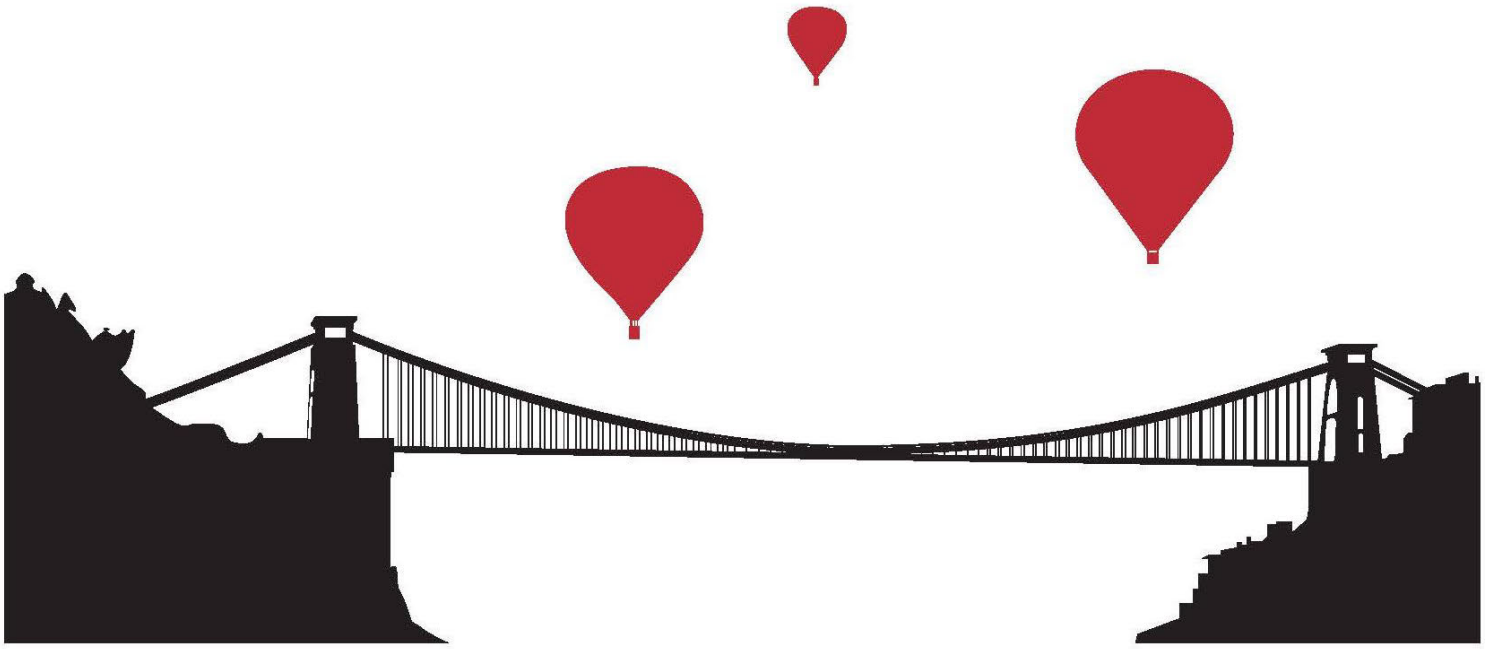

SLSA 2018

27-29 MARCH

Book of Abstracts

University of BRISTOL Law School

SLSA Socio-Legal Studies Association

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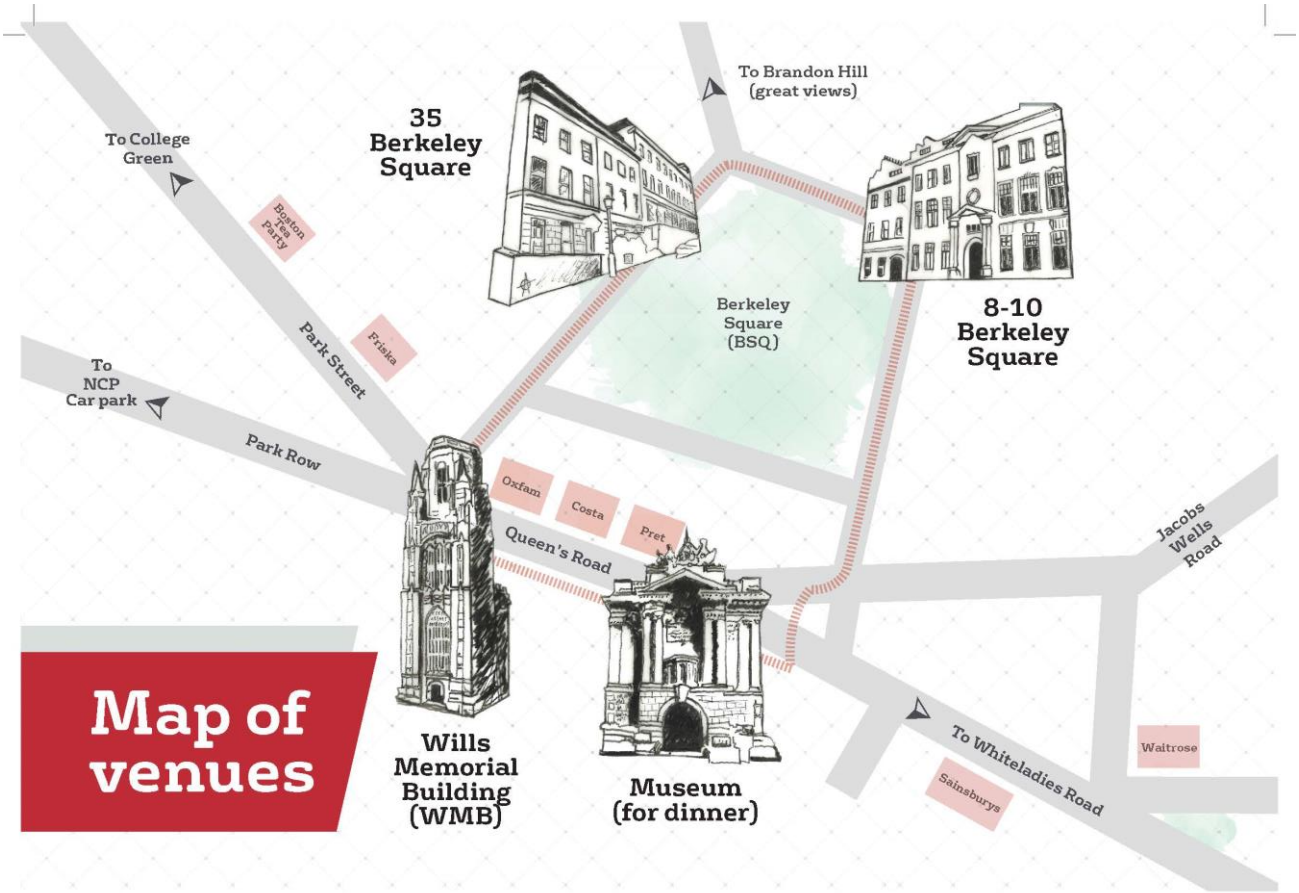

Streams and Papers by Session

Session One: Tuesday 27th March 13:30-15:00

Access to Justice in Context 35BSQ: 4.07

Philosophy, Politics and Legal Structure

- Jen Hendry, Everyday Challenges to the Rule of Law: Critiquing Procedural Hybrids

Hybridised procedures are blended processes in either civil or criminal law that rely upon mechanisms normally associated with the other type, or omit procedural dimensions normally required by their own sort. Such procedural hybrids blur the lines between the civil and the criminal, usually to achieve a particular end, and they are becoming more common – indeed, there has been a marked increase in recent years in the quantity of legislation passed by the UK Parliament that provides for 'hybridised' procedural approaches to specific legal issues, for example, civil recovery, immigration detention, domestic violence protection, and anti-social behaviour regulation. The justification for their employment varies depending on context, but invariably reduces to the provision of an instrumental benefit. The conflict that arises here is between achieving this goal, on the one hand and, on the other, ensuring the adequate observance of the alleged perpetrator's civil and political rights. The legislative privileging of expediency over considerations of human rights and due process is becoming increasingly normalised, and problematically so.

There is very little scholarly engagement with such low-level, everyday hybrid procedures, a significant omission considering that these regulate some of the most commonplace interactions between the legal system and those who it governs. Indeed, there has also been no overarching investigation into the increase in frequency of such procedural hybrids or into the different motivations – historical, social, political, and ideological – that may underpin their adoption and implementation. This presentation highlights the need for conceptual framework through which civil/criminal procedural hybrids can be examined as a distinctive legal phenomenon. It also outlines an investigation into those larger rule of law questions that have, until now, gone unexamined in this critical area of legal governance.

- Penny Miles, A Framework for Access to Justice: Embarking on LGBTI Litigation

This paper presents a framework that considers the facilitative and restrictive factors relevant to undertaking litigation to advance LGBTI rights. This in part responds to the growing use of litigation worldwide to challenge and advance LGBTI rights through litigation, as part of wider movement or individual strategies for effecting change. The model builds on Siri Gloppen's (2006) framework for using courts to advance social rights, but departs from it in two main ways: it focuses solely on the first stage set out in her work relating to claimants' ability to articulate their voice before the courts, and it is an actor-based framework. This model emphasises the complexities around initiating litigation pertaining to LGBTI rights, as a socially and legally marginalised issue. As Gloppen's first stage centres on an individual's voice articulation, the subsequent expansion of this stage lends itself to an actor-based approach. It focuses on four principal actors: the claimant, the LGBTI movement (domestic and international), the lawyer/s, and the last actor or perhaps factor, is the case itself. However, in recognition of the contextual and structural factors that impact upon an individual's action, this piece examines the relationship between the actor and the context by exploring how political and legal opportunities intersect when studying emergent legal action by LGBTI people. This framework builds on extensive study into LGBTI rights comprising ethnographic and qualitative fieldwork conducted in Chile between 2004 and 2012, material collected at 3 international LGBTI human rights conferences spanning 2009 to 2017, and a review of literature on LGBTI litigation and legal mobilisation. Whilst the framework is conceived of primarily through research conducted on the Global South, it would also be applicable in other so-called 'hostile' environments where same-sex relations and non-conforming gender identities are legally criminalised and socially extremely marginalised, such as Russia.

- Jane Krishnadas, CLOCK A Transformative Methodology for Access to Justice

This paper draws upon the theoretical foundations for the CLOCK (Community Legal Outreach Collaboration, Keele) initiative as a transformative methodology for access to justice, which is being cascaded in collaboration with Sussex,

Brighton, Canterbury, Wolverhampton, Birmingham City, Salford, Liverpool John Moores, Leicester, Lancaster, Swansea and the Open University.

CLOCK is based upon theoretical framework for justice which critiques the liberal rights claims to recognition, redistribution and relocation, within the overall CLOCK mechanism, as a plurality of actors within time.

Drawing upon subaltern, feminist discourses of rights, CLOCK provides a subjectively led research initiative, where persons access the CLOCK, to define their characteristics, their legal needs and their locations within the justice system, to create a subjectively led universal mechanism to calculate who, needs, what and when?

In this paper, I will consider the data collated over the last five years, to understand the key criteria for overcoming barriers to access to justice, to demonstrate a universal model for access to justice.

- Maria Orchard, Beyond accommodations: Access to justice for disabled women as survivors of domestic violence

This presentation stems from my doctoral research, which explores the experiences of seven disabled women with the justice systems of the United Kingdom and the United States as survivors of domestic violence. Research shows that disabled women are more likely to experience domestic violence than both non-disabled women and disabled men, and endure more severe forms of physical abuse and for longer periods of time. Yet disabled women are often prevented from receiving support because it is inaccessible, unavailable or not appropriate for their specific needs. This research aims to develop our understanding of the legal needs of disabled women and to identify the barriers and/or facilitators each participant encountered in her quest for justice. It focuses on what was necessary for a particular woman to access and participate in the justice system, and it thus endeavours to highlight the most pressing issues for improving access. In this connection, the reasonable accommodation duty is a means by which to remove or mitigate barriers that hinder the equality rights of disabled individuals - that is, to create an equal playing field. Thus, by placing a positive obligation on state authorities to accommodate a specific woman and her disability, this duty plays a crucial role in securing equal access to and meaningful participation in the justice system, an essential component of an appropriate response to domestic violence. However, after collecting and analysing the narratives, it became apparent that 'access to justice' in this context is multifaceted: reasonable accommodations alone are insufficient and there are other complexities at play. This presentation will thus explore the concept of 'access to justice' for disabled women who have experienced domestic violence and the four-part structure adopted to frame the participant narratives and ensuing themes.

Children's Rights WMB: 3.32

- Conor O'Mahony, Kenneth Burns and Elaine O'Callaghan, Improving Decisions through Empowerment and Advocacy: Addressing Professional Deficits in Children's Rights

Child protection proceedings mark a critical time in a child's life, profoundly changing their closest relationships and future. In both contested and voluntary proceedings in Ireland, decisions are made with a focus on the welfare or best interests of the child as the central consideration. It is evident, however, that in practice, the child is noticeably absent from this decision making process despite the emphasis on establishing his or her welfare or best interests (see, for example, Parkes et al., 2015). Initial findings from research suggest that a significant reason for this is a lack of training provided to practitioners in both law and social work on children's rights in domestic and international law, as well as on "soft skills" such as communicating with children and ensuring their participation (O'Mahony et al., 2016).

On foot of these initial findings, a five country international project led by University College Cork and co-funded by the Rights, Equality and Citizenship programme of the European Union entitled IDEA: Improving Decisions through Empowerment and Advocacy, is aiming to address this shortfall in practitioner knowledge and skills. This project, which is ongoing, seeks to establish the training needs of child protection practitioners in five countries: Ireland, Sweden, Finland, Estonia and Hungary. Findings from this process will then inform the development and delivery of training to practitioners as well as follow-on research identifying how to improve decisions for children.

This paper will present the findings of this project on the training needs of child protection professionals as identified in the literature review and consultation aspect of the project. It will highlight key deficits in the skill sets of lawyers and social workers that serve to hinder the extent to which a true children's rights approach can inform practice and decision-making in the child protection system.

◦ Rachel Heah, Young People's Participation in Research through Online Focus Groups

In line with perspectives from the 'new sociology of childhood' (James and Prout, 1997), children and young people are now commonly viewed as social actors who actively respond and contribute to the construction of the social world around them, and who therefore are able to contribute to research in a relevant and meaningful way. In researching with children and young people however, there is a need for research methods to take into account children's experiences, competencies, and interests, the (potentially different) ways in which they communicate (Punch, 2002; Alderson,1995), as well as generational issues (Mayall, 2008).

As children and young people are becoming increasingly tech-savvy and spending more time online, online research methods hold a lot of promise for future research with children and young people. In this presentation, I will discuss my experiences of using private online focus groups for conducting research with secondary school pupils. In particular, I will discuss:

a) The ethical considerations raised, particularly in relation to the online environment, which is deemed highly risky to children and young people;

b) Some of the methodological challenges faced in setting up and conducting the research;

c) Participants' own thoughts on the research method – and further reflections arising therefrom.

On the whole, this paper will open up discussions on the suitability of online research methods, particularly online focus groups, for researching with children and young people.

◦ Tracy Kirk, Ethical and legal issues for the future involvement of children in mental health research

There are legal and policy drivers that seek innovation in early help services that are delivered to children and their families. In a climate of austerity, and as lifelong mental illness comes at a large cost and is likely to start in childhood, there is at the very least, a fiscal imperative to look towards involving children in mental health research to improve outcomes through early, cost-effective interventions.

Children's mental health and wellbeing is vital to their ability to thrive and achieve – this is indisputable. Research clearly evidences, that children who experience poor mental health, face unequal chances in in their lives, particularly where childhood mental health issues continue into adulthood (DoH/DfE, 2017: 3).

Furthermore, there is evidence that half of all mental health conditions are established before the age of fourteen, and crucially important, is early intervention, which can prevent problems escalating, and have major societal benefits. This view is supported by a systematic review of existing evidence on the most effective ways to promote positive mental health for children and children (Marshall et al., 2017).

There has never been a more important time to consider the importance of involving children in this important area of research. This paper is based upon a joint article which is currently out for review and is co-authored with Professor Kim Holt, Dr Nancy Kelly (both of Northumbria University) and Dr Lina Gega (York University). Ultimately, the paper discusses the main ethical and legal issues, which are currently inhibiting the involvement of children in mental health research.

Criminal Law and Criminal Justice WMB: 5.68

Chair – Samantha Pegg

- John Kendall, Regulating Police Detention: the failure of custody visiting

This paper summarises a case study of volunteers working under the Independent Custody Visiting Scheme. These custody visitors are the only outsiders to make regular visits to suspects detained in police custody blocks. The police say that the primary purpose of detention in custody is to make the suspect amenable to investigation. People the police arrest may be detained in custody for up to 96 hours. While the suspect is entitled to legal advice and may receive the support of an appropriate adult, most of the time is spent in isolation and out of public view. Public controversies about what happens in these secret places arise only when there is a death in custody.

The custody visitors are managed locally by Police and Crime Commissioners. The visitors make what are supposed to be unannounced visits, and they meet the suspects to check on their welfare. This qualitative in-depth research, based on observation and interviews, shows that the suspects do not trust the visitors, and the police do not respect the visitors. The power of the police, and official policy, prevent the visitors from making independent and effective scrutiny. The existence of the visiting scheme obscures the need for effective regulation of police conduct in custody blocks. The radical reforms that are needed for the visitors to be effective regulators could be achieved if the truth about custody visiting caught the attention of Parliament and the public.

The speaker's book Regulating Police Detention: Voices from behind closed doors, will be published by Policy Press on 31st January. One of several firsts in the research is obtaining and publishing the views of suspects about custody visiting of detainees: the voices from behind closed doors.

- Colin Moore and Gerry Rubin, Policemen as Criminal Prosecutors during the Inter-War Years: Practical and Procedural Issues, Middle Class Motoring Offenders, and Austerity

This paper explores the criminal prosecution process taking place in England and Wales during the inter-war years, with particular reference to prosecutions carried out by Police officers. Whilst prosecutions were carried out privately by members of the public, or in the most serious or important cases by the Director of Pubic Prosecutions (DPP), the duty of prosecution ordinarily fell to the police.

Prosecutions by the police, particularly of summary offences, were often carried out without the aid of legal assistance, which was often viewed as a controversial practice. However, as a result of the increased level of traffic offences involving private motor vehicles during the inter-war years, the police tended to make use of legal assistance far more regularly. Motor vehicles were owned by the middle and upper classes, who not only presented a more resolute challenge when cross-examined, but also were able to afford their own legal representation. As will be seen here, this generated a reluctance for the police to bring a prosecution unaided by legal assistance. However, at the same time the 1920s and the 1930s saw significant periods of economic recession, and therefore costs associated with providing legal representation were problematic. Thus, we examine challenges to criminal justice procedural norms here, brought about by a changing social context.

- Richard Martin, Policing, Protests and Politics: How do the Police Interpret and Apply the Human Rights Act 1998?

As Roger Cotterrell (1997: 289) remarked two decades' years ago, legal interpretation is not just a matter for lawyers: "Law's community of interpretation is not one but many. Legal theory must explore both the possibilities for rational interpretation within such communities…". One such community are the police. Across Europe and further afield, police powers are governed by human rights law principles and increasingly detailed standards – from suspects' arrest and detention to the regulation of public protest, from investigatory standards to the use of lethal force. In the UK specifically, the turn of the millennium brought with it the introduction of the Human Rights Act (HRA) 1998, which incorporated the European Convention on Human Rights (ECHR) into domestic law. As public bodies under the HRA 1998, police organisations are subject to human rights law standards and enhanced legal accountability before domestic courts.

Human rights law has, in words of Neyroud and Bleckley (2008), produced a "new agenda in policing". This paper presents findings from the first empirical inquiry of its kind to examine how human rights principles and case law are understood, interpreted and applied by senior police officers.

Based on extensive fieldwork with the Police Service of Northern Ireland, this paper will focus on how the right to freedom of protest and assembly and the right to life is policed in the context of Northern Ireland's highly contentious parades and protests. These events present a paradigm case of competing rights, requiring the police to respond in a way that respects the rights of the various parties involved. What appearance did human rights law take in the planning and carrying out public order operations? What extent were public order commanders aware of, and understand, duties arising out of the HRA 1998? How did they interpret them, and, more interestingly, make them meaningful in an operational setting? Were there techniques or understandings that enabled officers to creatively use human rights law protections, perhaps enhancing or undermining its regulatory force? Did a rights-based approach make it easier for the PSNI to account for their decisions to oversight bodies? The answers to these questions represent the views of a select sample of officers intimately involved in public order policing in Northern Ireland. By producing an account of policing and human rights law an important and poorly understood area of public law and criminal justice, this paper contributes to wider debates about the function of law in public bodies, as well as its ability to regulate powerful actors like the police.

Equality and Human Rights 35BSQ: 2.26

Human Rights Internationally

Chair – Peter McTigue

- Kathryn McNeilly and Alice Panepinto – From Authority to Reiteration: The Dual Performativity of International Human Rights Law

While stemming from philosophy of language, the concept of performativity has developed as an important interpretative lens or theoretical tool in many other fields, including law. In many respects, law appears as an activity and discourse characterised by performative utterances: statements which are generative in their effects, and that do something (often normative) through their very utterance. While many areas of law may display performative features, international human rights law has emerged as a key area where the performative dimensions, operation and capability of law have received some attention. In this view, rights ideas themselves, their international enactment, and their claiming at the local level are all characterised by important performative elements. This project, however, remains in its infancy. In this paper, we aim to add to existing work exploring international human rights as performative. In particular, we seek to bring into view the dual function of performativity in international human rights law as both a way of explaining how new rights come into being and gain authority, and also a way of critically reworking existing provisions to meet the changing needs of the present. This duality is an important part of the performative nature of international human rights law, and stresses the complexity of performativity in this discourse and practice – at different stages of the life of a given right. In order to consider this further we reflect on two performative phenomena within international human rights law: the performativity of new rights (with a focus on the right to truth), and the possibilities for performative reiteration of pre-existing rights (with a focus on women's rights). Ultimately, the concept of performativity offers an under-explored perspective that enriches theoretical as well as applied understandings of international human rights law.

- Chunfang Qi – Does International Human Rights Law Make a Difference in China?

This article examines China' decisions to commit to human rights treaties. By the year 2017, China had signed 27 international human rights treaties and numerous other international treaties. Critics argue that these are unlikely to have made any actual difference in reality. The Chinese government contends that China has improved respect for human rights through the implementation of international human rights law it ratified domestically. This article analyses how China treats international treaties, especially capital punishment related human rights treaties from the legislative aspect and judicial level. The findings suggest that ratified international treaties do have effects on human rights in this country.

Furthermore, it is a normal practice to apply international human rights treaties by judicial interpretation from the supreme court in China's courts. However, in the lower law courts, the situation is different.

◦ Salah Sharief – Drones, Dehumanisation and Detachment

This paper addresses the advent of drone warfare, in particular its detachment, dehumanisation, and resulting proliferation of war.

Dehumanisation is a tool commonly employed to carry out acts of atrocities. By reducing the victim's status to that of a sub-human, perpetrators absolve themselves from responsibility. However, outward and intentional forms of dehumanisation, such as the label of inyezi ("cockroaches") in the Rwandan genocide, or "rats" in the holocaust, are not the only form. This paper researches the dehumanisation developed as a result of both physical and psychological detachment.

Parallels are drawn between anecdotes of soldiers that had killed their opponents face to face, and drone operators who executed strikes thousands of miles away. The link between physical distance and psychological distance is analysed, and a negative correlation is noted between physical distance and resistance to killing.

Drones in particular are analysed in detail due to their unique ability to acquire reach of an enemy while simultaneously remaining physically distant. This breakthrough technology coupled with the ability to maintain a constantly watchful eye has led to a dramatic change in the dynamics of armed conflict.

As a result, war is being transformed from shorter periods of high-intensity conflict, to low-intensity operations that operate indefinitely. The detached nature of the strikes and its resultant physiological effect has thus led to a proliferation of warfare.

Family Law and Policy WMB: 3.33

Surrogacy

Chair – Anne Barlow

- Nick Hopkins, 'The Law Commission's Project on Surrogacy'

In December 2017, the Law Commission of England and Wales published its 13th Programme of Law Reform, which includes a project on surrogacy. The project is expected to commence in April 2018 and will be conducted jointly with the Scottish Law Commission

The purpose of this paper is twofold. First, to explore the possible scope of the Law Commission's work. Case law has demonstrated that are significant questions relating to the procedure for the grant of Parental Orders to the intended parents. Surrogacy arrangements also raise issues of children's rights to access information about their parentage, both genetic and gestational, while there are wider questions around the basis on which surrogacy arrangements should be permitted. International surrogacy arrangements bring into focus problems surrounding the nationality of children born to surrogates (including the risk of statelessness), bringing surrogate-born children into the UK, and the risk of exploitation of all the parties involved. Secondly, the paper considers how social-legal research might help to provide an evidence-base to inform the Law Commission's recommendations for reform.

◦ Alan Brown, The Potential Shape of Surrogacy Law Reform

In recent years, there has been growing academic criticism of the legislative regime governing surrogacy arrangements in the UK and repeated calls for law reform. A major strand of this criticism has focused upon of a series of decisions of

the High Court concerning the granting of 'parental orders'; the post-birth order, set out in section 54 Human Fertilisation and Embryology Act 2008, which transfers legal parenthood from the surrogate to the intended parents. In December 2017, surrogacy was included within the Law Commission's 13th Programme of Law Reform, with the commission stating: 'the law relating to surrogacy is outdated and unclear, and requires comprehensive reform.'

This paper considers what such 'comprehensive reform' might involve, exploring some of the issues that the Law Commission will have to grapple with in its proposals on surrogacy: including for example, the approach taken to determining legal parenthood, the role of both the welfare of the child and children's rights within the regulatory regime, attitudes towards the commercialisation of surrogacy, the underlying exploitative potential of surrogacy and the domestic and international contexts in which surrogacy arrangements occur.

Given the influence of these diverse factors, it is apparent that the approach which law reform will take is neither self-evident nor straightforward. As such, this paper seeks to move beyond the critiques of the current legal approach, and instead to offer some ideas about the shape of law reform in this area. In particular, the paper will seek to highlight how potential reform to the regulation of surrogacy arrangements may impact upon wider understandings and determinations of legal parenthood.

- Philip Bremner, Recognising Gay Male Parenting: Surrogacy and Collaborative Co-Parenting in the UK, Australia and New Zealand

Legislators are increasingly being confronted with the need to recognise gay male parenting in the context of surrogacy arrangements. Closely related to this is the recognition of families that gay men create through reproductive collaborations with female friends (which I refer to as collaborative co-parenting). In this article, I consider the ways in which two similar but divergent legislative frameworks (i.e. the UK and Australia) recognise or fail to recognise these two types of gay male families. I explore how courts and legislators should respond to the increase in numbers of gay men who conceive and raise children from birth in these ways. In doing this I argue for a more inclusive approach to the legal recognition of parent-child relationships premised on the idea of recognising family diversity rather than on the promotion of a heteronormative conception of the family.

The Law Commission of England and Wales has rightly decided to review the law of surrogacy in its Thirteenth Law Reform Programme. The Law Commission has specifically identified the need for reform of the legal recognition of parenthood following surrogacy and notes the salience of this for male couples in particular. It has also highlighted the strong potential for a future law reform project on birth registration which would likely involve a more thoroughgoing consideration of rules on the ascription of parental status. The present article contributes to these discussions by promoting a flexible approach to parental status that can accommodate the plurality of parent-child relationships that exist in modern families.

- Brian Tobin, The General Scheme of the Assisted Human Reproduction Bill 2017: A Hybrid Model for the Regulation of Surrogacy in Ireland

The General Scheme of the Assisted Human Reproduction Bill 2017 contains detailed proposals for the regulation of altruistic, gestational surrogacy for the first time in Ireland. This paper will discuss the protracted journey towards a statutory regime for surrogacy, which began almost two decades ago with the establishment of the Commission on Assisted Human Reproduction in March 2000. It will then critique the complex hybrid model for regulating surrogacy arrangements that is proposed in Part 6 of the General Scheme, and discuss potential policy reasons that may have resulted in this type of regulatory model. It will be argued that the hybrid model appears to have emerged from Irish policy-makers' clear misunderstanding of the Supreme Court's decision in the surrogacy case of MR & Another v An tArdChláraitheoir in late 2014. Rather than facilitate domestic surrogacy arrangements, it will be argued that the hybrid

model provided for in Part 6 of the General Scheme might be more likely to discourage them. The paper will conclude by advocating for an alternative statutory model for regulating altruistic, gestational surrogacy in Ireland.

Gender, Sexuality and Law WMB: 3.31

Chair – Nora Honkala

- Gayatri Patel (Aston University), How 'Universal' is the United Nations' Universal Periodic Review Process? - The Challenge of Cultural Relativism in the Decriminalization of Sexual Orientation

In 2006, the United Nations' Human Rights Council was tasked to establish a new and innovative peer review human rights monitoring mechanism: the Universal Periodic Review Process. Its distinct nature is defined not only by its universal participation by all UN member states, but its focus on a dialogical method of reviewing state's human rights records. In light of the fundamental aim of the review process to promote and protect universality of all human rights, the aim of this paper is to examine the significance of cultural relativism in the nature of discussions held amongst delegates on one of the most contentious issues in the claim of universality of international human rights law: the decriminalization of same sex relations. The primary findings of this investigation reveal that despite the criminalization of sexual orientation being repeatedly held to be incompatible with international human rights norms of equality, non discrimination and privacy, states under review were not coy to expressly reject any recommendations for decriminalization based on various degrees of cultural relativism, with some states even adopting an extreme form of cultural relativism to justify the criminalization of same sex relationships. Analyzing the implications of these positions adopted by states, the paper argues that despite the optimism surrounding the UPR process, the findings of this investigation reveal that the discussions held on the decriminalization of sexual orientation are at best a missed opportunity to make a significant impact to initiate and influence reforms to practices on decriminalization in the domestic context; and at worst, raises doubts as to whether the core aim of the process, to improve the protection and promotion universality of all human rights on the ground, is being fulfilled.

- Monique Huysamen (University of South Africa), "If you go up into Africa it's riddled with all types of things": Men's constructions of paying for sex in South Africa.

Sex work in South Africa is complicated by high levels of unemployment, structural and racial inequality, crippling poverty, and an HIV/AIDS epidemic. Since the colonial era sex work has been associated with both the spread of sexually transmitted disease and moral degeneration (Levine, 2003; Sanders, 2017; Weitzer, 2017). It remains stigmatised in South Africa, where legal, academic, and public discourses continue to construct sex workers as responsible for the spread HIV/AIDS. This paper presents the findings of a study conducted with 43 South African men who pay women sex workers for sex using online and face-to-face narrative interview methods. Drawing on both intersectionality and queer theories, the paper demonstrates how, in order to distance themselves from the stigma associated with sex work, men enlisted racist colonial tropes about the black body as 'out of Africa' and dirty and diseased, while constructing white sex workers, whom they claimed to patronise, in terms of purity, cleanliness and respectability. In discussing the implications of these findings, this paper argues that poor street-based sex workers are the most visible in societies and thus always most heavily targeted by the laws that criminalise sex workers. However, in South Africa it is primarily poor black women who sell sex in outdoor settings, and it is thus black woman who bear the brunt of these laws and this stigma. Therefore in the South African context, current legislation that criminalises sex work and discourses that associate it with the spread of disease contribute to maintaining the dominance of colonial tropes about the black body as dirty and diseased. This paper puts forwards alternative legislative approaches that might more appropriately respond to sex work in contexts where structural inequalities ensure that not all sex workers' bodies are be treated equally by the law.

- Cassandra Wiener (University of Sussex), Mind the Gap: An Analysis of the New Law on Coercive Control in Light of Contemporary Understandings of Domestic Abuse

While prosecution and reporting rates of domestic abuse are improving year on year, the criminal law in this context is still a cause for concern to academics and practitioners alike. The most recent improvement, s. 76 Serious Crime Act,

came into force Dec 29 2015. This new law makes coercive or controlling behaviour in an intimate relationship a criminal offence, and had the potential to fundamentally change the way that domestic abuse is prosecuted in England and Wales. Initial uptake has been disappointing, however, and difficulties remain. In fact, the statute still most often used to prosecute abuse remains the Offences Against the Persons Act 1861, a statute designed in the Victorian era to combat brawls and fights between men on the streets that is clearly not suited to the prosecution of abuse between intimate partners.

This paper begins with an analysis of coercive control, drawing on both the social science literature (with a particular emphasis on the pioneering work of Evan Stark and Mary Ann Dutton) and also an original empirical study that was conducted by the author with survivors of domestic abuse. Focus groups and interviews were conducted with survivors and their closest advisors to develop a working model of coercive control. The paper then provides a doctrinal review of the existing legislative infrastructure, with a particular focus on s. 76 Serious Crime Act. This analysis suggests that s. 76 has been poorly drafted, with initial misunderstandings as to what coercive control is partly responsible for a law that is unnecessarily difficult and complicated to enforce. As a result, there is a still a gap between women's experiences of abusive perpetrators' behaviour and the criminal law infrastructure that is used to prosecute them. The paper ends with a brief discussion of the potential for further reform.

- Anupama Sharma, O. P. Jindal Global University, In a Cobweb of Social Beliefs (Rituals), Social Convenience and Inequality to what Extent Can Law Intervene?

The best medium to understand the functioning of a given society is to observe its social practices. Such practices reflect the existing mindset and framework of the society at that point of time. The practices which gain wide acceptance get the status of 'culture' and are treasured as intrinsic part of that society. Continuance of society as a concept is based on its evolutionary character. As humans forming the society evolve, the social beliefs and practices consequently undergo change. Where on one hand evolution brings in new ideology, its coexistence with the existing ideology creates ideological conflict of social perceptions of such practices. With this change comes conscious abandonment of few practices, gradual erosion of few and rest continue to exist owing to their cultural value or acquired social significance.

With specific focus on social rituals and beliefs revolving around the institution of marriage, time and again many rituals have failed to prove their contemporary social worth or have lost the practical value owing to changes in the structural framework within marriage. Current research focuses on those rituals which are still lingering without much significance and form roots for undesired perceptions within the structure of kinship and foster gender inequality. Since such rituals form reflection of social beliefs, their existence and practice constantly reinforce the ideology and perceptions.

Whenever the peaceful coexistence within a society has been disrupted, law has intervened to ensure peace and order. Evil social practices such as Dowry, Sati has been abolished and criminalized owing to their abhorrent consequences. The question at hand is at what stage should law intervene? Should it wait for evils to directly result into gross violence or should it condemn the practices that have an inherent social message which may directly or indirectly lead to social evils and inequalities?

Graphic Justice: Law, Comics, and Related Visual MediaWMB: 3.30

- Rebecca Bratspies, Mayah's Lot: Teaching Environmental Justice with Comic Books

"Environmental Justice, I bet you don't even know what that means…I had no idea that it actually affects every one of us. That is until it came to my home"

So begins Mayah's Lot, the environmental justice comic book I co-wrote with artist Charlie LaGreca. Mayah's Lot tells the story of a young girl who inspires and organizes her urban neighbors to save a vacant lot from becoming an industrial toxic storage waste facility. Mayah's Lot stands alone as a storybook, but also serves as a didactic tool providing valuable environmental justice lessons. It introduces readers to street science, basic administrative procedures, and effective community organizing for environmental justice. Readers learn alongside Mayah, the young heroine, as she helps organize her neighborhood to prevent the siting of a hazardous waste facility in her already overburdened community.

This paper describes how Mayah's Lot, and its brand-new sequel Bina's Plant, contribute to citizen empowerment and community participation in New York City.

◦ Aislinn O'Connell, Generic Super Hero - Can He Exist?

The term 'superhero' would seem, at first glance, to be a genericism. That is to say, 'superhero' may be a word or term used to refer to any caped, masked or costumed crusader who fights crime, whether super powered, inhuman, demigod, or genius playboy billionaire philanthropist. However, the legalities of the term super hero are far more nuanced than that. This paper discusses the use of the word super hero in light of the fact that the term is covered by a trade mark right jointly held by Marvel and DC. Registered in 1979 in the UK, the trade mark has existed continuously since then, protecting the use of the term Super Heroes and registering it as a designation of origin allocated solely to these two comic book giants in several categories, covering publications, especially comic books and magazines and stories in illustrated form, notebooks and stamp albums, toy figures, and t-shirts. The paper then continues to discuss how, in the years since then, Marvel and DC have jealously guarded their trade mark, issuing proceedings against those who infringe on their intellectual property, be they businessmen publishing self help books or self-publishing small-run comic creators, but not objecting to the use of super hero in-text in comic books, only in titles and promotional material. This paper further considers the challenges to Marvel and DC's trade mark registration which were considered by the UK courts in 2016, and discusses the possibility of the joint trade mark status violating the stipulation that a trade mark should indicate a single origin. It concludes by considering the future feasibility of the existence of the generic super hero.

◦ Toni Selkälä, Patterns of Justice: Police, Power, and Destruction in Lego City Undercover

The noughties saw video games emerge as an important popular cultural phenomenon on its own right. Alongside its grown prominence as a medium, concern over impact of video games to the youth created a stream of alarmist writings over violence in video games. The concern shown to video games was related to the ways their message might disrupt accepted social fabric. Legal scholarship on law and video games has focused, similarly, to ways in which video games might be subversive to the present structure of law. Thus, focus on free speech, copyright, and intellectual property rights more generally have dominated the legal consciousness with much less attention to the image of legal order or justice more generally portrayed in video games.

Taking a cue from more general research conducted in law and popular culture, I read together an image of police and justice in Lego City Undercover to the response of courts and law more generally to similar police behavior. I suggest that the subtle and direct ideological functions of video games provide an important vista on the indoctrination to certain forms of police conduct as normal pattern of justice. It is further argued that the portrayal of images of justice and law in video games would serve a much more fertile ground for legal research than focus on possible violations of existing norms.

Intellectual Property 8-10BSQ: LG02

Chair – Jasem Tarawneh & Smita Kheria

◦ Magdalena Kolasa, Using Fairness to Determine Post-Employment Duties with Respect to Trade Secrets

Employees and former employees are named as one of the biggest threats for secrecy. The rising value of information in the economy and reliance on its use by both employers and employees, combined with increasing work mobility, cause tensions. At the same time, trade secrets are used as means to protect innovation and their protection is an important element of public policy.

Balancing of rights is the ultimate way to achieve fair results in the determination of the scope of post-employment duties. The applicable criteria include the right to work and to personal development on the part of the ex-employee and the right to protect investments on the part of the ex-employer. These interests are to be seen in the broader context of

public policy relating to incentivising innovation, entrepreneurship and dissemination of knowledge. Legal certainty requires a legal framework setting out the policy goals and allowing for flexibilities.

In Europe, the legal framework regulating post-employment duties is fragmented and lacks uniformity. The Trade Secrets Directive which is to be implemented by 9 June 2018 achieves the goal of harmonisation only partially. In particular, the list of factors for determining lawfulness and unlawfulness of use should be more complete. More flexibility in issuing remedies would be desirable, such as a possibility to grant damages in lieu of injunction. Regulation of post-employment agreements to some extent would increase legal certainty as well. These measures would allow to better achieve fair results in post-employment disputes.

◦ Carys Craig, The Predictable Decline of Fair Dealing? On Dialogue and Duelling Rights

Copyright's fair dealing defence marks out space within the copyright regime for fair uses to be made of protected works without incurring liability for infringement. Whether the defence is properly conceived of as a narrow exception, a limited privilege, or a user's right has long been a matter of debate. In Canada, which inherited its fair dealing provisions from the United Kingdom, the Supreme Court has defined fair dealing as a "user right" essential to striking copyright's "balance" between authors and the public interest. It is widely thought that a user rights-based approach to fair dealing—or its US counterpart, fair use—is likely to lead to a greater ambit for the defence, and a more limited scope for copyright owners to preclude publicly beneficial downstream uses of their work. The judicial and statutory evolution of fair dealing in Canada seemed to support this assumption—until recently. Two 2017 cases on fair dealing for education and parody purposes, respectively, suggest that the recognition of fair dealing as a user right did not produce the paradigm shift that many optimistically perceived. I have cautioned elsewhere that the rise of "user rights" may be more rhetorical than real, and may bring more risks to the articulation and recognition of the public interest than we might realize. In this paper, with a view to these two cases, I will explain why a rights-based balancing approach both permits and legitimizes a restrictive interpretation of fair dealing. I will argue that the fair use doctrine requires, rather than simply individual dueling rights, a fuller appreciation of the dialogic nature of copyright's work.

◦ Serife Esra Kiraz, Secondary Liability for Intellectual Property Rights and the Effects on the Sale of Goods

Secondary liability comes into existence for intellectual property rights when an infringement occurs, however, the defendant did not directly commit the infringing act. This kind of liability is of importance especially when the acts of direct infringement is not held within the jurisdiction which provides protection for intellectual property rights. Therefore, secondary liability can be claimed against a person who is dealing with infringing copies, and counterfeit goods by way of importation, sale, and offers for sale. Thus, secondary infringement is related with international trade activities which covers sales of the goods attached with patents, copyrights, trademarks or other intellectual property rights. In that occasion, the person who faced with intellectual property infringement claims, and may held liable on the ground of secondary liability is the buyer of a sale of goods agreement, who purchases the goods with the aim of reselling them. As a result of this infringement, there is a potential risk for the buyer to be held under the secondary liability and to be prevented from using or reselling them due to a litigation undertaken by the right holder.

In this paper, the main consideration is given on the relationship between secondary liability doctrine for intellectual property rights and sales law. Where intellectual property law aims to protect right holder, it also needs to be questioned the buyer's rights within the context of sale of goods agreement when he is considered liable for intellectual property infringement which is not directly committed by himself. This paper aims to reveal an answer for this question.

International Criminal Justice 8-10BSQ: LG05

◦ Noelle Higgins, Crime of Our Times? Cultural Cleansing and the Destruction of Cultural Property

Cultural property and cultural heritage have, from time immemorial, fallen victim as collateral damage to violence during conflicts. However, in recent times, purposefully directed attacks on cultural property have been employed as a tactic of war by Islamic fundamentalist groups in the Middle East and parts of Africa. These acts have been labelled as 'cultural cleansing' by the Director-General of UNESCO. While the international legal framework regarding the protection of cultural property is quite extensive, unfortunately, the international community has been powerless in most instances to adequately react to episodes of destruction. Recently, in the face of the current wave of attacks of cultural property, the United Nations Security Council has adopted two significant Resolutions, Resolution 2199 adopted in February 2015, focusing on the illicit trafficking of cultural property from Iraq and Syria as a source of terrorist financing, and prohibiting the trade of cultural objects originating from these countries, and Resolution 2347, adopted in March 2017, recognizing the broader role that culture and heritage protection play in the maintenance of peace and international security. This paper sets out how the international criminal law framework can be fully utilised in order to tackle the destruction of cultural property and queries whether a new crime of cultural cleansing should be identified under this framework.

- Amina Adanan, An Analysis of the Exercise of Universal Jurisdiction in the United Kingdom

Universal jurisdiction permits any State to prosecute persons accused of committing certain abuses regardless of where the offence occurred and irrespective of the nationality of the accused person(s) or victim(s). The principle is a rationale-based type of jurisdiction that exists in both conventional and customary international law. The inhumanity of the act demands that the perpetrator be prosecuted, and the offence must not go unpunished. In recent years, some States have narrowed the scope of the principle's application in their legal systems by necessitating a link between the crime committed abroad and the State prosecuting the offence. The United Kingdom is an example of one such State.

The UK is a common law dualist State, and in keeping with this tradition, it incorporates universality into its domestic legal system when required to do so by an international treaty. Thus, the Government is reluctant to legislate for universal jurisdiction over international crimes where it is a right stemming from customary international law. The purpose of this paper is to answer the following questions: Is the exercise of universal jurisdiction today in line with the rationale for the principle's application to the crimes to which it applies? This question will be answered in respect of the exercise of the universality principle in the UK in the context of legislative changes that have reduced the scope of the application of the principle. This paper is based on a case study completed as part of the author's PhD thesis and includes analysis based on historical materials from the UK National Archives.

Lawyers and Legal Professions 35BSQ: 4.01

- Ken Oliphant, The Personal Injury Claims Process: Comparative Perspectives on Professionalism

This paper will present and subject to critical analysis the results of comparative, interview-based research into the personal injury claims process. It focuses on professional actors involved in the PI claims system in England and Wales, the Netherlands and Norway: claimant and defendant lawyers, lawyers for legal expenses insurers, insurance claims adjusters, claims handlers and adjudicators in compensation boards, and judges. The research tests the working hypotheses that the 'law in the books' is transformed as claims are resolved by informal means in daily legal practice, reflecting both the aims, attitudes and strategies adopted by practitioners, and the influence of such 'environmental' factors as fee structures, cost recovery rules, professional obligations, business models and 'legal culture'. Lawyers in the UK express greater antagonism towards their opponents than elsewhere and find that the process is characterised by high levels of distrust. This contrasts with a more strongly affirmed commitment to cooperative claims resolution in the other countries in the research. The research seeks to identify possible reasons for this disparity with reference to the environmental pressures at play, highlighting in particular differential conceptions of professionalism as traced against a number of different axes: regulation versus markets; individuation versus commoditisation; expertise versus automation; etc.

- Jo Wilding, Lawyers, Quality and Financial Viability in Publicly Funded Asylum Legal Services

There is very little research on the publicly-funded asylum and immigration bar. This paper presents findings based on interviews with nineteen barristers and four staff in six chambers which are ranked as high quality in Chambers and Partners' Guide.

Barristers are underpaid for the work they do on fixed-fee asylum appeals but they do "what is needed" for the client. Even when paid at hourly rates, they tend to under-bill, partly due to complex billing procedures. They continue to do judicial review work despite funding cuts which mean they risk being unpaid for large amounts of work. At individual, team and chambers level, cross-subsidy is essential from privately-paid work, other areas of law which pay more promptly, and successful judicial review work where the opponent is ordered to pay inter-partes costs. Chambers which do large amounts of publicly-funded work rely very heavily on a small number of high earners who undertake almost exclusively private work, who appear to remain in legal aid sets out of personal commitment to work which they no longer wish to do themselves. These commitments are not merely individual but part of a "shared ethos" in certain chambers.

However, barristers' position at the end of the legal services supply chain means that they sometimes face greater time pressure or extra tasks with no additional payment because lower quality solicitors have prepared poorly or delegated casework to cheaper and lower-qualified staff. This creates an ethical dilemma over the extent to which it is either possible or appropriate to "rescue" cases, where this means propping up a poor quality solicitor. This leads barristers to reject some solicitors' work, despite the cab-rank rule, in order to protect their professional integrity and their personal wellbeing. The research has wider implications for debates over professionalism and legal aid policy.

- Pablo Fuenzalida, Neoliberal Redefinition or Corporatist Reaffirmation? The Legal Profession in Chile

Between 1973 and 1990, the military dictatorship led by General Pinochet reshaped Chile through its neoliberal policies. Those affecting the legal profession have been analysed with less detail, even though they share common neoliberal principles of privatisation and deregulation. Three areas can be highlighted: the pathway to become a lawyer, professional regulation and legal aid.

The statutory pathway to become a lawyer might not seem unusual – Chile has civilian law and it is common in such jurisdictions to combine academic and professional skills development, overseen by separate institutions, respectively. Yet, legal education providers do not follow a common curriculum under the aegis of a national association of lawyers or another similar body. What a university decides to teach as part of their law degrees is at the sole discretion of each law school. Beyond the conferment of the lawyer's degree by the Supreme Court, there is a complete absence of further practice requirements such as continuing legal education, certifying specialisation or mandatory legal insurance. Becoming a member of a lawyers' association is a voluntary decision of each legal professional, such that it is not a requirement to practice the law.

The outlier of this neoliberal turn would be legal aid. Introduced by statute in 1929 as a central feature of the Chilean Bar Association (CBA), legal aid provision was primarily aimed to train prospective lawyers before becoming admitted to practice. In 1981 the scheme was taken from the CBA with the creation of Legal Assistance Corporations (LAC). Because this legal reform kept the original legal aid through legal training scheme, it can be read more as a change of administration – from the CBA's hands to the newly created LAC – than as an institutionalised tool of the regime's ideology.

This paper discusses the dictatorship's decision to retrieve legal aid through legal training as one motivated by its different ideological struggles between corporatist (furthering continuity) and neoliberal (furthering change) ideologies. The creation of LAC seems to be a halfway solution to access to justice and admission to practice regulation.

From the perspective of access to justice, the Corporations, with their relative atomisation and autonomy from the government, appears to be a halfway solution rivalling the inherited professional logic coming from the CBA -closer to corporatism- with an incremental intervention from the government towards neoliberalism. As regards admission to practice, the creation of LAC could be summarised as a halfway solution in the transition between the successful manipulation of the legal aid market by its most relevant occupational group, the lawyers organised under the tent of the CBA ('professionalisation from within'), to the domination of forces external to the occupations such as market-consumerism in higher education and state-managerialism ('professionalisation from above') By keeping legal aid through legal training, LAC are similar to middle ground, providing a diplomatic solution to the internal ideological clashes within the regime and avoiding the complete dismemberment of the legal profession's history.

Legal Education 8-10BSQ: LG01

- Tasnim Ahmed, A Critical Evaluation of Phd Supervision as 'Teaching' In Law

Boucher and Smyth(2004) argue that supervision occurs within the context of relationship, not disconnected from it. It is about engagement, interaction and connection in ways that go beyond the intellectual and the surface.

Student problem-solving is part of the PGR agenda. The research aims of the paper, which is its initial stages would will be to observe the following:

-How do people learn to supervise and what do supervisors bring to supervision?

-To examine how supervisors may allow learning to take place.

-To explore how supervision looks like from a supervisor's perspective and how they perceive the issues surrounding the PhD.

-Provide a critique in PhD Law supervision as a 'pedagogy" versus 'teaching' and then look to suggesting whether these two approaches can coexist or exist in hybridity.

- Russell Sandberg, About Time: The Need for History in the Law Curriculum

Recent years have seen the rise of interdisciplinary research and (to a lesser extent) teaching in Law Schools. However, one discipline has been increasingly absent from the party: history. Traditionally, legal history was a fixture in the Law School curriculum. However, in the twenty-first century its popularity has waned. This paper explores why this has happened, why this is unfortunate and what needs to happen so that a historical approach to law can be placed at the beating heart of the undergraduate curriculum. One reason for the neglect of legal history has been the fragmentation of historical scholarship about law. Recent years have seen some new work exploring the 'external' history of law from a socio-legal perspective especially examining modern history. However, this work has not led to a renaissance in legal history and has actually increased its marginalisation because such work has often failed to engage with the earlier 'internal' legal history which provided a doctrinal analysis of the early development of common law. Recent 'external' work has often discredited the earlier 'internal' literature discrediting it as the 'old' legal history or even as its 'enemy'. Another reason for the neglect of history is that a historical approach to law is often subversive: questioning every dividing line and distinction made and showing that they are constructs of a particular time and place. This paper contends that there is a need to bring both 'internal' and 'external' perspectives together and to re-think the role and place of legal history as a socio-legal subversive enterprise. It argues that historical approaches to law should be seen as a method for all academic lawyers rather than a specialism for a select few.

- Foluke Adebisi and Yvette Russell, All Law Schools Should Offer a Unit on Law and Race

Because law and race shape each other in powerful ways, the nature and causal factors of racial inequalities are often transformed, hidden in plain sight, legitimised or obscured by the supposed neutrality of law. Nevertheless, apparently race-neutral laws and policies have racially disparate results in almost every sector of society – education, employment, welfare, housing, criminal justice to name a few. These disparities are compounded when examined under an intersectional lens.

Legal education – the study of law – is the study of the world, human societies and their order. Very often a vital aspect of this social order – the co-dependency of race and law – is left out of the study of law. This paper makes the argument that all law schools should have a unit dedicated to examining how law and race are co-constitutive. Any attempt to end racial disparities without questioning, confronting and dismantling the complicity of law is an exercise in futility. Drawing on the authors' research and personal experiences of developing an optional final year law and race unit at a Russell Group university with little provision of teaching on race, this paper examines: what the unit can and should contain; what theoretical and resource limitations exist; the role of curriculum co-creation with students and; navigating institutional, political and pedagogical impediments. The paper situates a unit on law and race as part of the optional LLB curriculum within the wider context of the decolonisation of education. It also considers the role of such a unit against a much wider background of neo-liberalisation and marketisation of higher education in the United Kingdom.

Medical Law, Healthcare and Bioethics 35BSQ: 3.13

It's All in the Genes

- Louise Hatherall, Public Interest Challenges to Gene Patents: An Analysis of the Legal Obstacles faced by Patients; NGOs and Public Interest Groups

Legal challenges to gene patents by NGOs, public interest groups and patients are highly pertinent to their regulation and protection (see, for example D'Arcy v Myriad). Such challenges are also vital for voicing the broad and wide-ranging public interest issues at stake in the patent system. However, there are multiple legal obstacles to bringing these challenges. These legal obstacles, such as demonstrating standing to sue, are understudied from both a doctrinal and socio-legal perspective. This paper seeks to examine the role of the patient in gene patent challenges, and the obstacles they face, by building on Peter Drahos' 'insider theory'. Following his extensive study of patent office's Drahos argues that there is an 'insider/outsider' system in effect. Patent policies and practices, he argues, are driven both by large and powerful patent offices and by big businesses, who have a significant voice in determining patent policy. This system means that 'outsiders' – such as patients – face significant difficulties in challenging gene patents and in having opportunity to voice their perspective. This paper thus builds on the concept of an 'insider' system by examining obstacles faced by 'outsiders' who nonetheless have a key stake in the patent system.

This paper uses the litigation surrounding Myriad Genetics' BRCA patents as a lens to explore obstacles to patent challenges, and the marginalising of patient voices in gene patent challenges. Exploring the litigation before the US Supreme Court and the EPO Board of Appeal, this paper argues that patients play a key role in the patent system by providing a perspective on the social impact of patents. However, there are various legal obstacles, along with international and systematic boundaries, which prevent patient perspectives from being heard. Where they do have an opportunity to provide their experience – such as through rare public interest litigation, or in public consultations – their experiences are often expunged from the discourse.

- Catherine Kelly & Robert Burrell, Myths of the Medical Methods Exclusion

This paper explores the interaction of British medical practitioners with the nascent intellectual property system in the nineteenth century. It challenges the generally accepted view that throughout the nineteenth century there was a settled or professionally agreed hostility to patenting and to the patenting of methods of medical treatment in particular. We demonstrate that a significant number of medical practitioners did seek to patent their inventions, including some methods of medical treatment, while others made use of closely related alternative systems, in particular, the utility designs regime. Admittedly the number of applications remained much lower than in other fields of technical endeavour. But the failure of medical practitioners to establish a strong culture of patenting during the nineteenth century can be

explained on more prosaic grounds than the traditional narrative would have us believe. Specifically, there was an incompatibility between the inventive process in medicine and the internal requirements of patent law. This incompatibility applied to many forms of medical advance, but was particularly acute in the case of methods of medical (and surgical) treatment. When, towards the end of the nineteenth century, an ethical norm about the inappropriateness of patenting medical advances generally, and methods in particular, began to coalesce, this is to be attributed in no small part to the profession making a virtue out of necessity.

◦ Ilke Turkmendag & Paul Martin, Socio-legal Imaginaries of Epigenetics

Epigenetics is a field of molecular biology, which explains the ways in which medical, nutritional and behavioural experiences influence the expression of our genes, and how these changes are transmitted to subsequent generations. In this paper, we discuss the social, legal, and ethical significance of the scientific findings in this area for parents, especially for mothers.

New research in the emerging field of epigenetics is suggesting a link between maternal behaviour during pregnancy and after birth, and the subsequent well-being of their children in both early and adult life. Although these molecular mechanisms are poorly understood, epigenetics knowledge is already influencing the professional and public notions of maternal responsibility towards future generations, the advice given to pregnant women, and new preventative health initiatives. Preventive prescriptions about reproductive health, pregnancy, early development and parenting have started proliferating in media, dedicated websites, and public health policy briefing reports. Claims associated with epigenetics have also started to influence Early Intervention initiatives, which aim to reduce social problems through implementation of evidence-based programmes targeting young children and their parents. Arguably, the hype around epigenetics has so far rapidly outpaced reliable evidence in the field.

In this article, we analyse the way in which emerging discourses of epigenetics in scientific reports, news and social media may increase social surveillance of mothers and the regulation of pregnancy. These discourses not only draw on sociotechnical imaginaries of how the next generations can be engineered through epigenetic-based interventions, but also shape sociolegal imaginaries to make these interventions possible. These include the construction of new norms for parenting, new ethical obligations and new legal responsibilities. We suggest that epigenetic imaginaries coevolve with sociolegal imaginaries, mutually shaping our perceived responsibilities and obligations towards future generations.

Mental Health and Disability Law 35BSQ: 3.18

Domestic Mental Capacity Law

◦ Lucy Series, An Empowering Act? The Mental Capacity Act 2005 and the Problem of Empowerment

The Mental Capacity Act 2005 (MCA) is often described as 'empowering' for people with mental disabilities, yet this reputation is increasingly contested. Domestically, a House of Lords Select Committee concluded that the MCA's 'empowering ethos has not been realised', due to implementation problems and paternalistic and risk averse cultures in health and social care. Internationally, a forceful critique of 'mental capacity' laws has emerged in connection with the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which casts them as discriminating against disabled people and violating their human rights. The contested status of the MCA as 'empowering' invites a revisitation of the context in which it was developed, and how it came to acquire its emancipatory reputation. From a doctrinal perspective, it is not at all obvious how a law that provides a legal framework for restricting legal capacity and authorising substitute decisions came to be regarded as 'protecting rights to decide'. This paper will present a historically informed account of how the Act came to acquire this reputation, based on accounts found in the literature and in interviews with key protagonists in the development of the MCA. It will unpick key strands in the particular approach to empowerment embodied by the MCA.

- Camilla Parker, Deprivation of Liberty, the Subjective Element and Parental Consent: What about the Voice of the Child?

A question emerging from the aftermath of the Supreme Court's decision in Cheshire West, which confirmed that for a deprivation of liberty to arise both the 'objective element' (Lady Hale's 'acid test') and the 'subjective element' (the lack of consent) must be present, was how this judgment applies to under 18s. Specifically, can parents consent to restrictions placed on adolescents so that although the acid test is met, there is no deprivation of liberty (because the parents have given consent on behalf of their child) and, if so, when? If there is no deprivation of liberty, none of the safeguards under Article 5 of the ECHR (such as requiring the confinement to be 'in accordance with a procedure prescribed by law') are engaged.

This paper considers the Court of Appeal's decision in (Re D (A Child) [2017] EWCA Civ 1695), which held that there are circumstances in which parents can consent to their child's confinement so that no deprivation of liberty arises. It argues:

(i) Although the nature of children's rights differs from adults in that the decision- making role of parents is recognised and that actions are to be taken in the 'best interests of the child', the application of both is moderated by the wishes of the child.

(ii) The views of the child are a significant factor in determining whether parental consent is sufficient to authorise an adolescent's confinement.

(iii) Despite the recognition of their importance in human rights standards and national law, recent cases concerning deprivation of liberty have given little attention to the views of the child.

(iv) To address this gap, decision-makers should adopt an approach similar to that outlined in the CRC Committee's General Comment 14 which regards children's views as being integral to determining their best interests.

- Emma Whewell, Pre-proceedings and capacity: the impact of professional language and other barriers on parents with learning disabilities.

In England and Wales, the issue of delay in public law children cases has been a concern for two decades. Delay can lead to an increased burden on the public purse and greater uncertainty for children and families. Numerous procedural measures have been introduced try to reduce delay both before the issue of care proceedings at court and subsequently. There is now a national 26-week target for the completion of proceedings. However, although there is a national 'pre-proceedings process', there is no suggested time limit for the conclusion of pre-proceedings work.

A research team, has considered the operation and effect on children and families of two regional pre-proceedings protocols which aim to complete pre-proceedings work within 26 weeks, and enable permanent decisions to be made about a child's future within a year overall. One of the findings from the qualitative and quantitative data collected in 2013-2014 and 2016-2017 is that the 26 week pre-proceedings process can create particular problems for parents with learning disabilities or who otherwise lack capacity. These groups are known to be at greater risk of losing their children. The speaker will consider how professional language and other barriers in this time-limited and complex intersection of child and adult care law can contribute to the problems experienced by such parents.

Methodology and Methods 35BSQ: 2.17

Routledge Handbook of Socio-Legal Theory and Method (1)

Chair: Naomi Creutzfeldt (University of Westminster)

- Chris Ashford (Northumbria University), Doing Socio-Legal Studies: A Guide to Theory and Methods: Queer Theory and the Law

The emergence of queer theory in the 1990s and the re-vitalisation of the theory in the past two decades (Duggan 2003; Leckey and Brooks 2010) has helped to provide an important counter-argument to the equality legal agenda, whilst also providing a more fundamental re-appraisal of legal discourse surrounding the study of sexuality.

Queer seeks to disrupt traditional gender and sexuality binaries, and builds on postmodern thought that has sought to document power and truth. The very fluidity of queer has led to competing claims as to the 'truth' of queer. Just as queer has been used to disrupt notions of 'good' and 'bad' sex, so too can it be applied to re-appraise our notions of the 'good' and 'bad' researcher (Ashford 2009).

In social sciences more generally, this has also initiated a growing application of queer to the methods and methodology (Nash and Browne 2012), disrupting traditional paradigms and offering the potential for the re-framing of existing ethical and methodological approaches (Ashford 2009).

This paper will draw on the authors own work together with other scholarship in social sciences to examine why this approach is important for methods, ethics and legal scholarship more broadly. It will seek to apply queer perspectives beyond the narrow category of sexuality studies that has sometimes been applied, instead considering what queer might mean for areas that may include criminal law, employment law, and broader post-colonial approaches to international law. The chapter will also examine how existing approaches to methods can be disrupted by queer, for example through an examination of the use of cyber-ethnography.

This paper forms part of a forthcoming edited collection on Socio Legal Theory and Methods, edited by Naomi Creutzfeldt, Marc Mason, and Kirsten McConnachie.

- Marc Mason (University of Westminster), Looking at LGBT Lawyers as an LGBT Lawyer

This paper discusses a chapter in the Routledge Handbook of Socio-legal Theory and Method. The chapter looks at the LGBT+ Bar project in which the author and Steven Vaughan (University of Birmingham) examined the experiences of LGBTQ barristers. The chapter will consider the significance of a researcher's identity and characteristics in a research project. Taking the author's experience as a queer barrister exploring the experience of other LGBTQ barristers as its starting point the chapter will start by exploring the problem of researcher objectivity in such a context. It will go on to consider that if objectivity is always problematic, whether sharing characteristics with research subjects becomes an asset for the researcher and then go on to examine the ways in which this research tool can be used appropriately in a manner that is methodologically sound. It will further explore the extent to which such advantage can be claimed by those holding characteristics which differ from the research subject but still position the researcher as 'other'.

- Stacy Sinclair (Fenwick Elliott LLP), ANT and Ethnography in Law: Beyond the Lawyer's Office Door

This paper, which will form part of the forth-coming 'Routledge Handbook on Socio-Legal Theory and Method', explores the dynamic interaction between ethnography and the Actor-Network Theory (ANT) and the advantages, implications and hurdles of research which utilises both. To do so, the paper examines ethnographic research, which was situated and conducted within a leading London law firm, specialising in construction disputes, over the course of 18 months: an investigation into what influences the outcome or trajectory of construction disputes, once the lawyer's gaze falls upon the dispute, and to what extent do lawyers control, shape and transform the dispute. The primary focus was participant observation in all of the firm's activities in order to offer an 'up close and personal' glimpse into the life of these disputes and the lawyers that deal with them. The basis of the theoretical framework of the research, and indeed the research method, was ANT. As such, the research viewed a dispute as a set of associations – an entity which takes form and acquires its attributes as a result of its relations with other entities. ANT required the dispute to be at the heart of the study, whilst enabling a flexible and broad empirical investigation of those entities, both human and non-human, which shape and develop its outcome. The success of this research was contingent upon the collaboration between ANT and ethnography, both requiring an immersion in and amongst the disputes within the firm. Notably ANT's method of tracing associations results in ethnographic data which itself is an explanation of the associations. With the rise of the 'vanishing trial' and the increased use of ADR, society has less of an opportunity to see and learn from these disputes. The use of ANT and ethnography provided and resulted in a unique perspective on construction disputes and their outcomes.

Property, People, Power and Place 8-10BSQ: 1.13

- Edward Burtonshaw-Gunn, Housing Production in Bristol, UK: Findings from Ethnographic Research with the Local Planning Authority

The UK is faced with a housing crisis, and has been for some considerable time. The main cause of this crisis, I argue, is the failure to supply enough new homes over the past four decades to meet rising demands. The focus of my doctoral research is on the interrelationship between politics and economics within the planning system – through law, policy, and practice – to explain how these elements interrelate to produce housing in Bristol, UK. Over the course of this research, I conducted a three-month ethnographic placement at Bristol City Council – the local planning authority responsible for establishing local planning policies in line with national policies, and for determining planning applications within Bristol – to answer the research question, 'how does the local planning authority perceive its position in relation to the production of housing?'.

The content of this paper will cover three principal areas. First, it will briefly draw upon the context of the national housing crisis through national completions data and political targets in order to outline the relevance and importance of this research. Second, it will focus on the housing crisis in Bristol by presenting the supply and demand assessments for the city, and its performance in house building over recent years. Finally, this paper will present a selection of key findings from my empirical research with Bristol City Council to demonstrate the specific difficulties that Bristol faces in producing housing, discussing how both national and local politics, and the prominent force of economics, interact with the local planning system.

- Robin Bartram, The Cost of (Non)Compliance: Building Codes, Rents, and Property Prices

Extant literature suggests that building codes increase rents and property prices. Yet existing studies rarely differentiate between compliance and non-compliance. I hypothesize that building code (non)compliance has different effects on rents than it does on property price. I present statistical analyses of building code data and housing market data to test this hypothesis and argue that there are important distinctions in how complied and non-complied building codes affect properties of different tenures. This article demonstrates how building violations reinforce the divide between wealthy and poor homeowners, as well as exacerbate the existing lack of affordable housing options for renters.

- Sarah Keenan, From Historical Chains to Derivative Futures: Title Registries as Time Machines

The establishment of land title registries across most of the common law world over the past 150 years marks a fundamental change in the process for transferring ownership of land. Previously, conveying land was a complex, slow and historically oriented process requiring the construction of a chain of paper deeds evidencing multiple decades of prior possession. In 1858, colonist Robert Torrens developed a new system for the transfer of land in South Australia, where the land was understood by colonial powers as without history. Based on the system for registering ships and with the explicit intention of making land a liquid asset, the Torrens system of title registration shifted the legal basis of title from a history of prior possession to a singular act of registration. Analysing the structure and effect of title registration systems, engaging with interdisciplinary work on time as a social tool (Grabham 2016; Mawani 2014), and with critical finance studies (Maurer 1999; Poovey 2008), I argue that title registries can usefully be understood as time machines. Like the time machine H.G Wells imagined, land title registries use fiction to facilitate fantastical journeys in which the subject is radically temporally dislocated from the material constraints of history.

Social Rights, Citizenship and the Welfare State 35BSQ: 2.06

- Anne Daguerre, Retrenching or Expanding Social Rights? Comparing Welfare Reform in Britain and the United States

Contemporary studies of welfare state reform have paid relatively little attention to the ways in which policymakers - both bureaucrats and politicians - amend, monitor and interpret benefit rules. As noted by Levi-Faur (2014:604), there is still a dichotomy between two scholarly communities, with little cross-fertilization between the study of regulation and

the study of redistribution. Legal scholarship on social security and welfare tends to be isolated from the comparative welfare state literature, especially in Britain (but see Simpson 2017, Paz-Fuchs 2008, Harris 2000 and 2013). Yet, at a time where social life is characterised by a proliferation of secondary legislation as well as political conflicts regarding the rule of law, there is a need to understand better how public law systems operate and the extent to which they constrain party-politics driven welfare expansion or retrenchment.

This article seeks to answer the following questions: how do core Executives in Britain and the US modify primary and secondary legislation when trying to implement social policy change? What are the institutional, political and judicial constraints they face when so doing? The purpose of this article is twofold. First, it aims to assess the importance of administrative power structures in each country. In particular, the procedural rules governing rule making differ markedly in the US and the UK, with administrative power being subjected to a much wider range of checks and balances than in the British system traditionally characterised by weak parliamentary scrutiny. Second, it aims to explain the reasons for the pattern of policy stagnation and drift regarding social assistance benefits in the US between 2010 and 2015, which forms a sharp contrast with the period of intense legislative activity in the field of welfare to work in the UK. To conclude, the paper seeks to assess whether there is a process of convergence between the United States and the UK in terms of rights to social assistance.

- Michal Polakowski, Dynamics of Old-Age Pension Systems Reforms in EU Countries - a Social Citizenship Perspective

The Global Crisis has brought about a wave of old-age pension systems reforms. However, in last 25 years the European pension systems have been undergoing less or more profound modifications. The aim of the paper is to map the developments of old-age pensions systems in seven European countries: Greece, Italy, France, Germany, Poland, Ireland and United Kingdom. The paper covers period 1990-2015 and focuses on the mix of social citizenship and the role of private provision.

The paper utilises a fuzzy sets ideal-types approach to a medium n sample. The use of this analytical tool allows for systematic multidimensional comparisons First, the dimensions of comparison will be defined. Second, the dimensions will be calibrated, so that in the third stage, the empirical data can be translated into fuzzy scores. Fourth step will involve single dimension (policy aspect) comparison. Finally, the configurations of dimensions will be compared in relation to ideal types. Such strategy allows for understanding dynamics of single dimensions, but also whole combinations.

The paper will conceptualise and utilise the following dimensions of pension systems in the context of social citizenship: generosity of benefits, access to benefits, poverty alleviation function and the role of non-governmental elements of the systems. The research will draw on the variety of data from EU, OECD, World Bank, and national data

The hypothesis of the paper is that in spite of several reforms, the analysed pension systems are resistent to significant change, so that only a limited convergence towards a single combination can be identified. More precisely, a change of one dimension of pension policy does not automatically translate into convergence of the combinations (pension systems). Finally, the paper will try to locate the dynamics of the European pension systems in the context of existing typologies (Bismarck vs. Beveridge and their further iterations).

- Jo Howard, Citizenship Agency in The Margins of Neoliberalism

This paper is concerned with citizenship in the context of neoliberalism. By citizenship, I refer to both a legal status defining rights and duties with regard to the state, but also agency - the capacity to act - in relation to public authority which involves both a horizontal relationship with and within a community, as well as a vertical relationship with the state. Neoliberalism has become a central concept in some of the social sciences, although rejected for its negative connotations by economists. It continues to be important after decades of debate, because it continues to be hegemonic, and shapes citizenship and welfare policies in countries as politically diverse as England and Nicaragua.

Evers and Guillemard (2013) argue that the demographic and social change that has happened since Marshall (1950) set out the triad of liberal citizenship rights, call for a new and different 'post Marshallian' concept of citizenship. This paper

draws on research in England and Nicaragua to i) understand governmental framing of citizenship in terms of access to welfare ideology and the 'good citizen'; and ii) to understand marginalised citizens' own notions of citizenship, both actual and desired. The gap between policies and discourses of citizenship on the one hand, and experiences, alternative ideas and everyday practices on the other, is discussed. Following Edmiston & Humpage (2017), I identify attempts to resist or reconfigure the prevailing welfare settlement, 'which can 'generate creative ruptures that push and pull on the tethered boundaries of citizenship'.

The Persistent Reality of Forced Migration 35BSQ: 4.02

Constructing the Forced Migrant; Constructing Home

Chair & Discussant – Ben Hudson

- Natasha Carver, The 'Silent Backdrop': Colonial Anxiety at the Border

Through the categorization of movers – who is permitted entry and under what conditions – the state (re)produces not only its own nation in idealized form, but also determines and fixes the belonging of the migrant and thus (re)produces the nation-state system as a global reality. For the majority of movers, this is little more than a subliminal reiteration of nation-state belonging at the moment of border-crossing, involving the swipe of a passport over a scanner. Some movers, however, some bodies, are deemed illegible within this system. They disrupt the 'unthought cosmology' (Massey 2005) of national belonging which has its roots in colonialism and the state endeavours to label and control these bodies and thus bring them within the system, rearticulating and essentializing nation-state belonging through this process.

This paper critically considers the coloniality of power embedded within the application of the Refugee Convention, particularly focusing on how nationality is constructed and produced within a global system of unequal states. Using a case study of a 'suspect' nationality group, Somalis, this paper shows how the UK state continues the colonial project of 'making up people' (Hacking 1999). As with colonial-era physical anthropology, the methods used to determine identity – linguistic analysis and DNA-testing – situate identity in the body. The Somali migrant, like his colonized predecessor, is constructed as an unreliable informant of himself through this process: a 'lying native' (Bhabha 1994) whose identity can be 'discovered' by the tools of the enlightened West.

