

**Courts and the Making of Public Policy**

# If the Public Would Be Outraged by their Rulings, Should Judges Care?

REPORT AND ANALYSIS OF A WORKSHOP FOLLOWING PROFESSOR CASS SUNSTEIN'S FLJS ANNUAL LECTURE, RHODES HOUSE, OXFORD 24-25 MAY 2007

**Daniel Butt**

The Foundation for Law, Justice and Society  
in collaboration with  
The Centre for Socio-Legal Studies,  
University of Oxford

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## If the Public Would Be Outraged by their Rulings, Should Judges Care?

### *Introduction*

The 2007 FLJS annual lecture, held jointly with the Faculty of Law, University of Oxford, and the Centre for Socio-Legal Studies, was given by Professor Cass R. Sunstein at Rhodes House in Oxford on 24 May 2007. A half-day workshop was held following the lecture on 25 May 2007. This report summarizes Professor Cass Sunstein's lecture and the two formal responses made during the workshop. It then critically assesses the subsequent discussion.

### *An overview of judicial ruling and public outrage*

It is clear that judicial rulings can, and sometimes do, provoke public outrage. A significant body of literature in political science seeks to demonstrate the extent to which courts sometimes work to reduce the likelihood and intensity of such outrage. The normative question of whether judges should attend to outrage has received only episodic attention. Conventional views of this question maintain that it is wrong for judges to be affected by the likely reception of their rulings, since a key function of an independent judiciary is to check and sometimes override intensely held populist judgements.

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Questioning such a view, Professor Sunstein suggested two reasons why public outrage might matter. The first reason is consequentialist, claiming that judges should take potentially adverse effects of a ruling into account. The second reason is epistemic, holding that intense public convictions may provide relevant information about the correctness of judicial

conclusions. Assessing these reasons for considering public outrage requires that a distinction be made between invalidations and validations of decisions of elected branches: courts have less reason to consider outrage before validating democratic decisions, since the public can react to a law by changing the composition of the legislature. An understanding of the significance of public outrage in judicial reasoning informs thinking on the relation between democracy and judicial review, and depends crucially on empirical questions concerning the real-world capacities of various institutions.

### *The consequentialist argument for judicial attention to public outrage*

Considering the case of majority outrage at a judicial invalidation of a decision of the elected branches, Professor Sunstein gave the hypothetical example of Justice Bentham, who has the casting vote in a range of cases where a vote in line with Bentham's very well-based convictions as to the proper interpretation of the constitution will certainly give rise to serious public outrage, and thus to various very bad consequences. Bentham concludes that in rare but important cases, he will attend to outrage and its effects. He thus acts on consequentialist grounds, rejecting rule-consequentialist arguments which maintain that acting with regard to public outrage in such cases will lead to worse consequences overall. As such, he is choosing not to utilise a model of Kantian adjudication, whereby the constitution must be interpreted properly, regardless of consequences. Such a model seems to capture the conventional view that the courts should ignore outrage and its possibly harmful effects, rooted in public acceptance of the importance of judicial independence.

However, there are two reasons calling into question an unconditional attachment to Kantian adjudication. First, even Kantians typically maintain that moral

rules can be overridden in the face of sufficiently serious consequences. Second, it is not clear that the core Kantian claim that people should be treated as ends and not as means requires Kantian adjudication. Instead, Professor Sunstein suggested that Kantian adjudication is best seen as a kind of moral heuristic, justified on rule-consequentialist or systemic grounds. So, the intuitive judgement, that certain or all consequences should not be considered by certain officials, must itself be justified on consequentialist grounds.

A range of options are open to the judge inclined to consider public outrage. One alternative may be to exercise what Alexander Bickel called 'passive virtues', judicial techniques for 'withholding ultimate constitutional judgement', and avoiding addressing the merits of the case in question. If this approach is not possible, such a judge may alternatively be able to address the merits in a way that reduces the magnitude and effects of public outrage, by, for example, ruling in a narrow or shallow fashion, which seeks to resolve the question at hand without reference to a wider rule. Such a strategy need not require a mis-statement of the grounds of the judge's conclusion. But it might make explicit reference to the judge's view of the modest role of the judiciary in a democratic society.

