

Bingham Centre Newsletter

Spring 2013

The Bingham Centre for the Rule of Law is delighted to publish its inaugural newsletter.

The Centre was launched in December 2010 and is an independent research centre devoted to the study and promotion of the rule of law worldwide. Its focus is on understanding and promoting the rule of law; considering the challenges it faces; providing an intellectual framework within which it can operate; and fashioning the practical tools to support it. The Centre is named after Lord Bingham of Cornhill KG, the pre-eminent judge of his generation and a passionate advocate of the rule of law. It is part of the British Institute of International and Comparative Law, a registered charity based in London.

The Centre has already undertaken a remarkable breadth of work, contributing to law and policy debates in the UK and around the world, and undertaking projects in countries including Libya, Bahrain and Burma/Myanmar.

We hope our newsletter will keep you in touch not only with the Centre's work but with rule of law issues and developments in the UK and abroad.

Professor Sir Jeffrey Jowell QC
Director, Bingham Centre



Paul Craig: Process, Evidence and the Rule of Law

Guest contributor Professor Paul Craig writes about the UK opt-out from EU measures on Freedom, Security and Justice, and the process dimension to the rule of law.

The relationship between theory and practical reality is always fascinating, more especially so in discourse concerning the rule of law. The real world has a knack of generating facts that cause us to test our pre-existing assumptions, or reappraise their application. The check list on the rule of law produced by the Council of Europe's Venice Commission properly includes considerations relating to the process by which a law is enacted, requiring this to be transparent, accountable and democratic. This is self-evidently distinct from requirements that pertain to the form of the law once enacted, viz that it should be clear, accessible, stable and the like, and from conditions concerning the content of the enacted law and its compatibility with, for example, human rights. It is interesting to reflect on the demands flowing from what may be termed the process dimension of the rule of law, and the political world provides an apt example.

"The UK political system is not perfect, but the select committees perform valuable oversight functions, and those from the House of Lords are noted for their in-depth scrutiny."

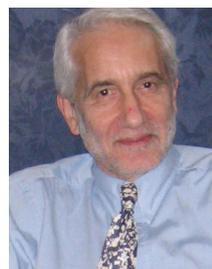
Consider in this respect the UK government's plan to exercise the opt-out from measures concerning the Area of Freedom, Security and Justice. This is lawful insofar as Protocol 36 of the Lisbon Treaty contains provisions stating that at the latest six months before the expiry of the five year transitional period, the UK may notify to the Council that it does not accept, with respect to the Third Pillar acts passed before the Lisbon Treaty, certain powers of the institutions specified in the Treaties. If the UK makes such a notification then Third Pillar acts adopted prior to the Lisbon Treaty cease to apply to it from the expiry of the transitional period. If the opt-out is exercised it operates in relation to all such measures, subject to the possibility that it can opt back in later, with the agreement of the other EU players.

There is therefore no legal doubt that the UK can choose to walk away from this array of EU measures. The opposite issue is whether it should exercise this power, and the rule of law process considerations that should inform this judgment. The UK political system is not

perfect, but the select committees perform valuable oversight functions, and those from the House of Lords are noted for their in-depth scrutiny. The House of Lords' European Union Committee Report on the desirability of exercising the opt-out (HL Paper 159) is compelling reading for those interested in the topic, and more generally for those concerned with the process dimension to the rule of law.

Space precludes detailed analysis of the Report's findings. Suffice it to say for the present that the Committee took evidence from a very broad array of people including ministers, the police, border officials, political parties, lawyers, academics and interest groups. It considered the arguments advanced by government for the opt-out, and concluded that they were not sustainable given the evidence that pointed to the opposite conclusion. Thus the Committee was, for example, struck by the preponderant legal view concerning the negative implications for the UK of the opt-out, it was unconvinced by the government's arguments in favour, it found that the opt-out from criminal justice measures would have significant adverse negative repercussions for the internal security of the UK, and did not believe that alternative arrangements posited by the government would work. That is just a bare flavour of the Report.

