SLSA Annual Conference

Socio-legal in culture: the culture of socio-legal

Tuesday 31st March – Thursday 2nd April 2015

Warwick | Law School

SLSA
Socio-Legal Studies Association

THE UNIVERSITY OF WARWICK

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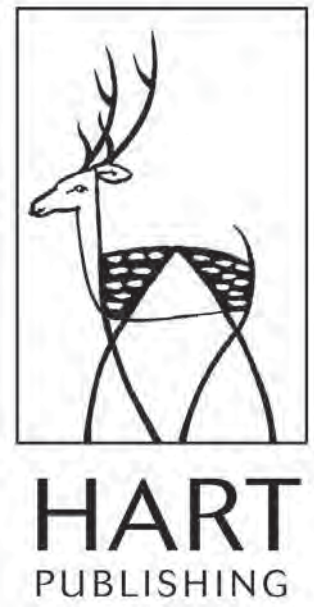

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Contents

Welcome to the SLSA Annual Conference 2015

As Chair of the Socio-Legal Studies Association, it gives me great pleasure to welcome you to the 25th annual SLSA Conference at Warwick Law School. With over 400 papers across 42 streams and themes the conference promises to be a vibrant and stimulating one. It is particularly pleasing that the SLSA should return to Warwick, which pioneered the contextual approach to the study of law, as the University is celebrating its 50th anniversary.

The success of any conference is largely dependent on those who participate. Delegates are coming from around the world which we hope will facilitate comparative discussion and the establishment and strengthening of international socio-legal networks. Every year, groundbreaking papers are presented by first-time delegates, many of whom have previously attended one of our very successful postgraduate conferences. This year we are continuing with our poster session and, in light of its success over the past two years, have extended it to include established scholars as well as postgraduate students. The latter will also be entered in our annual poster competition, and I encourage everyone to take the opportunity to view the posters during the drinks reception on Tuesday evening, where they will be on display in the magnificent Mead Gallery.

I would like to extend my thanks on behalf of the Executive Committee to all those involved in the organization of the conference, particularly Ana Aliverti, Jonathan Garton, Maebh Harding, Andreas Kokkinis, Celine Tan and Charlotte Woodhead, together with Wendy Curtis, Nic Doran, Vida Glanville, Stephen Gant and Kerry Walsh, for the months of hard work this has entailed. I also want to thank our sponsors – their generosity enables us to support the socio-legal community in many ways. I extend my congratulations to this year's prize winners Alan Paterson (book prize), Debbie Becher and Kirsten McConnachie (joint winders of the early career book prize), Henry Yeomans (socio-legal theory and history prize) and Amanda Perry-Kessaris (article prize), and especially to Sally Wheeler, whose outstanding work over many years is being recognised at this year's conference with the SLSA's award for contributions to the socio-legal community. Finally, I would like to thank the participants in what will no doubt be a lively plenary panel session on teaching law in context.

If you would like to know more about the SLSA, please visit our stall at the conference, speak to an Executive member or attend the Annual General Meeting on Wednesday lunchtime. I hope that you enjoy the conference and look forward to meeting many of you over the next three days.

Professor Rosemary Hunter FAcSS

Chair of the SLSA

Welcome from the Head of Warwick Law School

On behalf of Warwick Law School, I wish you a most warm welcome to SLSA 2015.

We are delighted to host the conference in Warwick University's 50th anniversary year. I would like to thank the SLSA Executive Committee for accepting our bid at this auspicious time. I would also like to thank the many colleagues at WLS who have worked to bring SLSA 2015 here, and to provide what I am confident will be a successful conference. From its inception in the late 1960s, Warwick Law School has pioneered a contextual approach to the study of law. I believe that this offers not an alternative or supplement to traditional approaches, but a better understanding. When we speak of law in context, we speak in the plural, because our approaches change to reflect new developments in social science and the humanities. Behind the evolution, however, remains the study of law as a living phenomenon, linked to the spaces, relations and situations where it operates. It is such a vision, I believe, that brings us all to Warwick for SLSA 2015.

With 400 papers submitted, it is clear that socio-legal studies remain vibrant. The programme indicates the strength and variety of our work, while stream headings indicate its cutting edge nature. As a Law member of REF 2014, I was struck by the range and quality of the submissions. I have a similar sense with regard to SLSA 2015.

Whatever the challenges facing UK university education, our discipline is in good shape. At this conference, we will not only test our ideas, but also contribute to the flourishing of socio-legal studies in the UK.

I also hope we will have a good time: enjoy the conference!

Professor Alan Norrie, FBA
Head, Warwick Law School

Warwick | Law School

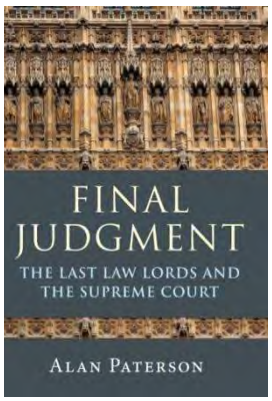
SLSA Prize Winners 2015

2015 Hart-SLSA Book Prize:

Alan Paterson (2013)

Final Judgement:

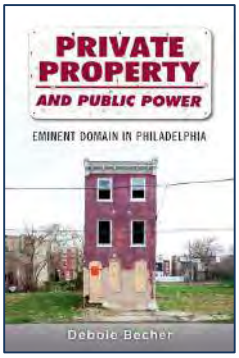
The Last Law Lords and the Supreme Court, Hart.



Professor Sally Wheeler

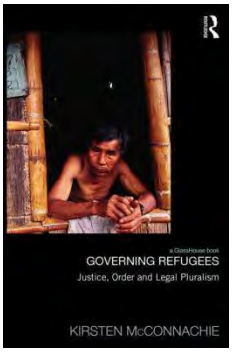
Winner of the SLSA Prize for Contributions to the Socio-Legal Community

2015 Hart-SLSA Prize for Early Career Academics: Awarded jointly



Debbie Becher (2014)

Private Property and Public Power: Eminent domain in Philadelphia, OUP

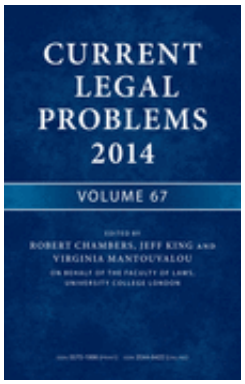


Kirsten McConnachie (2014)

Governing Refugees: Justice, order and legal pluralism, Routledge

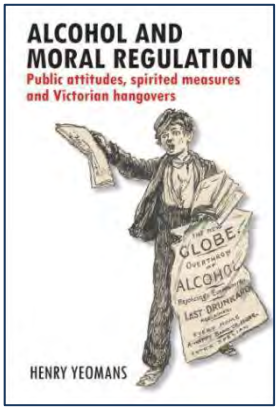
2015 SLSA Article Prize:

Amanda Perry-Kessaris (2014) 'The case for a visualised economic sociology of legal development' 67 Current Legal Problems 169



2015 Socio-Legal Theory and History Prize :

Henry Yeomans (2014) *Alcohol and Moral Regulation: Public attitudes, spirited measures and Victorian hangovers*, Policy Press



Schedule of Conference

Tuesday March 31st **DAY ONE**	**Room**
Registration from 10.00	
11.30-12.30 A Moving Experience of Legal Education (weather permitting)	**Meet outside Ramphal Building**
12.30-13.30 WELCOME LUNCH	**Ramphal Foyer**
13.30-15.00 (SESSION ONE)	
Refugee and Asylum Law: Theory, Policy and Practice	Social Sciences S0.11
Criminal Law and Criminal Justice/ Mental Health and Mental Capacity Law	Social Sciences S0.20
Law and Justice in Colonies and 'Post'-Colonies	Ramphal R0.14
Law and Literature	Ramphal R1.03
International Criminal Justice: Theory, Policy and Practice	Ramphal R1.04
Intersectionality	Ramphal R2.41
Access to Environmental Justice	Social Sciences S0.17
Administrative Justice	Social Sciences S0.28
Culture Clash, Peace and World Order	Social Sciences S1.66
Rethinking Surrogacy Laws	Social Sciences S0.08
Exploring Legal Borderlands: Empirical and Interdisciplinary Approaches	Social Sciences S0.19
Sentencing and Punishment	Social Sciences S0.13
Challenging Ownership	Social Sciences S2.12
Labour Law	Social Sciences S0.09
Research Methods and Methodologies	Social Sciences S1.14
Sexual Offences and Offending	Social Sciences S0.10
15.00-15.30 Refreshments	**Ramphal Foyer**
15.30-17.00 (SESSION TWO)	
Refugee and Asylum Law: Theory, Policy and Practice	Social Sciences S0.11
Criminal Law and Criminal Justice	Social Sciences S0.20
Law and Justice in Colonies and 'Post'-Colonies	Ramphal R0.14
Law and Literature	Ramphal R1.03
International Criminal Justice: Theory, Policy and Practice	Ramphal R1.04
Gender, Sexuality and Law	Ramphal R1.13
Civil Procedure and Alternatives to Litigation, ADR	Ramphal R1.15
Registering Registration	Ramphal R2.41
Children's Rights	Ramphal R3.41
International Economic Law: Governing Markets in Context	Social Sciences S0.17
Administrative Justice	Social Sciences S0.28
Culture Clash, Peace and World Order	Social Sciences S1.66
Rethinking Surrogacy Laws	Social Sciences S0.08
Renewing Critique in Criminal Justice	Social Sciences S0.18
Exploring Legal Borderlands: Empirical and Interdisciplinary Approaches	Social Sciences S0.19

Sentencing and Punishment	Social Sciences S0.13
Challenging Ownership/Mental Health and Mental Capacity Law	Social Sciences S2.12
Labour Law	Social Sciences S0.09
Sexual Offences and Offending	Social Sciences S0.10
17.15-18.30 PLENARY	Ramphal Lecture Theatre R0.21
18.30-20.30 POSTER SESSION and Drinks Reception Sponsored by Social and Legal Studies	**The Mead Gallery, Warwick Arts Centre**
Wednesday April 1st DAY TWO	**Room**
9.00-10.30 (SESSION THREE)	
Refugee and Asylum Law: Theory, Policy and Practice	Social Sciences S0.11
Criminal Law and Criminal Justice / Mental Health and Mental Capacity Law	Social Sciences S0.20
Law and Justice in Colonies and 'Post'-Colonies	Ramphal R0.14
Art Culture and Heritage	Ramphal R1.03
International Criminal Justice: Theory, Policy and Practice	Ramphal R1.04
Gender, Sexuality and Law	Ramphal R1.13
Renewing Critique in Criminal Justice	Ramphal R1.15
Registering Registration	Ramphal R2.41
Children's Rights	Ramphal R3.41
International Economic Law: Governing Markets in Context	Social Sciences S0.17
Administrative Justice	Social Sciences S0.28
Lawyers and Legal Professions	Social Sciences S1.66
Banking and Finance	Social Sciences S0.08
Culture Clash, Peace and World Order	Social Sciences S0.18
Exploring Legal Borderlands: Empirical and Interdisciplinary Approaches	Social Sciences S0.19
Mental Health and Mental Capacity Law	Social Sciences S0.13
Challenging Ownership	Social Sciences S2.12
Labour Law	Social Sciences S0.03
Race, Religion and Human Rights	Social Sciences S1.14
Rethinking Surrogacy Laws / WORKSHOP	Social Sciences S0.10
Information Technology Law and Cyberspace	Social Sciences S0.09
10.30-11.00 Refreshments	**Ramphal Foyer**
11.00-12.30 (SESSION FOUR)	
Refugee and Asylum Law: Theory, Policy and Practice	Social Sciences S0.11
Criminal Law and Criminal Justice	Social Sciences S0.20
Research Methods and Methodologies	Ramphal R0.14
Art, Culture and Heritage	Ramphal R1.03
International Criminal Justice: Theory, Policy and Practice	Ramphal R1.04
Gender, Sexuality and Law	Ramphal R1.13
Family Law	Ramphal R1.15
Registering Registration	Ramphal R2.41

Children's Rights	Ramphal R3.41
International Economic Law: Governing Markets in Context	Social Sciences R0.17
Administrative Justice	Social Sciences R0.28
Lawyers and Legal Professions	Social Sciences R1.66
Banking and Finance	Social Sciences S0.08
Legal Education	Social Sciences S0.18
Exploring Legal Borderlands: Empirical and Interdisciplinary Approaches	Social Sciences S0.19
Mental Health and Mental Capacity Law	Social Sciences S0.13
Challenging Ownership	Social Sciences S2.12
Labour Law	Social Sciences S0.03
Race, Religion and Human Rights	Social Sciences S1.14
Transitions from Conflict: The Role and Agency of Lawyer	Social Sciences S0.10
Information Technology Law and Cyberspace	Social Sciences S0.09
12.30-14.00 Lunch / AGM	**Ramphal Foyer**
12.30-14.00 AGM	Ramphal Lecture Theatre R0.21
14.00-15.30 (SESSION FIVE)	
Refugee and Asylum Law: Theory, Policy and Practice	Social Sciences S0.11
Criminal Law and Criminal Justice	Social Sciences S0.20
Research Methods and Methodologies	Ramphal R0.14
Art Culture and Heritage	Ramphal R1.03
Gender, Sexuality and Law	Ramphal R1.13
Family Law	Ramphal R1.15
Law, Politics and Ideology	Ramphal R2.41
Children's Rights	Ramphal R3.41
International Economic Law: Governing Markets in Context	Social Sciences S0.17
Administrative Justice/Crisis round table	Social Sciences S0.28
Lawyers and Legal Professions	Social Sciences S1.66
Banking and Finance	Social Sciences S0.08
Medical Law and Ethics	Social Sciences S0.18
Exploring Legal Borderlands: Empirical and Interdisciplinary Approaches	Social Sciences S0.19
Mental Health and Mental Capacity Law	Social Sciences S0.13
Challenging Ownership	Social Sciences S2.12
EU Law	Social Sciences S0.03
Law Enforcement, Regulation and the Use, Abuse and Control of Information	Social Sciences S1.14
Transitions from Conflict: The Role and Agency of Lawyer	Social Sciences S0.10
Race, Religion and Human Rights	Social Sciences S0.09
15.30- 16.15 Refreshments	**Ramphal Foyer**
16.15-17.45 (SESSION SIX)	
Refugee and Asylum Law: Theory, Policy and Practice	Social Sciences S0.11
Sentencing and Punishment/ Criminal Law and Criminal Justice	Social Sciences S0.20
Sports Law	Ramphal R0.14

Art Culture and Heritage	Ramphal R1.03
Research Methods and Methodologies	Ramphal R1.04
Gender, Sexuality and Law	Ramphal R1.13
Family Law	Ramphal R1.15
Law, Politics and Ideology	Ramphal R2.41
Challenging Ownership	Ramphal R3.41
International Economic Law: Governing Markets in Context	Social Sciences S0.17
Sexual Offences and Offending	Social Sciences S0.28
Lawyers and Legal Professions	Social Sciences S1.66
Banking and Finance	Social Sciences S0.08
Medical Law and Ethics	Social Sciences S0.18
Exploring Legal Borderlands: Empirical and Interdisciplinary Approaches	Social Sciences S0.19
Mental Health and Mental Capacity Law	Social Sciences S0.13
EU Law	Social Sciences S2.12
Law Enforcement, Regulation and the Use, Abuse and Control of Information	Social Sciences S1.14
Transitions from Conflict: The Role and Agency of Lawyer	Social Sciences S0.10
Race, Religion and Human Rights	Social Sciences S0.09
18.00 – 19.00 Little Venice *(Shakespeare and the Law)*	**Humanities Studio**
19.00-24.00 Dinner	**Panorama Suite Rootes Building**
Thursday 2nd April DAY THREE	**Room**
10.00-11.30 (SESSION SEVEN)	
Indigenous Rights and Minority Rights	Social Sciences S0.11
Sports Law	Social Sciences S0.20
Criminal Law and Criminal Justice	Ramphal R0.14
Private International Law	Ramphal R1.03
Gender, Sexuality and Law	Ramphal R1.04
Family Law	Ramphal R1.13
Law, Politics and Ideology	Ramphal R1.15
International Economic Law: Governing Markets in Context	Ramphal R3.41
Intellectual Property	Social Sciences S0.18
Systems Theory Thinking, Law and Society	Social Sciences S0.17
Legal Education	Social Sciences S0.28
Access to Environmental Justice	Social Sciences S1.66
Medical Law and Ethics	Social Sciences S0.08
Mental Health and Mental Capacity Law	Social Sciences S0.19
Challenging Ownership	Social Sciences S0.13
EU Law	Social Sciences S2.12
Law Enforcement, Regulation and the Use, Abuse and Control of Information	Ramphal S2.41
11.30-12.00 Refreshments	**Ramphal Foyer**

12.00-13.30 (SESSION EIGHT)	
Indigenous Rights and Minority Rights	Social Sciences S0.11
Sports Law	Social Sciences S0.20
Gender, Sexuality and Law	Ramphal R1.04
Family Law	Ramphal R1.13
International Economic Law: Governing Markets in Context	Ramphal R3.41
Systems Theory Thinking, Law and Society	Social Sciences S0.17
Legal Education	Social Sciences S0.28
Access to Environmental Justice	Social Sciences S1.66
Medical Law and Ethics	Social Sciences S0.08
Challenging Ownership	Social Sciences S0.13
EU Law	Social Sciences S2.12
Law Enforcement, Regulation and the Use, Abuse and Control of Information	Ramphal R2.41
13.30-14.30 Lunch	**Ramphal Foyer**
Trips to Kenilworth Castle	**Meet outside Ramphal Building**

Plenary Panel: Teaching Law in Context

Tuesday 31 March 5.15pm, Ramphal Lecture Theatre

Speakers

Professor Sally Wheeler is Professor of Law and Head of the School of Law at Queen's University Belfast. She previously held chairs at Birkbeck College and the University of Leeds, and has written widely on company law and insolvency law from a socio-legal perspective. She is a former Chair of the SLSA and the recipient of the Society's 2015 award for contributions to the socio-legal community. She is a Fellow of the Academy of Social Sciences and a member of the Royal Irish Academy.

Professor Joanne Conaghan is Professor of Law and Head of the Law School at the University of Bristol. She previously taught at the Universities of Kent, where she was Head of the Law School, Exeter and San Diego California. She has written extensively about issues relating to gender and law, and her publications include the Clarendon Law Series monograph *Law and Gender* (2014 OUP). She is a Fellow of the Academy of Social Sciences and served as Deputy Chair of the 2014 REF law sub-panel.

Professor Alan Norrie is Professor of Law and Head of Warwick Law School. He previously held chairs at King's College London and Queen Mary and Westfield College. He has written widely on criminal law, critical and dialectical philosophy and socio-legal theory, and his publications include the monograph *Dialectic and Difference* (Routledge 2010), which won the International Association for Critical Realism's inaugural Cheryl Frank Memorial Prize. He is a Fellow of the British Academy and served on the 2014 REF law sub-panel.

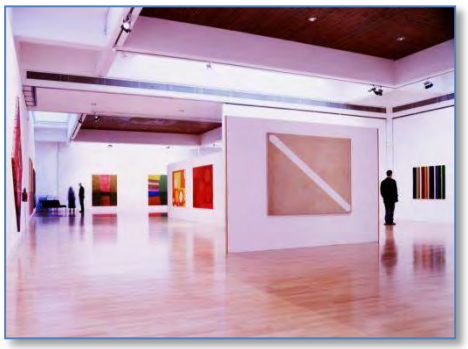
Special events

Tuesday lunchtime

A Moving Experience of Legal Education

An interactive walk around the Warwick campus to search for the material metaphors that first made legal language and to explore the stirring potential of education which legal standing so often denies. Led by Professor Gary Watt (Warwick Law School) Law Teacher of the Year 2009 and National Teaching Fellow.

Time: 11.30am-12.30pm (weather permitting)
Location: please meet in Ramphal foyer



Tuesday early evening

POSTER SESSION and Drinks Reception
Sponsored by Social and Legal Studies

Time: 18.30-20.30
Location: The Mead Gallery, Warwick Arts Centre

Wednesday lunchtime

Tour of University Art Collection, *both indoors and outside, please wear appropriate clothing for spring weather and be prepared to walk approximately 1 mile! Led by Sarah Shalgosky, Curator.*

Time: 1pm-2pm (weather permitting)
Location: please meet in Ramphal foyer

SLSA Annual General Meeting

Time: 12.30 – 14.00
Location: Ramphal lecture theatre

Wednesday evening

Shakespeare and the Law: *Little Venice*

A play, written and performed by undergraduates in the Department of English and the School of Law at the University of Warwick - Royce Clemente, Rosie Gray, Angus Imrie, and Emma O'Neill.

Time: 18.00 – 19.00
Location: Humanities Studio

SLSA Conference Dinner with live music by "Funk Education"

Time: 19.00 – 24.00
Panorama Suite – Rootes Building

Excursion to Kenilworth Castle

Picture of Kenilworth Castle keep courtesy of Gwyn Norrell

For those with time to spare after the conference we are providing a free minibus to Kenilworth Castle on Thursday afternoon. Entry to the castle is £10.60 or free for members of English Heritage.

The castle dates back to the 1120s as a Norman great tower and had various incarnations, including as John of Gaunt's palace fortress in the late 1400s and the Earl of Leicester's Renaissance palace in the 1500s, before being destroyed by the Parliamentarians during the Civil War. Today, its attractions include the Elizabethan tower and garden, Leicester's gatehouse, the Norman keep and John of Gaunt's great hall. There also is an interactive family-friendly exhibition, tea rooms and a shop.

The minibus will make three pick-ups from outside the Ramphal Building at 1.45, 2.30, and 3.15.

For those wishing to return to campus, the minibus will make two pick-ups from outside the castle at 3 and 3.30. Otherwise, delegates should arrange their own onward / return journey. There are regular buses from Kenilworth both to the University and to Coventry. Those who wish to return to campus can catch any of the following: the National Express 11, the Stagecoach X16 and X17, and the Unibus U2. Journey time is around 10-15 minutes depending on traffic.

The castle is open until 6pm.

Poster Session

Sponsored by Social and Legal Studies

Time: 18.30-20.30

Location: The Mead Gallery, Warwick Arts Centre

Titilayo Adebola	**Interrogating the Global Political Economy of Intellectual Property Rights for Plant Varieties through the Lens of the Global South**
My research focuses on the implementation of obligations under Article 27.3(b) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in the Global South. Article 27.3(b) obliges member states of the World Trade Organization to provide a form of intellectual property protection for plant varieties through patents, a sui generis (unique) system, or any combination of systems. Many countries in the Global South opt for the sui generis option. TRIPS does not define sui generis, therefore countries can develop systems that best suit their needs. One such system is the International Convention for the Protection of New Varieties of Plants (UPOV). However, a variety of state and non-state actors argue that 'plant breeders' rights', a sui generis system laid out in the 1991 UPOV Convention is not suitable for the socio-economic realities of countries in the Global South. It is with this debate that I am concerned. My research analyses competing sui generis intellectual property systems for plant varieties using the 'Third World Approaches to International Law'. It unpacks counter-hegemonic legal norms and principles developed by the Global South, such as farmers' rights to save, use, exchange and sell seed/propagating materials provided in the International Treaty on Plant Genetic Resources for Food and Agriculture, as well as 'disclosure of origin' and 'prior informed consent' systems provided in the Convention on Biological Diversity among others. Notably, countries like India and Thailand have incorporated some of these sui generis systems, and provide models which can be imitated by similar countries.	
Salem Alshehri	**The Assessment of the Right to Trial within Reasonable Time in Saudi Arabia**
The study examines the concept of right to trial within reasonable time and due process under sharia law, the Arab Charter of Human Rights (ACHR), and Saudi domestic law. It argues the importance of recognizing this right, its scope, and protection under the domestic law. The paper compares this right under Saudi Arabian and international human rights laws with respect to their provisions and advocating this right in Saudi Arabia. The paper considers Sharia law and the ratified ACHR as the sources of rights for accused under domestic laws. The right to trial without undue delay is explored with respect to Sharia law, criminal procedure law (LCP), the law of criminal procedure before sharia courts (LPBSC) and the ACHR. In this regards, the Quran and Sunna are complete guides to human rights practices under the Sharia law. The paper argues that the Saudi judicial system upholds Islamic principles and protects rights of accused, but violation arises from judicial deficiencies such as fewer judges and investigators, ambiguous laws, lack of guides in the pre-trial and trial stages, vague implementation of the law, absence of supervision from the courts on Public Prosecution, and lack of independence. The paper concludes that the country should strive to address these deficiencies to meet international convention standards. Possible remedies include additional judges and investigators, due process in implementing domestic laws, guarantee indecency to the legal system, and improved supervision of the system.	
Claudia Carr	**Three parents, one baby? The future of Assisted Reproductive Techniques**
In 2015 the Human Fertilisation and Embryology (Mitochondrial Donation) Regulations will be debated with a view to the Regulations coming into force in October 2015. The importance of these regulations is unquestionable as, if passed, they will amend the Human Fertilisation and Embryology Act 2008 and permit defective mitochondrial in the mother's cell to be removed and replaced with healthy mitochondrial from a donor cell. The importance of this new assisted reproductive technique (ART) is that, if permitted and successful, it will prevent the transmission of serious mitochondrial disease from mother to child. There is currently no other ART able to achieve the same goal. Mitochondrial disease can only be passed from mother to child and if transmitted, results in pain and suffering and an early death for the child born. The new technology will permit the removal of the defective	

mitochondrial which will be replaced by a healthy cell from a donor egg. The regulations will allow the HFE Authority (the regulatory body under the HFE Act) to issue licences to allow these techniques to be used therapeutically. The Regulations will provide that the woman who donates the egg will not be related in any way to the child who, once born will have no right to obtain any information about the donor.
Opponents argue that should mitochondrial donation be permitted, we begin the slippery slope towards designer babies. This contention will be rejected and the slippery slope, a phrase too commonly used, will be rejected as a fallacy and an unjustifiable 'fear factor'. The importance of ART should not be underestimated and if there is a method to eliminate mitochondrial disease, we have a duty as a society to legislate in favour of its therapeutic use and not be bound by alarmists.

Claudia Carr	**Is presumed consent the future for Organ Donation in the UK?**

By December 2015 Wales will have introduced presumed consent for organ donation. The effect of the Human Transplantation (Wales) Act 2013 is that Welsh residents over the age of 18 with capacity will be presumed to have consented to donation of their organs on their death. The Act intends to increase the number of available organs by 25%. The poster which supports presumed consent will explore the merits of presumed consent and will argue that presumed consent should be introduced in England, as a means of increasing the number of available organs for transplantation. According to the National Health Service Blood and Transplant Authority, the UK has one of the lowest organ donor rates in Western Europe, with an organ donor ratio of only 18.5 organ donors per million and 3 patients die every day waiting for an organ to become available. Currently, in England and Wales should a person wish to donate their organs on their death they choose to opt in.
Presumed consent is based on a compelling public policy rationale reversing the onus so that a person opts out should they not wish to donate their organs on death. Whilst the majority of people would accept an organ should they need one, it is only the minority that donate. Presumed consent introduces a sense of reciprocity as well as communal interdependence and responsibility. The poster will outline statistics from other countries which largely demonstrate that presumed consent increases the number of organ donors for the benefit of those in need of organs for transplantation. The poster will also evaluate the strengths and weaknesses of the ethical arguments that exist and will conclude that England should follow the example set by the Welsh Assembly.

Hannah Donaldson, Mathilde Pavis, Shawn Harmon, Karen Wood and Abbe Brown	**InVisible Difference: Disability, Dance and Law**

InVisible Difference will provide an overview of the three year AHRC-funded project examining the intersections between disability, dance and law. A short explanation will describe our research methods including documentary analysis, expert forums, interview data and micro-ethnographies. This will provide an overview of the empirical research that we have conducted to date. The InVisible Difference poster will also provide brief research findings from the interview data explaining that the law fails to sufficiently interact with the creative process and the dis/ability of the choreographer or performer. We suggest that the law also lacks flexibility in its application to the work depending on whether the artist works alone or with a team. Further, we explain that artists are not aware of the legal protections in place for their work. Finally, we state that the public lack the critical language necessary to sufficiently discuss dance created by differently abled individuals without resorting to a paternalistic approach, as dictated by the medical model.

Kyle Duggan	**No act is more person-specific than that of sex: A critical comparison of the judicial approach to capacity to consent to sexual relations in *X City Council v MB, NB and MAB* [2006] EWHC 168 and *R v C* [2009] 1 WLR 1786**

A theoretical comparison of the judicial approach taken to the correct test of capacity to consent to sexual relations. The paper examines caselaw both prior to and following the Mental Capacity Act 2005. Assessing the strengths and weaknesses of the various tests outlined in judgments and academic criticism of these approaches it considers what the best approach to this issue is and how to ensure that individual's human rights are not unnecessarily infringed.
It considers themes such as the interplay of human rights law with capacity law in this area and the impact of the United Nations Convention on the Rights of Persons with Disabilities. It also considers the relationship between capacity and consent and the role of an individual's learned sexual history.
It examines a case which seeks to resolve the competing tensions and considers the impact the United Nations

Convention on the Rights of Persons with Disabilities might have on this part of the law in the future and whether or not it is compatible with the principles of the Mental Capacity Act 2005 as it currently stands. It concludes that the distinction between civil and criminal law is crucial in this area. The question for civil law is one of capacity, which can only be assessed in the abstract. The question for criminal law is focused on consent and is inevitably situation and person-specific.

Naheed Ghauri	**Using generational order, intersectionality and the UN Convention on the Rights of the Child to frame research about children's lives at complex sites of study: the example of the educational experiences of homeless children in England**

This paper examines the influence of European human rights and private international law, the UK and France on minority rights. Should the State wish to keep control, then they have to learn about 'the other' in the law itself. On 22 April 2013, the BBC Panorama programme made a covert documentary on Muslim Shari'a Councils operating in the UK; this attracted a lot of controversy about the inequality issues against Muslim women resorting to these Councils to seek advice. This also attracted political scrutiny by Baroness Cox, a politician who introduced the Arbitration and Mediation (Equality) Services Bill [HL] 2014-15 that has just gone through its first reading on 11 June 2014. The Bill addresses gender discrimination within religious tribunals and the parallel legal system. This paper addresses the question of whether gender equilibrium can be reached with the limitations on human rights for minority groups living in the UK and whether state laws accommodate different legal systems. This study investigates this by conducting a critical examination of judgments delivered in Muslim religious tribunals in the UK. The secular-religious debate has been politically influenced, for example, inequality for women seeking advice from Shari'a Councils and the veil (face covering) prohibition in France. Islamic law is not monolithic and practice-based study identified the specifics of religious-legal pluralism within secular-religious debate. Gender inequalities existed within traditional shari'a law.

Sofia Graca	**The Assessment of the Right to Trial within Reasonable Time in Saudi Arabia**

The engagement of immigrant women with the justice system of the country of destination is notoriously low. Although there are an estimated 500000 Portuguese immigrants in the UK, very little is known about their engagement with the English justice system, particularly in situations of domestic violence. This paper seeks to explore the concept of domestic violence held by Portuguese women living in England and how it impacts their perceived appropriate responses to it. It is based on empirical research developed in three areas of high concentration of Portuguese immigrants in England, and uses literature on the invocation of law, immigrant women and legal consciousness to explore this thematic.

Ben Hudson	**'A right to return? Human rights protection of internally displaced persons (IDPs) in international law'**

Despite high-level proclamations of an IDP's 'right to return' in academic papers, UN resolutions and NGO statements, recourse to any such legal right in international law remains distinctly lacking. The UN Guiding Principles on Internal Displacement, although designed to address the failings of existing law to protect the human rights of the internally displaced, fails itself as a soft law instrument to provide IDPs with an effective right to return voluntarily to their places of habitual residence. As a result, it is somewhat surprisingly in the jurisprudence of the European Court of Human Rights that we see some of the most significant legal developments in IDPs' rights protection. However, while Sargsyan v Azerbaijan and Georgia v Russia (II) (building on the Court's judgment in Loizidou v Turkey) promise interesting developments over the coming months, any recourse to the ECHR remains limited given that it was not drafted with the specific needs of IDPs in mind - indeed, let us not forget that it was such limitations that the Guiding Principles had promised to remedy. As such, not only does a lack of a legal right to return reveal the continuing deficiencies of international law to secure, inter alia, an IDP's fundamental right to freedom of movement without discrimination, it also raises questions about the success of soft law instruments in filling the protection gaps left by hard law at the international level.

Emma Jones	**The Suppression of Emotion in Legal Education**

The law has traditionally stood in counterpoint to emotion as the bastion of reason and rationality. Within legal education, this manifests itself as a celebration what it deems to be a rational, dispassionate, objective assessment of material facts. This is often termed as "thinking like a lawyer" and has become synonymous with "suppressing or denying one's feelings and personal experience while putting forth a "cold" analysis of

the "facts."" This poster will argue that the suppression of emotion has a number of deleterious effects on legal education. Firstly, it fails to acknowledge recent scientific research in relation to emotions which sees emotion as aiding and assisting reason. Secondly, it mean the emotional needs of law students are not met (or, in most cases, even acknowledged) leading to decreased levels of student wellbeing and satisfaction. Thirdly, it leads to the production of individuals who do not have the necessary emotional skills to succeed in the legal profession (or elsewhere). They may lack the self-knowledge to make judgements, and the understanding of others which comes with insights into their emotional states. Finally, law students will not be able to learn as effectively as a whole because of the impact the emotions have on cognitive and behavioural development, namely, quality of thinking and quantity of involvement in learning tasks. This leads to the conclusion that it is necessary to explore ways in which emotion can be acknowledged, explored and utilised within legal education.

Eva Klambauer	**Sex workers as political actors between criminalization and empowerment**

Sex workers are largely excluded from the political debate regarding the regulation of sex work. (cf. TAMPEP report 2009/ Mathieu 2003). This is due to specific barriers, such as “their legal status, discrimination, social attitude, and judgemental views about sex work” (TAMPEP report, 2009). In recent years, there has been an increase in mobilisation and protest events of either sex workers themselves or groups speaking on behalf of sex workers. The legal framework in which sex work is embedded impacts the participatory potential and means of expression available to different actors – sex workers and advocacy groups alike. My research will encompass an examination of the laws and policies regulating sex work, and attempt to bridge the gap between legal and policy scholarship and the social movement literature. (cf. Rubin 2001) Taking a meso-level approach, I will investigate the following question in my research project: What is the relationship between the existing legal framework, political mobilisation and potential policy change regarding the regulation of sex work? I will analyse three cases that are each representative of a different legal regime of sex work: UK (neo-abolitionist), Austria (regulatory) and NSW in Australia (decriminalised). This poster will specifically focus on the first part of the research project and present an analysis of the legal framework of my case studies and its implications for the legal status of sex workers, their marginalisation/criminalisation or empowerment, as well as for their status as political actors. Moreover, I will question the accuracy of the widely accepted classification of legal frameworks of prostitution and discuss in what ways the differences in legislation matter for the potential of sex workers to politically organise.

Caroline Lynch	**Provenance: a legal and ethical narrative?**

This poster explores the strengths of research framed in theory, design and analysis by generational order (sociology of childhood), intersectionality and the UN Convention on the Rights of the Child. Specifically considered is how such a framing can be used when researching the lives of children at complex sites of study characterised by the interface of several areas of policy and law. The poster takes the illustrative example of ongoing qualitative PhD research concerning the educational experiences of homeless children in England. That site of study is complex in being characterised by the interface of housing, homelessness, education and child protection policy and law; areas affected by post-2010 ideological reforms and cuts in public spending including those impacting access to/availability of legal advice and representation. Three key potential strengths of the approach are identified: (i) facilitating collaboration and literacy between often tensional sociological and rights-based approaches; (ii) making more meaningful connections between everyday experiences, domestic policy/law and children’s rights; and (iii) generating research which may usefully inform advocacy activities including the identification of opportunities for strategic litigation, thereby meeting a need for research capable of instrumental and conceptual impact and better linking academic and NGO activity.

Sara Mohammadzadeh	**Is my research dirty? Exploring dirty research in academia**

Dirty work refers to occupations that are viewed by society as physically (jobs that include dangerous elements or jobs that are physically dirty), socially (work linked to stigmatized populations), or morally (work that is seen as morally compromised by society) tainted (Ashforth et al, 2007, p.2). The stigma of dirty work is transferred to those who perform dirty work, and in turn they are treated as dirty workers (Grandy, 2008, p.179). While academia may not seem like dirty work, researching certain ‘unloved groups’ within ‘ certain academic environments may be problematic for researchers, leaving them vulnerable to being socially tainted, and in some cases rendering them ‘dirty workers’ within their field’ (Sanders-McDonagh, 2014, p.242).
This poster aims to explore some of the issues surrounding conducting dirty research and how this can lead for the need to negotiate a positive identity and managing the relationships between researcher and participants.

Sanders-McDonagh, E (2014) Conducting “Dirty Research” with extreme groups: understanding academia as a dirty work site. Qualitative Research in Organizations and Management: An International Journal (9)3, pp. 241-253
Grandy, G (2008) Managing spoiled identities: dirty workers’ struggles for a favourable sense of self. Qualitative Research in Organizations and Management: An International Journal (3)3, pp. 176-198
Ashforth, B.E, Kreiner, G.E, Clark, M.A and Fugate, M (2007) Normalising dirty work: managerial tactics for countering occupational taint. The Academy of Management Journal (50)1, pp.149-174

Katharine Parker	**The Gender Dilemma: Barriers for Female Researchers in Male Dominated Environments**

In recent years there has been a notable increase in literature exploring the benefits of being a female researcher within male dominated environments (Gurney 1991, Sampson and Thomas 2003, Palmer 2010, Reeves 2010). Indeed, the heavily gendered notions of women being perceived as unthreatening, warm and indeed nurturing thus rendering them in a positive position for accessing male research participants features prominently within this literature. However, the realities for women conducting research in such environments can often mean an impossible choice between data collection and the lowering of personal and perhaps ethical standards. This poster aims to explore some of the barriers faced by women attempting research in such environments and how this unavoidable gender dynamic has the potential to not only shape the data collected but also the researcher herself.

Gurney, J. N. (1991) ‘Female Researchers in Male Dominated Settings’, in W.B. Shaffir and R.A. Stebbins (eds.) Experiencing Fieldwork: An InsideView of Qualitative Research, 53–61. London: Sage
Palmer, C. (2010) ‘Everyday Risks and Professional Dilemmas: Fieldwork with Alcohol-based (sporting) Subcultures’ Qualitative Research 10(4) 421-440
Reeves, C. L. (2010) ‘A Difficult Negotiation: Fieldwork Relations with Gatekeepers’ Qualitative Research 10(3) pp.315-331
Sampson, H. and Thomas, M. (2003) ‘Lone Researchers at Sea: Gender, Risk and Responsibility’ Qualitative Research 3(2): 165-89.

Amanda Perry-Kessaris	**Communicating law through graphic design**

It is commonly reported that we remember just 10 percent of what we hear and 20 percent of what we read, but 80 percent of what we see and do; and that over 80 percent of the information we absorb is visual. Yet social science research is overwhelmingly conducted and communicated in words, spoken and written without regard to their visual dimension. How might legal research be visually communicated? This is the question that lead me to produce a series of designs, each expressing a perception or expectation of law, using only the word itself, with a view to provoking and facilitating conversations about design, about law and about law and design. Because communication is a multi-way process, in which meaning is imputed by senders and recipients, I wanted to make sure that I tested the designs out on academics and designers. So on November 6th 2014 I held an experimental online show via Twitter (@aperrykessaris #apklawdesigns) and my blog, Approaching the econo-socio-legal (http://tinyurl.com/apkLAWdesigns). I released one design every 30 minutes throughout the day and engaged in debate over Twitter and email. The event attracted over 3500 page views in 24 hours and provoked conversations that would not have happened but for the designs.

Carolyn Shelbourn	**Prosecuting Heritage Crime in England and the United States: Improving Understanding of the Impact of Looting**

Illegal excavation and removal of objects from archaeological sites (‘looting’) is a worldwide problem which has been linked to organised crime, money laundering and terrorist activity. In the US two thirds of sites on publicly owned land have been looted and in England some sites have been subject to what has been called 'quasi-industrial' looting. A survey carried out by Shelbourn found that archaeologists who reported looting and other damage to the police thought that the police, prosecutors and the courts had little understanding of the full impact of looting on the historical heritage .

This research has considered how this impact might be better taken into consideration by looking at the law and practice in the US where a calculation of the 'archaeological value' of the site must be taken into account in criminal proceedings, and by the recent adoption of heritage crime impact statements in England. It has

examined the need for careful management of what are relatively rare prosecutions in both the US and England, in the light of two recent prosecutions which might be regarded as being counterproductive and entrenching attitudes that heritage crime is a trivial matter.

Louise Taylor and Simon Boyes	**LL.M by MOOC: Breaking down barriers to LL.M Study**

This poster seeks to develop a rationale for the development and delivery of an LL.M (Master of Laws) degree by way of a Massive Open Online Course (MOOC).The enrollment rate of those applying for, and receiving an offer of a place on academic LL.M courses is relatively low. Much of this is accounted for by the difficulties associated with competing obligations which limit both available time and flexibility, geographical constraints, immigration and financial limitations.This poster reports on work in progress by the authors to develop an entire LL.M programme by MOOC as a means of overcoming those barriers to access. The aspects represented here relate to the early part of the scoping phase of the project. In particular it presents the results of a literature review undertaken over the summer of 2014 and the results of focus groups of existing and prospective LL.M students at Nottingham Law School, Nottingham Trent University.

Charlotte Woodhead	**Perceptions and Reactions to Domestic Violence in the Portuguese Community in England**

Discovering a cultural object's provenance (its ownership history) was once seen as primarily concerned with contributing to its authenticity and value. In recent years there has been increased concern with gaps or ambiguities in the provenance of cultural objects; first, where ancient antiquities appear on the market with no indication of where or when they were discovered and secondly, when cultural objects were apparently sold during the period 1933-1945 but their previous owners were Jewish and living in an occupied country. Whilst a simple list of former owners would give the bare ownership history of the object, this fails to set out what Appadurai (1986) would call the social life of the object. Furthermore, it fails to acknowledge the taint of an object's past history which may now taint the viewer (Baroness Deech, Hansard 2009). Provenance seems therefore to be more than simply about owners and more about the itinerary of the object (Joyce 2012).
This poster analyses the legal and ethical obligations of museums to investigate the provenance of cultural objects in their collections even where they have a strict legal entitlement to the object (by virtue of statutes of limitation). It will be argued that the provenance of cultural objects is better conceived of as a legal and ethical narrative which, when unearthed, provides not only the basis on which to advance a claim to dispute resolution panels (such as the UK's Spoliation Advisory Panel) but also a mechanism by which to remedy the past injustices of dispossession.

Nicola Zoumidou	**Women Solicitors in the UK: should they be treated the same or differently?**

This poster will summarise theories being used within this PhD thesis to analyse the policies and strategies of the Law Societies of (1) England and Wales, and (2) Scotland in relation to the retention and progression of women solicitors and the conclusions drawn thus far.
The career advancement issues facing women solicitors in the UK have been widely discussed and most of these problems are not limited to the UK, or to the legal profession. There are a number of possible mechanisms which could be used to increase the retention of women in the legal profession and further the progression of those women within the profession. However, despite equality and diversity policies and strategies having been in place for at least the last decade, the situation has not improved significantly.
This speaker's doctoral research includes a comparative analysis of the policies of each Law Society using a theoretical lens in order to find points for improvement in each. The paper that has already been accepted will look at the main features of each jurisdiction's policies in this area and will explain the main areas of difference in each jurisdiction. The proposed poster to which this abstract relates will deal with the theory and analysis of the policies.
It is hoped that this poster will complement the contents of the paper presentation, although it will also make sense to an audience who has not/will not also attend the paper presentation.

Streams and Papers by Session

Session One: Tuesday March 31st 13.30-15.00

STREAM/THEME	CONVENERS Author(s)
Access to Environmental Justice	**Gita Gill, Susan Wolfe and Sammy Adelman**
Session One	**S0.17**
From Theory to Practice in the Ecological Civilization Discourse : China's Endeavor in a Global Concern	Paolo Davide Farah
Regulating Oil Multinational Corporations in Nigeria: A case for the African Union?	Eghosa Ekhator
Administrative Justice	**Richard Kirkham**
Session One: Title: Administrative Justice through the courts	**S0.28**
Recent Developments in Tax Law on the Doctrine of Ultra Vires	Stephen Daly
The Dano Case – A Landmark Case?	Kirsten Ketscher
Challenging Ownership: Meanings, Space and Identity	**Penny English, Francis King and Sarah Blandy**
Session One: Property, Planning and Development	**S2.12**
More Problem than it's Worth? The Problem with the CIL	Tola Amodu
A 'time in-between': the temporal logics of private and public sector development agreements and urban retail property redevelopment schemes	Edward Mitchel
Reclaiming the land: Greek grassroots movements and the case of the former airport of Hellinikon	Ioannis Flyzanis
Criminal Law and Criminal Justice	**Vanessa Bettinson and Ben Livings**
Session One: (joint with Mental Health)	**S0.20**
'Are we not all legally insane?': A critique of the situationist's approach to blame attribution	Louise Kennefick
Containing them, liberating us: Psychopathy, morality and Jung's shadow	Leon McRae
International Criminal Justice: Theory, Policy and Practice	**Anna Marie Brennan**
Session One:	**R1.04**
"The Legal Nature of UN Security Council Referrals to the International Criminal Court Revisited "	Gabriel Lentner
"The Emerging Customary Crime of Terrorism under International Law: An Examination of how Domestic Criminal Law Influenced the Special Tribunal for Lebanon's Interlocutory Decision"	Anna Brennan
"Beyond the State: The Future of International Criminal Law"	Clare Frances Moran
Intersectionality	**Charlotte Skeet**
Session One	**R2.41**
The intersectionality of citizenship and gender on livelihood strategies of protracted refugees; a case study of Palestinians in Jerash, Jordan	Hana Asfour
Human Rights and Alternative Forms of Sexuality	Shaminder Takhar
Labour Law	**Michael Jefferson and Sam Middlemiss**
Session One	**S0.09**

Employment Tribunal fees	Liz Oliver
Shared parental leave	Gemma Mitchell
Law and Literature	**Julia J.A. Shaw**
Session Two:	**R1.03**
Men of Violence, Men of Vision: John Davies and John Marston at the Middle Temple	Paul Raffield
Catastrophe and Systemic Violence: Richard Wright and the Mississippi Flood of 1927	Philip Kaisary
Mental Health and Mental Capacity Law	**Peter Bartlett**
Session one: (Joint with Criminal Law and Criminal Justice)	**S0.20**
'Are we not all legally insane?': A critique of the situationist's approach to blame attribution	Louise Kennefick
Containing them, liberating us: Psychopathy, morality and Jung's shadow	Leon McRae
Research Methodologies and Methods	**Antonia Layard, Jonathan Sims**
Session One: SituationMethodologies	**S1.14**
"Women, Poverty and Human Rights: Applying Feminist Research Methods"	Rhoda Askia Ige
Use of corpus linguistics for interdisciplinary research on legal-lay discourse types	Tatiana Tkacukova
Sentencing and Punishment	**Gavin Dingwall**
Session One: Chair: Gavin Dingwall	**S0.13**
'Challenging Harm as Normatively Definitive of Criminal Punishment: What's the harm in punishment?'	Helen Brown Coverdale
'Proportionality and Previous Convictions: Striking a balance'	Gary Betts
Sexual Offences and Offending	**Phil Rumney**
Session One	**S0.10**
The Legal and Social Challenges posed by Group Localised Grooming: Reconsidering the Risk of Harm	Dr Jamie-Lee Mooney
The role of denial in criminal justice agencies' responses to child sexual exploitation in Rochdale and Rotherham	Maureen O'Hara
The recognition of pre-teen mothers as victims of sexual offences	Kirsteen Mackay and Sarah Nelson
Exploring Legal Borderlands: Empirical and Interdisciplinary Approaches	**Naomi Creutzfeldt and Petra Mahy**
Session One: Property	**S0.19**
The Use and Non-Use of Leases: what is law and what is social practice?	Susan Bright
Law and social ordering in residential developments with 'common parts'	Sarah Blandy
Tenure as a borderland: Some observations	Dave Cowan, Helen Carr & Alison Wallace
Rethinking Surrogacy Laws	**Debra Wilson and Rhonda Powell**
Session One: Surrogacy, parenthood and construction of the family	**S0.08**
Surrogacy and the Problems of the Binary, Two-Parent Model of Legal Parenthood	Alan Brown
Surrogacy: A challenge to the traditional legal construction of family. A Nordic perspective	Freya Semanda
What have genes got to do with it?	Rhonda Powell

Law and Justice in Colonies and 'Post'-Colonies	**Raza Saeed**
Session One:	**R0.14**
Legal instrumentalism in pre and post-¬-Independent Zimbabwe: Assessing understandings of law by the State	David Hofisi
Legal Parenthood in Hindu Law	Padmapriya Srivathsa
From Colonialism to Coloniality: Deconstructing the Logic and Form of colonial law in British India	Raza Saeed
Culture Clash, Peace and World Order	**Nwudego Nkemakonam. Chhinwuba**
Session One	**S1.66**
Co-opting Human Rights Narratives to Justify the 'Security State'	Lynsey Mitchell
The Right to Self-Identify and Cultural Belonging in Post-Conflict and Divided Societies	Elizabeth Craig
Refugee and Asylum Law: Theory, Policy and Practice	**Dallal Stevens**
Session One: Comparative International Refugee Protection (1)	**S0.11**
'Asylum, migration and natural disasters: A new perspective from the Americas'	David Cantor
'The role of international law in defining the protection of refugees in India'	Mike Sanderson

Session Two: Tuesday March 31st 15.30-17.00

STREAM/THEME	CONVENERS Author(s)
Administrative Justice	**Richard Kirkham**
Session Two: Title: The boundaries and accountability of administrative justice	**S0.28**
The Changing Boundary between Criminal Justice and Administrative Justice: The Case of Sanctions	Michael Adler
"Leave your club jersey at the committee room door": Irish Parliamentary accountability systems in the shadow of the Banking Crisis	Fiona Donson
Challenging Ownership: Meanings, Space and Identity	**Penny English, Francis King and Sarah Blandy**
Session Two: Housing and Mental Health (Joint session with the Mental Health Law stream) Panel discussion	**S2.12**
Panel: Nick Hopkins, Sarah Nield, Christopher Bevan and Warren Barr	
Children's Rights	**Helen Stalford**
Session Two: : Understanding the Scope and Impact of Children's Rights of Autonomy	**R3.41**
Seen and Still Not Heard? The Lived Realities of Children and Young People's Participation in Ireland in their Homes, Schools and Communities.	Aisling Parkes
Conceptualising children's rights around participation in elite sport	Eleanor Drywood
Civil Procedure and Alternatives to Litigation, ADR	**Masood Ahmed**
Session Two	**R1.15**
Rhetoric and Civil Justice: A commentary on the promotion of mediation without conviction in England and Wales	Debbie De Girolamo
QOCS quirks and the quixotic quid pro quo': Qualified One-Way Costs Shifting and Access to Justice	John Bates
THE PROTECTION OF HUMAN RIGHTS BY THE JUDGE IN THE CIVIL PROCEDURE IN MEXICO	Amalia Patricia Cobos Campos, Enrique Antonio Carrete Solís and Carlos Severiano Díaz Rey
'Lies, damned lies and … strike-outs': Access to justice and the new duty to strike out 'fundamentally dishonest' claims in their entirety	John Bates
Criminal Law and Criminal Justice	**Vanessa Bettinson and Ben Livings**
Session Two:	**S0.20**
A retort to Norrie: Derrida, Law, and the 'socio-historical.'	Chris Lloyd
Counterterrorism as Authoritarian Legalism – Trends, Logic, and Form of UK Counterterrorism Law	Christos Boukalas
Re-imagining the minimum age of Criminal responsibility: Opportunities and Challenges in Transition	Dwyer
Gender, Sexuality and Law	**Chris Ashford and Alex Dymock**
Session Two: Queering kinship?: the law of intimate relationships	**R1.13**
Older lesbian and gay constructions of kinship in succession law	Sue Westwood
White West Knows Best? Critical Feminist Perspectives on Polygamous Marriage in the English Courts	Zainhab Naqvi

Strategies to achieve Same-Sex Marriage and the Method of Incrementalist Change	Frances Hamilton
International Criminal Justice: Theory, Policy and Practice	**Anna Marie Brennan**
Session Two	**R1.04**
"The Prosecution of Sexual and Gender-Based Crimes at the International Criminal Court: Obstacles and Chances"	Barbel Schmidt
"Prosecuting Gendered Harms at the Extraordinary Chambers in the Courts of Cambodia: The Promise and the Pitfalls."	Diana Sankey
"Charging Sexual Violence as Torture under the Rome Statute: Are the Geneva Conventions a Useful Tool for Prosecuting Sexual Violence Today?"	Sarah Creedon
Labour Law	**Michael Jefferson and Sam Middlemiss**
Session Two:	**S0.09**
EU Labour Law	Michael Doherty
Enforcement of EU migrant workers' rights	Amy Ludlow & Catherine Barnard
Responsive Law and gender inequality	Amanda Viriri
Law and Literature	**Julia J.A. Shaw**
Session Two:	**R1.03**
From homo economicus to homo roboticus: law and the posthuman	Julia J.A. Shaw
Remember Madness: Aesthetics of Justice on the Streets of Gotham	Thomas Giddens
Exploring alternatives to Justitia with Eowyn and Niobe: on gender, race and the legal	Patricia Branco
Mental Health and Mental Capacity Law	**Peter Bartlett**
Session Two: (Joint with Challenging Ownership) Housing and Mental Health. Panel Discussion	**S2.12**
Panel: Nick Hopkins, Sarah Nield, Christopher Bevan and Warren	
Sentencing and Punishment	**Gavin Dingwall**
Session Two: Chair: Gavin Dingwall	**S0.13**
'Consuming Identities: Karsten Kaltoft, obesity and the criminal construction of the addict'	Simon Flacks
Sexual Offences and Offending	**Phil Rumney**
Session two	**S0.10**
Protecting the Therapeutic Space: Why victims' counselling records should be excluded from historic child sexual abuse trials	Sinéad Ring
Regulating prostitution: an assessment of different legal regimes on the different dimensions of women's opportunities for self-determination	Nicolle Zeegers
Exploring Legal Borderlands: Empirical and Interdisciplinary Approaches	**Naomi Creutzfeldt and Petra Mahy**
Session 2: Legal consciousness	**S0.19**
Exploring the borderlands of European Legal Culture: A comparative Study of Collective legal consciousness in the UK, Poland and Bulgaria	Marc Hertogh & Marina Kurkchiyan
Legal Consciousness and formal-informal borderlands in Indonesia	Petra Mahy
What do we expect from an ombudsman? European narratives of everyday engagement with the informal justice system	Naomi Creutzfeldt
Rethinking Surrogacy Laws	**Debra Wilson and Rhonda Powell**
Session Two: Issues in international surrogacy	**S0.08**

Exploitation in International Paid Surrogacy Arrangements [This is Stephen Wilkinson who wasn't 100% sure he could make it]	Stephen Wilkinson
Commercial vs altruistic surrogacy- a principled or imperceptible distinction?	Debra Wilson
Law and Justice in Colonies and 'Post'-Colonies	**Raza Saeed**
Session Two:	**R0.14**
Between 'Activism' and 'Pragmatism': The changing narrative of Public Interest Litigation in India and Judicial Meanderings of the Supreme Court	Jhuma Sen
Study of the Application of the Doctrine of Stare--Decisis in Some Islamic Law Cases in Northern Nigeria	Ahmed Salisu Garba
Culture Clash, Peace and World Order	**Nwudego Nkemakonam. Chhinwuba**
Session Two	**S1.66**
ELECTION DISPUTE RESOLUTION AND THE QUESTION OF JUSTICE IN NIGERIA	Muiz Banire
GOVT POLICIES, CULTURE AND SURROGACY IN WEST AFRICA: ISSUES ARISING.	Dennis Odigie
Refugee and Asylum Law: Theory, Policy and Practice	**Dallal Stevens**
Session Two: Comparative International Refugee Protection (2)	**S0.11**
'Democratic or autocratic regime? The paradox of Ghanaian refugees'	Cristiano D'Orsi
'From refugee producing to refugee receiving countries – A comparative study of asylum policies and practices in Croatia and Bosnia and Herzegovina'	Selma Porobic & Drago Zuparic-Iljic
International Economic Law: Governing Markets in Context	**Celine Tan, Guiliano Castellano and Stephen Connelly**
Session Two: International Financial Law and Regulation	**S0.17**
Sharing, Ranking, Matching, and Pricing: A Socio-Psychological Perspective on EU Financial Regulators	Genevieve Helleringer and Giuliano Castellano
Certainty in Uncertain Times: Conflicting Visions of the European Project	Dania Thomas and Maren Heidemann
Law and Finance in Emerging Economies: The Case of Germany 1800-1913	Carsten Gerner-Buerle
Registering Registration	**Julie McCandless and Ed Kirton-Darling**
Session Two: Hiding and Revealing	**R2.41**
What's in a birth?	Julie McCandless
Making land liquid: registration of title as technology of dispossession	Sarah Keenan
Recording marriages	Rebecca Probert
Regulatory registers: unwinding the list and the strike-through	Marie-Andree Jacob
Renewing Critique in Criminal Justice	**Henrique Carvalho**
Session Two:	**S0.18**
The Preventive Turn in Criminal Justice: From Liberal Imagination to Neoliberal Insecurity	Henrique Carvalho
Holding Responsible and Taking Responsibility	Craig Reeves
Criminal Justice and the Blaming Relation	Alan Norrie

