
VERDICT
OXFORD LAW SOCIETY
Michaelmas Term 2018

A LETTER FROM THE EDITOR

Dear Law Society members,

I hope that everyone has had a great Michaelmas term, and that you are all enjoying the vacation so far! I'm delighted to present you with this term's issue of the Verdict. I've very much enjoyed reading the responses to the essay question, as well as conducting some enlightening interviews, which I hope you will find useful. I would also like to thank David, Nia, Louis, Katie, and all of the general committee for providing such an incredible Michaelmas term for us all to enjoy!

ANDY ROSZKOWSKI,
VERDICT EDITOR, MT18

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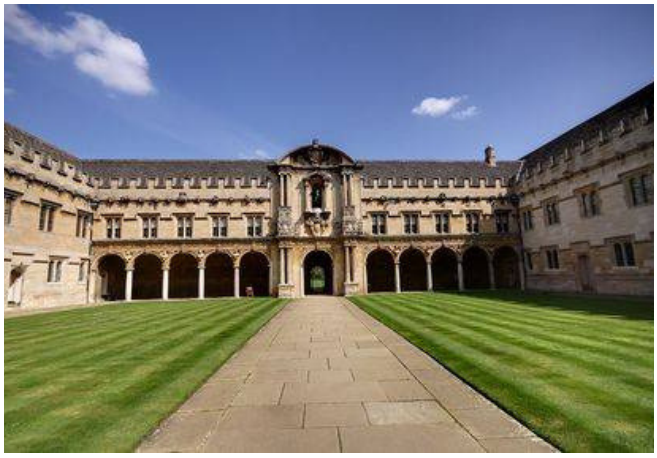
TIPS FOR SECURING A TRAINING CONTRACT AS A NON-LAW STUDENT

AN INTERVIEW WITH AMELIA WRIGLEY
BY ANDY ROSZKOWSKI

Amelia studied English at St John's College and graduated in 2018. After completing a vacation scheme at Slaughter and May, Amelia was offered a training contract from the firm.

What first sparked your interest in a potential career in law?

Over Christmas of second year, I applied to a wide range of summer internships: in consulting, marketing, TV production … and law. To be honest, I didn't know a great deal about City law when I applied for summer work experience at Slaughter and May. I still had my motivations for applying, in particular I liked the academic nature of law compared to other City jobs, and I was keen to secure a graduate position with a high level of support and training. Nonetheless, it was only really during my work experience at Slaughters that my interest was confirmed.



How would you advise a non-law student who wishes to ascertain whether a career in law may be right for them?

I would advise non-law students who think they might be interested in a career in law to get some direct experience! A training contract entails two years of further study and another two years of training in the firm, so it's no small commitment (though once you qualify, there is no obligation to stay at the firm, or even in the law). Obviously, there are other ways to ascertain if this is the career for you – follow cases in the news, listen to lectures on specific legal issues etc. – but any direct experience you can get will be infinitely more revealing than secondary research. During my three weeks at Slaughters, I found that the unique mix of independent, academic research and dynamic client-facing work was greatly appealing to me. I also got on very well with everyone I met at the firm, and enjoyed the culture of the place – factors that were only apparent to me through actually spending time there. You don't, of course, have to secure a vacation scheme to get some direct experience. Larger firms often run workshops and other talks that you can attend, and these will give you an insight into the world of City law, and specifically life at that firm.

How does the route into a career in law differ for a non-law graduate compared with a law graduate?

The only real difference is that non-law students have to take the Graduate Diploma in Law (GDL), which is a year-long course after their first degree. This is the stage I'm currently at, and I'm finding the fast-paced, compact format to be both interesting and rewarding. In a single week I'll study everything from non-fatal offences against the person in Criminal Law, to free movement of persons in EU Law, to the domestic scandals of secret trusts in Equity and Trusts. For me, it's also been a great chance to enjoy living in London for the first time without the time constraints of a full-time job. Once you've completed the GDL, you join your law student peers on the Legal Practice Course (LPC), either for one year or for seven months if you're joining one of the Consortium firms.

Do you feel that there are advantages to having a non-legal background when applying for vacation schemes?

Absolutely. When discussing this question with a partner at Slaughters, he said that trainees from non-law backgrounds (who comprise about 50% of the firm's intake) were invaluable for their alternative ways of thinking and approaching legal problems, for their ability to clearly explain complex law to a client, and for the fresh perspective they bring to the trainee cohort as a whole. There's a reason why Slaughters' slogan is "great minds think differently".

As a non-law student, what did you find was the most challenging aspect of your application process for vacation schemes? How did you deal with this?

I only applied for two vacation schemes, one at Slaughter and May and one at Linklaters. Linklaters had a more conventional application process, which was a little challenging as a non-law student, as it asked questions to test my legal-commercial awareness and my (albeit basic) understanding of the structure and processes of the English legal system. Slaughters, by contrast, only required a cover letter and a CV, with no specific engagement with legal issues. Furthermore, in the interview I had for my vac scheme (and ultimately the interview for my training contract), legal subjects only featured as a minor note. The substance of my interview was on my general experience, skills and capabilities, aptitude for legal thought, debate about current affairs and my academic study (for example, a discussion of my dissertation on the poet John Ashbery). As such, my non-law background was not a problem at all for this particular application.

When interviewed for vacation schemes, what transferable skills do you think the employers were looking for?

I think the skills I've acquired in the course of my English degree are highly transferable to law – in particular reading, distilling and organising vast amounts of materials, thinking critically about arguments, identifying linguistic nuances and being precise in drafting and writing advice to clients. I was also JCR President of my college, and I believe that the skills of leadership, time-management and communication with a large number of stakeholders were held to be relevant and transferable by my interviewers. Overall, I think it's about demonstrating a balance between two core skill sets: on the one hand a precise, critical mode of academic thinking with a high level of attention to detail, and on the other hand, an ability to effectively communicate this complex, introverted thinking to a client, and the capacity to be flexible and creative in the way you think about problems. It's a difficult balance to strike, but the first skill set can often be demonstrated simply through the work you've done for your degree, and the second, by an involvement in an organisational/leadership role of any variety.