The government might of course drop the opt-out in the light of this damning Report. This would indeed be a desirable conclusion, proof positive that the process dimension of the rule of law was working as it should. This outcome is however unlikely given the backbench pressure from the Conservative Party that was the catalyst for exercise of the opt-out. It is more likely there will be a 'robust' governmental response in which it takes issue with some reasoning in the Report, ignores much else and concludes that the democratically elected government must make these hard choices. Facts may be contestable. They are however subject to reasoned evaluation. We ignore this simple truism at our peril. The process dimension of the rule of law is therefore important. The value of clear and intelligible laws is undermined if they are predicated on evidence that does not withstand serious scrutiny.



**Professor Paul Craig,
Professor of English Law,
University of Oxford**

The Destoori Project: Constitutional Options for Libya

On 15 February 2011, anti-government protests began in Libya. By the end of that month, the opposition controlled most of Benghazi and the National Transitional Council had been formed, declaring itself by 5 March 2011 to be “the only legitimate body representing the people of Libya and the Libyan state”. In mid-March, UNSC Resolution 1973 had authorised a no-fly zone over the country while the revolution continued to spread. On 3 August 2011, the TNC issued a Constitutional Declaration, which set out a roadmap from “liberation” to the formation of an interim government, the drafting of a new constitution and the election of a democratic government in accordance with its provisions. By 16 September 2011, the UN General Assembly voted to award Libya’s seat to the NTC. “Liberation” was finally declared on 23 October 2011.

Soon thereafter, the Bingham Centre was approached by the Libyan Progress Initiative (LPI), a UK-based organisation founded by British Libyans seeking to support the democratic ambitions and efforts of the Libyan people in the post Gaddafi era. The Centre was asked to research possible constitutional options for the new Libya, which it did, paying particular reference to recent constitutional settlements elsewhere in the Arab and Islamic world and in countries emerging from conflict and revolution. Issues of religion, equality, decentralisation and revenue sharing from natural resources were of particular interest. The paper was ultimately presented at a launch event in December 2011, prompting acclaim and stimulating debate.

Subsequently, and as a result of its work with LPI, in the spring of 2012, the Bingham Centre was approached by Lawyers for Justice in Libya, an independent NGO dedicated to defending and promoting justice in Libya through the promotion of human rights, the rule of law and democracy. The Centre was asked to draw on its existing research in the area to help compile training materials for Libyan lawyers involved in the organisation’s Destoori project. Destoori, which means “my constitution” in Arabic, is a project which aims to educate Libyan citizens on the constitution-making process, to gather public opinion on what the new Libyan constitution

should include, and to create a connection and sense of ownership between the Libyan people and their constitution. One of the key mechanisms for doing so was the Rehlat Watan Constitutional Bus Tour whereby lawyers and activists travelled around the country to hold a variety of events around the constitution and its process. To this end, the Centre put together a lengthy training manual on key aspects of constitutions and the processes by which they are made. I travelled to Tunis in September 2012 to train the lawyers chosen to be the four Destoori Ambassadors in the content.

Although the bus tour itself was delayed several times due to the security situation, it eventually took place between November and December 2012, visiting 35 communities all across Libya. As with the LPI work, the issues of greatest interest amongst communities included the role of Islam, decentralisation and the management of natural resources. The Centre was universally praised for producing such practical and yet detailed training materials in a short space of time. It remains to be seen what shape the constitution itself ultimately takes.

The Centre would like to thank White & Case LLP for assisting with the pro bono printing of the manuals, without which, the project would not have been possible.



Naina Patel,
Director of Education and
Training, Bingham Centre

The Justice and Security Act 2013

Dr Tom Hickman, Visiting Fellow Bingham Centre, Barrister and Reader in Public Law, UCL, writes:

The New Act

On 25 April 2013, the Justice and Security Act (JSA) became law.