Session Three: Wednesday April 1st 09.00-10.30

STREAM/THEME	CONVENERS Author(s)
Administrative Justice	**Richard Kirkham**
Session Three: Title: Questions on the ombudsman enterprise	**S0.28**
The Prisons and Probation Ombudsman and Holding Persons to Account following a Death in Prison Custody in England and Wales: A Critical Analysis	Christopher Sargeant
Taking stock: what is the private sector ombudsman model? Carolyn Hirst,	Chris Gill and Carolyn Hirst
The use of informal resolution approaches by ombudsmen in the UK and Ireland: A mapping study	Margaret Doyle and Varda Bondy
Art, Culture and Heritage	**Janet Ulph and Charlotte Woodhead**
Session Three: CULTURAL HERITAGE: RIGHTS, REMEDIES AND THE ROLE OF THE STATE	**R1.03**
Is there a need for an Arbitration Institute to facilitate Alternative Dispute Resolutions in the Art World?	Mounia Chadlia
State Responsibility for the Breach of International Cultural Heritage Obligations -	Andrzej Jakubowski
Art, Culture and Heritage Post-Conflict and Divided Societies: A Minority Rights Perspective	Elizabeth Craig
Banking and Finance	**Clare Chambers (now Jones) and Mary Young**
Session Three: Global banking, regulation and corporate governance	**S0.08**
Paper: Hunting for content and scope: long-term interests in the company directors' decision-making processes.	Katarzyna Chalaczkiewicz-Ladna
Paste: Corporate Failures and Managing Personality Risks in Corporate Governance: The Role of the State.	Ngozi Okoye
Missing pieces in the EU derivatives regulation puzzle	Tatjana Nikitina
Challenging Ownership: Meanings, Space and Identity	**Penny English, Francis King and Sarah Blandy**
Session Three: Property, rights and the body	**S2.12**
Recognising Property Rights in Human Materials	Neil Maddox
Out of time and out of place – unraveling the deaths of homeless people	Helen Carr
Children's Rights	**Helen Stalford**
Session Three: : Accommodating Best Interests: Tensions and Potential Solutions	**R3.41**
Lessons in Valuing Children: Conflicts of Interests, "Best Interests", Rights, and School Exclusion	Lucinda Ferguson
Becoming tyrannous? A capabilities approach to best interests assessments	Michael Thomson
Islamic States rebuff The Hague Abduction Convention: Justified explanations or just excuses?	Nazia Yaqub
Criminal Law and Criminal Justice	**Vanessa Bettinson and Ben Livings**
Session Three: (Joint with Mental Health)	**S0.20**
Paper: Criminal Responsibility & Adolescent Development: A Neuroscientific Perspective	Hannah Wishart

Legal capacity and impaired self-control: a study of approaches to anorexia nervosa and alcohol addiction across personal decisions and criminal acts. [Paper 437]	Jillian Craigie
An issue of intersectionality? Hate crime and mental condition defences	John Rumbold
Gender, Sexuality and Law	**Chris Ashford and Alex Dymock**
Session Three: Crime	**R1.13**
Sexual Intimacy, Gender History and the Criminal Law	Alexandra Sharpe
Responsible mothers and battered women: Mothers who fail to protect their children and the criminalisation of vulnerability.	Sarah Singh
The Implementation of Feminist Law Reforms: The Case of Post-Provocation Sentencing	Rosemary Hunter and Danielle Tyson
Information Technology Law and Cyberspace	**Brian Simpson and Mark O'Brien**
Session Three:	**S0.09**
'Technological solutions to privacy questions: what is the role of law?'	Maria Helen Murphy
'The Territoriality and Extraterritoriality of EU/US Data Protection and National Security Law'	Willie Mbioh
'The Anarchist Netbook: Legal and Community Regulation in the Deep Web'	Mark O'Brien
International Criminal Justice: Theory, Policy and Practice	**Anna Marie Brennan**
Session Three	**R1.04**
"Does the International Criminal Court Deter Torture?	Yvonne Dutton, Eamon Aloyo and Lindsay Heger
"Targeted Killing and Characterisation of Remote Warfare under International Humanitarian Law"	Anthony Cullen
"General Principles of Law as a Source of International Criminal Law"	Noelle Higgins
Labour Law	**Michael Jefferson and Sam Middlemiss**
Session Three:	**S0.03**
Occupational safety	Paul Almond
Workplace injuries among Chinese seafarers	Desai Shan
Child labour in s. Asia	Trivikram Nayak & Shashank Sheakar
Lawyers and Legal Professions	**Andy Boon**
Session Three	**S1.66**
Paper: Rising to the top: Women Solicitors in the UK	Nicola Zoumidou.
'Don't be too outwardly Islamic…' Fitting in, Firm Culture and Muslim Female Solicitors	Dianne Atherton
Paper: Branding, Marketing and the New Entrepreneurial Barrister	Atalanta Goulandris
Work experience for non-traditional aspirant entrants in the legal profession: revelation or maintenance of status quo?	Elaine Freer
Mental Health and Mental Capacity Law	**Peter Bartlett**
Session Three: (Joint session with Criminal Law and Criminal Justice)	**S0.20**
Paper: Criminal Responsibility & Adolescent Development: A Neuroscientific Perspective	Hannah Wishart
Legal capacity and impaired self-control: a study of approaches to anorexia nervosa and alcohol addiction across personal decisions and criminal acts. [Paper 437]	Jillian Craigie

An issue of intersectionality? Hate crime and mental condition defences	John Rumbold
Session Three: MCA in medicine and social care	**S0.13**
The Mental Capacity Act 2005 - Compliance in Clinical Practice	Helen Taylor
Conceiving better birth plans: mental illness, pregnancy and court authorised obstetric intervention	Sam Halliday
The implications of the UNCRPD requirements on the Mental Capacity Act and healthcare decision-making in relation to people with Fluctuating Capacity	Anna Raphael
Supported Decision-Making in Adult Safeguarding – A Qualitative Study	Amanda Keeling
Race, Religion and Human Rights	**Fernne Brennan**
Session Three: Multiculturalism and Human Rights	**S1.14**
Paper: The Cultural Concept of "Incompatibility in Lineage" and the Rights of Women in Saudi Arabia.	Adal Almoammar
British Muslim women: Pursuing divorce in a multicultural society, in light of human rights and religion	Islam Uddin
'Living Together' after SAS v France: Interculturalism or Assimilation?	Stephanie Berry
Exploring Legal Borderlands: Empirical and Interdisciplinary Approaches	**Naomi Creutzfeldt and Petra Mahy**
Session Three: Methods and Actors	**S0.19**
Should we aim to generalize or to compare (or do both)?	Mike Adler
Law and legality, consciousness and technicality: interdisciplinary, methodology and (socio)legal studies	Dave Cowan & Dan Wincott
Too trifling to be significant' – moving boundaries of 'permitted work' in claims for incapacity benefits across the twentieth century	Jackie Gulland
Rethinking Surrogacy Laws	**Debra Wilson and Rhonda Powell**
Session 3: Surrogacy Workshop: Networking and Collaboration Opportunities	**S0.10**
Old dilemmas, new controversies: Children in international adoption and global surrogacy	Gabriela Misca
Law and Justice in Colonies and 'Post'-Colonies	**Raza Saeed**
Session Three:	**R0.14**
Post -colonial intervention: Victim Participation at the International Criminal Court – the real at The Hague and the impossibility to symbolize trauma	Gianna Magdalena Schlichte
Looking Backward for the Future of the Right to Development: Communitarian is as the 'Old Wine in a New Bottle'	Salim Bashir Magashi
Public trust in policing in Hong Kong	Maggy Lee and Michael Adorjan
Culture Clash, Peace and World Order	**Nwudego Nkemakonam. Chhinwuba**
Session Three	**S0.18**
SEA LEVEL CHANGES, RESOURCE LOSSES AND IMPLICATIONS FOR COMMUNAL AND SOCIO-POLITICAL CONFLICTS AROUND THE COASTAL SLUM AREAS OF LAGOS, NIGERIA	Alabi Soneye
From Ancient to Modernity: Uneasy Transformation of the Culture of British West Africa and Unending Tensions	Amos Enabulele
World Order: Understanding the Interlock of Custom, Culture and Religion as a Fundamental Tool of achieving Peace	Nwudego Chinwuba
Refugee and Asylum Law: Theory, Policy and Practice	**Dallal Stevens**

Session Three: Historical Perspectives on Refugee Protection and 'Burden-Sharing'	**S0.11**
'From informal to formal burden-sharing: an alternative insight into the early development of refugee law and international forms of cooperation'	Paolo Biondi
The historical background to Article 31(1) of the 1951 Refugee Convention from a UK perspective' -	Yewa Holiday
'The Dublin Regulation: Balancing efficiency and individual protection'	Harriet Gray
International Economic Law: Governing Markets in Context	**Celine Tan, Guiliano Castellano and Stephen Connelly**
Session Three: Finance and Corporate Governance	**S0.17**
When Overseeing Becomes Overlooking: The Post-GFC Reconfigurations of International Finance	Stephen Connelly
Drawing a Synergy between Theory and Practice: A Move towards a More Stakeholder-Oriented Regulatory Framework for Modern Islamic Finance Institutions	Sheharyar Hamid
Between the State and Market: Sovereign Wealth Funds and Transnational Regulation in South-East Asia	Celine Tan
Registering Registration	**Julie McCandless and Ed Kirton-Darling**
Session Three: 'Secrecy, privacy and addressing 'the public'	**R2.41**
"Anyone can register a death, well, within reason"	Ed Kirton-Darling
The changing identity of title registration data: from record to resource	Victoria Moss
Registration "below the waterline": public review of secret surveillance	Bernard Keenan
Renewing Critique in Criminal Justice	**Henrique Carvalho**
Session Three:	**R1.15**
Paper: The Law of Crowds	Illan Rua Wall.
Criminalizing protest: silencing disputes over property, public space and natural resources in so-called postconflict scenarios	Maria C Olarte.
Families' Interrogation of State Violence: The Subversive Potential of Kinship in Deaths in Custody Cases	Nadine El-Enani
Para-nomic, Ec-nomic, A-nomic: Art Between Law and Lawlessness	Julia Chryssostalis

Session Four: Wednesday April 1st 11.00-12.30

STREAM/THEME	CONVENERS Author(s)
Administrative Justice	**Richard Kirkham**
Session Four: Title: Empirical studies on administrative justice	**R0.28**
Homelessness Internal Reviews: Comparisons and Contrasts since 1997	Dave Cowan, Simon Halliday, Caroline Hunter and Abi Dymond
Bureaucratic Legal Consciousness and Government Officials' Moral Ideals: The Role of Truth Verification and Information Processing in Affecting Bureaucratic System Goals and Substantive Justice	Sally Richards
Art, Culture and Heritage	**Janet Ulph and Charlotte Woodhead**
Session Four: ART AND HERITAGE: CONCEPTS AND RESPONSES	**R1.03**
Economies of permitted images: exploring the justification for the ban on photography in courts	Linda Mulcahy
Disabled Dance: Grounding the Practice in the Law of 'Cultural Heritage'	Charlotte Waelde, Shawn Harmon and Abbe Brown
From Local to World Heritage	Sophie Vigneron
Banking and Finance	**Clare Chambers (now Jones) and Mary Young**
Session Four: The historical business of banking, and challenges faced in modern banking	**S0.08**
Islamic Finance within a Global Economy: Towards a Common Sustainable Future	Hanaan Balala
Are Virtual Currencies actually Currencies? If not, what are they?	Henry Hillman
Bargaining with 'Octopus tentacles': the Bank of England's branches and the first English joint stock banks	Iain Frame
OTC Derivatives Post-crisis Reforms: 'If you don't know where you're going any road will get you there'?	Ligia Catherine, Arias Barrera
Executive Remuneration Reform in Banks and Beyond: Servant of Two Masters?	Andreas Kokkinis
Financial Advice: Broadening Access to Financial Knowledge?	Asta Zokaityte
Challenging Ownership: Meanings, Space and Identity	**Penny English, Francis King and Sarah Blandy**
Session Four: Property Rights on the home	**S2.12**
Finding the Way Home	Adam Ramshaw
Retiring Property: A Radical Approach to Ownership	Sean Thomas and Paolo Vargiu
Adult Social Care and Property Rights	Brian Sloan
Children's Rights	**Helen Stalford**
Session Four: Protecting Children from Harm: Legal and Methodological Strategies	**R3.41**
A Successful Case of Planning on Children's Rights	Azadeh Chalabi
Children's wishes and feelings about parental harm: Ascertaining the unascertainable?	Vanessa Richardson
Childhood Obesity: A Case of Parental Neglect or State Failure?	Naomi Salmon
Criminal Law and Criminal Justice	**Vanessa Bettinson and Ben Livings**
Session Four: Gender and the Courts	**S0.20**
Paper: Establishing Credibility in Criminal Court: A Case Study of Domestic Abuse Case	Tatiana Tkacukova and Isabel Picornell

Paper: Building a discrete offence of domestic abuse upon the foundations of coercive control	Vanessa Bettinson and Charlotte Bishop
A critique on the influence of the "New Abolitionist Movement" on human trafficking discourse	Elizabeth Faulkner
Family Law and Policy	**Anne Barlow and Annika Newnham**
Session Four: Some theoretical and international perspectives on family law issues	**R1.15**
Relational autonomy and spousal agreements in the Supreme Court of Canada: How much difference does a theory make?	Lucy-Ann Buckley
High-conflict Post Separation Disputes Involving Family Violence in a Neoliberal Context - British Columbia, Canada	Rachel Treloar
Equal property rights for women: ethnographic reflexions on the dynamics of autonomy within the Indian joint family.	Karine Bates
Gender, Sexuality and Law	**Chris Ashford and Alex Dymock**
Session Four: Constructing Gender and the Body	**R1.13**
Bodily Integrity and Legal Personhood	Mitchell Travis
Gender – a space of socio-cultural transformation. Insights from Jamaica and Dominica	Ramona Biholar
The Ideas of Women	Wendy Guns
Information Technology Law and Cyberspace	**Brian Simpson and Mark O'Brien**
Session Four:	**S0.09**
Export Control Standards on Data and Its Influence on International Cloud Service Industry'	Cindy Whang
User-controlled justice? The governance challenges of multi-user platforms	Kim Barker
Multistakeholder approach and human rights in Internet Governance	Andrey Shcherbovich
Paper: 'Algorithims or Advocacy: Does the Legal Profession Have a Future in a Digital World?'	Brian Simpson
International Criminal Justice: Theory, Policy and Practice	**Anna Marie Brennan**
Session Four:	**R1.04**
"A New Path for the International Criminal Court"	Eduardo Toledo
"Minority Perception of Fairness in Finland: Is there Racial Disparity?"	Stephen Egharevba
"Judicial Dialogue and the Development of the Crime of Genocide"	Nora Stappert
Labour Law	**Michael Jefferson and Sam Middlemiss**
Session Four:	**S0.03**
Restoring wages councils and sector bargaining and extending wages and condition?	Keith Puttick & Peter Beszter
National Industrial Court of Nigeria	Chioma Agoro
Adjudication in Malaysia and Nigeria	Rabui Shatsari & Ado Malam Bello
Lawyers and Legal Professions	**Andy Boon**
Session Four:	**R1.66**
The Legal Professions' New Codes of Conduct: What Do They Tell Us?	Andy Boon
The Failure of the New Legal Services Market?	John Flood and Liz Duff
The Ethics of Transactional Lawyers	Stephen Vaughan
Legal Education	**Tony Bradney and Fiona Cownie**

Session Four:	**S0.18**
Parresia and academic freedom in legal education	Pedro Fortes
Could you make it a bit more MOOCy?	Simon Sneddon
Towards a Feminist Pedagogy of Clinical Legal Education: Challenges and the Possibilities of Transformative Learning	Jhuma Sen
Mental Health and Mental Capacity Law	**Peter Bartlett**
Session Four: CRPD, MCA – problems of decision-making	S0.13
Challenging the Capacity/Incapacity Binary- Capacity to Consent to Sex and Vulnerability	Clough, Beverley
Active citizenship of persons with disabilities and legal capacity: an obvious connection?	Milan Markovic
Analysing the definition of disability in the CRPD: Is it really based on a 'social model' approach?	Kazou Aikaterini
Exploring the discriminatory nature of the functional approach of capacity-related assessment	Yi Huang
Race, Religion and Human Rights	**Fernne Brennan**
Session Four: Rights and Human Rights	**S1.14**
Taking Human Rights and Equality Seriously in Public Authority Decision-Making in an Age of Austerity	James Harrison and Mary-Ann Stephenson
'Right' on the Margins: the misplaced right to food in the UK	Ben Warwick
Research Methodologies and Methods	**Antonia Layard, Jonathan Sims**
Session Four: Empirical Research in Progress	**R0.14**
"Triumph for Transparency? : Assessing the Impact of Freedom of Information Laws"	Erin Ferguson
Risk logic: An evolving methodology for analysing diverse information sources	Thomas Barcham & Richard Collins
"Broadening law's 'context' in socio-legal research"	Nicole Graham
Exploring Legal Borderlands: Empirical and Interdisciplinary Approaches	**Naomi Creutzfeldt and Petra Mahy**
Session Four: Administration	**S0.19**
From Medical Guidelines to Medical Norms	Friso Jansen
Domestic Compliance with International Normative Frameworks relating to Disaster Management	Ronan McDermott
Determining the boundaries of the public and private spheres	Claire Bessant
Refugee and Asylum Law: Theory, Policy and Practice	**Dallal Stevens**
Session Four: Children, Gender and Asylum	**S0.11**
'Conceptualising child refugees: A review of child-specific forms of persecution considering developments in the international children's rights and refugee law frameworks'	Samantha Arnold
'[En]gendering international protection: are we there yet?'	Heaven Crawley
'Cessation, revocation and control over the movement of the body of the refugee in Canada'	Anne Neylon
International Economic Law: Governing Markets in Context	**Celine Tan, Guiliano Castellano and Stephen Connelly**
Session Four: Structures of International Economic Law	**R0.17**
International Economic Institutions: Developing the Concept of Substantive Accountability	Abayomi Al-Ameen
Exploring 'the Empirical' in International Economic Law Linkage Debates	James Harrison

The Institutional Fragmentation of International Law and Democratic Governance in a World Society: A Crisis or An Opportunity?	Anlei Zuo
Politics and Technocracy in International Corporate Taxation	Sol Picciotto
Registering Registration	**Julie McCandless and Ed Kirton-Darling**
Session Four: 'Excluding and over-promising'	**R2.41**
Birth registration and same-sex parenting in the UK and Canada: some unanswered questions	Phil Bremner
The land register in England and Wales: reflection of reality or history?	Emily Walsh
The lake home	Henrietta Zeffert
Transitions from Conflict: The Role and Agency of Lawyer	**Anna Bryson**
Session Four:	**S0.10**
Paper: Swapping Sides? Political Transitions and Cause Lawyers within the State	Louise Mallinder
Paper: The Gendered Professional: Lawyers in Conflict & Transition	Anna Bryson
Lawyers, Clients and Political Causes in Conflict and Transition	Kieran McEvoy

Session Five: Wednesday April 1st 14.00-15.30

STREAM/THEME	CONVENERS Author(s)
Administrative Justice	**Richard Kirkham**
Session Five Title: Crisis in the administrative justice system and Kickstarting research	**S0.28**
Roundtable discussion on the current predicament of administrative justice.	
Kickstarting research: About the UK Administrative Justice Institute	UKAJI (Margaret Doyle and Andrew Le Sueur)
Art, Culture and Heritage	**Janet Ulph and Charlotte Woodhead**
Session Five: SUSTAINABILITY AND RESPONSBILITY	**R1.03**
Forgers, Connoisseurs, and the Nazi Past: Van Meegeren and Beltracchi	Christa Roodt
Corporate Culture Vultures: Art, Culture and Heritage Goals for Limited Companies	Colin Moore
Returning looted cultural assets: the role of enforcement agencies	Janet Ulph
Banking and Finance	**Clare Chambers (now Jones) and Mary Young**
Session Five: Market abuse, and the misuse of financial services products	**S0.08**
Paper: Selling financial services: the interplay between individual legal liability and behavioural economics	Judith Dahlgreen
Predatory capital and the irresponsible state: a critical decoding of mandatory CSR at the 'Gateway to Africa'	Renginee Pillay and David Quentin
What part can market abuse play in the regulation of financial services?	Andrew Baker
Challenging Ownership: Meanings, Space and Identity	**Penny English, Francis King and Sarah Blandy**
Session Five: Author Meets Readers	**S2.12**
SLSA prizewinner Debbie Becher, author of Private Property and Public Power: Eminent Domain in Philadelphia	Francis King
Children's Rights	**Helen Stalford**
Session five: Achieving Child Friendly Justice	**R3.41**
Children's voices: Centre-stage or side-lined in out-of-court dispute resolution in England and Wales?	Jan Ewing, Rosemary Hunter, Anne Barlow and Janet Smithson
The Child Rights Law of Lagos State 2007: A Qualitative Study of Child Justice	Iyabode Ogunniran and Chinwe R Nwanna
Methodological tools for exploring and promoting children's rights in the justice process	Helen Stalford, Liam Cairns and Jeremy Marshall
Criminal Law and Criminal Justice	**Vanessa Bettinson and Ben Livings**
Session Five: Policing	**S0.20**
'I'm a celebrity and shouldn't be on bail': Pre-charge police bail and prospects for reform	AntheaHucklesby
A Polarised Approach to Police Complaints	Clare Torrible

Identifying vulnerability and risk – exploring themes to understand reality	Roxanna Dehaghani
EU Law	**Ian Kilbey and Kathryn Wright**
Session Five: Crisis and Austerity	**S0.03**
Protecting the Vulnerable during Austerity: The Legal Requirements on the Troika to Consider Poverty in Implementing the Bail-Out Programmes.	Roderic O'Gorman
EU Competition Law and Social Policy	Anca Chirita
Crisis, Law and Legal Scholarship	Imelda Maher
Family Law and Policy	**Anne Barlow and Annika Newnham**
Session Five: Developing responses to non-traditional family life	**R1.15**
Paper: The Importance of 'Biological Reality': Constructions of Parenthood in Non-Traditional Families	Alan Brown
Paper: Mandatory sperm-donor registry: instrumental, symbolic or something in between?	Helen Weyers
Paper: "There is a danger, isn't there, that things are just going to be copied from one to the other?": discourses of sameness and difference between civil partnership and marriage	Charlotte Bendall
Gender, Sexuality and Law	**Chris Ashford and Alex Dymock**
Session Five: Gender, Sexuality and Legal History	**R1.13**
Diagnosing perversion: forensic psychiatry on trial	Janet Weston
Judges, nabobs and malign domestics: judicial fact-finding in Woods and Pirie v Cumming Gordon	Caroline Derry
Discourse and Domination: A Genealogy of Domestic Violence	Conor Crummey
Lawyers and Legal Professions	**Andy Boon**
Session Five:	**S1.66**
Lawyers: A Theoretical Framework	Elisabeth Reiner and Jan Pospisil
Re-regulation and change in professional organisational fields: The case of UK legal services	Sundeep Aulakh and Ian Kirkpatrick
Paper: Language and Law in Globalised Legal Practice	Martina Kunnecke
Medical Law and Ethics	
Session 5: "Assisted dying"	**S0.18**
"Rethinking death: Assisted Dying Bill 2014-15: The way forward?"	Nataly Papadopoulou
"Debating Assisted dying in the Upper Chamber: Procedure, process and 'souciance' in the passage of a Bill in the House of Lords."	Cedric Gilson
"Debbie Purdy; her contribution to the law on assisted suicide, past, present and future."	Claudia Carr
Mental Health and Mental Capacity Law	**Peter Bartlett**
Session Five: Court of Protection	**S0.13**
Litigation friend	Shazia Akhtar
Who, and what, is the Court of Protection for?	Lucy Series
(Re)Presenting P before the Court of Protection	Alex Ruck Keene
Back to the Future: The Case for a Mental Capacity Act Commission?	Jean McHale
Race, Religion and Human Rights	**Fernne Brennan**
Session Five: Discrimination and human rights	**S0.09**
Constructions of Religious Symbols at the European Court of Human Rights: Assertions, Evidence, and the Power of Language	Anna Jobe

Poverty as a prohibited ground of discrimination: theory and the Irish example	Ben Mitchell
The Punishment of those who Ill-treat Detainees during Police Questioning in Breach of Article 3 ECHR	Neil Graffin
Research Methodologies and Methods	**Antonia Layard, Jonathan Sims**
Session Five: Visual Methods	**R0.14**
"Revealing the Legal Experience through Visual Arts"	Natalie Ohana
Prize winner session: "The Case for a Visualized Economic Sociology of Legal Development" Winner of the 2014 SLSA Best Article Prize	Amanda Perry-Kessaris
Exploring Legal Borderlands: Empirical and Interdisciplinary Approaches	**Naomi Creutzfeldt and Petra Mahy**
Session Five: Meet the Author – 2015 Hart-SLSA Prize for Early Career Academics	**S0.19**
Joint winner; Kirsten McConnachie, Governing Refugees: Justice, Order and Legal Pluralism, Routledge, 2014	Discussant: Julio Faundez
Refugee and Asylum Law: Theory, Policy and Practice	**Dallal Stevens**
Session Five: The Problems of Process	**S0.11**
'The detained fast track asylum process: inherently unfair, or a necessary qualification to the right to liberty?'	David Sellwood
'Accelerated refugee status determination procedures in the UK and Australia: "Fast track" to refoulement?'	Linda Kirk
'Fresh claims for asylum since Rahimi - legal consequences and procedural barriers'	Sheona York
International Economic Law: Governing Markets in Context	**Celine Tan, Guiliano Castellano and Stephen Connelly**
Session Five: International Investment Law I	**S0.17**
Reforming International Investment Law: Is it Time for a New International Social Contract to Rebalance the Investor-State Regulatory Dichotomy?	Dessilav Dobrev
Re-thinking International Investment Law's 'Utopia'	Edward Guntrip
The Impact of Investment Treaty Law on Government Behaviour: A Socio-legal Perspective on State Compliance with Good Governance Standards	Mavluda Sattarova and Mustafa Erkan
Law Politics and Ideology	**Andrew Gilbert and Graham Gee**
Session Five: International edges of law, politics and ideology	**R2.41**
Networked Governance for Implementing Human Rights: A Promising Way Forward	Azadeh Chalabi
The Involvement of Former Colonial Powers in their Former Colonies and the use of International Law: the Case of France and Mali	Amanda Kramer
Compassion in Law: the Personal and the Political	Dermot Feenan
Law Enforcement, Regulation and the Use, Abuse and Control of Information	**Richard Hyde**
Session Five: Sharing of Forensic Bioinformation	**S1.14**
A distinctive mark: Assessing the Present Parliament's Contribution to the Governance of Forensic Biometric Data	Tim Wilson
The Risks of Using and Sharing Biometric Data to Tackle Crime Across the EU	Chris Wood
Why should we share forensic bioinformation beyond national borders - towards a theoretical framework	Ashley Savage and Richard Hyde
Transitions from Conflict: The Role and Agency of Lawyer	**Anna Bryson**

Session Five: Wednesday April 1st 14.00-15.30

Session Six:	**S0.10**
Working for and with Victims in the Extraordinary Chambers in the Courts of Cambodia	Rachel Killean
Legal Culture and the Interpretations of Post-Justice in Rwanda	Nicola Palmer
Lawyers, 'Revolution' and Transitional Justice: The Case of Tunisia	Marny Requa

Session Six: Wednesday April 1st 16.15-17.45

STREAM/THEME	CONVENERS Author(s)
Art, Culture and Heritage	**Janet Ulph and Charlotte Woodhead**
Session Six: GIVING VOICES TO COMMUNITIES	**R1.03**
Child 'Charlie' and King Richard: Contesting the Ancient Dead	Carolyn Shelbourn
The Horse Culture of "Cowboys and Indians": , Cultural Heritage, Stereotypes and Safeguarding	Sarah Sargent
Global Governance and Intangible Cultural Heritage in the Information Society: at the Crossroads of IPRs and Innovation	Paolo Davide Farah
Banking and Finance	**Clare Chambers (now Jones) and Mary Young**
Session Six: The law in finance: Financial crime and fraud	**S0.08**
THE SEPARATE LEGAL PERSONALITY OF CORPORATIONS IN THE UK: A LAW AND ECONOMICS ANALYSIS	Stephen Copp
Culpability of banks in illicit financial flow and money laundering	Viri Chauhan
CORPORATE FRAUD: THE CASE FOR A MANIFEST APPROACH TO LIABILITY	Alison Cronin
Challenging Ownership: Meanings, Space and Identity	**Penny English, Francis King and Sarah Blandy**
Session Six: Property law and strategies for resistance	**R3.41**
Legal Land Lock? Extraterritorial jurisdiction, sovereignty extension and near-perfect annexation of the West Bank	Alice Panepinto
Confrontations with ownership in The King Hill Hostel Campaign	Laura Binger
Legal recognition as a challenge to the closing of soup runs in London	Caroline Hunter
Criminal Law and Criminal Justice	**Vanessa Bettinson and Ben Livings**
Session Six: (Joint with Sentencing&Punishment)	**S0.20**
Professor David Ormerod, Law Commissioner	
EU Law	**Ian Kilbey and Kathryn Wright**
Session six: Governance and Contract :	**S2.12**
Legitimacy and European Union Governance: Whither Transparency?	Stephen Lea
EU Governance in Organs: Proposing A Leap to Hybrid Governance and the 'Integrated Model of Combined Governance'	Tasnim Ahmed
Moving On from Non-Delegation: Climate Engineering Research and the EU Regulation of Scientific Uncertainty	Janine Sargoni
Clarifying Aggressive Commercial Practices in the Unfair Commercial Practices Directive: the Role of Consent	Eleni Kaprou
Family Law and Policy	**Anne Barlow and Annika Newnham**
Sesson Six: New-style challenges within family justice	**R1.15**
Paper: Multi-modal discourse analysis of the financial order proceedings from the perspective of litigants in person	Tatiana Tkacukova
Paper: 'The Challenges of the Unrecognised: An analysis of Muslim Marriage recognition in England and Wales'	Leyla Jackson and Kathryn O'Sullivan
The role and construction of 'the other side' in family dispute resolution	Anne Barlow
Gender, Sexuality and Law	**Chris Ashford and Alex Dymock**
Session Six: Rights	**R1.13**

Domestic Violence and the European Court of Human Rights: Is a more gender-sensitive interpretation of the ECHR needed?	Ronagh McQuigg
Beyond the Gains: The Unfinished Business of Women's Rights in Africa	Rhoda Asikia
The Right of the Girl-child to Education: The Chibok School Girls' Adduction and the Response of International Law	Amos Enabulele
Lawyers and Legal Professions	**Andy Boon**
Session Six:	**S1.66**
2015 Hart-SLSA Book Prize: Alan Paterson (2013) Final Judgment: The last Law Lords and the Supreme Court, Hart	
Medical Law and Ethics	
Session six:	**S0.18**
"The leaning tower of the NHS: The destabilising force of the Health and Social Care Act 2012."	David Horton and Gary Lynch-Wood
"Dietary Health, functional foods and the law."	Naomi Salmon
Mental Health and Mental Capacity Law	**Peter Bartlett**
Session Six: Mental Health Act	**S0.13**
An Intersectional Perspective on Use of the Mental Health Act: Ethnicity and Madness	Mel Stray
Involuntary Outpatient Treatment: Human Rights and Efficacy Arguments for Repeal	Piers Gooding
'Appropriate' compulsory treatment for people with mental disorder? Research and evidence y	Steph Sampson
Society, Mental Health Policy and Welfare of the Mentally-Ill: Insight from Nigeria [awaiting easchair submission]	Fatai Badru
Race, Religion and Human Rights	**Fernne Brennan**
Session Six: Theory and Human Rights	**S0.09**
Human Rights and the Fall of the Platonic Guardians	Alan Greene
Explaining the Universality of Human Rights from Ontological and Epistemological Perspectives	Azadeh Chalabi
Research Methodologies and Methods	**Antonia Layard, Jonathan Sims**
Session Six: Legal Research & Historical Methods	**R1.04**
Winner of the 2014 SLSA Best History and Theory Book Prize	Henry Yeomans
Alcohol and Moral Regulation: Public attitudes, spirited measures and Victorian hangovers	
Sentencing and Punishment	**Gavin Dingwall**
Session Six: (Joint with Criminal Law and Criminal Justice)	**S0.20**
Professor David Ormerod, Law Commissioner	
Sexual Offences and Offending	**Phil Rumney**
Session six	**S0.28**
Paper: Accessible Justice? Rape victimization and psychosocial disability	Vanessa Munro, Louise Ellison and Katrin Hohl
Challenging and redressing police failures in the context of rape investigations – the civil liability route	Joanne Conaghan
Paper: Raping Femininity: Reforming the Law on Rape in England and Wales	Siobhan Weare
Sports Law	**Simon Boyes, John o'Leary Ben Livings and David McArdle**
Session Six: On-Field Interventions	**R0.14**
Concussion and Brain Injury in Contact Sport: Legal Implications	Jack Anderson

Injured athlete or crime victim?	Louise Taylor
Legitimate Limits of the Application of the Criminal Law in Sport	Simon Boyes
Exploring Legal Borderlands: Empirical and Interdisciplinary Approaches	**Naomi Creutzfeldt and Petra Mahy**
Session Six: Corporate Banking	**S0.19**
Legal Transplants and Local Contexts – the Troubled Case of Afghan Banking Reform	Michael Leach
Creditors' priorities in insolvency proceedings: a contribution to the theories of institutional complementarities	Federico Mucciarelli
Corporate Social Responsibility and Development: a Socio-Legal Approach	Renginee Pillay
Refugee and Asylum Law: Theory, Policy and Practice	**Dallal Stevens**
Session Six: Who is a refugee?	**S0.11**
'The tale of two men: Testimonial styles and presentation of asylum claims'	Forough Ramezankhah
'Refugees and migrant workers? LM, AA and MA (Syrian Nationals) v Russia'	Agnieszka Kubal
'Examining Article 1 if the 1951 Convention relating to the Status of Refugees: Does it go far enough?'	Olayinka Lewis
International Economic Law: Governing Markets in Context	**Celine Tan, Guiliano Castellano and Stephen Connelly**
Session Six: International Investment Law II	**S0.17**
Power and Contract in International Investment Law: The Dynamics of Investor-State Arbitration	Edward Cohen
TTIP-ing Nanotechnologies? (Unwanted) Implications of the Investor-State Dispute Settlement Chapter and Chemical Chapter	Daria Davitti
Investment in Human Rights: Defragment or Reboot?	Aurora Voiculescu
Law Politics and Ideology	**Andrew Gilbert and Graham Gee**
Session Six: Law under control; law as control	**R2.41**
Law & 'Counter-law': Regulating surveillance out of the shadows?	Rebecca Moosavian
Social citizenship in the devolutionary state: a clash of law and politics? Some initial findings	Mark Simpson
The 'English Question': Regionalism, Federalism and the Electoral Politics of the UK	Wilson
Law Enforcement, Regulation and the Use, Abuse and Control of Information	**Richard Hyde**
Session Six: Whistleblowing	**S1.14**
Empowering the Vulnerable to Speak Up: The migrant worker as whistleblower	Ashley Savage and Ian Fitzgerald
Whistle while you work: effective data sharing and protection of the vulnerable	Helen James
The Halfway House is Only Halfway Built: Towards a Fit-for-Purpose Understanding of 'Prescribed Persons' in the Public Interest Disclosure Act	Richard Hyde
Transitions from Conflict: The Role and Agency of Lawyer	**Anna Bryson**
Session Six:	**S0.10**
Lawyers, the CCRC and Dealing with the Past in Northern Ireland	Hannah Quirk
General problems of the post-national human rights regime and its socio-legal implications in the case of the crimes committed during the Spanish Civil War and Franco's Dictatorship	Ainhoa Martinez

Session Seven: Thursday April 2nd 10.00-11.30

STREAM/THEME	CONVENERS Author(s)
Access to Environmental Justice	**Gita Gill, Susan Wolfe and Sammy Adelman**
Session Seven	**S1.66**
Addressing the 'drivers' and 'root causes' of environmental and human rights harm within corporate law – a global approach	Stephen Turner
The Freedoms of the Neoliberal Company	Lorraine Talbot
Challenging Ownership: Meanings, Space and Identity	**Penny English, Francis King and Sarah Blandy**
Session seven: Enduring Property Relations	**S0.13**
Panel discussion Sarah Blandy (chair), Susan Bright, Alison Clarke, Nick Hopkins, Sarah Nield.	
Criminal Law and Criminal Justice	**Vanessa Bettinson and Ben Livings**
Session Seven: Policing and Prosecuting	**R0.14**
The Construction of Police Cases in China	Yu Mou
Prosecution policy, centralisation and professional discretion	Laurene Soubise
Prosecuting Hate Crime: Procedural Issues and the Future of the Aggravated Offences	Abenaa Owusu-Bempah
EU Law	**Ian Kilbey and Kathryn Wright**
Session Seven: Environment and animal welfare	**S2.12**
Is the Infringement Procedure Effective? An Examination of Environmental Infringement Cases	Aleksandra Cavoski
The Evolution of EU Animal Protection Law	Stephanie O'Flynn
Improving Animal Welfare by Defining Core Concepts in EU Law	Moa Nässtrom
Family Law and Policy	**Anne Barlow and Annika Newnham**
Session seven: Children's perspectives in the brave new world of family justice	**R1.13**
Mediating children cases: what part is played in the process by parental proposals, by the voice of the child, and by giving paramount consideration to the welfare of the child as set out in the Children Act 1989?	Mavis Maclean
How do children think about 'home' after parental separation?	Belinda Fehlberg and Kristin Natalier
Tides of change and choppy waters: Legal evaluations of local authority social workers' evidence in care proceedings and perceptions of expertise	Ann Potter
Gender, Sexuality and Law	**Chris Ashford and Alex Dymock**
Session seven: Crime 2	**R1.04**
A Gendered Critique of Group Localised Grooming: Masculinity of Offending v. Femininity of Victimisation	Jamie Lee Mooney
Combating Revenge Pornography in the UK: A Feminist Perspective	Ksenia Bakina
Heteronormativity and the inverted relationship between socio-political and legislative approaches to lesbian, gay and bisexual (LGB) hate crime	Marian Duggan
Indigenous Rights and Minority Rights	**Sarah Sargent**
Session Seven: Current Issues for Indigenous Peoples	**S0.11**

Paper: Logic, Scale and Jurisdiction: Critiquing VAWA 2013	Jen Hendry
Paper: . An analysis of indigenous family mediation in Taiwan	Grace Tsai
Paper: Law, Policy & Governance of Indigenous Land Rights in Development Projects	Kinnari Bhatt
The Sami, One People, Four Countries	Snusu Hirvonen-Kowal
Legal Education	**Tony Bradney and Fiona Cownie**
Session Seven:	**S0.28**
Taking prior experience into account when evaluating judicial training: some empirical findings	Diana Richards
Legal Education as a Sub-Discioline of Law and the Quality of Legal Education Research	Anthony Bradney
Training for tomorrow – legal education and training for an evolving legal sector	Julie Brannan & Paul Woodcraft
Medical Law and Ethics	
Session Seven: "Critical perspectives on Transnational Health Law"	**S0.08**
"Peripheral legality: Abortion and the networked state."	Ruth Fletcher
"Global health on the path to constitutionalisation?"	Atina Krajewska
"Staging the nation: Ethnicity, blood donation and terror in Kenya"	John Harrington
Mental Health and Mental Capacity Law	**Peter Bartlett**
Session Seven: Financial Decision-Making and DOLS	**S0.19**
Re-conceptualising Contractual Capacity? An analysis of English Contract Law in light of the UN Convention on the Rights of Persons with Disabilities	Eliza Varney
'The Mental Capacity Act 2005 and legal capacity decision-making: time for a new theoretical terrain?'	Alex Pearl
Addressing the Bournewood Gap in Scotland	Jill Stavert
The Way Forward for DOLS: What is it that we Want?	Peter Bartlett
Sports Law	**Simon Boyes, John o'Leary Ben Livings and David McArdle**
Session Seven: Law & Sport Self-Regulation	**S0.20**
How Open is Open Enough? Competition Law and the New Hybrid League Structure	Salil Mehra
Financial Fair Play and competition law: evidence of a new EU sports policy?	Tom Serby and John O'Leary
The Proportionality Principle in Judicial Scrutiny of Sports Governing Bodies: A Critical Appraisal	Simon Boyes
Systems Theory Thinking, Law and Society	**Tom Webb**
Session Seven:	**S0.17**
'International Law applied to Trans-boundary waters: An Autopoietic approach.'	Kenneth Kang
'Autopoiesis, vulnerability and asylum in the United Kingdom'	Tom Webb
Private International law	**Emma Roberts**
Session Seven:	**R1.03**
The Continuing Evolution of Habitual Residence'	David Hill
A blessing in disguise - International traffic accidents and insurance'	Christopher Bisping
State versus minority groups: Can equilibrium on gender equality be reached?	Naheed Ghauri
International Economic Law: Governing Markets in Context	**Celine Tan, Guiliano Castellano and Stephen Connelly**

Session Seven: Panel 6: International Trade	**R3.41**
World Trade Organization and Subsidies in the Renewable Energy Sector	Paola Davide Farah
Assumptions in WTO Law: WTO Accession of Non-Market Economies,	Dylan Geraets
Rethinking Assumptions: Interrogating the Scope of 'Food Security' in International Economic Law	Fiona Smith
Intellectual Property Law	**Jasem Tarawneh**
Session Seven	**S0.18**
Social networking and Data Protection Issues Revisited 2015	Rebecca Wong
India - The Local Self Of The International	Amaka Vanni
Politics of Voluntary Licensing on Pharmaceutical Patents: A Preliminary Discussion	Yuan Qiong Hu
Does the Artists' Resale Right benefit visual artists?	Anthony O'Dwyer
Law Politics and Ideology	**Andrew Gilbert and Graham Gee**
Session Seven: The changing landscape of law and reform	**R1.15**
: Politics and the Law Commission: Law reform as the policy-making lawyers are allowed to do	Richard Percival
(Neo)Liberalism and Legal Aid: an analysis of the effect of ideology at institutional level	Lucy Welsh
Governing Through Taxation? A Historical Study of Alcohol Excise Duties and Behavioural Regulation	Henry Yeomans
Law Enforcement, Regulation and the Use, Abuse and Control of Information	**Richard Hyde**
Session Seven: Information Sharing I	**R2.41**
Clare's Law' under the spotlight: The 'politics of public protection' in the promotion of a 'risk information' Disclosure Scheme'	Jamie Grace
The power of diversity data: a nudge in the right direction through voluntary benchmarking	Richard Collins and Laura Holloway
Auditors and Information Sharing: An Initial Exploration	Catriona Hyde

Session Eight: Thursday April 2nd 12.00-13.30

STREAM/THEME	CONVENERS Author(s)
Access to Environmental Justice	**Gita Gill, Susan Wolfe and Sammy Adelman**
Session Eight	**S1.66**
Interrogating Growth: the inefficiency principle	Janet Dine
Water Poverty, Sustainability and Human Rights: Re-balancing the Economics of Water Service Provision	Claire McCann
Developing sustainable and socially responsible supply chains through public procurement	Opi Outhwaite and Olga Martin Ortega
Challenging Ownership: Meanings, Space and Identity	**Penny English, Francis King and Sarah Blandy**
Session Eight: Fragmentation of Property Rights	**S0.13**
Legalising Property and Alternative Property Practices: Post-Mao China as a Case Study	Ting Xu
Bare Land Condominium and the Spread of Propriety Residential Associations in British Columbia	Douglas Harris and Guy Patterson
Challenging the Legal Conception of the First Legal Mortgagor	Lisa Whitehouse
EU Law	**Ian Kilbey and Kathryn Wright**
Session Eight: Movement of Persons	**S2.12**
Is Free Movement Subverting Democracy?	Vesco Paskalev
The View from Bradford: A response to the European Commission's Study on Mobility, Migration and Destitution in the European Union, 2014	Edward Mowlam
A comparative UK and Polish study of the European Arrest Warrant: Does reform of the EAW need to come from individual Member States or are changes needed to the EAW as an instrument?	Gemma Davies & Katarzyna Andrejuk
Family Law and Policy	**Anne Barlow and Annika Newnham**
Session Eight: Family Law and Policymaking	**R1.13**
Paper: Lessons from a Letter to a Child: Family Law and Policy during the First Thatcher Government	Andrew Gilbert
Marital Property Agreements and Public Policy: A Fragmented Evolution	Marie Parker
"Putting families at the heart of government"?: Family Tests, Policymaking and Degrees of Judgement	Alex Masardo
Gender, Sexuality and Law	**Chris Ashford and Alex Dymock**
Session Eight: Sex, Legitimacy, Governance	**R1.04**
Reparative/Conversion Therapy, Religion, and Regulating Psychotherapy: diversity, rights and inclusion	Rob Clucas
Concealment of birth: what are we punishing?	Emma Milne
Same-Sex Male Social Dating and Encounter Networks: Identity Formation and Protection	Chris Ashford and Kevin Brown
Indigenous Rights and Minority Rights	**Sarah Sargent**
Session Eight: Current Issues for Minority and Indigenous Rights: Language and Culture	**S0.11**
Access to Justice in Ireland for Limited English Proficiency Persons	Maria Silva,
The Question of Cultural Genocide	Snusu Hirvonen-Kowal
Legal Education	**Tony Bradney and Fiona Cownie**

Session Eight	**S0.28**
Claire Palley, the U.K.'s first woman law professor: a legal landmark'	Fiona Cownie,.
Socrates v PowerPoint [2015] SLSA 1: A Reflection upon Ancient and Modern Techniques for Law Teaching in the 21st Century	Maeve Hosier
DIRECTIONS OF LEGAL EDUCATION	Isabel Garrido Gomez
Medical Law and Ethics	
Session Eight	**S0.08**
"Liability and compensation for mishaps in clinical trials involving pregnant women and their foetuses."	Maria Sheppard
"Could advances in neuroimaging lead to a duty to manage pain proactively in minimally conscious patients?"	Stephanie Pywell
Sports Law	**Simon Boyes, John o'Leary Ben Livings and David McArdle**
Session Eight: Perspectives on Sports Law	**S0.20**
Horses for Courses: A Socio-legal Discourse on Non-Human Athletes and Doping Regulation	Jonathan Merritt
Critique of the purpose and effectiveness of FIFA's prohibition on the international transfer of minors from a children's rights perspective	Eleanor Drywood
What Gramsci Says: Sports Law, Regulation and Cultural Hegemony.	John O'Leary
Systems Theory Thinking, Law and Society	**Tom Webb**
Session Eight:	**S0.17**
''What really happened?' A systems theory approach to legal constructions of 'the facts''	Adrienne Barnett
'Does Crime Pay? A Systems Perspective on Civil Recovery'	Jen Hendry and Colin King
'Autopoietic empiricism for research on climate change adaptation	Irene Bullmer
'Global health on the path to constitutionalisation?'	Atina Krajewska
International Economic Law: Governing Markets in Context	**Celine Tan, Guiliano Castellano and Stephen Connelly**
Session Eight: Challenging International Economic Law	**R3.41**
Does the Invisible Hand have Green Fingers, or Would International Economic Law be viable International Environmental Law?	Paul Anderson
The Rights Resurgence, Social Movements and Post-War Capitalism	Radha D'Souza
What the World Needs Now is….Corruption	George Meszaros
Law Enforcement, Regulation and the Use, Abuse and Control of Information	**Richard Hyde**
Session Eight: Information Sharing II	**R2.41**
Information about information law and the effects of its release and restriction	Judith Townend
Share and share alike? Trust, anonymisation and data sharing	Marion Oswald and Helen James
Liberty, Security and the Permanency of Information in the Governance of Risk: Catt in the Supreme Court'	Jamie Grace

STREAM/THEME	CONVENERS	Author(s)
Access to Environmental Justice	**Gita Gill, Susan Wolfe and Sammy Adelman**	

Session One

From Theory to Practice in the Ecological Civilization Discourse : China's Endeavor in a Global Concern

Paolo Davide Farah

« Ecological Civilization » is one of the core concepts of Chinese politics today. Since 2007, when Hu Jintao promoted this concept of « Shengtai wenming » during the XVIIe congress of the Chinese Communist Party, this idea has been widely spread in Chinese Politics and Scientific Fields as one of the main target of this Nation. If we refer to the XIIe five years plan adopted in 2011, it seems very clear that Chinese Politician has decided to enroll China in a new stage of development based on the principles of an eco-civilization. Two arguments, or general reasons are given to sustain this new development: on one hand the actual situation of China, and on another hand its Tradition.

What could it be to live within an Ecological Civilization? And first of all, what could it mean? Aren't those two words « Ecological » and « Civilization » put together a contradiction? The notion of civilization goes with those of development and progress, and is currently opposed to the notion of wilderness or barbarism. Humankind became civilized by associating to each other and building tools, communities, arts, rules, beliefs. Humankind became civilized by overwhelming the dangers of nature, buy overtaking their weak condition thanks to the engineering of their brain and to the faith in their own power. What should « ecological » be added to the notion of our achievement? What's wrong with « civilization »? What could be the necessity of this new conception?

This paper wants to describe and evaluate what is an « Ecological Civilization », or what it could be, in China, and in the Global World. First of all, on a conceptual point of view: what does the expression « Ecological Civilization » means in the « Western World » and in China? What are the key concepts and epistemological foundations of such a conception? Secondly, on a practical point of view: what has been done and what is being done in the West and in China to settle and implement an Ecological Civilization? What are the political practices, policies and rules that have been created to answer this need? Thirdly, what are the main problems that interfere in the building of such a new model? And mainly: How is it possible to articulate economical growth and ecological civilization?

Regulating Oil Multinational Corporations in Nigeria: A case for the African Union?

Eghosa Ekhator

Multinational corporations (MNCs) have been accused of engaging in environmental injustices in Nigeria. A major problem is the inability of Nigerian laws to adequately regulate the activities of MNCs. This presentation will argue that the African Union mechanisms can be a basis of regulating MNCs in Nigeria and invariably enhancing environmental justice in the country.

MNCs can be regulated via international (soft) law, host and home countries. This paper will focus on the potential of using the African Union mechanisms as one way of regulating the activities of oil multinational corporations in Nigeria. This paper will divided into six sections. The first part will briefly highlight the oil and gas industry and its impacts on the Niger Delta where it is located. The second part of the paper will dwell on the international regulation of MNCs. Here, some of the extant soft law measures 'regulating' the activities of MNCs will be in focus. The third part of this paper will focus on the various laws that regulate the activities of oil MNCs in Nigeria. The fourth part of the paper will dwell on the African Union measures that can be used to 'regulate' the activities of MNCs in Nigeria. The measures in focus will include the African Charter on Human and Peoples Rights, Treaty Establishing the African Economic Community, Convention on the African Energy Commission and the New Partnership for Africa's Development (NEPAD) amongst others. The fifth part of the paper will advocate for some recommendations to improve MNCs regulation by the African Union. The last part of the paper will be the conclusion.

This paper will argue that the AU mechanisms can be the basis of promoting environmental justice in Nigeria

Session Seven

Addressing the 'drivers' and 'root causes' of environmental and human rights harm within corporate law – a global approach

Stephen Turner

This paper considers ways that the law could be reformed in order that corporations become legally predisposed to benign outcomes in terms of their impacts upon the environment and people's associated human rights.

It maps out the global legal architecture that has developed in jurisdictions around the world over the last two centuries, which has facilitated the unique success of the 'corporation' as a medium for business enterprise. However, it focuses on the deficits within corporate law which arguably predispose corporations to potentially become agents of environmental degradation and the exploitation of vulnerable individuals and communities in terms of their human rights. It especially considers why the law has developed in the way that it has on a global scale and uses those lessons to posit the manner in which it could be reformed.

As such this paper is forward looking and takes a problem-solving approach to the existing global legal architecture. Nevertheless, it takes into account the strengths and weaknesses of existing approaches that have been developed to address the negative manifestations of corporate activity.

In considering the pathways that need to be created to develop a reformed legal framework of environmental and human rights responsibilities for corporations, this paper summarises new research that proposes concrete steps that could be taken in this regard. It therefore considers recent proposals which include the reform of directors' duties and the creation of an 'International Corporation Registration Body' which would require compliance with prescribed international standards. Finally it comments on the steps that would be required to achieve such major changes in the law.

The Freedoms of the Neoliberal Company

Lorraine Talbot

As an organisational form the company has efficiently enabled the principal capitalist aim of surplus value extraction. In the earliest period of capitalism the company was limited by, inter alia, technological and infrastructural development which contained the reach of surplus value extraction. The extraction of surplus was, for example, largely contained within nation states. Polices have also contained surplus extraction. In the decades proceeding the Second World War national and international policies sought (or were forced to seek) ways to moderate the exploitative orientation of capitalism, so as to achieve stability and some social equality. However, the later reassertion of market ideologies, beginning in the UK and US and shaped by the particular ideology of neoliberalism has reconfigured the company as an organisation whose only aim is to extract value for shareholders regardless of any negative externalities. In seeking out value, the neoliberal company is free from many of the developmental constraints of nineteenth century liberal capitalism. In particular the neoliberal company can negatively impact on the environment of people across national borders while enjoying a legal detachment from responsibility for its actions. This paper discusses how the neoliberal company operates and what must be done to contain it.

Session Eight

Interrogating Growth: the inefficiency principle

Janet Dine

This paper recognises that growth cannot be unlimited because growth means emissions; we know that the planet is warming and anthropogenic emissions are implicated. We know from the Intergovernmental Panel on Climate Change (IPCC) reports that even now there is 'high confidence that neither adaptation nor mitigation alone can avoid all climate change impacts' yet companies and economists believe that growth should be a high priority. Sustainability for blind growth is an oxymoron in a finite planet. Drawing on the work of thinkers like the Skidelskys, How Much is Enough? Allan Lane, 2012, Tim Jackson, Prosperity Without Growth, Earthscan, 2009, Donella Meadows, Jorgem Randers and Dennis Meadows, Limits to Growth, Earthscan, 2010, Kate Raworth Why Growth is not Enough, RSA 2014 and Rob Dietz and Dan Neill Enough is Enough, Berrett-Koehler, 2012 the paper seeks to argue that one key contribution for a green revolution is to radically transform corporate governance and the neo-liberal contractual model of companies. It is not enough to tinker on the edge of corporate governance; multinationals should be stripped of their subsidiaries, stopping jurisdictional arbitrage. The system of subsidiaries was only invented in 1888-94, this system can be reversed allowing much more control over large enterprises which would be accountable in one jurisdiction. Looser structures of enterprises (such as franchises) should also be accountable in one jurisdiction. A strong arms-length principle, which was mandatory, could stop fake transfer-pricing transactions and there would be more transparency in the enterprise. The political will might be found since even powerful countries are finding that their tax receipts are falling because many MNEs do not pay taxes. Commercial ventures should have a cap for profit and dividends like Community Interest Companies.

Water Poverty, Sustainability and Human Rights: Re-balancing the Economics of Water Service Provision **Claire McCann**

The connection between environmental sustainability and economic viability of water use is one which has profoundly shaped the discourse of water service provision at a national and international level. The use of the market and commodification has become the dominant means of assuring access to water, but this model does not adequately address the reality of water poverty and the impact this has on the lives of poor and vulnerable households and communities. The environmental movement has influenced this increasingly marketised approach to water service provision, by emphasising the relationship between recognition of water as an economic good and sustainable water use. There are good reasons to be concerned about sustainability of water supply; over the last fifty years, the global population has doubled, but the demand for water has more than quadrupled. This increase is due to economic development, industrialisation and changes in agriculture and food production markets globally and the response has been to marketise water use to ensure that water is recognised as precious and limited resource. The tension within this model is that it situates small scale household water users in the same economic framework as industrial, business and agricultural users and fails to recognise the detrimental impact that the commodification of water and water poverty can have particularly on poor households and individuals.

The recognition of the human right to water presents an alternative model for valuing water. Reframing the sustainability model through the human rights lens changes the focus away from prioritising economic costs and places the human experience of at the core of any water service provision. This paper will argue that the environmental movement needs to align with the human rights model and embrace the human right to water as core tenet of water service provision in order to address water poverty and assure sustainable water supply now and for future generations.

Developing sustainable and socially responsible supply chains through public procurement **Opi Outhwaite and Olga Martin Ortega**

In sectors operating in international markets the production of goods often takes place in the context of multi-tiered global supply chains. Global sourcing and relocation of factories is common and a single product may contain resources and work carried out by several companies and in multiple countries. A number of difficulties with the governance of global supply chains have been recognized and their operation has, for a number of sectors, been associated with poor environmental, health and safety standards and with human rights abuses. The increasing profile of concerns and failures in these areas and pressures on corporations to recognize responsibilities throughout the supply chain point to a need to develop new and more effective means to achieve sustainable and socially responsible global supply chains.

Public procurement offers a potentially valuable contribution to the search for strategies to improve supply chain conditions. Public bodies are significant consumers of goods and public procurement spending represents a considerable proportion of GDP in many countries. The buying power associated with public procurement contracts means that they hold the potential for significant leverage in human rights and sustainability issues. The potential use of public procurement contracts to address such issues within the context of global supply chains (rather than domestically)is however relatively under-developed and little attention has been given to legal (rather than voluntary) options for doing so.

This paper critically examines the potential for public procurement as a tool to achieve sustainable and socially responsible supply chains. The paper first considers environmental and labour conditions that have been identified in the context of given supply chains. Second, the paper critically assesses

the extent to which the recently revised EU framework for public procurement, specifically Directive 2014/24/EU, permits the use of public procurement contracts to promote environmental and social considerations along the tiers of global supply chains. Options at each stage of the procurement process are considered. Finally the paper suggests options for the incorporation of supply chain considerations in public procurement contracts and discusses the possible scope and reach of such options in relation to identified supply chain problems.

Administrative Justice **Richard Kirkham**

Session One: **Title: Administrative Justice through the courts**

Recent Developments in Tax Law on the Doctrine of Ultra Vires **Stephen Daly**

The Achilles' heal of the legitimate expectations doctrine is the ultra vires concept: that an expectation lacks legitimacy where it requires a public body to act outside its statutory powers. However, recent HMRC actions suggest that this may not strictly be so. In essence, HMRC will give effect to unlawful representations in limited exceptional circumstances. That HMRC ought to do so is largely beyond dispute. What must be questioned however is the basis upon which they are so doing. This piece seeks to elaborate on this initial proposition and is accordingly divided into two parts. The first details the orthodox position, which suggests that unlawful representations cannot give rise to legitimate expectations, as well as the academic and judicial responses to this issue. The second part explores, and thereafter critiques, the evidence of HMRC effectuating unlawful representations. The former provides not only the background and context for the latter discussion, but also provides a theory to explain HMRC's approach.