ADVICE FOR MODS

AN INTERVIEW WITH JOSHUA WANG
BY ANDY ROSZKOWSKI

Joshua is a 2nd year law student at St Catherine's College who was awarded the highest mark in his year for Law Moderations. Mods are the first real challenge for all Oxford law students where you are examined on criminal, constitutional and Roman law. Joshua received marks of 70, 73, and 72 in these subjects respectively.

What was your typical working day in the build up to mods?

I tended to wake up around 9am and usually work for around 2 hours before lunch. I followed the Pomodoro method whereby I take a short break after every 25 minutes of working in order to stay refreshed. During this break I would normally take a walk outside of college as I found this helped to energise my brain. In the afternoon, depending on classes, I would work for around 3 hours before having a break for dinner, and then I would work another 2 hours or so. I would usually finish working around 10pm and have a break before going to sleep.

Was there any module that you found most challenging, and how did you cope with this when preparing for the exam?

I found constitutional law really difficult and was getting horrible marks for it throughout the term. I struggled with the abstract way of thinking for constitutional law. I think it's the nature of the subject that it all clicks back into place once you've finished all the topics. I just tried to consolidate my understanding and draw links from week to week and after that I got a much clearer picture. I definitely focused my revision more on constitutional law, but I wouldn't say that I put a disproportionate focus on it.

Did you do any reading outside the main syllabus?

No, generally the reading lists were so long that most of the time I struggled to finish them. There was actually one exception to this. For constitutional law I read a UK Constitutional Law blog (Public Law for Everyone) which was really useful, especially the 1000 word articles by Mark Elliot. Those provided really nice summaries of the topics.

How did your revision approach differ according to the subject?

I approached revising for essays and problem questions quite differently. As constitutional law only involved essays, this meant that my approach differed from the other two subjects. For essays I spent a lot of time really trying to understand what was going on. I didn't actually do a single practice essay. Instead I created a mind map of the entire topic and tried to figure out how everything fitted together. For criminal and Roman law where problem questions were involved, I spent more time practicing questions. I would also create hypothetical scenarios and consider whether, for example, something would be theft under criminal law, and then consider what the outcome would be under Roman law.

How did you balance revising for mods with having time to relax?

I think that this is really important as pushing yourself too hard will be unhealthy and will actually decrease efficiency. It's important to hang out with friends, have fun and enjoy yourself. This keeps you in the right state of mind. I would only study when I felt that I had the energy and motivation to do so, otherwise I would just go and have a chat with friends or take a walk. It's important to ensure that you have a life outside of law.

Have you got any final advice for first years with mods approaching?

One important thing is having the right motivation for why you are studying. You should make sure that your motivation is not because of the pressure you put on yourself to achieve a high mark. I feel that this is actually a trap that I fell into. It's important to ensure that your motivation is trying to understand and master the subject in the best way possible out of your interest and passion for the law. In the end I think that I stopped caring about what mark I was going to get and just focused on learning the material in the right way.

What are your tips for preparing on the evening before and on the morning of the exam?

On the evening before an exam I didn't really do too much preparation. My advice would be to just get a good rest because any last minute cramming would be damaging for your performance the next morning. Maybe one hour of light revision across all the topics would be helpful to keep everything fresh, but I wouldn't say to go beyond that. Definitely don't try and learn anything new as that will just make you panic. On the morning of the exam I'd recommend having a nice meal, ideally something slow burning in terms of energy such as bananas. Other than that just keep calm, have confidence and go for it.

PERSPECTIVES ON ARBITRATION FROM HONG KONG

WRITTEN BY YEE-KWAN LAW

Yee-Kwan spoke to a number of experts in dispute resolution from Hong Kong

Most people have heard of litigation... but what is arbitration and what are the main considerations when choosing to undergo arbitration proceedings?

Arbitration is a form of alternative dispute resolution aimed at resolving disputes between parties in private. The arbitration agreement can be (and indeed usually is) incorporated as part of the contract from which the dispute arises. The parties agree to designate an independent third party (a tribunal, comprising of one or more arbitrators) to resolve the dispute between them and to be bound by their decision. Many states have consistent arbitral procedures which are based upon the UNCITRAL Model Law on International Commercial Arbitration, first adopted in 1985 and amended in 2006.

Because arbitrations are confidential and are conducted in private, this means that it is preferable compared to litigation when the cases involve trade secrets or confidential commercial transactions. The final rulings are not released into the public domain, and this is conducive to both sides maintaining a reputable brand in the case of adverse findings. Arbitration awards are also binding on parties as soon as they are rendered and is not subject to various levels of appeal and judicial review, which minimises uncertainty, delays and further expenditure.

A process of arbitration upholds principles of due process and the rule of law whilst affording familiarity to parties who can tailor a dispute resolution process according to their own preferences and backgrounds, and this would be preferable when one has to deal with significantly different legal traditions and cultures.

One should also bear in mind that choosing an 'arbitration-friendly jurisdiction' (in which Hong Kong is included – as explained later) is preferable for dispute resolution, as it is the courts of the "seat" (i.e. the jurisdiction to which the arbitration procedure is tied) that will play a supervisory role in any dispute.are signatories to the New York Convention.

Owing to Hong Kong being party to the "1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards" (the 'New York Convention') by virtue of China's accession to that treaty, this means that an award obtained in Hong Kong is enforceable in other countries that are signatories to the New York Convention.

Why is Hong Kong considered to be 'arbitration-friendly'? Is this particularly relevant in the age of Belt and Road Initiative (BRI) projects?

