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This annual report is the first I write as Director of the Institute of European and Comparative Law. I have been Professor of Comparative Law in the University and Fellow of Brasenose College since October 2003, and the Board of the Faculty of Law appointed me to the Directorship with effect from October 2004.

The post was handed over to me by Professor Mark Freedland who had kindly involved me in the decision-making process within the Institute during the previous months. In the three years of his Directorship Mark made an enormous contribution to the Institute. Having taken over in turbulent times he safely steered it through a period of immense institutional and personal change in the University. The Institute has now become firmly grounded in the Law Faculty. It helps to service come crucial aspects of the Faculty’s activities in research and teaching and has become a first port of call for many a visitor from abroad.

All this implies that the incoming Director’s role has been one of incremental development rather than revolution. Mark, at a farewell dinner given by the Faculty in his honour, compared his role to that of a conductor handing over his orchestra with a certain suspicion that it might turn into a percussion group. Alas, the familiar tune has not changed substantially. During the academic year 2004-5 the members of the Institute have continued to pursue the task the Institute was set when it was established - furthering the work of the Oxford Law Faculty in the research and teaching of European and comparative law. Our ambition to cover the whole spectrum of these disciplines is illustrated on the following pages.

Apart from the pursuit of the individual research and teaching interests of the academics linked to the Institute (see below, p. 7), we hosted a whole range of events (p. 19), such as a major conference on the harmonisation of European contract law which we co-organised with law firm Clifford Chance, a joint colloquium on privacy and human rights with our partner faculties from Munich and Leiden, and a conference on constitutional change in France and the United Kingdom between 1995 and 2005. The newly-established Centre for Competition Law and Policy which provides a platform for the Faculty’s work in this dynamic area is an integral part of the Institute and has
been an instant success (p. 39). In the future, publications arising out of the Institute’s activities will usually appear in the newly established ‘Studies of the Oxford Institute of European and Comparative Law’ (p. 41).

On the teaching side the Institute continues to prepare students for the prestigious four-year BA in ‘Law with Law Studies in Europe’ and to administer the degree (p. 50). A new graduate course in ‘European Private Law: Contract’ has been established (p. 48).

This report also contains some indications as to our activities in the academic year to come (p. 72). European and comparative law are exciting and increasingly important subjects, and the Institute is well placed to be an active player in the ongoing and future developments. This is not to neglect the fact that, in times of increasing financial pressure on all Higher Education Institutions in this country, the Director’s lot is not always an entirely happy one. The amount of paper work, the time spent in meetings and the efforts to be made for fundraising are considerable. A recent review by a Faculty Working Party examining the relationship between the Oxford Law Faculty and its various Centres, including the Institute of European and Comparative Law, aptly sums up that the current situation of the Institute is largely satisfactory, but that there also ‘is a real sense in which the Institute is having to run faster simply in order to stand still’.

Having said this, my first year as Director has still been an enormously rewarding one. This has been made possible by the enormous back up I have received from various quarters: firstly, the generous support of our benefactors has made it possible to engage in the activities mentioned above. An exhaustive list of supporters is provided in an Appendix to this Report. However, it may be appropriate to single out the major ones already in this Introduction: global law firm Clifford Chance continues to fund a large part of our work, the French Ministry of Education and the German Academic Exchange Service (DAAD) contribute to the teaching of Oxford students reading for the ‘Law with Law Studies in Europe’ degree, the Wallenberg Foundation funds the Oxford/Stockholm Collaboration, and law firm Shearman & Sterling supports our work in the area of Competition law. Secondly, the Faculty has been extremely supportive, particularly the Chair of the Law Board, Professor Ewan McKendrick, and the support staff in the Faculty office. Finally, the academic members of the Institute and the Institute’s administrator, Jenny Dix, have been most welcoming, and it has been and is a pleasure to work with them.

Stefan Vogenauer
Professor of Comparative Law and Director of the Institute
Institute Members

The Staff of the Institute

**Director of the Institute and Professor of Comparative Law:**
Professor Stefan Vogenauer (SV)
Fellow of Brasenose College, Course 2 Co-ordinator
Special interests: comparative law, European legal history, private law and legal method

**Deputy Director and Professor of Employment Law:**
Professor Mark Freedland (MF)
Fellow of St John’s College
Special interests: employment law

**Deputy Director and Jacques Delors Chair in European Community Law:**
Professor Stephen Weatherill (SW)
Fellow of Somerville College
Special interests: European law and policy

**Deputy Director (French):**
Professor Pascal de Vareilles-Sommières (PDVS)
Visiting Fellow of University College
Special interests: (comparative) private international law, international trade law

**Deputy Director (German) and DAAD Fellow:**
Dr Katja Ziegler (KSZ)
Special interests: EC law, commercial law, competition law, public international law, (comparative) public law

**Director of the Oxford/Stockholm Collaboration:**
Professor Ulf Bernitz (UB)
Special interests: European Community law

**Centre for Competition Law and Policy:**
Dr Ariel Ezrachi (AE)
University Lecturer in Competition Law, Fellow of Pembroke College
Special interests: competition law
Research Fellows:
Professor Anthony Bradley (AB)
Special interests: British Constitution
Professor Gerhard Dannemann
Centre for British Studies, Humboldt University, Berlin
Special interests: comparative law and Anglo-German studies
Dr Simon Whittaker (SJW)
Reader in European Comparative Law, Fellow of St John’s College
Special interests: comparative law

Marie Curie Fellow:
Dr Aurelia Colombi Ciacchi (ACC)
Special interests: environmental liability, consumer contract law, comparative law

Teaching Fellow in European Community Law:
Dr Mads Andenas
Fellow of Harris Manchester College, Director of the British Institute of International and Comparative Law, London
Special interests: European Community law, comparative law, public law

Linklaters & Alliance Teaching Fellow for Italian Law:
Nello Pasquini
Member of the Senior Common Room, Brasenose College
Special interests: Italian law, commercial law, civil law

French Law Associate:
Marina Milmo
(funded by the Franco-British Lawyers Society)

Tutor for German Language:
Dr Thomas Martinec
DAAD/Montgomery, Fellow of Lincoln College

Administrator:
Jenny Dix

Honorary Fellows of the Institute

Professor Sir Roy Goode CBE, QC, FBA
Lord Kerr of Kinlochard GCMG
Formerly Secretary-General of the Convention on the European Constitution and formerly Permanent Under-Secretary at the Foreign and Commonwealth Office
Departures and Arrivals

Michaelmas Term 2005 saw a couple of changes in the staff of the Institute. One of them can hardly be characterised as an ‘arrival’ but it should be duly noted that Professor Mark Freedland did not leave the Institute after having ended his three year term as Director. Mark kindly agreed to remain on board as Deputy Director. It is to be expected that he does not need any introduction to most readers of this report. For those who have not met him, however, it may be recalled that Mark is one of the leading labour lawyers in this country. His teaching and research also extends to public law. He has been a Fellow and Tutor in Law at St John’s College since 1970 and was elected as a Fellow of the British Academy in 2002. He has held numerous offices in the Faculty and also, in recent years, visiting professorships at the Universities of Paris I and Paris II.

Professor Pascal de Vareilles-Sommières was also appointed Deputy Director of the Institute in Michaelmas Term 2005, thereby replacing Professor Denis Baranger who had returned to his home University of Paris II at the end of Trinity Term 2004. Pascal is Professor of law and Director of the Ecole doctorale de droit comparé at the University of Paris I (Panthéon-Sorbonne). He holds a Maîtrise in private law from the University of Paris X
(Nanterre), with honours, 1983, a DEA in private international law and international trade law of the University of Paris I, with honours, 1984, a DEA in private law of the University of Paris II (Panthéon-Assas), with honours, 1986, and a Docteur en droit of the University of Paris I, with honours, 1992. In 1993 he passed the concours externe in private law and criminal sciences and became an agrégé des facultés de droit. Before being appointed to Paris I, he was Professor of Law at the Universities of Reims from 1993 to 1997 and Paris XI (Paris-Sud) from 1997-2001. He held a Visiting Professorship at the Harvard Law School during the academic year 2001-2, and has been the General Secretary of the Comité français de droit international privé since 2002. His publications include La compétence internationale de l’État en matière de droit privé (Paris: LGDJ 1997), Le droit privé européen (co-edited, Paris: Economica 1998), Droit international privé (co-authored, Paris: Dalloz 8th ed. 2004), and La contractualisation de la famille (co-edited, Paris: Economica 2004). Pascal is on secondment to the Institute until summer 2006. Here, he mainly teaches French public law to the second year students in ‘Law and French Law’, i.e. those who are due to study a year in Paris within the framework of the Law Faculty’s BA degree in ‘Law with Law Studies in Europe’.

These welcome ‘gains’ could not entirely make up for the ‘losses’ the Institute suffered. Amongst them was Mr John Cartwright, a Fellow (‘Student’) of Christ Church and University Reader in the Law of Contract who has widely published in comparative contract law. In his capacity as Academic Director of the Faculty’s exchange programmes John had been Deputy Director of the Institute since 2001. However, he remains attached to the Institute since he will still oversee our exchange with Paris (see below, p. 50).

Finally, in Trinity Term 2005 the Institute saw the departure of its French Law Associate, Mrs Marina Milmo. Marina, a French lawyer who has lived in London for many years and edits the ‘European Commercial Cases’ for Thompson Publishing, had been teaching private law to the second year students reading for the ‘Law and French Law’ option since the earliest days of the ‘Law with Law Studies in Europe’ degree. To our (including the students’) great regret she chose not to renew her teaching arrangement with the Institute when it expired at the end of the academic year. However, a small farewell party compensated for the loss (see below, p. 25).
Academic Activities of Institute Members

Professor Ulf Bernitz is Director of the Oxford/Stockholm Wallenberg Venture. Seminar and conference papers presented during the year include:

‘The EU Services Directive – What is Going to Happen?’, Institute of European and Comparative Law seminar, May 2005

‘The Case of “Social Tourism” from the New EU Member States’, seminar presented at the Centre of European Legal Studies, University of Cambridge, September 2004

‘Merger Control of Newspaper Acquisitions’, seminar presented to the newly founded Academic Association for Competition Law (ASCOLA), European University Institute, Florence, November 2004

‘European and Nordic Competition Law: How Well Do They Correspond?’, paper and forthcoming article, Internordic Competition Law Conference organised by the Nordic Council of Ministers, Copenhagen, November 2004


‘Is There Still Room for National Law? Competition Law as an Example’, paper at the conference to celebrate the 50th Anniversary of the Institute of Private Law at Oslo University, March 2005

‘Not Enough References to the ECJ? The Commission’s Attack on the Swedish Supreme Courts’, lecture, Leuven, Belgium, April 2005

Professor Bernitz has acted an internal examiner of a doctoral D.Phil. thesis in law at the University of Oxford: Institutionalised Joint Ventures under EC Competition Law by Gerd Messner. The viva took place in December 2004.

Most of Professor Bernitz’s activities are related to the Oxford/Stockholm Collaboration which is discussed in detail on p. 60, below.
**Professor Anthony Bradley** is a Research Fellow at the Institute.

Last year’s publications include:


During the year he has presented the following lecture, conference and seminar papers:

Lectures on constitutional law at the Koc University, Istanbul, October 2004

‘Judicial Independence: What Assumptions Can Constitutional Theory Make?’, in Series on constitutional theory, Oxford Faculty of Law, May 2005

‘The Constitutional Role of the British Courts: Change and Challenge in the 21st Century’, lecture in the Faculty of Law, Jagiellonian University of Krakow, May 2005


‘Constitutional Evolution in the United Kingdom’, DAAD conference, St Anne’s College, Oxford, September 2005


Professor Bradley’s other activities during the year include:

- Legal Adviser to the House of Lords Select Committee on the Constitution;
- Convenor of the Constitutional Law Group, British Institute of International and Comparative Law;
- A Vice-President of the International Association of Constitutional Law;
- Alternate UK member of the Council of Europe’s Venice Commission for Democracy through Law (delegated by the Commission to take part in constitutional discussions in Montenegro, 26th and 27th November 2004).
Mark Freedland. Professor of Employment Law and Fellow of St John’s College, is Deputy Director of the Institute. During the year, Professor Freedland contributed to teaching and examining in the undergraduate option in Labour Law, and two BCL/MJur options: ‘European Employment and Equality Law’ and ‘Globalisation and Labour Rights’. He also ran the Course in Legal Research Method, which is compulsory for all first year research students, and supervised a number of individual graduate students. He was one of the two organisers, and leaders of the teaching, for the joint seminar with the University of Munich on European Employment and Equality Law which took place at the Venice International University in March 2005 and which functioned as an adjunct to the BCL/MJur course in that subject (see below, p. 46).

Professor Freedland’s publications have included:


Contributing editor, Chitty on Contracts, 29th edition (2004); first annual supplement 2005


Further development of three-year research project in European and Comparative Law at St John’s College, this being the second year of the project.

Conference papers include:

Paper presented at Colloquium in Honour of Professor Spiros Simitis, University of Florence, November 2004

Paper presented at Conference on Public Services in Europe, University of Bari, December 2004

Paper presented at Oxford/Leiden/Munich Conference on Privacy Law, Oxford Institute of European and Comparative Law, January 2005

Public Lecture in the Current Legal Problems series, University College London, March 2005
In his first year as one of the Deputy Directors of the Institute, following three years as its Director, Professor Freedland’s main responsibilities included:

- completing the handover of the Directorship to Professor Stefan Vogenauer;
- further development of relations with partner institutions, especially Paris I and Paris II;
- preparing Oxford/Paris II symposium papers on the Public/Private Law Divide for publication (see publications, above).

In addition to his duties in the Institute and the Law Faculty, Professor Freedland was also a member of the University’s Working Party on Statutes and Regulations, the Conference of Colleges’ Legal Panel and the University Committee on College Statutes, as well as serving as St John’s College’s Equality and Statutes officer.

Professor Pascal de Vareilles-Sommières is French Deputy Director at the Institute. The academic year 2004-2005 was his first at the Institute. In Oxford he teaches the Introduction to French Public Law: this course is intended for students planning to go to France during the next academic year and is taught in French. The balance has been kept between French constitutional law and French administrative law.

Professor de Vareilles-Sommières was kindly invited by Dr Simon Whittaker to co-teach three seminars on the sources of French and English private law. The main focus of his teaching has been on the sources of French law, with an emphasis on French contract law and on the relationship between domestic and EC sources in France.

Professor de Vareilles-Sommières has initiated, on behalf of the Institute and the Association Oxford-Sorbonne pour le droit comparé, the setting up of a conference to be held in Oxford in 2006, on ‘Forum Shopping in the European Judicial Area’ (see below, p. 72).

Most recent articles (in French) by Professor de Vareilles-Sommières include:

‘The EC Regulation on Taking of Evidence Abroad and Third States’, in A. Nuyts and N. Watté (eds) International Civil Litigation in Europe and Relations with Third States (Bruxelles: Bruylant 2005) 381.

