washington, D.C.-- representing-- doing some of the, probably, best work I've ever (LAUGH) done in my life representing-- people in poverty accused of crimes.

And-- feeling frustrated that-- that working one case at a time wasn't going to change enough of the quality of justice in the United States to make much of a difference by the end of the career I had just started. And-- I found myself-- in conversation with a

---

man then the-- a man named Michael Smith who was then director of the Vera Institute of Justice who needed someone to run his London office.

And I made a deal with-- with Michael Smith. This was in 1986, that-- I would go run his London office-- for a couple of years if he would then pay my salary in New York while I tried to create a different kind of public defender in-- in this city. And he took the deal. I think he was more desperate than I was. They needed someone to go to London. And I came to visit him in-- in New York to get my instructions. I-- and-- I spent a couple of days-- in-- at the Vera Institute here in New York.

And at the end of it I was beginning to get some idea of what he did in New York. But I had no idea what I was supposed to do in London, I said. So we met in his office at the end of my two days. I said, "Well, this is all nice, but what am I supposed to do when I get off the plane?" And he said, "Well-- your instructions are very simple. You just need to-- protect our friends and have fun."

I thought, that-- that's a-- that's an instruction for running a justice reform organization in London. And I realized that-- that-- that it was all about the first half off that instruction. (LAUGH) That that was actually gonna occupy me-- for as long as I was there. I said, "Well, how do I do that?" He said, "Just go find Lester. Go-- go look up Anthony Lester. And-- he-- he's the-- he's how we got going."

The reason he-- that-- Michael Smith asked me to do that was in 1974, when he-- was asked to go create-- Vera's London office-- the reason he had an invitation to do that was because Anthony Lester was serving as a-- advisor to Roy Jenkins. Who was then the home s-- had just become the home-- labor home secretary.

And-- a project-- an endless project. Somebody in-- in New York in the '60s had noticed there was a problem with money bail. An effort had been-- put together to-- to deal with this-- you only have to look around today to the situation with money bail to notice it wasn't a complete success. But it launched the Vera Institute. And that interested Roy Jenkins.

Anthony and-- Roy Jenkins were trying to deal with remands and custody in-- in Britain at the time. And-- thought there'd be a good collaboration. In any case, years later that project had-- not been terribly successful in England. But everybody had so much fun working together that the-- that the Vera Institute's office had continued-- to work on a number of-- a number of things.

That-- that-- experience in London in the-- in the mid '80s in Thatcher's England-- certainly change my life. Shifted me from a-- what-- what Anthony writes in the book as a reform advocate-- having to work cases one at a time and doing what your client says-- changed me into someone working on justice system reform.

But it also introduced me to one of the most remarkable reformers of-- I've ever met in my life. Anthony became a-- guide, an advisor for me trying to find my way in-- complicated British politics. And-- an era of-- beginning era of extraordinary pace of criminal justice reform in the U.K. The pace the-- police-- criminal evidence act.

The-- the introduction of the crown prosecution service. And a whole range of

---

reforms-- that just-- didn't ever seem to end since then. But it also-- it introduced me to a-- man who could take a young person-- hungry for justice-- and with just a-- word of advice here or there-- guide me on my-- on my way.

We have-- crosses paths since then time and again. When I just-- when Aryeh Neier asked me to join the board of the Open Society Justice initiative here-- in-- 2004-- Anthony was on that board-- at the time. And-- we were able to reconnect then. And we've been colleagues. And he's been advising me and guiding me-- ever since then.

We were able to stay-- colleagues on that board. But also-- just-- trade-- ideas, frustrations, sometimes moments of anger. Often moments of his insight-- in the years since then. And I-- I can't imagine-- any better guide that we could have had for those early decades of the-- of our work in justice-- at the Open Society Foundations than Anthony. I'm gonna-- Anthony has-- has served as a peer-- as a member of the House of Lords. Taught me-- in that role-- the value of putting a question-- introducing a private member's bill-- the art of working, whether it's in opposition or in-- in coalition-- is something-- something I think Anthony had mastered and-- and taught us all how-- how it could be navigated.

And all of this from those-- early years in British politics-- through his role as an advocate-- and his campaigning-- making every use of every organization-- he could find to work with-- is-- told brilliantly. And-- and-- refreshingly in this book. I should say before Anthony speaks that this meeting is being recorded-- and posted on our website. And being streamed live.

So if you-- join in the conversation you are forewarned. And-- and-- for those of you here live in New York, books are available-- outside. And I hope you will-- pick one up-- after our program today. But Anthony, a pleasure to have you here. A pleasure as always. And-- the floor is yours.

## **ANTHONY LESTER:**

Thank you very much, Chris. I-- I-- I've never done anything like this before. And I did warn you that if you were excessively complimentary about me it would enable me to (LAUGH) tell my Henry Kissinger joke. (LAUGHTER) Which-- which-- which my wife, who is sitting in the front row, becomes restive about. Because I put on an American accent-- (LAUGHTER)

## **CHRIS STONE:**

Oh dear--

## **ANTHONY LESTER:**

--when I-- when I-- when I tell it.

---

## CHRIS STONE:

Henry Kissinger doesn't have an American accent.

## ANTHONY LESTER:

The-- what happened was that when I was once in-- Cambridge, Massachusetts, in Memorial Hall, Dan Shaw was getting some award. And-- he is my source for this story. He also was praised excessively. And he said that when Henry Kissinger received the Nobel Peace Prize-- a lady came up to him afterwards and said, "Doctor Kissinger, Doctor Kissinger, I wish to thank you from the bottom of my heart for saving the whole of humankind." (LAUGHTER)

To which he replied, "You're welcome." And I-- I like to believe that to be true. Sounds as though it could be. Well-- you have reminded me of things I had forgotten, actually. But-- what I wanted to say w-- a bit about this book, is that for ten years I have c-- been in this building as a member of the Open Society Justice Initiative. For some of those-- chaired by-- by Chris Stone.

