British judges increasingly now pay attention to foreign case law when deciding domestic cases, and are required to interpret and apply international law in domestic courts and administer an international code of human rights. Tom Bingham examines the consequences of this increasingly internationalist outlook of British courts, including cases which rely on a range of foreign authorities, cases where an international convention or principle is interpreted and cases in which human rights issues are decided in reliance on principles established elsewhere.

LORD THOMAS BINGHAM, Baron Bingham of Cornhill, has held the posts of Master of the Rolls, Lord Chief Justice and Senior Law Lord. He presided over key judgments, including the ruling in the Belmarsh case that it was unlawful, and a breach of human rights, to detain foreign terrorist suspects without charge, and the ruling that evidence against terror suspects obtained by torture was inadmissible.
WIDENING HORIZONS
The Influence of Comparative Law and International Law on Domestic Law

THOMAS H. BINGHAM
CONTENTS

The Hamlyn Trust       vi
The Hamlyn Lectures     x

1 ‘Foreign moods, fads, or fashions’     1
2 ‘Wider still and wider’        29
3 Nonsense on international stilts?  55

Index       84
The Hamlyn Trust owes its existence today to the will of the late Miss Emma Warburton Hamlyn of Torquay, who died in 1941 at the age of 80. She came of an old and well-known Devon family. Her father, William Bussell Hamlyn, practised in Torquay as a solicitor and JP for many years, and it seems likely that Miss Hamlyn founded the trust in his memory. Emma Hamlyn was a woman of strong character, intelligent and cultured, well-versed in literature, music and art, and a lover of her country. She travelled extensively in Europe and Egypt, and apparently took considerable interest in the law and ethnology of the countries and cultures that she visited. An account of Miss Hamlyn by Professor Chantal Stebbings of the University of Exeter (one of the Hamlyn trustees) may be found, under the title ‘The Hamlyn Legacy’, in volume 42 of the published lectures.

Miss Hamlyn bequeathed the residue of her estate on trust in terms which it seems were her own. The wording was thought to be vague, and the will was taken to the Chancery Division of the High Court, which in November 1948 approved a Scheme for the administration of the trust. Paragraph 3 of the Scheme, which follows Miss Hamlyn's own wording, is as follows:

The object of the charity is the furtherance by lectures or otherwise among the Common People of the United
THE HAMLYN TRUST

Kingdom of Great Britain and Northern Ireland of the knowledge of the Comparative Jurisprudence and Ethnology of the Chief European countries including the United Kingdom, and the circumstances of the growth of such jurisprudence to the Intent that the Common People of the United Kingdom may realise the privileges which in law and custom they enjoy in comparison with other European Peoples and realising and appreciating such privileges may recognise the responsibilities and obligations attaching to them.

The Trustees are to include the Vice-Chancellor of the University of Exeter, representatives of the Universities of London, Leeds, Glasgow, Belfast and Wales and persons co-opted. At present there are eight Trustees:

Professor N. Burrows, The University of Glasgow
Professor I. R. Davies, Swansea University
Ms Clare Dyer
Professor C. Stebbings [representing the Vice-Chancellor of the University of Exeter]
Professor R. Halson, University of Leeds
Professor J. Morison, Queen's University, Belfast
The Rt Hon. Lord Justice Sedley
Professor A. Sherr, Institute of Advanced Legal Studies, University of London (Chairman)
Clerk: Ms Sarah Roberts, University of Exeter

From the outset it was decided that the objects of the Trust could be best achieved by means of an annual course of public lectures of outstanding interest and quality by eminent
lecturers, and by their subsequent publication and distribution to a wider audience. The first of the Lectures were delivered by the Rt Hon. Lord Justice Denning (as he then was) in 1949. Since then there has been an unbroken series of annual Lectures published until 2005 by Sweet & Maxwell and from 2006 by Cambridge University Press. A complete list of the Lectures may be found on pages x to xiii. In 2005 the Trustees decided to supplement the Lectures with an annual Hamlyn Seminar, normally held at the Institute of Advanced Legal Studies in the University of London, to mark the publication of the Lectures in printed book form. The Trustees have also, from time to time, provided financial support for a variety of projects which, in various ways, have disseminated knowledge or have promoted to a wider public understanding of the law.

This, the 61st, series of lectures was delivered by Lord Bingham in three different locations. The first took place at Newton House, Dinefwr Castle near Llandeilo, South Wales. The second was held at the Museum Lecture Theatre at Cardiff University Law School and the third was held at the Lecture Theatre at the London offices of Clifford Chance in the Docklands. The Board of Trustees would like to record its appreciation to Lord Bingham himself and also the Swansea and Cardiff University law schools, as well as the partners of Clifford Chance who generously hosted these Lectures. Travelling from the west to the east of the country the Lectures moved from a small castle in West Wales, to the Museum of Wales by a Winter Wonderland in Cardiff and onto the Docklands to and from which great ships carried out international
commerce in years gone by. These were all a fitting tribute to the Welsh associations of the Lecturer and to the subject of the lectures – widening the horizons of the law.