Hong Kong is a common law jurisdiction governed under the principal of 'One Country, Two Systems' and there are similarities between arbitration practices in Hong Kong and England & Wales. Both jurisdictions are fully capable of embracing parties and practitioners of different legal and cultural backgrounds together to resolve a dispute. A mixture of having an extensive network of professional services in finance and accounting, geographical proximity to China and bilingualism means that Hong Kong provides a great option for parties when choosing arbitrators, and the city was actually voted to be the third most preferred venue in the world (and first in Asia) in 2015 by a White & Case survey.

There are also large numbers of experienced arbitrators who reside and work in Hong Kong, and they have been gaining more expertise as the vast majority of BRI investment is continually channelled through the city, meaning that precedents have been sent with Hong Kong incorporated vehicles.

The choice of Hong Kong when BRI disputes arise is often a compromise – foreign parties are often dealing with a Chinese counterparty, and it is very likely that the latter would propose for the seat of arbitration to be in China and/or the governing law to be Chinese. Many foreign parties are unlikely to be familiar with the particularities of Chinese law and would have to seek more advice if they choose to seat the arbitration in 'mainland' China. Therefore, it is not uncommon for foreign parties to prefer Hong Kong as a seat given its modern arbitration legislation and independent legal system and judiciary; whilst Chinese parties are typically equally comfortable with Hong Kong as a seat.

Hong Kong continues to be an independent and neutral seat of arbitration, as evidenced by Hong Kong courts having enforced awards against Chinese state-owned enterprises (SOEs) in the past (in mainland China against Chinese assets). A 'reporting up system' holds in mainland China, where awards can only be refused enforcement with the endorsement of the Supreme People's Court (an award may not be enforced if the enforcement would be contrary to the social and public interests of Mainland China). This is applicable when the losing party is a state-owned company, and such a defence may be raised; but this is akin to state immunity in litigation cases. For more details, one can refer to a new agreement for mutual recognition and enforcement of arbitration awards between Hong Kong and Mainland China (that was struck on 21 June 1999) – it is used in place of the New York Convention because of issues pertaining to sovereignty.

For award enforcement purposes, the New York Convention is no longer valid (because of sovereignty reasons), and a new agreement for mutual recognition and enforcement of arbitration awards between Hong Kong and Mainland China was struck on 21 June 1999, reflecting the provisions in the New York Convention as well as restoring enforcement procedures in place prior to the handover.

Arbitral tribunals in Hong Kong have also been known to provide interim relief, in the form of asset (and evidence) preservation measures or injunctions to maintain or preserve the status quo.

What is 'Third-Party Funding' and why has it been a hot topic as of recent?

This goes back to the age-old law of maintenance and champerty. Hong Kong remains out of step with other major common law jurisdictions in that maintenance and champerty are still crimes, and a huge debate revolves around if these doctrines should apply to arbitration.

Legislative reforms (under the Arbitration Ordinance) were passed in June 2017 to bring Hong Kong's arbitral proceedings in line with other major jurisdictions in terms of third-party funding, thus making the city even more appealing as an arbitral seat. Clients would have to make a case to the funder setting out the strengths and weaknesses of their case.

The funder might assemble an internal committee comprising of experienced dispute lawyers alongside other factors before deciding; their primary concern is to make returns in proceedings either through an award or settlement agreement. Unsurprisingly, the funder would have some say in what dispute resolution clauses go into contracts, and a process of negotiation would have to take place. Proper due diligence would need to be done so as to fully explore the merits of the case. From the funder's point of view, it comes down to economics – it revolves around cost and expected return.

The law requires for the fact of funding and the name of the funder to be disclosed to the opposing side and tribunal. It is unsurprising that some clients expect that seeking third-party funding may be interpreted by

the tribunal as a sign that the defendant cannot afford the proceedings and be swayed by the other side's argument that they should provide 'security for costs', but this is untrue. Very solvent clients have spoken to us in the past about funding, and from the other side, funders have mentioned that some clients seek funding for cash flow, or capital and liquidity management purposes rather than for impecuniosity.

Effective enforcement of an eventual award is therefore critical and choosing experienced arbitrators and institutions with modern rules is critical in ensuring a valid and enforceable award such that the funds can be recouped. However, much work remains to be in terms of mutual involvement and educating users, even though progress from an HKIAC task force has been promising. The path to its widespread adoption is fraught with pitfalls. A code of standards and practices should be enacted for third-party funders of arbitration should comply with, including clear promotional literature and funding agreements which explain key features, risks and terms; and it would be desirable for the funded party to receive independent legal advice on the terms of the funding agreement.

Bringing this back to England & Wales, for the time being third-party funding seems to be wholly self-regulated by the Association of Litigation Funders according to a partner at Tanner De Witt. The UK Parliament will look into formal regulation if the industry continues to grow, but at the moment, it is slow to take steps in this area for fear of hindering growth in the industry. There is still some way to go before litigation funding becomes a 'burgeoning area of commerce' as is the case in Australia, to the extent that entities solely focusing on this are publicly listed companies.

Two tribunals involving arbitration and third-party funding from recent memory include the *Muhammet Cap v. Turkmenistan* case and the *Essar v Norscotcase*, the latter of which was settled in the English High Court. The details of these cases will be discussed to a greater extent in the next issue of Verdict.

RETHINKING JUDICIAL APPOINTMENTS FOR THE US SUPREME COURT

WRITTEN BY ALVIN CHEUNG

The highly televised and contentious confirmation hearings of Brett Kavanaugh must have felt alien to the British population. Not only was Justice Kavanaugh rightly highlighted for his sexual misdemeanors, he was also criticized for showing complete contempt for the Democrats and his blatant partisanship when he accused Dr. Christine Ford's testimony as a "sham" and a "conspiracy" by the liberal left-wing. Kavanaugh's accusations are terribly worrying. Isn't judicial independence one of the cornerstones to a formal or substantive conception of the rule of law? Doesn't this make the judiciary subservient to the political agendas of the executive, instead of acting as a check and balance against the government's worst excesses? After all, the United States are built on a proud tradition of a mistrust of the government, and thus a need to "resist government tyranny".