There are a number of ways in which public outrage might produce bad effects. It might render a decision futile, if, for example, the decision is simply ignored, calling the court's authority into question. It might make a decision perverse, in producing consequences opposite to those intended by the court. Or, it might just produce overall harm, if, for example, it threatens national security. In any case of evaluating consequences, a judge will need to know both whether certain outcomes count as good or bad, and how to weigh potential consequences against each other. A consequentialist judge will need an account of value in order to make such assessments. It may well be that these assessments will be so difficult and contentious, that consequentialist judges should adopt a general presumption or firm rule against

considering the effects of outrage. But equally, it follows that in certain cases, likely consequences will be so bad as to require an alternative approach. This is so, even given the fact that judges are fallible in their assessment of the character and effects of public outrage: there will nonetheless be cases where the consequences of a given course of action are entirely predictable.

*There are a number of ways in which public outrage might produce bad effects. It might render a decision futile ... or it might just produce overall harm, if, for example, it threatens national security.*

What of the widely shared conviction that judges should not pay attention to such consequences? The conclusion is that this form of role morality is best understood as the product of an intuitive form of rule-consequentialism. Role morality is the idea that people who occupy particular social roles are subject to particular moral principles, and so are sometimes called upon to act in ways that seem to run counter to standard morality. The claim that those who hold certain positions should not worry about bad consequences rests upon the claim that bad overall consequences will, in fact, follow if people in those positions actively try to avoid bad consequences. Thus, the way to obtain good consequences is, in fact, for role-holders to ignore consequences and follow rules. The principle of Kantian adjudication emerges as a kind of moral heuristic, justified on rule-consequentialist grounds: a short-cut or rule of thumb, which, generally, though not always, leads to the right moral judgement.

Professor Sunstein further suggested that the moral obligations of those who find themselves in a range of other social roles can be analyzed in this fashion. He noted that one virtue of assessing institutional morality in such a way is that it permits an

exploration of whether a particular taboo on taking consequences into account can in fact be justified in consequentialist terms.

Two conclusions are possible for the consequentialist judge. One is to support Kantian adjudication, on the grounds that it leads to the best consequences, due to the unreliable ability of the courts to predict the consequences of their decisions, their possibility of inducing strategic behaviour, whereby elements of the public are given incentives to react with outrage, and the danger of provoking undue timidity in judicial reasons. But, Professor Sunstein reasons, a second conclusion would be more reasonable still: in unusual, but important cases, judges are likely to have sufficient information to know whether outrage will exist and have significant effects. In such cases, consequentialist considerations do seem to justify a degree of judicial hesitation.

### ***The epistemic argument for judicial attention to public outrage***

In the second part of his lecture, Professor Sunstein addressed epistemic reasons for paying attention to public outrage. He discussed a second hypothetical judge, Justice Condorcet, who considers the proposition that intense public opposition provides a clue that his interpretation of the constitution is incorrect. Justice Condorcet therefore considers hesitating, on grounds of humility in relation to his own ability, in cases where he finds his interpretation to be very much a minority one.

*Groups may be subject to the phenomenon of 'group polarization', whereby discussion and socialization amongst those in broad agreement push the group as a whole towards an extreme position.*

The basic argument for such a position makes reference to the Condorcet Jury Theorem (CJT). This holds that as the size of a group asked to make

a decision expands, the likelihood that a majority of the group will be right approaches 100 per cent, if, and only if, each group member is at least more than 50 per cent likely to be right. The CJT suggests that judges might have good reasons to pay attention to the wisdom of crowds, both in situations where a judicial decision relies on a disputed empirical fact, and, potentially, in cases of contentious moral judgements.

Much here depends on the prevailing theory of constitutional interpretation. Originalists will typically not have good reasons to pay attention to public outrage, insofar as the public is most unlikely to be motivated by its independent interpretation of the constitution. But the situation might be different for those who believe that some judgement of political morality is important in constitutional interpretation, if, for example, they think that judges should bring forward the best justification, in principle, for the fabric of existing law. For such judges, the CJT may be helpful in cases where there is something close to a consensus on a point bearing on or overlapping with judgements that give rise to constitutional interpretations.

That said, sometimes widely held views are uninformative about what is true. If most people are likely to blunder in answering a question, there is no particular reason to trust a majority's answer. First, if some systematic bias means that the public are less than 50 per cent likely to be right, the likelihood that the majority will be wrong approaches 100 per cent as the size of the group expands. Secondly, people's judgements may be a product of a cascade, meaning they will lack the independence of judgement that the CJT requires, if their judgement comes about as a consequence of the judgement of others. Such cascades can be observed in terms of factual beliefs, of moral outrage, and, even, of constitutional judgements themselves, among judges as well as amongst the public. Thirdly, groups may be subject to the phenomenon of 'group polarization', whereby discussion and socialization amongst those in broad agreement push the group as a whole towards an extreme position, thus increasing the likelihood of the group reacting with outrage.