- Elena Isayev, Beyond-Resilience: Rights, Exceptional Politics And Innovation Out Of Displacement

The paper will present one element of an initiative that seeks to bring together researchers and practitioners engaged with or in contexts of displacement who are invested in understanding, charting and enhancing the rights, agency and the potential of politics, beyond that enacted through nation states and territorial membership. It will speak to the challenges of human rights, which, while promising equality irrespective of citizenship status (e.g. Article 2.1 ICC; Article 14 UDHR), are still articulated within the framework of the Nation State. The 'right to have rights', as Arendt (1951) defined them, still appears confined by state-centric international law, despite advances in the institutionalisation and universalisation of human rights norms (Gundogdu 2015 et al). In what way, then, are displaced people be political beings? This paper will address the emergence of de-politicising trends resulting from the convergence of human rights and humanitarianism, which foster an emphasis on suffering bodies. A focus on the helpless victim (as distinct from acknowledging victimisation) deflects from displaced persons as political beings, undermining their ability to make their actions and speech relevant, hence excluding them from political community and subverting their capacity for claiming human-rights. The paper will position the agency of the displaced within the longue durée, as it is exposed in contexts of hospitality and asylum, by articulating its key modes: contingent, willed and compelled. Using a historical context as its starting point, it will expose the duplicity in conceiving of the current condition of displacement as transient or exceptional. As such, it argues for the urgent need of a shift in the perception of displaced people from that of impotent victims to potent agents, and to engage with the new forms of exceptional politics which their circumstances engender, without romanticising.

- Inga Thiemann, Unpacking the 'Victim of Trafficking' category

This paper engages with the human trafficking aspect of the forced migration theme. It explores the idealized victim category of female victims of trafficking and demonstrate that the nature of human trafficking for sexual exploitation makes it so that even in their victimhood women victims of trafficking face restrictions placed upon them by gender roles.

The idealised 'victim of trafficking' concept is a highly gendered category, as it relies on the historical notion of the female victim of trafficking in the sex industry. The 'innocent victim against the evil trafficker' dichotomy is further amplified by a second image: the exploited prostitute and evil pimp image.

Additionally, the conditionality of protections and services in destination countries on 'Victim of Trafficking' status, is based either on worthiness as a victim (by fulfilling the narrow victim category) or usefulness to the prosecution (by being a credible victim). This conditionality of services, together with their temporariness, normalise trafficked persons' status as non-citizens, but as recipients of charity and 'protections'. Thus, the victim category, which requires absolute and passive victims, maintains trafficked persons' exclusion from labour rights and human rights at the hand of the traffickers and ignores the underlying exclusions they face as women, migrants and sex workers, which facilitated their initial alienation from those rights.

Through the continuous stress of the criminal- victim dichotomy, trafficking policy reiterates ideas of women as passive and naïve victims who need such 'rescue' from traffickers, even if 'rescue' means forcible return to their home country. Equally, women need 'protection' by the state, even though this may include the 'protection' of being kept out by Western countries or being forced to stay 'at home' by countries of origin.

Transnational Organised Crime 35BSQ: 4.08

Approaches to Combating Illicit Markets and Trafficking

- Gloriana Rodriguez, A Labyrinth of Fear: The War on Drugs in Central America

One of the deepest conundrums regarding human rights is how to balance the need for greater security without undermining fundamental rights. It is a particularly complex issue, given that the human rights discourse is on the acknowledgment of universal human dignity. In contrast, security policies are usually rooted the belief that public order can only be guaranteed through state repression.

In the context of the "War on Drugs", the Hobbesian vision redefined security policies, the political discourse and the social paradigm. In Central America, the rise of violent non state actors, such as gangs, cartels and organized crime, have led to an epidemic of instability which has been associated with the flourishing of repressive policies. These repressive policies, often termed "Mano Dura" (Iron Fist), have, in many cases, led to human rights violations and the undermining of fragile democratic institutions.

The main victims are marginalized groups and children, who remain nameless and faceless, but whose suffering is evidence of a collective moral failure. To find a way out of the macabre labyrinth of insecurity, it is essential to develop and implement approaches based on social inclusion, not centered on punishment. This implies adopting a multifocal approach focused on at-risk groups, bearing in mind their diverse needs, beliefs and age-specific vulnerabilities. To this end, it is key to investigate the most affected social group (young boys) from the perspective of human rights as a means of developing effective polices which guarantee the public peace without deepening suffering.

Indeed, while no one wants to leave a population vulnerable to violence, any security measures must be drafted and executed carefully. Power can easily be abused. More power can result in greater abuse. Contrary to popular belief, the ends never justify the means, because the means define the path and the path defines identity.

- Prabha Kotiswaran, A Development Approach to Trafficking

Almost twenty years since the adoption of the Palermo Protocol on Trafficking, anti-trafficking law and discourse continue to be in a state of tremendous flux and dynamic evolution. While the efficacy of using criminal law to tackle an irreducibly

socio-economic problem of labour exploitation was always suspect, scholars and activists alike sought to remedy the excesses of a criminal justice approach by proposing a range of human rights protections thereby articulating a human rights approach to trafficking. Arguing that this did not go far enough, labour law scholars called for a labour approach to trafficking in order to forefront the role that a redistributive mechanism like labour law could perform in supporting the agency of workers to counter vulnerability to trafficking. Since then however, trafficking has evolved into a development issue with the articulation of Sustainable Development Goal 8.7 around which the International Labour Organisation has mobilised considerable resources. My paper seeks to explore the core assumptions of a development approach to trafficking and the regulatory forms that such an approach takes with a view to assessing its strengths and drawbacks over previous approaches to trafficking.

Session Two: Tuesday 27th March 15:30-17:00

Access to Justice 35BSQ: 4.07

Access to Justice in a Transitional and Developing Justice Setting

- Noemi Perez Vasquez, The Blind Letters: Women's Access to Transitional Justice

In my doctoral thesis, I examine the transitional justice policies implemented in Timor-Leste and I address this research question: 'What is the impact of the transitional justice laws and policies implemented for the protection of women's rights? Based on in-depth interviews and archival work, I analyse how women's rights were taken into consideration in the substantive and procedural laws of the Special Panels for Serious Crimes, in the policies and practices of the Truth Commission and in the provision of reparations. My thesis explores therefore the differences of access to transitional justice between women and men, whether transitional justice facilitates women's rights protection, and whether the proactive participation of international actors has been determinant in the protection of women's rights. By uncovering women's silences and raising their experiences in dealing with the law, policies and institutions, I show that although the Timorese government set back some UN mechanisms, many of the post-conflict UN policies did not necessary protect women's rights.

- Leah Cleghorn, Access to Justice in a Post-Colonial Society: A Grounded Theory Study of Victims' Access To The Criminal Justice System in Trinidad and Tobago

In recent years, successive governments in Trinidad and Tobago have been struggling with increasing crime rates and the weight it places on the administration of justice. This has led to an increasing focus on crime fighting and administering a system to deal with the influx of cases. Despite measured efforts there has been a decline in citizen's confidence in the institutions and processes of justice and a further divide between the victim and the system.

Internationally, it is recognised that victims' participation in the system is necessary, however this is often offset with discussions of 'balance'; the need to balance victims' rights against the purpose of the system and rights of defendants. Although in Caribbean societies there has been some intermittent social and political discourse on victim access to justice, there have been very few legal and systematic responses. Some Caribbean authors have deemed that the lack of adequate responses is rooted in the imitation of European common law systems that are bureaucratized, anachronistically administrative and characterized by social, economic and political inequities.

This research uses the grounded theory methodology to assess victims' access justice in postcolonial Trinidad and Tobago and how this affects the system's legitimacy. The paper demonstrates the possible structural barriers that limit victims access to justice, drawing on ongoing research (semi-structured interviews) being conducted with victims and practitioners. The paper presents some early indications of the justice system's organization of relationships with victims, mobilization and processing of victims and information; examining structural barriers and the impact such has on victim's identities as citizens and the effect on their perceptions of the system's legitimacy.

- Dennis Odigie, Personal Injury Litigation and Administration of Justice in Developing Economies: The Nigerian Judicial System in Perspective

Personal injury is often associated with permanent disability, diminution of human frame, inability to engage in hitherto economic and occupational activities, enduring traumatic experience and the psychological effect of deprivation of participation in certain social activities manifesting in reduced happiness and sometimes, life-long curtailment in pleasures of life. Apart from the foregoing negativities, the personal injury victim's effort at seeking reparation is inhibited by unfriendly system of administration of justice and uncomplimentary role by key players in litigation process, notably the courts and legal representatives with the result that the claimant is disenchanted after all the rigours of litigation. This paper examines the foregoing challenges as obtainable in Nigeria in the light of applicable judicial authorities and relevant statutory provisions, and offers suggestions on ways and means by which a sustainable friendly, expeditious and affordable justice delivery and satisfactory reparation regime can be entrenched in the overall interest of the personal

injury claimant. The paper concludes by expressing optimism that a pragmatic implementation of the proffered suggestions would be beneficial to claimants.

Children's Rights WMB: 3.32

- Helen Ryan and Emma Nottingham, Critically Ill Children, Privacy and Social Media in a Digitally Incontinent World

Children undergoing medical treatment have a right to privacy independent of their parents or guardians. This applies to children of all ages, no matter how young. The courts have on a number of occasions sought to protect the best interests of such children by refusing to permit disclosure of their identities by the media. However, there appears to be an increasing tendency in an age of digital incontinence for families to live out their everyday lives in the full glare of the publicity afforded by social media. Such publicity, often unregulated, and frequently involving a public not possessed of the full facts, may well conflict with the legal duty to ensure that the interests of children are paramount and that any decision taken on behalf of very young children who lack decision-making capacity, must be in that child's best interests. Considering the recent string of cases involving the terminally ill baby Charlie Gard, we explore the tensions between the competing interests that arise in similar cases involving critically ill children. Parents on the one hand will often, understandably, wish to prolong the life of their child and seek to harness the impetus of public opinion through the use of social media to promote their cause. Medical practitioners on the other may believe that it is in the child's best interests to allow the child to die. We seek to identify whether justice and the best interests of the child are well served through the use of an often unregulated social media as a mechanism through which parents might achieving their desired outcome and whether the law has a role in providing guidance and regulation.

- Faith Gordon, Protecting the identity of Children 'in conflict with the law' in the Digital Age: Pre-Charge Identification and the Lacuna in the Legislative Framework

The digital world offers many positive opportunities for the current generation of children and young people but there are also significant risks. Children and young people have identified issues they experience. Two significant issues are the content they are exposed to online and the continued use of their social media content, without permission. This paper draws on focus groups with over 170 children and young people, as well as interviews with media journalists, editors, broadcasters, children's advocates, politicians and police officers. It employs socio-legal analysis to assess the court's judgment in a recent case in Northern Ireland relating to pre-charge identification of a minor who had been accused of involvement in a high profile national 'hacking' case. This demonstrates the negative impact of the lacuna in the current legislation in relation to pre-charge identification of minors and is an area in which urgent reform is required, as further delay is resulting in breaches of children's rights. A further case study relating to the Police Service of Northern Ireland's use of print and social media to publish photographs of children wanted for questioning, will be discussed. The paper proposes that the Supreme Court's decision in this case, ignored the UN Committee's previous criticisms of the UK State Party's approach to 'naming and shaming' children, while compromising the safety of children within their communities. The paper concludes by presenting several recommendations for policy, regulatory and legislative change in order to ensure that children's rights are of paramount importance in the digital age.

- Wendy O'Brien, Lifelong Punishment for Children in Conflict with the Law: Children's Rights and the Importance of Safeguards Against Online Naming and Shaming.

In the digital age, the publication of identifying information about children in conflict with the law imposes punishment that is both disproportionate and largely extra-judicial. Where children are identified in police social media posts, or in electronic news articles about criminal proceedings, their identifying data forms part of the permanent public record, and often becomes the subject of vitriolic or violent threats by members of the public. Enduring profound social exclusion

and/or risks to personal safety, children subjected to online shaming bear lifelong consequences that extend far beyond the digital realm.

This paper is concerned with the extent to which the Internet, and changed modes of human communication, give rise to particularly troubling forms of public vigilantism or mob justice in response to children publicly identified as having breached the law. To give this analysis focus, case studies are used to explore the extent to which pre-digital law, legislative lacunae, and the punitive impacts of indiscriminate and expansive criminal law, permit unregulated public participation in the online shaming of young offenders. Drawing on recent examples of naming and shaming of children prior to arrest and criminal charge (Australia), during the post-sentencing period (England), and during the lifelong inescapability of sex offender registration (USA), this paper argues that specific features of the digital age, and the cultural trends enabled by digital technologies, require a renewed a commitment to rehabilitation and the preservation of human dignity, consistent with human rights standards.

Civil Procedure and Alternatives to Litigation 35BSQ: 2.25

- Masood Ahmed, A Review of Judicial Approaches to Compulsory Mediation and the Online Court

This paper revisits the author's notion of 'implied compulsory mediation' in light of recent ADR jurisprudence and civil justice reforms, in particular, Lord Justice Briggs' proposal for an Online Court (OC). It will be argued that although the issue of compulsory mediation remains unsettled, there may be an opportunity to introduce some consistency and clarity by subjecting certain types of disputes to compulsory mediation (a proposal first made by the author at the Civil Mediation Council Conference 2017 and before the publication of the Civil Mediation Council ADR Working Party Report). It will also be argued that, as its jurisdiction develops and expands in the future, the OC could (subject to various modifications) provide the best potential for a more consistent approach to the issue of compulsory mediation for a variety of disputes beyond simple money claims.

- Aonghus Cheevers, Mediation in Ireland at a Time of Change- What do Stakeholders Think?

In January, the Mediation Act 2017 (Ireland) was commenced by ministerial order. This Act seeks to place mediation at the heart of Irish civil proceedings. Like other jurisdictions, such as the United Kingdom and the United States, advocates of mediation in Ireland, point to the advantages that mediation can provide for disputants and for the legal system, more generally. This paper discusses a survey conducted with 126 mediation stakeholders in Ireland (mediators, lawyers, clients) in the latter half of 2017. The survey examines how the respondents view mediation and whether it is capable of providing the advantages claimed. In particular, the survey analyses how procedural justice ideas such as voice, neutrality, and control, operate within the mediation process. At this moment of great change and opportunity for Irish mediation, the analysis points to a process where procedural justice ideas play an important role. In addition, the survey points to a process in which the various stakeholders recognise the role of such procedural justice ideas. The paper reinforces the claims of mediation advocates, that mediation can provide Irish disputants with an effective and efficient process where they can resolve their dispute.

- Masood Ahmed and Aonghus Cheevers, Reflections on Recent Civil Justice Reforms and the Role of ADR

This paper presents a review and comparative discussion of recent civil justice reforms and the focus on ADR in England, Scotland and Ireland and aims to encourage critical discussion around the issue of ADR compulsion.

Criminal Law and Criminal Justice WMB: 5.68

Chair – Samantha Pegg

- Richard Nobles and David Schiff, What's Wrong with Guilty Pleas: Replacing Accuracy with Agency

In the research, which is the subject of today's paper, we have been looking at the academic justifications given for the criminal justice system and comparing these with both the frequency of, and the judicial justifications for, convictions obtained via guilty pleas.

For many commentators, guilty pleas challenge the current justifications for our system of criminal justice. Normative accounts of the criminal justice system typically focus on the criminal trial and attribute trial values (accurate fact finding, fairness, and human rights) to the system as a whole.

Commentators find it easy to criticise current practices as demonstrably running contrary to the focus on trials, and the values associated with them. The vast majority of convictions are now obtained through guilty pleas and not trials. The incentives offered to defendants to plead guilty undermine claims that a guilty plea offers very strong evidence of a defendant's guilt. Whilst in their precedents the judiciary continue to claim an evidentiary value for guilty pleas that denies that they represent any threat to the factual accuracy of convictions, they in practice construct the validity of a guilty plea as principally conditional on its voluntariness, rather than its reliability. And for the judiciary, that voluntariness of pleas is not disturbed by any lawful incentives (or threats) that may incentivise those pleas.

Such judicial resistance to guilty pleas as has arisen, especially in the UK, although articulated in terms of the need for voluntariness, is perhaps better explained by reference to judicial determination to maintain their discretionary sentencing powers.

In our research we ask: does the dependence of criminal justice on a procedure that prioritises the values of agency (the defendant's voluntary agreement to conviction) over rectitude in fact finding, require an alternate normative account of the criminal justice system that acknowledges this and, if so, what might this alternate normative account involve?

This research, work in progress, is an offshoot of a long, recently published paper. That paper explored a hypothesis about criminal justice procedures directed towards criminal trials as they have evolved for over 1000 years: that criminal justice procedures are a response to the need to convict and punish more persons than can be known, with certainty, to have committed crimes. It is published as: Trials and Miscarriages: an evolutionary socio-historical analysis', Nobles, R. & Schiff, D. Criminal Law Forum (2017). http://doi.org/10.1007/s10609-017-9329-4

- Ronnie Mackay, What's Happening with the New Diminished Responsibility Plea?

The new Diminished Responsibility plea is markedly different from the original section 2 of the 1957 Homicide Act 1957. Despite this, the "official" line explaining the impact of the new plea was that it was merely a vehicle for modernisation and clarification and nothing more. This paper will summarise the recent empirical research into the operation of the new plea carried out by myself and Professor Barry Mitchell which may cast some doubt on this "official" view.

- Gaye Orr, Interpreting the Feminine: Do Judicial Directions have a place in the Jury's Domain?

Examination of a number of wrongly convicted mothers in child death cases, indicates that it is possible that interpretations of maternal behaviour evidence may influence outcomes in the criminal justice system.

Such interpretations may employ descriptive or prescriptive beliefs about maternal behaviour around the time that a child died, that serve to support or justify an adverse decision about a mother on trial. By analogising from rape myth scholarship and Gerger et al's definition of a rape myth in particular, such beliefs have been termed mothering myths.

Jurors may be expected to judge maternal behaviour using their experience and common sense. Accordingly there are no prescribed judicial directions in relation to mothers in child death cases in the Crown Court Compendium (CCC) on which a judge may draw, in order to highlight for jurors' the dangers of relying on their own perspectives, prejudices or biases when considering maternal behaviours admitted as background or informal evidence.

This paper examines whether judicial directions based on the Crown Court Compendium (CCC) would be warranted, in order to constrain the use of mothering myths in interpreting maternal behaviour evidence. Modifications are proposed to existing CCC directions in respect of Rape and Sexual Assault, in relation to trial management, circumstantial evidence, preconceived assumptions, inconsistency of account and emotion and distress. The possibility of an intervening female juror perspective is also raised and the question whether judicial directions would be sufficiently persuasive is considered.

Equality and Human Rights 35BSQ: 2.26

Disability and Human Rights

Chair – David Barrett

- Emily Kakoullis, Interpreting and Implementing the Conceptualisation of 'Disability': Is the WHO's International Classification of Functioning and Disability Compatible with the 'New Paradigm' Approach of the UN Convention on the Rights of Persons with Disabilities?

The United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) was adopted in 2006. Article 1 enshrines a 'paradigm shift' in approach to the concept of 'disability' in international human rights law: A shift from an approach underpinned by a 'medical model of disability', which views persons with disabilities as 'objects' of medical treatment and in need of charity; to a 'social model of disability', which views persons with disabilities as 'subjects' with rights and focuses on the barriers persons with disabilities face. Article 1 does not define 'disability' but it provides a description of 'persons with disabilities'. Most states parties to the CRPD continue to face challenges in interpreting and implementing the conceptualisation of 'disability' enshrined in Article 1, as revealed by the examination of their reports submitted to the CRPD Committee on the Rights of Persons with Disabilities. Following the CRPD's adoption, some authors have argued that the conceptualisation of 'disability' in the CRPD is in line with the World Health Organisation's (WHO) International Classification of Functioning and Disability (ICF) (Fina 2017), and for the ICF to be used for data collection and to monitor the implementation of the CRPD (Bickenbach 2009). In this paper, the compatibility of the ICF with the CRPD will be explored. It will be argued that these suggestions need to be treated with utmost caution as the ICF is grounded in a medicalised understanding of disability, which does not accord with Article 1 of the CRPD.

- Thomas Bundschuh, Equality Re-examined: Disability, Poverty and the Convention on the Rights of Persons with Disabilities

Disabled people experience disproportionately high rates of poverty while being poor dramatically increases the likelihood of becoming disabled (Yeo 2003). It has been argued that "[d]isability and poverty have a bidirectional relationship; meaning that disability is a cause and a consequence of poverty" (Pinilla-Roncancio 2015, 115). A recent report reveals that "people living in households with disabled members in four countries face significantly higher levels of multidimensional poverty. These households also contribute more to the national levels of multidimensional poverty than their share in the population. More worryingly, a large percentage of households are not only severely multidimensionally poor but also destitute" (Pinilla-Roncancio & Alkire 2017, 1). The draft General Comment on Article 5 highlights that the CRPD is based on a new model of transformative or inclusive equality (para 10). Thus these questions arise: First, can the CRPD tackle the vicious circle of disability and poverty? Second, is the concept of transformative equality suited to protect and fulfil the right of persons with disabilities to an adequate standard of living for themselves and their families (Art 28 CRPD)? Third, does the CRPD require a State party to meet minimum core obligations to ensure the satisfaction of, at the very least, minimum essential levels of an adequate standard of living of persons with disabilities? Fourth, what are the implications for 'specific measures' under Article 5 CRPD and for UK equality and human rights law? The paper will address these questions in turn.

- Peter McTigue, Using the UN Convention on the Rights of Persons with Disabilities to push the boundaries of the Equality Act 2010

In December 2006, following prolonged lobbying by disability rights activists, the UN General Assembly adopted the Convention on the Rights of Persons with Disabilities ('CRPD') which entered into force in May 2008 after receiving the requisite number of ratifications. The UK Government and EU ratified the CRPD in 2009.

At the European level, the effect of ratification is that all EU institutions must comply with the CRPD in implementing and interpreting EU law. In the field of employment, this means that EU institutions and Member States must interpret and implement Council Directive 2000/78/EC in accordance with the CRPD. Such measure has had a significant impact in expanding disability rights across the EU.

Many commentators are now however concerned that the UK's decision to leave the EU will have a detrimental effect on the rights of disabled individuals in employment. This paper shall examine the validity of these concerns and question whether the CRPD is capable of providing continued assistance to such individuals post Brexit.

Family Law and Policy WMB: 3.33

Post-LASPO Issues

Chair – Anne Barlow

- Jess Mant, Experiences of LIPs in the Post-LASPO Family Justice System

The impact of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 on access to justice has been a crucial concern in private family law since its implementation, due to the restrictive nature of the new eligibility criteria for legal aid, and the many problems that even theoretically eligible individuals are having in providing the required evidence for legal aid. In this paper, I will present some of the main findings of my doctoral research project, which has sought to understand the specific impact of the cuts to legal aid on the accessibility of the family justice system for parents who are now self-representing in the family court. Over the course of the project, I interviewed 23 parents about their experiences in court, and their perceptions of both the system and the professionals who work within it. Through this research, I have been able to 'follow' litigants in person through the family justice system, and provide an insight into some of the possible experiences that LIPs – including many victims of domestic violence excluded under the new rules – are now having in the absence of state-funded legal representation.

The paper will begin by mapping the LASPO reforms and their political context, before outlining the research I have undertaken in response to this shift. I will draw on the experiences of my interviewees in order to explore some of the problems that LIPs are now having in engaging with this legal context without a lawyer, and the impact of these problems on their ability to self-represent. I will argue that removing lawyers from the courtroom has disrupted the traditional format of the family justice system, before reflecting on the current accessibility of family justice for parents, and suggesting essential future directions for research, policy and practice in the post-legal aid era.

- Rachael Blakey, Family Mediation Post-LASPO: The Accessibility and Relevance of Public Information

Family mediation has struggled to capture the attention of the public despite recent attempts to move cases away from adjudication. This is potentially because there is a lack of reliable information available to parties engaged in family disputes. This paper is based on empirical research exploring the accessibility of public documents on family mediation. Drawing on 27 documents from a variety of organisations, including family mediation providers, the study presents a socio-legal perspective on the impact of information on mediation's use and success. The project adopts a mixed methods approach, focusing on qualitative content analysis. This was supplemented by quantitative assessments of readability, a method not previously seen in family law.

The main findings presented in this paper are threefold. Firstly, the study highlights the extensive use of complicated language and legal jargon. Most terminology, from 'legal aid' to 'Memorandum of Understanding' was left undefined. This arguably means public information on family mediation is inaccessible to readers with a low understanding of English. Secondly, non-traditional models, such as online mediation, appear to have increased in availability. Whilst documents created by mediation providers indicated a rise in tailored and innovative services, this was not reflected in other material. The third finding is that the family justice system's rhetoric for the amicable resolution of disputes is evident in public information on mediation. This was demonstrated through frequent contrasts between the "helpful" mediator and "imposing" judge. Mediation was framed positively throughout the documents examined, particularly where parties obtained legal advice. This positive discourse was also adopted by "neutral" advice services who have appeared to have

bought into the LASPO reforms. Overall, the paper adds to growing calls for an authoritative, neutral and interactive source on the resolution of private family law disputes.

- Paulette Morris, 'Men Behaving Badly': How Mediators Respond to Fathers Undermining Family Dediation

This content for this paper is taken from my forthcoming book chapter.

This paper draws on empirical data collected from experienced mediators affiliated with National Family Mediators (NFM) in 20010-2011 (n=24). Focusing on a subset of cases (n=7) this paper explores the abusive behaviours present in Joint Meetings (JMs), how the mediators responded to those behaviours and identifies some of the impacts that these behaviours had on the mothers and their children.

The themes for analysis were taken from the Duluth Domestic Abuse Intervention Programme (DDAIP) (Pence and Paymar, 1993), which comprises of eight modules each based on a tactic of control that is identified as abusive behaviour/domestic violence.

This paper concludes that whilst the mediators managed the 'themed' abusive behaviours, they did not see the behaviours as domestic violence; thus clients were not seen in separate meetings for screening to take place.

- Mavis MacLean, After the Act: Access to Family Justice in the Run up to the Post Legislative Review of the Legal Aid Sentencing and Punishment of Offenders Act 2012

Within the interlocking and sometimes conflicted structures providing affordable and accessible legal help in family matter, who is doing what? This paper reports the latest findings from our small qualitative observational study of the range of pro bono initiatives in family justice, and follows on from our earlier paper on concerns among the legal profession about the boundaries between legal information and legal advice. This paper goes on to look at the boundaries between legal advice and support within the advice sector, and as part of legal education, The advice sector traditionally relied on referral to legal aid lawyers for advice in family matters but since LASPO , though constrained by cuts and hard pressed to develop new expertise, has continued its traditional work of advice giving, legal or other. At the same time clinical legal education is developing rapidly and enhancing the training of young lawyer. But while students are being trained to offer support, the provision of legal advice remains supervised and controlled by legally qualified staff whose primary responsibility is to provide education rather than services.

Gender, Sexuality and Law WMB: 3.31

Chair – Peter Dunne

- Tatiana Sanchez Parra (University of Essex), Contested Identities: Gender, Reproduction, and War in Colombia

Children born as a result of sexual violence are part of the realities of the armed conflict in Colombia and, in some parts of the country, they have been labelled by their communities as "Little paramilitaries", paraquitos. Based on ethnographic fieldwork conducted in Cauca, Colombia, in an area that was occupied by paramilitaries between 2000 and 2004, in this paper I argue that seeking to understand the identity of these children by focusing on narratives about the stigmatising label that reproduces the association of these individuals with their biological fathers, obscures the gendered politics of reproduction that underpin logics of violence against women and girls. Different than in other countries where children born of wartime sexual violence are discriminated against based on local biologies that assume the children to reproduce their "father's evil", in Colombia these children are understood in the community as "potential criminals" not because of who their biological fathers are, but because according to social and moral values their mothers have failed in raising them properly. I explore how local discourses normalise and naturalise wartime sexual violence, at the same time that

they have reproduced patriarchal notions of motherhood. Women's experiences during the armed conflict are dismissed, and the particular positionality of children born of war as war-affected children is denied.

- Gloriana Rodriguez (King's College), The War on Drugs and the Incarceration of Transgender Women

As a result of the War on Drugs, the Costa Rican government has implemented repressive polices which end up criminalizing poor and transgender women. The situation of transgender women is alarming. While countries such as Argentina, Colombia, Bolivia, Ecuador and Uruguay have enacted laws recognizing transgender identity, without requiring surgical intervention, in Costa Rica they are left unprotected. It is worth noting that both the Committee against Torture and the Inter-American Commission on Human Rights have denounced the violations of the human rights of transgender people in Costa Rica.

Transgender women are excluded from social, political and economic life. Neither their voice, nor their well-being, nor their multiple vulnerabilities are taken into consideration when elaborating and implementing public policies. A concrete indicator of this phenomenon are prison policies. Most of the transgender women incarcerated for drug-trafficking are in the lower echelons of the illicit drug market. Far from being the counterpart of the capos of the cartels, they are the janitors of the cartel. Indeed, they are women who resort to traffic as the result of economic desperation. Many of them are born in a situation of extreme vulnerability, they come from impoverished areas, are victims of abuse or violence (of various kinds) and are then criminalized by the state. It should be emphasized that since these women were born in conditions of social marginalization, they never were "integrated" before being deprived of their liberty. For this reason, it is paradoxical to discuss their "reintegration" after they have served their sentence. In reality, after leaving prison, these women still lack access to education and employment, are the sole breadwinners for their families and have the additional stigma of a criminal record.

In this regard, drug policy has become a magnifying glass for underlying social injustices and weaknesses.

- Emma Milne (Middlesex University) and Karen Brennan (Sussex University), The Infanticide Act as a Means Readdress Harms? Women Who Kill Their Infants and Reproductive Justice

Women who kill their infants have long been recognised as a group of violent offenders who deserve sympathy and compassion from the courts. Such public sentiment was one of the key motivators prompting the creation of the Infanticide Act 1922. The criminal offence of infanticide has received significant criticism, partly due to the medical and psychological undertones of the statute. Numerous feminist scholars have pointed to the Infanticide Act as an example of legal paternalism, and of pathologising infanticidal women, labelling them as 'mad', and so masking the social and cultural pressures that may lead a woman to kill her baby.

The social and cultural pressures that surround pregnancy and motherhood are numerous. Often overlooked and under-acknowledged, the demands on pregnant women and new mothers can be extensive. It is on this basis that we present a feminist argument in support of the Infanticide Act, advocating that it must remain a feature of modern criminal law.

Reproductive justice, a concept that links reproductive rights with social justice, advocates that women and girls should have the economic, social and political powers and resources to make healthy decisions about their bodies and their families. Within a reproductive justice framework, pregnant and postpartum women and new mothers would receive significantly more support and care from society as a whole. An evaluation of the current situation, would lead to a conclusion that women in the UK lack reproductive justice.

Within this context, we argue that the Infanticide Act allows for a redress for women; compensating them for the social harms experienced as a result of their lack of reproductive justice. The offence of infanticide allows a rebalancing of the law in instances where lack of social support has resulted in women committing fatal acts of violence towards their children.

Intellectual Property 8-10BSQ: LG02

Chair – Jasem Tarawneh & Smita Kheria

- Mohammad Rababa, The Impact of Trademarks Protection on Online Keyword Advertising: The European Experience

Modern business methods and the vast array of marketing opportunities are not only placing the role and function of the trademark at the forefront of consumer protection, but also developing the concept of the mark as an asset of considerable value in itself. This increases its vulnerability to competitive interference and the proposition that it should receive enhanced protection in law. Somewhat perversely, it has resulted in a body of legislation and jurisprudence which lacks cogency and coherence.

The purpose of this article, accordingly, is to examine the impact of the development of protection granted to the trademark with particular reference to the use of online keywords advertising service and focus on the effect of relatively new theories of what functions qualify to be shielded from harm from competitive others. This has expanded beyond the conventional boundaries of source 'origin' protection, espoused to primarily protect consumers from confusion in their choice making process. Advertising and investment functions as separate principle are recognised by the Court of Justice of the European Union, but do not appear to qualify for safeguarding in the context of the competitive free market. In fact, it will be shown that giving excessive shelter from harm to all functions which may affect the value of the trademark will limit, even jeopardise, third party competitor and consumer issues. It will inhibit the use of the e-commerce online keywords advertising service which assists third parties to promote alternative competing goods or services and so reduce consumer choice by restriction of online information. It is suggested that proper, clear defences must be guaranteed under the law so third parties may gauge their actions to avoid infringement of trademark owner rights whilst promoting their own products, and accordingly strike the necessary balance between the different competing interests of trademark owners, third parties competitors, and consumers.

- Shane Burke, Artistic Authorship, Performance and Legacy in the Shadow of Copyright Law

With a focus on aspects of the artistic practice of Sol LeWitt, an architect of the Conceptual Art movement, and based on an interview with the archivist from his estate, this paper explores disparities between legal and art world conceptions of authorship and intellectual property. It explores how social norms, which in many respects mirror copyright protection, support art world notions of authorship. It then proceeds to examine the legacy implications associated with such realities.

LeWitt's text based instructional artworks involve a privileging of the idea with physical execution sometimes perfunctory involving limited supervision by the artist or their estate. These works highlight the complex role of the artist and, in the post-mortem situation, of their estate in the realisation of visual works frequently executed by a draftsperson rather than by the hand of the artist. Inherent in such practices, and in tension with doctrinal aspects of copyright, there is a view of authorship that privileges conception over execution resulting in an attribution of authorship that is often at odds with that of copyright law. Analogies may be drawn between such works and musical practice where a score/performance model exists. It will be contended that such an approach more accurately reflects the precise nature of the authorship at hand here, with the artist/estate's varying levels of input in the execution or 'performance' of the work cast as more of a 'conductorial' role.

This paper argues that, particularly in the context of posthumous 'performances', a conception of intellectual property which is significantly broader than the legal notion is supported by art world conventions which in some instances mirror, and in others exceed, copyright and moral rights protections and thus ultimately serve to sufficiently protect these artistic practices in the process blurring the boundaries between authorship, moral rights, conservation and legacy.

- Smita Kheria, 'The prismatic nature of copyright: Writers and their everyday practice'

What is the role of copyright in the day to day practice of writers, and how is it changing? In the context of writers' real world experiences, what is the actual, and perceived, value of copyright? How are beliefs, and meanings, regarding copyright shaped? Moreover, how do beliefs, meanings and experiences regarding copyright ultimately shape the contours of a writing practice? This paper examines the prismatic nature of copyright as it relates to the everyday professional experiences of writers. To explore this, I draw on a dataset consisting of semi-structured, in-depth, interviews with writers, and ethnographic field work. While foregrounding some of the key aspects of copyright that writers value, the paper also highlights how they are informed, and influenced, by contextual factors that impact processes of meaning-making, and decision making, when it comes to the role of copyright in their practice; including the dilemmas they face in instances where their perspectives and decisions regarding copyright are pulled in different directions.

Lawyers and Legal Professions 35BSQ: 4.01

- Emma Cooke, 'Injected' precarity? Questioning the Stylized Existence of the Legal Aid Lawyer Within the Neo-liberalist Context

Following the radical implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, significant cuts to civil, family and criminal legal aid budgets threaten to change the legal aid terrain beyond all recognition. Based on an informed ethnographic account of Legal Aid Lawyers in the context of the workplace, this paper explores the changing nature and connotation of professionalism in light of crumbling nature of Legal Aid. This paper critically examines the way in which precariousness exponentially increases under conditions of neoliberalism. The insecurity experienced by these altruistic workers has particular implications as the Legal Aid Profession becomes subject to the type of degradation traditionally associated with blue-collar work (Beck, 2000; Standing, 2011). Changes to the legal aid regime that encourage the enactment of acquisitive as opposed to altruistic modes of work, the privatisation of public services and the removal of systems of state welfare can be seen as contributing to the precariousness experienced by these professionals. This paper argues that the Legal Aid Lawyer themselves have been placed in the position of a 'precariat' at the occupational level, which has particular implications for the demoralization and professional diminishment of their practice. Questioning the stylized existence of the legal-aid lawyer in the current neo-liberalist context offers a unique opportunity to apply concepts, which have previously been applied to blue-collar work in the white-collar context. This vitally paves way for an original contribution to the largely under-researched field of the profession of legal-aid lawyering.

- Stefanie Lemke, Lawyers and Corporate Social Responsibility: On the Legal Profession's Hesitation with the UNGPs

Legal Education 8-10BSQ: LG01

- Stephen Samuel, Rethinking 'Common' in Common Legal Education

From 2020, it is likely that a new test will be instated to qualify as a solicitor in the United Kingdom. This will occur through the introduction of the Solicitors Qualifying Exams (SQE). There have been numerous reasons cited in support of these proposals, and, some strongly worded opposition. Primarily, concerns relate to marginalisation of common values across professions, potentially leading to undesirable bifurcation between solicitors and barristers. There certainly is some bite with such concerns since, not too long ago in 1996, The Lord Chancellor's Advisory Committee on Legal Education and Conduct noted the "need for common professional legal studies" and considered it to be "essential in order to meet the changing needs for legal services, and to ensure the efficient delivery of those services to the public." In this paper I interrogate the potential impact of the SQE and whether a common legal education is at serious risk.

First, I begin by considering the proposed SQE introduction from the perspective of providers the university sector. What is likely to change for whom, and, what necessarily will change for whom? My aim in this first section is neither to commend or disparage the proposed changes. Rather, this first section explains how the various stakeholders in the university sector – law students, university managers, government regulators, research academics – do not, quite

reasonably, have the same interests in mind. In other words, distinguishable interests exist amongst the participants of legal education in the high education sector.

Second, I explore the different senses of the term "common" within past studies and reports about legal education reform within the UK. My aim here is to consider commonality from different perspectives contained in those studies, including commonality as: disciplinary field, jurisdictional space, universal ethics, shared marketplace. In this second section, the survey attempts to reveal how various invocations of commonality during periods of reform, tended to occur in the face of corresponding desires to manage economic sustainability.

My paper concludes with a simple reflection. Considering distinguishable interests amongst stakeholders, and the multiple ways to make sense of the common agenda of law professionals, some questions need to be raised with regards to how universities are measured and ranked. Would neo-liberal competition amongst universities be a good thing? Or put differently, can competition lead to comity?

- Hanaan Balala, The Effect of the Social Environment on Legal Education

Having taught law in three common law jurisdictions, United Kingdom, Malaysia and Kenya, I am intrigued by the effect of the social environment and jurisdictional context on legal education. This paper aims to explore this effect, including the effect it has on law students and the legal profession as a whole.

Legal education encompasses the process of educating those aspiring to join the legal profession and the continuous development of those within the legal profession. It pertains to both the students and educators, be they in the universities or within the legal profession and established legal bodies.

This paper will focus particularly on the ethical fabric of the socio-legal environment in Kenya and the effect it has on legal education. In Kenya, the effect of corruption, cronyism and nepotism is patently debilitating at best and otherwise stultifying. Lawyers, judges, members of parliament and the police force are all corrupt with the exception of a few and a law student's journey to becoming a lawyer is thus burdened with unethical hurdles. The systemic nature and hold of corruption in Kenya is worsened by the fact that those who fight it or defy it suffer negative consequences of doing so, and are eventually eliminated by the system.

Drawing on my experience living, studying and working in Malaysia for 8 years, and likewise in England for almost 10 years, I intend to investigate the factors that contribute to Kenya being a rampantly corrupt country with the objective of determining whether corruption can be reduced or better managed with regard to the effect it has on legal education.

Can corruption be curbed in Kenya? And what effect will this have on legal education in Kenya?

- Foluke Adebisi, Decolonising the Legal Curriculum: Law, Race and Creating the Subaltern

Decolonisation of knowledge and curricula asks for critical inclusion of epistemologies, ways of knowing, lived experiences, texts and scholarly work that have been previously excluded from our disciplines. It asks for an examination of the history of academic disciplines to explain and understand how and why certain forms of knowledge and values have been privileged. Decolonisation requires an examination of our inherited assumptions about knowledge and the impact this history has. One of the most often unnoticed but significant effects of this history for the study of law is the creation of the subaltern – a person who is in a vast array of ways, placed outside a hegemonic structure. Repeatedly, race is among the factors that makes subalternity possible.

Racial disparities abound in our institutions, in our law schools, in our profession and in our discipline. Yet there is an increasingly collective understanding that race is socially constructed, without biological meaning. It is imperative that this understanding causes us to reassess our curriculum. This is because 'law and race shape each other in powerful ways.' Without decolonising law and legal study, and examining how they have developed and evolved, racial discrimination and existing disparities will continue to be legitimised, reproduced and evolve. Using theories of postcolonial law, critical race, and subalternity, this paper will explain what decolonisation of the curriculum and the law means for our

understanding of law. It will make the argument that the legal curriculum needs to be decolonised. The paper will continue with a description of what a decolonised curriculum and decolonised law would look like. The paper will conclude by examining some contemporary challenges to decolonising the law, e.g. increased marketisation of the sector, and regulatory mechanisms which are advanced on a presumption of the objectivity and neutrality of law.

Medical Law, Healthcare and Bioethics 35BSQ: 3.13

Beginning of life

- Claire Murray, Women's Agency in Pregnancy: The far-reaching Consequences of the Irish Constitution

This paper considers recent case-law and policy to highlight the extent to which pregnant women are denied agency when giving birth in hospital in Ireland. It is a fundamental principle in medical law and ethics that a competent patient has a right to consent to and refuse medical treatment, including where pregnant (see Montgomery v Lanarkshire Health Board [2015] UKSC 11). However, for pregnant women in Ireland there is a question mark over this where the woman's refusal may impact on the life or health of a viable foetus, and this is reflected in the HSE National Consent Policy and the National Maternity Strategy, as well as in the provisions for Advance Healthcare Directives in the Assisted Decision-Making (Capacity) Act 2015. One of the reasons for this is the 8th Amendment to the Constitution which protects the "right to life of the unborn." This is primarily understood as a constitutional ban on abortion in Ireland, although abortion is permissible in circumstances where the life of the mother is in danger. However, the effects of the 8th Amendment are broader than this, and in fact impact on almost every aspect of reproductive healthcare for women and girls in Ireland. The full extent of the impact of the 8th Amendment is now beginning to gain wider public understanding, in part as a result of the consideration of the issue by the Citizen's Assembly and the Joint Oireachtas Committee in 2017. With the Irish Government promising a referendum in summer 2018, the debate on repealing the 8th Amendment is already well underway. This paper argues it is essential to understand the scope and range of the denial of women's agency in this context in order to develop strategies to address this, which include, but are not limited to, repeal of the 8th Amendment.

- N.Hammond-Browning, Criteria for Uterus Transplantation – Looking Ahead

Uterus transplants are heralded as a reproductive solution for women with absolute uterine factor infertility (those born without a uterus or who have a non-functioning uterus). Uterus transplantation involves IVF, major surgery on at least two occasions, use of immunosuppressant drugs, and high-risk pregnancies. It is recognised that at least four people will be affected by a uterus transplant the recipient, the donor, the recipient's partner, and a future child, however, the focus of this paper is on the women involved – the recipient and the donor. Research trials are in progress throughout the world, selection criteria have been agreed upon and approved by research ethics committees, and yet there is little discussion about the appropriateness of the selection criteria.

This paper focuses upon the selection criteria of three research teams – Sweden (Gothenburg), the UK (Womb Transplant UK), and the US (the Cleveland Clinic). An examination of the criteria is both timely and significant; the concept has been proven with nine live births, and the journey toward uterus transplants as a treatment for absolute uterine factor infertility is underway. In this paper I look to the future and suggest recommendations for eligibility criteria for treatment include permitting the use of donor eggs (and sperm), access for women including single women and women in same-sex relationship, higher age limits, appropriate information provision and the use of uteruses from deceased donors or bioengineered uterus.

- Louise Austin, Miscarriages, Medical Treatment and Consent

This paper explores whether the options for disposal of pregnancy remains following a miscarriage prior to 24 weeks' gestation should form part of the process of consent for medical treatment, or healthcare, for miscarriage. This question arises as recent research demonstrates variation between hospitals in information given about disposal options.

When a woman miscarries at less than 24 weeks' gestation, the fetal remains need to be disposed of. The law regards fetal remains as part of the woman's tissue and consent is not required for its disposal. However, the Human Tissue Authority has recognised that the nature of fetal remains requires them to be treated differently and in 2015, issued guidance on disposal of those remains aimed at addressing the gap in the law. The guidance requires healthcare professionals to offer women the options of disposal by burial, cremation, or incineration. However, such guidance is not mandatory and research has found that the information given to women about disposal options varies between hospitals [Report to the Human Tissue Authority on Disposal of Pregnancy Remains (2017)]. Interviews with women who have miscarried illustrates that this lack of information can have long-term consequences for women recovering from the trauma and bereavement associated with miscarriage.

This paper explores the extent to which the existing law surrounding informed consent to medical treatment could be used to ensure the HTA guidance is followed. It examines the case of Montgomery [2015] which requires healthcare professionals to give patients information about treatment, and its extension to post-treatment information [Spencer v Hillingdon (2015); Gallardo v Imperial College (2017)]. The paper concludes that information about the disposal of fetal remains falls within the legal requirements of informed consent on the basis that it forms part of the medical treatment, or healthcare, for miscarriage.

Mental Health and Disability Law 35BSQ: 3.18

Mental Health Law

- Thomas Webb, Swept Along by the Winds of Change: The History of the Hospital Managers' Discharge Power

Under the Mental Health Act 1983 s.23, Hospital Managers or, as is generally considered to be the case, their nominated delegates, possess a power to discharge individuals from almost all categories of compulsory mental health care. The 1999 Expert Committee contended that this power originated in the Mental Health Act 1959. While the Committee can be forgiven for reaching this conclusion, they were incorrect. The roots of the power are to be found in the early-19th Century with the establishment of public asylums. However, while the emergence of the Hospital Managers might appear to march in step with other recognised themes in the history of the mental health services (inter alia the rise of the psychiatric profession, the oscillation between legal and medical oversight of care), closer examination reveals that s.23 has a history all of its own. In consequence, wider historical developments in mental health law provide only limited insight into why s.23 exists in its current form.

In this paper, through an examination of the history of the s.23 power, I argue that the emergence of s.23 is best characterised as one of happenstance. Changes in the power of discharge were largely incidental to shifts in governmental policy towards, and the legal framework regulating, mental health care more generally. The corollary of this observation is that s.23 and its antecedents have never been the subject of detailed legislative reflection. It is true that (unsuccessful) attempts have been made to abolish the power, but these efforts were founded on the basis of little evidence. Now that reform of the Mental Health Act 1983 is again under consideration, it is important to reflect on the lack of attention that has been paid to the s.23 power, given that it is likely to be targeted for abolition once more.

- Jill Stavert, Do mental health tribunals have a role to place in a CRPD-compliant world?

The CRPD challenges perceptions of the role of human rights of persons with mental disabilities that have developed over the last 40 years. It requires us to fully consider what the equal and non-discriminatory enjoyment of rights for all actually means. In doing so we must look beyond an approach where human rights only limit unwarranted interventions in relation to persons with mental disabilities to one where there is proactive removal of obstacles to full rights enjoyment and where environments exist that respect and support such enjoyment.

The Committee on the Rights of Persons with Disabilities also considers that mental health laws that permit involuntary treatment deny the exercise of legal capacity for persons with mental disabilities on an equal basis with others (General

Comment No 1(2014), para 7). Similarly, it regards mental health laws that allow for persons to be detained on the basis of their actual or perceived impairment, even where risk is involved, as discriminatory and amounting to arbitrary deprivation of liberty (Guidelines on art 14 (2015), para 6).

In democracies courts and tribunals, as judicial bodies, are generally regarded as the guardians of human rights. Mental health tribunals are included within this. Indeed, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health considers that accountability for the enjoyment of the right to mental health depends upon, amongst other things, independent review provided by judicial bodies (Report to UN Human Rights Council, March 2017, para 51). However, at the same time he notes an increase in mental health tribunals that legitimise coercion and isolate people within mental health systems from access to justice (Report to UN Human Rights Council, March 2017, para 52).

This paper will therefore consider whether mental health tribunals do have a role to play in upholding the rights of persons with disabilities in a CRPD-compliant world. In doing so, it will refer to research currently being undertaken by the author into service users' and others' experiences of the Mental Health Tribunal for Scotland.

- Judy Laing, Jeremy Dixon, Kevin Stone and Megan Wilkinson-Tough, The Views of Approved Mental Health Professionals on the Nearest Relative role in the Mental Health Act 2007: Findings of an Empirical Study

This paper will present the findings of an empirical study into the views of Approved Mental Health Professionals (AMHP) of the Nearest Relative (NR) role in the Mental Health Act 1983 (as amended in 2007). Nearest relatives have a number of key rights and responsibilities in the mental health compulsory admission process. Despite the significance of the role, relatively little is known about how it works on the ground and limited research has been carried out to date about the effectiveness of the nearest relative functions. It is reported that interaction between nearest relatives and mental health professionals under the legislation can be difficult, and a number of problems in practice have been identified by legal commentators and researchers (see Laing et al, 2018 in press; Rapaport 2012; Keywood, 2010).

This study was designed as a pilot project to explore the views of AMHPs towards NRs, thereby seeking to fill a gap in the literature and current state of knowledge. The paper will present our preliminary findings and highlight some key themes that emerged from our research relating to the interaction between AMHPs and NRs. These findings have implications for current law reform, professional practice and AMHP training needs.

Methodology and Methods 35BSQ: 2.17

Methodology and Methods

Chair – Petra Mahy (Monash University)

- Helen Thomas-Hughes (University of Bristol), Co-production and Community Researchers in Socio-Legal Research

This paper critically examines the utilisation of community researchers within community-engaged and co-produced research partnerships. The paper draws on the author's work training and supporting community researchers from across four collaborative research projects which took diverse approaches to exploring mechanisms of regulation for engagement from within the U.K.'s 'Productive Margins, Regulating for Engagement' research programme.

Co-produced research has been used as a 'catch-all' (Facer & Enright, 2016: 87) for various participatory, community-based and collaborative research methodologies. It is framed as: an opportunity to facilitate grass-roots solutions to the complex issues facing our contemporary world, an active medium for social change (Kesby, 2007), a way of working outside of the influence of powerful majority perspectives (Beebeejaun et al., 2015), and a facilitative process for individual and collective empowerment which can stimulate progressive social change and transformational outcomes for communities (Banks & Armstrong et al., 2013; Heron & Reason, 2008).

Community researchers are a relatively typical feature of co-produced research in the U.K. and can be seen as an embodiment of the methodologies attempt to re-distribute power within the research process. It's argued that community researchers can lend cultural relevance to a research project resulting in findings that are more applicable to community contexts (Mosavel & Sanders, 2014; Christopher et al., 2008) and enhance access to and knowledge of 'hard-to-reach' communities (Elliot et al., 2002). Training for community researchers has been framed as a mode of community capacity building (Facer and Enright, 2016), a consciousness-raising process empowering individual community-researchers towards action for social change (Kilpatrick et al., 2007) and, as part of a wider ideological commitment to life-long learning as a fundamental principle in the transformation of society (Aspin & Chapman, 2000).

However, reflections from the U.K.'s Connected Communities programme revealed inherent challenges to the role and training of community researchers in co-produced research (Facer and Enright, 2016). The proposed session will draw on real-life contexts to examine the role of community researchers within co-produced socio-legal research. In particular, asking what 'training' for community researchers can come to mean in practice. The paper critically examines the potentiality of community researchers as a mode for producing new knowledge which can meet the expectations, needs and values of our diverse society (Xavier Grau et al., 2017, p.501) aiming to facilitate a critical dialogue about the role and limits of community researchers within and beyond socio-legal research partnerships.

- Seamus Byrne (University of Liverpool), A Child Participatory Approach to Investigating Social Exclusions in England

School exclusions have anchored themselves as an institutional and material reality within the English educational system. Aside from the direct and immediate impact that exclusion has on the individual child themselves, their removal from the education system also directly impacts their families and the wider community. However, school exclusions are subject to a well-defined statutory scheme in England which ultimately places a large amount of decision-making power into the hands of the head-teacher.

This paper will highlight the child-participatory methodology which the author adopted to investigate the phenomena of school exclusions in England. In particular, the author will outline some core issues including;

a) Why a child- participatory methodology was used in this investigation.

b) The ethical issues involved in adopting such an approach.

c) The benefits of child-participation in the furtherance of socio-legal investigations.

Overall, this paper will hopefully serve as a basis for a fruitful discussion pertaining to the adoption and deployment of progressive methodological approaches to research.

- Ashley Rogers (University of Abertay Dundee), The Value of Ethnography and Legal Consciousness in a Legally Plural Context

As Silbey (2005: 359) highlights, 'law is a basic, constitutive attribute of our social consciousness'. Meaning making in relation to law, society, and the Self are therefore intertwined. This paper suggests that ethnographic explorations of 'legal consciousness' offer everyday insights in to law and society, illuminating law as an organising principle of not only the meaning of law itself, but of life.

There has, however, been much debate about the usefulness of legal consciousness in socio-legal studies, yet in a plurinational and legally plural context such as Bolivia, it provided a useful guiding principle in relation designing the methodological approach and conducting research. My research over one year in La Paz, Bolivia, reveals that by foregrounding the exploration of legal consciousness - in the context of a recently enacted law against gender-based violence – in depth insights in to the influence of law in everyday life are revealed. This highlights not only the relationship that women have with the law and legal institutions, but also uncovers the tensions that exist in a plurally legal context, where both state law and customary law are formally recognised in the country's Constitution.

Researching law in everyday life, and in a (legal) culture that is different to that of the researcher (a Scot in Bolivia), raises important questions about methodology in socio-legal studies and the value of legal consciousness. What is the starting point in research that seeks to explore legal consciousness, but not privilege law as it exists on paper? Are constitutive theories exaggerating law's power to shape meaning? Can ethnographic approaches to law in society help address these issues?

Property, People, Power and Place 8-10BSQ: 1.13

- Daithí Mac Síthigh, Most of Us Enjoy a Good Party: Acid House and the Home Office

Between 1988 and 1990, the phenomenon of the acid house party (or the warehouse rave, or the outdoor music festival) prompted significant political and press reaction. From the 'second summer of love' of 1988, through high-profile and sometimes controversial events in 1989, and on to the Entertainment (Increased Penalties) Act 1990, debates encompassed the reach of licensing law, the appropriate use of police powers, the changing topography of England (whether rural or motorway), and the emergence of subcultures, fads, and political movements. Contemporary and subsequent scholarship highlights the period as conforming with some of the features of a moral panic, as well as a decisive step towards later legislation (including the Criminal Justice and Public Order Act 1994 on raves and later licensing law reforms).

In this paper, I offer a new assessment of this period, through a close study of recently released archive material from the Home Office, which was an important site of analysis and debate. The origins of the 1990 Act (often sidelined in existing accounts) are explored in more detail than has been possible before now, as is the significance of key parties (e.g. Maidenhead in June 1989, Reigate in September 1989) and tabloid coverage, and influential players (ranging from the Prime Minister to various Chief Constables to an inchoate form of Tory anarcho-capitalism). I also identify the role played by technological change, by the context of public order policing in the 1980s, and by the different trajectory of the debate in the north of England and in Scotland and Northern Ireland.

- Emma Patchett, Marking Place : Law and Materiality in Gypsy and Traveller Film

This paper seeks to explore the ontological relationship between people and place in relation to a particular framing of Gypsy and Traveller ethnicity and the law's shaping of public space. Drawing on a law and film approach, I will explore law's everyday manifestations in the spatio-temporal materiality of destabilised sites, examining the way in which the discursive embeddedness of the law negates diverse encounters with place. Through contemporary film texts by Gypsy and Traveller filmmakers, I will consider how it could be possible to recognise alternative means of engaging with the juridical shaping of public space, and how we might begin to challenge law's representation of the materiality of place in the construction of sites of unsettlement.

- John Picton, The Charitable Donor's Bargain

Charity law can be understood as a 'bargain' with private donors. In exchange for a voluntary transfer of property (or wealth), the law rewards the donor with tax advantages and perpetuity. The idea of an exchange underpinning charity connects with a sociological view which presents reciprocity as a fundamental element of all gift-giving (e.g. Mauss, 1925; McGoey 2015). It also connects with so-called 'warm-glow' theories of giving in economics, in which donors are sometimes presented as being motivated by pleasure, or even social advantage (e.g. Andreoni, 1989; Elster, 2011).

This paper will first establish the law as a bargain with donors and then assess the policy impact of reforms directed at that bargain. That is, legal reforms that either reward or disadvantage the donor in the act of 'exchange' with the law. These are: altered public benefit requirements (e.g. Synge, 2015), reforms to gift aid (e.g. Morris, 2014), and reforms directed at modification cy-près (e.g. Picton, 2018). It will be seen that reforms have occurred piecemeal without any

over-arching policy understanding of the law as a bargain, and that in consequence there has been no assessment of the terms on which the deal should be set.

It will be argued that the law's bargain with donors is - in part as a consequence of recent reforms - lopsided and could be reset in such a way that donors receive fewer legal benefits in exchange for their gifts.

Sexual Offences and Offending WMB: 3.30

Chair – Phil Rumney

- Eithne Dowds, Conceptualising the Harm of Rape in Conflict and Peace: A New Typology

The crime of rape is a global epidemic. It occurs in a multitude of places: in the street; in universities; in someone's home. By a multitude of actors: a stranger, a friend, a partner. In a multitude of contexts: peace; conflict; occupation; humanitarian crisis – as well as all the places in between. What, if anything, connects these acts of rape? Can the harm experienced by one be linked to the harm experienced by another, in a different place, by a different person, in a different context?

The recognition of rape as an international crime in the 1990s gave fresh impetus to these debates providing the opportunity to re-think and re-discuss the harm of rape in light of the particular context of international criminal law. Indeed, such rethinking is evident in jurisprudence from the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia where rape has been conceptualised as a crime of aggression, a violation of human dignity and a violation of sexual autonomy.

However, rather than mining these conceptualisations for insights about the harm of rape conceived more generally, a sharp distinction has been drawn between rape perpetrated in conflict situations and rape perpetrated in times of 'peace'. This distinction has been criticised for creating a hierarchy of rape and, furthermore, it does little to improve our understanding of the harm of rape as perpetrated at all times. This paper seeks to remedy this by developing a feminist infused conceptualisation of the harm of rape that, while remaining sensitive to the peculiarities of context, can apply to the crime in whatever context it occurs.

- Francisca Anene, Sextortion as a Gendered Form of Corruption in Nigeria

Anti-corruption initiatives in Nigeria are largely gender neutral though studies have established that corruption impacts men and women differently - mostly due to gender differences/roles and socio-cultural factors. This paper examines sextortion as a form of corruption whose victims are mostly women, but which is hardly recognised or pursued by Nigerian anti-corruption authorities. Drawing from survey data on gendered incidences of corruption (particularly sextortion), the paper explores possible reasons for the lack of action against sextortion and how socio-cultural influences may affect the perception of sextortion as a form of corruption prevalent in Nigeria. The paper argues that sextortion is indeed corruption and that it places women at a significant disadvantage. Hence, more attention ought to be paid to exposing and combatting this form of corruption in Nigeria.

- Leona Mydlowski, Police Officers Perceptions of the Risk Assessment of ARMS following the Home Visit process

Under the Criminal Justice Act, there is now a statutory duty placed on Police Officers (known as MOSOVO) to risk assess registered sexual offenders for the prescribed period whilst they are placed on the Sexual Offences Register.

This research has been part of the authors PhD research where 9 focus groups were carried out with three different police forces. 3 focus groups were carried out in each force, one with newly qualified MOSOVO, the second with officers who

have 3-5 years experience of risk assessment of registered sexual offenders and the final focus group with experienced officers of Sergeant and inspector level.

This study aimed to explore officers views of the risk assessment process using ARMS with particular attention paid to the home visit process. Officers were asked a series of questions which looked at whether officers thought the MOSOVO training equipped them to carry out the risk assessment in the offenders home, officers views generally on the home visit part of the risk assessment and suggestions for improvement/reform to the home visit process.

The data was transcribed verbatim and data was analysed using thematic analysis from which 5 themes emerged with various subthemes. The themes from the data will form the basis of the authors presentation.

- Catherine O'Sullivan, The Roscommon Incest Case: Gender, Sexual Abuse and Sentencing

In this paper I will consider the media reporting of a case in Ireland where both parents were convicted of incest, sexual assault and neglect offences in relation to their children. The focus of the paper will be on how the female offender was represented in the media both at the time of her conviction and at the time of her release, although reference will be made for comparative purposes to the representation of her male co-accused. This case, in particular the comments of Judge Reynolds regarding the disparity in offence maxima available to her, was a spur for a proposal to equalise the penalties for male and female persons convicted of incest. Unfortunately this reform opportunity was not availed of, and the reasons for the deletion of the proposed amendment from what would become the Criminal Law (Sexual Offences) Act 2017 will be considered.

Social Rights, Citizenship and the Welfare State 35BSQ: 2.06

- Ciara Fitzpatrick, In the Long Shadow of Thatcher and Joseph? Conservative Ideology, Iain Duncan Smith, and the Centre for Social Justice

Keith Joseph's Centre for Policy Studies played a crucial role in establishing an 'ideological fellowship' - a term which encapsulates how think tanks provided an institutional setting for like-minded neo-liberal political elites who felt supported and assured by the expertise that think tanks produced. It will be asserted that the idea of an 'ideological fellowship' transcended beyond the realms of the creation and sustenance of the 'counter-revolution' in the 1970's and assisted Iain Duncan Smith, who established the Centre for Social Justice, to compound and expand Thatcherite thinking, particularly on the question of social citizenship in a contemporary policy environment. It is evident that the CSJ and more specifically the Social Justice Policy Group was a significant influence for David Cameron, particularly as the Conservative's headed towards the 2010 election, in the same way that the CPS was a significant influence for Margaret Thatcher as she headed towards the 1979 election. Both think tanks popularised 'a new version of an old thesis', namely, 'that many of the poor are poor because they do not conform with prevailing social values and need to be disciplined or taught so to conform for their own good'. Joseph's speeches earned him the nickname of the 'mad-monk' and precluded him from becoming party leader. However, it is undeniable that his intellectual prowess, formalised through the policy documents released by the CPS cemented his place in counter-revolutionary discourse. Modern think tanks, such as the CSJ have arguably adopted Joseph's method and mastered them – crafting 'decision-based evidence making' and tailoring it to the needs of policy elites and politicians searching for accessible catchphrases to convince a 'jaded electorate'. In this way, right facing think tanks have become even more lethal ammunition for governments who seek to entrench market-led ideas.

- Helen Taylor, The Housing (Wales) Act: What's Philosophy Got to do with it?

In this paper I argue that the inclusion of the Pereira Test for vulnerability within the Housing (Wales) Act 2014 undermines the legislation's ability to deliver both social and administrative justice. First, I will outline the theoretical framework under which I create a modified version of John Rawls' difference principle to be used as a test for social

justice in contemporary social policy. On my account, social justice is measured in terms of enabling effective agency for individuals in society. I use the Capability Approach to modify Rawls' principle to fit this metric, so that social justice is achieved when individuals have the ability to make concrete decisions about their life. I use Thomas Scanlon's concept of reasonable rejectability to make this principle into one which can be used as a tangible policy tool. The test therefore questions whether individuals can reasonably reject the proposals and impact of the policy or legislation in question, based on its capacity to deliver the bases of effective agency.

The second part of the paper applies this test to the Housing (Wales) Act 2014. I assert that abstract philosophical concepts can and should be used to critically engage with contemporary policy. The case study aims to demonstrate whether my modified difference principle can work in this way, whilst providing insights into the relationship between this particular piece of legislation and social justice. In this second section, I will focus on the inclusion of the Pereira Test for vulnerability within the 2014 Act; this inclusion changes the Test's status from judicial guidance to statutory direction. I will argue that this undermines the legislation's ability to deliver social justice as the use of the 'ordinary homeless comparator' is problematic on normative, procedural, and legal grounds.

◦ Michael Orton, Social Security/Welfare Benefits: What Kind of Future?

The concern of this paper is with the future of social security/welfare benefits, in the UK. The paper draws on a number of pieces of research undertaken by the author over the last 3-4 years, around a theme of socio-economic (in)security. A brief recap is provided of the periods of the Poor Law, the post 1945 settlement and contemporary 'welfare reform', along with their respective theoretical underpinnings. Possible future trajectories for social security/welfare benefits are then considered. These include continued free market/neoliberal solutions, progressive contributions to debate and the example of the Scottish Social Security Bill introduced in June 2017. Drawing on empirical investigation, attention is given to the lack of consensus among progressives regarding social security/welfare benefits. Whether this reflects a lack of a theoretical and ideological framework is discussed. The paper concludes by outlining one possible way forward with a potential theoretical underpinning based on revisiting T. H. Marshall's classic account of citizenship.

Socio-Legal Issues in Sport WMB: OCC

Chair – John O'Leary

◦ Matt Hall, Alcohol and Football: Time for Liberalisation?

Often policed on reputation and not individually, an abundance of football specific legislation exists. This includes the Football Spectators Act 1989, Football (Offences) Act 1991 and Criminal Justice and Public Order Act 1994 which outlaws the selling by unauthorised persons of tickets to a designated football match (s. 166).

S. 2 Sporting Events (Control of Alcohol) Act 1985 also curtails alcohol intake among all football spectators. This legislation criminalises;

- Possessing alcohol in direct view of the pitch during a designated sporting event (s. 2(1)(a)).
- Possessing alcohol while entering or attempting to enter a designated ground (s. 2(1)(b));
- Entering, attempting to enter, or, being inside a designated football stadium drunk (s. 2(2)).

Previous research has demonstrated that parts of the legislation are rarely enforced at football with many drunken spectators entering and viewing the event. One reason for this is that determining what is 'drunk' lacks clarity and certainty. Furthermore, arresting for these offences would mean a depletion in officers at the stadium.

The introduction of the 'liberalising' Licensing Act 2003 did repeal s. 2(1)(a), but 15 years later, no Commencement Order has been forthcoming. Football is the only sport in the UK where consumption 'in view' of the event is criminalised, despite events such as boxing, horse racing and rugby union all having disorderly incidents reported over recent years. That said, the Welsh Rugby Union have acknowledged this and are proposing 'dry zones' within the Principality Stadium to pacify concerns raised by their spectators of drunken behaviour.

Thus, this paper argues that the legislation is now outdated, difficult to enforce and should a Commencement Order ever be forthcoming, adopting the approach of the WRU could be a sensible proposal to bring football on an equal par with other sporting events.

- David Rigg, Time to Take a Stand? Tracing the Development of the All-Seater Football Stadium Requirement in England and Wales and Examining the Case for Change

Recent years have seen a resurgence of interest in the reintroduction of standing areas at football grounds in England and Wales. Several high profile clubs across Europe have pioneered the introduction of so-called 'safe standing areas' and, in 2016, Celtic became the first top flight club in Scotland to introduce a safe standing area for 2,900 spectators. For much of the twentieth century, a regulatory framework for ensuring the safety of football spectators in England and Wales was conspicuous by its absence. It was not until the Safety of Sports Grounds Act 1975 that a system of licensing based on the issue of a safety certificate by local authorities was established. This paper begins by reviewing the problems associated with the old standing terraces in the context of the laissez-faire era and the early attempts at regulation. Attention then turns to the impact of the Hillsborough Disaster and Taylor LJ's sweeping recommendation that all clubs in the top two divisions become all-seater. The paper concludes by considering the nature of safe standing, examples already in use across Europe, and how the law might be changed to allow for its use in England and Wales. The argument is made that the all-seater requirement is a product of a very different era. An era symbolised by old and dilapidated grounds, minimal regard for the comfort and safety of spectators, and chronic underinvestment in infrastructure. The arrival of licensing together with new streams of income has seen the transformation of the game since the mid-1990s both in how grounds are designed and constructed, and in the attitude of clubs and authorities to spectator safety.

The Persistent Reality of Forced Migration 35BSQ: 4.02

Forced Migration: Europe's Response

Chair & Discussant – Ben Hudson & Brid Ni Ghráinne

- Neza Kogovsek Salamon, The Principle of Solidarity in Asylum and Migration Within the Context of the European Union Accession Process

When a candidate country fulfils the European Union membership conditions, it is expected that they will share the values of solidarity, mutual assistance and burden sharing in the fields of asylum and migration which will naturally impinge on their state sovereignty. However, the reality has shown that this is not the case. Several EU member states have opposed the 2015 relocation decisions adopted by the EU Council, while two of them have even challenged the decisions before the Court of Justice of the European Union (see C-643/15 and C-647/15 Slovakia and Hungary v. Council). This submission is based on the hypothesis that the opposition to solidarity in the field of asylum and migration is related to the fact that the principle of solidarity has not been discussed within the enlargement process, meaning that the 'new' Member States were not aware of the concrete forms that this principle could take in the future. This hypothesis was tested on three case studies by analysing the accession documents of one candidate country from each of the three enlargement cycles (Slovenia, Bulgaria and Croatia respectively). The main conconclusion is that by agreeing to the EU Treaties, its solidarity clause and the majority vote rules, either as Member States or candidates, the states undertook the duty to transpose obligations in the fields of asylum and migration, even if they did not necessarily agree with them. The submission is based on the paper that was accepted for publication by Maastricht Journal of European and Comparative Law.

- Ben Hudson, Law's Invidious Creep: The Effect of Law and Policy on Access to Higher Education for Forced Migrants

Education is not a privilege, but a fundamental human right of all, including displaced persons. Yet, in the UK, the challenges faced by many forced migrants when seeking to access higher education are profound. Frequent and far-reaching changes in immigration legislation, and unstable and often obfuscating student finance regulations, combine to

place seemingly insurmountable barriers in the way of displaced persons who wish to continue their education here in the UK. It is at this point where immigration law and student funding regulations meet where we find the source of the issue, so therefore it is here where this paper is situated.

The regime is invidious, and prospective forced migrant students feel its effects acutely. Yet, higher education institutions (HEIs), many of which have stepped in to help fill this "access gap" through the provision of bespoke initiatives for forced migrant students, also find themselves under increasing regulatory scrutiny. This paper will reveal how this immigration-funding nexus conspires against HEIs, by creating an environment that not only seriously challenges their ability to develop and administer initiatives for forced migrant students, but also risks dissuading those HEIs that would otherwise be committed to providing dedicated support. While many of the ongoing reforms may, at least on the face of it and when taken individually, appear modest, their effects are severe and far-reaching, which only goes to show the insidious manner in which the current regulatory regime encroaches upon the fundamental rights of displaced persons.

- Hakan Ergin, Syrian Academics' Employment at Universities in Turkey: A Legal Overview

The ongoing war in Syria has led to the displacement of millions of Syrians. With 3,5 million, Turkey is the country which hosts the highest number of Syrian forced migrants today (UN Refugee Agency, 2018). Among these, 334 Syrian academics have moved to Turkey and started to work at universities in Turkey (Council of Turkish Higher Education, 2017). However, it is known that there are many more Syrian academics in Turkey who have been seeking for academic employment in Turkey (Council for At-Risk Academics, 2018). These unemployed academics, once the intelligentsia in Syria, face poverty and work in low qualifying jobs. In this sense, this study draws attention to the legal procedures for the Syrian academics' employment in Turkey. Providing the related laws, regulations and legal gaps, the study seeks the answer of how the Syrian academics, who are still forced migrants in Turkey, can be employed in secure academic jobs in Turkey with less bureaucracy.

Transnational Organised Crime 35BSQ: 4.08

Big Business & Law Enforcement: Deconstructing the Criminal Organisation.

- Colin King and Ilaria Zavoli, Dirty Money and the London Property Market: The Role of Estate Agents in (Anti-)Money Laundering

In May 2016, at the global Anti-Corruption Summit in London, PM David Cameron emphasised the need to “clean up our property market right here in London.” This statement reinforced other concerns that the London property market was a target for ‘dirty money’, and that estate agents were facilitating laundering of such money. Policy documents now emphasise the need to tackle ‘high end money laundering’, yet all too often there is an inadequate evidence base underpinning policy claims as to ‘high end money laundering’, ‘professional enablers’ or ‘facilitators’. In this paper, we explore how and why the property market is a target for money laundering; outline the legal rules put in place to stop such laundering, and consider the experiences of those at the coal face (ie estate agents) to gauge their views and experiences of anti-money laundering rules and obligations in the property sector.

- Juliette Scott, Law Enforcement Agencies’ Approaches to Externalized Translation Procurement and Repercussions on The Fight Against Transnational Organized Crime

The extra-institutional translation of written material in legal contexts, despite proliferation spawned by globalization, is a largely unnoticed, often invisible activity, particularly with regard to organized crime (National Crime Agency 2015; Scott, 2016, 2018). This paper applies a critical framework for externalized legal translation procurement that has been widely field-tested (Scott 2016) to explore the extent to which law enforcement agencies (LEAs) combating transnational organized crime have strategies for obtaining translated texts. Specifically, it sets out to discover whether they have a deliberate approach to written translation, and if so how it is managed, and how much weight is assigned to it: in their

investigations; when accessing foreign domestic legislation and transposed European law; when seeking arrest warrants; and when preparing prosecutions.

The work sits within a larger project examining the procurement of externalized written translation, encompassing multinational corporations and institutions, with an overall aim of identifying latent threats to justice and security. As in previous phases of this research, the author's existing pool of respondents, global in scope, along with active soliciting, are called into play to gather data. To counter methodological issues with self-reporting, a range of mixed methods are applied and triangulated: interviews with translators, LEAs, service provision intermediaries, and process servers; surveys; published reports; case law searches.