The JSA is one of the most controversial pieces of legislation in recent years. It allows courts, for the first time, to decide ordinary civil claims, including judicial reviews, on the basis of evidence which is not disclosed to one of the parties.

There are already some very limited circumstances in which English courts decide cases in this way. There are statutory provisions requiring courts to resolve cases on the basis of secret evidence in the context of TPIMs (Terrorism Prevention and Investigation Measures, formerly Control Orders) and in immigration and employment cases where action has been taken against a person based on grounds of national security. However, in these statutory contexts, it is said that there is a national security imperative for action to be taken against a person, whether that is preventative confinement, deportation or dismissal. Absent the ability for courts to rely on secret evidence, so the argument goes, such action could not be taken.

The JSA goes a great deal further and extends the regime to the entire civil justice system. The justification for this extension is also quite different. The government argued that it was unfair to government departments to be unable to rely on evidence in their defence which could not be disclosed to the other party to the case and so, under established principles, had to be excluded from the case altogether. The government also argued that it was simply unrealistic to think that the courts, applying ordinary public interest immunity principles, could scrutinise the activities of the Intelligence Services and reach findings about the legality of their actions.

The Bingham Centre's Role

The Bingham Centre engaged with the government's proposals, as set out in a Green Paper in autumn 2011 and then during the passage of the Bill through Parliament. The engagement was multifaceted and included meetings with practitioners, academics, government representatives and Parliamentarians; the submission of a report on the Green Paper proposals; and the publication of briefing notes as the Bill progressed through Parliament.

The Bingham Centre took the view from the outset that the government had failed to show that the changes were necessary and had not justified the significant departure from natural justice, open justice and equality of arms entailed by the reforms. But, without wishing to endorse the proposals in the Bill, if they were to be introduced, the Centre urged the adoption of "minimum safeguards" that were dangerously absent from the Bill as introduced to Parliament.

Professor Adam Tomkins of the University of Glasgow and I were appointed Visiting Fellows to co-ordinate the Centre's response. We benefitted from the excellent support of Research Fellow Lucy Moxham.

The Bingham Centre's response to the Green Paper consultation and the briefings on the Bill are available on its website.

Key Safeguards

Three key safeguards which the Bingham Centre advocated are to be found in the JSA.

First, the JSA states that it is to be for the court and not for the government to decide whether secret procedures should be used, including in circumstances where this might disadvantage the government by allowing the court to see information it might prefer to see excluded from the proceedings.

Second, the Intelligence Services cannot hide behind statutory exemptions to withhold material from the court where a secret procedure is used.

Third, the JSA includes provisions for monitoring and reviewing the system after five years.

A fourth key safeguard – maintaining the so-called Wiley public interest balance – was, unfortunately, not introduced by Parliament.

Bingham Centre Acknowledged

The Bingham's Centre's contribution was acknowledged by Lord Wallace of Tankerness, on behalf of the government, who stated in the House of Lords:

"I am particularly grateful to the Bingham Centre for taking time to scrutinise the Bill and for writing to me and asking the Government to rethink. The Centre is an important legal research institute and the Government welcome its contribution to make sure that the Bill is suitably drafted".

The Rule of Law as the “Missing Goal”



Lucy Moxham, Research Fellow in the Rule of Law, Bingham Centre writes:

On 24 September 2012, the UN General Assembly held the first-ever High-Level Meeting on the Rule of Law to agree a forward-looking agenda on strengthening the rule of law at national and international levels. The Bingham Centre submitted comments on various drafts of the Declaration, adopted by Member States at the Meeting. The Declaration highlights the rule of law as “essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights” and calls for this linkage to be considered in the post-2015 development framework that will succeed the current UN Millennium Development Goals.

In fact, the rule of law was described as the “missing goal” at a side event hosted by the Bingham Centre, the Open Society Foundations and the Republic of Senegal at the UN Headquarters later that week to explore the prospects for promoting a strong rule of law perspective in the post-2015 development agenda.