And a great deal of the book really grows out of my experience with O.S.I. And before that with the Roma Rights Center with Aryeh Neier. And b-- long before that, a great deal of it grows out of my experience here in the United States. Because when I first came here-- in 19-- s-- in the early '60s-- I went to Harvard Law School. I then went (TAPE SKIPS) to the American South-- during the long hot summer of 1964.

And that is really what got me involved in becoming-- a human rights advocate-- who believes that you can do more than simply argue cases on behalf of clients. It took me three years to write the book. And I decided that what I should do is to write a book that is not technical, not legalistic, capable of being read by non-lawyers. And hopefully by young people.

And so that's what I have attempted to do. It is not an easy thing to write a non-technical book. Especially if you are a lawyer. I was thinking about the five ideas-- human rights, (COUGH) the protection of human rights, equality, free speech, privacy, and the rule of law. And although the book looks at those very much in European terms, it also-- glances across the Atlantic to look at them through-- American eyes as well.

And-- one of the interesting things-- is how these ideas play on both (NOISE) sides of the Atlantic. I-- I am not going to bore anybody by reading large chunks of the book. But there is one bit that I-- (NOISE) feel particularly proud of. Because the book was first published in England in May before the British people made the most stupid decision of my lifetime in voting in a referendum to leave the European Union.

Now, I wrote this before the referendum happened. This is what I wrote: "Our increasingly disunited kingdom is threatened by powerful forces of nationalism. Pressure exerted by those who would quite the European Union or the United Kingdom or both. And from those who would impose their values and beliefs on the

---

rest of it. This threatens our secular tradition. There's a risk that our governors may sleepwalk the U.K. into leaving the European Union and that Scotland may leave the rest of the U.K. and that Northern Ireland will remain politically polarized."

And I'm very glad I wrote that before the event. Because it seems to me that everything that has happened since the referendum indicates that that is so. So there we are. I think that's probably enough by way of introduction (NOISE) about the book.

## **CHRIS STONE:**

Well, since you raise Brexit, let's stay with that for a moment. The-- I wonder if you would say something about the commonwealth. You talk a lot about the commonwealth in the book. And that the-- you-- you actually say near the end that the principle purpose of the commonwealth is-- is-- to defend and advance the rule of law.

That that's-- that that's at the core of what the commonwealth means. Right-- right after Brexit-- the new-- the-- the-- the current head of the commonwealth told me that she thought this was a good time for the commonwealth, 'cause Britain was going to leave the E.U. But at least they could-- they would stay connected to the world through the commonwealth.

What-- what do you see-- is the-- is the commonwealth a-- useful structure for Britain post-Brexit? Is there a-- is there a-- is there a new-- new dawn? M-- perhaps connected with the rule of law and with (NOISE) human rights for the commonwealth and the world? Or-- as some would have it-- does one need to focus on somehow getting-- recreating the European Union. Reconnecting with it and make that the champion of-- of Human Rights as some-- hoped it would be-- at its-- at its inception.

## **ANTHONY LESTER:**

When-- Dean (MIC NOISE) Acheson, the former Secretary of State-- said decades ago the British have lost an empire but not yet found a new role in the world for themselves-- he was correctly reporting the fact. That our nostalgia for the British Empire was no substitute for something which really chimed with the needs and aspirations of the people.

And that was then thought to be Europe. I-- I think that remains to be-- remains the case. The-- commonwealth-- is not a waste of time. The-- but-- it's a very weak organization. Weakly enforced. Many commonwealth countries, as the book tries to descr-- describe-- violate the rule of law in gross ways. As, of course, do some European states. And (UNINTEL) of the United Kingdom in certain ways.

The answer is I do not think that having voted to leave the European Union, that a return to the former British Empire (LAUGH) in the form of the commonwealth is a

very hopeful thing to do. And if you're not careful-- it becomes racist. In-- in the sense that what you then mean by the commonwealth tends to be the-- the old white commonwealth.

It tends to be Canada, Australia, and New Zealand. And that's not very-- happy either. The other thing about the commonwealth worth bearing in mind, if you're thinking about what becomes known as the Muslim problem-- is that in Britain, for example-- the three million British Muslims come largely from Sunni countries of the commonwealth. Notably Bangladesh, Pakistan, and India.

So I'm not clear from (UNINTEL) the question-- what one would make of that in the context of the problems we have in Britain that arise, really, from-- migrants arriving. Multiculturalism being entertained. And then social problems like forced marriage and genital mutilation and honor crimes and so on. And terrorism arising as well. I think it's ridiculous and simplistic if we were to replace the idea of the union with the commonwealth and think that that advanced the argument at all.

## CHRIS STONE:

Uh-huh (AFFIRM). The-- so if you think about the-- the-- you spent a huge amount of your-- of the last decades as a litigator in-- in Strasbourg. And trying to use, in that case, the Council of Europe mechanism. And the European-- commitment to the rule of law as a-- not just a unifying-- project, but as a project to advance human rights more-- more generally.

And you write in the book about how that system is being starved of-- of resources. And-- and losing-- losing its-- force. And its potential. Indeed, you can read the book-- as basically concluding that virtually everything is falling apart. You open by saying (LAUGHTER) British democracy is falling apart-- the U.K. is falling apart, the political system, I think you say, in the-- in Britain is falling apart-- and has been falling apart for-- for decades, I think you say.

You-- you-- after you publish the-- the E.U.-- now seems to be-- struggling. The commonwealth is no-- where do you-- where do you see-- in addition to the principles you're fighting for, where are the institutions that can take-- that-- that can take those up-- strongly? Are there-- do you have-- you're-- you've worked as an institutional reformer. But you've always been principally-- an advocate for clients. Are there institutions that you have hope for-- in the years ahead that can-- that are up to the ideals and the ideas that you've been fighting for?

## ANTHONY LESTER:

Yeah, you-- you remind me of the-- of the cover of a n-- *New Yorker*-- book for lawyers. (LAUGH) Which had a cartoon w-- with-- a lawyer looking at his client saying, "How much justice can you afford, Mrs. Popnick?" (LAUGHTER) How much truth can you afford?