‘Public Policy and International Contracts in Europe’, in Mélanges Ph. Malaurie (forthcoming)

‘Conclusion’ in a ‘dossier faillite internationale’, Journal des Sociétés, July 2005-23, 45, dealing with EC regulation on international insolvency proceedings

Comment on a French Cour de Cassation case dealing with EC rules on international jurisdiction in civil and commercial matters (Cass. civ. 1, 8th June 2004), (2005) Rev. Crit. DIP 111


Stefan Vogenauer, Professor of Comparative Law and Fellow of Brasenose College, is Director of the Institute. His main areas of interest are comparative law, European legal history, private law and legal method. During the academic year 2004-5 he designed, convened and participated in the teaching of the new graduate course in ‘European Private Law: Contract’ (see below, p. 48). He also taught Roman law of contract for undergraduates, comparative law for both graduate and undergraduate students, supervised a couple of graduate theses and acted as ‘tutore relativamente al progetto di ricerca’ for post-doctoral research at the Istituto Italiano di Scienze Umane. Professor Vogenauer was elected to the Council of the Statute Law Society. Most of his administrative duties are related to the Institute and are reported elsewhere in this Report.

As far as research is concerned, Professor Vogenauer mostly worked on a comparative and historical study on third party rights in contract and on a critical analysis of the House of Lords’ recent approach to the use of parliamentary materials in statutory interpretation. His publications during the academic year include:


Professor Vogenauer was invited to give lectures to the Statute Law Society (‘A Retreat from Pepper v Hart?’) and at the Cambridge Centre of European Legal Studies (‘Towards a European Legal Method’). He also gave papers on the history of nineteenth century English law journals at a conference on law journals in Europe which was held at the Max Planck Institute for European Legal History in Frankfurt/Main; on the means of judicial development of the law in France and England at the British Institute of International and Comparative Law’s conference on the ‘French Civil Code: its Relevance to the Common Law World and Beyond’; on the nature of European Contract Law at the Oxford conference on Harmonisation of European Contract law that was organised by the Institute of European and Comparative Law and Clifford Chance in March 2005; and on the problem of legal authority in Jhering’s theory of law at the Oxford Legal Philosophy Colloquium 2005. His inaugural lecture to the Oxford Law Faculty is outlined below, at p. 26.

Stephen Weatherill, Jacques Delors Chair in EC Law is a Deputy Director of the Institute. Professor Weatherill’s work has largely been concerned with the Treaty establishing a Constitution for Europe, and in particular its attempts to provide an intelligible account of the relationship between the exercise of power at State level and at EU-level. The temporary and perhaps permanent banishment of that Treaty to cold storage does not eliminate an enduring need to craft a more compelling account than is currently available of just how and why the EU helps States to deliver what their citizens want and need more effectively than those States could achieve acting unilaterally. He has also kept himself busy with work on the role of regional political actors in Europe, law and sport, consumer law and patterns of harmonisation, in particular in application to private law.

Three of his textbooks were published in new editions in 2005. Consumer Protection Law entered its second edition. This is co-authored with Geraint Howells under the imprint of the Ashgate Publishing Company. EU Consumer Law and Policy is also a second edition, albeit under the auspices of a new publisher - Elgar European Law. And his Cases and Materials on EU Law has now reached its seventh edition in just a decade-and-half, demonstrating the rapid pace of change in EU legal studies. It is published by Oxford University Press.

He also co-edited (with Ulf Bernitz) The Role of Regions and Sub-National Actors in Europe, published in the Spring of 2005 by Hart Publishing of

Articles published during the year include:


Conference papers include:


‘Is Sport “Special”?’ delivered in the framework of the Hamburger Forum für internationales Sportrecht, at the Max-Planck Institut für ausländisches und internationales Privatrecht, Hamburg, November 2004

‘The Constitutional Dimension of European Contract Law’, delivered at a Round Table on ‘Protection from Unfair Suretyships in the EU Constitutional Dimension and Empirical Framework’, organised at the Zentrum für Europäische Rechtspolitik within the EU Marie Curie Fellowship Scheme, Bremen, November 2004


Dr Simon Whittaker is a Fellow of St John’s College, Oxford and a Research Fellow of the Institute. As well as his teaching in English contract and tort law (as tutorial fellow at St John’s College), Dr Whittaker has continued to give seminars and lectures for the Oxford FHS/MJur Comparative Law of Contract course and has participated in the seminars (with Mr John Cartwright and Professor Stefan Vogenauer) in the new BCL/MJur course, European Private Law: Contract. In February 2005 he gave a guest graduate seminar at the European University Institute, Florence (on ‘administrative liability for unsafe products in France and England’), and in March 2005 he was professeur invité at the University of Paris II (Panthéon-Sorbonne) giving seminars for the DEA de droit privé of Professor Geneviève Viney.

Dr Whittaker has given papers at conferences as follows:

‘The Terminologies of Civil Protection: Rights, Remedies and Procedures’, given at The Language Policies of EU Institutions after the Enlargement (Inter-University Centre for Research in Comparative Law, Universities of Milan, Bologna and Insubria), Como, April 2005

‘The Regulation of Unfair Terms and the Commission’s Encouragement to Develop European Standard Contract Terms’, paper delivered at annual meeting of the Society of European Contract Lawyers (SECOLA), Prague, June 2005

During the last academic year, Dr Whittaker’s main work has been to complete and put through the press his book Liability for Products: English Law, French Law and European Harmonisation (OUP) which will appear in October 2005. The following other works have appeared:


Dr Whittaker’s earlier collaborative work under the ‘Common Core of European Private Law’ based at the University of Trento and published as R. Zimmermann and S. Whittaker (eds) Good Faith in European Contract Law (Cambridge University Press 2000) was translated into Chinese and published by the Law Press of China under the EU-China Legal and Judicial Co-operation Programme (2005).

During the year, Dr Whittaker has acted as a member of the ‘core group’ (which met in January 2005) for the AHRB research project on ‘European Legal Development’ led by Professors John Bell and David Ibbetson and based at the Faculty of Law, University of Cambridge (see http://eld.law.cam.ac.uk/). This is a historical and comparative project using the evolution of tort liability for fault as a context for wider reflections on the processes of legal evolution more generally. Dr Whittaker has also acted as convenor of the product liability sub-project, presented a paper on the English aspect of this topic at a working group in Cambridge in September 2005 and will edit a book of the contributions of this sub-project in the course of 2006.

Dr Whittaker has continued to participate in the St John’s College Research Centre project on European law (together with law colleagues at the college and beyond it and under the overall direction of Professor Mark Freedland), leading the sub-project on ‘personal debt in Europe’.

Over the past academic year, Dr Whittaker has accepted invitations to become a member of the Editorial Board of the journal European Review of Private Law (based at Ghent, Belgium); a member of the Advisory Board of the Society of European Contract Lawyers (SECOLA) and an associate member of the Académie international de droit comparé. He has acted as one of the Oxford nominees to the Board of the Association Sorbonne/Oxford.

In September 2005 Dr Whittaker (together with Mr John Cartwright of Christ Church) agreed to translate the Avant-projet de réforme du droit des obligations et du droit de la prescription presented by Professor Pierre Catala on the basis of the work of thirty-six French law professors and judges to the Minister of Justice on 22 September 2005. Their translation (and the French text) will appear on the Institute’s website in the course of the academic year 2005-6.
**Dr Katja Ziegler** is Deputy Director of the Institute. Dr Ziegler continued to teach undergraduate classes on German Constitutional and Private Law to students on the ‘Law with Law Studies in Europe’ course, preparing them for their year abroad. She taught classes on EC competition law throughout the year. She also gave tutorials to a number of undergraduate and MJur students in public international law and European law, as well as acting as a supervisor and examiner for postgraduate theses. She also continues to be in charge of the Course 2 exchanges with our German partner universities (Bonn, Konstanz, Munich and Regensburg).

Just before the beginning of the academic year, Dr Ziegler convened a comparative law conference under the title ‘Constitutionalism and the Role of Parliaments’, together with Professors Denis Baranger and Anthony Bradley. In January 2005, she convened a colloquium on human rights at the Institute which brought together academics of our partner faculties of Leiden and Munich on the theme ‘Human Rights and Private Law: Privacy’ (see below p. 21). Both events will lead to a publication of the conference papers in the new series ‘Studies of the Oxford Institute of European and Comparative Law’ (see below, p. 41).

During the year, Dr Ziegler has delivered conference papers and participated in invited seminars at the following events:


Invited Seminar: ‘Leading Cases of the European Court of Human Rights’, University of Bielefeld, June 2005


Constitutional Law Group, British Institute of European and Comparative Law, London, seminar on ‘Reforming the Law of Royal Prerogative’, February 2005

King’s College London, Annual European Law Conference, February 2005
Dr Ziegler’s publications include:


Dr Ziegler’s current research projects include the comparative analysis of executive prerogatives in the UK, Germany and the USA; privacy and the freedom of the press; human rights and migration law; problems of legitimation and accountability at the supra- and international level; and the relationship between economic regulation and questions of social justice in EU law.
In the academic year 2004-5 the Oxford Institute of European and Comparative Law launched a series of annual high profile conferences, hosted jointly with its major benefactor, global law firm Clifford Chance. The first of these dealt with the ‘Harmonisation of European Contract Law: Implications for European Private Laws, Business and Legal Practice’. The conference was held at St Anne’s College on 18th and 19th March 2005 with Sir David Edward, formerly Judge at the European Court of Justice, in the chair. Both the speakers and the almost 120 delegates represented a variety of European legal systems and made for a stimulating mix of academics and practitioners.

Contributors included Professors Alpa (Rome), Bernitz (Stockholm), Goode (Oxford), Hesselink (Amsterdam), McKendrick (Oxford), Weatherill (Oxford) and Zimmermann (Hamburg) and representatives of the European Commission (Dr Dirk Staudenmayer), the Department for Constitutional Affairs (Paul Hughes), the Law Commission for England and Wales (Professor Hugh Beale), the Office of Fair Trading (Professor Sir John Vickers), the Federal
Association of the German Industry (Andreas Dietzel) and Clifford Chance (Stuart Popham and Daniela Weber-Ray).

There were vigorous and highly informed discussions about all sorts of issues relating to the European Commission’s recent proposals for further harmonisation in the area of contract law. A particular highlight was the presentation, by Clifford Chance’s Senior Partner Stuart Popham, of a business survey which had been commissioned by the law firm with Oxford Professors Vogenauer and Weatherill acting as academic advisors. The results gave a surprising degree of support for further harmonisation amongst European businesses, and thus seem to lend legitimacy to the Commission’s activity in this area. They will soon be published in a joint article of the academic advisors in the European Law Review, an extended version of which will also appear in the conference volume. This is edited by Professors Vogenauer and Weatherill and will be published, under the title *Harmonisation of European Contract Law: Implications for European Private Laws, Business and Legal Practice*, by Hart Publishing in early 2006.

The next joint conference of the Institute and Clifford Chance will be held on 17th and 18th March 2006. The topic, ‘Regulating the European Market’, should make for a similarly interesting event.
Privacy in vertical relationships, that is, as a human right against the state, is most topical when it involves issues such as the debate about introducing identity cards or surveillance measures in the United Kingdom being discussed very broadly. In contrast, restraints on privacy by private actors (in private law ["horizontal"] relationships) seem to be of less general concern, if the use of store loyalty cards and the widely accepted use of CCTV on private premises can be taken as an indicator. The latter aspect of human rights and privacy in particular was the subject of a joint conference of members of the partner law faculties Leiden, Munich and Oxford on 7th and 8th January 2005, hosted by the Institute and convened by one of the Institute’s Deputy Directors, Katja Ziegler.

Papers were delivered in two main categories. One group of papers looked, from a broader and sometimes theoretical perspective, at the interaction of the body of public law human rights and private law in horizontal – or if including the state: triangular– relationships (Paul de Hert, Hans Nieuwenhuis, Lorenz Fastrich, Alison Young), and, especially, in contract law (Henk Snijders, Dagmar Coester-Waltjen, Donal Nolan). From a broader view, it was controversially argued that social justice was, or ought to be, promoted by a direct horizontal application of human rights and, moreover, harmonising effect on human rights from the international level (Aurelia Colombi Ciacchi). A special section was dedicated to the insertion of a right to privacy into tort law, in particular in relation to the recent case-law in the United Kingdom in the Douglas v. Hello saga and Campbell v. MGN (Nick Barber, Roderick Bagshaw, Siewert D. Lindenbergh). The other group of papers concerned more specific problems of privacy arising in selected subject areas of the law: intellectual property law (Josef Drexl, Michael Spence, Leslie Kim Treiger-Bar-Am), employment law (Michael Coester, Mark Freedland), and media law (Michael Lehmann, Katja Ziegler).

Although, at first sight, conflicts exist between human rights and private law principles, in substance the real conflict was chiselled out on the same level of hierarchy, in the end between conflicting human rights. Examples are the conflicts of privacy with the freedom to act, including the right to autonomy or self-determination as the basis of contract law, or with the right to engage in economic activity. This shifted the focus towards the necessity of balancing
rights, the critical assessment of how balancing is achieved in individual subject areas and legislative measures, the remedy if the balance is struck wrongly, serving at the same time as a deterrent and the potentially different balance struck by the European Court of Human Rights. The theme of harmonisation of private law via the European Convention of Human Rights, especially after the coming into force of the Human Rights Act in the United Kingdom received special attention. The Caroline von Hannover v. Germany decision naturally featured prominently in the discussions across the sections.

The event revealed once more the benefits of staff or student exchange: The cross-border or, better still, cross-jurisdictional contact and exchange opens up not only new insights and knowledge about another legal system on an intellectual level, but also new angles and perspectives of our respective home jurisdictions. Irrespective of where one stands on the substance of the question, it can be concluded that the unifying bracket of the European (EC, ECHR) level helped to set and define the context.

(KSZ)

‘Trends in Retail Competition: Private Labels, Brands and Competition Policy’: Symposium of the Institute and the Wallenberg Venture

A competition law symposium was organised in June 2005 by the Institute in co-operation with the Wallenberg Venture on the subject ‘Trends in Retail Competition: Private Labels, Brands and Competition Policy’. The symposium focussed particularly on the role of private labels in competition between retailers and between suppliers and the issue of strong buying power. It took place in St Catherine’s College and attracted an international audience of about 70 people. The programme included the following speakers, representing a mixture of lawyers and economists: Dr Sven Norberg, Director at DG Competition, European Commission (‘Brand Competition and Private Labels – Reflections from a DG Competition Perspective’); Director Richard Herbert, Europanel (‘Private Labels in Europe – Trends and Strategies’); Mr Dick Bell, Oxford Institute of Retail Management (‘Private Labels – Their Role in the Competitive Process’); Professor Paul Dobson, Loughborough University (‘Private Labels and Branded Goods – an Economic and Competitive Comparison’); Mr Alastair Gorrie, Coudert Brothers
‘Private Labels and Powerful Retailers – the Response from Competition Authorities’; Mr Paul Walsh, Bristows (‘Customers as Powerful Competitors – the Implications for Litigation’). In addition, the programme included a roundtable discussion led by Professor Patrick Rey, Université de Toulouse, and co-ordinating and concluding remarks by Professor Ulf Bernitz. Most of the papers presented at the seminar are published on the website of the Oxford Centre for Competition Law and Policy: http://www.competition-law.ox.ac.uk.