The Dano Case – A Landmark Case? **Kirsten Ketscher**

The right for EU-nationals to export social benefits or to be eligible for social benefits in another member state, although they have not contributed to this state or have any particular kind of association to this member state, is high on the political agenda. Social security and social welfare rights have consequently been questioned in several EU-countries especially in UK and Denmark. An ECJ case on this issue: the Dano Case 333/13 was the first of its kind as to the extension of social EU rights. It was decided in November 2014. In this case a non economically active Romanian national, residing in Germany, applied for minimum income benefit for herself and her minor son, born in Germany. The case and has been called a landmark case. Is it a landmark case? How does this case comply with the anti-discrimination principles in the Treaty, Charter, Social security regulation 883/04, residence directive 2004/38 and past ECJ-practice? What questions were asked? And what answers given by the Court? Did the German court get the answers they were looking for?

Session Two: Title: The boundaries and accountability of administrative justice

THE CHANGING BOUNDARY BETWEEN CRIMINAL JUSTICE AND ADMINISTRATIVE JUSTICE: THE CASE OF SANCTIONS **Michael Adler**

The criminal courts used to have a monopoly in the imposition of sanctions but there is now a mixed economy in which criminal sanctions coexist with administrative sanctions and welfare sanctions. Moreover, the number of fines imposed by the criminal courts has, in recent years, been dwarfed by the number of parking fines imposed by local authorities and, even more recently, edged into third place by the number of welfare sanctions imposed on unemployed and long-term sick and disabled people by the Department for Work and Pensions. This paper describes the changing landscape of sanctions in the last 10 years or so in the UK. One important difference between criminal sanctions on the one hand and administrative and welfare sanctions on the other is that the imposition of a criminal sanction is preceded by adjudication, i.e. by a process in which the person who receives a fine has pled guilty or been found guilty by the court. This is not the case with administrative or welfare sanctions which are imposed unilaterally by traffic wardens or DWP staff. Another important difference is that those who are subject to administrative and welfare sanctions can challenge them by making a complaint to the authorities and, subsequently, by appealing to a tribunal, while those who are subject to a criminal sanction cannot do so. The paper compares the logic underlying criminal, administrative and welfare sanctions; examines whether each of the three types of sanction is 'fit for purpose'; and assesses the implications of the changing landscape for justice.

"Leave your club jersey at the committee room door": Irish Parliamentary accountability systems in the shadow of the Banking Crisis **Fiona Donson**

The Irish state has struggled to develop effective parliamentary systems to achieve accountability at central government level. This is an ongoing problem; however it is one which has received a renewed focus in the wake of the 2008 banking crisis which highlighted acute oversight and accountability failures in the state. Yet renewal of Oireachtas systems has not been straightforward. In 2011 the Irish people rejected the 30th amendment designed to empower the Oireachtas to hold Parliamentary Inquiries. As a result in 2013 new legislation was passed to provide for a variety of inquiries designed to provide accountability and information gathering mechanisms. The first test of this renewed inquiry structure is the recently initiated Banking Inquiry.
In considering these efforts at accountability renewal, this paper will consider the operation and potential of the current Banking Inquiry in order to examine the context within which Oireachtas inquiries operate. It will also highlight the public's (and judiciaries) deep-seated distrust of politicians to fairly and effectively carry out their role and the structural undermining of inquiries by the Irish administrative law system's fixation with constitutional (natural) justice.

Session Three: Title: Questions on the ombudsman enterprise Chair: Richard Kirkham

The Prisons and Probation Ombudsman and Holding Persons to Account following a Death in Prison Custody in England and Wales: A Critical Analysis **Christopher Sargeant**

In recent years, significant attention has been spent considering why so many deaths occur in prisons in England and Wales and how to prevent them occurring hereafter. This paper conversely analyses how persons are held to account following such deaths and whether one particular mechanism that exists for this task, namely the PPO, is structured, organised and operates as effectively as possible. To do this, the work of the PPO is analysed against a modified assessment tool originally developed by Bovens et al to determine how far its investigations advance any of the four underlying purposes identified behind holding persons to account, namely the public oversight purpose, the abuse of power purpose, the learning purpose and the catharsis purpose. These results are then contrasted with the stated aims of the PPO in conducting this role to examine how effectively it meets in practice the aims it states it intends to achieve in theory. Whilst undoubtedly preferable to the previous system of essentially internal oversight, the effectiveness of the PPO in this regard is nonetheless questionable. Whilst its investigations do seemingly encourage wider public healing, they appear less effective at advancing the other purposes identified. These concerns are further amplified given that the primary aims of the PPO in such cases are precisely to conduct independent investigations into deaths in prison custody, to correct any injustices which arise therefrom and to identify learning opportunities to prevent equivalent deaths occurring thereafter. The PPO thus fails not only to effectively hold persons to account following a death in prison custody in a general sense, but also to fulfil even those specific goals it was specifically created to achieve.

Taking stock: what is the private sector ombudsman model? Carolyn Hirst, **Chris Gill and Carolyn Hirst**

Ombudsmen began life as a public sector institution dealing with grievances between citizens and state. As they migrated into the private sector, so the functions and processes of the institution were adapted to a new context. The discrete private sector ombudsman model that emerged has continued to evolve in its own distinct direction and has become influential in shaping public notions of the ombudsman institution more broadly. As further and extensive change is now being driven by the European Union's Consumer ADR Directive, it is timely to take stock: how have private sector ombudsmen developed and what is their current model? Based on a small interview study, this paper delineates key features of the private sector ombudsman model and begins working towards a definition. The paper concludes by exploring the significance of these developments for administrative justice and the work of public services ombudsmen.

The use of informal resolution approaches by ombudsmen in the UK and Ireland: A mapping study **Margaret Doyle and Varda Bondy**

The use of informal and early resolution techniques by ombudsmen and other complaint handlers is an under-studied area but one which is gaining importance in light of several developments in the field of administrative justice generally, and the European Union ADR Directive, to be implemented in 2015.

Our study presents the findings of an empirical research project, funded by the Nuffield Foundation, designed to produce a descriptive mapping study on the use of informal resolution by ombudsmen. Specifically the aims were to:

- identify and map the informal resolution approaches used by ombudsmen and other complaint handlers in the UK and Ireland;
- ask what is, or might be, best practice in relation to this aspect of ombudsman work; and
- contribute to a greater understanding of the current ombudsman 'brand'.

The focus of our study was on the use of informal resolution approaches as alternatives to investigation and determination/decision. Our findings set out an analysis of the responses received from 48 of the 52 ombudsman and complaint-handling organisations in UK and Ireland that are (or were at the relevant time) members of the Ombudsman Association. In addition to the descriptive value it has in its own right, this study provides a solid foundation for future research on the ways by which ombudsmen resolve disputes.

Session Four: **Title: Empirical studies on administrative justice** **Chair: Richard Kirkham**

Homelessness Internal Reviews: Comparisons and Contrasts since 1997 **Dave Cowan, Simon Halliday, Caroline Hunter and Abi Dymond**

Since 1997, every few years, we have been conducting questionnaire based research of local authorities's engagement in the internal review process of homelessness decision-making under the Housing Act 1996, Part 7. We now have a considerable dataset, which highlights consistencies and contrasts in the ways in which local authorities conduct the process, the subject-matter, and outcomes of the process.

Our consistent concerns have been that the Government does not collect this data (because it falls between two departments of state) and, equally significantly, apparently similar local authorities have widely differing numbers of internal review requests. We cannot answer this as such through our dataset but the problem can clearly be established, as can other matters - for example, we raise the question as to whether matters which have been constantly before the Court of Appeal on second appeals are reflected as significant issues in our dataset.

Bureaucratic Legal Consciousness and Government Officials' Moral Ideals: The Role of Truth Verification and Information Processing in Affecting Bureaucratic System Goals and Substantive Justice **Sally Richards**

This paper, part of a broader study, considers the decision-making ideals that structure bureaucratic legal consciousness. It focuses on two ideals that inform bureaucratic legal consciousness: truth verification and information processing; unearthed in an empirical enquiry conducted in the Refugee Review Tribunal of Australia. In doing so, the paper provides background to the manner in which truth verification and information processing were idealised and how these idealisations structured the government officials' legal consciousness. It outlines that in moments of expressing the realist view that truth attainment was a possibility, decision makers were sceptical of the role of law as central to decision making, expressing conjoined beliefs in the importance of uncovering the objective reality of the applicant's situation and the fallibility of law in achieving this goal. On the other hand, anti-realist sentiments that denied the possibility of objectively verifying the applicant's situation were expressed in conjunction with favourable views towards the capacity of law to direct good decision-making. These anti-realist sentiments reflected a clear prioritisation of the value of information processing over truth verification. Employing Jerry Mashaw's well known framework in Bureaucratic Justice to shed light on bureaucratic system goals, it goes on to argue that bureaucratic information processing cannot achieve the system goals that bureaucracy sets out to achieve, and further, that it comes little way in producing substantive justice for the applicant. The paper concludes that truth verification might be preferred over idealisations of information processing for both the production of bureaucratic stability and innovation and the pursuance of substantive justice for the applicant.

Session Five **Title: Crisis in the administrative justice system and Kickstarting research** **Chair: Michael Adler**

Roundtable discussion on the current predicament of administrative justice.

Kickstarting research: About the UK Administrative Justice Institute **UKAJI (Margaret Doyle and Andrew Le Sueur)**

The UK Administrative Justice Institute (UKAJI) is a new initiative established to kickstart the expansion of research in administrative justice. Its aims are to:

- create links between the policy, practice and research communities;
- develop a coordinated research agenda; and
- identify and tackle capacity constraints.

Public bodies make millions of decisions each year that affect the rights and interests of individuals. The administrative justice 'system' encompasses the procedures and law of such decision-making as well as the mechanisms for resolving disputes between individuals and public bodies.

Despite the importance of administrative justice, there has been comparatively little sustained empirical research on the operation of its mechanisms. Areas in need of research include encouraging early decision-making, the efficiency and effectiveness of the 'system', feedback, access to justice and enforcement and outcomes. Funded by the Nuffield Foundation for three years, UKAJI is independent, broad based and cross-disciplinary. It will review research literature on administrative justice, identifying gaps and potential future research; develop a searchable database of researchers working in the field; organise inter-disciplinary workshops throughout the UK; engage early-career researchers; and improve the availability of information on administrative justice to both researchers and other stakeholders. The project is run by the University of Essex, led by Professor Maurice Sunkin, and the core team includes Professor Andrew Le Sueur and Senior Research Fellow Varda Bondy, with Senior Research Officer Margaret Doyle. The wider core team includes academics, researchers, and practitioners from across the UK and across disciplines. The presenters are from the core team. This session will give an overview of the project and its workplan and invite discussion and ideas from participants. In particular the presenters will invite participants to discuss how they would use the project and what resources would help them in their work.

Art, Culture and Heritage **Janet Ulph and Charlotte Woodhead**

Session Three: CULTURAL HERITAGE: RIGHTS, REMEDIES AND THE ROLE OF THE STATE

Is there a need for an Arbitration Institute to facilitate Alternative Dispute Resolutions in the Art World? **Mounia Chadlia**

This paper evaluates the possible creation of an international arbitration institute specialized in disputes related to art and cultural heritage. It states the special feature of art and cultural heritage law and points out the difficulties that domestic courts have when they have to judge a case. It shows how alternative disputes resolutions methods are the most suitable means to solve disputes related to art and cultural heritage and how the solutions at stake are disparate and decentralized. It aims to point out different needs to improve the resolve of disputes related to art and cultural heritage and list the functions that an independent exclusive body should handle that go beyond the mere administration of alternative dispute resolutions

State Responsibility for the Breach of International Cultural Heritage Obligations - **Andrzej Jakubowski**

Although state responsibility lays in the heart of the entire international legal system, its many aspects are still obscure and highly debatable. In fact, this area of international law, lacking a comprehensive treaty codification, is subject to a constant process of evolution. One of the crucial difficulties refers to bilateralism v. community interest approach. According to the first one, the law of state responsibility governs when and how a State is held responsible for the breach of an international obligation against an injured State, and determines legal consequences of that violation. A community interest awareness, reflected in the 2001 ILC Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), also concerns the consequences of grave breaches of obligations vested to the international community as a whole (including the violation of peremptory norms). Thus, the question arises whether and within which limits so-called 'third States' are entitled to remedies for such violations. Moreover, if certain remedies are legitimate and available, how could they be effectively imposed? In such a context, this paper discusses the issue of international responsibility for wrongful acts against cultural heritage. Its protection is nowadays more often seen as an important element of the human rights regime and thus constitute an obligation erga omnes. First, it explores whether such wrongful acts may create 'secondary' obligations as being owed to the international community as a whole, and discusses the right to take countermeasures. Second, it deals with the fate of such obligations in cases of state succession and/or extinction of states held responsible for the breaches. In the latter instance, the paper critically discusses the recent works by the Institute of International Law (State Succession in Matters of State Responsibility) undertaken within the framework of its 14th Commission. Thus, the core objective of this paper is to analyze to what extent the current regime of state responsibility provides adequate replies to grave violations of international cultural heritage obligations

Art, Culture and Heritage Post-Conflict and Divided Societies: A Minority Rights Perspective — **Elizabeth Craig**

This paper will examine the extent to which discourse on the interface between art, culture, heritage and law has featured in the work of the bodies responsible for the monitoring of developing European and international minority rights standards. It will focus in particular on the extent to which relevant recommendations and developing interpretations of relevant rights provisions have focused on the role of cultural institutions and cultural events in promoting the aims of relevant instruments. These include the Council of Europe's Framework Convention for the Protection of National Minorities, the Preamble of which refers to 'the creation of a climate of tolerance and dialogue ... necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society'. The paper will explore how this aim has been promoted, focusing on particular challenges to the realisation of cultural rights as human rights in post-conflict and divided societies, and ways of moving beyond these.

Session Four: ART AND HERITAGE: CONCEPTS AND RESPONSES

Economies of permitted images: exploring the justification for the ban on photography in courts — **Linda Mulcahy**

This paper considers the controversial role that the photograph has played in transforming the production, management and consumption of modern legal spectacles. More specifically, it looks at debate surrounding the ban on the taking and publication of photographs of the trial that has been in place in England with the passing of the Criminal Justice Act 1925. It considers why press photography in courts, rather than depictions of trial scenes in sketches, fine art and text was singled out for special regulatory attention. It is argued that this topic is worthy of much more attention than has been paid to it by lawyers or art historians to date, and that existing accounts have largely failed to consider the broader implications of the prohibition for the politics of representation in the society of the spectacle.

Drawing on primary and secondary sources, it is argued that the existing literature on the topic has failed to pay sufficient attention to a number of aspects of the story leading up to the 1925 ban. Firstly, it is contended that the number of photographs produced by the press which parliamentarians placed in the category of offensive images has been seriously underestimated. Contrary to assertions that the ban was prompted by the exposure given to seven sensational trials involving murder and divorce this dissertation argues that the ban was just as likely to be prompted by the vast range of more mundane trials that appeared in the popular press. Secondly, it is argued that insufficient attention has been paid to the role of class in current accounts of the ban and the particular threats posed to State control of certain spectacles by the popular press. Finally, it suggests that arguments about the concept of what constitutes good taste have been too readily accepted by existing scholars. By way of contrast it suggests that rather than having an ethical duty not to look upon the misery of others being tried we actually have an ethical duty to look at how law and punishment are administered in our name.

Disabled Dance: Grounding the Practice in the Law of 'Cultural Heritage' - — **Charlotte Waelde, Shawn Harmon and Abbe Brown**

The arts, including dance, have significant social importance. The InVisible Difference project, funded by the Arts and Humanities Research Council, seeks to extend thinking and alter practice around the making, status, ownership, and value of work by contemporary dance choreographers, focusing on disabled dance. This paper considers the socio-economic position of disabled dance against the backdrop of disabled dance's position in our 'cultural heritage'. This is important because both the law and the art-form's social standing will have consequences for its future. First, we offer a legal definition of 'cultural heritage', arguing that disabled dance properly fits into that definition and therefore is entitled to claim the protections and benefits of that capture. Second, we consider the arts (funding) scene, and argue that it, combined with our empirical evidence around disabled dance 'literacy', demands for certain actions to be taken in support of disabled dance so as to secure its place in our cultural heritage.

From Local to World Heritage - — **Sophie Vigneron**

This presentation will focus on the process of identifying national sites for inclusion in the World Heritage List (as created by the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage), in relation to, on the one hand, the criteria of Outstanding Universal Value, Authenticity and Integrity and, on the other hand, the nomination process at a national level. The comparison involves 10 countries: Australia, China, France, Italy, Germany, Japan, Spain, Switzerland, the UK and the US. It will provide an analysis of the legal discourse concerning the Convention at the national level in order to understand the difficulty of developing a coherent policy to submit properties to the World Heritage List. Firstly, it will compare properties on the existing World Heritage List with those on the respective States' Tentative Lists to highlight the differences of policies regarding nominations and the different approaches to submission. Secondly, it will focus on the criteria used to identify sites of international cultural importance (Outstanding Universal Value) at a national level and will analyse laws and cultural policies such as technical guidance that deal with the identification and appropriation of cultural heritage by a State when there is no definition, in most national legislation, of what is of international importance as opposed to national or local importance.

Session Five: SUSTAINABILITY AND RESPONSBILITY

Forgers, Connoisseurs, and the Nazi Past: Van Meegeren and Beltracchi **Christa Roodt**

The accurate authentication and attribution of art can be a complex issue. Ethics, connoisseurship and politics count among the "active ingredients" in the mix. Each one of these factors has a bearing on the speed with which misattribution is revealed and the record set straight. Han van Meegeren's deception reached well beyond his technical skill and ability to predict what the experts would do. Similarly, the deception perpetrated by Wolfgang Beltracchi went way beyond how knowledgeable he was in regard to the work and methods of a very large number of different modern artists. Both forgers and their accomplices turned a political situation to their own advantage. In van Meegeren's case, it was the situation in occupied Holland during World War II. In the Beltracchis' case, it was the sordid cultural policies of the Third Reich, which they successfully incorporated into their plans some 60 years after the war. The successes of both forgers was bound up with the opinions of connoisseurs whose endorsements were actively engineered even if indirectly obtained. The experts were giving and receiving something in return, so that the ethical lines became rather blurred. The extent to which the courts helped to correct the attribution of art works and shed light on the role of the experts in the art market, is evaluated. It is argued that the law could offer stronger support for ethical behaviours in the art market in instances where forgers capitalize on war, turning wartime politics to their personal financial advantage.

Corporate Culture Vultures: Art, Culture and Heritage Goals for Limited Companies - **Colin Moore**

This paper argues for legislation to extent the role that limited companies play in the promotion of art, culture and heritage goals. In particular, it is argued that this could be achieved by the extension of corporate directors' duties, to include such ideals within wider goals of sustainability and corporate social responsibility.

The corporation or company is clearly the dominant legal, social and economic construct within western capitalist society. However, in the UK at least, corporate directors have no mandatory duties to ensure corporations participate in art or cultural projects and, at a general level, to carry out acts of cultural preservation. Indeed, the capitalist imperative to accumulate and the dictates of shareholder primacy, are likely to prevent significant barriers to even the most culturally-minded company directors participating in such projects.

Companies are restricted, alongside other developers, by planning regulations when carrying out development projects, which have provided a level of protection for historically and architecturally significant buildings in a series of Acts of Parliament since 1947. Development projects may also be subject to planning conditions and agreements concerning the public realm, which may include public art, cultural and heritage requirements. Despite these development restrictions and requirements, it is argued that companies need to be compelled to have a wider role in promoting art, culture, and heritage goals even when not engaged in carrying out such development projects.

UK corporate law has recently included wider stakeholder goals in the general directors' duties, described as 'enlightened shareholder values' and embodied in the Companies Act 2006, s.172. However, no specific mention is made of art, culture and heritage goals within these values, which are in any case enforceable only by shareholders and not the wider community. This paper therefore proposes that a new statutory regime should be introduced to remedy these defects in the current Companies Act.

Returning looted cultural assets: the role of enforcement agencies **Janet Ulph**

This paper will discuss the role of the Immigration and Customs Enforcement (ICE) of Homeland Security in the United States in combating the misappropriation or theft of cultural objects. ICE appears to make great efforts to secure just and ethical solutions and to promote the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 Convention). Its work shows that law enforcement authorities may be able to intervene to help those whose cultural assets are taken from them, regardless of whether the victims are state governments, or museums, or private individuals.

Both the USA and the UK are parties to the 1970 Convention. Yet it could be argued that the work of ICE demonstrates a stronger commitment by the USA to the Convention. This paper therefore seeks to draw some comparisons between the UK and USA in relation to their efforts to combat the illicit trafficking in cultural property. Although there are differences in the law, and the resources available to enforcement agencies, this paper will focus in particular upon differing attitudes towards publicity and the use of the media as a tool for deterring trafficking and encouraging the return of looted cultural property.

Session Six: GIVING VOICES TO COMMUNITIES

Child 'Charlie' and King Richard: Contesting the Ancient Dead **Carolyn Shelbourn**

In some jurisdictions, notably in North America and Australasia, the issue of the repatriation and reburial of human remains held in museum collections has been a hotly debated matter between archaeologists and lineal descendants and indigenous groups with close cultural connection to the remains. In 1989 the World Archaeological Congress adopted the Vermillion Accord on Human Remains, acknowledged the need for respect to be paid to the wishes of local communities, living relatives and descendants and groups with a cultural link to the remains about their disposition. In England the matter gave rise to much less debate and few claims for repatriation, and it was not until 2005 that the DCMS published Guidance for the Care of Human Remains in Museums which included policies for determining requests for the repatriation of human remains from museums. This guidance was intended to apply primarily to claims from descendants and indigenous groups, but was also intended to have wider application to repatriation claims.

Principle 3 of the Vermillion Accord provides that respect should be given to the "wishes of the local community and of relatives or guardians of the dead" wherever this is possible, reasonable and lawful. However this can be particularly problematic when those claiming to act in the role of "guardians of the dead" are seeking the 'repatriation' and reburial of the remains of the anciently dead. In recent years there have been a number of cases where pagans, and other interested parties have sought a 'say' in the disposition of the remains of those who died in the distant past and in 2012 the Ministry of Justice published a policy statement of archaeology and human remains which acknowledged that the disposition of excavated remains may be of interest to groups outside the archaeological community.

This paper will consider some of these cases where people outside the archaeological community have asked for a 'say' in the disposition of the remains of those who died in the distant past. In particular it will consider two high profile cases of 'contested' ancient remains in England

• The request for the reburial of the prehistoric child 'Charlie', whose remains are held in the Alexander Keiller Musuem at Avebury
• Decisions on the reburial of the remains of Richard III

It will consider what happened when an attempt was made to resolve issues over reburial by application of the current policy guidelines in the DCMS Guidance in the Avebury case, and by application for judicial review in the case of the remains of Richard III. It will argue that the DCMS Guidance establishes a test which it is very hard to pass where remains are more than 300 years old, and that it appears that judicial review is similarly unlikely to provide satisfaction for those claiming the anciently dead and that given the increasing interest in and contestation of the disposition of the anciently dead, there may be a need to reconsider the issue and the current guidance.

The Horse Culture of "Cowboys and Indians": , Cultural Heritage, Stereotypes and Safeguarding **Sarah Sargent**

The imagery and mythology of the American West is well known through popular films, books, and museum exhibits. "Cowboys and Indians" is an enduring stereotype of a time period from over one hundred years ago. Yet, the horse culture that is popularised by this stereotype is still thriving and evolving, outside of mainstream public consciousness and awareness. This paper has 4 points of inquiry about the horse culture of American Indians and "cowboys" or the "American West":

1. The effects of museums as a point of contact with American Indian horse culture and cowboy "Western" culture
2. The effects of the enduring mythology of the "cowboys and Indians" stereotypes and mythology on safeguarding culture
3. The risk that popular media and other stereotypes in the present day pose to the continued existence of "horse culture" as intangible cultural heritage within specific groups. Popular stereotypes, while creating visibility, can also pose risks to the safeguarding of cultural heritage.
4. Whether the horse culture of American Indian groups and of "cowboys" in the present day can be considered as "intangible cultural heritage" in international instruments, and the effectiveness of safeguarding provisions available in these provisions.

The "horse culture" of cowboys and Indians are each respectively hybrids—created by the contact and confluence of two or more different existing cultures. They were each formed during similar periods in time, and in the same geographic proximity. The paper compares and contrasts these two horse cultures across the four points of inquiry.

Banking and Finance **Clare Chambers (now Jones) and Mary Young**

Session Three: Global banking, regulation and corporate governance

Paper: Hunting for content and scope: long-term interests in the company directors' decision-making processes. **Katarzyna Chalaczkiewicz-Ladna**

One of the reasons for the financial crisis was the focus on short-term interest – the policy to increase the share price whereas long-termism was neglected. This paper examines to what extent the law imposes on the directors in the UK, Delaware and Germany the obligation to take into account the long-term consequences of their decisions.

Long-termism is an intensely subjective notion. It depends on many factors, such as the size of the company, its objectives. This paper critically assesses the content and scope of long-termism in these three jurisdictions. I study the interrelationships between corporate governance mechanisms and put forward a claim that the particular aspects of the corporate governance systems impact on the content and scope of long-termism. Two instruments – shareholder vs. stakeholder debate and the ownership structure of the corporation – are believed to most heavily influence the concept of long-termism. I use them as aids in identifying examples of long-term decision-making and emphasising structural differences in these jurisdictions. First of all, the stakeholder vs. shareholder debate is crucial to ascertain whose interests are paramount in the corporation. In the shareholder orientated jurisdiction, long-termism will be presumably identified with the long-term shareholder value maximisation and in the stakeholder jurisdiction with the long-term interests of various stakeholder groups. Further, different systems of ownership structure emphasise distinct agency problems and tensions in the corporations during the decision-making process. Thus, different ownership structures have a bearing on the company's goals and division of powers within the company.

To conclude, this paper discusses the content and scope of long-termism and provides examples of both long-termist and short-termist decision-making in order to illustrate differences between the countries.

Corporate Failures and Managing Personality Risks in Corporate Governance: The Role of the State. **Ngozi Okoye**

Considering the contractual theory and the philosophical underpinnings of the free market economy, there are arguments against State intervention in the organisation of corporate affairs, except in the most minimal extent required for the basic functioning of companies. However, in view of the peculiar nature of public listed companies as entities which are funded by the public and the need to foster the economic and social welfare of society by ensuring that these companies are managed effectively and corporate failures are prevented, there are reasonable justifications for State intervention in the provision of regulatory mechanisms for personality risk management in corporate governance. Personality risk can be argued to refer to the probability or threat of damage, injury, liability, loss or other negative occurrence that arises as a result of personality issues. In corporate governance, the responsibility for the management of companies rests on company directors and any other persons to whom they delegate their duties. These persons are constantly interacting with the corporate governance process and exerting their personality which in turn contributes to eventual outcomes. Psychological research and literature indicates that personality has a significant impact on the behaviour of individuals, and that there are personality dimensions which are better suited to corporate governance than others. Persons with personality traits which are not suited to corporate governance are more likely to exhibit inappropriate behaviour in the governance process, thereby generating personality risks and also impacting on the effective management of all other corporate risks. This paper discusses the role of the State in managing personality risks in order to help prevent corporate failures. It does so by evaluating the justification in corporate theories, analysing the significant contribution of personality risks to major corporate failures and arguing for regulatory intervention as an effective means of managing personality risks.

Missing pieces in the EU derivatives regulation puzzle **Tatjana Nikitina**

The global financial crisis brought the over-the-counter (OTC) derivatives into the spotlight and revealed the deficiencies in the OTC derivatives markets related to counterparty credit risk management and the lack of transparency. The failure of Lehman Brothers and a near collapse of AIG, followed by the largest liquidity lifelines that have ever been provided by a central bank, had global implications. The OTC derivatives which remained at that time largely unregulated, were seen as one of the major factors leading towards the crisis and aggravating its severity, and therefore they were brought at the forefront of the new regulatory agenda. As a result, in 2009 the G20 leaders agreed that all standardised OTC derivatives must be cleared through central counterparties.

In the EU the G20 commitments were implemented by adopting the European Market Infrastructure Regulation which requires clearing certain OTC derivatives through the central counterparties (CCPs) and also introduces conduct of business, organisational and prudential requirements for the CCPs themselves. Central clearing mitigates counterparty credit risk and addresses certain financial stability concerns, and at the same time it leads to the concentration of risk within the CCPs. I argue that central clearing mandate causes significant changes in contractual arrangements between counterparties and shifts incentives among financial market participants. Designating CCPs as financial system safety nets inevitably increases their importance from the global financial stability perspective.

I explain that that merely introducing the central clearing mandate does not automatically make financial markets safer. A comprehensive and coherent regulatory framework must be developed and implemented along with robust supervisory practices. Finally, my research shows that the EU-wide regime to deal with failing CCPs must be put in place. Unlike clearing mandate which has been elaborated by the European regulators, the framework facilitating orderly resolution of CCPs is still missing. Such framework should also bring clarity into the allocation of losses between clearing houses, banks and other financial market participants.

Session Four: The historical business of banking, and challenges faced in modern banking

Islamic Finance within a Global Economy: Towards a Common Sustainable Future **Hanaan Balala**

Islamic Finance was conceived to be different, whether to satisfy the identity politics of the 20th Century or in response to the post-colonialist religious revivalist fervor that spread in the Middle East and continental Asia. It was presented as not only the lawful option for Muslims but also the equitable socio-economic alternative to the injustice of global capitalism and conventional interest-based finance. Several decades on, however, there now exists a general perception that the formulaic distinctions of Islamic banking and finance (IBF) bearing much the same substantive outcomes as conventional finance are not optimal nor true to the theory of Islam. This realisation has aroused both criticism and keenness towards developing more substantively equitable products that directly contribute to the socio-economic welfare of the Muslim societies they are marketed in. Within this broader and on-going debate on how best to reformulate IBF in the 21st century, is also the less addressed yet equally vital issue of how best to re-position IBF in the present so as to contribute to a collectively sustainable financial future.

The paper focuses on exploring successful micro-finance models to emulate with the objective of facilitating socio-economic welfare and the empowerment of women.

It commences with a discussion of legal and policy issues that would facilitate such an emulative approach and then proceed to explore successful models that can be adopted or adapted for Islamic finance purposes. As a Kenyan I am acutely aware of the MPesa success story and its empowering impact on Kenyan women. I have been exploring how best the Mpesa micro-finance model can be adapted for Islamic finance purposes. The Grameen bank model is another success story I intend to draw from and the Swedish JAK interest free cooperative bank model is the third. After suggesting how these models can be applied within Islamic finance, I will conclude by highlighting the importance of a contributive value-based product development orientation. Within this, I will consider the concept of creating shared value, as championed by Harvard professor Michael Porter, and suggest it takes priority over glamorous balance-sheet statistics within the IBF industry.

Are Virtual Currencies actually Currencies? If not, what are they? **Henry Hillman.**

To some extent the publicity around virtual currencies has subsided in recent months; Bitcoin is no longer worth over $1,000 per coin, in fact at the time or writing nearly 5 Bitcoins could be bought for $1,000, and it is not appearing in newspapers as frequently. Yet in the entire furore over Bitcoin, it was never properly defined and has no legal status in the UK. This paper considers what exactly Bitcoin is; can it be defined as a currency? If not can Bitcoin be considered property, or should the definitions of currency and property be reassessed to include virtual currencies?

The analysis will not solely concern Bitcoin, the status of other virtual currencies will also be considered, such as those which are used in virtual worlds, for example Linden Dollars, used in Second Life. Linden Dollars are of particular interest as they may be traded for US$. Additionally the issue of property rights within virtual worlds will be addressed; if property rights can be attributed to the currency of a virtual world, may individuals obtain property rights for their virtual world creations as well.

Bargaining with 'Octopus tentacles': the Bank of England's branches and the first English joint stock banks

Iain Frame.

In his 1998 book Conceiving Companies, Timothy Alborn argues that in the early to mid-nineteenth century the Bank of England (BoE) was divided between its public and private responsibilities, the former following from its close ties to the state, the latter from the expectations of its shareholders. When they were first permitted in England after 1825, a similar division affected the first joint stock banks, where strong regional ties between the bank and the community of which it was a part came up against shareholders and the returns they expected. In this paper, I use Alborn's framework to explain a puzzle arising from the relationship between the BoE and these new joint stock banks.

One of the BoE's most pressing public responsibilities in the 1830s was upholding the gold standard. Fulfilling this responsibility was made difficult, however, by the independent note-issues of provincial bankers. To control these 'independent' issues, the BoE introduced so-called 'circulation accounts' through which it offered favoured provincial banks cheap access to BoE notes via the BoE's branches in return for these banks giving up their own note issue. By, as one contemporary put it, stretching its 'octopus tentacles', and replacing local notes with those of the BoE, the BoE's directors aimed at "monopolizing to themselves the circulation of the country".

The use of circulation accounts as a means of managing the gold standard is somewhat puzzling, however. The puzzle is that on exactly those occasions when the BoE needed to restrict the creation of credit, the circulation accounts compelled the BoE's branches to do the opposite. My aim in this paper is to explain the puzzle at the heart of the BoE's circulation accounts by drawing on Alborn's claim that both the BoE and the new joint stock banks were torn between their public and private responsibilities.

OTC Derivatives Post-crisis Reforms: 'If you don't know where you're going any road will get you there'? **Ligia Catherine, Arias Barrera**

The OTC derivatives market had traditionally been a self-regulated market of bilateral and non-standardised contracts and transactions privately negotiated between the parties involved. However, after the Global Financial Crisis European regulators decided to intervene in the market through more comprehensive regulation, along with a more intrusive approach to supervision. Hence, the interest in providing a better counterparty risk management is traduced in the adoption of new financial market infrastructures (FMIs): Central Counterparties (CCPs) and Trade Repositories.

In the UK the Bank of England restates the importance of the main function carried out by Central Counterparties CCPs, which is to take and manage counterparty credit risk. To this end, the CCP collects margins from its clearing members, and that margin should correspond to the amount of credit risk the CCP is managing. Thence, the attention of the supervisors is focused on the margin models and stress tests that are used. The Bank has been carefully examining a number of key elements of CCP's margin and default fund calculation to ensure the CCP is sufficiently protected against potential member failure.

The importance of the Recovery and Resolution regime of CCPs lies on the systemic consequences that a CCPs failure could have in case of insolvency. Therefore, implementing effective loss allocation rules to protect the CCPs is a key part of ending the concerns regarding the 'too big to fail' character of these institutions. This paper seeks to question the improvement that CCPs represent for the credit risk management of OTC derivatives and how post-crisis supervisors are increasing, instead of solving, the concentration of risk in the market.

Executive Remuneration Reform in Banks and Beyond: Servant of Two Masters? **Andreas Kokkinis**

The remuneration of company directors and senior managers is a difficult issue for corporate and financial lawyers and has remained at the epicentre of public debate for years- most notably after the recent global financial crisis. In the particular context of banks, the area was transformed in 2014 due to the imposition of strict limits with regard to variable remuneration as a percentage of fixed remuneration pursuant to Capital Requirements Directive IV, articles 92-95. More broadly, the introduction of a binding shareholder vote on directors' remuneration policy on a triennial basis (Companies Act 2006, section 439A, which came into force on 1st October 2013) and the emphasis on remuneration structure in the latest editions of the UK Corporate Governance Code evince the significance of the issue from a shareholder protection perspective.

This paper seeks to provide a conceptual framework on policy issues surrounding the regulation of executive remuneration – both in companies generally and in banks specifically – and to critically evaluate recent legal and regulatory reforms in light of emerging evidence on banks' and other companies' responses to these reforms. In particular, the paper will argue that current policy initiatives, and – to a lesser extent – relevant academic literature, are (perhaps purposefully) confusing two different aspects of the debate, namely the aspect of protecting shareholders and shareholder value, on the one hand, and achieving public interest goals (such as financial stability, sustainability, and an equitable distribution of wealth), on the other. This confusion of rationales has led to paradoxical legal processes, as the one provided for in CRD IV, which appears to be focusing on the public interest but still (partly) defers to bank shareholders as arbiters of the maximum total amount of variable remuneration. At the same time, the swift response of banks to the limits imposed on variable remuneration questions the practical feasibility of imposing restrictions on the operation of market forces with respect to the determination of executive pay packages.

Financial Advice: Broadening Access to Financial Knowledge? **Asta Zokaityte**

Over the last two decades, consumer financial education has been extensively used and relied upon by local and global policy makers to tackle financial exclusion and financial inequalities. In the UK, policy makers have adopted a national strategy on consumer financial capability which aims to strengthen the regulatory framework for consumer protection in financial services markets. As a part of this national strategy, the Financial Services Authority (now - Money Advice Service) has sought to expand and broaden consumer access to financial advice. Financial advice as a new regulatory tool is seen to address many sorts of issues: consumer protection, social welfare provision and even macroeconomic, financial stability. This paper aims to look at and examine the ways in which UK financial regulators have used financial advice to regulate consumer behaviour and financial services markets. By doing so, it seeks to show how financial regulation 'imagines' the consumer as a differentiated subject of regulation. The paper argues that this new imaginary of the consumer is based on a problematic understanding of consumer financial capability which simplifies and decontextualizes people's day-to-day dealings with money.

Session Five: Market abuse, and the misuse of financial services products

Paper: Selling financial services: the interplay between individual legal liability and behavioural economics **Judith Dahlgreen**

This paper will examine some elements of behavioural finance and cognitive psychology that are relevant when individuals decide to enter into legally binding contracts to purchase financial services products in the UK in the 21st century. Factors such as heuristics, hyperbolic discounting, bounded rationality and the effects of emotion on decision making are relevant to the tendency of individuals to purchase financial services products such as loans, pensions and life assurance. These factors are influenced by sales techniques, graphics, presentation and methods of marketing.

In the 21st century the majority of financial products are being sold over the internet rather than through face to face sales contact. This change in the method of delivery of the product alters the interface between seller and purchaser and affects the context in which a legally binding contract is being formed. The UK in the 21st century is increasingly overly- indebted and increasingly economically unequal.

The law of contract and the law and regulation of banking and financial services have developed in the UK (and Europe) on the basis that individuals take rational decisions, in their own interests on a voluntary basis. The law of contract and sales of goods was developed in the 19th and 20th centuries on the basis of common commercial practice in the sale and purchase of goods that were material, visually identifiable and immediately understandable. Most financial services products sold to retail consumers are complex, medium to long term and immaterial.

This paper will consider the extent to which the law of contract and the regulation of conduct of business by authorised firms by the Financial Conduct Authority under FSMA 2000 should be impacted by developing knowledge of behavioural finance and cognitive psychology and a changed sales environment. It will comment on whether law genuinely serves the interests of an economically equal society.

Predatory capital and the irresponsible state: a critical decoding of mandatory CSR at the 'Gateway to Africa' **Renginee Pillay and David Quentin**

In recent years, Mauritius has successfully positioned itself as the 'Gateway to Africa': it is the entry jurisdiction of choice for inward investment into the continent. Its carefully curated network of double tax treaties and special tax regime for 'Global Business Companies' allows global (offshore) capital to enter Africa through Mauritius and extract maximum value -primarily by exploiting cheap labour and extracting resources- without paying significant amounts of tax on their profits. Hence, Mauritius facilitates the 'upgrading' of illicit financial flows into seemingly licit ones, which make nil contribution to the financing and accountability of local public functions.

In contrast to this positioning as a predatory offshore financial centre, encouraging irresponsible behaviour by global corporate capital, Mauritius has pursued an innovative policy of corporate social responsibility (CSR), requiring Mauritius-resident companies to apply a proportion of their profits to CSR 'programmes', operating very much like a tax. Our paper examines the development of this legislation, decoding its assumptions from a tax law perspective. We argue that the legislation represents both (i) an acknowledgement that the social justice shortcomings of neoliberalism are less a matter of irresponsibility on the part of corporations and more a matter of failure on the part of the state generally to discharge its responsibility to distribute the proceeds of corporate profitability equitably by means of taxation, and (ii) a formal abdication of that responsibility.

What part can market abuse play in the regulation of financial services? **Andrew Baker**

The EU has recently brought forward legislation updating and strengthening its Market Abuse regime. Since the 2007/8 financial crisis global policy makers have brought forward a plethora of new laws and regulations aimed at ensuring that there is no repeat. However, it is arguable that rather than a complex body of regulation that is doomed to follow previous attempts, greater focus on measures to tackle market abuse would be beneficial. It is suggested that the most recent crisis and revelations that have emerged since, for example, LIBOR and foreign exchange manipulation, are classic examples of market abuse, indeed many of the rationales given for bank and financial services reform by policy makers are examples of market abuse, for example, BCCI, Barings, Maxwell Pensions, Barlow Clowes and others. The difficulty has been that the regimes in place have failed to provide sufficient cover to deal with depth of abuse witnessed, but Part VIII Financial Services and Markets Act was supposed to do just that, but as we have seen the only real option open to regulators and law enforcement has been through the common law offence of conspiracy to defraud. This paper questions whether the new Market Abuse Regulations and the updated Market Abuse Directive will provide the cover that earlier versions did not. The paper will ask whether the UK should enact the provisions of MAD2, rather than use its opt-out as currently stated. The paper will further analyse whether a strong sanctions based regime is a better option that the wide ranging and ever more complex supervisory and regulatory regime that has emerged post crisis.

Session Six: The law in finance: Financial crime and fraud

THE SEPARATE LEGAL PERSONALITY OF CORPORATIONS IN THE UK: A LAW AND ECONOMICS ANALYSIS - **Stephen Copp**

The doctrine of separate legal personality of the corporation is a fundamental assumption on which successful market economies are based. It is often neglected in economic analysis where there is some hostility towards realist views of the company and a belief in the generic economic firm. Yet there is evidence of considerable economic advantages flowing from this regulatory measure including the reduction of transaction costs, asset partitioning, risk-shifting to the most efficient risk-bearer, the facilitation of efficient stock markets and investor diversification and therefore optimal portfolio holdings. The arguments against the doctrine are that it infringes a moral principle as to personal responsibility for debt, encourages undue risk-taking at creditors' expense, enables shareholders to evade tort liabilities, is inappropriate for small businesses and facilitates the growth of excessively large and unaccountable businesses. In the UK the doctrine is enshrined in statute in terms broadly consistent with economic efficiency. However, under the common law system there has been some pressure on the judiciary to make inroads into this based on hard cases. Indeed, the rigour with which the doctrine has been upheld has been subject to periodic change over its long history. The law has recently been subject to a rigorous review by the UK's highest court, the UK Supreme Court in Prest v. Petrodel Resources Ltd (2013), in which it was argued that the only true rationale for the disregarding of corporate personality was the "evasion principle", involving the deliberate evasion of an existing legal obligation, liability or restriction, or, the deliberate frustration of its enforcement, by the interposition of a company. Despite this, there is a worrying trend for the courts to make use of other legal doctrines that have the practical effect of circumventing separate legal personality. This paper will evaluate the consistency with economic efficiency of the current state of play of the doctrine of separate corporate personality in the UK and make proposals for reform.

Culpability of banks in illicit financial flow and money laundering **Viri Chauhan**

With the vast array of anti money laundering provisions implemented globally, money laundering is still prolific and abuses continue in many forms. The distinction between illicit financial flow and money laundering is blurred and the banks play a major role in this area. It could be argued that they have most to gain, and allow through legal loopholes and the lack of oversight poor AML practices to continue; despite a rhetoric that promotes a strong AML culture.

The strongest evidence of the culpability of the banking sector, is in their role of allowing proceeds of crime into the banks through secrecy and confidentiality laws that provide protection for individuals and corporations to transfer illicit capital. The British Crown Territories make up a significant amount of the offshore capital held globally, and the UK territories have the highest combined scores of secrecy and lack of transparency.

The paradox is that the legal structures such as off-shore banking and setting up of anonymous shell companies are used by legitimate organisations to maximise their profits, as well as criminal gangs to launder money. Corporations and banks take advantage of transfer price abuse, which is currently legal but seen as unethical by many. The lack of an AML policy at the International Banking Federation, the European Banking Federation and the British Banking Association leaves serious questions as to whether banks actually play an active role in fighting money laundering

CORPORATE FRAUD: THE CASE FOR A MANIFEST APPROACH TO LIABILITY **Alison Cronin**

The current approach to the attribution of corporate criminal liability is ill-suited to address instances of pervasive and systemic corporate fraud, such as, for example, may have been evidenced in the recent widespread mis-selling scandals. In response to the difficulties associated with the fictionist 'identification principle' generally, various alternative approaches have been mooted. Whilst acknowledging the realist nature of organisations, the proposals for reform implicitly perceive the need to prove mens rea as problematic and typically construct an altogether different basis of fault, such as negligence or the 'failure to prevent' model. However, whereas the negligence-type model fails to express adequately the deceptive nature of fraud, the 'failure to prevent' construct is equally ill-suited in that fraud is, in essence, a lawful activity, done in an unlawful, dishonest, way. A historiographical analysis of the law reveals that a return to the orthodox, but previously displaced, doctrines of fault would facilitate corporate conviction for fraud without the need to use either the problematic identification principle to impute mens rea or to defer to alternative bases of liability. It is suggested that a renewed recognition of the traditional evidential presumptions would provide the means by which both the capacity of an organisation and the blameworthiness of its conduct could be identified. Seemingly effecting a subtle shift towards a 'manifest' assessment of the behaviour, the re-instatement of the presumptions would accommodate the contemporary theory of action and accord with recent advancements in neuroscience and the discovery of the mirror neuron system in the brain. As regards a theory of corporate liability, it is of note that 'mirroring' not only provides the means by which individual action is understood, it has been shown to apply equally to collective action and, in line with realist theory, also explains how the autonomous collective personality can emerge.

Challenging Ownership: Meanings, Space and Identity

Penny English, Francis King and Sarah Blandy

Session One: Property, Planning and Development

More Problem than it's Worth? The Problem with the CIL

Tola Amodu

The land-use planning domain, for reasons of technical complexity and informational asymmetry, donates considerable discretion to local authorities to devise solutions allocating appropriate uses of land. The legal framework contains an array of discretionary powers (ranging from the high-level allocation of land uses, to how planning applications are decided), which include in the latter case peripheral (indeed penumbral) forms of bargaining and negotiation that are integral to the statutory scheme. The Planning Act 2008 includes, however a shift towards confining discretionary activity through law in the form of the Community Infrastructure Levy (CIL). The CIL is a scheme obliging local authorities to impose a 'tax' on new planning development to recoup the cost of infrastructure provision rather than negotiating solutions with individual developers on an ad hoc basis. Not only does this represent a departure from a use of discretion to secure equivalent benefits (which have historically been obtained through negotiation) it provides an illustration of the effects of attempting to constrain one of the many forms of discretionary activity in the context. The provisions, while ostensibly limiting local discretion, point to a temporal shift in its locus. This paper critiques the provisions of the Act as they relate to the CIL and suggests that an imposition of fixed charging structures may have the effect of displacing rather than eliminating discretionary activity in particular negotiation and bargaining and, as such creating more problems than it seeks to overcome.

A 'time in-between': the temporal logics of private and public sector development agreements and urban retail property redevelopment schemes

Edward Mitchel

My paper focuses on the contractual framework that local governments and property development companies deploy when negotiating, planning and constructing urban retail property redevelopment schemes. I draw on a case study of a redevelopment scheme in an English city to show how the relevant contractual framework incorporated a number of different temporal logics.
This paper argues that the parties used the contractual framework to carve out a time in between the decision to redevelop and the anticipated moment at which construction would commence. This 'time in between' enabled the parties to carry out negotiations and develop ideas, but was also a time in which controversies could play out without disrupting a sense of the linear flow of development.
The framework produced, and consistently reproduced, this sense of linearity. The parties entered into a 'Co-Operation Agreement' at the outset, followed by a 'Development Agreement' and various accompanying agreements, which were followed in turn by subsequent ancillary agreements. Each agreement therefore became another step towards the culmination of development. But this unfolding process did not produce a sense of time as a neutral medium. The parties were aware that they had produced a trajectory to which they were bound but which only they could follow. Deciding which party determined the proper flow of time consequently became hotly contested.
Finally, the paper shows that the parties regularly emphasised their ability to move from one temporal logic to another. An impression of seamless movement was an important device that the parties utilised in their attempts to retain control of the development process.

Reclaiming the land: Greek grassroots movements and the case of the former airport of Hellinikon

Ioannis Flyzanis

During the economic crisis, the greek authorities announced that they would cancel a promised green public project: the construction of a Metropolitan Park at the former International Airport of Hellinikon. Instead, they adopted a privatization plan of the specific area in order to develop luxurious infrastructures. Therefore, in this paper I will examine how the local movements are reclaiming the land of the former airport: Do they litigate? Are they following more radical counter-moves, such as the creation of commons, asserting spaces of common property and solidarity?

Session Two: Housing and Mental Health (Joint session with the Mental Health Law stream) Panel discussion

Panel: Nick Hopkins, Sarah Nield, Christopher Bevan and Warren Barr

Session Three: Property, rights and the body

Recognising Property Rights in Human Materials

Neil Maddox

This paper suggests criteria for the recognition of ownership entitlements in the human body. As a material object, the body is theoretically capable of attracting Honeré's standard incidents of ownership, yet it does not. Due to advances in biotechnology, novel uses for the body are being discovered, and the extent to which private ownership should be recognised is important for instrumental reasons. As the body is sui generis property, the task of delineating such rights is not a simple one. I suggest treating the body as 'the person personified' until death. From this, I deduce two criteria to determine if the body part can be recognised as property; first, if the object in question is replaceable, and, secondly if it is not strongly associated with the person of the donor. An organ needs to be replaced if failure to do so would kill the subject, or would reduce their quality of life significantly, for example through a loss of a vital function, or reduced life expectancy, or both. 'Identification with the Person' is a less clear-cut determination and will often be a question of degree: some body parts are strongly identified with the person, while others are only identified weakly. A bodily material is identified with the person through, for example, cultural and religious symbolism or social norms. The use to which the material is put is also relevant in this regard, and certain uses may impact on personhood through infringements of privacy or autonomy.

Out of time and out of place – unraveling the deaths of homeless people **Helen Carr**

The starting point of this paper is the increased potency of the mechanisms of accountability triggered by the deaths of vulnerable adults in the UK (Kirton-Darling 2015). Its concern is with the limits of those mechanisms when the deaths at issue are those of people disenfranchised by homelessness, a concern exemplified by the failure of formal processes to unravel the legal, social and political web of accountability surrounding the death of Daniel Gauntlett in February 2013 in the garden of a derelict bungalow in Aylesford Kent. The juxtaposition of an empty home, provided nearly 100 years ago to house victims of the trench warfare of the first world war, and the hypothermic homeless man apparently deterred from entering the property either by the actions of the owners or by the recent criminalization of squatting, is not only poignant, it is replete with political possibilities. However the coroner's verdict, death by natural causes exacerbated by self-neglect, not only depoliticizes the death, it also suggests, in an echo of Razack's claims in connection with the deaths of colonial subjects, that the body of the homeless person, too helpless to be helped, is inherently violable in the interests of ownership (Razack 2011 & 12).

Session Four: Property Rights on the home

Finding the Way Home

Adam Ramshaw

The law has excelled in the protection of discernible interests and assets which attach to our understanding of private ownership. Given the rhetoric of theory in the area of ownership it is perhaps unsurprising to see that the law has traditionally favoured interests that have an easily ascertainable monetary value, rather than the more intangible qualities attributable to a person's 'home'. Historically, classical theorists have therefore concerned themselves with first acquisition and the opportunity for capitalising on physical property rather than the sociological advantages flowing from a space which serves as a person's home. This paper seeks to demonstrate the shortcomings of that approach in the face of the human rights instruments of the 20th century, which expressly attach importance to the 'home', rather than 'the house'. Most prominent of these provisions for this paper is art.8 of the European Convention on Human Rights which provides a right to respect for one's home. Despite the influence of human rights law, when faced with disputes involving a person's home the courts regularly fail to attach sufficient weight to the home against claims from those wielding interests based upon ownership. Ideas of privacy, identity, and community prove difficult for courts to quantify and include in the factual matrixes which serve as the basis for judicial decisions.
This paper will highlight the gaps left by a classical approach to private property at the expense of the advantages of the home to the individual, the family, and society, together with the philosophical hangover left in the minds of the judiciary by this approach. In doing so this paper will inform the legal conceptions of 'the home' through an in-depth exploration of its dichotomous relationship with 'the house'.

Retiring Property: A Radical Approach to Ownership

Sean Thomas and Paolo Vargiu

As Thomas Piketty argues in Capital in the Twenty-First Century, a major cause of inequality is that the rate of return on capital (r) tends to exceed the rate of economic growth (g). The consequence of this is that 'capitalism automatically generates arbitrary and unsustainable inequalities that radically undermine the meritocratic values on which democratic societies are based.' Inter-generational post-mortem wealth transfers (i.e. inheritance), as means of capital retention, have potentially inequitable effects. It is clear that in many developed jurisdictions, and in many cultures and societies, property ownership is age-contingent. This age-contingency primarily concerns the rights of minors. However, in light of continuing increases in life expectancy, it may be incumbent on states to consider the other end of the age spectrum: can, indeed should, property rights of older people be limited? For Piketty, the extent to which r > g will depend on the 'shocks to which capital is subject', as well as political and institutional regulation of the relationship between capital and labour. This paper will therefore consider a radical approach to dealing with the general problem of capital retention, by analysing the specific problem of under-utilisation of housing by older people. It will be argued that one option is to reduce such under-utilisation by state transfer of housing from one generation to another, without having to wait for post-mortem disposition. It will also be demonstrated that this approach is no more or less arbitrary than otherwise politically acceptable mechanisms which limit property use.

Adult Social Care and Property Rights - **Brian Sloan**

Adult social care supports people with physical, cognitive or age-related conditions in carrying out personal care and domestic routines. It is the responsibility of local authorities in England and, unlike health care provided by the National Health Service, it is not underpinned by a broad principle of being free of charge at the point of delivery. Currently, those with assets worth more than £23,250 can effectively be expected to pay the full costs of their care, and the adult social care system therefore represents a significant challenge to the ownership of property for the increasing numbers of people who will require it in the context of an ageing population. In addition to clarifying the legal framework governing the system inter alia, the Care Act 2014 ultimately aims to reduce the extent of this 'challenge'. It will do so by, for example, imposing a cap on the amount that any one person might be expected to contribute towards her lifetime care costs, and increasing the availability of 'deferred payment agreements'.
This paper forms part of a project hosted at the Centre for Research in the Arts, Social Sciences and Humanities at the University of Cambridge. The paper's aim is to assess whether the reforms brought about by the Act are likely to ensure that necessary and appropriate care is provided for elderly and disabled adults in England, particularly in the light of continued local authority discretion, while at the same time giving due weight to the property rights of those receiving social care and the interests of family members and others who might be said to have legal or moral claims in respect of the estate of a social care recipient after she has died. A significant aspect of the analysis will evaluate the new system from a human rights perspective.

Session Five: Author Meets Readers **Chair: Penny English**

SLSA prizewinner Debbie Becher,
Author of *Private Property and Public Power: Eminent Domain in Philadelphia*
Discussant: Francis King

Session Six: Property law and strategies for resistance

Legal Land Lock? Extraterritorial jurisdiction, sovereignty extension and near-perfect annexation of the West Bank

Alice Panepinto

To give thee great and goodly cities, which thou buildedst not, and houses full of all good things, which thou filledst not, and wells digged, which thou diggedst not, vineyards and olive trees, which thou plantedst not [KJV Deut. 6:10-12]

The Israeli government is conducting a sophisticated appropriation - carefully cloaked in legality - of Palestinian land (public and private) in 'Area C' of the West Bank through extraterritorially applying Israeli military and civil law in over 60% of Occupied Palestine. In September 2014, approximately 400 hectares between Bethlehem and Hebron were declared 'state land' by the Israeli Defence Forces, paving the way for confiscation of Palestinian land and appropriation for Israeli settlement expansion. At the same time, the Supreme Court of Israel has heard cases on the route of the separation wall in the UNESCO-listed Battir village and in the Cremisan Valley, home to a Catholic school and winery as well as privately-owned vineyards and olive groves - both locations are within the internationally-recognised 1967 borders of Palestine. The same judges are also considering the possible eviction and relocation elsewhere of around 7,000 Bedouins from their present location East of Jerusalem - with the effect of moving vulnerable communities across different parts of 1967 Palestinian land (without their consent). The message is clear: Area C of the West Bank falls comfortably within the ratione loci jurisdiction of the Supreme Court of Israel. Yet, access to that court by Palestinians is limited ratione personae.
Which laws are of use in this complex situation? The first approach is through the laws of military occupation, applying IHL across West Bank Area C (entirely under the military and administrative control of Israel). This was the position adopted by the ICJ in its 2004 Advisory Opinion on the Wall - and rejected by Israel. If pursued, this path would find violations of the IV Geneva Convention. The alternative could be to reconfigure Area C as part of the State of Palestine on the basis of the assumption of recognition of statehood after the 2012 UN General Assembly's vote to confer 'Non-Member Observer State' Status to Palestine and the formal accession to the Rome Statute of the ICC in January 2015. This would bypass the laws of occupation of IHL - which have offered little effective protection to Palestinian land - and look at Area C from a different perspective, uncovering old forms of colonialist violence against indigenous lands carefully masked with the legal cosmetics of a democratic state. This paper explores the second approach presented: extraterritorial jurisdiction over a foreign land as domination.

Confrontations with ownership in The King Hill Hostel Campaign **Laura Binger**

In August 1964, residents at a hostel for homeless families operated by Kent County Council refused to abide by the rules. For over a year, they would refuse to leave when time limits on their stays expired and resist attempts at eviction. Men, banned from the premises outside of visiting hours, moved in to live with their families. In the courtroom battles that took place as Kent County Council sought to enforce its exclusionary policies, the National Assistance Act 1948 was pitted against the property rights of Kent County Council. Outside of the courts, residents went further by demanding a role in the day-to-day governance of the hostel, and in doing so presented a challenge to the assumptions of ownership held by the Kent County Council.