---

When the Soviet empire collapsed and the Cold War ended-- one of the very bad decisions that was made by your Mr. Clinton and Mr. Yeltsin was to do a deal whereby NATO was allowed to expand to the east, provided that Russia was allowed to enter-- the Council of Europe.

Russia and all its former satellites. And so what then happened, and it was understandable, and maybe it had to happen, is that the Council of Europe, which had been a relatively coherent and cohesive organization of a dozen states then became a little more-- rocketed to its present, what is it now, 48 states, I think. 47, 48 states. 48 judges. 48 judges from-- countries like Cyprus, a country of 800,000 people.

To countries like Turkey-- of-- 100 million by far. Treated as though they are the same. As though each state has equal validity. Each one can appoint the same judges in the same way. The-- the result is-- the result of the-- of the-- arrival of Russia and the Ukraine, in particular, and Turkey into the system, although Turkey was always there, has been a gross overloading of that court. With a backlog, at one time, of-- I think it was-- several-- over 100,000 cases increasing every year by 20,000.

Now that institution, that super national court (COUGH) pl-- is meant to play, and does play, a vital role. Which, of course, the United States is deprived of since you don't-- you don't have any supranational court to monitor your human rights record. Whereas-- whereas the 800 million Europeans-- in all those countries have the protection of that court.

And when you say-- do you see any-- any ray of sunshine-- I do actually see some rays of sunshine. (COUGH) For example, the new British judge, amazingly, appointed by the present government, amazingly, Tim Eicher (PH), a-- German-- and a Brit-- is brilliant. And an extraordinary appointment. Because he is independent and clever and committed to human rights. And nobody's patsy.

So w-- when my country, with all the-- the appalling things that have been going on in my country, is still capable through its government of making an appointment like that, that gives me some hope. I think that, in the end, the reform of European institutions will come more from the central and eastern European part of Europe than from the west. Why? Because in the west we're all very cynical.

And in the west, the governments really don't want to have a supranational body looking over their shoulder. In the east, those who have lived under Soviet domination understand what persecution really is. And are probably more inclined to-- do something about it than in the west. Of course, that's not-- generally true. But I think it is-- it is-- there is some truth in that.

So I have not lost hope that the Council of Europe will survive. Our present Prime Minister, Theresa May, has threatened to withdraw from the European Convention system. I think she's now unlikely to do that. But there's still that threat. If Britain carried that threat out it would begin to destroy the whole system. But I don't think it will. We will see.

---

**CHRIS STONE:**

Right. Lemme-- lemme ask you about just a-- story. You tell in the-- book-- a wonderful-- so in 1980 you and I both-- worked on a death penalty case. And we both lost. The-- I was in Hattiesburg, Mississippi, which you may have visited back in 1964, I'm not sure-- representing a young-- young man-- facing the death penalty. But you were arguing in the-- in the-- among-- before the law lords, Diploc (PH) I think, actually--

**ANTHONY LESTER:**

Yes. Yes.

**CHRIS STONE:**

And-- a case from Singapore. (FOREIGN LANGUAGE NOT TRANSCRIBED), I think, is the name of the client. Lemme just s-- say a little bit about that-- that story-- for those who have to read the book. And what you concluded about-- the rule of law from that. It's-- it's a-- it's a powerful story because the-- what you experience in the law lords is not what-- a law student is-- is taught happens at the na-- at a nation's highest court.

**ANTHONY LESTER:**

Yes.

**CHRIS STONE:**

And I'm curious what-- what lesson that-- tell the story and then maybe say something about what you drew from that about the rule of law in-- in-- in your country.

**ANTHONY LESTER:**

Yes. Well-- by the way, that story has a happy ending.

**CHRIS STONE:**

Well--

---

## ANTHONY LESTER:

Of a different kind. But the actual story is horrific. In Singapore-- there was a mandatory death penalty for trafficking in a certain amount of heroin. And-- a number of-- men and one woman were awaiting execution because they had all been convicted of trafficking in heroin.

And I found myself representing one of them, (FOREIGN LANGUAGE NOT TRANSCRIBED)-- before the Supreme Court of the United Kingdom, which was then the House of Lords. And I came in front of a judge whose-- brilliance far exceeded his generosity. (LAUGHTER) Lord-- Lord-- Lord Diploc. And I turned up and-- before I could say anything Lord Diploc turned to me.

I-- I was-- it was 1980. So I was a bit younger. And-- and Diploc turned to me and he said, "Mr. Lester-- you say that there are constitutional issues in this case. Did you argue those in Singapore?" So I said, "No, my lord, I-- I've only just been instructed here." So he said, "Well, you can't argue them now." (LAUGH) So I said, "In that case, my client will stand condemned to die unheard." And he said, "Quite." Quite. (LAUGHTER)

The youngest of the law lords then, Lord Scarmon (PH), very quietly said that he would like to hear the argument. And Diploc snarled, "Clear the bar." And we were all slung out. And 20 minutes later we came in and Scarmon looked very battered. (LAUGHTER) And Diploc looked at me and said, "All right. Argue it then. But you must not cite any American cases." (LAUGHTER)

So I said, "Well, I've only got two cases to show you. And they're both United States Supreme Court cases where they say a mandatory death penalty is unconstitutional." He said, "You-- you can't argue-- you can't use those authorities." Anyway, it went on like that-- for three days. For three appalling days. I lost, he wrote in the judgement that counsels would never again cite American precedence in a privy council. That didn't last very long. And they hanged my client and the-- the rest of them, including the woman.

20 years later, this is the happier thing. 20 years or 30 years later when-- another judge, Lord Bingham, was in the privy council, they had exactly the same issue-- in the Caribbean. About the death penalty in the Caribbean. And Bingham, not knowing what I've just told you, just said that the case that I had lost was an example of primitive jurisprudence that should no longer be followed.