‘A Decade of Constitutional Change in France and the United Kingdom (1995-2005)’: Joint Conference of the Institute and the University of Paris II

On 30th September 2005, a further measure of friendly co-operation between the Institute and the Law Faculty of the University of Paris II enabled there to be a joint colloquium in Paris on the theme, ‘A Decade of Constitutional Change in France and the United Kingdom (1995-2005)’. Participants from Oxford who presented papers were Professor Vernon Bogdanor, Professor Anthony Bradley and Dr Katja Ziegler. The speakers from Paris II included Professors Philippe Lauvaux, Guillaume Drago, Philippe Raynaud, Fabrice Picod and Denis Baranger.

The topics examined at the seminar were the process of constitutional change, the changing constitutional position of the judiciary, devolution and decentralisation (on which an informative paper was presented by Professor Sir Neil MacCormick, of the University of Edinburgh), changes in constitutional ideology, and the impact of Europe on the national constitution. The intention behind the seminar was not to aim for a publication based on the discussion, but to stimulate the comparative study of constitutional change during the same decade in two neighbouring countries with very different constitutional traditions. Discussion focussed mainly on the differences - such matters as the asymmetric nature of devolution in Britain, compared with the strong unitary basis of government in France; the continuing effect of inherited constitutional principles (in France, the separation of powers, presidential authority, and the stable role of the judiciary; in Britain, the sovereignty of Parliament and government
accountability to Parliament); and participants drew attention to inconsistencies perceived between New Labour’s resistance to reform of the system for electing the House of Commons and its reluctance to extend democracy to the upper house, compared with its willingness to extend the jurisdiction of the courts (in the form of the Human Rights Act) and to provide a new constitutional base for judicial independence. From a comparative viewpoint, more common ground emerged in relation to the constitutional impact in the two countries of European Union law and the European Convention on Human Rights.

It must be recorded that the proposal for the seminar was made by Professor Denis Baranger, of Paris II, who in 2002-04 was Deputy Director of the Institute in Oxford; he also assumed responsibility for organising the colloquium and securing the funding for this stimulating event.

(AB)

‘Europeanisation and Americanisation: Rival Projects or Synonyms?’: Conference of the European Studies at Oxford Consortium

Following upon and building upon the success of the ‘Whose Europe?’ conference of April 2003, the European Studies at Oxford consortium, on this occasion jointly with the Rothermere American Institute, held the ‘Europeanisation and Americanisation’ conference towards the end of the Easter vacation 2005. As on the previous occasion, the Institute had a significant involvement in it; just as Steve Weatherill had been, as then Director of the Institute, one of the chief architects of the ‘Whose Europe?’ conference, so Mark Freedland, initially as Director and latterly as a Deputy Director of the Institute co-organised the ‘Europeanisation and Americanisation’ conference with Timothy Garton Ash, Director of the European Studies Centre at St Antony’s College, and Paul Giles, Director of the Oxford Rothermere American Institute. One of the further contributions to this very successful conference from the Institute and the Law Faculty consisted of the raising of a sponsorship of £10,000 from the Anglo-American law firm of Kirkpatrick & Lockhart Nicholson Graham. This firm was created by the recent merger of the US firm of Kirkpatrick and Lockhart with the London City firm of Nicholson Graham and Jones.
This handsome donation was specially attributable to Peter Kalis, the Chair of the Management Committee of the firm, and a one-time Rhodes Scholar doctoral student of the Law Faculty (D.Phil., 1976) at Brasenose College. The firm was represented at the conference by Richard Smith, a partner of the London branch of the merged firm.

The other Institute/Law Faculty input consisted in playing a major part in the organisation and presenting of the law-related session of the conference. This session, convened by Mark Freedland and by Dan Kelemen from the Politics Sub-Faculty, was on the topic of ‘Constitutionalism. Experiments with the rule of law on a continental scale, and their export’. Papers were presented by George Bermann of Columbia University, and by Paul Craig of Oxford, the latter very kindly standing in for Renaud Dehousse of the Institut d’études politiques, Paris, who was obliged to withdraw at a late stage by reason of family illness. This session was very well-received and should form a useful section of the publication of papers and transcripts from the conference which is currently being organised. The development of genuinely interdisciplinary and comparative studies in Oxford represented by this conference is warmly to be welcomed.

(FM)

Farewell to Marina Milmo

In June the Institute said au revoir to Marina Milmo, who has decided to retire from her teaching post with us. We held a drinks party after her final seminar at the end of term, attended by her students and members of the Institute staff and other Faculty members who have worked with Marina over the years, at which a presentation was made in token of the Faculty’s and the Institute’s appreciation of her work.

Marina Milmo has been the longest-serving continuous member of the Course 2 team. She was recruited when Course 2 (the 4-year degree) was established, in the mid-1990s, to teach French Law seminars to our students to prepare them for their year abroad in Paris. The size of the group taking the French option within Course 2 each year has almost doubled, from 8 to 15, during the 12 years that Marina has taught the French law seminars. Marina was an ideal member of the Course 2 team: French by birth, but living in England; trained in both jurisdictions, as both Solicitor and avocat; and working as editor of Sweet & Maxwell’s European Commercial Cases and International Litigation Procedure. She has come to Oxford to give her
seminars every fortnight; but has always been willing to help our students outside the seminars when they have needed it – most particularly when they have had to deal with French administrative bureaucracy (not an infrequent problem!) in their arrangements for, or during, the year abroad.

Marina had considered retiring from the teaching in Oxford three ago, but we were relieved when she was persuaded to accept an extension of her contract. But this time, we were unable to repeat the persuasion. We understand entirely that she has many other activities which she needs the time to be able to pursue. We rather doubt whether she will ever ‘retire’ in the normal sense of the word. At the Institute we shall, of course, maintain contact with her; but for her work for our students over more than the last decade we are very grateful indeed.

John Cartwright, Christ Church

‘A European Legal Method’: Inaugural Lecture by the New Professor of Comparative Law

Although there is no formal obligation on incoming professors to give an inaugural lecture there is certainly an expectation on the part of the Faculty that new holders of a chair take on this task. Having been appointed to the Chair of Comparative Law with effect from October 2003, my inaugural was long overdue by the time I finally managed to give it, on 21st January 2005. The title was phrased as a question: ‘A European Legal Method: Should We, Could We, Would We?’, and I tried to answer it in three steps.

In the first part of the lecture I considered the need for a legal method, common to the Member States of the European Union. I attempted to show how uniform law, such as Community law, needs to be applied uniformly in
order to achieve the ultimate purpose of legal unification, i.e. securing the 
uniform effectiveness of the uniform law in all the national legal systems 
concerned. Uniformity of application, however, requires a uniform legal 
method; a point which I illustrated with references to the well known Court 
of Appeal decision in Bulmer Ltd v. Bollinger SA [1974] 1 Ch 401 and which I 
defended against various possible objections.

In the second part of the lecture I enquired whether establishing a common 
European legal method would actually be feasible. I argued that it would 
require the joint effort of at least four sub-disciplines of legal scholarship: 
Community law, in particular Community constitutional law, comparative law, 
legal history, and jurisprudence or legal philosophy.

Finally, in the third part of the lecture I attempted to outline the contents of a 
future common European legal method. It would aim to provide standards 
for good lawmaking and for the good application of the law. Areas concerned 
would thus be the style of drafting of legislation and of court decisions, the 
rules and principles of statutory interpretation and the application of 
precedent, both in Community law and in the laws of the Member States.

In conclusion and in answer to the initial question, I argued that, firstly, there is 
a case for the development of a common European legal method. 
Secondly, the project is a feasible one. Thirdly, the areas which it would cover 
are obvious.

The event was well attended not only by colleagues and students of the 
Oxford Law Faculty, but also by academics from other Universities and by 
quite a few practitioners who had come up from London. The Law Faculty 
kindly hosted a drinks reception after the lecture. The day was rounded off 
with a splendid dinner at Brasenose to which the College generously allowed 
me to invite my family and a number of friends and colleagues from all over 
Europe. I am enormously grateful to all my colleagues and to all members of 
the support staff both in the Faculty and in College who gave their advice in 
preparing the lecture and in the (much more intricate!) business of organising 
the surrounding social events.

(SV)
A Tribute to Barry Nicholas

On 17th September 2005 the Institute joined with Brasenose College in commemorating and paying tribute to Professor Barry Nicholas (1919–2002). Having read Classics and Law at Brasenose as an undergraduate, Barry Nicholas served the College for over fifty years after his election to a Fellowship in 1946-47, first as Tutor in Law and later as Principal. Devotion to his College was equalled by Barry’s commitment and loyalty to the University and the Oxford Law Faculty. He was All Souls Reader in Roman Law from 1948 to 1971 and Professor of Comparative Law from 1971 to 1978. ‘It would have been impossible to imagine law in post-war Oxford without Barry Nicholas’, writes Professor Sir Guenter Treitel in his contribution to the Festschrift marking Barry’s seventieth birthday. That Barry Nicholas continued to teach Roman law each year to a fortunate group of Brasenose first year undergraduates (present author included) until into his eightieth year may serve as just one illustration of his enthusiasm for the law and his dedication to its study and teaching. The respect and admiration which Barry commanded from colleagues and students alike and the deep affection in which he is held is reflected by the illustrious list of speakers who participated in the commemoration ceremony.

The event commenced at the Institute of European and Comparative Law with a series of addresses covering different aspects of Barry’s life as a lawyer. Professor Tony Honoré, formerly Regius Professor of Civil Law, remembered ‘Barry as a Roman lawyer’. Of Barry’s many contributions to the study of Roman law, he drew attention to two in particular: They are Barry’s Introduction to Roman Law (published in 1962), which the late Professor Peter Birks has described as ‘the best introduction to law that has ever been written’, and Barry’s third edition of Jolowicz’s Historical Introduction to the Study of Roman Law (published in 1972). Tony Honoré identified Barry’s ‘conservatism’ in writing them, essentially a reflection of Barry’s caution and
modesty in teaching beginners, as an important element in the success which these introductory textbooks continue to enjoy after so many years. Almost exact contemporaries, Tony and Barry knew each other well, and their careers ran to some extent in parallel. It is thus that the audience was treated to a hitherto undisclosed episode of faculty history. When Professor David Daube retired from the Regius Chair of Civil Law in 1970, both Barry Nicholas and Tony Honoré were considered suitable successors. The latter had at this point, however, already accepted election to the Chair of Comparative Law. It was agreed between them – informally, in those days – that a switch should take place, by which Tony would resign the Comparative Chair for Barry to accept, and instead move across to the Roman Law (Regius) Chair. Clearly, both parties to the bargain would have been excellent choices for either chair; but, as Tony Honoré emphasised, Barry’s graciousness in welcoming the switch endures as an example of Barry’s unfailing kindness and collegiality.

Professor Bernard Rudden, Barry’s successor as Professor of Comparative Law, paid tribute to him as a comparative lawyer. He highlighted the fact that Barry never attempted to put forward a prescriptive or exclusionary definition of his subject, allowing for a vast variety of different approaches. This methodological open-mindedness is reflected in the broad scope of Barry’s academic writing on comparative law, ranging from two influential articles on Unjust(-ified) Enrichment in the law of Louisiana (which were famously in Barry’s own view ‘always cited ... but not usually read’) via studies in French public law dealing with constitutional issues during the de Gaulle era, to various publications in the area of (mainly Anglo-French) contract law. Leaving the topic of comparative law, Bernard Rudden also expressed his admiration for Barry’s handling of the so-called ‘Indian Institute Affair’. During the student unrests in 1974, Barry presided over the trial by the University Disciplinary Court of sixteen students who had unlawfully occupied the University Offices. Despite the defendants’ disruptive behaviour and the constant threat of violence from protesters outside the building, Barry’s patience and calm mastery of the situation eventually ended in a well-balanced verdict, which was upheld on appeal. Bernard Rudden reminded the audience that it is only thanks to Barry that we have today almost forgotten the entire episode.

Professor Hugh Collins, first a student and later a colleague of Barry’s, spoke on the topic of ‘Barry Nicholas and Contract Law’. In view of Barry’s interest and expertise in comparative contract law, it is not surprising that Barry was appointed UK delegate to the United Nations Committee on International Trade Law in 1972 and that he played a pivotal role in the negotiation and drafting of the Vienna Sales Convention. Hugh Collins recalled Barry’s
disappointment when, after all the hard work that had been put into the Convention, the UK Government refused to ratify it. However, he pointed out that it has since made an enormous impact at European level, both in economic reality and as a major source for the Principles of European Contract Law, and it may yet end up as part of a future European Civil Code. Another personal memory which Hugh Collins shared with the audience concerned Barry’s teaching technique. Far from lecturing a student on a given topic, Barry would simply ask numerous questions and then later on provide a short memo of comments and references to further reading. Hugh Collins ended by drawing attention to Barry’s work on ‘Rules and Terms’, an exposition of two different approaches to contract law, which has proved to be an important contribution towards bridging the gap between the civilian and the common law tradition.

Sir Christopher Bellamy, President of the Competition Appeal Tribunal and former judge at the Court of First Instance of the European Communities, paid homage to the ‘European dimension of Barry Nicholas’ work’. A former Brasenose undergraduate, he too vividly recalled Barry’s unique way of gently leading students through discussion and questions to find the right answers by themselves. Sir Christopher emphasised that the knowledge of Roman Law which Barry had thus instilled in his students was much more than the tools needed to pass exams. It was an understanding not only of rules and basic legal concepts, but also of the moral dimension of law. The combination of these factors turned out to be a solid foundation for a life in the law, a valuable asset becoming relevant in the most unexpected situations and places. Sir Christopher illustrated the usefulness of Roman law learning in communicating with civilian lawyers at a European level. At the same time he pointed out that the common law with its case law method is in some ways more closely related to Roman ways of thinking than modern civilian jurisdictions. Barry’s teaching, Sir Christopher concluded, has allowed generations of students to see that even if concepts and procedures differ, the ultimate answers are often very similar: With his deep understanding of both great Western legal traditions, Barry had grasped a fundamental truth about European law, namely that ‘despite its civilian dress, EC law is essentially praetorian law using common law techniques’.

Following the speeches, the Director of the Institute, Professor Stefan Vogenauer, unveiled a display of various memorabilia pertaining to Barry’s life as a lawyer which were generously provided by Barry’s widow, Mrs Rosalind Nicholas (see below, p. 33). They may be viewed in the foyer of the Institute and bear testimony to the fact that ‘[h]is contribution to the academic study
of law, both through his writing and his teaching, was and remains immeasurable’. (Peter Birks in a memoir).

