

October 2004 Address to Dedman School of Law, Southern Methodist University

HE MINISTER JAWAD SALIM AL-ARAYED,
MINISTER OF JUSTICE, KINGDOM OF BAHRAIN

Dean Attanasio,
Honorable Guests,
Fellow Students,
Ladies and Gentlemen:

I am honored to address you today—to be asked to speak at this esteemed university and to address this distinguished group.

I address you all today as my “fellow students.” It is my belief that we should view ourselves as perpetual students—always learning, always seeking answers, and posing questions. We can become more experienced, more knowledgeable, and more adept, but we will never have all the answers. The most knowledgeable and well-respected men I have ever known have also been the most humble. Thus, it is in the spirit of learning that I address you today—posing, I hope, some new questions and offering a different perspective on three interrelated and critical issues that our legal systems face today: change, pluralism, and democracy.

Eighty years ago, Bahrain revolutionized its legislative and judicial system when Bahrain’s Amir, Sheikh Hamad, set into place new laws for pearl divers in the 1920s. At that time, almost half the male population of Bahrain was employed in one aspect or another of the pearl production trade. The system, which had evolved over time, was one in which the divers and pullers were paid advances twice a year. These advances were effectively loans, with interest, that would be set against their share of profits from the upcoming diving season. By accepting the advance, the diver was obliged to work for that captain during the pearling season. The ships’ captains were entitled to one-fifth of the profits from the pearls, and the divers and pullers shared the remaining four-fifths of the profits.

In theory, the system seemed fair. But so many abuses crept in that the divers and pullers became virtual slaves to the captains and merchants who financed them. The interest rates charged on advances were often outrageously high, accounts were falsified, divers could be shifted without their consent to another captain, and on a father’s death, his debts were transferred to the sons. The divers and pullers had no means of checking their accounts,

and the only avenue of recourse was a notoriously corrupt Diving Court composed of captains and merchants.

In 1923, Sheikh Hamad instituted a complete reform of the diving system with the support of the religious leaders, who were opposed to any form of usury, as well as a diverse group of progressive Arabs, some of whom were pearl brokers and merchants. The new laws set limits on interest, allowed divers to use the central courts system, created a simple and responsible system of accounts, and gradually implemented limitations on advances. Witnesses were introduced into the pearl selling process, and it was decreed that the debts of a diver died with him.

The diving law reforms were contentious as significant changes often are. There was strong opposition from the captains and merchants, who saw their control over the divers being lost. Some adversaries of the regime, who were forever seeking any opportunity to discredit the government, also opposed the reforms. But, to the glee of the captains and merchants, the divers—the main beneficiaries of the reforms—put up the greatest opposition, often in the form of riots and strikes.

The changes were not easily accomplished. But, in the end, the introduction of these reforms in 1923 meant that a largely disenfranchised segment of the working population gradually achieved a measure of social and economic justice. These measures went far toward ensuring that Bahrain nurtured a healthy, civil society.

Any significant change to an existing system is controversial. People often have a stake in maintaining the status quo, and there is also a natural human tendency to resist and fear change. But, the judicial system is a reflection of the interface between the people and the rules of law and social order within a society. Thus, the judicial system must mirror the inevitable and inexorable changes in society and the rule of law. A judicial system that does not evolve will lose touch with the rest of society, and from that divide, bitter and inexorable conflicts will arise.

The overwhelming approval of Bahrain's National Charter in 2002 signaled the beginning of political, legal, and social reform in our country. Since that time, we have witnessed legislative restructuring in the formation of a dual-chamber parliamentary system. In addition, Bahrain set itself upon a new course when we planned for and then successfully carried out elections for both municipal and parliamentary representatives. The government also recently enacted laws to ensure that human rights are respected and that there is an active and free press. All of these transformations reflect the fresh attitudes and change that Bahrain has adopted.

Further, Bahrain has initiated a process of judicial reform, which incorporates measures such as ethics policies, legal training programs, judicial standards, automation and re-engineering of our processes and procedures, announcements of judicial openings, and a transparent appointment process. None of these reforms will happen overnight. We are spending considerable time looking at similar systems of other countries around the world in order to understand the scope of what is possible, to take the best ideas and build on them, and to learn from what has not worked and why.

When the U.N. analyzed political systems in Latin America, it concluded that democracy cannot be sustained without two preconditions. The first precondition is a healthy and civil society. Such a society provides manifold ways through which its people can exercise both the rights and the duties of citizenship. It allows not only a voice, but a means through which all citizens can channel voice into action. In a healthy civil society there are mechanisms to ensure equality, dignity, and opportunity, as well as access to fundamental services.