The possibility of such phenomena occurring at the level of constitutional judgement may give good reasons for judges not to take account of public outrage on grounds of the CJT. Although judges may nonetheless accept, without invoking the CJT, that in some cases, they may themselves be at epistemic disadvantage when compared to the public as a whole. So, they may hesitate, on epistemic grounds, before rejecting the salience of majority outrage. The problem is that judges lack good tools for investigating the process by which public outrage is formed. So they will typically not know whether they should trust the wisdom of the crowd or not. The consequence, according to Professor Sunstein, is that the epistemic argument for considering public outrage emerges as intelligible but as far more fragile than the consequentialist argument.

Professor Sunstein concluded that if judges are consequentialists, and have perfect confidence in their forecasts of consequences, they should be willing to consider the likely effects of public outrage as part of their assessment of the consequences of one or another course of action. On epistemic grounds, judges might conclude that a widely and deeply held set of public convictions deserves respectful attention, at least if judgements of fact or political morality are pertinent to the constitutional question. The epistemic justification does not apply if a systematic bias is likely to affect public judgements; if group polarization is at work; or if most people are participating in some kind of informational, moral, or legal cascade. He claimed that on inspection, the epistemic argument turns out to be quite fragile; however, in unusual cases, and particularly in connection with potential invalidations of legislation, consequentialist arguments have considerable force, arguing at least in favour of exercising the passive virtues in ruling in minimalist fashion, by reference to narrow and shallow principles where possible.

### **Response: Daniel Butt**

In his response, Daniel Butt focused on Professor Sunstein's distinction between consequentialist and Kantian interpretation. Professor Sunstein had

suggested that the Kantian model did not make much sense: it was not clear why it was necessary that people should be treated as ends rather than as means, in order to respect the core Kantian injunction. As such, he argued that role morality, the idea that people who occupy particular social positions are subject to particular moral principles, is generally best understood in terms of rule-consequentialism, with the principle of Kantian adjudication emerging as a kind of moral heuristic. Professor Sunstein had suggested that this was plausibly true of the role morality of a number of other social roles, but that it was not universally the case. He noted, for example, that doctors are different: there is a legitimate Kantian objection to a medical decision to hasten a patient's death on consequentialist grounds.

*There are rule-consequentialist reasons as to why bad consequences would emerge from jurors, by their decisions, trying to bring about good consequences ... To do so would also be unjust to the defendant.*

Such a characterization was not seen as applicable to judges. Their role morality was in fact similar to that of lawyers, who have good rule-consequentialist reasons to provide the best possible defence for their clients, rather than assessing, in particular cases, whether the consequences might be better were their clients convicted. The legal system as a whole is better when lawyers stick to their apportioned roles.

Butt sought to challenge this characterization of the role of judges. To do so, he gave the example of jurors in a criminal trial. According to role morality, such jurors are supposed to ignore the consequences of their decisions, and focus on the facts of the case. It seems clear that there are rule-consequentialist reasons as to why bad consequences would emerge from jurors, by their decisions, trying to bring about good consequences,

such as an increase in GDP. But this is not the only reason why it would be wrong for jurors to act in such a way. To do so would also be unjust to the defendant. Kantians would have good reasons to maintain that in such a case, defendants were being treated as means to other ends, and not with the respect they are due as moral persons.

Judges in criminal trials may be similarly characterized. There seem, for example, to be good Kantian reasons for not heeding to public outrage in sentencing, if so doing would result in the imposition of an unjust punishment on a particular individual. The question then arises of whether constitutional judges should be seen as similar to criminal judges. Butt suggested that the answer to this question depends on the nature of the legal system in question, and, in particular, on whether judges are considering cases as a result of parties with standing initiating legal proceedings. He suggested that constitutional judges in such systems might be thought to have Kantian duties, based on respect for persons, to the parties in the legal process. This is particularly the case if a judge were considering taking consequences into account for reasons of the net overall harm, as opposed to futility, or perversity. Disregarding the rights of some individuals for the sake of the overall good is precisely the move that Kantians have reasons to reject.

### **Response: Professor Timothy Endicott**

In his response, Timothy Endicott sought to underline the importance of judicial humility, while opposing the application of the CJT as a potential solution. While Professor Sunstein argued that the CJT-based argument for heeding public outrage was 'fragile', Endicott went as far as to say that the CJT was 'irrelevant'.