December 2009, London

AVROM SHERR
Chairman of the Trustees
<table>
<thead>
<tr>
<th>Year</th>
<th>Title</th>
<th>Author</th>
</tr>
</thead>
<tbody>
<tr>
<td>1949</td>
<td>Freedom under the Law</td>
<td>Rt Hon. Lord Denning</td>
</tr>
<tr>
<td>1950</td>
<td>The Inheritance of the Common Law</td>
<td>Richard O'Sullivan</td>
</tr>
<tr>
<td>1951</td>
<td>The Rational Strength of English Law</td>
<td>Professor F. H. Lawson</td>
</tr>
<tr>
<td>1952</td>
<td>English Law and the Moral Law</td>
<td>Professor A. L. Goodhart</td>
</tr>
<tr>
<td>1953</td>
<td>The Queen's Peace</td>
<td>Sir Carleton Kemp Allen</td>
</tr>
<tr>
<td>1954</td>
<td>Executive Discretion and Judicial Control</td>
<td>Professor C. J. Hamson</td>
</tr>
<tr>
<td>1955</td>
<td>The Proof of Guilt</td>
<td>Professor Glanville Williams</td>
</tr>
<tr>
<td>1956</td>
<td>Trial by Jury</td>
<td>Rt Hon. Lord Devlin</td>
</tr>
<tr>
<td>1957</td>
<td>Protection from Power</td>
<td>Rt Hon. Lord MacDermott</td>
</tr>
<tr>
<td>1958</td>
<td>The Sanctity of Contracts</td>
<td>Professor Sir David Hughes Parry</td>
</tr>
<tr>
<td>1959</td>
<td>Judge and Jurist in the Reign of Victoria</td>
<td>C. H. S. Fifoot</td>
</tr>
<tr>
<td>1960</td>
<td>The Common Law in India</td>
<td>M. C. Setalvad</td>
</tr>
<tr>
<td>1961</td>
<td>British Justice: The Scottish Contribution</td>
<td>Professor Sir Thomas Smith</td>
</tr>
<tr>
<td>1962</td>
<td>Lawyer and Litigant in England</td>
<td>Rt Hon. Sir Robert Megarry</td>
</tr>
<tr>
<td>1963</td>
<td>Crime and the Criminal Law</td>
<td>Baroness Wootton of Abinger</td>
</tr>
<tr>
<td>1964</td>
<td>Law and Lawyers in the United States</td>
<td>Dean Erwin N. Griswold</td>
</tr>
<tr>
<td>1965</td>
<td>New Law for a New World?</td>
<td>Rt Hon. Lord Tanglely</td>
</tr>
<tr>
<td>1966</td>
<td>Other People's Law</td>
<td>Rt Hon. Lord Kilbrandon</td>
</tr>
</tbody>
</table>
The Hamlyn Lectures

1968  Justice in the Welfare State by Professor H. Street
1969  The British Tradition in Canadian Law by the Hon. Bora Laskin
1970  The English Judge by Henry Cecil
1971  Punishment, Prison and the Public by Professor Sir Rupert Cross
1972  Labour and the Law by Professor Sir Otto Kahn-Freund
1973  Maladministration and its Remedies by Sir Kenneth Wheare
1974  English Law – the New Dimension by the Rt Hon. Lord Scarman
1975  The Land and the Development; or, The Turmoil and the Torment by Sir Desmond Heap
1976  The National Insurance Commissioners by Sir Robert Micklethwait
1977  The European Communities and the Rule of Law by Lord Mackenzie Stuart
1978  Liberty, Law and Justice by Professor Sir Norman Anderson
1979  Social History and Law Reform by Professor Lord McGregor of Durris
1980  Constitutional Fundamentals by Professor Sir William Wade
1982  The Quest for Security: Employees, Tenants, Wives by Professor Tony Honoré
1983  Hamlyn Revisited: The British Legal System Today by Lord Hailsham of St Marylebone
1984  The Development of Consumer Law and Policy – Bold Spirits and Timorous Souls by Sir Gordon Borrie
1985  Law and Order by Professor Ralf Dahrendorf
THE HAMLYN LECTURES

1986 The Fabric of English Civil Justice by Sir Jack Jacob
1987 Pragmatism and Theory in English Law by Professor P. S. Atiyah
1988 Justification and Excuse in the Criminal Law by Professor J. C. Smith
1989 Protection of the Public – A New Challenge by the Rt Hon. Lord Justice Woolf
1990 The United Kingdom and Human Rights by Dr Claire Palley
1991 Introducing a European Legal Order by Gordon Slynn
1992 Speech and Respect by Professor Richard Abel
1993 The Administration of Justice by Lord Mackay of Clashfern
1994 Blackstone's Tower: The English Law School by Professor William Twining
1995 From the Test Tube to the Coffin: Choice and Regulation in Private Life by the Hon. Mrs Justice Hale
1996 Turning Points of the Common law by the Rt Hon. the Lord Cooke of Thorndon
1997 Commercial Law in the Next Millennium by Professor Roy Goode
1998 Freedom, Law and Justice by the Rt Hon. Lord Justice Sedley
1999 The State of Justice by Professor Michael Zander QC
2000 Does the United Kingdom still have a Constitution? by Professor Anthony King
2001 Human Rights, Serious Crime and Criminal Procedure by Professor Andrew Ashworth QC
2002 Legal Conundrums in our Brave New World by Baroness Kennedy of the Shaws
2003 Judicial Activism by the Hon. Justice Michael Kirby AC CMG
2004 Rights at Work: Global, European and British Perspectives by Sir Bob Hepple QC, FBA
THE HAMLYN LECTURES

2005  Can Human Rights Survive? by Professor Conor Gearty

2006  The Sovereignty of Law: The European Way by Sir Francis Jacobs KCMG, QC

2007  The Prisoners’ Dilemma by Professor Nicola Lacey

2008  Judging Civil Justice by Dame Hazel Genn

xiii