The paper questions whether, where ineffectively procured, the failures of translation to serve LEAs may inadvertently support transnational organized crime due, for example, to ensuing failed cases, compromised evidence, or misunderstood foreign regulations. Going a step further, we may speak rather of effective deployment than effective procurement: in such circumstances translation has the potential to be a crime-fighting tool to be purposively and successfully deployed.

- Martina Bedetti - 'Ndrangheta: a German Case Study

In the last decades, the Italian academic world and institutions, supported by recent investigative findings, have observed a pronounced attitude of the Calabrian mafia crime syndicate, the 'Ndrangheta, to migrating abroad, finding specific territories in order to establish and conduct business in foreign countries. This phenomenon is particularly evident in Germany, where the presence of this organization has been observed and documented since the second half of the '60s, especially in the western part of the country. This expansion in Germany has not been homogeneous: in fact, it has hit some regions more than others because of the existence of certain favorable circumstances. Indeed, it must be noted that historical, socio-economic, geopolitical and juridical factors have helped the 'Ndrangheta to initially move to some Länder, and later to establish its units (the Locali), and to develop there illegal and legal activities.

To some extent, this situation can be compared to what has previously happened in Lombardy.

Germany is certainly not a mere "transit country" where the 'Ndrangheta directly manages the drug routes from Latin America and Balkans towards Europe, but it is also considered a relevant hub for money laundering and a perfect hiding place for fugitives. This is corroborated by the fact that over the years several members of this organization have been arrested; regarding this matter, it is worth to point out the juridical outcomes of the "Operazione Crimine", "Rheinbrücke" and the recent "Stige" investigations.

Despite this critical situation, there seems to be little awareness among the German society, and the political and academic world. As a result, very few researches have been conducted and little documentation is currently available.

The aim of this paper is to provide a deeper insight in this information gap by adopting mainly a qualitative approach from a sociological point of view. In fact, the focus of this research will be first on the factors that enable the 'Ndrangheta, to emigrate and later prosper in a "non-traditional context", highlighting why this phenomenon seems to be more pervasive in certain German areas than others. Secondly, it will investigate which Calabrian mafia families are present, their activities and if there is any connection with the homeland. Furthermore, this paper will explore the differences between the colonization model adopted in Germany compared to the Lombardy case study, considered one of the most penetrated regional areas in Italy. The sources will be mainly official documents (i.e. BKA, DIA and DNA reports, juridical material), and literature, tapping, interviews. Official statistics will be used as well.

This paper might be helpful to reveal the current situation in Germany and consequently to raise awareness of the transnational attitude of the 'Ndrangheta, helping to understand potential future scenarios and the actions to be taken

Session Three: Wednesday 28th March 09:00-10:30

Access to Justice in Context 35BSQ: 4.07

Roundtable: What does courts modernisation and digitisation mean for access to justice?

- Judith Townend
- Natalie Byrom
- Julie Doughty

This panel/round table discussion is designed as a special session to respond to ongoing procedural reforms in the civil and criminal justice system in the UK; in particular, HMCTS's £1 billion programme of courts modernisation. We intend that each presenter will offer 10-15 minutes of insights from their professional and academic standpoint, and then we will open the discussion to the floor to hear from other socio-legal researchers on their respective views and experiences. This part of the discussion will be guided by some general and more specific questions:

*How do current reforms affect access to justice from the perspective of legal practitioners, claimants and defendants, litigants in person, victims and other court users?

*Which, if any, technological proposals are at risk of limiting court users' access to justice? Alternatively, how might they improve it?

*Is, as some have suggested, necessary primary legislation being bypassed in the government's agenda for reform?

*What should a new Courts Bill – as promised in the Queen's Speech 2017 – contain?

*What can socio-legal research offer the MOJ and HMCTS, and other policy stakeholders, in terms of theoretical understanding and practical implications?

*What lessons can be learnt from historical socio-legal research, and what are the new research questions that need to be asked?

Panellists:

*Ms Natalie Byrom, Legal Education Foundation and University of Warwick (presenter)

*Dr Julie Doughty, Cardiff University (presenter)

*Dr Judith Townend, University of Sussex (presenter)

*Senior civil servant, Ministry of Justice (TBC, presenter)

*Dr Maria Moscati, University of Sussex (chair and respondent)

We would also be open to one or two further accepted participants in the Access to Justice stream joining this panel, if their work is deemed relevant to our questions.

Natalie Byrom will discuss the implications of the reform programme for the future conduct of empirical legal research. The digitisation of court processes creates an unprecedented opportunity to collect and publish better data on the operation of the justice system and its outcomes. This in turn creates opportunities to develop research that revolutionises our understanding of what works in helping individuals to secure the outcomes they are entitled to under law. However, academics and funders of research have raised concerns that at present there are no plans to either: i) develop a consistent data collection policy across all of the court processes being digitized or ii) collect and publish aggregate, anonymised data on both the characteristics of users of the online court and the outcomes they secure (e.g. equalities data, data on the points at which individuals exit or 'drop out' of the system, and data on the outcomes secured through online processes). She will argue that collecting this data is necessary to understand whether the newly digitized processes devised are delivering their aim of: 'strengthen(ing) the rule of law' (Ryder, October 2016) and creating a: 'fully accessible court that is… more capable of securing equal justice for all' (Etherton, June 2017).

Julie Doughty will draw on family law research to consider aspects of access to justice and the use of technology in the family courts and the implications for the court user, in relation to three extended examples. First, online divorce.

Obtaining a divorce decree is largely seen as an administrative process which requires minimal judicial scrutiny and so has been earmarked as a court procedure that could be undertaken online, freeing up resources in the courts. A disparity between the modern procedural and traditional substantive law, however, suggests that divorce petitioners and respondents of the future may face difficulties in access to justice. Second, advice for litigants in person. The withdrawal of legal aid in private law matters by LASPO 2012 has resulted in large numbers of unrepresented litigants having little or no idea of where to access reliable sources of information about their legal rights. As more people turn in desperation to websites and social media for support, research is urgently needed into where they are going, what they are told and how they use that information. Third, digital working. HMCTS has stated that it is working with local authorities, practitioners and other groups to support 'seamless digital working to and through court, so that evidence can be submitted, bundled and shared electronically and cases can be managed much more securely and effectively'. It is envisaged that 'cases can move seamlessly from one process to another': from the issue of a public law case through to a final adoption order, for example. However, recent research on adoption has shown that adoptive parents and social workers already find the law difficult to follow. Although birth parents do usually have lawyers, it is suggested that they too find the law bewildering.

Judith Townend will focus on access to courts information from three perspectives: a participant in court proceedings, a member of the public observing court, and the media reporter. The deeply entrenched common law principle of open justice protects the public's right to access court as observers and reporters, a protection further strengthened by rights to freedom of expression in ECHR Article 10. Open justice is understood to support access to justice by providing an accountability mechanism for the conduct of court proceedings. However, courts modernisation may change the way in which courts is accessed, with the introduction of new video terminals in place of the public gallery, and with restricted audiences for proceedings conducted online. She will argue that the MOJ and HMCTS has thus far overlooked important questions about the implications of proposed changes. While they have consulted some academic and practitioner stakeholders on 'open justice', this exercise has been too limited: full public consultation is vital. Not only does the public need an opportunity to respond to proposed changes in public access, the courts must also consider the ramifications of systematic digital publication and dissemination of courts data for the subjects and other participants in court proceedings, with regard to privacy and rehabilitation of offenders, as well as broader issues of open justice and access to justice.

Administrative Justice 35BSQ: 4.08

Complaint Systems

- Stephen Daly, Soft Law – Type 1, Type 2 and Protections in Tax

Soft law is used to describe a variety of instruments at both an international and national level, but at its core describes norms which influence the behaviour of others without formal binding effect (though some legal effects may arise). At the national level, an important distinction arises, though this has not been detailed in either the court cases or commentary on the issue, between soft law instruments which set out rules over which the relevant official or public authority has discretion to decide, and soft law instruments which set out an official or public authority's view of rules which have been set by Parliament. This distinction becomes critical when it comes to the protections available to the citizen concerned where the official or public authority seeks to depart from its position which has been set out in such an instrument.

This paper uses tax as a case study to highlight the importance of this distinction between type 1 and type 2 soft law instruments. It will demonstrate that avenues for non-legal redress (through the Adjudicator's Office and Ombudsman) offer more robust protection to taxpayers than the courts where HMRC seeks to depart from its position in type 2 soft law instruments.

- Marc Hertogh and Richard Kirkham, The Past, Present and Future of Ombudsman Scholarship

Globally, the ombudsman is an increasingly significant model of dispute resolution but research on the institution remains immature when contrasted with literature on other institutions charged with promoting the rule of law and good administration. In interrogating this shortfall, we make three claims. (1) There has been a lack of sustained and

interconnected academic attention on ombuds creating an ill-defined and under-coordinated discipline, with innovative research too infrequently developed further by future researchers or interlinked with other branches of ombudsman study. (2) There remains insufficient testing of the theory of the ombudsman through to demonstrable practical impact.In part this is an argument for more empirical testing of the ombudsman's influence, vulnerabilities, and wider

institutional and stakeholder networks. This claim though is additionally an argument for theorising to be regularly challenged and based upon stronger evidence of what the ombudsman can achieve. (3) The ombudsman model is a fluid one and academic research needs to do more to encourage the constant redesign of ombuds towards better outputs. To address these various shortcomings, we offer a map with which to comprehend the state of ombudsman scholarship today. We also discuss three major societal trends that will have important implications for the future position of the ombudsman and lay out three challenges for ombudsman researchers to focus upon going into the future.

- Chris Gill, Carolyn Hirst, Maria Sapouna and Jane Williams, The Effects of Complaints on the Health, Well-Being, and Work Practices of Public Service Employees

A major concern of public administration in the last 30 years has been to increase the accountability of public services and, particularly, strengthen the role of the service user as a consumer of services. The emphasis has therefore been to plug the “accountability gap” that has been perceived as existing within our public services.

While concerns have been raised about the potentially dysfunctional effects of accountability (such as defensive practices and unintended consequences), there have been few empirical investigations in this area. This paper seeks to address this gap and to provide empirical evidence in relation to the effects of one form of accountability mechanism – complaint processes – on public service employees.

Previous research on the effects of complaints has focused on health and social care professionals and has identified significant impacts in relation to defensive clinical practice, health, and well-being. The present research seeks to contribute to this evidence base by studying the effects that complaints have on employees working in a broader range of administrative settings (specifically, local authority planning departments and social housing).

Researching this topic is important because all too often public policy assumes that accountability is an unmitigated ‘good thing’. The more, the better. But poorly designed accountability mechanisms may create more mischief than they resolve. What happens if they result in defensive practice, alienation, and a loss of focus on service delivery?

The research reported in this paper sought to provide some preliminary insights into these issues by conducting an online survey of local authority planning and housing association staff (n = 132) who had been complained about. This was followed up by a series of telephone interviews (n = 16). This paper describes the initial findings of the research.

Art, Culture and Heritage 8-10BSQ: 1.12

Cultural Expression

- Keren Lloyd Bright, What if the Degenerate Art Exhibition Happened Right Here, Right Now. What Would be the Legal Consequences?

In 1937, the Nazi Party mounted an art exhibition in Munich entitled ‘Ausstellung Entartete Kunst’ (Degenerate Art Exhibition). It was later staged in a number of other German cities. The exhibition contained hundreds of modernist works of art selected from many thousands confiscated from German museums. Most of the exhibited artists were of German or part German descent (such as Ernst Ludwig Kirchner, Paul Klee and Emil Nolde), but some were of other nationalities (such as Marc Chagall, Wassily Kandinsky, Piet Mondrian and Pablo Picasso). The purpose of this exhibition was to persuade those visiting it of the cultural decay exemplified by the works of art.

This paper considers a theoretical proposition: what if a similarly conceived exhibition was collated in London today? Which areas of law would be engaged? Would those artists so unfortunately targeted be able to obtain legal redress? If so, which causes of action would be applicable?

- Luis F. Yanes, The Human Right to Art: The Enjoyment of Artistic Expressions

Historically, national and international law has devoted itself more in regulating art than in actually protecting it as a right. Defining art is a complex challenge, one that might require a philosophical, sociological, anthropological and legal approach. However, defining it, or at least having an approximation to its elements, can provide an answer to the question: Is Art a Human Right?

Art is many things, but above all it is a product of our culture, intended primarily for one purpose: to be enjoyed. Understanding art as part of our cultural expressions implies that the right to art is an expression of the human right to take part in cultural life. The paper explores the idea of art as a human right, and the dual dimension to such right. It explores the notion that there is a right to produce and benefit from artistic expressions – this is – a right to be an artist or to make art; and on the other hand, that there is a right that non-artists and artist alike have to enjoy such artistic expressions. This is not a right to be 'moved' by artistic expressions, but rather a right to be able to access artistic expressions: to see them, hear them or touch them, to experience them. Such access must be under certain conditions, which must ensure the availability, accessibility, adaptability and the quality of protection of such right.

Finally, the paper explores the issues of discriminatory art, art that undermines religions or beliefs, and art that calls for violence or hatred. If this happens, should it be destroyed or never shown? As a human right, art can interact in many ways with other human rights, advancing them and obstructing them. Hence, understanding its limits is essential for achieving a full and adequate enjoyment of such right.

- Jessika Eichler, Intangible Cultural Heritage under Pressure: A Focus on Migration, Minorities and Refugees

Intangible cultural heritage (ICH) is increasingly subjected to social, economic and political pressures that endanger its existence. Increasing migration, political change and repressive regimes add to the panoply of considerable challenges. Of particular concern are vulnerable populations including indigenous peoples and minorities who could be considered 'under-resourced' in the light of post-colonialist agendas that prevent (collective) cultural self-determination to flourish. Pressures such as tensions between intellectual property and cultural heritage add to the pressure that produces more vulnerabilities, it could be argued. New protective measures are thus required to ensure ICH will be able to be maintained, protected and further developed in the light of intergenerational relations. International organisations such as UNESCO as well as regional organisations such as the EU play an important role in establishing and observing adherence to safeguarding standards in the ICH context.

Children's Rights WMB: 3.32

- Devyani Prabhat, Ann Singleton and Robbie Eyles, Age is Just a Number? Supporting Migrant Young People in the UK

This paper challenges the focus on age 18 as an exclusionary point in age assessments of unaccompanied migrant children in the UK. As Arendt writes, membership in a political community is essential for claiming protection of rights (1951). For foreign born and/or foreign national migrant and refugee children who come in unaccompanied by adults, membership is usually obtained through asylum proceedings. In the UK, claiming special recognition of their rights in asylum proceedings is relatively easier for children than adults. Further, children are entitled to full child services provided by the local authority and by law are not subject to detention for immigration purposes. In case of uncertainty regarding age, the High Court has set down broad guidelines as to how age ought to be assessed for unaccompanied minors (Merton

2003). The focus of assessments is not just on their physiological age (medical tests) but also their overall situation, including their appearance, social history and credibility. Despite this broad range of assessment factors, the focus of the assessment is still on establishing whether or not someone is below 18. This is problematic as migrant, non-UK citizen young people do not acquire any rights of adulthood (to live independently in a self-supporting manner) at 18. Further, traumatic events often create developmental delays in the lives of many such children. Drawing from the extended concept of childhood for children in care, such as the 'Staying Put' arrangements which permit special arrangements until age 21, this paper argues that the Merton standard could prevent the number 18 from becoming an exclusionary one. Using the Supreme Court case of Tigere (2015) we argue that age 18 is a bright line rule of special rights which meets practical needs such as providing legal certainty. However, age determination should be primarily about protecting vulnerable children. When children have special vulnerabilities, their situations require exercise of additional individualised discretion for which the generalised framework of 18 is inadequate.

- Sarah Atkins, Does status really matter? The Lived Realities of Child Refugees

In the majority of Western states, when a person is determined as being a refugee they are treated in the same manner as a citizen of that state, meaning that they can move freely and avail of the same state services and facilities. However, this situation is not true the world over. Many 'temporary' refugee camps have existed for decades and have been a 'home' to many generations of refugee families. Yet such refugees often must tolerate manifestly discriminatory restrictions their free movement, employability, and access to basic facilities, thus negating their ability to thrive or to integrate into a host State and depriving them of meaningful agency over their own future. This paper compares the lived realities of child refugees, using comparisons of older (Kenya and Lebanon) with more recent (Turkey and Greece) refugee camps for exploring problems faced by children. The paper argues that socio-economic exclusion affects child refugees by cultivating vulnerability on many levels, further compounding a sense of the "other" for those within these host states. This paper questions whether in fact refugee status - as a determinant of protection and security – really makes a material difference as much as the does the determinant of where the person seeks refuge. This is done by a combination of engaging with doctrinal analysis of applicable international and regional human rights instruments and case law as well as engaging with potential consequences for the construction and perception of refugees, drawing on theoretical literature around vulnerability (MacKenzie), narrative (Yuval-Davis) and 'othering' (Benhabib).

- Iyabode Ogunniran, Advancing Children's Rights in the Digital Age: Challenges and Opportunities in Nigeria

Globally, there is a growing engagement of children with the digital media. This enhances their educational, informational and communication needs which can have positive influence on their development. However, there is the risk of exposure to abuse, exploitation and violence with unimagined adverse effects. The Convention on the Rights of the Child (CRC) signed by most countries in the world contains several provisions protecting the rights of children. It is almost 29 years since its adoption and the digital world has grown enormously with emerging threats. The Optional Protocol on Sale, Prostitution and Pornography of Children was ratified. Due to the urgent concern, the UN Committee on the Rights of the Child had a day on 'Children's Rights and the Digital Media'. It discussed children engagement with the internet and the need to empower and protect them. There are also similar provisions in the African Charter on the Rights and Welfare of the Child. Nigeria is a signatory to the above Conventions. The children population in Nigeria is about 40 percent. As at 2017, the internet users are about 90 million. Hence, the Nigerian children are susceptible to both the benefits and risks associated with the digital media. This paper seeks to analyse the various national legislation on such rights, the Child Online Protection Policy as well as the National Cybersecurity Policy in Nigeria. It examines the challenges of accessibility, literacy and infrastructural gap. The writer suggests that for Nigerian children to draw tremendous benefits from the digital media; there is need to obliterate challenges, enforcement of rights, continuous evaluation of existing policies and regional and international collaborations.

Criminal Law and Criminal Justice WMB: 5.68

Chair – Samantha Pegg

- Lucy Welsh and Matthew Howard, Standardisation and the Production of Justice in Summary Criminal Courts: A Post Humanist Analysis

Since the 1980s, successive governments have become increasingly distrustful of professional judgment in those services which remain funded by the state, including the criminal justice system. Against this background governments sought to increase efficiency in summary criminal courts. One way that this seems to have occurred is via the use of standardised forms in case progression. During 2013, Welsh conducted empirical research in which the reliance placed on standardised case management forms became apparent. We argue, drawing on post-humanist vocabularies to inform our analytic framework, that while such documents may have increased the speed at which cases progress, they have the (perhaps unintended) consequence of (further) marginalising defendant participation and limiting the types of legal issue that are litigated. As such, access to justice becomes limited to only those issues that the court is prepared to make time to consider.

- Ed Johnston, The Defence Lawyer in the Modern Era and the Evolving Criminal Trial

This paper will examine how the role of the defence lawyer can be categorised in the modern era. The Criminal Procedure and Investigations Act 1996 is the genesis of the modern era as this is where very fabric of the adversarial criminal trial altered. The Act created an onerous regime of pre-trial defence disclosure. This paper is based on the empirical findings of my PhD in which 24 practicing defence lawyers were interviewed and then thematically categorised into 3 distinct categories:

- The Classic Lawyer
- The Conflicted Lawyer
- The Procedural Lawyer

The modern era also represents a fundamental departure from classic adversarialism. The desire for a more efficient trial process means the role of the actor's roles have changed. The judiciary take a more interventionist approach and have shed their coat of passivity. Furthermore, the accused returns to his 'accused speaks' roots in which he treated as an informational resource.

- Marcus Keppel-Palmer, Tom Smith, Sally Reardon and Phil Chamberlain, Reporting of Magistrates Courts in Local Newspapers

There has been an assumption among journalists, the judiciary and academics for nearly 20 years that court reporting is in decline. See for instance journalist Nick Davies (1981) and Joshua Rozenberg (Law Gazette 1991). A survey from 2016 (Thornton 2016) found more than half of local newspapers do not have a court reporter. While there has been a lot of anecdotal comment there has been little academic analysis to test assumptions about court reporting. See also Moran (2014).

Observers agree that courts are a fundamental part of civic life and it is vital that the public has the opportunity to see how its judiciary operates. The perceived decline is primarily seen as a product of the declining revenues available to the media which does not make covering courts cost effective. This is particularly so if the perception among media outlets is that not enough newsworthy events take place in court to justify the expenditure. Another factor is that the reporting gap cannot be made up, it is assumed, because of the specialist skills required to perform the role and the legal penalties should it not be done correctly. Finally, there is no easy way to obtain court transcripts so it cannot be covered after the event; as the minutes of a public authority allow. However, despite much discussion in political, judicial and media circles, there have been no tested proposals to increase court coverage.

This paper reports on a pilot study carried out in Bristol Magistrates Courts in January 2018 testing these assumptions about the extent of court coverage and what kinds of cases are heard.

Equality and Human Rights 35BSQ: 2.26

Equality and Human Rights in Northern Ireland

Chair – Tom Lewis

- Neil Graffin, The Problem of Racial Profiling in Immigration Control in Northern Ireland, Post-Brexit

This presentation will look at the possibility of an increase in racial profiling in immigration control in Northern Ireland, post-Brexit. It will consider how the control of movement of people may be irreconcilable with an immigration policy which has respect for the protection of discrimination where there is a 'frictionless' border in Ireland, and where crossing points to the UK are absent of any controls. The paper will consider the difficulties posed in proving racial profiling, should it occur, and will consider if there are any means to prevent it from happening.

- Richard Martin, Human Rights Law in the 'Political Mire': The Northern Irish Policing Board

The Northern Ireland Policing Board (Policing Board) is a forum where the demands of human rights law meet the contested understandings and relevance of human rights in political discourse. The Policing Board was central to the reform of policing in the Province which began in 2000 and brought much needed accountability and political support for policing, which had been sorely lacking throughout the thirty-year conflict. The Policing Board is compromised of members of the five main political parties, as well as independently appointed members, entrusted with overseeing keys aspects of the Police Service of Northern Ireland's (PSNI) work. Particularly significant though, is the the Policing Board's statutory duty to monitor police performance on the basis of the Human Rights Act 1998 – a first for police oversight in the UK. To this end, the Board employed leading human rights lawyers to devise a pioneering oversight framework for policing and invested considerable resources in implementing it. Over a decade on, the official narrative cultivated and maintained by the Policing Board at a corporate level suggests its ongoing determination and unity in ensuring the PSNI is held to account on the basis of human rights law.

Outside the formalism of the law though, the discourse of human rights has become a dominant mode of expression, voice of challenge and call for change in Northern Irish politics and civic society. A striking outworking of deep ethno-political divisions in contemporary Northern Ireland is how the logic of universality, which defines modern human rights law, has been ruptured. Perceptions and conceptions of human rights in this prominent local discourse are distinctly aligned to forms of Nationalism and Unionism; in a country that has achieved peace in the absence of either reconciliation or a shared understanding of the violent past, human rights have become politics, or even war, by other means (Curtis, 2014). This paper presents findings from the first study of its kind to interview political and independent members of the Policing Board about their experiences, and perceptions of their oversight function and the role that human rights play in this. It is argued that notwithstanding the Board's clear statutory obligation to oversee policing on the objective basis of the HRA 1998, human rights remain a normative and linguistic vessel harbouring much deeper sentiments, concerns and visions, at the heart of which are competing national identities and understandings of the conflict. The paper concludes by reflecting on what this means for the role of human rights in police oversight.

Family Law and Policy WMB: 3.33

Marriage

Chair – Annika Newnham

- Rebecca Probert and Stephanie Pywell, "Not religious in nature": What Registrars will Permit in Civil Marriage Ceremonies

Most weddings celebrated in England and Wales now take place in civil ceremonies. While the governing legislation and regulations specify that the proceedings may not be 'religious in nature', guidance issued by the Registrar General

indicates that incidental religious references may be included. But what vows and rituals are permitted in practice, and what does this tell us about the perceptions of civil marriage among both state officials and couples?

We sought to answer this question through two surveys. An on-line survey of registrars in England, which yielded around 150 responses, asked not only about policies, but also whether the registrars would permit specific examples of vows and rituals. We posted a questionnaire to 300 couples who had given notice, at one of 15 English register offices, of their intention to marry. We recruited some further couples, who had married in England in 2015–17, by limited use of social media. Couples were asked whether they had requested specific vows and rituals in their ceremonies and, if so, whether these had been permitted. We received around 100 responses.

It is abundantly clear that the majority of registrars are keen to provide a service that is both professional and personal. Most couples were very positive about their experience, and only a few reported that the vows or rituals that they had wished to include had not been permitted. However, while registrars invariably stated that they would not permit religious content in civil ceremonies, there was considerable variation in practice as to what was categorized, or recognized, as religious. The results suggest that couples wishing to draw on the traditional version of the Church of England marriage service are more likely to be asked to re-word their vows than are those drawing on vows from other religions.

- Rajnaara Akhtar, Liminality: Unregistered Muslim Marriages as Signs of Integration

Marriages formed by religious ceremonies which are not legally recognised are often cited as synonymous with unregistered Muslim marriages. The conceived illegitimacy of such unions and the need for legal interventions has been raised in political discourse in the UK, as such marriages are deemed to counter women's rights and wider legal and cultural norms. This paper uses the concept of liminality to argue that these relationships may in fact indicate signs of integration, not isolation. Liminality is used here to signify a process of transition from one set of cultural norms to another, and unregistered marriages in this theoretical framework represent a transition from state recognised unions, towards the widely accepted cultural norm of cohabitation. This paper draws on empirical research seeking to explore 'English narratives' where Muslim marriage practices are concerned. Focus group discussions and discourse analysis methodology are utilised to explore marriage and the parameters for legal intervention in order to ascertain emerging narratives around marriage practices and the perceived need or otherwise to register marriages with the state. These narratives are key to understanding the trend towards unregistered marriages. This paper explores three thematic areas which emerged in this research, namely, (1) integration: to register or not to register; (2) categories of nikkah; and (3) the legitimacy of children.

- Vishal Vora, Meaningful Marriage Ceremonies, Failures to Comply with the Formalities of the Marriage Act 1949, A Case for Reform

With the rise of cohabitation in England and Wales, it is noteworthy to observe that marriage still remains vital for many British minority ethnic communities, in particular those from the Indian-subcontinent. Even with the communities maturing, the aspiration that marriage holds has not faded.

Does the current legal framework allow these groups to marry in a way that is meaningful?

With a maturing population, there has been increasing focus on the search for authentic with many British South Asians, wanting to re-trace and re-examine the homeland of their parents and grandparents. They belong to Britain by virtue of their birth but are also influenced by their inherited traditions, family values and upbringing. Taking forward the step of Ballard's 'home away from home', this generation thus has to deal with their multiple identities.

Marriage celebration is a good lens with which to examine how British South Asians are dealing with the balance of such issues. This paper, via empirical research, will demonstrate that in its current form, the Marriage Act 1949 does not allow all citizens an easy and meaningful route to marriage, and the administrative process of civil marriage can lead some to unknowingly fall between the gaps.

Several options exist to solve such issues, such as the recognition of other forms of (religious) marriage and also the fortification of cohabitee rights, bringing about legal and financial consequences if and when such relationships end. Neither solution is perfect and ultimately, this paper will show that soon enough the current statutory framework of marriage, the Marriage Act 1949, should be updated, incorporating the significant changes in society of the past 69 years.

- Sharon Thompson and Russell Sandberg, Feminist Relational Contract Theory (FRCT): A New Approach to the 'Minorities within Minorities' Debate

In recent years much concern has been raised about the operation of religious tribunals particularly in relation to family law matters. Much academic writing has focused upon the 'minorities within minorities' debate: the extent to which States should intervene to ensure that the citizenship rights of female group members are protected and that religious tribunals do not discriminate on grounds of sex. This paper, drawing upon our article 'Relational Autonomy and Religious Tribunals' (2017) 6(1) Oxford Journal of Law and Religion 131-161, suggests a new approach to the issue. Feminist Relational Contract Theory (FRCT) – a theory previously applied to prenuptial agreements – focuses on relationships rather than the usual focus on the autonomy of the religious group or on the individual autonomy of those who use religious tribunals. The paper outlines how FRCT draws upon contractual theory and feminist scholarship and how it can be applied to the minorities within minorities debate. We contend that FRCT provides the most appropriate framework in which power imbalances within religious tribunals can be recognised.

Gender, Sexuality and Law WMB: 3.31

Chair – Nora Honkala

- Lindsey Mitchell (Leeds Beckett), Saving Women Abroad- Ignoring Women at Home: An Inconsistent Approach to Reproductive Rights?

The failure to extend the Abortion Act 1967 to Northern Ireland (NI) effectively created a two-tier system of reproductive healthcare in the UK, whereby women in mainland Britain are free to seek terminations, yet women in NI can only do so outside NI. This continued discrimination against women has been criticised variously by the UN's Committee on Elimination of Discrimination Against Women (CEDAW), NGO's, academics, lawyers, and healthcare professionals. However, in reply to CEDAW, the Government's response is that 'there are no plans to change the law on abortion in Northern Ireland'.

This is a paradoxical position, because the UK Government has been a vocal supporter of women's reproductive rights and advocate of safe abortions internationally, and has taken steps to comply with CEDAW's recommendations in other areas of gender discrimination. This paper highlights not only that there is an inconsistency in the Government's position toward advocating greater reproductive rights internationally yet denying the same rights to some women domestically, but how such inconsistency devalues the UK's advocacy of human rights and dilutes its ability to influence other states to eradicate gender discrimination.

In the midst of increasing human rights challenges to the lack of access to abortion in NI, this paper considers the UK's stance on abortion in NI from an international legal perspective. It also considers whether the current devolution settlement has allowed the UK to default on its international commitments to women's human rights, and questions whether such a position is sustainable given the UK's claim to situating women's rights at the heart of international political settlements. Ultimately, this paper utilises the UK's framing of the abortion debate in NI to consider whether the UK's advocacy for universal women's rights is mere rhetorical.

- Kate Mukungu (University of Cumbria), Reforming Abortion Legislation in Northern Ireland; Threats, Opportunities and Political Expediency

Abortion is illegal in Northern Ireland (NI) except when the pregnancy has been determined to pose a threat to the woman's life or her permanent or long-term health. This paper will explore the ramifications of two legal setbacks in June 2017 for the NI pro-choice movement, from a feminist perspective. Firstly, the Supreme Court for the United Kingdom (UK) rejected a challenge from a NI teenager and her mother that the government acted unlawfully by denying her a National Health Service (NHS) funded abortion in England. Then the NI Court of Appeal overturned the NI High Court's landmark decision in 2015, under Article 8 of the European Convention of Human Rights, recommending legal abortion in cases of fatal foetal abnormality and pregnancy caused by sexual crime. Concurrently, a series of dramatic political developments in the UK placed a spotlight on the discrimination experienced by NI women in accessing abortion care. Thus, on the very day the Article 8 ruling was overturned, the UK Government announced that the English NHS will fund abortion treatment costs for women travelling from NI. Political momentum towards abortion rights is contrasted by the heightened influence of the anti-choice Democratic Unionist Party in NI, on which the Conservative Government relies for a parliamentary majority. This paper will provide an analysis of political will and complex political expediency influences determining threats against and opportunities for increased abortion rights. Learning from examples when previous governments forfeited opportunities to reform abortion laws in NI will form part of a critical analyses of the often troublesome relationship between politicking and developing human rights legislation. Finally, this presentation will consider what may lie ahead for NI women and access to free, safe and legal abortion.

- Juliette Doman (University of Liverpool), Guatemalan Women Changing the Face of Justice: Mini Exhibition About Sepur Zarco Trial

This presentation and mini-exhibition examines the development of women's agency and the participation and protagonism of Guatemalan women in the struggle for gender justice for crimes of sexual violence committed by the Guatemalan military against Maya women during the Guatemalan civil war. The exhibition presents a selection of photos, with accompanying texts, and a couple of short films on the pathbreaking Sepur Zarco trial prosecuting wartime domestic and sexual slavery committed by the Guatemalan military against Maya Q'eqchi women. The presentation and exhibition, based on my PhD research on the trial and its outcomes and has been created in collaboration with the organizations supporting the women survivors. The exhibition seeks to make the women survivors' protagonism visible and the protagonism of Guatemalan women who have supported them. It considers the meaning of participating in the trial and the forms protagonism and participation can take. Using an 'intersectional sensibility' (Bueno-Hansen, 2015:12), the exhibition seeks to question the dominant understandings of gender based violence and of justice, by examining interlocking forms of oppression and dimensions of identity that inform the conceptualisation of both gender violence and justice for this violence in Guatemala. The exhibition is intended to provoke discussion and reflection on these and related issues. I will elaborate further and provide context for these issues in my spoken introduction to the exhibition, which will also allow time for discussion on these themes. There will also be a space for written commentary and feedback to be provided on questions raised and reflections on the themes in the exhibition.

Grenfell Tower and the Law of the High Rise 35BSQ: 4.10

Race, Dignity, Community: Critical Reflections on the Fire at Grenfell and the Aftermath

- Nadine El Enany, The Colonial Logic of Grenfell

The Grenfell fire of 14 June 2016, of which the majority of victims were racialised as non-white, epitomises the persistence of a colonial social order predicated on racial hierarchy in Britain. Britain's geography is marked by spaces of colonial control and exclusion in which resources are withheld from people living in conditions of spatial and temporal precarity. Understanding the colonial logic of the Grenfell Tower atrocity demands a historical and contextualised analysis. Many of the Grenfell residents and their ancestors suffered the dispossessing effects of European colonialism. They lived and fled not only the lasting material consequences of colonisation, but also the economic decline caused by global trade and debt arrangements that ensure the continued impoverishment and dependency of Southern economies on those of the North. This paper draws on the work of Sherene Razack and Ruth Wilson Gilmore to argue that race and its ongoing colonial configurations in Britain overdetermined what brought the Grenfell victims to the dangerous heights of the high-rise tower and ultimately to their violent and premature deaths.

- Laura Binger, Failure After Failure: Homelessness Legislation and the Rehousing of Grenfell Tower survivors

After the fire at Grenfell Tower Theresa May promised that residents would be rehoused within three weeks. Six months later, four out of five families made homeless by the fire were still in emergency accommodation. Since the fire, many survivors have spoken publicly about their experiences living in temporary accommodation and have strongly criticised the rehousing procedures they have encountered. We have learned, for example, about the shockingly poor response of the Royal Borough of Kensington and Chelsea on the ground in the immediate aftermath of the fire, the stress caused by the initial use of a competitive bidding system for allocations, the strain of long stays in hotel rooms, and the unsuitability of housing offers. What has happened raises important questions about how homelessness legislation has failed to ensure the rehousing of Grenfell Tower residents with dignity and care. This paper critically reflects on the legal regime of homelessness through an analysis of the public statements made by survivors.

- Ed Kirton-Darling, Juries and the Community: A Public Hearing

On 15 June 2017, the Prime Minister announced a public inquiry into the fire at Grenfell Tower, and that evening, civil liberties solicitor Sophie Khan appeared on Newsnight criticising the decision. She argued that an inquest would provide a more independent mechanism for investigating the fire, and further that an inquest would mean a jury would be responsible for reaching a final conclusion, not an appointed Chair. Other lawyers, as well as academics and campaigners, suggested her arguments were misplaced, but they have had continued resonance as the lack of community representation on the inquiry has been challenged. At the time of writing, the latest development in relation to this was a decision by the Prime Minister on 22 December 2017 to refuse a request to add panel members to the inquiry, instead approving a proposal to set up an advisory panel of community members.

Existing criminal scholarship on juries tends to focuses either on the constitutional significance of the jury trial or on the efficacy of the jury trial in relation to accurate truth finding. Analysing this literature and human rights jurisprudence, this paper will explore the role of juries in inquisitorial public hearings. It will argue that concerns about the adequacy of the inquiry from a human rights perspective, as demonstrated by the ongoing Equality and Human Rights Commission investigation are closely linked to the role and representation of the wider community in the hearing. Critically, drawing on empirical research into juries in the coronial jurisdiction, it will argue that effective community involvement fundamentally changes the public nature of the hearings, while superficial engagement risks a narrow, decontextualised and inadequate account of what happened at Grenfell Tower.

Intellectual Property 8-10BSQ: LG02

Chair – Jasem Tarawneh & Smita Kheria

- Jade Kouletakis, Softly As I Leave You: Comparing the Hardline Legislative Approach of South Africa's Bayh-Dole Act Against the United Kingdom's Moderate Approach to Increasing University-Industry Collaborations

My paper will examine the supposed success of South Africa's Intellectual Property Rights from Publicly Financed Research and Development Act of 2008 ('the IPR Act'). The IPR Act is modelled on the United States of America's Bayh-Dole Act of 1980, and seeks primarily to increase university-industry collaborations ('UIC') which results in patented research outputs. My paper will argue that the hardline approach adopted by the IPR Act has meant that it has at best failed to fulfil this aim and at worse only succeeded in taking South Africa further away from doing so. I will do this by collecting data evidencing the trends among publicly financed South African universities in patenting both locally and internationally from before and after the IPR Act came into effect.

Looking forward, my paper will suggest changes based on the United Kingdom's approach to encouraging UIC which excludes any Bayh-Dole legislation. Instead, the United Kingdom chooses to take a moderate approach by adopting the

REF's Impact Agenda coupled with the Lambert Toolkit of 2016. To this end the Lambert Toolkit of 2016 will be discussed as a way in which the United Kingdom has proposed to maintain the principal of freedom of contract between universities and industry while at the same time having the policymaker play a vital role in creating an environment whereby barriers to UIC are minimised. This is particularly important for countries where there has been historical inequality among higher education institutions. As such, my paper will recommend reworking the IPR Act in such a way that it is no longer premised upon the American Bayh-Dole Act but rather the United Kingdom's Lambert Toolkit of 2016, as well as adopting a 'business-friendly' Research Output Policy premised primarily on the United Kingdom's Impact Agenda.

[redacted]

◦ Sakthivel Mani, Copyright and Sports Contents: Odd Couple for Marriage?

Live telecast of sporting events is a high-demand content on television as well as over the internet. As most viewers seek to watch sporting events live-time only, it has also been an active subject matter of unauthorized content over the internet. The huge commercial value associated with any sports content remains only as long as it has market demand. This demand or the viewers' interest in a sporting events remains primarily till the game is in action. Once the results are out, the same event turns into the nature of news item rather than a high-value entertainment item. Therefore, the demand for the telecast of sporting events is primarily live time.

One of the best ways to exploit the commercial value of sports content is, by telecasting it over television. Live television broadcasting of sports is one of the most demanded entertainment contents, owing to the viewers' anxiety towards the game, and the curiosity to know the result. For the exploitation of sports content through broadcasting, broadcasting organisations require prior authorisation from the organisation running the event in question, as they own the rights of such sports content. Though all entertainment-related broadcasted contents could be subjected to unauthorized distribution over the internet, sports content is one of the most vulnerable to unauthorized distribution, as content like

music can be used a multitude of times by the people, whereas the same is not true for sports content. As reiterated earlier, in the context of sports content, information is the primary concern rather than the quality of the content, as it wouldn't be used recurringly, as in the case of other entertainment contents. Therefore, over a period of time, the unauthorised distribution of sports content has exploded and caused huge economic losses to the broadcasting organisations and the rights holders of various sports contents.

There cannot be any second thoughts on the need for prohibition of unauthorized transmission of sports content, and the due protection required to be given to such content. However, the issue is whether the protection should be afforded based on Copyright Law?. Since there is a constant attempt to extend copyright protection to sports broadcasting, it is important to examine whether sports content is copyrightable at all. Copyrightablility of sports content is still a debatable issue, as it does not fit into any of the designated category of works. Even if an argument is to be put forth for putting sports content under the category of 'cinematograph films" after fixation, the issue that remains is, that sports content does not comply with the requirements of a work to be called cinematographic works, i.e. a cinematograph film should be based on work(s). In this content, this paper makes an attempt to critically analyse the issue of copyright protection for sports content.

- Emmanuel Oke Intellectual Property and The Fair and Equitable Treatment Of Foreign Investments

In assessing the potential impact that treating intellectual property (IP) as an investment asset can have on the IP policy space available to states, it is essential to draw a distinction between the rules governing the expropriation of investment assets and the rules relating to the fair and equitable treatment (FET) of investments. This distinction is necessary because, in some investment agreements, measures relating to IP are excluded from the scope of the rules on expropriation whereas there is usually no such exclusion for IP from the scope of the FET standard. Furthermore, even where an investor claims that an IP measure amounts to an indirect expropriation of its IP asset, it is quite possible for an investment tribunal to defer to the regulatory powers of the host state especially where the challenged measure is consistent with the rules of International IP Law (as embodied in the TRIPS Agreement) and/or the measure has been adopted to address a public health problem. Moreover, the FET standard can be described as a standard whose content and scope is ambiguous thus making it a potentially useful tool in the hands of an investor seeking to challenge an IP measure adopted by a state.

This paper therefore seeks to examine the potential impact that the FET standard can have on the IP policy space available to states. Using the two recent decisions of investment tribunals in the cases of Philip Morris v. Uruguay and Eli Lilly v. Canada as case studies, the paper will critically examine the extent to which a claim based on a denial of FET can narrow down the policy space available to states to design their national IP laws in a way that suits their level of development and societal needs.

Law and Emotion 35BSQ: 2.25

- L. Bleasdale and S. Humphreys, Law Students, Resilience, and the Role of Universities

The notion of 'resilience' is increasingly used in a range of contexts, including in connection to individuals, schools, communities, and corporate/organisational wellbeing strategies. The seemingly ubiquitous term has also entered the lexicon of Higher Education, primarily through claims that undergraduate students 'lack resilience,' and must begin to exhibit an as yet undefined characteristic considered to be required within Higher Education and workplace environments.

This paper will explore the findings of a year-long research project which examined second year undergraduate student levels of resilience across six undergraduate disciplines, including Law, at the University of Leeds. The paper will primarily focus upon existing levels of resilience within the Law sample, as well as upon suggestions as to how the resilience of Law students can be supported and enhanced. In making those suggestions, the paper will also offer a critique of the dominant

discourse surrounding resilience, arguing in favour of moving from an individualised notion of resilience to one in which collective responsibility is taken for the resilience of university students.

◦ S. Menis, Consensual Sexual Acts, Harmful Consequences and Disgust

In the case of Meachen [2006] EWCA Crim 2414 a woman meets a man in a pub. They have some drinks. She asks whether he can get hold of some recreational drugs. He does. They end up having consensual non-penile anal sex. On the face of it, this is not an unusual scenario, except for the fact that the woman had to be fitted with a colostomy bag because of the above sexual encounter. The aim of this study is to investigate the formation of the social construct of unlawfulness within the context of consensual sexual acts which have led to harmful consequences. The question set forward is 'how do judges go about creating legal rules which, in their mind, might reflect social solidarity?'. The aim of this analysis is to demonstrate not how and why, but simply that emotions have a role in judicial decisions. The traditional understanding of emotions as uncontrolled impulses and therefore inevitably distinct from something as 'reasonable' as the law, has been challenged. The psychological explanation that emotion is a cognitively-based process attributes a significant connection with human rationality. As argued by several scholars, the roots of emotions are found in thoughts and experiences which in turn are responsible to the shaping of the cognitive process. It is argued here that the (ir)rationality of the law can be better explained, in this case, through the rationality of emotional expression (in this case, of judges). The study will assess the case of 'disgust'.

◦ C. Strevens, An Exploration of Teachers' Perceptions of Teaching Clinical Legal Education and its Impact upon Academic Teachers' Wellbeing.

This paper poses the theory that involvement in teaching students in live client clinics supports psychological wellbeing of teachers through increasing the intrinsic motivation to teach.

The Law Works Law School Pro Bono and Clinic Report (Carney, Dignan et al 2014) indicates that about 20 of the 80 responding Law Schools offered clinical legal education in some form that was assessed. The form of assessment is not accurately reported but in many cases include a reflective essay.

This paper reports upon a project that describes and discusses the impact on Law Teachers of involvement in a live client clinic that requires students to undertake a reflection following the experience. We have interviewed clinic tutors at approximately 12 of these Law Schools where clinic is part of the curriculum.

The data gathered is being analysed through the lens of self-determination theory and motivation using the work of Deci and Ryan (2000) in order to explore implications for law teacher wellbeing. Our tentative conclusions will be presented for discussion.

Law, Politics and Ideology 8-10BSQ: LG01

Social Class and Law

◦ Dermot Feenan, Social Class and Law

This presentation opens this special session on social class and law, by introducing the rationale for an examination of social class and law.

Class has long been a category of social classification and politics. Many significant progressive laws, principally in the field of labour and welfare, have been secured with reference to class. Class has been used as a key concept in theorising law. Indeed, class might be said to be a key, if not essential, component within ideological critique. Much legal scholarship references class. Yet, class increasingly seems to be questioned as a category. True, concern is expressed regarding one of the traditional accompaniments to class difference: inequality; but now between 'rich' and 'poor' alone, the '1%' and '99%', the 'elite' and the unexplicated remainder. New categories vie for attention, including the 'Precariat' and

'squeezed middle'. Rhetorical embrace of 'working' people can blur the constituency demarcations that traditionally distinguish left and right political parties. Class appears less and less frequently as a unit of analysis in legal scholarship. Savage said after the Great British Class Survey in 2013 that classes were 'being fundamentally remade'. Some say class is dead.

What accounts for these changes and what impact do they have for law? Certainly, post-structuralist and postmodernist theorising eschewed traditional class categories. The emergence of identity politics has been attributed as partly responsible for the eclipse of class analysis. New frames for analyzing sociality in relation to law – such as social movement theory and Actor-network Theory – have also been implicated in the apparent decline in class discourse. Neoliberalism and globalization have affected class organisation. Certainly, organised labour – which has historically been synonymous with the working class – is under growing threat.

Is class no longer relevant? Have social, political and economic changes rendered class redundant? This presentation will introduce these questions with especial reference to the contemporary challenges of theorising class and law, and whether and if so how class can remain a productive category for law.

- Lydia Hayes, Institutionalised Humiliation: Unsettling the Inertia over Class in Socio-legal Scholarship

Is it not curious that class does not feature more prominently in socio-legal scholarship? Class relations, like those of gender, are not merely reflected in law but are produced through legal reasoning and by the application of rules offering justification for social and economic hierarchies. Yet, in contrast to the thriving body of knowledge about gender and law, class is rarely the site of socio-legal inquiry. Sociological understandings in which the social class positions of individuals are traced to employment relations (ie Lockwood, Dahrendorf, Braverman) have provided a theoretical basis for empirical 'class analysis' by locating jobs and occupations within a structure of class positions (Crompton, 1995; Goldthorpe, 2010). While law is the thread which locates and attaches people to the grand social tapestry of the labour market, it is illustrative of a general inertia over class that socio-legal examinations of employment and equality law rarely engage explicitly with class. Building on the work of Fraser (1996), I consider that the inertia of class within socio-legal scholarship is partly a reflection of assumptions that class-interests are collective and concerned with wealth redistribution while disputes over legal status and entitlements are individual and centred on questions of recognition. Through my research about the day-to-day experiences of homecare workers in the UK, I have developed a doctrinally and empirically-informed understanding of law and class within a process I term 'institutionalised humiliation' (Hayes, 2017). This has enabled a sustained critique of the persistent and pervasive judging of working class women as inferior. In this paper, I develop the concept of 'institutionalised humiliation' to explore law and class as co-constituting social processes which demand greater contemporary attention in socio-legal scholarship.

- Will Atkinson, Bourdieu, Class and Law

After a period in the doldrums, the sociology of class was thoroughly revitalised around the turn of the millennium. This was in some part thanks to a shift away from the prevailing paradigms of thought ultimately rooted in the writings of Karl Marx and Max Weber. Dissatisfied with the economism, utilitarianism and unidimensionalism that had come to characterise the dominant heirs to the Marxist and Weberian traditions, a newer generation of scholars looked elsewhere for inspiration. Amongst the contenders for their attention, the writings of Pierre Bourdieu emerged as particularly captivating. Combining philosophically-informed theorising with rigorous empirical research, Bourdieu produced a set of conceptual tools – habitus, capital, field – that proved remarkably fruitful for not only making sense of new themes neglected by the old-guard, such as the lived experience of class, the relational character of identities and symbolic violence, but for reframing many of the themes traditionally associated with class research, from social mobility and educational inequality to health disparities and political attitudes.

This paper aims to outline the key elements of the Bourdieusian approach to class and their potential for thinking about the relationship between class and law, taking Marxism as a constant point of contrast. Attention will turn in particular to the genesis of law within what Bourdieu termed the 'field of power', showing it to be the product of complex, cross-cutting struggles for recognition within a multitude of fields populated by dominant and dominated agents more or less homologous with dominant and dominated classes and class fractions. As the work of Loic Wacquant shows, the current

state of struggle within these fields produces laws which operate to maintain and harden class inequalities by criminalising, stigmatising and sequestering segments of the class structure whose practices are attuned to their own search for recognition in straightened circumstances.

Lawyers and Legal Professions 35BSQ: 4.01

- Stephanie Theophanidou, An Empirical Investigation into the Role of Legal Expertise: Comparing the influence of In-house Lawyers in the EU and UK Legislative Drafting Processes

This empirical study compares the role of legal expertise in the EU and UK legislative drafting processes. Here, legal expertise encompasses the procedural, substantive and drafting advice provided by in-house lawyers of the main EU and UK institutions involved in legislative drafting. There is limited research in this field as lawyers are often perceived as backstage actors simply operating on behalf of their principals. Studies which do exist arguably have limited scope due to narrow perceptions of legal expertise and restrictive definitions of legislative drafting which exclude the early stages of policy formulation.

The chosen EU/UK comparison aims to demonstrate the different duties and challenges which in-house lawyers encounter at the supranational and national level. A detailed analysis of official EU and UK documents reveals a divergence of legislative standards and priorities which could further contribute to the contrasting approaches of these lawyers. Documentary analysis is supplemented by in-depth interviews with EU and UK lawyers to gain a better understanding of the social, political and institutional factors which influence their roles in their respective settings. This paper will present preliminary findings from the initial interviews conducted.

Theoretical insights from public administration will be used to explain how certain institutional factors can shape the behaviour of lawyers and encourage their potential politicisation. This paper will also reflect on the opportunity to use theoretical frameworks from science and technology studies (STS) to better understand how legal experts can effectively operate in multidisciplinary settings such as legislative drafting. This includes a consideration of methods, both formal and informal, which lawyers can use to interact with other types of actors for the successful production of a legislative text. Although STS insights have been applied to lawyers in the courtroom, they have not been applied to lawyers involved in legislative drafting.

- Lucy Floyd, Female Students' Perceptions of Lecturers in Vocational Legal Education: Role-Modelling, Professionalism and Professional Identity Formation

There is some support in the literature for the proposition that lecturers on vocational and professional courses can play a significant part in modelling professional behaviour, and thereby in influencing the process of professional identity formation. Notwithstanding, there is little research into the part played by lecturers on the LPC in England and Wales in influencing the process of professional identity formation of law students who wish to become solicitors.

This paper describes and outlines some of the conclusions from a longitudinal study to investigate the significance of the Legal Practice Course in the formation of female solicitors' professional identities. The study uses a Bourdieusian framework to draw on theoretical concepts of professional identity and gender, and on existing literature in the area of legal education. Its findings suggest that perceptions of and attitudes to LPC lecturers varied markedly between students, and particularly between those who started the LPC with more, or less, well-developed legal professional identities. In general the data suggested that student attitudes, combined with the non-situated nature of the LPC, meant that the potential for lecturers (and in particular female lecturers) to act as and to be seen as models of legal professionalism was limited. This in turn limited the scope for female students to reflect on the hegemonic masculinity of legal professional practice, and on alternative models of legal professionalism.

The findings outlined in this paper represent a useful contribution to debate about the legal professional project and the ways in which a gendered professional status quo is maintained.

- Richard Moorhead, In-House Lawyers: Deepening Understandings of Role and Professional Orientations

This paper will discuss findings from the study of in-house lawyers conducted by Moorhead, Vaughan and Godhino – partly reported in their Mapping the Moral Compass report (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2784758) and contextualised by as yet unreported interview data (in their forthcoming book on in-house lawyers). Drawing on ecological and institutional logics literature, we seek to build on and push beyond the Cops, Counsellors and Entrepreneur's of Nelson and Nielsen's work, heeding Rosen's call for a more nuanced exploration of the influences on in-house lawyers as they gatekeep and seek status and influence. Through quantitative and qualitative lenses we examine the contextual and professional influences on in-house ethicality and occupational control.

Medical Law, Healthcare and Bioethics 35BSQ: 3.13

Gender/alternative treatments

- Chris Dietz, Trans Rights: What Role for Medical Law?

The historical regulation of trans bodies constitutes a clear point of intersection between legal and medical norms. Since the enactment of the Gender Recognition Act (GRA) 2004, trans people in the UK have been required to garner the support of two medical professionals when applying to amend their legal gender status. This application must then be approved by a Gender Recognition Panel, which comprises six medical professionals (general practitioners, psychiatrists, and psychologists) alongside the six legal professionals tasked with ensuring that such applications meet the eventual requirements laid out in law. Inspired by reforms in Ireland and elsewhere, campaigners are currently seeking to separate out the legal and medical regulation of trans embodiment in the GRA, by supporting proposals to introduce self-declaration of legal gender status. This form of gender recognition legislation permits individual legal subjects to make a declaration of their own gender status, and have this taken as legally authoritative without the need for further gatekeeping approval. With a view to informing such debates, this paper considers how the introduction of self-declaration has impacted upon the interplay of legal and medical norms in Denmark, the first European state to have adopted it, in 2014. Drawing upon interviews conducted with 33 stakeholders – including trans and intersex people, activists, politicians, civil servants, and medical practitioners – it describes the limitations of the Danish reforms. With these insights in mind, it then goes on to ask what role (if any) there is for medical law in gender recognition debates at a time when it appears that governmental receptiveness to self-declaration may be on the wane. Its findings will be of interest to trans legal scholars, and medical lawyers interested in the regulation of bodies more generally.

- Edmund Horowicz, Transgender Minors and the Surgical Taboo: Is Age Restriction Justified?

Despite considering genital-reassignment surgery as a legitimate and reconstructive intervention, the World Professional Association for Transgender Health (WPATH) and NHS England guidelines for the surgical management of gender dysphoria recommend that genital-reassignment surgery be delayed until the age of majority. The recommendation to defer genital-reassignment surgery to adulthood is ethically and legally problematic because competent minors with a diagnosis of gender dysphoria are unable to benefit from a medical treatment, without a substantial evidence based rationale. This paper explores whether the justifications for delaying surgery are sufficient to prohibit surgery for transgender adolescents below the age of eighteen. The paper highlights the discourse between clinical guidelines for the management of gender dysphoria in minors, the legal ability of competent minors to consent to treatment and the impact of this on doctors to provide care in the best interests of individual patients. The paper argues that the ability of a minor to provide informed consent for genital-reassignment is affected by an apparent increased preoccupation with unsubstantiated concerns of potential regret or dissatisfaction, along with a need for parental acceptance. Of concern is that these presumed and unsubstantiated concerns are inferred as somehow lessening upon reaching the age of majority.The paper argues that attainment of a specific age is not representative of how healthcare decision-making for

adolescents are established. The conclusion is that provision of genital reassignment surgery for competent adolescents should be reconsidered, albeit with caution and through establishing a solid evidence base. Importantly, although the paper considers genital reassignment surgery provision within the context of legal and medical practice in England, the ethical arguments proposed here could be relevant in other jurisdictions.

- Emilie Cloatre, Law, Science and the Boundaries of Therapeutic Care: Regulating Alternative Healing in France

This paper, based on an ongoing Wellcome Trust project, explores the ambiguities of the regulation of 'alternative healing in France', and what it suggests of the boundaries of 'legitimate medicine'. A defining (though not unique) feature of the French legal system is to consider that the delivery of therapeutic care should be the monopoly of biomedically-trained professionals. Alternative healing, often formally illegal, is also considered as suspicious by the secular state, and partly monitored by the regulatory agency that oversees cults, and responds to what are considered to be 'abusive practices'. In spite of this formally highly restrictive regulatory system, however, alternative healers operate very widely, and very openly, in France. They practice, however, on the verge of (il)legality, often organising their activities, individually and collectively, so as to limit the likelihood of state intervention, and lobby for legal reform. Their claims for some recognition as providers of care, however, are highly sensitive and contested, in a national context where biomedicine is a particularly powerful institutionally, and where republican ideals are heavily based on both narratives of modernity as scientific and rational, and on secularism. As a result, alternative healing has failed to become a 'policy issue' for the state, in spite of the tensions and uncertainty that the current regulatory system creates. This paper explores recent debates, claims and practices in this field, and what they suggest of the relationship between law and science in shaping the boundaries of legitimate medicine in contemporary healthcare.

Mental Health and Disability Law 35BSQ: 3.18

Capacity and Decision-Making

- Samantha Halliday and Jean McHale, Advance Decisions and the Protection of Human Dignity: Can You Ever Refuse Basic Care?

The inclusion of advance decisions in the Mental Capacity Act 2005 was extremely controversial and throughout its passage through Parliament concerns were raised about the permissible scope of advance decisions. The Act makes it very clear that an advance decision may only refuse, rather than demand, treatment and that an advance decision will not constitute a request for assisted dying, or a valid refusal of treatment provided under the Mental Health Act. However, an exclusion not set out on the face of the Act is found in the Code of Practice stating:

"An advance decision cannot refuse actions that are needed to keep a person comfortable (sometimes called basic or essential care). Examples include warmth, shelter, actions to keep a person clean and the offer of food and water by mouth. Section 5 of the Act allows healthcare professionals to carry out these actions in the best interests of a person who lacks capacity to consent (see chapter 6). An advance decision can refuse artificial nutrition and hydration."

This paper considers the legislative background to this apparent limitation upon the scope of advance decisions and questions what constitutes basic care, why is it apparently excluded from the ambit of advance decisions and the extent to which such an exclusion is consistent with the protection of human dignity. It concludes that the current limitation reflects the state of the debate around end of life decision-making during the 1990s and early 2000s and that the questions of public policy and public interest in advance decision-making and refusals of basic care need to be revisited.

- Kevin de Sabbata, Dementia and Healthcare Choices: Realizing Supported Decision-Making in Europe

Dementia is a category of brain diseases causing the progressive impairment of memory and reasoning ability. Because of such an impairment, the law often deems people with dementia legally incapable to decide on medical treatment, depriving them of the fundamental right to decide on their care.

A number of researchers, carers and people with dementia themselves have criticized this approach for being impractical and oppressive, as it requires to apply the binary distinction capacity/incapacity to a progressive condition and leads to unfairly disregard the will of the person. Indeed, studies show that people with dementia are often able to form a simple but meaningful opinion on their care, though they may face challenges in expressing it.

A more adequate legal model of treatment decisions emerges from the UN Convention on the Rights of Persons with Disabilities (CRPD), which refuses the binary concept of legal capacity/incapacity and indicates supported decision-making as a means to empower people with serious mental impairments like dementia to decide on their life and care.

This paper analyses the implications of the support-centered approach to legal capacity proposed by the CRPD in relation to treatment decisions of people with dementia in Europe, taking the stock of the situation in terms of interpretation and implementation of the Convention relevant principles. In doing this, it firstly tries to clarify the exact meaning of controversial provisions such as those of Articles 12, 17 and 25 CRPD. Then it looks at the work done by the Council of Europe and the European Union in interpreting such norms and promoting their implementation. Finally, it reports on promising practices emerging in various European countries, providing concrete examples of what a CRPD compliant approach to healthcare decision-making in dementia care could look like.

- Kevin de Sabbata, Dementia and Healthcare Choices: Realizing Supported Decision-Making in Europe

- Peter Bartlett, Charting the Divide: Responses to the Consultation by the CRPD Committee to the Draft General Comment on Article 12

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) was passed with considerable fanfare in 2006. This acknowledged the failure of traditional legal and human rights approaches to the care of people with disabilities in the past, and promised a paradigm shift in the approach to rights and care of people with disabilities.

The responses to the consultation by the CRPD Committee regarding the draft general comment on Article 12 provides a context to explore how those ideas have developed. The draft general comment, concerns the rights of people with disabilities – most notably mental disabilities – to make decisions. It holds that the use of a mental capacity threshold, when based in whole or in part on the presence of a mental disability, is discriminatory and thus inconsistent with the CRPD. States are enjoined to develop systems of supported decisionmaking.

The responses to the consultation lay bare fundamental fissures in the interpretation of the CRPD. Organizations of people with lived experience of mental distress overwhelmingly support the Committee's approach, emphasizing the oppressive nature of capacity-based and best interests frameworks. States, professional organizations and a number of human rights organizations argue against that approach. Problematically, these other organizations provide little by way of alternative, beyond an affirmation of the status quo ante. There is little in the responses of these other organizations that shows an understanding of the scope of the convention, or the importance of rights to make decisions in terms of the scheme of the CRPD as a whole.

Methodology and Methods 35BSQ: 2.17

Roundtable on Managing Quality and Integrity in Research
Chairs – Kate Malleson, Lizzie Barmes & Rosemary Hunter (QMUL)

Speakers:
- Richard Collier
- Emily Grabham
- Helene Tyrell

This session concerns legal methodology in its broadest sense. Its aim is to provide a forum for presentations and discussion about:

· the pressures, challenges and dilemmas colleagues face in trying to maintain quality and integrity in their socio-legal research;

· strategies for navigating those pressures etc and still managing to produce work that the scholar believes in and that is somewhere between 'good enough' and their best work.

The format and content of the session will intentionally not be prescriptive as we hope that it will open space for an important and overdue conversation about what feels most urgent to junior, mid career and senior legal academics. We have invited Richard Collier, Emily Grabham and Helene Tyrrell to talk about their experiences as representatives of these three stages of a legal academic career.

Property, People, Power and Place 8-10BSQ: 1.13

- Jed Meers and Caroline Hunter, The "Affordable Alternative to Renting:" Property Guardians and Legal Dimensions of Housing Precariousness

Heralded by some as the 'new affordable alternative to renting' and attacked by others as the 'the monetisation of the housing crisis,' the growing phenomenon of 'Property Guardianship' is increasingly coming under scrutiny. Property Guardian companies - who are principally property management firms – function by advertising spaces in otherwise vacant commercial or residential buildings, providing security to the owner and 'quirky homes for low rent' for those with a 'flexible lifestyle.'

This paper draws on new empirical data to interrogate this phenomenon. Its arguments fall into two sections. The first analyses the extent and composition of the property guardian sector, arguing that it is far more diverse and used for longer-term habitation than previously thought. The second builds on the sizable literature on precariousness to argue that the practice exhibits five legal dimensions of housing precarity under the following headings: immigration; time; control; cost; and conditions. By focusing on these five areas, we argue that we can identify the legal determinants that contribute to rendering housing relations inherently precarious.

- Michel Vols, Evictions, European law and the Destabilisation of Property Law

Under the traditional rights paradigm, a request for an eviction is usually allowed by courts. The position of a property owner is that strong, that courts adopt a landlord-must-win assumption in eviction litigation. Under the paradigm, strong property rights trump soft home interests. However, recent European case law seem to challenge this rights paradigm. The European Court of Human Rights held that everyone at the risk of losing his/her home should have the opportunity to have the proportionality and reasonableness tested by an independent court. The European case law requires national courts to abandon the landlord-must-win assumption and apply a more contextual approach instead. Some scholars and courts– mainly based in the United Kingdom – have argued that this contextual approach will erode or even undermine property law as we know it, and will result in a paradigmatic shift.

This paper aims to analyse whether this paradigmatic shift actually took place in continental Europe. To do so, a systematic and quantitative content analysis of over 600 eviction judgements of courts of first instance in the Netherlands is conducted. The judgements deal with eviction claims because of rent arrears, nuisance behaviour and drug-related crime. The paper assesses the number and types of proportionality defences advanced by tenants, the impact of these defences on the reasoning of the court and the outcome of the case. The results of this analysis show that there are no indications for a clear paradigmatic shift. Although tenant do put forward proportionality defences, and court do assess the proportionality of the eviction, no significant difference in outcome is found between cases in which the tenant raise a proportionality defence and cases in which they do not advance such a defence. However, the paper also shows that the possibility of a proportionality review may influence the decision making of landlords in the pre-court phase as well as the after court phase.

- Irene Antonopoulos, Natural Disasters, Climate Change and Property Rights: A Human Rights Approach to Environmental Risks, their Materialisation and Loss of Private Property

The European Convention on Human Rights provides for the protection of the right to property through Article 1 of Protocol 1. In 'environmental' applications, the right to property was linked to the right to enjoy one's home as provided by Article 8 - Right to Respect for Private an Family Life. The European Court of Human Rights has acknowledged that the right to respect for private and family life can be affected by non physical interference, such as air, water and noise pollution. The Court has also acknowledged that the protection of Article 8 amidst environmentally challenging circumstances relies on the right to be informed. According to the Court, States have to provide information, when this is available, to interested parties over potential environmental risks affecting one's interests in enjoying his property. The paper asks whether the foreseeability of a risk affects one's claim for a potential violation of Article 8 and Article 1 of Protocol 1. The article looks at two different scenarios of loss of property i.e. loss of land or fiscal value of property. Loss of land due to climate change effects (i.e. coastal erosion, rising sea levels) and the destruction of property due to environmental challenges (ie. environmental disasters, polluted environment, green zones). The aim of the paper is to examine the different claims over property rights, based on the foreseeability of the risk of property loss and whether decisions defer depending on whether this risk has been materialised or not.

Sexual Offences and Offending WMB: 3.30

Chair – Susan Leahy

- Phil Rumney & Duncan McPhee, Exploring the Impact of Multiple Victim Vulnerabilities on Rape Investigations in England and Wales

The existing research literature suggests that rape cases involving a victim who has an inherent or situational vulnerability such as mental illness or involvement in prostitution tend to have higher levels of attrition and victim withdrawal compared to cases without those characteristics. This paper seeks to build on that literature by focusing on a neglected area: cases that involve victims with multiple vulnerabilities. The data for this paper is derived from 441 police case files involving rape investigations that include victims with complex and multiple vulnerabilities. The paper examines the impact of multiple victim vulnerability on victim engagement with the criminal justice process, case progression, victim care, including the impact of support referrals on progression and engagement. In addition, the paper will consider the role of 'offender centric' police investigations in helping to identify and secure evidence concerning suspects who offend against highly vulnerable victims, including a focus on the behaviour, admissions, attitudes and history of criminal suspects.

- Isla Callander, Consensual Sexual Behaviour between Similarly Aged Adolescents: Improving the Statutory Frameworks in Scotland and England

Scotland and England are examples of jurisdictions which, through specific statutory offences, apply blanket criminalisation to all consensual sexual intercourse between similarly aged adolescents where both or one of the parties is under the 'age of consent'. This paper examines whether such approaches are appropriate. It gives an overview of the nature of the legislation in each jurisdiction, and then contextualises the respective provisions against the relatively widespread occurrence of such activity amongst adolescents and the very limited number of prosecutions in practice. In assessing whether the current blanket criminalisation approach in each jurisdiction is appropriate, relevant public health research and aspects of research into adolescent psychology and neurological development are integrated with the principles that should normatively inform criminalisation decisions and doctrinal legal discussions. Overall, it is argued that, while there are good public policy reasons to encourage adolescents to delay engaging in sexual intercourse, the current blanket approach taken by the criminal law in both Scotland and England is overly broad. The legal approaches taken to consensual sexual intercourse between adolescents in other common law jurisdictions are also discussed, as a means to identify possible alternative approaches that might be followed. These approaches are drawn upon to advocate

a more refined approach in the substantive law in both Scotland and England that criminalises consensual sexual intercourse involving adolescents only where there is a substantial age difference between the participants or where there is otherwise evidence of exploitation. It is argued that the refined approach would safeguard adolescents against exploitation without automatically criminalising significant numbers of adolescents for their consensual sexual behaviour.

- Nabilah Hani Ahmad Zubaidi, "A Person Appearing to be a Child Engaged in Sexually Explicit Conduct": Is Potential Harm, Harmful?

The world of technology has amplified existing risks to children and created new ones. Child image abuse and exploitation are prevalent, not only on the dark web but also on mainstream digital platforms and social media. This paper addresses the criminalisation of child pornography in Malaysian law of not only where actual children are involved but also concerning a person appearing to be a child, through manipulated images and computer-generated images in drawings or cartoons, by creators and distributors. Focusing on the definition of child pornography in the Malaysian context under Section 4(a) (ii) and (iv) of the new Sexual Offences Against Children Act 2017, it assesses whether several types of harm and moral-based arguments can successfully legitimate the extension of the criminal law to non-actual children. Primarily adopting the library-based approach, semi-structured interviews were also conducted with relevant stakeholders including policy makers, the police and lawyers to learn more on this issue. It is argued that harm may be caused by an image that depicts actual child abuse of a real, recognisable child. While it is suggestive that the elements of debasing a child's dignity is present, it is unfair to presume that an actual child has suffered harm directly from manipulated images or computer-generated images of child pornography. Further in depth clarification is needed to determine whether there is harm and whether the nature of the harm is the same, justifying criminalisation. By looking into the arguments of Miller and Feinberg, this paper concludes that a simple application of categorising manipulated images and computer-generated images as child pornographic images poses risk to potential violation of privacy, freedom of expression and the principle of legal certainty.

Social Rights, Citizenship and the Welfare State 35BSQ: 2.06

- Mark Simpson, 'Exploring the Child's Right to Social Security'

Article 26 of the Convention on the Rights of the Child protects the child's right to "benefit from social security." As the Committee on the Rights of the Child has yet to issue any interpretative guidance, this rather bare statement demands elaboration. This paper explores what the child's right to social security might mean in practice, particularly in the UK context. Reference is made to other UNCRC provisions and rights conferred by other instruments, notably the International Covenant on Economic, Social and Cultural Rights, European Social Charter and European Convention on Human Rights as well as UK and ECHR case law. The normative content of the right can be tied closely to the child's right to development, an adequate standard of living and to have his or her best interests treated as a primary consideration, general rights to social security and social assistance, the right to family protection and the right to respect for family life. Ultimately, any hope of an enforceable right in the UK depends on the ECHR, with article 8 the most likely vehicle for a child's right to social security. Recent case law hints that the courts may be taking small steps towards carving out space in article 8 for such a right, albeit in conjunction with article 3(1) UNCRC (the best interests of the child) rather than article 26. However, it is observed that to date the right to family life has been more effectively deployed in defence of existing entitlements than as a means of asserting a social floor for households with dependent children. The paper considers the scope for a more ambitious interpretation and highlights the need for a more clearly defined right to underpin future empirical research into whether it is fulfilled in practice.

- Hannah Mirjam Adzakpa, 'Policy Contradictions in the Nexus of Demanding Activation and Social Assistance – a Fuzzy-Set Analysis of Lone Mothers in Europe'

This paper examines why EU member states differ in the extent of demanding activation expected from lone mothers in receipt of social assistance. Of the 18 countries studied, some exempt lone mothers with a 2-year-old child from

demanding activation due to their caring responsibilities, whereas others do not. In order to explain this variation, fuzzy-set qualitative comparative analysis is employed, a methodology which allows for causal complexity. The findings show that a weak economic situation is a necessary condition for the presence of demanding activation. Public child-care coverage and maternal employment rates can be either high or low to be sufficient for the presence of demanding activation, revealing two distinct pathways. When explaining the absence of demanding activation in the form of exemptions due to caring responsibilities, low maternal employment or public childcare coverage rates occur in combination with a healthy economy. Taken together, these findings point towards policy contradictions in the nexus of activation, family policies and social assistance. While care regimes and gender roles matter, in the end it seems to be the economy which determines whether or not lone mothers are exempted from demanding activation.

- Dave Cowan, 'I, Daniel Blake: Receptions of Administrative Justice and Legal Consciousness'

In some writing on legal consciousness and administrative justice (eg Sarat and Cowan), there is a focus on the importance of dignity. This chapter explores how issues around legal consciousness and administrative justice play out in the film, I, Daniel Blake. Ken Loach uses various caricatures in the film to explore bureaucratic administration of the welfare state and its effects. The themes will be familiar to scholars of social administration - screen, telephone and system-level bureaucracies; bright line rules; robotic administration. They will also be familiar to scholars of legal consciousness, including the dignity of those affected and the systemic indignities produced; the significance of time - waiting in line, waiting for the decision and the telephone call; the significance of place - the jobcentreplus, the call centre etc.

However, from a legal consciousness perspective, the more interesting sites of exploration relate to the acts of resistance in which Daniel Blake and Katie, the Londonder he "adopts", engage. Oddly, Daniel's use of the techniques of administrative justice are barely played out in the film. Certainly, his use of the administrative tribunal and his finding of a representative (lawyer?) is not well done as so much is left unspoken. However, it is the more everyday acts of resistance which are rather better done and thought through, and which I want to explore. These range from the spectacular - from the message daubed on the wall of the jobcentreplus to the mundane act of retaining his tools after selling off the rest of his furniture; Katie's omission to eat, her act of attending the food bank and eating the can of beans there and then; arguably, Katie's children's acts of bouncing the ball and reading are acts of resistance against a system which has dehumanised them. In other words, I want to use this film as a text to explore the ways in which people act against the law. This is the area which has proved to be so fertile in recent scholarship (eg Hull; Hertogh) and which reading this film as a text can offer some insight.