Endicott argued that judicial humility was indeed a very important virtue, which judges should maintain. Judges are appointed according to their capacity for good judgements, although they come from a profession which values the skills of the brilliant advocate. As such, they should be disposed to being aware of their capacity for making what may be

serious mis-judgements. The problem is of knowing when they are likely to be making such a mis-judgement. The CJT presents itself as a potential solution, but should be rejected. The problem is of whether individuals in a jury are more likely than not to be correct, before the CJT comes into play. Judges can have no general reason to think that members of the public are more than likely to be correct on the sorts of issue at stake in a judicial judgement.

A particular problem is raised by disagreement within a jury. In a context of widespread disagreement, there may be reason to conclude that it is not the case that individual members are more than 50 per cent likely to be correct. So, judicial humility can only give reasons to defer to groups when there is a consensus within the group. The basic point is that the humility of judges ought to extend to an awareness of the danger of making mistakes in assessing that members of the public are more than 50 per cent likely to reach the correct conclusion. Thus, Endicott's conclusion that judicial humility, properly understood, should in fact lead judges to refrain from assessing public outrage in terms of the CJT.

### **Criticism and discussion**

Public outrage at judicial decision-making is not the norm. Professor Sunstein indicated that his conception of outrage refers to an intensely held public reaction that goes beyond the idea that people are merely 'upset' by the ruling in question. As Lord Justice Dyson observed, the number of cases where judges can be confident that their rulings will lead to public outrage, as properly understood, is very small, even at the highest level.

### **The nature of public outrage**

One question concerns the significance of this particular understanding of outrage. It is important to be clear as to why there is a difference between judicial actors taking account of public outrage, and not of public disagreement. The answer, in terms of the consequentialist argument, seems to be that outrage may lead to particular bad consequences, which mere disagreement will not do. However, this



is seemingly an empirically contingent question. Presumably, there can be judicial decisions which give rise to adverse consequences, even in the absence of outrage.

It appears that Justice Bentham would have to consider taking account of such consequences in his decision. The issue is even more significant for Justice Condorcet: the CJT does not require that a majority of the public be outraged by a decision, merely that they disagree with it, for the Justice to have good reason to change his mind, given the assumption, acknowledged by all to be unlikely in practice, other than in unusual contexts, that he is confident that each member of the public has a more than 50 per cent chance of reaching the correct conclusion.

One response points out that in empirical studies of jury decision-making, confidence in judgements correlates with correctness in judgements. However, more research is needed to show this to also be the case amongst the general public, related to the sorts of issues at stake in, for example, constitutional interpretation. Given this particular understanding of outrage, it is important to appreciate that Professor Sunstein's argument is only concerned with a small number of contemporary issues: those few, but important, cases where, he claims, public outcry is practically certain, should judges decide in a given way based on their best reading of the constitution. His examples include invalidation of bans on same-sex marriage; a large-scale expansion of the takings clause; a constitutional attack on references to God in currency and in the Pledge of Allegiance; and sharp limitations on congressional authority under the Commerce Clause as, for example, through the invalidation of popular environmental legislation. His claim is that the case for hesitation based on consequentialist reasoning is much stronger here than hesitation based on epistemic reasoning. Not least, because it is not necessarily clear that the outrage which would be produced by such judicial interventions could truly be said to be consensual, as opposed to within a majority of the public. The epistemic argument fails if the public is deeply divided.

### ***Consequentialist vs Kantian adjudication***

A good part of the discussion following the lecture concerned the distinction between consequentialist and Kantian approaches to adjudication.

Some participants sought to put pressure on this distinction, pointing out that any moral theory must take some account of consequences. It was further observed that the epistemic argument for attention to public outrage was itself consequentialist, in Professor Sunstein's terms.

Consideration of the distinction between consequentialism and Kant found expression in a discussion of how different areas of law should deal with public outrage. It was observed that tort law was potentially significantly different from criminal law in this regard, as a result of the social opprobrium and differential sanctions attached to a judgement against a defendant in criminal law. One suggestion would be to maintain that criminal law is a particular sphere where consequences should not be taken into account. Judges in criminal trials, with responsibility, for example, for sentencing, should be seen as analogous to doctors. They are debarred from taking account of the social consequences of their judgements on account of the Kantian principle of treating persons as ends and not means.

