IALS News

Sir William Dale Centre and Statute Law Society announce joint seminar programme

The Sir William Dale Centre for Legislative Studies is delighted to report a new initiative to foster closer collaboration with the Statute Law Society.

For many years the late Sir William Dale, the first Director of the Centre, was an active member of the Society’s Council. The current chairman is Lord Clyde, who recently accepted an invitation from the Institute of Advanced Legal Studies to participate in the Advisory Committee of the Sir William Dale Centre. Dr Helen Xanthaki, the Centre’s Academic Director, is now a member of the Council of the Statute Law Society.

The President of the Statute Law Society is Lord Renton, whose Committee’s Report on the preparation of legislation in 1968 inspired the formation of the Society in that year. One of its central aims is to further the making of technical improvements in the form and manner in which statutes and delegated legislation are expressed and published with a view to making them more readily intelligible. The Society also aims to further the education of the public in the processes and scope of legislation of all kinds and at all stages.

In addition to its annual lecture and annual conference, the Society has for several years organised a regular series of evening seminars on topics of interest to members. The Sir William Dale Centre for Legislative Studies and the Statute Law Society are delighted to announce a joint programme of evening seminars on topics related to legislative drafting, the interpretation of legislation and the legislative process. The first seminar in the joint series took place on 18 October 2000 when Alec Samuels described the reasoning in a number of cases in which the Judicial Committee of the House of Lords had been faced with difficult problems of statutory interpretation. The speaker at the next joint seminar will be Mr Edward Caldwell, First Parliamentary Counsel, who has agreed to talk about the drafting process. Details of this seminar will be announced shortly.

All joint seminars award CPE points, are followed by light refreshments and are currently offered free of charge to members of the Statute Law Society and their guests and to supporters of the Sir William Dale Centre for Legislative Studies.

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Helen Xanthaki
Academic Director, Sir William Dale Centre for Legislative Studies

The W G Hart Workshop 2000: an appreciation

The W G Hart Legal Workshop, Comparative Law in the 21st Century, organised jointly by the Society of Oriental and African Studies (SOAS) and Glasgow Law Departments, took place this summer between 4–6 July, under the auspices of the IALS.

The workshop was based on the assumption that developments in the last two decades and economic and political conditions make comparative law increasingly important. The aim was to look at the direction comparative law should be taking in the 21st century. What kind of substantive areas should we be concerned with? Should we compare rules, contexts or cultures? Which legal traditions should be approached anew? The main propositions of comparative law, and its general and theoretical issues were to be examined in a critical perspective.

Transmigrations and transferability of legal ideas and institutions, comparative public law, religious systems of law and the European dimension of comparative law were regarded as the most significant developments in the changing socio-legal and other conditions of the new century. The workshop was accordingly divided into four panels. A decision was taken not to run parallel sessions as it was felt that everyone should discuss all the issues facing comparative law.

Professor Barry Rider, IALS and Professor Andrew Harding, SOAS, introduced the workshop. Lord Goff of Chieveley, the keynote speaker, called comparative law the ‘flavour of the next century’ and advocated caution especially in the comparative study of substantive law. Instead, he proposed reform of civil procedure by looking at other systems. He did not support European Codes or European Principles or unification by any other means. ‘Conversation and marriage are not the same things,’ he said. Cross-fertilisation however was ‘inevitable and useful’.

The first panel, ‘Transmigrations and transferability of legal ideas and institutions’, considered one of the major tasks of comparative law in the 21st century: to analyse and aid the transfer of legal ideas and institutions, as reciprocal influence and transpositions will have a central role in the reshaping of all legal systems. The speakers were Professor Jan Smits, University of Maastricht, Catherine Dupré, University of Birmingham, Professor David Carey-Miller, University of Aberdeen, Coralie Raffenne, Trinity College Dublin, Nick Foster, SOAS and Professor Peter De Cruz, University of Staffordshire.

The panel members contributed to the development of theory in the field and enriched the theoretical matrix by looking at recent examples of transmigrations and assessing
the factors involved in the transferability of law from Hungary to South Africa. The relationships between models and recipients were also considered. Speakers referred to Watson, Kahn-Freund, Siedmans, Legrand and Teubner as parameters of theories on transplants. New directions in this field were suggested. It was also pointed out that while the 20th century looked at similarities between legal systems from the exportation perspective, in the 21st century we should also look for differences and from the importation perspective.

The importance of deep-seated epistemic processes was emphasised in assessing why legal transplants succeed or fail. Evolution from within is preferred. Nevertheless, globalisation means that an emerging cosmopolitan elite will have a significant impact on the future of legal systems and the ways in which they develop. Assimilating and fitting of the models into the domestic milieu needs further analysis. Reforming the law will inevitably lead to more transpositions and analysis of contexts. We were warned against generalisations and asked to test theories and undertake more empirical work to determine instances of anti-transplant or areas of resistance to transplants. Transmigration is here to stay. It requires both conceptual and analytical refinement, and in many fields hitherto regarded as resistant to transplants.