Legal recognition as a challenge to the closing of soup runs in London - **Caroline Hunter**

One of the impacts of austerity has been the increasing use of the provision of free food to the poor, whether through food banks, soup kitchens or soup runs. Soup runs (the provision of food in outside public space) are perhaps the most precarious of these. In London there have been various attempts to control and close some of them down. In this paper I will consider one particular case – the attempt by the London Borough of Waltham Forest to move the soup run organised by a group known as Christian Kitchen. The council sought to force the soup kitchen to move by withdrawing their licence to use a space outside the Town Hall. The decision of the council was successfully challenged by judicial review: Christian Kitchen v LB Waltham Forest [2014] EWHC 10, primarily on the basis of a breach of the Equality Act 2011. The case raises questions about the type of legal arguments that can be used and who is recognised and protected by the law.

Session seven: Enduring Property Relations

Panel discussion **Sarah Blandy (chair), Susan Bright, Alison Clarke, Nick Hopkins, Sarah Nield.**

Session Eight: Fragmentation of Property Rights

Legalising Property and Alternative Property Practices: Post-Mao China as a Case Study

Ting Xu

This paper examines the different concepts of property used by Chinese people in different periods and the processes in which these understandings were transformed, especially by deliberate attempts to 'legalise' them in the post-Mao period. From the Qing dynasty reforms of the late nineteenth century onwards, in contrast to the official, and indeed legal, support for unitary and exclusive property rights, the reality of property practices has manifested in a fragmentation of property rights, which emphasises the right to use and access. In the process of legalising property, a range of concepts and theories of property have been chosen and manipulated in order to serve the purposes of control and governance but were, and still are, often resisted in alternative property practices, which constitute part of the socio-economic changes and may transform the law. As a result, such a complex interplay between law and property leads us to rethink the nexus between ownership, use and access and the interaction between the state, individuals and communities.

Bare Land Condominium and the Spread of Propriety Residential Associations in British Columbia

Douglas Harris and Guy Patterson

Condominium facilitates the subdivision of land into multiple private titles. It does so by creating a structure of ownership that combines individual titles, undivided shares in common property, rights to participate in the governance of the private and common property, and obligations to contribute to the maintenance of the common property. Used most commonly to subdivide ownership within buildings, condominium is also one among a number of ownership structures (including housing or homeowner associations) that enable the lateral subdivision of land, sometimes to create gated communities. Grouped within the larger category of common-interest-development, and described as a form of private residential government, this paper suggests the term "proprietary residential association" to highlight the foundational role of property in their construction.

Designed primarily to permit the subdivision of buildings, British Columbia's condominium legislation also permits the lateral subdivision of land. Known as "bare land strata title," the legislation allows for the particular combination of ownership rights within condominium, but without a building or other physical structure. This paper describes the emergence and proliferation of bare land condominium developments in British Columbia, and then evaluates their prevalence and use in comparison to proprietary residential associations in other jurisdictions.

Challenging the Legal Conception of the First Legal Mortgagor

Lisa Whitehouse

The mortgage is subject to regulation by two distinct regimes, the public law system overseen by the Financial Conduct Authority (FCA) and the private law system overseen by the courts. While the former adopts a clear vision of first legal mortgagors as "consumers", the latter tends to view them as autonomous individuals capable of competing on an equal footing with mortgagees. This approach cannot be explained simply on the basis that the transaction concerns land because, as is well known, second mortgages fall squarely within the protective confines of consumer credit regulation. Rather, it appears to derive from the historical development of the modern law of mortgage and its crystallisation during the high water mark of the freedom of contract principle. This approach is surprising given that the rhetoric of "consumerism" has been prevalent within government housing policy since the early 1980s, manifested by the transference of the provision of housing from the state to the individual within a free market system. This move to a consumerist model of provision has not translated into the first legal mortgagor being conceived of as a "consumer" by the private law regime nor have such agreements been brought fully within a unified consumer protection regime.

While this approach is mitigated to some extent by the public law regime and its focus on ensuring that all mortgagors are treated fairly, evidence suggests that there is more work to be done. In particular, mortgagors do not have sufficient information to allow them to exercise effective choice and are not able to negotiate the terms of their agreement. It is these factors, as well as the move to a mass home ownership market, that justify the inclusion of the first legal mortgage within the realm of consumer protection and a cultural shift in the manner in which the private law regime conceives of the mortgagor.

Children's Rights **Helen Stalford**

Session Two: : Understanding the Scope and Impact of Children's Rights of Autonomy

Seen and Still Not Heard? The Lived Realities of Children and Young People's Participation in Ireland in their Homes, Schools and Communities.

Aisling Parkes

As we mark the 25th Anniversary of the UN Convention on the Rights of the Child 1989, it is an opportune time to take stock of how effectively the human rights of children are being implemented in practice. One area which is ripe for such an examination is that of children and young people's participation. While the overall benefits of children's participation are well accepted, and initiatives to facilitate such participation have grown significantly over the last twenty years, there is a growing body of evidence to suggest that children and young people feel undervalued and misunderstood in various aspects of their lives(Theis, 2010; Kerrins, Fahey and Greene, 2011. Arguably, this has resulted in a major gap between the vision of Article 12 of the CRC and the implementation of that right in practice.

This paper is based on the findings of an Irish Research Council/DCYA funded study (2012-2013) which focused on children and young people's experiences of participating in decision-making in the contexts of home, school and community in Ireland. Qualitative interviews and focus groups were undertaken with over 100 children and young people and 36 adults in three distinct geographical locations in Ireland. The paper will explore the lived realities of participation for children and young people and, what are may at times, be considered to be polarised views of the nature and scope of effective participation for children and young people.

Conceptualising children's rights around participation in elite sport

Eleanor Drywood

This paper considers rights theories in the context of a larger project critiquing the professional football recruitment system from a children's rights perspective. It will be argued that the football industry currently adopts a crude approach to the welfare of children involved in the recruitment process. A highly protectionist stance, which ignores children's capacity to make decisions about their life and career, is combined with turning a blind eye to some egregious rights violations, particularly around exploitation of young people targeted by rogue agents in developing regions of the world. An essential aspect of the broader project is to critique this stance and expose its limited capacity to promote children's rights principles. However, children's rights have rarely been theorised in the context of elite sport, leaving something of a vacuum in the literature. The aim of this paper is to fill this gap by offering a concrete and robust children's rights-based framework for future analysis carried in this project. Specifically, the focus will be on three key issues in literature on children's rights, exploring them in the context of the football recruitment system: the autonomy of children and how to accommodate their evolving capacities; assessing and responding to the best interests of the child; and, debates on child labour and commercial exploitation.

Session Three: : Accommodating Best Interests: Tensions and Potential Solutions

Lessons in Valuing Children: Conflicts of Interests, "Best Interests", Rights, and School Exclusion

Lucinda Ferguson

How should we resolve conflicts between the interests of individual children and the school community more generally? Whilst ECtHR jurisprudence has developed to provide a framework for resolving conflicts of rights, there is no comparable approach to resolving conflicts of interests. This may be counter-intuitive to the extent that the resolution of conflicts of ECHR rights often turns on which competing rights can be more justifiably infringed upon by countervailing interests.

The Department for Education recently lowered the threshold for exclusion, so that a pupil can be excluded where allowing them to remain would be merely "detrimental to the education or welfare" of that pupil, other pupils, or others in the school. But the governing body and any appointed Independent Review Panel are required to consider the interests of both the affected pupil and others in the school. This places greater pressure on the accuracy of the balancing between competing interests. Yet no test or framework for balancing naturally derives from the concepts at stake.

My analysis contributes both to the particular discussion of exclusion as well as to the broader issue of resolving complex decisions that affect multiple children. First, I outline the unique complexities of the education context, particularly the larger need to ensure stable system in school and that exclusion may promote or undermine the "best interests" of a particular pupil. Second, I examine the suitability of the conceptual framework in the DfE's statutory guidance 2015 for directing the decision as to whether to exclude. I argue that the posited requirement to balance interests directly is irresolvable without external guidance. I consider the value of injecting a "best interests" perspective; overlaying competing interests with a broader children's rights perspective; and focusing more on the unique duties owed to the school population; and which best embraces UNCRC rights.

Becoming tyrannous? A capabilities approach to best interests assessments

Michael Thomson

The Children Act 1989 sets out that the welfare of the child must be the paramount consideration in any decision made with regard to the upbringing of a child. This 'best interests standard' has become a core principle of welfare law. At the same time, what might constitute the best interests of children is given very little formal shape or content. Indeed, it has been argued that the standard is unacceptably vague to the point that it is meaningless. Further, the test has been criticised as being too subjective, allowing room for personal prejudice in decision-making, and operating to advance parental and professional interests over what might actually be the best interests of the individual child. Notwithstanding such criticism, no satisfactory alternative framework has been forthcoming. The Capabilities Approach proposed by Amartya Sen and others provides a theoretically nuanced framework for evaluation and deliberation. It has as its central characteristic a focus on what people are effectively able to 'be and do'. It is argued that well-being and justice are best conceptualised in terms of people's capabilities to function; that is, their effective opportunities to undertake the actions and activities that they want to engage in, and be whom they want to be. Severine Deneulin has recently interpreted the capabilities approach as a normative language. She argues that the flexibility of the approach allows actors to interpret the components of the theory in different settings, and construct context dependent policy narratives. Acknowledging this flexibility and sensitivity to context, this paper argues that the Capabilities Approach can provide a principled decision-making framework for best interests assessments and, indeed, welfare law and policy more generally.

Islamic States rebuff The Hague Abduction Convention: Justified explanations or just excuses?

Nazia Yaqub

Parental child abduction is reported to increase each year as a result of international relationship breakdown and ever fluid migration patterns. The area is governed by Private International Law, notably the Hague Abduction Convention 1980 and for intra-EU cases, the Brussels II Regulation which facilitate the child's return and enable any custody dispute to be resolved in the child's home state. Nevertheless, the Foreign and Commonwealth Office confirm British children are abducted by parents to non-Convention states on average every other day, with figures having doubled in the last decade. The majority of non-member states appear to be states where Islam is the official religion and the problem arises from the failure of those states to ratify the Abduction Convention; their reluctance founded on the premise that Convention principles conflict with Islamic custody law. The origins of the problem therefore relate to the different understandings of child welfare and specifically what is perceived as being in the best interests of the child. Through analysis of the primary sources of Islamic law, this paper argues that there is no conflict between Islamic custody law and the Abduction Convention. Accordingly, there is no reason why Islamic states cannot accede to the Abduction Convention. This is further evidenced by Morocco's accession to the Convention in 2010 and so it is necessary to examine how it, as an Islamic state has rationalised the differences with regards to determining the welfare principle in custody disputes. Iraq also recently acceded to the Abduction Convention in 2014 and it remains to be seen whether the judiciary in Iraq will embrace the objectives of the Convention, where accession is likely to be as a result of external pressures and not internal reform as in the case of Morocco.

Session Four: Protecting Children from Harm: Legal and Methodological Strategies

A Successful Case of Planning on Children's Rights

Azadeh Chalabi

This paper is intended to present the results of a case study in planning on children's rights in Australia. In 2007-08, there were 55,120 reports of child abuse and neglect substantiated by child protection services in Australia. At 30 June 2008, there were 31,166 young people in out-of-home care. To address the increasing number of Australian children who are being exposed to child abuse and neglect, on 30 April 2009, the Council of Australian Governments (COAG) endorsed the first National Framework for Protecting Australia's Children 2009-2020 (NFPAC) which was welcomed by the Committee on the Rights of the Child. This framework has outlined a long term national approach to ensuring the safety and well-being of Australia's children. It has been implemented through a series of three-year national human rights action plans. This framework likewise was highlighted in the current Australia's National Human Rights Action Plan (2012). Although it is still early in the life of the NFPAC to draw many conclusions about whether or not the Framework is making a difference at this time, the results of an online survey, conducted by the author in April-July 2013 on the effectiveness of Australia's National Human Rights Action Plans in practice, shows that human rights experts tend to agree that this part of the current Australia's National Human Rights Action Plan is among the most effective parts of the plan. Furthermore, in some quantitative indicators, progress can be already observed. This paper will first present the results of the online survey and a quantitative secondary analysis on the effectiveness of NFPAC and then will examine the four key features of NFPAC that have contributed significantly to its effectiveness. These features include (a) theoretical foundation, (b) partnership approach/integrated governance, (c) evidence-based, and (d) the modern concept of planning upon which NFPAC is based.

Children's wishes and feelings about parental harm: Ascertaining the unascertainable?

Vanessa Richardson

This paper draws on an empirical, psycho-social, case study of a young woman who was removed from her parents' care at about the age of eleven. Prior to this she had been subject to a care order under the Children Act 1989. The study traces her account of harm and it traces her struggle with her relationships with childcare professionals,arising from the isolating impact of her parents' abuse. This young woman's account was that her wishes and feelings were not listened to because the childcare professionals did not understand her. In particular the professionals did not want to contemplate the good things in her relationship with her father, despite the abuse. Nor did they want to understand about her mother's emotional cruelty. Before the abuse was discovered the young woman described an increasingly isolated childhood. Once the abuse was discovered and she was taken into care, her response was to refuse to say anything. She became outwardly increasingly distressed and it was only in her young adulthood she began to talk about what had happened to her. This paper highlights the issue of legal competence when the child does not have the words to express their experience of harm.

Childhood Obesity: A Case of Parental Neglect or State Failure? **Naomi Salmon**

The UK is in the grips of an 'obesity epidemic.' According to recent figures, in England approximately 28% of children aged between 2 and 15 are overweight or obese. In Wales the picture is even worse! It is now widely recognised that poor dietary health in childhood has significant long-term consequences for individuals' weight in adulthood and, therefore, their more general physical, emotional and economic well-being. The obesity epidemic also has serious implications for our already overburdened NHS.
Notwithstanding the efforts that are now being made by policymakers to address some of the key causes of poor diet - through, for example, a tightening of nutritional standards for school meals, and restrictions on 'junk food' advertising on the TV - the problem of childhood obesity seems to be getting worse. Developments in public health policy have thus far, then, proven inadequate. But there is another angle to the state's response to childhood obesity. Over the course of the last few years, a handful of parents of morbidly obese children have found themselves facing charges of child neglect, whilst their offspring have been taken into local authority care. Perhaps this is how things should be. If society readily views under-feeding as clear evidence of culpable parental neglect, then why not adopt a similar position in relation to over-feeding? On the other hand, just how much control do parents really have over their child's diet in today's 'obesogenic environment'? Bearing in mind the complex factors that influence the dietary health of the nation's children, is it reasonable to blame the parents of obese children; to label them as 'neglectful' and to prosecute them accordingly? With reference to developments in public health policy and law, media coverage and reports of the obesity crisis and prosecutions carried out in the UK and elsewhere, this paper evaluates the law's response to this complex and emotive public health issue and, with reference to the State's legal obligations under international human rights law, offers some thoughts on where responsibility for the obesity epidemic that is now plaguing our children should lie.

Session five: Achieving Child Friendly Justice

Children's voices: Centre-stage or side-lined in out-of-court dispute resolution in England and Wales? **Jan Ewing, Rosemary Hunter, Anne Barlow and Janet Smithson**

The UK Government recently announced that children aged 10 and over should have the opportunity to be consulted on their views in both family court proceedings and family mediation. Drawing on data from the ESRC-funded 'Mapping Paths to Family Justice' project, this paper examines the extent to which children's voices are currently heard within out-of-court family dispute resolution (FDR) processes in England and Wales. The paper documents practitioners' and parties' views and experiences of child consultation, as well as evidence of the ways in which adult disputes may become the dominant concern and children's welfare marginalised in FDR processes. It argues that the government's proposals would represent a significant change in current practices. To achieve such a cultural shift would require better training and accreditation for FDR professionals, adequate funding of child-inclusive mediation, reframing of children's participation in terms of rights to have their views heard and correspondingly, modification of the central principle of party autonomy in FDR processes.

The Child Rights Law of Lagos State 2007: A Qualitative Study of Child Justice **Iyabode Ogunniran and Chinwe R Nwanna**

The Children and Young Persons Laws (CYPLs) have been the main laws guiding juvenile justice administration in Nigeria. For the past 30 years, several researches showed that in almost every aspect of criminal proceedings, the well-being of juvenile offenders are not protected. Nigeria ratified the Convention on the Rights of the Child in 1991 and enacted same as the Child Rights Act in 2003. This was adopted as the Child Rights Law (CRL) of Lagos State 2007 and has been in operation for over seven years. This paper analyses the challenges in administering child justice from three key perspectives: Police, Social Welfare Officers and the Family Court Judges and Magistrates. The study used in-depth interviews to interrogate purposely selected Judges, Magistrates and officers of four different police sectors- the present two police stations that have children specialised centres, the Lagos Police Command and Police College between July and September 2013. A Focus Group Discussion was conducted for a purposive sample of Social Welfare Officers in August 2013. The study showed the two specialised police stations are inadequate, the Police Command is yet to implement the CRL and it is not part of the curriculum at the Police College. At the two stations, a challenge faced includes unwillingness of parents to proceed with cases. The major inhibiting factor reported by social welfare officers was contradictory provisions in the CRL. Similarly, there were problems of conflicting jurisdiction in the family courts, training on rules of procedure and enhanced welfare package for assessors. The authors argue that all these findings require urgent solutions to improve child justice and assist relevant stakeholders in their policy decision making.

Methodological tools for exploring and promoting children's rights in the justice process **Helen Stalford, Liam Cairns and Jeremy Marshall**

Civil Procedure and Alternatives to Litigation, ADR **Masood Ahmed**

Session Two

Rhetoric and Civil Justice: A commentary on the promotion of mediation without conviction in England and Wales

Debbie De Girolamo

There have been a series of recent articles in England and Wales dealing with mediation within the civil justice system. For example, Genn, Nolan-Haley, Ahmed, Shipman and others have explored the development of mediation with particular emphasis on the development and place of mediation within civil justice. This paper continues the exploration, weighing in on the issue from a public policy point of view. The schizophrenic nature of support for mediation in England and Wales vacillates between government insistence that mediation is the preferred method for resolving disputes, judicial encouragement of mediation and the emphatic denial for compulsory mediation in this jurisdiction. Policy statements speak of the need to deal with matters privately and to lessen the use of the courts yet there is an unwillingness to take affirmative steps to assure that this is so by implementing a directly compulsory programme.

Despite statements to the contrary, it is not clear where England and Wales stand on the issue of compulsion and mediation. The problem lies with the disconnect between government rhetoric, the reality of judicial pronouncements on mediation and the Civil Procedure Rules. One could assume that the question whether England and Wales have a compulsory system for mediation in the civil justice system would be an easy one to answer. However, a canvass of the literature supports a schizophrenic answer to this problem. As Nolan-Haley says, the debate regarding compulsion continues in the United Kingdom. The effect of this schism between policy and reality is the existence of a justice system which is not transparent. The inconsistency in position regarding compulsion in English civil justice needs to be redressed. The plea is to recognize the inconsistency and take steps to eradicate it. The paper explores these issues.

'QOCS quirks and the quixotic quid pro quo': Qualified One-Way Costs Shifting and Access to Justice

John Bates

In the Final Report of the Review of Civil Litigation Costs, Lord Justice Jackson recommended the introduction of a regime of Qualified One-Way Costs Shifting ('QOCS') in personal injury cases. This recommendation was part of the inter-locking package of reforms to the funding and recovery of costs in civil disputes. QOCS was seen as part of the solution to the problem of removing the right to recover 'additional liabilities' (success fees and premiums for After The Event insurance) in cases conducted on a conditional fee basis, whilst preserving access to justice in personal injury cases. The Government adopted many of Lord Justice Jackson's recommendations, and a system of QOCS was introduced in April 2013, as part of the widespread changes to civil litigation costs and funding in the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

The QOCS regime is now 2 years old. We are starting to see litigation reach the courts which test the parameters of the rules. Is QOCS operating as expected, to do justice in the 'paradigm instance of litigation in which the parties are in an asymmetric relationship'? Is there a true comparison with the 'legal aid shield' provided by the Legal Aid system of the past? Are there unwanted side-effects of a system in which a claimant can now pursue a claim in the expectation that he will not face an adverse costs order in the event of failure at trial? Are the boundaries of the QOCS protection clearly delineated to strike the right balance between preserving access to justice in a litigation environment free of CFA success fees and ATE insurance premiums? How does QOCS interact with the existing (and new) Part 36 system for offers to settle? What does the future hold for QOCS?

This paper aims to explore some of these topical issues.

The Protection of Human Rights by the Judge in the Civil Procedure in Mexico

Amalia Patricia Cobos Campos, Enrique Antonio Carrete Solís and Carlos Severiano Díaz Rey.

With the constitutional reform in Mexico, in the country emerged a strong controversy, about the responsibility of the judge in the human rights protection, some scholars has spoken of a new system of fuzzy control of constitutionality, opinion which has not been endorsed by the Supreme Court who has determined that such monitoring is in exclusive faculty for them. It is consequently, resort to the ordinary judge measure what their responsibilities and scope in the safeguarding of human rights. In the present investigation discussed with a theoretical perspective, the doctrinal and jurisprudential positions, we realized an extensive law literature review, jurisprudential and legislative and presents valid conclusions to resolve the legal theoretical problem raised, that lead us to determine that in Mexico there is not a fuzzy control of constitutionality, despite the positions in favor of the some scholars. The human rights protection has been realized for the ordinary judge with juridical principles such pro person and the treatments but the control of constitutionality is exclusive for the Supreme Court.

'Lies, damned lies and ... strike-outs': Access to justice and the new duty to strike out 'fundamentally dishonest' claims in their entirety **John Bates**

What consequences should face a claimant in a personal injury claim, where the claimant has been determined by a court to have included a dishonest element in his claim? Should the entirety of the claimant's claim be struck out as abusing the process of the court and being an affront to the civil justice system, or should a more nuanced approach be taken to reflect the causative potency of the dishonesty and the punishment lie in adverse costs consequences. This is a question which has vexed first instance and appellate courts in recent years, including the United Kingdom Supreme Court in Summers v Fairclough Homes Limited [2012] UKSC 26.

The position of the United Kingdom Government has been to legislate. Proposals in the Criminal Justice and Courts Bill seek to enact the Government's legislative objective to require the courts to dismiss, in their entirety, claims for damages in personal injury claims where the claimant is adjudged by the court to have been 'fundamentally dishonest.' This models follows the legislative approach by the Irish Republic in the Civil Liability and Courts Act 2004.

Are there adequate safeguards to protect the interests of genuine claimants in achieving access to justice in personal injury litigation, where the 'polluter' has historically been responsible for the consequences of their admitted or found breach of duty? At what point does the imposition of a sanction in respect of dishonesty become disproportionately unfair? What are the opportunities, threats and impacts on the behaviours of claimants, defendants and their advisers and funders? How well-equipped are the constraints of the modern, post-Jackson claims processes, including dispute resolution portals, to deal with these issues? It remains to be seen how strong the Government's appetite is to expand this regime beyond personal injury claims.

This paper aims to explore some of these topical issues.

Criminal Law and Criminal Justice — Vanessa Bettinson and Ben Livings

Session One: (joint with Mental Health)

'Are we not all legally insane?': A critique of the situationist's approach to blame attribution **Louise Kennefick**

Criminal law has the fascinating task of regulating the human condition. Since the 18th century, it has sought to fulfil this task through the advancement of a construct of the individual as a rational, autonomous and responsible agent. Mind sciences, on the other hand, strive to understand the human animal in a more comprehensive, and arguably more cogent, way. The field of social psychology, in particular, aims to explore via scientific method the way in which the thoughts, feelings and behaviour of the individual are influenced by their social context or situation. What, if anything, then, can or should the criminal law take from mind sciences, and in particular, the field of social psychology? Or, is the underlying premise and operative language of each field so disparate as to override any attempt at crosspollination? The branch of social psychology termed 'situationism' raises serious questions about the nature of individual responsibility.

This paper adds to the existing body of law and mind science literature by considering the application of situationism to a pivotal feature of the criminal law, the insanity defence. In particular, it will examine the conception, construction and coordination of the insanity defence, as the manifestation of the concept of criminal responsibility underlying the law. By asking, 'are we not all legally insane?' the paper interrogates the concept of criminal responsibility underlying the law, in light of the situationist thesis of 'fundamental attribution error' (Ross, 1977), which casts doubt on the very basis upon which the criminal law attributes blame. A core principle of the project is not to assume the saliency of situationism but to query its application to the criminal law in terms of issues pertaining to legitimacy and coordination.

Containing them, liberating us: Psychopathy, morality and Jung's shadow **Leon McRae**

It is a generally accepted that crime can never disappear in solidary societies, because "the sentiments [based on a common morality] that are offended would have to be found without exception in all individual consciousness" (Durkheim 1895, 13). All effective societies must therefore attempt to overcome this limitation of socialisation and heredity by reifying the common morality through law (widely construed). In Western societies, one way in which this has been achieved is through construction of a notional continuum between immorality and morality. At one end is the morality-shaping function of law; at the other, the psychopath: the archetypal criminal, who serves as both a warning to the would-be criminal and a lens onto our own potential for moral impropriety. From time-to-time, we catch glimpse our own immoral 'shadow' (as Carl Jung once put it); for example, through displays of aggression, sadism and self-interest. We respond, through an unconscious act of ego-preservation, by projecting our unacceptable shadow onto others, onto the psychopath. Without submitting to the moral complex in this way, there would be social anarchy, or as Stevens once quipped, "we should all be psychopaths" (1994: 66). If this is true, the implication is that legal rights, rehabilitative policies and exculpatory defences must contend with the importance of containment of the archetypal criminal as a tool for denying that part of ourselves which ought not be made public.

Session Two:

A retort to Norrie: Derrida, Law, and the 'socio-historical.' **Chris Lloyd**

Recent readings of Jacques Derrida's work on law have argued that deconstructive legal theory actively solicits the political, the social and the historical. Two examples being Jacques de Ville's Jacques Derrida: Law as Absolute Hospitality and Catherine Kellogg's Law's Trace: From Hegel to Derrida, which argue (respectively) that Derrida's work on law is to be seen as testing the limits of metaphysicality, as well as critiquing the 'always-already' posited and totalising forms of law. However against such positive readings of Derrida's work on law there are prominent critiques, such as the one espoused by Professor Alan Norrie, whose work on criminal law and legal theory is influential and well received. Norrie dismisses the relevance of Derrida's deconstructive legal theory to what he calls 'the socio-historical' of law, that is, law understood in terms of 'the underlying social relations in which it [is] embedded' (Alan Norrie, Law and the Beautiful Soul). Most notably, Norrie views deconstruction to be of little relevance to the criminal law. As well as this Norrie accuses Derrida of 'not relat[ing] deconstruction as an ethical project to the 'possible or useful' socio-historical project he also identifies.' Against these critiques and accusations this paper seeks to offer a retort to Norrie's lambasting critiques which deride Derrida's work on law for 'bypass[ing] the terrain of the social and the political' to the point that it then wallows in a 'melancholic situation of judgemental impotence' (Alan Norrie, Dialectic and Difference: Dialectical critical realism and the grounds of justice).

To address Norrie's critique this paper will attempt to dissolve the false distinction (which Derrida himself seemingly erects in 'Force of Law: The "Mystical Foundation of Authority"') between a critique of law which concentrates on the 'superstructures of law' and a critique of law which addresses the 'very emergence of justice and law, the instituting, founding, and justifying moment of law.' To do this the paper will recall Derrida's repeated statements which explain deconstruction as 'what happens or comes to pass' ('ce qui arrive') ('The Time is Out of Joint') and further as the process by which all presence makes itself known through the trace: 'presence, then, is the trace of the trace, the trace of the erasure of the trace' ('Ousia and Grammē: Note on a Note from Being and Time'). From these assertions the paper will then align the workings of deconstruction to both a critique of the metaphysics of presence, as well as the process which ensures the very existence of presence. Taking from Derrida once again, deconstruction will be shown to be the process by which 'we have all history' (Of Grammatology). Accordingly deconstruction becomes the movement which underpins all experience of society and the social, and all history. It is from this explication of deconstruction, and hence deconstructive legal theory, that a retort to Norrie's criticism will be voiced, focusing on how deconstruction can indeed be relevant to a critique of criminal law.

Counterterrorism as Authoritarian Legalism – Trends, Logic, and Form of UK Counterterrorism Law **Christos Boukalas**

This paper takes stock with 15 years of UK counterterrorism law, to identify its effects on criminal law and its repercussions for the rule of law.

It focuses on counterterrorism legislation and proceeds in four stages, respectively concerned with legal content, trends, logic, and forms.

Starting with the content of counterterrorism law, the paper presents three of its key moments: the definition of terrorism, the offence of 'encouragement', and the control orders/TPIMs regime. Based on this, the paper proceeds to identify some trends that counterterrorism introduces in criminal law: the diminishing of legal certainty, the construction of legal hybrids, the extension of the reach of criminal law, the decline of due process, etc. These trends display strategic coherence, for they all originate in the strategy of pre-emption. While many of them pre-date 21 century counterterrorism, in its context they acquire a directly political character. On this basis, the paper identifies significant reversal in the logic of criminal law: the latter is conceived as an instrument for security policy, and its prevailing function becomes to impose upon everyone a duty to uphold the social order. The paper concludes with a brief comment on legal forms. It notes a paradox: while counterterrorism law is incompatible with (any conceivable form of) the rule of law, and introduces authoritarian elements in criminal law; it does so from within the rule of law institutional framework, without for a moment disrupting it. This raises the question of whether counterterrorism law indicates the advent of a peculiar 'authoritarian legalism', a hybrid form that keeps the institutional shell of the rule of law intact while developing authoritarian trends in its context.

To trade or not to trade: Relaxing the ban on the trade in endangered species. **Simon Sneddon**

The Convention on the International Trade in Endangered Species (CITES) has controlled and limited the trade in endangered species since 1973. In the UK, the Endangered Species (Import and Export) Act 1976 (as amended) gives effect to CITES, and lists in Schedules 1-3 the species for which import and export are prohibited without a licence.

Poaching of endangered species continues to rise however driven, along with all acquisitive crimes, by the huge potential profits. In 2012, the Environmental Investigation Agency gave evidence of ivory on sale in China at over US$6,500/kg – a 2200% increase of the amount paid to poachers (EAC, 2011: Ev100). In 2011, Kenyan President Kibaki "set ablaze five tonnes of ivory" with a conservative potential resale value of US$30m – 63 per cent of the Kenyan Wildlife Service's 2013 income (KWS, 2014). In 2013/4, the National Geographic reported that in excess of 50 tonnes of ivory, with a potential value of US$300m, had been earmarked for destruction (Russo, 2014).

This paper builds on the work of Martin et al (African Ivory), and Biggs et al (African rhino horn). It assesses the extent to which a relaxation in the 1976 Act, and appropriate redistribution of the resulting income, could benefit conservation, or whether such an approach would effectively guarantee a market, thus encouraging a large increase in poaching.

Re-imagining the minimum age of Criminal responsibility: Opportunities and Challenges in Transition **Clare Dwyer**

In 2010, twelve years following the Belfast/Good Friday Agreement, Policing and Justice powers were finally transferred to a newly created Department of Justice for Northern Ireland. This was the final piece of the jigsaw and a key stage in completion of the devolution timetable set out within the Hillsborough Agreement. A key element of this agreement was a commitment to undertake a review of how children and young people are processed at all stages of the criminal justice system, with reference to international obligations and best practice. In the Review team's final report, it was made clear that human rights need to be embedded into policy and practice developments in the youth justice system. However, despite policy recommendations, there remains many areas that are still in need of reform, where recommendations have not been adopted or have been slow to be implemented. This includes, the principle of best interests of the child still not being reflected in the aims and principles of youth justice, delays in processing and sentencing and a lack of agreement on the minimum age of criminal responsibility. By drawing on some of the key discussions on the age of criminal responsibility, this paper will examine the disjuncture between the rhetoric of rights and resistance to change within discourse on youth justice in Northern Ireland, looking particularly at the issue of minimum age of criminal responsibility.

Session Three: (Joint with Mental Health)

Paper: Criminal Responsibility & Adolescent Development: A Neuroscientific Perspective **Hannah Wishart**

There is growing neuroscientific evidence that adolescence, a period of great cognitive development, can cause adolescents to commit criminal actions such as criminal damage, reckless driving offences, and murder. However due to the severity of the crime committed, some adolescents have been treated indifferent to adults in the English criminal justice system by being held criminally responsible and punished. Recently, the information relating to the development of brain structure and cognitive functioning during adolescence is being argued as the cause of their criminal behaviour is raising a number of legal questions. There is considerable debate amongst the neuro-legal disciplines on whether the adolescent's brain—underdeveloped in contrast to the matured adult brain—via an developing cognitive function or brain structure (or both), should or could be found incapable of the reconcilement of criminal responsibility when that adolescent committed criminal actions. In this paper, I will review the English criminal justice system's position on adolescence and criminal behaviour, including the reasons for abolishing the common law defence for adolescence immaturity, the doctrine of doli incapax. I will then examine the evidence relating to the key structural and functional cognitive developments inside the brain determined to influence adolescent criminal behaviour. It is hoped that a more complete understanding of adolescent development from neuroscience may endow the assessment phrase of adolescent criminal responsibility with a better awareness and understanding of the nature of development. It is uncertain whether the courts will accept neuroscientific findings as pertinent to this process. In light of this, I will consider whether neurobiological correlates of adolescent development for reconciling the adolescent as cognitively immature is relevant to capacity-responsibility and crucial to the law's determination of criminal responsibility

Legal capacity and impaired self-control: a study of approaches to anorexia nervosa and alcohol addiction across personal decisions and criminal acts. **Jillian Craigie**

Problems of self-control pose difficult questions both in law concerning personal decisions and law concerning criminal acts. In both contexts, psychopathologies associated with impaired self-control raise questions about the appropriateness of assigning legal capacity, for example: Should the person retain the right to refuse treatment? Should they be held fully responsible for a criminal act? One central issue that has arisen in both contexts concerns whether problems of volition are adequately accounted for in so-called 'rationality' tests.

In this talk I will focus on the current approach in England and Wales to questions of impaired control in anorexia nervosa and alcohol addiction. The analysis reveals a recent alignment of the approach to understanding problems of control in alcoholism in the test for diminished responsibility, with the approach to understanding the problems of control in anorexia found in legal judgments concerning refusal of treatment for anorexia. This will be used to reflect on the fairness of the current approach to these questions of legal capacity for people with anorexia and alcohol addiction; as well as the broader question about the adequacy of rationality tests.

An issue of intersectionality? Hate crime and mental condition defences **John Rumbold**

A prominent American disability rights campaigner commenting on the recent case of Tania Clarence expressed concern that the courts and the public appear to value the lives of disabled children less, which she argued amounted to discrimination on the grounds of disability. There are several notorious cases where the assessment of a defendant's mental condition was arguably influenced by the nature of the criminal charges, where the acts appeared to be motivated by racism, homophobia or other categories of "hate crimes". These include the Soho nail bomber, David Copeland, and the white supremacist, Anders Breivik. Such cases demonstrate how mental condition defences can be misunderstood as exculpatory and equivalent to acquittals. They also arguably demonstrate how the mentally ill continue to be denied the same protection and compassion as other vulnerable groups.

The differences between mental condition defences, such as insanity and diminished responsibility, and the partial justification of loss of control/provocation are also discussed. Further study is required to identify if those seeking to rely on mental condition defences when charged with hate crimes (or crimes perceived to be hate crimes) face additional barriers.

Session Four: Gender and the Courts

Paper: Establishing Credibility in Criminal Court: A Case Study of Domestic Abuse Case **Tatiana Tkacukova and Isabel Picornell**

Lying during the legal process has been the subject of much study in the last ten years. Criteria Based Content Analysis (part of Statement Validity Analysis) continues to be a popular instrument for evaluating the credibility of witness statements; originally developed for child witnesses in sexual abuse cases, research suggests that it may be a useful tool with adults in other criminal contexts. Interview techniques to improve lie detection continue to be developed, with managed cognitive loading successful in differentiating between truth-tellers and liars. However, one area that remains little studied in deception is the verbal strategies that liars adopt on the witness box.

The paper presents a case study of establishing credibility in a domestic abuse court case. Domestic violence is difficult to prove because there are usually no adult witnesses, there may not always be enough circumstantial evidence and everything often hinges on perception and verbal confrontation. Establishing credibility in court thus becomes crucial for the outcome of the case but also for gaining the right type of support and protection from the police and courts. The presentation concentrates on the communication strategies used by witnesses and defendant in a clear-cut domestic abuse case followed by the researchers from the very beginning (the 999 call) until the outcome of the criminal hearing at the Magistrate's Court. Deceptive communication strategies discussed involve the focus of personal pronouns, use of emotive adjectives, the proportion between irrelevant information and description of verbal movements, the change in lexical mapping and verbal re-adaptation of descriptions of the same action during cross-examination and offering evasive replies for very specific questions

Paper: Building a discrete offence of domestic abuse upon the foundations of coercive control **Vanessa Bettinson and Charlotte Bishop**

Domestic violence and domestic abuse are currently receiving high levels of political and academic attention, with plans recently being announced to include a new offence of Domestic Abuse under the Serious Crime Bill. However, defining what the two are, and whether they are, in fact, distinct remains fraught with difficulties. For some commentators, efforts to define the terms 'can serve to distract us from the broader issue of violence against women.' However, in terms of responses, particularly those within the criminal justice system, we argue that establishing an accurate definition is critical to the successful operation of the offence.

Currently, general offences, commonly within Offences Against the Person Act 1861 and assault and battery, Protection from Harassment Act 1997 and the Criminal Damage Act 1971, may be applied to certain incidences of domestic violence. However their ability to apply is limited due to their reliance on common (mis)understandings of the harm of domestic violence where the extent of the physical violence is used to assess both its existence and severity. This has led to two main difficulties; first the threshold of harm required, for example, the restriction on the term actual bodily harm to exclude 'mere emotion' or psychological conditions as distinct from psychiatric conditions retains the perception that domestic violence always involves physical violence. Secondly, these offences remain incident-based and thus fail to take into account the lived experiences of victims who face a pattern of behaviour from the perpetrator designed to exert power and control over their capacity to make decisions. Whilst 'a course of conduct' forms part of a harassment offence, this paper argues that judicial interpretation has in fact led to the examination of individual incidents of assault and battery, and whether or not these, in combination, amount to a course of conduct. As a result, the current interpretation of these offences means that coercive and controlling behaviour that erodes a victim's freedom and causes psychological harm are unrecognised in the criminal law framework. In turn, these understandings create a hierarchy of harms with physical violence at its peak, meaning there is the potential for the new offence of domestic abuse to be seen as less serious than physical violence.

Written following the announcement that domestic abuse will be criminalised as a discrete offence under the Serious Crime Bill, this paper will argue firstly that it is necessary to create such an offence in a way that captures the dynamics and harm of coercive control which is currently outside the reach of criminal law. Secondly this paper will advocate that such an offence would need to place the programmatic nature of the behaviour involved, and the impact it has on the victim, at its core. Suggestions as to how this is to be achieved will be examined.

A critique on the influence of the "New Abolitionist Movement" on human trafficking discourse **Elizabeth Faulkner**

This paper will address the "New Abolitionist Movement" and evaluate the influence it has had upon our contemporary understanding of human trafficking. There has been an explosion in respect of the attention that human trafficking receives today. In fact human trafficking has become a buzz word, an issue of pressing international and political concern, whilst the actual prevalence of the phenomenon remains unclear. The statistics that are available are often relied upon without question; the Global Slavery Index 2014 is a prime example of this with the critical response to the GSI being virtually non-existent.

The terms human trafficking and contemporary slavery are used interchangeably providing a broad appeal to humanitarian feeling, exploiting the emotive quality of slavery and affording a level of exceptionality to the phenomena. Reflecting upon what influence this exceptionality has had upon the international community's policy and actions towards human trafficking. Whether the measures implemented to combat the phenomena are actually what they prima facie appear to be will be questioned.

Echoing Kipling's sentiment in "The White Man's Burden" the movement has effectively established an unchallenged dominance over debates with regards to human trafficking, this begs the questions why and who benefits from this influence? This paper argues that whilst there is a place for the "New Abolitionist Movement" in the discourse of human trafficking, there are other significant issues that remain inadequately addressed as a result of the unfettered influence of this movement. The main contention is the unquestionable status of the "New Abolitionist Movement" as a whole, and what vested interests are being shielded by the movement and served by it.

Session Five: Policing

'I'm a celebrity and shouldn't be on bail': Pre-charge police bail and prospects for reform **Anthea Hucklesby**

Pre-charge police bail was introduced by PACE 1984 as a mechanism through which suspects could be released from police custody whilst further investigations take place. Since its introduction, police use of pre-charge bail has increased exponentially so that around 80,000 suspects are on bail at any one time. This coupled with a number of high profile cases involving celebrities accused of historical sexual offences has raised concerns about the necessity and implications of its use. These concerns have focussed particularly on the length of time some suspects spend on bail and the conditions which are imposed, which can be onerous and result in suspects 'having to put their lives on hold'. Proposals to more tightly govern the use of pre-charge bail have followed starting with a College of Policing (2013) consultation on a set of bail principles. More recently, the Home Office (2014) have instigated a consultation on a range of measures to reform the use of pre-charge bail namely, removing the necessity to release suspects on bail whilst further investigations are undertaken, creating statutory time limits, implementing a structured and hierarchical review procedure and the publication of a set of standards to govern the use of pre-charge bail. This paper will assess these proposals in light of research conducted on the use of pre-charge bail in two police forces. The research findings suggest that the government's proposals are likely to have some impact on both the number of suspects bailed and the governance of the process but that they leave the process open to abuse and the moulding of practice to conform to police working rules.

A Polarised Approach to Police Complaints **Clare Torrible**

Maguire and Corbett suggest the complaints system serves four functions (satisfaction of complainants, enforcement of discipline in the ranks, feedback to police managers and maintenance of public confidence in the police) and much academic work has centred on how these interact. In addition, the style and extent of external oversight within police complaints processes is a continuing and pervasive theme in this field. These two elements have combined to focus deliberations on the extent to which more external involvement in the system might impact on each of the four functions identified above. In this paper I seek to reframe these debates by reference to two types of police legitimacy; constitutional and organisational. At a constitutional level, the police are seen as embedded state actors and their legitimacy centres on their compliance with the rules surrounding their mandate to use force. In contrast, they are organisationally legitimate to the extent that their conduct is pragmatic in resolving conflict and accords with their service role. These two types of legitimacy operate as polar opposites on a continuum and I argue that analysis by reference to them is useful because, for example, 'complainants' satisfaction' with a certain outcome may reflect acquiescence concerning levels of police brutality that are offensive to constitutional principles. Similarly, at an organisational level, maintaining police morale and discipline in the ranks may require weighing conflicting evidence in favour of officers and this raises important questions concerning when this pragmatic concession becomes constitutionally unacceptable. I conclude that analysis along these lines also deepens the debate in this area by requiring some focus on the extent to which various parts of the system facilitate deliberation regarding the balance to be struck between organisational and constitutional legitimacy.

Identifying vulnerability and risk – exploring themes to understand reality **Roxanna Dehaghani**

. Identification of risk is important in preventing self-harm and suicide in custody. Moreover, identification of vulnerability is fundamental to preventing false confessions and false convictions, through the appropriate adult safeguard (Code C of the Police and Criminal Evidence Act 1984 (PACE 1984), and for ensuring that diversionary measures are considered as an alternative to prosecution. Previous research has indicated that whilst custody officers in England & Wales ensure that the requirements under PACE 1984 are fulfilled when vulnerability has been identified, criticisms have been levelled at their failure to adequately identify vulnerability and risk (Gudjonsson, Clare, Rutter and Pearse 1993; Irving and McKenzie 1989). A gap with regard to how custody officers define vulnerability nevertheless remains. This research seeks to close, or at least lessen, this gap. By investigating the social reality of police officers and the gravity of the task, the difficulties faced have been explored and explained. The empirical research conducted at, thus far, one custody suite in England, explores custody officers' perceptions of vulnerability and their understanding and interpretation of the legal provisions on vulnerability. Through observation of the processes carried out in custody certain themes have emerged that contribute to understanding how custody officers view their role in identifying vulnerability and risk. Furthermore, the research has led to the discovery of how identification is achieved and how vulnerability is perceived. This paper seeks to explore the themes thereby contributing to our knowledge and understanding of why custody officers often fail to identify vulnerability.

Session Six: (Joint with Sentencing&Punishment)

Professor David Ormerod, Law Commissioner

Session Seven: Policing and Prosecuting

The Construction of Police Cases in China **Yu Mou**

Written evidence contained in the police dossier, such as witnesses' statements and interrogation records, carries a great deal of weight in decision making at all stages of the criminal process in China. Shielded from external scrutiny and in lack of any authentication process, relatively little is known about whether these official dossiers are truly reliable. Drawing upon my empirical study of the written procedure of the Chinese criminal justice system, this article investigates how the written evidence has been constructed by the police in daily practice. It reveals that the constructed evidence has regularly been distorted and falsified to enhance the function of the incrimination of the accused. With the recording process of the police interrogation being fraught with manipulation and falsification, the investigation in China is inherently coercive and serves the function of social control.

Prosecution policy, centralisation and professional discretion **Laurene Soubise**

Tasked with enforcing the criminal law against suspected offenders, public prosecutors have traditionally enjoyed broad discretion, which is usually structured by legal guidelines defining rules prosecutors should follow when making their decisions. Basing its analysis upon direct observations and interviews in France and England and Wales, this paper studies the institutional architecture of public prosecution services in relation to the definition and implementation of prosecution policy in these jurisdictions. There have been few systematic, empirical accounts of the way national prosecution policies are disseminated and on the inner workings of public prosecution services. Whilst a classical account of the French criminal justice system is that of a top-down hierarchical process, in which opportunities for the exercise of official discretion are closely circumscribed, this study shows that it offers a much greater degree of discretion to individual prosecutors in practice than the Crown Prosecution Service (CPS) in England and Wales. Aiming to establish its legitimacy through certainty and transparency, the CPS has become increasingly centralised: prosecution policy is defined almost exclusively at the national, rather than local, level and compliance is strictly monitored by CPS managers who have to report centrally, strongly reducing the scope for prosecutors' individual discretion. This paper argues that the centralisation of prosecution policy and the growing constraints on individual discretion have shaped the evolution of the prosecution profession, both in France and in England and Wales.

Prosecuting Hate Crime: Procedural Issues and the Future of the Aggravated Offences **Abenaa Owusu-Bempah**

Tackling hate crime is currently high on the government’s agenda. At the request of the Ministry of Justice, the Law Commission recently examined the case for extending the racially and religiously aggravated offences in the Crime and Disorder Act 1998, so that they also cover disability, sexual orientation and transgender identity. The terms of reference for the project were narrow, and did not include an examination of whether the existing offences are in need of reform. The Commission recommended that, before a final decision is taken as to whether the offences should be extended, a full-scale review of the operation of the existing offences be carried out. This paper contends that, in determining the future of the aggravated offences, consideration should be given to the procedural difficulties which can be encountered during the prosecution stage of the criminal process. The paper highlights a number of significant procedural problems which arise from the structure of the existing aggravated offences. These problems are largely related to alternative charges, whereby the prosecution charge both the aggravated offence and the lesser offence encompassed within it, and alternative verdicts, whereby the jury can convict of the lesser offence if the aggravated element is not proven. This paper argues that the procedural problems can, and have, lead to unfair outcomes. If the offences cannot be prosecuted effectively, they become little more than an empty gesture to those affected by hate crime, and this may be counter-productive. Procedural problems also put defendants at risk of wrongful conviction. The paper concludes that the preferred way forward would be to repeal the racially and religiously aggravated offences and rely on sentencing legislation to deal with hostility-based offending.

EU Law **Ian Kilbey and Kathryn Wright**

Session Five: Crisis and Austerity

Protecting the Vulnerable during Austerity: The Legal Requirements on the Troika to Consider Poverty in Implementing the Bail-Out Programmes. **Roderic O'Gorman**

Within the range of instruments providing the legal basis for the economic adjustment programmes for Ireland, Portugal, Greece and Cyprus (implementing decisions, memoranda of understanding, financial assistance facility agreement), the European Commission is mandated to periodically review the effectiveness of the agreed measures and recommend necessary corrections with the view to, inter alia, minimising harmful social impacts, particularly regarding the most vulnerable members of both nations societies. This requirement grants, in theory at least, a basic level of scrutiny of and protection against the worst elements of the bail-out programmes for impoverished persons in the relevant states. In each of the quarterly reports undertaken by the Troika, analysing the implementation of the programmes in the four bail-out states, references is made to this requirement, though the importance given to it varies significantly between the reports.

This paper seeks to ascertain the extent to which the legal provisions concerning vulnerable persons contained in the bail-out programmes actually impacted on the manner in which they were implemented. It will begin by examining the various EU legal instruments for each programme, comparing the extent to which they include provisions relevant to the protection of the vulnerable. This will be followed by a quantitative textual examination of each of the quarterly Troika implementing reports, to see the extent to which they referred to the provisions contained in the initial instruments. On foot of this, a comparative analysis will be undertaken of the overall approach of the Troika to how it deals with poverty in the context of an economic adjustment programme and whether legal instruments make any substantive difference. Proposals will be made as to how the issue should be addressed in any future financial assistance facility agreement coming from the European Stability Mechanism in the future.

EU Competition Law and Social Policy **Anca Chirita**

This paper aims to explore the influence of Keynesian and neo-Keynesian employment theories on Article 3 TEU's social policy aimed at 'full employment' and of the German neo-liberalism in shaping a 'highly competitive social market economy'. The historical method of interpretation of EU social goals will be based on my interpretation of the goals of EU competition law (63 ICLQ 2, 2014) by examining macroeconomic goals. The intersection of competition law and social policy is essential to understand the role of competition law in shaping the social values of solidarity and in order to combat the negative effects of austerity. As unemployment targets are missing in the convergence criteria (16 CYELS 2014 on 'The Impact of the EU Crisis on Law, Policy and Society), the purpose of my paper is to criticise the EU's austerity obsession as a possible breach of the Lisbon's Treaty promise to deliver Keynes' 'utopian' ambition towards achieving 'full employment', given than only half of the EU population is in active employment. Finally, the paper aims to demonstrate how competition law can and should integrate an active focus on employment friendly commercial considerations of corporations willing to merge or in breach of competition rules. By setting employment targets to the undertakings in question, e.g. avoiding job cuts and/or creating new jobs, when balancing their commercial intentions and objective justifications, competition law can implement a social policy to combat austerity.

Crisis, Law and Legal Scholarship **Imelda Maher**

This paper aims to do two things: First, it asks how the nature of EU law has been challenged by the varied responses to the euro-crisis: through treaty revision, intergovernmental treaties and case law in the highest national courts and before the EUCJ. Second, and this is really the main focus, it analyses how legal scholarship engages with non-legal scholarship in this field. The spur for this is twofold. Menendez, in a recent editorial in the European Law Journal correctly notes the challenge that the crisis has posed for EU Law scholarship and suggests two responses to this, one of which is greater engagement with historical and economic context. The second is Ruffert's article in the Common Market Law Review which, a few years earlier, also identifies the challenge the crisis poses for legal scholarship warning against an apology or complete rejection of the crisis responses suggesting instead a return to core EU principles and the central idea of integration through law, which has not disappeared but has lost public support. He argues that this means that legal scholars must speak the unpopular truth that law must be honoured even in crisis and cannot be abandoned for power. The question these two views raise is to what extent there has been or should be engagement by legal scholars in scholarship from other disciplines in discussion of law and the crisis. This preliminary paper adopts a mix of quantitative and qualitative analysis of 'crisis scholarship' to address this question.

Session six: Governance and Contract :

Legitimacy and European Union Governance: Whither Transparency? **Stephen Lea**

In the European Union, the value of transparency has been lauded not only as a mechanism for fostering democratic accountability, but also as a means of enhancing the legitimacy of the centralised institutions of the EU. After 20 years of transparency, this seems at best to have had only limited impact on perceived levels of trust in the EU.

A growing body of critical scholarship highlights that there is a pressing need to take a much more nuanced approach to both transparency's potential and its shortcomings in the context of the European Union's democratic challenge. In particular, much closer attention needs to be paid to the 'perception' question, i.e. how will citizens' respond to the evolving transparency framework in the ongoing constitutionalisation of the EU? Such a task requires a systematic approach to culture and the various cultural biases that inform citizens' reactions to the changing EU landscape. One model, which may offer that systematic approach, is the Grid-Group Cultural Theory (GGCT) model. GGCT presents a typology of four omnipresent cultural types, which stem from four distinct forms of community organisation. By considering the type of response that each of these forms of social organisation might elicit in respect of the EU transparency framework, it may well be possible to offer some answers to the all-important perception question, thus presenting a more theoretically sustainable account of the impact of transparency on legitimacy.

EU Governance in Organs: Proposing A Leap to Hybrid Governance and the 'Integrated Model of Combined Governance' **Tasnim Ahmed**

New governance methods such as the OMC have threatened the overall level of general political input and democratic oversight into its procedures. Therefore the research will aim to propose a governance paradigm in healthcare (through agencies, networks and comitology) which could be utilised rather than the sole reliance on the OMC. The suggestion is to employ other experimental modes of governance as the OMC healthcare did not develop extensively unlike the OMC SPSI. The reason for this was that the OMC health and long-term care was not adopted until 2004 and then more or less immediately streamlined in 2005 to the Social OMC which contained the three strands namely pensions, social inclusion and protection and healthcare. This left a gap for healthcare governance in the EU. Hence the way forward proposed here for the OMC is through combined governance. Combined governance requires a hybrid interaction between hard and soft law and further the new modes of governance can be fused together and allow hybrid interactions. This notion will be represented substantively through the Organs Directive as the collaboration of the directive and action plan presents a hybrid format (combined governance). Secondly my proposal of the 'integrated model' may be utilised when applying the Organs Directive. The integrated model presents a fusion of the three governance structures the OMC, comitology and agencies. In the case of the Organs Directive it presents a 'hybrid within a hybrid'.

Moving On from Non-Delegation: Climate Engineering Research and the EU Regulation of Scientific Uncertainty **Janine Sargoni**

The paper questions how the nascent transnational regulation of climate engineering research can develop to maximise the possibility of securing legitimacy as part of an EU regulatory framework. The orthodox answer lies with the case of Meroni which demonstrates how the EU promotes democratic legitimacy in regulatory frameworks for risky environmental or scientific research by adopting a Risk Analysis approach: an approach that separates the institutions that scientifically assess risk from those political institutions that manage the risk. In this paper, I suggest that the Risk Analysis approach is counterproductive in securing legitimacy for the emerging transnational regulation of climate engineering research because of the assumption it makes about the ability of science to assess the risk of climate engineering and its research. I offer an alternative approach to regulating risk – one based on what I call an incorporated approach to risk assessment – which provides formal opportunities for all members of the public to participate in decision-making processes for the assessment of risk, thereby maximising the possibility of securing legitimacy. I conclude by evaluating the implications of this alternative approach on the counterintuitive constitutional development of doctrine of non-delegation in the EU.

Clarifying Aggressive Commercial Practices in the Unfair Commercial Practices Directive: the Role of Consent **Eleni Kaprou**

The Unfair Commercial Practices Directive (UCPD) is one of the most important pieces of legislation for European consumer protection, due to its broad scope of application and its maximum harmonisation character. It introduced provisions on aggressive commercial practices for the first time on a European level. Still, the vagueness surrounding key aspects of the provisions is leading to legal uncertainty. In contract law, consent is a central concept as for a contract to be binding both parties must wish to be bound by it. Similarly, in aggressive practices the issue is that the consumer is pressured into taking a transactional decision, one he would not have taken otherwise, in other words aggressive practices are problematic because they impair the consent of the consumer.

In the UCPD, practices that use harassment, coercion, or undue influence are aggressive, putting these three concepts are in the heart of what constitutes an aggressive practice. However, in spite of their importance they are characterised by a lack of clarity as they are not defined in the Directive with the exception of undue influence. Consent and lack thereof is a connecting factor between the three concepts of harassment, coercion and undue influence and can assist in distinguishing legitimate from illegitimate pressure.

This paper will seek to offer a definition of consent for the purposes of the Directive and in particular the aggressive practices provisions. It will conceptualise consent both as a rationale for regulating aggressive practices and as an element of an aggressive practice, namely as the effect it has on the consumer. Moreover, it will utilise the concept of consent for pointing out the overlap between the concepts of harassment, coercion and undue influence as well as their limitations.

Session Seven: Environment and animal welfare

Is the Infringement Procedure Effective? An Examination of Environmental Infringement Cases — **Aleksandra Cavoski**

Is the Infringement Procedure Effective? An Examination of Environmental Infringement Cases

As the European Commission releases its latest Report on Monitoring the Application of EU Law, it again becomes apparent that the environment remains an area of concern in the implementation of EU law. Despite a downward trend in the overall number infringements from 2011 to 2013, the number of environmental infringement cases rose in 2013.[1] By the end of 2013, 1300 infringement cases remained open and of these 334 were environmental infringements, representing 26 per cent of the total.[2] The paper will examine the effectiveness of the infringement procedure in environmental cases, drawing on the information contained in the Commission's reports on application of EU law in the last five years. The paper will explore the measures launched by the Commission to improve compliance with EU environmental law, in particular improving the exchange of information and improving existing working methods, maintaining a dialogue with the European Parliament and seeking a more effective management of environmental infringements. As the effectiveness of the infringement procedure in environmental cases principally depends on the willingness of member states to comply with the EU environmental acquis, the paper will also focus on three member states with the poorest record of implementation to identify reasons for non-compliance.

The Evolution of EU Animal Protection Law — **Stephanie O'Flynn**

This paper will examine the evolution of EU animal protection by examining the regulatory regime and critiquing CJEU Jurisprudence in relation to animal welfare disputes. The current system of protection will be analysed, highlighting the various challenges within the current regime. The paper will conclude by setting out reform options for EU animal protection law.