The second part of the commemoration ceremony took place at Brasenose College where a memorial plaque, composed by Dr Llewellyn Morgan, Fellow of the College, honouring the former Head of House was unveiled in the Antechapel (see below p. 32). After a greeting by the Principal, Professor Roger Cashmore, and a short introduction by Mr John Davies, formerly Senior Law Tutor at Brasenose and Barry’s colleague for many years, Mr Peter Fraser, formerly Fellow at All Souls, remembered Barry as a close personal friend. Tracing Barry’s life from student days and wartime experience to his time as Principal of Brasenose, it became clear that it was one devoted to the College. Peter Fraser recalled what pleasure it gave Barry to have been elected the first Roman Catholic Head of House since the Reformation. Without the numerous fundamental reforms which Barry effected as Principal for the benefit of the College, Brasenose would not be what it is today.

A drinks reception concluded the commemoration ceremony in honour of Barry Nicholas. The event was a fitting tribute to a brilliant scholar, a gifted teacher and a great man. Oxford is fortunate to have benefited so much from his wisdom.

*Birke Häcker, All Souls College*
Text of the Memorial Plaque Unveiled in the Chapel of Brasenose College on 17th September 2005

HAC TABULA A PRINCIPALI SOCISQUE PIE FIXA  
By this plaque erected with affection by the Principal and Fellows
COMMENORATUR  
is commemorated
BARRY NICHOLAS  
MCMXIX-MMII
HUIUS COLLEGI SCHOLARIS DEINDE ANNOS XXXI SOCIUS  
of this college Scholar, then for 31 years Fellow
INTERIM ET IURISPRUDENTIAE COMPARATIVAE PROFESSOR  
during that time also Professor of Comparative Law
POSTEA  
subsequently
PRINCIPALIS  
MCMLXXVIII-MCMLXXXIX
EXINDE SOCIUS ITERUM HONORIS CAUSA  
thereafter Fellow again in an honorary capacity
SINGULARI FUIT IURIS SCIENTIA ET SUBTILITATE VERE FORENSI  
His knowledge of the Law was without parallel and he displayed a truly legal precision
NEC IURIS TANTUM PRUDENTIA  
and a wisdom that extended beyond the study of law
IDEMQUE HUMANITATIS ET COMMUNITATIS EXEMPLAR  
and he was at the same time a model of kindness and collegiality
VIR ET ALIOQUI ET IN PIETATE SUA SUMMA ERGA COLLEGIUM  
a man both in other respects and in his absolute devotion to the College
MIRE CONSTANS

There is a play on the term ‘jurisprudence’ in nec iuris tantum prudentia, ‘of a prudence not only juris’; and communitatis in the next line was picking up on the remark of Herbert Hart (quoted by John Davies in the Independent obituary) that ‘Barry Nicholas had a kind of genius for cooperative work’. The final two words were designed to encapsulate some essential feature of the man, and a leitmotif of the obituaries was his consistency across many aspects of his life: ‘his loyalties were impregnable’, ‘He did not change and had no need to’ (Guardian); ‘65 years of devoted service’, ‘His loyalty to his pupils was unconditional’, ‘Retirement produced no great change in his life … In his youthful appearance, too, and in his unfailing, unassuming kindness, he remained the Barry Nicholas we had always known’ (Independent). The most striking personal impression of him for many of us elected more recently was that his physical appearance had not remotely changed in the decade since his portrait had been painted. So mire constans, ‘remarkably consistent’, describes an important aspect of his personality, but might also (‘amazingly unchanged’) be the kind of thing an astonished former student would have said at a Gaudy (cf. Guardian: ‘When former pupils returned for a gaudy … they could not conceal their surprise when … Barry … appeared to be exactly as he always had been’). It might be interpreted in more religious terms, as well.

Dr Llewellyn Morgan, Brasenose College
Unveiling of the Display: Remarks Made by the Director

‘This event is, maybe not entirely untypical in the Oxford context, a product of a dinner. It was a dinner at Brasenose, and it was held shortly after my arrival there as a new Fellow. I talked to John Davies, one of Brasenose’s most active Emeritus Fellows, and, of course, a teacher of generations of Oxford law students. John asked a few questions about the Institute that I was supposed to direct from the beginning of the following academic year; and from the questions he asked I developed a slight suspicion that he had actually never been to the place. So I thought it would be a good idea to lure him down to this somewhat cavernous environment, and I advertised what is arguably the only pleasant feature in this room: the display given to the Institute by F.H. Lawson’s family a couple of years ago.

John immediately suggested that it would be a good idea to have something similar celebrating the achievements of Barry Nicholas who had died shortly before. He offered to put me in touch with Barry’s widow Ros, and this set in motion a rather long process. Ros kindly let me go through Barry’s entire academic correspondence which was neatly ordered and stored in a couple of cardboard boxes. For a novice in the Chair of Comparative Law it was an extremely touching experience to read letters exchanged between previous holders of the Chair, particularly the extensive correspondence between Barry and Harry Lawson.'
Not all of the interesting pieces can be displayed here. Not surprisingly, some of the papers are of a more confidential nature. But others are not, and they are equally fascinating. To start with, there is a short note of 13 June 1946, appointing Barry to a Lectureship at Brasenose. It was written by the legendary Brasenose Principal W.T.S. Stallybrass (to whom Barry and F.H. Lawson, in their correspondence, would only refer to as ‘Sonners’; usually in connection with the phrase ‘had Sonners lived to see this …’). One suspects that the conditions of the appointment were slightly less generous than the young ‘Nicholas’, as he was addressed, would have liked. In the second sentence Stallybrass reminded him that ‘you will be given rooms in College but I am afraid you will have to pay a reasonable price for them’. And, ‘Sonners’ added: ‘If you wish to get married you will have to get leave by the College’. In fact, Stallybrass is reported not to have been amused when this prospect materialised a couple of years later. He was, it is said, of the opinion that a College was entitled to a ‘full’ Fellow for at least a decade after his appointment. It is quite reassuring to a more recent appointee that at least some of the terms of employment have improved over the last six decades.

Apart from this letter, our display has three ‘sections’, grouped around Barry’s major areas of research: Roman law, comparative law, and uniform sales law.

Roman Law

The display contains an offprint of Barry’s first major publication, a two-part article on ‘The Form of the Stipulation in Roman Law’ which appeared in the 1953 Law Quarterly Review (the modern observer, incidentally, is reminded with a certain nostalgia that these were days when it was not taken for granted that every argument could be made in less than 10,000 words, and the LQR used to publish two-part articles). This article generated some correspondence which, as such, is an interesting part of Faculty history, and this is displayed as well. Barry had sent the article to two German scholars who he had met when they had been refugees in Oxford, seeking shelter from the Nazi régime. Both were highly distinguished Roman lawyers. One of them, Fritz Schulz, still lived in Oxford and sent Barry a short and polite note commenting on the piece. However, the second, Fritz Pringsheim, wrote a long letter from Freiburg, focussing on the second part of the LQR article. There, Barry had challenged the prevailing view that the strict requirements of the contract of stipulatio – the oral exchange of question and answer in the presence of both parties – had already been relaxed in the post-classical period. As opposed to this, Barry had argued that Justinian, in the Corpus Juris, had still treated the stipulatio as a verbal contract, and had treated all written documents accompanying it as merely evidentiary. Pringsheim, overall, judged Barry’s Part II to be ‘instructive, stimulating and necessitating a new
discussion … written with great care with cautious formulations and without any prejudice, it is scholarly work’. However, on the central thesis ‘you have not convinced me. … Especially I do not believe that Justinian did not admit the enforcement of any promise made in a document. … Nor do I believe in your reconstruction of the development. What you say about evidence may be good English common sense, it is not Roman’. This must have made a lasting impression on Barry. He recalled the last sentence at the very end of the last piece that was published (posthumously) by him, in a volume on German-speaking émigré lawyers in Britain, recently edited by Jack Beatson and Reinhard Zimmermann.

The next item dates from 1955. It is a contract for the publication of a work in the Clarendon Law Series called ‘Roman Law (or similar title)’. This was to be the origin of the famous 1962 *Introduction to Roman Law* a copy of which is included in the display. The book proved to be a huge success. It was translated into Spanish and Mandarin. The late Professor Birks, in his contribution to the Beatson/Zimmermann volume just mentioned, called it ‘a genuine introduction not only to Roman law but to law generally. Within that genre that book deserves the highest praise. There could be none better’.

Again, the modern observer is forced to pause. In the sixteen years between his appointment and the publication of the *Introduction* Barry hardly published anything apart from the previously mentioned LQR article – certainly not the output considered to be adequate today, in this era of formal ‘Research Assessment Exercises’. Be that as it may, Barry’s next great success, the third edition of *Jolowicz’s Historical Introduction to the Study of Roman Law* is conspicuously absent from this display. It is out of print today, and it was impossible to find a copy that could be purchased.

**Comparative Law**

The next section of our display is devoted to comparative law. There is an offprint of a ground-breaking and highly influential two-part article on ‘Unjustified Enrichment in Civil Law and Louisiana Law’ from the 1961 *Tulane Law Review*, the fruit of a Visiting Professorship at that University. Again, there is a story connected to this piece. It generated some posthumous discussion when, two or three years ago, it was suggested in a book that comparative lawyers should ‘package’ their writings in a more digestible way in order to make an impact on the courts; in this context the *Tulane Law Review* article was cited as the one piece of Barry’s writings which had been frequently cited in the courts, since Barry had wanted to make an impact. This idea was rejected in a review of the book in the LQR by one of Barry’s former pupils, Jack Beatson, by now a High Court judge. Sir Jack even followed up on this in
one of the following issues of the LQR with a special ‘note’, relying on an
autobiographical note of Barry’s, which showed that the article had really just
been a result of teaching a course at Tulane and had never been intended to
influence the Louisiana judiciary.

We then see the advertisement for the Professorship of Comparative Law in
the University Gazette of 8th October 1970. Whilst the job description, in its
commendable brevity and vagueness (‘shall lecture and give instructions in
the comparative study of different legal systems’), looks surprisingly familiar to
that of the current holder of the Chair; at least some things have changed
since, and for the better. In the days of co-education the following clause
would not usually be found: ‘A non-stipendiary Professorial Fellowship at
Brasenose College is attached to the professorship, save that, in the event of
a woman being elected, a non-stipendiary Professorial Fellowship will be
available at Somerville College, unless at the time the election is made
another Professor has been allocated to that College, in which case the
Professorial Fellowship would be held at St. Hugh’s College’.

There is a letter from the Registrar, formally announcing Barry’s election, and
congratulations on the election to the Chair by both his predecessor; Otto
Kahn-Freund, and his successor-to-be, Bernard Rudden. We have also included
a copy of a letter, dated 17th January 1969, to all College Librarians from
Otto Kahn-Freund, announcing the beginning of teaching of comparative law
to undergraduates in the academic year 1969-70, and asking them to
purchase the relevant French textbooks. Not all College libraries seem to
have seen this as a worthwhile investment: some of these books cannot be
found in Oxford up to this day!

Some further pieces of research in the area of comparative law are on
display: an important article on rules and terms in civil law and common law
jurisdictions from the 1974 Tulane Law Review, and a 1978 piece on
‘Fundamental Rights and Judicial Review in France’ which appeared in
Public Law and is still widely read today, Barry being probably the first non-
French scholar who realised the importance of the French Conseil
Constitutionnel. In 1982 the first edition of the French Law of Contract was
published. We display a copy of the second edition of 1992 which is still used
widely for teaching in this country.

In this context it might be interesting to note an illustration of Barry’s
meticulous workstyle. In the cardboard boxes given to me by his widow I
found hundreds of case notes used in preparation of the French Law of
Contract. We included the one on the famous tort case of Jand’Heur (Ch
réun 13 Feb 1930, DP 1930.1.57) which established that there is a
‘presumption of liability’ of the *gardien* for things (thereby effectively introducing strict liability of the custodian), and that such liability is not restricted to the custodians of dangerous or defective things, nor is it excluded when the thing in question (here: a motor car) is ‘guided by a human hand’. Despite the thorough analysis, the case, after all, is not even discussed in the book (at least it is not mentioned in the index).

One of Barry’s last pieces of work is included as well. He was one of the authors of the *Ius Commune Casebook on Unjustified Enrichment*, a highly innovative tool for the teaching of comparative law, which appeared in print only posthumously, 2003.

**Uniform Sales Law**

In a letter to Harry Lawson of 9th January 1973 Barry wrote: ‘In what now I think was a foolish moment I agreed to be the UK man on the UN Working Group which is revising the Uniform Law on International Sales (I say foolish because I suspect that no more will come of its labours than came of those of its predecessors in the 30 years before 1964) [the year of the enactment of the Hague Sales Law].’

The next document we see is Barry’s copy of a *Commentary on the Draft Convention on Contracts for the International Sale of Goods*, prepared by the UNCITRAL Secretariat in 1979 during the negotiations leading to the enactment of the Vienna Convention on the International Sale of Goods. There are a large number of handwritten corrections of the draft text, and it is tempting to assume that they were Barry’s suggestions. It has indeed been argued that Barry exerted a strong influence on the drafting process. However, it seems that the corrections that can be seen here were meant rather to reflect the outcome of the negotiations since they can all be found in the final version of the text of the Convention, and it would be quite exceptional if Barry had been able to persuade the Working Party of all his suggestions.

In any event, the Vienna Convention saw the light of day in 1980. Later Barry published extensively on this new instrument and tried to familiarise English lawyers with it. Two products of this labour can be seen on display, an LQR article of 1989 and a contribution to one of the first international commentaries on the Convention.

What to say in conclusion? Maybe just a reference to one further item. It is rather exceptional. In all the correspondence I read I did not find a single bad word written about colleagues or students. The style was very moderate and balanced. There was only one counter-example, written on the back of the envelope of a letter to Harry Lawson, stamped on 22nd May 1959.
It reads: ‘I am sending you a copy of Denning’s Romanes Lecture [From Precedent to Precedent (Clarendon Press: Oxford 1959)]. As delivered it was, I thought, Denning at his unintellectual, revivalist preacher; worst. Certainly not fit for a serious academic lecture’.

This afternoon’s contributions were certainly not intended to be serious academic lectures, but just a tribute to the man who was described by Peter Birks, in a biographical memoir for the British Academy, as ‘the unobtrusive rock on which’ the Oxford Law Faculty’s success in the second half of the last century ‘was largely founded’.’His contribution to the academic study of law, both through his writing and his teaching, was and remains immeasurable’. I am enormously grateful to the speakers who addressed us today. Bernard Rudden even took the trouble of making a detour on his trip back to Cornwall from Cornell.

Thanks go also to Oxford University Press and Hart Publishing Ltd. for letting us have copies of some of Barry’s books. Finally, I would wish to thank Ros Nicholas for granting access to the papers and for kindly giving the items to the Institute.’

(SV)
The University of Oxford Centre for Competition Law and Policy (CCLP) provides a centralised platform for teaching and research of competition law and policy at the University of Oxford. Activities and courses focus on regulation of competition in the UK, EU and US, international aspects of competition law and antitrust economics.

