

Editorial

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Sir William Dale was at the forefront of the legislative studies debate at a time when quality in legislation was outside the agenda of legal minds both in legal practice and academe. Educated at Hymers College, Hull, he was articled to a Hull Solicitors firm where he studied externally for his LLB from London University. He then read from the Bar at Gray's Inn. A chance reading of an advertisement took him to Palestine to work for the firm of Richardson, Turtledove, solicitors in Jerusalem in 1934. He returned to England in 1935 and took up a job as legal assistant in the Colonial Office. Thereafter his formidable abilities took him rapidly through the ranks of the civil service. During the war he served at the Ministry of Supply and afterwards returned to the Colonial Office where he soon found himself on the way to Sarawak to examine Rajah Brooke's offer to cede the country to Britain. From 1951 to 1953 he was legal adviser to Libya, charged with producing a single legal system from many differing codes. The Libyan government paid tribute to his wisdom and single mindedness and indeed wanted him to stay as a judge of the Supreme Court. Instead he returned to London to be legal advisor to the Ministry of Education. Between 1961 and 1966 William Dale was legal advisor to the Commonwealth relations Office and was seconded to act as legal advisor to the Central Africa office to deal with the break up of the Central African Federation. In 1965 he was knighted. Retirement brought him great happiness and unceasing activity. In 1966 on his 60th birthday he married Gloria Finn, with whom he shared many interests in the arts, food and other pleasures of civilisation. Back in London he founded the *Commonwealth Law Bulletin* and became Director of Studies of the Government Legal Advisors Course, an influence over several hundreds of commonwealth lawyers for a generation. He continued to occupy that post and to teach until almost the end of his life, imposing clarity and simplicity in drafting. He also found time to write two books, *Legislative Drafting: A New Approach (1977)* and *The Modern Commonwealth (1983)*. Yet another interest was the regular updates of *the Law of the Parish Church*, first published in 1932. The seventh but first "unisex edition", as he called it appeared in 1998. Like so much else of his work, these volumes cover an extraordinary span of history in one lifetime.

Sadly, Sir William passed away in 2000. His work has not faded and his passion for quality in legislation has born fruit. The Centre that bears his name entices drafters and academics from the Commonwealth and beyond for training, research and intellectual exchanges. The conviction that legislative studies is not only a practical skill but also an academic discipline that can be taught and developed

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in a theoretical and practical context is reflected in the annual Sir William Dale issues of the European Journal of Law Reform. This, the second Sir William Dale issue, hosts contributions from Europe, Africa and the Caribbean, thus proving that Sir William's work has found its way to all corners of the world.

The leading article for this issue is a contribution from Prof. Kader Asmal, MP in South Africa and one of the main drafters of the South African Constitution; his insight to the drafting of a constitution for the reconciliation of rights in a multi-cultural society is a fascinating examination of the constitutional history of South Africa and its possible use as a case study for drafting in post conflict environments. In fact, there are lessons to be learnt from the South African experience that relate to the protection of minority cultures in environments lucky enough to be disassociated from conflicts: discrimination against the socially and financially vulnerable is a plague to most legal systems in the world today and drafters must be acutely aware of this parameter when legislating.

Vareen Vanterpool, drafter at Attorney General's Chambers in the British Virgin Islands, analyses quality in legislation by examining the task of the drafter at each stage in the drafting process and analysing how the elements of quality legislation may be factored into each stage of the drafter's task. The quest for quality legislation has wider implications which encompass the right of every person to meaningful participation in their own governance. In this regard there is an even greater need for insistence on improvements to be made, particularly to those statutes which affect daily life. To this end, Vanterpool uses the draft *Status of Children Act* as a case study. The author concludes that, while the drafter may contribute to the overall quality of legislation, the contribution of other participants of the legislative process is crucial. Ultimately, the Parliament bears the responsibility and the cost of lack of quality in legislation.

Rehema Mkuye, drafter at the Ministry of Justice in Tanzania, explores the adequacy of controls and safeguards in delegated legislation using her own jurisdiction of origin as a case study juxtaposed with the UK, USA, New Zealand and Botswana. Delegated legislation, or executive legislation, is an increasing phenomenon in legislative practice whose dangers of possible misuse can not be underestimated. Common controls and safeguards are antecedent publicity, consultation, publication, lying of delegated legislation in parliament and parliamentary scrutiny. These can be considered minimum standards of quality in the adoption of delegated legislation towards which Tanzania, and indeed many other countries, needs to work harder for. Suggested recommendations for improvement include a revision of laws or standing orders as a means of providing sufficient time for antecedent publicity and consultation; incorporation of the affirmative procedure for delegated legislation in parliament; and a special committee on the scrutiny of delegated legislation.

Gayle Edwards, drafter at the Attorney General's Chambers in St. Kitts and Nevis, discusses legal transfers and economics. Edwards tests the legal transplant theories of Watson and Legrand against her own conviction that, although there is no guarantee of survival of the transplanted law, its reception and assimilation is greatly enhanced if the environment of the host is one that would receive such a law with little difficulty and if the law transplanted is the appropriate solution

for what ails the society. The appropriate solution can only be determined after extensive consultations and research into the society that is to receive the law. Such research would not only look for the similarities between the potential host and other systems where the law was previously successful but look especially for the differences, which could be the key to the success or failure of the transplant. This preliminary process of in-depth study of the host is the responsibility of a comparativist law maker as stated by Legrand. To test the theories of Watson and Legrand and to prove the affirmative answer of the research question this thesis used the experiences of the World Bank in the 1980s in Jamaica, Kenya and the Philippines. Legal rules, institutions and systems do pass from one country or organisation to another and such transplants can provide a great impetus for legal change and development. However, legal transplants have a minimal chance of success if the social and political environment of the recipient is not considered. Such lack of pre-legislative examination can derail the good intentions of donors and legislatures and result in the application of laws, which are not suited and are out of sync with the recipient's legal systems leading to unexpected repercussions. Pre-legislative examination of the society and post-legislative scrutiny increase the chance of a legal transplant being successful as the law would be drafted with the environment of the host in mind and amendments would be made for better coherence with the legal system.

Diana Bozhilova, of King's College in London, explores the successes and failures of EU-Europeanization in the Eastern enlargement using judicial reform in Bulgaria as a case study. The process of democratization in Central and Eastern Europe led to Europeanization of the rule of law and judicial reform as a result of integration in Bulgaria. Fragmented success in Justice and Home Affairs reform in Bulgaria is described with reference to the transparency and accountability of judges and the trial phase against the stalled pre-trial reform. These patterns of judicial reform in Bulgaria verify that the outcomes of Europeanization depend on the policy brief and the affected institutional actors at national and EU level. Areas governed by the *acquis* are likely to see change introduced much more rapidly than those areas governed essentially by conditionality, whether political or functional. In the area of Justice, in particular, incremental change occurs as a result of the sparing of the *acquis* and the subsequent use of external political pressure in place of deficient regulation.

Lydia Clapinska, Law Commission England and Wales, conducts an expert analysis on the issue of quality of legislation viewed under the prism of EU law. Clapinska brings to light impressive primary resources and identifies the definition, elements and results of quality in legislation both at the EU and the national levels.

The 2007 Sir William Dale issue is an expert contribution to the legislative studies debate in Europe, Africa and the Caribbean. Contributions are offered by distinguished authors undertaking impressive in-depth research. As an editor to this issue I did precious little than to admire the contributors for the depth of research and analysis that bring to the journal and to the discipline.