Socio-Legal Issues in Sport WMB: OCC

Chair – Simon Boyes

- Nuno Ferreira, Neil Partington and Anna Verges, Rights and Welfare Perspectives of Children's Training in Football Academies

Sporting issues are increasingly the subject of legal intervention and parliamentary scrutiny. The need for scrutiny and regulation of commercial pressures is acknowledged, but the effect of commercial pressures on young football players remains largely unaddressed.

On the basis of an empirical assessment of the football industry's self-regulation on youth development matters, an interdisciplinary team of Law and Sports Science researchers has examined the shortfalls of the regulatory framework with regard to young football players.

In this presentation, some preliminary results of this project will be presented, with a focus on the data gathered through around 80 semi-structured interviews across England with young players, parents, football Academies staff, and other stakeholders.

- Claire Sumner, Forced to Dope? The 3rd Gender in Sport

In 2015, the Court of Arbitration for Sport (CAS) took the decision in the Dutee Chand case to suspend the need for intersex athletes to take hormone suppressants. CAS require evidence of a clear advantage to women athletes with higher than normal levels of testosterone before reinstating this requirement to dope. Evidence was published in 2017 and it seems likely that CAS will reinstate the pre-Chand position. This enforced doping is hard to reconcile with anti-doping's ethos of protecting clean competition and celebrating natural talents.

The outcome of the Chand decision for Lynsay Sharp was the loss of, arguably her final, chance at Olympic medal glory at Rio 2016. The gold, silver and bronze medals in the women's 800 m were all won by intersex athletes who were able to compete without taking testosterone suppressants. This seems to be a clear injustice to Sharp and other female competitors but the exclusion of intersex athletes from competition is also unfair and enforced doping unethical.

The IAAF proposes a third gender for competition. A third gender will give obvious benefits to female athletes and legitimise intersex athletes, but the ethical issues will not necessarily be resolved. As with any classification, a third gender will surely require entrants to prove their eligibility. Non-surgical trans athletes, for example, may wish to compete in this category but will presumably need, as now, to take hormone suppressants.

Is there an alternative approach? At Tokyo 2020 some sports will be gender neutral where both sexes compete in mixed teams. Could this model be extended to individual sports, where athletes would compete together but win in their class? Issues of classification seem unavoidable when teams are mixed and classes are identified.

- Marcus Keppel-Palmer and Matthew Hall, The Connoted Message of Sports Photography in National Newspapers

Barthes (1961) identified that press photographs hold a connoted message understood by the cultural knowledge of the reader and dictated by the selection process of editorial choice. Studies support the contention that photographs exert a greater impact on public than text on attitudes (Houston and others 1987), involvement (Newhagen and Reeves 1992), and affect (Dillard and Meijinders, 2002) A number of writers (e.g. Duncan, Messner and Williams (1991) on USA newspapers; Pedersen (2002)on USA newspapers; Packer and others (2014) on UK newspapers) have analysed media stories which have consistently shown that there is an under-representation of stories featuring women in sport. This under-representation can be seen to directly influence pay and remuneration of women in sport.

This paper reports on a longtitudinal study of photographs in selected national newspapers' sports pages to consider the connoted messages conveyed in such photographs relating to gender and also to ethnicity.

The Persistent Reality of Forced Migration 35BSQ: 4.02

Human Rights, Humanitarianism and The Rule of Law

Chair & Discussant – Ben Hudson

- Renuka Balasubramaniam, Refugee Protection in Malaysia and the Rule of Law

Malaysia has engaged in the de facto and temporary protection of asylum seekers for over 40 years. In recent times, an aspect of its protection efforts that has been the subject of criticism has been the human rights violations encountered by refugees. This study first examined Malaysia's socio-legal context and its claimed allegiance to the Rule of Law.If the rule of law did exist, it was found to be of a very thin version and this context excluded the possibility of a number of assumptions upon which international law relied. The deficiencies of the international legal system therefore, required a domestic solution for addressing the human rights violations encountered by refugees. The study then examined, the laws that govern, and the institutions accountable for, humanitarian protection in Malaysia. Employing a rule of law framework, it analysed the extent to which decision-making concerning refugees, by Malaysian authorities is consistent

with the Rule of Law. The methods adopted were a doctrinal analysis of common law and statute, combined with a textual analysis of publicly reported secondary material, and personal observations as a practitioner.

The first intermediate finding made by this study was that the un-formalised protection that Malaysia grants to refugees can be justified; on the one hand, by the prerogative to regulate entry and, on the other, by the individual's freedom of movement. Its next finding was that the prerogative to regulate entry and the individual's freedom of movement have been displaced by statute for the control of immigration. Malaysia's Immigration Act has clarified Parliament's intent as regards the prerogative of defence in the interests of national security. As such, it displaces the Executive's humanitarian endeavours. It concludes that the symptoms of harms to refugees, and administrative dissonance to public officials, are the result of the failure to reconcile the competing forces of Parliament's statutory intent and the Executive's political agenda.

- Olawale Ogunmodimu, Perspectives on Adopting Special Legal Framework for Protecting Somalia's IDPs

The fulcrum of this article is whether failed states need a special legal framework of protection for their IDPs. The answer proffered is in the negative. Needless of making new laws in a situation where existing laws are generally not obeyed. Rather, the emphasis should be placed on strengthening institutional frameworks to support the rule of law, constitutionalism, human rights protection, and a functioning government in accordance with accepted international norms expected of civilized nations. This article identifies two forms of state failures regarding internal displacement: there is failure due to lack of political will to implement policies that will enhance human development generally, and there is failure due to a collapse in the system of governance. It examines if it is within the realms of constitutional equality to give more attention to displaced persons, over their non-displaced counterparts. This paper adopts an empirical approach to create a correlative bearing between the responsibilities of failed states and the constitutional rights of every citizen (displaced and non-displaced). The outcome of the finding is—failed states do not need a special regime of protection for their IDPs, but a general systemic overhaul that empowers existing institutions of human/social development, because it will be counter intuitive to take care of a demographics and neglect others. To solve the problems of IDPs, without fixing the nation itself is a futile exercise.

- Alfredo Soares, The protection of people displaced by development projects under the Kampala Convention: a brief assessment

In parallel with those displaced by armed conflict and environmental desasters (many of which are linked to climate change), the landscape of contemporary forced migration presents another category of internally displaced persons: the "development displaced persons". Despite its local and regional specificities, development-induced displacement and resettlement (DIDR) phenomenon has the scope of a global socio-political problem, since it is increasingly widespread in many countries on different continents, raises unavoidable human rights issues and creates major challenges for the international legal order and the institutions of global governance.

Although little visible to the eyes of much of international community, displacement by development projects is per se an accumulation of human rights violations. As such and for generating all sorts of insecurities for the victims (economic, food, environmental, personal, community, political, cultural and gender), this displacement constitutes a mechanism of violence, aimed mainly at indigenous peoples and minority ethnic communities, to the point of becoming a kind of "ethnic cleansing at disguise".

In this context and determined to address this plight, the African Union adopted on 23rd October 2009 its Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), which highlights the need for a holistic response, based on a combined framework of international human rights law and humanitarian law.

Five years after the entry into force of the said Convention (on 6th December 2012), using the analytical method and the review of literature this paper aims to take stock of the progress made in its implementation and, in particular, to assess its effectiveness in protecting persons displaced by development projects.

- Brid Ni Ghráinne, Safe Zones in International Law

This presentation will outline a new project entitled 'Safe Zones in International Law'. Safe zones, if properly established, allow civilians to remain in a conflict zone and avoid the inherent dangers associated with leaving their state, such as drowning and people smugglers. However, safe zones are often established to contain refugee flows. They can also be notoriously dangerous, as was tragically illustrated by the 1995 example of Srebrenica, Bosnia. In light of President Trump's repeated calls to build safe zones in Syria, as well as the establishment of 'de-escalation zones' in Syria by Turkey, Russia, and Iran, a legal analysis of the creation and maintenance of safe zones is long overdue. First, the presentation will analyse whether safe zones can be established under international law, and if so, under what conditions. It will then set out the applicable provisions of refugee, human rights, and humanitarian law. It will conclude by setting out gaps in the law, and identify questions for future research.

Session Four: Wednesday 28th March 11:00-12.30

Access to Justice in Context 35BSQ: 4.07

Litigants in Person and Legal Aid

- Tatiana Tkacukova, Litigants in Person in the Digital Jungle

In recent years, the post-LASPO wave of empirical research on Litigants in Person in civil proceedings in England and Wales has shown that the system is letting down vulnerable people ('Access Denied? LASPO Four Years on: A Law Society Review' 2017). The planned digitisation of court proceedings, starting from smart forms to introduction of online courts and virtual hearings, offers opportunities to improve some aspects of access to justice for LIPs. The paper focuses on communication challenges currently experienced by litigants in person and evaluates the potential of HMCTS reforms to improve such aspects as form filling, gathering evidential documentation, obtaining initial procedural and legal advice, and engaging with legal proceedings more actively.

By foregrounding the importance of efficient communication as part of legal proceedings, the paper comments on advantages and disadvantages of digitisation from the perspective of access to justice for LIPs. Although there is little clarity on specific details related to online courts or virtual hearings, at this stage it is essential to raise the awareness of legal professionals and policy makers about both the potential and dangers of digitisation. For instance, if the function of recording virtual hearings is enabled, the audio recordings could be shared instantaneously, saving the parties' time and finances and allowing LIPs to make clearer notes and prepare better for the upcoming hearings (at the moment the recordings are sent to approved transcribers and can be very costly). Digitisation would nonetheless create a need for a clear strategy on supporting those lacking sufficient digital skills as well as users with communication related difficulties (non-native speakers, mental health problems, learning disabilities, etc). The paper concludes by drawing upon the experience of digitised proceedings abroad, especially USA, Canada and Australia.

- Grainne McKeever, Litigants in Person in the Civil & Family Courts in Northern Ireland

This paper presents the preliminary findings of a two-year, Nuffield Foundation funded research study on litigants in person in the Northern Ireland court system. The presentation is based on qualitative and quantitative research with personal litigants in the Northern Ireland courts, conducted from September 2016 to September 2017, in the areas of ancillary relief, divorce, family proceedings, family homes & domestic violence, and bankruptcy (both debtor's and creditor's petitions). Researchers conducted over 260 observations of court proceedings, 180 interviews with personal litigants, 50 interviews with lawyers, judges and others working within the court system, and over 120 questionnaires to capture the general health and socio-demographic profiles of personal litigants. This was supplemented by an analysis of the court files of the litigants who were interviewed to understand their paths to justice. The presentation will provide an analysis of the reasons why people self-represent, identifying the range of factors that have determined why they do not have legal representation at the time of their court proceedings, the impact of self-representation on the litigants themselves and on the court system.

- Tobias Eule, The "Quality" of Legal Services: Of Measurements, Fetishes and Taboos

This paper examines the provision of legal advice to migrants in Germany and Switzerland, where legal revisions and structural reforms directly affect the advice community, which sees an increase in state funding opportunities paired with a higher demand for quality standards and "managerial" practices. Based on ethnographic fieldwork that includes participant observation, interviews and documentary analysis, the paper will show how these changes reveal frictions between advice organizations and challenge long-standing agreements and collaborations. Structurally and individually, pre-existing notions of "good advice" are being challenged and threaten to divide the advice community. These include specific casework decisions such as taking on or not assisting asylum appeals with low chances of success. However, while many agents saw a need for discussing issues around the 'quality' of legal services, many were also reluctant to bring up what they saw 'managerial' questions of common standards or certifications for advice givers. The paper will show how 'good advice' was central to most in the community - even though hardly anyone wanted to discuss what that actually meant.

Administrative Justice 35BSQ: 4.08

Case Studies in Administrative Justice

- Robert Dingwall, Saad Al-Mutairi and Ian Connerton, Understanding "Corruption" in Regulatory Agencies: The Case of Food Inspection in Saudi Arabia

Corruption is a neglected topic in studies of regulatory agencies. The label is applied to a wide range of deviations from behavioural standards derived ultimately from Weber's account of the ideals of Prussian bureaucracy. This paper draws on a study of the work of food inspectors in Saudi Arabia to argue that it is unhelpful to reduce a complex phenomenon to simple allegations of malpractice that can be managed by disciplinary sanctions. Our data show that irregular behaviour by street-level agents may be deeply embedded in the expectations that members of a society have of one another. It is less a matter of personal gain than of maintaining one's recognition as a fellow-citizen. Such behaviour is not easily changed through sanctions directed at individual inspectors. Our study does not exclude the possibility that irregular behaviour can be motivated by personal gain, and properly managed by criminal or similar penalties. However, it does propose that research should be more sensitive to the contexts within which irregular behaviour occurs rather than treating 'corruption' as a uniform and homogenous phenomenon.

- Sarah Craig, Immigration Bail Hearings in the UK, Communication and the Use of the Video Link

This paper considers immigration bail hearings, administrative justice, and the use of new technologies (video link).

In immigration bail hearings at the UK's First Tier Tribunal (Immigration and Asylum Chamber), communication with immigration detainees often takes place via video link. As highlighted in empirical studies by NGOs as well as by academics, this means that the detainee is remote from all other actors in the hearing, including the interpreter. The implications of these arrangements are contested, with some observers pointing out that bail hearings require limited communication because they deal only with the issue of liberty/detention, rather than the complex evidential issues which can arise in other immigration and human rights contexts. On the other hand, the use and practice of immigration detention in the UK has attracted criticism from human rights monitoring bodies. Immigration bail hearings therefore inevitably raise challenges for administrative justice in the UK.

This paper aims to contribute to the debate about digitalisation of administrative justice, and the use of the video link. It draws on empirical research carried out by IBOPS (Immigration Bail Observation Project Scotland), a staff/student initiative at the University of Glasgow Law School. It highlights the communication issues which arise from the use of the video link in immigration bail hearings, and considers whether – and if so how- ground level justice could be achieved in these hearings.

Apologies and the Past WMB: OCC

Apologies and the Past I

- Lauren Dempster, Apology, Acknowledgement and the 'Disappeared' of Northern Ireland

In 1999 the Provisional Irish Republican Army (PIRA) released a statement acknowledging its responsibility for the 'disappearances' of nine people during the conflict or 'Troubles' in and about Northern Ireland. This statement included an apology for the time taken to resolve the issue, and the "prolonged anguish caused to families." The statement issued by the IRA is complicated by the need to legitimise past violence and questions over who the intended audience – or audiences - were. For some of the families of the 'disappeared,' the statement was tainted by the exclusion of some of the 'disappeared' from the IRA's list of victims, and the inclusion of accusations that their relatives were informers. The apology element of this statement was not the focus of media attention, and indeed, calls from families of the 'disappeared' for an apology were – and are - rare. The statement as a whole, however, was extremely significant.

This paper is based on data collected from media archives and through semi-structured interviews. It will use PIRA's 1999 statement as a lens through which to explore a number of issues, including acknowledgement of responsibility for past violence by a Non-State Armed Group, the significance of this apology statement coming at a transitional moment, what value apology can have in response to an act such as a 'disappearance,' and the relationship between apology and acknowledgement.

- Kevin Hearty, Moral Emotions, Dealing with the Past and Recalibrating the Relationship Between Victim and Victimiser

This paper explores how the moral emotions that victims feel towards their victimisers can change throughout transitional justice processes. Using extensive media coverage relating to the death of former Irish Republican Army (IRA) commander turned peacemaker Martin McGuinness, it interrogates how and why a personal investment in acknowledging past hurt and empathising with victims can recalibrate the moral lens that victimisers are viewed through by those impacted by their violence. The paper will explore how a more self-critical approach to dealing with the past by victimisers like McGuinness creates a new moral-emotional relationship where they are reframed by some victims as a peacemaking statesman and fellow-traveller in the peace and reconciliation process.

- Sarah Sargent, Sorry Not Sorry: The Indian Child Welfare Act at 40 and the Plight of Indigenous Children in the US

It is now 40 years since the passage of the US federal law, the Indian Child Welfare Act (ICWA) which was intended to prevent the forced removal of indigenous children from their families and communities. Prior to this Act, up to one third of children were removed and placed deliberately away from family, community and tribe in a misguided effort to assimilate them into mainstream "white" society.

Other countries, such as Canada and Australia, had similar practices, and both of these have issued apologies, and Canada has even had a Truth and Reconciliation Commission.

The US on the other hand has issued no apology and not engaged in any form of truth and reconciliation. As well, a 2013 US Supreme Court decision (Adoptive Parents v Baby Girl) undercut many of the protective provisions of ICWA.

Are apologies effective? Has the situation for indigenous children changed in practice and policy in Canada and Australia following these? How is the situation for indigenous children effected by an intransigent hostility towards an apology, as well as to ICWA itself?

These questions are considered from the lens of the ICWA 40 years on.

Art, Culture and Heritage 8-10BSQ: 1.12

Commerce and Culture

- Mary Tumelty and Rosanne McDonnell, Practical Challenges of Art Disputes from the Perspective of the Lawyer

'Largely self-regulated, the art market is characterized by a complex interplay of legal rules and ethical rules…' (Giroud and Boudry, 2015: 402)

Art, traditionally purchased for aesthetic pleasure, has in the last number of decades, become increasingly financialised (Campbell 2008). The practical legal challenges of art disputes, caused by the 'distinctive autonomy' of art (Kearns, 1998: 175), have long existed. However, the increase of collectors and the growth in art investment have created a more complex set of legal problems (Velthuis 2014).

Legal challenges most frequently present themselves following an art transaction, where often little or no paperwork exists (McAndrew and Campbell 2010). Despite the increased commodification of art, the market lacks the transparency

and regulation of comparable markets (Horowitz 2014). Consequently, issues which may emerge present unique challenges, as the lawyer must grapple with the application of general legal principles to the intricacies of the art market.

Employing a case study approach this paper will provide insights into inter-jurisdictional legal issues, which arose in a title dispute involving a Turner painting. Using practical examples, this paper will explore common legal challenges in art disputes, including issues surrounding authentication, title, and contract. The paper will conclude with an overview on how best to mitigate these risks, frequently inherent in art-related transactions.

- Hui Zhong, China's Art Auction Market and the New Law

Over the past decade, China's art market has developed at an unprecedented rate. In a country that barely had an art market two decades ago, reported auction revenues for 2012 were up 900% from 2003, to $8.9 billion. In 2016, the sales value in China had continued to increase by 7% year-on-year. This increase nevertheless has its global implications: China surpassed the United States and regained its global lead as the world's biggest art and auction market. In fact, due to continued uncertainties in the stock and real estate markets, the art market is actually perceived by many Chinese as one of the safer places to invest.

However, as the market has grown, so has its dark underbelly. China's home-grown auction houses have been plagued by forgeries, default payment problems, illegally traded objects and long-standing suspicions of price manipulation. To clean up the art market, on 28 October, 2016, China's State Cultural Relics Bureau published the amended Provisions on the Administration of Cultural Relic Auction. This paper focuses on the recent changes occurring in China's current art auction market and the highlights brought by the new Auction Law. This paper aims to answer questions as to whether the new law is sufficient to address the problems occurring in the current auction market.

- Janet Ulph, Acquiring Fossils: A Complex Picture?'

The concept of heritage has been expanded by different academic disciplines to the extent that almost anything has the potential to fall within a definition of cultural property. But Nudds has argued fossils should not be regarded as 'cultural', given that fossils are not part of the developed culture of the country in which they happen to have been preserved. Nudds contends that, by incorrectly classifying fossils as 'cultural' objects, they become subject to cultural property laws which restrict their export and dealings with them.

This paper considers the extent to which the principles of international conventions and English criminal law, which can deter the theft and looting of cultural property and their purchase, take account of fossils. It explores the extent to which trafficking in fossils can be viewed in the same light as trafficking in antiquities and concludes with some unexpected results.

Children's Rights WMB: 3.32

- Catherine O'Sullivan, Ignorance of the Law is No Defence? The Age of Consent and Failings in Sex Education

In this paper I will argue that the ignorantia juris non excusat maxim should not be applied to underage persons who engage in non-exploitative sexual activity and who would otherwise be liable for offences under the Criminal Law (Sexual Offences) Act 2006 (age of consent) and the Child Trafficking and Pornography Act 1998 (sexting). First, I will argue that if a young person falls foul of the law on the basis of poor educational provision then (a) his/her prosecution should be stayed or (b)if a prosecution is proceeded with, then s/he should be entitled to raise the defence of reasonable mistake of law. This is because poor sexual education is equivalent to a form of officially induced mistake and is in breach of the State's duty to educate the child and in breach of the child's right to receive adequate sexual education.Second, in the alternative, I will argue that because the relevant legal ignorance is one that is deliberately maintained through the denial

of adequate sex education, then the legitimate target of the law's desire to deter underage sexual activity should be those who placed the young person in that position of ignorance rather than the young person him/herself.

◦ Elizabeth Agnew, 'Sexting' among Young People: Limitations of Criminal Law

This working paper explores two key themes from the Children's Rights stream: Children, Young People and 'Sexting' and Criminalising Children and Young People. This paper will begin by charting the development of 'sexting' as a form of 'harmful' sexual behaviour young people are engaging in. What becomes clear, 'sexting' among young people has provided unique challenges for professionals especially in relation to defining and categorising the behaviour. Moreover, in the absence of a recognised alternative response, young people who 'sext' are breaching criminal laws, specifically the laws governing indecent images of children. With these contentions in mind, the second part of this paper will consider the limitations of utilising existing legal frameworks in an attempt to regulate a highly complex and evolving practice among young people.

In pursuance of this paper's aims, key findings from semi-structured interviews with professionals and focus groups with young people will be explored. Analysis will primarily focus on critically examining the legal challenges which arise when young people participate in 'sexting'. Contributing factors include: the 'normative' nature of sexting among young people; gender and power relations which lie at the heart of the practice; 'sexting' as part of a continuum of behaviour and the blurred concept of consent and coercion among young people. Reflecting on and challenging the restricted focus within criminal law draws attention to the complex nuances 'sexting' among young people presents. In sum, this paper contends that employing legal mechanisms in response to 'sexting' among young people is futile.

Criminal Law and Criminal Justice WMB: 5.68

Chair – Samantha Pegg

◦ Stefanie Lemke, Who Holds Europe's Judges and Public Prosecutors to Account? How the International Community Fails to Effectively Address Judicial Harassment in Criminal Proceedings

◦ Melissa Hamilton, From Risk Assessment to Threat Assessment of Lone-Actor Terrorists

Western countries are in a new age of terrorism. Officials are acutely concerned about the danger of lone-actor violent extremists. They espouse ideologies such as the radical right, ethno-nationalism, religious fundamentalism, left-wing, or idiosyncratic single issues. A recent realization among counterterrorism strategists is that the practice of systematized risk assessment, commonly conducted by forensic analysts for predicting violent offending, is inappropriate for violent extremists, including lone-actors. One reason (among others) is that most criminal acts of violence tend to be emotional and impulsive, while violent extremists engage in targeted acts of violence that are planned to achieve widespread effects. This differentiation is important to assessing future dangerousness but is not recognized in risk assessment tools designed for ordinary criminal violence.

The alternative paradigm for evaluating violent extremists posed herein is threat assessment. This discipline entails three interconnected points of evaluation: (1) threat, (2) vulnerability, and (3) consequences of the violent attack. The salience of the threat assessment trend has sparked a relative explosion in the last few years of theoretical and empirical research into psychological factors, radicalization processes, and goals of attack for violent terrorists. A select number of enterprising researchers have created and offer what they purport are risk assessment tools to aid in the structured professional judgement for terrorist offenders. This paper provides a critical analysis of these assessment tools for future dangerousness, contending that they actually represent a form of threat analysis rather than comport with the more commonly understood risk assessment tools used more generally in criminal justice. Suggestions and cautions about the future of threat assessment for lone-actors are offered at the crossroads regarding interests in the legal, the political, and the empirical.

◦ Zeynab Malakoutikhah, The Impact of International Efforts on Combating Terrorism Financing

Although terrorism is not a new phenomenon, it is not entirely undermined. One of the significant ways to combat terrorism is through blocking the funds. After the 9/11 attacks, the international community has paid more attention to combat financing of terrorism. This paper addresses two main issues: first, the three international aspects of counter-terrorism financing framework and second, Iran's responses, as a recognised state sponsor of terrorism by some countries and international bodies, to this framework. Firstly, I will look at the international instruments, such as the International Convention for the Suppression of Financing Terrorism (1999), the United Nations Security Council (UNSC) Resolutions and the Financial Action Task Force (FATF) Recommendations in order to examine the three aspects of counter-terrorism financing. These aspects include the criminalisation of financing terrorism, the regulation and the sanctions imposed on individuals and entities who support terrorist acts, terrorists and terrorist organisations. The aim of examining these aspects is to assess whether they are compliance with human rights and the rule of law. The second issue is related to Iran, which is accused of supporting terrorist groups, such as Hamas and Hezbollah. Iran believes that these groups are freedom movements seeking their rights of self-determination and self-defence against Israel as an occupying state. This section will examine that to what extent Iran responds to the aspects of counter-terrorism financing framework. In conclusion, this project, by closely examining the three aspects of the counter-terrorism financing framework and Iran's responses to this framework sheds new light on the effectiveness of the international framework in order to combat financing of terrorism.

Equality and Human Rights 35BSQ: 2.26

The Enforcement of Equality and Human Rights Laws

Chair – Tom Lewis

- Amir Paz-Fuchs and Tammy Harel-Ben-Shahar, Separate but Equal Reconsidered: Religious Education and Gender Separation

In November 2016, Britain's High Court ruled that sex segregation in religious schools is not discriminatory per se, and is allowed as long as girls and boys receive education of equal quality. This decision was reversed by the Court of Appeals (CoA) in October 2017.

We assert that the Court was not bound to accept Ofsted's position only if it found that 'separate cannot be equal', critique both courts' position on a number of fronts, and argue that they asked the wrong questions. The High Court was too quick to reject, and the CoA too quick to deem as irrelevant, the similarities between race segregation (deemed inherently unequal) and sex segregation (which is not). The CoA's reluctance to consider the group implications, and to focus solely on the individual boy or girl. The High Court and the majority in the CoA were wrong to dismiss the claim that segregation on the basis of sex constitutes expressive harm to women in general. In the context of religious schools, we suggest that gender segregation conveys a message of inferiority, suggesting that girls' (and women's) presence in the male-dominated public sphere is unwelcome, and that it preserves traditional gender roles thereby curtailing girls' opportunities.

We acknowledge that religious communities may genuinely feel obligated to instil gender segregation in education and elsewhere. We examine whether religious or pedagogical considerations may override the argument against gender segregation, and whether institutional questions (e.g. if the school is private or public or if it is publicly funded) make a difference in this respect, issues not addressed by the courts.

- Seamus Byrne, The Enforcement of Children's Rights: Domestic and International Impediments

The thematic compartmentalisation of human rights into diffuse areas ranging from the rights of refugee's to economic, social and cultural rights has established itself as the institutional and legal bedrock of the contemporary human rights system as currently configured. While such classifications have the benefit of advancing the human rights of individuals who have often been marginalised within both domestic and international legal structures, such rights-bearing taxonomies have neither been fluid nor unproblematic in practice. This is particularly evident with regard to children's rights and the actual ability of children to claim, enjoy and enforce many of their rights.

This paper will address the legal imbalances and structural inequalities which pertain to the ability of children to exercise and enforce many of their rights. This analysis will specifically focus on children's rights to education and the author's empirical investigation into school exclusions in England and the status and nature of children's rights within such processes. Drawing on such analysis, the author will problematize and highlight three core issues which inhibit the enjoyment and enforcement of children's education rights in England. These include;

a) The failure of the international human rights system to adequately espouse a free-standing right to education for children in their own right. Rather, through the legal and textual dilution of existent education rights, children's rights are configured in a manner which renders them secondary and subordinate to parental rights, thereby depriving them of any individual compellable force.

b) The domestic incorporation of children's education rights, replete with legislative and regional variations and imbalances, further nullifies the ability of children to enforce and exercise their rights.

c) The lack of remedial rights for children, a direct correlation of the abovementioned issues solidifies their precarious position regarding the right to education, within both domestic and international human rights law.

◦ David Barrett, The Equality and Human Rights Commission and Sector-Specific Enforcement of Equality and Human Rights Law

Sector-specific enforcers (regulators, such as the Care Quality Commission, inspectorates, such as Health Inspectorate Wales, and ombudsmen, such as the Parliamentary and Health Services Ombudsmen) have an important role to play in ensuring compliance with equality and human rights norms. They have the potential to act as alternatives to courts, providing cheaper, quicker and more informal procedures (O'Brien, 2009). They also have the potential to take more proactive action, tackling equality and human rights abuses before harm has been caused (HIW, 2016). Finally, sector-specific enforcers can also incorporate non-justiciable rights into their work (e.g. CQC, 2014) and reach the private sector (e.g. the Pensions Regulator).

Despite their potential, sector-specific enforcers also have significant limitations. Given the wide variety of sector-specific enforcers there is a danger of inconsistent enforcement by different enforcers with organisations subject to differing standards. Individuals at sector-specific enforcers also generally lack knowledge of equality and human rights requirements resulting in weak enforcement practices. Finally, individuals at sector-specific enforcers tend to have little knowledge of changing jurisprudence and do not usually update their enforcement practices to take account of changes (OPM, 2009).

The Equality and Human Rights Commission (EHRC) has an important role to play in overcoming the limitations of sector-specific enforcement and helping sector-specific enforcers realise their significant potential. The Commission has started to do this through co-ordinating (thus ensuring they take a uniform approach to enforcement) and supporting sector-specific enforcers (building up their knowledge of equality and human rights standards and informing them of changing jurisprudence). Through interviews with individuals at the EHRC and eleven sector-specific enforcers, this paper aims to explore the different approaches the EHRC takes to co-ordinating and supporting enforcers in their equality and human rights enforcement work and the perception of the utility of these approaches by sector-specific enforcers.

Family Law and Policy **WMB: 3.33**

Family Justice – Current Issues

Chair – Rebecca Probert

◦ Zanele Nyoni, Looking to the Future: Family Arbitration in England and Wales

Arbitration has been a key dispute resolution remedy in civil litigation for many years and in some areas, the default remedy. However, family arbitration is only 6 years old having been launched in 2012 by the Institute of Family Law Arbitrators (IFLA). From its introduction, the scheme has covered specific financial and property disputes arising from the breakdown of family relationships, and in July 2016, the Family Law Children Arbitration Scheme was introduced to resolve disputes relating to private law issues about the welfare of children. Arbitration in a family law case provides the parties in dispute with the opportunity to choose their accredited family law arbitrator, providing them with a decision maker who is particularly experienced in this area of law. In addition it offers flexibility, confidentiality and speed at a time when the court system is burdened by a backlog of cases and a lack of resources. The subject is at an early stage of evolution with no legislative framework beyond the Arbitration Act 1996, however, there has been strong judicial support for awards reached under the IFLA rules.

This article explores the factors that make arbitration a stronger or weaker competitor among the panoply of dispute resolution methods, and the extent to which the general framework for arbitration has been modified to adapt it to the specific nature of family disputes.

- Leanne Smith and Emma Hitchings, 'Here be dragons'. Rationalising Responses to the Changing Legal Services Landscape for Private Family Law Disputes.

This paper uses recent research on fee-charging McKenzie Friends in private family cases as a starting point for arguing that debates over the risks, opportunities and regulatory challenges presented by changes to the legal services landscape for family disputes are dominated by traditional conceptions of legal services. It begins by outlining negative representations of fee-charging McKenzie Friends across the legal professions and legal media. It then interrogates the rationality of the concern with McKenzie Friends. It does this firstly by arguing that the scale of the attention paid to fee-charging McKenzie Friends appears to be disproportionate to the threat they pose to either the administration of justice or to the sustainability of traditional legal services. Secondly, it positions fee-charging McKenzie friends as a sideshow to more far-reaching incursions into professional legal advice being made by online divorce providers and mediators. From this perspective it is argued that anxieties about fee-charging McKenzie Friends have served as a distraction from a more purposeful and necessary review of the shifting landscape of legal services in the area of private family law.

- Julie Doughty, Public Interest in Publishing Family Court Judgments

In a derogation from the principle of open justice, family court proceedings in England and Wales are held in private. This leads to allegations about 'secret' family courts making decisions that may result in a child being removed from, or losing contact with, a parent - and a lack of accountability on the part of judges and practitioners. In order to begin to address this problem and for the purpose of public legal education, new practice guidance was issued to judges in January 2014 to make certain types of judgments available on a freely accessible website, BAILII. The categories included (1) judgments of specific types where the guidance assumed a level of public interest and (2) others which did not fall in to those criteria but where the judge concluded that it was in the public interest to publish. The stated intention was to bring about an immediate and significant change in practice as a first step towards more openness in the family justice system. However, progress has been slow, partly because the rationale for transparency is challenged by the perceived risks of a child being identified (despite requirements for anonymisation).

This paper will draw on the findings of an evaluation of the responses to, and effects of, this guidance, which analysed more than 800 published judgments; and obtained views of judges and stakeholders. This revealed wide variations in responses to the guidance, compliance with which is patchy.

The paper will explore two aspects of public interest that emerged from the research. First, whether or not there is a presumption of public interest in publication per se. Although this is the view of some judges and lawyers (and generally the view of the media), for others, the more traditional starting point of privacy and protection remains. Sometimes a balancing exercise between Article 8 and 10 interests is undertaken by the judge, but this is not routine. Second, analysis

of the characteristics of cases where judges exercised their discretion gives insights into their perceptions of public legal education.

Gender, Sexuality and Law WMB: 3.31

Chair – Nora Honkala

- Caroline Derry (The Open University), Class, Conformity and Conservatism? First Women Barristers in Practice

In 1922, the first cohort of ten women were called to the Bar. Their Call was both a landmark achievement and the initial step in a long-term struggle to establish legal careers. In fact, few of the group did stay in, and earn a living from, the profession. By contrasting two of those who did, this paper highlights some of the complex factors at work in determining career success. Sexism, both overt and covert, was pervasive but combined with subtler issues of class and conformity to social and professional norms.

Monica Geikie Cobb was the first woman to hold a brief and argue a case in court. Ethel Bright Ashford had already featured in the press as she made a tour of the Royal Courts of Justice in her new robes immediately after being called. Nonetheless, neither would attract the media's interest beyond the reporting of (sometimes tenuous) 'firsts'. Indeed, details of their legal activities after those first court appearances are relatively sparse. However, there is evidence to suggest that Cobb probably had one of the most successful practices of the 'first women', while Ashford struggled.

This paper will consider the factors which may have contributed to their relative levels of success. In particular, their personal and social backgrounds differed significantly, in ways which intersected with their gender to produce very different professional experiences. Thus these women's entry into the profession was marked and determined by issues which continue to affect women at the Bar today.

- Stella Coyle (Keele University), Religion and Sexual Orientation in Equality Law: Conscience, Class and Citizenship

The conflict between religion and sexual orientation in goods and services provision is dominated by rights-based debates over conscientious objection and reasonable accommodation. These arguments mask an important factor that threatens the sexual citizenship of gay people: class. Class is not a protected characteristic, yet class has a profound impact on how goods and services can be accessed. This is particularly important when one considers the government's decimation of state-funded public services. Gay rights do not cost the taxpayer money, so they are acceptable to a government whose prime concern is to extinguish demands made on the state. However, there is an unequal distribution of gay equality. For example, research has shown that being working class is related to a decreased likelihood of being 'out' and being able to live in a 'safe' community. Public spending cuts have negatively affected gay people, in terms of finding gay-friendly accommodation with local access to specialist support services. Moreover, the starvation of the public sector, coupled with a theonormative discourse that seeks to strengthen the role of faith institutions, has enabled increasing numbers of religious organisations to be granted the status of service providers. This has fuelled a resurgence of what Foucault termed 'pastoral power', with serious implications for economically disadvantaged gay people. This paper argues that, by facilitating the replacement of public provision with religious provision, the state is implicated in perpetuating homophobia, particularly against working class gay people. Religious expansion in service provision threatens to bring about a newly-constructed, class-based closet, which renders working class gay people less than citizens – in other words, they become 'socially dead'. Therefore, the conflict between religion and sexual orientation in equality law must acknowledge the impact of class on the ability to participate in society as a full sexual citizen.

Grenfell Tower and the Law of the High Rise 35BSQ: 4.10

After Grenfell: Wider Implications

- Helen Carr, Edward Kirton-Darling and Dave Cowan, What, and Who, is Housing Law For? Reflections After Grenfell

The starting point for this paper is research carried out by the authors, commissioned by Shelter, Closing the Gaps – Health and Safety at Home . The report analysed current housing law, sought the views of those with a stake in housing law about its fitness for purpose and proposed a new statute, the Housing (Health and Safety in the Home) Act. Our paper provides an opportunity to reflect further on the research, by problematising the notion of housing law itself, by considering the understandings and misunderstandings of the law and the particular agendas revealed by the responses to the survey and by considering responses to the report. The paper suggests that rather than housing law being a social project, its work perpetuates inequalities. In conclusion the paper argues for a notion of law that is transformative, rather than one which regulates the status quo.

- Sue Bright, Post Grenfell Fire Safety in Private Blocks

The horrors of the Grenfell Tower fire have highlighted multiple problematic issues and practices in the context of social housing but this paper shines a spotlight on the impact for private blocks of flats, many of which have also been found to have combustible cladding systems. Focusing on blocks that are owned and managed independently of leaseholders, the paper illustrates the inadequacy of legal and financing tools to address the urgent responses needed to make buildings safe again. In line with other scholarly works on multi-owned housing this study exposes the conflict and power imbalance between key stakeholders.

These issues are explored through themes of 'risk', 'location' and 'tipping points'. Risk explores where the possibility of loss and injury lies if nothing is done: not only in relation to the obvious risk of physical harm in the event of fire, but other consequential risks for the key stakeholders. Drawing on the various legal and financing possibilities the idea of location looks at: locating the sources of responsibility for action and the power to act; locating information and the seat of decision-making; and locating the responsibility for funding action. Finally, taking ideas from Gladwell's work on how trends may tip over into wide-scale popularity - 'The tipping point' – the paper speculates on what conditions may be necessary to tip private blocks from inaction to action.

- Edward Burtonshaw-Gunn, Responses to the Grenfell Tower Fire: The Economic and Political Consequences for Local Authorities

The Grenfell Tower fire on 14th June 2017 shocked the nation, with consequences for everyone beyond those whom it most immediately and significantly affected. The Prime Minister announced a public inquiry the following day, chaired by Sir Martin Moore-Bick, to establish the facts of what happened in order to take necessary action to prevent a similar tragedy. While it is not expected that the inquiry will publish its interim report until Easter, the transcripts of the inquiry's procedural hearings are made available following each meeting.

Drawing upon these transcripts as concurrent data, this paper will; firstly, seek to outline the anticipated legal, policy, and/or regulatory responses to the Grenfell Tower fire. Secondly, and the substance of this paper, it will present and discuss the economic and political consequences of those anticipated responses for local authorities in the context political austerity, where local authorities are required to continue the performance of their duties, under greater financial pressure.

To do so, this paper will draw upon my doctoral research – which is examining the interrelationship between politics and economics with planning law, policy, and practice for house building in Bristol – and the data from a three-month ethnographic placement with Bristol City Council. Using this empirical data, it will seek to analyse the immediate responses by the local authority following the Grenfell Tower fire, and discuss the potential future implications of the anticipated legal, policy, and/or regulatory responses.

IT Law and Cyberspace 35BSQ: 4.02

Human Rights and Privacy Online

Chair – Brian Simpson

- Sara Solmone (University of East London), The Extraterritorial Application of the Human Rights Conventions to Online Acts

This study focuses on the extraterritorial application of the human rights conventions on the Internet. The study aims at answering the following research question: when and under what conditions acts that happen online can be considered to have happened within a Member State's jurisdiction according to the human rights conventions?

This question will be answered through the analysis of the jurisprudence of human rights courts regarding the concept of State jurisdiction, extraterritorial State jurisdiction, online State jurisdiction and the courts' jurisdiction ratione personae and ratione loci.

The research shows that due to the uncertainty as to the meaning of online State jurisdiction, the human rights courts that have been confronted with jurisdictional issues in Internet-related cases have so far left this matter for the States to decide. Overall, the research highlights the need for guidance from the human rights courts on the compliance of some forms of extraterritorial exercise of State jurisdiction with the rights enshrined in the conventions.

- Gurujit Singh (GGSIP University, New Delhi), Hate Speech and Human Right Violation in Cyberspace: Regulatory Challenges and Solutions

Cyber space in particular has created new challenges for society and States. The three deadly combinations of functioning of cyberspace i.e., instant dissemination, cross border accessibility and anonymity of the users have allowed the religious fundamentalist groups as well as anti social elements to creates havoc in cyberspace. The hate speech in particular is one such example. This can be used as mass weapon by the narrow minded fundamentalists and anti social groups to violate human rights of minorities in society and threaten the peaceful existence of secular forces. To maintain peaceful existence of diverse cultural and social fabric, the hate speech has to be properly regulated by the States. This is very pertinent from the world's largest democracy i.e., India's perspective. However, the problem is not only for India, but for every democratic and rule of law abiding State and society throughout the globe. The paper in this background attempts to identify the regulatory challenges the functioning of cyberspace poses and explore the solutions if any available to control the hate speech.

- Simisola Akintoye (De Montfort University), Balancing Privacy and Innovation: Implications of the General Data Protection Regulation for Scientific Research

The incoming EU General Data Protection Regulation 2016/679 (GDPR) is set to replace the current EU Data Directive 95/46/EC in May 2018 and bring significant change to scientific research by imposing new obligations on institutions that process personal data. Arriving at the peak of the EU Digital Single Market, the regulation aims to harmonise data protection and privacy legislation, while boosting research and digital innovation, protecting personal rights to privacy and enhancing public trust.

Flowing from this, the GDPR provides some exemptions for scientific research. Institutions that process personal data for research purposes may avoid restrictions on data processing subject to implementation of appropriate safeguards and keeping up to date with recognised ethical standards for scientific research. Anecdotal evidence suggests a considerable gap between current measures for digital ethics in scientific research and what the actual demands/expectations of the GDPR are. With only a few months to go and stringent sanctions for data breaches that include possible fines of up to €20 million, or 4% of an organisation's global turnover, it is vital that research institutions have in place appropriate ethical standards that fully comply with the GDPR.

In view of the above, the research seeks to examine current ethical measures undertaken by research organisations in readiness for the Regulation and aims to explore how new and enhanced measures imposed by the GDPR should be adhered to as a beacon for good practice and as a model for legal and ethical compliance.

The research has potential policy implications on implementation of organisational measures that comply with the Regulation. Analysis of current ethical standards adopted for scientific research could inform structural reform towards transition to the new regime. The research is also of potential real world significance to current global debates on responsible research and innovation, digital ethics and scientific research.

Intellectual Property 8-10BSQ: LG02

Chair – Jasem Tarawneh

- Bianca Hanuz, Communication to the Public on the Internet, When is a User Liable for Providing Access to a Copyright Infringing Copy of a Work?

The right of communication to the public provided in Article 3(1) of Directive 2001/29/EC has been further harmonised and expanded after the recent CJEU decisions in GS Media (C-160/15) , Filmspeler (C-527/15) and The Pirate Bay (C-610/15) to cover the facilitation of access to copies of works published online without rightholder consent. In these cases, prima facie liability is largely dependent on the existence of an act of communication and the actual or constructive knowledge of the communicator. Furthermore, when the user is communicating 'for profit', this creates a rebuttable presumption of actual knowledge. Doubts have emerged regarding the legal basis for the knowledge test and regarding the impact of these rules on the online marketplace in the aftermath of their application at national level. The practical impact could concern all, for example it is now unclear if search engines can liable for creating hyperlinks to unlawful copyright content hosted on third party websites, or if a blogger can be held liable for providing access to unlawful content.

To provide answers the paper will first explain and examine the legal rules set by the CJEU and then it will assess via a comparative methodology the application of those rules in national courts in Germany, Sweden, the Netherlands and Spain. National courts are sending mixed signals regarding the potential for consistent answers in these matters between Member States.

- Evgenia Kanellopoulou & Nikolaos-Foivos Ntounis, Developing Place Brands: Is There Something to Protect?

The paper asks if the investment and the development of place brands has grown exponentially to attract the interest of intellectual property. It is argued that the ever-growing focus and need for places to develop strong brands, as indicators of qualities and attractors of tourism, investment, and capital in the current neo-liberal setting, mirrors the traditional investment attempted by traders and businesses to gain competitive advantage in their respective markets.

Indeed, marketing strategies are devised and undertaken by trained professionals and relevant departments in cities, regions, and on country level, including the placement of promotional material in publications, targeting footfall and investment. It can be deduced that places remain in competition with each other for such 'customer' attraction, and that such competition is expressed in the development of their respective distinctive branding associations. Further, academic research in place branding and place management has grown substantially, bringing together geography, sociology, and urban studies with more traditional business disciplines and economics, showcasing the real implications of place branding for business-oriented local development.

Taking the above a step further, the proposed paper seeks to delve into the theoretical justifications for the protection of intellectual property, with particular consideration paid to trademark protection (referring to the example of logos registered to cities and national promotional campaigns), and question whether the current legal framework is in position to recognise and thus afford protection to a broader place-related commercial activity. The paper aims to undertake a

theoretical exercise and consider: a. whether a need for protection or recognition of place brands as such exists, b. and if so, if it can 'fit' in any pre-existing regime.

Ultimately the paper seeks to develop a pre-emptive narrative for place brand recognition, detaching intellectual property protection from 'goods related to places', and recognising a scenario where places have gained commercial goodwill themselves.

- Eleanor Wilson, The Ethics of "Victimless" IP Infringement

What is the ethical difference between downloading a pirated film and buying a counterfeited handbag? For the consumer, there may be virtually none; they will likely know it is illegitimate but perceive it as victimless, and hardly a threat to film companies or designer brands. This of itself provokes jurisprudential concerns about the gap between law and conduct. However, the consequences of counterfeit trade can be far more damaging than filesharing: providing finance for weapons trade, trafficking, and sweatshop labour.

There is conflicting evidence regarding the impact of online copyright protected content consumption altogether, but most recently it indicates an appreciable shift away from torrenting and filesharing, towards non-infringing paid or "freemium" streaming services. This can be attributed variously to initiatives in legislation, education, litigation, and mixed messages from content creators themselves. The available evidence will be analysed and, where possible, the actual victims of copyright infringement are identified from an ethical perspective.

On the other hand, there is a lesser level of awareness about the potential harm resulting from counterfeited products. Contemporary efforts to curb counterfeiting internationally will be critiqued, and the extent to which lessons can be learnt from the experience of reducing online copyright infringement explored. The impact of the injection of money in counterfeit markets will also be discussed. There are wider implications for large corporations that cannot be neglected in this analysis. First, the negative public impression of "over-litigiousness" and risking apparent conflation of legal action against counterfeiters with that against imitators or competitors. Second, the darker reality that established companies are also implicated in sweatshop labour. The latter factor taps into wider concepts of ethical consumption as a whole, presenting unique challenges for education around the subject.

This article will explore the parallels, contrasts, and potential lessons for policy and strategy relating to the ethics of "victimless" infringements of soft IP between copyright and trade marks, and, in particular, the facilitative role of the internet.

Law and Emotion 35BSQ: 2.25

- M. Burton, Shame, Anonymity and Judgement in Telephone and Face-to-face Advice

Telephone-only advice is now a major source of legal aid provision in social welfare law. The emotional consequences of this shift away from face-to-face interaction demand in-depth examination. I intend to explore an aspect of this in this paper, drawing on my recent qualitative research comparing telephone and face-to-face advice in social welfare law.

Shame can be an immobilising force in terms of people seeking help with their problems (Rahim and Arthur, 2012; Sandefur, 2007). Thus the anonymity of telephone advice has been identified as one of its advantages, because of the potential for ashamed clients to speak about sensitive or embarrassing matters while remaining unseen (MOJ, 2011; Patel and Smith, 2013b; Ellison and Whyley, 2012b). There are, however, also examples of the contrary viewpoint. For instance, women and female victims of domestic violence express a clear desire for face-to-face legal services over telephone provision (Rights of Women, 2011; National Federation of Women's Institutes, 2011). A review of the current literature in social science research shows the position on this issue to be unclear, or even contradictory (see, for example, Midanik et al, 1999; Holbrook et al, 2003; Shuy, 2003).

This paper will consider anonymity and shame within the context of telephone and face-to-face advice in social welfare law. It will examine whether telephone-only interaction encourages the involvement of the 'shamed' individual or

inhibits sensitive disclosure. It will also consider whether, by promoting the client's continued concealment, it is prolonging their shame. It has been suggested that expressing their shame to others and being accepted and understood by them are part of enabling an individual to recover from and cope with their shame (Van Vliet, 2008). This paper will explore whether non-judgemental face-to-face interaction provides a more effective environment in which clients can experience affirmation and acceptance in a way that assists them in overcoming their shame and hence makes them better able to deal with their legal problems.

- E. Jones, "Rationalise, Rationalise, Rationalise": Exploring How Solicitors Deal with Emotions

This paper will consider the emotional aspects present in practice, including those generated in transactions with clients, colleagues and other professionals. It will draw on data from a range of semi-structured qualitative interviews conducted with solicitors in a variety of civil practice areas in England to explore how emotions manifest themselves in practice and how they are regulated or otherwise dealt with by individual practitioners. It will also consider how both the emotions themselves, and the regulating mechanisms applied, can impact upon solicitors' work and personal lives. The paper will conclude that emotions pervade legal practice and that a much greater focus on developing appropriate emotional competencies is required to ensure that these can be regulated in a healthy and beneficial manner.

- R. Collier, Surviving or Thriving? Wellbeing and Mental Health in the Legal Community - Making the Connections Between Legal Practice and Law Schools

This paper interrogates recent developments around wellbeing and mental health at the interface of the academic discipline of law, legal professional practice and legal education and training, and considers why this has become an issue of growing concern across the legal community in recent years. Drawing on research projects funded by the Leverhulme Trust ('Wellbeing, Law and Society: Politics, Policy and Practice – A Socio-Legal Study') (2017-18) and the charity Anxiety UK (2018), it begins by setting the legal community's 'wellbeing turn' within a wider social, political and economic context. The paper proceeds to overview recent developments and initiatives and the key concerns emerging within the growing international literature on the topic. Conclusions consider, drawing on my work as a member of the Legal Profession Wellbeing Taskforce, what connections may exist across the legal community with regard to the wellbeing of lawyers, law students and legal academics alike; and whether, more specifically, as has been claimed, it is the case that many people working in law are, in the theme of the 2017 Mental Health Awareness Week, 'surviving but not thriving'. Underscoring these wellbeing debates, the paper suggests, are issues that cannot be confined to the field of, say, corporate legal practice but which include the discussions about wellbeing now taking place within many university law schools and across socio-legal studies more generally.

Law, Politics and Ideology 8-10BSQ: LG01

Political Concepts and Legal Forms

- Liviu Damsa, (Backwards) Corporate Law and Governance in post-communist CEE. The Lost Three Decades?

The superiority of 'private corporation' to any form of corporate governance is one of the tenets of 'law and economics' and of the neoliberal ideology inspiring privatisation policies across the world. As the 'successful' wave of privatisation of socialist corporations, which took place in post-communist Central Eastern Europe (CEE) in the early 1990s, is often marshalled to support this superiority, I analyse in this paper this claim built on the wave of privatisation of socialist era corporations. The main argument that I develop, based on an analysis of Romanian and CEE corporate legal rules during socialism and the post-communist transformation is that the neoliberal prescriptions about privatisation were grounded on a number of false assumptions about socialist law and about the functioning of socialist era corporations. The socialist era corporate legal rules, far from antithetical to 'Western' corporate rules, were in fact similar to the latter, as they were copied in large measure from French or German pre-war codes. Yet, the neoliberal policies prescribed a change of

corporate rules, which was unnecessary, while totally ignoring a change of the operational unwritten rules that governed the socialist era corporate transactions. Leaving these operational rules unchanged, and prescribing the formation of huge state corporate 'funds' entrusted with the administration of socialist property and privatisations, these neoliberal policies fostered the huge level of corruption which would plague all of post-communist CEE during the following decades and impede future contributions of post-communist corporations towards the realisation of economic needs necessary for stable and resilient societies. Furthermore, the subsequent decades of adjustment to EU rule did not bring any notable innovation in CEE corporate rules, but a race to the bottom in the region. Far from being a showcase that could support law and economic or neoliberal claims, the post-communist privatisation of socialist corporations rather show how everything could go wrong when broad policy prescriptions are based on the wrong understanding of functioning of law and society. A re-examination of what went wrong during post-communist privatisation of socialist era corporations could lead to a useful theoretical reconceptualisation of corporation, and can assist in conceiving the necessary conditions for the existence of corporations which do not drain societal resources and increase societies' inequalities, but rather enable the functioning of societies which secure fundamental social needs.

- Rachel Pougnet, Learning about the French Approach to Political Citizenship and Identity in Discourses on Integration

In this paper, I critically engage with the French approach to political citizenship and identity. In France, citizenship has been an important issue from the time of the Revolution. Since then, citizenship forms the basis of sovereignty and membership in the state. The state represents a "community of citizens" which rests on mutual agreement of a shared political project. This political project is thought of as universal, open to all individuals. It is grounded in the recognition of the equality of all human beings before the law, through citizenship. As the first article of the Constitution of 1958 writes, for equality to be ensured the state needs to be blind to the ethnic, cultural and/or religious affiliations of its citizens. This model has often been criticised as 'assimilationist' in nature and leaving little room for cultural diversity. In this paper, I show the discrepancies in this model. I argue that official discourses on integration perform a categorization between formal French-citizens around cultural lines. These discourses, in effect, essentialize difference by referring to individual- French citizens according to their ethnic origin and/or cultural affiliations, which runs contra the colour-blind approach to French citizenship and equality. I find that these discourses should be considered as instances of the politics of belonging implemented by states. Indeed, I argue that they give insights into what is required to fully belong to the state and who fully belongs to the state, beyond the holding of formal citizenship. I note that these discourses also run contra the vision of French citizenship and equality as universal.

- Dimitrios Tsarapatsanis, Political Realism and Human Rights

The starting point of the paper is Bernard Williams' contention that 'whether it is a matter of philosophical good sense to treat a certain practice as a violation of human rights, and whether it is politically good sense, cannot ultimately constitute two separate questions'. With regard to what it means to 'make political sense of a practice', Williams famously opposed his 'political realism' to 'political moralism', defending the view that political thinking should not be reduced to 'applied ethics'. The paper sets out a number of ways of unpacking this abstract idea within the specific context of human rights practice. A number of propositions are thus defended. First, there is a distinctive kind of normativity akin to politics, which is not reducible to morality, insofar as political judgment has to accommodate phenomena such as reasonable disagreement both about justice and about the good, the historical situatedness of political practices, uncertainty about the effects of action on a large scale, or the importance of long-term stability of the political forms which enable moral reasoning itself. Human rights practices fall within this distinctive political domain. Second, effective political judgment about human rights requires a specific 'diagnostic' style of reasoning, which can be contrasted with abstract philosophical/moral theorizing ('political moralism'). Diagnosis aims at a reflective understanding of the historical conjuncture in which political judgment about human rights is exercised to solve a particular problem. It brings out the situatedness of political actors and the incompleteness of their attempts to intellectually master a specific conjuncture, as well as the tools, both material and intellectual, which have to be used to that effect. Accordingly, political judgment about human rights is significantly aided by historical/genealogical and sociological analyses of both human rights concepts and institutions.

Lawyers and Legal Professions 35BSQ: 4.01

- Hilary Sommerlad and Ole Hammerslev, Comparing Legal Professions 30 Years After "Lawyers in Society": Methodology and Theoretical Issues

The authors of this paper are currently engaged in developing a comparative study of legal professions 30 years after publication of Lawyers in Society (Abel & Lewis, 1988). This presentation will outline the aims and scope of the project, and reflect on the methodological issues which it raises.

It is commonplace that the term profession is highly contingent and hence conceptually complex. As a product of an epoch of counter-hegemonic engagement and critical scholarship, the original Lawyers in Society exemplifies the historical (as well as social and geographical) contingency of both the profession and its sociology. Written against the backdrop of the Cold War and, in the West, dramatic socio-economic and political upheavals, the books engaged with the deconstructive impact on the profession of such forces as globalisation, the crisis of the nation-state and the 'new legal order' (Loughlin 2000, pp 150-7). For Abel, the result would be that a process of institutional isomorphism would disrupt many of the distinctions between national professions, which would begin to fragment.

The drivers of change have strengthened over the course of the last 3 decades, and the impact on national legal professions have largely vindicated Abel's prediction. Nevertheless it is clear that national differences persist. Moreover, major geo-political developments since the original project (most notably the fall of communism and the hegemony of globalized, neo liberal capitalism) have further eroded the socio-economic and political conditions which produced 'modern' legal professions. Sassen for instance points to the impact of globalization on the institutional architecture of the nation state (see too Urry 1989: 97). Some have focused on technological developments (e.g. Castells, 1995); and others on the dissolution of tradition and hence of sociological categories such as class and gender (Beck; Giddens). Scholarship specifically focused on the profession has variously described professionalism as dead (Kritzer and see Leicht 2015); a disciplinary discourse (Fournier); and as characterised by new logics which are antithetical to those associated with traditional professionalism (e.g. Hanlon; Faulconbridge & Muzio 2008). Larson notes the challenge which these forces have generated to the profession's problem solving role, and to their ordering and stabilizing function (Larson 2000), reducing contemporary legal professionals as 'risk managers' (rather than lawyers) (Oevermann, 2001; Olgiati, 2006: 543). Luhmann has worried that the expansion (and diversification) of the profession is reducing its cohesiveness; and that the law is differentiating and its power base .. shifting as disputes start to be resolved by systems with other codes than the legal.

This scholarship underlines the importance of revisiting the original project, and reframing many of the old questions which dominated the sociology of the profession, such as its relationship with the state. Clearly, however, the dramatic processes of change alluded to above have compounded the pre-existing difficulties of defining the meaning of the profession (Saks). In our presentation we will reflect on these conceptual difficulties, and describe the research strategy which we have adopted in order to address them. We will show how, drawing on Bourdieu's tool of the field means that the empirical studies which we have commissioned of a wide range of jurisdictions enables us to replace preconstructed, taken for granted concepts (not only of profession but also, for example, of globalisation) with evidence of the impact of change, and to show how different fields are emerging and developing as different agents create and develop their logics and practices.

- Andy Boon, Fundamental Questions in Legal Services Regulation

The prevalent theory of legal professions draws heavily on analysis of established frameworks for regulating legal services, and has focused heavily on common law jurisdictions and Anglo-American examples. The ideal type, regulation by independent legal professions using powers delegated expressly or implicitly by the state, dominates the literature and is an aspirational model for countries seeking to establish a democratic constitutional framework under the rule of law. By expanding the range of examples we see, however, that the model is not clearly established; there is a significant minority of jurisdictions where it does not operate. Nor is it uniform; there are variations within states where legal

professionalism presides. Indeed, in jurisdictions that may be seen as its heartland, professional self-regulation may be in decline. Recent work identifies a trend towards regulation that can be described as 'consumerist' in its intent and which potentially diminishes the impact of legal professions on markets for legal services. If such developments prove to be widespread it would suggest that neither processes of professionalization that rely on self-regulation nor the institutions and methods associated with them are an inevitable direction of travel for legal services regulation. This paper will consider world-wide patterns in the development of legal professionalism, professional regulation and professional ethics.

Medical Law, Healthcare and Bioethics 35BSQ: 3.13

Advance decisions

- Thomas Hayes, Advance Decisions to Refuse Treatment – Autonomy and Government

Individual autonomy and the patient empowerment are commonly cited as the most important justifications for the recognition of Advance Decisions to Refuse Medical Treatment (ADRTs). These legally binding instruments, often referred to as 'living wills', allow individuals to refuse anticipated medical treatment in the event that they lack the requisite mental capacity to make the decision at the time, even where such a refusal of treatment may lead to death. As such ADRTs purport to enable individuals to exercise greater control over their future treatment.

However, although ADRTs most obviously and directly affect the individuals who create them, they also have consequences for others. In this paper, I argue that an equally important reason for the development of a system of ADRTs, beyond the extension of individual personal autonomy and patient empowerment, is their capacity to alleviate the considerable ethical burden of deciding when to withdraw life-sustaining medical treatment. In the absence of an ADRT, the inevitably fraught decision as to whether life sustaining treatment should be withdrawn will fall on others as part of the determination of whether a continuation of treatment is in the best interests of the patient. Patients with valid and applicable ADRTs remove the need to enter into a discussion of best interests.

I suggest that the aspect of ADRTs that affects those beyond the author can be viewed as part of what Foucault termed the 'government of others'. This theoretical perspective allows for a consideration of the operation of ADRTs, beyond their doctrinal function, in shaping conduct. In this paper I argue that a number of others are affected and governed by ADRTs, but the focus will be on the othering of and governing of the 'future-self' envisioned by authors of ADRTs.

- Kirsty Moreton, 'A Child's Right to Refuse' – Should the UK Follow the Australian Example and Permit Gillick Competent Children to Make Legally Binding Advance Decisions to Refuse Treatment?

The legal and ethical debate around children's healthcare decision-making,and in particular treatment refusal by or involving children in mid-childhood (ages 8-15 years),perhaps evidences that this can be one of the most challenging areas of healthcare law. The complexity of the triadic nature of the decision-making relationship involved, is combined with evident tensions between protecting children from the often far-reaching implications of the decision to refuse treatment, and the growing call for children to have their voices heard, as evidenced by their Right to Participation enshrined in Article 12 of the UNCRC.

This paper takes as its focus, the practice of advance refusal of treatment by Gillick competent children in the form of an 'Advance Decision/Directive, or Living Will' and compares and contrasts the new approach taken in Victoria, Australia under the Medical Treatment Planning and Decisions Act 2016, with the approach in the UK. Whilst under the Australian model, from March 2018 competent Victorian children will be permitted to make legally binding Advance Directives, the Law Commission in their recent review of the Mental Capacity Act 2005 stated that the opportunity to extend legally binding AD's to those under 18 would not be pursued. This was largely on the basis of the judicial precedent of overriding treatment refusal by children, which is done in the name of their 'best interests' and the pursuit of an imperative to not only preserve life but to protect the opportunity for choice in pursuit of the child's right to an 'open future'(Joel Feinberg.

Using an Ethics of Care framework and drawing on the 2008 case of Hannah Jones, this paper will argue that the UK should follow the Victorian example and permit Gillick competent children to make legally binding advance refusals of treatment.

- Samantha Halliday, Insight and Capacity, a Tale of Loss – Could Advance Perinatal Mental Health Care Planning Provide a Happy Ending?

The last six years have seen a resurgence of the issue of court authorised obstetric intervention, in almost all cases the women were suffering from a mental illness. This paper will analyse the importance attributed to insight, considering the way in which 'insight' has transitioned from a term of art in psychiatry, to increasingly form a component of the assessment of capacity. Having established that the woman lacks capacity to make her own decisions in relation to the management of her pregnancy and delivery, the way in which best interests have been assessed in the latest tranche of cases will be addressed, focussing upon the centrality of the achievement of a successful delivery and the notion that a safe delivery will negate any harm suffered.

It will be argued that more thought is needed regarding how such cases can best be managed in such a way as to facilitate the woman's ability to make decisions and that positive steps should be taken to facilitate anticipatory decision-making, ensuring that her wishes, rather than her welfare, or indeed that of the foetus, are prioritised. To that end it is argued that much greater use needs to be made of advance decisions for obstetric treatment and care (as opposed to the more aspirational birth plan), enabling a woman to set out her wishes at a time where there can be no question of her lacking capacity, where there is no stress, pain or emergency situation detracting from a calm discussion of the available options.

Mental Health and Disability Law 35BSQ: 3.18

Mental Health and Criminal Justice

- Roxana Dehaghani and Chris Bath, Who is the 'vulnerable adult'?: Reflections on the Home Office's Proposed Changes to Code C to the Police and Criminal Evidence Act 1984

In October 2017, the Home Office invited response to their proposed changed to Code C to the Police and Criminal Evidence Act 1984 by way of public consultation. Two of the most radical changes were to the term used to explain adult suspect vulnerability and to the threshold of proof required: for the former, the Home Office have proposed that the terms 'mental vulnerability' and 'mental disorder' be replaced with the term 'vulnerable adult' and for the latter, the Home Office have proposed that 'suspicion or be told in good faith' be replaced with 'reason to believe'. These changes, it is argued, are problematic. Firstly, whilst a move away from a medical test and towards a functional test may be welcomed, the term 'vulnerable adult' is offensive and demeaning and may be rejected by adults. It may also create confusion for practitioners and the courts because of its usage in areas outside of criminal justice. Further, drawing upon legal psychology literature, it will be argued that, when elaborating upon what is meant by a 'vulnerable adult, the Home Office have not fully considered what 'vulnerability' may mean in the context of police custody. The change of threshold may, on a practical level, be more detrimental as it will, in essence, require that police officers prove that the suspect is a 'vulnerable adult'. It will be argued that the Home Office should further consider the proposed changes before proceeding on a path that may lead to adults who require support being left without it.

- Alan Cusack - Invisible Victims: Exploring the Pre-Trial Treatment of Crime Victims with Intellectual Disabilities in Ireland

For too long Irish academic discourse on the treatment of vulnerable crime victims has focused on the formalities of the trial. There has been insufficient acknowledgment of the influence which a victim's pre-trial interactions exert over proceedings. With this in mind, this paper considers the interactions which shape an intellectually-disabled crime victim's initial encounter with the Irish legal process. It will be shown that a politics of neglect, conceived at a legislative level, has permeated the professional attitudes and procedural practices of Ireland's criminal justice agencies. Consequently, in

dealing with crime victims with intellectual disabilities, members of the Ireland's police force fail to consistently follow appropriate interview techniques and Irish prosecutors routinely entertain dismissive competency assumptions. This dismissive pre-trial culture has, in turn, concretised the invisible status of members of this vulnerable victim constituency in Ireland who are disincentivised from reporting crimes owing to an understandable scepticism about what the criminal process will entail.

Methodology and Methods 35BSQ: 2.17

Methodology and Methods

Chair – Petra Mahy (Monash University)

- Carolyn Sutherland (Monash University) and Michelle Welsh (Monash University), Evaluating Regulatory Measures to Promote Gender Equality: An Interdisciplinary Experiment

A number of regulatory measures are used in different jurisdictions to encourage increased female participation in senior management roles and on corporate boards. In Australia, soft measures are used to encourage employers and listed companies to promote gender equality in senior roles. These measures require employers and companies to report publicly on gender equity policies and outcomes. In debates surrounding the development and implementation of these regulatory measures, stakeholders and policymakers have discussed an alternative proposal to require corporations to meet mandatory targets for the percentage of women in senior executive roles and on corporate boards.

This paper explores the findings of an interdisciplinary project conducted by legal scholars and experimental economists that uses a laboratory experiment to investigate the effectiveness of various regulatory measures. We examine the impact of setting mandatory targets for female representation and the effectiveness of various alternative sanctions for non-compliance including 'naming and shaming' and financial penalties.

- Charlotte Coleman (St Mary's University, Twickenham), Women's Networks in the Early Twentieth Century: Methodological Considerations and Investigative Strategies

This paper describes how Social Network Analysis (SNA) can firstly contribute to socio-legal research and secondly how it can be utilised to further our understanding of the first women lawyers and their networks. Legal researchers have employed methodologies that consider the importance of networks and personal and professional relationships among female lawyers. In legal life writing, group biographies 'have proved valuable in allowing scholars to focus on the common characteristics or experiences of a professional group for which individual biographies are not traceable' (Mulcahy & Sugarman, 2015). Actor-network approaches, as methodologies suppose that everything in the social and natural worlds exists in constantly shifting networks of relationships. Studies based on this methodological approach have 'illuminated certain changing contours of regulation and governance in the private rented sector', thus challenging preconceptions about power and law (Cowan & Carr, 2008). Together these approaches illustrate a widening of methodologies employed in legal research. However, while valuable in their own right, they both neglect the importance and interrelation between three key components: actors; their ties and relationships; and the structure of networks. SNA bridges these components and considers them in context, paying close attention to social structure. By focusing on personal ties or professional relationships, which combine to form networks among people, groups of people, organisations and countries, SNA allows researchers to map structure, structural positions in relation to attributes and other areas of interest. This paper argues that structure is fundamental to understanding the networks of the first women lawyers and SNA, therefore, adds a new dimension to socio-legal research. Finally, the implications of the SNA methodology are considered, including how archival research could be conducted to effectively map and identify the networks of the first women lawyers, their attributes and relationships.

Property, People, Power and Place 8-10BSQ: 1.13

- Aurora Plomer, The parallel universes of Intellectual Property and Innovation for Sustainable Development

This paper examines the tension between protection of intellectual property rights and innovation for sustainable development in the UN 2030 Agenda. Public-private partnerships and multinational corporations are anticipated to play a critical role in the realization of the UN 2030 SDGs, prompting the question of how the pursuit of public and private interests may be aligned. This paper examines recent data on the value of intangible property in global value chains and science and technology reports from the EU and UN agencies pointing to the decline in public funding funding of science and technology in developed economies and tensions in the pursuit of science as a public good versus science and innovation as a profit-driven commercial tool. It analyses the risks of exacerbating social and economic inequalities in emerging economies posed by the SDGs model of global export of public-private partnerships in developed economies and suggests that achieving a fair balance between the interests of private investors and the public requires a significant re-alignment of the legal boundaries of IP rights and enhanced levels of transparency on the funding and allocation of intellectual property rights in PPPs to ensure that realization of SDGs is fully aligned with the protection of human rights.

- Paddy Ireland, Financial Property and Democracy

“The test [of a security] is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others.”

Securities and Exchange Commission v W.J. Howey Co (US Supreme Court, 1946)

The growing concentration of financial property ownership amongst the wealthiest in society, together with the (re)concentration of these owners in financial institutions and the liberalization of financial markets, has seen the emergence of a powerful “new aristocracy of finance”—a reconfigured financial elite. This elite is able, mainly through its activities in these markets, to exercise growing power not only over corporations, but over states and societies. The paper argues that the power of this financial elite – partially hidden behind intangible property forms such as shares and bonds, and behind the seemingly impersonal forces of the financial markets — is not always immediately visible but is clearly reflected in the emergence of “investor protection” as one of the main policy goals of both states and international agencies. Against this backdrop, the paper explores the peculiar nature and vulnerability of the intangible financial property that lies at the heart of the wealth and power of the new aristocracy of finance, the policy constraints that these property forms impose, and their impact on democracy.

- Tomaso Ferrando and Aurora Plomer, Orientalize and Plunder: The 2009 Baguazo, 'Us' and 'Them' and the Ideological Construction of Foreign Direct Investments in Land

The past, present and future of Latin America have been defined the creation and exploitation of cheap resources, labour, food and energy, and by their forced integration in the global economy. The production of the 'other' was crucial to this endeavour: local communities and indigenous people the preferred target of this binary reconstruction. If colonisers were moved by the ideology of conversion of the savage and developmentalism by the "white man burden", today the "us-them" dynamic represents the background of foreign direct investments and expansion of the capitalist frontier. With extreme pervasiveness, orientalization has now transcended the traditional West-rest relationship and modified the geopolitics of struggle. Today's "us" and "them" do not belong to two different geographies or distant world, but are often expression of the same territory, products of a common past of invasions and submission. However, 'us' and 'them' have never been so far away as in Bagua, Peru, where the government utilised helicopters and live ammunition to break up a 90 days road block by indigenous and criollos. Through the tragic experience of the Baguazo and the struggle for the Cordillera del Condor, this contribution discusses the ideological construction around investments and how barbarization, orientalization and public violence are conducive to an easier access to natural resources.

Sexual Offences and Offending WMB: 3.30

Chair – Phil Rumney

- Siobhan Weare, The Female Rapist-Male Victim Paradigm? Findings From a Study on Forced-to-Penetrate Cases and Questions Around Law Reform

Forced-to-penetrate cases, where a man is forced-to-penetrate, with his penis and without his consent, a woman's vagina, anus or mouth, have previously received little consideration within academic literature. Under the current law in England and Wales such cases cannot be prosecuted as rape, instead being prosecuted under the offences of 'sexual assault' or 'causing a person to engage in sexual activity without consent'. Both of these offences are less serious 'either way' offences, attracting shorter sentences within the legal framework. This paper will consider if there is a need for law reform within the sexual offences framework in relation to forced-to-penetrate cases, and the potential consequences of such reform. In doing so, the paper will present quantitative and qualitative findings from the first empirical study in the UK on forced-to-penetrate cases. In particular, it will focus upon the strategies used by women in compelling penetration, the emotional harms experienced by men, and men's perceptions of legal and criminal justice responses to such cases.