Courses supported by the CCLP include the graduate BCL/MJur Competition Law Seminar Series and the undergraduate FHS EC Competition Law Course. Additionally, the CCLP is home to the Guest Lecture Programme where leading practitioners and academics discuss recent issues of competition law and policy. The CCLP also provides a venue for scholars and practitioners to exchange views on competition law and policy through its Discussion Forums and its Online Papers and Materials Database.

During the academic year 2004-5 the CCLP continued developing and expanding its activities. As in previous years, the Centre’s Guest Lecture Programme provided an impressive venue for discussion and debate. Distinguished guests who joined this year’s programme included: Sir John Vickers (Chairman, Office of Fair Trading), Carles Esteva Mosso (Head of Unit, DG Competition, European Commission), Alden Abbott (US Federal Trade Commission), Chris Bright (Shearman & Sterling), Philippe Chappatte (Slaughter and May), John Temple Lang (Cleary Gottlieb Steen & Hamilton LLP), Mark Williams (NERA Economic Consulting), Robert O’Donoghue (Cleary Gottlieb Steen & Hamilton LLP), Simon Evenett (Saïd Business School), and Phil Evans (Which) (see below, p. 45). The seminars were very popular with graduate and undergraduate students, members of the University and other external guests.

During the month of June, the CCLP was involved in hosting a one day symposium on ‘Trends in Retail Competition: Private Labels, Brands and Competition Policy’ (see above, p. 22).

Earlier this year, the CCLP, in conjunction with the Institute of European and Comparative Law, successfully bid for funding from the European Commission for the training of national judges in EC competition law (see below, p. 74).
This year also saw the introduction of a new online database for papers and materials on competition law and policy. The database, accessed through the CCLP website (http://www.competition-law.ox.ac.uk), is aimed at facilitating discussion between academics and practitioners and is devoted to scholarly works-in-progress and to the distribution of other materials on competition law and policy.

Looking ahead, in the coming academic year the CCLP will strive to secure funding to finance its new programme of Research Fellows. Under this programme, practitioners and academics will spend time at the Centre conducting research on their chosen subject. This initiative is aimed at further stimulating academic discussion and research at the CCLP.

Our activities were greatly facilitated by the ongoing support of law firm Shearman & Sterling for which we are most grateful.

(AE)
The following two publications which comprise papers given at previous Institute conferences appeared in print during the academic year 2004-5:


In addition, the Institute established two book series in order to promote research in European and comparative law:

**Studies of the Oxford Institute of European and Comparative Law**

This series will be the main forum for publication of the research pursued at the Oxford Institute of European and Comparative Law. In accordance with the general aims of the Institute, both European and comparative law are perceived in their broadest sense, and a special focus lies on the intersection of the two disciplines.

The series is published by Hart Publishing Ltd., Oxford. The Series Editor is the Director of the Institute, Professor Stefan Vogenauer. The Board of Advisory Editors is composed of two of the Deputy Directors, Professors Mark Freedland and Stephen Weatherill, and of the Chairman of the Institute’s Management Committee, Professor Derrick Wyatt.

Currently, three volumes are being prepared for publication. The first, *The Harmonisation of European Contract Law: Implications for European Private Laws, Business and Legal Practice*, edited by Stefan Vogenauer and Stephen Weatherill, is the conference volume of the Institute’s March conference with the same title (see above, p. 19). The second, *The Public Law/Private Law Divide: une Entente Assez Cordiale?*, edited by Jean-Bernard Auby and Mark Freedland, is the fruit of the Institute’s co-operation with the University of...

**European Legal Studies**

‘European Legal Studies’ (‘Schriften zur Europäischen Rechtswissenschaft’/ ‘Etudes juridiques européennes’) is a scholarly series of legal monographs devoted to European private law and European public law. The works in the series are studies in comparative law. Some of them draw conclusions relevant to issues of unification, harmonisation or approximation of laws. Many will illustrate trends towards convergence or the endurance of legal differences within and across various areas of law. All of them contribute to a deeper understanding of European Community law and the legal systems of the Member States.

The series is published by Sellier European Law Publishers, Munich, and is the product of the co-operation of four leading European Institutes in this field of research: it is multi-lingual and jointly edited by Professors Christian von Bar for the European Legal Studies Institute (Osnabrück), Ewoud Hondius for the Molengraaf Institute for Private Law (Utrecht), Martijn W. Hesselink for the Amsterdam Institute for Private Law, and Stefan Vogenauer for the Oxford Institute of European and Comparative Law.

The following titles were published in the academic year 2004-5:


This is a comparative study of the claims that can be pursued, both in private law and under social security legislation, by a person who has suffered damage when rendering assistance to a person who has asked for help, be it in a case of necessity or not. The legal systems covered are French, German, Austrian and English law.

**Volume 2:** Hanna Sivesand *The Buyer’s Remedies for Non-conforming Goods: Should there be Free Choice or are Restrictions Necessary?* (2005) 300pp.

This study analyses the buyer’s remedies for non-conforming goods under a sales contract under English, German, French and Scandinavian law. Moreover, the EC Consumer Sales Directive, the 1980 UN Convention on Contracts
for the International Sale of Goods (CISG) and the Principles of European Contract Law (PECL) are included. The study examines the most controversial issues and problems involved in the establishment of an effective and fair remedial regime for non-conforming goods. Should there be a certain hierarchy of remedies, where some prevail over others? Who should be able to choose between the remedies, the buyer or the seller; and should there be a right for the seller to impose cure upon the buyer? Should certain remedies be restricted where the lack of conformity is not sufficiently serious? Another controversial issue is the question of whether, and if so, how the buyer should be obliged to notify the seller; and within which time limits he should be obliged to bring forward his claim.

The Oxford University Comparative Law Forum

The Oxford University Comparative Law Forum is a freely accessible web-based journal (ISSN 1743-8713), accessible via www.ouclf.iuscomp.org. Sponsored by CMS Hasche Sigle it seeks to promote the study and discussion of legal issues from a comparative perspective by publishing academic writing and by providing discussion groups. Authors represented in the Forum include the late Peter Birks, Albrecht Cordes, Otto Pfersmann, Peter Schlechtriem, and Iain Stewart. During the academic year 2004-5 the following articles were published:


Alan Berman, ‘The Law on Gender Parity in Politics in France and New Caledonia: A Window into the Future or More of the Same?’ (2005) 5 OUCLF

Charlotte Romano, ‘Comparative Advertising in the United States and France’ (2005) 5 OUCLF
Teaching

The Institute’s teaching activities consist first and foremost in the College and Faculty teaching of its individual members. However, the Institute also provides the foreign law teaching for Oxford undergraduates going to France, Germany or Italy in their third year of studies (see below, p. 50). Furthermore, the Institute has been closely involved with a number of particular teaching activities over the last year:

Comparative Law Discussion Group

The Comparative Law Discussion Group is organised by John Cartwright, Stefan Vogenauer and Simon Whittaker under the auspices of the Institute of European and Comparative Law. Meetings, to which all members of the Faculty and graduate students are invited, are held at lunchtime after a sandwich lunch provided by the Institute.

Over the course of the last academic year, there were two meetings of the group. In November 2004, Professor Jacques du Plessis of the University of Stellenbosch addressed the group on the topic ‘Duress and Undue Influence in Mixed Legal Systems and the Principles of European Contract Law’, and in May 2005 Professor Ewoud Hondius of the University of Utrecht did so on ‘Precedent: a Comparative Lawyer’s View’.

(SJW)
Guest Lecture Series of the Centre for Competition Law and Policy

The Centre of Competition Law and Policy (CCLP) hosts the Competition Law and Policy Guest Lecture Programme. This brings together leading practitioners and academics to discuss recent developments in competition law and policy. Lectures cover both the law and economics of competition law. The majority of lectures take place in Hilary Term at the St Cross Building. Lectures are open to Oxford students and university members. During the academic year 2004-5 the following lectures were given:

Mark Williams (NERA) ‘Antitrust economics’, 18th October 2004

Phil Evans (Which) ‘Competition enforcement and the consumer interest’, 4th February 2005

Carles Esteva Mosso (DG Competition) ‘EU merger control: the current state of play’, 14th February 2005

Robert O’Donoghue (Cleary Gottlieb) ‘IP rights and competition law’, 18th February 2005

Chris Bright (Shearman & Sterling) ‘Dispute resolution and competition law’, 20th February 2005


Philippe Chappatte (Slaughter and May) ‘International cartels and leniency procedures’, 4th March 2005

Simon Evenett (Saïd Business School) ‘Globalisation and competition law’, 11th March 2005


John Temple Lang (Cleary Gottlieb) ‘Problems and issues of decentralising European competition law’, 13th May 2005

Sir John Vickers, CCLP Guest Lecturer

(AE)
‘European Employment and Equality Law’: Joint Seminar with Munich University

In the week following Hilary Term 2005, there took place, as part of the programme of co-operation between the IECL and the Law Faculty of the Ludwig-Maximilians University of Munich, a three-day joint seminar on European Employment and Equality Law. It was organised jointly by Professor Michael Coester, Professor of Civil Law and Procedure at Munich, and Professor Mark Freedland, Deputy Director of the Institute. In the previous year, those colleagues had put the proposal for the seminar to the Venice International University, and had been pleased to secure its acceptance. As the result of the generosity of the two Law Faculties, the organisers were able to offer places on the seminar to eight graduate students from each university, and to arrange for three faculty members from each law faculty to provide the teaching/supervision. Professor Freedland was joined by Professor Fredman and Ms. Costello; Professor Coester was joined by Professor Dupper and Herr Dr and Frau Dr Servatius. The eight students taking part from the Oxford BCL/MJur European Employment and Equality Law class were: Anne Benedetti, Peter Burhoj, Robert Danay, Martina Kocjan, Iulian Rusu, Desmond Ryan, Ravinder Thukral, and Adam Wand – a truly international contingent.
The subject-matter consisted of the implementation in Germany and the UK of recent EC Directives in the field of employment and equality law; and each student submitted in advance and presented in the course of the seminar a paper on a particular Directive or group of Directives, the subject-matter of the papers from the two groups being closely aligned with each other. Rather in the manner of traditional vacation reading parties, there were two sessions of work and one session of leisure in each day. Both work and leisure were made extremely pleasant by the delightful location of the Venice International University on the Island of San Servolo in the Lagoon of Venice, ten minutes’ water-bus ride from Piazza San Marco. Discretion compels us to draw a veil over the occasion on which the students missed the last water-bus of the night back to the Island, and to confine ourselves to recording that the seminar was felt by all concerned to be extremely rewarding and enjoyable, a sense which we hope is conveyed by the group photograph. At the conclusion of the seminar it was resolved that future repetitions of this co-operative activity were greatly to be hoped for:

(MF)
New Graduate Course in European Contract Law

The academic year 2004-5 saw the establishment of a new graduate course in 'European Private Law: Contract' which is taught by Professor Stefan Vogenauer, Mr John Cartwright and Dr Simon Whittaker, and thus exclusively by current and former members of the Institute. The course can be chosen by students reading for the Oxford graduate degrees in law, the BCL (Bachelor of Civil Law) and the MJur (Magister Juris).

European Private Law is an emerging and dynamic subject. It concerns the gradual approximation and harmonisation of the national private laws of the European Union’s Member States, one of the most fascinating contemporary developments in the law. The Europeanisation of private law has two dimensions. One is fairly imminent and extremely relevant to legal practice. It concerns the implications of existing legislation and case-law emanating from the organs of the EU for national private laws. The other is more forward-looking and rather of a scholarly nature. It relates to a number of academic proposals for common European rules and principles in the area of private law, based on thorough comparative research. Thus European Private Law combines issues from at least three branches of legal scholarship, i.e. European Law, (national) Private Law and Comparative Law.

The course attempts to combine these disciplines, constantly approaching particular problems from a European point of view as well as from the perspective of various national private laws, thus necessarily adopting a comparative approach. The course first considers fundamental questions relating to the desirability, the constitutional legitimacy and the feasibility of the harmonisation of Private Law in Europe. An overview of the existing state of European Private Law, the imminent developments and the long-term proposals by various groups of academics is provided. The main part of the course consists in the study of a limited number of specific substantive issues taken from one of the core areas of private law, the law of contract. These are studied, as far as possible, with reference to primary materials, i.e. legislation and case law, and are likely to include topics such as pre-contractual liability, formation of contract, third parties in contract, mistake, good faith, standard terms, supervening events, breach of contract and remedies. Examples from national legal systems are mainly drawn from English, French and German law. If, however, another legal system offers an interesting and original solution this is also taken into account.
This approach already indicates that the course does not aspire to cover the whole of contract law with all its, say, constitutional and procedural implications, in all or even the most important European legal systems, but is rather of a more topical nature. The search is for – common or diverging – solutions to legal problems arising in all legal systems (including EU law and recent proposals for further harmonisation). These are looked at both from a rather technical point of view and with respect to the underlying principles, so that a balance between ‘black letter’ law and general policy issues is struck. Participants will thus be in a position to evaluate the status quo of European contract law(s), the potential for further harmonisation and the methodological implications of this process. The principal objective of the course is to enable students to acquire knowledge and understanding in the area of European Private Law and to discuss and assess critically at an advanced level the legal and policy issues arising therefrom. Participants may expect to gain a deeper understanding of the nature of contract law, basic knowledge of the major European traditions in this area of the law and the ability to master a wide range of strongly heterogeneous sources — all of which are competences and skills of increasing importance in a Europe growing together.
Student Exchanges


The Institute continues to be responsible for the Faculty’s four-year BA in ‘Law with Law Studies in Europe’. This essentially is a variant on the regular Oxford law degree that includes an extra year spent at one of Oxford’s partner universities abroad. Options are Law and French Law with 15 students per year going to the University of Paris II; Law and German Law with three students going to Bonn, four to Konstanz, two to Munich and three to Regensburg; Law and Italian Law with two students going to Siena; and Law and European Law with four students going to Leiden in the Netherlands. It is thus also frequently called ‘Law Course 2’. The Institute administers the programme, including the provision of preparatory teaching in foreign law and languages and keeping constant contact with the academic directors and the administrators of the exchange programmes in our partner universities.

Within this framework, the Institute also provides a focus and support network for the students coming to Oxford from our partner universities under the exchange agreements. These students are registered for a one-year programme suitable to their level of study, normally the Diploma in Legal Studies or the Magister Juris.

Whilst Mr John Cartwright had been the (sole) Academic Director of the exchange programmes in previous years, the academic year 2004-5 saw a change in the institutional structure: for the first time a team of academics has been in charge, the aim being to facilitate dialogue between our Faculty and both our partner universities and the students on the course. I have taken on the overall academic direction of the exchange programmes, but an individual member of the Institute and/or the Faculty has been responsible for each separate country exchange. John continues to oversee the Paris exchange, Dr Katja Ziegler co-ordinates the German exchange arrangements, Professor Stephen Weatherill takes the oversight of the Leiden exchange and I look after the arrangements for Italy. As far as it can be said after one year, the new structure has worked well. This is not only due to the fact that
Ms Jenny Dix, the Institute’s Administrator, has continued to run the day-to-day administration of the degree, but also a result of the exemplary care and thoroughness John Cartwright showed in handing over business.