Many speak of the vital importance of the rule of law in development, but further thought is needed around how the rule of law might feature in the post-2015 agenda, whether as a development goal in its own right or incorporated across other goals. The challenge lies in identifying an approach that would advance the rule of law in a way that can be supported and monitored.

Good governance, anti-corruption efforts and accountability are emerging as strong priorities from the series of national and thematic consultations about the future development framework that the UN has facilitated over recent months. The UN Secretary-General Ban Ki-Moon has also appointed a High-Level Panel of Eminent Persons to advise on the post-2015 development framework. UK Prime Minister David Cameron is one of the co-chairs of the High-Level Panel and has described the rule of law as one of the “building blocks that take countries from poverty to prosperity”. He has also spoken about the “the golden thread” of “conditions that enable open economies and open societies to thrive: the rule of law, the absence of conflict and corruption, and the presence of property rights and strong institutions”.

The High-Level Panel is due to report at the end of May 2013 and we believe that the rule of law should be included in their recommendations for the post-2015 framework. The Bingham Centre will continue to seek to shape policy on this issue.



Legal Requirements in Business and Human Rights

Lara Blecher, Research Fellow, Bingham Centre and Professor Robert McCorquodale, Director, BIICL write:

Since 2011, when the UN Human Rights Council endorsed the Guiding Principles on Business and Human Rights (the “Ruggie Framework”), a number of groups and individuals have commented on how they believe the Guiding Principles could be implemented. In 2012, BIICL, through the Bingham Centre, produced a major research study on this topic in conjunction with Clifford Chance, and with funding from the Association of International Petroleum Negotiators (AIPN). Titled ‘Human Rights Responsibilities in the Oil and Gas Sector: Applying the UN Guiding Principles’, this research is now available on the AIPN website and has been published in the *Journal of World Energy Law and Business*.

This research discusses practical and legal issues which business enterprises operating in the oil and gas sector may face in their efforts to discharge their responsibility to respect human rights. It provides an applied research perspective, assisted by an approach that combines desk-based legal research with empirical analysis. The latter research includes a survey of

international oil and gas business enterprises and their respective human rights policies, as well as interviews with representatives from major international oil and gas companies and industry consultants.

Although the Guiding Principles are not legally binding, the research suggests that there could be more legal consequences to the Guiding Principles than companies currently realise. It points out that, increasingly, states are enacting legislation on business and human rights, companies are facing litigation in this area, and both states and companies are experiencing human rights consequences through contractual relationships (such as supply chain contracts).

Therefore, the idea of a voluntary approach to business and human rights is giving way to a hybrid of voluntary initiatives, soft law and hard law requirements. Businesses must navigate all of these requirements, as confirmed by the Guiding Principles, especially through the concepts of due diligence and leverage.

There remain many issues to explore in this important area and in relation to other sectors, such as the financial and the mining sectors. The Centre would be keen to undertake research in these areas with appropriate partners and funding.

Bingham Centre Visits Bahrain to Discuss Freedom of Expression

Dr Eric Metcalfe, Visiting Fellow, Bingham Centre and Barrister, Monckton Chambers writes:

On 20 January 2012, members of the Bingham Centre began a three-day visit to Bahrain as part of a scoping study with a view to carrying out training and advisory work in relation to freedom of expression in the Kingdom in accordance with international human rights standards. The focus of the visit, which was hosted by the Minister of Justice and supported by the British Embassy in Manama, was the implementation of those recommendations of the 2011 Bassiouni Report – the report of the Independent Commission of Inquiry headed by the Egyptian jurist Mahmoud Cherif Bassiouni – relating to freedom of expression in the Kingdom.

The Commission of Inquiry had been established following the widespread protests in Bahrain in February-March 2011 during the Arab Spring, and the subsequent crackdown by Bahraini authorities. In its 2011 report, the Commission made a number of recommendations in relation to freedom of expression including the relaxation of government censorship; greater opposition access to television, radio and print media; and legislative measures to prevent incitement to hatred. It also discussed proposed amendments to the Penal Code to enhance freedom of expression.

