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HAMLYN
LECTURES
— 2013 —

The Common Law Constitution

To be delivered by

The Rt Hon Lord Justice Laws

Lord Justice of Appeal

- LECTURE 1 **The Common Law and State Power**
DATE Thursday 14 November 2013, 6pm
VENUE Northumbria University, Lecture Theatre 001, Business & Law Building,
 City Campus East, Newcastle upon Tyne NE1 8ST
RSVP If you wish to attend, please email: nu.events@northumbria.ac.uk
- LECTURE 2 **The Common Law and Extremism**
DATE Wednesday 20 November 2013, 5.30pm
VENUE The Saskatchewan Room, Exeter College, Turl Street, Oxford, OX1 3DP
RSVP Please book through: <https://www.regonline.co.uk/JohnLawsHamlyn>
- LECTURE 3 **The Common Law and Europe**
DATE Wednesday 27 November 2013, 6pm
VENUE Inner Temple Hall, The Inner Temple, London EC4Y 7HL
RSVP If you wish to attend, please email: IALS.Events@sas.ac.uk

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Hamlyn Lectures 2013

The Common Law Constitution

Lecture I – The Common Law and State Power:

In Lecture I Sir John Laws will say that the common law is the crucible of the moderate and orderly development of State power. Its genius is the refinement of principle over time. Its process is one of continuous self-correction. It is not by chance that our constitution is uncodified; it is because, being conditioned over the centuries by the changing common law, it is not and cannot be the creature of a single moment. The common law reflects and moderates the temper of the people as age succeeds age. It stands for no grand theory of anything; but it is endlessly creative. Its insights of substantive principle are integral to the interpretation of all our legislation. These insights alike inform the construction of Parliament's Acts and the judicial review of executive action. Two circumstances – (1) judicial interpretation is evaluative, not merely grammatical, and (2) the common law is gradual, but legislation is immediate – describe the interdependence between the judiciary and the political arms of government. This is the means by which legislature and government are allowed efficacy but forbidden oppression. All this is the backdrop for our whole understanding of our constitution.

Lecture II – The Common Law and Extremism

Lecture II concerns the dilemma of extremism. In fact there are two linked dilemmas. There is first the dilemma between free thought and expression, and the prohibition of destructive sectarian speech. Then there is the dilemma between the demands of due process on the one hand, and the imperative of public protection against the threat of fanatical crime on the other. The challenge of these dilemmas is of course not only faced by the common law. It tests also, and particularly, the wisdom of our politics. But because the common law is the crucible of the moderate and orderly development of State power, its part in the resolution of these dilemmas is critical.

The common law has a particular repugnance to extremist positions. Such positions start with assumed truths taken to be beyond question, as do some notions of law. This is the very opposite of the common law's process: one of continuous self-correction, and its genius: the refinement of principle over time.

Lecture III – The Common Law and Europe

Lecture III concerns the fashioning of a stable and satisfactory response to the force of the laws coming out of the European Union and the European Court of Human Rights. The laws of the European Union raise familiar questions, by now familiar questions, about the nature of State sovereignty and therefore the shape of our constitution. Sir John Laws will say that there has in law been no transfer of State sovereignty to Europe; and this is an important constitutional truth. It means we may absorb rich legal insights from continental Europe free of political neuroses; and the common law is the means of doing it.

Decisions of the European Court of Human Rights at Strasbourg, and the responses to them of our State institutions, also raise questions about the source of the laws that govern us; and therefore, again, the shape of our constitution. Sir John will say that fundamental rights have to be seen as the gift of our own constitution, and this requires the making of a domestic human rights jurisprudence which will have important effects on the relationship between our State institutions and the Strasbourg court.

In all these areas, again, the wisdom of our politics is put to the test; but again the common law, being the crucible of the moderate and orderly development of State power, has a critical place.