The second precondition to sustainable democracy is pluralism. Pluralism is defined as “peoples of diverse backgrounds and interests coming together in organizations of varying types and goals, for different kinds and forms of creative expression, which are valued and supported by the government and society as a whole.” In its most basic form it means embracing diversity.

Daily, we see further examples where conflict has found its breeding ground in places where pluralism has been rejected. We see it in extremists of every ilk—political, religious, and social. We find it in governments who favor one part of their citizenry over another. It is found in societies where access to basic services, education, or opportunity is not available equally. When we do not embrace diversity in culture, religion, heritage, history, and learning, we lose track of our own identity as nations and as people. By denying pluralism, we are denying the disparate, often incongruous, but thoroughly magical and mellifluous melting pot that is humanity.

The social and political changes that Bahrain is undertaking have brought with them a clear and invigorating wind, along with opportunities for a fresh look at our systems and procedures, and how we can best accomplish our judicial—indeed our societal—goals. Social change and technological change can be viewed as an enemy storming the gates or embraced as the answer to all our prayers. But it is never quite that simple.

It is Bahrain’s *choice* to view such changes as the litmus by which we judge our progress and our stability. It is our *choice* to hold firmly to the fundamentals, while at the same time embracing change, diversity, and openness. It is our *choice* to enhance our judicial system to reflect both our core values and the new world, which we walk towards the future.

But when considering change, you must also be aware of foundations. You have an American expression: “Don’t throw out the baby with the bathwater.” As we evaluate reform, we must remain intimately aware of what actually comprises the core or essence of our systems and our society. We must be certain that we identify those essential elements of our institutions upon which we want to build. It is the *soul of the society* that makes us what we are and keeps us grounded. We must first clearly identify that foundation—as well as those parts of the system that are not intrinsic—if our building is to last.

To find that core, there must be open, lively, and critical discussion. Controversy, in and of itself, is not necessarily bad. When differences of opinion result in a meaningful debate of alternatives, there is benefit for all. Dialogue and debate promote civic responsibility, as well as ownership of the outcome, because everyone has been involved in its foundation.

You will recall the story I told you when I began about Sheikh Hamad and the changes he instituted in the pearl diving laws. In making those reforms, he took the time to understand the elemental changes that he wanted to accomplish, looked at the options, and then moved forward—changing the details as it became necessary, but always firm in the fundamental intent to better the system. He succeeded by taking those first hard and controversial steps, then persevering through to completion, despite opposition. Bold initiatives followed by firm resolve, a willingness to change the detail but keep to the principles—only in this manner can we right the wrongs and keep in step with our changing world.

The purpose of a judicial system is to serve society—to ensure that social norms and rules are maintained so that the culture can continue to grow and flourish. The judiciary must continuously assess whether it is accomplishing that aim, while developing innovative, fiscally efficient, and effective ways to move toward this goal.

Centuries ago, several Shakespearian characters discussed how to improve the social conditions of the populace. The starting suggestion offered was the following: “The first

thing we do, let's kill all the lawyers." Hardly a novel suggestion, but certainly one that is persistent!

The reason that this idea endures is that all too often judicial and legal systems thoroughly rebuff any change. They become entrenched and immovable, massive and immutable—a big, woolly bureaucracy that lumbers forward without thought or reasonableness and often without meaning. Systems designed to protect the innocent and the victims have been transmuted into systems that protect the powerful, the well-connected, and existing bureaucrats, technocrats, and politicians.

Each day, the world becomes more closely intertwined through technology and political events. Our societies are changing—we cannot escape it, we cannot prevent it. Our only hope is to embrace it and make change our own—we must ensure that our legal and judicial systems help lead the way, not drag along behind. If our judicial systems remain mired in outdated procedures, excessive bureaucracy, and obsolete technology, then our fellow citizens may begin to feel that Shakespeare's advice is the only possible solution.

Embrace change and the new technologies that go with it. Work together to ensure that change is both lasting and meaningful. Be creative in your thinking, efficient in your procedures, and let true justice be your goal.

Embrace pluralism wholeheartedly. Remember that not all answers reside inside U.S. borders. Look openly to the rest of the world—as well as inside yourselves—for answers, for options, and for opportunities. You will find your commitments, your values, and your determination mirrored in diverse ways throughout the rest of humanity. We are all together on this big blue ball that is earth. Once we begin to explore and exult in its diversity, I am sure that what we will find is common ground.