- Susan Leahy & Margaret Fitzgerald-O'Reilly, Exploring the Irish Legal System's Response to Women Who Sexually Abuse and Exploit Children

Instances of female sex offending are comparatively rare, particularly in a small jurisdiction such as Ireland. However, such offending does occur, and for the most part, the Irish criminal legal system's response to this category of sex offenders has not been discussed or analysed. The main exception to this was the events which led to the Roscommon Child Care Inquiry. In this case, a mother was imprisoned for seven years in January 2009 for the abuse (including sexual abuse) and neglect of her six children. The case raised serious concerns about the child protection services' failure to identify the abuse earlier, as well as the insufficiency of Irish incest laws which only permitted a maximum sentence of seven years where a woman is convicted, whereas a man convicted of the same offence can be sentenced to up to life imprisonment. Despite numerous calls for reform, this law remains unchanged and this case suggests a lack of consideration of appropriate responses to female sex offending in Ireland.

This paper reviews Irish legal cases where women have sexually abused or exploited children or have facilitated such abuse to uncover how the legal system is currently responding to such offending. This analysis will extend to both criminal and child protection cases. The latter is included to determine how the State responds to mothers who participate in or facilitate the sexual abuse of their children. The paper will thus analyse State responses via criminal punishments (i.e. sentencing and sex offender registration), protective measures to ensure that children are removed from abusive environments, as well as whether there are any available treatment programmes for these offenders in Ireland.

- Craig Harper, Acting on Impulse About Sexual Crime

Attitudes towards sexual offenders have been widely studied in forensic psychology and criminology research over the past 25 years. At present, however, studies examining these views are predominantly descriptive in nature. That is, self-report questionnaire measures are typically distributed to different groups (e.g., general public samples, and members of different occupational categories), with the resultant between-groups differences being reported in research papers. While these studies have provided some interesting findings, the results gained from them fail to inform researchers about the psychological mechanisms that underpin views about this offending population. Further, these studies tell us little about the effects of attitudes on real-world behaviour (e.g., policy support, clinical behaviour, or offender reintegration).

This talk will present work on the psychological underpinnings of attitudes towards people who have committed sexual offences, with a particular emphasis on non-conscious information processing. Specifically, data from survey and experimental work will be presented, and the roles of high-profile media campaigns, sexual offender stereotypes, and public emotion will be discussed. The apparent dual-process nature of attitudes towards sexual offenders calls into question some previously-expressed calls within the literature that presenting fact-based information about sexual offenders may lead to improvements in societal attitudes. Instead, it may be that more indirect and emotional methods may be required to achieve such aims. Opportunities for promoting societal attitude change will be set out.

Social Rights, Citizenship and the Welfare State 35BSQ: 2.06

- Paulien de Winter, Regulatory Enforcement of Social Security in the Netherlands: A Comparison

The Dutch social security is mainly conducted by municipalities (social assistance agencies), the Dutch Employee Insurance Agency (UWV) and the Social Insurance Bank (SVB). The state provides the legal framework within these agencies must act. In this paper the implementation of enforcement has been investigated from a bottom-up perspective.

Five case studies (in which the researcher used participating observation, interviews and dossier analysis) were conducted; at three municipal social assistance agencies and at two Employment Insurance Agencies. The implementation of enforcement of several social security obligations differs between the five case studies. Based on the concept enforcement style this paper describes and explains differences in enforcement styles between the five implementing agencies. An enforcement style describes the behavior of employees (street level bureaucrats/civil servants) in daily interaction with clients (beneficiaries) to promote compliance. The style of an employee is based on two dimensions: 'response to (possible) rule violation' (persuasive or punitive) and 'manner in which rules are applied' (strict or flexible).

From the analysis of the data it appears that there are differences in enforcement styles between the three social assistance agencies, between the social assistance agencies and the Employee Insurance Agencies, and even between the two Employee Insurance Agencies (even if they have the same policy and methods). Possible explanations for these differences are team composition, employee characteristics such as attitude and background, guidance from the management, the degree of discretion employees have or role interpretation by employees.

- Jed Meers, Do You Believe in Life After Leave? The European Social Fund and Local Welfare Support

Little escapes Brexit – the focus of this stream included. The potential impact of the ongoing negotiations on social rights is already being explored, with work generally clustering around three issues: anticipated changes to the principles of free movement and the role of the CJEU, the new ambit of or attempts to retain benefits from EU citizenship, and concerns about current EU protections within the European Social Charter and elsewhere no longer providing a 'backstop' to the potential lowering of standards in the UK.

This paper zooms into one comparatively small area - the UK's access to the European Social Fund – to demonstrate how disentangling the European Union from welfare provision in the UK is dauntingly complex. It draws on some initial research with local authorities in England to examine the likely impact of losing access to €3.5bn of European Social Fund money, allocated to 'reduce inactivity among young people and the long-term unemployed.' I address three questions:

1. Is access to ESF money something Local Authorities are worried about, or not?

2. Are programmes funded by this money just a response to some 'bonus cash' or are they fulfilling a more structural role in the welfare system?

3. What will happen if this money disappears and is not replaced?

In answer to these questions, I argue that: (i) access to EU structural funds has become an important part of UK welfare provision and should be replaced if/when we leave the EU, and (ii) the legal framework on access to these funds puts money already allocated to projects in the 2014-20 tranche at threat.

- Charles O'Sullivan, A Very Irish War on Welfare

With the onset of the Financial Crisis, Ireland underwent a largely unprecedented reduction in the social welfare budget as part of its 'bailout' package. A significant part of its successful implementation was the State's emphasis on welfare fraud and the 'undeserving poor,' a language that had thus far primarily been mobilised against migrants and asylum seekers.

This contribution seeks to explore how the more specific targeting of different categories of migrants within the welfare system allowed for a more widespread targeting of Irish citizens in receipt of social welfare payments from 2008 onwards.

Socio-Legal Perspectives on Brexit 8-10BSQ: LG05

- Amal Ali, The Challenges of Brexit: Highlighting Intersectional Invisibilities

The legal regulation of Muslim communities within Europe has been a topic for scholarly debate for some time now and has become even more prominent in the current post Brexit landscape. These discussions are often framed around human rights, multiculturalism and citizenship and the law and focuses on the management of religious and cultural difference in the public sphere. While the EU has been a source of rights for many minorities, it has not been equipped to deal with claims regarding multiple or intersectional discrimination.

This paper critiques the reality that an increasing number of regions, provinces and States across Europe have restricted the manifestations of religious belief. Current restrictions on religious freedom across Europe include work place bans, bans at educational establishment and a general ban which extends to the public sphere. Recently, the CJEU held that these bans do not run counter to their anti-discrimination legislation, especially if it enables the employer to pursue the legitimate policy of ensuring religious and ideological neutrality.

Drawing from intersectional theory, which argues that identity politics often replicate the exclusion of other groups; this paper will use intersectionality to identify shared assumptions and understandings of 'gender' and 'religion' which may continue to reassert traditional perceptions of women and religion. This is especially important in light of the fact that since the UK's decision to leave the European Union, there has been an increase in hate crimes against Muslim minorities. While the EU's anti-discrimination legislation has generally improved the UK's equality infrastructure, both legal systems do little to protect the rights of those in the margins.

- Susan Millns, Brexit, Gender and (the End of) Human Rights

The UK has long been known for its scepticism about the value of European human rights law and this scepticism has spanned both the UK's relationship with the European Convention on Human Rights as well as European Union Law. Equally feminist scholars have expressed mixed views over the years about the value of human rights laws themselves (constructed in an abstract and gender neutral fashion) to ameliorate women's inequalities and to address violations of women's human rights. This chapter explores the implications of Brexit for women's human rights protection in the UK and in Europe. It will investigate the historical development of fundamental rights guarantees in the European Union and the extent to which this has assisted in addressing violations of women's human rights particularly in the British context. The article will explore the relationships and tensions between the various sources of European human rights law (including the EU's Treaties, the Charter of Fundamental Rights, the European Convention on Human Rights and the case law of the European Court of Justice and European Court of Human Rights) and will seek to answer the question 'What has the EU ever done for the human rights of women in Europe and the UK?' The article will furthermore explore the

consequences and future prospects for the UK's withdrawal from EU human rights obligations, particularly given the longstanding desire of the British government to end the UK's association with other forms of European human rights protection, notably the debated UK withdrawal from the European Convention on Human Rights.

Session Five: Wednesday 28th March 14:30-16:00

Access to Justice in Context 35BSQ: 4.07

Access to Justice and Dispute Resolution

- Jane Williams, Chris Gill, Nial Vivian and Naomi Creutzfeldt, Consumer Experiences of ADR and a Ladder of Legal Participation

In the UK consumer ADR schemes have replaced the courts in many sectors as the dominant mechanism by which consumer disputes are resolved (Hodges et al 2012). This process has been gradual but was recently accelerated by the implementation of the EU's Directive on Consumer Alternative Dispute Resolution 2013/11/EU and Regulation on Consumer Online Dispute Resolution 524/2013. Whilst concerns exist that consumer ADR may lead to some lesser form of inferior form of justice, it is generally accepted that the low economic value of many consumer claims makes access to courts unrealistic. Building consumer trust in consumer ADR therefore is an important step if these schemes are to succeed. Recent work by Creutzfeldt (2014 and 2016) suggests that traditional perceptions of procedural justice, whilst helpful, may not be sufficient to explain consumer satisfaction in relation to consumer ADR.

This paper, therefore, aims to explore whether a model of legal participation first proposed by McKeever (2013) in the context of tribunal decisions could provide an effective framework for understanding consumer experiences of consumer ADR and barriers to greater participation. It will draw on a small scale, qualitative study with consumers who have recently used an ADR scheme which was undertaken as part of a larger research project for Citizens Advice in this area (Gill et al, 2017). The 37 telephone interviews sought to gather consumer perspectives on using ADR and provides an insight into consumer experiences. The schemes used by those interviewed include ombudsman, conciliation and adjudication schemes. The data will be analysed in order to identify whether McKeever's ladder of legal participation has potential to assist those tasked with the design and delivery of consumer ADR schemes to improve access to these schemes, increase consumer satisfaction and address concerns over trust and transparency.

- Maria Federica Moscati, Rainbow after the Storm: Using Visual Arts to Enhance Access to Justice for Children

The aim of this presentation is to analyse whether and how visual arts can be adopted to enhance access to justice for children involved in family disputes. It answers the question: can images be a tool helping to overcome or at least reduce barriers to access to justice? It is argued that visual arts help to create a sense of inclusiveness for children involved in dispute resolution. In developing its argument this talk will present Rainbow After the Storm: Mylo and His Dads Go to Mediation, a book for children on families, disputes and mediation.

The debate on whether and how to involve children during family mediation has been covered by the literature. However the involvement of children raised in non-heteronormative relationships has not received enough attention so far. Therefore, Rainbow after the Storm and the paper on which this presentation is based fill the gap.

Engaging with access to justice and children's rights discourses and drawing upon empirical research carried out during the last four years, this presentation will show that using the UN Convention on the Rights of the Child (1989) as inspiration in visual arts will be instrumental to encourage children to talk about their own family, their involvement in family disputes and mediation, and at the same time to overcome barriers to access to justice.

Administrative Justice 35BSQ: 4.08

Administrative Cultures

- Tobias Eule, Rights, Deferred: The Implementation Lag in European Migration Law

Strategic litigation, collective action and institutional change have over time contributed to a wide expansion of rights worldwide, going beyond white, male and relatively wealthy rights holders. However, many studies shown that in practice, rights expansions are often halted or slowed down. This can be caused by inefficient or unequipped bureaucratic structures, or, in some cases, attempts by implementation agents to actively hinder or limit implementation. Based on an analsis of rights extended to immigrants in Europe through the European Court of Human Rights and the European Court of Justice, this paper will show how implementation is halted through administrative procedures that place high hurdles to accessing rights to remain, claim asylum or family reunification. It will show that claimants sometimes have to accede to requests that infringe their or their partners privacy, ranging from unannounced home visits to phallometric testing. Often, however, these methods do not hold in court appeals - rights can thus be realized, but often only after extensive litigation and with substantial delay. The paper will argue that in order to assess and safeguard the realization of rights, close attention to practices that constitute an 'implementation lag' has to be paid.

- Zach Richards, Tacit Knowledge in Responsive Legality

This paper presents responsive legality as the archetypal twenty first century ideal type of administrative justice.

It argues that effective public organisations and the officials that work in them positively demonstrate responsive legality in their orientation towards rule of law compliance and simultaneous demonstration of caring concern for applicant welfare. In responsive legality, officials work to protect applicant welfare through rule of law conformity. They are driven by an unprecedented sense of purposiveness, an orientation towards substantive fairness, and cognitive processes requiring the application of personal experience to verify factual truths.

After presenting a brief overview of the relevant public administration literature that the type draws its evidence from, the paper focuses on one core feature of responsive legality: the role of tacit, experiential based knowledge. In this it draws on Knowledge Management (KM) and political science organisation studies to demonstrate some of the virtues of experiential based knowledge in twenty first century governance.

- Stergios Aidinlis, Custodian Legal Culture – An Account of English Administrative Data Sharing for Research

Empirical studies suggest that public bodies in England are very reluctant to grant access to administrative data, i.e. data collected from the operation of administrative systems for such purposes as social security or tax collection. The present paper problematizes this phenomenon in the context of data-sharing for social research, where legal powers of ‘data custodians’ are exclusively discretionary. In response to a positivist approach to data-sharing ’barriers’, it adopts a constructivist-interpretative perspective that seeks to understand the meaning of custodian behaviour. It examines context-specific influences on custodian discretion by distinguishing between ‘structure’, i.e. the settled, durable and institutional aspects of a legal system, and ‘culture’, i.e. ideas, attitudes and expectations related to the legal system. It argues that the role of legal structures is undisputed in creating discretionary powers and establishing the general contours of their operation, yet limited in steering their actual exercise in more specific directions. To interrogate this assertion, it presents a qualitative case-study involving semi-structured interviews with eight (8) individuals working for three English public bodies: two data custodians and one research-data-sharing collaborating body. Data analysis suggests that ‘cultural’ forces are more salient in steering discretion. Custodians’ perceptions of the formal legal framework, research and data ownership, as well as trust/distrust in research-data sharing collaborators and civil-service attitudes are identified as such forces. Considering the implications of these influences for custodian discretion, it suggests that they allow us to transcend the lawful/unlawful-discretion binary. A conceptualisation of custodian discretion as being exercised along a continuum, with a cautious-negative type at the one end and a confident-positive at the other is offered. Subject to specific caveats related to its small-scale empirical support, the paper argues that these two ‘types’ correlate to substantially different exercises of discretionary powers, creating barriers to or promoting research-data-sharing respectively.

Apologies and the Past WMB: OCC

Apologies and the Past II

- Anne-Marie McAlinden, Apologies and Institutional Child Abuse in Ireland

This paper examines the role of apologies in the aftermath of high profile cases of institutional child abuse in Northern Ireland and the Republic of Ireland. Such cases have been surrounded by a series of public apologies, by the Church and the State, to victims, the 'faithful' and society more broadly in terms of their historical failures to adequately respond to suspicions or allegations of abuse. However, the construction and delivery of a public apology to a range of audiences emerges as an extremely complex gesture which has to balance the acknowledgement of harm with the potential public admission of wrongdoing and attendant legal ramifications. In this vein, apologies are often constructed through the lens of the past, justifying abuses with reference to past norms and the social conventions of the time. The paper draws on original primary research from an ongoing ESRC funded study on 'Apologies' which aims to examine the role and importance of apology in coming to terms with past abuses. This includes data from a large scale public survey, focus groups and interviews with key stakeholders, and the text of some public apologies. It explores a number of themes including the social and political construction of narratives about the past and what makes a 'legitimate' apology in the context of historical institutional child abuse.

- Kieran McEvoy, Apologies, Acknowledgement and the National Imagination: Dealing with the Past in Ireland (The Actors)

This paper explores the intersection between apologies, acknowledgement and national imagination in Ireland. Drawn from an extensive review of the relevant archives and ongoing interviews with senior republicans, loyalists and state actors, this paper traces the relationship between apologies and statements of acknowledgement and how these map onto imagined versions of self, community and nation. The paper argues that only by a close reading of same can one understand the possibilities and limitations of such statements as part of any transitional justice processes designed to deal with harms of the conflict. Issues considered will include the language used; timing, choreography and performance, legitimacy; leadership; reconciliation and follow-through.

- Anna Bryson, Hearing, Seeing, Believing: Public Perceptions of Apologies for Past Harms in Ireland

This paper will explore the public reception of apologies for past harms relating primarily to the conflict. It draws on a CAPI survey of 1000 respondents in Ireland, North and South, and 14 focus groups conducted as part of a wider ESRC-funded project. Regardless the intent of the apologising institution or individual the 'public' have clear views on the effectiveness, sincerity and utility of apologies. Themes to be explored include: language, timing, choreography, performance, reconciliation and follow-through.

Children's Rights WMB: 3.32

- Sanjay Shenoi Padmakumar Dhanwantahri Madom, Access to Justice: Rights of Surrogate Mother and Surrogate Child

Debates over legalizing surrogacy are strengthening around the world. However, the rights of the surrogate mother and surrogate children are not properly discussed. Commercialization of mother's womb is the point of discussion which is exposed to the ethical aspects of medical terms. This is again linked to the right based claims of an individual over personal autonomy. The question debated is whether the law could regulate a person's autonomy over his body parts. Similarly, the contractual obligations in surrogacy and the rights and duties of parties involved are also questioned. Several case studies lead to the question of rights of children born to surrogate mother due to the physical condition and not the contractual obligation. States are yet to make rules regulating the same making issues worse. The reasons for surrogacy reflects two aspects, on one side poverty as the major reason for the availability of surrogate mothers, while on the other hand the lack of child and urge for parenthood of own blood notion. However, the issues are complicated due to (i) the

lack of legal recognition in private international law, (ii) divorce of contracting parents leading to unclaimed child, (iii) surrogate mother does not want the child for herself, (iv) state does not have any facility for preserving such children and finally (v) the status of the child i.e. who are his parents and how should he be known to others. The paper looks into these aspects through case studies in India exploring the need to recognize the status and rights of the child along with surrogate mother as well as the possible duties of the state in regulating the execution of the surrogacy may it commercial or otherwise.

- Shailesh Kumar, Gender and the Epistemic Shifts in the Indian Juvenile Justice System

The conception of juvenile justice has its ontological root in the internationalization of childhood and construction of children as a distinct social class. The euro-centric vision of children as right-possessors that informed the United Nations Convention on the Rights of the Child (CRC), 1989, transformed the epistemology of juvenile justice. India, ratified the CRC in 1992, defined 'child' uniformly, irrespective of sex, unlike in the past, thereby challenging its gendered subjectivity of 'female child'. Such an emergence of new modality of delivering juvenile justice that I see as the epistemic shift did not last long and one gory incident changed its landscape. In the wake of the incident, the Indian government enacted and enforced the Juvenile Justice (Care and Protection of Children) Act, 2015 that contradicts the very objectives of the Act and undermines the sociological ideologies that govern its own as well as the international juvenile justice framework.

This paper will foreground an analysis of the politico-legal action of the Indian state and its poverty of understanding children's rights in a larger societal context, and construction of gendered notion of male child offenders, which appreciated the mob frenzy in the aftermath of the incident. It will explore the role it played in the demonization of the entire male children community under the influence of public sentiment. It will further unpack the potentiality of its repercussion by considering contemporary developments and investigating the translation of one lived public experience into nightmare of male child subjectivity, by diagnosing the present and possible future child governance and juvenile justice frameworks, both in India and internationally.

Criminal Law and Criminal Justice WMB: 5.68

Chair – Simon Boyles

- Kevin Brown, The New Vagrancy Laws of England and Wales: The Neo-Liberal Governance of Homelessness in Public Space

In recent years, many western jurisdictions have adopted an increasingly neo-liberal, consumeristic and coercive approach to the use of public space. This has involved the introduction of new governance techniques to control who accesses public space and the activities that can be carried out within it. This article critically explores, through a governmentality lens, the implementation of new local municipal codes that govern public aspects of homelessness in England and Wales. These codes are introduced via provisions entitled Public Spaces Protection Orders. These orders responsiblise local government encouraging them to intervene in quality of life disputes over public space. An empirical examination finds that an increasing number of local authorities are introducing orders which surpass existing criminal laws in the extent to which they criminalise, marginalise and exclude homeless people. Evidence is presented to show that these reforms are driven by a neo-liberal mentality which prioritizes the sensibilities and intolerances of the consumeristic majority at the expense of the so called 'undeserving poor'. The paper argues that these new codes amount to a return to and even a broadening of the vagrancy regimes of the past.

Equality and Human Rights 35BSQ: 2.26

Gender Equality, Human Rights and the Media

Chair – David Barrett

- Francisca Anene, Gender Equality and Corruption: More than a Numbers Game

Several studies have established a negative correlation between gender equality in positions of power and corruption. Though there is no agreement on possible causative factors, two major theses stand out - women's honest nature (the 'fairer sex' thesis), and liberal democracy which facilitates both gender equality and good governance (the 'fairer system' thesis). This paper seeks to explore which of these factors may be more likely to influence rates of corruption. With the aid of secondary data from various sources including Transparency International Corruption Perceptions Index, Afrobarometer Survey and World Values Survey, the paper tests the validity of the aforementioned theses drawing comparisons between countries perceived to be highly corrupt (including Nigeria) and those perceived as less corrupt. Based on these comparisons, it is suggested that numerical increase of women in power is unlikely to have any significant effect on corruption levels. Hence, policy options for curbing corruption and instituting good governance through gender equality are suggested.

- Richard Poole, Crisis, Legal Gradualism, and International Human Rights Law in Japan: A Case Study of District Court Sexual Harassment Cases 1999-2005

This paper presents an interrogation of women's experience of crisis and social change, and how international human rights law (IHRL) and language and values have contributed to cultural transformation in Japan. Building from the crises of economy and identity in the Lost Decade, this paper argues that IHRL provided an expanded public consciousness and new language of sexual harassment in Japan.

The enactment of IHRL into Japanese law through the Equal Employment Opportunity Law (EEOL) in 1985 made the key contribution to a rising awareness of sexual harassment. It created the social conditions and legal authority in the 1990s for more direct and forceful litigation by women, challenging both sexual harassment, and the philosophy of legal gradualism that sought to moderate social change by invoking the preservation of Japanese values.

This paper contributes to the growing body of feminist legal theory which articulates how women experience and shape the processes of social change in Japan. The EEOL amendment to include sexual harassment protections in law took force in 2009. Content analysis of five especially-translated district court decisions from 1999 to 2005 reveals the use of IHRL language and values by judges after these reforms. Through litigation strategies and linguistic borrowing from IHRL, women in Japan have challenged narratives of gradualism and social cohesion that restrict their access to equality. Crisis, identity, and law combine to offer insight into these challenges, and complement analysis of judicial decisions demonstrating how women can use the IHRL as a driver of social change.

- Karla Perez Portilla, Challenging Media (Mis)Representation: An Exploration of Available Models

Speech that uses demeaning stereotypes, that disparages or maligns disadvantaged groups - (mis)representation, is not frequently considered hate speech. However, not only does speech of this sort form part of the context where discrimination and hate crime occur; it also inflicts a discreet harm in and of itself. This paper explores the harm caused by this sort of speech and suggests the crucial role of individuals and the organised civil society in challenging it and seeking redress.

This is principally a theoretical analysis aimed at articulating the harm caused by media (mis)representation and showing existing and potential ways in which this harm can be contested. The approaches analysed are largely from the UK. However, they are not unique and the issues and blue prints explored are potentially transferable.

The article is divided into two main parts. The first explores the concept of media (mis)representation and outlines its various manifestations in order to name and describe the phenomenon before proceeding to assess its impact. It is argued that (mis)representations are matters of injustice which serve as a means of continuing the dynamics of power and discrimination while inflicting harm in and of themselves.

The second part provides a theoretical analysis of contemporary models aimed at contesting media (mis)representations. This includes a range of examples which: clarify why media (mis)representations are a group-based issue; and, show the crucial roles that groups as targets and as complainants can play.

Family Law and Policy **WMB: 3.33**

Public Law Issues

Chair: Mavis Maclean

- Vanessa Richardson and Alison Brammer, Mothers of Children Removed Under a Care Order: Outcomes and Experiences

The focus of this exploratory research is the experience and outcomes of mothers, whose children are subject to care orders under the Children Act 1989. Drawing on a psycho-social methodology the research examines free association narrative interviews with a small sample of mothers. This study highlights particular challenges for these vulnerable women in managing their relationship with their children before and after their children are taken into care. It examines these mothers' experiences of post-care relationships in a climate where, a greater number of children are placed with family members and contact up to the child reaching majority may have been restricted or terminated. The analysis especially highlights the participants' relationship with their own mother and the impact of this relationship on their relationship with their child. It describes these participants' perceptions of harm that began in childhood and is re-experienced in motherhood and in the changing nature of their involvement in their child's life. It examines these mothers' accounts of their own mothers' difficulties, their circumstances and needs, and situations when their child is placed with family members, adopted and in long-term care and the mother is seeking reunification and another chance at motherhood. The study points to the likely scope and complexity of this problem when children are placed with family members through the court and childcare agencies' increasing use of family placements and special guardianship orders. Through concentrating on these participants' accounts, the study describes a significant child protection failure including on the part of the family court and statutory agencies, to address mothers' experiences of harm as well as their children.

- Sarah Sargent, Special Guardianship and Permanent Guardianship: A Cross Jurisdictional Comparison of Their Effects in the UK and the US

Both the UK and the US have had to grapple with a large population of older children in care, who were neither going to be able to return to their family or likely to be adopted. Many factors affect whether a child is statistically likely to be adopted, including age and ethnicity. This is true in both countries. In some situations, adoption is not appropriate, even if it were available, due to the child's religion, desire not to be adopted, or emotional ties and identity with the family of origin.

Special Guardianship and Permanent Guardianship were developed to provide more permanency arrangements for this population of children. Despite their introduction, and widespread use, the numbers of older children who are in care remains persistently high. In England and Wales, the use of Special Guardianship has taken some unexpected directions, being paired for instance with supervision orders.

While there are many similarities in the US and the UK child care system and laws there are also striking differences. US federal law the Adoption and Safe Families Act (ASFA) requires that efforts be made to return a child to their family of origin unless reasons are found that this not be pursued. Children's cases are subject to frequent and ongoing court reviews to determine progress towards the permanency goal that has been set. There is no analogous requirement in the laws of England and Wales to attempt to return a child to the home, once removed.

This side by side comparison then opens up larger questions on the operation of child welfare systems and in the appropriate goals once the child has been removed from the home, in determining what is best for the child's short and long-term wellbeing.

- Annie de Roo and Rob Jagtenberg, Participation in the Social Care Domain: The Fate of Family Group Conferences In The UK And The Netherlands

During the past decade, both the UK and the Netherlands embraced notions of 'participatory governance' in many areas, including in the domain of child and family care. The concept of family group conferences (FGCs) that originated in New Zealand was heralded as a promising tool to give substance to social network participation and responsibility.

It is noteworthy to see that the fundamentals of FGCs have been compromised in both the UK and the Netherlands, but in different ways. In the UK the FGC appears to have become squeezed between countervailing pressures within judicial case management. In the Netherlands, FGCs have been turned into a statutory right, but at the same time a duty has been entrenched in the new Youth Act for young persons and their families to demonstrate they are not capable of mobilizing support from within their own network, as otherwise they will not qualify for state-funded care and support.

In this contribution we will elaborate on this legal paradox, and our first findings from a longitudinal empirical inquiry into the existence and nature of networks relevant to the family care domain, and to barriers encountered to engage such networks.

The diametrically opposed motives that underlie the participatory governance aspirations, (notably the idealistic motive of empowerment as well as the more cynical motive of austerity) will be addressed.

Research project: Hybrid local governance in multiple social domains (2015-2019)funded by the Netherlands Organisation for Scientific Research and the Rotterdam Municipality.

Gender, Sexuality and Law WMB: 3.31

Chair – Flora Renz

- Stephanie Pletz (University of Sheffield), Germany's New Third Gender Option - Legal Dogmatism Not Incompatible With Progressive Liberalism

"Gender identity […] is regularly a constituent element of an individual's personality. The assignment of gender is of paramount importance for individual identity; denying individuals the recognition of their gender identity in itself threatens their self-determined development."
Bundesverfassungsgericht, Press Release No.95/2017

On the Intersex Day of Remembrance (November 8th 2017) the German Federal Constitutional Court ordered the German government to enact new provisions that "must allow a third gender option" in effect abolishing gender dichotomy under German law. As a result, the German legislator is now faced with two options: either to "create the possibility to choose another positive gender designation that is not male or female" or to "generally dispense with information on gender in civil status." Germany could thus become the first European country to legislate for a third gender option redefining the parameters on how the law views and categorises gender. The paper argues that while the decision is long overdue, the Court's rigorous and progressive liberal reasoning is set to inspire a legal revolution, denoting an epochal turning point that is not incompatible with traditional German legal dogmatism but instead its logical consequence.

Specifically the paper explores and assesses the Court's considerations against the perspective that intersex people are an equal biological reality. It debates the questions that remain unanswered, such as choosing an appropriate and inclusive terminology describing the new third gender option as well as whether the new option will represent a strict category, available only to intersex people, reflecting a narrow interpretation which is likely to undermine its telos. Most significantly, the paper argues that creating a new third gender option could stipulate a gender trichotomy, perpetuating the inaccurate initial concept of gender dichotomy and merely extending it by a numerical value.

- Grietje Baars (City, University of London), Queer Cases Unmake Gendered Law, or, Fucking Law's Gendering Function

Law's role in upholding and continually reproducing the heteropatriarchy is increasingly being challenged. This is happening directly, by those wishing to undo law's compulsory binary gender performance through asking to be

recognised as non-gendered (the case of Norrie in Australia, and K in the Netherlands), and by those seeking to 'queer' law's gender binary through cases that assert the recognition of, what are called in the popular media, 'pregnant transfathers' – for example the case of the anonymous Berliner currently pending at the German Constitutional Court. Most recently, this court decided that an intersex claimant's constitutional right to positive gender recognition is violated with an obligatory M/F registration and the German legislature must either create a third gender option or abolish gender registration altogether. As similar case is pending in Austria. In The Netherlands, proposals have been tabled to scrap gender registration or at least minimise the obligation to declare a gender in official documents. In Australia, New Zealand and India amongst other places it is now possible for some to have a passport with gender "x", while in the UK the gender-neutral Mx title is recognised by public and private bodies. Indirectly 'fucking' law's gendering function are the so-called 'gender deception' cases of which three have recently gathered an increasing level of media coverage in the UK (McNally, Newland, Lee). The latter sees the judicial system reasserting its hegemony as heteronorm-maker, while the popular press amplifies the vehemence of the lesbo- and transphobia in these judgments. At the same time, recognition of a third or 'inter' gender leaves untouched most intersex people's main concern, which is intersex genital mutilation, binary-conforming surgery routinely practiced on infants in most European countries, and which the UN Human Rights system has described as 'torture'. The latter has led French intersex activists to commence the criminal prosecution of surgeons. This paper evaluates the effects of these queer cases, queer strategic litigation and legal reform efforts, and asks what the queer struggle with the heteronormative can tell us about law's social function, material effects and emancipatory or liberatory potential more broadly. Can we queer the legal binary or is now the time to say 'fuck law'?

- Rob Clucas (University of Hull), Trans People, The Church Of England, and Differential Institutional Treatment: Microaggressions and Disadvantage

Most people will be aware of the differential treatment afforded to lesbian, gay and bisexual (LGB) people by the Church of England. The position of trans people is not so obvious. In this paper, I aim to make this clearer, not only with respect to obvious instances of discrimination – which are legal and institutional – and its effects, but also with respect to the microaggressive messages hidden within these discriminatory practices, that make the Church a difficult and unsafe place for many trans people. By 'trans people', I mean people whose gender identity is different in some way to the sex they were assigned, and gender they were assumed to be, at birth. On this definition, trans people may be binary-identified, nonbinary, or non-gendered. Here, I clarify some of the difficulties of being trans in a specific religious environment that privileges cis gender, and explain the ways in which the Church of England as an institution contributes to and perpetuates this damage and harm. First, I outline briefly the principal ways in which trans people are disadvantaged by the institutional Church and its legal environment. Next, I examine the implications of this disadvantage. I then describe the concept of microaggressions developed by Derald Wing Sue and his colleagues, and then reconsider the Church environment with this in mind. Finally, I conclude with a plea that this discriminatory environment is taken seriously and its cost considered.

Grenfell Tower and the Law of the High Rise **35BSQ: 4.10**

Grenfell & Human Rights: the EHRC's Investigation –

- The Equality and Human Rights Commission, Housing and Human Rights After Grenfell

A session with the Equality and Human Rights Commission to discuss their investigation into Grenfell Tower.

IT Law and Cyberspace **35BSQ: 4.02**

Law, Commerce and the Internet of Things

Chair – Mark O'Brien

- Lisa Collingwood (Kingston University), How Desirable are Connected Toys?

Toys of a new kind are appearing on the shelves of toys shops. These 'Connected Toys' might include, inter alia, watches, robots, talking dolls or teddy bears, but all share the facility to be connected to the internet and some are able to adapt to the actions of the user, to be 'smart', in other words . Such toys have reputedly been 'designed to connect to the Internet and therefore remote servers that collect data and power the toy's intelligence'. Connected Toys also appear to have the facility to share this recorded data.

A range of risks attach to these toys. These include: -

- Data security (biographical data)
- Device security (toy can be hijacked to behave badly or erratically)
- Device security (geolocational tracking of children)
- Children's privacy (secrets recorded, incremental effect of data collection and sharing over a lifetime)

By way of example, an interconnected talking doll, My Friend Cayla, was recently hacked with the consequence that it started saying filthy words to its playmates . The Cayla doll was actually banned as soon as it even hit the shelves in Germany because the Regulator regarded the toy as dangerously insecure, viewing it as akin to a spying device.

In the UK, to date, there has been little governmental or regulatory discussion regarding these toys. This presentation will evaluate why this is misplaced, focussing on the role of the law in relation to the privacy of our data generally and, since this technology infringes one of the most intimate aspects of a child's life, the means by which the law has, to date, protected a child's right to privacy.

◦ Alexander Kosenkov (Tallinn University of Technology), Legal Challenges of Industry 4.0

In my paper I plan to highlight the main challenges of industry 4.0 to modern law and reasons why socio-legal research is potentially the most relevant to solve industry 4.0 related issues.

Industry 4.0 is the new generation of manufacturing and service delivery which includes application of the cutting-edge technologies (robotics, cyber-physical systems (CPS), big data, Internet of Things (IoT), cognitive computing (including artificial intelligence (AI)) etc.) throughout the whole product supply chain. Currently industry 4.0 is on the stage of emergence. Its complexity and multifaceted nature hamper implementation of industry 4.0. Nevertheless after the beginning of its wide adoption it will have hyperexponential social impact.

Industry 4.0 is related with three main types of legal issues:

- industry 4.0 demands special legal framework for its implementation. Currently legal norms do not sufficiently describe industry 4.0 related processes (e.g. application of cognitive computing solutions and big data). Legal uncertainty is one of the reasons slowing down the development of industry 4.0.

- industry 4.0 will globally transform adjacent social relations. For example, scale and volume of manufacturing will demand new taxation regulations, transborder production will demand new approaches in international law, new regulation of big data will be needed in intellectual property law and security of industry 4.0 should be settled throughout different areas of law.

- potentially industry 4.0 can fully transform social order globally. That also means that in future legal regulation will become different from the one we have nowadays.

The main peculiarity of industry 4.0 regulation is that it should be proactive, rather than reactive in order to cope with highly complicated and rapidly emerging social relations. This makes socio-legal approach highly important in order to grasp ongoing social transformations, regulate and shape them through legal mechanisms.

◦ Talib Al Kharousi (Dublin Institute of Technology), The Case of the Sultanate of Oman: A Legislative Framework for Consumer Data Protection in Electronic Commerce

While electronic commerce has many advantages, there is evidence to suggest that data protection concerns are an inhibitor to its adoption in the Sultanate of Oman.

The most challenging factor for completion of a transaction between businesses and consumers is a company's ability to access the personal data of consumers.

This study will be conducted to understand and evaluate the existing constraints in the legal framework in the Sultanate of Oman that obstruct the improvement of consumer information security in electronic commerce. I will also provide appropriate suggestions and recommendations to enhance the regulatory system in the Sultanate of Oman.

The researcher will investigate those elements of the current regulatory system which gives certainty to shoppers regarding securing their information in electronic commerce exchanges.

This research will also try to pinpoint the current regulatory structures that hinder the advancement of electronic commerce from the point of view of electronic transaction organizations.

Finally, I will analyse how the current regulatory structures concerning purchasers' information assurances can be enhanced to upgrade consumer confidence in electronic commerce transactions.

The most challenging factor for completion of a transaction between businesses and consumers is a company's ability to access the personal data of consumers. As part of this research, the researcher will discuss personal data concerns as an inhibitor to the development of electronic commerce in the Sultanate of Oman.

Whilst personal data needs protection, there needs to be a balance between the importance of personal data protection and the developmentof electronic commerce.

The interpretative grounded hypothesis approach facilitates the researcher to develop a deep understanding of the view of electronic commerce and data privacy held by the principle partners: government, organizations and buyers.

Interrogating the Corporation WMB: 3.30

- Carrie Bradshaw, Corporate Conscience and Real Entity Theory

Contractarianism constructs hypothetical bargains between (some) corporate stakeholders which insulate both company decision making, and the legitimate goals of company law, from non-profitable 'CSR' concerns such as fair labour treatment, respect for human rights, and environmental protection. This 'CSR irrelevance' is grounded in the nexus of contracts' methodological individualism and economic rationalism, where corporate actors are assumed to be 'homo economicus', leaving no room whatsoever for 'corporate conscience', or any normative commitment to non-profits goals or decision-making.

Nonetheless, glimpses of corporate conscience can be seen through two (related) areas of empirical research, briefly outlined in this paper. First, compliance literature, which consistently throws up normative, 'conscience-driven' commitments to CSR-goals at the individual and corporate level. Second, behavioural experiments, which show, beyond reasonable dispute, that the vast majority of individuals are at least to some degree 'prosocial', and can be counted on in the right circumstances to make modest personal sacrifices to avoid harm to something beyond one's own material interests. These glimpses of conscience are however constrained in the corporate context by limits on conscience which arise from group decision making and structural traps subsisting within company law.

This paper outlines an account of the corporation which bridges the divide in corporate theory between 'aggregate' and 'entity' conceptualisations of the corporation, but which is also more deductive than contractarianism in accommodating the empirical realities of normative commitments to non-profit goals and evidence of widespread altruistic behaviour. By reinvigorating Otto von Gierke's 'real entity' approach, this paper seeks to navigate the individual and group levels of analysis necessary to account for the behavioural realities of corporations comprised of real individuals as corporate decision-makers, and in turn set out theoretical space for CSR concerns within company law and corporate decision-making so trenchantly denied by contractarian approaches.

- Ope Adegbulu, Mind the Gap: Bridging the Gap Between Justifications For Corporate Governance And Public Interest

In this era of public distrust of governance structures and organisations including (transnational) corporations, it is imperative that we engage in discussions about the socio-legal issues tied to impact of these entities. It is often argued that good corporate governance like other areas of governance, is at the heart of the debate about serving contemporary societal needs. In this paper, it is considered that centring public interest in such discussions is imperative. It is added that this is crux of the argument about understanding the societal role of corporations. Public interest unveils the way in which diverging theories of the firm share one surprising similarity; implicit or explicit justification(s) for corporate governance and corporate law in a manner which serves society. The aim of this paper therefore is to highlight how public interest and the various theories which underpin it, provide ways of ensuring that corporate governance serves societal needs. Accordingly, western and non-western theories on public interest, feminist and other critical perspectives will be used to deconstruct the notion, public interest, to examine and analyse how it is articulated and how it could serve as a useful tool to ensure that corporate governance evolves with societal interests. It is submitted although public interest is not infallible, it is useful nonetheless because it could bridge the gap between different theories of the firm and the nature of the corporation and by doing so better serve societal needs, making corporations more fit for purpose (of serving society).

- Ciara Hackett, Reflections on Morality: Corporate Obligations under the UN Guiding Principles on Business and Human Rights

The Multi National Corporation (MNC) has mutated from its original inception as an economic business entity to its powerful position today, one that transcends economic boundaries encompassing both social and political landscapes. There has been a proliferation of the corporation's duties from the formal need to create a profit for its shareholders to the practical recognition of its broader role in the geo-political landscape. Academia and practice have centred conversations on the need to contextualise, shape and advance those corporate obligations that touch upon human rights. The latest, and most lauded, of these attempts within international law has been the United Nations Guiding Principles on Business and Human Rights (UNGPs). These advocate a three-pillared approach: (1) the state duty to protect; (2) the corporate duty to respect; and (3) the right to a remedy where a human rights violation has occurred.

This paper builds on these discussions and proposes a thought experiment, one that deconstructs the second pillar of the United Nations Guiding Principles on Business and Human Rights (UNGPs) using the work of Ladd, Donaldson and Kant. The language of the Guiding Principles indicates that corporations should respect human rights. This contrasts with the typical construct of corporate legal obligations by imposing a landscape of morality on a corporate form legally constructed to have a much narrower personality than that of a natural person. This paper takes a Kantian approach to understand corporations, applying his work on morality and shaping this with discussions around the categorical and hypothetical imperative. This offers an original explanation of the second pillar of the principles and argues that despite being much lauded, the UNGPs, and this second pillar in particular – rather than quantifying corporate duties as they relate to human rights – simply reinforce the language and expectations of Corporate Social Responsibility. In short, it represents lip service to human rights that is not met by reality.

Law and Emotion 35BSQ: 2.25

- K. Lloyd Bright, Law and Emotion Writ Large: Prisoners, Ex-prisoners and Law Students

This paper explores the legal and emotional dynamics of two pilot projects between the Open University Law School and the St Giles Trust, a charity working with and for prisoners and ex-prisoners.

In the course of these pilot projects, our law students sought instructions, conducted legal research and provided generic legal advice on a number of issues, including housing the homeless and access to IT in prison. The remit of each project was clearly framed and the legal skills and professionalism of our students were both tested and developed. The agenda

of the prisoners and ex-prisoners was, however, largely unanticipated, as were the emotional responses of all concerned. The resulting experiences were challenging, surprising and ultimately enriching for our law students.

◦ L. Walker, The Role of Empathy in the Sentencing of Women in England and Wales

This paper argues that empathy needs to play a central role in the sentencing of women in England and Wales. It is well-known among practitioners and academics that the imprisonment of mothers (and grandmothers) has 'wreaked havoc on family stability and children's wellbeing' (Convery and Moore, 2011). Sentencers need to see procedural justice in its broader social context and particularly for women, in relation to the disadvantages that they experience in society that make them unequal to men before they encounter the law (Heidensohn, 1986). The incorporation of empathy into sentencing decisions does not mean that sentences should feel sympathy for female offenders. Rather, sentencers should see matters from the female offender's perspective and avoid custodial options whenever possible (Coplan, 2011). Sentencers cannot properly decide cases without acquiring some insight into the contextual realities of a female offender's situation and identifying with her unmet psychological needs.

There are higher rates of personality disorder, learning difficulties, substance misuse and self-harm among female compared with male prisoners (Madden, Swinton and Gunn, 1994). Many female prisoners experience comorbidities, which put them at a greater risk of self-harm and suicide (Marzano et al, 2012). Sentencers should empathise with female offenders and their families and consider the impact of a custodial sentence. Most convicted women in prison are serving short sentences for non-violent, low level offences (e.g. fraud, theft and council tax default). Reducing the use of short custodial sentences allows sufficient time for effective rehabilitative work within the community and for women to remain in custody of their children. This is not showing sympathy towards female offenders. Community sentences can result in hard work or curfew, while holding down a job and completing a demanding rehabilitative programme (Corston, 2007). Empathy in sentencing involves taking into consideration women's criminogenic needs and sentencing them to the appropriate level of punishment.

◦ V. Munro, From Hoping to Help: Identifying and Responding to Suicidality Amongst Victims of Domestic Abuse in England and Wales' By Vanessa Munro & Ruth Aitken

In this paper, we draw on findings from a study recently conducted with REFUGE, national domestic violence charity, into the prevalence of, and mediators and moderators of risk in relation to, suicidality amongst victims of domestic abuse. Through analysis of Refuge client case files, we were able to track the scale of (disclosed) experiences of suicidal ideation or suicide attempt amongst (mostly female) victims of domestic abuse, and identify some factors in relation to clients and their experiences of abuse that appear to increase or decrease their likelihood of suicidality. We triangulated this analysis with a series of semi-structured interviews with expert REFUGE staff to explore on-the-ground challenges in relation to the identification of, and support provision for, this vulnerable group, which also included reflection on the difficulties experienced by staff as a consequence of the emotionally demanding nature of their interactions with clients.

To the extent that suicidality is best understood not as an issue of mental ill-health so much as a 'normal' reaction to the psychological injury often inflicted on women who experience domestic violence and abuse, we believe that our findings speak to this stream's theme of 'law and emotion', and raise pressing issues for the legal system in respect of its response to perpetrators of abuse in situations where victims take their own lives, as well as for social support and health services in terms of their interactions with suicidal domestically abused clients. In partnership with Refuge, we highlight the importance of recognising and responding to the psychological impact that this demanding work can have on frontline staff, and the benefits - for clients and staff alike - of developing a more trauma informed approach thereto.

Law and Literature 35BSQ: 2.06

Chair – Julia J.A. Shaw

- Max Brookman-Byrne, 'Direct Hit[s]' and 'Small Group[s] of Terrorists': An Analysis of The Ministry of Defence's Narration of UK Airstrikes In Iraq And Syria

The use of airstrikes against non-state armed groups, such as al-Qaida or ISIL, is heavily imbricated within narratives concerning their lawfulness, morality and lethality. In the public political sphere, claims regarding these attributes are overt: for instance, the use of armed drones is cast as both 'the only game in town' when targeting al-Qaida leaders (Panetta, 2009: 38) and 'the death penalty without trial' (Reprieve, 2015). Statements from groups with diametrically opposing views create competing narratives that hyperbolically celebrate or deplore these military engagements. Against this backdrop the Ministry of Defence (MOD) has, since 2014, been engaged in the production of its own narrative around airstrikes conducted in Iraq and Syria, through monthly strike reports, and it is these that are the focus of this paper.

The MOD's reports are less-overtly public than the statements of NGOs or politicians—being predominantly confined to an obscure part of the MOD's website—but they nonetheless feed into the overall discourse around modern techniques of targeted warfare. By presenting each strike as one in a series of events, the reports are an institutional storytelling of the UK's aerial campaign against ISIL, producing a narrative 'configuration from a succession' of events (Ricœur, 1990: 278).

The proposed paper arises out of the early stages of an on-going project interrogating this storytelling, utilising narratology as well as elements of grounded theory and discourse analysis. The paper will present initial findings of the project, detailing the themes that emerge from the MOD's narrative, the implicit claims to lawfulness and moral nobility within it, as well as detailing expectations for the future direction of the project. Constructive comments and suggestions are actively sought to support the continued development of this nascent project.

- Gillian Black, "Rational Happiness or Worldly Prosperity"? Jane Austen and the changing role of marriage in 19th Century society

In this paper, I explore the changing understanding of the purpose of marriage in the late 18th/early 19th centuries, driven by the Enlightenment ideals of personalism, individualism, and rationalism – and the interpretation of these changes in Pride and Prejudice (1813). As marriage evolved from being seen as an end in itself, usually for economic benefit or stability, to a relationship based on love and personal happiness, Jane Austen's characterisation of the different marriages contracted in Pride and Prejudice reflects this contemporary shift, and the (necessary) shades of grey between the two extremes. By contrasting the relationships of Lizzie Bennett, Charlotte Lucas, and Lydia Bennett (and their respective spouses), we can see how the "old" and "new" ideals play out in theory and in practice.

Curiously, this social understanding was reflected in the literature but not in any significant legal reform of the time. What does this tell us about society's legal regulation of marriage then and now, and the limits of such regulation? And, critically, what is the significance of a shifting understanding of marriage for divorce laws - which are, once again, under the reform spotlight? By examining our understanding of the purpose of marriage, and contrasting the approaches played out by the literary characters of the time, we can gain a greater insight into current divorce law, thereby informing law reform debates. Pride and Prejudice allows us to explore law's role in regulating social relationships, and the tension between ideals and realities in adult relationships.

- Chloe Wallace, There and Back Again: A Parliament's Tale. Storytelling in Miller and Middle-Earth

In this paper, I will explore the Miller litigation (the 'Brexit case' brought by, amongst others, Gina Miller, and ultimately decided by the Supreme Court in January 2017) using approaches taken from the literature of applied legal storytelling, and drawing from the insights into epic storytelling found in J.R.R. Tolkien's Lord of the Rings. Through a reflection on the experience of participating in a great constitutional moment, I shall consider the impact and interpretation of the meta-narratives of constitutional development, the importance, and elusiveness, of beginnings and ends, and the complex relationship between 'worlds within worlds'. In particular, I shall discuss whether narrative and storytelling provide an

explanation for what was a legally controversial Supreme Court judgment, and what they have to teach us about the constitutional ramifications of Brexit as they are experienced both within and outside the courtroom.

Law, Politics and Ideology 8-10BSQ: LG01

Institutional Interactions

- Benjamin Yong, Greg Davies, Cristina Leston-Bandeira, The Politics of Publication: Publishing Legal Advice in a Legislative Context

In this paper we explore the politics of publication. In recent years there have been a number of instances where the legal opinions of parliamentary lawyers at Westminster have been published in their entirety by select committees. This is not ordinary practice. The number of such instances is currently small, but publication in the unique institutional context of Parliament raises a number of issues which are likely to become increasingly important as Brexit fuels the demand for internal legal advice at Westminster.

There are various pressures on select committees to publish the legal advice they are given—an instrumental desire to inform the policy process; a strategic desire to substantiate a particular policy outcome; and/or the concern to legitimate Parliament itself by demonstrating that it is following evidence-based policy making and acting transparently. This pressure to publish is complicated by the politics of the legislature, and the specific duties of permanent staff like parliamentary lawyers. They are at once expected to be both responsive to their clients (parliamentarians), but sufficiently impartial that they are not identified with any one point of view. Publication complicates this impartiality and potentially threatens the legitimacy of legal advice in a legislative setting.

In short, publication may be evidence not only of the legalisation of politics, but also the politicisation of law. In this paper we examine these issues – the politics of publication – by drawing on published parliamentary reports, and interviews conducted with parliamentary lawyers, clerks and politicians at Westminster.

- Wendy Kennett, Deregulation of Civil Enforcement: Losing Sight of the Wood

A system of civil justice needs a mechanism to ensure compliance with the orders issued by courts and other competent authorities. Forced seizure or transfer of property, or sanctions backed by state force, are required. Originating in France, the independent professional (Judicial Officer/JO) model was promoted as an efficient enforcement system to East European states as part of their legal and economic transition and is now the most widely used model in Europe. Under this model JOs, who are remunerated wholly or partly from enforcement fees, are positioned as neutral agents of the state, enforcing judgments and other enforceable instruments on behalf of creditors, but at the same time ensuring that debtors enjoy the protections accorded to them by the law.

Neoliberal theories, in combination with digitalisation, have had a dramatic effect on this enforcement model. Three particular elements can be distinguished:

(i) Promotion of competition, and notably the deregulation of the legal professions

(ii) The contracting out of state functions

(iii) Digitalisation and remote access to debtors' assets

The distinctive features of the JO profession have been neglected in these developments. Deregulation has led to aggressive competition for creditor business, inconsistent with the 'neutral' status of JOs. Public bodies have contributed to this, in their role as creditors, using their contractual muscle to avoid or reduce their liability to pay fees when enforcement is unsuccessful and thus further eroding incentives to ensure respect for the rights of debtors. Moreover, business restructuring and the use of digital tools have reduced proximity to debtors with its associated potential for a holistic treatment of their situation. New strategies are required to create regulatory networks representing all stakeholders, to use the availability of data to protect vulnerable debtors, and to rehabilitate those who are capable of recovering financial independence.

- Nauman Reayat, Judicial Empowerment in Pakistan from 2009 to 2017

The strategies and interests of various elites and actors from within society have empowered the judiciary in Pakistan. Ever since the lawyers' movement for the restoration of superior courts' judges from 2007 to 2009 and subsequent restoration of the judges in March 2009, the Supreme Court of Pakistan has enhanced its powers through popular decisions in human rights cases and politically high-profile cases. Deciding public policies such as reducing prices of petroleum products and edibles, indicting ex-army officials, disqualification of two prime ministers in 2012 and 2017 and intervening in constitutional amendments are a few examples of such decisions. The main reason behind judicial empowerment in Pakistan is the convergence of the interests and strategies of elites and actors from within the society. The extant literature provides incomplete explanations of systemic needs, political competition, economic growth or interest-based hegemonic preservation as causes of judicial empowerment. This paper, building upon interest-based hegemonic preservation theory, argues that the Supreme Court of Pakistan has been empowered from 2009 to 2017 because of the strategic interplay of not only elites but also the middle class of society. The argument will dilate upon comparison of two legally different but politically similar decisions of the apex court in cases pertaining to disqualification of the two prime ministers of Pakistan: Yousaf Raza Gilani in 2012 and Nawaz Sharif in 2017. The judgment in the former empowered the court more than that in the latter because the degree of convergence of interest and strategies of various actors in the former was more than in the latter.

Law's empire, Empire's Law: Justice, Law and Colonialism 35BSQ: 4.01

- Alexandra Bohm, Asking the Right Questions or Responding to the Wrong Ones: Researching the Responsibility to Protect

This paper considers the response of 'mainstream' scholars to post-colonial scholarship on the Responsibility to Protect (R2P), questioning whether scholars working from such different perspectives and world views can have meaningful dialogue about crucial issues, and how to encourage such dialogue.

The paper first outlines the R2P. The R2P supposedly 'moves on' from the stalled debate on humanitarian military intervention in response to mass atrocities in another state. It does so by reconceptualising sovereignty as responsibility towards a population (rather than as a right of non-intervention and non-use of force, long-standing cornerstones of international law in the UN Charter). If a state fails to protect its population from mass atrocities then other states (the 'international community') can exercise their responsibility to protect those victims, through a variety of measures including education, pressure and coercion.

The paper then outlines the author's critique of the R2P. For example, the elevation of mass atrocity crimes over other forms of suffering, particularly socio-economic injustices such as deaths from global poverty and underdevelopment, has not been fully explored. Additionally, the 'blame' for atrocities is situated at the local level of those doing the killing, and the responsibility of the international community for contributing to the causes of the violence, is not explored.

Finally, the paper outlines responses given by audience members and reviewers on presentation of these ideas. While claiming to acknowledge that the post-colonial critique has merit, responses tend to restate the mainstream assumption of the R2P as a progressive, valuable doctrine that is correct in its understanding of causes of and solutions to violence. Given that the critique of R2P questions these foundational assumptions, it appears that critical and mainstream researchers may be talking past each other rather than having meaningful dialogue. Ideas are sought as to how to encourage such dialogue.

- Raza Saeed, The Wrong of Colonialism

There has been some recent interest in analytic philosophy on the question of identifying the distinctive wrong of European colonialism. While colonial enterprises across various continents were associated with slavery, economic exploitation, genocide and extermination of native populations, capture of land and livelihoods, mass relocation of populations, denigration of various cultures and knowledges, murder and torture of dissidents, these are claimed to be insufficient in identifying the harms that could be distinctly attributed to colonialism. For scholars working in fields of law and colonialism, the 'sum' of all these wrongs is enough to indict the colonial enterprise in and of itself, as a political system that made 'legitimate' use of these policies to ensure its continuation and survival. But for the recent forays into this field, as these crimes are wrong in themselves regardless of the political system that they are attributed to, the distinctive wrong is to be found beyond the 'systemic perpetration' of these acts.

This paper will engage with colonialism's distinctive wrongs identified by the scholars working in this field, and argue that the key problem that most of these accounts are struggling with is that they are focus, almost exclusively, on the political side or the self-determination aspect of the colonialism. The reach of colonialism went much further than the politics of autonomy and the right to self-determination, although these remain at the forefront because of the nature of decolonisation struggles in many countries. This a limited understanding of colonial domination also leads to a limited understanding of what some prominent de-colonial activists and authors, such as Gandhi, Fanon, Biko, Freire and Cesaire were attempting to achieve.

Medical Law, Healthcare and Bioethics 35BSQ: 3.13

End of life (ish)

- Tom Smith, Could a *Terminal Sedation Act* Expedite a Current Legal Impasse, Where Failure to Acknowledge Cause of Death, is a Fundamental Omission?

The discourse surrounding terminally ill patients, is often closely linked or even tragically obscured by right-to-die, euthanasia, assisted (physician) suicide, quality /sanctity-of-life or futility arguments. The Courts have ploughed a pathway with, perhaps an artificially semantic, reliance upon omission –v- acts for rulings, not least following Bland.

Currently, focusing on euthanasia /assisted dying arguments, the law in England & Wales, is in danger failing those terminally ill.

Terminally Sedating (sedation to the point of unconsciousness, permanently, accompanied by non- continuation/ initiation of artificial nutrition & hydration and medication), those who are terminally ill, at the very final stage of life, for whom all existing palliative pain relief has failed to alleviate intractable pain, suffering or anxiety; may for a small number of patients, allow omission of life whilst, simultaneously potentially, act to extend the life of others who are terminally ill.

Terminal patients and their families openly travel to jurisdictions where assisted dying is legal. Competent adults can commit suicide or refuse treatment, even when this will result in death. This paper is not advocating or refuting, euthanasia or assisted dying, but is proposing that medical law could be advanced re. Terminal Sedation; thereby affording to a minority of terminally ill patients, choice based on omission of life continuation, where death is caused by the underlying illness.

27 years after Tony Bland's death, the Corner recorded, that the medical cause of death was as a consequence of compression asphyxia, arising at the Hillsborough disaster, years before Tony's life ended. There was no mention of the omission of (or act of turning off) life support.

Terminal Sedation; an opportunity for clarity of legal options which potentially adds to both quality and paradoxically, length of life of those terminally ill, through omission where the cause of death is the underlying health condition.

- Sabine Michalowski and Karen Brennan, Compassion as a Means to Uphold the Status Quo – Critical Reflections on the Use of Compassion in the Context of Assisted Dying

In the past two decades, various attempts to reform the law on assisted dying have been made through Parliament and the courts. So far, none of them have been successful, even though there is an increasing discontent with the status quo.

Following the decision in Purdy, the DPP issued a policy which sets out public interest factors for and against prosecuting individuals who assist others to commit suicide. The compassionate motive of the assister is one of the crucial factors that count against a public interest in prosecution. At the same time, in euthanasia cases, courts often show leniency at the sentencing stage where they empathize with the defendants based on compassion, and/or where they feel that compassion-driven defendants should be given lower sanctions. Thus, the consequences of the prohibition of assisted dying are mitigated by resorting to compassion.

The importance of compassion for keeping the status quo in place was confirmed when the House of Commons debated the Assisted Dying (No.2) Bill 2015 and many MPs denied a need for legal change in light of the CPS policy's balance between upholding the importance of the sanctity of life and lenience in individual cases based on compassion.

This paper will critique the use of the emotive and subjective concept of compassion to justify upholding a status quo that has long been found to engage the right to privacy of those who want assistance with their suicide. Our critique does not deny the importance of compassion in the context of assisted dying, but is rather addressed at the use of the concept as a feel-good factor that justifies the perpetuation of a situation that denies a group of individuals the exercise of their human rights and a stumbling block to a frank discussion of all rights and interests involved in the assisted dying context.

Mental Health and Disability Law 35BSQ: 3.18

Mental Capacity and Vulnerability

- Beverley Clough, Rethinking the Spaces of Mental Capacity Law

The UN Convention on the Rights of Persons with Disabilities (UNCRPD) has been hailed as an exciting and potentially transformative Convention which will effect a 'paradigm shift' in our approaches to disability rights. It provides a welcome opportunity to challenge, rethink and reimagine some of the foundational assumptions and norms which inflect the legal framework for disabled people.

In recent years, there has been increasing critical discussion and engagement by legal commentators engaging with social model of disability, and more relational approaches to autonomy, particularly in the context of mental capacity law. However, this opportunity to rethink our approach to justice that is believed to reside in the UNCRPD has not yet been meaningfully engaged with. There is a danger that we will allow the boundaries of our current legal and theoretical framework to constrain our thinking.

Scholars in areas as diverse as law, sociology, politics, science and technology studies and geography have been engaging in debates about relationality, chronotopes and assemblages. The emerging critical approaches here, often seen in the literature on new materialisms and spatial justice, provide potent insights and methodologies which may help to move us beyond the stagnant and stultifying debates that are currently constraining developments. This paper will outline some of the key insights from these theoretical approaches, with their convergences around issues of relationality and dynamic processes of change. These will then be considered more specifically in the context of mental capacity law, with a particular focus on consequences for our conceptualisation of disability; for our rendering of the legal subject; and for the way in which we envisage the role of the state and notions of 'responses' or 'interventions'. In doing so, there is the opportunity to create alternative conceptual and legal spaces and to reconsider the boundaries that are currently drawn.

- Jack Clayton Thompson, All or Nothing: Capacity, Vulnerability and Autonomy

This paper is concerned with the role of 'Capacity' as a conceptual basis for the law's understanding and treatment of individuals with mental health concerns and mental disabilities. Focusing on the binary nature of the Capacity paradigm

under the Mental Capacity Act 2005, it seeks to argue in favour of a more nuanced understanding of and response to circumstances of incapacity and partial capacity. Drawing on Martha Fineman's and Alan Gewirth's conceptions of Vulnerability, the Social Model of Disability and the United Nations Convention on the Rights of Persons with Disabilities, it argues in favour of a spectral approach to issues of capacity and autonomy. Under this framework, emphasis is drawn towards supported decision making through the lens of (Human) Rights; it does so by directing the discussion towards the means of exercising one's rights rather than whether or not rights are held.

◦ Amanda Keeling, Developing Supportive Environments; Critical Realism and Relationality

Article 12 of the UN Convention on the Rights of Persons with Disabilities has moved the focus of capacity law from the assessment of individual's mental capacity, to the support networks in which they make decisions and to a more relational understanding of legal capacity. In doing so, it poses a significant challenge to established protective legal frameworks, which have positioned certain groups as 'vulnerable' to harm and given agents of the state powers to intervene. In the English legal context, this focuses a spotlight on the operation of a number of different legal mechanisms; this paper focuses particularly on the adult protection framework in the Care Act 2014.

Empirical work conducted in 2014 by the author has suggested that existing social work practice with 'vulnerable adults' can have the paradoxical effect that social work practice designed to protect people can in fact open them to future exploitation or abuse. This is due to practice which can marginalise the individual from the decision-making process, removing their agency and it is argued that social work practice should be refocused to create 'supportive environments', where an individual's legal capacity can be fostered and developed.

However, this raises questions of what a 'supportive environment' for legal capacity looks like, and what constitutes 'good' and 'bad' support. This paper develops a normative framework for a supportive environment, bringing together critical realist ethics and relational approaches to autonomy and vulnerability, to consider what a 'supportive environment' should look like in the context of adult safeguarding.

Methodology and Methods 35BSQ: 2.17

Routledge Handbook of Socio-Legal Theory and Method (2)

Chair – Marc Mason (University of Westminster)

◦ Antonia Layard (University of Bristol), Reading Law Spatially

Twining and Miers have argued that anyone reading legal material, a case, for example, "needs to know something about the nature of the material involved – how it is constructed, by whom, and for what purposes". The same argument can be made about reading legislation or monitoring bureaucratic practices. As Twinings and Miers suggest, "the nature of the material (the what) may remain constant, but the appropriate skills and methods (the how) will vary according to the purpose of the reading (the why)" (2010, xv).

This paper investigates how and why we might - from a methodological perspective - read law (cases, legislation, practices) spatially, doing the work required of "nomospheric tacticians" (Delaney, 2010), more comprehensively and programmatically than perhaps we have done so far. The task will be to find both spatial presences and absences, identifying discursive moves where spatial questions apparently disappear from (legal) view, investigating the differences between "legally usable" and unusable arguments (Martin et al, 2010).

Legal geographers have much to learn from critical legal, feminist and critical race scholars, asking "the space question" and learning lessons from how "the race question" (Culp, 1992) or "the woman question" (Bartlett, 1990) has increasingly been asked of judgments, legislation and bureaucratic decisions (let alone systems).

The paper concludes by asking if we can identify spatial (or aspatial) imaginations within our readings or law (Boyd White, 1973, 2010), what differences might this make?

◦ Angus Nurse (Middlesex University), Law, the Environment and Narrative Storytelling

This paper examines the extent to which critical understanding of environmental protection and the development of environmental enforcement policy is enhanced by socio-legal method, particularly narrative storytelling. Despite growing environmental awareness and the efforts of a variety of Non-Governmental Organisations (NGOs) to enhance environmental protection policy, environmental enforcement remains outside of mainstream criminal justice. Understanding environmental enforcement involves constructing narratives around this fringe area of 'policing' whose public policy and enforcement response significantly relies on NGOs. Using content analysis and narrative storytelling as its core method(s) this paper explores how mainstream justice failures and the construction of environmental harm as being other than 'crime' result in flawed or at least difficult to enforce environmental laws which arguably fail to provide effective redress for much environmental harm. The narrative method illustrates how environmental protection is socially constructed such that the manner in which the environment is protected and the enforcement approach adopted differs between jurisdictions. Yet it is rarely a core policing priority and remains NGO dependent. Narratives reveal how much environmental offending is regulatory or administrative in nature, rather than being covered by the criminal law and mainstream criminal justice responses. This paper employs regulation theory, arguing that an understanding of contemporary environmental protection and its enforcement requires drawing on mechanisms for examining not only the legal framework within which environmental protection takes place but also the involvement of civil society as enforcers and policymakers. It explores the tension between protection of the environment and the drive for sustainable exploitation of natural resources within neoliberal markets. This results in law that simultaneously seeks to protect the environment whilst allowing its continued exploitation.

- Alice Schneider (University of Oxford), Maayan Ravid (University of Oxford) and Stacy Topouzova (University of Oxford), Exploring Fluidity and Change in Legal Concepts

This paper offers directions to examining the dynamic nature of legal concepts, as a crucial part of understanding law in context. It proceeds from the recognition that dogmatic or, as socio-legal scholars refer to it, 'black letter' law is subject to change over time. In modern legal systems that possess Hart's secondary rules of change, such changes in the content of legal concepts occur through official-institutionalised processes like parliamentary legislation or adjudication by courts of law. However, the collective attribution of meaning to concepts is itself necessarily a fluid process of social construction that is wound up with knowledge, power, and voice. This means that the meaning of a given legal concept influenced by its social and political environment and thus susceptible to social change. This chapter examines processes of social construction through which the meaning of legal concepts changes over time and across legal systems. In using the example of the legal concept of ‘refugee’, this chapter demonstrates how different theoretical approaches and scholarly methods, including genealogy, intellectual/concept history, and deconstruction can aide the socio-legal exploration of the fluidity and change of legal concepts. Specifically, this chapter reflects on how one might access empirically the changing social construction of ‘refugee’ in international legal instruments, namely, the U.N. Refugee Convention and Optional Protocol, as well as in national legal instruments in Bulgaria, Germany and Israel.

Property, People, Power and Place 8-10BSQ: 1.13

- Harley Ronan, Excavating the Socio-Spatial Composition of Property

In this paper I seek to re-visit the well-trodden path analysing the constitutive nature of ‘property’. Our understanding of the composition of property – both as a ‘social’ and ‘legal’ phenomenon, presuming a division is meaningful – remains haphazard. On the one hand, the maddening, cyclical logic of property as ownership – what Robert Gordon calls the ‘absolute dominion trope’ – denies that the question of what property ‘is’ is even capable of being asked. On the other hand, property has been re-thought and re-imagined numerous times in socio-legal scholarship without sufficiently addressing the composition of that which is re-imagined. In this paper, I attempt to cut through this impasse, and rather than re-think property, I delve into the analytics of property’s socio-spatial composition with the aid of actor-network theory, examining how property emerges as a thing capable of ordering relations between people (and between people with respect to things) through the ongoing intertwinement of actors and space. I argue that property emerges as an entity or phenomenon from socio-spatial relations, and, accordingly, that property is inherently more open, unstable and

contingent than is pre-supposed. By implication, and perhaps more importantly, our forms of property remain open to adaptations and novel incarnations - a question of renewed importance in the ongoing crisis of owner-occupation and financialisation of urban life. Utilising this approach to property, this paper examines how novel forms of property are emerging in urban contexts, drawing on urban studies to suggest that the city is uniquely suited to provoking the emergence of alternative property practices.

◦ Douglas Harris, Condominium Property as Private Forum for Public Issues

The Omnicare Pharmacy is a small, street-level dispensing pharmacy in Vancouver's Downtown Eastside neighbourhood. It occupies and owns a unit within a larger strata property/condominium building—Carrall Station—that includes other retail shops at street-level and residential apartments above. The Downtown Eastside is one of Canada's most impoverished neighbourhoods, and notorious for the open use of illegal drugs. Adjacent to the city's prosperous downtown core, it is currently the epicenter of an opioid-overdose crisis that is killing hundreds of people each year. The Omnicare Pharmacy serves this neighbourhood; many of its customers are managing substance dependencies.

The Carrall Station condominium corporation has been attempting to remove the pharmacy for years. It is dominated by the owners of residential units who complain the pharmacy's customers make excessive noise, leave garbage and human waste, loiter in front of the building, and are verbally abusive and threatening. The confrontations are exacerbated because the entrances to the pharmacy and the residential apartments are side-by-side.

The conflict between pharmacy owner and residential-unit owners is a small but revealing instance in a larger struggle over the future of the Downtown Eastside. That struggle pits those who see latent potential for urban redevelopment against those who insist the neighbourbood remain a place for marginalized people to establish homes and build community. In this struggle, condominium developments are recurring sites of conflict as either desirable renewal or unwanted gentrification. However, the conflict between the Omnicare Pharmacy and residential-unit owners in Carrall Station is not over a condominium development, but instead is occurring within condominium property. In this instance, the struggle for the Downtown Eastside is unfolding within the private association of owners rather than the public realm. This paper analyzes how the private forum within condominium property shapes the outcome and resolution of important public issues.

◦ Helen Carr, Some Very Local Comedy: Revisiting Rose's Comedy of The Commons in the Context of Contemporary Property Disputes

This paper revisits Rose's seminal paper The Comedy of the Commons: Custom, Commerce, and Inherently Public Property in the context of two very local property disputes, an attempt to restrict use of a rural public footpath using PSPOs and an local authority seeking to prohibit dancing in a town centre, to suggest that her acknowledgement of the importance of sociability, recreation and the subversive public may provide a useful vocabulary to resist contemporary assertions of exclusive rights and the paramountcy of public safety.

Protest and Regulation in the Context of Social and Environmental Justice 8-10BSQ: 1.12

Major Projects, Protest and Regulation

◦ Fiona Haines, Reflecting on the Role of Protest in Moving Towards Environmental and Social Justice

Combining social and environmental justice is a significant challenge yet one that is critical to present and future wellbeing. This paper critically examines the way that social and environmental goals are often in tension with one another and sets out the regulatory implications of this tension in ensuring we can remain within ecological planetary boundaries. Social protests against the injustices and environmental destructiveness of business activity often do occur and can push for a different, fairer and more sustainable future. But these too can be focussed one or other domain at the expense of the other, or if they demand regulatory change to accomplish both, are channelled towards pre-existing regulatory structures that once again emphasise one or other goal. Protest can lead to alternative, more holistic,

governance strategies but these tend to be self-regulatory or multi-stakeholder accreditation and soft law governance arrangements. These create different problems of accountability on the one hand or significant compliance burdens by businesses and social enterprises that want to 'do things differently'. This paper critically analyses these challenges through exploring protests against unsustainable and unjust business activity both in industrialising (India and Indonesia) and industrialised (Australian) contexts and the regulatory regimes that are brought into play through these protests. It shows how postcolonial sensitivities combined with economic pressure and political complexity pose significant hurdles to environmental justice in industrialising contexts. In industrialised contexts, anger against protest 'outsiders' can also fuel resentment which in turn provide support for unsustainable practices to continue. The paper draws together lessons from these cases about how protest might overcome the problem of fuelling local conflict and what the conditions are that can provide the best hope for meeting our ecological challenge.

- Atsegwasi Grace, The Adoption of an Effective Offshore Occupational Health, Safety and Environmental Regime in the Oil And Gas Sector Of Nigeria, with Lessons from the United Kingdom Goal-setting Safety Case Regime

Occupational Health Safety and Environmental (HSE) issues have emerged as a serious concern, especially in sectors characterised by operations in hostile environments; take for instance, the offshore oil and gas industry. In acknowledging the importance of this problem, there ought to be constant search for an effective regulatory system that will undoubtedly improve the health and safety regulations in workplaces. This should be the major concern and focus of every host government and operator in the oil and gas industry worldwide. This thesis aims at exploring occupational HSE management in the Nigerian and United Kingdom's oil and gas industries, with specific focus on the offshore sector and towards determining an effective regulatory system that will enhance the occupational HSE systems and management practices currently in place. The status quo of the industry is riddled with countless issues; causing improvement in safety operations across board to hit a critical level. Research over time has shown that the success and failure of every exploration and production operations in the oil and gas industries worldwide, are linked to the regulatory system initially set in place. With emphasis on the strength of the statement above, this thesis proposes a reform for the Nigerian regulatory safety case regime in HSE matters. With the UK being the key focus to draw lessons from, it is suggested that the adoption of the UK's goal-setting safety case regime, which advocates positively for operators to provide valid arguments, be safe for a given application in a given environment. Therefore, Nigeria must review its regulatory framework for parameter of offshore HSE matters as a preventive measure targeted at the improvement of health and safety issues in offshore oil and gas operations. Meanwhile, it is imperative to keep in mind that challenges are bound to rear up in a bid to transplant the regime from the UK to Nigeria.

