

SEMINAR

Confronting Strasbourg: From Common Law Criminal Procedure and European Fair Trial Rights to Cosmopolitan Criminal Jurisprudence

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This paper explores the on-going impact of human rights norms on English criminal procedure. Recent Strasbourg case-law in relation to, e.g., hearsay evidence and access to legal advice is suggestive of a new phase of legal cosmopolitanism in which procedural law is shaped, in part, through “transnational judicial conversations” between domestic and international judiciaries. The paper’s primary illustration, and central focus, is the series of English and European decisions in *Al-Khawaja* and *Tahery*, concerning Article 6(3)(d) - the right to examine witnesses, sometimes (not altogether helpfully) described as the accused’s right of confrontation. The political context is highly charged: the UK Minister of Justice is currently actively floating the idea of withdrawing entirely from the Convention system and replacing it with a “British Bill of Rights”, or at least curtailing the Strasbourg Court’s jurisdiction in English law. The role and legitimacy of the Strasbourg Court, as a manifestation of “Europe”, have been called into question. Peering beyond the froth and rhetoric of British party politics, this paper will reconsider the ‘*Al-Khawaja* saga’ from the perspective of an emerging cosmopolitan criminal jurisprudence, characterised by innovations in comparative judicial method and representing an unprecedented experiment in transnational law-making. This, it will be argued, is significantly uncharted and potentially perilous jurisprudential territory. Common lawyers may have to modify their traditional assumptions and expectations if (international) human rights norms are to be successfully integrated into domestic procedural traditions.

Paul Roberts teaches, researches and supervises PhD students in the fields of criminal justice, evidence, criminology and criminal law, with particular emphasis on philosophical, comparative and international perspectives. In addition to his prolific contributions to leading academic publications in the area of evidence (principal amongst these: Roberts and Zuckerman, *Criminal Evidence* (OUP, 2/e 2010), Roberts and Hunter (eds), *Criminal Evidence and Human Rights* (Hart, 2012), he has published over ninety journal articles, book chapters, essays and reviews. Paul has previously been a consultant to the Crown Prosecution Service and to the Law Commissions of England and Wales and of Scotland, and is currently an advisor to the UK Forensic Regulator. He has been visiting professor or invited lecturer at the International Islamic University Malaysia (IIUM), the University of Warsaw, the Jagiellonian University in Krakow, the University of Göttingen, China University of Political Science and Law (CUPL) in Beijing.

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