Improving Animal Welfare by Defining Core Concepts in EU Law — **Moa Näsström**

In recent decades, animal welfare legislation has developed considerably and become more detailed in the European Union (EU). However, to ensure consistent application throughout the EU, many core concepts need to be clarified, as twenty-eight different Member States (MS) results in a pluralistic legal order with an equal number of different attitudes towards animal welfare. Animal welfare legislation in EU takes the form of minimum harmonisation Directives that allow for a certain degree of differentiated integration, rather than requiring uniform application. Unfortunately, the lack of definitions for core concepts in these Directives results in different interpretations of core concepts such as 'animal welfare', 'suffering', 'ethological needs', and 'environmental enrichment'. If these core concepts were defined on EU level, the interpretation and therefore the application of the legislation would become more coherent. Additionally, by not imposing uniformity, such an approach would allow for national variations whilst safeguarding vital animal welfare aspects. Greater clarity and coherence would benefit not only the animals in many MS by improving their welfare, but also the farmers on an EU-wide scale with clearer rules and more effective enforcement of legislative compliance at a farm level. Consequently, the 'field would be levelled' for farmers in different MS regarding their competitiveness in the EU internal market, therefore strengthening their competitive position and thus increase their financial security. Difficulties are; reaching consensus regarding the definitions of core concepts, the cost of ensuring on farm compliance, and the cost of upgrading farm facilities to comply with the new definitions in several MS. However, the benefits for farmers, markets, national authorities, and numerous animals would significantly outweigh the negative aspects.

Session Eight: Movement of Persons

Is Free Movement Subverting Democracy? - — **Vesco Paskalev**

The proposed paper discusses the effect of the economic freedoms and especially of the free movement of people on citizens' participation in national politics, especially in the 'weak' democracies on the periphery. While the headlines, especially in the UK, have been dominated on the economics of European mobility, the relationship on mobility with national democracy has received little attention. This is unfortunate, because, as we know from A.O. Hirschman, each citizen faces perennial dilemma between 'voice' and 'exit'. Further, citizens have to make a choice between taking action in the public sphere and pursuit of private welfare. The paper argues that EU is incentivising people to take the less public-minded option in both cases. Thus, by facilitating the exit option on one side and enhancing the opportunities for private prosperity on the other, the EU, for all the good things it provides, subverts democracy in these countries. Citizens are less likely to take to the streets and protest against corrupt or inept governments, and more likely to either move to another country or to turn to private consumption. Those who remain concerned about the way society they live in is run, have a firmly-guaranteed right to move to another society. It is no surprise that traditional countries of emigration, e.g. Southern Italy are locked in corruption, and more recently Romania and Bulgaria seem to have entered the same trap.

Thus, the paper explores several dynamics of citizens' participation in democratic self-governance and mobility which come into play in the context of the EU. It shall draw on the available data for migration in Europe, and relate it to the existing (and perceived) corruption and failure of rule of law and democracy in the member states. Further, it applies the economic concept of regulatory competition to analyse not only the flow of goods and capital, but also of civic virtue. Regulatory competition in this case prompts two possible scenarios in both of which mobility plays a negative role for the national democracy in Europe. The paper concludes with a call for EU intervention to compensate for this fallout.

The View from Bradford: A response to the European Commission's Study on Mobility, Migration and Destitution in the European Union, 2014 -

Edward Mowlam

The Commission's Study on Mobility, Migration and Destitution is a welcome addition to this lamentably under-researched and rapidly-changing area. These issues comprise a major part of the empirical work being conducted by the speaker and this presentation will address a number of issues concerning destitution and homelessness among EEA nationals.
Evidence will be presented which will go some way to addressing points upon which the Commission's study is unable to provide specific guidance or analysis. This includes how the legal framework has served to trap migrants within a cycle of homelessness, how they and service providers deal with this and why it is common for EEA nationals to stay in the UK despite encountering destitution and/or homelessness.
The Commission's study states that, '[w]hile generally most mobile citizens... have fared reasonably well in the UK in terms of employment, there is a growing concern of a (sic) increasing incidence of destitution and homelessness among segments of the EU10 population in the United Kingdom'. This concern is well placed. Numerous studies show as many as one third of rough-sleepers in the UK are EEA nationals. The evidence also shows that the rules governing the allocation of Housing Benefit and other forms of social assistance mean that homeless EEA nationals are routinely being turned-away from hostels and being denied specialized support designed to prevent destitution and help people back into economic activity. Despite this, there is widespread concern that the benefits system is being abused by EEA nationals and measures to more strictly restrict the allocation of social assistance form a large part of all the 'major' parties' campaigns going into the May 2015 general election. The impact that such policy changes may have on EEA nationals and on EU free-movement of workers law more generally will also be discussed in this presentation.

A comparative UK and Polish study of the European Arrest Warrant: Does reform of the EAW need to come from individual Member States or are changes needed to the EAW as an instrument? -

Gemma Davies & Katarzyna Andrejuk

The European Arrest Warrant was designed to allow fast-track extradition between EU countries for serious crimes reducing the potential for administrative delay, but it has not been a smooth ride for the EAW. Despite the acknowledged difficulties the UK Government has ensured that the EAW is to be on the 'opt in' menu. Arguments for opt in have been based on the notion that improvement to the EAW can be achieved, in part, through negotiation with Member States and informal judicial cooperation. Such a position places the blame firmly on individual Member States rather than the EAW as an instrument, but is there any evidence to support this?
This paper seeks to look comparatively at the operation of the EAW in Poland and the UK. Poland has been a European leader in the number of issued EAWs. This is not only the result of significant emigration of Poles to other EU countries but also a specific interpretation of the EAW framework in the Polish legal system. In 2009 Poland issued 4844 EAW (30.6% of all EAW issued). From 2009 Poland has steadily decreased the number of warrants issued and the Polish Ministry of Justice associates this fact with its active politics of diminishing usage of EAWs. In July 2015, an amendment to the Polish Code of Criminal procedure will come into force, changing art. 607b to state that issuing the EAW must be "in the interest of justice". This paper seeks to compare the operation of the EAW in the UK and Poland, considers the efficacy of Polish efforts to reduce the number of warrants it issues and ultimately seeks to look at whether Member State reforms will ever be enough to cure the ills of the EAW or whether this can only be achieved at EU level.

Family Law and Policy — **Anne Barlow and Annika Newnham**

Session Four: Some theoretical and international perspectives on family law issues — **Chair: Anne Barlow**

Relational autonomy and spousal agreements in the Supreme Court of Canada: How much difference does a theory make?

Lucy-Ann Buckley

This paper speaks to the debate on autonomy and choice in the context of spousal financial and property agreements (including prenuptial agreements, separation agreements and divorce settlements). The legal weight attached to such agreements is usually premised on respect for the autonomy of the parties, but feminists have highlighted the effects of structural barriers and social context on personal decision-making. They have commonly advocated 'relational' autonomy models as providing a more complete and nuanced understanding of personal decision-making, but the practical significance of these models is often simply assumed. This paper evaluates the utility of a relational autonomy approach in the context of spousal support (maintenance) and property agreements, focusing on the jurisprudence of the Supreme Court of Canada from 1987 to date. The paper addresses two key issues. First, to what extent has relational theory informed the Court's decisions on spousal support and marital property agreements? Second, do relational models make any practical difference to case outcomes? Tracing the Court's developing jurisprudence on family autonomy, the paper argues that, although the Court's decisions have gradually incorporated key aspects of relational theory, this does not always make as much difference to case outcomes as many feminists might expect. However, the paper also demonstrates that a relational approach may make a vital difference in some situations.

High-conflict Post Separation Disputes Involving Family Violence in a Neoliberal Context - British Columbia, Canada

Rachel Treloar

This paper begins with a brief overview of the economic, social and political context that formed the backdrop for British Columbia's new Family Law Act (2011) which came into full effect in March 2013. This context included significant cutbacks to legal aid and to a broad range of services and programs that support families. The Act clearly lays out new norms and procedures for the resolution of family disputes, with an emphasis on out of court dispute resolution. Although the Act includes a number of innovative changes, this paper will focus on those involving family violence. These changes include: a comprehensive definition of domestic violence that recognises the many forms that domestic violence may take, explicit attention to the presence and impacts of family violence in determining a child's best interests, and new tools to help the courts address family violence. In 2014 a new Provincial Domestic Violence Plan was also announced, which included specific provisions for vulnerable groups. Thus, at the same time as a broader legal definition of family violence was enacted, the conception of who is vulnerable in the context of family violence policy also narrowed. This conceptual narrowing of identifiably vulnerable people within policy is increasingly common in neoliberal governance and tends to occur alongside a reduction of resources. This plan, particularly as it intersects with BC's FLA, raises a number of important questions and creates new tensions. After exploring these issues and tensions, the paper assesses the extent to which the Act is fulfilling its transformative potential in such an environment. It concludes that although the new Act contains many positive changes, without adequate resources to support families and improved access to justice, families who must turn to law may now be more vulnerable, particularly where family violence is a factor.

Equal property rights for women: ethnographic reflexions on the dynamics of autonomy within the Indian joint family.

Karine Bates

In India, the Hindu Succession Act (HSA) of 1956 allows to claim an equal share to the wife and daughters, along with the sons of the deceased senior male, out of familial property. By giving inheritance rights to daughters and widows, and not only to sons, this Act encourages a radically different organization to the ideal household, commonly referred to as "the Indian joint family". The Act also initiates a transformation of Hindu women's status by introducing property rights based on the concept of the autonomous individual, which entails the transformation of women's rights and duties in India. Even today, the HSA is seldom used by daughters. The limited success of this law can be explained by a complex interplay of factors. Drawing on the analysis of qualitative data compiled during extensive fieldwork periods and complemented by ethno-legal research in Pune tribunals, this paper will discuss how the Hindu women interact with their equal rights they have with their brothers under the HSA and how they integrate this idea of the autonomous individual self.

Session Five: Developing responses to non-traditional family life **Chair: Annika Newnham**

The Importance of 'Biological Reality': Constructions of Parenthood in Non-Traditional Families

Alan Brown

This paper will consider how the growing significance attached to the genetic connection between parents and children is rendered problematic in non-traditional families, formed using artificial reproduction. In such families, the factual circumstances are complex and varied, with the 'biological reality' often being different from the legal determination of parenthood.

It will be suggested that a trend towards privileging the biological relationship has developed in cases of traditional, natural reproduction, which is in direct contrast to the approach to determining parenthood employed in the Human Fertilisation and Embryology Act 2008, which separates legal parenthood from the genetic connection possessed by sperm and egg donors. However, this paper will consider judicial language which suggests that in spite of this clear statutory approach, the biological connection between parents (whether mothers or fathers) and children continues to possess some significance.

The paper will consider the judgments in both Re G (Children) (Shared Residence Order: Biological Non-Birth Mother) [2014] 2 FLR 897, which concerned a dispute between the genetic mother (who was not a legal parent) and the gestational mother, and Re G (Children: Sperm Donors: Leave to Apply for Children Act Orders) [2013] 1 FLR 1334, which concerned a dispute between lesbian couples and 'known donors' (who were not legal parents).

It will be suggested that these judgments contain a judicial attempt to acknowledge the importance of the genetic connection, while also recognising the complexity of the diverse, factual circumstances in such planned, non-traditional families. Therefore, these decisions encapsulate the tension which exists between legal parenthood and the 'biological reality'

Mandatory sperm-donor registry: instrumental, symbolic or something in between?

Helen Weyers

Since the eighties, several European countries have adopted the position that anonymous sperm donation in clinics should be illegal (Austria, Finland, the Netherlands, Norway, the United Kingdom, Sweden and Switzerland). This paper compares four of these countries: Austria, Sweden, the Netherlands and the United Kingdom.
The research question is: Does striving for the best interest of the child by making sperm registries mandatory, lead to the same kinds of laws and to the same effects in the four countries?
To answer this question, I will inquire the goals of mandatory sperm donation registry and the adopted mechanisms. That is: recording the way information on being conceived by artificial reproduction can be obtained, the possibilities to obtain more information on the donor, and the way in which this information can be attained.
To determine the effects of the law, I will answer questions as: Do parents inform their children on their conception? If not, are there other ways for the child to receive this information? How many children feel the need to know something about the donor? What is it exactly that they want (e.g. knowing a name, having a picture, or ongoing contact)? What side-effects occur? Etc.
My provisional answer is that these four laws, although inspired by the same right differ considerably in the way they came into being, the rules they consist of and their effects.

"There is a danger, isn't there, that things are just going to be copied from one to the other?": discourses of sameness and difference between civil partnership and marriage

Charlotte Bendall

This paper explores qualitative data obtained through in-depth interviews with family law practitioners and clients relating to their experiences of civil partnership dissolution. The wider context of my research seeks to interrogate how civil partnership (and, by extension, same sex marriage) might work to challenge social and legal constructions of gender in family relationships. My focus is on questions around how solicitors perceive civil partnership dissolution matters in comparison to their experience of heterosexual divorce cases; how they have gone about preparing for and arguing their dissolution cases (and the degree to which they have drawn upon heteronormative arguments and case law); and whether the practitioners and clients believed that civil partnerships are, and should be, treated similarly to marriages. The discussion will examine the different understandings of 'equality' employed by the two bodies of participants and interrogate the ways that they relied upon ideas of 'sameness' and 'difference'. The key argument that this paper makes is that the solicitors placed particular stress on 'sameness' and the need to apply the existing framework to this new scenario. Their emphasis needs to be understood in the context of a system where practitioners' arguments are based on past experience of 'what works'. Conversely, the clients were less willing to take on the full legal implications associated with formalised heterosexual relationship breakdown, and less receptive of the use of a divorce 'blueprint'. Within the paper, I will also be reflecting upon the existing feminist critique concerning the assimilationist or transformative potential of same sex marriage. I will argue that, whilst there are suggestions of both occurring, a number of clients felt that the solicitors were attempting to 'translate' their conflicts into categories that were more legally recognisable. This happened to such an extent, on occasion, that the partners considered their own matters unrecognisable.

Sesson Six: New-style challenges within family justice **Chair:**

Multi-modal discourse analysis of the financial order proceedings from the perspective of litigants in person

Tatiana Tkacukova

The paper presents a multi-modal discourse analysis of the financial order proceedings from the perspective of litigants in person. The main focus is on the oscillation between different written and spoken legal genres and narrative development strategies which litigants in person have to use throughout different stages (from the early stages of starting the proceedings, filling in court forms and providing other documentation through the negotiation process to interaction in court). Research shows that while legal professionals express themselves in paradigmatic legal mode influenced by legal acts and legislation, litigants in person tend to express themselves in narrative mode similar to everyday storytelling. The paper explores the differences between the two discourse types in the context of financial dispute resolution. Special attention is paid to linguistic, communicative, conceptual, cognitive and procedural challenges experienced by individuals when acting on their own behalf in legal proceedings. The objective is to investigate how the process originally designed by legal professionals for their own use can be simplified for litigants in person to empower them, without losing the important legal paradigmatic mode.
The research lies at an intersection of linguistics and socio-legal studies and uses linguistic research methodology to investigate the discrepancy between legal-lay discourse types. The paper also addresses different options litigants in person have for finding advice and support, including but not exclusive to online information sources, Personal Support Unit services and direct access options for counsel representation. The paper concludes the analysis by evaluating different options for the simplification of procedures and forms and arguing for the need to provide more specific support for different stages of the financial order proceedings.

'The Challenges of the Unrecognised: An analysis of Muslim Marriage recognition in England and Wales'

Leyla Jackson and Kathryn O'Sullivan

According to the 2011 Census, Islam is now the biggest minority religion in England and Wales with 2.7 million followers, representing 4.8% of the population. Yet due to clashes between Muslim religious law (Sharia) and the legal formalities required for marriage in England and Wales, serious difficulties have emerged in relation to the validity and recognition of a significant number of Muslim marriages. In particular, these clashes have placed many financially weaker Muslim 'spouses', often unaware of their true legal status, in a very vulnerable financial position and unable to obtain a financial remedy pursuant to the Matrimonial Causes Act 1973 when the relationship ends.

The first half of this paper focuses on the difficulties evident in the caselaw relating to marriage validity and the issues arising from the failure to automatically recognise the Nikah (Muslim marriage ceremony) in England and Wales. The second half of the paper then evaluates the protections available to financially weaker Muslim 'spouses' in England and Wales in the absence of a right to seek a financial remedy under the 1973 Act and questions what lessons may be learned from other jurisdictions which have faced similar difficulties to date.

The role and construction of 'the other side' in family dispute resolution

Anne Barlow

As part of the ESRC-funded Mapping Paths to Family Justice project which explored out of court family dispute resolution, the phenomenon of the construction and use of the concept of 'the other side' as a key reason for the explanations around choices of dispute resolution process and reasons for success or more often failure, were frequently alluded to. In addition, practitioners who were attempting to engage in non-adversarial dispute resolution, particularly through mediation where there is an overt commitment to neutrality and not taking sides, often constructed the 'court' as the 'evil' other.

In some political and social anthropological theories around intractable conflict (see e.g. Terrell A Northrup, "The Dynamic of Identity in Personal and Social Conflict," in Intractable Conflicts and Their Transformation, eds. L. Kriesberg, T.A. Northrup, and S.J. Thorson (Syracuse: Syracuse University Press, 1989), 55-82), the construction of a strongly held belief around the identity of the other side is seen as key as to why peace negotiation fails. Shelley Day-Sclater (Divorce: A Psychosocial Study, Ashgate: 1999) argued that the coping strategies of conflict and acrimony are integral and psychologically necessary aspects of the divorce process, which formal out of court dispute resolution processes are now very clearly trying to rein in.

Drawing on the Mapping project data, this paper will explore the use and misuse of 'the other side' in the out of court Family Dispute Resolution context and consider how useful or damaging these practices might be to the norms surrounding attempts at dispute settlement in this context.

Session seven: Children's perspectives in the brave new world of family justice **Chair: Annika Newnham**

Mediating children cases: what part is played in the process by parental proposals, by the voice of the child, and by giving paramount consideration to the welfare of the child as set out in the Children Act 1989?

Mavis Maclean

This paper draws on findings from the project "Delivering Family Justice in the 21st Century" carried out by the author with John Eekelaar. The first part of the paper analyses training materials and codes of practice being used by mediators ,both lawyers and nonlawyers, with respect to children issues at the time of writing , January 2015, and will comment on the expected new documentation as far as possible by the time of the meeting. The second part draws on observational data from child mediation sessions conducted during the previous 12 months by lawyer and non lawyer mediators to examine the process for reaching agreement about parenting arrangements with particular reference to the role of the Children Act 1989. Questions are raised about the difficulties arising for mediation as a private ordering mechanism in dealing with the interests of children who are vulnerable third parties, and the need for further discussion of ways in which the welfare paramountcy principle might cover all children where parenting arrangements are being made with the help of either lawyers or non lawyers in a legal setting or through alternative dispute resolution.

How do children think about 'home' after parental separation?

Belinda Fehlberg and Kristin Natalier

There is now a significant body of literature on the meaning of home within the disciplines of sociology, anthropology, psychology, human geography, history, architecture and philosophy (Mallet, 2004). Yet the extent to which this body of work has informed our understandings of children's experiences of living across households after parental separation has been very limited indeed.

In particular, Australian and English family law is informed by an emphasis on home as a physical entity and the expectation that children readily function in more than one home after parental separation. This approach does not recognise home as the interrelationship between physical and psychological space. In contrast, the literature on home captures its multifaceted and phenomenological dimensions but overwhelmingly assumes a singular home. This body of work also marginalises children's perspectives, with the exception of Alison James who concludes children understand home 'as an emotionally shaped cultural context of everyday life that emerges in and through familial relationships' (James, 2013).

Currently, there is no socio-legal work that describes and theorises children's conceptualisation and experience of home in the context of parental separation(the closest being Smart & colleagues' body of work on children's experiences of post-separation parenting arrangements, including the challenges of existing across more than one home). Yet Western emphasis on a singular physical home, as well as the apparent centrality of affectivity and connectedness to 'home' for children, raise important questions about if and how parental separation leads to changes in the idea of home for children. Informed by plans for a British study by Mavis Maclean and Susan Golombok, we suggest that further exploration of what home means for children would provide a valuable basis for supporting children and parents to configure post-separation living arrangements so that children always feel they are at home.

Tides of change and choppy waters: Legal evaluations of local authority social workers' evidence in care proceedings and perceptions of expertise **Ann Potter**

Concerns about delay in care proceedings identified the 'over-use' of independent experts to compensate for poor local authority social work practice and evidence (Family Justice Review 2011). Subsequent reforms include a mandatory 26 weeks timescale for care proceedings (Children and Families Act 2014, s.14(2)) and restriction on the use of independent experts to situations where it is 'necessary' (Children and Families Act 2014, s.16(6)). This has re-affirmed that good quality social work evidence is required for the court to reach swifter decisions in care proceedings, without recourse to additional independent experts. Parallel social work reforms have addressed the quality of social work practice generally, promoting the development and recognition of social work practice expertise (Munro 2011; Social Work Reform Board 2012), leading to changes within social work education, training and leadership. However, contradictory approaches have emerged for social work practice within care proceedings: a general drive for decreased proceduralisation within social work reform, versus increased proceduralisation within the family justice reforms, legislative change (Children and Families Act 2014) and new statutory guidance for local authorities (DfE 2014).

Recent legal evaluations of social work evidence provide 'directives' about the form and quality of such evidence within care proceedings (Re B-S [2013] EWCA Civ 1146; Masson 2014; Re R [2014] EWCA Civ 1625). Along with a new Social Work Evidence Template from the Association of Directors of Children's Services (ADCS) and Cafcass (http://coppguidance.rip.org.uk/social-work-evidence-template/#SWET_templates), these seek to prescribe the structure and content of local authority social work evidence in care proceedings, suggesting that compliance will encourage legal evaluations of social work evidence as competent and even 'expert'. This presentation will report on a research project (in progress), analysing legal evaluations of social work practice and evidence within care proceedings, in the context of competing tides of change and perceptions of expertise.

Session Eight: Family Law and Policymaking **Chair: Anne Barlow**

Lessons from a Letter to a Child: Family Law and Policy during the First Thatcher Government **Andrew Gilbert**

In 1981 a child wrote to the Prime Minister, Margaret Thatcher, asking for her help to stop his/her parents' impending divorce. Thatcher's response, part typed/part manuscript, was released in 2012. It provides an illuminating insight into Thatcher's views on the relationship between family, law and state, which I argue were representative of her government's approach to the family during her first term of office. This paper draws on archival research, at both party and governmental levels, to support this claim, as well as to explore the pre-history of Thatcherite family policy from the mid-1970s. In concluding, I draw on both liberal and conservative thought to attempt to explain why, unlike in economic matters, there was no real attempt to break the post-war settlement in the law concerning divorce. However, the overall picture is mixed, such reticence was not universal and did not extend to certain other areas of personal moral and sexual behaviour, as the experience of subsequent Thatcher governments shows.

Marital Property Agreements and Public Policy: A Fragmented Evolution **Marie Parker**

This paper will trace the public policy issues surrounding marital property agreements to their source in order to suggest that the historical evolution of these agreements has been misinterpreted in case law. The focus will be on the common law rule that pre-nuptial and post-nuptial agreements were considered to be void as it was against public policy for a couple to contemplate a future separation. This common law rule caused marital property agreements to move apart in terms of validity. Pre-nuptial and post-nuptial agreements have been considered to be void by the judiciary until very recently. Separation agreements have received different treatment by the judiciary and they have been accepted by Parliament.

This paper will suggest that the historical evolution of the common law rule which invalidates agreements contemplating a future separation has been overlooked in case law, namely MacLeod v MacLeod. When discussing the rule in Radmacher v Grantino, the Supreme Court commented that it was 'obsolete and should be swept away.' The Law Commission stated that this comment from the Supreme Court, 'may' have abolished the rule, however 'it is not clear that it had that effect.' This uncertainty is reflected in the Law Commission's Draft Nuptial Agreements Bill, Clause 1(2) states, 'The common law rule (if it still exists) that provision of that sort is void if it concerns the financial consequences of a future separation is abolished.' This paper will propose that the judicial reasoning which is currently casting doubts over the existence of the rule is flawed, and moreover, that this rule deserves further scrutiny from Parliament due to the influence it has on the nature of marriage.

"Putting families at the heart of government"?: Family Tests, Policymaking and Degrees of Judgement **Alex Masardo**

In an attempt to ensure that "promoting family life is placed at the heart of government decision-making", a "families test" on all government policies is being formally introduced into impact assessments (Gov.UK, 2014). Domestic policy, it is claimed, will be examined for its impact on the family and policies that fail to support family life will not be allowed to proceed. The Department for Work and Pensions has drawn up a list of five questions which civil servants must address before policy or legislation can be brought to Parliament (DWP, 2014).

• What kind of impact might the policy have on family formation?
• What kind of impact will the policy have on families going through key transitions such as becoming parents, getting married, fostering or adopting, bereavement, redundancy, new caring responsibilities or the onset of a long-term health condition?
• What impacts will the policy have on all family members' ability to play a full role in family life, including with respect to parenting and other caring responsibilities?
• How does the policy impact families before, during and after couple separation?
• How does the policy impact those families most at risk of deterioration of relationship quality and breakdown?

Key to the success or otherwise of this initiative will be the degree of judgement exercised by policy makers when considering family impacts. This paper examines the relationship between these new family tests, policymaking and the degrees of judgement required in reaching "sensible and proportionate" (DWP, 2014: 3) responses to them. The paper draws on current legal notions of proportionality, in particular as a criterion of fairness and justice in statutory interpretation processes, to help us think about what criterion might best be used in developing impact assessment when applying a family perspective

Gender, Sexuality and Law **Chris Ashford and Alex Dymock**

Session Two: Queering kinship?: the law of intimate relationships

Older lesbian and gay constructions of kinship in succession law **Sue Westwood**

Traditional discourse about lesbian and gay 'families of choice' suggests they comprise friendship-centric kinship networks informed by voluntarism and an absence of a sense of duty and responsibility. My research with 60 older lesbians and gay men, and their narratives about Will-writing complicates this discourse is two main ways. Firstly, participants described diverse forms of kinship composition, involving varying combinations of partners, friends, biological/filial/extended family ('family') and significant others. Secondly, with the exception of those individuals leading relatively separatist lives, narratives about Will-writing distinguished between friends and other relationship forms in two main ways: in the absence of a sense of duty and responsibility towards friends, but the presence of a sense of duty and responsibility towards 'family'; and in a demarcation in the disposal of material and financial assets upon death, with a distinct prioritisation of 'family.' This paper considers the implications of these findings for contemporary understandings of lesbian and gay kinship construction, particularly in later life.

White West Knows Best? Critical Feminist Perspectives on Polygamous Marriage in the English Courts **Zainhab Naqvi**

This paper examines responses to polygamous marriage in the English courts through a discourse analysis of judicial constructions of polygamy. I begin with a critical overview of feminist perspectives on postcolonialism, Western imperialism and Orientalism to set out a conceptual framework for the case analysis. Whilst postcolonial feminism provides insights into the disruption of dominant discourses and the importance of historical context, the lenses of Western imperialism and Orientalism further build upon this by assimilating the former "civilising" mission of colonisation with more recent efforts to "modernise" the postcolonial landscape, in which the advanced and superior West seeks to facilitate the modernisation and advancement of ex-colonies along with their cultural and religious practices. It is against this backdrop of Western superiority that polygamy is constructed with its participants being scrutinised according to White, Western religious and marital norms.

This is particularly evident in judicial discourse on polygamy as illustrated by the discursive analysis undertaken. In the analysis, I will explore the presence of Christian Western imperialist, orientalist and racist discourses along with the value of British ideals and the sexism inherent when referring to women both within and outside of accepted marital structures. I will argue that racism, sexism, Christian Western imperialism and orientalist assumptions in English judicial responses to polygamy have combined to subordinate non-White and non-Christian women who live in polygamous marriages.

Strategies to achieve Same-Sex Marriage and the Method of Incrementalist Change **Frances Hamilton**

Proponents of same-sex marriage need to determine the appropriate strategy for enacting lasting change. This piece advocates the use of comparative constitutionalism in order to learn from the experience of other nations in tackling similar social and legal issues. Using analysis of recent international examples this article recommends the use of slow incremental change. This is often characterised by an intermediate stage of civil partnership legislation. The legislative approach is also to be preferred to that of the court based approach. This method allows influence upon and engagement with public opinion which is necessary for successful change. This article demonstrates by way of case studies that countries which do not follow this method are more likely to see a backlash in public opinion and a subsequent legislative reversal of a court judgement. Alternatively lack of public support could lead to less than substantive equality for same-sex couples.

Session Three: Crime

Sexual Intimacy, Gender History and the Criminal Law

Alexandra Sharpe

This paper forms part of a broader research project, one concerned with non-disclosure of gender history prior to cis-trans sexual intimacy. The project has three prongs: (i) the legitimacy of criminalisation, (ii) the ethicality of non-disclosure, and (iii) a Queer reading of the cisgender demand to know. This paper is concerned with the first prong. In recent years, a number of young transgender people have been successfully prosecuted for sexual offences on the basis of fraud, namely, non-disclosure of gender history to cisgender partners prior to sexual intimacy. The 'intelligibility' of these prosecutions relies on heteronormative constructions of the concepts of consent, harm and deception. After challenging the legal and cultural construction of each of these key criminal justice and philosophical concepts, the paper will argue that even if non-disclosure (i) serves to vitiate consent, (ii) is harmful to cisgender people and (iii) constitutes deception, there are compelling reasons to conclude that non-disclosure should not be subject to criminalisation. Three reasons will be considered: (i) criminalisation produces legal inconsistency and is potentially discriminatory, (ii) sexual autonomy, the basis of a 'right to know,' should not be considered absolute, and (iii) criminalisation is contrary to public policy aimed at reducing transphobia.

Responsible mothers and battered women: Mothers who fail to protect their children and the criminalisation of vulnerability.

Sarah Singh

This paper explores the potential of vulnerability theory to reframe the female subject of criminal law. Looking specifically at the offence of 'causing or allowing the death of a child', I argue that the imposition of criminal responsibility on women who are themselves victims of domestic violence implicitly criminalises vulnerability. Cases such as R v Green & Critchley (2013, Unreported) evince law's reactive approach to familial violence, which results in the implementation of "pathogenic" policies and provisions. In the court room gendered stereotypes of the "bad" mother are mobilised by the prosecution to justify the imposition of criminal responsibility on women who themselves are vulnerable. The law's expectation of maternal responsibility will be examined to explore the impact of domestic violence on the autonomy, morality and ultimately blameworthiness of law's responsible subject (Naffine, 2003; Nadler, 2012). Drawing on the work of Mackenzie et al. (2014) and Fineman (2008) I argue that familial violence is such a complex dynamic that it requires the state to be responsive as opposed to punitive and to stop prioritising the 'inevitable' dependency of children over the 'derivative' dependency of their mothers. A vulnerability inflected approach to 'failure to protect' cases takes into account the relationships between the parties and focuses on how the abuser has exacerbated, manipulated and exploited the mother's and child's respective (and shared) vulnerabilities. By shifting focus back on to the perpetrator of the abuse, the omissions of the mother are contextualised; the jury can begin to appreciate the challenges she faced in trying to protect her child. As a result this not only empowers women who are charged with failure to protect but also potentially diminishes the power of archaic gender stereotypes in legal discourse.

The Implementation of Feminist Law Reforms: The Case of Post-Provocation Sentencing -

Rosemary Hunter and Danielle Tyson

In 2005 the Australian State of Victoria abolished the defence of provocation. Part of the impetus for the reforms was to challenge provocation's victim-blaming narratives and the defence's tendency to excuse men's violence against intimate partners. However, concerns were also expressed that these narratives and excuses would simply reappear at the sentencing stage when men who had killed intimate partners were convicted of murder or manslaughter. This paper undertakes a systematic examination of post-provocation judicial sentencing narratives in order to determine whether these concerns have been borne out. Analysis to date suggests that they have not, but at the same time, significant differences are emerging between the narratives constructed by different judges. In particular, post-provocation sentencing appears to provide opportunities for feminist judging – picking up on the spirit of the reforms – which have been taken up by some judges more than others.

Session Four: Constructing Gender and the Body

Bodily Integrity and Legal Personhood

Mitchell Travis

This paper starts from a position that values bodily integrity as a human right, placing it as one of the central tenants in Health Law, and an important facet of tangential areas such as Criminal and Tort. The importance of this right, however, has been marred by its failure to be articulated in a series of high profile cases. This paper examines three areas in particular; non-therapeutic surgery on children born intersex, non-therapeutic circumcision and progenetive conflict. These instances, amongst others, have shown how easy the concept of bodily integrity has been to undermine. This paper questions why bodily integrity has been so difficult to apply in law arguing that law's understanding (and framing) of the person is responsible. Personhood, it is contended, acts as a legal barrier between the body and bodily integrity. Law's commitment to framing personhood in universal, objective and abstract terms has in practice allowed for a conflation of the term with masculinity, whiteness, heterosexuality and 'health' broadly understood. It is in the contours of personhood, therefore, that arguments of bodily integrity begin to lose their legal purchase. As such, this paper questions the value of personhood characterising it as a biopolitical space where Cartesian dualism continues to flourish.

Gender – a space of socio-cultural transformation. Insights from Jamaica and Dominica - **Ramona Biholar**

Embedded constructions of femininity and masculinity based on ascribed sex roles and consequent gender stereotyping foster a vicious cycle of discrimination, which often leads to gender-based violence. At the international level, the patriarchal arrangements of gender are put under the spotlight in Article 5(a) of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This Article imposes on States parties an obligation to take measures to modify sex roles and stereotypical social and cultural patterns of conduct in order to eliminate forms and consequences of discrimination, such as violence, and to achieve gender equality. Within this legal, international human rights instrument, which focuses specifically on sex-based discrimination against women, Article 5(a) raises the question of femininities and masculinities and confronts State parties with the challenge of addressing and changing prevailing gender relations. In other words, as early as 1979 (the date of CEDAW adoption), Article 5(a) engages with the concept of gender to set a human rights agenda for social and cultural transformation.
Yet, the lived realities of women and men worldwide are often disconnected from this international agenda. In the Caribbean, regional case law indicates that entrenched social and cultural beliefs about the construction and reproduction of gender encourage a normalisation of gender-based violence, which makes this type of violence the norm rather than the "aberration" in the region. (HC of St. Lucia, Martinus Francoise v AG of St. Lucia; Robinson, 2004).
Through the lenses of qualitative research I conducted in Jamaica on women's rights and in Dominica on masculinities and gender policies, I reveal how international human rights norms are negotiated in national spaces to address discriminatory constructions of gender and achieve equality. In my research, I went beyond the legal analysis of norms, jurisprudence and policy text. I employed socio-legal methodologies and complemented downstream perspectives, which focus on State actors, with upstream ones, which focus on civil society organisations and rights-holders. Based on these explorations, I discuss how gender becomes a space of social and cultural transformation and empowerment for both women and men.

The Ideas of Women **Wendy Guns**

By the mid 1990s two United Nations (UN) policy documents recognised the connection between unsafe abortions and the reduction of maternal deaths and morbidity. One could argue that given the momentum it was expected that future UN policy documents would have expanded the language on abortion but this did not happen.
For some feminist international lawyers this lack of progress is another example of the male centeredness of international law. They argue that men continue to dominate the international law structure and as a result international norms represent male values. Only if women are present then women friendly norms would be established. Arguably, a problem with this line of reasoning is that although men have been outnumbering women as diplomats and staff, women's rights activists have been a force to be reckoned with within the international structures from the nineteenth century onwards. If women have been present within the structures of international making in general and have not been powerless within this system, why is it so difficult to establish international norms that recognize sexual autonomy? Might it be that not only gender is important but also the ideas of women involved. Yet, feminist international scholarship hardly explores this matter. This paper will. It examines whether gender is really the decisive factor or if other ones are equally important in ensuring that progressive norms for women are established. We will see that a reason to explore this matter is the growing representation and influence of social conservative women within the structures of the UN. Their presence challenges assumptions about women's roles in the United Nations structures.

Session Five: Gender, Sexuality and Legal History

Diagnosing perversion: forensic psychiatry on trial **Janet Weston**

On 16 October 1946, Neville Heath was executed at Pentonville Prison for the murder of Margery Gardner. In a case that inspired lurid headlines and set the handsome young Heath apart as one of the more notorious murderers of the twentieth century, his status as a 'sexual pervert' driven by sadistic desires was widely accepted. At his trial, however, legal and medical disagreements surrounding such perversions were voiced by the judge and the three medical witnesses. Did his sexual sadism constitute a form of 'moral insanity' or 'mental defect', or was he simply an 'ordinary sexual pervert' who had finally gone too far?
This paper will place these discussions of sexual deviance, mental disorder, and criminal responsibility within the context of mid-twentieth century medical studies and beliefs about sexual offending in Britain, and will compare expert opinion in Heath's case with that of an earlier 'sexual sadist' also convicted of murder, Harold Jones. Focusing on the middle of the twentieth century, a time of significant change for both penology and psychiatry in Britain, this shifts attention away from more traditional objects of study in histories of sexuality, law, and medicine, such as the Victorian sexologists or later campaigns around homosexual law reform. This focus will highlight the delays and uncertainties surrounding the acceptance of sexual 'deviance' as a legitimate field of medical study in Britain, and will suggest some of the complexities produced by the collision of medical and criminological concerns. The assumption that sexual offenders are in particular need of psychological treatment as part of their rehabilitation is widespread, but debates surrounding the moral insanity of these mid-twentieth century 'sadistic' murderers highlight some of the unstable foundations of medical engagements with sexual deviance.

Judges, nabobs and malign domestics: judicial fact-finding in Woods and Pirie v Cumming Gordon **Caroline Derry**

When in 1810, a pupil at a small Scottish boarding school alleged that her two schoolmistresses were engaged in a sexual relationship, the consequences spread from her grandmother's drawing room to the highest courts in the land. The resulting case has attracted the attention of historians of lesbian sexuality; this paper explores what a legal approach might add to their analysis. In the course of the protracted court process, the original events came under intense judicial scrutiny; at least some of the judges clearly took pride in careful attention to factual detail, supported by classical and contemporary 'knowledge'. However, witnesses' accounts were assessed not only on the perceived factual consistency of their stories, measured against assumptions about female sexuality, but on the credit of the witnesses themselves. This credit was intimately connected to nationality, race and class as well as to a wider narrative in which the British gentlewoman was placed in clear contrast to the rest of the world. At the same time, the direction of their enquiries was dictated in large part by the arguments put forward by the parties themselves.
The events have reached us in the form of case papers, which provide a full account of the pleadings, written submissions and witness evidence in the case. A careful consideration of the way at least some of the judges approached their decision-making shows that assumptions about gender, race and class were deployed to fill gaps and interpret the evidence, rather than in place of it. What, then, can a legal reading of the case tell us, not only about the attitudes of the judges, but also about the agency of the women at the heart of the case?

Discourse and Domination: A Genealogy of Domestic Violence **Conor Crummey**

"Genealogies are... about the insurrection of knowledges... against the centralizing power-effects that are bound up with the institutionalization and workings of any scientific discourse organized in a society such as ours"
Foucault, Society Must Be Defended.

This paper uses Foucault's 'genealogical method' to present a 'genealogy of domestic violence'. In Foucault's work, 'genealogies' are understood as 'antisciences' which aim to reveal 'subjugated knowledges' denied access to mainstream discourse. My aims are (i) to investigate how the conventional understanding of domestic violence has achieved its dominance in legal and academic discourse; and (ii) to suggest specific 'subjugated knowledges' that might allow us to form a genealogy of domestic violence to disrupt mainstream discourse.
I argue that the abuser-abusee binary can be usefully conceptualised as a mirror of the governor-governed binary in liberal society. Specifically, the abuser-abusee relationship occurs at the intersection of sovereign power, disciplinary power and biopower. The abuser punishes insurrection through force (sovereign), governs through the threat of violence, economic control etc. (disciplinary), and compels the abusee to internalise the norms that he presses upon her (biopower). Just as biopower is most effective when it hides its own mechanisms, domestic violence understood in the sense I propose is most effective relative to its ability to conceal its operational mechanisms. The victim naturalises and internalises the abuse, and so it is rendered invisible. Hence, this form of abuse goes unrecognised in academic and legal discourse.
A genealogy of domestic violence must seek to render this form of abuse visible. This can only be achieved through greater focus on the perspective of victims of domestic violence. It is their voice that is silenced, their knowledge that is subjugated. Through bringing this knowledge to the mainstream, we might reconstitute the 'truth' of domestic violence and disrupt the silencing effect of conventional understandings.

Session Six: Rights

Domestic Violence and the European Court of Human Rights: Is a more gender-sensitive interpretation of the ECHR needed? **Ronag McQuigg**

Although it seems clear that domestic violence constitutes a breach of internationally recognised rights such as the right to be free from torture and inhuman or degrading treatment; the right to private and family life; and, in some circumstances, the right to life itself; it is only relatively recently that domestic violence has been analysed through the lens of human rights law. However, beginning in 2007 the European Court of Human Rights has now issued a series of important judgments in cases involving domestic violence. The most recent of these is Rumor v Italy (app. no. 72964/10, 27 May 2014). Rumor v Italy is notable for the fact that it constitutes the first case directly focused on domestic violence which has gone to a full hearing before the Court and in which no violation of the ECHR was found. Although the Court stated that the treatment suffered by the applicant was sufficiently serious to constitute ill-treatment within the meaning of Article 3 of the ECHR, the Court was nevertheless of the view that the state had fulfilled its obligations in the matter, and no violation was found. However, was this finding justified? There are certain indications in the judgment that the state's response may have been insufficient. In the earlier case of Valiuliene v Lithuania (app. no. 33234/07, 26 March 2013), one of the judges issued a Concurring Opinion in which he stated that 'the full effet utile of the European Convention on Human Rights...can only be achieved with a gender-sensitive interpretation and application of its provisions which takes in account the factual inequalities between women and men and the way they impact on women's lives.' Overall, it will be argued that such a gender-sensitive interpretation of the Convention was missing from the judgment in Rumor v Italy.

Beyond the Gains: The Unfinished Business of Women's Rights in Africa **Rhoda Asikia**

Initially feminist literature construe African women as oppressed, wretched and in need of deliverance, this is because African women fail to meet certain western standards. However, globally as attention is being paid to women, and with the rising voice of African women on the continent beginning with the Aba Women's riot of 1929 in Nigeria, and the overt participation of African women in the struggle for independence in colonial Africa. African women activities queries the negative perceptions held by certain scholars/historians.

At the global plane in recent times (especially beginning from the 1970s), African women have also been very visible in theory and practice of women's rights. while there have been gains politically, socially and economically for African women, I argue that women's human rights in Africa has not reached the crescendo in which African women can celebrate and go to sleep; this is because there are areas in which there are disparity in concepts and outlook in actualising women's rights and gender equality in Africa. In this article, I intend to chronicle first, the achievements of African women in the field of human rights which has resulted in the gains women now enjoy in most parts of Africa; second, there is also the need to address the unfinished business in the field of women's rights in Africa which is ideological, and third to propose the blue print for sustenance and improvement of women's human rights currently enjoyed in most parts of Africa today.

The Right of the Girl-child to Education: The Chibok School Girls' Adduction and the Response of International Law **Amos Enabulele**

On the Night of 14, 2014, 276 Chibok school girls were abducted from school by the Boko Haram sect in Nigeria. This incident naturally spurred public outcry both in Nigeria and across the world in a movement currently represented in the tag: "#BRINGBACKORGIRLS". The initial response of the international community even while the Nigerian government was still in denial raised hopes that the girls will indeed be brought back. As time gradually nudge towards the first anniversary of their abduction and with many more girls subsequently abducted by the same sect, hopelessness has replaced hope.

The Chibok Girls may not mean a lot to the international community, but the moment and circumstances of their abduction fundamentally challenge the ethos of both national law and contemporary international law. Chibok questions the importance contemporary international law places on the right of the girl-child to education and on the protection of civilians during armed conflict. The fact that the girls are yet to be rescued is a manifest failure of the protection to which they are entitled under national and contemporary international law. This is particularly so as Boko Haram engages in trans-border terrorism and has been recognised by the Security Council as a terrorist organisation

This paper seeks to draw attention to the new and present challenge confronting the right of the girl -child to education with a view to speculating on an appropriate response to this scourge that create a risk of a large population of illiterate women in Africa and Asia in the near future, if not specifically addressed. The paper seeks to press for the active involvement of the international community in eliminating the risk by protecting potential victims within the territory of a State that is either unwilling or unable to protect them.

Session seven: Crime 2

A Gendered Critique of Group Localised Grooming: Masculinity of Offending v. Femininity of Victimisation **Jamie Lee Mooney**

Group localised grooming (GLG) has recently attracted much attention following the convictions of numerous perpetrators in high profile cases involving groups targeting, grooming, sexually abusing and exploiting adolescents. The ability to effectively tackle GLG is hampered by lack of understanding about the way in which multiple offenders often act in concert to sexually offend against children. Undoubtedly, the dynamics of multiple perpetrator sexual offenses and the grooming, abuse and exploitation of children in a localised context illustrates a real need for more contemporary research into how and if gendered norms of both the offence and victimisation process increase the risk to children by creating opportunities for grooming and abuse.

First, this paper will analyse how cognitive distortions in sex offenders are specifically related to beliefs and attitudes of socially accepted gendered norms. It will be argued that GLG can serve to reinforce appropriate masculinity, create feelings of power, status and belonging that can lead to 'diffusion of responsibility'. Individuals that groom children for abuse and exploitation as part of a group may feel a shared sense of masculine power, to the extent that 'the role of the child may become little more than an object within the group's 'collective performance of masculinity'. This may reinforce the groomer's behaviour, thus allowing the continuation of sexual abuse and exploitation.

This is extremely concerning when coupled with how groomers can target and exploit such norms during the victimisation process. Gendered norms can also create opportunities for abuse by allowing groomers to exploit ideas of 'appropriate' femininity and 'appropriate' sexuality by creating the perception that the relationship is akin to an 'adult relationship'. Attention needs to be given not only to endeavouring to understand more about this harmful phenomenon, but also to ensuring that the legal and social response to both victims and perpetrators does not exacerbate vulnerability

Combating Revenge Pornography in the UK: A Feminist Perspective **Ksenia Bakina**

In many modern societies people are increasingly searching for love on the internet. The internet makes it possible to find romance anywhere in the world. However, the internet also has a much darker side. It can serve as a platform for proliferation of sexism, misogyny and abuse of women. One example of such aggressive practices is revenge pornography. It is this phenomenon that will be analysed from the perspective of feminist legal theory. By doing so, this paper seeks to inject a gender analysis into the debate on the regulation of revenge pornography.

Revenge pornography is a term used to describe sexually explicit images which have been distributed online without the consent of the person depicted. These images are typically uploaded onto various websites by ex-partners and hackers. Quite often naked pictures or videos are followed with personal information about the individual involved. This can include their full name and links to their social networking pages. Research has shown that victims of revenge pornography are predominantly female. The growth of this phenomenon can be seen as a danger to women due to the grave consequences suffered by victims. Revenge porn can prevent women from participating in the public sphere due to threats of physical abuse received online.

This paper will apply feminist analyses and particularly, feminist views of pornography, to ascertain the best way of dealing with this problem. Considering the gendered nature of this practice, it is imperative that any proposed regulations protect the interests of the female victims, without hindering their ability to express themselves sexually. This paper will conclude that any regulation must place women at the centre of its proposals. It must not be an attempt to regulate women's sexuality or their sexual freedom.

Heteronormativity and the inverted relationship between socio-political and legislative approaches to lesbian, gay and bisexual (LGB) hate crime **Marian Duggan**

The Republic of Ireland is under growing pressure to enact hate crime legislation in line with several of its European counterparts, including the UK. The island of Ireland is unusual in that Northern Ireland has had hate crime legislation in place for several years whilst across the border in the Republic, virtually no laws exist to recognise or address crimes based on prejudice or hostility. Useful and symbolic as it can be, criminalisation is often critiqued as warranting a criminal justice response to what may be social - and potentially preventable - issues. The prejudices which are integral to discerning a crime as being motivated by hostility are not innate; they must be somehow learnt and learnt in response to the socially constructed identity which they target.

Alternative socio-political (or socio-cultural) approaches to address the prejudices informing hostility against lesbian, gay and bisexual (LGB) communities have focused on preventative awareness-raising, political engagement. Most recently, socio-political assimilation has been through enhanced legal rights on par with heterosexuals; gains made in relation to marriage equality, healthcare, parenting and employment (in some parts of the UK) are to be commended, yet prejudice remains. Even after a decade of hate crime law, the number of people victimised as a result of their sexual identity remains high and prosecutions low.

This paper evaluates the impact of heternormativity on socio-political and legislative approaches to LGB hate crime to evaluate the efficacy of such approaches in light of the context in which they are situated and what lessons can be imparted to those seeking to implement similar measures.

Session Eight: Sex, Legitimacy, Governance

Reparative/Conversion Therapy, Religion, and Regulating Psychotherapy: diversity, rights and inclusion **Rob Clucas**

Research indicates that a substantial minority of therapists have attempted to help clients to reduce same-sex desire, despite lack of evidence for the effectiveness of such treatment (Bartlett et al., 2009). Major therapy professional bodies are explicit in their opposition to conversion therapy. However, some socially conservative religious voices continue to speak in favour of the reduction in homosexual feelings through therapy.

Participation in reparative/conversion therapy is significantly increased in cases of anticipated or actual negative family reactions, high levels of religious fundamentalism and identifying as spiritual (Maccio, 2010). There are serious concerns about the harm caused by conversion therapy (Panozzo, 2013), and best affirmative practice recommends increased client support, not an attempt to 'cure' the client. Nonetheless, advocates of reparative therapy views couch attempts at reducing same-sex sexual attraction as important for client autonomy, and claim that this is a means of respecting diversity in the form of religious affiliation and values (Ginicola and Smith, 2011, p. 304).

In the light of recent UK statements (NHS England et al., 2015; UK Council for Psychotherapy, 2014), including support from the Association of Christian Counsellors, it might be thought that a line has been drawn under the practice of religiously-motivated conversion therapy. However, persons connected with the Core Issue Trust (see also Core Issues Trust v Transport for London, 2013), have been arguing that the psychotherapeutic consensus in the UK is ideological rather than scientific, and that the right to reduce homosexual feelings, where possible, is a human right (Davidson, 2012; O'Callaghan et al., 2013; O'Callaghan and Davidson, 2013).

In this paper, I discuss the 'right' to diminish same-sex attraction, and examine the co-opting of diversity rights, and claims for inclusion in the name of religious freedom on the part of conservative religious views.

Concealment of birth: what are we punishing? **Emma Milne**

In 1803 the Malicious Shooting or Stabbing Act (43, Geo. 3 c58), commonly called the Lord Ellenborough's Act, created the offence of concealment of birth in England and Wales – concealing the body of a newborn with intent to conceal the birth of the child, punishable by up to two years in jail. When first enacted the offence could only be committed by unwed women and it was only possible to convict a woman of the crime upon finding her not guilty for the murder of the newborn. At this time, Parliament was concerned that too many unwed women were getting away with the murder of their illegitimate newborns because the medical evidence could not support a murder conviction. The principle was that if a woman gave birth alone to an illegitimate child and the child ended up dead then the woman must have done something wrong.

Two-hundred years later, the crime can be committed by anyone and is a standalone offence, which 17 people have been convicted of in the last ten years. But considering the advancement of medical science and the abilities of pathologists to determine if a child was born alive and how they died, what unlawful action is

The offence aiming to punish? This paper will examine the themes surrounding concealment of birth from a feminist perspective and presents the early findings of my doctoral research. I propose that whilst the offence is no longer targeting only unmarried women, the intent to punish is still centred upon those women whose pregnancy may seem "inappropriate" to the rest of society. The principle is that the discovery of a dead baby following a concealed pregnancy deserves to be punished, even if the evidence is ambiguous.

Same-Sex Male Social Dating and Encounter Networks: Identity Formation and Protection **Chris Ashford and Kevin Brown**

Social networking continues to grow as a 21st century phenomenon, and has been particularly popularised as a tool in the context of same-sex male encounters. Apps such as Grindr, Scruff and Gaydar deploy location-based mobile services in order to facilitate dating and more casual encounters.

Existing literature on same-sex male dating and encounter applications has focussed on a public health/sexual health analysis both in terms of user behaviour and also in terms of health protection tools (Landovitz et al 2012; Weiss and Samenow 2010). More generally, there has been a significant amount of literature generated that has focussed upon social networks more generally (notably Facebook and previously, MySpace) (see for example: Gross and Acquisti 2005; Stuzman 2005; and Finch 2007). However, this work has not examined the issues of identity and identity protection within the sexualised space of same-sex spaces such as Grindr and Scruff from a legal stand-point (although there has been some research from a sexuality perspective, for example: Gudelunas 2012).

This paper draws upon a small project funded by the British and Irish Law Education and Technology Association which was undertaken by the authors in 2014 and early 2015 examining through a series of UK-based small group interviews, the attitudes of men who have sex with men to the use of social dating and encounter networks. It specifically examines attitudes to identity formation and protection.

These initial findings provide an important context for ongoing policy and law-making responses to issues of online safety and protection.

Indigenous Rights and Minority Rights **Sarah Sargent**

Session Seven: Current Issues for Indigenous Peoples **Chair: Sarah Sargent**

Logic, Scale and Jurisdiction: Critiquing VAWA 2013 **Jen Hendry**

This paper applies Mariana Valverde's insights on logic, scale and jurisdiction to the example of legal plurality in the USA in terms of the American Indian Native Nations within (and occasionally traversing) its borders, with a specific focus on the Violence Against Women Act (VAWA) 2013. In providing for the prosecution of non-Indians facing charges of domestic violence against Native American women, this Act not only explicitly recognises Indian law as functionally equivalent to State law but also recognises the 'jurisdiction' of Indian law within its territory, albeit under restricted circumstances. The restricted application of VAWA does, however, beg further scrutiny, both in terms of the particular scalar aspects relevant to its operation and the power dynamics implicit in an understanding of jurisdiction as the 'governance of governance'. This submission takes a spatialised perspective on VAWA 2013 with a view to providing a critique of its scope, operation and effectiveness.

An analysis of indigenous family mediation in Taiwan **Grace Tsai**

The aim of this article is to examine the socio-legal status of indigenous people in family disputes, so as to protect the judicial rights of indigenous people in accordance with Article 34 of UN Declaration on the Rights of Indigenous Peoples and Article 30 of the Indigenous Peoples Basic Law 2005. According to the discourse of legal pluralism, participant observation of indigenous family mediation is carried out in the Nantou District Court, in order to depict the interaction of state law and indigenous community law, and power relationships in family mediation sessions. This article finds that indigenous family mediation is carried out within a matrix of state law, indigenous customary laws, and the domestic laws based on inequalities among different members of the household. Indigenous disputing parties also suffer under patriarchy and unequal differentiation imposed by indigenous communities and Han Taiwanese in terms of their life experiences. It may be said that having the knowledge of indigenous customary laws increases the possibility of reaching settlements in family mediation sessions. However, indigenous customary laws with reference to child maintenance, visitation, and forms of alternative family-dispute resolution should be further investigated in indigenous tribes. The mediators should also be aware of the potential problem of power imbalance that may affect the dynamics in mediation and try to empower the disadvantaged parties in accordance with international human rights law and indigenous customary rules resonating with it

Law, Policy & Governance of Indigenous Land Rights in Development Projects **Kinnari Bhatt**

This paper draws from ongoing research on the legal, policy and governance frameworks related to the land rights of indigenous people moved from ancestral land due to development projects. The study's objective is to provide normative recommendations on how existing legal, policy and governance frameworks can be enhanced to actively and equitably incorporate indigenous land interests into project structures: insightful for private companies, policy makers, academics and organisations interested in protecting indigenous land rights.

So far the research provides a comprehensive roadmap of the international, regional and domestic legal framework and an evaluation of its quality. Methodologically, jurisprudence on land rights is drawn broadly from aboriginal title (the closest concept to land rights in common law) in Australia and Canada, international and regional human rights law on "displacement" "development displacement", constitutional provision and refugee law. The findings are synthesised into specific "rights" e.g. aboriginal title, property, family life, culture, food and critiqued using scholarship discussing the historic context to legal protection and rational choice theory. Insights identified include theoretical and legislative ambivalence, jurisdictional fragmentation in the common law approach to and evolution of such rights, lack of uniform, international and legally binding framework, themes surrounding state delegation of resettlement practices to the private sector and rights erosion.

The Sami, One People, Four Countries **Snusu Hirvonen-Kowal**

The Sami (also spelled Saami) are the indigenous people of the very North of Europe, in the area known as Sapmi or also known as Lapland. This territory stretches across the northern parts of several countries – Norway, Sweden, Finland and the Kola Peninsula in Russia.

Although the formal borders of these four Nations divide the Sami, they are united by a common culture and identity and as such they continue to exist as one people. The borders have cut through the linguistic and cultural communities and severely constrained the Sami peoples' semi-nomadic lifestyle especially in regards to reindeer-herding activities, which is of central importance to the Sami people. During the 1800s and up until around the Second World War, the policies that the Nordic governments primarily followed, with respect to the Sami people, were aimed at assimilating them into the majority societies.

Fortunately today the Sami communities in each of the Nordic countries, bar to an extent the Russian Sami, do not have to deal with many of the socio-economic concerns which other indigenous peoples throughout the world have to face such as extreme poverty, health matters or hunger in the most extreme cases. Finland, Sweden and Norway are ranked among the most wealthy and highly developed countries in the world thus they are well positioned to tackle the concerns of the Sami population and to set examples in regards to the advancement of the rights of indigenous peoples worldwide.

This paper is focused on examining the human rights situation of the Sami people and to highlight the areas of concern that the Sami still face today. Further to that based on the findings, this paper hopes to present a brief overview of how other Nations could help in the advancement of their own indigenous peoples.

Session Eight: Current Issues for Minority and Indigenous Rights: Language and Culture Chair: Sarah Sargent

Access to Justice in Ireland for Limited English Proficiency Persons **Maria Silva**

This paper evaluates the challenges faced by people with limited knowledge of the English language, in contact with the justice system in Ireland, as accused persons. Ireland differs from other common law jurisdictions due to the lack of regulation of legal interpreters. There are no rules on accreditation or mandatory requirements for neither qualifications nor training of persons working as interpreters in the Irish criminal courts.