- Rebecca Schmidt, The Olympics and Environmental Protection – Protests as a Driver and Catalyst for Transnational Regulation in Sports

Few events are more global than the Olympic Games. Broadcasting of the London Olympics reached 4.8 billion people. In the 1980s the Olympic Movement started to become a powerful economic actor based on changes it induced in its sponsorship structures and the sale of broadcasting rights. With these transformations came also demands to take greater responsibility for global political matters and as a result the Games have also become a target and platform for political activists.

An early focus of activists was on the environmental footprint of the Games. The 1992 Winter Games in Albertville were considered by many an 'environmental disaster' and lead to widespread and well-covered protests by environmentalist groups. One of the main points of critique was that the IOC had no environmental policy in place. The following Winter Games (Lillehammer 1994) constituted the turning point. Unlike Albertville, Lillehammer put special emphasis on environmental protection and included environmental groups in the planning and execution of its Games. In the aftermath of the Games, the Centennial Olympic Congress, held in Paris in 1994, recognized the 'importance of environment and sustainable development'. This was followed by the inclusion of an additional paragraph in Rule 2 of the Olympic Charter and the recognition of the environment as the third pillar of the Olympic movement, alongside sport and culture. An agreement between UNEP and the IOC was reached in the same context; the cooperation foresaw the promotion of environmental protection in and through sports. Over time the regulatory framework was expanded

significantly, often based on local initiatives which included civil society groups (e.g. in the context of the London Olympics); in other contexts, such cooperation was less successful (Sochi Olympics) and environmental outcomes did not meet expectations.

The paper argues that despite these mixed results, mega events such as the Olympics are an important venue for activists to bring about regulatory change. This change can extent from the private regulatory regime (here the IOC), to the local and even global level. In fairly well-functioning local regulatory contexts, activists and protesters can aim at broader global changes through cooperation and creating new role-model standards. In the opposite scenario these standards, then required by transnational regulatory regime, in combination with global attention, can be used to pursue local changes.

Socio-Legal Perspectives on Brexit 8-10BSQ: LG05

- Sylvia Walby, Brexit, Gender and Violence: The European Area of Freedom, Security and Justice

If the UK were to leave the EU, what might be the implications for gender based violence in the UK? The answer to this question depends on an understanding of the nature of the EU 'Area' of 'freedom, security and justice', the legal and institutional competences of the EU in relation to gender equality, and theories of gender-based violence. The development of EU-level competence on 'freedom, security and justice' was given legal and political impetus in the Treaty of Lisbon 2006; resulting in a series of Directives on child sex abuse, trafficking, protection orders for domestic violence, and victims' rights, institutionalising EU-wide cooperation through the mutual recognition of judicial decision-making across all Member States. This embedded several initiatives concerning gender equality into law and order, internal security, and home affairs, extending the realm of gender equality traditionally focused on employment and economic issues. If the UK were to leave the EU, would these new rights for (largely) women be lost? The UK has stated that it seeks to remain in the EU security area, but it is unclear if the UK understands violence against women to be included within the concept of security, and if it would recognise courts outside the UK. These pose intriguing questions as to the gendering of EU powers concerning security, which are of wider relevance than Brexit.

- Nicole Busby, Brexit, Gender Equality and Scotland: Opportunity or Threat?

Equality law inhabits a somewhat undetermined territory within Scotland's current devolution settlement. With limited exceptions it is a reserved area whereas human rights are devolved, although the relevant provisions of the Scotland Act 1998 must be read alongside the UK's Human Rights Act 1998. Regulatory responsibility can be unclear given that the (GB-based) Equality and Human Rights Commission has a Scotland Committee and Scotland has its own separate (and confusingly-named) Scottish Human Rights Commission, both of which are assigned particular statutory duties.

62% of the Scottish electorate voted to remain within the EU, making the democratic legitimacy of the 'leave vote' particularly relevant here. The dominant political response to Brexit's perceived threat to gender equality is for Scotland to be distinct, to go beyond the non-regression principle and become a global leader. Potential is offered by the use of the exceptions to the Equality Act 2010 permitted under the Scotland Act 2016 as mechanisms for gender mainstreaming, as well as the EA's PSED Scottish-specific duties and the Scottish Government's planned implementation of the socio-economic duty. Furthermore, calls are being made for the incorporation of the UN Convention for the Elimination of Discrimination against Women (CEDAW) into Scots law.

This paper considers the threats and opportunities that Brexit poses to gender equality in Scotland. Whilst some argue that Brexit provides an ideal opportunity to exploit Scotland's indeterminate equality framework by taking bold and decisive action, many ask whether Scotland is really so different from many UK regions so that claims to differentiation are merely attempts to 'put a kilt on it'.

- Michelle Weldon-Johns, Brexit and the Work-Family Conflict – a Scottish Perspective

Brexit poses various potential challenges to UK employment rights. However, for working families UK work-family rights go beyond those guaranteed at an EU level. The UK has also gone further than the CJEU in recognising the rights of intended parents in surrogacy ((C-167/12) CD v ST [2014] 3 CMLR 15 and (C-363/12) Z v A Government Department [2014] 3 CMLR 20; Children and Families Act 2014). However, Brexit could still pose challenges to the development of work-family rights. In particular, the CJEU has begun to recognise the role of the father, and thus gender-neutral parenting ((C-104/09) Roca Alvarez v Sesa Start Espana ETT SA [2011] 1 CMLR 28 and (C-222/14) Maistrellis v Ypourgos Dikaiosynis, Diafaneias kai Anthropinon Dikaiomaton [2016] CEC 282). This compares notably with the highly gendered rights in the UK. In addition, Article 7 of the Charter of Fundamental Rights of the EU replicates Article 8 ECHR, which has also been used successfully by fathers seeking access to parental leave, again promoting gender-neutral parenting (Markin v Russia (2013) 56 EHRR 8).

The Scottish government's desire to maintain the EU employment law framework and further strengthen employment rights underpins their recently renewed commitment to seek devolution of employment and equality law in light of Brexit. This chapter will critically examine the challenges Brexit could pose for the development of work-family rights, and whether devolution in these areas would address this from a Scottish perspective.

Session Six: Wednesday 28th March 16:45-18:15

Access to Justice in Context 35BSQ: 4.07

Access to Justice on the Global Stage

- Delia Sanchez Del Angel, Redefining Access to Justice: Participation of Victims before International Human Rights Mechanisms

In the last two decades, the main concerns in relation to access to justice before international and regional human rights mechanisms have been the issues of backlog of cases and petitions, and the adequate implementation of judgments and decisions. While finding effective solutions to these problems will undoubtedly contribute to guaranteeing access to justice of victims of human rights violations, we cannot forget the importance of active victim participation before these mechanisms, particularly in cases of grave and systematic human rights violations.

International and regional human rights mechanisms are for many victims of grave and systematic human rights violations an opportunity to access justice after it was repeatedly denied to them at a domestic level. For victims that have been historically discriminated, this could also be the first time that their claims and needs will be addressed. We have to redefine our conception of access to justice in relation to international and regional human rights mechanisms. These mechanisms should not only grant justice in a legal or conventional way, they should also provide justice that will contribute to 'healing' or 'repairing' victims. For this to be achieved, participation becomes essential. How can victims of human rights violations access justice if they are not key participants in these mechanisms?

From a philosophical perspective, this paper will explore the connections between justice and participation in relation to international and regional human rights mechanisms. It will also identify aspects of access to justice that could prove opposing to participation. Legal and political philosophy, elements of theories of restorative justice, therapeutic jurisprudence and of legal empowerment, as well as the social-psychological concept of procedural justice, will be used.

- Alice Venn, Climate-vulnerability and Access to Justice: Exposing the Procedural Gaps in International Protection

The relationship between climate-vulnerability and social justice is widely acknowledged in international policy discourse, yet the barriers to access to justice for climate-vulnerable nations and communities remain neglected in climate change responses. The Paris Agreement, hailed as a breakthrough in international efforts to limit warming to well within 2 °C and to pursue efforts for a 1.5 °C threshold, has so far failed to have a significant impact upon warming trends, with recent UN estimates projecting some 2.9-3.4 °C by the end of the century. In the face of increasingly severe climate impacts, including the displacement of communities, it is argued that breaking entrenched barriers to access to justice must be prioritised. Drawing upon empirical findings from a regional case study in the South Pacific, key material and institutional barriers to access to justice and the enforcement of fundamental rights are exposed.

The corresponding need to move beyond a purely distributive approach to climate justice within the international framework, and to develop definitive measures to tackle procedural challenges through, inter alia, enhanced capacity-building and the alleviation of human rights reporting burdens is outlined. It is argued that a pluralistic conceptualisation of climate justice founded upon access to justice and strengthened human rights protections should be adopted to inform future law and policy-making. It is only through enhanced collaboration between the justice and climate change sectors, the involvement of key national government and civil society actors, and a pragmatic appraisal of the existing framework that climate justice can be attained moving forward.

- Lyla Latif, Access to Justice through Fiscal Remedies for Communities Affected By Mining Corporations

The right to an effective remedy for harm is a core tenet of international human rights law. The obligations of States with respect to this right have been reflected in the Guiding Principles on Business and Human Rights: Implementing the Protect, Respect and Remedy Framework in terms of a "State's duty to protect" against business-related human rights abuses, of which providing access to an effective remedy is an integral part. Mining corporations often explore and operate near land and property belonging to, or being used by, communities. Mining can negatively affect the local

environment, including water and biodiversity, as well as people's livelihoods (which often depend on the health of the environment or access to land and resources). However, the existing literature on access to fiscal remedies for communities affected by the operations, policies and projects of corporations in the extractives sector is fairly limited. The Business and Society Exploring Solutions (BASES) website provides online access to the largest collection of materials on grievance mechanisms. This website aims to provide a collaborative work space for sharing information and learning about how dispute resolution between corporations and society works around the world, but it provides no information on access to fiscal remedies for communities. Accordingly, this paper discusses the interplay between mining corporations and communities with respect to business operations and human rights violations. It also explores the judicial as well as non-judicial remedies available to communities.

- Virginia Passalacqua, Proactive or Reactive Courts? Two Case Studies on Legal Mobilization for Migrants' Rights: Italy and the UK

Legal mobilization scholarship commonly looks at proceedings as the result of citizens' action. It investigates the external dynamics surrounding litigation, with special emphasis on the social struggles behind it. A key feature of this approach is that it sees courts as essentially "reactive" institutions, while "individual litigants actually set the agenda of the judicial branch of government" (Zemans 1983).

Consequently, courts become tools to be used by social movements, political parties or activist lawyers. But, what if judges start telling their version of the story?

Drawing on the interviews with two migration judges from Italy and the UK, this paper examines the relationship between judges, social movements and social struggles. It shows that confining judges to their institutional role at times could be wrong. Judges might turn out to be participants or even promoters of a strategic litigation. This paper analyses 'how law does and does not matter'(McCann 2006), with a special focus on the procedural law in force. The CJEU's procedure provides that is the national court and not the individual litigant to decide whether to make a preliminary reference to the EU court (article 267 TFEU). This means that the responsibility of bringing a judicial claim is of the actor who, in legal mobilization, is normally considered an institutional player: the judge. The paper argues that this particular procedure has given the judges a more proactive role within the legal mobilization.

Administrative Justice 35BSQ: 4.08

The Practice of the Justice System

- Jo Wilding, The Business of Asylum Justice: Suppliers Mediating Demand?

Demand consistently outstrips supply for lawyers providing peer-recognised high-quality legal aid asylum services. Legal aid policy is heavily influenced by theories of Supplier-Induced Demand, utility maximisation and contractual incentives, within an overarching scheme of market-based procurement of services. Based on case studies of law firms, not-for-profits and barristers, this paper argues that demand and supply in publicly funded asylum legal services are poorly understood, leading to market failure, with serious consequences for administrative justice in this area.

At macro-level, Freedom of Information and interview research show significant gaps in geographical availability of advice and representation. At micro-level, providers therefore make prioritisation decisions in order to reconcile quality and financial viability, providing a counter-argument to suggestions of "cream-skimming", but nevertheless reducing access. Costed cases are used to demonstrate that the lawyers in the study do not "bump up" their work to escape the fixed fee scheme. There is, however, some evidence that poorer quality suppliers limit their work to the amount that will be paid for on the fixed fee. Providers are paid the same regardless of the quality of their work, creating a false impression of the time it takes to provide an adequate service and risking creation of an Akerlof-style "lemon market". At the meta-level, bureaucratic demands, surveillance and a punitive approach from the Legal Aid Agency create further demands on the resources of providers which threaten supply, as audit stress and unpaid administration push suppliers out of the market.

This research suggests that "demand" needs to be considered in two parts: Potential-Client demand (the number of people seeking the organisation's services) and In-Case demand (the demand for services on an open case). The paper concludes by arguing that suppliers mediate demand, rather than simply responding to contractual incentives, within a context of exponentially increasing legal and procedural complexity.

- Richard Kirkham, The Function of Judicial Review

- Michelle Bruijn, Understanding Administrative Drug Eviction Cases Through Party Capability and Statistical Analysis of Case Law

In the Netherlands, mayors are entitled to close public and non-public premises due to drug-related activities. Despite severe consequences of an administrative closure order, like eviction or company lockdown, research on party capability indicates that mayors are more likely to win in court than the party contesting the closure. Prior studies categorized litigants as stronger and weaker parties based on aspects like financial resources and (litigation) experiences and found that the legal system tends to tilt in favour of the "stronger" party. Drawing from existing theoretical frameworks on party capability, this study examines the relative success of parties in drug eviction cases in the Netherlands from 2008 until 2016 (N=217). Parties are categorised according to their resources, experiences, expertise, and other inherent (dis)advantages, such as a mayor's ability to make policy rules. Mayors fall into the strong category and opposing litigants into the weaker category. The same distinction is made within these two categories. Mayors from large municipalities and those with more case-specific experience are categorised as stronger than those with small populations and little experience. Similarly, among the opposing parties, businesses and organizations are the stronger party and individuals the weaker one. I used logistic regression to calculate the expected chance a mayor wins, based on different case characteristics such as the type of drugs, type of property, and legal arguments. In line with the hypothesis, mayors won in the vast majority of cases. However, contrary to the presumptions, mayors have a significantly lower chance to win if they litigate against individuals compared to businesses or organizations. Yet, these effects dissipate when controlling for other case characteristics like the type of drugs and invoked defences. Altogether, the results show the impact of party capability and the importance of particular case characteristics for the outcomes of administrative drug eviction cases.

Art, Culture and Heritage 8-10BSQ: LG02

The Significance of Heritage

- Gautam Sundaresh, Bringing back the 'Mountain of Light': Repatriation of Cultural Property and the Kohinoor Diamond

This paper analyzes the legal paradigm surrounding the repatriation of the Kohinoor diamond, taken from India during British colonial rule. While attempting to explicate the complexities of the issue, parallels are also drawn with the legal, normative and theoretical aspects of the understanding of similar cultural property disputes from across the world. The paper attempts to demonstrate the legal vacuum that 'source countries' encounter as a result of the arrant failure of the international framework to deal with issues of ownership and repatriation of such cultural property. This is directly linked to influence exerted by 'market countries' during and after the creation of the regulatory framework and international policy. Consequently, the unique and distinguishable characteristics of cultural property from ordinary conceptions of property go unrecognized. The moral and theoretical arguments revolve around an understanding that cultural property retains an inherent and indelible connection with the source country, holding immense significance in terms of cultural and national identity. On the other side of the debate, arguments revolve around the notion of 'Universal Culturalism' and endorsement of theories such as those propounded by Fallmerayer (using the lapse of time and the idea that there exists a biological disconnect, as a basis to challenge the locus standi of source countries). Here, considerations of security and infrastructure take precedence over those of emotion and identity. There is focus on specific aspects of the Kohinoor issue, in order to understand why the deadlock exists and the arguments that an international adjudicatory body might take into consideration if the parties were to ever resort to such dispute resolution. To conclude, I theorize alternatives

that would help undo the rigidity that the debate has become associated with, in an attempt to reach a compromise without pushing either nation to a full concession.

◦ Sarah Sargent, Classical Horsemanship and Contemporary Local European Identity

Europe is known as being full of old, tangible heritage—so much so that some commentators refer to it as "Museum Europe" and warn against visitors becoming overwhelmed by trying to see all that there is to see. Classical Horsemanship is certainly part of this rich past—having its origins in the Renaissance where it was seen as part of the well-rounded education of a gentleman. Horses became increasingly an object of leisure rather than of work and war.

Today Classical Horsemanship remains a vital part of European culture, albeit with a different role. It now features in local European identity and as a tourist attraction with a performative element. There are four "schools" of Classical Horsemanship today: The Spanish Riding School in Austria, the Cadre Noir of the French National Riding School, the Royal Andalusian Equestrian Art in Spain, and the Portuguese School of Equestrian Art. The first two- in Austria and France-- are now inscripted on the UNESCO List of Representative Intangible Cultural Heritage. Each school of horsemanship has a distinct way of training and riding horses, and may also ride a distinctive type or breed of horse. The breed of horse can also have a significant place in local European identity.

Inscription has become the "gold standard" of heritage recognition and can heighten the profile of a heritage element and increase tourist interest. Some research also suggests that inscription has become a highly political process, reflecting influential power configurations of states, instead of focusing on the suitability of the heritage nomination for inscription as the criteria for approval.

This paper explores two questions: the role of Classical Horsemanship in contemporary local European heritage, and the effects of the inscription on identity and heritage.

◦ Miroslaw Sadowski, Managing and Preserving Urban Cultural Heritage in the 'Harsh' Environment of a Modern Metropolis: The Cases of Hong Kong and Macau

"It takes all the running you can do, to keep in the same place. If you want to get somewhere else, you must run at least twice as fast as that!" — observed Lewis Carroll in Through the Looking-Glass. This nowadays proverbial observation is particularly true in case of cities. Constant change has proved essential to their growth, as the ones who stay in place slowly crumble into pieces. In the urban environment, however, moving forward often results in the destruction of its past. Gentrification, urbanisation, reindustrialisation — they are often to blame when cultural heritage, both tangible and intangible, is destroyed. The purpose of this article is to analyse how urban cultural heritage may be preserved in the 21st century and to show the best ways to manage it, on the 'extreme' examples of global metropolises — Hong Kong and Macau. In the first, introductory part of the paper, M. M. Sadowski explains the concept of cultural heritage, defining its different 'varieties' — tangible, intangible, and urban. The second part of the article is devoted to the current international legal regulations protecting cultural heritage, notably UNESCO's conventions. The author first critically surveys them, trying to establish whether or not they are successful tools in protecting urban cultural heritage, and then moves on to the analysis of a recent approach towards urban cultural heritage, based on the 2011 recommendation on the Historic Urban Landscape (HUL). In the third, last part of the paper, M. M. Sadowski, examines the legal frameworks protecting cultural heritage in place in Hong Kong and Macau. He first explains his choice of the two cities as case studies, then shows how their legal regulations correspond with UNESCO's guidelines, and ultimately ventures to make suggestions which may improve the fate of cultural heritage in this kind of a changing modern metropolis.

Banking and Finance 35BSQ: 4.01

Emerging International Financial Challenges after the Global Financial Crisis

Chair – Steve Cairns

◦ Daniel Cash, Sustainable Finance Ratings as the Latest Symptom of "Rating Addiction".

Using the widely accepted but rarely articulated concept of 'rating addiction', this paper examines the recent entrance of the credit rating agencies into the sustainable finance field against the backdrop of 'rating addiction'. Once the concept of 'rating addiction' is positioned, the effects of the addiction can be clearly witnessed by even just a cursory glance at the history of the credit rating agencies, particularly their recent history. On that basis, the paper provides a warning for regulators, and the field, with regards to the potentially negative effect that credit rating agencies can have upon the ever-growing and socially-important sustainable finance sector. In light of these examinations, the paper concludes by assessing the aptitude of the agencies within this particular sector and suggesting that, ultimately, the invitation afforded to the agencies to become part of the sustainable finance movement is the latest in a long of indicators that 'rating addiction' continues to be as prevalent as ever.

- Krzysztof Kozminski, Bank Loans Denominated and Indexed to Foreign Currency – a Polish, Ukrainian or Europe-Wide Problem?

The institution of a bank mortgage denominated/indexed to foreign currency (referred to generally and not very precisely as "foreign currency loan" or "loan adjusted to foreign currency") is an instrument commonly used by a broad group of citizens of European states for acquiring capital with a view to purchasing a housing unit. Until recently, such loans were popular not only in Poland and other countries belonging to the so-called "New Union" (those whose accession took place within the last decade or so: Czech Republic, Slovakia, Romania, Hungary and Croatia), Austria, Spain, Italy, Portugal, but also outside of the borders of the Union: in Russia, Serbia and Ukraine (however, one difference was the currency in which obligations were evaluated – whilst loans in EU countries were dominated by the Swiss Franc, Ukrainian lendees more frequently relied upon loans "adjusted" to the U.S. dollar). Regardless of differences persisting in legislative regimes, peculiarities of national legal systems and local economic and social conditions, in all those countries doubts have arisen whether a drastic change in currency rate (which results in an obligation to pay off a loan on conditions much less attractive than beforehand) constitutes a legally relevant circumstance that could permit one to release oneself from having to perform one's contractual duties or, at least, facilitate granting some relief in fulfilling increasingly more onerous obligations towards banks. To discuss the permissibility and legal aspects of foreign currency loan contracts is complicated not only from the juridical point of view, but is also of interest to society, politics and economics. Still, the problem attracts strong emotions, particularly among lendees who took out a foreign currency loan and now feel deceived due to a change of the currency rate. The lendees and their organizations often expect involvement, particularly from EU bodies, where, in their estimation, domestic authorities have failed or "succumbed to the banking lobby". Unfortunately, having observed the course of events over the last several years, one may surmise that the low number of judgments in cases concerning denominated bank loans, and especially the sceptical approach of the Court of Justice, have generated a lot of disappointment.

- Mika Viljanen, Making Credit Risk After the Crisis

Before the global financial crisis banking, banks used sophisticated value-at-risk technologies to measure credit risk on their books. The technologies were crucial to the pre-crisis banking regulation as well. They allowed the Basel Committee on Banking Supervision (BCBS) to subject banks to the disciplinary effects of "real" risks, and to simultaneously impose safety limits on leverage while refraining from affecting bank asset choices.

The VaR-based ontology of risk collapsed during the global financial crisis. The ontology was discredited both on the practical and theoretical planes. The collapse left regulators in a fraught position, scrambling for reform options. A tortious succession of reforms has emerged meshing risk methodology revisions with distinctly non-risk-based measures. BCBS has now, ten years after the crisis, produced new methodologies for gauging credit risk on bank books. The methodologies have in part abandoned the VaR-based approach, in part perpetuated it, while layering safety protocols on the methodologies.

The paper adopts a science and technology studies approach and traces the reforms as attempts at navigating regulatory performativity, that is the complicated interactions and interferences between the real world things and the effects regulatory interventions have on the things. The argument is that three factor constrain the regulatory efforts: respect for the a priori, non-regulatory risk that regulators seek to perform to implement the non-interventionist strategy, the wish to enact appropriately prudent risks that do not put the global economy at risk, and, the real world economic repercussions the different enactments the risks have. The regulators have engaged in making risks that no more aspire to realness but, instead, create categories that balance the real with the prudcential, and the unreal with economic fungibility.

The paper advances the discussion of the constitutive effects of law, highlighting how legal interventions contribute to the construction of the fundamental categories of the economy.

- Alison Lui and George Lamb, Artificial Intelligence and Augmented Intelligence Collaboration: Regaining Trust and Confidence in the Financial Sector.

Robots and chatbots are sophisticated. Artificial intelligence (AI) is increasingly popular in the financial industry due to the ability to provide customers with cheap, efficient and personalised services. This article uses doctrinal sources and a case study to show that many banks and FinTech startups are investing in AI. Yet, there are a number of challenges arising from the use of AI which could undermine trust and confidence amongst consumers. This article features the issue of bias and discrimination in banking. There is evidence that algorithms discriminate against certain races and gender. Legislative gaps in the Equality Act 2010 and the General Data Protection Regime will be analysed. Ultimately, human beings are still needed to input, train and help machines to learn. Fortunately, the FCA are leading in RegTech, from the launch of regulatory sandboxes to their co-operative collaboration with FinTech startups on regulatory matters. Augmented intelligence collaboration is needed to enable industry players and regulators to provide seamless regulation and financial stability. The future of AI regulation is inter-disciplinary in approach.

Criminal Law and Criminal Justice WMB: 5.68

Chair – Samantha Pegg

- Fred Cram, What Gives Them the Right? Police Legitimacy and The Self-Reflections of Prolific Offenders on Their Criminal Behaviour

One of the many forms that modern policing takes is 'integrated offender management' (IOM). This involves the police working alongside staff from other agencies including probation and prison officers and drugs workers, all in a bid to reduce offending by prolific offenders. Some of this work involves traditional policing methods of surveillance, catch and convict. The novelty for some police officers lies in the requirement that they adopt the role of 'offender manager'. As police offender managers they attempt to draw prolific offenders away from crime through 'pathway support', such as helping them into employment and supporting them into stable housing arrangements. Whilst in theory this changes the nature of the policing task extensively, research suggests that some offender managers continue to plough on with orthodox police cultural practices, such as social discipline and communicative surveillance. These methods can threaten citizens' perceptions of police legitimacy because the practices are procedurally unfair. People routinely stopped and required to account for their whereabouts, searched, but rarely arrested and subjected to the aggressive imposition of police authority, may view such treatment as disproportionate and invasive. Drawing on ethnographic fieldwork, this paper examines offenders' self-described experiences of IOM. Study findings highlight that IOM policing strategies did not have negative implications for police legitimacy, as one might expect; rather, offenders justified their treatment as an inevitable part of the prolific offender 'game'. Given the emphasis in existing literature on the linkage between procedural fairness and legitimacy, this raises interesting questions as to the extent that people's self-reflections about their own criminality can contribute to the development and maintenance of police legitimacy.

- Fabio Ferraz de Almeida, Counter-Denunciations: Notes on How Suspects Blame Putative Victims in Police Investigative Interviews in The UK

My research is based on a corpus of around 100 audio-recorded police interviews in the UK, mostly concerning relatively minor crimes, in which one of the defence strategies employed by suspects is to build a counter-denunciation blaming the putative victim for the incident under investigation. The suspect attempts to make the putative victim at least partially responsible for the incident, transforming him/herself into the victim and the other into the perpetrator. Thus the categories of 'suspect' and 'victim' can undergo some modification or even be turned around, as interviews progress; far from being rigid and mutually exclusive, it may become evident – and evident to the police interviewers – that which of those being questioned is the victim and which the aggressor (suspect) is less clear, or hangs in the balance. The outcome, if there is one, depends on the accounts that each provides, on the descriptions and narratives each constructs, and the police assessment of the accountable evidence. A few studies have documented something like the counter-denunciations occurring in my data. However, most studies are based on cases of sexual violence, and none has examined how this defensive technique is constructed and employed moment-by-moment, turn-by-turn, interactionally. In this paper, my aim is to describe the main analytical properties of counter-denunciations as a defensive strategy. Drawing upon conversation analysis and ethnomethodology, I demonstrate that there are five principal analytical properties of counter-denunciations: a) the temporal character of the narrative in which this defence occurs; b) the relation between ordinariness and 'innocence'; c) the use of a backstory (a history of incidents preceding the one under investigation) to recontextualise the incident; d) descriptions of actions and conducts; and e) the attribution of motives.

- Antonia Porter, Prosecuting Domestic Abuse in England and Wales: New Public Managerialism and Crown Prosecution Service 'Working Practice'

The Crown Prosecution Service (CPS) regards offences of domestic abuse as 'particularly serious' (CPS, 2014) and considers tackling violence against women a 'priority' (CPS, 2017). This paper examines how criminal prosecutors in England and Wales approach cases of domestic abuse in practice, specifically at the point when a complainant no longer wishes to support the prosecution. In 2017 the CPS' violence against women report commended its highest ever domestic abuse conviction rate; 75.7% (CPS, 2017). Such open and unqualified celebration of the improved rate of convicted offenders inevitably sets the tone that 'success' in these cases for the CPS equates to convictions.

Firstly, through the lens of 'New Public Managerialism', a strategy which successive neoliberal governments have deployed in the public sector, the paper thematically analyses the qualitative responses of a sample of Crown Prosecutors in the South of England. It identifies from the primary research a prosecutorial 'working practice' that is disinclined to terminate cases at the victim's request, prompting instead the routine or habitual use of 'witness summons'. This is a practice which compels the victim to attend trial against her stated wishes and is a practice which CPS policy states ought to be a prosecutor's 'last resort' (CPS, 2014). The paper exposes concealed 'working rules' that have typically influenced prosecutors to routinely prefer summons, despite the stated policy and suggests that the 'working rules' are often a consequence of New Public Managerial agendas. Policy objectives, management structures, digital working, statistical monitoring of cases and working to budget are some of the managerial techniques that have encouraged the practice. The primary research also reveals, however, that following training in 2016/17 prosecutors may be beginning to scale back from the habitual use of summons in recognition that the merits of summons cannot always be presumed.

- Iyabode Ogunniran, An Assessment of the Nigerian Administration of Criminal Justice Act (ACJA) 2015

The Nigerian criminal justice system has long been in a state of perpetual decline, legislations have loopholes with epileptic enforcement. It was obvious that it could no longer meet the exigency of a democratic society. The enactment of the ACJA was considered timely and laudable. The Act purposes to protect the rights of suspect, defendant, victim. The law contains about 27 innovative provisions such as prevention of unlawful arrest, prohibition of arrest in civil cases, electronic recording of confessional statements, professional prosecution of offences, remand time, establishment of Police Central Criminal Registry, compensation of victims and non-custodial sentences. Two years after, this paper seeks to assess these provisions. It interrogates the extent of its enforcement. Just last year, the Nigerian Supreme Court

advanced the frontiers of the criminal justice system by relying on the ACJA to declare stay of proceedings in criminal trial unlawful. The writer observes that the country's federal structure continues to be an impediment to the Act. Presently, the Act applies only to offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory (FCT). The issue is what happens to offences enacted by the State Houses of Assembly? Though states can adopt the Act, it comes with the trend of whittling down some of these provisions or outright non-adoption. Also, it applies to Federal Courts and courts in FCT, yet, majority of the criminal cases are prosecuted in the Area and Magistrate Courts in the states. Infrastructural deficit remains a hurdle. She canvasses reconciling the above issues for an efficient administration of justice.

Equality and Human Rights 35BSQ: 2.26

European and Domestic Human Rights

Chair – David Barrett

- Tom Lewis, Blanket Bans, General Measures and Strasbourg's "Procedural Turn"

In recent years scholars have detected a so called 'procedural turn' in the jurisprudence of the European Court of Human Rights. This has entailed - in some cases - a shift in emphasis away from an examination of the proportionality of the measure, and towards an emphasis on the domestic legislative and/or judicial processes that led to it. One area where this phenomenon has become particularly prominent is where states have imposed legislative blanket bans or 'general measures' which permit no account to be taken of the actual conduct of the applicant in question (see eg Hirst v UK (No 2) (prisoner voting); Animal Defenders International v UK (TV political advertising); SAS v France and Belcacemi et al v Belgium (face-cover bans)).

This move has been welcomed by some, (for example as a reflection of an increased emphasis on subsidiarity by the Court, or as a corrective to the margin of appreciation, or as reflective of dialogue and deliberative democracy) However this paper sounds a cautionary note, and seeks to critically examine the 'procedural turn', in particular with respect to the rights of minorities, in relation to the likely consequences on the consistency of Strasbourg jurisprudence, and in relation to the irony that the more 'general' the ban the less scrutiny will be levied upon its actual impact.

- Lindsey Bell and Steven Greer, Six Myths About Counter-Terrorism in British Universities: A Socio-Legal Critique of the Case Against the Prevent Duty

The Counter-Terrorism and Security Act 2015 (CTSA) , amongst other things, imposes a legal duty upon schools, universities, the NHS and other institutions to have 'due regard to the need to prevent people from being drawn into terrorism' (the Prevent duty). The anti-Prevent movement, which numbers around forty-five organisations and includes the National U Union of Students (NUS) and the University and College Union (UCU) makes a number of claims in relation to the duty, not least that it is a form of spying upon and criminalising Muslims, violates basic human rights, is counter-productive, and has a chilling effect on public debates and freedom of speech. This paper argues that a great deal of the opposition to the Prevent duty in HE is based on myth, misinformation, misrepresentation, and misconception rather than sound socio-legal research and reflection. Framing the analysis around the six most prevalent myths about the Prevent duty, this paper critiques these myths to argue that universities cannot be exempt from participating in counter-terrorism, that the Prevent duty and CTSA are attempts to formalise this response and respond to palpable and urgent problems. Apart from legitimate concerns about the inclusion of non-violent extremism and some fine-tuning, the legislation is largely appropriate and necessary.

Exploring Legal Borderlands WMB: OCC

Borderlands of Normative Translation

Chair – Pedro Fortes

- Pedro Fortes (FGV Law School), Normative Georeferencing: Can Law be mapped?

There is a currently a trend in many jurisdictions to develop instruments to measure normativity. In this sense, the field of legal metrics established some technological tools to measure the efficiency of property rules, contractual enforcement, and corporate governance. This measurement requires the adoption of numerical indicators and the variety of legal indexes has flourished in the past few decades. Nowadays, human development, transparency, rule of law are evaluated through numbers and jurisdictions are careful about how their public policies influence these legal indicators, because they may affect reputation, businesses, and soft power of countries in the international arena. One important aspect of this logic is to consider whether law can be properly mapped empirically in a way that these indexes accurately correspond to the territory receiving a particular numerical normative value. Therefore, this paper explores the limits and possibilities of normative georeferencing: can law be empirically mapped? Do legal indicators capture variations of socio-legal norms across spatial areas? How may different degrees of social normativity be described according to the space? By examining the spatial reference of socio-legal norms, this paper also investigates the meaning of legal borderlands through interdisciplinary socio-legal methods.

- Juliette Scott (Legal Translation Hub), Translators as Neglected Legal Borderland Agents

In spite of its fundamental importance, the translation of legal texts between natural languages is a grey area of practice, endemically carried out in the shadows. Across a wide range of textual genres, translators must negotiate the formal and the informal (e.g., legislation vs surveillance transcripts); law and non-law (e.g., case law vs evidential texts). Along with register and generic integrity (Bhatia 2014, Gotti 2012), they must seek ways of conveying concepts embedded in what may be widely diverging legal systems (Galdia 2003, Pommer 2008). This is a highly complex and multidimensional task (Scott 2015, 2016, 2018), and interactions between these many facets are constant as the translator performs their task. Diachronic aspects arising out of evolving legislation and case law must also be taken into account, as must the intended purpose of the target text.

The author's empirical study of legal translators' agency in non-institutional contexts, encompassing 41 countries (Scott 2016), has demonstrated a widespread failure to define the above parameters on the part of those procuring translation – sometimes attributed to concerns of confidentiality, sometimes to lack of client education, and often as the result of a surfeit of intermediaries.

In such a desolate borderland environment, we can question how translated texts can possibly comply with quality criteria (Strandvik 2015, 2017) such as fitness-for-purpose. On a more optimistic note, this paper draws out ways in which this regrettable situation could be remedied, and outlines best practice in each instance: educating the commissioners and receivers of legal translations; upstream quality efforts; comprehensive briefing; principal>agent and agent>principal dialogue; the communication of reference sources; and more generally the awareness-raising of law-related professions.

Family Law and Policy WMB: 3.33

International and Diverse Perspectives

Chair – Annika Newnham

- Keisuke Mark Abe, Towards Legal Recognition of Family Diversity: The Japanese Supreme Court at the Crossroads

"Promoting the rule of law is a basis for prosperity; it is indispensable for earning the trust of the international community." Thus read the report of a Japanese government council, which triggered a legal reform in the 2000s. A change seems to be taking place inside the Supreme Court as well, which was once unwilling to exercise judicial review. It has recently handed down a series of innovative decisions, extending the voting rights to citizens living abroad, disapproving a shrine's use of city-owned land, invalidating a rule of inheritance giving illegitimate children a lesser share of their parents' estate than their half-siblings, and approving a transgender husband's request to recognize him as the legal father of a child conceived by his wife through sperm donation.

Examples of judicial activism also include Anonymous v. Japan (2015), where the Court declared unconstitutional a part of Article 733 of the Civil Code, which stipulated a six-month waiting period for remarriage only for women. The Court

held that 100 days would suffice to avoid a potential conflict of presumptions of paternity. It is arguably a victory for those concerned about gender equality. However, a fundamental contradiction is visible when it is contrasted with another Anonymous v. Japan (2015), which affirmed the constitutionality of Article 750 of the Civil Code requiring a married couple to assume a single surname.

Is Japanese law prepared to recognize and accommodate the reality of family diversity and its implications as to gender and sexual orientation dynamics? Do recent Supreme Court decisions reflect the trend for egalitarianism or rather disclose more and more inconsistency in law? Combining insights from constitutional law and family law, the presenter will explore the answers to these and other questions and forecast the future of Japanese law, particularly as it relates to same-sex marriage.

- Anne Barlow, Jan Ewing, Astrid Janssens and Sharon Blake, Everlasting Love? Findings from the Shackleton Relationships Project

Drawing on a 2 year interdisciplinary research project in which the research team worked with schools and updated Ewing's earlier empirical research, this paper will consider whether there are key characteristics and skills which can be identified acquired and built on to make relationships intended to be permanent likely to succeed and avoid breakdown.

The paper will look at the strengths and weaknesses of the Gottman's Sound Relationship House Theory and alternatives and at how far any such skills can be used as part of the revised policy approach to compulsory Relationship Education in Schools given government's renewed interest in this field.

Gender, Sexuality and Law WMB: 3.31

Chair – Flora Renz

- Peter Dunne (University of Bristol), Some Families Are More Equal Than Others: Critiquing Trans Inclusion Within English Family Law

Since 2000, transgender (trans) identities have achieved growing visibility within the structures of English law. From explicit non-discrimination rights (Equality Act 2010, s. 7) to express hate crimes protections (Criminal Justice Act 2003, s. 146), trans experiences (or at least public perceptions of those experiences) are increasingly enshrined in existing legal frameworks.

This paper critically analyses trans-inclusive policies in one (particularly important) sub-division of the English legal system: family law. The presentation explores how various legal reforms (statutory and jurisprudence-based) have incorporated trans rights into child and family law policies, and it interrogates the (possibly unintended) consequences of this movement for change.

The presentation proceeds in four sections, each addressing a specific intersection between trans identities and family law rules.

Section I considers policies for acknowledging trans identities. It particularly focuses on the Gender Recognition Act 2004 (2004 Act), and offers an assessment of that important statute (fourteen years after enactment). Section I considers possible options for reform, including non-binary recognition and greater privacy protections (e.g. R(C) v SS for DWP).

In Section II, the presentation interrogates relationship formalisation/maintenance entitlements. While, English trans persons can marry in their preferred legal gender and need not divorce before obtaining recognition, the Marriage (Same-Sex Couples) Act 2013 has introduced a (controversial) 'spousal consent' requirement. In addition, trans individuals, who enter into a valid marriage, are obliged to disclose their trans history or risk their marital union becoming voidable.

Section III discusses parent-child relationships. It asks what role parents/guardians should have within medical and legal transition pathways. Section III also discusses recent high-profile case law, denying a Haredi trans woman direct contact with her children and determining that a mother was pressuring her child to involuntarily transition.

In the final section, the presentation considers outstanding questions for reform, including the legal status of trans men who give birth (HFEA 2008, s. 33) or who seek to lawfully terminate a pregnancy (Abortion Act 1967, s. 1).

- Jess Smith (University of Kent), A World Within A World: Registering Births at the Beaney House of Art & Knowledge

Birth registration lays at the heart of the state-citizen relationship. A distinctly Victorian act of governance, the modern civil registration system has seen little change since its inception in the Victorian era. According to section 1(1) of the Births and Deaths Registration Act 1953, the birth of every child in England and Wales must be recorded in the administrative sub-district in which they were born. Further, it is the duty of the mother/father, or other qualified informant, to attend the registration office within three months of the birth. Interestingly then, registration is a somewhat unique form of state documentation whereby individuals are compelled to meet in spaces and places designated by the law.

With these two requirements in mind, this paper explores the registration of births in the idiosyncratic space of the museum. Two overarching questions underpin this consideration: how is otherness encountered in the experience of registering a birth and what role does space/place play in shaping this encounter? The focus of this study is the Beaney House of Art & Knowledge – a museum, library, gallery, exhibition space and community hub based in the centre of Canterbury, Kent. Adopting an interdisciplinary approach, this paper will draw upon a range of materials and themes to prompt a deeper understanding of birth registration, not as a form of state documentation but rather, as an unique encounter in the everyday spaces of law.

- Nic Shall (Centre for Gender and Violence Research, University of Bristol), "TERFs are to rape culture what FOX News is to Terrorism": The Case for Queering the 2003 Sexual Offences Act

For decades, Trans Exclusionary Radical Feminists (TERFs) have been blaming trans women for the continuation of rape culture by their very existence, despite the particularly high rates of sexual violence perpetrated against them. As trans activist Cristan Williams illustrates in the above quote, rape culture is weaponised by TERFs to incite fear and hatred towards the transgender community. In this paper, I draw on socio-legal and autoethnographic approaches to argue that queering the construction of perpetrators of sexual violence is necessary when conducting research that attempts to tackle the (re)production of rape culture. Following Tanya Palmer's (2012) socio-legal analysis, I start by demonstrating how biological essentialism is embedded within the 2003 Sexual Offences Act, (re)producing a hierarchy of sexual offences that criminalises the penis itself. Connections are subsequently made between this legal construction and tendencies among feminist activists to view the penis as inextricable from perpetrators when addressing sexual violence. Incorporating Ruth Behar's (1996) autoethnographic approach, which illustrates how "aspects of the self" – in this case my own transgender identity - are, "the most important filters" (13), the paper concludes by presenting ways in which literature from the transgender community can queer and dismantle the male/female binary. In particular, Jack Halberstam's (2001) theorisation of female masculinities can displace the biologically essentialised depiction of the perpetrator of sexual violence. This is productive of a more complex embodied subject both of surviving and perpetrating sexual violence, that, it is argued, is effective in conducting research into gender based violence.

Grenfell Tower and the Law of the High Rise **35BSQ: 4.10**

The Law of the High Rise: Design, Refurbishment, Governance

- Sarah Blandy, Law and Place in the High-Rise

In this paper towers are used as a framing device for discussion of three different types of high-rise accommodation: private apartments, council flats and student housing. They raise different issues in terms of law and governance, labels (discursive images), and design (the effects of the tower's spatiality on the residents, and on its neighbourhood). Design is often neglected as a key element in facilitating (or otherwise) sustainable relations between residents.

Examples of these different types of high-rise buildings providing accommodation for different types of resident are drawn from Sheffield, to remove the discussion from the peculiar financial bubble that London represents. Reflecting on these legal and spatial developments and the research findings' implications for social sustainability, I argue that far more attention should be paid to design, the governance arrangements for co-living, providing appropriate information to residents, and to attitudes to sharing space and property rights.

- Roxana Willis & Sue Bright, Narratives of Tower Block Refurbishment: A Case Study from Oxford, England

In the last decade, a wave of tower block refurbishment has taken place across England in social housing. Many tower blocks built from the 1950s onwards have been updated with external cladding which has since failed post-Grenfell fire safety checks. Commentators have consequently questioned why these refurbishment projects were implemented and who stands to benefit from them. This article contributes to these enquires by exploring reasons behind the refurbishment of five tower blocks in Oxford, through four narratives. The first narrative is a legal one, which brought the modest language of repair and maintenance to the forefront. The next two narratives are more ambitious, concerning regeneration and environmental aspirations. Finally, a sceptical counter narrative is considered. This study indicates that once legal proceedings are initiated, the legal narrative can come to dominate over all other accounts, thereby side-lining alternative perspectives, and creating fertile ground for sceptical explanations to take root. To reduce scepticism in future projects, it is recommended that in housing law disputes, space be provided for residents' voices and emotions.

- Rachelle Alterman, The Urban Verticality Shock: Legal and Governance Responses to Tower Condominiums

Many of the world's cities are rising high to the sky, in fast-increasing number of residential towers. These are usually in condominium-like tenure. In some countries, residential towers are becoming rampant in prestigious city centers, but also on the urban outskirts and smaller cities. This trend is drawing increasing attention by researchers. The legal and governance implications, however, are just recently being addressed. There is still a dearth of legal and public-policy knowledge about the broader relationships between residential verticality and neighborhood and urban planning and urban management. This paper seeks to contribute to this field of knowledge.
The research is set in the emerging international knowledge about tower living, but focuses empirically on one country – Israel. Due to its small geographic size and high population growth (the highest in the OECD), the Israeli case provides a globally unique case study because the current rate of transition to tower-condominiums living is probably the highest in the world. The Israeli context is thus a compact real-life laboratory for observing the impacts of what we call "the verticality shock" in a fast-track temporal context
The paper defines and analyzes several spheres of possible legal and policy impacts of tower condominiums: (1) The internal challenges of managing residential towers; (2) The interface between condominium towers and their surroundings; (3) The condominium towers' relationship with the broader neighborhood; (4) the possible wider challenges to city governance such as allocation of budgets, public goods, and electoral processes.
Our conceptual framework of spheres of impact is a theoretical contribution to better understanding of tower condominiums on the future of the world's cities. We seek to contribute to recent knowledge on how accepted conceptions of private and public property are being challenged. We also further unveil urban-management issues raised by the new realities of vertical neighborhoods era.

Indigenous Rights 8-10BSQ: 1.13

- Gloriana Rodriguez Alvarez, Pluriversal Values in the Constitutional and Legal Framework of Bolivia

Since 2009, the Bolivian Constitution was reformed in order to guarantee rights of all sentient beings within a legal and constitutional framework. To this end, the government positivized pluriversal (in contrast to universal) values based on the recognition of the diversity of indigenous peoples. This implied that in addition to the traditional sources of law, such as legal codes, jurisprudence and doctrine, indigenous traditions could also be applied. In this regard, it could be argued that the current Constitution is a true "social contract" based on the inclusion of multiple social actors. Moreover, besides diversifying positive law, it promotes a legal framework which is more diverse than the androcentric human rights discourse.

According to Enlightenment philosophy, political constitutions should be instruments which ensure that the premise of a social organisation is the protection of human rights. Indeed, over the last century, the protection of civil and political rights was generally included in the legal frameworks. Subsequently, economic, social and cultural rights have also been guaranteed protection. In both cases, the advancement of human rights was based on the defence of the well-being of citizens, revealing the predominance of a deeply Western worldview. In this regard, the Bolivian legal framework, based on the protection of the rights of sentient beings and the inclusion of other philosophical and cultural traditions could be seeing as ground-breaking.

Given that law had hitherto excluded indigenous traditions, the new Bolivian constitution implies a rupture with a past characterised by institutionalised violence, which had led to the marginalisation of the indigenous cultural fabric. Moreover, the deeply anthropocentric perspective had offered little protection to other sentient beings and nature, which had been mindlessly exploited during the colonial times and even more so in a postindustrial environment.

- Gayathri Divakara Naik, Indigenous People and Right to Water: Issues, Concerns and Access to Justice in India

Water is the core of life and livelihood. When debate on whether water is a human right or an economic good is continuing, indigenous people and their right to water also attract significance. Water resources, naturally accessible to indigenous people, are exploited for economic benefits of the population outside their realm. This paper looks into indigenous people and right to water in India. In India, development projects like dams for irrigation, hydroelectric power generation, industries, and nuclear power projects are being constructed near major water bodies. These activities have severely affected indigenous communities, their life and livelihood resulting in forced displacements of these communities from their natural habitat denying them all their rights. The Supreme Court of India in many landmark judgments have noted that right to clean and healthy environment, right to clean and safe drinking water are fundamental rights of every person and state is obliged to ensure the same. State which exploits water resources for developmental activities violate the rights of indigenous people through these projects. As Water rights of indigenous people are not recognised by formal mechanisms, they are exposed to long, costly and time-consuming process to access to justice against violation of their rights in Courts of law. The focus of this paper is upon the right to water of indigenous communities, how these rights are ensured and what mechanisms are available for accessing justice in violation of water rights in India. The study tries to analyze these issues in the light of recent proposals of river interlinking projects and developmental activities on major rivers.

IT Law and Cyberspace 35BSQ: 4.02

Algorithmic Risk Assessment and Prediction and the Role of Law

Chair – Brian Simpson

- Marion Oswald and Christine Rinik (University of Winchester), Algorithmic 'recommender' Predictor Systems in UK Policing – A Thematic Analysis'

To date, use of algorithmic tools within mainstream UK policing has been piecemeal and 'experimental' (Oswald et al., 2017). First steps have included the deployment of tools aimed at the management of risk: pre-emptive 'recommender systems' (Yeung, 2017) in which a machine learning model, using historic data, produces a risk 'predictor' (for instance, likelihood of future offending) for a particular individual. Such deployments could provide valuable case studies for the assessment of 'real-world' implications of algorithmic regulation - not only for the data subject, but for the criminal justice decision-maker, informing the way in which algorithmic tools 'mesh' into a police force's objectives and decision-making processes (Beer, 2017). It is becoming increasingly recognised that those interested in testing the many claims that are often made regarding the incorporation of algorithmic tools into public sector decision-making must pay attention to the views and needs of the practitioner, must consider contexts of use and 'engage in collaboration to understand the way technologies are perceived, used and evolved' (Veale, 2017).

This paper will discuss the authors' analysis of the output of focus groups conducted by a UK police force in order to consider the possible deployment of a 'recommender' predictor system relating to serious criminal offences, and examine the high-level themes emerging from that analysis: 1) organisational culture; 2) accuracy (of data inputs and algorithmic outputs); 3) professional judgement and discretion; 4) prediction and risk assessment; 5) the wider context; 6) use of algorithmic forecasts; and 7) collaboration with other agencies. The paper will note how these themes serve to illuminate the opportunities, challenges, nuances and practicalities that arise when attempting to implement algorithmic technology on the ground.

- Adam Harkens (Queen's University Belfast) 'Accelerated Inscrutability: Algorithmic Risk Assessment, Contestation, and Legal Vacuums'

This paper empirically analyses the use of two specific algorithmic risk assessment tools within the criminal justice systems of the United States and the United Kingdom. Framed by the judgment of the Wisconsin Supreme Court in Loomis vs. Wisconsin, it argues that ensuring concrete procedures of legal contestation is vital for the development of algorithmic risk assessment in a beneficial manner, to prevent the persistence of legal vacuums that are open for exploitation in this accelerated 'algorithmic age' (Fraser and Kitchin, 2017).

To do this, the paper focuses specifically on the use of Northpointe's COMPAS - a web-based 'fourth generation risk and needs assessment instrument' – and Durham Constabulary's HART, the first example of an operational algorithmic risk assessment tool in the UK. It tracks the processes of development, marks out design choices, and attempts to delineate theoretical assumptions and the disciplinary power inherent to each of these technologies. It is hoped that by doing so, it can be demonstrated that these technologies operate political functions - because of the methods by which they enact policy choices by design – and in doing so, argues for coherent processes of review, and options of contestation, for individuals who are scored by the tools.

Interrogating the Corporation WMB: 3.30

- Rangika Palliyaarachchi, Constructing Meaning through Organisations and Law: Legal Endogeneity and Due Diligence Defence for Prospectus Misstatement Liability in Australia

The identification of corporations as the main vehicle of creation of wealth in capitalist societies has enhanced the importance of corporate form in society thereby replacing the prominent place held by government and public institutions in past. Corporations have not only become the focal point for economic activities but also the mechanism for addressing an array of social, environmental, governance and cultural issues. Corporations law in this regard has been identified as a tool which ensures the long-term value for shareholders/stakeholders (based on which side of the monist and pluralist debate one finds herself). Whether is it stakeholder or shareholder value maximisation, the relationship between law and corporations has commonly been studied based on the laws' impact and regulatory power over the corporations' conduct. However, the growing identification of importance of corporations in law making process has directed much attempt at assessing the direct influence of organisations rather than studying the subtle and indirect ways in which corporations' shape laws' content and meaning. Therefore, this paper adopts the theoretical framework of legal endogeneity as presented by Lauren B. Edelman to study the manner in which business organisations influence construction of meaning and content of laws in relation to one of the most important elements of corporations' regulation; equity fundraising. Being part of a doctoral study comprising four jurisdictions, this article focuses on the due diligence defence in prospectus misstatement/omissions liability in Australia to assess the manner in which organisations shape law through the continuous dialog and exchange which occurs through organisational filed and legal field, which ensures 'the legalization of organizational fields' and the 'managerialization of law'. In conclusion, this paper argues that corporations shape and construct laws as much as laws shape and regulate corporations.

- Metji Makgoba, Discourse, Law and Power: A Critical Analysis of Anglo-American Platinum's Legitimation of Retrenchment

This paper adopts a critical discourse analysis to demonstrate how Anglo-American Platinum employed the discourse of law in its press statements to protect its corporate image and to background the commercial interests in its business restructuring. I employ Fairclough's three-layered model (1992) to analyse these texts through their textual form, the discursive practices of their production and consumption, and the broader social practice that they are part of. My approach to CDA here considers language "as a site of power and social struggle" that "is involved where there is contention over, and a challenge to, power" (Wodak and Busch, 2004:110). It also illustrates how the company employed its discursive power through ambiguous bureaucratic and legal language to construct its identity, to distance itself from the process of retrenching workers and to represent the role of Unions and Government in the process. In doing so, the analysis finds that the company used technical language to exercise power through the application of intertextual and interdiscursive mechanisms that function to merge different discourses to legitimize its decision to retrench its miners. This study shows the intersection of law and language as well as cultural studies, necessitating the need for an interdisciplinary approach.

- Johanna Hoekstra and Olga Martin-Ortega, Non-Financial Reporting and Human Rights: Assessing EU and National Normative Developments

December 2016 was the deadline for Member States to transpose the EU Directive on Non-Financial Reporting (2014/95/EU). The Directive requires large public-interest companies to report relevant environmental and social information, employee matters, respect for human rights, and anti-corruption and bribery matters.

The transposition of this Directive comes in the wake of the development of several national regulatory initiatives imposing obligations on companies to publicly report on their human rights due diligence processes to identify, prevent and mitigate human rights risks in their supply chains.

In the light of these developments this paper critically examines the implementation and preliminary functioning of the Directive from a comparative perspective. Firstly, this paper examines the international legal context in which the Directive was written, its main provisions and the criticisms that are leveled against it.

The second part analyses the implementation process in selected countries from a comparative perspective, with an in-depth focus on the UK, the Netherlands, Spain, and France. This examines the legal obligations developed in each country in their national regulatory context, compliance mechanisms and the consequences of non-compliance.

The third part of the paper analyses the preliminary results of the implementation. This part examines a selection of the first non-financial statements submitted at the end of 2017 in some of the selected countries. This analysis focuses firstly on compliance, and secondly on potential impact on the protection of human rights in global supply chains.

Finally, conclusions are drawn on the overall role of the Directive in the context of the business and human rights debate, critically assessing whether the Directive and the resulting national legislation adequately articulate the corporate responsibility to protect human rights in their supply chain and the state duty to protect those working in global supply chains and those affected by business activities.

Labour Law and Society 35BSQ: 3.13

- Jamie Atkinson, Dads and Shared Parental Leave: The Process of Accessing and Requesting SPL in UK Companies

Shared Parental Leave (SPL) was introduced in the UK in April 2015 in order to allow parents (widely defined) the opportunity to take time away from the workplace to look after their biological or adopted child in the 12 months following birth or placement for adoption. SPL is a more flexible version of its predecessor and enables eligible parents

to share up to 50 weeks of leave, 37 of which can be paid. Parents can take leave in continuous or discontinuous blocks and can take some leave together or independently. A key policy aim was to encourage fathers to take a longer period (or periods) of leave to care for their child, provided that their spouse or partner had either returned to work or given notice to return.

Despite having the potential to challenge the male breadwinner-female carer family model (and variations on that model) and to provide various other economic and social benefits, it has been hampered in achieving these aims by poor rates of take up. Research by the CIPD in December 2016 found that, on average, only 5% of eligible fathers have taken up SPL, and over half of employers reported no take up at all. This paper will present the results of a pilot study which involved conducting qualitative interviews with fathers employed in the private sector, who had taken or were going to take SPL during 2016/2017. The research concentrated on their experience of accessing information about SPL from their employer and the process of requesting SPL in general. The study also considered to what extent the participants felt that their work and/or career prospects had been negatively affected by taking SPL.

- Grace James, A (Condensed) History of Regulating Working Families: Focus on Eldercare

This paper is drawn from a book (A History of Regulating Working Families: Strains, Stereotypes, Strategies and Solutions, Hart Publishing, forthcoming 2018) currently being co-written with Professor Nicole Busby (from Strathclyde University). Focussing on eldercare, in this paper I provide an outline and critique of how elderly dependents, and those who provide care for them when needed, have been constructed throughout history.

Today, those with elderly dependents have very few employment rights that reflect their specific, but varied and changing, needs – especially when compared to carers of children. Yet, an estimated 3 million workers have eldercare responsibilities and the numbers are predicted to rise – with implications for families and workplaces (see discussion in James, G and Spruce, E (2015) Workers with Elderly Dependants: Employment Law's Response To the Latest Care-giving Conundrum' in Legal Studies Vol 35(3) 463-479). In this paper I show how our inability/unwillingness to adequately investigate, articulate or respond to the varied and changing needs of elderly dependants or their carers is evident across time. I demonstrate how it is rooted in the early (post-war) but ongoing categorisation of the elderly as somehow 'separate' to the rest of the population and an assumption that families, particularly women, will absorb the care needs of any elderly relatives. Over time, I argue, this categorization and assumption has been perpetuated and problematized by various factors, including the erosion of the welfare state and growth in our acceptance of neoliberalism.

As a whole the paper provides a brief history of legal (or lack of legal) engagement with an issue that impacts upon the lives of an increasing number of workers and considers what lessons can be learnt that might help us improve the lives of working carers and the recipients of their care.

Law and Emotion 35BSQ: 2.25

- G. North, Assessing for Bruises on The Soul: Identifying And Providing Evidence of Interfamilial Emotional Abuse

Emotional abuse is a contested notion, which professionals struggle to recognise. They may not be able to operationally define it, and consequently 'experience uncertainty about proving it legally' (Glaser 2002: 697).

Whilst providing statutory child protection social workers with powers and duties, the law does not necessarily offer clear direction. They must investigate when there is reasonable cause to suspect that a child is suffering, or is likely to suffer 'significant harm' (Sec. 47 Children Act 1989). As the term 'significant harm' is so contested, particularly in relation to thresholds of emotional abuse, lengthy delays in bringing interventions may occur. Social workers routinely experience fear when working with the law, feeling inadequately equipped to engage with it.

This ESRC funded doctoral research project uses psychosocial methods to explore the experiences of child protection social workers in their every day work assessing and evidencing emotional abuse. 8 social workers were interviewed, 2

focus groups were carried out, and an additional 2 analysis 'panels' provided further data. The research looks beneath the surface of participants' responses, to gain in-depth understandings of how, for example, previous practice experiences, educational training and cultural background contribute to decision-making processes. It aims to explore the complexities social workers encounter in their everyday work around identifying and evidencing emotional abuse in a statutory social work context. This is with the aim of supporting decision-making in child protection cases more effectively.

The research findings indicate that social workers' self-efficacy in work with emotional abuse may be improved through effective, non-bureaucratic supervision and supportive peer working groups. The use of psychosocial theory as a tool to support reflection in these activities is recommended, along with a developed awareness of psychodynamic processes, such as transference. The research identifies the importance of opportunities to formalise knowledge about attachment theory. Social workers may also benefit from enhanced understanding about the impact of adverse environments on a child's welfare, for example access to up to date research.

- N. Cammu, Socially Deviant or the Consequence of Societal Evolution? Media Discourses on Multiple Parenthood in the Low Countries

Contemporary forms of 'multiple parenthood' have attracted considerable media attention in recent years, specifically in newspaper coverage. This paper explores news articles concerning two forms of multiple parenthood in Belgium and the Netherlands. A first stream of articles focuses on Mitochondrial Replacement Therapy (so-called 'three-parent babies'), first officially legalized in the UK in 2015. A second stream of articles covers the social and legal functioning of parental projects of more than two parents, against the backdrop of the recommendations of legal parenthood for a maximum of four parents by the Dutch Government Committee on the Reassessment of Parenthood (2016). Through discourse analysis of these articles, this paper will challenge the concept of parenthood as an understandable given. That is, newly developed 'concepts' within the traditional framework of parenthood are explicitly presented as 'new' and 'revolutionary', yet their existence remains dependent on mainstream conceptual usage and dominant social relations underpinning them. While law merely focuses on the legal aspects, e.g. the juridical discrimination emerging from the protection of certain parents above others, media additionally covers emotionally charged imagery. Consequently, the news articles' rhetoric has the potential to shape public opinion more than the law itself.

- J. Carlisle, Making an Emotional Case for Children's Best Interests: The Transnational Experiences of Dutch, Moroccan and Egyptian Parents

This paper explores how parents who are forcibly transnationally separated from their children have adapted affective claims to child custody or access to fit the criteria of the best interests of the child. I will explore the opportunities and limits of this international legal principle for variously positioned parents as they engage in complicated and difficult transnational child custody and access disputes. My conclusions will outline the extent to which the rise of the 'best interests' norm has helped different parents in three legal jurisdictions: The Netherlands, Morocco and Egypt.

The subjects of my research are Dutch, Moroccan and Egyptian mothers and fathers who are victims of international child abduction, the breakdown of a migration marriage, or deportation. All of them have been forced to live across the Dutch/Moroccan or Dutch/Egyptian border from their children because they are either unable to legally cross this border or to legally bring their children back across it. None of these parents have recourse to an international legal remedy.

The only feasible argument that these parents can make is for recognition of the importance of their emotional relationships with their children. The Netherlands, Morocco and Egypt have all ratified the Convention on the Rights of Child, binding them to making children's best interests a primary political, legal and bureaucratic consideration. The CRC further obliges states to respect children's identities (Art 8), to protect children's relationships with their parents (Art 9) and to give careful consideration to applications for family reunification (Art 10).

My fieldwork with parents, NGOs and state institutions shows how parents' gender, citizenship, religion and class impact on the treatment of their emotional claims about their children's best interest by state institutions and courts. While the best interests principle has potential to empower some of these parents, it has yet to be of use to others.

Law, Politics and Ideology 8-10BSQ: LG01

Citizen and State

- Ian Loader, Criminal Justice and Sacrifice

Why, given its recurrent injustices and repeated ineffectiveness, do the police cling so tenaciously to stop and search powers? Why do police shootings, or deaths in custody or detention, so seldom result in prosecutions or adequate redress? Why are prisons not reconfigured so as to reduce demonstrable risks of self-harm of suicide? Why are known collateral effects of incarceration tolerated rather than tackled? In this paper, I argue that that we can shed clearer light on such questions if we theorize and investigate criminal justice as a site of sacrifice. Criminal justice is an arena, first, where marginalized individuals are routinely sacrificed – violated, neglected, forgotten; left unheard and invisible – in clear contravention of the claim to treat those who transgress with decency that legitimizes and supposedly constrains police and penal power. It is a site, secondly, in which the values that liberal democratic polities purport to hold dear are sacrificed at the altar of a police logic of security and sovereign control. Thinking about criminal justice in these terms helps, I argue, to clarify why authorities find families' campaigns to remedy or redress abuses of criminal justice so troubling and why such campaigns are typically met with recalcitrance or refusal. I conclude that the systemic reduction of sacrificial abuse requires a politics grounded in an altogether different and unrealised mode of sacrifice – relinquishing the alluring fantasy of police and criminal justice as constitutive of social order and 'making oneself vulnerable' to the 'new political possibilities' (Lebron 2016: 158) that may ensue.

- Alison Tarrant, Interpretations of Independence in Social Care: Understandings and Misunderstandings in the Policy and Legal Contexts

Independence is a critical idea for disabled people. 'Independent living' is cited as one of the big ideas of the UK disabled people's movement and 'living independently' is one of the pivotal rights of the UN Convention on the Rights of Persons with Disabilities. Independent living has been incorporated into social care policy in both England and Wales and is stated to be protected under the well-being principles of the Care Act 2014 and the Social Services and Well-being (Wales) Act 2014. Yet despite these advancements, disabled people in the UK argue that their rights and access to independent living are currently being systematically undermined. The recent case of R (Davey) v Oxfordshire County Council demonstrated that the principles of independent living are consistently misunderstood and conflated with notions of independence that relate to self-reliance and a lack of dependence on state structures.

The 2014 Act in Wales contains a new duty to promote the independence of adults seeking or receiving social care support. We therefore need to understand what is meant by independence in the Welsh context. This paper reports on research which systematically examines the thematic construction of both independent living and independence in documents produced by the disabled people's movement and policy and legislative documents in Wales. It considers whether the constructions of these concepts are the same, which elements of the construction by disabled people are reproduced in Welsh policy and law, what is absent and why this might be the case. It concludes by considering the implications of this for disabled people, policy and law.

- Clare Torrible, Caught up in the Moment or Part of the Movement? Revisiting the Political and Ideological Underpinning of Thompson and Hsu

It is now twenty years since R v Commissioner of Police for the Metropolis ex parte Thompson and Hsu (Thompson and Hsu) set guidelines to encourage the settlement of police actions for intentional torts (police actions). This paper reviews Thompson and Hsu in light of several subsequent judgments and argues that it has resulted in a subtle but significant transformation of the relationship between citizen and state. It contends that, where previously police actions were

conceived as protecting the right not to be subject to unlawful interference by the state (vindication of which was represented monetarily) they are now predominantly understood in terms of a considerably lesser right; the right to monetary recompense when such interference occurs. The paper explores the political, legal and ideological roots of this change.

The starting point is the political climate at the time of the Commissioner's appeal in Thompson and Hsu. As architect of the Civil Procedure Rules it is perhaps unsurprising that the outcome of Lord Woolf's judgment in this case is ideologically aligned with those rules. However, while neo-liberal reforms to the provision of legal services led to increases in the number of civil actions in the 1980's and 1990's, the increase in police actions during this period is largely attributed to reduced public confidence in the police complaints process at that time. The paper therefore focuses on the extent to which changes in perception (and practice) in relation to police actions can be attributed to the ideologies that have driven reforms to tort law and the provision of legal services more generally, and contrasts this with the influence of political and legal standpoints more specific to the regulation of police conduct.

Protest and Regulation in the Context of Social and Environmental Justice 8-10BSQ: 1.12

ICT, Protest, Repression and Regulation

- Bronwen Morgan, Ownership and Control in the Sharing Economy: Food, Money and Ethos

The rise of the sharing economy has occasioned much debate as to whether its disruptive potential is emancipatory and progressive or instead amplifies and exacerbates existing inequalities. The paper argues that such an inquiry is necessarily regulatory, and highlights in particular the importance of the regulatory infrastructure of ownership and control of sharing economy projects. To illustrate this argument, the paper compares the implicit and explicit dimensions of this infrastructure as portrayed in two contrasting crowdfunding 'pitches' for building platforms for the distribution and exchange of local sustainable food. The argument points to the co-equal importance of 'ethos' along with the technical design details of financing, ownership and control and legal governance. It raises, as a concluding provocation, the question of how regulatory scholarship can most effectively integrate this question of ethos: whether through interrogating the relationship between property rights and social and economic human rights, or through a dialogue with commons-based approaches, or engaging with arts-based methodologies.

- Martin Innes and Bethan Davies, Counter-Governance and 'Post-Event Prevent': Regulating Rumours, Fake News and Conspiracy Theories in the Aftermath of Terrorism

This paper draws upon empirical data to distil insights into how and why 'soft facts' (rumours, fake news and conspiracy theory) are communicated in the aftermath of terrorist attacks by individuals, groups and institutions, and the consequences these have for how the situation is defined and public understandings constructed. It is argued that some such communications constitute forms of 'counter-governance', that seek to resist and disrupt authority structures. The empirical data, drawn from across two studies (1- in depth interviews with Prevent practitioners; 2 – public reactions to the 4 UK terrorist attacks of 2017), also document the attempts made to regulate and mitigate the effects and social impacts of these soft facts.

Positioned in this way, in addition to helping us understand the dynamics of the new information environment and media ecology, this paper also seeks to make a contribution to knowledge in respect of social reactions to terrorism. Terrorist violence is a form of communicative action designed to 'terrorize, polarize and mobilize' different segments of the public audience. Given this intent, it is perhaps surprising that understanding public reactions to terrorist events has remained relatively neglected by policy development and academic research, particularly when compared with the amount of work that has been directed towards the acquisition of terrorist motivations and processes of radicalization.

- Film viewing of 'The Live Model'

Sexual Relationships: Deception, Consent and Protecting Autonomy WMB: 3.32

- Alexandra Sharpe, The Ethicality of the Demand for (Trans)parency in Sexual Relations

This paper considers what we owe to each other by way of information disclosure prior to sexual intimacy. It does so in one specific context, namely sexual relations between cisgender and transgender people. In recent years, the UK has witnessed a spate of sexual offence prosecutions brought against young transgender and other gender non-conforming people. It does not deal with questions of criminal law, at least not directly. Rather, it aims to challenge the dominant cisnormative view that non-disclosure of (trans)gender history is unethical. The paper contains four parts.

First, it will issue an important caveat concerning complainant claims of ignorance of defendant gender identity. This is important because without the caveat the analysis might be viewed as reinforcing the transgender/deception coupling. Second, it will delineate the relevant 'facts' about gender in relation to which ethical conclusions might appropriately be drawn. This section will highlight how problematisation of (trans)gender identity is an effect of cisnormative power and privilege.

Third, the paper engages with arguments derived from normative ethics, ones which accept gender identity claims, at least nominally, but nevertheless view non-disclosure of gender history to be unethical. It will do so in order to highlight how, even when issues of ideology, power and privilege are ignored or suspended, the view that an ethical obligation to disclose ought to exist will not necessarily win the day. Finally, the paper returns to issues of cisnormative power and privilege and considers what it might mean to be 'ethically gendered,' and the implications of being so for the way we think and feel about sexual encounters in a world characterised by gender variance.

- Rachel Clement, Deception, Mistake and Consent to Sexual Activity: A Differentiated Approach

There are two broad approaches to analysing the validity of sexual consent obtained by deception and that given on the basis of an uninduced mistake. One is to adopt a 'unified approach', which identifies material mistakes as consent-invalidating, and relegates the deception/mistake distinction to the mens rea/fault stage of the analysis. Under a 'differentiated' approach, the distinction is relevant at the 'consent stage'. In this paper, I reject the unified approach as misconceived and offer a conceptually robust 'differentiated' account. This paper ultimately offers a coherent differentiated approach to deception and mistake that better reflects the complex nature of sexual integrity and is more sensitive to competing and complementary rights, interests and values.

My paper comprises four main sections. I explain and critique firstly, the conceptual foundations of the unified approach, and secondly, its scope and practical application. Thirdly, I recast the right to sexual integrity as comprising three component rights: the right to make a decision, the right to be free from illegitimate interference with that decision, and the right to know information relevant to that decision. Deception and uninduced mistake implicate different component rights, and so do not affect consent-validity in the same way. Finally, I argue that only in restricted circumstances will consent given on the basis of an uninduced mistake (rather than deception) constitute a violation of sexual integrity, due to the need to carefully balance C's interests in disclosure against various other rights and interests of all potential parties to sexual activity. In most cases, mistaken consent is valid consent.

- Matthew Gibson, The Wrongfulness of Sex by Deception: Developing the Case for a Separate English Offence

Some people lie to get sex. The victims of these deceptions may claim their consent to sexual activity was invalid. Should such deceivers be criminalised? If so, should they be convicted of a standard sexual offence? Or should they be convicted of a separate offence ('sex by deception') which specifically reflects their deceptive conduct? Moreover, are the answers to these questions contingent on the type of deception involved? Unsurprisingly, scholars disagree on how to tackle these issues. Some claim that existing sexual offences already capture the wrong of deception, whilst others prefer the creation of a bespoke offence. Occasionally, some argue that deceptive sex should not be illegal at all. Commentators also debate

whether all or just certain types of deceptions should be criminalised. These matters have become significant in England and Wales following recent sexual offence cases involving deception.

This paper develops the case for a tailored 'sex by deception' offence in England and Wales. In doing so, it suggests that sex by deception is differently wrongful to the conduct targeted by the consent-based crimes in the Sexual Offences Act 2003. That difference arises in the way that sex by deception falsely permits the victim to believe s/he has the opportunity to gain a sexual autonomy-enhancing experience. The deception frustrates that opportunity. In contrast, the existing consent-based crimes are only concerned with activity which was never able to produce a potentially sexual autonomy-enhancing experience for the victim in the first place. As such, the sexual act in cases of deception is constituted differently from that which obtains in other non-consensual scenarios. If this is correct then the current practice in England and Wales of subsuming sex by deception within consent-based sexual offences is a travesty of ex ante fair warning and ex post fair labelling.

