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Amicus Curiae Contacts

Editor: Professor Michael Palmer, SOAS and IALS, University of London

Production Editor: Marie Selwood

Email address for all enquiries: amicus.curiae@sas.ac.uk

By post: Eliza Boudier
Amicus Curiae, Charles Clore House,
17 Russell Square, London WC1B 5DR

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INTRODUCTION

MICHAEL PALMER

IALS and SOAS, University of London

In this issue, a number of the contributors examine various topics relating to judges and their responsibilities, and the nature and impact of judges' decision-making. In addition, there are contributions on the administrative processes involved in handling homeless applications, suggestions for reform to corporate governance in the interest of better controlling problems of corruption and money-laundering, an analysis of China's reformed foreign investment law regime, and consideration of the often overlooked influence of Harold Laski's legal philosophy on China's governance and development.

Judges generally serve with honour, and the contribution by Barrie Lawrence Nathan entitled "Ain't Misbehavin': Judicial Conduct and Misconduct" points to the usually high standards of conduct within the judiciary that have contributed to the warranted prestige of the courts in the United Kingdom. He reminds us that judges, however, are human beings who do not always conduct themselves in an exemplary fashion, and Nathan examines recent instances of inappropriate conduct and comments

made by judges, as well as the manner in which complaints alleging such misconduct and inappropriate behaviour have been managed. Judges are shown in his contribution to exhibit bias, to have subsequently refrained from recusal, to have reacted badly to negative comments in the media, to have made inappropriate comments in the sentencing process (in particular in the handling of sexual assault cases), and to have sometimes even indulged in inappropriate language when faced with difficult parties. Nathan suggests that greater transparency in the work of the Judicial Conduct Investigations Office would likely improve a situation in which it seems complaints about judicial misconduct are increasing, but with somewhat fewer complaints resulting in disciplinary action against judges and magistrates (*The Law Society Gazette*, 'Complaints about Judges Behaving Badly Increase 17% in a Year' (7 December 2018)).

In his Review Article entitled 'Lions in the Whirligig of Time—Stephen Sedley's *Lions Under the Throne: Essays on the History of English Public Law*, and *Law and*

the Whirligig of Time’, Professor Patrick Birkinshaw explores important aspects of the recent writings of Sir Stephen Sedley, the distinguished former Court of Appeal judge and subsequently Visiting Professor at the University of Oxford. Birkinshaw delves into the core ideas in the analytical history, key issues, and prognosis for the future of public law offered by Sedley in these two recent books, and suggests that one of the most important themes to emerge from this work is that the pursuit of justice and governmental accountability is never-ending. Birkinshaw adds the moving thought that hopefully there will continue to be judges of Sedley’s immense ability and intuition to carry on that pursuit. In *Lions* (that is, the carved lions beneath the coronation throne, their role being both to provide support for the monarchy and to stir themselves when necessary to ensure that the state operates within the law) and *Whirligig* (a collection of occasional publications which, by its very nature, makes no large thematic offerings, but does draw effectively on Sedley’s experience as a practitioner) many major issues of public law are considered. Birkinshaw’s review not only shows us their importance but also offers perceptive commentary and elaboration. Thus, for example, he encourages Sedley to see the limited conceptualization of ‘the state’ in public law as an issue that is

somewhat deceptive, making it easy to overlook, for example, its importance in the Official Secrets Act 1911 and the space it gave Clive Ponting to construct a successful defence against unauthorized disclosure in the ‘interests of the state’. Birkinshaw concludes that not only do the two books offer a fine collection, analysing important features and issues of public law, but they also encourage us to hope that in times of aggressive executive power, popular nationalism and receding international cooperation, there is a real need for our judicial guardians to be independent, resilient, uprighteous and wise in following the deep structures of the law.

In her contribution to ‘Visual Law’, Dr Amy Kellam discusses the diptych by Gerard David entitled *Judgement of Cambyses*. The oil-on-wood panels were inspired by the Greek historian Herodotus’ account of the judgment and punishment of a judge in early Persian history. The artwork differed from the devotional Christian diptychs common to the Middle Ages and Early Renaissance in that it depicted a secular subject with intent to convey political censure. It was commissioned in the late fifteenth century to remind the people of Bruges that a harsh response awaited if they renewed their recently failed rebellion protesting the oppressive rule of their Austrian governors. For political ends the

painting repurposed the original tale, in which a corrupt judge was skinned alive for taking a bribe and delivering an unjust verdict and his son then forced to succeed him in that judicial role, carrying out his judicial duties seated on a bench covered with the refashioned skin of his father. Dr Kellam's note shows how the meaning of the depicted tale broadened over time. From a condemnation of judicial corruption, it was transformed into a public work warning against political unorthodoxy and protest. She observes that in contemporary Russia and Ukraine, Gerard David's diptych has been re-presented yet again, becoming something of a symbol of public protest against injustice and poor governance by the authorities, including the courts.

