

CONFERENCE REPORT

**3rd Annual 'Experiencing the Law' Conference:
'From Globalisation to Poverty; the implications of
a 'credit crunch'
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The idea of the Experiencing the Law series of one-day conferences is to identify a theme likely to be of interest and relevance to practitioners and academics; and to use that to bring a group of interdisciplinary speakers together in order to debate the topic, in ways that can influence practice (practitioner as well as academic) and highlight issues that have a public policy dimension that needs to be addressed. For us in the summer of 2008, in a year that opened with chaos and uncertainty in the financial markets, bank collapses and a British and US 'credit crunch' the question was: How would the year end and what was the likely future in terms of the ways in which ordinary individuals might need, or might be forced, to encounter the law? Our intention was to put together a conference programme to reflect on the nature of globalisation, in terms of its effect upon us all. Our starting point was that in today's multi-cultural Britain, with its membership of the EU, this is no local crisis, but one with much wider implications. Issues of in-migration (economic and political) are nuanced by the credit crunch, with enhanced problems for migrants and refugees (whatever their standing) in maintaining themselves economically and legally. This is also, for the economically vulnerable, an age when the dangers of internet fraud loom large because of the reality that the best 'bargains' are often to be sourced online, opening individuals to a whole new range of economic vulnerabilities.

Thus the conference set out to explore a range of relevant issues including insurance, white collar crime and bank 'fraud', drawing on the voices of those affected and involved both professionally and privately, past and present. We questioned how the credit crunch was likely to be experienced by those who are economically, and so socially, most vulnerable, and what implications this had for the management of this through the legal process. In this we were determined to include the historical dimension. We thought it important to explore the vision increasingly depicted for consumers by politicians and leading monetary figures, that in this first global recession of the twenty-first century we are setting sail, in stormy seas, into

uncharted waters, where there is no past precedent of any use to guide us (to draw on the flowery metaphor currently favoured by so many political commentators). Is it possible to challenge this by taking a fresh, critical look at past crises and identifying any lessons for today?

The opening plenary warned of the particular vulnerabilities of the London market; because of its global involvement, Rob Merkin argued, we had yet to find out (and might have to wait for some months) the full impact of problems in the US on the British economy, via the impact on British banks. It was, after that opening, fascinating to hear Sarah Wilson's emphasis on the long history of banking crises, and her argument that, essentially, we had all been here before. As she pointed out, the echoes of previous crises from the South Sea Bubble of 1721 via Overend Gurney in 1866 to Northern Rock, Bear Stearns and Lehman Bros, were very plain. The issue, as Rob Merkin had insisted, was the exposure of other institutions after the troubles of a single institution became critical, because of the interconnectedness of the global markets, meaning that in fact, there is always some potential for the stability of the entire global banking system to be threatened. The issue was how far the scandals of such financial frauds should and could be dealt with via regulation and so the criminal justice process. The events of the period 1850-1870 are crucial here, as even the 2007 Treasury Select Committee Report accepted, with collapses such as that of the City of Glasgow Bank in 1870. This key period reveals that while dishonesty had been part of life since 'time immemorial', a feature of the modern age was a growing perceptual appreciation that business activity was capable of amounting to criminal activity.

Sarah Wilson reflected on ways in which modern ideas on what amounts to financial crime are always influenced by the immediacies of banking necessity at any time, reshaping both opportunities for and identification of 'unacceptable' financial conduct. It was thus essential to make sure that there was an awareness of this as not just a short term factor, when seeking to deal with the full scope of the current banking crisis and its fall out. Complementing this, Jamie Murray from Liverpool John Moores University reflected on the 'law' (or almost the lore) of global capital, by providing some necessary socially-orientated theoretical underpinning to the practical issues raised by Sarah Wilson and Rob Merkin. He pointed out that chaos theory had a real relevance to any understanding not just of the banking crisis but also of its wider impact. The 'dissipative system assemblage of capitalist organisations', accompanied by a 'global axiomatic of system regulation' was sustained by individual states

because their own security was ultimately dependent on the global capital system. But this also meant that the impact of a catastrophe in one area was something which went far beyond the arcane economic sector. Nicholas Ryder's response was to explore the potential for an alternative to banks for the economically vulnerable in the shape of credit unions which, although started in this country (in the shape of the Rochdale Society of Equitable Pioneers, founded in 1844) had had a greater impact elsewhere, with the emergence of co-operatives in Central Europe and North America, where they have acted as mainstream providers of financial services in many jurisdictions. In the United Kingdom, an inadequate legislative framework, an ineffective credit union regulatory system, inappropriate development models, allied to an over-reliance on state subsidies, had ensured that they did not develop here. He called for a revisiting of this option, pointing out its advantages – not least its distance from the current banking model which would have a reassuring impact on public confidence – and the hopeful signs of political support provided by the government since 1997. But more needed to be done.