The second panel, 'Comparative Public Law', was significant as comparative law in the 20th century hardly dealt with public law topics such as constitutional law, administrative law and even criminal law; many scholars doubting the possibility of meaningful comparative law scholarship in these areas. The speakers in this panel were Professor John Bell, University of Leeds, Professor Jeffrey Jowell, University College London, Dr Robert Thomas, University of Manchester, Peter Leyland, University of North London, Professor Andrew Harding, SOAS and Peter Slyn, Commonwealth Legal Education Association. This panel examined public law concepts and institutions comparatively in the new climate of a global shift towards democracy and human rights. It was once more pointed out that in the construction of systems, especially of the developing world, legal transplants play a very important part and that this is not just a historical phenomenon but one of our day. This is now most evident in public law. South East Asia and southern Africa are witness to this. The future of comparative law also involves regional studies and further conversation between regional comparatists, as institutions, rules, the external and internal dynamics and the underlying structures and processes must be appreciated.

In the area of comparative constitutional law perhaps there is little room for divergencies. Hands-on assistance for law reform will prove popular and useful in the coming years, though the importance of differences in legal and political culture have to be kept in mind by comparatists. The comparative approach has a renewed legitimacy. Constitutionalism, human rights and administrative accountability are areas that will attract the attention of comparatists in the years to come.

The third panel was 'Religious systems of law'. Most comparative law textbooks introduce their subject by allocating the world's legal systems into families of law, which typically concentrate on western law and its present influence. Some use the genus 'religious systems' to contain non-European and pre-20th century legal traditions. Asian law is regarded either wholly western/modern (Japan, China) or wholly religious/pre-modern (Hindu, Islamic, Jewish, Buddhist). The panel looked at Christianity, Judaism, Hinduism, Buddhism, Roman law, Islam, Chinese law and Canon law and the speakers were Professor Calum Carmichael, Cornell University, Professor Bernard Jackson, University of Manchester, Dr Werner Menski, SOAS, Dr Andrew Huxley, SOAS, Dr Lynn Welchman, SOAS and Professor Silvio Ferrari, University of Milan.

Three linked questions were considered: Is it useful to classify the world's legal phenomena into families? If so, should one of the families be labelled 'religion systems'? If so, which of the world's legal cultures should be included here? Not only was it difficult to regard all the presented 'isms' of the same genus, but some were not legal systems; 'belief systems' and religious laws are not the same thing. Religious systems do not belong to a family and it is difficult to define a religious legal system. At a time when the theory of legal families is under attack and is not regarded as useful except as a teaching device, comparatists in the 21st Century will not talk of 'a religious legal family' and have to recognise the very specialist nature of these studies. Yet the non-black-letter-law approach, which is developing among comparatists, will regard religion as part of the underlying deeply seated processes.

'The European Dimension' was the title of the fourth panel. The comparative law method has been adapted to suit the needs of the European Community (Union), both in harmonising and approximating the economic and commercial laws of its members, and in facilitating modernisation programmes in the countries of Eastern Europe, often with the goal of membership of the European Union. The speakers were Professor Van Gerven, University of Leuven, Professor Janet Dine and Dr Frederique Dahan, University of Essex, Dr Melanie Latham, Manchester Metropolitan University, Dr Wendy Kennett, University of Keele, Dr Efstatios Banakas, University of East Anglia and Angus MacDonald, University of Staffordshire.

This panel assessed the measure of success in the attainment of common laws in Eastern and Western Europe. Individual attempts were viewed in the context of the debate on the possibility and desirability of a new European ius commune for the 21st century. Some of the papers reiterated the point that comparative lawyers must work with colleagues from other disciplines and that although there are cultural similarities in the western world, responses to ethical and social issues differ to a large extent. European experts are
working as consultants in Central and Eastern Europe and their crucial role will be enhanced by an understanding of the role of comparative law in such ventures and the realisation that the study of economic and social background should become part of comparative legal studies. Nevertheless, Europe is a new market for comparative law studies and comparatists are needed for political processes.

In the closing session Professor Roger Cotterrell, Queen Mary and Westfield College, reflected on socio-legal change and Professor David Nelken, Macerata University and University of Wales, on metaphors of legal adaptation. Finally, Professor Esin Orucii, University of Glasgow and Erasmus University Rotterdam, brought the workshop to a close with a paper summing up the comparative law agenda and opened it up to general discussion. Concepts such as Eurocentrism, ethnocentrism, fragmentation, legal pluralism, legal anthropology, social engineering, language, channels of transplants, versions of comparative studies and construction of theoretical models came to the fore. We were left with the question ‘Are we expecting too much from comparative law and, more important, from comparative lawyers?’

Professor Esin Orucii
Academic Co-Director

From the Vaults

Materials from the IALS library are displayed in the foyer of the Institute building, and the following provides some background information.

16TH, 17TH AND 18TH CENTURY ENGLISH LAW REPORTS

Tithe cases

One of the items shown in the display case is Eagle and Young’s Tithe Cases volume I 1204–1727 which was printed by Sweet and Maxwell in 1826. Composed of four volumes the series describes itself in its title page as:

‘A collection of the reports of cases, the statutes and ecclesiastical laws relating to tithes with a copious analytical index’.