This article will try to examine three different things: first, the US Constitution on the appointment of Supreme Court Justices; second, how Judy and Punch politics in the United States erodes the very concept of judicial independence; and third, whether the appointment of judges in the United States needs a rethink.

Chapter 1: The starting point – The Constitutional Principles (or the lack thereof)

What is clear from the United States Constitution is that the founding fathers paid little attention to the formation of the judiciary. The Constitution does not say much about the Judicial Branch (Article III) as compared to the Legislative Branch (Article I) and the Executive Branch (Article II), both in breadth and in depth. It does not extensively detail the mechanism for choosing the Supreme Court judges. The only constitutional guidance is provided by Article II where the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint... Judges of the Supreme Court".

Moreover, the Constitution says nothing about the qualifications of judges. Although s 1 of Article III allows for "judicial power to be vested in the Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish", there is a dearth of procedural requirements and substantive explanations as to what constitutes an ideal Supreme Court candidate. This is in direct contrast to stringent qualifications put on the Office of President of the United States, which requires the person to be of US citizenship and at least thirty-five years of age.

But without constitutional guidance, presidents have sought to formulate their own principles as to how a Supreme Court Justice is to be chosen. Such are provided by Presidents Eisenhower and Nixon on how they appointed Supreme Court justices. In Memoirs – Mandate for Change: The White House Years, President Eisenhower submitted four principles: first, every nominee should be thoroughlyinvestigated by the FBI and given "security" guidance; second, no one who has "extreme legal or philosophical views" should be appointed; third, each appointee should be vetted by the American Bar Association and fourth, appointees should be drawn from the inferior federal and state courts. Whilst these criteria have been nothing short of astonishing as it permits the FBI to substitute its judgment of the character and qualifications of a candidate for the judgment and discretion of the President, and it permits a semi-public organization like the American Bar Association a kind of veto power over presidential decisions, these have been endorsed explicitly and implicitly sanctioned by President Nixon as well.

However, it is questionable as to whether these criteria were actually fulfilled in the Kavanaugh appointment: even though he was accused of multiple instances of sexual misconduct, the FBI only conducted a week-long investigation, without interviewing witnesses who were desperate to provide pertinent testimony. Moreover, it is arguable he has extreme legal and philosophical views: despite the entrenched decision of *Roe v. Wade* and the protection of abortion rights, Kavanaugh has written a

peculiar dissenting judgment in *Rochelle Garza v. Eric Hargan*, where he argued against providing an unlawful immigrant minor of having a right to abortion and it is "not an undue burden for the US Government to transfer an unlawful immigrant to an immigration sponsor before she has an abortion" even though the process was deemed to violate the principle of expeditiousness given the nine-week sponsorship hunt. Moreover, Kavanaugh writes the "government has permissible interests in favoring fetal life and refraining from facilitating abortion". Most shockingly, however, Kavanaugh has argued for the expansion of executive power to exempt a President from criminal prosecution and investigation due to the availability of the "impeachment process" in a 2009 article titled "Separation of Powers During the Forty-Fourth Presidency and Beyond". In a day and age where citizens value nothing more than accountability from the government and their rights being protected (especially for minorities), Justice Kavanaugh's views seem to be quite extreme and anachronistic.

Even if we accept that whether a judge's views are extreme or not are mostly subjective (as evidenced by Abraham Lincoln's acceptance of Justice Chase – who was an extreme abolitionist and argued in court there was a law higher than the Constitution), and the investigation was thoroughly investigated,surely the most worrying part of Kavanaugh's testimony is his open detest for the Democratic Party and its sponsors. In the broad arena of American politics where party affiliations are crucial, the one place where is should be excluded is the Supreme Court. Judicial independence is propounded as one of the key features of the procedural rule of law by Joseph Raz, an integral component without which would mean the court simply is an extension of the rule of politicians. One of the rather quaint features of the appointment of Justices in the United States is there are publicly televised hearings, or "bloodbaths", conducted by Congressional lawmakers by a Senate Committee. This measure seeks to allow Congress, and by extension, the public "know a great deal about...their personal backgrounds, political views, and working habits". What is extremely worrying is this counterweight measure failed to vet/catch a man who has had showed blatant partisanship and hatred for the Democratic Party at the hearings.

The next section will examine how Judy and Punch politics have eroded judicial independence altogether.

Chapter 2: Judy and Punch: how it erodes the very concept of judicial independence

In 2001, after President Bush took office, the New York Times ran a front-page story which read "interest groups on the left and the right are busy preparing for the possibility of a Supreme Court vacancy, perhaps as early as summer, and what many predict will be a brutal political war". Such an episode is simply emblematic of what the Supreme Court represents to those closely associated with the Democratic and Republican Parties: it is an opportunity to extend their respective influences beyond the executive and the legislature, but into the judiciary as well. What was originally intended to be an apolitical and independent body has been transformed into a highly politicized battlefield in the struggle for power.
Why is the Supreme Court of the United States so politicized? This might be due to the lack of party variants in the United States Congress itself. Since 2001, there have not been more than three members in the Senate which do not belong to either the Democratic or the Republican Party. Practically speaking, the consistent underperformance, lack of publicity and funding which third parties receive have contributed to such a duopoly. Moreover, Congress has been historically dominated by two parties– from the early years of the Anti-Administration and Pro-Administration parties, to the Democratic-Republicans and Federalists, to today's Democrats and Republicans. This entrenched tradition and mindset of two antagonistic parties pitted against each other in a "David versus Goliath" manner have also contributed to the lack of political variants within the American system.