And I wrote to Bingham and told him the story. And he-- he said he had no idea. And I-- I want to finish this point by saying that what I am proud of is that the present British judiciary, right now, in my view, are the most internationally minded and enlightened judiciary anywhere. It may not last, 'cause six of them have gotta retire next year. Through age.

But at the moment, we have an extremely enlightened judiciary. In my book I'm trying to describe what it was like 50 years ago and the progress that we have made. And I would say the judicial branch of British government-- is an example of

---

something which has happened which has strengthened the rule of law.

And-- I mean, as you-- I'm not allowed to say much about the presidential election probably, (LAUGHTER) but as you go closer to (COUGH) the end of your 89 days, of course the outcome of your election is going to decide-- what the c-- political composition of your Supreme Court will be. I'm very glad to say that in Britain-- we have managed to take away altogether from politicians the choice of senior judges. It is now nothing to do with politicians anymore.

## **CHRIS STONE:**

So-- let me-- let me try and take you back even further before we come to the present day and elections-- here and there. You speculate in the book about why you care about these five ideas. And you talk about your-- early experience in the country. You-- you use a phrase which I'm (LAUGH) actually-- much prefer to the common-- the-- the current phrase.

You talk about pinpricks of anti-Semitism that you experienced in national service. I think we call those microaggressions (LAUGH) today. But the-- I-- I think pinpricks captures-- captures it well. What-- what is it, when you-- when you have a client, is it-- what is it in your early experience? You don't go into it in the book. But what is the connection between your own experience and the causes, these ideas that you-- that you write about?

You've-- you've made the legal case, you've got a rational case. And you've got a impassioned political, principled case here. But say something more about the personal case that connects your experience to these ideas.

## **ANTHONY LESTER:**

It's extremely difficul-- it's impossible to know-- to answer that question properly. Because none of us knows what-- what we really are. We think that we know, but we don't really know what we are. In my case, I cannot tell whether what motivates me is because of the holocaust-- because of my experience of seeing-- the holocaust in news reels when I was nine-years-old.

Was it because my parents brought me up to believe that the underdog should be defended? Was it coming to the United States? I mean, I-- I loathed, I detested law in England in Cambridge. I found it stifling-- rule learning-- austere. When I went to Harvard Law School in-- 1960-- I met a remarkable Indian woman-- a law lecturer from Delhi, who convinced me that you could use law as an instrument of social change.

It had never occurred to me until she-- she-- she-- she did that. That, I think, was quite a powerful influence upon this young, impressionable graduate student in-- in Harvard. I think going to the deep south was, for me, a searing experience. I spent about three months there.

---

And-- anyone who's in the deep south during that long hot summer would be bound to be affected by it. When I came back to England-- I was full of American ideas about s-- free speech, about equality, about the rule of law and so on. And Dr. Martin Luther King said we needed a civil rights movement in Britain. And I turned up to the-- to the meeting-- that founded it and found myself as the legal advisor-- working with Trotskyites, Stalinists, black powersists, communists, liberals, all kinds of folk-- as a lobby. As a campaigning lobby.

I suppose-- I'm trying to answer your question. All-- all of these influences played upon me. And I can remember feeling depressed at the state of Britain compared with the state of the United States in-- in 1964. In-- in-- in the states in 1964, there was great hope. And-- and commitment to due process, equality, free speech, and change.

In Britain we had no public law, no European Human Rights Convention court. No public law. Law consisted of criminal law, civil law, commercial law, family law, and that was it. The legal system was ethically aimless. And I can remember thinking-- you know, take an American law book at the time, say Norman Dawson's (?) work. If you looked at Norman Dawson's work here and then you thought about the United Kingdom-- the cupboard was bare in Britain.

And I determined then that-- I should try and to do something about it. For me, the great turning point was actually in 1968. And maybe this is quite interesting to Americans in particular. Because, of course, our parliament has supreme power. We have no written constitution.

Parliament can do whatever it likes. Which means the government can do whatever it likes if it-- if it has a majority in the House of Commons. In 1968, 200,000 East African Asians were made refugees in East Africa by the newly independent African governments. They started coming to Britain in large numbers. A racist campaign was organized against them.

And parliament was persuaded in three days and three nights to take away their rights of entry and settlement in the only country of which they were citizens. It couldn't have happened here because of your constitution, s-- provided that the constitution that was-- was working properly. But it could happen in Britain. And-- that convinced me that we needed, for example, a bill of rights.

And-- and I gave a lecture in 1968 to that effect. And-- and the only person in Britain who agreed with me was the London correspondent-- chief London correspondent from the *New York Times*, Anthony Lewis. Who said to me, "Anthony, you are right, but you are crazy. (LAUGHTER) It will never happen." And it took 30 years for it to happen.

I would say-- I mean, this is (NOISE) one of the things I go into the book. We have managed to-- to achieve that. But now we have a government, after Brexit, (COUGH) which is threatening to weaken or destroy it. Which simply shows that you can't put your faith in written constitutions or laws. It's the spirit of the people that matters.

---

**CHRIS STONE:**

So-- and you-- (NOISE) you've ta-- that's one impossible task you got done. And there are a host of others you describe in the book. It is-- it's an extraordinary journey. You have a-- you tell us-- you tell-- you-- aphorism in the book about unripe time.

And ideas that-- that may appear like-- terrific ideas when you have them. But you may be in the wrong time for them. When you think of today and you-- if you were-- if we had just met-- and-- I was-- in my late 20s or turning 30 and looking for advice about how to use law for social change today-- what are the-- what are the ideas whose time is ripe today? And what-- what is best-- treated as still unripe? What's the-- what are the-- what are the passions of the moment that need to be left? And what needs to be taken up today?