A tithe, from the old English ‘tenth’ (teogothian), is a custom dating back to Old Testament times and adopted by the Christian church whereby lay people, often under ecclesiastical or legal obligation, contributed a tenth of their income for the upkeep of the local church and incumbent. It was abolished by the Tithe Act 1936 and replaced by ‘redemption annuities’ payable to the crown. Payment was made in money or its equivalent in crops, farm stock and so on. In his preface Francis King Eagle stated that he aimed to correct those inaccuracies and deficiencies of which he had become ‘long ago sensible’ and provide total coverage for a work of reference. The cases covered in the volume essentially concern disputes about whether tithes ought to have been paid in certain circumstances or whether exemptions should have been given.

State trials

Two volumes in the display contain details of state trials in the sixteenth and seventeenth centuries. The first of these is one volume of six in the series printed in London in 1720 which covers ‘Tryals for High Treason and other crimes with proceedings on bills of attainder and impeachments for 300 years past’. This item was once the property of the Bristol Education Society to which it was presented by Reverend James Newton in 1790. The second is Howell’s State Trials vol. II 1603–1627 which was printed in London in 1816. This series of twenty-one volumes declares itself to be ‘A complete collection of State Trials and proceedings for high treason and other crimes and misdemeanours from the earliest period to the year 1783.’

These volumes together contain cases heard during the reigns of Henry VIII, Elizabeth I, James I and Charles I. There is much overlap in coverage. Some of the most famous state trials in Britain’s history are covered, including that of Sir Thomas More in 1535. The speech which Sir Thomas More gave defending himself against the charges laid before him and yet ultimately denying Henry VIII’s supremacy of the church is included along with the final sentence. Sir Thomas More was spared the traitor’s punishment for a commoner of being hung, drawn and quartered and was instead beheaded. Other trials included are that of Mary Queen of Scots and of Sir Walter Raleigh. The latter was found guilty of high treason in 1603 but after he was confined for fourteen years in the Tower, James I gave him a commission to command a fleet for discovery. This voyage was unsuccessful and on his return in 1618 he was beheaded at Old Palace Yard in Westminster despite most lawyers feeling that after such a lapse of time he should have been acquitted.

Chancery reports

The final three volumes contained in the display contain cases argued and determined in the High Court of Chancery. These are all nominate reports; compiled by individual barristers at the various Inns of Court, covering sixteenth, seventeenth and eighteenth century cases and published in either the eighteenth or nineteenth centuries. Williams reports volume I, for instance, covers the period 1695–1721 and the Dickens’s reports volume I covers...
1559–1769. These reports all contain dedications to the Lord Chancellor as patron of the work. The author, in one case hopes that 'the great name and reputation of the patron may protect the work from the censure to which it would otherwise be exposed'. Dickens's reports were collected by John Dickens, late senior registrar of that court and revised by John Wyatt of Inner Temple. Hand-written notes on the title page declare that Dickens was a 'very attentive and diligent Register but his notes being rather loose were not considered of very high authority' and therefore, apparently, required revision. The divisions in these volumes are by terms within each year; these being Hilarii, Trinitatis, Michalmas and Pasche. The cases reported cover matters such as the ownership of property and its passing through inheritance and the payment of debts.

Gillian Sands
Senior Library Assistant (book acquisitions).

SALS Lectures

Thursday 14 December 2000
EDWARD L FLIPPEN
Partner, McGuire Woods LLP, Richmond, Virginia
Electric deregulation in the United States

NPP and CPD points are available for these events. Attendance is free for SALS members, and £5 (payable at the door) for non-members.

IALS Events

Public Lecture

Monday 19 February 2001
PROFESSOR GEORGE HAY
Cornell University Law School, USA
Competition policy for the 21st century
ADMISSION FREE – ALL WELCOME

Seminar

Monday 11 December
GLEN PLANT
Barrister
Caspian Basin oil and gas: geo-politics and international law
ADMISSION FREE – ALL WELCOME

Company Law Lectures

Thursday 7 December
CHARLOTTE VILLIERS
Reader in Law, University of Glasgow
Disclosure and information-sharing in company law: law and economics versus communication theory

Thursday 15 March 2001
HER HONOUR JUDGE DIANA FABER
The history of company law reform for small businesses

Thursday 29 March 2001
PROFESSOR PETER MUCHLINSKI
Draper’s Professor of Law, Queen Mary, University of London
Holding multinationals to account: recent developments in English litigation

Company Law Lectures

Monday 30 April 2001
STEPHEN COPP
Director, European Centre for Corporate Governance, Bournemouth University
Alternative dispute resolution and company law (title to be confirmed)

Monday 14 May 2001
LISA LINKLATER
Barrister, Chancery House Chambers, Leeds
Market abuse (title to be confirmed)
ADMISSION FREE – ALL WELCOME

All events are scheduled for 6pm-7pm at the IALS. Those wishing to attend, or requiring further details, should contact Belinda Crothers at the Institute of Advanced Legal Studies (tel: 020 7862 5841; email: bcrother@sas.ac.uk)