A complete contrast to the American system would be Germany's. Currently, there are seven political parties in the

Bundestag, comprising of the ruling parties of the Christian Democrat Union, the Christian Socialist Union, and opposition parties such as the Greens and the Left. Therefore, the committee to select judges for the Federal Court of Germany represents a wide spectrum of parties. The parties then take turns in proposing candidates. But more importantly, a two-thirds majority of Parliament is needed to confirm a nominee, which requires broad consensus between parties and usually ends up empowering moderate candidates. Although judges do have their own political opinions, they do not feel particular allegiances to a particular party as a result of their confirmation. Historically, no party in the country's modern history has ever had a two-thirds majority in Parliament, and thus, the final say over a Supreme Court nomination. Therefore, the Federal Court of Germany is rarely criticized as being "politicized" given their multiparty system which forms the fundamental cornerstone of selecting and confirming judges.

The politicized nature of the US Supreme Court is also exacerbated by judges holding "their offices during good Behaviour" (Article III, s 1), which has been taken to mean being appointed for life. Therefore, the battle for the United States Supreme Court is significant as it represents an opportunity for the two parties to exert 1/9 control over the judiciary for an extended period of time. In complete contrast to the United States, most European Union countries have implemented limits on term-times. For Germany, the maximum term-time is 12 years or to work until 68 years old and in Spain, although they are appointed for life, they are automatically retired at 70.

Finally, if the Supreme Court was quietly the object of sophisticated, quiet politicization, Senate Majority leader Mitch McConnell certainly openly embraced the concept of subordinating the Supreme Court and judiciary under the control of the majority party. He had once said one of his "proudest moments" was when he looked then-President Barack Obama in the eye and insisted he would not fill the Supreme Court vacancy. Moreover, the then 11 Republican members of the Senate Judiciary Committee signed a letter saying they had no intention of consenting to any nominee from Obama, and no proceedings commenced over the appointment of Merrick Garland. This power grab had a knock-on effect as well: first, it prevented the seating of a Democratic president's choice; but second, and more importantly, the vacancy became a powerful motivator for conservative voters in the fall, especially when the previous incumbent was the ultraconservative Antonin Scalia. McConnell' s aggressive and unequivocal politicization of the Supreme Court has also contributed to erode judicial independence of the Supreme Court in the United States.

But the more enduring question is why has the United States persisted with such a defective system when what they traditionally proudly endorse is a partial separation of powers with harsh checks and balances, so as to prevent the overconcentration of power?

One particular explanation is the US Constitution is not easily amended. According to Article V of the Constitution, amendments can only be made when "two thirds of both houses shall deem it necessary", or by constitutional convention called for by two-thirds of the State legislatures. A two-thirds majority for **both** houses in a bicameral parliament is such a rare occasion sufficiently onerous to ensure that the Constitution is simply immutable. The Constitution has only been changed 27 times for the past 200 years, and the last change came in 1992 on delaying laws affecting Congressional salary. Such a phenomenon shows how difficult change to the Constitution is. Moreover, in light of the doctrine of supremacy and the reverence which most Americans show to the Constitution and its Founding Fathers, there is a degree of "amendophobia" – an irrational fear of resorting to amendment, even when the occasion is appropriate (Jackson). Perhaps the possible anachronism of the Constitution in modern times also adds support as to why Barber is against a written constitution, in addition to the "uncertain mixture of codification and reform" and "precipitation of constitutional crises". However, Jackson also warns against overemphasizing the myth of the un-amendability of the Constitution as the overstatement of the difficulty may become self-fulfilling and might hamper the Constitution's democratic legitimacy.

A possible second explanation: judicial independence is intricately tied to public confidence. After all, that was why a new Supreme Court was established in 2009 as authorized by the Constitutional Reform Act (part 3, s23) and a new Supreme Court Building was built, so as to alleviate public fears about the entwining of Westminster politics and law. However, Lorne Neudorf notes prominent US legal scholars such as Terri Jennings Peretti argue support for the Supreme Court is based on the substantive results of its decisions as opposed to any kind of public reverence of the judicial role. If the Court adopts a position against a law-making majority, the public accordingly exacts a cost in confidence. In other words, the legitimacy of the judiciary in the US seems to

stem from Courts agreeing to the prevailing political attitudes and policies of the time, rather than acting as a "check" against possible abuse of government power or, for that matter, being politically independent.

Chapter 3: Reform – what are the options?

What are the options to fix this seemingly broken system? One option is to follow England's example in passing a Constitutional Reform Act and forming an independent selection commission. In the United Kingdom, the selection commission is made up of the President and Deputy President of the Court, and a member each from the Judicial Appointments Commission, Judicial Appointments Board for Scotland and Northern Ireland Judicial Appointments Commission. Moreover, selections must be based on codified requirements instead of purely arbitrary and discretionary principles: I venture that requirements go beyond the normal provisions of being selected on "merit" and having held "high judicial office for at least two years", but also that each candidate should be properly vetted by the FBI. Considerations should be given to resourcefulness and imagination such as Justice Story when he created an admiralty law for the United States and through the great case of *Swift v. Tyson*, emancipating much of the economy from the restrictions of state law by creating a national commercial law.

Conjunctively implemented should be amendments to the Constitution to set term limits on their top legal bodies. The main reason why such a reform needs to go hand-in-hand with an independent commission is based on concerns over France's Constitutional Council. It has nine permanent members, of which one-third are replaced every three years by the executive branch. Due to appointments by the executive branch, it has been suspiciously seen as a "highly politicized court" (Sterck). As Jackson implies, Americans should not be afraid of amending the Constitution when it is necessary to do so. The implementation of both these suggested reforms should be a good start to depoliticizing what should be an independent Supreme Court.