**ANTHONY LESTER:**

Do you mean in the States or in Britain or in Europe--

**CHRIS STONE:**

Take a-- take a-- take-- wherever you-- wherever you'd--

**ANTHONY LESTER:**

I mean, everything--

**CHRIS STONE:**

--like to go--

**ANTHONY LESTER:**

--depends upon-- upon context, really. I mean, one of the advantages of being in the unelected hopelessly unreformed House of Lords is that-- (LAUGH) is that you can form coalitions-- and take up issues-- with some success. Because the government does not have the majority--

**CHRIS STONE:**

Right.

---

## ANTHONY LESTER:

So if I were to try and answer your question in the context of the House of Lords, it would be a different-- question from-- anywhere else. And since I've been in the House of Lords for about 25 years, that is the playground in which I tend now to operate much more than in-- in law courts. In Britain, at the moment, it-- in truth, it's a question of defending what we have rather than trying to do better. Let me take the case of the human rights act and a bill of rights. In 1998, Tony Blair's government-- passed the Human Rights Act. And that is now our substitute for a written constitutional bill of rights.

And it's worked extremely well. But from the time that it was born, the media is-- which is largely right wing, has been up-- up-- attacking it again and again and again. They attack it partly because they do not want an enforceable right of privacy to prevent them from publishing what they would like, muck about public figures.

So day after day, there is a campaign and has been ever since 1998. And the anti-European part of the conservative party agrees with it. And so right now, if you're asking-- right now-- right now the challenge is to defend the Human Rights Act against it being destroyed or weakened. That's a rather dispiriting answer. Because I would like to see a more powerful constitutional bill of rights that was stronger than the Human Rights Act.

But it's a waste of time to think that because Labor has committed mass suicide-- in the form of-- Mr. Corbyn and his supporters. They will not win power in my lifetime, unfortunately. My party, the liberal democrats, have been almost destroyed by-- by Mr. Cameron. They will not win power in my lifetime. The conservatives will continue to exercise power. They are split between right wing anti-Europeans and more sensible people.

And various things like tearing up the Human Rights Act will continue to disfigure the public arguments. But none of this will be surprising to you because you only have to think about what happens in your presidential election to see what can happen in my country. So I've not really-- I-- I mean, the truth is, this is not a good time in my country for much needed reform.

Let me give you one of-- of a good example that will appeal to you. Disgracefully, we have all but abolished civil legal aid. Disgracefully, we now charge-- fees for anybody who goes to court or to a tribunal. Or even an asylum seeker who wants to appeal. We're not talking about \$5. We're talking about-- 1,000 pounds. That kind of figure. Now, these obstacles to justice are a disgrace. And if you say what to fight for now, it would be that. But if you say to me, "Have you got any hope?" I would say (LAUGH) not under this government.

## CHRIS STONE:

So-- lemme ask you one question then we'll open it for-- anyone who wants to join

the conversation. Lemme ask you this-- this. (NOISE) So where do you see-- so you ta-- you've talked about the importance of hope. You talked about it in 1964 in the United States. You've talked about it in the-- in-- in different moments. And you've-- in your country and you talk about-- through (NOISE) here, through the book, you've got a series of crusades, each hopeless in their moment.

Which one-- remarkably, one (LAUGH) after another. You-- you bring-- or you help bring-- to realization. Who do you-- who do you look to today-- for hope? Do you see in-- is there a-- is there a young lawyer? Is there a-- statesperson? Is there a judge or a politician? Not of your generation, our generation, but-- who is-- making their way-- at the beginning of their-- their career-- who you think-- you look to-- with some hope for what they can achieve-- on these issues.

## **ANTHONY LESTER:**

These are very tough questions. I mean-- I mean, certainly what I've said about the judiciary remains the case. That is to say--

## **CHRIS STONE:**

(UNINTEL PHRASE) just told us they were all gonna (LAUGH) retire in a couple of years--

## **ANTHONY LESTER:**

No, no. But there are-- there are-- although it's very hard to get good lawyers to become judges, partly because their pensions have been raided disgracefully-- b-- in the recent past. Nevertheless, the judi-- (NOISE) the judiciary is-- remains a source of great hope.

The young lawyers coming-- into the legal profession-- are much better than my generation were. When I started in my chambers, which is the English way of describing a law firm, but it's not a law firm-- when I started in my chambers, there were eight of us. And boy, were we boring. (LAUGH)

Now, there are over 100 of us. And I would say that more than half of them either do pro bono work-- or do public interest work. Or-- or do, anyhow, human rights work on both sides of the argument, for the government and against the government. And they are cosmopolitan, better educated by far than we were, and in turn, they are a real hope for the future.

Because they will not be put down. They will continue, professionally, in-- in that way. In terms of politics-- there are actually good young people still going in to politics. But-- polarization-- has discouraged people. And one of the problems about politicians in Britain-- is that in my time they had a hinterland.

---

They-- they had outside jobs. Outside interests. They might be a lawyer or-- or a doctor. Or a writer. But they did other things before they became politicians. Now, unfortunately, our politicians have done nothing but politics. But before they become politicians. And so we have-- they become special advisors and then they move from that to become politicians.

So I would say that the political branch is less healthy than the judicial branch. And-- and-- and the legal profession. But-- I mean, the truth is-- that you have to take what you can find, opportunistically. May I give you one example? I have always thought the English law of libel was appalling. Because libel tourism-- was-- was-- was fantastically popular, and although I don't agree altogether with the case law on a first amendment, including on libel-- nevertheless, it-- it was obvious that your law was vastly superior to ours.

So I decided I better use my time at the Lords to reform the law of libel. And then the question was, how do you do that? After all, (LAUGH) for the last 300 years we have not reformed the law of libel. And every attempt had failed. So what did I do? Well, I sat down with Dominic Grieve, who was a very smart conservative lawyer, and I said, "Suppose the conservatives win power. Would you support me in reforming the law of libel?"

I did the same with Labor and with the Liberal Democrats. And all of them said yes they would. All of them agreed to do so. So then I spent six months with a couple of real experts, which I'm not. A judge and a libel practitioner, in wh-- and a whole group of NGOs week after week, fashioning a bill to reform the law of libel. Then we h-- when-- when-- was election, when the new government came in, we were able to build on that.

