

JUDICIAL LEADERSHIP IN AN AGE OF AUSTERITY:

Note of Seminar held at 67-69 Lincoln's Inn Fields, Queen Mary, University of London
7th of June 2016

This is a note of a seminar held on 7th June 2016. The seminar was supported by *Sheffield Solutions*, a public engagement initiative by the Faculty of Social Sciences at the University of Sheffield. The seminar convenors were Professor Graham Gee (University of Sheffield), Professor Robert Hazell (UCL's Constitution Unit), Professor Kate Malleson (Queen Mary) and Dr Patrick O'Brien (LSE). The seminar revives a series of seminars held between 2011 and 2013 as part of a project on *The Politics of Judicial Independence* and is the first in a new series to be held over the next two years. Those participating in the seminar had a professional interest in the issue, with contributions from judges, civil servants, practitioners, academics and other stakeholders in the justice system. The discussion was conducted under the Chatham House Rule. This anonymised note is intended to give a broad impression of some of the main themes discussed.

The Challenge of Austerity

Senior judicial leaders such as the Lord Chief Justice and Senior President of Tribunals have statutory duties to ensure the effective and efficient administration of the justice system (as well as corresponding statutory powers to lay written representations before the UK Parliament and devolved legislatures). Overarching duties such as these apply in times of austerity as much as in times of plenty. Austerity necessarily affects the manner in which such duties are performed: increasing demands are placed on the justice system at a time when the available resources are declining. This affects all governmental actors of course, but a senior judge explained some of the particular problems for the judiciary: e.g. austerity impacts the pursuit of diversity goals when restrictions are imposed on recruitment; it hollows out the quality of support services by stripping out well-experienced support staff and replacing them with less-experienced staff; and inasmuch as austerity affects the quality of work undertaken by other public service actors, it can mean that the courts proceedings are less efficient.

It was noted that in the last couple of years, the Ministry of Justice has delivered cuts of 27%, yet more will have to be done to cut the departmental budget. One official suggested that it cannot be right that the court system is immune from the pressures facing the country, and not just in terms of the need to make savings, but also in terms of reforming in order to achieve greater efficiency. Although money is very tight, the Ministry has committed £700m(+) to implement reforms such as improved technology facilities. Some participants argued that cost cutting within the judicial system can go no further, with the consequence that it is important to invest in a better, modern and efficient system. One participant with a professional background in both the public and private sectors noted that there is never enough money to meet all of an institution's objectives, and that leadership involves managing whatever level of money is available. For judges, this involves difficult decisions about what to prioritize and thinking about the financial implications of certain decisions in the course of judicial proceedings for the police and social services etc (e.g. is requiring a certain assessment in a family law dispute *necessary* or merely *desirable*?). This participant suggested that there must be a greater stress on an "*is it necessary?*" test when thinking about the orders that judges make.

What Does Judicial Leadership Involve?

Much of what we mean by "judicial leadership" was once within the Lord Chancellor's responsibilities. Leadership, administrative and management functions are increasingly undertaken by judges on top of their traditional role of sitting in court. For the most senior leadership roles such as the LCJ and Heads of Division, it is critical to delegate tasks to other judges. One judge differentiated between two types of leadership: *jurisdiction leadership* and *people leadership*. The former encompasses the performance and allocation

of the judicial workforce and helping to shape the policy of the justice sector. The latter embraces the responsibility to manage and support a range of actors in the justice system (judges, clerks, case workers, case officers). Both types of are necessary for a fair, accessible and proportionate system. One participant emphasised that there are system-wide dimensions to judicial leadership: i.e. judges have leadership responsibilities not only in respect of other judges, but other stakeholders in the justice system. Supporting a wide range of colleagues in the justice system is both leadership and management. Individual judges can have a dramatic effect on performance of others (but many tend not to realise this). This invites questions such as: *Do judges communicate enough with other players in the justice system? Do they do enough to indicate what those others players are doing well and what they are doing less well?* It is important to design working practices that allow for learning and feedback not just between judges, but between judges and other stakeholders. One judge agreed that it is important that the various actors cooperate to ensure efficient and effective legal proceedings. But problems arise if a judge is let down by those other actors; for example, if the probation service faces cuts and is unable to perform its duties, this might cause problems in the courts. In this regard, the judge is powerless. It is hard to provide effective leadership over people who are doing the best they can and who are also being asked to do more with less. One judge suggested that there is a culture within both the bar and the judiciary that means that praise is not frequently shared. Another participant noted that judges face similar challenges as other professionals (e.g. to find time amidst very busy working lives to think about the future, appraise staff, and plan how to improve their own personal skills).

Echoing a participant who noted that the pressure created by the age of austerity can also create space for innovation and change, one senior judge explained that leadership involves embracing change to produce a different model of justice system for the twentieth-first century (e.g. flexible deployment of judges; “one-stop-shops” where judges hold concurrent jurisdictions; quick and cheaper processes that are more accessible to public). This requires senior judicial leaders to work with the UK Government to achieve change. The judiciary has been working with the UK Government on the annual spending round and the planned 3-5yr comprehensive spending review. The judiciary has decided that it must invest to change. One participant noted that the Ministry of Justice helps with judicial leadership. For example, the Provision of Judges Steering Group provides a forum to think about how to modernise judicial terms and conditions, to consider ways of recognising the administrative burden associated with judicial leadership in salary supplements, and to reflect on ways to make leadership roles more attractive to a more diverse range of judges. Change always needs leadership, and in the context of judicial leadership, this should be led by the judiciary, but supported by the Ministry of Justice.

There was some discussion about whether there might be particular problems with fostering a culture of judicial leadership. Some possible reasons include that the judicial profession is very atomised. The nature of a judicial career is to work independently. The judicial profession is highly dependent on the bar for producing candidates, but the bar is also very atomised. It was asked if there was a mismatch between ‘judicial will’ and ‘judicial skill’ when it comes to the leadership to deliver reform. Judges are enthusiastic about pursuing reform but might lack the skills to deliver change. One judge said they had seen a significant improvement over the last five years in the resources used to train judges. Poor management and leadership have consequences, but judges’ leadership skills have improved and they are better able to address poor management issues.

The Implications for Judicial Retention and Recruitment

Several participants touched on the implications of the increasing administrative work-load for recruitment and retention. It was suggested that increasing work hours spent on leadership, reduction in support and continuing disgruntlement about judicial pensions has a demoralizing effect, with the result that there are fewer applicants interested in applying for even high judicial office. It was also suggested that the emphasis placed on appointing judges who can “hit the ground

running” leads to a narrowing of the pool of potential applicants. Well qualified lawyers with potential to develop into excellent judges might feel discouraged to apply if they think that they do not have the experience and skill to take on the job. This in turn would likely have a negative impact on the diversity of judicial appointments. One judge pointed out that administrative workloads are proportionate based on experience. Nevertheless, the consensus was that recruitment was a major problem.