In the academic year 2004-5 applications to join Law Course 2 remained as strong as ever. There were 248 applications for the 33 places available, thus making competition for the programme one of the fiercest for any university in this country. Our partner universities also report a continued strength in the number of their own students who wish to come to Oxford for a year under the terms of our bilateral exchange programmes.

The teaching arrangements for the Oxford undergraduates on Law Course 2 remained virtually unchanged this year. Classes in French, German and Italian law are given within the Institute to the second year students who are preparing to spend their third year abroad; and classes in French, German, Italian and Dutch language are arranged in or (with the University’s Language Centre) through the Institute.

As in previous years, Dr Katja Ziegler, Deputy Director of the Institute, taught the preparatory classes in German law and Mr Nello Pasquini provided the teaching in Italian law. Part of the French law teaching is always provided by a Professor on a two-year secondment to the Institute as Deputy Director from either Paris I (Panthéon-Sorbonne) or Paris II (Panthéon-Assas). This year Professor Pascal de Vareilles-Sommières (Paris I) taught the public law elements of the French law preparatory classes for the first time, taking over from Professor Denis Baranger (Paris II). Mrs Marina Milmo who has given us great support in the teaching of the programme since its earliest days, continued to teach the private law elements of the French law classes. Regrettably, her teaching arrangement with the Institute has now come to an end (see above, p. 25).

The intensity of the language tuition provided is constantly under review, particularly in the light of feedback of students on the course. Conversational classes in Dutch were introduced a couple of years ago for the students who will go to Leiden (where they will be taught in English). In the academic year 2002-3 the intensity of the German language classes was increased by providing teaching in both the first and the second year. Last year saw a similar move for the French language training, meeting students’ concerns that their A-level French might ‘get lost’ during their first year at University.

The students’ initiative led to another innovation, a ‘buddying scheme’: in order to provide the second-year students at Oxford who were about to leave for Paris with a maximum of information, each of them was teamed up with a
student who had just returned from his or her year in the French capital. It was then up to the students to meet and to exchange information. Once the second-years will return they will act as ‘buddies’ to the then second-years. The feedback we received from students reveals that second-years benefited from the advice of their predecessors, whilst fourth-years enjoyed sharing their experiences.

Overall, Course 2 remains one of the success stories of the Institute. Its graduates are highly sought after by the big law firms. Students appreciate their experience abroad and the teaching they receive in Oxford: the University’s student course experience questionnaire for the year 2004 displays a stunning 100% percent ‘overall satisfaction’ by its graduates. In my capacity as Course 2 Co-ordinator I was able to visit our partner universities in Bonn, Konstanz, Paris and Siena during the academic year and have, whenever possible, met our students who spent their year abroad there. Despite the occasional hardships and worries arising from a year abroad they clearly enjoyed themselves.

For the academic year 2005-6 year only limited changes are to be expected. Mr Eric Descheemaeker of St Catherine’s College will take over the teaching of French private law. The ‘buddying scheme’ will be extended to all students on Course 2. The major event will be the establishment of a further option in Law and Spanish Law. This is a reaction to the increasing pool of outstanding candidates with Spanish language skills who might wish to follow a course in Spanish law. We are currently in the process of exploring possible Spanish partners, and selecting a suitable Faculty for the exchange.
A Year in Siena

Katy Campalani, 3rd Year Law with LSE Student (Pembroke College)

Fortunate as I felt to be given the opportunity to study law at Oxford, the possibility of having a year to study Italian law in Siena was not only the icing on the cake but the cherries and candles as well. Anglo-Italian by birth, my primary education was undertaken in a very deprived area of south east London, followed by an Anglo-Indian school in Calcutta and an Italian convent, before being transferred to a traditional grammar school in Northern Ireland. I was excited by the chance to re-visit my educational and cultural roots. Ostensibly the course offered the opportunity for comparative study of the Italian legal system via an Italian language medium: however, the societal, cultural and developmental possibilities were equally appealing.

I began my year at the Università degli Studi di Siena on 1st October 2004 and left on completion of all required exams on 23rd June 2005. Therefore the course engages one full academic year and provides the chance to study a continental law system. The student is required to pick from a list of appraised subjects equal to 40 credits and achieve a pass in each of these. This opportunity, however, is not without its cost, including the fact that the student will have to observe their study companions back in Oxford graduating and entering professional life or further study while they must return to Oxford the following year to face the considerable challenge of finals without the emotional support of their study peers.

I really appreciated the opportunity to enjoy an alternative educational experience which included different studying techniques and different exam procedures. In the British university system, much discussion is focused on what the law should be as well as what it is and the educational focus is on one’s personal opinions of the law which then require supporting arguments. In Italy rote learning, rather than interpretation of the law, is required. Italy also offers more chances to repeat exams in the case of failure. Students are
able to sit an exam a second time in the subsequent term to which it was taught, and even a third time, if the subject was taught in the first term.

In Oxford, studying and preparation for exams is generally a very solitary exercise. The odd tutor might request that students exchange essays or alternatively students may be required to read out their essays in tutorial to gain the benefit of others’ insights. However, students left to their own devices will rarely seek to work together with others. In Italy students approach the situation differently. Group work is much more prevalent and is seen as a much more effective way to achieve success. It occurs spontaneously and without any direction from the tutors.

In Siena all exams are oral, so no writing is required at all. Students in England can fall into the trap of writing reams and reams of senseless notes and I too in the past have been guilty of this. Italian students, however, generally write no notes at all and focus more on re-reading the book several times. Once the content of the book is learned they work together repeating it out loud to one another and testing each other on more difficult aspects of the course. This was helpful as it made studying for difficult exams a less lonely experience and discussing the topic before an exam greatly aided getting key concepts clear in your head and lodging them there. Also I found the oral exams to be a really valuable addition to teaching aids as it tested not only knowledge but presentation and interview skills which were needed to give the best rendition of the appropriate answer.

In evaluating my year in Siena I would say that it exposed me to a very different approach to third level study. It removed intellectual barriers and any fears I had of moving from a common law to a continental law system. It opened the idea in my mind that I could work in a foreign jurisdiction. Also Siena is a very cosmopolitan city with students gathering there from every part of the world. For instance I made friends with students from different states in America and Africa, from Turkey, Palestine and even met a boy from the Dominican Republic. Many of my closest friendships were with Czech and Polish students and this was useful as I previously knew relatively little about Eastern Europe. Allied to this was a greater exposure to different political views. My Czech friends articulated the experience of day-to-day life in a country which was evolving from a communist past and this included their views not only on communism but also Italy’s fascist past. As always, integrating into a new community develops interpersonal, communication and negotiation skills, as does sharing a room with another person!
A Year in Oxford

Sarah Ganz, MJur Erasmus Exchange Student from the University of Munich (St Hilda’s College)

I spent the academic year 2004-5 as an exchange student from the Ludwigs-Maximilians-Universität of Munich at the University of Oxford. It has been a wonderful and extremely enriching year for me – both in the academic and personal sense. It is difficult to compress my experiences into a few pages, but in this report I would like to describe some of the aspects that have been the most important for me.

The exchange programme exists between several German universities (Munich, Bonn, Konstanz and Regensburg) and the University of Oxford and allows between two to four students each year to study for one year in Oxford or at one of the German partner universities respectively. I had the privilege to be one of the two students from the Ludwigs-Maximilians-Universität of Munich who was chosen by Professor Coester-Waltjen in Munich and the University of Oxford to participate in the programme. When I was applying for the programme I saw this as a unique opportunity to spend one year as a masters student at the renowned University of Oxford with all the advantages that this exchange programme offers: a simplified application procedure, no University or College fees and the Institute of European and Comparative Law as a framework that organised social events (such as a welcome reception and a Christmas event) and which also dealt with any administrative problems.

As an MJur student in Oxford, I had the possibility of choosing between three and four courses and I decided to take Competition Law, International Dispute Settlement, Comparative Human Rights and European Private Law: Contract. In retrospective, I was extremely happy with my choice particularly because my courses were quite diverse and this allowed me to experience very different ways of academic thinking and different approaches to dealing with legal issues.
One of the most interesting courses for me was Comparative Human Rights. In this course, which was taught by Professor McCrudden, we read and discussed judgments from different jurisdictions dealing with specific Human Rights issues like freedom of speech and equality. Besides the fascinating (and often very challenging) experience of reading decisions by distinguished judges of the US Supreme court, the Indian Supreme Court and the South African Constitutional Court, to name just a few examples, it was especially the discussions in class that made this course so special. As the course consisted of a very diverse student body, I was often confronted with views and opinions that I had not considered before, and this course made me realise to what extent the opinion of a ‘correct’ answer to a legal or political problem is influenced by one’s own legal background and political culture.

I had a similarly fruitful experience in the other comparative subject I had chosen: European Private Law: Contract. The course was taught by Professor Vogenauer, Mr Cartwright and Dr Whittaker. This was the first year the course was offered. As with Comparative Human Rights, the course cap was twenty, which helped to create a very personal and friendly atmosphere inspiring many discussions. The course was demanding, as it dealt with detailed aspects of contract law in English, German and French law as well as international harmonisation, but among other things this also allowed me to gain an insight into English law. Being exposed to the Common Law way of thinking had great significance for me as all my other subjects were related to European and international law rather than English law.

Whilst the courses of the MJur programme were an important part of my year in Oxford, I think that it was the many other academic events that made this year in Oxford so special and which render Oxford distinct from most other universities. Throughout the year I attended various lectures, talks, conferences and debates such as the Friday afternoon lectures on the European Constitution, the Thursday lunchtime lectures organised by the Public International Law discussion group as well as many interesting speeches and debates by distinguished speakers in the Oxford Union of which I was a member for a year.

One of the most memorable events was a visit to the House of Lords which was organised by the Institute of European and Comparative Law for all the exchange students. This was a unique opportunity to speak to one of the Law Lords, Lord Rodger, to attend a hearing as well as to get a very informative tour of the Houses of Parliament. I found it very impressive, after having read several judgements of the House of Lords and having heard so much about this institution, to actually be able to see this court in
action. Lord Hoffman, who was also present in the hearing we attended, came to Oxford later in the year for the Blackstone Lecture to talk about causation.

Evidently, my year in Oxford did not only consist of academic events but also many social activities. I missed out on a typical Oxford experience – rowing - because I lacked the enthusiasm to be on the river at six o’clock in the morning for training. Instead, I joined the European Affairs society and the Magdalen College film society which both offered many excellent events like weekly film screenings, speakers and a ball. There were several exchange dinners between my College, St. Hilda’s, and other Colleges. I was also invited to guest dinners at other Colleges and attended black tie dinners. I went punting, participated in the 1st May celebrations on Magdalen Bridge, listening to Latin songs sung by the Magdalen College Choir; and went to a champagne breakfast afterwards. I enjoyed beautiful evensongs in several College chapels with candlelight. And most of all, I met many amazing and interesting people from all over the world to share this year with, many of whom I will hopefully stay in touch with for a long time.

Naturally, not every experience in Oxford was enjoyable. The atmosphere in some courses was very competitive and Oxford sometimes seemed a little insular. But these were minor points and did not alter the fact that I felt very much part of Oxford after a short period of time. Did it seem odd at first to go to some dinners in sub fusc and gown and to stand up when the fellows of the college entered the dining hall? These traditions became soon very familiar and (almost) natural. By the time we wrote our exams I could walk down the street in my sub fusc and a pink carnation without noticing tourists stopping and staring at ‘these peculiar Oxford students’.

I am very grateful to both the University of Oxford and the University of Munich for having enabled me to enjoy this year in Oxford through their joint exchange programme. I sincerely hope that the programme will continue to provide this opportunity for many students and I envy all future exchange students for still having this fantastic year ahead of them.
Institutional Links

University of Bonn

The University of Bonn is one of the Institute's partner universities for its German student exchange programme (see above, p. 50).

University of Konstanz

The University of Konstanz is one of the Institute's partner universities for its German student exchange programme (see above, p. 50).

University of Leiden

The University of Leiden is the Institute's partner university for its student exchange programme in 'Law and European Law' (see above, p. 50).


University of Munich

The University of Munich is one of the Institute's partner universities for its German student exchange programme (see above, p. 50).

In January 2005, a group of Munich academics participated in the Oxford-Munich-Leiden colloquium on 'Human Rights: Privacy' (see above, p. 21).

University of Paris I (Panthéon-Sorbonne) and the Association Sorbonne/Oxford

Our connection with the Law Faculty of Paris I has been reinforced by the appointment of Pascal de Vareilles-Sommières, a Professor at Paris I, as Deputy Director of the Institute in October 2004 (see above, p. 5).

The Association Sorbonne/Oxford was founded in 1989 with the aim of promoting exchanges, teaching and research in the area of Franco-English comparative law as between the two universities. Its members, and funders, are the University of Paris I, the Oxford Institute of European and
Comparative Law, and Clifford Chance. To date, most of the Association’s funds have been used to build up a considerable body of English legal material in the Paris university library, to fund an annual colloquium, and to fund an Oxford academic to teach in Paris. The Association also funds an annual prize awarded for a thesis in comparative law. At the Annual General Meeting of the Association in May 2005 the Institute was represented by Mr Martin Matthews and Dr Simon Whittaker.

University of Paris II (Panthéon-Assas)

Professor Denis Baranger who had been on secondment to the Institute as a Deputy Director for two years, returned to Paris II at the end of the academic year 2003-4. The process of appointing the next Deputy Director from Paris II who will be appointed with effect from October 2006 has recently begun.

Paris II continues to be the Institute’s partner university for its French student exchange programme (see above, p. 50). Furthermore, an Oxford/Paris II conference on constitutional change in France and the United Kingdom was held in September 2005 (see above, p. 23). The Director of the Institute was warmly welcomed by the President of the University of Paris II, Professor Jacqueline Dutheil de la Rochère, and a delegation of members of the Law Faculty when visiting Paris in May 2005.

University of Regensburg

The University of Regensburg is one of the Institute’s partner universities for its German student exchange programme (see above, p. 50).

University of Siena

The University of Siena is the Institute’s partner university for its Italian student exchange programme (see above, p. 50).
University of Stockholm and the Wallenberg Venture

This collaboration has been running for four years. The original arrangement was for the three year period 2001-2004. However, the collaboration has been extended for three further years on unchanged terms. Its basis is a donation by the Wallenberg Foundation in Sweden to set up a venture named the Wallenberg Foundation Oxford/Stockholm Association in European Law. Professor Ulf Bernitz is the director of this Venture which enables him to contribute to the work of the Institute of European and Comparative Law in a consultancy capacity.

The objective of the association is to deepen the collaboration and mutually beneficial intellectual improvement. The activities include attracting Scandinavian doctoral and post-doctoral researchers and active academics to pursue study and research in Oxford, to make conference arrangements, particularly within European law, to participate in funded legal research projects and, in general, to act as a catalyst for more intensive collaboration between Scandinavian and British jurists. The activities take part within the ambit of the Institute where Professor Bernitz is provided with an office.