Echoing the call for more action, Sarah Nield (like Rob Merkin from Southampton University) commented on the need to address protection for the domestic borrower. She identified three broad areas requiring such attention. First, the regulation of the mortgage market through the statutory regulatory regimes provided by the Financial Services and Markets Act 2000 (FSMA) in respect of Regulated Mortgage Contracts and the Consumer Credit Act 1974 (as amended) (CCA) in respect of mortgages falling within this legislation. Allied to that there was the control of unfair terms provided by the Unfair Terms in Consumer Contract Regulations, the Unfair Practices Regulations and s140A-C of the CCA; and finally, the issue of borrower redress through the complaints process offered by the Financial Services Ombudsman, legal rights of action through the FSMA and CCA and the regulation of the lender's right to possession through the FSMA, CCA, Pre-Action Protocol for Mortgagee Possession Actions and the Administration of Justice Act 1970 (as amended). There had been developments in recent decades to the protection of domestic borrowers from the equitable jurisdiction based upon oppression and unconscionability to a complex web of statutory measures based upon the treatment of the borrower as a consumer. But despite this plethora of statutory protection, she argued, in treating the domestic borrower as a consumer the Government has failed to adequately discharge its responsibilities and few things displayed this better than protection in the essential process of providing affordable housing.

Sessions followed addressing the criminal justice process, by Andrew Baker and the author of this Report, which revealed the problematic nature of the present by comparison with past habits. But of particular interest were the practitioner sessions which followed, provided by Ed Gibson, the head of Microsoft Security for Europe, Dinah Greek, from the periodical *Computer Active*, and Jennifer Parry, of the internet service, e-Victims. Ed Gibson, in a *tour de force* plenary presentation discussed the computing environment and the UK regulatory system. Having been involved in, for instance, Project Ore, he clearly had a good grasp of the problems for the individual in protecting themselves in the online environment. His argument, along the *caveat emptor* line, was that we had to be more prepared to take responsibility for our own identity protection online, via a range of measures from the obvious virus protection software (he also recommended the free service Secunia as a system check) to 'good house-keeping' measures such as regular password changes. He demonstrated how frighteningly easy it was to access an individual's computer (linking in, here, with wider reportage and comment that identity fraud, for instance, is one of the fastest growing crime areas). We had to understand there was a determined will to use this technology for criminal and fraudulent ends, as well as for positive ones: reliance on government regulation was always going to be an illusion, given the ingenuity of the technologically-skilled criminals working in this area. His points were pushed home still further by Dinah Greek's powerful presentation, *Frauds, Scams and Deceits*. She pointed out that consumer law was there which could deal with the issues: rather than a lack of regulation, the issue was how to apply it, given the minimal resources given to this by the Home Office. There was a real need, she argued, for proper funding of police forces in particular to investigate and prosecute as too many individuals were escaping as things currently stood. As Ed Gibson had done, she emphasized the skill of the internet-orientated fraudsters, and how a combination of genuine and fake internet pages could lead to involvement in a fraud. She also addressed the issue of how this enabled identity theft, and the acquisition of bank details: a link to her presentation is provided at the end of this Report. Equally, [Jennifer Perry's](#) challenging presentation on the need to provide a comprehensive online service, based on the experiences of the victims of internet fraud, mis-information and crime.

Particularly in view of these closing sessions, the message from the conference was plain: we were in the middle of a financial recession which was being made worse, in terms of the experiences of individuals, by a less than useful and sympathetic regulatory system. In many areas, government and the criminal justice system were

proving themselves to be inadequate. While it was still impossible to predict the full scope of the recession, it could be made better – on both the macro and the micro scale – by a more honest recognition of the potential for help by looking to the lessons of history. New and innovative approaches, such as promoting credit unions, needed to be explored. And given the importance of internet technology at all levels of daily life, there was action needed by both the potential victims and government. Proper attention and funding had to be devoted by the state to the investigation and management of crime and fraud as it affected individuals. Equally, the state had to be prepared to make more use of NGOs and other voluntary organizations such as e-Victims, with its broad approach to helping and supporting victims of crime and fraud. However, at the same time, we all, as potential victims, had to be prepared to take a greater responsibility for ourselves in protecting ourselves against being exploited criminally via the internet.