International Law and Human Rights Unit

Guest Speaker Series

‘Can Legal Guarantees of Socio-economic Rights Ever Go Beyond Minimum Standards?’

Colm O’Cinneide

The question of whether socio-economic rights should be legally enforceable looms large in comparative constitutional scholarship. It has also acquired real world significance, as such rights can now be enforced before courts in multiple different jurisdictions (including within EU law, courtesy of the ‘social principles’ set out in the EU Charter of Fundamental Rights). However, serious doubts remain about whether such rights can be enforced in a manner that avoids either (i) becoming an exercise in pure tokenism, or (ii) results in judicial usurpation of decisions better left open to political debate. I argue that there are only two realistic ways for socio-economic rights enforcement to escape this trap. The first approach is to focus on laying down minimum standards - which has the advantage of being consistent with other modes of legal rights protection, but also is unlikely to deliver more than what Samuel Moyn has described as a ‘jurisprudence of minimum sufficiency’. The other approach is to adopt a much looser interpretative approach, similar to that adopted by the German courts in applying the principle of the Socialstaat as part of their constitutional law regime. This would generate a much weaker socio-economic rights jurisprudence than many of its advocates would like - but it may have the advantage of being ultimately more sustainable.

Prof Colm O’Cinneide is Professor of Human Rights Law, University College London.

Wednesday 10th October 2018
1.00pm
University of Liverpool, Rendall Building, Seminar Room 3

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