During the Bingham Centre's visit, the Centre's Director of Education and Training, Naina Patel, Ivan Hare of Blackstone Chambers and I met with a range of public officials, including not only the Minister of Justice but also the Minister for the Interior, the Minister of State for Information, and the Attorney General. The Bingham Centre also met with a number of journalists, including the editors of three Bahraini newspapers, Akhbar Alkhaleej, Al Bilad and Al Wasat, and representatives of civil society, including human rights NGOs.

It is clear that Bahrain continues to face serious challenges in relation to freedom of expression, in what has become an increasingly sectarian atmosphere. The Bingham Centre is in the process of preparing its final report and hopes to be able to continue engaging with the various actors in Bahrain with a view to promoting the rule of law, including the possibility of training for lawyers and civil society in relation to international freedom of expression standards.

Rule of Law Seminar in Burma/Myanmar



The Centre's Director, Professor Sir Jeffrey Jowell QC, recently participated in a Rule of Law Seminar in Burma/Myanmar, organised by the European Union and the Attorney General of Myanmar, on 9 February 2013 in the capital Nay Pyi Taw. Present throughout the day was Daw Aung San Suu Kyi, Chair of their Parliamentary Committee for 'The Rule of Law and Tranquillity'. The purpose of the meeting was to identify the role of the rule of law in the country's future. It was attended by about 300 people, including lawyers, civil servants, judges, members of parliament and NGOs.

The proceedings were opened by Myanmar's Attorney General, who invoked Lord Bingham's definition of the rule of law, and pledged that the country was committed to taking it forward. Daw Suu Kyi then identified a number of areas in which the rule of law was lacking in Burma/Myanmar, including an overloaded parliamentary drafting system, lack of facilities in courts and deficiencies in legal education. Above all, she said, ordinary people interact more with the administration than with courts, and it is that area which needs to be both more efficient and more compliant with rule of law standards.

The Centre's Director addressed the seminar and also participated in a later discussion session, and made the initial points that the rule of law was not a purely Western concept and was not vague but contained practical elements, as set out in Lord Bingham's book, 'The Rule of Law', and in recent international instruments drawing on that book. He then made a number of suggestions about how the rule of law could be enhanced, including a more transparent law-making system and, taking up Aung San Suu Kyi's point, by setting out standards of good administration and administrative justice. These standards should be implemented through training and by providing the opportunity to challenge unlawful administrative action cheaply and effectively.

In-House Counsel, Government Lawyers and Independence



Justine Stefanelli, Maurice Wohl Fellow in European Law, Bingham Centre writes:

The Court of Justice of the European Union (CJEU) has expanded its case law on in-house counsel. The CJEU took a strict stance with regard to in-house counsel with its 2010 decision in *Akzo Nobel* (Case C-550/07). In that case, the Court held that communications between a client and its in-house legal counsel were not protected by legal privilege because in-house counsel are not sufficiently independent from their clients due to the existence of a salaried employment relationship between the two. The Court recently took this holding one step further in *Prezes* (Joined Cases C-422/11 P and C-423/11 P) when it held not only that corporations are unable to benefit from legal privilege regarding

communications with their in-house counsel, but also that any lawyer in an employment relationship with their client is disqualified from representing their client before the CJEU. The Court did not, however, equally exclude government lawyers from enjoying legal privilege or the right to appear before the EU Courts, despite the existence of an employment relationship between government lawyers and the State they represent, and several similar concerns regarding the government lawyer's ability to offer fair and impartial legal advice. To be more consistent and fair, the CJEU should either treat government lawyers and in-house counsel alike, or it should consider reversing its case law on in-house counsel. If it wishes to continue with the distinction, it must provide clear and convincing reasons as to why government lawyers do not present the same concerns regarding independence. Otherwise, the CJEU risks generating an unacceptable level of legal uncertainty, which could result in parties (both public and private) being unable to defend their interests without confusion and uncertainty.