A visit of the Stockholm Faculty of Law to the University of Oxford, comprising a full study week, was organised from 27th September to 3rd October 2004. Fifteen Stockholm law scholars took part in the event, using St Anne’s College as a venue. The Stockholm delegation, headed by the former Vice Chancellor of Stockholm University, Gustaf Lindencrona (Professor of Tax Law), included law professors, younger researchers and doctoral students. Professor Mark Freedland and Dr Timothy Endicott presented to the group the Oxford system of graduate studies and doctoral research in law, and Professor Ewan McKendrick talked about undergraduate legal education in Oxford and in the UK. A number of topical subjects were presented by other Oxford professors, followed by discussion: Professor Paul Craig on the European Constitution, Professor Judith Freedman on tax avoidance, Professor Dan Prentice on specific features of English company law, Dr Stefan Talmon on counterproliferation of weapons of mass destruction at sea and Professor Stephen Weatherill on problems and objections to harmonising private law in the EU. The programme included a study visit to the House of Lords and two London law firms.

In June 2005 a symposium was organised in association with the Institute and the Centre for Competition Law and Policy. This was entitled “Trends in Retail
Competition: Private Labels, Brands and Competition Policy’, and is reported above (at p. 22).

A conference on ‘Compensation Schemes’ in the area of medical injuries was organised on 16th March 2005 by the Institute in collaboration with the Centre for Socio-Legal Studies. The conference to a large extent focussed on the Nordic approach to compulsory insurance schemes for injuries caused by pharmaceuticals. Professor Bernitz chaired the session on the Nordic approach and also acted as a commentator. He further contributed to the Institute conference on the harmonisation of European contract law in March (see above p. 19). This paper, an assessment of the Commission’s suggestions for EU-wide standard terms will be published as an article in a forthcoming book based on the conference.

The majority of the papers presented at the 2004 conference on ‘Good Corporate Governance in Europe in the Light of the Take-Over Directive’, organised by the Oxford/Stockholm collaboration and the Institute have been published as a special issue of The European Business Law Review (Issue 6, 2004), edited by Professor Bernitz. He contributed the article ‘The Attack on the Nordic Multiple Voting Rights Model’.


Within the framework of the collaboration a study visit, including mini seminars, was organised in November 2004 for three younger researchers from Stockholm University and the Royal Technical University in Stockholm, specialising in the relationship between intellectual property and competition law. The group, Assistant Professor Antonina Barkadejva Engelbrekt, Assistant Professor Bengt Domeij and Dr Dan Eklöf, met, inter alia, with member of the Oxford Internet Institute (OII) and with Professor David Vaver of St Peter’s College.

Merva Hämäläinen, researcher at the Helsinki University Law Faculty, spent two study weeks at the Institute in March 2005.

(UB)
The Institute is pleased to host academic visitors, normally of post-doctoral status, during their research periods in Oxford. Visitors are usually offered a work-space and IT facilities at the Institute and access to the Bodleian Law Library, the biggest law library of the Commonwealth. During the academic year 2004-5 we accommodated the following scholars:

**Nicos Alivizatos** has been Professor of Constitutional Law at the University of Athens since 1992. He holds a doctorate in public law from the University of Paris II (Panthéon-Assas) and he spent previous sabbaticals at Stanford and Princeton. He mainly works on human rights in a comparative perspective. In addition, he is a leading practitioner in human rights law before the European Court of Human Rights at Strasbourg, pleading in cases involving, among others, religious freedom, freedom of thought and property rights. Nicos spent the Michaelmas Term 2004 at the Institute, pursuing his current research on the treatment of immigrants in Greece and the EU and whether or not official attitudes towards them have been influenced by deeper perceptions of the ‘other’ and by diverging views of equality in our national legal traditions.

Ms **Claudia Amodio** is graduated magna cum laude in 2001 discussing a thesis on ‘Medical Liability between Contract and Tort: a Comparative Analysis’. In 2002, upon a public competition selection, she was admitted to the Doctorate in Comparative Law at the University of Florence, working under the supervision of Professor Anna De Vita. She is also a Teaching Assistant at the University of Ferrara where she is involved in a research program about ‘Liberalism and Solidarity and the Shaping of European Contract Law’. Claudia spent two months in the Institute working on her doctoral thesis which focuses on contemporary theoretical debate about both the feasibility and desirability of reconciling classical notions of contract theory with the goal of social policy aiming to ensure equality of bargaining power. This work aims to survey English approaches to the ethos of contractual relationships, since it is possible to understand these approaches as inviting a re-evaluation of the law of contract, including its political and economic dimension.
**Rainer Arnold** is Professor at the University of Regensburg, Germany, holder of the Chair of Public Law and Comparative Law as well as of a Jean-Monnet-Chair of EC Law, and a permanent visiting professor at Charles University of Prague. He has been a Visiting Professor at numerous universities, including Paris I (Panthéon-Sorbonne), Paris II (Panthéon-Assas), La Sapienza Rome, Moscow Lomonossov State University as well as at the University of Bologna and the Universidad de los Andes, Chile. He has also been Visiting Fellow of the European University Institute, Florence. He is a corresponding member of the Bologna Academy of Science and membre associé of the Académie internationale de droit comparé. For the Utrecht World Congress of this Academy in 2006 he will be the general reporter on the subject of European Constitutional Law. His main research interests are EC/EU Law (institutional aspects, fundamental freedoms, external relations, in particular with Central and Eastern Europe countries) as well as Comparative Law (Constitutional and Administrative Law in European countries). In these fields he has published numerous books and articles in German and foreign languages. He is a member of scientific boards of leading international reviews in France, Spain, Italy, the Czech Republic, Poland and the USA. He spent the month of September 2005 at the Institute studying the British approach to recent developments in EU Law and to the emergence of European Constitutional Law.

**Mr Guido Boni** graduated from Florence University in 2002. He discussed a thesis in Private Comparative Law on ‘Freedom of Contract between Autonomy and Heteronomy: Comparative issues in Labour Law’. In 2002, upon a public competition selection, he was admitted to the doctorate in European and Comparative Labour Law at the University of Pescara. He also teaches Labour Law at the University of Florence. He spent five months at the Institute working on his doctoral thesis on ‘Crisis of Subordination and New Forms of Work: The Evolution of the Labour System in Great Britain and Italy’. During that period, he concentrated on the theoretical debate on the crisis of subordination, analysing the current English law of traditional contracts of employment and of other personal employment contracts. He paid particular attention to the current discourses on the reassessment of the legal framework of the contract of employment in the United Kingdom.

**Dr Dulce María Cairós Barreto** is an Assistant Teacher in the Department of Employment Law at the University of La Laguna, Spain. Her major publication so far has been *Contratos de mediación laboral y de agencia mercantil: un estudio sobre el contrato de trabajo y sus transformaciones* (Valladolid: Lex Nova, :Valladolid 2004). Dulce spent February to May 2005 at the Institute, doing research on the working time directive in European law, and on occupational risk prevention in English labour law.
Dr Aránzazu Calzadilla Medina lectures in Civil Law in the Faculty of Law at the La Laguna University, Tenerife (Canary Islands, Spain). She practices as a substitute Judge in the second instance court of Tenerife (Audiencia Provincial de Santa Cruz de Tenerife). For several years she did research at the Faculty of Law of the Complutense University of Madrid. Later she pursued her research for three months at the Harvard Law Library (Cambridge, USA). She finished her doctoral thesis on International Adoption in April 2002, being awarded the highest recognition (distinction cum laude). During August and September 2005 she did research on the relationship between the Land Registry and the environment in Europe at the Institute. For this she was funded by a postdoctoral scholarship granted by the government of the Canary Islands.

Albina Candian is Professor of Comparative Law at the University of Milan Faculty of Law. She is a Member of the International Academy of Comparative Law. Her fields of research are the Law of Property, Security Interests, and Insurance Law. She visited the Institute in August 2005 in order to pursue research on security interests and bankruptcy in European Law. The research project primarily intends to analyse the actual problem related to the validity of guarantees (securities interests) in the case of bankruptcy or insolvency procedures in the European context, considering also the impact of the implementation of the European Directive on financial collateral arrangements. A further aim is to analyse the differences between secured creditors and unsecured creditors in bankruptcy through the tools of economic analysis of law.

Dr Aurelia Ciacci is a senior researcher at the Centre of European Policy and Law (Zentrum für europäische Rechtspolitik, ZERP) of the University of Bremen. She spent a full year as a Marie Curie Fellow at the Institute on which she reports more fully below (p. 66).

Michele Graziadei is Professore Ordinario at the Università degli Studi del Piemonte Orientale ‘Amedeo Avogadro’, Italy. Recent publications include Commercial Trusts in European Private Law (Cambridge University Press, 2005, edited with Ugo Mattei and Lionel Simth); ‘Agency’ in L. Antoniolli and A. Venezian (eds) Principles of European Contract Law and Italian Law - A Commentary (Kluwer Law International, 2005); ‘Artificial Reason’ in Barbara Pozzo (ed) Ordinary Language and Legal Language (Giuffre, 2005); and ‘Italy’ (with Albina Candian) in Eva-Maria Kieninger (ed) Security Rights in Movable Property in European Private Law (Cambridge University Press, 2004). During August 2005 Professor Graziadei conducted comparative research on the law of fiduciary obligations to complete the project of a book on this topic that is
due to be published in the Clarendon Lectures series (Oxford University Press). He also began a comparative study dedicated to legal regulation of conveyancing services in the US and in England and of the evolution of the legal profession in this field.

Ms Santa Nitti is a third year Ph.D. student in comparative law at the Law Faculty of the University of Milan. Her main field of research is contract law. Whilst visiting the Institute in August 2005 she did research on her thesis on the ‘Duty of Disclosure in Insurance Contract Law: a Comparison Between Italian and English Legal Systems’. This starts off from the observation that, today, contracts are the result of more and more complex pre-contractual negotiations where a very important role is played by information exchanged between parties. The thesis analyses legal problems of general pre-contractual duties and related liability in case of breach by one or both parties. It then focuses on the duty of disclosure in insurance contracts as contracts uberrimae fidei. In particular, using the comparative method, the thesis is supposed to verify the divergences or convergences between different legal systems on this specific aspect. Finally, the European trends towards a harmonisation of contract law and in particular insurance contract law will be analysed.

Marco Olivetti is Professor of Constitutional Law in the University of Foggia, Italy. He spent four weeks in the Institute between August and September 2005, working on a research project concerning ‘Legal Regulation of In Vitro Fertilisation in the United Kingdom’. The weeks in Oxford were spent mainly working in the Bodleian Law Library and are part of a wider project which aims to place Professor Olivetti’s current research interests – concerning the legal regulation of the said subject in Italy – in the context of a comparison with the British and the American legislative regulations.

Karl-Nikolaus Peifer holds a chair in Private, Commercial, Competition and Intellectual Property Law, New Media and Economic Law at Cologne University, having held similar positions at the Ruhr-University in Bochum and the Viadrina University in Frankfurt/Oder beforehand. He spent two weeks at the Institute in March 2005, pursuing research on the English law of privacy.

For the academic year 2005-6 the Institute expects visitors from Austria, China, Germany, Italy, Poland, South Africa, Spain and the United States.
From 1st April 2004 to 31st March 2005 I had the honour and pleasure to be a Marie Curie Fellow at the University of Oxford, Institute of European and Comparative Law. This has been most enriching for me in many regards: academic, cultural and personal. For this I would like to thank several institutions and people.

The European Community

Marie Curie Fellowships are granted by the European Community to foster cross-border mobility and training of researchers, for the purpose of structuring a common European Research Area. A researcher can only become a Marie Curie Fellow when she or he moves to a country which is neither her or his country of origin nor a country where she or he has recently been staying for more than one year. I am an Italian and German national, living and working in German academia since 1995. Because I had never lived in the UK before, I was an eligible candidate for a Marie Curie Fellowship in a British university.

The EC Framework Programme provides for several types of Marie Curie Actions (for an overview of the Marie Curie Actions see European Commission, 'Structuring the European Research Area – Human Resources and Mobility – Marie Curie Actions', Work Programme, ed. September 2004, ftp://ftp.cordis.lu/pub/fp6/docs/wp/sp2/r_wp_200208_en.pdf). A first distinction is to be drawn between individual-driven and host-driven actions. In the individual-driven actions the application for a Marie Curie fellowship project is presented to the EC directly by an individual researcher with the support of her or his future host institution. In the host-driven actions one or more research institutions apply for EC funding, to be spent on recruiting Marie Curie Fellows. My fellowship was embodied in one particular type of host-driven action: the ‘Marie Curie Host Fellowships for the Transfer of
Knowledge (TOK) Development Scheme. This action aims to support projects presented by an institution in need of developing new knowledge. The applicant organisation can realise this knowledge transfer in two ways. First, it can host experienced researchers from other European countries (‘incoming researchers’) for a period up to two years. Second, it can send experienced researchers from among their own staff members (‘outgoing researchers’) to an institution in another European country for the acquisition of new knowledge to be transferred and developed by them on their return to their home organisation. I was sent as an ‘outgoing researcher’ from the Centre of European Policy and Law of the University of Bremen (Germany) to the Institute of European and Comparative Law of the University of Oxford, in the framework of the research project ‘Protection from Unfair Suretyships in the European Union’.

The Centre of European Policy and Law of the University of Bremen (ZERP)

Between my first Ph.D. in comparative private law (University of Trieste, Italy, 1998) and my second Ph.D. in comparative criminal law (Bucerius Law School, Hamburg, Germany, 2004) I have been working as a junior researcher at the University of Kiel and, since 2000, as a senior researcher at the Centre of European Policy and Law (Zentrum für europäische Rechtspolitik, ZERP) of the University of Bremen. Because the ZERP is expected to raise as much in research funds as possible, since the very beginning of my appointment in May 2000 I gained familiarity with project applications and EC funding schemes. In this regard I would like to thank my ‘Habilitationsvater’, Professor Gert Brüggemeier, for his constant support and for having provided me with a high degree of autonomy in developing comparative research projects in the field of European private law. Thus I have been able to design and coordinate the entire Marie Curie project ‘Protection from Unfair Suretyships in the European Union’, from the application to the implementation phase. Several colleagues from ZERP, in particular Professor Peter Rott and Professor Lesley Jane Smith, have helped me in preparing the application, for which I thank them.