Conclusion

In conclusion, the appointment of Supreme Court Justices in the United States is incredibly broken. Reforms should be taken to improve judicial independence, especially when the Supreme Court is the highest court in the land.

ESSAY COMPETITION

RUNNER UP

ELVIS ZHANG, SOMERVILLE COLLEGE

Is it time for the UK to legalise cannabis in all forms and for all users?

On October 17 2018, after the passing of requisite parliamentary legislation, the Canadian Prime Minister Justin Trudeau confirmed that recreational marijuana will become legal. Canada is not the only country that has relaxed legal controls on recreational weed: Uruguay did so in 2013, as well as the American state of Colorado, amongst others. While these are overseas developments, the concept of legalising marijuana is certainly not a foreign idea. The merits of such a policy have been widely discussed and debated in the UK. Is it time for the debate to move forward, and for the state to endorse one side over the other? This essay will broadly set out the law relating to cannabis usage in the UK, and then argue in agreement with the question that cannabis should be legalised in all its forms. However, this essay will present a slight disagreement with the question: legalisation should not be for all users, and should come with the appropriate regulations, including age restrictions on purchase, like those that are usually associated with alcohol and tobacco.

Marijuana is controlled by the Misuse of Drugs Act 1971 ("1971 Act"), and is classified as a Class B drug under the 1971 Act. Section 6 of the 1971 Act specifically prohibits the "cultivation of cannabis plant", while sections 3, 4 and 5 prohibit the importation and exportation, production and supply, and possession, of controlled drugs. It may be argued that the UK's strict legal position against cannabis has been chipped away at recently: the Home Secretary has announced that he will grant licences to specialist practitioners to prescribe medical cannabis oil for patients with an "exceptional clinical need". This was a policy decision made subsequent to the controversial case of Billy Caldwell, a "severely epileptic" boy who has been using cannabis oil in 2016 to control his epilepsy.

However, this is but a decision that concerns the medical usage of cannabis: where recreational use is concerned, no executive decisions, or proposed legislation, has been put forward. A ban is still very much in place in the UK.

Are there any good reasons for the UK to legalise cannabis in all forms, especially recreational marijuana? The fundamental tension within the law relating to the regulation of private activities is always between the protection of personal autonomy, and paternalism. On one hand, the state is concerned with the protection of personal autonomy: we should be free to do as we wish to our own bodies, without the undue interference of the state. This is why tobacco and alcohol consumption is allowed, and why in the realm of private law, the freedom of contract is recognised as a fundamental rule. On the other hand, the state is also concerned with protecting people against their own bad habits, as well as preventing the consequences of one's actions from harming third parties. Therefore, tobacco is heavily taxed in the UK to discourage consumption, and courts have set aside contracts on the grounds of procedural unconscionability (see Cresswell v Potterand Fry v Lane). Any argument advocating for the legalisation of all forms of cannabis therefore has to show that this balance can be struck in a satisfactory manner.

Perhaps the answer is found in the fact that the recreational use of marijuana is not that harmful at all. Some studies have gone as far as to claim that recreational marijuana, consumed in socially normal amounts, is far less dangerous than tobacco and alcohol. This is due to the huge difference between the average amount consumed, and the amount required for fatality. Smoking a blunt is certainly not going to produce delirious face eating cannibals, like some 'bath salts' do.

It may impair one's driving ability, but there is no reason why the legislation cannot simply regulate it the way drink-driving is regulated. It has also been shown to be somewhat addictive, but the addictive nature of other substances, like shisha, has never been a ground upon which the state has banned usage.

It should be recognised, however, that one of the most major medical concerns is the association between marijuana consumption and long-term mental health. In particular, one Swedish studyhas drawn a correlation between consumption of marijuana and the subsequent development of schizophrenia. Although some have argued that these studies do not show any conclusive causation between the two, rigorous studies proving substantial connections should not be readily dismissed. The upshot here is that the legal response does not necessarily have to be a ban. Individuals have the right to do as they wish, even if it comes at some expense to their well-being. Where specific classes of individuals may suffer disproportionate harm, or are shown to be unable to make informed decisions for themselves (such as minors under the age of 18), then there are stronger justifications for banning it for them. These justifications plainly do not arise for average adults of sound mind. If the state wants to step in and protect individuals from themselves, it may be better to discourage said activity, than to outright ban it. After all, football headers have been linked to long term brain damage. Not getting enough sleep (something Oxford students and commercial lawyers suffer from on a regular basis) has also been shown to cause health problems. Surely the government is not going to ban headers in football, or ban all-nighters?

The argument that conclusively tips the scale in favour of regulation, rather than outright banning, is that regulation comes with wider social benefits, including reduced crime and increased tax revenue. Lord Falconer, a former Lord Chancellor and Secretary of State for Justice, has radically argued for an end to Britain's war on drugs. He has pointed out that a ban on drugs wrongly targets marginalised communities and oppressed individuals at the bottom of the social ladder. Furthermore, black market drugs are clearly far more dangerous than legal, regulated drugs. If drugs were legalised, police efforts and resources would be re-directed towards more pressing issues.

Taxes collected from the sale of drugs could go towards the NHS in helping addicts recover, and to its strained resources in general. Proponents of this view would point to Portugal – which has decriminalised drug use since 2000 – as an example. There, drug addiction has reduced since 2001, amongst other encouraging indicators. While the UK may not go as far – not yet, at least – it is certainly a model that is worth considering.

The recent advancements in science has made issues surrounding recreational cannabis usage more transparent, and with this information, individuals are better placed to make informed decisions for themselves. It thus follows that a better policy would be to allow people to choose freely, rather than to dictate their actions. Furthermore, the other eminent social benefits that come with lifting the ban on cannabis usage also present a strong case for legalising it. It is hoped that the UK will be the next country in line to legalise cannabis in all forms, albeit in a regulated manner.

