

LICENCE EN DROIT – 2^{ème} NIVEAU

PARCOURS DROIT FRANÇAIS ET DROIT ANGLO-SAXON

GROUPE DE COURS N° IV

ANGLO-SAXON JURISPRUDENCE

(Cours de Mme O'CONNELL)

MERCREDI 03 MAI 2017

11 H 30 – 13 H 30

SUJET :

Choose **ONE** of the following excerpts and discuss it, in the light of this semester's course on legal theory in Common Law jurisdictions.

“So long as human beings can gain sufficient co-operation from some to enable them to discriminate others, they will use the forms of law as one of their instruments. Wicked men will enact wicked rules which others will enforce. What surely is most needed in order to make men clear-sighted in confronting the official abuse of power, is that they should preserve the sense that the certification of something as legally valid is not conclusive of the question of obedience, and that, however great the aura of majesty or authority which the legal system may have, its demands must in the end be submitted to a moral scrutiny. This sense, that there is something outside the official system, by reference to which in the last resort the individual must solve his problems of obedience, is surely more likely to be kept alive among those who are accustomed to think that rules of law may be iniquitous, than among those who think that nothing iniquitous can anywhere have the status of law”.

H.L.A. Hart, *The Concept of Law* (1994) Oxford: Oxford University Press, p. 210

“The stability of a conception of justice does not imply that the institutions and practices of the well-ordered society do not alter. In fact, such a society will presumably contain great diversity and adopt different arrangements from time to time. In this context stability means that however institutions are changed, they still remain just or approximately so, as adjustments are made in view of new social circumstances. The inevitable deviations from justice are effectively corrected or held within tolerable bounds by forces within the system. Among these forces I assume that the sense of justice shared by the members of the community has a fundamental role. To some degree, then, moral sentiments are necessary to ensure that the basic structure is stable with respect to justice”.

John Rawls, *A Theory of Justice* (1999) Cambridge, Mass.: Harvard University Press, p. 401

“Along with many other senior women judges from around the world, however, I do believe that a more diverse judiciary will be a better judiciary. Diversity of background and experience enriches the law. Women lead different lives from men, largely because we have visibly different bodies from men. This is not to say that all women are the same, any more than that all men are the same. Some women may lead lives which are very close to men’s and (less plausibly) vice versa. But by and large, the interaction between our own internal sense of being a woman and the outside world’s perception of us as women leads to a different set of everyday and lifetime experiences. The same is true for other visible minorities. It is just as important that these different experiences should play their part in shaping and administering the law as the experiences of a certain class of men played for centuries. They will not always make a difference but sometimes they will and should. This is all the more important at present, when equality principles are by no means fully embedded or achieved. People who have experienced their own personal humiliations can bring that experience to the humiliations of others”.

Baroness Hale of Richmond, “A Minority Opinion?”, Maccabean Lecture in Jurisprudence, 17 November 2007

Your essay should ideally begin with a concise introduction highlighting the central issue to discuss as well as a brief overview of your plan. Normal practice is to do a running commentary.

You are also expected to illustrate your opinions with examples taken from the course or your personal readings, provided they are relevant to the case in point (Minimum 300 words).

(AUCUN DOCUMENT N’EST AUTORISE)