Such an approach, however, runs into difficulties when one considers cases of judicial leniency and of deterrence in sentencing. If it is maintained that it is wrong for a judge to consider the effects of public outrage when sentencing, for example, a sexual offender, and, if heeding this public outrage would cause the judge to increase the offender's sentence, would it equally follow that the judge should ignore the consequences of imprisoning a single parent with dependent children, for example? What of a judge who believes that a lenient sentence is likely significantly to improve the prospects for a prisoner's reformation? What of a judge who seeks to create a deterrent, by handing down a heavy penalty against a given offender in order to send a message to those tempted to commit the offence in question? Can we differentiate between different kinds of consequence, such as, on the one hand, macro-considerations, such

as the size of the prison population, and, on the other, the consequences of judgements on particular defendants, whether harsh or lenient?

Different responses to such examples were given in the discussion. For some, they constitute a case against what is taken as the Kantian model of adjudication, characterized by Professor Sunstein as maintaining that justice must be done, 'though the heavens may fall'. For others, however, the Kantian model can take account of such consequences, whilst still maintaining the Kantian injunction against merely treating people as means to other ends. John Tasioulas maintained that the question was not really of whether consequences should count in judicial judgements, but of how they should count. Kantians maintain that persons should be treated with the respect they are due as moral agents. In some cases, this is best understood in terms of respecting their rights. To impose a grossly disproportionate punishment on one individual in order to deter others may well, on such an account, constitute an injustice. Although a judge may be justified, within a given range, in giving greater or lesser punishments so as to deter others from committing crimes, the judge does not have a *carte blanche* to impose such punishments as will lead to the greatest overall net utility.

*The Kantian model of adjudication, characterized by Professor Sunstein as maintaining that justice must be done, 'though the heavens may fall'.*

For others, the idea of a right against disproportionate punishment amounts to an idea of a right created by positive legislation or by the rule of law within a given legal system, and is not deducible from principles of interpersonal morality. It therefore must be a legal rather than a moral right. It may well be that some of the disagreement amongst the participants arose as an inevitable consequence of different methodological approaches to rights claims.

But it does nonetheless reflect a key potential point of divergence between those described by Professor Sunstein as Kantians, and those described as rule-consequentialists. For it is precisely in cases where upholding the rights of individuals will lead to majority outrage, with subsequent adverse consequences, that some will want judges to hold the line and uphold rights, while others will want them to override the interests of the few for the sake of the many.

The contrast between the two views can certainly be overstated: Professor Sunstein noted both that Kantians can accept that the greater good should prevail in particularly dire circumstances, and that those described as 'consequentialists' need not be viewed merely as crude utilitarians. Some of the consequences may involve the fair treatment of defendants, for example. Furthermore, the significance of such rights claims in cases involving constitutional interpretation, which are the primary focus of Professor Sunstein's argument, is open to question. In discussion, Professor Sunstein suggested that a preoccupation with particular plaintiffs by bodies such as the US Supreme Court would be 'too fussy' in cases where ruling in their favour would lead to manifestly adverse consequences. Certainly, one can accept that in such cases the nature of rights claims are likely to be different than in criminal law. But nonetheless, the animated nature of discussion on this issue does suggest genuine disagreement as to how judges, in different branches of law, should weigh up the interests of those who appear before them in relation to the interests of the public as a whole. This question would certainly reward further discussion and study.

### ***Role morality and positional duties***

Much interest was expressed in the account of role morality outlined in the lecture. Various attempts were made to suggest alternative foundations to rule-consequentialism, for the idea that role-holders face duties to act in particular ways, such as disregarding the consequences of their actions. One salient factor in assessing the duties of role-holders may be the promissory obligations that role-

holders have voluntarily taken upon themselves in assuming their roles in the first place. For example, members of the British judiciary take a judicial oath 'to do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will'. Some may see this as imposing a definite obligation upon them to disregard public outcry. Others may see the duty to keep one's oaths as being justified on rule-consequentialist grounds. Thus it can potentially be disregarded in the face of particular kinds of consequences. The question therefore is not whether it is ever justifiable to break a promise in order to prevent terrible consequences, a largely uncontroversial point, but, more interestingly, whether a judge who has taken such an oath should act differently in any way, from a judge who has not taken such an oath.

A related approach focuses on the character and virtues holders of particular roles are desired to possess. If a judge is chosen specifically on grounds of their independence of judgement within a system of separated powers, is it wrong to act in a fashion seemingly going against the reasons for appointment? If so, is this because the judge disappoints the expectations of those who chose the judge? Because the judge has implicitly contracted to act in a different fashion, or because of acting from motives which, in general, are bad ones for judges to have? Or for some other reason? There is a body of literature on related topics within moral philosophy, such as positional duties, which could usefully be brought to bear upon this debate.