At present, any bi-lingual person without training in legal terminology, the Irish legal system and without proper official testing of linguistic skills, can act as an interpreter in the courts, during police questioning or in legal consultation. This situation ultimately fails people as they do not receive complete and accurate interpretation but often cannot complain in relation to this, as they are not able to evaluate the quality of the interpretation provided.

The absence of training for the judiciary, legal professionals and the police in Ireland, constantly jeopardizes the right to an interpreter which has been established for many years at common law and in many international legal instruments. In Ireland, these officials often continue to dispense with language assistance despite the fact that the accused persons have limited knowledge of the English language and are not able to fully understand the case made against them.

This paper will briefly compare interpreting service provision in criminal proceedings in the United Kingdom, Canada and the United States of America. In addition, it will consider the provision of interpreting services in civil law jurisdictions where regulation of interpreters has been enshrined in law for decades, namely Sweden and Denmark, contrasting this situation with Portugal, where the present lack of regulation, as in the case of the Republic of Ireland remains a serious concern.

The Question of Cultural Genocide **Snusu Hirvonen-Kowal**

The question of cultural genocide has been a largely under-studied and under-recognised phenomenon in the legal field. The debate surrounding this issue have mostly focused on the definition of the concept opposed to actually debating the merit of incorporating it into our international legal system. Scholars such as Helen Fein and William Schabas completely dismiss the idea of cultural genocide while on the other hand scholars such as Damien Short and Shamiran Mako highlight it's importance. The concept of cultural genocide verses cultural diffusion is one of the major problems in regards to getting any current legislation amended or added with cultural genocide.

My paper seeks to address the gap which has been formed between these opposing views and specifically draws attention to several case studies in which it could be argued cultural genocide has taken place. A further investigation into the current international instruments (includes UNDRIP and ILO 169) which surround this topic are necessary to see if elements of cultural genocide have been addressed and to what extent. The consequences of this investigation hopes to highlight what the repercussions the omission of cultural genocide has on world affairs and whether there is ground for pushing for the recognition of cultural genocide.

Information Technology Law and Cyberspace	**Brian Simpson and Mark O'Brien**
Session Three:	**Chair: Brian Simpson**

'Technological solutions to privacy questions: what is the role of law?'

Maria Helen Murphy

Privacy is widely found in international human rights instruments. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights each contain clear legal bases for the protection of the right. In spite of this legal recognition, privacy has been criticised as a moribund right of little value in the modern world. In the post-Snowden environment, however, there has been a reinvigoration of the privacy debate. Even some so-called "digital natives" have expressed renewed interest in privacy and have, to an extent, voted with their feet, by embracing internet services that market the privacy conscious features of their products as key selling points. While increased focus on anonymity tools and encryption software appears to be a positive sign for the continued protection of privacy rights, important questions remain regarding the role law has to play in this context.

Developments in society — particularly in communications and technology — have led to increased levels of surveillance. With ongoing advances in technology, privacy protecting laws often lag behind and rarely catch up. Technological solutions to privacy problems, however, can be much more responsive to new and evolving threats to privacy. Many in the technology community have adopted the development of privacy protecting solutions as a mission and have designed tools that protect against personal, corporate, and government surveillance. Equally, however, governments seek to counter such tools of opacity by both exploiting technological weaknesses and exploring legal options in an effort to hinder their continued development. This paper examines the challenges to privacy that exist in the world of big data and the internet of everything and considers what role legislative tools have to play in the protection of privacy in this red queen's race.

'The Territoriality and Extraterritoriality of EU/US Data Protection and National Security Law'

Willie Mbioh

The United States and the European Union both have regimes of privacy and data protection where national security practice is subject to juridical supervision and constitutional controls. Since early 2000s they have entered into bilateral framework agreements on data protection to facilitate the transnational collection, processing, and transfer of personal data across their jurisdictions, especially in the e-commerce and cloud computing industry. However, these agreements have national security derogations (clauses that permit the US and EU, on grounds of national security, to access, process, or intercept the personal data and telecommunications of each other's citizens without the consent of Data Subjects or a requirement to inform each other of such activity). The clauses, in effect, permit differential treatment; the EU and US can provide two regimes data protection and privacy: one for their own territory and nationals, subject to judicial supervision and informed by discourses of human rights, and another, for foreign nationals and extraterritorial places, governed by the logic of discretionary, executive power (or "hyper-securitisation"). Drawing on scholarship from Critical Terrorism Studies and Legal Geography, the paper conducts a comparative study of EU/US privacy, data protection, and national security law and examines their territoriality and extraterritoriality. It unpacks the geopolitical implications of their territoriality/extraterritoriality within the context of the EU-US, E-commerce and Cloud Computing industry.

'The Anarchist Netbook: Legal and Community Regulation in the Deep Web'

Mark O'Brien

Session Four: **Chair: Mark O'Brien**

Export Control Standards on Data and Its Influence on International Cloud Service Industry' **Cindy Whang**

Cloud technology has been structured as a service that is consolidated or hosted offsite for its clients. It is unnecessary for the service providers to be physically present where their clients are located and is an industry with huge international market potentials. HIS, a company that analyzes information trends, noted that the cloud-related spending for 2014 was at $174.2 billion USD, and the expected market growth will be $235.1 billion USD by 2017. As cloud service providers attempt to reach an international market, an issue that arises is the potential that the exportation of data might violate various domestic data export control regulations.

This paper argues that although export control law and regulations are domestic in jurisdiction and not all countries regulate the export of data, the international nature of cloud technology might move cloud service providers to abide by a more restrictive data export standard in order to make their product more accessible on international markets. Under current export control regulations, the exporter has the liability of making sure that exported goods or data fulfill various export requirements since the exporter knows the international destination of the goods or data. However, this might change in an international cloud service setting. The cloud service client, which could be considered as the "exporter" since he or she is sending the data, might be oblivious to where the data is being sent or stored. If data is sent or stored outside of the client's legal jurisdiction, international cloud service providers might be liable for export control violations. This will be incentive for the international cloud service providers to abide by the data export control standards that would create least export liabilities for them.

User-controlled justice? The governance challenges of multi-user platforms **Kim Barker**

Online multi-user platforms like World of Warcraft, and Twitter are international entities, attracting users across the globe. They have one common regulatory mechanism; the End User License Agreement. This document forms the cornerstone of the regulatory system within each of these spaces. Yet it is regularly contravened by users and providers alike, suggesting it is neither fit for purpose, nor adequately designed for these online spaces. The EULA forms not only the contractual relationship between the service provider and the end user, but is also intended to control the behaviour of the users in the relevant online environment. These are very often the only forms of control or regulation that are present in online environments and therefore control more than user behaviour.

Increasingly, virtual disputes are no longer confined; threats of violence and other potentially criminal offences arise too. The Habbo debacle of 2012 is one example of how a seemingly safe, controlled environment spirals out of control if few checks and balances are in place. Other examples are now apparent from the abuse issued to Anita Saarkesian and Caroline Criado-Perez, and most recently, Jill Flipovic – the first suffering death threats and threats of abuse through wiki hacking, whilst Criado-Perez suffered Twitter abuse, and the latter was victimised on online message boards.

Whilst cyberspace was once deemed to be free from governmental control and claims of governmental sovereignty, is there now a need to consider how users of spaces such as online games, virtual worlds and social media are protected? Is it fair and practical to leave regulation to EULAs? How do users achieve justice – through in-world and in-site governance mechanisms or wider controls? This paper will consider some of these issues through relevant and prescient examples, and will assess whether there is a role for law in user-controlled justice.

Multistakeholder approach and human rights in Internet Governance **Andrey Shcherbovich**

This research, devoted to the 10th anniversary of the Internet Governance Forum (IGF), 10th meeting of which will be held in Brazil in 2015, considers the improvement in the global Internet governance on the level of international organizations of the UN system on the basis of multistakeholder approach.

The decision-making system in international organizations is still very conservative. The composition of the international forums that can generate significant international instruments, has not changed for centuries. Only diplomats and representatives of international organizations whose credentials are confirmed in a certain way are admitted to international decision-making. The only exception to this rule is the International Labour Organization (ILO), which works on the principle of tripartism: in its work involves not only the representatives of the states, but also representatives of employers and workers from each of the member states of the ILO.

Internet Governance Forum, under the auspices of the UN, UNESCO and the International Telecommunication Union, is established in 2006 on the basis of the World Summit on the Information Society, which is today the world's most authoritative international discussion forum on Internet governance, not fully use their potential in order to best regulation of international Internet governance processes. The basis for this regulation is multistakeholder approach, which consists in a multiplicity of categories of decision-making mechanism, which includes, in addition to the traditional representatives of states and international organizations, civil society, business, academic and technical community, the media, and other interested stakeholders.

This research is expected to provide guidance in improving the global Internet governance arrangements, taking into account the interests of all categories of participants, as well as to establish rules of procedure for decision-making on the basis of multistakeholder-approach in the Internet governance to give the Internet Governance Forum the opportunity to adopt international “soft law” instruments. An example of this is the Draft Charter of rights and principles on the Internet, developed by Dynamic Coalition on Human Rights and the principles of the Internet Governance Forum - a kind of analogue of the Universal Declaration of Human Rights with regard to the Internet. The need to take human rights instruments on the Internet determines the direction of the development of programs and policies in global Internet governance and role of the Internet Governance Forum in these processes.

Paper: ‘Algorithims or Advocacy: Does the Legal Profession Have a Future in a Digital World?’ **Brian Simpson**

Much of the focus on the impact of new technology on employment has been on work which is regarded as repetitive and requiring minimal skills. For the most part it seems that professional occupations have been assumed to be relatively immune to the effects of 'digital disruption'. However, there are now suggestions that this is altering as new software programs have been developed that can undertake at least some of the functions of various professions. Included in such developments is the legal profession which may not exist as we know it today as these new technologies become embedded in the legal workplace. Instead of supporting, facilitating or transforming the role of the lawyer, we may ask the question is such technology destroying the role?

This paper seeks to begin a discussion of what the legal profession will look like in the future (if it exists at all) in the light of new information technologies and how this might affect the groups that depend on legal services to assert their claims. It will also consider how legal education might be affected by digital disruption, and finally what opportunities such unravelling of the legal profession might present.

International Criminal Justice: Theory, Policy and Practice

Anna Marie Brennan

Session One:

"The Legal Nature of UN Security Council Referrals to the International Criminal Court Revisited "

Gabriel Lentner

The possibility of a United Nations Security Council referral to the International Criminal Court is arguably the most fundamental operational relationship between the United Nations and the ICC. Article 13(b) of the Rome Statute grants the Court to exercise jurisdiction over cases involving situations in States not party to the International Criminal Court. The referral thus provides the Court with jurisdiction which it otherwise would not possess. While agreement was reached during the negotiations, closer scrutiny reveals that the discussion regarding the referral's dogmatic and doctrinal basis in international law has yet to take place.
It shall be demonstrated in this article that a clear doctrinal foundation of the theory of SC referrals is essential not only for the operation and exercise of the ICC's jurisdiction and powers but for its legitimacy in practice, especially in light of the ambiguity of the precedents set by the referrals concerning Darfur and Libya. Thus, the present article deals firstly with the theoretical aspects of the referral, after which the ICC's jurisdiction in case of SC referrals in practice is being considered in light of the theoretical outcomes, concluding with the challenges posed by this practice to the legitimacy of the Court and suggestions for further research.

"The Emerging Customary Crime of Terrorism under International Law: An Examination of how Domestic Criminal Law Influenced the Special Tribunal for Lebanon's Interlocutory Decision"

Anna Brennan

In the recent interlocutory decision passed the Special Tribunal for Lebanon the Appeals Chamber endeavoured to infer a customary crime of terrorism from national law. Although an analysis of national laws may impart considerable evidence of state practice and opinio juris, on their own they are not satisfactory evidence of custom. An examination of the national laws examined by the Appeals Chamber lays bare the incomplete nature of the analysis conducted by the Appeals Chamber and also how the STL incorporated national law into its reasoning. The Appeals Chamber does not make a distinction between national laws that address domestic terrorism and national laws that address transnational terrorism. Only national laws concerning transnational terrorism should have been taken into account by the Appeals Chamber. Essentially, no reliance can be placed on definitions of terrorism that do not include a transnational element. The Appeals Chamber's approach to national laws is that it relied on domestic definitions of terrorism adopted for both criminal purposes and non-criminal purposes, when only the former should have been taken into consideration. States use different definitions of terrorism in civil, administrative and criminal law. This paper will consider why the Appeals Chamber's heavy relied on national laws in reaching its decision that there is a customary crime of transnational terrorism. This will involve an evaluation of why the Appeals Chamber analysed the legislation of some states to the inclusion of others. Indeed, it could be said that the judiciary cherry-picked which national laws in order to mould the interlocutory decision to their particular viewpoint.

"Beyond the State: The Future of International Criminal Law"

Clare Frances Moran

This work examines the development of international criminal law, and by default the International Criminal Court, towards the protection of the individual. The link to State planning, policy or officialdom appears to be waning and the discourse has shifted from conceptual discussions of the Court's jurisdiction to the best means of protecting individual. This has naturally involved the cross-pollination of international criminal law by the associated disciplines of international human rights law and international humanitarian law. This has entailed a shift towards prosecuting those who are guilty of mass atrocities regardless of whether they are State officials, with the majority of the defendants before the Court having an affiliation to a rebel group of non-state actors. There are also further investigations in respect of situations which would not traditionally be identified as armed conflicts. Thus international criminal law retains its appeal for academics and further ensconces its place in public international law through the sharing of concepts with international humanitarian law and international human rights law, and it reciprocates through providing a forum for the prosecution of the most serious abuses of individual dignity.

Session Two:

"The Prosecution of Sexual and Gender-Based Crimes at the International Criminal Court: Obstacles and Chances" **Barbel Schmidt**

Recognising the devastating impact on individuals and societies, the international community has mobilised recently to put an end to impunity for sexual and gender-based crimes. Unique among international instruments, the Rome Statute of the International Criminal Court characterizes such crimes both as crimes against humanity and war crimes. However, so far the Prosecution could not secure a conviction for sexual crimes due to factual and legal obstacles. Victims willing to testify face huge challenges. Often traumatized and in urgent need for psychological and material support they fear retribution or being stigmatised while they can expect only limited protection and no guarantees for anonymity. Questioning a vulnerable witness to make a solid case requires legal and psychological knowledge. Investigators must avoid the re-traumatization of the victim while eliciting the most comprehensive evidence possible related to circumstances and mental elements.

The admission of procedures such as witness preparation and the evidentiary standard for the confirmation of charges have been interpreted differently by Pre-Trial and Trial Chambers. The legal characterization of conduct of sexual violence by the Prosecution and Chambers diverged repeatedly.

For holding perpetrators accountable, it is necessary that ICC judges address the specificities of gender-based crimes and establish jurisprudence providing clarity of procedural requirements and substantive law. The Prosecution has committed to integrating a gender perspective and analysis into all of its work, including a victim-responsive approach, to address all aspects of sexual violence. This is a promising step to not only close the impunity gap in the international sphere but reach the underlying objective to trigger national prosecutions of sexual crimes, seek justice for all victims and ultimately bring on structural and societal changes to prevent sexual violence.

"Prosecuting Gendered Harms at the Extraordinary Chambers in the Courts of Cambodia: The Promise and the Pitfalls." **Diana Sankey**

The establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC) raised hopes that some form of justice may be provided to the victims/survivors of the Khmer Rouge regime. However, in terms of recognition of gendered harms the record of the Court has been deeply problematic. Sexual violence was ignored during the initial investigations at the Court, and whilst forced marriage has now been included in Case 002, and will be investigated in forthcoming cases, such developments were largely a result of campaigns by civil parties and civil society organizations. Indeed, developments in the recognition of sexual violence in international criminal law over the past two decades had little initial impact at the ECCC.

Given the lack of a clear gender strategy at the Court, awareness of gendered harms continues to be piecemeal. Sexual violence outside of forced marriage will only be investigated in case 004, silencing experiences of such violence in other cases. Moreover, the recent judgment in case 002/01 also silenced and distorted gendered experiences of the forced population movements. Although the system of civil party participation developed by the ECCC provides some possibilities for women's voices to be heard, the impact of such participation remains limited, particularly considering how the system has been scaled back. In this context, the role of civil society has been significant in highlighting the prevalence of gendered violence during the regime and providing spaces for women to voice their experiences. The ECCC remains an important mechanism in the search for 'justice' in Cambodia. However, there is also a need to recognize the inherent limitations of such international(ized) tribunals in addressing gendered harms and to explore the role of civil society in providing alternative 'justice' spaces and concepts of justice that may complement and/or contest the approach of the Court.

"Charging Sexual Violence as Torture under the Rome Statute: Are the Geneva Conventions a Useful Tool for Prosecuting Sexual Violence Today?" **Sarah Creedon**

In the recent past, international criminal tribunals demonstrated remarkable innovation when tasked with providing justice for victims of sexual violence in armed conflict. Lacking specific sexual violence provisions within their statutes, they charged the violence as grave breaches of the 1949 Geneva Conventions, or violations of Common Article 3 thereof. For the International Criminal Court today, however, such creativity is not necessitated; Article 8 of the Rome Statute explicitly enumerates many forms of sexual violence as specific crimes within the Court's jurisdiction. However, it also contains the same Geneva Conventions provisions as its predecessors. Hence, the option of charging sexual violence as a grave breach, or violation of Common Article 3, rather than as a specific crime, is still possible today. Bearing in mind the criticisms leveled at the Court in terms of its failure to successfully prosecute sexual violence, this paper specifically explores the possible benefits of charging sexual violence in armed conflict as torture, which is both a grave breach of the Geneva Conventions and contrary to Common Article 3.

The suitability of torture, and the extent to which sexual violence fits the requirements thereof can be easily seen within the jurisprudence of the tribunals, and their many successful prosecutions. Furthermore, charging it as torture could arguably be helpful for the recognition of the seriousness of sexual violence, given the unique gravitas bestowed upon the crime of torture by the international community. However, as feminist scholarship shows, the significance of the very inclusion of specific crimes of sexual violence within Article 8, on par with crimes such as torture and extermination is immense. Hence, these provisions, rather than being dismissed, should instead be utilised as tools for achieving justice. Ultimately, this paper will demonstrate that to charge sexual violence as torture would be regressive, justice would be better served for victims by utilising the specific crimes available, the inclusion of which took so long to achieve.

Session Three

"Does the International Criminal Court Deter Torture? **Yvonne Dutton, Eamon Aloyo and Lindsay Heger**

The international human rights regime consists of treaties to which the vast majority of states belong. But do international institutions actually have the ability to induce positive change and deter human rights abuses? We focus on state commitment to the Rome Statute, the treaty creating the International Criminal Court, to examine this question. We argue that of the many treaties aimed at improving human rights practices, the ICC has the greatest likelihood of deterring abuses because it has been designed with a uniquely strong enforcement mechanism. Unlike other treaties that have delegated no power to sanction noncompliant behavior, the ICC has the power to investigate, prosecute, and sentence the citizens of any ratifying state who commit genocide, crimes against humanity, or war crimes if the state does not prosecute these individuals on its own. Therefore, we hypothesize that the incidence of torture will be higher in countries that have not ratified the Rome Statute when compared to countries that have ratified the Rome Statute, controlling for a number of important factors. Our analysis of the incidence of torture in states from 1981 to 2010 provides empirical support for our argument. Ceteris paribus, States Parties have a lower incidence of torture than countries that have not ratified the Rome Statute.

"Targeted Killing and Characterisation of Remote Warfare under International Humanitarian Law" **Anthony Cullen**

The use of Unmanned Ariel Vehicles (UAVs) for the targeted killing of suspected terrorists has raised a number of complex legal issues for scholars and practitioners in field of international criminal justice. This paper will focus on the applicability of international humanitarian law in such situations, the characterisation of remote warfare as armed conflict, and the possibilities for the exercise of jurisdiction over war crimes. In this context, the scope of armed conflict as a concept of international humanitarian law will be explored. In doing so, emphasis will be placed on the rules of interpretation provided for under Vienna Convention on the Law of Treaties and customary international law.

"General Principles of Law as a Source of International Criminal Law" **Noelle Higgins**

This paper analyses the use of 'general principles of law' as a source of international criminal law. It traces the use of such principles in the ad hoc tribunals and analyses the drafting history of Article 21 the ICC Statute regarding general principles. It assesses the difficulties inherent in creating a 'universal' justice system and interrogates whether the current international legal framework can accommodate 'other', 'traditional' or 'customary' understandings of justice through the use of general principles. It will use the armed conflict in Nigeria as a case study to highlight how general principles could have an important part to play in the ICC.

Session Four:

"A New Path for the International Criminal Court" **Eduardo Toledo**

On October 24th 2014, in the name of the victims of the Lago Agrio Case in Ecuador I presented a Communication to the Prosecutor of the International Criminal Court. This document is addressed to Ms Fatou Bensouda with the intention that she open an investigation into the situation of oil contamination in that country. We believe the environmental conditions, on the grounds of article 7 of the Rome Statute (Crime against Humanity), constitute an "attack" against the civil population of the Oriente Region, widespread and/or systematic, with knowledge required. The crimes of Murder, Extermination, Deportation or forcible transfer of population and/or Persecution against any identifiable group or collectivity, has been committed in the situation of Ecuador because the high-rank officers has voluntarily maintained and aggravated the situation in the Oriente Region.
The acts of the CEO of Chevron Corp., company that has been condemned to remediate the pollution, could be punishable under forms of liability of the Article 25 of the Rome Statute. Taking into account that the standard to fulfil at this stage of the proceedings is "a reasonable basis to proceed", under the light of the standard set in Article 30, it can be surmised that the relevant subjective element should be that the perpetrator has acted with the intention to influence or induce the commission of a crime.
This case represents an opportunity for the ICC to analyse very complex issues related to Human Rights violations, environmental crisis and personal liability for corporate actions; I'll describe the most important points of this Communication and, finally, I'll demonstrate how a deep investigation could influence in the policy of the International Criminal Court for the future in a positive manner.

"Minority Perception of Fairness in Finland: Is there Racial Disparity?" **Stephen Egharevba**

Research have shown that minorities particularly Blacks are six times more and Asian are twice likely to be stereotyped, suspected, stopped and searched, as well as arrested, cautioned as these groups are more likely to be prosecuted on weaker evidence when compared to Whites in many countries in Europe. Some reasons adduced for this phenomenon has been minorities engagement with deviant and criminal behaviour, while neglecting the Criminal Justice System (CJS) that treat minorities unfairly. However, in Finland interestingly very little research has examined minority perception of police fairness in the country. The aim of the paper is to examine the experiences of 650 immigrants from Africa, Asia, and Eastern European Countries, Middle East, as well as Latin Americans perception of the legitimacy of the police in view of the fact that experiences can influence the perception of fairness in the CJS. Secondly, explore why minorities feel they are treated differently in order to increase our understanding of minorities contact with the police. The participants with constant contact with the police tend to be more negative towards the CJS. Additionally household identified with specific referent groups significantly see the CJS as being bias.

"Judicial Dialogue and the Development of the Crime of Genocide" **Nora Stappert**

Over the last two decades, international courts and tribunals have significantly developed international criminal law. While a growing literature traces the changing character and expanding scope of various substantive and procedural aspects of international criminal law, few attempts have been made to explain this development. Combining insights from Political Science, International Relations and International Law, this paper emphasises the need to consider the specifically discursive and argumentative logics within international law and adjudication. In particular, it explores the role of judicial dialogue between international courts and tribunals for the development of international criminal law. To do so, the paper examines the crime of genocide, drawing on decisions of the ad hoc Tribunals and the ICJ, as well as the travaux préparatoires of the Genocide Convention. While often depicted as one of the areas within the dynamic field of international criminal law that remained exceptionally stable, the paper explains how the crime of genocide has been changed substantially through international adjudication. In addition to challenging a conventional view of the development of the crime of genocide, the paper thus puts forward a new explanation of legal change through adjudication by exposing the crucial role of judicial dialogue for the development of international criminal law.

Intersectionality **Charlotte Skeet**

Session One

The intersectionality of citizenship and gender on livelihood strategies of protracted refugees; a case study of Palestinians in Jerash, Jordan **Hana Asfour**

The majority of today's refugees are considered to be protracted populations who are particularly vulnerable because of the lack of legal protection mechanisms to support them. Their situation is an issue of financial concern to countries with fragile economies such as Jordan. The UNHCR has recognised the importance of 'self-reliance' to avoid refugee dependency on the international community and host countries on a long-term basis.

The following paper explores how gender and citizenship influence the agency of protracted refugees in Jerash, Jordan in developing livelihood strategies. It looks at the livelihood strategies of protracted Palestinian refugees with varying citizen and non-citizen status and their role in fostering resilience at the level of individuals, households and institutions within the social and economic structure of the host country. More specifically, it focuses on Palestinian Jordanians with full Jordanian citizenship, Gazans with 2-year temporary citizenship and the host population. The literature on livelihood strategies and resilience often generalises these strategies, and lacks a perspective on intersectionality in terms of gender and citizenship, which this paper addresses. In addition, this paper is an analysis of not only the individual and household strategies, but also those of state and NGO institutions within a particular country.

This paper argues that while gender is a crosscutting social marker that restricts women's access to employment, degrees of disadvantage vary with the intersection of citizenship status. State legal structures play a fundamental role in shaping durable solutions for the situation of protracted refugees. This paper proposes a collaborative approach in addressing the livelihood needs of protracted refugees that involves stakeholders from micro, meso and macro levels.Jordan, intersectionality, Palestinians, refugees, structure, agency.

Human Rights and Alternative Forms of Sexuality **Shaminder Takhar**

The paper examines what we mean by sexual rights and whether this can be contextualised within a human rights framework. Legislation that recognises the rights of marginalised groups is seen as a sovereign issue by many states, rather than universal therefore, the paper examines what this means with reference to ideas of equality, justice, dignity and diversity in an increasingly globalised world. The paper surveys recent developments in legislation that promote equality based on sexual orientation. Although liberal attitudes towards sex and sexuality have been evidenced in countries where for example, same-sex marriage has been legalised, homophobic, conservative and religious views challenge equality legislation. Furthermore, transnational influence on LGBT issues cannot be underestimated, for example in India and Uganda. The paper therefore examines the developments and setbacks in these two countries that have a colonial legacy in the form of anti-homosexuality legislation. What is clear is that the expression of alternative sexuality has been criminalised because it disrupts the foundation of conservative ideology and religious beliefs in most countries. As a relatively new entrant to international human rights discourse the paper asks, what are the enabling conditions for sexual rights particularly if we acknowledge the existence of transnational organisations, transnational sexual citizenship and the globalisation of human rights discourse.

Labour Law **Michael Jefferson and Sam Middlemiss**

Session One

Employment Tribunal fees **Liz Oliver**

A programme of major reforms to employment law has taken place within Britain over the past five years. This process has unfolded through various reviews and consultations, primarily in the form of the 'Employment law Review' and also through a participatory website known as the 'red-tape challenge'. Since the formation of the Coalition government deregulation has been an explicit objective, however the extent and nature of the intended informs has emerged through responses to the various consultations and through revelations concerning the role of key advisers. As one commentator has noted "behind the rhetoric of reflexivity...is a programme of deregulation of some of the central planks of employment law" (Wynn, 2013).

This paper focusses on a plank of the adjudication and enforcement of employment law: the employment tribunal system and the implications of the introduction of fees to lodge and hear claims at employment tribunal. The rationale for this reform concerned the allocation of the cost of providing the employment tribunal to those who use it. This assumes, however, that individualised employment law claims are entirely private matters and overlooks a dual role for labour law in both resolving individual disputes and in driving social justice (Ewing, 1996). This paper will explore this dual function and will consider the implications of the fee regime for the public function of private disputes.

Shared parental leave **Gemma Mitchell**

This paper will explore whether shared parental leave, which was introduced by The Children and Families Act 2014, is likely to encourage men to take leave from the workplace to provide childcare. The legislation made fifty weeks of maternity leave transferable as shared parental leave to the father, or the mother's spouse, civil partner or partner, if both parents are eligible. The 2014 Act aimed to achieve shared parenting, which involves dismantling the gendered division of labour by encouraging men to more actively participate as parents. Many benefits of such a policy were identified, including improving children's educational and emotional development. The Government also noted that such policies would support women in maintaining a strong attachment to the workplace; if men spend more time caring, women will have more time to participate in paid work. This is important because women's association with caring has resulted in them experiencing discrimination; some employers view them as less reliable workers, likely to be absent from the workplace. Achieving shared parenting would challenge this discrimination because all employers would have to recognise men as potential carers too. However, I conclude that the scheme of shared parental leave now enshrined in the legislation is unlikely to achieve shared parenting in practice. This is because the legislation continues to prioritise the caring role of mothers, even though the long period of transferable leave symbolically recognises other parenting roles. I will support this argument by examining the eligibility requirements, the limited level of statutory remuneration and the need for maternal consent to access shared parental leave. This analysis will demonstrate that shared parental leave is tokenistic and is unlikely to increase the number of men taking leave to provide care.

Session Two:

EU Labour Law **Michael Doherty**

It is, of course, always dangerous to express oneself on the future of labour law, which is in seemingly perpetual crisis and flux. Nonetheless, as talk across Europe moves increasingly to the focus on labour market regulation 'post-crisis', this paper seeks to explore a number of interrelated themes focusing on the legal, and extra-legal, processes and phenomena that shape the essential functions of labour law.

First, the paper considers the relationship between labour law, the labour market and social competition. Here, it focuses on the limits of labour law as a corrective mechanism to the liberalisation of markets at the European and global levels.

Secondly, the paper looks at the tie between labour law and human dignity and the conceptual shift from viewing labour as a commodity to allowing the worker to obtain the status of citizen within the enterprise. The role of human rights in the development of labour law will be considered in relation to this theme.

Thirdly, the relationship between labour law, market law and (social) competition law is examined; here, the paper looks at issues concerned with the spread of market (and contract) law and the dominant philosophy of entrepreneurial freedom.

Finally, the paper considers the risk of a renewed contestation of the dignity of working people. In relation to this theme, it reflects on the view that nation states have lost control over markets and that national systems of social adjustment now compete amongst themselves.

Enforcement of EU migrant workers' rights **Amy Ludlow & Catherine Barnard**

The arrival of a large number of migrant workers from EU-8 Member States has changed the face of the UK's labour market. Some employers have treated these workers with respect and have tried to meet their legal obligations. However, there is now good evidence that some employers are taking advantage of migrant workers and denying them rights under UK law, especially rights to the minimum wage and to paid annual leave. This raises questions about social justice towards (often vulnerable) migrant workers. It also means that responsible employers find it difficult to compete with rogue employers in their sectors.

This mixed method empirical study seeks to understand what happens if migrant workers are denied their employment rights. Do they enforce those rights and if so how? Through a textual analysis of all Employment Tribunal decisions between 2010-2012 we are able to present some quantitative insights into how many EU-8 migrant workers are bringing cases before employment tribunals, what those cases are about, how they are advised, supported and represented before tribunals, and the level of success of their claims. Guided by these insights, our complementary qualitative work has explored some of the obstacles and alternatives to the use of employment tribunals and how migrant workers understand and interact with their labour law rights using other channels. Through our interview and focus group data we particularly reflect upon the likely impacts upon EU-8 migrant workers of the introduction of fees to access employment tribunals and the role and challenges for trade unions and other advice/representation organisations in supporting EU-8 migrant workers. We explore the powers and effectiveness of other enforcement bodies such as the Gangmasters' Licensing Authority and offer some suggestions about how enforcement might be improved among EU-8 migrant workers. This work is particularly timely following the adoption of the two EU Directives 2014/54 on migrant workers and 2014/67 on posted workers, both of which address, in different ways, the question of enforcement of the rights of those working in other Member States.

Responsive Law and gender inequality **Amanda Viriri**

It's often been noted that if organisations were required to disclose details about their actions and process of decision making, then pressure to justify the above will increase. This pressure may also lead to such organisations making changes to their policies and procedures, without the need for a mandate. Developments within domestic law have attempted to narrow the gender pay gap in the form of reflexive law. This study aims to analyse and contribute to the debate over reflexive regulation and its counterpart substantive regulation in relation to pay equity, focussing on the public sector equality duty, as encapsulated in the Equality Act 2010, as well as equal pay ligation in the public sector. It will also aim to comparatively address this issue with Australian law. The state with its law making capacity has set general standards that steer primary actors but simultaneously leave them with a level of autonomy in which to engage in self-regulation. However some issues arise due to the resurgence of reflexive regulation. Should responsibility be relinquished by the legislature in ensuring a fairer society? What sort of guarantees can be given that self-interest will not overshadow the importance of equality? Are we in danger of allowing 'trickle down discrimination' remaining the norm?

Session Three:

Occupational safety **Paul Almond**

In Britain in 2014 there appears to be a widespread belief that health and safety has 'gone mad,' with accusatory fingers frequently pointed at the 'nanny state.' Politicians, policymakers and regulators have tried to correct these perceptions of a regulatory system that is out-of-control, while also buying in to the perception at times. But where has this belief come from, and how long standing is it? Has the legitimacy of health and safety come under new challenge – or have longer standing pressures been reformulated and rephrased? And how does this reflect and create understandings about risk?

Focusing on the period since 1960, this paper explores the nature of risk management in Britain, and the ways in which the governance of health and safety at work has been perceived. It covers a period of vast change in the regulatory environment, with the shift from a patchwork of laws and regulators to a more unified and comprehensive system, and from a prescriptive, command-and-control style of regulation to one predicated upon open-ended duties and a self-regulatory approach. This change occurred alongside structural changes in the British economy and society, which posed fundamental challenges to contemporary understandings of occupational ill-health and injury, as well as a period of political change which saw the state's role in such issues increasingly called into question.

This paper will explore how and why perceptions of occupational safety and health have changed over the last 50 years. The legitimacy of this issue, meaning the extent to which it is socially accepted and supported, underpins these perceptions, and renders them significant from an institutional point of view, as they shape the policy and operational context within which regulators, workers, and employers operate. The paper concentrates on health and safety as a site of intervention by the state, trades unions, employers and employees, exploring how these agents have attempted to manage workplace risks and the rhetoric they have used to position themselves in the debates. In a contested area such as this, it is necessary to establish how far changes in the policy context have been driven by the efforts and actions of the actors involved, and how much by wider developments in the legal, political, and social spheres.

Workplace injuries among Chinese seafarers **Desai Shan**

The global labour market for seafarers has emerged and developed since the last two decades of the twentieth century. This is mainly driven by shipowners' motivation to reduce ship management costs and to escape strict labour protection legislation of their home countries. By transferring vessels' registry ports, shipping companies are able to choose a 'capital friendly' environment, such as Panama, to 'shop' cheap labour from developing countries with lower labour welfare protection requirement, such as China and the Philippines. However, on the other hand, international and Chinese studies indicate that seafarers suffer higher risks of work-related injuries and death than land-based workers do. For this reason, a reasonable and effective compensation regime is crucial for the welfare of maritime labourers and their families. Nevertheless, there is no effective global legal approach for injured seafarers to claim compensation against their foreign employers, so seafarers from developing countries still need to rely on the compensation regime of their home countries, which usually cannot provide comprehensive protection for their rights.

The studies conducted in Australia and Canada show that claimants for work-related injuries compensation suffer procedural obstacles, financial difficulties and psychological harm from the interaction with employers, labour authority or judicial authority in the claim process. However, there is little attention, in academic discourse, paid to the struggles of Chinese seafarers and/or their families in the claim process for work-related injuries compensation against their foreign employers.

To fill the research gap, this research has utilised qualitative research methods to explore the experiences of Chinese seafarers of compensation claims against their foreign employers. Through the four-month fieldwork in rural and urban areas of fourteen Chinese cities, twenty-five qualitative semi-structured in-depth interviews have been conducted with the seafarers, who have experienced workplace injuries on foreign vessels and attempted to claim compensation against the foreign shipowners.

Through analysing the transcripts of these interviews, the preliminary findings show that seafarers have experienced great difficulties in negotiating compensation to obtain reasonable compensation from the foreign shipowners, due to the low legal compensation standards, the unfair terms and conditions of the employment contracts and the hardship to find their foreign shipowners. In addition, the claimants also suffer stress caused by lengthy judicial litigation process, panic caused by the lack of external social support from trade unions, and anxiety caused by hostility and stigmatisation from the employers, and stress caused

Child labour in South Asia **Trivikram Nayak & Shashank Sheakar**

This paper studies the role of law in addressing the problem of child labour in South Asian nations. In this paper we are studying how changes in legal spectrum alone, cannot address the problems of the society. Socio-economic norms play vital role in transformation and law simply cannot be implemented without solving these deep-rooted social issues. Despite efforts being made at both national and international level, a child labour free society remains a distant dream. This is mainly the result of level of poverty, literacy and awareness in the society about the issue, which has not shown any substantial change.

In this paper we will be addressing three-core issues fundamental to the concept. Firstly, analyzing the laws and policies prevailing in the region as well as the set global standard and finding out reasons for ineffectiveness of laws in curbing the social menace. Secondly, studying the extent to which child labour laws are affected by social aspects like poverty, development, etc. Finally, we will be dealing with what holistic approach should be adopted in order to deal effectively with the issue.

Session Four:

Restoring wages councils and sector bargaining and extending wages and condition? **Keith Puttick & Peter Beszter:**

The abolition of the Agricultural Wages Board and revocation of the Agricultural Wages Order – one of the more controversial aspects of the Coalition's programme of deregulation - brought to an end the last vestiges of the Wages Council system, at least in England. However, the system continues in Scotland and Northern Ireland. It also continues in Wales following Wales' successful challenge to the abolition measure in the Supreme Court. It is also significant that the Republic of Ireland, despite on-going challenges, has sought to retain its own version of sectoral wages and conditions fixing, the Joint Industrial Councils with a view to tackling the problems of low pay in the Republic. At a time when wages in many sectors remain low, and in-work poverty is estimated to affect over 6 million households in which there is at least one person in remunerative employment (Social Mobility and Child Poverty Commission and Monitoring Poverty and Social Exclusion 2015 (J R Rowntree Foundation), there is a case for revisiting mechanisms for wages and conditions setting at the sectoral level, having regard to payability. As will be argued in this paper, there are obstacles to overcome, not least in relation to the introduction of new systems of representation on both sides of any regulated system of negotiation, agreement, and statutory wages and conditions setting. Nevertheless, assisted by models of schemes in operation elsewhere in the UK and Europe it is arguable that such a system could be established. The proposal has been supported by the TUC, and ought to be considered by an incoming government committed to addressing the problems around low pay in the UK.

National Industrial Court of Nigeria **Chioma Agoro:**

The traditional common law rules for determining complex employment issues have often proved to be grossly inadequate in dealing with emerging issues in a globalised world of work. A spate of judicial activism by the Supreme Court of Nigeria in the 1980s, injected constitutional and human rights principles into an area that had for long been feed on the dry diet of employment at will, freedom and sanctity of contract. This development, revolutionary at the time and period, was limited in application. Nevertheless, it became the reference point in dealing with issues relating to workers' rights, safety, and welfare among other issues. These principles given teeth by the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010. The question is: Can they really bite? In other words, What difference has the Act made to the generality of employment relations since its enactment. This paper examines some cases decided by the National Industrial Court of Nigeria (NICN) since the enactment of the landmark Act. The aim is to assess the impact of this legislation on the the development of employment or labour laws in Nigeria particularly in relation to international best practices.

Adjudication in Malaysia and Nigeria **Rabui Shatsari & Ado Malam Bello**

This paper is a comparative analysis of the judicial arrangements for resolving both private and public sector labour disputes in Malaysia and Nigeria. These two selected countries use various forms of institutionalised processes for the settlement of labour disputes, be they disputes of rights or disputes of interests. Adjudication is one of the processes in use. In fact, in both countries, there exists an industrial court charged with the responsibility of hearing and deciding issues relating to labour disputes. Malaysia and Nigeria have been chosen due to their apparent comparability. On the one hand, the two countries, one South-East Asian and the other West African, are common law jurisdictions with shared British colonial legacy; and that their labour relations systems are both characterised by high degree of government involvement. On the other hand, the labour relations system of each country has uniquely evolved over time as a consequence of its peculiar socio-economic and political experiences. The objective of the paper is to provoke discussion on the mechanisms for labour disputes settlement in the two countries. The paper is structured as follows: introduction; historical evolution of the labour relations laws of the two countries; an outline of the mechanisms of labour disputes settlement in both countries; a comparison of the industrial courts in both countries; summary, evaluation and conclusion.

Law and Literature — Julia Shaw

Session One:

Men of Violence, Men of Vision: John Davies and John Marston at the Middle Temple **Paul Raffield**

In Hilary Term 1598, John Davies entered Middle Temple Hall during commons, concealing a dagger and a ‘bastinado’ under his gown. Davies approached his close friend (and fellow Middle Templar) Richard Martin, with whom he had fallen out, and hit him over the head with the bastinado, so hard apparently that the weapon broke. In this paper, I consider the theme of violence in late Elizabethan England, using the lives and works of Davies and John Marston as a framework within which to examine the causes and effects of violence and rebellion in London and throughout England in the 1590s. I investigate especially the role of early modern lawyers in articulating and restating the classical theory that eternal or moral law was coterminous with natural law, and superior (in the words of Davies) to ‘all the written laws in the worlde’. In the course of the essay, I address the theme of censorship, and the institutional suppression of freedom of expression, in its late-Elizabethan context and with especial reference to the satirical epigrams of Davies. The future Chief Justice of the King’s Bench, was not only one of the most eminent lawyers and jurists of the late-Elizabethan and Jacobean period: he was also one of its most successful poets, the author of Orchestra, or a Poem of Dancing; Hymnes of Astraea; and Nosce Teipsum. I examine the close correlation between law and poetry (and by way of conclusion, through analysis of an early play of John Marston’s, entitled Histrio-Mastix, between law and theatre), concluding that the indivisibility of these aesthetic forms was a salient feature of the early modern legal institution.

Catastrophe and Systemic Violence: Richard Wright and the Mississippi Flood of 1927 **Philip Kaisary**

Until the Hurricane Katrina catastrophe of 2005, the Great Mississippi Flood of 1927 was the most devastating environmental disaster in American history. A thoroughly manmade ‘natural’ disaster, the 1927 Flood displaced more than one million people, left around 700,000 people homeless, and is thought to have claimed between 500 and 1,000 lives. The disaster also generated a voluminous cultural archive, ranging from a cornucopia of Blues music, to literary works by Richard Wright and William Faulkner, to social commentary by W.E.B. DuBois, and a radio broadcast by Walter Benjamin. This paper will explore Richard Wright’s literary responses to the 1927 Mississippi Flood, the short story “The Man Who Saw the Flood,” and the novella “Down by the Riverside,” first published in 1937 and 1938 respectively. These two imaginative recuperations of the 1927 Flood refuse the ‘natural’ as an explanatory category through which to understand the catastrophic impact of the 1927 Mississippi Flood. For Wright, the 1927 Flood is firmly an injustice, not a mere misfortune. Moreover, his Flood Stories refuse any reading of the consequences of the disaster as an overturning of normative structures. Instead, Richard Wright’s Flood Stories serve as a voice of explanation around the social dimensions of disaster, urging us to see in the 1927 Flood the consequences of systemic violence – race-based segregation, sharecropping, peonage, and environmental degradation. The paper will thus consider Wright’s representation of ‘systemic,’‘catastrophic’ and ‘slow’ violence in order to critically interrogate the concept of ‘disaster vulnerability’ and to reconceive the possibility of ‘disaster justice.’

Session Two:

From homo economicus to homo roboticus: law and the posthuman **Julia J.A. Shaw**

As social life becomes increasingly complex, the perfunctory blurring of boundaries between human and machine comprises a dangerous reductionism in the way we think about and readily accommodate the use of progressively sophisticated technological tools. Too often, without considering the societal or personal impact, we act in response to culturally transmitted ideas that are embedded in symbolic representations of structural information. Two conflicting schools emerge from speculation about technological advancements and future implications. The Utopians anticipate helpful robots, machines which take on the physically demanding, time consuming and less intellectually engaging, boring and repetitive tasks, along with those that assist in law enforcement. The dystopians, alternatively, envisage a world in which human endeavour is rendered inferior or useless with people enslaved to the whims of the machines, resulting in a zombie apocalypse; predicting ecological disaster; even the end of the world following the creation of many monsters. This paper explores both attitudes in relation to various narrative accounts, particularly fantasy folklore, cyberpunk and science fiction and speculates on the role of law in a cultural posthuman era.

Remember Madness: Aesthetics of Justice on the Streets of Gotham **Thomas Giddens.**

Criminal justice processes involve the reduction of complex, messy life into reified categories of criminality and administration. Jonathan Wender shows how navigating the streets, police officers have to compress their encounters into rational categories amenable to adjudication and 'solution', whilst attention to the aesthetic can help recall the creative epistemological processes involved in such a 'compression' of life. This paper shows that comics, as a uniquely placed medium on the boundaries of the rational, aesthetic, textual, and visual, are an apt resource for examining such concerns. The specific focus is on Batman, who traverses the uncertain line between reason and un-reason, between sanity and madness, relying on his ability to abstract and rationalise the messiness of life in order to 'make sense' of crime and reality on the streets of Gotham. Through such mediations, Batman comics can remind us of the human in criminal justice, and of how to make knowledge that may be aware of the aesthetic and epistemological foundations that mainstream criminal justice knowledge arguably overlooks in its quest for 'facts' and bureaucratic 'solutions'.

Exploring alternatives to Justitia with Eowyn and Niobe: on gender, race and the legal **Patricia Branco**

The imagery of justice is (and always has been) a common and popular feature of legal culture in many parts of the world and it can be found everywhere, from courthouses to cartoons (Resnik and Curtis, 2011). But the prominent image that has affected us most is that of Lady-Justice, a white woman, sometimes appearing with her eyes veiled and other times unveiled, at times bearing scales and/or a sword in her hands.

But, after all, who is this woman? Is she really a worthy representative of justice? A representative of women? The images of Justice we have come to accept as a "given" do not challenge the political or legal elite; rather they reinforce their status as law givers (Mulcahy, 2011). We are, therefore, in front of a "universal" image that needs to be confronted culturally.

I intend, in this presentation, to question the image of the Lady Justice, and the interpretations that have been associated with it, or the behaviors that are required and imposed upon women, inside and outside the legal profession. I will, thus, point some arguments towards such questioning, particularly the questions of gender and race, by using two female characters: Eowyn (The Lord of the Rings, by Tolkien) and Niobe (The Matrix, by the Wachowski Brothers). These two characters show us women that have some significance in both plots. Using them I will establish some similarities / differences with Lady Justice, namely the need to disguise themselves as men or embrace male attitudes (a similar process concerning women in the legal professions, for example); the use of weapons (like the sword, and, hence, the necessary analysis of women as delinquents, in contradiction to the image of Justitia); and matters of skin color.

Lawyers and Legal Professions **Andy Boon**

Session Three

Paper: Rising to the top: Women Solicitors in the UK **Nicola Zoumidou**

This paper will consider the similarities and differences between the policies of the Law Societies of (1) England & Wales; and (2) Scotland, in relation to the retention and progression of women solicitors.

The career advancement issues facing women solicitors in the UK have been widely discussed and most of these problems are not limited to the UK, or to the legal profession. There are a number of possible mechanisms which could be used to increase the retention of women in the legal profession and further the progression of those women within the profession. However, despite equality and diversity policies and strategies having been in place for at least the last decade, the situation has not improved significantly.

This speaker's doctoral research includes a comparative analysis of the policies of each Law Society using a theoretical lens in order to find points for improvement in each. This paper will look at the main features of each jurisdiction's policies in this area and will explain the main areas of difference in each jurisdiction.

It is hoped that this paper will fit into this stream very comfortably since it is looking at the legal profession directly, with a particular interest in women solicitors who make up more than half of the profession in the UK

'Don't be too outwardly Islamic...' Fitting in, Firm Culture and Muslim Female Solicitors **Dianne Atherton**

For ethnic minority lawyers, identity can run through many lines of potential conflict; through religious, racial and gendered lines, which alongside their social class and backgrounds influence the development of their own personal identities. Although a small number of (already marginal) firms within the profession may construct employability in ways in which value these racial and religious characteristics, within the mainstream profession the outward display of race and religious values of non-traditional members are more problematic; resulting in an increasing challenge for these lawyers to conform to a normative professional identity. The ability of a BME lawyer to blend into a firm and to maximise their mobility relies on their ability to manipulate these characteristics through aspects of dress and presentation to their clients and colleagues.

Drawing on a series of interviews with Muslim lawyers, I will explore the idea of 'fitting in', and what this means for non-traditional lawyers within the profession, as part of a wider PhD study. I will argue that through their intersecting identities, this group is vulnerable to experiencing dissonance with the expected identity, which paradoxically renders them both invisible and hyper visible. Firstly, I will explore how the profession's heavy reliance on networking and 'bonding events' (often alcohol fuelled) can work to alienate Muslim female solicitors whose cultural and religious beliefs provide a potential hindrance to full participation within firm life.

I will then move to argue that this group is located within the wider context of an increasingly Islamophobic society, and as such they become hyper visible as a Muslims within a firm, and are at risk of 'othering'.

This invisibility and hyper-visibility dichotomy experienced by Muslim females within the profession indicates that the individual agency of marginal actors is still heavily constrained through structural forces; both in the profession and wider society.

Paper: Branding, Marketing and the New Entrepreneurial Barrister **Atalanta Goulandris**

Based on empirical evidence from in-depth interviews with barristers, clerks and marketing staff, this paper examines the rapid development of marketing at the Bar of England and Wales, since the removal of the complete ban by the Bar Council in 1990. Three studies were carried out when the profession first struggled to come to terms with the need to promote its services (Harries and Piercy, 1998; O'Malley and Harries, 1999, Harris and O'Malley, 2000), but there has been little or no empirical research on how marketing and branding has developed in the last 15 years at the Bar, in the context of an increasingly competitive market, structural reforms and legal aid cuts. The engagement of marketing consultants, together with a growing array of collective, chambers' and individual practitioner marketing initiatives, in part fuelled by the growth of IT and social media, is transforming the cultural landscape at the Bar and is leading to structural and organisational changes within chambers. In addition, barristers have had to acquire new skills, marking a shift from the notion of an independent, self-employed practitioner to the new, 'entrepreneurial barrister', engaging in self-commodification in the form of branding. This paper analyses the marketing and branding techniques that are being deployed and how this sits with the traditional image and values of legal professionalism and whether this on-going commercialisation is giving rise to a new breed of barrister. It also examines conflicting empirical evidence on attitudes to marketing and as to whether it actually works, despite heavy investment of time and money into these promotional activities.

Work experience for non-traditional aspirant entrants in the legal profession: revelation or maintenance of status quo? **Elaine Freer**

Work experience has been described as 'a crucial moment of identity formation' for those hoping to follow a career in the legal profession (Francis and Sommerlad, 2009: 65). Many chambers and firms require legal work experience as a specific criterion on application forms, and research suggests privileging of legal work experience over work experience in non-legal contexts that may nonetheless lead to the assimilation of valuable transferable skills (Young Legal Aid Lawyers' Report, 2013).

For students from traditional backgrounds, accessing legal work experience poses few problems (Francis and MacDonald, 2009); many have social or familial links to professionals, and higher social capital (Bourdieu, 1984). Thus, they can utilise informal contacts, or are familiar with the expectations of selectors, giving them the confidence and knowledge to apply directly.

For non-traditional students, however, the accessing of legal work experience may be more difficult (Sommerlad, 2007). This research is part of a larger project examining transformative action by a professional association. This paper particularly examines the professional association's decision to support access by establishing a programme for non-traditional aspirant entrants whereby work experience is undertaken in chambers, but applications are made to, and administered by, an access specialist at the professional association, allowing for the contextualisation of educational achievement.

It is argued that, whilst this may indeed allow a small number of non-traditional aspirant entrants who would not otherwise have secured work experience to do so, it fails to challenge the underlying assumption that legal work experience is qualitatively better, due to the opportunity to assimilate social norms (Bourdieu, 1984) and therefore supports the status quo; a factor identified by Braithwaite (2010) as key in access interventions

Session Four:

The Legal Professions' New Codes of Conduct: What Do They Tell Us? **Andy Boon**

The Legal Services Act 2007 led to the separation of the representative and regulatory functions of legal professions in England and Wales. The regulators for both solicitors and barristers have now issued new Codes of Conduct. In both cases the new codes are heralded as major revisions. This paper analyses what the form and content of the new codes tells us about the aims, aspirations and priorities of the new regulators. It also considers whether the new codes tell us anything about the future for regulation of the legal services market.

The Failure of the New Legal Services Market? **John Flood and Liz Duff**

With the shift from the welfare state to the neoliberal economy promises were made that the market would be an efficient mechanism to improve access to justice. New competitive forces would impel lawyers into a new era of legal innovation. The new age is predicated on the redesign of the legal services market through the agency of the Legal Services Act 2007. Eight years later we are still waiting for this new market to emerge. True, there have a number of ABS and we are seeing more adoption of technology through websites like LegalZoom and RocketLawyer, but regulatory structures and conservatism have done their best to stifle true innovation. We advocate a more fundamental cause which is the refusal of the legal profession to comprehend that it has been weaned off the welfare state and now faces market forces.

The Ethics of Transactional Lawyers **Stephen Vaughan**

This is part of an ESRC 'Future Research Leaders' project titled "The Limits of Lawyers". This paper will explore the ethics of transnational lawyers: how they understand legal ethics, and the extent to which they have experienced, or could imagine, legal ethical issues arising on transactional matters. I am currently undertaking the data gathering part of the wider project and will be able to draw on around 50 interviews with partners, associates and trainees by the time of the SLSA conference. My pilot stage, undertaken in early January 2015, has shown how most transactional lawyers understand legal ethics in a Kantian/rules based way and how they struggle to understand that there could be any ethical issues attached to the work that they do.

Session Five:

Lawyers: A Theoretical Framework **Elisabeth Reiner and Jan Pospisil**

Lawyers differ in many aspects from other professions. This can mainly be attributed to two reasons: firstly, lawyers are part of the so called liberal professions. Hence, their professional activities are characterised by certain “core values”, such as loyalty to the client, closeness and the ban on conflict of interests. To fulfil these requirements, the professional law regulates the profession in many ways; one such intervention is the specification of lawyer’s business models by professional laws. Secondly, lawyers are acting within a particularly challenging market environment. Their services are highly competitive, in the sense that they contest for the interest of their clients against other parties. Furthermore, the relationship to their clients is asymmetric: the quality of the lawyer’s services can only be estimated ex post.

How can these characteristics of the lawyer’s profession be framed theoretically? In this paper, we – against the background of empirical findings on the incorporation needs of Austrian lawyers – develop a theoretical approach, based on the combinations of a resourced based view (RBV) and the institutions theory of new institutional economics (NIE). Referring to Debora L. Spar, we identify four essential resources of law firms: walking assets, reputation, size of the firm and brand positioning. To deal with the non-economic side of the profession, the NIE approach allows us to explain the institutional arrangement, in particular its normative and cultural-cognitive factors. The interplay of these two pillars frames is what we call the regulative framework of lawyers.

Re-regulation and change in professional organisational fields: The case of UK legal services **Sundeep Aulakh and Ian Kirkpatrick**

In examining the adaptation of professional service firms to changes in the market and institutional context, the extant literature focuses almost exclusively upon “a single population of organizations” and ignores other changes that may transform a professional service field such as the emergence of new populations or shifts in the boundaries demarcating fields. This blind spot is attributable to the characteristics of professional service fields, which tend to be closed and, historically at least, distinguished by high levels of self-regulation. However, neoliberal policy regimes in North America and Europe have introduced various reforms challenging self-regulatory practices.

The re-regulation of professional services represents powerful pressures for institutional change. Yet, it is not clear what form this will assume – radical or convergent? As entry restrictions to professional service fields are loosened, radical change implies an influx of new entrants and extensive innovation management practices and, ultimately, ascendency of a new organizing template. Following the re-regulation of legal services in England and Wales under the Legal Services Act 2007 (LSA), we investigate the nature and pace of change in this highly institutionalized field. Generating extensive global commentary and controversy, the Act removed historic restrictions relating to the financing, management and ownership of legal practices and permits non-lawyer ownership and management of law firms through the introduction of a new organizational form – ‘Alternative Business Structures’ (ABS). We examine the impact of re-regulation along two dimensions: field membership to explore the extent to which professionals from other jurisdictions have entered the legal services sector. Permission to appoint non-lawyers as owners/managers of law firms and the ability to raise external capital investment are two distinctive features of ABSs and we explore the extent to which the ABS population has adopted these innovations in order to assess the degree to which radical proposals are producing radical change.

Paper: Language and Law in Globalised Legal Practice **Martina Kunnecke**

Whilst English is often used by lawyers from different legal communities there are many well described pitfalls in the use of legal English in international communication. It is well illustrated that this is due to the culture specific nature of law, the lack of equivalence of legal concepts and the fact that legal English is not a neutral legal English but still the language of the Common law and there are different expressions in the US and Canada. The use of neologisms and the hybridisation of the English language in the law-making process of the EU have paid tribute to the difficulties in legal translation and drafting. My research is aimed at the question to which extent the increased use of English in international legal communication and drafting has led to the creation of "new forms of legal English" and to whether this has had an effect on the language of the Common law. It raises broader questions as to the role of legal English in globalised legal practice and the related question whether English legal professionals require foreign language skills to be effective communicators.

Whilst English remains the language of global legal communication, English Law firms are increasingly interested in graduates with foreign language skills and a global mind-set. (The Lawyer, Even 18 October 2013, The Times, 23 May 2013). Recent research into language capacity in the diplomatic service has identified a "vicious cycle of monolingualism" (Lost for Words: The Need for Languages in Security and Diplomacy, British Academy, 2013; Languages: State of the Nation, British Academy, 2013). However, there is little reliable data available on the most relevant foreign languages required, the subject areas of law in which foreign languages skills are employed and in which situations they are relevant.