The Proposal to Codify Principles of Good Administration in European Institutions: Advancing the Rule of Law?

Justine Stefanelli, Maurice Wohl Fellow in European Law, Bingham Centre writes:

The Bingham Centre is working with the Italian Council of State (Consiglio di Stato) to review and comment on the proposal before the EU Parliament to codify good administrative practice within EU institutions (EU 2012/2024 INI). An initial meeting was held at the Bingham Centre in June 2012 to discuss ways forward and to begin planning a conference which was held in London in November 2012. The first of its kind in the UK, the conference presented a comparative overview of several states' experiences with codification. A variety of perspectives was offered by two diverse panels of speakers, which included Professor Paul Craig (Oxford), Professor Mario Chiti (Florence), Professor Luigi Berlinguer (European Parliament), Professor Cora Hoexter (South Africa), Dr Jeff King (UCL) and Professor Emeritus Carol Harlow (LSE). The panellists considered that there are merits and disadvantages to codification, but suggested that it might be preferable in the context of the EU, given the varied legal traditions in the Member States. The Bingham Centre and the Italian Council of State intend to take this subject forward so as to contribute to the development of the EU proposals, and hope to reconvene in Rome in October 2013.

Director visits China and Taiwan

In October 2012, the Centre's Director, Professor Sir Jeffrey Jowell QC, participated in a one-day symposium and mock trial at Renmin University Law School Beijing, organised together with Hong Kong University Law School and UCL Law Faculty, to an audience of administrators, judges and academics, including members of the Chinese Academy of Social Science. Lord Justice Goldring delivered the judgment in the mock trial and the debate following this focused on rule of law issues and was joined by the senior government minister in charge of Chinese legal reform. The meeting was generously supported and encouraged by the distinguished Hong Kong lawyer and environmentalist, Winston Chu, who is a member of the Bingham Centre's Advisory Council. A further such event is being planned for late 2013.

Following this meeting, the Director was a guest of the National Taipei University and the Judicial Yuan of Taiwan. He lectured on the rule of law on the 60th anniversary of the Law School and also to the Supreme Court of Taiwan and the Judicial Yuan.

Book Review: Rachel Kleinfeld, 'Advancing the Rule of Law Abroad: Next Generation Reform'

**Naina Patel, Director of Education and Training,
Bingham Centre**

Rachel Kleinfeld's 'Advancing the Rule of Law Abroad: Next Generation Reform' (Carnegie Endowment for International Peace (2012)) is the current must-read for all those interested in how to build and improve the rule of law overseas. Having worked closely for many years with Thomas Carothers of 'Promoting the Rule of Law Abroad: In Search of Knowledge' fame, Kleinfeld has had the chance to grapple long and hard with the problems in this field. Although written from a US vantage point, it has many lessons for those of us engaged in similar work on the other side of the Atlantic like many of us at the Bingham Centre.

Kleinfeld begins by discussing the history of US rule of law reform efforts from the late 19th century to the present and the different rationales given for these enterprises, from enhancing domestic security, to ensuring respect for human rights, to promoting market economies. She recognises that these efforts are often not entirely altruistic, but suggests that is not the point. The US will continue to engage in such efforts so it may as well get it right.

Kleinfeld moves on to consider how to get it right. First generation rule of law reforms focused too much on reforming laws and institutions to look like their Western counterparts and not enough on the ends, which those laws and institutions existed to realise. Next generation reforms, Kleinfeld posits, need to focus on these ends and must recognise the need to change power structures and cultural norms to meet those ends. She suggests there are four main methods for doing this: top down programs, bottom up reforms, diplomacy, and what she calls enmeshment, for example the use of EU accession requirements to induce reform.

Kleinfeld certainly identifies the million dollar question: if law is ultimately a set of norms and the rule of law is adherence to those norms, then answering how one builds the rule of law overseas requires answering how one changes norms. Why is it that in Afghan shura, women are not present? Why is it that in an English courtroom, everyone stands when the judge walks in? And how does one get from one to the other, assuming it is desirable to do so. But are we any closer to answering this question on a deep and fundamental level? Perhaps Kleinfeld's next book might look at rule of law success stories, identifying instances of such change and explaining how it has taken place.