### ***The principle of judicial humility***

One common theme in the discussion was a general support for a principle of judicial humility. It was pointed out that it is possible to care about public outrage without altering the substance of one's decision in response to actual or anticipated public outrage. Instead, judicial humility may find its place in the language of judgements, in the character of public communications, and even, in the general deportment and bearing of judicial actors, who, while needing to maintain authority and dignity in the courtroom, are nonetheless employed as public

servants. Endicott's response underlined the controversial character of judicial humility, in maintaining that rather than requiring judges to employ the CJT in response to public outrage, humility actually debars judges from acting in this manner.

More generally, it can certainly be argued that the humble judge is restricted to a narrow consideration of the case, without being flattered as a seer who can predict either public reaction to her rulings, or the likely consequences of such rulings. It remains an open question as to how compatible rejecting taking consequences into account is with a theory of constitutional interpretation, which requires a judge to give the best moral reading of a constitution, finding the best justification for the fabric of existing law. It may be that an appeal to minimalism in one sphere undermines the other.

It is interesting in this context to note the claim that there may be an argument for judges to pay attention to the outrage of certain groups in cases where judges do have particularly good reason to believe these groups are likely to be reliable in the correctness of their judgements. Of relevance is the heterogeneity of social composition, typically displayed by judicial branches in a range of different countries. In this situation, outrage may be an informational input into the deliberations of a group lacking the practical expertise to assess the true effects of their rulings in practice. Humility, in this case, seemingly consists of an understanding of the limitations of one's knowledge. This sort of argument can be made without any reference to the CJT itself, although a host of problems associated with the CJT approach to the epistemic argument, such as the fact that judges cannot know for certain what the reaction to their rulings will be, the distorting effects of group polarization, and the fact that outrage can be socially engineered, remain nonetheless.

## Conclusion

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Professor Sunstein's lecture was extraordinarily rich, and stimulated a great deal of discussion and debate. It seems fair to say that his criticisms of the Condorcet Jury Theorem-based model of the epistemic argument were largely accepted. In fact, some participants sought to go further than Professor Sunstein in underlining its problematic aspects. His limited defence of judges taking consequences into account was controversial.

It led to lively discussion ranging from philosophical objections to his distinction between consequentialist and deontological moral reasoning, to firsthand accounts of the mental responses of judges in cases where their decisions have indeed led to some degree of public outrage.

The Foundation would like to thank all participants for their contribution to a most stimulating event.

## Participants

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**John W. Adams**, Chairman, The Foundation for Law, Justice and Society

**Nick Barber**, Trinity College, Oxford

**Professor Geraldine Van Bueren**, Queen Mary, University of London

**Dr Daniel Butt**, Oriel College, Oxford

**Professor Gianni Comperti**, University of Siena

**Paul Dodyk**, Cravath, Swaine & Moore LLP

**Lord Justice Dyson**, Court of Appeal

**Dr Katherine Eddy**, St Anne's College, Oxford

**Professor Timothy Endicott**, Balliol College, Oxford

**Dr David Erdos**, University of York

**Professor Denis Galligan**, University of Oxford and member of the board of directors of the Foundation for Law, Justice and Society

**Dr Ruth Herz**, Hebrew University, Israel

**Dr Dan McDermott**, Keble College, Oxford

**Dr Phil Parvin**, University of Cambridge

**Dr Mark Philp**, Oriel College, Oxford

**Professor Cass Sunstein**, University of Chicago

**Dr Adam Swift**, Balliol College, Oxford

**Dr John Tasioulas**, Corpus Christi College, Oxford

**Dr Alison Young**, Hertford College, Oxford





## The Foundation

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## Courts and the Making of Public Policy

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**Daniel Butt** is the programme director of the programme on *Courts and the Making of Public Policy*, Foundation for Law, Justice and Society, University of Oxford. He is fellow and tutor in Politics at Oriel College, Oxford, and a member of the Centre for the Study of Social Justice, affiliated with the Department of Politics and International Relations at Oxford University.

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our website at [www.fljs.org](http://www.fljs.org)  
or contact us at:

The Foundation for **Law, Justice and Society**

Wolfson College  
Linton Road  
Oxford OX2 6UD  
T · +44 (0)1865 284433  
F · +44 (0)1865 284434  
E · [info@fljs.org](mailto:info@fljs.org)  
W · [www.fljs.org](http://www.fljs.org)