And it took three and a half years and the defamation act, 19-- 2014, is so good that every time an American friend writes to me and says, "Can I bring a libel case in London?" I say, "Read the act." And they say, "But it's just as difficult as in America." And I say, "And so it is." (LAUGHTER) (NOISE) Now there is a good example of luck and patience and ability to work-- beyond your tribe. And having-- and luck is very important.

## **CHRIS STONE:**

Very good. Any-- anyone want to-- please, come and-- there's a microphone right here. So-- we're streaming so please just come on up. Join-- join us.

## **MALE VOICE (UNIDENTIFIED):**

Hello, sir. You talked about how much impact your time in the deep south had back in 1964. You said you didn't wanna comment on the presidential election. However, (LAUGHTER) one thing I would ask you to comment on is a justice system which, I believe, treats people better if they are rich and guilty than poor and innocent.

---

Where specifically African Americans-- are routinely treated as, in my opinion, less than equal citizens. Which, of course, they are not. And all of the other injustices. Seems to be that though it's not exactly the same, obviously there's a lot of the same racism, hate-- fiddling with the law, if you will, that took place in 1964 that still takes place today. And I'd love to hear your perspective on that.

## **ANTHONY LESTER:**

I-- I mean-- a foreigner has to tread carefully-- (LAUGHTER) in commenting on-- the country in which he is enjoying hospitality. Luckily, *The New Yorker* had a remarkable article-- in which Chris Stone is quoted-- about a man called Brian Stevenson-- whose organization-- does the most magnificent work. And I think he's supported by O.S.I.

## **CHRIS STONE:**

Uh-huh (AFFIRM).

## **ANTHONY LESTER:**

And-- that article is describing exactly what you're talking about, which is the appalling situation-- in which-- black Americans-- Americans of color, I don't know the current way of describing. Can you say, "Black Americans" without causing offense? (NOISE) Black Americans are obviously discriminated against in the justice system and in the penal system. Including the operation of the death penalty.

Also, of course, your incarceration rate is surpassed only by China and Turkey, I think, per capita. And yet-- for example, in Europe-- from Ireland in the west to Turkey and Azerbaijan in the east-- throughout the Council of Europe, we have completely abolished the death penalty. This is not to say we do not have serious problems of racism in the criminal justice and penal systems in my country as well as elsewhere in Europe. We do.

But they-- they are dwarfed, I think, in comparison with the problems here. And we certainly don't have the problem which I'm seeing now and saw in '64 of the killing of unarmed black men by the police. I don't know whether I've answered (LAUGH) your question. But-- I hope what I've just said-- is fair.

I-- I mean, the other thing I feel about your system-- is that the way you appoint and elect judges is-- is, to me-- (LAUGH) very difficult to reconcile with my idea about equal protection of the law. The idea electing judges is-- is-- is-- (TAPE SKIPS) I mean, we had-- we Brits had a bad system in which someone called the Lord Chancellor, who was a minister in the government, could appoint judges. Politically.

And as a parliament, we decided that must end. So we set up a separate supreme court. We took the judges out of their comfort zone in the House of Lords, and

---

shoved them across Parliament Square into a separate building. And then we set up an appointment system which is entirely based on merit.

And ministers have no real discretion about judicial appointments. And the idea of-- electing judges is to ask a contradiction if you're talking about the rule of law. So-- so, I mean, (LAUGH) these are-- that-- that-- that, I'm afraid, will continue whoever is president of the United States. But you will-- if-- if Hillary Clinton wins, I see from today's *New York Times* you will have a liberal majority on the court for the first time for 50 years. But it doesn't please me that that is the product of a political process.

## CHRIS STONE:

Just to answer, before we go to-- can I just ask you-- on that question. If you-- you know, in-- in '64-- I think '64 is actually the same year that Malcolm X was writing-- about the-- the-- the ballot or the bullet as the way forward on civil right-- on human rights.

And indeed when-- when he broke with-- American Muslim movement-- and formed the-- Coalition for African-- the African Struggle-- he cited the Universal Declaration of Human Rights as the foundation for the rights he thought he was struggling for.

We have an election-- we have-- a reviving tradition of protest. Would you advise Americans today with the politicized structure you talk about to trust in the law as a way forward on rights-- today? Or-- would that not be-- a source of hope? (COUGH)

## ANTHONY LESTER:

Well, I-- I can't see the alternative-- to-- I mean, once you decide not to use the ordinary political process and not to use the legal process, I-- you then finish up with a very dangerous situation-- in which mobs rule and demagogues reign.

And I don't think that's the way forward at all. I think that-- I think you-- I-- I mean, I'm probably sounding like an old fogie, which I probably am, (LAUGHTER) but I think you have to work through institutions and make the institutions work. And not work around institutions in an anarchic way. (NOISE)

(CHRIS STONE: UNINTEL)

## ARTEMIS SEAFORD:

Hi, I'm-- I'm Artemis Seaford. I'm a fellow here. I work for the president's office. So you have spent your life-- using the law-- for justice and accountability. Both at the domestic and the international level. And I wanted to ask you, I was curious to hear your thoughts, about what you see as more promising today. Pursuing-- sort of, justice and human rights through domestic institutions, or international ones.

And I'm thinking-- specifically about-- criminal law. So international criminal law. Do

you-- have faith in international organizations such as the-- I.C.C. and hybrid tribunals? Or do you think the future of international criminal law-- lies-- in domestic prosecutions? But also more broadly about other issues of human rights. Thank you.

## ANTHONY LESTER:

When we joined what was then called the common market, there was a very brilliant law professional called Otto Kahn-Freund. Otto had been, I think, a German-- judge. A refugee. And I remember going to a lecture that he gave in which he said, "Now pay attention. You must approach European law through British law and not round British law."

He said, "If you're not careful-- being part of a supranational system will weaken public confidence in your own system. You have to argue-- cases. You have to think of cases in a way which is going to make people-- support what you do. And have confidence in the legal system. So do not rush straight to Europe to a supranational system.

