

Comparative Common Law – Judges as Rule Makers

“[a]fter all, that is the beauty of the common law; it is a maze and not a motorway.” Lord Diplock

Class Summary

The class considers the sources of law that a judge can draw on when formulating their decisions. How judges reach their decisions is still very much clouded in mystery and in particular the jury process. It is imperative to ensure consistency in rule making and within the common law system this is achieved through adhering to and being bound by precedent. In this way there can be a predictability to the law. Legal certainty is another reason why following precedent is important but what happens when the law creates an injustice should judges still be bound to follow a precedent which perpetuates an unjust system of law? This question will be considered in the class and complimented by the readings.

Required Reading

Please read the articles below by following the associated link and then answer the self-check questions:

1. **Judges as Rule Makers**
2. **Binding Precedent and English judicial law making**

Self-Check Questions

1. Why is it important to consider the moral impact of judicial rule making?
2. At the birth of the common law the will of the King and the King's court determined cases in line with the particular monarch at that time. Has the common law become more sophisticated and transparent in its operation?

Recommended Further Reading

Please read the articles below by following the associated link and then answer the self-check questions:

1. **Faced With Legal Puzzles, Judges Often Turn to Fellow Jurists**

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Further Self-Check Questions

1. Is it really more productive to have more opinions on how a particular case ought to be decided?
2. Describe what the jurist-to-jurist lifeline is.

Definitions/Key Terminology

- Consistency
- Legal Certainty
- Reliance
- Equality of Treatment

