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THE NORWEGIAN PATH TO JUSTICE

The IALS took great pleasure on 3 April in hosting the Coffin Memorial Lecture on the History of Ideas, when the Hon Justice Carsten Smith, President of the Norwegian Supreme Court, spoke on *Judicial Review of Parliamentary Legislation: Norway as a European Pioneer*. Both the Institute and the School of Advanced Study, which jointly staged the event, work hard to encourage the exchange of ideas between nations and also to stimulate co-operation between academics, practitioners, members of the judiciary, and those involved in governing bodies. It was therefore appropriate that the speaker – a distinguished former academic who has risen to high judicial office – should use the occasion to explain how the use of judicial review has helped to shape the development of human rights in his country.

A fiercely independent nation, Norway has developed a highly individual legal system which reflects certain aspects of both the civil and the common law but is rooted in neither tradition. Norway has twice refused to join the European Union, but last year adopted the European Convention on Human Rights (along with the two principal UN conventions in this area). It has also been influenced by developments in other nations, particularly the USA.

The number of cases subjected to judicial review in the UK has increased considerably in recent years, thereby causing the process itself to assume greater importance within the legal system. In Norway there has long been an established principle that executive decisions could be declared null and void by the courts. The Norwegian constitution, which dates back to 1814, is the oldest written constitution operating in Europe. The first recorded case of judicial review was in 1866 when the Supreme Court (by a majority of 4:3) sided with a naval officer who challenged the right of the authorities to compel him to provide lists of his crew without remunerating him for the task. In all some 30 cases exist where substantial interventions have been made by the courts which could be said to have set aside the existing law. During the period of German occupation the Norwegian Supreme Court insisted on reviewing the validity of all laws passed by the authorities: when subjected to interference all its members resigned in protest, and the Chief Justice assumed a leading role in the resistance.

There is a lively ongoing debate in Norway between those who wish to see a more radical approach taken to human rights issues and the more cautious element which is concerned that judicial review could impede the country's economic development if too strictly applied – particularly where commercial cases are involved. Justice Carsten Smith referred to three central questions which currently dominate the Norwegian human rights debate: whether in relation to individuals the constitutional rules provide specific rights or discretionary legal standards; whether the various constitutional rules are of equal strength; and the extent to which the constitution should be interpreted around its original meaning or in the light of change.

In his concluding remarks the Rt Hon Lord Woolf, Master of the Rolls and Pro-Chancellor of the University of London, said that the judiciary is worried that when the UK adopts the ECHR later this year the courts will face an influx of work and various attendant difficulties. He was reassured that the ordinary Norwegian courts would be applying the new rights and inspired by what he had heard of the rule of law in Norway.