The Meaning of Judicial

The IJA Research Agenda

The IJA builds on 44 years of socio-legal research exploring the reality of law in action particularly within the context of the British criminal justice system. As the IJA is re-launched the aim is to continue in this vein but also to build upon this tradition in order to incorporate a broader range of research from a wider disciplinary background. Centrally it is planned that research should contribute to an explanation of what judicial constitutes today.

The past two decades have seen a number of reforms – often driven by economic necessity – leading to the role of judges changing and indeed, increasingly being performed by alternative persons. The central tenet of IJA research will focus upon the transformation of the judicial role as well as developments impacting upon it.

In relation to criminal justice there have been a plethora of developments which might well be viewed as undermining the position of the judiciary and in particular their "monopoly" upon making decisions of a certain stature and – relating particularly to the criminal law – in imposing punitive sanctions. Whilst the British system has never been purist, the concentration of changes undertaken in more recent times calls for exploration of the judicial position. The last decade has indeed witnessed the introduction of special procedures and agencies with the responsible policy-makers commenting that one intended purpose is to avoid the onorous standards associated with the traditional judicial (criminal) procedure as was the case for the asset recovery agency and procedure.

The standing of judges and the judicial role within criminal justice has furthermore been impacted upon by proceedings involving special advocates (in which the information made available to judges or the presentation of defence arguments is limited despite highly very liberty restricting decisions being made) – within the counter-terroris context e.g. control order hearings – as well as related to Anti-Social Behaviour Orders (for which central decision taken by local authorities etc. with judicial ones subject to lower evidential standards backed up by criminal status offences) – obviously here relevance is in relation to criminal trial judges. The criminal justice system and the role of judges within it is naturally also impacted upon by the role of other agencies within it. Thus the gradually growing use of prosecutorial discretion (demonstrated e.g. by the assisted suicide guidelines and the assignment of charging as well as conditional cautioning powers to the CPS) must be expected to impact upon the judicial function. The range of channels through which the traditionally strong police discretion is channelled such as Penalty Notices and the reformed cautioning set-up are further areas of interest.

The impact of discretion exercised by agencies lower down the criminal justice chain upon the judicary is also highly relevant within other contexts than the domestic one for example within the context of international criminal law.

Exploration of the role played by criminal judges should further be supported by research concerning less immediately obvious areas study due to the punitive nature of use of other strands of law. Cartel proceedings and indeed the use of immigration law in a number of contexts are examples worthy of attention.

The social function performed by British judges in criminal proceedings are, however, also being impacted upon strongly by the internationalisation of increasing parts of their work. Thus UN/EU propagated terror black-lists and freezing procedures – which were entirely determined by executive bodies - form another point of interest. The Europeanisation of criminal justice brings with it a number of further fields for IJA research. Alone the enormous shifts in power from the judiciary to prosecutors in continental European systems will affect the British judiciary in very serious, trans-national cases in which the latter will be called upon to recognise decisions of the former who bear the status of judicial agencies and with whom European law requires them to co-operate. The increasingly important post-Lisbon status of the European Court of Justice but also more subtely the consolidating powers of agencies such as Eurojust (e.g. to settle European conflicts of jurisdiction) provide other point of interest. Furthermore there are planned suggestions such as that for a European Public Prosecutor's Office which despite the distinct likelyhood of UK non-participation cannot but impact upon the British judiciary.

Judges in the British criminal justice process find themselves increasingly tied into a mutli-tiered system in which punitive and controlling (i.e. liberty-restricting) laws are being implemented upon citizens. Whilst judges retain their role in a core of these, they are increasingly flanked by alternatives and functional equivalents. That e.g. there is no systematisation as to the severity of crimes or the level of punitivity of punishment these others are allowed to make quasi-judicial decisions in will form the heartb of an important strand of IJA research.

As has been demonstrated, even a focus upon criminal justice related research is intended to encompass work in branches of the law which extend beyond the immediately obvious. It is furthermore foreseen that the IJA research agenda exploring the meaning of judicial should encompass research from other legal areas. The impact of legal aid reforms upon the role judges will have to play in the coming years is an area of particular importance. The impact of the widespread use of arbitration and mediation in private law matters is a further point of great relevance.

As the Supreme Court comes into its own and under fire for example for its decisions relating to matters in the context of devolution the evolving constitutional role of UK judges also in relation to Scotland and Northern Ireland will be the subject of IJA effort.

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