"Surely the government is not going to ban headers in football, or ban all-nighters?"

WINNER

ABDUL MUSADDIK, ST JOHN'S COLLEGE

In this essay it will be argued that it is time for the UK to legalise cannabis in all forms and for all users. This is primarily because cannabis is a safe drug which does not cause significant harm meaning there is no justified reason for its prohibition. Further to this, cannabis is currently a Class B drug making it technically illegal, however, a look at the law's treatment of cannabis reveals it to be virtually legal already. This creates problems for the rule of law. Finally, the benefits of legalising cannabis will be highlighted to affirm that it is time for the UK to legalise cannabis.

Firstly, the statistics on the recreational use of cannabis show cannabis to be a relatively safe drug. A 2015 study by the National Center for Biotechnology Information compared cannabis with other recreational drugs and found cannabis to be the least harmful. According to the study, alcohol was the deadliest drug accounting for 30,700 American deaths in 2014 whilst finding 0 documented deaths from cannabis use. This is in agreement with previous research which has consistently ranked cannabis as the safest recreational drug. There is a clear consensus within the international medical community that cannabis is not a harmful drug and it is because of such findings that cannabis is legal in 26 countries across the world including Canada and many states in America. Therefore, cannabis is clearly a safe drug and the UK should follow other progressive countries and also legalise cannabis.

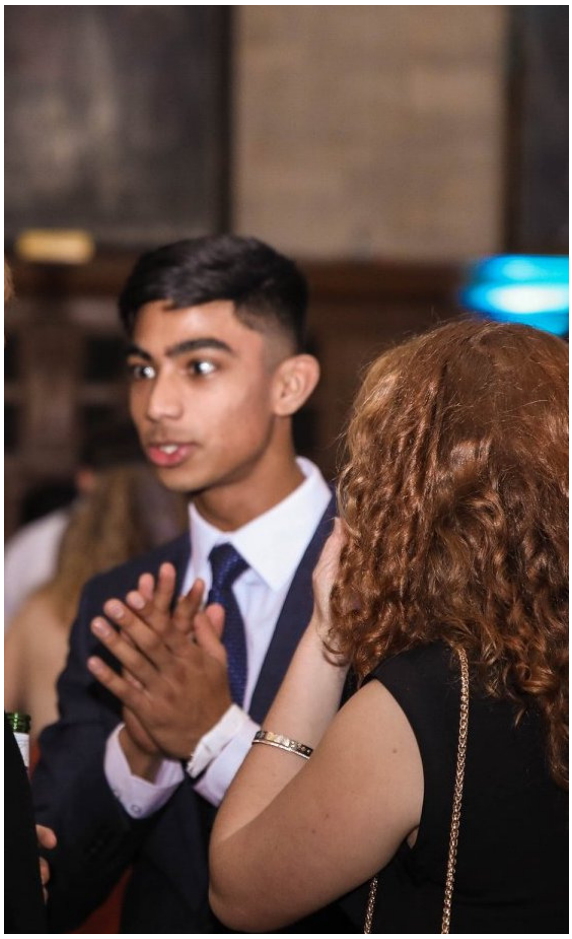
Additionally, the current illegality of cannabis can be shown to be a sham. This is because drug legislation holds that the possession or supply of drugs is illegal according to the section 5(1) of the Misuse of Drugs Act 1971. However, every year on the 20th of April, around 5,000 people gather in Hyde Park to publicly smoke cannabis in the presence of police without a single arrest being made. Thus, on that day in Hyde Park cannabis is virtually legal as law enforcement allow people to smoke the drug without any consequences.

Further to this, there has been a downward trend in the number of convictions or cautions for the possession of cannabis with the Guardian reporting that there has been a 19% fall of cannabis prosecutions and a 34% fall of cannabis cautions since 2015. Further to this, the number of cannabis warnings have dropped from 139,666 in 2007 to only 18,211 warnings in 2017. Whilst police enforcement of the ban on cannabis has significantly decreased, there is no evidence to suggest that the number of people actually in possession of the drug has decreased. Thus, it appears that police forces are in effect decriminalising cannabis themselves and the only logical reason for this is because they have recognised that cannabis is not a harmful drug. This is an extremely poignant state of affairs, as the police are being forced to go against clear cut laws for the sake of true justice.

The decriminalization of cannabis by police forces creates substantial problems which can be understood in terms of an abrogation of the rule of law. Police forces are not properly upholding s.5(1) of the 1971 Act which is a blatant disregard for the rule of law as all laws should be respected and adhered to when passed down as a statute. This removes the certainty and fairness in the law around cannabis, as whether someone is prosecuted for possession of the drug is dependant on the police force and not the law of the land. This is evidenced by the fact that Cheshire saw an increase of 3% in cannabis prosecutions, despite the rest of the country experiencing a significant decrease. This has led to Lib Dem MP Norman Lamb describing the current state of cannabis legislation being a 'postcode lottery' where cannabis users may or may not be prosecuted depending on where they live. It is clear that police forces have recognised that cannabis is not a harmful drug and thus they are unable to properly enforce cannabis legislation. Therefore, to meet the demands of the rule of law and restore fairness and certainty, cannabis should be legalised in all forms and for all users.

Furthermore, by legalising cannabis the UK would experience a boost to its economy, with the Institute of Economic Affairs reporting that the legalization of cannabis would raise a billion pounds in tax. Further to this, there would be savings for public services, especially the police who would be able to concentrate their efforts on more serious issues. Legalizing cannabis would also allow the UK to regulate the cannabis market and ensure that the cannabis people smoke is not laced with other more dangerous chemicals. Furthermore, the health services would experience savings as people would be free to use cannabis as a painkiller instead of always having to resort to the National Health Service. It is clear that legalising cannabis will bring many benefits to the UK.