Session Six:

2015 Hart-SLSA Book Prize Winner: Alan Paterson (2013) Final Judgment: The last Law Lords and the Supreme Court, Hart

Legal Education **Tony Bradney and Fiona Cownie**

Session Four: **Chair: Anthony Bradney**

Parresia and academic freedom in legal education **Pedro Fortes**

This paper will discuss academic freedom among law professors, students, and legal academics in general. The point of departure will be Michel Foucault's concept of Parresia, understood as a special freedom that some greek citizens had to criticise the powerful in society. Adapting parresia to contemporary legal academia, this paper explores whether law professors have an equivalent freedom to criticise the powerful social members as a result of their tenured positions and the potential to provide critical accounts of state authorities, such as judges, lawmakers, regulators, police officers, MPs, and the rich. The paper will also focus on contemporary limitations to parresia, resulting from an intersubjective sense of political correctness, a game of incentives and sanctions that induces strategic behavior among members of a law school, and also a conservative mood of preserving the status quo that balances a more critical attitude against the powerful. The paper will bring a few concrete examples for further discussion and reflection. At last, the paper will bring a few final remarks.

Could you make it a bit more MOOCy? **Simon Sneddon**

This paper takes as a starting point one of Paul Schrag's views of the future; that one of the only ways law schools are going to survive is by "incorporating MOOCs" into their offering, by blending the delivery and using MOOCs for information delivery and live teachers for face-to-face sessions.

The paper argues that while HEIs are moving toward blended learning, the starting point, however, is generally the traditional lecture and seminar module, with additional online resources and some online assessment. Stephenson wrote that "Experience has long been considered the best teacher of knowledge. Since we cannot experience everything, other people's experiences, and hence other people, become the surrogate for knowledge" and Siemens (2005) also said that connectivism has implications for the design of learning environments. This paper suggests that the use of MOOC elements accessible to students and non-students can help to incorporate elements of connectivism more directly into law teaching.

The author co-developed an International Law MOOC in 2013/14, and this was deconstructed and evaluated by existing final year undergraduate law students, who were asked to judge the attraction, perceived usefulness, suitability for existing modules, and levelness of each element. Their responses are being used to design cMOOC-style elements within the final year of undergraduate law modules that are open to both students and non-students, and will allow all participants to interact.

The paper concludes that Schrag's view, while perhaps a little apocalyptic in nature, is nonetheless an extremely useful starting point for the future of delivering legal education.

Towards a Feminist Pedagogy of Clinical Legal Education: Challenges and the Possibilities of Transformative Learning **Jhuma Sen**

Clinical Legal Education (CLE) started developing as a concept of prescriptive learning since the mid-90s and now is identified as an inseparable part of legal education across the globe attempting to bridge the gap between theory and practice. While CLE may be specialized with a specific focus on target areas of law practice (Social Justice Clinic, Domestic Violence Clinic for example) or target groups which shall benefit (Child Rights Clinic for example) with certain layers of overlap between the two; or generic, with the objective of teaching law students regular drafting and developing their skills, the challenge is to shift classroom thinking in new directions of critical pedagogy. Before identifying the challenges of such a project, one must attempt to understand what 'feminist pedagogy' is. Who employs 'feminist pedagogy'? When is it employed? What are the challenges of employing such transformative tools? In the context of CLE, which is limited by its own constraints like the problems of isolation, staffing problems and problems of resources, how does one integrate feminist learning into simulated classroom teaching? These are some of the questions the paper shall reflect, address and engage with, drawing from experiences, both primary and secondary, in the global south.

Session Seven: **Chair Fiona Cownie**

Taking prior experience into account when evaluating judicial training: some empirical findings **Diana Richards**

While almost all legal education is designed for adults, and thus has to take the pedagogical principles of adult learning into account, vocational learning brings two further challenges: it ought to prepare the trainee for the specific professional requirements of the job (not just provide a foundational knowledge), while at the same time taking into account any expertise the trainee has already acquired at the time of the training. In this sense, the judicial institutes in charge with providing training for judges have so far done their best in designing their methods so as to provide future, newly-appointed or current judicial office holders the skills, attitudes and knowledge they need in their daily duties.

The current study aims to empirically explore the hypothesis that prior expertise and prior exposure to training do make a difference in how legal professionals (in this case, judges and prosecutors) perceive the training they receive. It has so far focused on one European jurisdiction – Romania – which boasts a hybrid judicial appointment and training system, which both common law and civil law systems can relate to. By observing how initial and continuous training sessions are conducted, by interviewing judicial trainees and trainers on the purported differences in training aims and methods, and by surveying more than 500 judges and prosecutors of various levels of legal experience and at different stages in their training, the study revealed that indeed differences in experience do correspond to differences in training preferences.

This conference will provide the most fruitful environment in which some of the key findings can be debated. Legal educators can perhaps also extrapolate the findings to their own pedagogical experience and see if they might be valid for other types of legal education or not

Legal Education as a Sub-Discioline of Law and the Quality of Legal Education Research **Anthony Bradney**

In this paper I will argue that in the United Kingdom and a number of other jurisdictions Legal Education, the study of the nature of legal education in higher education, has become an established sub-discipline in law. I will then go on to look at the distinction that can be drawn between research into legal education and writing about legal education. Finaly I will ask what distinguishes good research into legal education from poorer research into legal education.

Training for tomorrow – legal education and training for an evolving legal sector **Julie Brannan & Paul Woodcraft**

The regulation of legal services has undergone a period of significant change. The way the Solicitors Regulation Authority (SRA) works has shifted from prescriptive rules to a more flexible and targeted approach, under which regulatory restrictions should only be imposed where they are necessary to address a real risk to the regulatory objectives of the Legal Services Act 2007.

This is reflected in a changed regulatory role in relation to education and training. Historically, the SRA regulated the quality of teaching and learning, with institutional visits, classroom observation and detailed direction about what and how to teach. This approach has resulted in a rigid and inflexible framework that is slow to respond to change and fails to recognise the different learning styles of students. A more effective approach to regulation sees education and training as a regulatory tool for assuring standards. As a consequence, the SRA's regulatory focus shifts from learning to assessment; from prescribing particular courses, processes and structures to defining and assessing the standards required for admission to the profession, and for continuing practice as a solicitor.

This session will discuss how this approach balances maintaining standards whilst allowing innovation in the design and delivery of training. We will explain our focus on defining and assessing standards and our views on the need for an assessment framework in which the public has confidence and which measures competence accurately.

This does not mean to say that we have no interest in learning: we want learning processes to enable aspiring solicitors to acquire the competences they need for practice. However, it does mean a new relationship between regulators and training providers, in which we specify less and create more space for innovation and creativity from the people who really are the experts in learning.

Session Eight **Chair Anthony Bradney**

Claire Palley, the U.K.'s first woman law professor: a legal landmark' **Fiona Cownie**

Drawing on biographical interviews with Claire Palley, the first woman to be appointed to a Chair in Law in the U.K , this paper is part of an extended project exploring the legal biographies of early women law professors.
Claire Palley took up her Chair at Queen's University Belfast in 1970. Using the theoretical perspective of Margaret Archer's work on the 'internal conversation' this paper examines some of the personal qualities which may explain why it was likely that Claire Palley would be a pioneer in her chosen career. It then goes on to consider some of the different historical and political contexts in which Claire's career was developed, and analyses her contribution as a scholar and political activist

***Socrates v PowerPoint* [2015] SLSA 1: A Reflection upon Ancient and Modern Techniques for Law Teaching in the 21st Century** **Maeve Hosier**

In the age of globalization and rapid technological advancement, where virtual learning and IT play an ever increasing role in the law classroom, this paper seeks to explore whether the teaching methods of the ancient Greek academy still have a viable role to play in imparting the requisite skills for becoming a good lawyer. The rise of Microsoft PowerPoint as an educational tool has been phenomenal, and it is argued herein that due to its versatility and simplicity, it has brought about a paradigm shift in legal education methodology.
This paper adopts the Socratic method in order to examine the rise of PowerPoint in the law classroom, and seeks to explore the following four key questions:
1. How has PowerPoint contributed to students' understanding of the law?
2. Has the use of PowerPoint presentations discouraged students from reading more widely about the law?
3. Should the use of PowerPoint be 'controlled' in the law classroom,?
4. Should teachers adopt the Socratic method on a regular basis in the law classroom?
Given the importance of rhetoric, oratory, logic and ethics in legal practice, it is argued that the Socratic method ought to be given more prominence, and that the philosophies of both Aristotle and Plato should be more regularly explored in the law classroom today. The reluctance of many law students to engage in substantive reading is identified as a significant problem which may be exacerbated by the frequent recourse on the part of teachers to PowerPoint. To conclude, it is argued that the failure of the 21st century legal academy to reconnect with the ancient Greek academy may ultimately hasten the demise of the legal profession as we know it.

Directions of Legal Education **Isabel Garrido Gomez**

I believe should start from the fact that, increasingly, there is a new relationship in the borders between public and private Law. Public authorities are progressively turning to private Law when selling their assets and use contracting to fulfil the missions entrusted to them, providing services indirectly through licences to private companies, extrapolating to the public ones formulas which are used in private Law or resorting to the forming of foundations. Now, another good assumption is that of the trend towards americanization of the Law, explained because globalization is given impetus by the needs of the global economy and by the unequal distribution of power. There is dissemination of concepts, figures and practices coming from the United States of America. Although also from this viewpoint, it is worth underlining that it comes from a restructuring of the international legal field, which has its origin basically in the practice of Law carried out by the large American legal firms and by the influence of American legal education on the elites of the Latin American States. But, if we go deeper into the matter in question, this idea of unification which is present in the legal dimension of globalization poses some questions: Do all countries have the political, social and cultural prerequisites to bring this harmonization to a successful conclusion? Can we talk of a genuine harmonization of Law, or rather that there is uniformity of the rules, but not the practice of application? And, in all the fields of Law, are all these tendencies carried out in the same manner?

Medical Law and Ethics

Session 5: "Assisted dying"

"Rethinking death: Assisted Dying Bill 2014-15: The way forward?" — **Nataly Papadopoulou**

The UK Suicide Act 1961 abrogated the rule prohibiting suicide or attempted suicide. The 1961 Act however created a new criminal offence that of assisting another's suicide or attempted suicide. Often this creates distressing dilemmas for unfortunate individuals who wish to end their lives and alleviate their suffering. The question of whether the law should be reformed has been widely debated at an academic and judicial level. Cases concerning people with incurable diseases have been tried in national and international courts, often attracting extensive media coverage. More than 100 Britons have used DIGNITAS' services in Switzerland to be assisted in dying, whilst others have resorted to self-starvation or unsafe suicides.

In June 2014 a new legislative proposal was brought before the UK's House of Lords. The Assisted Dying Bill enables competent adults suffering from terminal illnesses to be provided, at their own request, with assistance to end their life. Following a 10-hour debate in the House of Lords, the Bill received its Second Reading in July 2014 and proceeded to Committee Stage for further examination. The questions arising by the new legislative proposal have not yet been addressed by the literature. The Lords' Hansard Reports on the Bill are insightful and instructive for the current research. This paper presents the main provisions of the 2014-15 Bill and critically analyses key aspects of the Lord's analysis to date.

With the 2014-15 Bill through into Committee Stage, emerging public opinion apparently favoring legalisation, and the Supreme Court's recent judgment in Nicklinson calling for a revision of the current law, this paper argues that it is now more imperative than ever for the UK Parliament closely to examine the proposed legislation, to accord with current social values and afford clarity and safety for both patients and medical professionals.

"Debating Assisted dying in the Upper Chamber: Procedure, process and 'souciance' in the passage of a Bill in the House of Lords." — **Cedric Gilson**

Debate about this vexed subject in society brings its resolution no nearer. The passionate opinions of conflicting conscience groups about hastening death for the suffering grow ever more polarized, and opinions reached in petitions to law in recent highly publicized cases affirm that it is only the legislature that can change the law. Therefore it behoves the concerned scholar—and it is more instructive—to study attempts to achieve this in the English parliament, especially those arising in the House of Lords as representing authority and realism. Attendance to debates affords insights into the way in which the instruments of parliamentary procedure can be exploited to expedite or obstruct the passage of a Bill. At the same time, witnessing the 'souciance' of deliberants reveals the most informed and heartfelt consideration of a sensitive subject by an august institution. The Assisted Dying Bill introduced as a Private Member's Bill by Lord Falconer in May 2013 has made substantially more progress through the upper house than any of its antecedents. It passed its Second Reading unopposed and proceeded to Committee stage. So what can be detected now in the will of the House by this token? Might it be that manifold amendments of the Bill could bring about its demise through intense argument about its detail, or could the same be responsible, eventually, for a just and operable law? Is there a fresh zeitgeist in the upper chamber that is more receptive to proposals with respect to assisted dying, or is the scholarly observer merely following the score of a well-rehearsed symphony that is process being played out? Description will be of the process itself at Committee Stage, not the merits of the Bill, but with reference to underlying principles and themes.

"Debbie Purdy; her contribution to the law on assisted suicide, past, present and future." — **Claudia Carr**

Following the death of Debbie Purdy, an active campaigner in favour of assisted suicide in December 2014, this paper will critically evaluate whether the guidelines issued by the DPP following the case of R (on the application of Purdy) v Director of Public Prosecutions 2009 UKHL 45 are fit for purpose and whether the Assisted Dying Bill 2014, currently being debated in the House of Lords is an essential change in the law in England and Wales. It will be argued that the guidelines issued (DPP Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide 2010) may have succeeded in addressing short term issues but it is only the introduction of legislation that will address the longer term ambition of decriminalising assisted suicide.

Given the overwhelming public support of legislation in favour of assisted suicide in England and Wales, despite the fundamental rejection by the medical profession, this paper, which supports the introduction of law permitting assisted dying, will also examine the ethical arguments surrounding this topical yet controversial area of the law. The arguments relating to dignity and autonomy will be explored together with the counter argument relating to sanctity of life. The real difficulties of ensuring a person has been not pressurised will be analysed together with the potential risk of abuse, the potentially damaging effect on the doctor-patient relationship and the fear of the slippery slope.

The paper will conclude that the ethical arguments in favour of assisted suicide outweigh the counter arguments and that the Assisted Dying Bill 2014 must proceed in order to allow people the chance to determine for themselves when to end their life.

Session six:

"The leaning tower of the NHS: The destabilising force of the Health and Social Care Act 2012." **David Horton and Gary Lynch-Wood**

Underpinning the creation of the National Health Service was the ideal that good healthcare should be available to all. Three principles were at the heart of this ideal: that the NHS meets the needs of everyone; that it is free at the point of delivery; and that it is based on clinical need, not ability to pay. Over 60 years on, the Health and Social Care Act 2012 has introduced some of the most wide-ranging reforms since the NHS was established. Particularly, the Act: creates a new healthcare commissioning framework; places greater emphasis on economic regulation; and embraces a market-based policy that promotes a discourse of liberation. The Act therefore has significant implications for the provision of public health. This paper provides a contextual analysis of the historical and current regulatory frameworks that have evolved with, and shaped, NHS services. It shows that the more recent evolution of regulation is characterised by a gradual 'titling' away from the idea that healthcare is a public good towards a market-based discourse that sees health as a commodity to be administered. The result, we suggest, is that the original ideals of the NHS are undermined. The discourse surrounding the 2012 Act represents a critical juncture. By shaping how health is conceptualised, this discursive shift has created space for the enactment of several far-reaching legal reforms. More specifically, the reforms in the 2012 Act are focused on: extracting wealth; managing resources; allowing for greater involvement of private sector firms, and, critically, changing the discourse surrounding health care. It is suggested that the 2012 Act exerts a strong destabilising force that 'tilts' the NHS further away from its core values; the Act relegates the focus on health care whilst advancing a range of economic concerns. The paper draws from other areas of regulation, and makes the case for reconnecting the regulatory agenda so that the NHS moves back towards its original ideals.

"Dietary Health, functional foods and the law." **Naomi Salmon**

This paper considers the rapidly expanding market in 'functional foods' - foods that, one way or another, claim to provide 'extra' nutritional and health benefits to the consumer. Against the backdrop of an obesity epidemic, and wide-spread concern over the state of the nation's diet, many major food industry actors are now energetically carving out their piece of this highly profitable 'cake.' Many new products have already reached the market and there are many more in the pipeline. Some of these foods will seem fairly familiar and innocuous to consumers; others are rather more 'novel' in character. In terms of governance, this sector presents some challenges. How effectively does current food law police this area. How confident can consumers be that the claims made by manufacturers are genuine and reliable? Beyond these more 'functional' questions of safety and efficacy, there is a more fundamental question to consider. This takes us back to the important concept of 'food culture': to what extent is desirable to permit the burgeoning market in these types of food to fill the nutritional gap that has created by our 'fast-food culture'?

Session Seven: "Critical perspectives on Transnational Health Law"

"Peripheral legality: Abortion and the networked state." **Ruth Fletcher**

States take a variety of actions when their residents travel to access healthcare which they are unwilling to provide; actions which produce, stigmatise, ease, regulate and represent that flow all at the same time pulling it in different directions. If we want to understand better the effects of those actions and perhaps even how to steer them, we need a way to differentiate between them while acknowledging the transnational space that they occupy. This paper develops the concept of peripheral legality as a means of understanding the network of legal actions that regulate care as it flows between periphery and centre. I distinguish between three different kinds of peripheral legality: marginal, tangential and dependent. Marginal legality refers to legal mechanisms, which refuse to make care provision e.g. abortion care central to the state's tasks, but claim centrality in international norms of care by renaming the object of care e.g. as the fetus rather than the pregnant person. Tangential legality captures those legal techniques that attempt to address gaps in care provision sideways. In regulating activities that are on the periphery of care (information, counselling, check-ups) rather than part of core care activities (abortion provision), tangential legality claims to reduce harm while stopping short of core care provision. Dependent legality on the other hand refers to legal mechanisms that are mobilized in claiming a lack of legal ability to change care norms and practices. These reflections on peripheral legality work out from the example of state actions and transnational care flow with which I'm most familiar, that of Irish state practices as they contribute to an outward flow for abortion care (Fletcher, 2013).

"Global health on the path to constitutionalisation?" **Atina Krajewska**

'Global health' is an increasingly important field of research and practice concerned with the profound implications of globalisation for individual and communal health. The area of global health has recently witnessed a proliferation of: a) actors (IOs, NGOs, private bodies), b) normative practices (treaties, declarations, standards, indicators), and c) levels of norm production (international, transnational, national). Consequently, it is becoming progressively difficult to identify the sources of GHL and distinguish between law and non-law (Flood&Lemmens 2013). This has contributed to the widespread criticism of GHL as incoherent and dysfunctional (Gostin 2013). At the same time, the sense of growing commonality between health law principles across the world identified in recent comparative studies of health rights litigation (Yamin&Gloppen 2011, Gauri&Brinks 2008). Interestingly, despite extensive studies on fragmentation and pluralisation thus far there is little research that analyses the normative status of norms concerning heath, and what the wider unifying normative features of global health might be. To address these issues and seemingly opposite phenomena the paper connects the fields of global health governance and human rights (Zunga et al. 2013, Fidler 2007) with increasingly prominent studies of legal pluralism and post-traditional patterns of organization. In particular it focuses on theories stemming directly or indirectly from systems theory that attempt to explain significant phenomena occurring in global law, that is: a) the growing commonality of administrative law-type principles (Kingsbury 2009), b) the informal processes of rule-making (Pauwelyn et al. 2012), and c) the self-constitutionalisation of global private orderings (Teubner 2012). Building upon these studies, the project constructs a wide-angled, sociologically informed analysis of the pluralisation and fragmentation of health law, in a global setting.

"Staging the nation: Ethnicity, blood donation and terror in Kenya" **John Harrington**

The attack on the Westgate shopping centre in September 2013 in which 61 civilians were murdered was accompanied by an exceptionally large wave of blood donation in Nairobi and other Kenyan cities. National leaders and prominent NGOs made high profile pleas for donations. In official speeches, opinion columns and on social media, blood donation was figured as a fitting response to the presumed intentions of the Al-Shabaab militants who had seized the centre. In word and image blood was represented as a unifying substance capable of physically crossing the 'tribal' divisions which were seen to have provoked mass conflict after Kenya's disputed elections in 2007-8. This 'staging' of the Kenyan nation-state needs to be understood with reference to the consequences of that conflict, in particular the trial of the current President and his deputy for crimes against humanity at the International Criminal Court. Drawing on an ongoing review of secondary sources and interviews with blood donation mobilizers this paper sets the official rhetoric of unity against a more heterogeneous landscape of multiple particular donation intiatives. The latter are often driven by specific ethnic groups, such as the Asian and Somali communities, or by faith groups and 'on-line communities'. The strategic goals of many of these groups and the practical effects of their initiatives tend to run counter to the ideal of a national, anonymous and wholly altruistic system of donation as championed in post-war Britiain by Richard Titmuss and promoted internationally by the World Health Organization.

Session Eight

"Liability and compensation for mishaps in clinical trials involving pregnant women and their foetuses." **Maria Sheppard**

Historically, pregnant women have largely been excluded from clinical trials. This has happened for a number of reasons, including a belief that pregnant women are vulnerable as research participants, but particularly the fear of legal liability by the manufacturers of medicinal products or the clinical investigators. However, without clinical trials it is not possible to know whether a medicine or treatment is safe and effective in pregnancy. Medical progress therefore requires that pregnant women are subjected to the risks of participating in a trial. At the same time, in the light of new technological advances, clinical trials in pregnancy where the research is aimed at the unborn child rather than the woman will need to become more common. While clinical trials in pregnancy may potentially benefit either the woman or her fetus, because of the nature of clinical trials it is not possible to exclude injury to the woman or her fetus. Whether the harm to the trial participant is alleged to be negligent or purely accidental, there will be concerns regarding liability and compensation by the sponsors and/or clinical investigators. Current guidelines, legal regulations and the existing system of tort law in England do not offer a satisfactory solution for these concerns, particularly regarding non-negligent injury of pregnant women and their fetuses in early phase, borderline non-therapeutic trials. The need to rely on ex-gratia payments by injured research subjects may not be conducive to encourage all important trial participation in pregnancy in the long run.

"Could advances in neuroimaging lead to a duty to manage pain proactively in minimally conscious patients?" **Stephanie Pywell**

Most adult patients are able to indicate when they are in pain or distress, but people suffering from disorders of consciousness and locked-in syndrome may be unable to communicate both verbally and non-verbally. The traditional view has been that such patients cannot make their feelings and wishes known.

Several studies suggest that many patients are misdiagnosed as having a more severe disorder of consciousness than is actually the case, meaning that their already profound suffering may be exacerbated by their being inappropriately treated as though they were unconscious. This involves an assumption that they are insensate. Recent advances in neuroimaging, notably functional magnetic resonance imaging, potentially offer a means of enabling some such patients to communicate; if these techniques could be developed and refined, they could enable doctors to ascertain whether some patients with disorders of consciousness were in pain and, if so, whether and how they would like it to be treated.

This paper offers a brief overview of the disorders of consciousness and reviews some important neuroimaging studies on patients who suffer from them. It goes on to discuss whether the Mental Capacity Act 2005, or the UK's accession to the European Convention on Human Rights and the United Nations Convention on the Rights of Persons with Disabilities, could eventually mean that the National Health Service, as an emanation of the state, could be deemed to have a legal duty to employ neuroimaging techniques in order to improve the care afforded to some of its most vulnerable adult citizens.

Mental Health and Mental Capacity Law — Peter Bartlett

Session one: (Joint with Criminal Law and Criminal Justice)

'Are we not all legally insane?': A critique of the situationist's approach to blame attribution **Louise Kennefick**

Criminal law has the fascinating task of regulating the human condition. Since the 18th century, it has sought to fulfil this task through the advancement of a construct of the individual as a rational, autonomous and responsible agent. Mind sciences, on the other hand, strive to understand the human animal in a more comprehensive, and arguably more cogent, way. The field of social psychology, in particular, aims to explore via scientific method the way in which the thoughts, feelings and behaviour of the individual are influenced by their social context or situation. What, if anything, then, can or should the criminal law take from mind sciences, and in particular, the field of social psychology? Or, is the underlying premise and operative language of each field so disparate as to override any attempt at crosspollination? The branch of social psychology termed 'situationism' raises serious questions about the nature of individual responsibility.

This paper adds to the existing body of law and mind science literature by considering the application of situationism to a pivotal feature of the criminal law, the insanity defence. In particular, it will examine the conception, construction and coordination of the insanity defence, as the manifestation of the concept of criminal responsibility underlying the law. By asking, 'are we not all legally insane?' the paper interrogates the concept of criminal responsibility underlying the law, in light of the situationist thesis of 'fundamental attribution error' (Ross, 1977), which casts doubt on the very basis upon which the criminal law attributes blame. A core principle of the project is not to assume the saliency of situationism but to query its application to the criminal law in terms of issues pertaining to legitimacy and coordination.

Psychopaths, moral cognition and English criminal law **Barnes**

Psychopathy is a personality disorder characterised by traits such as callousness, manipulativeness, superficial charm and a grandiose self-image. Persons with high levels of psychopathic traits commit a disproportionate number of criminal offences, including violent offences, and represent a significant burden on society. The criminal responsibility of psychopaths has been significantly debated, with recent discourse referring increasingly to findings in empirical moral psychology and cognitive neuroscience. The relevant science, however, is at an early stage, with only slight abnormalities in moral cognition identified. Nevertheless, it is possible that a subset of psychopaths may have a substantially impaired capacity to make at least some moral judgments, or completely lack such a capacity. In this paper, I move beyond some of the contemporary debates and consider the legal and policy implications of such an eventuality, should it be revealed by future research. This analysis enables the development of a framework, which I present, for considering some of the broader implications of neuroscientific research in this area.

Containing them, liberating us: Psychopathy, morality and Jung's shadow **Leon McRae**

It is a generally accepted that crime can never disappear in solidary societies, because "the sentiments [based on a common morality] that are offended would have to be found without exception in all individual consciousness" (Durkheim 1895, 13). All effective societies must therefore attempt to overcome this limitation of socialisation and heredity by reifying the common morality through law (widely construed). In Western societies, one way in which this has been achieved is through construction of a notional continuum between immorality and morality. At one end is the morality-shaping function of law; at the other, the psychopath: the archetypal criminal, who serves as both a warning to the would-be criminal and a lens onto our own potential for moral impropriety. From time-to-time, we catch glimpse our own immoral 'shadow' (as Carl Jung once put it); for example, through displays of aggression, sadism and self-interest. We respond, through an unconscious act of ego-preservation, by projecting our unacceptable shadow onto others, onto the psychopath. Without submitting to the moral complex in this way, there would be social anarchy, or as Stevens once quipped, "we should all be psychopaths" (1994: 66). If this is true, the implication is that legal rights, rehabilitative policies and exculpatory defences must contend with the importance of containment of the archetypal criminal as a tool for denying that part of ourselves which ought not be made public.

Session Two: (Joint with Challenging Ownership) Housing and Mental Health. Panel Discussion

Panel: Nick Hopkins, Sarah Nield, Christopher Bevan and Warren

Session Three: (Joint session with Criminal Law and Criminal Justice)

Paper: Criminal Responsibility & Adolescent Development: A Neuroscientific Perspective **Hannah Wishart**

There is growing neuroscientific evidence that adolescence, a period of great cognitive development, can cause adolescents to commit criminal actions such as criminal damage, reckless driving offences, and murder. However due to the severity of the crime committed, some adolescents have been treated indifferent to adults in the English criminal justice system by being held criminally responsible and punished. Recently, the information relating to the development of brain structure and cognitive functioning during adolescence is being argued as the cause of their criminal behaviour is raising a number of legal questions. There is considerable debate amongst the neuro-legal disciplines on whether the adolescent's brain—underdeveloped in contrast to the matured adult brain—via an developing cognitive function or brain structure (or both), should or could be found incapable of the reconcilement of criminal responsibility when that adolescent committed criminal actions. In this paper, I will review the English criminal justice system's position on adolescence and criminal behaviour, including the reasons for abolishing the common law defence for adolescence immaturity, the doctrine of doli incapax. I will then examine the evidence relating to the key structural and functional cognitive developments inside the brain determined to influence adolescent criminal behaviour. It is hoped that a more complete understanding of adolescent development from neuroscience may endow the assessment phrase of adolescent criminal responsibility with a better awareness and understanding of the nature of development. It is uncertain whether the courts will accept neuroscientific findings as pertinent to this process. In light of this, I will consider whether neurobiological correlates of adolescent development for reconciling the adolescent as cognitively immature is relevant to capacity-responsibility and crucial to the law's determination of criminal responsibility

Legal capacity and impaired self-control: a study of approaches to anorexia nervosa and alcohol addiction across personal decisions and criminal acts. **Jillian Craigie**

Problems of self-control pose difficult questions both in law concerning personal decisions and law concerning criminal acts. In both contexts, psychopathologies associated with impaired self-control raise questions about the appropriateness of assigning legal capacity, for example: Should the person retain the right to refuse treatment? Should they be held fully responsible for a criminal act? One central issue that has arisen in both contexts concerns whether problems of volition are adequately accounted for in so-called 'rationality' tests.

In this talk I will focus on the current approach in England and Wales to questions of impaired control in anorexia nervosa and alcohol addiction. The analysis reveals a recent alignment of the approach to understanding problems of control in alcoholism in the test for diminished responsibility, with the approach to understanding the problems of control in anorexia found in legal judgments concerning refusal of treatment for anorexia. This will be used to reflect on the fairness of the current approach to these questions of legal capacity for people with anorexia and alcohol addiction; as well as the broader question about the adequacy of rationality tests.

An issue of intersectionality? Hate crime and mental condition defences **John Rumbold**

A prominent American disability rights campaigner commenting on the recent case of Tania Clarence expressed concern that the courts and the public appear to value the lives of disabled children less, which she argued amounted to discrimination on the grounds of disability. There are several notorious cases where the assessment of a defendant's mental condition was arguably influenced by the nature of the criminal charges, where the acts appeared to be motivated by racism, homophobia or other categories of "hate crimes". These include the Soho nail bomber, David Copeland, and the white supremacist, Anders Breivik. Such cases demonstrate how mental condition defences can be misunderstood as exculpatory and equivalent to acquittals. They also arguably demonstrate how the mentally ill continue to be denied the same protection and compassion as other vulnerable groups. The differences between mental condition defences, such as insanity and diminished responsibility, and the partial justification of loss of control/provocation are also discussed. Further study is required to identify if those seeking to rely on mental condition defences when charged with hate crimes (or crimes perceived to be hate crimes) face additional barriers.

Session Three: MCA in medicine and social care

The Mental Capacity Act 2005 - Compliance in Clinical Practice **Helen Taylor**

The Mental Capacity Act 2005 (MCA) was enacted following long-standing concerns about the abuse and oppression of people, such as those with dementia or learning disabilities, who lack capacity to make decisions for themselves. This legislation was heralded as the means of safeguarding the individual rights and interests of some of the most vulnerable members of our society. Millions of pounds were spent educating healthcare professionals on its key principles (Department of Health 2006; House of Lords (HOL) 2014).

However, on March 14th 2014 the HOL published a damning Report on the implementation of the MCA (HOL 2014), disclosing that implementation has, at best, been "patchy" but in parts, "poor", and has not fulfilled its primary aim. Unfortunately, this Report echoes the findings in part of the Francis Report (2013), and indicates that the practice of thousands of health and social care practitioners of all levels and disciplines may be non-compliant with the Act, thereby compromising individual statutory rights. The HOL made it very clear that commissioners of health and social care; professional regulatory bodies; commissioners of care and individual practitioners must take their recommendations seriously.

These findings indicate the urgent need for a shift change not only in practitioner knowledge of the MCA, but in the attitudes that underpin their behaviour. This paper will consider the implications of these findings to practitioner training – fundamental change is indicated because the systems to date have clearly not worked. The idea that desired behavioural outcomes such as a respect for individual autonomy can only be realised by the well-advised has long been disputed by theorists who argue, instead, that transformation should focus on challenging the attitudes, beliefs and intentions that underpin behaviour (Ajzen 1991; Ajzen et al 2011).

Conceiving better birth plans: mental illness, pregnancy and court authorised obstetric intervention **Sam Halliday**

After a lull of ten years, during the last 18 months at least nine women have been subjected to a caesarean after the court found such treatment to be in her best interests. In the majority of those cases the women concerned were suffering from a mental illness, typically bi-polar affective disorder or schizophrenia. Unlike the US case law, the courts in England and Wales have steadfastly maintained that the foetus has no legal rights capable of protection and purported to recognise a woman's autonomy, unrestricted by pregnancy (Re MB, St Georges). Nevertheless, in reality it is difficult to conceive of circumstances in which a woman's refusal of treatment necessary for the benefit of the foetus will be upheld. This is even more apparent in the latest tranche of cases where there was generally no threat to the life of the woman, or even an immediate risk to the life of the foetus, but rather there was a perceived need to ensure that the child was born in supervised, controlled circumstances in order to ensure the safe delivery of the baby, optimum care for the woman and the availability of protection for the child from birth. The latest cases reflect the difficulty in achieving an appropriate balance between treating the woman's disorder and protecting the embryo and foetus from harm given that no psychotropic drugs are licensed for use during pregnancy. Such a balance needs to be sought on an individual basis and will often be extremely difficult to achieve, resulting in higher relapse rates than usual and increasing the likelihood that the affected women will be considered no longer to have the capacity to make decisions for themselves as birth approaches. The paper will analyse the assessment of a best interests in the latest tranche of cases, focussing upon the centrality of the achievement of a successful delivery within that assessment and the suggestion that a safe delivery will negate any harm suffered. It will be argued that more thought needs to be given to how such cases can best be managed, in such a way as to facilitate the woman's ability to make decisions. The most obvious way to do this is through a birth plan, but as s. 24 MCA makes clear, in England and Wales advance decisions may only refuse specific treatments, they do not bind healthcare professionals by providing consent to a particular procedure. Nevertheless, it will be suggested that positive steps should be taken to facilitate anticipatory decision making in the case of any woman who has a serious psychiatric disorder, or who has a history of severe mental illness, ensuring that her wishes are given significant weight in the determination of her best interests, with any proposal that they be disregarded being subjected to rigorous scrutiny.

The implications of the UNCRPD requirements on the Mental Capacity Act and healthcare decision-making in relation to people with Fluctuating Capacity **Anna Raphael**

People with fluctuating capacity (FC) face challenges to their autonomy when it comes to their ability to make healthcare decisions. In law and in healthcare, a person with FC is considered to be inconsistent and unreliable in her decision-making. The legal response to these challenges is currently the best interests approach used in the Mental Capacity Act (MCA) which allows a third party to make decisions on behalf of the person with FC. This paper argues that while the MCA provides a statutory framework for adults who lack or are likely to lack capacity to make decisions for themselves, the best interests approach used in the MCA goes against the spirit of the UN Convention for the Rights of People with Disabilities (UNCRPD), and in particular Article 12 which addresses the issue of decision-making by recognizing the right to legal capacity even for those who have higher challenges in decision-making. Accordingly, in order to avoid needlessly depriving patients with FC of their right to make health care decisions and in light of the limited exploration and discussion of the question of FC in the literature, it will be argued that there is a need to review and adopt a concept of FC where evaluations should be designed to maximize patient autonomous decision-making capacity as encouraged by the UN Convention. Recognizing the particular difficulties that this process raises, this paper will make an attempt to identify FC using a partnership approach with the principle of autonomy and the mechanism of supported decision-making as identified in the Convention.

Supported Decision-Making in Adult Safeguarding – A Qualitative Study **Amanda Keeling**

It is generally agreed that article 12 of the UN Convention on the Rights of People with Disabilities requires a move from a framework of substitute decision-making to one of supported decision-making. Substitute decision-making allows for an individual's ability to make a decision is assessed, and when it is considered lacking, the decision is made on their behalf. In contrast, supported decision-making creates a framework where individuals are supported to make their own decisions about the course of action needed by others, putting the individual back in control of the decisions that affect their life. However, supported decision-making also creates some potential challenges – in particular, under what circumstances 'support' bleeds into undue influence, manipulation or exploitation. This paper reports the findings of an ethnographic study of an adult safeguarding team, which explored the way in which adults who were the subject of a safeguarding enquiry, were involved in decision-making and to what extent they were supported to make their own decisions. The research was based with the team for a five month period, observing discussions in the office, and observing safeguarding practice in the community on visits to service users. Observation was followed by interviews with social workers, to explore the emerging themes

These findings suggest that there may be several barriers to a move to supported decision-making, and this may be in a large part due to the interpretation and use of the Mental Capacity Act 2005 by social workers in safeguarding practice.

Session Four: CRPD, MCA – problems of decision-making

Challenging the Capacity/Incapacity Binary- Capacity to Consent to Sex and Vulnerability **Beverley Clough**

This presentation seeks to explore the way in which the framework for assessing mental capacity to consent to sex frames the boundaries of the legal approach. Through engaging with the burgeoning literature on vulnerability, the presentation will consider whether a more nuanced and relational understanding of sexual vulnerability might elucidate the relevant concerns more clearly. The legal claim that setting a low threshold for capacity respects sexual autonomy will be challenged, and it will be contended that such an approach risks leaving people vulnerable to abuse. It will be suggested that the current legal approach simply respects liberty, and is not responsive to the various sources of vulnerability which ought to be addressed in order to secure sexual autonomy in this area. It will be questioned whether the Mental Capacity Act 2005 is a suitable arena within which to respond to concerns illuminated by insights from vulnerability theory. Framing the questions in terms of mental capacity and non-interference prevents a more responsive legal approach which is attentive to the ways in which sexual autonomy can be facilitated. Rather than being a conflict between intervention and autonomy (as is portrayed in the mental capacity case law), the real issue is whether the legal responses available to the state at present are sufficient to facilitate and secure sexual autonomy. The UNCRPD and related discourse may similarly call for a more nuanced and responsive legal approach, aimed at facilitating sexual autonomy.

Active citizenship of persons with disabilities and legal capacity: an obvious connection? **Milan Markovic**

The Seventh Framework Programme project DISCIT has the objective of collecting and publishing new knowledge as well as achieving a 'new European social model' in terms of making persons with disabilities in Europe full participators in all major areas of life, through the concept of 'active citizenship'.

The present paper, as a result of the project research activities, focuses on a rather implicit and neglected dimension of active citizenship of persons with disabilities that is their legal capacity. Is it possible to extend the levels of participation of persons with (mental) disabilities or to improve or strengthen their social and political status without seriously tackling the systems of legal capacity deprivation that consequently affect legal and social positions of these persons in certain national environments? Are these processes parallel, interrelated or possibly autonomous from each other?

The author uses the collected project data to answer these questions, employing additional input from the Serbian partner, being the only non-EU member to the project consortium.

Analysing the definition of disability in the CRPD: Is it really based on a 'social model' approach? **Kazou Aikaterini**

The UN Convention on the Rights of Persons with Disabilities (CRPD) is a core international human rights treaty specifically concerned with disabled people, aiming to ensure that they enjoy all human rights equally with other people, without discrimination on the basis of disability.

Since disability is its subject matter, it is important to examine how this complex concept is understood in the CRPD; it is also necessary, in order not only to identify the protected group, but also to determine what kind of responses are appropriate for disabled people and which changes are required by the CRPD.

Present in almost any work on the CRPD is a statement that it is based on the 'social model of disability'. This term refers to an approach which views disability as a socially created problem, caused by social and environmental barriers that exclude people with impairments from participating in society, and which is entirely distinguished from their individual impairment.

A different and perhaps more adequate, as this paper argues, understanding of disability is offered in WHO's International Classification of Functioning, Disability and Health (ICF). ICF describes disability as the multi-dimensional and interactive experience of a wide range of difficulties in functioning; in particular, these difficulties include impairments, limitations in performing activities and restrictions in participating in life situations, and arise out of the complex interaction between health conditions, personal factors and barriers in the physical and social environment.

This paper seeks to determine whether the CRPD adopts, as frequently stated, the 'social model' approach to disability, or an understanding which is closer to the ICF conceptualisation of disability. To this end, it will examine how disability is understood in the CRPD, based on the relevant definition found in the Preamble as well as the negotiations that led to the final text.

Exploring the discriminatory nature of the functional approach of capacity-related assessment **Yi Huang**

The law and practice of capacity-related assessment and the finding of legal incapacity are under the scrutiny of Article 12 of the Convention on Rights of persons with disabilities (CRPD). According to the General comment No.1 on Article 12, the Committee on the Rights of Persons with Disabilities (Committee), by examining State party reports, has observed that the concepts of mental and legal capacity have been conflated in most state parties. The Committee has listed three main approach of capacity-related assessment, namely status approach, outcome approach and functional approach. While the draft General comment left rooms for outcome and functional approach, the final version clearly states that all of these three approaches are discriminatory and should therefore be abolished.

While the discriminatory nature of status and outcome approach is not that controversial, whether the functional approach is by nature discriminatory is still debatable. It is widely argued that the functional approach is superficially neutral, potentially applied to all people rather than disabled people only, and since it is on a time and decision specific basis, it will not lead to a legally incapable status. Moreover, the functional approach is also defended as it serves a legitimate aim under the CRPD and is the reasonable means for achieving the specified aim.

I am interested in finding out the covert source of inequality of the functional approach. In addition to the analysis in the General comment No.1, some more helpful thinking on this issue are provided in the case Zsolt Bujdosó and five others v. Hungary. A broader interest behind this issue is whether there is room for capacity-related assessment of any kind (or whatever it will be named), under Article 12 and the support decision-making regime proposed in Article 12.

Session Five: Court of Protection

Litigation friend **Shazia Akhtar**

This project will consider the options available to individuals who are unable to represent themselves in the Court of Protection. It will specifically focus on the role of the litigation friend and explore the types of people currently undertaking this role. The role of the Mental Capacity Advocate will be reviewed to ascertain whether this role is being carried out by professionals such as IMCA's. Specific consideration will be given to the practical difficulties that are faced when acting as a litigation friend and how this could be resolved.

Options around the practicalities of training in relation to the role of litigation friend will be analysed to highlight any areas for discussion. The overall focus of the project relates to how a person lacking capacity can be represented in the Court of Protection. The reason I have chosen to research this topic is due to the limited research currently available. I want to ascertain what options are available, if certain individuals such as the IMCA should be encouraged to fulfil this role and how to make it work in practice. I currently work as an IMCA and would like to use this experience to assess the impact of the litigation friend role.

Who, and what, is the Court of Protection for? **Lucy Series**

The Court of Protection (CoP) was established by the Mental Capacity Act 2005 (MCA) of England and Wales, and came into being in 2007. It can adjudicate on a wide range of matters pertaining to mental capacity and best interests in relation to both property and affairs and health and welfare. It can also appoint 'deputies' with authority to make decisions on behalf of a person. The role of the CoP could be viewed in at least three distinct ways: 1) as a source of formal legal authority for those wishing to intervene in a person's affairs; 2) as a forum for resolving disputes between interested parties about a person's mental capacity and best interests; 3) as a forum for people who are alleged to lack mental capacity to assert their rights and seek an independent review of mental capacity assessments and 'best interests' decisions which will have serious consequences for their private lives. Each possible role of the CoP will be considered in the light of policy documents, its practice and procedure, case law and empirical data. It will be argued that the CoP's role as a source of formal legal authority for financial decisions is well established and is its primary function, that its role in adjudicating disputes between public authorities and families has become increasingly important since the passage of the MCA, but that its role as a forum for individuals to challenge decisions made about them under the MCA is as yet under-developed and hampered by a number of procedural and practical matters. This is discussed in light of recent developments under human rights law.

(Re)Presenting P before the Court of Protection **Alex Ruck Keene**

Since 2007, the Court of Protection has served as the ultimate decision-maker in difficult cases involving capacity and best interests across the spectrum of human activity. Judges of the Court have made decisions affecting all aspects of the lives of those without the material capacity and, in some instances, decisions having the effect that those lives will come to an end. It is therefore, striking, that default position in the court's rules is that the person concerned – P – will not be a party to those proceedings. Further, even where P is joined as a party to proceedings, the basis upon which they are represented by their litigation friend was not spelt out in the court's rules (or, indeed, anywhere else), and the case-law reveals a substantial confusion as to the duties of a litigation friend. The result has been dramatic – and inappropriate – inconsistency in the way P has participated in proceedings.

As part of a work in progress (and building on my work on the committee working to amend the court's rules), I will analyse the ways in which P has been presented, represented and misrepresented before the Court of Protection, examine the relevant principles that can be derived from the European Convention on Human Rights and the Convention on the Rights of Persons with Disabilities, and then set out a framework for an approach that seeks to ensure that the subject of the proceedings is not treated as a mere object.

Back to the Future: The Case for a Mental Capacity Act Commission? **Jean McHale**

The House of Lords Select Committee on the Mental Capacity Act: Mental Capacity Act 2005, Post Legislative Scrutiny HL 139 (2014) suggested that one of the omissions of the 2005 Act had been in hindsight the failure to establish an oversight body- a form of Mental Capacity Act Commission to review the operation of the legislation etc. The Committee recommended that "overall responsibility for implementation of the Mental Capacity Act be given to a single independent body. This does not remove ultimate accountability for its successful implementation from Ministers, but it would locate within a single independent body the responsibility for oversight, co-ordination and monitoring of implementation activity across sectors, which is currently lacking."

This is a striking recommendation and seems to very much go against the trend of the last decade to abolish " Arms Length Bodies" as exemplified by the abolition of the Mental Health Act Commission. This paper examines first the recommendation of the Committee and places it in the context of the events since the Act was implemented. It examines whether there is indeed a case for a new oversight body of this nature and how it would operate. Finally it explores whether this may itself trigger a re-assessment of the need for a Mental Health Act Commission itself.

Session Six: Mental Health Act

An Intersectional Perspective on Use of the Mental Health Act: Ethnicity and Madness **Mel Stray**

This paper explores how adoption of an intersectional approach could contribute to our current understanding of ethnic disparities in use of Mental Health Act powers. People from black backgrounds are more likely to be subject to the MHA (Care Quality Commission, 2014), and there is some evidence that other ethnic minority groups are also overrepresented (Singh et al., 2007). Moreover, the Community Treatment Order (CTO) population has a higher proportion of black people even compared to the inpatient population (CQC, 2013; Evans et al., 2010).

Psychiatric orthodoxy attributes disparities primarily to patient-related factors such as high rates of psychosis in certain groups (Coid et al., 2008; Fearon et al., 2006), alongside some recognition of institutionalised racism as a contributing factor. Concern about racial health inequalities and discrimination are central to this model of ethnic differences in mental health compulsion, but it requires implicit acceptance that discrimination on the basis of mental disorder is justified.

The psychiatric survivor and mad pride movements have sought to challenge medical orthodoxy on meanings of mental distress, Dillon and May (2002) arguing that clinical language 'colonises' subjective experience of madness. However, these movements are dominated by accounts of white service users and are criticised as exclusionary to BME groups. (Trivedi, 2008; Wallcraft, 2003).

Focus on either racial discrimination or disability discrimination prevents full examination of the position of people who experience both. I hypothesise that BME service users are subjected to manifold colonisation of experience by the psychiatric system, not only in how mental distress is understood, but also of ethnic identity, through quantified categorisation and application of particular meanings to ethnic and cultural background.

An intersectional perspective accepts that neither a service user's identity nor a practitioner's perception of said person is easily compartmentalised. This is helpful in considering the operation of psychiatric decision-making. For example, in the decision to use or not use a CTO, the perceived high risk ascribed to a black service user by a practitioner cannot be attributed singularly to her black ethnicity or diagnosis of schizophrenia- these factors are inextricable from each other, along with a myriad of other factors.

Going forward, I plan to explore the intersection between minority ethnicity and madness through empirical inquiry. The extent to which manifold colonisation of experience occurs will be investigated through an analysis of BME service user narratives. A sample of CTO approval decisions written by psychiatrists will be analysed to explore meanings attributed to diagnosis/symptoms and ethnicity, and the extent to which this intersection affects use of language and assessment of risk. It is hoped that an intersectional approach will help to reconceptualise disparities in mental health compulsion and facilitate critique of the psychiatric system's response to ethnicity minority service users.

Involuntary Outpatient Treatment: Human Rights and Efficacy Arguments for Repeal **Piers Goodin**

The use of involuntary outpatient treatment, such as 'community treatment orders' or 'outpatient admission orders,' has risen to unprecedented levels in the past decade. At the same time, an increasing body of evidence – including a Cochrane review and the largest randomized control trial to date – suggests that involuntary outpatient treatment does not work. Indeed, strong evidence indicates a lack of efficacy on any outcomes such as health service use, social functioning, mental state, quality of life or satisfaction with care. Meanwhile, trends in international human rights law, particularly the coming into force of the United Nations Convention on the Rights of Persons with Disabilities, has renewed calls for the repeal of involuntary outpatient treatment on the grounds that it violates a number of human rights. This presentation brings together efficacy and human rights arguments, and presents a case for the repeal of involuntary outpatient treatment.

'Appropriate' compulsory treatment for people with mental disorder? Research and evidence y **Steph Sampson**

Being detained under the Mental Health Act (MHA 1983) invariably entails coercion. Once detained under sections two or three, a person does not have the right to refuse the medical treatment that is considered appropriate. Under the MHA Code of Practice, the appropriate medical treatment test requires clinical judgement about whether 'an appropriate package of treatment for mental disorder is available' for a person before being detained. How is this decided, and what guidelines affect this judgement? Treatments given in situations of compulsion can take the form of containment, levels of observation, partial restrictions, control and restraint and various medications [emergency or non-emergency], to name a few. There are many treatments used solely in situations of compulsion; few, however, have been adequately tested in clinical trials for the purposes of directing healthcare guidelines.

In a time where the NHS is under excessive pressure for research output, there is a gap in the evidence literature for people who are compulsorily treated, as well as in the law as regards how such treatment is termed 'appropriate' when relying on unsatisfactory evidence – resulting in a 'catch-22' situation. Is research into the effectiveness of treatments used under coercive situations legally and ethically possible as regards consent? What are the barriers and what are the implications?

This presentation will discuss these issues, as well as the methodology of a pilot study which seeks to investigate the views of ethics committees, researchers and patients about coercive research participation.

Society, Mental Health Policy and Welfare of the Mentally-Ill: Insight from Nigeria [awaiting easchair submission]

Fatai Badru

Session Seven: Financial Decision-Making and DOLS

Re-conceptualising Contractual Capacity? An analysis of English Contract Law in light of the UN Convention on the Rights of Persons with Disabilities

Eliza Varney

This paper examines the concept of contractual capacity in light of the UN Convention on the Rights of Persons with Disability (CRPD), assessing the potential impact of the CRPD on English Contract Law. The discussion focuses on implementation challenges associated with Article 12 CRPD (which includes the recognition that persons with disabilities enjoy legal capacity in all aspects of life, on an equal basis with others) and questions the extent to which decisions of the CRPD Committee and the Committee's General Comment on Article 12 provide any clarity in addressing these challenges. The discussion explores the potential transformative impact of the CRPD for private law and reflects on the effectiveness and limitations of contract law as a mechanism for the pursuit of social objectives.

'The Mental Capacity Act 2005 and legal capacity decision-making: time for a new theoretical terrain?'

Alex Pearl

This paper considers whether, in light of Article 12 of the UN CRPD, the time has come for a new theoretical approach to legal capacity decision-making. This question will be examined through the lens of financial and property decision-making by adults with learning difficulties. The paper argues that despite the MCA's guiding principles, the liberal ideal human construct, (which underpins neoliberal policy responses to impairment), has informed how the MCA operates in practice and has resulted in paternalistic interferences in the lives of disabled adults (House of Lords Report – good law, bad implementation). Consequently, in light of the demands of Art.12, this paper advocates a new theoretical approach to legal capacity decision-making based on the Capabilities framework, which recognises that our ability to exercise legal capacity is determined not by individual capacity/incapacity, but through an interaction between individual characteristics, the supports available in our immediate environments (supported decision-making), and the dominant societal framework which either recognises and accommodates us or excludes us. The capabilities approach embodies a relational understanding of the human and provides the conceptual space in which to impose State obligations to provide the supports which adults with learning difficulties require to function as equals in society. The paper explores what measures might be required to achieve a new theoretical approach; professional training etc. The question of what legal reform is needed; e.g. a new legislative framework or changes to the existing MCA, will be opened for debate with the audience, but the paper argues that before we take this step, we may need a new theoretical approach to legal capacity to avoid ending up with more 'good law, bad implementation'.

Addressing the Bournewood Gap in Scotland

Jill Stavert

The European Court of Human Rights Bournewood ruling raised the question of possible incompatibilities between Article 5 ECHR(the right to liberty) and existing arrangements in Scotland for placing persons with incapacity in residential care settings. In particular, it has been necessary to consider whether welfare powers of attorney and guardianship, as regulated under the Adults with Incapacity (Scotland) Act 2000 (AWIA), can authorise a deprivation of liberty and, if so, whether the legal and procedural safeguards required by Articles 5(1) and (4) are present.

In October 2014, its task not having been assisted by the lack of clear Strasbourg direction but following the Cheshire West ruling, the Scottish Law Commission published its Report on Adults with Incapacity containing recommendations on how to address these matters. This paper will consider such recommendations from an ECHR and CRPD perspective.

The Way Forward for DOLS: What is it that we Want?

Peter Bartlett

The Deprivation of Liberty Safeguards (DOLS) are currently under consideration by the Law Commission, following a damning report from the House of Lords and the practical problems created following the Supreme Court decision in Cheshire West.

One difficulty with the existing DOLS is that they were passed as a response to litigation, rather than with any shared sense of what they should achieve. This paper will consider what the purposes of a post-DOLS regime might be, and what sorts of procedure might make sense to implement those purposes.

Race, Religion and Human Rights **Fernne Brennan**

Session Three: Multiculturalism and Human Rights

Paper: The Cultural Concept of "Incompatibility in Lineage" and the Rights of Women in Saudi Arabia. **Adal Almoammar**

The cultural concept of incompatibility in lineage has been invoked to prevent and to forcibly dissolve marriages between men and women of different social rank in Saudi Arabia. Those who support this practice often claim that it has a basis in Islamic law. However, research shows that the concept originated with pre-Islamic tribal traditions and customs, and that it was perpetuated by Muslim jurists who relied on traditional practices to interpret the divine sources of Islamic law. Moreover, the continuation of this tradition has led to abuses of the Islamic notion of guardianship, which have, in turn, resulted in racial discrimination, discrimination against women and inequality between men and women. In addition, the concept of incompatibility in lineage has led to breaches of international law under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), both of which have been ratified by Royal Decree and adopted into Saudi domestic law. The proposed paper discusses the origins of the concept of incompatibility in lineage and its introduction into Saudi legal tradition and argues that this concept is inconsistent both with Islamic law and with Saudi Arabia's obligations under international law.

British Muslim women: Pursuing divorce in a multicultural society, in light of human rights and religion **Islam Uddin**

The global struggle for women's equality and social justice in the past century is a theme that is well documented in legal history, and their rights to equality is reinforced by the preambles of the Universal Declaration of Human Rights 1948 (UDHR). Women living in Britain today, can expect from law, equality in the pursuit of education, employment and politics. Furthermore, there have been many reforms in family law to ensure that there is also equality in family life for women; thus, it could be argued that such laws benefit the individual as well as all women.

However, there is an on-going debate, regarding the issue of British-Muslim women and family law. One of the arguments is that in family law, all should be treated the same; thus we find only civil registered marriages and divorces will afford rights to Muslims living in the UK. Contrary to this argument, is the view that all citizens have the right to religious freedom, which is mentioned in article 18 UDHR, and therefore where a religious stance is preferred in matters of the private sphere, one should be given the option to exercise that right. As a result, many Muslims have a separate religious marriage ceremony, and any issues related to marital discord, including divorce are taken to religious councils or tribunals. Some welcome this perceived notion of legal pluralism, whilst others are critical of any parallel system operating alongside English law.

This paper will provide an analysis of the relationship between human rights and religion with regards to British Muslim women pursuing divorce in a multicultural society.

'Living Together' after SAS v France: Interculturalism or Assimilation? **Stephanie Berry**

In SAS v France the European Court of Human Rights (ECtHR) accepted the French argument that 'living together' justified a blanket ban on wearing the burqa in public spaces. The concept of 'living together', although not previously utilised by the ECtHR, had been introduced into the Council of Europe in 2008 in the Committee of Ministers' (CoM) 'White Paper on Intercultural Dialogue', which proposed 'intercultural dialogue' as an alternative to the much maligned multiculturalism. Whilst proponents of multiculturalism have argued that no demonstrable difference can be discerned between multiculturalist and interculturalist policies, politicians and international organisations have been more willing to embrace the concepts of interculturalism and intercultural dialogue. Theorists have suggested that the change in rhetoric associated with the move from 'multi' to 'inter' –culturalism signals a shift in emphasis to integration, dialogue and belonging. However Taylor has warned of the danger that interculturalism 'easily slides in practice towards imposing assimilation as a condition of integration'. Thus, this paper will explore whether the concept of 'living together' employed in the Council of Europe falls into the trap of imposing assimilation as prerequisite of societal membership. It is argued that rather than recognising the value of interculturalism, both SAS v France and the CoM document legitimise an assimilationist agenda which has the potential to undermine human rights standards.

Session Four: Rights and Human Rights

Taking Human Rights and Equality Seriously in Public Authority Decision-Making in an Age of Austerity

James Harrison and Mary-Ann Stephenson

The paper will argue that traditional public authority approaches to integrating equality and human rights into decision-making processes (particular in relation to budget-setting in a context of public spending cuts) have tended to be (1) narrowly focused on specific, individual policy proposals, and (2) be siloed in individual departments of public authorities. As a result, these efforts have had a limited ability to transform decision-making in a way that takes into account the lived experience of minority groups and/or those whose human rights are threatened by public authority decision-making.

The paper will then draw upon the lessons of three inter-related research projects undertaken by the authors that have examined the human rights and equality impacts of the public spending cuts on (1) women (2) older women and (3) Black, Asian and Minority Ethnic Women in Coventry. It will also draw upon work undertaken by the authors with the Scottish Human Rights Commission to pilot new approaches to integrating human rights and equality impact assessments in public authority decision-making in Scotland. Key to our research has been two principles. First we adopt a person-centred approach. For instance, we have focused on different groups of BAME women in Coventry (as the starting-point of our research) and attempted to understand their experiences of a range of different cuts and changes to services. Second, we have considered intersectional impacts, and how these create cumulative problems for disadvantaged groups. The paper will argue that this approach has the potential to transform the legal obligations of public authorities in relation to equality and human rights, from tick-box checks, to profoundly important elements of decision-making processes which can ensure that limited budgets are directed to those who are most in need

'Right' on the Margins: the misplaced right to food in the UK

Ben Warwick

Looking at the increased incidence of hunger and food poverty in the UK, and in particular the rise of food banks, this paper examines the role of human rights discourses in this context. It argues that socio-economic rights can add to the development of policy; that these rights have remained absent from policy debates; and that this absence is a function of a combination of substantive, cultural and procedural concerns.