Dr Alex Schwartz reports on a 'webinar' discussion hosted by the Centre for Comparative and Public Law (CCPL) in the Faculty of Law, University of Hong Kong on 2 June 2020, and which he chaired. This event, entitled 'New Empirical Studies on the Supreme Court of the United Kingdom: A Book Talk', focused on two recently published empirical studies of the UK Supreme Court: Rachel Cahill-O'Callaghan's *Values in the Supreme Court: Decisions, Division and Diversity* (Hart 2020) and Chris Hanretty's *A Court of Specialists: Judicial Behaviour on the UK Supreme Court* (Oxford University Press

2020). In the discussion, Cahill-O'Callaghan explained how her study *Values in the Supreme Court*, examines the value-orientations that in her view inform decision-making in the Supreme Court, with some judges preferring to follow values of traditionalism and conformity and other judges more disposed to favour values of universalism. Hanretty explained how his book, *A Court of Specialists*, shows the impact of legal specialization on the Supreme Court's decision-making process, while empirical findings indicate that political ideology also has an important influence on the court's decisions.

Dr Patricia Ng's contribution, 'Public and Private Realms of the Administrative Justice System: Homelessness Cases in England', analyses access to justice issues for homeless persons who apply for housing assistance from their local authority in the UK. Recent legislation, most notably the Homelessness Reduction Act 2017, places stronger burdens on local authorities to intervene at an earlier stage in preventing and addressing potential homelessness. Failed applicants may challenge negative decisions by means of processes of internal review, a judicial review-type inquiry by a judge (under the Housing Act 1996) and a complaint to the Local Government and Social Care Ombudsman. Litigation is only possible as a last

resort under the 1999 Access to Justice Act. Dr Ng maintains that homeless applicants, however, are often socially vulnerable and demoralized by both the pressures in daily life caused by their homelessness and the bureaucratic challenges made to the detailed materials that they are required to provide to the local authority. As a result, many homeless person applicants develop ‘applicant fatigue’, deciding that she or he has no choice but to accept a negative outcome or simply to ‘let go’ their application, and not take things any further. In addition, possibilities of legal advice and representation have declined over the years, and the author concludes that while the ‘ADR’-type processes used in the homelessness application system may have yielded some loosely spread cost benefits for the system as a whole, such processes are side-lining cases that in all probability should be dealt with by litigation and judicial decision-making.

The contribution from Dr Ejike Ekwueme, ‘Pushing Corruption and Money Laundering into Reverse Momentum: Echoes from the Corporate Governance Arena’, considers how corruption, money laundering and poor corporate governance are closely linked problems and difficult to reform. He argues that, in order to combat more effectively the difficulties of corruption and money laundering,

boards of directors need to strengthen their corporate governance mechanism(s), especially audit committees—which should include competent non-executive directors—and other corrective measures designed to deal better with these problems. Such responses might usefully also include encouragement of whistle-blowing and enhanced corporate ethics and their robust enforcement.

The contribution ‘China’s New Foreign Investment Law: An Open-and-Shut Case for Foreign Investors?’ made by Zhang Xiaoyang looks at China’s revised legal framework for governing foreign investment. The new Foreign Investment Law of the People’s Republic seeks to level the investment playing field so that foreign investors will have fewer of the privileges—intended to attract foreign investment—that have been unavailable to domestic firms and entrepreneurs. In addition, operating a relatively nondiscriminatory negative list policy, inflows of overseas capital are confined to specifically identified sensitive sectors. Professor Zhang argues that given the strength of the Chinese market, the new foreign investment regime and accompanying policies may not necessarily deter foreign investors.

Professor Xu Ting reports on the conference she hosted on ‘Harold Laski and His Chinese Disciples: A Workshop on the Legacy

of Laski's Legal Philosophy', held virtually on 2 July 2020 at the University of Essex. This workshop examined the often-overlooked influence of Laski on China's governance and development, arguing for greater appreciation of the significance and legacy of Laski's legal philosophy. Speakers included Professor Roger Cotterrell (Queen Mary University of London), Professor Ross Cranston (London School of Economics and Political Science [LSE]), Dr Peter Lamb (Staffordshire University), Professor Martin Loughlin (LSE), Professor Michael Palmer (SOAS & IALS,

University of London) and Professor Francis Snyder (Peking University School of Transnational Law). Participants in the workshop included academics, students and several public audiences.

Finally, two book reviews are offered: Professor Björn Ahl's examination of *Transparency Challenges Facing China* (Fu, Palmer & Zhang, 2019) and Dr Maria Federica Moscati's analysis of *Access to Justice for the Chinese Consumer: Handling Consumer Disputes in Contemporary China* (Ling Zhou, 2020).