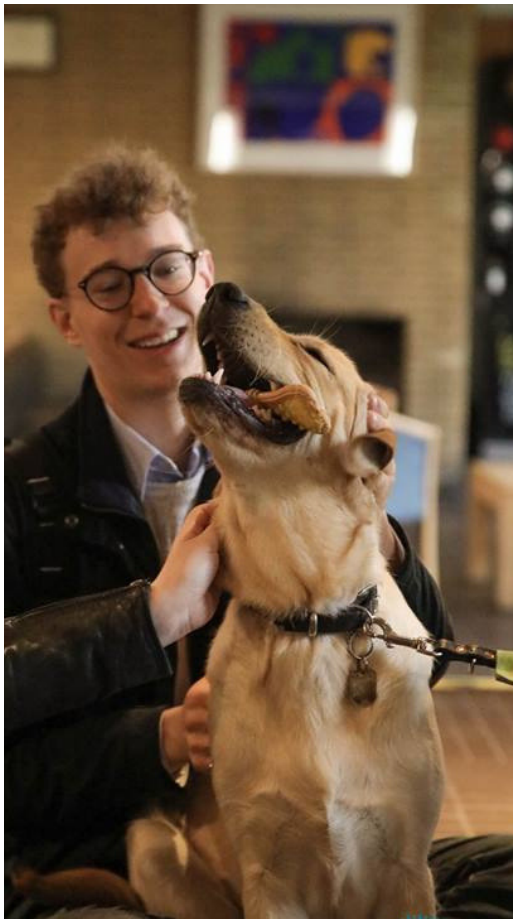
As it is clear that cannabis is not a harmful drug, nor is there a proper enforcement of its prohibition - the reasons for which cannabis is illegal become difficult to understand. It is arguable that as a western democracy, the driving philosophical ideology of the UK is that of liberalism. That is, if an action does not cause harm then it should be allowed to take place. Cannabis use undeniably falls into such a category. This essay has aimed to display how wrong the UK's current position on cannabis is as well as highlight the benefits that would arise from the full legalization of cannabis. Thus, it is time for Parliament to legalise cannabis for all users and in all forms.



Note from the editor:

Congratulations to our worthy winner and runner-up, and thank you to everyone who entered the competition!

HIGHLIGHTS FROM THE TERM




Garden Sculpture

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Ball Officer: Athena Ng

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Verdict Editor: Andy Roszkowski

OUTGOING EXECUTIVE MESSAGES

David Stuart
PRESIDENT

This term has undoubtedly been the best experience of my four years at Oxford. When I joined LawSoc as a fresher, I had no idea that I would become so heavily involved with the Society, but it's been a pleasure being on the Committee for the past year.

I've met so many new people and made many friends all because of my involvement with LawSoc. I'm also very proud of what the Society has achieved this term. We raised a record level of sponsorship over the summer, which meant we had events going on nearly every day and could afford to increase the capacity of President's Drinks and the Ball to 200 people. As a non-law student I was also keen to widen participation and I was pleased to see that at most events non-law students made up around 50% of attendees.

None of what we achieved this term would have been possible without the hard work of the rest of the Exec committee. I'd like to thank Nia, Louis, and Katie for their incredible work. I couldn't have wished for a more committed and diligent team. The General Committee's support was also invaluable and with such a busy term card, we couldn't have done it all without them.

I am sad to be leaving the Committee, but I'm also glad to now have the time to focus on my finals! I wish Nobel, Daniel, Viola, and George the best of luck for next term. I'm sure they will do a wonderful job.

Nia Williams
VICE PRESIDENT

I am certain that my University experience would have been far different and duller without the Oxford Law Society. I can confidently say that I have made close friends that I know I will always be able to rely on and have experienced so many interesting and exciting opportunities.

Leaving this society, which has grown to be such a big part of my life is bitter sweet. I will certainly miss committee life and being surrounded by such supportive and lovely people. Running LawSoc is a massive commitment and over the course of a term I feel we really became a LawSoc family. It is time however to pass the society onto the next exec and I cannot wait to see their amazing ideas become reality. I know that Nobel, Daniel, Viola and George will do a fantastic job and that makes leaving the society far more bearable.

A huge highlight of this term for me was the Michaelmas Term Hogan Lovells Ball at the Victoria and Albert Museum. I hope everyone who attended had a great time, I know that I did. There aren't many people who can say they organised a ball at the V&A and I am so grateful to have been given that opportunity. I hope it did not disappoint!

Finally thank you to David, Louis and Katie who have been absolutely incredible this term. We have worked so closely together the last few months and although our term has ended I am so glad our friendship will remain. I wish the Hilary Term executive committee good luck and I hope all members have a wonderful Christmas.

Louis Skinner
TREASURER

I can comfortably say that serving on the law society committee has been one of my favourite experiences of university. I have made friends I expect to keep for life, and have grown immensely as a person - I couldn't recommend getting involved with the society any more. From Pres Drinks at the Town Hall to the Ball at the V&A, there have been so many highlights. It's been hard work putting an event on every day but ultimately, I truly hope all our members found them helpful. A major shout out to my fellow exec member - Nia, Katie and David. Without their hard work and dedication this term would have been impossible. I wish next terms exec the best and I look forward to all the events they have planned!

Katie Rivers
SECRETARY

Being a part of the law society for the past three terms has been a highlight of my time here at Oxford. Being the secretary this term has been a great privilege and I have loved every minute. This term has taught me so much and has given me the opportunity to do some incredible things – namely, designing the term card and helping organise so many fantastic events! I cannot thank the general committee for all of their hard work and commitment (some perhaps more than others!) and wish them all the best for future terms. It goes without saying that this term would not have been a success without the hard work and determination of the other members of the executive committee: David, Nia and Louis – you have all been incredible to work with. Finally, I have to say good luck to my successor George - who will do an even better job I'm sure!