"Weave it into the warp and woof-- of-- of your own system." And I've always remembered that. And, I mean, the answer to your question is that it has to be a partnership between the domestic legal order and the international legal order. So, for example, if you take the international criminal court-- it depends upon cooperation from the member states.

And if a-- an alleged war criminal-- can be fairly tried at home, domestically, that makes sense. But if they can't be fairly tried or there's a lack of confidence in the system, then the supranational court becomes crucial. So I don't see it as a choice between the domestic and the international. As far as I'm concerned, they-- they are-- partners. And have to be partners. And the same applies, I think, to-- to governments as well. And to other institutions.

I mean, you have what's called exceptionalism here. And always have had. Wh-- which is-- which is strange to me. Because I'm-- I'm deviating from your question, forgive me. But when-- when we left-- when we left Harvard Law School in 1962, the dean of the law school was a man called Owen Griswold. And he-- he called the 100 foreign students together and he said to us, "You have benefitted hugely, have to you gentlemen?" I think we were all male.

"Gentleman, you-- you've benefitted. You understand now the American bill of rights. You understand due process. I want you all to go across the world and spread the word." (LAUGHTER) And-- and we thought, "What an appallingly arrogant statement." (LAUGHTER) And he was right. And we did. But-- but the compliment was never returned. So we were busy rushing about Europe-- spreading the word about American ideas of equality and due process and free speech.

And we did. And we used American case law. Et cetera. But God forbid that any of that stuff should contaminate your system. (LAUGHTER) So I'm afraid at the

---

moment-- your question-- is a question which is relevant to me because we belong to two systems, is much less relevant, I think, in the United States. (COUGH)

## **CHRIS STONE:**

Thanks.

## **MALE VOICE (UNIDENTIFIED):**

I have a task here, which is working with countries that thought that they had transitioned to democracy. And we still do. And yet, we forgot the justice system (LAUGH) in that process. The legislative and the executive powers managed to balance each other out somehow. In Latin America and many other places.

And then we suddenly call ourselves democratic. And yet, today, we face a big problem which is underfunded justice systems. Not autonomous. Victims of political appointments. And just, in general, being used very similar to the way they were used before, which was a way of governing. Providing some sort of order rather than providing justice.

And in that process, and this is just my interpretation that I would like to hear your opinion of, what happened is that justice started competing with security for providing order. And security won. And it started getting the budget for policing, for fighting the war on drugs, for-- building prison systems. And pretending that that was justice.

So my question every day when I go to these countries and think about these issues, especially now at the Open Society, 'cause they force me here, to think in (LAUGHTER) those terms, and I'm very lucky for that. But I'm just starting to think about is maybe in these places, justice is not providing a good, eloquent answer to the problem of order. That it surely could, but maybe we're not being able to communicate as probably-- and probably you can better. How can justice provide order as well as justice? Because in many countries that's what it's been demanded from justice. And we're not seeing it clearly. And we're failing at, sort of, being just with justice.

## **ANTHONY LESTER:**

Well-- I-- again, I don't really think that justice and security are mutually exclusive. I think that-- in-- in-- in the current *New York Review of Books*, there's a review of a book by Owen Fiss, the distinguished emeritus professor at Yale-- on-- on this subject.

I haven't read the-- Owen Fiss' book yet. But-- they're-- they're going into the issues you raise. May I give the example from my own country? Now-- the United Kingdom,

---

like other European countries, Spain, Austria, France, Germany, the Netherlands, we have serious problems of terrorism.

We have serious problems resulting from mass migrations. We have serious problems from right wing extreme parties exploiting-- fear and dislike of Muslims. We have-- wars in places like Afghanistan and Syria that are fomenting some young people to try to blow the place up. Taking your question then-- how do you weigh justice and security?

The answer is, if you clamp down, if you simply clamp down-- against what you regard as the Muslim threat, for example, you breed a whole new generation of disaffected people who will be tempted to blow the place up. You have to have a strategy which is fair and which makes the-- vulnerable minorities, in the case of Britain, quite a large vulnerable minority. Three million Muslims in Britain.

They have to feel that they are being fairly treated. And the moment that you allow security to feel that that is not the case, or to take a-- simpler and very well-known example that Mr. Trump has been talking about, take the offense of driving while being black. Now, the offense of driving while being black-- is certainly committed in my country.

I live about a mile from Brixton. And you only have to drive around to notice that the people are stopping black people much more than white people. This causes profound alienation among black people. So there's a real problem, (NOISE) which Chris knows much more about than I do about policing. About the training of police officers. About prosecutors. About what happens when they go-- into prison and so on.

These are all problems where you have to win the confidence of the minorities, including those from whom, at the moment, terrorists come. Another very good example, if you want any more, is what happened in Northern Ireland. There is no question that some of the injustices that were inflicted by the British occupying security service in Northern Ireland, was a recruiting sergeant for-- members of the IRA who-- who blew the place up.

## **CHRIS STONE:**

And so just to-- but to-- we'll t-- get to you in just one second. But lemme just-- push that a little further. Can-- can the law, can just-- can the justice system deliver, take (NOISE) on responsibility for order? Or is-- is that somebody else's job while the courts attend to principles of right and-- and-- and law?

B-- and you say they're-- they're not-- they're not inconsistent. They're compatible with each other. But I think the question was a step further. Can the justice system-- should it-- can it take on responsibility for delivering order along with justice?

(OVERTALK)

---

**CHRIS STONE:**

--I've stumped you. (LAUGHTER)

**ANTHONY LESTER:**

No. I mean, it's-- it's very difficult. Because the role of a judge is not to take the place of the army or the police. Obviously. But-- but the-- but c-- but judges must not be timid in reviewing whether the claims of national security are well made.

And there is a-- I think the answer to your question is that-- I think you are right in what you are implying. It is not the function of the judge to maintain order. It is the function of the judge to make sure that the rule of law operates.