In Memoriam: Professor Ronald Dworkin

Professor Ronald Dworkin, who sadly died on 14 February 2013, played an important part in the launch of the Bingham Centre during its first two years. He participated in its inaugural event, in March 2011, at Hogan Lovells, where he engaged in a "conversation" with US Supreme Court Justice Stephen Breyer, Lord Justice Stephen Sedley and Lord Anthony Lester. A year later, he was the keynote speaker at the Bingham Centre's event, in conjunction with the Foreign Office and the Council of Europe's Venice Commission, on "The Rule of Law as a Practical Concept" at Lancaster House. Anyone who heard him on those occasions could not fail to be struck by his brilliance, eloquence and humanity.

The Centre's Director, Professor Sir Jeffrey Jowell QC, reflects on the role and legacy of Professor Dworkin:

"We were privileged to have the support and participation of Ronald Dworkin during the first years of the Bingham Centre's existence. He has rightly been described as "the modern day Mill", whose work will be read with benefit by generations to come. Some years back he gave the seminal British Academy Lecture on the subject of the rule of law, where he demonstrated that it is a concept that is not purely formal. He uncoupled "rule by law" or "rule-book" law, from "rule of law", which he imbued with a number of important democratic principles, such as equality, respect for human dignity and access to human rights. His writings generally on legal philosophy showed that law is not a bare system of rules but is infused with moral content. Litigation in the public law sphere involves a moral claim against the state. He was the most eloquent and subtle seminar-leader, lecturer and author who, in forums such as the New York Review of Books, commented brilliantly on the practical legal issues of the day, and the respective roles of the courts and the executive. He will be deeply missed, leaving us so greatly enriched by his enduring insights."

News

Staffing

Lawrence McNamara Appointed New Deputy Director

We are immensely grateful to the David and Elaine Potter Foundation for their generosity in allowing us to appoint a Senior Research Fellow and Deputy Director. Lawrence comes to us from the School of Law at the University of Reading where he was a Reader in Law. He previously held lectureships at the University of Western Sydney and at Macquarie University, Australia. His research interests lie primarily in the legal regulation of speech, especially as it relates to the media. He is the author of the celebrated, 'Reputation and Defamation' (OUP 2007) which develops a theory of reputation and, in that light, analyses and proposes revisions to the common law tests for what is defamatory.



Jan van Zyl Smit Appointed New Research Fellow in the Rule of Law

Jan joins the Bingham Centre from Oxford Brookes University, where he is a senior lecturer teaching Public Law and International Human Rights Law. His recent research has focused on initiatives to reform the make-up of the judiciary in states undergoing constitutional transition, and on the effect of the UK Human Rights Act on the interpretation of legislation.



Projects

Centre's Response to UK Government's Attack on Judicial Review

In January 2013, the Bingham Centre responded to the UK Government's announcement that it planned to reduce the opportunity for judicial review of official decisions. The Centre's response to the subsequent consultation document, led by the Director and Visiting Fellow Dr Mark Elliott, highlights the dangers in curtailing judicial review and puts forward some practical proposals. The response is available on our website.

The Rule of Law in Burma/Myanmar

As reported above, the Centre's Director participated in a seminar on the 'Rule of Law in Myanmar: Perspectives and Prospects' with Aung San Suu Kyi and others. The Bingham Centre is now in discussions about ways in which we might be able to assist further. In May 2013, the Centre's Director of Education and Training, Naina Patel, will attend meetings with the Attorney General's Office in Myanmar to consider possible training programmes.

Bahrain Advisory and Training Programme

As described above, the Bingham Centre has been assisting Bahrain to comply with international human rights standards on freedom of expression. A delegation visited Bahrain in January 2013 to conduct a scoping study and will return to Bahrain shortly.

