



Davenport, 'Teaching Civil Liberties: Finding the Ideal Textbook', [2009] 1 *Web JCLI*
<http://webjcli.ncl.ac.uk/2009/issue1/davenport1.html>

Teaching Civil Liberties: Finding the Ideal Textbook

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First published in Web Journal of Current Legal Issues

Introduction

When the author was an undergraduate student (1986-1989) civil liberties was very much in its infancy as a separate module and only really became popular over the subsequent ten years. Indeed the author taught on the first civil liberties module at University of Wales, Aberystwyth in 1991-1992 and its first incarnation at Northumbria University in 1992-1993. The years since 1993 have seen the publication of various text and casebooks in this area and this review will assess them and their place in the curriculum.

One of the great pleasures of teaching civil liberties is that the area encompasses so many legal issues that the lecturer is almost spoilt for choice when deciding which topics to include in each year's syllabus. Subjects can become topical for a year or two at a time, e.g. the recent changes to the laws on pornography made by the Criminal Justice and Immigration Act 2008, or remain topical for a number of years due to regular changes in statutory law and the issues arising from the resultant jurisprudence, e.g. the changes in anti-terrorism law from the Terrorism Act 2000 onwards. The only real restriction is the need to ensure a lack of overlap where topic areas could come under the remit of other subjects, for example at Northumbria, police powers and public order law, two areas ripe for civil liberties discussion, are taught within the core subject Public Law and issues such as assisted suicide come under the banner of Medical Law. Those restrictions aside, there is still a plethora of interesting areas to address in a civil liberties module. The

enactment of the Human Rights Act 1998 and the jurisprudence it has generated has had a major effect on this area and continues to do so. Indeed the author completed this piece the day after the House of Lords handed down its judgment in *Austin and Saxby v MPC* [2009] UKHL 5, a decision with clear implications for the jurisprudence on Article 5 of the European Convention on Human Rights and just a week after the House of Lords handed down a declaration of incompatibility in *R (Wright and others) Secretary of State for Health and others* [2009] UKHL 3, coincidentally the day before the author's students were due to hand in an assignment discussing the use of such declarations. This topicality has the advantage of drawing students in to something they can see changing rapidly around them but also has the consequence that any book published will date very quickly. As will be seen below, some publishers are now providing companion websites to attempt to address this issue.

One potential drawback of this width of subject area is the difficulty of finding a single textbook which covers all the areas that the lecturer wishes to include. Whilst this is not in itself an insurmountable problem as students can be referred to a myriad of primary and secondary sources to fill in any gaps left by the absence of one particular topic in a textbook, students do tend to feel happier and more comfortable with one 'main' text per module. While many of the books have a common core of material, covering the European Convention on Human Rights, the Human Rights Act 1998, privacy, freedom of expression, police powers and official secrecy, it is almost impossible to find a book which covers everything the lecturer wants in the manner in which they prefer. This is not a criticism of any of the works discussed below, merely a recognition that this is such a wide area that any one book is unlikely to please all of the people all of the time.

Feldman (2002) is a major academic work which covers a wide range of topics in a clear, tightly argued form. The author provides extensive coverage of the topics with a philosophical background in the first part. There is wide-ranging reference to Commonwealth and American law and a clear style with a coherent argument. The book is exhaustively referenced and students are led to a voluminous amount of secondary literature which is excellent for projects and extended essays. The book is so comprehensive that most modules will be able to make use of only a number of the chapters during the course of a one or two semester module. The chapters are clearly structured and lead the reader through the law with case analyses and commentary. The footnotes provide ample extra reading for students. In 2009 the problem with recommending Feldman as a main text is its age. The law has moved on so much in the intervening years that whilst many of the ideas are still current and the discussion of the principles and concepts valuable in their own right, the sheer amount of subsequent case-law leaves many of the chapters looking somewhat out of date in terms of actual detail. This is a shame as the lucid style and coherent discussion have found favour with many of the author's students over the years.

Fenwick (2007) is the second major work in this area in terms of weight and coverage. The author provides clear, relevant discussion of a wide range of topics which can be found on most module syllabi. The most recent edition acknowledged the massive developments in the law since the previous edition (2002) and has the advantage over

Feldman in this respect. It covers the major legislative reforms of the first ten years of the Labour administration and makes copious reference to the relevant domestic and regional jurisprudence. The text is again well referenced and will lead students to other sources of valuable material to complement their studies and provide a wider context for the material they are dealing with. The chapters are clearly structured and contain both traditional text and commentary as well which should stimulate the brighter students. This is a frequently recommended book in universities and has many commendable and useful features. The coverage is excellent and the text is written in an accessible style that should please both those students who wish to add to lecture notes and those who choose not to make notes in lectures but to listen and then make their own notes later.