**CHRIS STONE:**

I wish you'd written that. We'll get that as a-- as a postscript to your book. It's wonderfully put.

(OVERTALK)

**FEMALE VOICE (UNIDENTIFIED):**

Building on the question about the value and effectiveness of international law and international courts. And I wanna go back to the point you made about the European court and how it-- it's been overwhelmed by cases from Russia, from Turkey, from Azerbaijan. I use that as an example because my organization, Freedom Now, (LAUGH) which you know is-- provides legal defense to political prisoners, we work on a lotta cases that go to the European court on Azerbaijan.

And for the Azerbaijanis, and these are cases of people whose very prosecution was politically motivated. So it's not a failure of the system in-- in as much as it is actual-- targeting by the government. So their only chance for any legal redress or justice-- are these international courts. Is the-- is the European court.

Now, that said, the European court generally comes out in decisions in their favor. Finding a violation of, you know, their rights to freedom of expression and against arbitrary detention. And the response by governments like Azerbaijan and Russia and other authoritarian governments is to just totally flout the judgement from the European court. They often will pay the compensation. They'll never release the person.

And in the community, in the international legal community, we're-- we're a little bit-- there-- there's a lot of discussion and this-- we feel a little bit stuck that there has been this great adherence to this-- the value in fighting the good fight in international courts and really pushing adherence to international law.

---

And now we feel that we're out-- we're-- we're at a st-- and maybe we always were. Maybe this is naive of me to say this is something new. But that we're fighting up against them and they just don't care. They don't care what the European court says. And even the working group on arbitrary detention at the U.N. released a judgement against the U.K. in the case of Julian Assange.

Controversial decision for a lot of reasons. But the U.K.'s response was we don't care about this body, we're gonna ignore it. And a whole bunch of countries said, "Oh, we get it. It's good enough if it's against us, but not against the U.K." And I'm just curious about your thoughts about the direction of international courts and the adherence to international law. And how much we should continue to push there or whether we should put more of our resources and attention towards just international advocacy.

## **ANTHONY LESTER:**

Last-- last week I was in Strasbourg attending a meeting of the committee of ministers on behalf Cyprus. And while I was sitting there, Azerbaijan came up as-- there-- there's a mechanism in the-- in the committee of ministers whereby judgements are monitored by the diplomats and lawyers to see whether the judgements are being complied with.

And these days they demand an action plan. And NGOs like yours-- are able to make submissions about what the action plan should be. And then you go to the meeting and the Germans will say-- "Hang on, you haven't paid the money and you haven't changed the system. And you're breaching the action plan." (NOISE)

And then the-- Azeri-- diplomat will sit there listening while eight or ten countries say roughly the same thing. So you might get Ireland and Denmark and Netherland and Germany and Britain-- (NOISE) all saying to the Azeris, you better change. The-- the-- and it's a very difficult question as to whether that process really does affect change or not.

I-- I mean, to take another example, the Roma. I once did a case against the Czech Republic about the Roma, we won, it was about s-- special schools. I go and I listened to the Czech Republic defending itself in this committee of (NOISE) ministers, and I'm not clear whether this pressure is leading to reform or-- or not. The honest answer to your question is-- well, the first thing is, should Azerbaijan or Russia have been admitted to the Council of Europe in the first place?

Because neither of them ever-- agreed with the rule of law when they came in. Some say, "Yes, they should, because it's better to have them inside and to influence them rather than have them outside." That in itself-- is a very complicated and difficult question. If you say they should be in, the next question is, "How do you influence them?"

Well-- in answer to what Chris was asking me before, one reform-- w-- is worth-- working for and the Open Society Institute Justice Initiative, as far as I can remember, is very interested in improving the mechanisms in Strasbourg. One obvious thing to

---

do is to punish states that-- repeatedly violate the convention and do not obey the judgements of the Strasbourg court.

Either in costs or damages or some other penalty. At the moment, that is completely lacking. So-- for the last five years, Turkey has refused to pay compensation to-- to Cyprus. And every time I go there we raise the same thing. And every time-- everyone says, "This is disgraceful." And every time turkey says, "Very sorry, we're not gonna do it." Now there needs to be some form of sanction.

And you only get-- and the-- what the end-- what NGOs like yours should press for is not only that the action plans are implemented, but also that the perpetrators-- are-- have to pay the-- the-- are liable for their failure. That requires the c-- the Committee of Ministers, the Council of Europe, and the Parliamentary Assembly to agree to change the system. And that, I believe, could be done. I think that is a good example of a very important reform that would help to address the problem you just raised.

## CHRIS STONE:

So, Amrit I'm afraid we're out of time. So I'm not gonna-- be able-- I've gotta-- end promptly here. But I will-- maybe there'll be a-- moment for a private conversation. Anthony, (LAUGH) the-- I'm-- I listen to you and I always think back on-- a story and I-- one of my hero historians, Edward Thompson, who-- wrote about the English law. Wrote stories of massive injustice. Judges who were corrupting the law.

Make-- Diploc-- look very familiar-- in his-- in his earlier histories. A number of impossible things. And he writes these histories. And then he says, "You know, you could read this and conclude that the law is sham. And the rule of law is sham." And he said, "That would be a huge mistake. The rule of law is actually one of the great cultural gems, jewels, of-- cultural achievements. Of-- of-- of the English system.

"And a-- cultural achievement of universal significance." And I listen to your stories, I read your book, and I think you could look at this life (LAUGH) and conclude the law is a sham. That there is a-- that there is-- that there is-- these are people manipulating power. Trying to get results. Ignoring laws when they don't want them.

And yet, I think, the lesson is the same as Thompsons. That what you have-- what you have achieved is-- a cultural achievement, not just an achievement for a series of individual clients. And that the rule is law-- the rule of law is stronger because of you. Because of your battles, because of your patience. And I thank you for being here, for writing the book, for sharing these insights. And-- thank you all very much for joining us. (APPLAUSE)

\* \* \*END OF TRANSCRIPT\* \* \*