Centre's First Intervention: Zimbabwean Lawyer Beatrice Mtetwa

Zimbabwean Human Rights Lawyer Beatrice Mtetwa was arrested in March 2013 while performing her duty as counsel to clients. For the first time in the Centre's history, we decided to intervene in a case and, with Liberty, instructed the former justice of South Africa's Constitutional Court, Johann Kriegler, to appear at Beatrice's hearing in late March and to seek bail. Beatrice was freed on bail, pending her hearing, understood to be scheduled for May. In a joint statement, Liberty and the Bingham Centre commented: "It is a cardinal principle of the rule of law and democracy that legal counsel are able to represent their clients without intimidation so that acts and decisions of all public officials can be fairly challenged through the courts".

Compendium of Judicial Appointment and Removal Procedures

The Commonwealth Secretariat is funding the Bingham Centre to prepare a compendium of provisions, procedures and practices for the appointment and removal of judges in the Commonwealth, including Chief Justices; and to review and analyse the material in order to identify contemporary best practice in the Commonwealth in the context of the Latimer House Principles. Research Fellow Jan van Zyl Smit is leading this research.

Events

Past Events

The Rule of Law and Taxation

March 2013

In March 2013, the Bingham Centre held an event at Berwin Leighton Paisner, 'Does Our Tax System Meet Rule of Law Standards?' which examined tax law and practice against rule of law principles. This event will be followed by a one-day conference on 20 November 2013, which BLP have again generously offered to host, the proceedings of which we hope to publish. Research Fellows Lucy Moxham and Justine Stefanelli are leading these events.

Annual Commonwealth Law Conference

April 2013

The Director and former Research Fellow Mia Swart presented aspects of the Centre's study on 'The Impact of Regional African Courts in Setting Standards for the Rule of Law in Domestic Jurisdictions in Africa' at the Commonwealth Law Conference in April 2013 in Cape Town. The Director also spoke on the subject of 'The Role and Independence of Government Lawyers – politician or protector of the rule of law?' to highlight upcoming research at the Centre, which was asked to develop a code of practice in this subject area.

Upcoming Events

Inaugural Bingham Annual Lecture

9 May 2013

On 9 May 2013, Professor Harold Koh, Sterling Professor of International Law, past Dean, Yale Law School and recent Senior Legal Advisor to the US Department of State, will give the inaugural Bingham Annual Lecture, 'Twenty-First Century Problems – Twentieth Century Laws'. This will be held at Lincoln's Inn and is kindly sponsored by Fountain Court Chambers.

A UK Without Convention Rights: Freedom or Danger: A Comparative Conversation

16 May 2013

Hosted by the Bingham Centre and the Human Rights Lawyers Association, this event will provide a comparative perspective in light of the recent inconclusive report of the UK Bill of Rights Commission and statements by the Home Secretary and others about the UK's possible withdrawal from the European Court and/or Convention on Human Rights. The event is being generously hosted by Freshfields Bruckhaus Deringer. The Master of the Rolls, Lord Dyson, will chair the event and the speakers will be David Anderson QC, ECtHR Justice Andras Sajó and Professor Hugh Corder.

Access to Justice and Legal Aid: Can Modern Technology Compensate for Cuts?

3 June 2013

This conference will consider the forthcoming cuts in legal aid and whether the internet, the use of telephone 'hotlines' and video communication offer the chance of offsetting the effects of the cuts.

Prosecutorial Discretion and the Rule of Law

16 July 2013

The Director of Public Prosecutions, Keir Starmer, will speak about 'Prosecutorial Discretion and the Rule of Law' at an event hosted by Hogan Lovells to take place this summer.

Does Our Tax System Meet Rule of Law Standards?

20 November 2013

Following on from our successful event on taxation in March 2013, this event will explore a range of issues, including tax and the rule of law, access to justice and development, and will also include a debate on the General Anti-Abuse Rule. Berwin Leighton Paisner are generously hosting this event.

Further details about all our events and how to register are available on our website.

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