Social Rights, Citizenship and the Welfare State 35BSQ: 2.06

- Jackie Gulland, Work, Care and the Welfare State

The welfare state has always had the concept of work at its centre. The classic Beveridgean welfare state was built around the idea of the archetypal worker (the male breadwinner and a dependent wife and children) has long disappeared. We now have a welfare state model which assumes that everyone is a potential worker. Increasing conditionality for unemployed people, lone parents and disabled people has now become the norm. Activists and scholars have questioned this extension of conditionality: whether it is ethical, whether it is discriminatory, whether it meets explicit or implicit policy objectives. There are fewer voices questioning the concept of 'work'. Feminists have long argued that childcare is 'work' but the solution to meeting the needs of parents in our work-centred welfare state is usually to subsidise child care costs to enable parents to do 'real work'. Meanwhile this commodified child care is carried out by low paid female workers. Similar patterns are now appearing for people who act as unpaid carers for other adults. Policies focus on taking these, mostly female carers, away from unpaid care work, encouraging them to do 'real work' while low paid women provide caring services. Meanwhile, the targets are shifting towards older people. The 'Women Against State Pension Inequality (WASPI) campaign, has highlighted the position of women in their early sixties, who no longer qualify for retirement pensions. As state pension age is raised for everyone, people in their sixties will become the target of work-related conditionality, while their own health issues and caring responsibilities increase.

'Work' remains a concept which is rarely scrutinised. This paper looks at the concept of work in the welfare state and considers whether there are other ways in which we could reimagine a welfare state which considers citizens' contributions to society which do not depend on waged labour.

- Gráinne Mckeever, Ciara Fitzpatrick and Mark Simpson, Destitution and Paths to Justice – (In)Justice and Paths to Destitution

This paper reports findings from the authors' current research on the links between access to legal advice and representation (or lack thereof) and pathways into and out of destitution. The project builds on work by Fitzpatrick and others (2016) on the definition and prevalence of destitution in the UK and encompasses a review of literature on legal need and access to advice and representation; a legal definition of destitution; analysis of legal issues contributing to destitute for 40 interviewees; and identification of potential advice points and barriers for those experiencing destitution. Emerging findings suggest that many of the social patterns evidenced by individuals who have experienced justiciable problems also apply to those individuals who have experienced episodes of destitution, notably social security and housing problems and related adverse events that increase vulnerability to both destitution and other legal problems. The proposed legal definition of destitution, drawing on human rights, immigration and asylum law, social security law and the common law, differs somewhat from Fitzpatrick and others' definition but the key finding here is that only rarely is there an absolute duty on the part of the state to prevent or alleviate destitution. Interviewees' experiences speak to a failure of social citizenship, with gaps or inadequacies in the post-2012 social security system a common cause of

destitution, with a discretionary, patchy, sometimes hard-to-access and frequently stigmatised safety net of local government and charitable support far from guaranteed to catch those who fall through the holes.

This study has been commissioned by the Joseph Rowntree Foundation and Legal Education Foundation.

◦ Keith Puttick, Towards a Convention-Based 'Right Not To Work'?

A number of groups currently on the periphery of the labour market – part-timers, the self-employed, the under-employed, and those in atypical forms of work – struggle to receive sufficient wages and household income to obviate the need for State support to supplement their earnings. That support takes a number of forms including in-work benefits, income replacement, wage supplementation, and assistance with rental and mortgage housing costs.

In a system that has seen the roll-back of insurance-based benefits and the contributory principle, means-tested benefits and schemes like Universal Credit look increasingly at claimants to demonstrate attainment of minimum levels of earnings from employment before sufficient 'reciprocity' and 'contribution' can be shown, and entitlement is established – or if reductions to amounts of support are to be avoided.

At present there are few, if any, clear 'protections' for such groups, other than in administrative guidance - even when it would appear that Convention rights may well be engaged: typically Article 8 and family life, Article 14 and discrimination, and Article 1, Protocol 1 and 'possessions'.

This paper will consider whether, and to what extent, Convention rights may represent a potentially and important developing source of a 'right not to work' – particularly when measures impact on the quality of family life, and set excessively demanding and disproportionate eligibility criteria - or penalties when earnings and income thresholds and progression targets are not being met (and particularly if younger families' welfare is jeopardised). Groups to be considered will include EU/EEA nationals required to meet earnings thresholds to demonstrate and maintain 'worker' status and therefore a 'right to reside'; UC claimants required to raise their minimum earnings threshold by taking on new or different work; and single parents finding it difficult to meet minimum thresholds to maintain required earnings targets.

Recent cases which have held that Convention rights are engaged, including R (DA) v Secretary of State for Work and Pensions [2017] HLR 35 will be considered.

In the face of successive Conservative and Conservative-dominated governments to establish a 'higher wage, lower tax lower welfare' society (Chancellor's Budget 2015 Speech, HM Treasury July 2015) such policy aims and barriers arguably represent a significant challenge for claimants, advisers, and the courts.

Socio-Legal Perspectives on Brexit 8-10BSQ: LG05

◦ Billy Melo Araujo, Devolution and Post-Brexit UK Trade Agreements

For the past 40 years, the United Kingdom has been precluded from carrying out its own international trade policy. Under the Common Commercial Policy, the EU had the exclusive competence to conduct trade policy and relations on behalf of its Member States. This included the right to regulate all aspects of external trade and to conclude trade agreements as well as the obligation to assume responsibility for violations of international law. Those powers will be repatriated once the UK formally leaves the EU, meaning that the UK will now be solely responsible for its external trade relations. This will enable the UK to negotiate and conclude its own trade agreements and to regulate market access issues (e.g., tariffs, subsidies, trade remedies) in the future, and it will also require the establishment of new legislative and institutional frameworks under which the UK's trade policy will operate. This paper examines the role to be played by the devolved administrations in the negotiation, conclusion and implementation of trade agreements concluded by the United Kingdom post-Brexit. By examining, from a comparative perspective, examples of collaborative frameworks between sub-national entities and central governments established in federal jurisdictions, it proposes a significant reform of existing

inter-governmental cooperation mechanisms to ensure that devolved administrations are given a meaningful voice in the shaping of future trade agreements.

- Emma Roberts, Conflict of Laws and Brexit: Realising our Internal Borders

Conflict of laws concerns cases which involve some 'foreign' element and which typically cross international borders. This area of law provides answers to questions of jurisdiction, applicable law, and enforcement of foreign judgments, in private disputes. The unique constitutional make-up of the United Kingdom and the distinctness of its three devolved legal systems of England and Wales, Northern Ireland and Scotland, prompts an intra-national response to these same questions.

For international disputes, the UK's conflict of laws regime was traditionally sourced in common law and statutory provisions. Nowadays, they primarily derive from several international instruments, to include those directly applicable measures passed by European legislators. Indeed, in matters of civil and commercial law, as well as some areas of family law and succession, the growing Europeanisation of this area of law has almost entirely superseded the UK's traditional approaches to conflict of laws. When the UK becomes party to any such international instrument, there is generally no obligation to apply the same rules to intra-national conflicts. Nonetheless, the UK applies these international rules to intra-national disputes in many areas. The UK's impending departure from the European Union poses complex questions as to the future status of these laws.

This paper considers the impact of Brexit on cross-border disputes within the UK. European standards have imposed harmonisation of laws across the UK's constituent parts for areas of law where devolution would otherwise have provided divergences. The lifting of these European standards, immediate or eventual, prompts that attention is turned to the robustness of intra-UK conflicts rules to appropriately adjudicate on cases crossing the UK's internal borders.

Session Seven: Thursday 29th March 10:00-11:30

Access to Justice in Context 35BSQ: 4.07

Financing Access to Justice

- Mhairi Campbell, Legal Expense Insurance: Can We Learn from our European Cousins?

In Scotland, there has been an increase in unmet legal aid in recent years. This, coupled with the cuts to the availability of state funded civil legal aid has created significant barriers in access to justice. Research indicates that fear of cost is the main reason why someone will not seek advice from a solicitor. At present, the Scottish and UK Government will launch a review into the civil legal aid system. However, it has been critiqued this will only be successful if there is an overhaul of the whole system as it is unsustainable.

Eligibility in particular has created a barrier for individuals who are deemed to be in the middle income trap (someone who earns too much to qualify for legal aid but cannot afford to pay for legal advice on their own). Legal expense insurance has been highlighted as a possible solution for unmet legal need in this particular group of litigants. In particular, it has been suggested to adopt the model that is based on Germany's. This paper concentrates on discussing whether a voluntary or mandatory legal expense model in the UK would promote or hinder access to justice.

- Samira Allioui, Access to Justice in a Context Of Budgetary Restrictions: The Case of Regional Human Rights Courts

Dominated by the ends discourse of securing the more rapid disposal of more cases, the restrictions of the access to justice because of budgetary restrictions and the establishment of results-based indicators have tended to be neglected missing from both scholarly and official discussions. How the institutions facilitate the access to justice for the litigants is more than a technocratic question of optimal resources allocations. It may produce significant injustice for some of the Court's most vulnerable applicants both in the European and the Interamerican system of human rights.

If we take the example of the European Court of Human Rights (ECtHR), recent ministerial conferences in Interlaken, Brighton , Izmir have encouraged the ECtHR to reduce the docket, address the delay and increase the number of decisions taken. Following that, the Court has instituted a « dedicating filtering section » in the Registry in order to deal with incoming applications from high-case count countries » . This last decade has also been difficult for the Interamerican Human Rights system, the Commission has been criticized by several Organization of American states parties and in 2012, in light of petitions procedural delay, the Commission began a process aimed at recovering its backlog, implementing diverse reforms that range from temporary measures to structural reforms . Those reforms have been at the origin of the introduction of new performance indicators. But it must be noted that all the reforms that have taken place since 2010 have the effect of discouraging individual requests and liquidating their treatment .

We will analyze the impact of the introduction of New Public Management in a context of budgetary constraints on the access to justice in order to have a concrete analyze of judicial performance in regional human rights courts. This prompts us to question why these courts were created if it's not to allow and facilitate the right of access to justice.

- Chris Gill & Naomi Cruetzfeldt, Access to Justice for Vulnerable and Energy Poor Consumers in the European Energy Market

Is Alternative Dispute Resolution (ADR) resulting in more accessible justice for vulnerable and energy poor consumers? Our three-year (2017-2020) research project seeks to answer this question.

Consumer disputes are frequently subject to ADR: in 2008, 530,000 cases were referred to ADR in Europe. And yet, only 43% of consumers report that ADR is easy to use. In this context, some have questioned whether ADR is meeting consumer needs. At the same time, debate about access to justice has shifted from a focus on demographic groups (e.g. the poor) to a broader focus on vulnerability. This more challenging concept is the focus of this research. We build on

existing scholarship and question the role of ADR in access to justice. ADR proponents say it is cheaper, quicker, and more accessible. Critics question how accessible it is, and whether it provides access to settlement, not justice.

Our research is located in the European energy sector for the following reasons. The energy sector is a sector where the European Union has mandated ADR as a means of promoting access to justice. Second, energy consumers are particularly prone to detriment, with 8.9 million problems experienced in the UK in 2015. Third, the consequences of detriment are severe, with 10.8% of the EU's population living in fuel poverty. Fourth, energy consumers are particularly at risk of vulnerability. Fifth, ADR is an explicit means through which policymakers are seeking to tackle vulnerability. This sector is, therefore, an important site at which access to justice, ADR, and vulnerability intersect. The research will use mixed methods (focus groups, interviews, surveys, and participant observation) and investigate six European countries (Malta, UK, Germany, France, Catalonia, Belgium) with significant national variations in policy and practice. This design has been developed in partnership with the National Energy Ombudsman Network (NEON). This paper will provide an overview of the project and some initial findings in the 6 participating countries.

Banking and Finance 35BSQ: 4.01

Banking Governance and Insolvency

Chair – Alison Lui

- Joanna Wilson, The Need (or Not?) For an Ex-Ante Resolution Fund in the UK: A Comparative Analysis

One of the key EU-level responses to the 2007-09 financial crisis was the Bank Recovery and Resolution Directive 2014/59/EU (BRRD), which put in place a new and comprehensive system for dealing with failing banks and which aimed to enhance stability, reduce moral hazard and, most importantly, put an end to publicly funded bail-outs. This article contributes to the literature on the public v. private debate of financing banking crises by analysing the decision of the UK Government to derogate from the requirement in the BRRD for Member States to build an ex-ante resolution fund via contributions from the private banking sector. A comparative approach is adopted which analyses the practices of Member States in imposing bank levies in the post-crisis climate, with a focus on whether they contribute either ex-post to the general economy (the approach taken in the UK), or ex-ante to a designated resolution fund (the approach taken by Member States operating within the Eurozone). In doing so, this article identifies the potential impact of the decision on the management of future banking crises in the UK, addressing in particular whether it will be the public or private sector that bears the cost. It also considers the implications of the decision on the UK's current negotiations to leave the European Union.

- Federik De Leo, Good Bankruptcy Governance: More Than a Dream? Applying the Agency-Principal Costs Model

Since the Enron scandal, good corporate governance has become increasingly important. Good bankruptcy governance, however, is something only a few idealistic academics speak about. Nonetheless, bankruptcy governance is nothing more – but also nothing less – than corporate governance in financially distressed companies.

Once we acknowledge that an insolvency estate is very similar to a "forced" corporation, with a management ("bankruptcy trustee/liquidator" or "debtor-in-possession") and shareholders ("creditors"), we discover a whole new governance structure, with its own agency conflicts: (i) between the creditors and the trustee, (ii) between the secured creditors and the unsecured creditors, and (iii) between the creditors in the estate and the estate creditors. One can observe a similar – although a bit more controversial – governance structure in companies in reorganization.

In this paper, the recently published (agency-)principal costs model from Goshen and Squire (Z. GOSHEN and R. SQUIRE, "Principal Costs: a New Theory for Corporate Law and Governance", Columbia L. Rev. 2017, 767-830), which builds on Jensen and Meckling's seminal paper (M.C. JENSEN and W.H. MECKLING, "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure", J. Fin. Econ. 1976, 305-360), will be applied to bankruptcy law. Our goal is to

develop a new theory for bankruptcy governance, inspired by the previous work of well-known (corporate) law and economics authors, which takes into account the different agency and principal costs.

While applying the agency-principal costs model in bankruptcy law, we stumble on some inefficiencies in the current bankruptcy governance system. While the residual risk in companies in financial distress shifts from the shareholders to the creditors, not all governance rights shift correspondingly. Although some of these standstills can be explained by principal competence or principal conflict costs, others cannot. Some examples of these inefficiencies are the limited say of creditors in the appointment, dismissal and remuneration of the liquidator as well as the debtor's exclusive right (often controlled by the majority shareholders) to propose a reorganization plan. We show that the current insolvency legislation relies (too) heavily on one specific type of trusteeship strategy, namely the oversight role of courts, while that type is ill-suited to diminish the agent competence costs. Only if the legislator systematically implements a combination of different principal-empowering and agent-constraining strategies, can we obtain a bankruptcy governance structure which minimizes the total control costs in the majority of insolvency procedures.

- Chris Umfreville, A Threat to Future Financial Stability? Understanding the Potential Impact of Brexit on the Effective Resolution of Cross-Border Insolvency Processes

As the UK prepares for Brexit and negotiates the terms of its future relationship with the European Union, financial stability and investor certainty are two crucial considerations. An effective framework for the resolution of insolvency proceedings is a key consideration for inward investment, as evidenced by its inclusion as one of ten categories in the World Bank's Doing Business Reports.

As a Member State of the European Union, the UK currently benefits from the EU Recast Regulation on Insolvency Proceedings (EURIP). EURIP inter alia ensures the automatic recognition of UK insolvency proceedings in all Member States, which enables efficient administration of cross-border insolvencies, to the ultimate benefit of creditors. Post-Brexit, this recognition will not apply, and in the absence of any specific bilateral agreement, the recognition of insolvency proceedings commencing in the UK will be dependent on the approach of individual Member States. This paper will explore the likely approach of key trading partner Member States to recognising insolvency proceedings commenced in the UK, and in turn the impact on the conduct of these proceedings and consequences for the wider economy.

- John Wood, The Use of Discretion in Corporate Governance

Following the 2008-09 financial recession it was found that existing regulation that was designed to promote good corporate governance were either not adhered to or they were ineffective in dealing with director conduct. Effective corporate governance remains essential to the promotion of a credible financial and governance system, since it ensures that directors operate in the best interest of their company. However, to achieve this objective it should be imperative that the directors are permitted to use the wide discretion afforded to them to make decisions, whether or not they happen to be unpopular or risky choices. As such a delicate balance should be struck between regulating directors and being careful not to permit extensive regulation which could prevent them from doing their job. Such an outcome could lead to a dysfunctional corporate governance model that fails to assist directors with good intentions, and effectively penalise those that do not.

An ineffective governance structure has been responsible, amongst other things, for permitting a risk culture amongst directors - a practice that increases the likelihood of corporate failure. This type of culture has only been allowed to exist because of poor monitoring, lack of supervision, and management overlooking bad industry practices. Respective governments and industry responses to this poor governance model have struggled to regulate risk-taking since most business decisions are often based on the discretion of the board of directors. As such, because risk is often required to promote the future success of a company, it is questioned whether more regulation that restricts risk-taking by directors is required.

Criminal Law and Criminal Justice WMB: 5.68

Chair – Tom Lewis

◦ Michelle Coleman, Pretrial Detention and the Presumption of Innocence

Pretrial detention is a common practice and is a major contributor to prison overcrowding. There is a clear tension between pretrial detention and the presumption of innocence. The presumption of innocence prevents governments from inflicting punishment or punishment-like activities on individuals before they are convicted. Imprisoning someone pre-conviction restricts their human rights, can act as pre-punishment, and can result in long-lasting consequences after release. Laws allowing pretrial detention are set out in different articles or sections from the laws granting the presumption of innocence. As such, the legality of a pretrial detention decision is often evaluated through the lens of the laws regarding pretrial detention alone. However, an overwhelming number of cases that decide presumption of innocence issues are actually considering whether detaining someone pretrial violates the presumption of innocence. These inquiries, however, are quite general. There are few decisions that evaluate whether the reasons behind the individual's pretrial detention violate the presumption of innocence.

This paper identifies three main themes as reasons why governments hold individuals in pretrial detention: 1. the type of charges the person has been accused of; 2. crime prevention; and 3. to ensure that the accused person is present for trial. It evaluates each of these reasons with respect to the presumption of innocence in order to determine whether they are compatible with the presumption. The paper concludes that the presumption of innocence does not permit holding someone in pretrial detention for the types of charges of which they have been accused or to prevent future crimes. The presumption of innocence is only compatible with holding an accused before trial to ensure their appearance at trial. This reason, however, can only be valid if the decision to detain the accused before the trial's outcome is considered outside of the realm of criminal law.

◦ Abenaa Owusu-Bempah, The Interpretation and Application of the Right to Effective Participation

Defendants have long held rights to participate in their criminal trials, including the right to effective participation. In the case of SC v UK (2005), the European Court of Human Rights provided a description of the right to effective participation which has been quoted in many subsequent cases. Yet, the precise meaning and scope of this right remain unclear and, in practice, the extent to which defendants can be said to participate effectively in criminal proceedings is often limited. This paper explores the definition and uncertain scope of the right to effective participation. It also examines the narrow way in which the right has been applied by the courts, including a judicial willingness to reject medical opinion and an optimistic approach towards the effectiveness of special measures. It argues that there is a need for a clearer and more comprehensive definition of 'effective participation', and a more rigorous and medicalised approach to determining whether defendants can participate effectively, to ensure compliance with Article 6 of the European Convention on Human Rights and create legal certainty.

◦ Roxanna Dehaghani, The Appropriate Adult Safeguard: Exploring the Descriptive and the Normative

The appropriate adult safeguard was introduced through the implementation of the Police and Criminal Evidence Act (PACE) 1984. It is contained within the accompanying Codes of Practice C, D and H, with the contours of the appropriate adult safeguard described mainly within Code C. Whilst recognized as an ideal in the abstract, the safeguard is subject to wide interpretation and encounters many problems both in theory and in practice. This paper examines the interpretation of the appropriate adult safeguard in the law in books and the law in action and draws upon hard, soft, and case law, academic literature, and policy- and practice-based studies. Thereafter the paper turns toward what the appropriate adult safeguard should look like, through the identification of best practice.

Equality and Human Rights 35BSQ: 2.26

Contemporary Issues in Equality Law

Chair – David Barrett

- Zuleyha Keskin, The Equality Principle in Public Services

In general, the term 'equality' is used as if it already represents the interests of all groups in society. However, in reality, equity is not explicitly mentioned as a common good. The most obvious place that we see it in the public services. Equality, as a reference norm and founding principle of the human right text, is a guarantee and way of realization of rights and freedoms take shape in public services, concretely. A broad sense of the concept of equality strictly depends on public service and social rights but not only the equality before the law. Public services should be especially evaluated by basic concepts and principles such as equality, social justice, and non-discrimination. Once administration or legislative power constitute a public service it must to comply with this principle when is being implemented to people. Once a service established a public service, needs of disadvantaged groups like women, disabilities, and children must be considered. This is a requirement of the principle. Equality is a fundamental notion and tenet in law that control the process of rule-making and its implementation in policy decisions, medium-term plans, programme budgets, and institutional structures and processes.

This paper will examine what is the principle in administrative law regarding public services. Should administration or legislative power take into consideration any identify (women, disabilities, religion) when constituting any public service? This question derived from some practices in Turkey. This paper will try to address that position of the principle in judicial decisions, administrative and legislative decisions in Turkey. It will be tried to classify how it is understood and implemented in practice the concept of equality in these aforementioned decisions. This paper will address the principle of equality in this context.

- Katie Hunt, Grief Without God: Religious Inequalities in Prison Pastoral Care

How effectively does the Prison Service meet its equality duties in its treatment of non-religious offenders? Prisoners suffer a higher rate of bereavement, and the incarceration experience complicates the grief process at every stage. Disenfranchised grief can lead to mental illness and recidivism upon release, so robust pastoral care interventions are vital. Unfortunately, grief counselling is unavailable to most offenders, for whom the primary (or only) source of formal support is the prison chaplaincy. While chaplaincies welcome all inmates, regardless of belief, this facility is not suitable for everyone. The preliminary evidence from criminal justice practitioners and care professionals is that many non-faith offenders do not access the chaplaincy as they feel uncomfortable engaging with religious services. A lack of secular alternatives means that these inmates are unlikely to receive the help they need, and may experience poorer outcomes. While Ministry of Justice guidelines entitle prisoners of every faith to visits from someone of the same belief, no equivalent provision exists for those of no faith. In short, my research identifies differences in provision of and access to pastoral care for non-religious prisoners. These discrepancies, drawn along religious lines, may constitute a breach of anti-discrimination legislation. Informed by the Equality Act 2010 and recent Supreme Court case law, my paper considers the apparent inequalities as a possible matter for both direct and indirect discrimination law.

Exploring Legal Borderlands WMB: OCC

Borderlands of Law, (In)formality, and (De)criminalisation

Chair – Pedro Fortes

- Nayeli Urquiza (Kent Law School), Entangled Roots: Negotiating the Legal Borderlands of Cannabis

This paper explores the muddy legal borderlands in the regulation of hemp and marijuana. Whilst the law seeks to produce defined boundaries between the cannabis family plants in order to delimit licit or illicit purposes, this exercise is fraught with ambiguity. Notwithstanding the chemical composition which defines each species of the cannabis family, hemp and marijuana have an entangled and shared history. Drawing on critical approaches to the concepts of entanglement and ambiguity in STS and feminist studies, I argue that hemp has been entangled into the prohibition approach dominating the so called 'war on drugs' but marijuana is entangled to the growing acceptance of hemp and CBD oil.

Hemp supporters, re-frame CBD oil extracted from hemp as a 'safer' medicine in comparison to stronger painkillers or as a 'super-food'. Framed this way, cannabis is 're-planted' in another pot, or better said, another legal framework which is not neatly parcelled out and constantly renegotiated through the intervention of different actors (users, civil society, pharmaceutical and/or food industry, legal experts, regulators, policymakers, scientists, etc.)

Overall, this case study encapsulates the debates regarding the legal boundaries between food supplements, herbal remedies, pharmacological products and drugs.

Most importantly, it also illustrates the ambiguity of the legal borders as well as the actors on the borderlands, who despite all their efforts, cannot separate the roots of society's most persecuted weeds. Despite the cut, burn, destroy approach by policy-makers, hemp's liminal status-as industrial and food produced- is the key to untangle the shackles of criminalization and it shows how the roots of cannabis plants are deeply entangled, despite all the efforts to separate them through medical, legal, scientific or criminal taxonomies.

- Viviane Bastos e Silva (Université Paris Nanterre), Legal Boundaries: A Study on Favelas in Rio de Janeiro

In the early 19th century, favelas began to be considered within the legal rules that provided for their restriction and removal: the favela was born paradoxically as an unlawful and transitory category. Even though they exist for over 100 years, their illegality and precariousness - temporal and material - are still considered constituent attributes of favelas. According to the Brazilian Institute of Geography and Statistics (IBGE) they are considered "subnormal agglomerations".

The construction of the concept "favela" by the state is symbolic and structuring. There is a choice of rights to be applied to this territory which is neither in the same logic nor have the same scope as what is observable in other parts of the city. Implemented by the state, the character of being permanently provisional has a twofold function: a) to disarticulate the resistance and b) to establish a survival system rather than a full existence, in which rights are perceived as gifts.

Since the dichotomy of "legality / illegality" is challenged by the reality of the favelas, another jargon is used to define what is not in conformity with the legal system: informality touches upon two aspects formality, that is, the alignment with the law, its non-conformity: it is a hybrid institute and of relatively fluid meaning.

By observing a series of judicial cases, the adjective is often linked to not following legal procedures ("informal testimony", "informal [suspicious] recognition", "informal [suspects] admission [in to the prison]"), which demonstrates the purpose of minimizing illegalities committed by the state. On the other hand, when one observes incidents concerning trade and housing, the term gets closed to the partial recognition of illegality. The discourse of lawyers and residents are impregnated by the expression: when there is an impossibility, especially economic, to adjust to the law.

- Carlos Juliano Simões Ferreira (University of Essex), Detention and Prosecution by Non-State Armed Groups

There are approximately 40 armed conflicts currently happening in the world, most of them non-international in nature. This new trend in warfare, that is marked by the ascension of non-State armed groups into the international arena, has brought forward many issues that were not anticipated by the architects of modern international humanitarian and human rights law. Among these issues, perhaps two of the most prominent are the legality of detentions and prosecutions carried out by such groups.

Firstly, the paper will present the issues stemming from the current application of international humanitarian and human rights law to non-State armed groups, which create a double standard that hampers the efforts to engage with these groups in order to improve their compliance with the international legal regime.

Following this brief explanation, the paper will address the issue of how could international law bind non-State armed groups, covering the main theories that have been proposed for the application of this body of law to armed groups, focussing on the prescriptive jurisdiction theory.

Finally, the paper will present the legal basis for detention and prosecution by non-State armed groups under international humanitarian and human rights law, including the different grounds for detention and prosecution both inside and outside an armed conflict, as well as a discussion regarding the capacity of such groups to carry out prosecutions in accordance to international law.

Family Law and Policy WMB: 3.33

Becoming and Being Parents (Fathers) Plus the Use of the Parens Patriae Role

Chair – Anne Barlow

- Andrew Gilbert, Does the Human Fertilisation and Embryology Act 2008 Apply to Unlicensed Artificial Insemination?

Until the case of M v F and H (Legal Paternity) [2013] EWHC 1901 (Fam) it was widely thought that where a woman was inseminated by means other than through intercourse or treatment in a licensed clinic, the common law would apply. This situation would result in the woman who gave birth being the mother, and the donor of the sperm being the father. However, obiter statements of Peter Jackson J in M v F and H suggest that the Human Fertilisation and Embryology Act 2008 might extend to cases of DIY insemination ('unlicensed AI'). While Jackson does not expand on his view, McCandless and Sheldon provide some possible support for it in 'The Human Fertilisation and Embryology Act (2008) and the Tenacity of the Sexual Family Form' [2010] MLR 175, although they also do not provide authority for their position. The regulator, the Human Fertilisation and Embryology Authority, stated on its website in 2017, 'Where fresh donated sperm is used outside of an HFEA licensed clinic, the donor is considered by law to be the child's legal father, with all the responsibilities and rights that involves', but the current website seems to reflect the post-M v F uncertainty, 'If you donate outside of a licensed clinic the situation is more complicated as you could be considered the legal father of any children conceived from your donation'. Relying on the modified rule in Pepper v Hart, this paper attempts to bring clarity to this important matter through an analysis of Hansard as it relates to the Acts of 1990 and 2008.

- Joanna Harwood, 'A father is for Life, Not Just Conception'? Child Arrangements Orders (Contact) & Domestic Abuse

Whether domestic abuse perpetrated by one parent against another should stop, or limit, contact between a child and the domestically abusive parent post-separation remains divisive. The criticism consistently levelled at the courts is that their pro-contact approach leads to unsafe contact. Following the introduction of the statutory presumption of parental involvement by the Children and Families Act 2014, concerns were raised that this presumption would further entrench the courts' promotion of contact at the expense of assessments of whether contact is safe and beneficial.

My research explores these issues through the lens of the key actors working on applications to court for contact. Forty-one semi-structured interviews were conducted with judges, barristers, solicitors, Cafcass officers and representatives from organisations supporting women affected by domestic abuse. Interviewees' responses clustered around four issues: how allegations of domestic abuse are handled, and in particular whether physical violence and coercive control receive different responses; whether the statutory presumption of parental involvement is changing outcomes; what impact financial tensions, including the cuts to legal aid, are having on the resolution of applications; and what, if any, reform of policy or practice is required.

Interviewees' responses identify the promotion of contact as a dominant force in the courts' resolution of cases, irrespective of the statutory presumption which is having little impact. Particular problems lie with the minimisation of non-physical abuse, despite the criminalisation of coercive control and increased theoretical understanding of the harm caused by non-physical abuse. But interviewees' responses also emphasise the intense challenges facing the courts. The

lack of evidence beyond parents' testimonies, the increase in self-representation and pressures on court time undermine efforts to access the 'truth' and find the 'right' outcome. What constitutes the 'right' outcome itself, however, failed to attract consensus. Continuing the conversation on this topic remains as significant as ever.

- Rob George, The Court's Protective Jurisdictions - Making Orders in Legislative Gaps

The court's inherent jurisdiction, or parens patriae jurisdiction, has its origins in feudal times, and is a theoretically limitless power of the court to make orders in respect of vulnerable citizens – usually interpreted to mean children and adults who lack mental capacity. The inherent jurisdiction is a creature of the common law, with its historic origins in the English court of chancery. Wardship is its best known example, but is far from being the only power that the court has claimed in this area.

Over the years, statutory schemes tended to curb and replace the court's inherent powers, sometimes indirectly and sometimes by design. Some jurisdictions, such as Australia and New Zealand, have taken steps to put at least some of the court's inherent powers on a statutory footing. In other jurisdictions, such as England and Wales, general statutory reform was seen as reducing the need for any reliance to be placed on the inherent jurisdiction, and specific limitations were imposed to try to ensure that the procedural safeguards of the statutory scheme were not undermined by use of the court's inherent powers.

Reforms of these kinds appeared, for some time, to have significantly reduced the court's need or desire to draw on its inherent jurisdiction. However, in some jurisdictions at least – England and Wales perhaps foremost amongst them – the last few years have seen an apparent revival of cases drawing on the inherent jurisdiction.

This paper presents early discussion based on a project funded by the British Academy which considers this apparent 'fall and rise' of the inherent jurisdiction in England and Wales, comparing the position there to that found in a number of other jurisdictions. The paper comments on the trends seen, and asks questions about the current trend to draw on the court's inherent jurisdiction in children cases.

Gender, Sexuality and Law WMB: 3.31

Chair – Flora Renz

- Roussa Kasapidou, Gender Identity Recognition and Orthodox "Resistance" in Greece

Throughout the last couple of years, the new-found interest of the Greek state in LGB and, lately, T issues has generated various responses across the political spectrum. The present announcement will navigate some forms of reaction on the part of the Orthodox Church of Greece (OCG) to the institutional recognition of trans identities. Specifically, the last year has brought a rise of political and legal discussions concerning gender identity issues, thus, bringing an unprecedented kind –for the Greek context- of attention onto transgender lives and identities. Since the '90s, the Greek judicial practice has established a set of preconditions (including hormonetherapy and genital surgery) for the amendment of legal gender identity. The current government, aligning with European guidelines, had committed to legislate a less invasive and pathologising legal procedure for gender identity recognition. To that end, Law 4491/2017 was voted allowing for the amendment of legal documents without these preconditions but still through a trial procedure and with the addition of some restrictions. The introduction of the bill in the Greek Parliament and the political crisis that was weaved around its discussion created a sudden peak in the public debate on trans issues. The present announcement will focus on the role of the OCG in the politico-legal debate as within Orthodox-majority contexts the Orthodox Church can influence social processes as well as legislative procedures. Attention will be brought to the complexity of the multi-layered reaction endorsed by the Orthodox Church and specifically on the Orthodox "legal activism" and the rhetorical schemata, which enabled its realization. Last, instances of the OCG's legal reasoning will be explored along with the ideological elements that supported it, such as the nationalistic fantasy of Helleno-Orthodoxy, the gendered notion of patriotic "resistance" and the construction of Greek-versus-European gender/sexual imaginaries.

- Alexander Maine, Same-Sex Marriage and the Sexual Hierarchy: Constructing the Homonormative and Homoradical Legal Identities

in 2013, the UK government legislated for same-sex marriage, as part of a broad trend established in Western Europe and North America. This presentation will present and discuss the key findings of research investigating the broad relationship between law and sexuality. This study delves into the impact of the Marriage (Same-Sex Couples) Act 2013 on sexual identity and practices utilising socio-legal empirical data analysed from a queer theoretical standpoint.

Using qualitative data from 29 semi-structured interviews with LGBTQ people in the north east of England, the impact of the same-sex marriage legislation on the construction of the sexual hierarchy will be constructed. The sexual hierarchy consists of the social and legal system of valuing certain sexual acts and identities that has traditionally favoured the married homosexual. This research will develop the sexual hierarchy in the light of same-sex marriage and transformed approaches to homosexuality.

The homonormative and homoradical identities are constructed within this research, with the homonormative existing as an extension of heteronormativity validated by the extension of same-sex marriage, while the homoradical exists as a newly constructed identity. The homoradical is thus a reactionary body to the normative tendencies offered by marriage and will be explored as a consequence of developing sexual attitudes and identities, as well as the recent equality-driven agenda. Investigation into the homonormative and homoradical identities will allow for further discussion of the future of relationship recognition and the ways in which the law reacts to, regulates, and interacts with sexuality.

- Andrea Nicolini, Mishima and the Law of Desire

Why does society try to rule sex as it does violence? Is it because sex is as dangerous as violence, or is it because, even more than violence, sex leaves us at the mercy of passions that make it difficult to distinguish between good and evil, passions for which good and evil are actually the same? In adopting Bataille's theory of sexuality (from which Lacan derived his concept of jouissance), I argue that human society rules sex in order to protect itself from the unbearable destructiveness of sexuality with all its antisocial potential. But what happens if desire contaminates the rules that society establishes to control it, making them into its most hidden and insidious form of expression? What happens if the rules that regulate society become the mask of the drives? Starting from this theoretical problem (as expressed by Lacan in Kant avec Sade), I want to explore Confessions of a Mask by Yukio Mishima as an example of a "shattering" jouissance that expresses itself through the strict rules of the Samurai ethics of Japanese society. If, in fact, as I want to argue, sexuality has the capacity to threaten the Symbolic by pushing the subject into the repetition of a masochistic jouissance, then the Confessions offers a refined example of the power of the drives to turn those social rules intended to restrain them into occasions for experiencing jouissance through subservience to duty itself and so to overrule the rule that pits the Law against the drive.

Information 35BSQ: 4.08

Chair – Richard Hyde

- Joasia Luzak, One Size Does Not Fit All: Impact of Consumer Vulnerability on Information Disclosure Design

Mandatory information obligations remain a staple of consumer protection in Europe (Helberger 2013). Provision of information to consumers aims to facilitate pre-contractual informed decision-making, as well as encourage the enforcement of consumer rights after the contract's conclusion (Luzak 2015). Still, it is a widely known phenomenon that consumers do not read (pre-)contractual disclosures (Ben-Shahar and Schneider 2014). Among many justifications given to explain the lack of readership is disclosures' complexity and obscurity. The principle of information transparency intends to remedy such defects. However, clear guidelines are missing in European scholarship, legislation and case law as to which requirements should be fulfilled to consider disclosures transparent. This paper examines whether in their

assessment of information transparency enforcement authorities should account for individual consumer characteristics, e.g. age, as well as whether European consumer law allows for such an individualised approach. Online transactions place consumers at a particular informational disadvantage as they hinder assessment of goods before the purchase, as well as limit communication with traders. Therefore, the paper discusses transparency of online disclosures. Research results presented in this paper follow from the ORA research project "The ABC of Online Disclosure Duties: Towards a More Uniform Assessment of the Transparency of Consumer Information in Europe".

- Eleni Kaprou & Smismans Stijn, Fit For Purpose? Evaluating Fitness Checks in the EU

The European Commission is placing particular weight in the evaluation of laws, as can be seen also in its latest 'Better Regulation' initiative. The EU champions an 'evaluate first' principle and as part of that it announced the first fitness checks of EU law in 2010. Fitness checks are meant to be comprehensive reviews of areas of legislation. Fitness checks have so far not been studied in a horizontal manner, and academic comment on them tends to focus on the substantive part of specific fitness checks, rather than fitness checks as an evaluation instrument.

This paper shifts attention to the methodology and structure of fitness checks as a whole. It examines all completed fitness checks in order to discover their common elements and uncovers a typology of fitness checks. In particular, it investigates what kind of information is collected and utilised in the context of a fitness check. What type of evidence and methodologies are considered robust and what safeguards are in place to ensure impartiality. This is significant as fitness checks become the basis for changing EU laws, whether that is removing laws deemed unnecessary or whether the introduction of new measures should be introduced.

As a rule, the studies supporting fitness checks are outsourced to external contractors, in an effort to promote impartiality. This paper also sheds light in the relationship between the studies supporting fitness checks and the final fitness checks reports, as published in the form of a Staff Working Document of the European Commission. Do the Staff Working Documents merely adopt and synthesise the results of independent outsourced studies, and if that is the case, then who is the real author of a fitness check?

IT Law and Cyberspace 35BSQ: 4.02

Special Challenges in the Regulation of Cyberspace

Chair – Brian Simpson

- Mark O'Brien (Oxford Brookes University), Dr. Deep Web, or How I Learned to Stop Worrying and Love Anarchy: New Ways of Regulating the World Wide Web

The 2013 closure of Silk Road, the first - and most infamous - darknet black market, brought the darknet (and wider deep web) to the attention of the wider public for possibly the first time, though unindexed web content invisible to search engines in any form (deep web), and overlay networks utilising specialist software or other means to permit access (the darknet), had always existed, and had for some time been recognised as a problem.

Of particular concern currently is its capacity to shelter a range of nefarious activities, such as terrorism; child pornography; and the drug trade. Given the difficulty in identifying the very existence of deep web content, regulating such content is especially vexing, despite some progress via 'traditional' policing and regulatory mechanisms.

By applying different theoretical positions to this problem, this paper seeks to advance a new - possibly supplementary, possibly dominant - regulatory position, that locates law's regulatory efforts within the parameters of the the prevailing environment, ultimately leading to more useful and successful legal outcomes.

International Economic Law in Context 8-10BSQ: LG.01

- Jing Wang, Paying Back, Not Giving Back: Environmental Responsibility of Tobacco Production Companies in Mainland China

The paper presented here investigates environmental responsibility of tobacco production companies in Mainland China from a legal perspective. As doers of both contributing to economic development and environmental pollution, Chinese tobacco production companies with symbols of high-level tax revenue and heavy pollution should share part of their benefits with society to restore and protect natural environment, so that we can expect scene prosperity of sustainable economic development. However, the ongoing pollution in the tobacco industry, from planting tobacco leaves to consuming cigarettes, violates the overall environment and infringes uncertain persons' environmental rights. Although the Chinese Company Law 2013 and the Chinese Environment Protection Law 2015 emphasise environmental responsibility of companies and industries, the situation has not been changed with regard to tobacco production companies: the current legal framework in Mainland China fails to protect environment. Therefore, this paper analyses reasons of shortages of environmental responsibility of Chinese tobacco production companies, and seeks a feasible approach to solve legal deficiency of their environmental responsibility from the linkages between the company law and the environment protection law.

- Mervyn Martin and Maryam Shadman, Pajouh Great Expectations: Is this the Beginning of the End for Globalisation?

The recent vote for Britain to exit the European Union and the election of Donald Trump as President of the United States of America has been described as events bring an end to globalization, and indeed seen as a reversal of the globalization process. A possible reason for this is that both choices are thought to be premised on inward looking objectives rather than having global objectives. This paper offers an opinion that this view is flawed. This is because integration which is used to approach globalization is not a one way process seeking greater levels of integration, but rather a tool to address global challenges which will involve making choices on the degree of integration that is thought necessary at a particular time. In other words, based on what is perceived as necessary for the time selective interconnectivity is used to reflect the level of integration desired.

Due to the degree of global income inequality, a high degree of integration will pose difficulties as a shift in production centers as well as immigration will bring not only economic but also socio-cultural and political implications on even the economically strongest nations.

The discussion and analysis in this paper is significant as it offers an unexplored perspective into current discussions on the Brexit vote and President Trump's election into office. This is paper is original as it offers a fresh perspective on the deglobalization debate. It is provides a discussion from the global income inequality perspective to explain why and how important are global challenges upon domestic choices and how this in turn relates to globalization and integration. The discussion and analysis is rigorous in that they are precise and robust in examining the historical evolution to the international trading system to explain why the predominant view on deglobalization is a misunderstanding of the matters that influence globalization and integration

- Irina Crivet, The effects of International Human Rights Law on International Trade Law: What does the Case-Law say?

The relationship between International Human Rights Law (IHRL) and International Trade Law (ITL) is viewed most commonly through one of two lenses: that of integration and coherence, or that of fragmentation and divergence between these two branches of Public International Law. Indeed, IHRL and ITL nexus is discussed with respect to a wide range of rights provided for in IHRL. Say ITL and plenty of rights come to mind; for example, labour rights, right to property, right to food, right to health, environmental dimensions of human rights protections, freedom of expression, right to an adequate standard of living, and right to development. Yet, how many of these are reflected in the World Trade Organisation (WTO) jurisprudence or regional judicial bodies that overlook after trade-related treaties?

In order to examine the effects of IHRL on ITL as reflected in the case-law I focus on ten notable cases. It must be noted at the outset that the WTO dispute settlement bodies have not yet directly dealt with IHRL qua IHRL in interpreting trade law. There are cases where possible conflicts between WTO law and other areas of PIL have been touched upon. But those conflicts have not led to a direct discussion of IHRL and its relationship with ITL. Nevertheless, there are some instances where the WTO panels and Appellate Bodies (ABs) or/and the State parties involved in a dispute refer to international human rights instruments and regional human rights courts case-law – in particular, the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights. Given the scarcity of WTO cases directly resorting to IHRL, I also touch upon the case-law of the Court of Justice of the European Union (CJEU), where principles of economic exchange were balanced against human rights law principles and provisions.

Interrogating the Corporation WMB: 3.30

- Verity McCullagh, Corporate Social Responsibility Within the UK: Issues and Suggestions

Corporate social responsibility (CSR) is a concept that can be utilised to prevent corporate irresponsibility as it includes the aim of preventing irresponsible corporate behaviour and its negative impact on society. Considering irresponsible corporate behaviour affects society negatively through human rights and environmental abuses, the way in which CSR is implemented and achieved is of key concern. As such, this paper seeks to answer the question of whether the way in which the United Kingdom (UK) implements CSR within regulation achieves the aim of preventing irresponsible corporate behaviour as it leads to negative impacts on society including that of human rights and environmental abuses.

This paper seeks to address CSR implementation within the UK. The UK has implemented aspects of CSR into corporate law, for example in the form of s172 of the Companies Act 2006. Other examples include CSR initiatives which can be found in other UK legislation such as the Modern Slavery Act 2015 and the Corporate Manslaughter and Homicide Act 2007. The question arises of whether these mechanisms are achieving the aims of CSR as regards preventing corporate irresponsibility. This paper examines the effectiveness of CSR implementation within the UK and utilises examples of corporations behaving in irresponsible ways to highlight the problems which corporations can create.

Ultimately, this paper is focussed on whether the current implementation of CSR within the UK is achieving the aim of preventing irresponsible corporate behaviour and its negative impacts on society. As it is perceived to be insufficient in effectively achieving this, how the law can progress the UK's CSR agenda is a key focus. As such, suggestions of how a state regulatory framework of CSR within the UK could be realised, will be discussed.

- Ronan Feehily, Enlightened Shareholder Value in UK Company Law, a Hybrid Euphemism for a 'Right without a Remedy

Enlightened shareholder value, the compromise between the shareholder primacy and pluralist approaches, was ostensibly enshrined in UK law by section 172(1) of the Companies Act 2006. The provision obliges directors to promote the company's success for the benefit of its members collectively, while having regard to a non-exhaustive range of factors, including the interests of stakeholders such as employees, suppliers, customers, the community and the environment. While no guidance is provided as to the weight to be attached to each of the enumerated factors and how conflicts between them should be settled, the members' interests remain paramount. Unlike under a pluralist approach, the interests of the non-members lack an independent value in the directors' decision-making and their consideration is perceived as a means of maximising the members' benefits. The members are entitled to initiate derivative proceedings for a breach of section 172(1) duty, which is owed to the company, whereas the non-member stakeholders who have been affected by the directors' failure to take into account their interests cannot bring a legal action in that capacity. This paper analysis the impact of section 172(1), and the concerns that it permits directors to justify almost any bona fide approach to delivering the success of the company. Acknowledging that from a practical standpoint, designing a corporate model with an internal hierarchy providing satisfactory accountability to the different stakeholder

constituencies with potentially conflicting interests would be difficult, the paper contrasts the UK position with the approach in jurisdictions where there is a legislative focus on a more stakeholder-oriented approach. Drawing on the experience in jurisdictions such as Canada, Singapore and South Africa, the paper concludes with proposals for reform that would broaden the range of remedies available to stakeholders, and in turn give greater prominence to corporate social responsibility in UK law.

- Ngozi Okoye, Beyond Box-Ticking: Company Directors' Skills and Creating Effective Corporate Governance

The Organisation for Economic Co-operation and Development (OECD) Corporate Governance Factbook 2017 indicates that most jurisdictions set out general requirements or recommendations for board directors' qualifications, however, it is clear that these requirements function to varying degrees of usefulness. Some countries, such as the United Kingdom (UK), recommend a formal screening process which is essentially the approval of board candidates by a nomination committee. The nomination committee, under the UK Corporate Governance Code, is required to evaluate the balance of skills, experience and knowledge needed by the board and base its recommendations on those factors. Focusing on the issue of directors' skills, this paper analyses the corporate regulatory framework in the UK, presenting arguments to the effect that the evaluation purportedly undertaken by the nominations committee as far as directors' skills are concerned is not as effective as it should be. Engaging with factors such as the corporate culture which is prevalent in the UK as regards directors' being appointed based on the old boys' network, the minimal involvement of shareholders in the appointment process, and the level of information provided in relation to appointees, this paper argues that the function of the nomination committee should be robust enough to justify its existence. In the Financial Reporting Council's Report of Observations on Corporate Culture and The Role of Boards, it was stated that corporate governance mechanisms need to focus on the substance of what boards do. Flowing from that, the key question addressed in this paper is whether the framework for the selection of board members based on their skills is sufficient to enable the creation of effective corporate governance. This issue is one of increasing importance, considering the role of companies in society and the responsibility placed on company directors to enhance economic and social value in the long-term.

Labour Law and Society 35BSQ: 3.13

- Katie Bales, David Whyte & Jon Burnett, State Enforced Forms of 'Unfree' Labour and the Need for Collective Action

Each year thousands of workers perform work outside of traditional labour regulations, and for which workers receive less than minimum wage. Importantly, this work is not considered 'illegal' but rather is sanctioned and enforced by the State, including: those working in immigration detention centres; community payback workers; prison workers and those on workfare schemes. Partly punitive, this work creates surplus value for not only the State, but also private corporations who benefit from unregulated and cheap forms of labour. A series of intimate connections therefore exist between labour market policies and interventionist forms of governance in areas such as immigration and welfare. In this paper we analyse the normative legal position of these workers and expose some of the private corporations profiting from this work. Adopting a Marxist perspective, we argue that this labour should be considered 'unfree' and that collective action is needed to reduce the exploitation of workers who are coerced into employment by the State.

- Amir Paz-Fuchs, It Ain't Necessarily So: From Legal Formalism to Legal Realism in British Employment Law

Discussion and analysis of British employment and labour law is often characterised by a curious dissonance. The overarching narrative is clear and explicit: labour law is a countervailing force to counteract the inequality of bargaining

power. The implication thus must be that labour law is heavily embedded with values and assumptions concerning the nature of employment relations and of the role of labour law within these relations.

And yet, when delving into particular labour law realms – employment status, the contract of employment, discrimination, working time, unfair dismissal, etc – labour law textbooks, and most of labour law scholarship, adopt a formalist approach, seeking to decipher abstract statutory concepts and tests derived from judicial pronouncements as if they were, indeed, a 'brooding omnipresence in the sky'. In doing so, the all-important question – cui bono – who benefits from the imposition of a particular doctrine, and more generally – what are its effects, is ignored. Similarly, there is far less engagement with the historical, contextual explanation of the development labour law doctrine as a reaction to changes in the social and economic sphere.

This paper is the first part of a project that seeks to bridge that gap, by offering a new, realist account of what may seem as the familiar constituent elements of labour law, such as those noted above. The first part will thus provide the justification for such an engagement and the methodology that will be followed. In the second part, the paper engages with the introduction of the 'necessity' test that has been imposed in the context of agency work. In doing so, it assesses the legitimacy of importing legal tests from one (commercial) context to another (employment) context. Moreover, it traces the immediate, real-life implications of the test on the status and rights of agency workers in Britain, and offers an alternative approach, which promises to safeguard these rights, and thus realign labour law with its true purpose – to counteract the inequality of bargaining power in the current political economy.

- John Sebastian and Apoorva Sharma, An Uber Journey to an Organised Workforce in India: Why the Uber Model Presents Both a Threat and an Opportunity for Labour Regulation in Chronically Informalised Economies

Professor Benjamin Edelman suggests that Uber makes money not from its innovation but from its ability to skirt the law. The recent judgments of the ECJ and many other courts seem to confirm this opinion. But what happens when Uber introduces itself into a system which has no regulation to begin with? In India, industrialisation has not led to a steady organising of labour over time, unlike in the Western model. In fact, there has been a steady 'informalisation' of labour as the economy progressed, leading to over 93%, or over 400 million members of the workforce, being in unorganised employment.

One cannot overstate the glorious mess that is Indian labour law. Taking just taxi regulations at hand, a single jurisdiction can sometimes have multiple overlapping laws governing the same issue. The net result is that these unorganised workers are given little or no employment or social security.

The entry of the Uber model can worsen the situation, as the model exploits an already vulnerable workforce. Unfortunately, the Uber model seems to be gaining in popularity in India, and equivalents have begun appearing in areas such as domestic labour where the abuse of workers even extends to the violation of basic human rights.

Despite all this, we argue that the Uber model presents a unique opportunity for jurisdictions with high degrees of informalisation to finally gain a toehold into regulating a sector that has historically eluded it. This is because the Uber model has, completely unintentionally, done something that decades of development have not been able to: consolidate and unify a fragmented market. Much like the factory floor unified labour in Industrialising Europe, a common platform created by the Uber model has the potential to unify where laws in India have failed, creating scope for collective bargaining and for regulation.

Law and Emotion 35BSQ: 2.25

- S. Pywell, LIP: Litigant in Person, or Left in Pieces?

This paper is a personal account of the emotional impact of being an unrepresented claimant in a small claim. At the outset, I assumed that my academic knowledge of the law would mean that bringing – and winning – a small claim would be inexpensive, simple, quick and stress-free. Six-and-a-half months later I was slightly older, but very much wiser.

My claim arose because a local business from which my husband and I had previously received excellent service fundamentally breached a contract, and our five well-spaced attempts to contact its Managing Director proved fruitless. We had placed our order and paid a substantial deposit in January 2017, and I raised a Money Claim Online – in my sole name, because I could not find anywhere to put my husband's name – on 6 June.

The next six months constituted one of the longest periods of constant-but-low-level stress of my life. I experienced some of the physical symptoms of acute anxiety, and I dreaded every postal delivery and personal email. The alarming incompetence of parts of HM Courts and Tribunals Service (HMCTS), coupled with a defending solicitor who seemed to be going out of his way to undermine me, led to my feeling that I was fighting three opponents: the defendant business, its legal representative, and – worst of all – HMCTS.

I feel able to speak in public about this only because the case was settled in our favour on 21 December: just seven business hours before the scheduled court hearing, and almost 11 months after the payment of our deposit. Even the electronic transfer of cleared funds into our bank account was much more nuanced and complex than we had imagined it could be, and we were left with a sense that justice had still not really been done.

My aim in making colleagues aware of my experience is to give those who practise and/or write about the law some insight into the sense of helplessness and hopelessness that can be felt by individuals for whom a court hearing looms. If just one person who hears this paper can better support a future litigant in person, my presentation will have gone some way towards fulfilling its purpose.

- M. Sahri, A Critical Analysis of the Liberal Legal Subject in Tort Law

This paper submits that the law is more than rules and that through defining duty of care and breach of duty of care in tort law, the law is actually constructing world views, understanding of events and social arrangements. This paper argues that the law in reality draws the line of boundaries between individuals and outlines when and to what extend we are responsible to one another. This could be translated as signalling when ‘caring’ should begin and end. This paper also explores the idea of a liberal legal subject embedded in tort law that we are autonomous, rational and self-reliant. It portrays an image that is difficult to be conformed as it does not consider different ways of thinking and life experiences, hence marginalizing those without the qualities of the liberal subject. By using feminist insights, this paper uncovers the flaw of tort law in neglecting individual life experience, emotions, social relations and needs. This paper submits that it is not possible for us to live in an individualized world as this ignores the reality that we are connected and dependant on one another. It argues against the dominance of this static and individualized legal subject and calls for the recognition of actual human lives as socially and materially dynamic.

- D. Clifford, The Monetisation of Online Emotions – Personalisation and Citizen-Consumer Autonomy

Emotions play a key role in decision making. Technological advancements are now rendering emotions detectable in real-time. Building on the granular insights provided by big data, such technological developments allow commercial entities to move beyond the targeting of behaviour in advertisements to the personalisation of services, interfaces and the other consumer-facing interactions, based on personal preferences, biases and emotion insights gleaned from the tracking of online activity and profiling and the emergence of ‘empathic media’. Although emotion measurement is far from a new phenomenon, technological developments are increasing the capacity to monetise emotions. From the analysis of inter alia facial expressions, voice/sound patterns, to text and data mining, and the use of smart devices to detect emotions, such techniques are becoming mainstream. Despite the fact there are many applications of such technologies which appear morally above reproach (i.e. at least in terms of their goals (e.g. healthcare or road safety) as opposed to the risks associated with their implementation, deployment and their potential effects), their use for advertising and marketing purposes raises clear concerns in terms of the rationality-based paradigm inherent to citizen-consumer protections and

thus the autonomous decision-making capacity of individuals. Indeed, one must question the effects of combining such means of personalisation with consumer-facing interactions that are driven by emotion insights and how their wide scale adoption would be affected by (and indeed affect) the law. This paper will therefore examine the emergence of such technologies in an online context vis-à-vis their use for commercial advertising and marketing purposes (construed broadly) and the challenges they present for EU data protection and consumer protection law. The analysis will rely on a descriptive and evaluative analysis of the relevant frameworks and aims to provide normative insights into the potential legal challenges presented by emotion commercialisation online.

Law and Music 8-1-BSQ: 1.13

- Marcus Keppel-Palmer, Law, Outlaw and Deviancy in Bro Country

This paper is a content analysis of lyrics to commercially popular songs in the modern Bro-Country sub-genre of music.

Country music and rap music have both been highlighted as genres in which lyrics and lyrical authenticity play a significant part in the popularity of the genres (Armstrong 1993). While rap music is linked lyrically to the lived experience of the urban young African-American youth, country music links to the experiences of white rural southern USA citizens. Since 2011, a new sub-genre called "Bro-Country" has highlighted a principally young male experience through the songs of artists such as Jason Aldean, Luke Bryan and Brantley Gilbert.

Content analyses of rap music (Hunnicutt and Andrews (2009); Webster and Kubrin (2009); Armstrong (1993)) have identified in rap music a strong lyrical concern with homicide, violence, masculine confrontation and misogyny. Hunnicutt and Andrews (2009) identified that 1/3 of rap songs successful in the US Charts between 1990 and 2000 concerned law, outlaw and deviancy. Armstrong (1993) compared content of lyrics of country music and rap music highlighting depictions of violence and illegal behaviour.

This paper will look at commercially successful songs from artists in the Bro-Country sub-genre to identify themes of law, illegality and deviant behaviour in the songs, reflecting male youth behaviour.

It is intended that the presentation of the paper will be accompanied by extracts from Bro-Country songs performed by UK Country Musician, Danny McMahon.

- Kevin De Sabbata, "Opera, Madness and the Law: Using Mad Scenes to Reflect on Legal Norms Regarding Mental Disability"

Mad scenes (Wahnsinnsszenen) are a frequent convention in belcanto melodramas composed between 18th and 19th century. They typically consist in great dramatic and highly virtuosistic moments in the middle of an opera in which, because of traumatic events occurring in the plot, a character develops some form of mental disturbance, often resulting in delusions and disconnect from reality.

In some of these scenes the character is prompted by his or her mental state to perform legally relevant actions such as homicide. In others, madness is the direct consequence of legal mechanisms such as trials or imposed marital agreements. In all these cases, the way in which society acts following the law is influenced or even deviated by the occurrence of a mental disability.

Therefore, mad scenes are the expression of a strong vision of both mental disability and legal provisions relating to it. In fact, on the one hand, madness here is seen as the outcome of oppressive social structures, following a vision which resembles the ideas of social constructionist views of mental illness. On the other hand, the law seems to emerge often as an impotent if not oppressive mechanism in front of mental disability.

This paper analyses the vision of mental disability and of the socio-legal factors implicated in the development and traditional societal reaction to such a dynamic emerging in mad scenes forming part of 18th and 19th century operas. It

shows how the analysis of such artistic works can provide valuable food for thought in relation to contemporary law, in particular in relation to the current debate on the rights of disabled individuals, criminal responsibility of mentally disabled people and legal rules as a cause of vulnerability or disabling barriers.

Methodology and Methods 35BSQ: 2.17

Methodology and Methods

Chair – Eleanor Pritchard (Oxford University)

- Carol Gray (University of Birmingham): Interpretive Description as a Methodology of Socio-Legal Studies

Interpretive description (ID) was developed as a methodology by Thorne (1997), and has been used mainly in healthcare research, but has also been employed in, for example, education, sport science and women's studies.

This paper describes its use in sociolegal studies, as a methodological basis for exploring the meaning and significance of obtaining informed consent to veterinary treatment of animal patients.

ID incorporates several of social science's foundational methodologies, e.g., ethnography, grounded theory and phenomenology, by importing methods of data collection and aspects of data analysis from each, but without wholesale adoption of their theoretical traditions.

ID thus lends itself to applied research questions where the most important outcome is knowledge that has the potential to change practice. It also encourages a "mixed methods" approach, where triangulation of sources gives multiple perspectives on the topic of study, and analysis that translates findings into practical advice for practitioners. The methods chosen for this study were 1) documentary analysis of consent forms; 2) observation of consent discussions in practice, and 3) interviews with key participants.

Data analysis of the language used on consent forms borrowed from aspects of grounded theory, and particularly a thematic approach to analysis. Participant observations incorporated ethnographic methods, and interviews with stakeholders utilised symbolic interaction. Data from observations and interviews were initially analysed through thematic analysis, but then re-analysed to incorporate discussion of this new knowledge within the framework of existing knowledge in this context, both from participants' experiences and from previously analysed data. This "fusion of horizons" was thus borrowed from phenomenological hermeneutics.

Through these methods, the conceptual differences between human medical and veterinary medical consent, the unique properties of consent in the veterinary context, and the perceptions of those involved in the consent process, were constructed and evaluated.

- Lawrence Mcnamara (University of York): National Research Security Issues: Access, Trust and Credibility

This paper explains and reflects on the experience of researching national security issues, focusing particularly on the use of interviews with (among others) senior figures from government, judiciary, media, policing and security, NGOs and the legal profession. It draws especially on two projects undertaken by the author in the last eight years: "Law, Terrorism and the Right to Know" (funded by the ESRC, 2009-13) and "Opening Up Closed Judgments: Balancing Secrecy, Security and Accountability" (funded by the Joseph Rowntree Charitable Trust, 2017). It examines some of the challenges that arise, including in the design of research, the difficulty of accessing interviewees, questions of trust between interviewee and researcher, and the credibility of the both the research and researcher. It also explores whether the impact agenda has any effect on this type of research. The paper aims to inform others who may be looking at undertaking this kind of research, and welcomes comment and reflection from others undertaking empirical work.

- Petra Mahy (Monash University): Interdisciplinary Solutions to the Problem of Causation in Labour Law Impact Studies?

Theoretical and empirical (especially econometric) research has been conducted for decades on the impact of labour law on labour market and wider economic outcomes. However, the jury is still very much out on whether the methodologies used are valid, and if so, what can be concluded from the evidence. This ongoing uncertainty was recognised by the World Bank's withdrawal of its Employing Workers Index from the overall Doing Business Index. This paper discusses how the problem of causation in labour law impact studies can be approached when research is based on an acceptance of the reality of pluralism in labour regulation, with both state and non-state sources of regulation, and how evidence of impact may be collected through interdisciplinary methods.

Protest and Regulation in the Context of Social and Environmental Justice 8-10BSQ: 1.12

Everyday Experience and Regulation

- Morag McDermont, Creating Alternative Imaginings of Regulation for Social Justice

Regulatory systems that shape the lives of citizens on a daily basis - immigration, social work, food regulation, space and surveillance, social care, ethnicity and faith – have very limited capacity, if any for citizens to engage in what they are for or how they operate. Whilst the 'decentring' of regulation may have produced more efficient and effective regulation from the perspective of regulators and regulated organisations, the resultant multiple, discrete regimes that evolve technocratic fixes to regulatory problems allow little, if any, reference to 'social justice'. This paper asks whether it is possible for radical community organisations and higher education researchers to reimagine regulatory practices through strategies of 'coproduction', bringing in the experience and expertise of communities at the margins to address the central question of how individuals and communities can engage with regulation to develop and promote social justice.

The paper begins by tracing developments in concepts of decentred regulation. With multiple actors operating in 'regulatory space' the boundaries between regulator and regulated become elusive, shifting and highly context dependent; nevertheless, decentred regulation results in spaces open only to those relatively powerful actors, the companies, consultants and other intermediaries, working alongside regulatory institutions (with a variety of attachments to, (or detachments from. the state). The paper then interrogates questions of expertise, experience, deliberation and creativity that arise in attempting to generate 'progressive'/alternative strategies through forms of coproduction. The final section reflects on the complex and mesh-like nature of regulation as experienced by communities that becomes evident from coproduced explorations, which points to the need to evolve different ways of seeing the operation of regulatory systems, and to develop political re-imagings of regulation.

- Amelia Thorpe, Rethinking Regulation in the Street

City streets have long been sites for protest and political debate, from mass rallies to small acts of graffiti. In some cases, such activities are swiftly rejected. In others, they receive recognition and respect. This paper examines the use of city streets for expressive purposes in PARK(ing) Day, a loosely-organised international event to reclaim street space from cars.

PARK(ing) Day was based on a creative rereading of the rules regulating kerbside parking spaces, and this link with legality plays a key role in the event. In contrast to more overtly political appropriations of city streets, PARK(ing) Day might be dismissed as a polite and inconsequential intervention. Yet the construction of "parks" on city streets is provocative. PARK(ing) Day does not challenge the social consensus, it invokes it. Participants do not make abstract claims about the city as a whole, but concrete demands about particular places, drawing power from deeply contingent local relationships.

- Marilyn Howard, Individual Experiences and Everyday Talk of Regulation

'Productive Margins: Regulating for Engagement' is a five-year programme of co-produced research with community organisations in Bristol and South Wales, and the Universities of Bristol and Cardiff.

Now in the final stages of the programme, we are looking across the programme through a regulation lens. In particular we have focused on how regulation is experienced and talked about from the perspective of people who are usually the subjects of regulation. Through the use of fiction and the development of an interactive game, to be played with decision-

makers and members of the public, one project ('Life Chances') challenged regulatory norms and explored how community members envisaged social justice strategies.

This session will

1. Draw on an analysis of three co-produced projects to consider how people and organisations talk about 'regulation'; and

2. Using data from the Life Chances project, explore responses of low-income parents to the different regulatory systems that they interact with in their everyday lives.

Sentencing and Punishment 8-10BSQ: LG.02

- Daniel Pascoe, Releasing Lifers in the United States

Since the ascendancy of 'tough on crime' politics during the 1970s and 80s, Life Without Parole (LWOP) statutes have become almost universal within United States legal jurisdictions, not least because they are often promoted as an alternative punishment to the death penalty in murder cases, and as a means of abolishing capital punishment that attracts public support. In envisaging a death penalty-free future in the US, LWOP statutes may play a significant role in prosecutions for serious crimes.

LWOP sentences raise a number of legal and empirical questions in their relationship with the executive clemency remedies of commutation and pardon. Within this paper, I investigate the relationship between LWOP and clemency. On the side of death penalty opponents who support LWOP as a pragmatic replacement, together with retentionists supporting LWOP as an alternative sentence to death: does such a sentence really result in the prisoner's natural death in prison, when there still exists the residual option to release through commutation in each case? To answer this first research question, I present quantitative empirical data on clemency grants already made in US state and federal LWOP cases from 1990 to the present, derived from government, NGO and media sources. I aim to empirically assess whether, in the words of two other researchers, 'governors nationwide have denied virtually all clemency requests [for LWOP prisoners] over the past three decades', and 'clemency has disappeared as a dependable avenue for prisoners serving life'. In other words, to test a commonly-expressed epithet in this context: whether 'life means life'.

On the side of abolitionist LWOP opponents on the other hand, if in a realist view the natural life penalty is to be retained in the United States, clemency performs a critical role in enabling individualised sentencing and insuring against the excessive punitiveness of a natural life sentence, as one of few legal hopes that such a prisoner has of eventual release. Again here, the question of whether, statistically, 'life means life' carries relevance. Yet in assessing whether or not executive clemency is an adequate safeguard in lieu of parole, case-based empirical data on the practice of clemency is surely also relevant. Not only is aggregate data important, but also are the reasons for which pardons and commutations have been granted in LWOP cases in the United States. Accordingly, in this paper I also summarise findings from a content analysis of LWOP clemency reasoning by US Governors and Presidents since 1990.

- Gavin Dingwall, Legitimacy, Transparency and the Release of 'Dangerous' Offenders

The Parole Board's decision to release John Worboys, who was serving an indeterminate sentence of Imprisonment for Public Protection after being found guilty of one count of rape, five counts of sexual assault, one attempted assault and 12 drugging offences, led to public outrage when it was reported in the media in January 2018. In part, this concern stemmed from a belief expressed by the police that the offences Worboys had been sentenced for represented a small fraction of the offences that he had committed and that he was one of the country's most prolific sex offenders. Worboys was serving a sentence of Imprisonment for Public Protection. This sentence was abolished in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, but 3,029 prisoners were continuing to serve such sentences on 31 December 2017 (Ministry of Justice, 2018, Table 1.9a). There is near-consensus that Imprisonment for Public Protection is a deeply

flawed sentence which has led to injustice as those who had committed moderately serious offences could (and in some cases had to) qualify for an indeterminate sentence and spend far longer than their tariff period in custody (2,640 of the 3,029 prisoners serving Imprisonment for Public Protection on 31 December 2017 were post-tariff: Ministry of Justice, 2018, Table 1.9a). Release is only possible when the Parole Board determines that an offender's risk can be safely managed in the community and the rate of release confirms the view that the Parole Board is often risk-averse. Campaigners cite cases where the instant offence suggests that the prisoner would pose little risk if at liberty, but the Worboys case serves as a reminder that many of those serving Imprisonment for Public Protection have committed serious violent or sexual offences and victims, and the public more widely, have legitimate concerns about their safety were the prisoner to be released.

This paper addresses four questions posed by the Worboys case: (1) How transparent should the Parole Board be when making decisions to release those serving indeterminate sentences? (2) If reasons are not provided to victims or to the public following a release decision, is the legitimacy of the process jeopardised? (3) How can the Parole Board be protected if it makes release decisions which will cause public outrage? (4) What effect is the decision likely to have on the remaining Imprisonment for Public Protection prisoners?

◦ Cyrus Tata, Sentencing: Magic or Machine? The Social Processes of Decision-Making – Towards New Research Agendas

How should research understand sentencing practice? Although there has been a long tradition of work seeking to measure, critique and evaluate reforms to sentencing discretion, relatively little work has been dedicated to thinking about how we should conceive of and study the exercise of discretion in sentencing decision-making. Two main traditions dominate the landscape (and arguably in legal decision-making research more generally). First, reform-minded scholarship is dominated by a juridical-cognitive paradigm, which sees discretion as 'structured' by formal law as well as a series of discrete, individual factors exerting power over the judge's decision. In the second tradition, scholars anxious about the march of rationalisation and the managerialism of 'the new penology' coalesce with defensive-conservative claims that sentencing is and should be the personal possession of individual judges. Together they tend to refute the validity of explicating practice.

Despite their normative opposition to each other, both reform-minded and conservative approaches, in fact, share the same tacit assumptions about the empirical reality of sentencing. These assumptions include:

• rules and discretion are binary opposites
• law and rule-like mechanisms structure behaviour
• case facts exist in themselves
• discretion is the personal possession of the judge

I argue that close empirical research into the social processes of sentencing offer a different account. In this paper I seek to develop a research agenda which conceives of sentencing practice as an inescapably social process. This is based on three inter-related propositions:

1. At an abstract level we may meaningfully see 'rules' and 'discretion' as binary opposites, this binary opposition tends to dissolve at the level of practice. Rules and discretion become almost practically indistinguishable.
2. Sentencing is a process of case-making. This means that the social production of knowledge should be central to research and understanding of practice, not relegated to marginal 'context'.
3. Sentencing is inescapably a performance in which professionals communicate to each other (and others) not simply about the appropriate decision in the instant case, but about roles, identities, shared values and norms.

Sexual Relationships: Deception, Consent and Protecting Autonomy WMB: 3.32

◦ Victoria Brooks and Jack Clayton Thompson, Let's talk about Sex: Deception, Ethics and Consent

Finding the answer to whether consent is present within a sexual encounter has become increasingly difficult for the courts. We argue that this is due to the focus placed on entrenching gender binaries, a conservative sexual ethic and clear offender/victim roles. It should be the case that the court's task is to find the truth of the encounter in coming to a judgment as to the ethical balance, rather than judging the parties' conformity to cis-normative and heteronormative roles. This endeavour is obscured by the court's need to exclude 'sex talk', or otherwise testimony as to the messy reality of the encounter, in favour of asserting gender identity and a procreative understanding of sex. We are, therefore, left in the position where the required information necessary for valid consent is obscured by the courts. We draw on an analysis of cases involving issues relating to consent to sex in order to argue for a judicial approach that is informed by a more flexible understanding of sexual autonomy.

- Steve Christopher, Covert Policing – An Evil Public Interest Necessity?

Recent high-profile cases highlight the tensions that exist in determining the boundaries of acceptability in covert policing and protecting human rights. Conducting investigations into serious and complex circumstances is a challenging and problematic exercise that requires operational freedom to push the 'creative envelope' of covert policing to prevent or detect crime in a sustainable fashion. Covert policing has become, over the decades, an increasingly necessary evil. By definition, it has to be concealed, secretive, deceptive, non-consensual with varying degrees of collateral damage – that is why it needs to be closely and effectively governed and monitored. Criminal investigation and covert policing are governed by a plethora of legislation and codes of practice introduced to ensure the integrity of investigations and protect the rights of individuals. This legal framework has been designed to enshrine reasonable standards of proportionality, legality, accountability and necessity. Independent judicial evaluation and oversight has been woven through the framework and is paramount in affording confidence to the public that these principles are being applied appropriately and ethically. Therefore, law enforcement agencies have been provided with clear legislative and governance structures to conduct covert policing and it is incumbent upon them to adhere to the framework with due transparency and professional responsibility if they wish to enjoy continued operational autonomy. Where there is compliance with the legislative regime, covert policing rightly deserves to be protected through public interest immunity. Issues arise, however, when operational freedom extends into over-creative covert methodologies, unethical practices and opacity leading to non-compliance and consideration of the causal spectrum of unacceptable behaviour when conducting covert policing. In these circumstances, public interest immunity, again quite rightly, becomes an adversarial voir-dire battleground. Law enforcement agencies that circumvent or subvert the legal framework not only infringe human rights and undermine the rule of law but endanger the existence of covert policing, the precise investigative methodologies required to investigative complex matters on behalf of the public.