Davis (2003) is a slightly different book from the first two. Davis does not go into quite so much depth as the previously discussed authors and has somewhat of a more 'black letter' approach to the law than is found in the above two books. The bibliography and references are less extensive and this is less suitable as a basis for a research project. However the book is written in a clear, accessible style and explains the law and concepts involved in a way which will encourage all students to understand the issues involved and should stimulate stronger students to further research in the areas in question. Again, the age of the text is an issue in terms of recommending it as the main text for a module. A lot has happened in the six years since it was published and some of the material is now beginning to look dated. Again, this is no criticism of the author, simply the acknowledgment of the fact that one is dealing with a fluid, rapidly changing subject that continues to grow every week.

Stone (2008) is the first of the textbooks discussed in this note to attempt to combat the issue of becoming dated by providing purchasers with a companion website which contains updates and other items of interest. Given contemporary students' ease and familiarity with the use of electronic material, this is a valuable extra resource. The book itself is presented in the OUP house style of textbook. Each chapter is divided into various subheadings and rather than providing a separate bibliography the references in the chapters are supplemented by suggested additional reading at the end of each chapter. This approach has the merit of providing the suggested reading there and then which some of the students the author has taught over the years have found useful rather than providing a long bibliography. This is very much a matter of student preference but is something that might be borne in mind when recommending a text. The text itself is presented in a lucid and readable style which addresses the law and some of the philosophical ideas covered in most courses. The law is clearly explained in an accessible style and in a logical and coherent manner. Whilst the coverage is very much the common core material covered in most of the books discussed, there is ample material around which to base a course and provoke student interest.

Foster (2008a) is one of the newer additions to this area. This second edition is also accompanied by a companion website which is intended to both update and complement the material provided in the hard copy text. Again, the text itself covers all the major areas with specific chapters on areas such as prisoners' rights which Foster has written on extensively. There are two very distinctive characteristics of this hard copy text. The

first is the frequent 'self-test' style questions which appear throughout the text. These provide a focus for student learning and are complemented by suggested answers on the companion website. This style of breaking up large areas of text with questions is becoming popular with publishers. So far, informal student feedback is mixed, with students either liking the stimulation of having to think about what they have just read at the time it's still fresh in their minds or disliking anything they see as breaking up the flow of what they are reading. The second novel feature of Foster's book is the use of case-studies during each chapter to contextualise the material presented therein. The cases are presented in a concise manner and followed by a series of questions which should assess understanding and promote further reading by the student. Again feedback is only informal at this stage, but this approach does seem to be finding favour even amongst those students who don't seem to like stand-alone questions within the text. Foster's book then presents a slightly different approach and has the dual benefits of a recent publication date and a companion website.

Fenwick and Kerrigan (2008) and Foster (2008b) are aiming at a different market. These are both question and answer style texts which provide a range of sample questions and answers for students to study and use as exam preparation. Both provide comprehensive answers and are written in a clear, lucid and accessible style. Either would be perfectly adequate for lecturers wishing to recommend a book of this type to students. These books do provide clear guidance as to how to answer both problem and essay style questions and could be very helpful to students who have difficulty structuring and presenting their ideas in the correct format.

Prior to the publication of Feldman's first edition in 1993, the major book on civil liberties was Bailey, Harris and Jones, the fifth edition of which was published in 2001. This was a cases and materials book rather than a traditional textbook and provided a collected set of domestic and regional materials for students to draw on. This was wide-ranging and the later editions were useful in both their own right and as a companion to other texts. Given however that the last edition was published in 2001, it had become dated. The new edition (Bailey and Taylor (2009)) is due for publication imminently and promises extensive revision and updating and a companion online resource centre. Providing this book maintains the quality of its predecessors, it will be more competition in the market-place.

Conclusion

A review like this can only hope to provide a flavour of the books covered. The overriding consideration has to be the content of the lecturer's individual module. All the books discussed have individual merits depending on the length of the module and the year of study in which it is presented. Whilst cost is clearly a factor, overlap of the sort referred to in the introduction means that students purchasing any of the texts will probably be able to make use of them in other modules in Public law - this may cushion the financial impact. The present author does not recommend one text for his module but makes extensive use of the various books throughout the module, leaving the student to make up his or her own mind which one they prefer.

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