

Institutions for Open Societies



Legal Systems for the 21st Century: Markets and Fairness

A multidisciplinary seminar organized by *Institutions for Open Societies* (IOS) and the *Utrecht Centre for Accountability and Liability Law* (Ucall)

Friday, April 20th, 2018 (12.30-17.30)
Utrecht University, Sweelinck-auditorium (Drift 21, Utrecht)

By

*Prof Dr Christopher Hodges (Oxford University) and
Prof Dr Stefaan Voet (KU Leuven)*

This *IOS/Ucall* seminar on ‘Legal Systems for the 21st Century’ aims to unravel some of the (complementary) weaknesses and strengths of several mechanisms in regulating corporate behaviour, especially in light of non-legal (e.g. psychological) factors that might influence such behaviour. Questions to be addressed are, e.g., what elements of which of the regulatory mechanisms in place are actually useful for a 21st century legal system? What is wrong with command-and-control legislative interventions? How to circumvent over-arching regulatory and enforcement policies?

During this seminar the emphasis will be on developments within private enforcement (by citizens) on the one hand and public enforcement (by governmental agencies) on the other. As to *private enforcement*, i.e. litigation by private actors, the focus is on the challenges that various traditional mechanisms have in performing well in their enforcement task, illustrated by evidence that (a) for several reasons certain types of disputes have moved out of expensive and slow court procedures into apparently more effective alternative dispute resolution (ADR) mechanisms (i.e. forms of dispute settlement without involving the judiciary; examples range from consumer-trader, personal injuries, to B2B sectors), and that (b) collective actions are far less effective than ‘new regulatory mechanisms’ or ‘legal technologies’ like redress powers used by regulators and by consumer ombudsmen.

As to the *public enforcement* part, the seminar looks at changes in (a) the practice of enforcement and compliance away from deterrence to supporting performance and compliance, (b) the understanding of the empirical evidence on underlying theories, such as deterrence and supportive or performance-based approaches, (c) the regulatory structures, such as the UK’s co-regulatory model of ‘regulated self-assurance’, and (d) the understanding of the policy implications of behavioural psychology. Some elements of the developments within both approaches are already visible in some countries and sectors.

As will be addressed during the seminar, the combination of these two approaches and the developments within them, requires academics, corporate leaders and policy makers to revise their understanding of the goals, efficiency, techniques, structures and desired outcomes of regulatory regimes and to consider the implications for our understanding of accountability and fault based liability regimes.

Programme

12.30 Coffee/Tea

12.55 Opening and Welcome by the Organizing Committee
Prof Dr Ivo Giesen & Dr Elbert de Jong (UU; Law)

13.00 First Session: Regulatory Techniques
Prof Dr Christopher Hodges and Prof Dr Stefaan Voet

Topics:

1. Regulatory Techniques, Structures, Policies and Theories
2. The Shift in Enforcement Policy from Deterrence to include Support for Performance
3. The Impact of Behavioural Science, and Empirical Evidence on 'No Blame' and Culture
4. The Ethical Business Practice and Regulation Model

14.30 Coffee/Tea Break

14.50 Second Session: Settling Disputes
Prof Dr Stefaan Voet and Prof Dr Christopher Hodges

Topics:

5. Dispute Resolution: The Shift from Litigation to A(C)DR or different intermediaries
6. Collective Redress and new Techniques for Dealing with Mass Harm Challenges
7. An Integrated Model: The role of Private Systems, Regulated Systems and the Courts in a Pluralistic Dispute Resolution Landscape
8. Conclusions: Political, Cultural, Economic, Social and Legal Perspectives on Markets and Fairness

16.30 Invited Comments & General Discussion
Chaired by Prof dr Ivo Giesen

Short Comments:

*Dr Rense Corten (UU; Sociology),
Dr Machteld de Hoon (Ministry of Security & Justice)
Prof Dr Eddy Bauw (UU; Law)*

General discussion

17.30 Closing and Drinks

Participation is *free of charge*, but please register by sending an e-mail to E.R.deJong@uu.nl