The Institute of European and Comparative Law (IECL) and St John’s College, Oxford

I owe much to Professor Lesley Jane Smith for having put me in contact with Professor Stephen Weatherill, who established the partnership between ZERP and IECL in this project and made the necessary arrangements for my research stay in Oxford. I would like to thank the Directors of the Institute,
Mark Freedland and, since October 2004, Stefan Vogenauer, the Administrator, Jenny Dix, and all colleagues of IECL, who warmly welcomed me and provided me with excellent working facilities. Mark Freedland also introduced me to St John’s College, whose SCR kindly accepted me as a temporary fellow for the whole duration of my research stay. The attachment to St John’s has made my Oxford year an even greater experience. At St John’s I had the pleasure to meet and exchange views with other internationally renowned worldwide known legal scholars such as Simon Whittaker, Roy Goode and Paul Craig, and the Junior Research Fellows in law, Alexandra Braun, Nicola Countouris and Catherine Jacqueson. I will remember the latter, and my IECL colleagues Katja Ziegler and Guido Boni, not only as dear colleagues, but also as good friends.

The Marie Curie Project: ‘Protection from Unfair Suretyships in the European Union’

This comparative law project addresses a specific social and economic problem. Banks often give credit to individual or small-medium enterprises (SMEs) only on condition that close family members of the principal debtor stand surety. If the amount of the suretyship is disproportionate to the financial means of the family members in question, the principal debtor’s insolvency inevitably leads them to financial ruin: they are doomed to being heavily indebted until the end of their lives. This result may appear unfair for many reasons.

First, family members often sign surety agreements without being aware of the risk they are running. They do so because their family member and/or a bank employee ask them to put their signature on a form. Neither the debtor nor the bank has any interest in advising the potential guarantor about the financial risk of the agreement. Second, these agreements may be unfair even when the family member is perfectly aware of the contractual risk while signing the form. Indeed, family members often have little choice, if any. Either they accept to stand surety, or they risk impairing their family relationship by refusing to do so. Third, family members do not always have an economic interest in the personal guarantee. Even if they could have had such an interest at the time of the conclusion of the agreement, the family situation may have dramatically changed before the realisation of the surety risk, e.g. after a divorce.

The relationship between non-professional sureties and professional lenders is characterised by a structural inequality of bargaining power which is no less intense than the one underlying consumer contracts. Sometimes the sureties’ substantive freedom of contract can be even more heavily restricted than the
one of consumers, such as in case of suretyships of close family members or employees of the main debtor. Therefore, the question arises why non-professional sureties should not be granted a protection as strong as enjoyed by consumers.

Until now, sureties have not been subject to specific EC consumer law. This, however, will change soon. The proposal for a new Consumer Credit Directive dating from 11 September 2002 (COM(2002) 443 final) as amended on 28 October 2004 (COM(2004) 747 final) raises a whole range of questions with regard to suretyships.

A first category of issues concerns the efficacy of the proposed regulation within its scope of applicability. Would the new Directive provide for adequate consumer surety protection? Would it have a positive or negative impact on the consumer credit market? Would the maximum harmonisation approach pursued by the proposed Directive force some Member States to reduce their existing levels of surety protection?

A second category of issues refers to vulnerable surety agreements not covered by the proposed Directive. Is it reasonable to exclude non-professional sureties guaranteeing business loans from the notion of consumer sureties? Do national contract laws award the former sufficient protection? Could national consumer bankruptcy laws help vulnerable sureties to avoid life-long indebtedness? Does the availability of effective consumer bankruptcy instruments affect the need for contract law remedies focusing on the substantive fairness of surety agreements?

The latter points raise then a third category of issues, focused on the tension between diversity and convergence in the laws of the Member States. Are there any common European principles in the national suretyship laws? To what extent do different legal systems achieve similar results in similar suretyship cases, despite the differences between the legal instruments formally applied? If the levels of protection of non-professional sureties in the Member States varied notably, would this be compatible with a European Constitution granting equal rights to Union citizens, and banning discriminations on the ground of nationality? Is harmonisation in this field desirable?

Ultimately, all these issues raise further and more general questions, such as the effect of the European Constitution on private law (including the constitutional boundaries of contract law harmonisation), and the socio-economic impact of laws protecting weaker parties (including the
problem of judicial decision-making amidst the uncertainty concerning these empirical factors).

All the questions mentioned above form the subject of the Marie Curie project ‘Protection from Unfair Suretyships in the European Union’ (see http://www.unfairsuretyships.uni-bremen.de). However, the project has enabled the ZERP to do much more than sending me to Oxford as a Marie Curie Fellow. Several experienced researchers from other European countries have been appointed as ‘incoming’ Marie Curie Fellows in Bremen since October 2004 within the framework of the same project. These are, in the order of appointment: Professor Dr Sjef van Erp (Maastricht), Dr Rebecca Parry (Leicester), Professor Gerard McCormack (Manchester) and Dr Gina Gioia (Padua). Moreover, from September 2005 until the end of March 2007 further fellows will be appointed: Dr Mel Kenny (Luzern), Professor Annina Persson (Stockholm), Dr Francesca Fiorentini (Trieste), Dr Špelca Meznar (Ljubljana) and, hopefully, Dr Anthony Chamboredon (Paris).

**Academic Achievements during the Period of Fellowship**

During my stay in Oxford, I concentrated my research on the following issues. Formal and substantive disparities, spontaneous convergences, and ‘cryptotypes’ in the surety protection laws of the UK, Germany, France, and the Netherlands; doctrines of the horizontal effect of human rights in UK private law; judicial convergence via horizontal effect of common European fundamental rights as an alternative way to harmonise European private law.

The results of the first stage of my research, and the scientific achievements of other scholars involved in the above Marie Curie project, were presented and discussed in Bremen on 30th November 2004 at the Round Table ‘Protection from Unfair Suretyships in the European Union: Constitutional Dimension and Empirical Framework’. Six papers were presented at this conference, which have recently been published in a special issue of *European Review of Private Law* (13 ERPL no. 3, 2005). The title of my paper is ‘Non-Legislative Harmonisation of Private Law under the European Constitution: The Case of Unfair Suretyships’. From December 2004 to March 2005 I had the great opportunity to present and discuss my draft papers at three academic events in Oxford:


Personally, I have experienced my period of fellowship at IECL, Oxford as enormously beneficial for both my academic profile and my life in general.
Looking Ahead to the Academic Year 2005-6

Joint Conference of the Institute and Clifford Chance

The Institute plans to hold another event in partnership with Clifford Chance in March 2006. This will focus on patterns of regulation in the European Market, examining legal and policy perspectives on the appropriate intensity of regulation at EU level and its relationship with the exercise of regulatory competences undertaken at national level. In particular the concern will be to consider routes to ‘better regulation’ and to ensuring judicious assessment of the costs and benefits of regulation.

(SW)


This French-English conference organised by the Association Sorbonne-Oxford with the support of the Institute for European and Comparative Law will be held early in March 2006.

One of the issues left untouched by the Brussels Convention of 27th September 1968 (and by the Brussels-1 Regulation replacing it) concerns the leeway left to the domestic courts when applying European rules on international jurisdiction in civil and commercial matters. Is the court by which the case is tried under a duty of strict compliance with the jurisdiction rule as it is drafted? Would such a duty go so far as to require the court to abide by the jurisdiction rule, even though this rule is used by one of the litigants against the other with a view to reach unmerited goals, and especially to delay the adjudication on the merits? Under what conditions, if any, may the Court reject jurisdiction on account of any unsuitable forum shopping, thus excluding the application of the normal jurisdiction rule?
Recent litigation in the ECJ has required, on three occasions in the last three years, to provide a rather – some would say 'excessively' – restrictive answer (see the Gasser case, 2003, Case C-116/02; the Turner case, 2004, Case C-159/02; and the Owusu case, 2005, Case C-281/02). In these three cases, the European Court of Justice held that, under the Brussels-Lugano regime, the domestic court has no discretion to remedy any inconvenience arising from the strict application of the European rules on jurisdiction, even if such discretion is provided for by the *lex fori*.

Such a series of rulings from the ECJ raises several new questions in turn. It especially leads the observer to wonder whether it is appropriate for the European Court to prescribe a blind application of European rules on jurisdiction by domestic courts. This is all the more so as the legal traditions of EC member States usually provide for corrective mechanisms – such as ‘forum non conveniens’ in English Law and ‘exception de fraude’ in French Law – available, among others, in cases when a party abusively triggers the jurisdiction of a court with a view to obtaining an unjust advantage.

The time has now come for an analysis, under both Community law and comparative law, of the ramifications of the recent Gasser/Turner/Owusu cases. One might thus determine to what extent this set of rulings leaves room for any judicial discretion on the part of domestic courts when facing procedural abuses from a party, or, more generally, inappropriate attempts at litigation. With this aim in view, the Association Sorbonne-Oxford, with the support of the Institute of European and Comparative Law, will host in Oxford a panel of practitioner and academic experts from both sides of the Channel for a French-English bilingual conference.

(PDVS)
Training of Judges in Competition Law

Earlier this year, the Institute and its Centre for Competition Law and Policy (CCLP) successfully bid for funding from the European Commission for the training of national judges in EC competition law. The £30,000 grant is aimed at providing national judges, especially those from the new Member States which joined the European Union on 1st May 2004, with training in EC competition law and policy. The training programme is to take place in Oxford in April 2006. Over five days, delegates from the Member States will attend lectures on the European competition regime and the application of competition law by national courts. Special attention will be given to the enforcement of competition laws by the national courts and the cooperation between them and the European Commission. The programme will consist of lecture sessions, workshops and case studies. The teaching will be provided by Professor Stephen Weatherill, Jacques Delors Professor of European Community Law, and Dr Ariel Ezrachi, Slaughter and May University Lecturer in Competition Law.

This exciting initiative and the show of confidence from the European Commission will allow the CCLP to actively contribute to the dissemination of legal expertise in competition law in the new enlarged European Union.

(IECL Annual Report 2004-5)

Intellectual Property and Competition Law Conference

The Centre for Competition Law and Policy in conjunction with the Oxford Intellectual Property Research Centre will host a one day conference on Intellectual Property and Competition Law on Friday 24th March 2006. The conference will look at the interface between competition law and intellectual property law at European and wider international levels. Discussion panels will include expert economists and legal specialists in competition law and IP laws. Further details on the conference will be available on the CCLP website in due course.

(IECL Annual Report 2004-5)
Appendix A: Members of the Advisory Council

The Governance Arrangements for the Institute, as agreed by the Law Board, provide that in ‘determining the strategic direction of the Institute the Director will be guided by an Advisory Council’. Its members shall be ‘prominent persons in public life and the legal world, well placed to advise upon and support the work of the Institute’. The Advisory Council meets once annually, usually in connection with our major annual event, the joint conference with Clifford Chance in March. We are grateful to members of the Council for the time spent and for their helpful suggestions in all sorts of issues.

Chair: The Rt. Hon. the Lord Rodger of Earlsferry PC, DCL, FBA,
   House of Lords
Professor Avv. Guido Alpa, University of Rome - “La Sapienza”,
   President of the Council of the Bar of the Republic of Italy
Professor Dr Christian von Bar, Director of the Institut für Internationales
   Privatrecht und Rechtsvergleichung, University of Osnabrück
Sir Franklin Berman KCMG, QC, Faculty of Law, University of Oxford
The Rt. Hon. the Lord Bingham of Cornhill PC, Hon.DCL (Oxon),
   Lord Chief Justice of England and Wales
Mr Christopher Bright BCL, Shearman and Sterling, London
The Conseiller Culturel, French Embassy, London
Professor Paul Craig FBA, Fellow of St John’s College, Oxford
Mr Ross Cranston QC, MP, DCL, House of Commons
Mr Eamon Doran, Linklaters & Alliance, London
Professor Jacqueline Dutheil de la Rochère, Le Président,
   Université Panthéon-Assas (Paris II)
Professor Sir David Edward CMG, QC, LLD, FRSE, former Judge of the Court
   of Justice of the European Communities
Mr Michael Elland Goldsmith, Clifford Chance, Paris
Professor Dr Francesco Francioni, Professor at the European University
   Institute, Florence and the University of Siena
Professor Dr Hans Franken, Dean of the Law Faculty, University of Leiden
Professor Mark Freedland FBA, Deputy Director of the Institute and
   Fellow of St John’s College, Oxford
Professor Sir Roy Goode CBE, QC, FBA, Emeritus Professor of English Law, Oxford
The Rt. Hon. the Lord Hoffmann, House of Lords
Professor Francis Jacobs QC, Advocate-General at the Court of Justice of the European Communities
Dr Nina Lemmens, Director, German Academic Exchange Service (DAAD)
Madame Noëlle Lenoir, formerly Judge of the Conseil Constitutionnel, France and Minister for Europe in the French Government, Conseiller d'Etat et Président, l'Institut de l'Europe, HEC School of Management, Paris
The Rt. Hon. Lord Justice Mance, Royal Courts of Justice
Mr Martin Matthews, Fellow of University College, Oxford
The Rt. Hon. the Lord Phillips of Worth Matravers, House of Lords
Mr Stuart Popham, Clifford Chance, London
The Rt. Hon. the Lord Saville of Newdigate, House of Lords
The Hon. Mr Justice Silber, Royal Courts of Justice
Professor Henk Snijders, University of Leiden
The Vice-Chancellor, University of Oxford
Professor Stefan Vogenauer, Director, Institute of European and Comparative Law, Oxford
Professor Derrick Wyatt, Chair of Management Committee of the Institute and Fellow of St Edmund Hall, Oxford
Appendix B: Members of the Management Committee

The Governance Arrangements for the Institute, as agreed by the Law Board, provide that the Director, in carrying out his duties ‘will be responsible to the Management Committee, which will be a Committee of the Law Faculty Board’. The Committee’s terms of reference include having general oversight of the Institute including its administration of the degree in ‘Law with Law Studies in Europe’, receiving reports on academic activity and programmes, monitoring financial outcomes and approving strategies for income generation. The current composition of the Committee is as follows:

Chair: Professor Derrick Wyatt (Law Board)
Mr John Cartwright (Law Board)
Dr Ariel Ezrachi (co-opted, Centre for Competition Law and Policy)
Dr Daniel Kelemen (Social Sciences Division)
Professor Ewan McKendrick (Chair of the Law Board)
Professor Stefan Vogenauer (Director of the Institute and Course 2 Co-ordinator)
Professor Stephen Weatherill (Jacques Delors Chair)
Dr Katja Ziegler (co-opted, IECL)
Appendix C: Financial Supporters of the Institute

The Institute gratefully acknowledges financial support received from the following governments, organisations, institutions, and individuals, listed here in alphabetical order:

Andbel AS, Norway
Anderson Foundation, Houston, Texas
Ian Arstall (formerly Linklaters & Alliance), World Group, Malta
Pauline Ashall, Linklaters & Alliance
Banca Monte dei Paschi, Siena
Banca di Roma
Christopher Bright, Shearman and Sterling
Anneliese Brost
Casa di Risparmio di Genova e Imperia
Clifford Chance, London
Ferrier Charlton (now retired), Linklaters & Alliance
CMS Hasche Sigle Eschenlohr Peltzer Schäfer Attorneys, Stuttgart, Germany
Commerzbank A.G.
Christopher Coombe, Linklaters & Alliance
Deminex (UK) Ltd.
Deutscher Akademischer Austauschdienst (DAAD), Bonn and London
Martin Elliott, Linklaters & Alliance
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