Session Eight: Thursday 29th March 12:00-13:30

Access to Justice in Context 35BSQ: 4.07

Justice for Vulnerable Individuals in the Criminal Justice System

- Patricia Jessiman, The role of the Appropriate Adult in Supporting Vulnerable Adults in Custody; Comparing the Perspectives of Service Users and Service Providers.

Background: The 1984 Police and Criminal Evidence Act (PACE) and its Codes of Practice created a duty on police custody sergeants to secure an Appropriate Adult (AA) to safeguard the rights and welfare of vulnerable people detained or questioned by the police. This includes any young person aged 10-17 years and adults who are mentally vulnerable. There is a statutory duty on Youth Offending Teams to provide AAs for children and young people, but no similar duty on any agency to provide AAs for vulnerable adults in police custody. However many local authority adult social services in England do commission or directly provide an AA service for vulnerable adults with mental health needs and/or learning disabilities in police custody. Aim: This study focused on the role of the Appropriate Adult in supporting vulnerable adults and sought to examine what a range of stakeholders would expect from an effective Appropriate Adult service in England. Method: This was a qualitative study of four Appropriate Adult services in England which were wholly or part-funded by adult social care. Qualitative interviews were undertaken with 25 respondents: managers or coordinators of AA services (6), managers or commissioners from adult social care and/or health services (6), Appropriate Adults (9) and police (4). In addition two focus groups were held with service- user groups, in which a total of 13 participants took part. Findings: Commissioners from adult social care identified the following reasons for directly funding AA provision for vulnerable adults; recognition that although non-statutory the provision was part of their wider safeguarding responsibilities; to alleviate demands on social care professionals; to respond to demands for the service from partners including the police; and to develop volunteering opportunities. The findings indicate considerable variation amongst case study areas around how safeguarding concerns raised during contact with service users are dealt with. There is also disparity between the expectations of service managers and commissioners, and service users, on what comprises an effective service. Professionals tend to prioritise the availability and response time of Appropriate Adults, while service users prioritise particular personal attributes and the demeanour of Appropriate Adults. There was little evidence of service user engagement or involvement in any of the four services in the study. The study calls for greater engagement of commissioners and other professionals in Appropriate Adult services to determine whether the legal and welfare rights of vulnerable adults in custody are being protected.

- Samantha Fairclough, "Grudging Law" And Its Effects

This paper considers the relevance of the way in which criminal justice reforms occur. Vulnerable and/or intimidated witnesses are able to give evidence in criminal trials using special measures (such as screens or TV link) so that their 'best evidence' can be secured. These measures are available via the Youth Justice and Criminal Evidence Act 1999, from which the accused was excluded from eligibility. As challenges relating to this exclusion have arisen and proved successful, the government has, somewhat 'grudgingly', legislated to provide the accused with some access to special measures in order to keep the legislative scheme Article 6 compliant. This paper examines the effect that this 'grudging' law reform has on the success of the resulting provisions in practice. Findings from interviews with criminal practitioners suggest that the effect of such 'grudging' legal provisions in practice is often negligible – they are little known about and little used. As a result, a vulnerable defendant's Article 6 rights remain in jeopardy. It is argued that the way in which criminal justice reform occurs has a significant impact on the uptake of those provisions in the future, and the extent to which the courts are supported in seeking to implement them.

- Rebecca Helm, Conviction By Consent? Guilty Pleas, Access to Justice, and the Presumption of Innocence for Vulnerable Defendants

Increasingly, legal research and scholarship has recognized that individuals in a legal system are vulnerable and in need of protection, rather than the rational and autonomous actors that they have traditionally been characterized as. This is vitally important in our criminal justice system, in which many convictions arise as a result of the decision of a defendant to plead guilty, rather than the decision of a judge or jury. Despite extensive empirical research in law, sociology, and psychology demonstrating social and cognitive vulnerabilities in human decision-making, the current plea system is still premised on a rational actor model, in which defendants are presumed to be able to make free and competent choices about how to plead. In this paper, I identify social and cognitive vulnerabilities in criminal defendants in this context, drawing on research from psychology, sociology, and empirical law. My research suggests that defendant vulnerabilities are likely to interact with aspects of plea procedure to compromise defendant decision-making. For example, cognitive theory suggests that even sentence reductions that are often characterized as small may be psychologically coercive for particular defendants, and the fact that pleading guilty can allow defendants who would otherwise be remanded in custody to get out of jail leaves some defendants with no practical choice but to plead guilty. I introduce evidence from interviews with criminal defense lawyers in England and Wales to make predictions about how often innocent defendants plead guilty, and also draw on examples from the "plea bargaining" system in the United States. I conclude that many vulnerable defendants are denied access to justice by being left with no practical choice but to plead guilty even when innocent, and make suggestions for potential policy change to provide a starting point for dialogue between legal practitioners, academics, and policy makers in this area.

Banking and Finance 35BSQ: 4.01

Financial Crime and Enforcement

Chair – John Wood

- Mark Haskew, A Weird Sort of Fraud: The Notion of “Manipulation” in Libor Trial

Why have so few individuals been convicted of Libor manipulation? Ten years on from the global financial crisis it is a question begged by the impressive-looking results of official investigations into the setting of the Libor benchmark, a daily interest rate used in the pricing of financial products from mortgage loans to complex derivatives. Despite corporate settlements amounting to billions of dollars (and counting); a trove of evidence – large parts of it placed into the public domain; a global regulatory shake-up; spin-off investigations into other key benchmarks; and countless careers ended in disgrace, only a handful of criminal prosecutions have yielded convictions – and even those look vulnerable to appeal. Critics point to prosecutorial mistakes, a lack of clarity in the law, and the complexity of financial fraud cases in general, and of Libor cases in particular. But these explanations gloss over a problem that goes to the heart of the Libor saga – the vexed notion of “manipulation”. Considering recent criminal proceedings, I argue that the discursive strategies deployed in Libor trials point to a more fundamental disagreement underlying the notion of “manipulation” in this context, which reveals itself in different attitudes towards economic reality, and how knowledge of that reality can best be accessed. From this perspective, "what went wrong" with Libor is less a legal or moral question than a contest between different epistemologies, whose faultlines are laid bare in the courtroom.

- Ilias Kapsis, The Evolving Nature of Money Laundering and the Failure of the Law

According to UNODC, global money laundering activities were estimated to be equivalent to approximately 3.6% of global GDP or US$2.7 trillion in 2009. The UK National Crime Agency (2015) estimated that hundreds of billions of these dollars are laundered through the UK financial system.

In UK significant new legislation on money laundering was enacted in 2017. In particular, in June 2017, the UK government enacted the Money Laundering Regulations 2017, which implemented the EU Fourth Anti-Money Laundering Directive, passed by EU in 2015. In addition, the Criminal Finances Act 2017, a UK initiative aimed between other, at expanding considerably the reach of anti-money laundering laws in the country, came into force. Additional legislative interventions targeting tax evasion were also adopted, whereas in EU there is currently a process for the adoption of a new Fifth Anti-Money Laundering Directive just two years after the adoption of the Fourth one. Finally, the Financial Action Task Force, which acts as the international coordinator on anti-money laundering efforts, regularly updates its Recommendations to national governments on money laundering.

The UK government in its 2016 Action Plan for anti-money laundering (AML) and counter-terrorist finance has identified the need for more legal powers, more effective supervision of banks and companies and more effective international co-operation as ways to more effectively deal with the problem, which poses an identified threat to national security.

The implementation of previous AML laws internationally and in UK produced poor results. Internationally the level of asset confiscation by national authorities remained very low amounting in 2009 to only 1% of illegal assets according to UN. In UK the assets confiscated during 2015-16 amounted to £31.53 million pounds, when the problem appears to be in the scale of billions of pounds annually. This poor outcome in UK occurred, in spite of the filing of 419,451 Suspicious Activity Reports (SARs) during the same period.

The limited effectiveness of the previous AML laws justifies approaching the new legislation with a level of scepticism about its effectiveness as the problem of money laundering has proved very resilient.Obvious questions for which answers are sought are: why should we pin hopes for better outcomes on the new laws? What is different now?

Seeking answers to the above questions, this paper reviews the main directions and philosophy of the latest UK and international initiatives. The aim, particularly, is to identify the ability of the new laws to deal more effectively than their predecessors, with the factors fueling money laundering, which had been identified in previous law reviews and reports.

Such factors, inter alia, include: inadequate legal frameworks; the complex nature and manifestations of the phenomenon of money laundering; the limited knowledge, data and resources available to law enforcers; the availability to money launderers of the latest technologies and professional expertise, which help them to avoid detection; and the existence in certain countries of national socio-economic and political factors which prevent effective AML cooperation with other countries. Also previous research identified the need for more effective crime prevention strategies.

The review of the latest legislation shows that public policy on money laundering, despite national and international authorities' best efforts to prove the opposite, remains primarily reactive, driven by scandals such as the Panama Papers or flare ups in phenomena such as the activities of terrorists or organised crime and there is absence of strategic depth in the new initiatives.

Moreover, policy makers and law enforcers continue to have insufficient knowledge of the complexities of the phenomenon of money laundering and as such they lack effective response. Money launderers continue to have access to the latest technologies and professional expertise which place them ahead of the law on crime detection adding to law enforcers' headaches. Pursue of national interests, narrowly defined, continue to pose obstacles to international cooperation.

The paper concludes that the latest initiatives, whilst containing new elements and tools to support the AML efforts of law enforcers, suffer from the same deficiencies as their predecessors and as such are likely to prove equally ineffective.

The paper closes with certain proposals for improving the legal framework by making it better targeted and more proactive.

- Lulwa Al Ben Ali, Enforcement of Kuwait Financial Regulation

Effective supervision and enforcement are important factors for well-established financial markets. Supervision seeks to deter noncompliance while enforcement seeks to detect and punish noncompliance. This study aims at identifying the most appropriate and effective approaches in regulating securities in relation to supervision and enforcement powers of the Kuwait Capital Markets (CMA). The study employs library resources to analyse laws and regulations governing the financial markets in the UK and Kuwait. This research analysis the UK regulation to reveal the deficiencies and shortcoming in active oversight in the UK. In addition to the application of the IOSCO objectives and principles in Kuwait financial markets to establish high standard regulations which will attract new investors and create trust in the stock market. However, three conclusions can be drawn. First, the CMA use risk-based approach which tend to assess current risks and do not have proactive intervention approach in identifying and responding to risk at an early stage. The risk-based approach failed to protect the Kuwait financial markets from the 2008 financial crisis. Second, there are five core tasks for enforcement of financial markets regulation namely; detecting, responding, enforcing, assessing, and modifying. Each task must be well-organised to have effective enforcement. Finally, the CMA tend to focus only on deterrence approach in exclusion of compliance mechanism. A combination of compliance and deterrence approaches is the best practice to ensure effective law enforcement. Overall, the CMA needs to improve detection techniques, enforcement tools, performance assessment procedures, precautionary procedures and modification capacities.

- Steven Cairns, Fostering Business Relationships or an Inducement to Improper Performance: An Analysis of the Role of Corporate Hospitality Following the Implementation of the Bribery Act 2010

'Rest assured...no one wants to stop firms getting to know their clients by taking them to events like Wimbledon or the Grand Prix.' K. Clarke, Ministry of Justice Guidance to the Bribery Act 2010

Corporate hospitality is recognised to be essential for the facilitation of business. It improves the image of an organisation, better presents products and services and fosters cordial business relationships. In 2015 alone, £1.2Bn was spent on corporate hospitality and events within the UK. Nevertheless corporate hospitality also carries the potential to foster corrupt activity. It has the capacity to be used corruptly to disguise a payment or gift with the intention of gaining an advantage or as an inducement to gain business.

The implementation of the Bribery Act 2010 left a significant number of stakeholders fearful that, due to the broad nature of the new bribery provisions, all hospitality could fall within the scope of a bribe under the Act. Whilst the Law Commission had identified corporate hospitality as bearing some of the hallmarks of corrupt activity, the Ministry of Justice sought to clarify the matter stating, '[t]he Government does not intend for the Act to prohibit reasonable and proportionate hospitality and promotional or other similar business expenditure intended for these purposes.' A fundamental problem has manifested itself however as there has been a lack of any clear guidance as to what would constitute 'reasonable and proportionate.' No single body has framed a test or definitive principle in identifying where the line should be drawn between legitimate corporate hospitality and a bribe.

It is argued that the distinction between hospitality and a bribe lies ultimately in the intention with which the hospitality was provided. The crux of the offence focuses on what has been called the improper performance test and it is within this test and subsequent case law that the answer lies. The chapter offers a comprehensive analysis of corporate hospitality following the implementation of the Bribery Act 2010.

Criminal Law and Criminal Justice WMB: 5.68

Chair – Samantha Pegg

Charmian Werren and Geoff Pearson, Some Assembly Required: Civil Preventative Powers and Article 11 ECHR

Article 11 of the European Convention on Human Rights grants individuals the qualified right of assembly. However groups and crowds gathered in public spaces are frequently seen as a threat to order and an increasing number of legal measures provide state organisations with the power to restrict gatherings that they believe may lead to 'anti-social behaviour', crime, or disorder. This paper charts the increase of civil preventative orders supported by criminal sanction which can impose conditions upon individuals which restrict or moderate their behaviour in public spaces. These orders are often the result of state concerns about unwelcome assemblies and/or may impose conditions which restrict the individual's ability to gather in such assemblies. These powers are wielded at numerous different levels within the Criminal Justice system, including local authorities, the police, and the courts.

We give examples of such restrictions on public gatherings from Criminal Behaviour Orders, Football Banning Orders, Community Protection Notices, Public Space Protection Orders and Anti-Social Behaviour Dispersal Directions. While these measures have previously been examined individually, this paper will identify the connections between them to demonstrate that there is an overarching trend towards the use of state power which poses a threat to the Art. 11 right to assembly. Moreover, the use of these powers has grown without adequate oversight or accountability. We call for the implementation of improved scrutiny and accountability mechanisms which would ensure that the imposition of these restrictions requires authorities to pay more than mere 'lip-service' to their obligations under Art. 11.

- Stewart Field, Remorse, responsibility and the Unique Individual Before the French Cour d'Assises: The Enactment of Political Cultures in Criminal Process

As part of a broader project being developed with Professor Cyrus Tata (University of Strathclyde) I have become interested in the interrelationship within criminal justice settings of the demonstration of state concern for the unique individual and displays of remorse and the acceptance of responsibility by defendants. Professor Tata, drawing on empirical data from Scottish Sheriff Courts, has described a process that he terms 'ritual individualization'. In it, the state shows an apparent commitment to applying general legal rules to individuals only after closely investigating and taking into account their individual circumstances. In return defendants are expected to show remorse, assume responsibility for their acts and accept the legitimacy of their punishment. Drawing on observations of very serious cases heard before the French Cour d'assises this paper examines the distinctive ways in which this process plays out there. It emphasizes not just the impact of the inquisitorial tradition in criminal procedure but also that of French Republican political culture in the elaborate performance of a very particular image of relations between state and citizen.

- Darren Mc Stravick, Who's Sorry Now? The Restorative Apology Ritual as Part of Reparation Panel Practice

The principle of reparation is a fundamental principle within restorative justice practice and procedure in that it can provide a platform for a participating offender to illustrate to a direct victim and others that they are both remorseful and ready to repair the harm caused by their criminal actions. The act of apology has been widely acknowledged as forming an integral role within this reparation principle. For Tavauchis (1991), an apology on the part of an offender represents a social gesture of symbolic importance, one that serves to constitute 'a tacit acknowledgment of the legitimacy of the violated rule or social norm; an admission of full fault and responsibility; and an expression of regret for having caused the harm in question'. Similarly, Doak (2011) argues

that the restorative apology represents one of a number of potential 'keys' which can ultimately unlock the therapeutic potential of restorative justice practice while for Braithwaite (2002) such an apology, alongside true remorse, represents 'the most powerful form of censure as it is offered by the person with the strongest reasons for refusing to vindicate the victim by censuring the injustice'.

This paper explores the specific means by which apologies are delivered and received as part of contract agreements within a specific, adult based offender reparation panel model. It explores the issue of remorse and the importance of genuine repentance, and the position of both direct and indirect victims, and community and criminal justice representative panel members as part of the apology ritual. Ultimately the paper addresses an important question as to the supposed legitimacy of restorative apologies within this particular restorative programme. This is especially pertinent within the reparation panel format which tends to limit direct victim participation as part of its overall procedures. The way in which the reparative apology is managed permeates the very core of the restorative justice paradigm and ultimately stands to distinguish whether or not the reparation panel model can call itself a genuinely restorative process.

Exploring Legal Borderlands WMB: OCC

Borderlands of law and economy

Chair – Pedro Fortes

- Allison Lindner (Kent Law School), The Formalisation of South African Waste Pickers in a Globalised Recycling Economy

This paper takes an 'econosociolegal' approach to investigating government efforts to formalise the work of waste pickers in South Africa—that is, it treats the legal and the economic as fundamentally social phenomena.

Waste pickers are informal workers who collect up to 80% of all recycled materials, and form part of an international commodities value chain worth just under £1 billion to the South African economy. Their work also contributes to environmental preservation through the reduction of landfill space and the creation of livelihoods for more than 60,000 South Africans who often work under poor conditions.

Formalisation offers waste pickers access to government-backed enterprise development opportunities. But formalisation also reduces waste pickers' ability to enter and exit the waste management economy, and recent field research shows that waste pickers value that flexibility. So government formalisation efforts have been largely unsuccessful, which has exposed the limitations of government to regulate and monitor the actions of those within sector. Waste pickers' resistance to government bureaucracy reveals their ability to retain autonomy through a reliance on informal norms at the local level. These norms facilitate waste pickers to carry out functions crucial to them, society and the wider economy without being formalised. They provide a livelihood for themselves; they contribute to environmental sustainability through landfill space reduction; and they support the globalised economy for recycled materials through the supply of commodities.

- Dania Thomas (University of Glasgow, Adam Smith Business School), Between Debt and Contract: Common Law Courts, Uncertainty and the Changing Governance of Sovereign Lending

In the unregulated world of sovereign lending, this paper maps an incipient blueprint of governance under uncertainty formulated by the common law courts. In far reaching and significant decisions, recent judicial interventions in disputes between speculative holdout creditors and sovereign debtors reveal contradictory impulses. In line with the traditional treatment of debt disputes, the courts are concerned with past obligations – the fulfillment of promises where an exchange has already occurred. In an interesting development, the decisions also reveal the modalities by which the courts recognize creditors as 'free', enterprising legal subjects that operate in conditions of uncertainty and as such expect to earn high returns in the future. In effect the courts are governing sovereign lending through the future.

This emerging template of governance through uncertainty revives the post-Bretton Woods debate about the causes of crises between the Keynesians, monetarists and the Minsky influenced economics of uncertainty. This paper engages with this debate through the lens of contemporary governance theorists such as Pat O'Malley to explore the implications of this expansive judicial role at the border of governing sovereign lending through the past and the future.

The recently concluded US district court decisions against Argentina have been described as 'radical' - for the first time in the history of sovereign lending, a group of holdout creditors have successfully used the courts to force a defaulting sovereign to pay its debts. This case was the latest episode in over two decades of post-default enforcement litigation examined here. The doctrinal discussion centered on the innovative interpretation of a standard term in boilerplate contracts. The dispute was eventually resolved with the grant of an injunction - an equitable remedy rather than the award of contract damages or the recognition of in-built remedies. The injunction triggered a sovereign default and an eventual settlement that awarded creditors a 1270 percent return on their investment and facilitated the debtors re-access to capital markets. The contracts were enforced based on mutual expectations about future returns. Here the courts were governing uncertainty through the future. This paper concludes by showing that the judicial governance of uncertainty is instrumental in sustaining sovereign lending but enhances irrational speculation that ensures high returns and delays crisis resolution. At another level, this modality of governance displaces the dominance of the official, risk-based statistical probability of likely crises outcomes and opens up the possibility of informal claims by state pensioners, welfare recipients and future generations - the constituencies most affected by a debt crisis.

- Marek Martyniszyn (Queen's University Belfast) & Maciej Bernatt (University of Warsaw), Embracing and Nurturing the Free Market: Lessons from Poland through the Lens of Competition Law and Policy'

This paper investigates the embracement and development of a free market economy in Poland following the fall of communism. Poland has a compelling, but little known, story to be told about the successful transition from central planning to a free market economy. Competition Law and Policy played a significant role in that regard. It provided a new regulatory framework for firms and it required embracement of a new market ideology and crossing existing legal and social borders. Competition law substantive and institutional framework was inspired by the European Economic Community and U.S. antitrust rules and the question was if and how will it work in post-communist country. Moreover, the creation of the competition authority was a long-term test of the state of Polish democracy and the progress in the fight with politicians' illegitimate interference.

The paper shows that the implementation of competition law in Poland was generally a successful process. The Polish competition authority (UOKiK) was successful not only in the protection, but also the development of competition. Former state-owned enterprises in numerous sectors (eg telecommunication, energy) were in the limelight of the UOKiK's initiatives. These efforts delivered across the key benchmarks—in terms of higher quality, lower prices and a broader choice for consumers. However, Polish competition regime keeps facing challenges. From the institutional perspective the UOKiK's independence is not sufficiently guaranteed. From the enforcement perspective, the UOKiK has put surprisingly little emphasis on fighting cartels, which are considered the most damaging type of anticompetitive conduct.

The paper findings are based on empirical research that covers selected, breakthrough enforcement actions, statistical analysis and media review. Conclusions of socio-legal nature are also drawn from the extensive, semi-structured interviews with all former UOKiK presidents, competition law judges, practitioners and other key figures involved in the development of Polish competition law.

Family Law and Policy **WMB: 3.33**

Financial Vulnerability
Chair – Rebecca Probert

- Anna Heenan, Divorcing Swedishly: Does Sweden Hold the Key yo Financial Remedy Reform?

Sweden is often held out as a beacon of gender equality in a gendered world. It describes itself as having 'the first feminist government in the world'. Further, its social policies, such as the emphasis on fathers taking parental leave, are often seen as ground-breaking and representative of a gender-neutral society.

Against this background, discourses of equality and autonomy are influential on divorce. Unlike the discretionary system in England and Wales, Swedish law approaches the division of property and claims for maintenance as entirely separate pillars. However, the underlying ethos of equality is reflected in both aspects. The matrimonial property regime of deferred community of property means that an equal division of assets is the norm. Further, these underlying assumptions are reflected in the exceptional nature of spousal maintenance. Pension sharing is also very restrictive, with only personal pensions, a limited category, being subject to sharing.

Given the increasing emphasis on autonomy as a principle in family law in England and Wales, this paper considers the reality of gender equality in Sweden. How far does formal equality result in (substantively) equal outcomes? The paper draws on interviews with legal practitioners in Sweden to assess the advantages and pitfalls of the law of divorce and to consider how far lessons from Sweden might be useful in developing the law of financial remedy in England and Wales. It is suggested that whilst the Swedish welfare state serves a far more protective function that its English equivalent, Swedish law itself provides little protection for spouses with caring responsibilities.

- Ellen Gordon-Bouvier, The Vulnerable Carer and the Home: A Vulnerability Analysis of Cohabitation Law

For many years, feminists have argued that the law applicable to cohabitants on relationship breakdown (ie the constructive trust and proprietary estoppel) unfairly discriminates against the homemaker/carer. This is something that still disproportionately affects women. In this paper, I examine the carer's relationship-generated disadvantage from the perspective of vulnerability theory. In doing so, I aim to reshape a decades-long debate around cohabitation, by making the novel argument that carer disadvantage is a state-created rather than a private problem.

I argue that, by failing to recognise caring contributions as giving rise to an interest in the home, cohabitation law marginalises the carer, reinforcing care as a private sentiment, thus obscuring its public importance. The cohabiting carer is unequal, both within her relationship and in a broader sense, in her failure to conform to liberal ideals of citizenship. This in turn generates a risk of harm, which I term 'relational vulnerability'. As well as economic, this vulnerability is emotional, including the carer's loss of power in the relationship, and spatial, referring to the carer's often precarious relationship with her home.

Finally, I argue that due to its role in creating unequal relationships, the state has an active duty to address carer vulnerability and provide resilience. Resilience should primarily aim to ensure equality and autonomy for the carer. I consider three forms of resilience, arguing that the home itself is a powerful source of resilience and that this can be reflected through expressly allocating rights in the home to the carer.

- Donna Crowe-Urbaniak, Vulnerability, Autonomy, Power, and Resilience: What Challenges are Faced by Military Wives Post-LASPO?

This work in progress aims to examine the experiences of military wives post-divorce, in light of the withdrawal of legal aid for private family law following the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). Research has highlighted some of the challenges experienced by wives as a result of military life: poor levels of education, patchy employment history, and limited opportunities for further education or to develop or maintain a career .Consequently, wives are frequently economically dependent upon their husbands. Whilst a marriage remains intact, decisions are viewed as being made in the best interests of the family. However, upon

separation, spouses can find themselves cast adrift both financially and socially. Military wives may have limited opportunities to either possess or command resources, and thus, as Fineman argues, may be particularly vulnerable post-divorce. Post-LASPO, parties are encouraged "to take responsibility for sorting out their own 'private' disputes"; a notion predicated on the assumption that relationships are "equal partnerships". In families where highly gendered roles are a key feature, how adept are these couples at negotiating a fair settlement? Do such policies "work against the interests of the weaker party"? This paper will explore these questions in outline, drawing on the feminist positions of Deech and Fineman to understand the dichotomous tension within the law, and set out how my proposed empirical research comprising thirty face-to-face interviews with military members and former military wives should enhance understanding of the particular challenges faced by military wives.

Gender, Sexuality and Law WMB: 3.31

Chair – Alexander Maine

- Po-Han Lee (University of Sussex), In the Name of 'Rights': The Danger and Potential of Healthifying Queer Vulnerability

In an era that the enjoyment of the highest attainable standard of health is considered as a fundamental human right, it is often taken for granted health inequity should not be absent from a thorough social justice movement. However, many LGBT rights activists in East Asia have been more conscious about the coupling of health and rights concerns. Drawing on the case study of an ongoing debate concerning the inclusion/exclusion of diverse sexualities and intimate relationships in the 'gender equity education', it much lacks the dimension of health rights. In fact, there have been much rarer references – compared to the prosperity of LGBT health movement in the 'West' – to the right to health (equity) among LGBT rights advocates and health professionals in Taiwan in particular and in East Asia in general. In a relatively worse situation for sexual and gender minorities than other neglected populations in public health history, the discursive formation of LGBT and queer subjectivities is closely linked to pathologisation up to date. This has resulted in the ambivalence towards the phenomenon of 'healthifying' the issues around LGBT social vulnerability among activists and community members. In this article, I identify two primary reasons for the ambivalence: first, the predominance of biomedical perspective of health inequalities over other social determinants of health (including sexual orientation and gender identity), and second, the risk of 'overexposure' of LGBT health problems due to societal negative attitudes towards the queer 'lifestyles'. Therefore, I argue for the need and potential of promoting the awareness of social health in society for and by LGBT and queer social movement, particularly when social health has been recognised in international human rights law as one of the determinants for the enjoyment of the right to health.

- Max Morris (Durham University) and Alex Powell (City, University of London), Queering 'Reckless' Transmission: HIV Criminalisation and Stigma in the Context of PrEP and TasP

In November 2017, Daryll Rowe became the first person to be convicted of intentionally transmitting HIV contrary to Section 18 of the Offences Against the Person Act 1861. News coverage of this case has reignited debates over the criminal law's response to HIV. Prior to this, there had only been convictions for 'reckless' transmission contrary to Section 20 of the same Act, as in the case of R v Dica. This presentation questions whether criminalisation is an effective way to reduce HIV transmission and stigma. First, we examine the cultural and political antecedents to these debates, alongside their contribution to stigma directed towards marginalised groups since the 1980s, including: gay and bisexual men, trans women, sex workers, people of colour, and people living with HIV. Utilising feminist and queer theoretical perspectives, we challenge the othering perpetuated by such narratives. In particular, we critique the concept of 'recklessness' in relation to a person's HIV status, drawing on examples from personal, political, and legal discourses. The emergence of highly effective antiretroviral therapies in 1996 transformed HIV from a life-threatening, to a manageable health condition.

Today, HIV positive people can expect an average life expectancy due to the increased availability and reduced toxicity of these medications. Furthermore, multiple research projects, including the PARTNER study (of which we are participants), found no cases of transmission between couples engaging in 'bareback' sex when the positive partner was on effective medication, something termed 'Treatment as Prevention' (TasP). Such medications are now also available to negative people as a preventative pill in the form of Pre-Exposure Prophylaxis (PrEP). We suggest that PrEP and TasP have radically altered the social, political, and medical context, reducing or eliminating the possibility of HIV transmission. These developments raise questions about whether the recklessness standard remains safe and appropriate for future cases.

- Giuseppe Zago (University of Northumbria), Confined Queers: The Role of Human Rights in Challenging the Essentialist Legal Framework of UK Prisons

International human rights law has started shedding light on the treatment of confined people of different sexual orientations and gender identities. Notably, the recent expansion of the Yogyakarta Principles included a call for States to enact policies of confinement that take into account the needs of sexual minorities and gender non-conforming individuals.

However, this paper argues that the UK prison complex remains regulated on the basis of gendered and hypermasculine institutionalised dynamics, which perpetuate forms of discrimination particularly affecting queer, trans and gender non-conforming people.

By analysing prison regulations and case law concerning expressions of same-sex sexuality and the management of prisoners who do not comply with the strict gender binary division of the penal estate, this paper proposes two arguments. First, the current legal framework, and its interpretation by courts, does not sufficiently consider developments under international human rights law, and contributes to the vulnerability of queer, trans and gender non-conforming prisoners. Second, oppressive gender and sexual norms are perpetuated by the way a balance is struck between the principles of security, discipline and order and the rights to human dignity and family life. In particular, the reasoning behind this approach is often inconsistent and informed on a traditionalist standard where only two genders, male and female, with specific essentialist roles, are recognised.

This paper contends that policies on sexuality and gender identity during imprisonment need a comprehensive re-assessment in light of human rights standards. The recent review of the prison regulations on the care and management of transgender prisoners represents an initial step in this direction, but there still exist areas for further development.

Furthermore, it maintains that the interpretation and implementation of human rights based on queer/trans analysis can challenge the heteronormative and gendered character of prison policies, and holds the potential to dismantle current logics of imprisonment.

Information 35BSQ: 4.08

Chair – Ashley Savage

- Helen Ryan, Protecting the Privacy of "Generation Tagged"

Children, even the very young, are often highly adept at using technology. However, they are far less aware of the potential consequences of doing so and of the harms that may result especially when participating in social media platforms often at the instigation of others. Where young children feature in broadcast media they are at risk of becoming the targets of comment, discoverable long beyond its original publication date, and which exceeds the safer environments of family and friends. These children are "Generation Tagged". Recent and current examples include programmes such as Channel 4's 'science entertainment' programmes in the 'The

Secret Lives' series, 'Born Naughty?' 'My Violent Child' and 'Child Genius'. Portrayal of children on Social media platforms such as 'YouTube Families' is also of concern.

This paper builds on our recent article published in the Journal of Media Law and the subsequent report of the workshop held with a range of Stakeholders, including Channel 4, and considers issues that surround the protection of the privacy of very young children in this environment. How, for instance, should the 'reasonable expectation of privacy' test be applied when parental consent may diverge from the child's best interests? How should children's privacy be treated when there is a public interest publication at hand? How far should the legal, regulatory and ethical framework protect the child's 'digital person' in light of technological developments?

We will explore some suggested solutions arising out of the workshop and consider how we might find out how some of the young people involved in this type of broadcasting have been affected by the experience.

- Judith Townend, Defending the Public Interest of Information Disclosure in a Pre-Brexit UK

This paper considers the UK government's recent policy record on information and data control, under Prime Ministers David Cameron and Theresa May, and potential threats to the disclosure of information in the public interest.

It focuses on three main events: the Cabinet Office's referral of a project on Official Secrets reform to the Law Commission in 2015, and the subsequent consultation report in 2017; the Digital Economy Bill / Act 2016-17; and the Data Protection Bill 2017-19. It discusses the nature – or absence of - public interest protection mechanisms in these proposals and the ability of different actors to influence their development.

The paper will contend, based on the evidence of these and earlier case studies, that in the absence of a forceful national media response, protections for the disclosure of public interest information are often overlooked during the legislative process. Furthermore, public interest protections are often narrowly construed in terms of the interests of professional journalism and, in particular, the commercial print media, and insufficiently covering broader public interest concerns, as an aspect of 'media-legal policy realpolitik' (Barnett and Townend, 2014). Broader issues include insufficient protections for the sources supplying the media with information, and ambiguity as to the extent to which public interest defences apply beyond traditional media organisations – to NGOs and academics, for example.

A further tension here, both implicit and explicit in the academic literature covering this area (see, e.g., Scott and Millar, 2016; Danbury 2014), is whether protections should focus on the type of actor disclosing the information; or the type of information being disclosed. Either model has its flaws, but the debate has – to date – received insufficient attention by law and policy makers.

- Richard Hyde and Ashley Savage, Transportation as a Single Data Space: Building Interconnected Governance Through Information Sharing

Rail, sea and air provide modes of transportation which regularly cross multiple jurisdictional and legal borders. Trains, ships and planes cross borders and so do passengers. This presents multiple issues concerning safety and security which can only be met by effective international co-operation. The advancement of regulatory and enforcement practices in the different modes of transportation has led to the formation and development of 'regulatory spaces,' areas which adopt laws, regulations, practices, procedures and values for the good of the communities in which they serve.

The purpose of this paper is to consider how data sharing operates within each community and how information is shared between transport, border control and criminal justice. The paper will provide extensive comparative

analysis between the different modes of transportation, identifying the differences between the mature regulatory spaces of air and sea alongside more recent developments in rail. The chapter will consider shared spaces in the different modes of transportation at a European and international level. Bi-national, multi-national and international information sharing partnerships will be discussed. The paper will provide emphasis on formal and informal partnerships which have emerged as a consequence of geographical location, shared language or similar cultural identities. The chapter will identify that informal sharing takes place, even where the regulatory space is well developed. The authors will seek to determine the advantages and disadvantages of formal and informal sharing. Ultimately, the chapter will seek to determine the lessons for building data exchange that can be drawn from the transportation sphere.

IT Law and Cyberspace 35BSQ: 4.02

Regulating Social Media

Chair – Mark O'Brien

- Laura Bliss (Edge Hill University), The Crown Prosecution Guidelines and Grossly Offensive Comments: An Analysis

This paper will critically evaluate the Crown Prosecution Service guidelines concerning grossly offensive comments made via social media in the United Kingdom. Abusive comments conducted online have recently dominated newspaper headlines across the world. The Crown Prosecution Service has attempted to give clear advice to prosecutors as to when a comment made online will go from being one that is simply offensive, to one that is so grossly offensive it warrants criminal prosecution. The guidelines were first created in 2013 and updated in 2016. This paper will critically examine the guidelines and grossly offensive comments made online and consider whether a coherent and accessible document has been created. Suggests will be made as to whether more work is needed to create consistency in the law when it comes to social media and criminal offences.

- Syahirah Abdul Shukor and Nik Salida Suhaila Nik Saleh (Universiti Sains Islam Malaysia), Social Media: What Should be Regulated?

Since the evolution of social networking websites, there have been concern of its content and the impacts of the communication resulted in the websites. There have been competing views as to freedom of speech and the right to speech in using these social networking websites. In recent years, social networking websites have been misused as a tool of spreading hate and offensive content. It seeks the issue as to what extent the legal authorities have the right for surveillance and control in cyberspace without interfering to the right of privacy? The most worrying trend is the declaration of apostasy for a Muslim in Malaysia in these social networking websites. There have been efforts have been taken by the Malaysian Communication and Multimedia Commission (MCMC) together with the government agency which is responsible on Islamic issues, namely, Jabatan Kefahaman Islam Malaysia (JAKIM)/ the Department of Islamic Development Malaysia to discuss the arising issues. This paper highlights what should be regulated by law in matters related to social media? Whether litigation is the best solution in handling legal issues arising from social media? Hence, a comparative analysis is also applicable to recent development of how other countries such as the United Kingdom and Australia in dealing legal issues arising from the social networking websites. There have been suggestions made by the Malaysian Communication and Multimedia Commission in setting up cyber wellness centre which should be further explored by all stakeholders and interested party.

- Reilly Willis (UEA), Evaluating the Impact of Global Twitter Campaigns on Domestic Law

#Hashtags such as #bringbackourgirls, #malala, and #delhigangrape have become almost household names. The advent of social media has fundamentally changed civil society's actions, particularly individuals' ability to participate in advocacy campaigns. Yet the efficacy of this new form of activism, or as some call it "slactivism", is hotly debated. The relationship between social media and gender adds another, relatively unexplored, complex dimension.

This study uses nearly 1 million Tweets from 10 campaigns targeting 9 countries, to evaluate the impact of social media on domestic legal change, specifically in the area of women's rights. The research is underpinned and guided by a critique of the spiral model of human rights change, using a liberal theory to challenge the model's (over-)emphasis of the role of transnational actors in the domestic institutionalisation of international human rights norms. The study focuses on quantifying contextual, independent, and dependent variables in order to model the effectiveness of campaigns. Variables include norm framing, persistence, domestic v. transnational drivers, and profiles of those participating in the campaigns. Dependent variables include changes in hard law, changes in soft law, national budget allocations, judicial involvement, and the representation of norms in national UN reports.

Using the space of social media presents a wide range of opportunities as well as threats. It may be that these campaigns are indeed leading to the change sought after by domestic women and girls, and that, as many think, the weight of the international attention leads to positive outcomes. Equally, it may be that the campaigns are ineffective or, worse, lead to government backlashes. This paper seeks to understand these impacts in depth, using unique and innovative statistical models to test the relationships between the variables mentioned above and any long term, meaningful legal change.

- Brian Simpson (University of New England, Australia), Reconstructing Truth Online: Fake News, Real Names and Viral Evidence

We seem to be living in an alternative reality where the 'real' Donald Trump dismisses criticism as 'fake news' while Facebook requires 'real names' when you sign up to their social media. At the same time movements online uncover the reality of child abuse, sexual harassment where the need to go viral appears to be as important as gathering evidence (or is it?). The questions this paper seeks to address is whether our desire to construct new realities in cyberspace has created a monster that is now out of control and whether the need to gather real evidence has become secondary to mobilising public opinion. If so, what does the future hold for our system of justice??

International Economic Law in Context 8-10BSQ: LG.01

- Ahmed Almutawa, The Qatar Crisis, Legitimacy and the use of Sanctions to Enforce the International Legal Obligation to Counter Terrorist Financing

On the 5th of June 2017, Saudi Arabia, the United Arab Emirates, Bahrain and Egypt severed diplomatic ties and initiated economic sanctions against Qatar. The coalition justified the sanctions by claiming that Qatar had violated its obligations under international law by supporting terrorism and extremism. In support of its claims, the coalition published a list of terrorists and terrorist groups allegedly supported by Qatar. The underlying motivation for the sanctions lies, inter alia, in Qatar's resistance to the regional hegemony of Saudi Arabia and Qatar's divisive policies of supporting political Islam, the Muslim Brotherhood and Hamas, providing extremists with a safe-haven and, through al-Jazeera, a platform for promoting their ideology. However, while there may be strong political reasons for acting against Qatar, the question is whether it was legitimate for the coalition to impose sanctions. In the context of international relations and foreign policy, legitimacy requires consistency with the rule of law and other international norms. Furthermore, legitimacy may also be contingent on some

form of collective authorisation. In this paper, the Qatar crisis will be assessed through the lens of legitimacy. First, it will be argued that the crisis may be understood as the culmination of competing conceptions of the content of legitimacy, with the coalition characterising Qatar's approach to counter-terrorism and extremism as illegitimate. Second, the legitimacy of the coalition's use of sanctions as a way of enforcing Qatar's international legal obligation to counter terrorist financing will be examined. It will be argued that, although the coalition's use of sanctions may be lawful and justified, its legitimacy is eroded by the demands imposed on Qatar, the coalition states' international legal obligations and the lack of collective authority.

- Clair Gammage and Amy Man, Investment Facilitation for Development: A Step Too Far, Too Soon?

The purpose of this paper is to challenge the legitimacy of the World Trade Organisation (WTO), the institution which sets the rules for global trade, to extend its mandate to include rules relating to the facilitation of foreign direct investment (FDI). Governance through the multilateral trading system is in crisis, with little progress made in the most recent Ministerial Conference in Buenos Aires (MC11). However, while WTO Members have failed to overcome the negotiating impasse in relation to the rules on trade in goods, and particularly the rules relating to agricultural governance, a Joint Statement has been issued by 70 Members following MC11 expressing their intention to instigate structured discussions on Investment Facilitation for Development at the WTO.

In this paper, we will critically assess the extent to which the proposed Investment Facilitation framework will foster "development", diversify export capacity, and integrate (developing) countries into global value chains (GVCs). We problematise the conceptualisation of "development" underpinning the WTO framework to challenge the normative assumption that foreign direct investment (FDI) will necessarily have positive implications for development. Through a range of contemporary examples, we will argue that the existing inadequacies of the multilateral trading system render it an inappropriate setting in which to liberalise rules on FDI. We will examine how, and to what extent, investment facilitation can be mobilized to address developing countries' and LDCs' needs in order to meet the Sustainable Development Goals (SDGs). By revealing the (neo)liberal economic assumptions on which the rules relating to multilateral trade and FDI rest, we argue that an approach to liberalisation recognising the social, economic, and cultural aspects of development is needed.

- Oleksandra Vytiaganets and Mavluda Sattorova, WTO System and Public Health Sovereignty of States: What is the Future for a New Generation of Anti-Smoking Regulations?

In July 2016, Uruguay protected its sovereign power to regulate based on public health considerations in the first investment arbitration case, where one of the biggest tobacco manufacturers directly challenged the state tobacco laws. Commentators and human rights activists praised this award as a manifestation of state right to regulate public health matters and "green light" to a new generation of anti-smoking regulations. However, similar claims, raised by Cuba, Dominican Republic, Honduras, Indonesia against Australia before the WTO Dispute Settlement Body (DSB), are still pending, and the Panel postponed the issue of the final report "[i]n the light of the complexity of the legal and factual issues".

This study aims to contribute to the discussion regarding the implications of WTO law for stricter anti-tobacco policies, and the ability of the DSB to reflect social concerns. Critically evaluating existing body of literature on the issue, it introduces new empirical data based on interviews conducted during March-July 2017 with high-ranked public officials and experts in Ukraine.

Findings indicate that WTO's decision on Australia's tobacco regulations may impinge on other tobacco and alcohol measures, and public health sovereignty of states, in particular, in the light of the trend towards elimination of TRIPS flexibilities. Obtained empirical data also highlights the role of multinational corporations in WTO disputes and international system generally.

Further, summarising the attitudes towards the dispute, the study makes an endeavour to predict the outcome of the trade disputes and suggests that Australia's tobacco policies do not breach the state's obligations under WTO agreements.

Interrogating the Corporation WMB: 3.30

- Eghosa Ekhator, 'African Solutions to African Problems': The Malabo Protocol and Regulation of Multinational Corporations in Africa

There have been a plethora of suggestions on addressing the regulatory gaps on the regulation of multinational corporations (MNCs) in the international and regional spheres. These include the power of an international tribunal or court to try corporations , World Court of Human Rights , International Arbitral Tribunal, extending the remit of the International Criminal Court to include MNCs, proposed binding international treaty and the adoption of the Malabo Protocol in June 2014 in Africa which extended the jurisdiction of the proposed African Court of Justice and Human Rights (African Criminal Court) to include corporate criminal responsibility.

This paper focuses on the Malabo protocol and the possible implications for the regulation of MNCs in Africa. The adoption of this protocol has been termed an example of the notion of 'African solutions to African problems' and which is when "African states must look inward for it developmental needs rather than on the Global North." The thrust of this paper is to critically analyse whether the adoption of the Malabo protocol will lead to effective regulation of the activities of MNCs or whether it will be symptomatic of similar African Union initiatives (such as NEPAD, APRM and various AU conventions on environment) which arguably have not had positive impacts on the lives of the average African.

- R.G.Pillay and N. Pariag-Maraye, Corporate Social Responsibility, Law and Development in Mauritius: Perspectives from Local Communities & Beneficiaries

In 2009, Mauritius became the first country in the world to implement a CSR legislation, requiring all profitable companies, with the exception of certain offshore and foreign companies, to commit two percent of their chargeable income to CSR projects, more commonly known as community development initiatives. However, since its implementation, no study has focused on the voices of the local communities and beneficiaries, in which these CSR initiatives have been implemented. In fact, Idemudia (2014), writing in the context of CSR and development in Africa, explains how these voices are 'often either neglected or ignored in mainstream CSR discourse', citing the need for 'rich empirical studies that are based on how local people experience CSR', and 'how socio-cultural factors shape local population expectations and perceptions of CSR'.

In this context, this paper seeks to fill this lacuna by looking at how the Mauritian CSR initiatives have had an impact on their beneficiaries and the local communities in which they have been carried out. It draws on empirical evidence gathered through fieldwork by means of semi-structured face-to-face interviews with some of these beneficiaries. Such a study is valuable as it would help to shed light on what the beneficiaries of the community development programmes under the CSR legislation actually think of them and if they are seen as meeting their needs - in effect, analysing the effectiveness of the legislation.

It must be noted here that the project on which this paper is based is funded by the Mauritius Research Council and is on-going: this paper, therefore, gives some preliminary data and analysis on the matter (drawing specifically on a pilot project in October- November 2017).

- Frederico Rigante, Maria Lucia Passador, The Importance of (not) Being Shareholder. Rethinking Agency Conflicts in Modern Listed Corporations.

As well known, Corporations are collective forms of exercising business activity. From a socio-historical point of view, in fact, such Business Organizations were created as a typical tool through which more entrepreneurs (Shareholders) were free to invest certain sums of money in order to obtain benefits (dividends), limiting ex ante the possible negative economic outcome of the activity on their personal assets, through the shield of legal personality and limited liability. In this sense, Corporations were born and raised as a perfect mechanism for realizing Shareholders' value, which has always been considered of utmost relevance both in Civil and in Common Law "Legal Families". The evolution of the capitalist system – also supported, in the last decades, by the so-called turbo finance – seems to have changed the reference framework here above described. Today, in fact, corporations (even more if listed, and working in certain sectors, such as banking and insurance ones) play a "systemic" role, which, in our opinion, leads to a slow but constant lack of attention to the position of their Shareholders, whose interests seem to be considered less important than the ones of public (such as the State and the environment) and private (such as creditors, employees and suppliers) Stakeholders. In other words, we argue that – especially in the "post-crisis era"– we must face a "Copernican Revolution" in Business Law: Corporations have been made in order to primarily realize the benefit of Shareholders, but progressively became a perfect structure able to guarantee – first of all – the interest of those subjects which are not part of the Organization itself. Given the importance of the topic, our paper intends to dwell on this issue, through a comparative study, also supported by an empirical analysis of the problem.

Labour Law and Society 35BSQ: 3.13

- Michelle Weldon-Johns, The future of the Work-Family Conflict in the UK

There is much concern about the potential loss of current legal frameworks post-Brexit, particularly in the employment law context. However, the arguably greater potential loss will be in areas where the EU continues to develop. The work-family conflict is one such area where the EU is proposing to develop its legal framework with the dual aims of addressing women's underrepresentation at work and encouraging the better sharing of childcare responsibilities between men and women (Proposal for a Directive by the European Parliament and of the Council on Work-life Balance for Parents and Carers and repealing Council Directive 2010/18/EU COM/2017/0253 final). This proposal complements the development in the jurisprudence of the CJEU towards recognising the role of working fathers in the work-family context (Case C–104/09 Roca Álvarez v Sesa Start España ETT SA [2011] 1 CMLR 28 and Case C-222/14 Maistrellis v Ypourgos Dikaiosynis, Diafaneias kai Anthropinon Dikaiomaton EU:C:2015:473).

This paper will critically analyse the proposed directive, considering in particular any potential implications for the UK package of work-family rights in light of Brexit. Reference will also be made to two recent UK cases on shared parental leave (Hextall v Chief Constable of Leicestershire Police ET/2601223/2015 and Ali v Capita Customer Management Ltd ET/1800990/2016, EAT decisions for both pending) to compare and contrast the approaches adopted here with the EU position, and any potential insight that this may provide for the future of work-family rights in the UK post-Brexit.

- Manoj Dias-Abey and Matt Canfield, Farm Workers Rising: How Farm Worker Organizations are Responding to Transformations in the Food System Through Innovative Legal Strategies

In the 1960s and 1970s, the United Farm Workers union (UFW) radically improved working conditions for farm workers in California. The UFW engaged creatively with the law to win substantial gains for farm workers, including a collective bargaining system (Ganz 2009; Gordon 2005; Wells and Villarejo 2004). The situation has changed significantly since that time. The agricultural sector now sits within a vast global food system and farmers face increased pressures from international competitors and concentrated agro-food corporations that exercise monopsony power from above and monopoly power from below (Howard 2016; Clapp and Fuchs 2009; McMichael 2009). As the agricultural and food sector has changed, so too have the structures and conditions of North America's farm workforce. Shifting state policies and dedicated labor migration programs have changed the ethnic and national composition of workers (Pechlander and Otero 2010; Preibisch, 2010), and the labor

institutions that were won during previous waves of farmworker labor mobilization have faced systematic deterioration (Martin, 2003). New labour organizations have arisen that respond to the changed circumstances. Two such labour organizations—the Coalition of Immokalee Workers (CIW) and Familias Unidas por la Justicia (FUJ)—represent the new face of the farm labour movement. These organizations have been able to win labor rights in the absence of traditional state protections by using innovative tactics to mobilize and construct multiple layers of public and private rules across multiple socio-political scales. In doing so, they offer insight into a new front in "labor law," demonstrating how bottom-up struggles and mobilizations can produce hybrid legal regulations capable of achieving real gains for farm workers.

◦ Mateja Durovic, The Necessity for Imposition of Stricter Work Hour Limit in Higher-Paying Jobs

In my Paper, I would like to argue that there should be a stricter regulation of the work hour limits in case of higher-paying jobs not only in the UK, but also globally. There are two main reasons to support my claim: the full achievement of gender equality and better mental health of the employees.

Today, it is possible to observe that in highly-paid industry sectors (e.g. law firms, banking and financial services, technology, etc.), employers typically expect from their employees to have extremely long working hours. Some of the empirical data show that the average employee might be between 85 and 90 working hours a week for in case of certain of these sectors. The long working hours are not only expected as a pre-requisite for the promotion of an employee, but also as a necessary condition for maintaining the currently held position in the company.

However, as a result of the absence of any strict regulatory restrictions of such practices of the employers result in the establishment of materially better carrier and promotion possibilities for male, than for female workers who spend much more time in caregiving, as the empirical results show. Second, the empirical research has shown that long working hours have significant influence on the mental health of the employees and, on a long-term plan, may cause materially harm to it.

In order to secure an equal and healthy treatment of the workers, it is essential that such practices should be changed. Certain legal systems (e.g. France) have, to some extent, already tried to address this problem, as well the leading European court in the area of human right (the European Court of Human Rights) in its jurisprudence, but this problem requires a much more massive and complete regulatory action on a global level.

Law and Emotion 35BSQ: 2.25

◦ Cyrus Tata, The Social Management of Emotion: Individualisation Work in the Criminal Process

In recent years significant advances have been made in thinking about emotion and law not as contradicting rationality but as complementary, even essential to. Much of this work focuses on the decision-making of judges, as well as their emotion work in managing the courtroom behaviours of others. This paper takes a different approach. It focuses less on the individual judge and more on the court community.

A recurring preoccupation of judges and lawyers is the need to balance the mechanistic requirements of consistency and speed with a focus on the unique individual. In legal discourse these ideas are seen to be mutually contradictory. This can present practical problems. In the work of the lower and intermediate criminal courts judges and lawyers are subject to expectations to 'dispose efficiently' of cases as speedily and with as little effort as possible. This can lead to an awkward sense of justice becoming like an assembly line or factory with insufficient concern for the individual and her participation, thus querying the legitimacy of the process.

How is that judges and lawyers do not appear to experience greater uncertainty, awkwardness, embarrassment, even shame, about constituting a process, which may fall short of what they themselves must hold as core ideals? Existing work on this question has tended to suggest that such potential dissonance between lofty ideals

and the disappointing reality is explained away through internal individual dialogue of rationalization. However, this may underestimate that as justice professionals lawyers regard themselves as carrying a triple burden of responsibility: to fellow human beings, as ethical professionals, and as the practical custodians of justice. Internal dialogue may not, by itself, be sufficient to resolve this dissonance. As well as an internal dialogue, more importantly and convincingly, as members of court communities, judges and lawyers participate in key social, ritual practices, which assuage and largely resolve potential concerns.

Drawing on empirical illustrations from Scotland and elsewhere, this paper shows how work which appears to individualise the defendant to be punished, (e.g. presentence reports, pleas in mitigation), re-presents the posture of defendants about their own culpability. In so doing, this 'individualisation work' tends to transform cases which might engender doubt. It does this because, paradoxically, individualization work normalizes defendant postures about what s/he has pled guilty to. In this way, potential worries about the legitimacy of the process tend to be seen off.

- J. Stannard, Towards a General Theory of Affective Law

One of the problems identified with law and emotion research has been the lack of any coherent theoretical framework. Recent years have seen the growth of a number of research areas that deal with aspects of what may be termed 'affective law'; these include not only law and emotion but also therapeutic jurisprudence, restorative justice, integrative law, multisensory law and others as well. This paper will address the relationship between these different areas, and to consider the theoretical perspectives on which they draw, with a view to identifying the extent to which they may be said to display a common approach.

Methodology and Methods 35BSQ: 2.17

Methodology and Methods

Chair – Eleanor Pritchard (Oxford University)

- Nicola Charwat (Monash University) and Jodie Boyd (Monash University), Exploring the Impact of International Trade Law Through Law and History: The GATT and the Australian Tariff Board

In this paper we explore the ways in which international trade law has impact at the domestic level. Specifically, we explore the impact of the General Agreement on Tariffs and Trade 1947 (GATT) on the Australian government's understanding of the Tariff Board (TB), an institution central to Australia's post-war policies of protectionism, full employment and immigration. We disrupt the view that the GATT had little effect on how the government implemented its trade and economic policy during the 1950s: The government relied on provisions 'won' by Australia's GATT negotiators and applied quantitative import restrictions to further its policies. Instead, we trace how government, regulatory elites and commentators started to reappraise their understanding of the TB in light of the new multilateral framework imposed by GATT. One key effect of this reappraisal points to how the basis of expertise and authority of the TB and good economic thinking starts to shift. It moves from a basis in representative and 'common sense' experience of the TB members towards new economic understandings of efficiency that demand an expanded role for economic expertise.

Literature on the early GATT years understands the GATT as primarily regulating relationships between nation states without considering its impact within the borders of states. Historical accounts from political economists and economists have focused on the international GATT negotiations and nation states' success in achieving their negotiating objectives there. Similarly, legal interest in this period of GATT history tends to focus on intergovernmental disputes and interpretations of GATT provisions rendered by its dispute panels. In this exploration of law's impact, we treat the GATT as a transmitter of the liberal 'free trade' economic doctrines and ideas that underpinned the new multilateral trade order it helped establish. Drawing also on historical expertise of 1950s political discourse and approaches to the interpretation of the past, we unpack and trace the

transmission of these ideas into the domestic realm to show how they challenged a protectionist status quo that Australia was not interested in challenging.

- Emma Nottingham (University of Winchester), An Archaeological Study of Gillick v West Norfolk and Wisbech Area Health Authority [1986] AC 112

This paper discusses the methodological approach of 'legal archaeology' and how it can be used to explore landmark cases. The term 'legal archaeology' was coined by Brian Simpson. He indicated that, to make sense of a case it must be understood in its context as an historic event. Academic studies that adopt a 'legal archaeology' methodology often seek to find new information through undertaking empirical and archival research and can require scholars to engage with 'non-legal' materials such as autobiographies, biographies, and newspapers articles. Accordingly, 'legal archaeology' involves analysing a case through contextualisation of the social setting and appreciates the relevance of the time in which a case was heard. Richard Danzig, another leading 'legal archaeology' scholar, makes clear that this approach can help to demonstrate when a case is a 'product of its time'. It can show that certain cases develop out of a set of facts, or the construction of relevant facts, which could only have occurred at that specific time, or out of a particular controversy that was especially pressing at the time. Through exploring the landmark case of Gillick v West Norfolk and Wisbech Area Health Authority, this paper demonstrates that 'legal archaeology' can enrich our understanding, by going beyond the background provided in the law reports and uncovering new information from archival and empirical research, as well as through an examination of two autobiographies written by Victoria Gillick.

- Jenny Kitzinger (Cardiff) and Celia Kitzinger (Independent Scholar), Longitudinal Ethnographic Case Studies: Research Challenges and Rewards

In ethnographic research, investigators immerse themselves in the lives of the people whose situation they are studying and research their real-time experience, rather than rely on retrospective interviews. Our initial interview-based research evolved into research based on longitudinal ethnographic case studies following the production of our online multi-media resource for families of 'coma' patients (people in vegetative or minimally conscious states following devastating brain injuries). We found ourselves immersed in the ongoing life experience of families who - sometimes referred by lawyers or clinicians - approached us for support with the situations they were confronting. We have supported around 20 families over periods of months or years, and published a number of 'case studies' based on our analysis of events for each family/patient as they have developed over time - often revealing facets concealed or obscured by court judgments. The research/support work has involved us in accompanying families to diagnostic assessments, best interest meetings and court hearings, visiting dying patients in hospices and attending funerals. In this talk we will reflect on the way this research method has evolved (especially in the context of the 'impact agenda'), the ethics of this intensely immersive research - including our engagement with our ethics committee, the demands and rewards it brings us as individual researchers with family experience of devastating brain injury, and the new insights and social-legal complexities that this method of research makes possible compared with (a) retrospective interviews and (b) analysis of court judgments. We draw attention to the ways in which this methodological approach lends itself to influencing socio-legal practice and social policy.

Protest and Regulation in the Context of Social and Environmental Justice 8-10BSQ: 1.12

Rights, Infrastructure and Public Goods

- Colin Nolden, The Emergence of Non-Traditional Energy Service Business Model in the Context of Social and Environmental Justice

External factors such as climate change, volatile energy prices, and technological progression as well as internal factors such as the decline of traditional business models, diminishing subsidies, and energy service innovation are having profound impacts on our energy systems. Among the non-traditional business models challenging market incumbency are some which place increasing emphasis on social and environmental justice as part of their business model. In tackling some of the energy related social and environmental injustices, these (mission-led) businesses provide an insight into how the incumbent system with its traditional business models and the surrounding regulatory framework fails to do so.

Focusing on the UK as a case study, this paper uses information from interviews, secondary sources and co-produced research with practitioners, including first-hand experience of negotiating community energy framework agreements with commercial partners, to analyse the evolution of non-traditional business models in regulatory niches.

The findings suggest that many non-traditional business models have grown from their experimental niches into recognised agents in energy markets, albeit at scales that have yet to pose a threat to incumbents. At the same time, diminishing subsidies are consolidating non-traditional business models towards the mainstream, which can diminish the value placed on social and environmental justice.

This paper concludes that in regulating the challenges resulting from incumbents' traditional business models and facilitating their low carbon transition, energy governance needs to ensure that non-traditional business models are not crowded out. This might ensure that socially and environmentally just energy service solutions are made available to an increasing share of the population along with associated health and financial benefits.

- Kenneth Kang, Explaining Law's Uncertainty Absorption Mechanism: The Right of the River

The personification of a river is best understood as a strategy to deal with the uncertainty about the identity of a non-human entity. This is because its purpose, above all, is to re-engineer the law's procedural and conceptual apparatus so as to make law more compatible with the challenges posed with conserving and regulating river-basins. The problem, nevertheless, with this intensified ecological orientation of the law, is that it radically increases the component of arbitrariness within legal decision-making – a theme which law as a discipline finds itself hard to admit. To adequately address this problem, this paper proposes the factual, social, and temporal dimensions offers powerful methodological tools for working out the nature to which law deals with (or deals away) social and ecological challenges.

The Factual dimension explores how the law is burdened with the arbitrary task of defining "what is" the jurisdictional scope of the right to the river. It is concerned with explaining why determining law's validity often produces questions which are unsolvable (or solvable only with time).

The Social dimension explores how the law deals with this arbitrary decision by determining the legal systems willingness to assume responsibility for the risks involved in granting a river its own legal standing. It is concerned with working out how the legal system employs various conditional (if x then Y), and purposive programmes (to decide Y for the purpose of X), so as to differentiate itself from other systems, such as politics, economy, science and religion.

The Temporal dimension explores how the law registers and reflects upon tensions between the past and future which arise in granting a river its own legal standing. It is concerned with working out how the law redirects its attention to the problematic question of its adequacy to the outside world.

The analytical value of this three-step framework can be found in the way it emphasises the immediacy of the law's operations. This is exemplified by illustrating how the (often unsolvable) fact dimension is (temporarily) relieved via the dynamics of the law's social and temporal dimensions. In short, the question asked is: How do the perceptions of legality, of granting a river its own legal standing, change in various interplays between different and continuously changing social perspectives?

- Gabriele D'Adda, How to Grant the Right to Housing in Time of Crisis? The Relationship Between Social Movements and the Legal Framework in Spain

The right to housing is granted to Spanish citizens by Article 47 of the Spanish constitution and also by several international treaties signed by Spain. Despite this constitutional right, since 2007, hundreds of thousands of people have been evicted from their homes as a result of their inability to pay their mortgages, calling into question their right to housing.

This mortgage crisis and its consequences are just the first symptom of a more generalized 'precarization' of the right to housing which has emerged as a result of the financialisation and commodification of housing. The second, and more recent, symptom is the continuous increase of rent costs. This trend is particularly acute in the larger cities, as it is reinforced by mass tourism and processes of gentrification. The third symptom of this emergency is energy poverty. Over 5 million families, 11% of Spanish households, declare that they are unable to adequately heat their houses during winter because they cannot afford to pay their energy bills. In a context of economic crisis and austerity policies the institutional response to these social problems has often been problematic and, according to the social movement involved in the defence of the right to housing, inadequate.

In my paper I will consider the case study of Plataforma Afectados por la Hipoteca (PAH) - 'Platform of People Affected by Mortgages', a social movement established in 2009 in Barcelona to support, through grassroots activism, people at risk of losing their homes because of mortgage default. Bypassing Spanish mortgage law PAH has successfully promoted thousands of individual and direct negotiations between affected people and banks. Nevertheless, the mortgage crisis was only one aspect of the housing crisis. In order to grant structural solutions to the people affected by housing related problems, PAH has developed a strategy demanding the need for a different legal model of housing rights regulation both at national and regional levels.

The first section of my paper will briefly analyze the extent to which the right to housing is incorporated in the International, European and Spanish legal framework. The second section will consider the official data provided by the Instituto Nacional de Estadistica (INE) – 'Spanish National Institute of Statistics' and the Consejo del Poder Judicial (CDPJ) – 'Council of Judicial Power 'regarding the number of mortgage execution procedures and evictions carried out since the beginning of the economic crisis in 2007 to analyse the consequences of the precarization of the right to housing in Spain. The third and main section will focus on the relationship between PAH and the Spanish legal framework on housing. This relationship will be addressed examining how, since 2012, PAH has campaigned for a citizens' legislative initiative – Initiativa Legislativa Popular (ILP) – at national and regional levels, have been pushing for a different set of formal rights, and public policies capable of guaranteeing housing rights in Spain. The various proposals made by the movement (the ILP presented to the Spanish Parliament in 2013, the ILP presented in Catalunya in 2015 that became the Catalan Law 24/2015, and the Ley Vivienda – Housing Law registered on the 10th January 2018 in the Spanish Parliament) will be considered to explore the socio-legal dialectic that these bottom-up processes of legislative change have triggered. Furthermore, since each one of these proposals to change the legal framework is closely interwoven with the relationship between the movement and the institutional political system at national and regional level, the political campaigns to support changes in the legal framework and the strategies used to influence the political system will be taken into account.

What will be argued is that the different attempts to change the legal framework promoted by PAH have led to different results depending on the strategies used by the movement and on the different attitude of the political and institutional system at national and regional level.

Sentencing and Punishment 8-10BSQ: LG.02

- Hannah Quirk, Sentencing Miscarriages of Justice: A Taxonomy

Sentencing has been an under-examined aspect of miscarriages of justice. Sentencing cases raise different issues to wrongful convictions as there is no single correct sentence; there are different, contradictory aims of sentencing (s.142(1) Criminal Justice Act 2003); and the perceived appropriateness of a punishment may vary over time, offence type and offender. Individual cases may attract public attention for being seen as unduly lenient (the 'Ealing Vicarage rape' was a notorious example) or excessively harsh ('Who Breaks a Butterfly on a Wheel?' as The Times editorial enquired following the sentencing of Mick Jagger of the Rolling Stones to three months imprisonment for possessing a four Benzedrine tablets, 1 July 1967). The Attorney General can appeal certain 'unduly lenient' sentences (section 36 Criminal Justice Act 1988) and those convicted may appeal against sentence to a higher court of review and ultimately to the Criminal Cases Review Commission but the Court of Appeal is reluctant to tinker with sentences. Definitional issues are a slippery concept in miscarriages of justice (Quirk 2007:759).Walker (1999:31) created a classic typology of miscarriages of justice that included wrongful sentences as one element. This paper sets out to develop the classifications of wrongful sentencing and to explain why they are important.

- Irene Antonopoulos, Gavin Dingwall and Tim Hillier, Guilty Pleas and Systemic Discrimination in Youth Justice

According to the latest statistics (Ministry of Justice, 2018) 45% of young people in custody are Black, Asian and Minority Ethnic (BAME) despite a 74% drop of children in custody over the past decade. The Lammy Review (2017) analysed the treatment of BAME men, women and children in the criminal justice system and found, on the basis of statistics from 2014 to 2015, that young BAME defendants were less likely to plead guilty in court than young White defendants (2017: 5). This trend impacts on sentencing as the system rewards those who plead guilty with a (potentially significant) reduction in penalty and, in appropriate cases, could legitimate reducing a custodial sentence to a community sentence (Sentencing Council, 2017, para 5.10). This differential in plea, and the allied effect on sentence outcome, raises fundamental questions of penal legitimacy and potential discrimination on the grounds of race within the youth justice system. This discrimination could be manifested or accelerated by non-uniform advice on one's human rights within the Criminal Justice System, disparity within the education system, or merely a lack of generic distrust towards the fairness of the Criminal Justice System. In this paper, it will be argued that these issues are of such concern that the practice of plea bargaining cannot be justified, at least in the case of children and young people.

Sexual Relationships: Deception, Consent and Protecting Autonomy WMB: 3.32

- Sorcha Mc Cormack, Vulnerability Versus Autonomy, Through a Lens of Sexual Offences and Consent

The area of sexual assault law reform has been dominated by the theory of autonomy. Reforms have been repeatedly suggested and implemented based on these overarching notions which are underpinned by the 'liberal subject'. Despite legislative reforms, there still remains a substantial justice gap as the law fails to adequately and equally protect its subjects. Reinventing and rewording of the law, tends to ultimately produce similar outcomes when such revisions are based on the same theory of autonomy. This liberal subject pursues a distinctive line dividing the public and private sphere. In particular, the liberal subject is concerned with the State's interference in the private realm which 'inhibits' their exercise of free choice. The State uses these apparent benefits of autonomy, coupled with the 'negative' associations with paternalism, as a mask for their responsibilities of regulating and protecting subjects from harm in the purported private domain.

What is apparently ignored in the liberal paradigm above, is our universal and constant vulnerability to harm. Dominant theory 'idealizes' these unrealistic notions of autonomy and self-sufficiency, discarding vulnerability as weakness and suggesting that 'there is something wrong, less-than desirable, about being a vulnerable person'. By disregarding our embodied and embedded vulnerability the State and its institutions fail to facilitate resilience and instead burdens its subjects with impossible task of avoiding harm or being 'invulnerable'. Yet,

no-one is invulnerable, our vulnerability exists as a constant state which might fluctuate depending on the resilience available, something which the 'all or nothing' concept of autonomy fails to acknowledge. Vulnerability cannot be avoided, but the possibility of harm can be reduced through the accumulation of resilience.

The law is one such institution of the State that has the potential to promote and provide resilience to individuals. Considering the current law on sexual offences is based on a foundation of autonomy, the legislative framework places an excessive focus on the autonomous being, the self-determining subject who is capable of rational decision making in every situational circumstance. This 'ideal subject' causes significant disarray in the application of the law, particularly in relation to sexual offences. A central focus on autonomy, and its limb of consent, leads us to place a disproportionate focus upon the complainant's behaviour, which carries an expectation of individual responsibility to avoid harm, whilst endorsing victim blame; this is evident in many juror studies, and in some judicial commentary. The current autonomy/consent paradigm distracts from the perpetrator's exploitative behaviour and instead excessively focuses on what the complainant did or ought to have done, whilst choosing to ignore the particular situational circumstances upon which 'consent' has allegedly been obtained.

Despite legislative frameworks designed to apparently protect those who 'cannot' be autonomous, namely those who are 'incapacitated', many issues remain. In particular, the law affords different protections to those based on how their incapacitation arose, which focuses excessively on the complainant's behaviour in becoming incapacitated rather than on their heightened vulnerability and need for State response. Similarly, the all or nothing understanding of capacity and individuals as autonomous beings, creates a grey area where those who do not meet the stringent threshold for incapacity are left more susceptible to exploitation.

This paper will argue that the law should instead acknowledge and protect our constant and ever fluctuating vulnerability. Considering the inextricable links between consent and autonomy it must be asked whether vulnerability and autonomy can coexist. Could we merely shift autonomy from the forefront of our understanding of what it means to be human, whilst acknowledging our vulnerability to harm and our need the need for State protection? Can we recognise sexual autonomy whilst simultaneously protecting from violence? As protection from exploitation should be a prerequisite for 'any meaningful autonomy' we could revolutionize our understanding of autonomy, by instead thinking of protection from harm as a 'precondition' rather than 'contradiction' to autonomous decision making. Perhaps we could move to 'relational autonomy' which seeks to understand consent within its wider social context.

This paper will navigate this terrain, considering the ways in which building on a vulnerable legal subject can impact on the law relating to sexual offences and considering the pitfalls and promises for the decentring and potential unseating of autonomy. It will be argued that the vulnerable subject, as opposed to the liberal subject, provides us with a richer understanding of our ontological existence and offers us a unique opportunity to reimagine the framework for consent and sexual offences law; allowing us to shift our focus from the complainant onto the exploitative actions of the defendant. Moreover, it acknowledges our inherent risk of harm, our dependency, our ever-fluctuating state of capacity and the need for State response and intervention. Through the consideration of these tensions and difficult questions in the context of sexual offences law, insights may arise for the broader liberal legal framework, whilst potentially unveiling the apparent benefits for reimagining the foundations of the law through a theory of vulnerability.

- Arushi Garg, Judicial Constructions of 'Deception', 'Delay' and 'Consent': A Socio-Legal Analysis of 'Promise to Marry' Cases in India

In 'promise to marry' cases, the victim is deceived into having sex with the defendant, based on his 'false' promise of marriage. Since deception negates sexual consent under Indian law, this is prosecutable as rape.

Promise to marry cases form an increasing proportion of the rape prosecutions in Indian cities, but remain an under-researched category. Literature about rape cases in India has typically focussed on the use of rape myths in legal decision-making, or discussed the inadequacy of institutional measures, such as those aimed at victim-support. To date, there is no academic writing on the substantive and evidential issues associated with promise to marry rape cases. Drawing on theories of legal realism, postcolonial feminism and intersectionality, this paper distils and analyses the legal issues that emerge during trials in these cases. It assesses the consequences of extending the current legal framework with respect to rape, which was not designed with 'promise to marry' cases in mind, to this particular category of cases. The analysis is carried out by drawing upon primary data from Delhi, including 61 interviews (with victims, lawyers, judges and victim-support personnel), observation in six trial courts, and all relevant judgments over a period of 12 months. Two main findings are made. It is concluded that that the legal framework developed to deal with promise to marry cases is premised on, and reinforces, the heteronormative, monogamous, intra-caste, intra-communal, marital relationship as the exclusive site for legitimate sexuality. Secondly, it is found that the understanding of two key concepts – sexual consent and delay - used for cross-examination and adjudication in promise to marry cases is incoherent. Thus, this paper provides an original, socio-legal account of promise to marry cases in India, and makes a strong case for re-thinking the manner in which the criminal justice system responds to them.

- Jonathan Herring, Mistakes, Deceit and the Responsibilities of Obtaining Consent

This paper will argue that sexual partners have responsibilities towards each other. This include showing respect for sexual autonomy and enabling a partner to reach a richly autonomous decision about whether they wish to engage in sex. Those who engage in deceit, withhold information which they know their partner needs to make a sufficiently autonomous decision about sex, or who pressurize partners are failing to show due respect for their partner's sexual autonomy. The law justifiably punish those who sexually penetrate or assault their partners without fulfilling these responsibilities.