It draws on the path-breaking work of Sen to argue that the increase in food poverty is at least partially a function of accountability deficits, and is not an unavoidable feature of post-crisis Britain. The paper argues for the use of socio-economic rights discourse to address these deficits and to provide a value-base for the development of policy solutions. Despite the potentially valuable role of the right to food, the dimensions of the right have largely been absent from public debate. The paper argues that this conspicuous absence is the result of the UK's particular rights culture, the substantive construction of the right to food, and weak enforcement mechanisms.

The paper concludes that a multi-level and multi-setting approach is needed in order to encourage the integration of the right to food into UK policy debates. Actions are needed at the international level, to clarify the scope of the obligations. In parallel, shaping the UK's rights culture and its domestic enforcement mechanisms is crucial to the integration of the right.

Session Five: Discrimination and human rights

Constructions of Religious Symbols at the European Court of Human Rights: Assertions, Evidence, and the Power of Language

Anna Jobe

On July 1st 2014, a Grand Chamber of the European Court of Human Rights held that a criminally sanctioned ban on wearing full-face veils in public spaces in France did not violate any Convention rights. The judgment in S.A.S v France is the latest in a growing line of cases concerning the regulation of religious symbols, which have included inter alia, cases concerning headscarves, turbans, crosses and crucifixes. These cases are not just significant because of their immediate outcomes. Bound up in the language of the judgments are important statements about how these different religious symbols are perceived, by the governments, applicants, and judges in the cases. The judgments themselves contain substantial discursive power, and this is the focus of this paper. Situating S.A.S. v France within the context of the Court's previous jurisprudence, this paper seeks to examine the constructions of religious symbols in these cases, with a view to determining their impact on the decision-making process. It examines the weight afforded to differing constructions, focusing on the evidence the Court demands. In particular, it explores the discursive space afforded to the applicants' conceptions of the symbols in question. The paper argues that despite clear opportunities for the Court to offer a coherent, evidence-based approach to all of its religious symbols jurisprudence, in practice the Court fails to deliver this consistently, particularly in cases concerning Muslim women who wish to wear the headscarf or face-veil. The paper concludes by suggesting that the judgments concerning Muslim women – both alone and cumulatively – operate as a form of 'discursive violence'. This is defined as when the 'processes and practices through which statements are made, recorded and legitimated', are used to 'script groups or persons in places, and in ways that counter how they would define themselves' (Jones, Nast and Roberts, 1997: 394).

Poverty as a prohibited ground of discrimination: theory and the Irish example **Ben Mitchell**

One of the most interesting debates in equality theory is whether poverty should be a prohibited ground of discrimination. This paper considers the theoretical question and tests it in the context of Irish constitutional equality law by comparing it to the treatment of racial and religious discrimination. This engages the recently reignited issue of the "presumptively proscribed" grounds of discrimination under the equality guarantee in Article 40.1. The question of protected grounds is in its infancy in Irish law, meaning there is strong potential to benefit from international theory and comparative examples. So far, dignity harm has been the crucial criterion for identifying grounds. The protected list certainly includes race, religion, and pedigree, and possibly also marital status, political affiliation, gender, disability, and nationality. The paper examines a number of recent cases and suggests that both theory and precedent support adding poverty to the list. The traditional distinction between socio-economic inequality and status-based inequality (such as race or religion) leads to reluctance to recognise poverty as a prohibited ground. The paper presents a positive argument for overcoming this distinction; using Sandra Fredman's multidimensional conception of substantive equality, the kinds of inequality suffered by the poor in Ireland are shown to be analogous to discriminations on the basis of race and religion. This is complemented by arguments overcoming objections based on democratic legitimacy concerns, the separation of powers and the non-justiciability of Article 45 of the Irish Constitution. Finally, the paper concludes with some socio-legal benefits of such a development. Economic redistribution would not be possible, but the judiciary could help to dismantle numerous recognition inequalities and barriers to participation suffered by the poor. In addition, there would be significant expressive force in treating poverty not merely as an economic or political issue but also a matter of human rights.

The Punishment of those who Ill-treat Detainees during Police Questioning in Breach of Article 3 ECHR **Neil Graffin**

This paper has been taken from wider research by this author where it is argued that Article 3 of the European Convention on Human Rights is an insufficient tool in protecting those who are held for police questioning from ill-treatment. In this research, it is also contended that the legal consequences following a breach of Article 3 are underdeveloped, particularly, following the infliction of inhuman or degrading treatment. As part of this research, this paper evaluates the question whether those who have inflicted ill-treatment to detainees should be punished in full accordance with the law when the perpetrators were infringing upon the rights of the detainee to further the aim of protecting others. This author will use the case of Gäfgen v Germany to provide a real-life example of such a situation to assess this argument.

It will be argued that the European system should establish a duty to punish and criminally prosecute those who ill-treat detainees during the period that they are held for police questioning when it can be established that the individual has purposively ill-treated the detainee. This suggests an expansion in the current powers of the Court, but it will be argued that this is important to avoid a culture of impunity, which may undermine Article 3. It will be contended that it is important for the deterrent effect of punishment that offenders should be punished in accordance with the full letter of the law. However, it will be argued that when a police officer has ill-treated an individual recklessly, rather than intentionally abusing him or her, it may be more appropriate for disciplinary proceedings to be initiated against the offender.

Session Six: Theory and Human Rights

Human Rights and the Fall of the Platonic Guardians **Alan Greene**

This paper aims to understand the current vocal anti-human rights discourse in the UK. This paper draws upon Ian Loader's influential concept of the 'Fall of the Platonic Guardians' which explores the declining influence of criminologists in the late Twentieth Century, with a view to understanding the current hostility towards human rights seen in the UK. While hostility towards human rights in the UK may be explained by its political constitutionalist tradition and by the fact that the hostility may be anti-European rather than anti-human rights; I argue that this is not the entire picture. In addition to these factors, the decline of the 'platonic guardians' in criminology can be seen to affect human rights debates in the UK, particularly seeing as the target of such anti-human rights discourse is often the same 'other' that is targeted by popular punitivist sentiments. Thus, I argue, the seeds of hostility towards the Human Rights Act 1998 were already sown before it was enacted. This hostility towards human rights has, in addition, been amplified further by the 'war on terror' – a similar effect can also be seen in the increased securitisation of the criminal justice system. I conclude with tentative suggestions about what human rights defenders may learn from their criminological counterparts.

Explaining the Universality of Human Rights from Ontological and Epistemological Perspectives

Azadeh Chalabi

The universality of rights is a significant assumption of international human rights law which has been criticised by cultural relativists; some argue that 'human rights' emanates from Western cultural values and is therefore not universally valid. Cultural relativism, as a chronic issue in human rights discourse, is somewhat contentious. This paper evidently is not intended to treat this complex subject in its full form, but instead to highlight two significant points: first, the idea of human rights is not Western or Eastern, but rather it is an evolutionary account. Second, human rights are ontologically grounded in universal objective values which are rooted in basic human needs. The first point, which is epistemological, bears on the ways in which rational agents form beliefs and discover knowledge about rights; the second one, which is ontological, bears on the nature of rights. As for the first point, this paper seeks to show that the universality of human rights is rooted in the fact that basic human rights are grounded in universal objective needs which give foundation to universal 'objective values'. Ontologically speaking, human beings have the same transcendental basic needs which exist in the external world, as a kind of reality independently of the knowing subject, of any enquirers, rule-makers, and any social and cultural rules and before any human rights declaration or treaty. Epistemologically, our knowledge of human needs and their corresponding rights has evolved and improved over time. There is a broad range of ways, however, to fulfil such needs. This is where individual differences and cultural differences come in. In other words, the way by which basic needs are met is dependent on socio-historical context and varies from culture to culture and person to person. But this makes no difference to the universality of basic rights. Considering both epistemic and ontological objectivity of human rights, the idea of human rights contains no named references to particular times and places. No name references to particular times and places is exactly what is defined as universality.

Research Methodologies and Methods **Antonia Layard and Jonathan Sims**

Session One: Situation Methodologies

"Women, Poverty and Human Rights: Applying Feminist Research Methods" **Rhoda Askia Ige**

Feminisation of Poverty has received considerable attention of scholars in the field of humanities and very recently law in the 21st century. This attention has led to efforts and struggles led by women and supported by men towards achieving gender equality. The consensus among scholars is that poverty is a multi-dimensional socio-economic and cultural tradition that transcends economic descriptions, law and analyses. Hence, attempts in finding solutions to the problem of poverty especially that being faced by women, by defining it as 'lack of access to basic needs/goods' alone will not suffice to remedy the situation; what is needed is a full understanding of the status of women in a typical African country.

Poverty is a sex equality issue because women's poverty is a manifestation of persistent discrimination against women. Poverty cannot be adequately explained without human development. Human development is the improvement of quality of life; it involves the eradication of conditions which make a human being unable to attain a decent standard of living.

Human rights law now refers to the relationship between the individual and the state or its government; the right to political participation, the freedoms that the individual should enjoy and their claims on the state with regard to the provision of basic needs of life.

There have been statistical reports on poverty carried out by the World Bank, United Nations Development Programme (UNDP Report); British Department for International Development and certain United States Agencies. These various reports which shows grim statistics follow the quantitative methods which tend to use the more structured methods of data collection such as surveys and experimental designs. Feminists have however, criticised these methods because it is male oriented and merely translates women's experiences into predetermined categories, resulting in distorted finding s or even in silencing on women's voices.

The paper therefore will consider applying feminist research methods in future developments in research into the role of human rights law in relation to women and poverty; this is necessary because feminist methods require 'situated judgement' rather than an overarching theory to work out the most appropriate technique at any time; and secondly, a constant feature of feminist research method is that qualitative methods of enquiry are usually favoured; above all feminist methods are concerned more with the approach taken and the ideological aims of the researcher (s)

Use of corpus linguistics for interdisciplinary research on legal-lay discourse types **Tatiana Tkacukova**

The paper explores the use of corpus linguistics for the research on legal-lay discourse types, which lies at an intersection of linguistics and socio-legal studies. Corpus linguistics offers many options and its precise methodological criteria enable objective analysis of the real-life language use in a variety of discourse types and communication modes.

The paper starts by introducing the main principles of corpus linguistics (i.e. balancing, sampling and representativeness) and then proceeds to illustrates them on the corpus complied by the author. The corpus currently incorporates seven sub-corpora of verbatim transcripts from different court cases with litigants in person and comprises over 11 million tokens. The paper shows how the corpus can be used for multi-focused analysis of a wide variety of topics, such as litigants in person's cross-examination strategies, the role of judges in cases with unrepresented parties, common communication problems and misunderstandings between lay people and legal professionals, differences between legal paradigmatic and lay narrative modes of reasoning. Given the breadth and importance of the topic of litigation in person, the paper discusses how the tools and approaches of corpus linguistics can be helpful in the multi-disciplinary area where multiple functions and uses need to be explored in depth.

The paper then finishes by summarising the ways in which the interplay between the legal and lay discourse types can be analysed and how the differences in institutional roles of the speakers are projected through their use of language. The presentation also considers the use of corpus linguistics for research on negotiation techniques, mediation, client consultation and other topics which could benefit from looking at real-life conversational data.

Session Four: Empirical Research in Progress

"Triumph for Transparency? : Assessing the Impact of Freedom of Information Laws" **Erin Ferguson**

Freedom of information (FOI) legislation in the United Kingdom has just celebrated its tenth anniversary. The Freedom of Information Act 2000 (FOIA) and Freedom of Information (Scotland) Act 2002 (FOISA) are generally regarded as 'success stories' and have been used to inform public debate on the operation of public services. Citing the large volume of information requests now made, Justice Minister Simon Hughes called the legislation a 'triumph for transparency.'

The politician's remarks raise some interesting questions about how 'success' is measured with regards to FOI and demonstrate the need for further empirical research. For example, how do we measure if FOI legislation is achieving its intended aims? What does the quantitative data on the number of requests made actually tell us about how the Acts operate in practice and whether they contribute to a culture of transparency? Answering these questions becomes all the more important as calls are made to extend FOI legislation to private contractors delivering public services.

In this paper I describe my current empirical research on privatisation (broadly defined) and access to information under FOI legislation. The research involves examining selected Information Commissioner decisions as well conducting semi-structured interviews with key stakeholders. I argue that the quantitative data on the number of information requests made provides us with valuable, yet limited information on how the legislation actually works in practice. The paper begins by providing a brief overview of the existing empirical research on FOI before turning to the specific matter of how to evaluate the impact of privatisation on access to information. I demonstrate that carefully designed empirical research can provide vital information needed in order to assess whether and how transparency can preserved when the delivery of public services is transferred to the private and voluntary sectors.

Risk logic: An evolving methodology for analysing diverse information sources **Thomas Barcham & Richard Collins**

The Solicitors Regulation Authority (SRA) regulates around 10,000 law firms and 120,000 individuals in England and Wales. We use a risk-based approach to help allocate our limited resources on the areas of greatest concern.

Measuring risk where there are many unknowns is a challenge. Our evolving methodology for assessing risk combines the complexity of bringing together a wide range of sources of information, with simplicity, to make clear when action should be taken.

Our approach places holistic assessment at the centre of our methodology. To achieve this we need to apply a consistent approach to analysis of information from a wide range of sources. These include data analytics, research and reports of misconduct from the public.

The challenge is the fusion of these different data sources in a way that provides outputs that inform better decision making. Qualitative information is needed alongside quantitative data and historic firm records must work in conjunction with real time reports from the public. Placing different emphasis on these sources depending on their availability and reliability ensures we use each source optimally. Combining them allows us to establish a 'risk exposure' for each firm we regulate across twelve distinct groups of risks. This is expressed in a way that can be compared directly with our organisational 'risk appetite'. This comparison establishes the risks we may wish to act on and goes on to help allocate work.

Being mindful of the daily changing nature of the firms we regulate and the shifting landscape of legal service provision in England and Wales, a consistent approach is essential alongside the flexibility to evolve and change the methodology. This session explains why we have pursued this methodology, the ways in which we use different sources of information, and how we see this informing the future work of the SRA.

"Broadening law's 'context' in socio-legal research" **Nicole Graham**

Legal history is a broad field of legal scholarship. According to descriptions of the methodology of legal history, there are two different kinds of approaches to legal history, producing two different kinds of legal history: internal and external legal histories (Ibbetson 2004). External legal history produces historical accounts of law in its various contexts drawn both from primary sources in law as well as primary and secondary sources in other, usually humanities and social science, disciplines. This approach also incorporates the methodologies of related (legal and non-legal) specialisms including comparative law, legal feminism, critical race theory, postcolonial and psychoanalytic theories, critical legal studies, law and economics and socio-legal studies. This paper explores the expansion of 'external' legal history to incorporate the methodologies of disciplines beyond the social sciences and humanities to include environmental history into legal historical analyses. The paper takes the example of Australian land law to explore this methodological 'turn'. Until the late 20th century, the history of Australian land law was regarded as essentially English. Revisionist legal historians have contended however that Australian law was not English, but local and therefore Australian. Both the conventional and revisionist histories of Australian land law situate law within abstract economic and political contexts. By contrast, environmental history produces accounts of the mutually constitutive ways in which humans change environments in which they live and on which they depend, and the ways in which those changes 'have in turn affected our societies and our histories' (Hughes 2006). By incorporating the environmental history of the material effects of legally incentivised, legally required and legally protected forms of land use in Australian colonies, it becomes possible to review the question of the identity of colonial Australian law beyond abstract cultural terms into environmental contexts. The broadening of the context in which law is studied beyond the social and economic to environmental contexts is an important development for legal research methodologies.

Session Five: Visual Methods

"Revealing the Legal Experience through Visual Arts" **Natalie Ohana**

In my paper I explore the methodological value embedded in using art as a form of inquiry to bridge over barriers posed by legal language.

My point of departure is my perception of language as a limited and limiting medium of expression through which to express different social realities. Many people live in a language they do not speak; they feel foreigners to a language that leads their lives. Every hegemonic, socially powerful language contains large inexpressible spaces. Compounding this, I perceive the legal language as a socially powerful but separated language, which creates a distinction between speakers and non-speakers and in which inexpressible spaces exist.

The legal language poses barriers over people's ability to express their legal realities. A legal reality is comprised of the ways people experience law in their lives and of their thoughts, perceptions, attitudes, opinions and critique towards it.

In the paper I explore the potential of visual art as an expressive tool and a research tool able to reveal crucial knowledge on people's experiences of law.

I will discuss this question by sharing my experience in designing and conducting an art and dialogue workshop in a refuge in London for women fleeing domestic violence. The three day art workshop I conducted with Sue challis, a community-based artist, was focused on the experiences of contacting the police; being represented by a lawyer and being present in a courtroom. It was a platform from which women expressed and revealed their legal realities by using visual arts and dialogue as expressive tools.

I perceive both the process of designing the workshop and the artworks themselves as relevant components able to reveal important understandings on the question of the potential art based methods hold for legal research.

Meet the Prize Winner: **Amanda Perry-Kessaris**

"The Case for a Visualized Economic Sociology of Legal Development" Winner of the 2014 SLSA Best Article Prize

Session Six: Legal Research & Historical Methods

Meet the Prize Winner: **Henry Yeomans**

Alcohol and Moral Regulation: Public attitudes, spirited measures and Victorian hangovers
Winner of the 2014 SLSA Best History and Theory Book Prize

Sentencing and Punishment **Gavin Dingwall**

Session One: Chair: Gavin Dingwall

'Challenging Harm as Normatively Definitive of Criminal Punishment: What's the harm in punishment?' **Helen Brown Coverdale**

This paper challenges the inclusion of harm as definitive of criminal punishment. Harm, or something similar, is a commonly included feature of Western definitions of punishment. It is included without great detail, easily implying an ambiguous and overly-simplified understanding of harm. Further, while the other defining elements of punishment are procedural, harm is the sole substantive content component. Why harm? Why only harm? Why not other substantive content elements? This prioritizes harm over other possible substantive content elements, overstating the importance of harm-simpliciter, and normalizing the presence of an ambiguous type of harm. This causes problems in theory practice and policy. Firstly, our theorising about punishment is restricted to the conceptual space described by harm. Approaches to punishment seeking to reduce or avoid harm appear less relevant. Secondly, in policy and practice, the normalised presence of an ambiguous harm-simpliciter obscures the occurrence of morally significant harms which punishment can entail, which threatens provision of Dworkin's equal concern and respect to offenders. Further, including harm as definitive of punishment is not as useful as it first appears. While harm is almost always descriptive of punishment, morally serious harms ought not to be perpetrated by the state. Trivial harms, while acceptable, do not distinguish punishment from other practices. Finally, this approach cannot account for rare incidents of punishment which in fact cause no harm. We could address the problem by specifying the type of harm intended in the definition. Alternatively, we could include other substantive content to contextualize the harm content. The paper argues for a procedural focused definition, taking the presence of harm outside of this definition. This frees theorising from the conceptual space described by harm, and takes consideration of harm and its moral significance outside of the definition of punishment, making problematic harms more readily identifiable in practice.

'Proportionality and Previous Convictions: Striking a balance' **Gary Betts**

Section 143(2) of the Criminal Justice Act 2003 enhances the role of previous convictions at sentence, purportedly placing greater weight on the offender's history by requiring the court to treat each previous conviction as an aggravating factor, if reasonable to do so. This appears to be consistent with a cumulative sentencing approach whereby the severity of the sentence imposed increases with each subsequent conviction. Where an offender has amassed a number of relevant convictions, the result could be a wildly disproportionate sentence which pays little regard to the seriousness of the current offence and instead sentences the offender primarily on the basis of his prior record. Yet the courts have a conflicting parallel duty to have regard to the seriousness of the immediate offence, and this features highly in numerous sentencing guidelines. Indeed, the Court of Appeal has, on a number of occasions, directed that the aggravating effect of prior record must be moderated by framing an offender's criminal history within the context of the seriousness of his immediate offence. However, this approach does not always appear to be followed: in other cases, significant weight is attributed to prior record, consequently pushing at the confines of proportionality, if not swinging the gate wide open.

By reviewing a number of recent cases involving repeat offenders, this paper explores how the courts have attempted to reconcile the need to impose proportionate sentences with the enhanced role given to prior record.

Session Two: Chair: Gavin Dingwall

'Consuming Identities: Karsten Kaltoft, obesity and the criminal construction of the addict' **Simon Flacks**

In the recent, much publicised, case of Karsten Kaltoft v Billund Kommune, the European Court of Justice ruled that obesity could, in certain circumstances, constitute a disability. In delivering his opinion prior to the final judgement, the Advocate General (AG) appeared to acknowledge that the 'disease' of addiction might also constitute a disability under EU law, emphasising that the notion of disability is 'objective' and does not depend on whether it is self-inflicted. Otherwise, those disabilities resulting from traffic or sport accidents would be excluded from the remit of non-discrimination legislation. The AG's opinion runs counter to UK legislation which, under the Equality Act 2010, expressly excludes dependence on alcohol or illegal drugs from disability discrimination provisions. In addition to equality legislation, the ruling raises interesting questions about the ways in which people with 'addictions' are treated by the criminal justice system. The roles of addiction, intoxication and mental health within law and policy relating to sentencing mitigation, or diminished responsibility for criminal behaviour, are not entirely clear. However, dependence on alcohol or drugs will not count in mitigation when sentencing an offender, and dependence does not itself come within the meaning of "mental disorder" for the purposes of the Mental Health Act 1983 (section 1(3)) unless accompanied by another recognised disorder. Moreover, given that they are excluded from equality laws, people with addictions do not fall within the remit of hate crime legislation. The purpose of this paper is to explore the possible consequences of recognising addiction as a disability for the criminal law, and to situate the issues of disability, addiction and obesity within broader discourses relating to responsibility and consumption. A central argument will be that attempts to legislate for addiction and obesity reflect contemporary anxieties over crime, freedom and identity within advanced liberal democracies.

Session Six: (Joint with Criminal Law and Criminal Justice)

Professor David Ormerod, Law Commissioner

Sexual Offences and Offending **Phil Rumney**

Session One

The Legal and Social Challenges posed by Group Localised Grooming: Reconsidering the Risk of Harm

Dr Jamie-Lee Mooney

Group localised grooming (GLG) has recently attracted much media attention and inquiries by the Office of the Children's Commissioner and a parliamentary select committee were launched in 2011 and 2012, following the convictions of numerous perpetrators in high profile cases involving groups targeting, grooming, sexually abusing and exploiting adolescents. The ability to effectively tackle GLG, as a form of exploitation, is hampered by misconceptions regarding which children are (most) vulnerable, the existence of damaging constructions of 'imperfect' victims and the difficulties of finding an appropriate criminal offence to best capture this behaviour.

The analysis will propose how a reconsideration of the nature of 'risk' in relation to this newer form of exploitation, could provide a response that is more appropriate in providing protection to children from all 'associated harms.' It is vital to refer to the 'apparent' willingness of children to engage in sexual activity as acquiescence, rather than consent. Misconceptions about the impact of grooming on a victim and the way in which grooming impedes free will, could lead victims to be portrayed as 'complicit' or 'consenting' parties to abuse.

Secondly, turning to the criminal law, despite the offence of meeting or arranging to meet a child following grooming under section 15 of the Sexual Offences Act 2003 being designed to enable intervention at an early stage in the abuse process, elements of the offence are difficult to establish in the context of GLG. Consequently the offence is of little use and is it vital to assess if other existing offences appropriately capture GLG behaviour, and more importantly, if they can do so prior to any abuse and exploitation. Finally in the concluding section, consideration will be given to steps that could be taken to integrate these reconsiderations into child protection policy and practice in order to provide children with a greater level of protection from the developing nature of child sexual exploitation.

The role of denial in criminal justice agencies' responses to child sexual exploitation in Rochdale and Rotherham

Maureen O'Hara

Within the context that the Sexual Offences Acts state that sexual intercourse with a person under the age of 16 is unlawful and there is no defence against engaging in sexual intercourse with a person under the age 13 years, there have been repeated cases in which under-age females who become pregnant have been castigated by politicians, Church representatives, the public, the press and within social media – with an apparent disregard to the possibility of sexual abuse, rape, and exploitation. This includes pre-teen mothers. While the recent spate of cases investigating the sexually exploitative actions of gangs of men against under-age girls (such as Rotherham) have attracted widespread condemnation, media reports of individual cases of under-age pregnancy and motherhood are subject to an entirely different treatment. Such reports often contain photographs of the girl concerned and readily portray them as idle, promiscuous products of 'sink-estate' single parents; while social media comments on newspaper stories, which may persist for many years, are often vicious. This paper presents findings from the authors' reviews of media reporting of under-age pregnancy and the relevant law on the identification of these girls in the media. This highlights how statutory provisions, intended to protect the identity of victims of sexual offences who become the subject of a court action, may actually worsen the situation of girls who have previously been identified and castigated within the press and social media. Defamation law also appears to offer little of practical use in respect of the comments made about them. The paper ends with recommendations for a more informed and coherent response to the reporting of sexual offences which result in under-age pregnancy both within the media and in those cases that go before the courts.

The recognition of pre-teen mothers as victims of sexual offences

Kirsteen Mackay and Sarah Nelson

Within the context that the Sexual Offences Acts state that sexual intercourse with a person under the age of 16 is unlawful and there is no defence against engaging in sexual intercourse with a person under the age 13 years, there have been repeated cases in which under-age females who become pregnant have been castigated by politicians, Church representatives, the public, the press and within social media – with an apparent disregard to the possibility of sexual abuse, rape, and exploitation. This includes pre-teen mothers. While the recent spate of cases investigating the sexually exploitative actions of gangs of men against under-age girls (such as Rotherham) have attracted widespread condemnation, media reports of individual cases of under-age pregnancy and motherhood are subject to an entirely different treatment. Such reports often contain photographs of the girl concerned and readily portray them as idle, promiscuous products of 'sink-estate' single parents; while social media comments on newspaper stories, which may persist for many years, are often vicious. This paper presents findings from the authors' reviews of media reporting of under-age pregnancy and the relevant law on the identification of these girls in the media. This highlights how statutory provisions, intended to protect the identity of victims of sexual offences who become the subject of a court action, may actually worsen the situation of girls who have previously been identified and castigated within the press and social media. Defamation law also appears to offer little of practical use in respect of the comments made about them. The paper ends with recommendations for a more informed and coherent response to the reporting of sexual offences which result in under-age pregnancy both within the media and in those cases that go before the courts.

Session two

Protecting the Therapeutic Space: Why victims' counselling records should be excluded from historic child sexual abuse trials — **Sinéad Ring**

In prosecutions for historic child sexual abuse, credibility is key to assessments as to where the truth lies. Defence attempts to use the victim's therapeutic records raise fundamental issues relating to privacy rights and the trial's role in establishing hierarchies of victims. Current legislative proposals in Ireland seek to regulate the admission of therapeutic records in criminal trials. This paper shows how the disclosure to the defence of therapeutic counselling records to the defence and their admission to the trial has the potential to mobilise two rape myths: that 'real' victims of child sexual abuse complain contemporaneously and that 'real' victims will be wounded, in this case psychologically. The paper further argues that the therapeutic (as opposed to truth-seeking) goal of counselling means that such records are of very low probative value. Therefore they should be subject to an exclusionary rule of evidence.

Regulating prostitution: an assessment of different legal regimes on the different dimensions of women's opportunities for self-determination — **Nicolle Zeegers**

Prostitution and human trafficking are both connected as well as quite different phenomena. The two are connected because many women are brought abroad and forced into prostitution. Furthermore connected because policymakers try to diminish trafficking by regulating prostitution and because scholars link the legal regime concerning prostitution to the amount of sex trafficking in a country (Jakobsson and Kotsadam, 2011). Whereas European countries are unanimous in prohibiting trafficking the laws on prostitution vary widely between different countries, from regulating the working conditions of prostitutes, to prohibiting procuring, selling sex or buying sex.

In the last decade, more and more attention has been paid by policy makers to the correlation between prostitution legislation and human trafficking. In the literature statistics concerning human trafficking strongly suggest that a legalization of prostitution, such as has taken place in the Netherlands, has led to an increase in human trafficking, presumably on the account of persons trafficked for the purpose of sexual exploitation. Conceivably, this has led policy makers in the concerned jurisdictions to reconsider the legal rules that have been put in place in their country and to ask themselves whether these should be made stricter again. In the paper in addition to the amount of sex trafficking, the effects of the different legal regimes concerning prostitution on women's opportunities for self-determination will be taken into account. The authors analyze and compare such effects in three countries, firstly Sweden that prohibits buying sex but not selling, secondly the Netherlands, a country that does not prohibit procuring, buying or selling sex but regulates the practice and, thirdly, a country in between. This comparison shows that it would be wise not to throw the child with the tub: the effects on women's agency are more positive in a regime of regulation than in a regime of prohibition whereas no data on sex trafficking are reliable enough yet to draw sound conclusions concerning the effects on the amount of sex trafficking.

Session six

Accessible Justice? Rape victimization and psychosocial disability — **Vanessa Munro, Louise Ellison and Katrin Hohl**

In a context in which research evidence indicates high rates of alleged sexual victimization amongst adults with psychosocial disabilities (PSD), this paper sets out to explore some of the challenges that are posed to the criminal justice system by these types of complainants. We do so by drawing upon rape allegation data recently collected by the London Metropolitan Police Service over a two month period. Our analysis of this snapshot of Metropolitan Police rape reporting suggests that a significant number of rape complainants have recorded PSDs, and that these complainants are significantly more likely than those without recorded PSDs to experience additional, circumstantial vulnerabilities, including intellectual disability, alcohol and/or drug dependency, and repeat victimization. Our findings also suggest that cases involving complainants with recorded PSDs are significantly more likely to suffer attrition – to 'drop out' of the criminal justice system - due to police or prosecutorial decision-making. In this paper we reflect upon possible explanations for this heightened attrition rate but also use our snapshot analysis as a stepping off point from which to highlight the need for more sustained critical research on the treatment of complainants, and the adequacy of police and prosecutor training and practice in this area.

Challenging and redressing police failures in the context of rape investigations – the civil liability route **Joanne Conaghan**

The question of police attitudes to and conduct of rape complaints has been in the British public eye now for some time. A damning succession of studies have catalogued police failings, from initial reporting through to final disposition of a case, generating a mountain of data evidencing deep structural, institutional, and cultural problems going to the heart of the effectiveness of the criminal justice system. Located within a broader policy context of growing concern over the low rate of convictions for rape cases and set against a backdrop of substantial reform of rape law, not just in England and Wales but around the globe, the police handling of rape investigations has attracted repeated criticism and public scrutiny.

One way of addressing these concerns is through strategic civil litigation. Looking beyond the UK, it is clear that both tort and human rights arguments have been successfully invoked to redress systemic and operational problems pertaining to the police conduct of rape investigations. Within the UK, such developments have been constrained by the doctrinal framework, particularly by the strong judicial deference given to policy considerations against civil liability first articulated in Hill v Chief Constable of West Yorkshire (1989). However, recent developments in human rights law and, in particular, the successful suit against the Metropolitan police for investigative failures in the context of the 'Black cab rapist' case (DSD & NBV v Commissioner of Police for the Metropolis (2014)) suggest that this avenue of redress may now be opening up.

How should this development be viewed in the context of the wider problem rape presents to criminal justice? Can civil liability be deployed effectively to bring about transformative cultural and institutional change in the context of investigating and prosecuting rape? Might it deliver results where all else appears to have failed? The purpose of this paper is to begin to explore these questions.

Raping Femininity: Reforming the Law on Rape in England and Wales **Siobhan Weare**

This paper will suggest potential reforms to the law on rape within England and Wales, with the underlying aim of acknowledging women as perpetrators of rape and thus as individuals with sexual agency. The existing definition of rape requires penile penetration and consequently only men can be legally culpable of raping either men or women. Women can only be charged with the offence of assault by penetration, thus reflecting the construction of women within English criminal legal discourse as submissive, objectified individuals who lack sexual agency. Confining female perpetrators to being convicted of this offence also arguably does not reflect the lived experiences of their victims, both female and male, who often identify their experience as being one of rape.

Making particular reference to the experience in other jurisdictions, particularly the United States (US), where female perpetrators of rape are often acknowledged within criminal legal frameworks, this paper will critically evaluate how a gender neutral definition of rape could be incorporated within a reform of English law. Such a reform would not only allow recognition of women, as well as men, as perpetrators of this offence, but also an acknowledgment of men as victims, and of rape existing within same-sex female relationships. In particular it will suggest taking a dual approach to this issue by firstly redefining rape as a gender neutral crime and critically evaluating such definitions found in different jurisdictions. Secondly, it will explore the potential of introducing a system of rape by degrees, similar to that found in some states in the US, in order to ensure that the proposed legal framework remains gender neutral and fully recognises the agency of female perpetrators of rape.

Sports Law **Simon Boyes, John O'Leary Ben Livings and David McArdle**

Session Six: On-Field Interventions

Concussion and Brain Injury in Contact Sport: Legal Implications **Jack Anderson**

A concussed participant leaving the field of play is one of the most worrying sights in sport. It is also one that might have serious legal implications for sports governing bodies. Over the past number of years, a major class action suit has rumbled through the US courts as taken against that country's biggest professional sport, the National Football League. The NFL is at present attempting to settle the lawsuit from more than 4,500 retired players who claim that the NFL knew for decades about the chronic health risks associated with cumulative concussions in American football but failed to warn players or take preventative steps. Testimony from retired NFL players has revealed stories of chronic headaches, Alzheimer-like forgetfulness, altered personalities and sometimes a downward spiral into depression, violence and suicide. Medical research is suggesting that professional American football players are three times more likely to die as a result of certain neurodegenerative diseases than the general population. This paper notes that the concerns about concussion are not confined to the NFL and extend to contact sport more widely and notably rugby union. This paper also assesses the reaction of leading sports governing bodies globally to the recorded medical risks and accompanying legal vulnerabilities.

Injured athlete or crime victim? **Louise Taylor**

This paper explores Nils Christie's notion of the 'ideal victim' in the context of criminal victimisation in sport. Real life examples of on-pitch violence occurring in rugby union football matches will be discussed in order to explore the characteristics that the audience consider as essential in moving a rugby player beyond the mere label of 'injured athlete' to that of 'crime victim'.

Rather than having as its focus the role of the criminal law in regulating on pitch violence, this paper seeks to explore the perceptions of rugby players and spectators in relation to criminal victimisation occurring on the rugby pitch. The parameters of a proposed empirical project to explore these perceptions in more detail will be discussed and audience feedback on this will be encouraged.

The criminological theories of hegemonic masculinity and relative deviance will also be drawn upon as a basis to consider the reasons why those involved in this contact sport may not perceive on-pitch violence as amounting to criminal victimisation. The paper then questions who owns the label of 'crime victim' in the sporting context and considers what interventions could be put in place to help those involved in rugby to identify criminal victimisation when it occurs. This would be done with the aim of helping to eradicate on-pitch violence which goes beyond the rules of the sport, and that which can have catastrophic consequences for players and damaging implications for the reputation of the game.

Legitimate Limits of the Application of the Criminal Law in Sport **Simon Boyes**

This paper seeks to assess the legitimacy of the intervention in sport of the criminal law. In doing so, the paper adopts a liberalist perspective, drawing substantially on the works of John Stewart Mill and Joel Feinberg. The paper further seeks to set this approach in the context of Karl Llewellyn's 'law jobs' theory and the wider literature on regulation theory in order to build a claim for a restrictive approach to intervention in sport by the criminal law.

The culmination of this model is the claim that sport may reasonably claim that those matters traditionally considered to fall within the domain of the criminal law may be illegitimate in this particular context. In particular the paper presents the argument that self-regulatory activity may effectively displace and replace the application of the criminal law where it demonstrates that it can and does address the wrongs or harm which are the target of the law

Finally the paper seeks to assess the extent to which this approach has been adopted – overtly or otherwise – by the courts and sets out a case study of a situation where the model might have been usefully deployed.

Session Seven: Law & Sport Self-Regulation

How Open is Open Enough? Competition Law and the New Hybrid League Structure **Salil Mehra**

Observers generally describe European professional football leagues as operating an open system involving promotion and relegation, while North American professional leagues – including the top leagues in football and American football – operate on a closed league model in which the teams involved do not routinely change each season. Recent scholarship has focused on how the "cartel model" of North American leagues plus private ownership results in anticompetitive practices and stadium rent-seeking from public funds. This clean dichotomy between open top professional leagues in Europe and closed top professional leagues in North America ended as of Fall 2014. Specifically, collegiate American football has undergone a recent transformation under which the top league is divided into two tiers, the players will be paid a salary in addition to the waiver of university tuition fees, and the introduction of a playoff system has driven annual revenues to $3.4 Billion, approaching the level of the National Basketball Association ($3.7 Billion in 2013) and the English Premier League.

These changes to collegiate American football raise questions for competition law about how open a league system needs to be. The current setup provides partial, limited access for the lower tier of the league to the playoff. The top tier comprises five divisions, all but one of which have required their members to sign penalty agreements that tend to lock in their membership. Given that almost 90% of the teams are operated by public universities, this arrangement raises important questions for competition law as well as the public fisc. An examination of this setup under US and EU competition law shows that how we define exclusivity needs refinement

Financial Fair Play and competition law: evidence of a new EU sports policy? **Tom Serby and John O'Leary**

The paper will provide an analysis of the application of TFEU article 101 to UEFA's Financial Fair Play Regulations and will demonstrate that they are a horizontal cost-cutting agreement between competitors (in the market for players) whose main purpose is to increase profits for owners (Weatherill, 2013).

However the paper will conclude that the challenge to the Regulations by Advocate Dupont in the Belgian court is unlikely to succeed as the European Court must consider how much deference to show UEFA as the regulator of European football, within the context of TFEU Article 165 and the recognition of sports specificity and autonomy of SGBs.

The paper will propose the theses that (i) the Regulations are at heart an attempt to improve football governance, and (ii) the European institutions have evolved a sports law policy, congruent with Article 165, of collaborative policy making, the collaborating parties comprising EU institutions such as the European Commission, sports governing bodies (eg UEFA), and other stakeholders (clubs, leagues, associations and athletes)

The Proportionality Principle in Judicial Scrutiny of Sports Governing Bodies: A Critical Appraisal

Simon Boyes

This paper critiques judicial approaches to legal challenges to the rules and decisions of organisations regulating sport.

First the paper outlines historical approaches to challenges to sports governing bodies in English law, before setting out the modern law as it stands in relation to both applicability (jurisdiction) and application (substantive law) in calling such organisations to account. The variety of cause of actions available to would-be litigants as against sports governing bodies are considered and their utility and their limitations assessed. In particular this focuses upon Judicial Review, contract, restraint of trade and public policy-based approaches to sports governing bodies.

The second part of the paper identifies and evaluates stated rationales for the approaches in respect of both jurisdictional and substantive legal contexts. In chief these are drawn from reported judgments in key reported cases involving challenges to sports governing bodies, but also take from the wider academic literature, in particular that relating to judicial deference and judicial restraint, and sources pertaining to judicial approaches to self-regulation.

The final part of the paper draws conclusions regarding the overall capacity of English courts to effectively scrutinise sports governing bodies and their activities, noting in particular the highly restrictive impact of the particular legal doctrines employed and the – for the most part – their conservative judicial application. The paper emphasises, in particular, the inconsistency in judicial reasoning justifying the extension of jurisdiction to encompass sports governing bodies, and that employed in the application of substantive law. This, it is argued, finds expression in the application of the proportionality principle in relation to scrutiny of sports governing bodies' decision-making; and this is traced through recent case law.

The paper concludes that judicial approaches to sports governing bodies are premised on inappropriate or irrelevant considerations drawn from the sphere of public law, and that given the relative lack of scrutiny available through other mechanisms, examination of these issues in court must be more intense in order to achieve appropriate levels of accountability.

Session Eight: Perspectives on Sports Law

Horses for Courses: A Socio-legal Discourse on Non-Human Athletes and Doping Regulation

Jonathan Merritt

This paper is concerned with doping and controlled medication irregularities in equestrianism and horse racing. No derivative of the WADA Code, with its preoccupation with strict liability and reverse burdens of proof, is fit for purpose for equines. As groundwork for that debate this paper specifically seeks to counter the received truth that the horse is merely the subject of a minority interest pastime, nostalgia and/or an anachronism. The construct of the horse has shifted dramatically but the economic and social importance has not diminished. The horse is no longer constructed as a beast of burden, weapon of war, implement of industry and agriculture but as an athlete-celebrity. As such the horse still contributes with comparable importance to the economy and to society as a cultural icon. The relationship between Equus Ferus Caballus and Homo Sapiens is unique, special and enduring and has merely reached a new phase requiring specific, tailored research and debate on doping and controlled medication of these non-human sports participants to avoid miscarriages of justice.

This paper refutes the commonly held view that the horse is at best a quaint reminder of our past, exploring uses that the horse is now put to in education, therapy and of course sport and recreation. Although it is true to say that the horse has significantly diminished as a source of physical power this is too crude a measure of the importance of the horse to society. Instead the status of the horse as athlete-celebrity can be established by reference to the fact that it remains a dominant cultural feature by its representation in art, literature, film and television. In tandem with this sporting prowess can bring a horse celebrity status. Taken as a totality these factors better measure the contribution the horse makes to 21st Century life

Critique of the purpose and effectiveness of FIFA's prohibition on the international transfer of minors from a children's rights perspective

Eleanor Drywood

FIFA's Regulations on the Status and Transfer of Players (RSTP) prohibit the international transfer of players under the age of 18 (Article 19). The relevant provision is entitled 'protection of minors' and purportedly exists to protect potential young foreign recruits from unscrupulous agents who engage in aggressive recruitment tactics. There is, however, extensive evidence that this prohibition remains ineffective. At the elite end of the spectrum, FIFA sanctioned FC Barcelona for violations of Article 19 RSTP last year in respect of activities in relation to ten minors at its academy between 2009 and 2013, a decision which has since been upheld by the Court of Arbitration for Sport. More troubling are widespread media reports of rogue agents exploiting the dreams of young players in developing regions of the world (primarily West Africa and South America), operating in similar ways to people traffickers, duping families out of money on the promise a trial with a European football club that never materialises. Recent estimates put the number of failed recruits to football clubs living as undocumented migrants on the streets of Europe at 15,000. The purpose of this paper is to understand better the ineffectiveness of the prohibition. The purpose of Article 19 RSTP is questioned from a children's rights perspective, and set within the context of debates on child labour and post-colonial critiques of the cultural relativism of rights. This critique reveals fundamental problems with a prohibition that, in the name of protection, removes opportunity for young people and arguably stifles sporting talent. It is suggested that this weakness is amongst the (many) contributing factors to the ineffectiveness of the prohibition and, further, that a more sophisticated conceptualisation of children's rights in the context of football recruitment should be at the heart of an improved regulatory framework

What Gramsci Says: Sports Law, Regulation and Cultural Hegemony. **John O'Leary**

Although Antonio Gramsci (1891-1937) did not coin the phrase cultural hegemony, he was largely responsible for the development of the theory. Gramsci believed that ideology was a product of human process enabling the dominant classes to rule by consent. Values of the dominant classes are thereby seen as universal and based on common sense. This interpretation explains 'domination by consent'. This paper argues that the regulation of sport by the law or by the internal mechanisms of discipline and dispute resolution, reflects the same type of cultural hegemony which is used by sports bodies against athletes in particular and society more generally. The paper will illustrate cultural hegemony in sport with examples of the sites of ideological struggle such as sports media, governing bodies, sports regulation and courts of law. It will examine the difficulties athletes have in creating a viable alternative sports culture and an alternative intellectual and moral leadership. It will conclude that domination by consent need to be challenged by an alternative hegemony and that academic lawyers are best place to promote and facilitate such a challenge.

Systems Theory Thinking, Law and Society **Tom Webb**

Session Seven:

'International Law applied to Trans-boundary waters: An Autopoietic approach.' **Kenneth Kang**

International Law applied to Trans-boundary waters has largely relied upon legal rationality and objectivity in order to prove its practicality, social usefulness and necessity. But as a consequence, the discipline has tended to shy away from studying law beyond its norms as social facts, thus losing the ability to describe International Law in its societal context. It remains in other words far too goal orientated and far too positivists for the complexities of environmental and social issues. This article argues, what is needed is not an increased illusion of objective and determinable rules - for that ignores the impossibility of objectivity and determinacy even existing - but rather higher abstraction, functionalist thought, and self-reflection of the International Legal system. Drawing upon the works of Niklas Luhmann's Autopoietic theory of law and Anthony D'amato's International Law as an Autopoietic system, I propose a new transdisciplinary analytical framework for reconceptualising our understanding of how International Law reacts and deals to trans-boundary water governance controversies. The purpose here, is not to pretend to offer solutions for how International law might enhance trans-boundary co-ordination, nor is it to construct a workable model for predicting International Law as D'amato imagined the International Legal System. Rather, the focus is to work out what contours problems emerge, and how does the law, and how ought the law, make invisible the question of its own self-induced paradox: That International Law both legitimises and prohibits the exploitation of trans-boundary water resources.

'Autopoiesis, vulnerability and asylum in the United Kingdom' **Tom Webb**

In this paper I look at the availability of legal advice for asylum seekers in the United Kingdom, and, drawing on autopoietic systems theory, examine why the wider trend in this area has been towards a reduction of legal aid and other protections. In this regard autopoietic theory accurately reflects how those involved in the media, political, and legal aspects of asylum conceptualise and justify their activities in this area. It captures the manner in which individual systems (law, politics, the mass media) conceptualise and communicate asylum. However, the very nature of this understanding, and its reliance on humans as communicative conduits only, means that autopoiesis is not well-equipped to deal with the management and prevention of the negative consequences which can flow from the activities of such systems when dealing with vulnerable individuals. The principle difficulty is that, while autopoietic theory can effectively describe systems in macroscopic terms, the systematised structure of the theory tends to apportion responsibility for systemic consequences to the system, and not to (merely) human conduits. Systems are disinterested in these issues, indeed blind to them, so long as they do not interfere with the perpetuation of the system's code and function. In this way a double-fault is committed by autopoiesis in that the theory not only explains why a system functions in this way, but also excuses that behaviour as being inherent in the system. This observation brings into question the position of autopoiesis as the dominant systems tradition in law, and suggests that it may not be suitable for application to challenging social contexts.

Session Eight:

''What really happened?' A systems theory approach to legal constructions of 'the facts'' **Adrienne Barnett**

According to much traditional legal theory, a primary function of trial court procedures and rules of evidence when facts are in dispute is to find the truth. Niklas Luhmann's theory of autopoietic social systems and his use of George Spencer Brown's theory of observation as form/distinction, would 'see' it differently. This paper discusses how law decides 'the facts' or, as Luhmann puts it, whether 'something is or is not the case', by considering fact-finding hearings in private law Children Act cases, which may be held where disputed allegations of domestic violence are made. The paper explores how law decides such allegations by the process of observation, that is, by drawing increasing differential distinctions – for example between system and environment, facts and law, evidence and not-evidence, truth and lies/untruth – to reduce the complexity of its self-created environment and arrive at a decision. This enables us to see that 'what happened' is always an observer-dependant ascription, and how authoritative decisions are made in the face of high contingency and improbability. In doing so, the paper examines the way in which evidence law both responds to and creates law's environment as the 'reality' in which legal communications/decisions occur, and thereby restricts the possibilities of what could be meaningful. It also considers how law constitutes cross-examination as an effective means for revealing 'the truth', and the role of the burden and standard of proof as communicative operations that produce a world where something either did or did not happen, with no room for grey areas. Finally, the paper explores how external observers, such as Cafcass officers, parents and lawyers (when not observing from within the system) observe law's operations in constituting factual determinations, and what this can mean for children and parents.

'Does Crime Pay? A Systems Perspective on Civil Recovery' **Jen Hendry and Colin King**

The UK Proceeds of Crime Act (POCA) 2002 has, over the past decade, become central to law enforcement's strategies in combatting serious crime and corruption. This legislation comprises a number of measures, such as anti-money laundering provisions, post-conviction confiscation, civil recovery, and taxation of assets, all of which come under the rubric of 'follow the money'. The rationale underpinning POCA is axiomatic, namely to deprive criminals of their ill gotten gains, but some of these measures have attracted controversy. Notable among these is civil recovery, which enables the seizure of 'criminal' proceeds in the absence of criminal conviction and on a reduced standard of proof, thus circumventing the enhanced procedural protections of the criminal process. The enactment of these civil recovery provisions was driven by concerns as to the inadequacy of existing criminal processes in controlling high-level and high-value organised crime; indeed, they can be said to constitute an overt retributional policy measure to recover the proceeds of such activity in light of that inadequacy. Our analysis of civil recovery from systems-theoretical perspective considers two normative dimensions: the first being the policy position that crime should not pay and that assets arising from criminal activity ought to be forfeit; the second concerning the tension created by the juxtaposition of these policy goals with the requirements of due process.

'Autopoietic empiricism for research on climate change adaptation **Irene Bullmer**

'There's a group of people who seem to think that when scientists say they are uncertain, we shouldn't do anything. That's crazy. We're uncertain and we buy insurance' (Borenstein 2013 citing George Gray, director of the Center for Risk Science and Public Health at George Washington University). This quote puts at least two things straight. Firstly, and most obviously, climate change adaptation is like buying insurance. Secondly, and even more importantly for this paper, this quote exemplifies why autopoietic empiricism is a useful method to study climate change adaptation governance. It highlights that the scientific system of society is composed of communication which applies its code of distinguishing between true and false. Saying it is 95 per cent certain 'that more than half of the observed increase in global average surface temperature from 1951 to 2010 was caused by the anthropogenic increase in greenhouse gas concentrations and other anthropogenic forcings together' (IPCC 2013: 15) is currently a scientifically true statement. However, how this can be translated so that other systems take account of this scientific knowledge is another question. And this question is very suitably treated applying autopoietic empiricism. Consequently this paper examines why autopoietic empiricism, i.e. the combination of autopoiesis (or self-reference) and empiricism, can be a right way to study questions concerning governance for climate change adaptation law and policy. A first section explains the approach which other authors have called autopoietic empiricism (section 1). A second section indicates the multitude of benefits autopoietic empiricism has for studying climate change adaptation governance (section 2). A third section briefly discusses potential drawbacks which, however, are mostly the same as for other approaches too (section 3). The paper concludes that autopoietic empiricism allows to foster a better understanding of communication difficulties as a barrier to climate change adaptation.

'Global health on the path to constitutionalisation?' **Atina Krajewska**

'Global health' is an increasingly important field of research and practice concerned with the profound implications of globalisation for individual and communal health. The area of global health has recently witnessed a proliferation of: a) actors (IOs, NGOs, private bodies), b) normative practices (treaties, declarations, standards, indicators), and c) levels of norm production (international, transnational, national). Consequently, it is becoming progressively difficult to identify the sources of GHL and distinguish between law and non-law (Flood&Lemmens 2013). This has contributed to the widespread criticism of GHL as incoherent and dysfunctional (Gostin 2013). At the same time, the sense of growing commonality between health law principles across the world identified in recent comparative studies of health rights litigation (Yamin&Gloppen 2011, Gauri&Brinks 2008). Interestingly, despite extensive studies on fragmentation and pluralisation thus far there is little research that analyses the normative status of norms concerning heath, and what the wider unifying normative features of global health might be. To address these issues and seemingly opposite phenomena the paper connects the fields of global health governance and human rights (Zunga et al. 2013, Fidler 2007) with increasingly prominent studies of legal pluralism and post-traditional patterns of organization. In particular it focuses on theories stemming directly or indirectly from systems theory that attempt to explain significant phenomena occurring in global law, that is: a) the growing commonality of administrative law-type principles (Kingsbury 2009), b) the informal processes of rule-making (Pauwelyn et al. 2012), and c) the self-constitutionalisation of global private orderings (Teubner 2012). Building upon these studies, the project constructs a wide-angled, sociologically informed analysis of the pluralisation and fragmentation of health law, in a global setting.

Exploring Legal Borderlands: Empirical and Interdisciplinary Approaches **Naomi Creutzfeldt and Petra Mahy**

Session One: Property

The Use and Non-Use of Leases: what is law and what is social practice? **Susan Bright**

This paper draws on the role that leases play in the management of building spaces to consider the question of what law is, and where law ends and (other?) social practices begin. It draws on preliminary findings from an inter-disciplinary EPSRC funded project investigating energy management in retail buildings (Working with Infrastructure, Creation of Knowledge, and Energy strategy Development (WICKED)). The 'middle-out' part of this study uses qualitative methods to explore how organizational practices affect energy management and includes case studies of owners and occupiers of retail space.

The role of leases is to set out the rights and responsibilities of landlord and tenant and to establish a framework for the management of buildings. Traditional leases present barriers and disincentives to the implementation of energy efficient measures in tenanted commercial space and recent years have seen the development (but not widespread adoption) of 'green leases' that facilitate improved environmental practices.

This paper will consider two issues:

1. What role do leases play? Leases are legally binding documents, carefully drafted by lawyers, but evidence from WICKED is that leases are generally 'hidden away in a cupboard', not necessarily seen by those occupying and managing the space and only dusted off if there is a dispute.
2. Why do many parties prefer to enter non-binding Memoranda of Understanding than 'green leases'? Why do some parties think that leases are irrelevant?

What do the answers to these questions mean about the role of legal scholars? If behaviour is managed not by legal documentation but is guided by 'quasi-legal' norms and extra-legal social practices is this an examination of law or non-law?

Law and social ordering in residential developments with 'common parts' **Sarah Blandy**

This paper explores concerns raised by my empirical research about the constitution of property through residents' practices and understanding, in multi-owned housing sites such as blocks of flats or private residential estates which include 'common parts'. Typically, long leases give rights to use these shared spaces 'in common with other leaseholders' but are silent on the details. Residents must continually work out day to day rules and norms of how to use this shared space (which may extend to parking, grounds and leisure facilities) in common with others; for example, Should your teenagers play football on the grass when other residents are hoping to enjoy a quiet Sunday afternoon? Can you put up pictures on the wall of the staircase outside your flat? Whose responsibility is it to clean the hallway?

Rejecting a law-first approach, my qualitative research methods – observation, interviews, etc. – were designed from the understanding that law and society are interconnected processes, enabling a study of property as lived practice constituted 'from the bottom up' rather than as a set of static legal relationships. This approach also reflects a theme in property law scholarship, that understandings of property are intuitive. Findings from my observations and interviews suggest that a form of collective property (different from that provided for in the legal documents for any particular site), which incorporates mechanisms for governance and dispute resolution, is being performed and produced by the residents.

The paper focuses on the difficulty of distinguishing law from other forms of normative ordering, and on the complex relationship between them.

Tenure as a borderland: Some observations **Dave Cowan, Helen Carr & Alison Wallace**

What might tenure tell us about the identification of "the social", of the borderland between the private and the other, and between "owning" and "renting"?

We draw on our case study of shared owners - households who both part own their property and part-rent it from a "social", ie non-profit-making, landlord - to explore how these borderlands are constructed among our interviewees. For this exploration, we focus on our interviewees' self-constructed "crisis moments", the times at which they have felt under threat in their properties. We observe the fluidity inherent in this tenurial borderland, of course, as well as the complexity of the social relationships as our interviewees try to make sense of their relationships with their homes.

Session 2: Legal consciousness

Exploring the borderlands of European Legal Culture: A comparative Study of Collective legal consciousness in the UK, Poland and Bulgaria

Marc Hertogh & Marina Kurkchiyan

In the EU, the existence of legal borderlands that separate the national jurisdictions of member states is not in doubt. Nevertheless, the shared European aspiration is for a common legal space. This raises the question whether it is feasible to remove social and cultural differences by means of harmonization of law.

Using national surveys, focus groups and interviews, the paper tests the assumption of a common European legal culture by contrasting 'collective legal consciousness' in the UK, Poland and Bulgaria. The findings indicate that, in general terms, people in all three countries share similar ideas about law. However, the consensus consists of only a thin layer. Underneath there are some fundamental differences in the interpretations of the meaning of law. People make a clear distinction between their images of domestic law and EU law. It will be argued that this may be explained by the fact that people's legal ideas and expectations are not isolated values, but instead are closely connected with their views about the political system.

These findings take us to a very different type of borderlands; the grey areas that emerge as a result of analytical construction. To advance knowledge, we impose intellectually constructed borders and create umbrella concepts such as 'legal culture'. Yet, our findings suggest that legal consciousness is strongly defined by the perception of the political system. This leads us to consider an alternative approach to European legal culture, in which the 'political' should not be left in the borderland of the 'legal' for our understanding of collective legal consciousness.

Legal Consciousness and formal-informal borderlands in Indonesia

Petra Mahy

Drawing on a set of interviews with restaurant workers and business owners in three cities in Indonesia conducted in 2013-2014, this paper describes and analyses the ways that different actors perceive and maintain the division between formal and informal types of employment regulation. Many restaurant businesses actually combine different elements of formal labour standards with an array of informal types of regulation, that is, they are located in the wide borderlands where the formal and informal meet and mix. Nonetheless, many of the interviewees expressed a very clear idea of the distinction between formal and informal types of regulation. This paper will discuss this apparent anomaly and its implications for understanding the durability of the formal-informal distinction in Indonesia.

What do we expect from an ombudsman? European narratives of everyday engagement with the informal justice system

Naomi Creutzfeldt

This paper explores how people's assumptions about legality shape their everyday expectations of the informal justice system. To advance an understanding of the underexplored connections between the distinct models of private and public sector ombudsmen, an empirical inquiry into law in action of people using ombudsmen as a pathway to redress outside of the formal court system is suggested. What do they expect from an ombudsman? Based on survey data collected from a sample of over 1000 ombudsman users in Germany and the UK, this paper applies the analytical framework of legal consciousness to parse distinct narratives of legality in ombudsman settings. These narratives are collections of attitudes that form expectations towards ombudsmen. The contributions are twofold; firstly the paper finds that while people's expectations of the outcomes from public and private sector ombudsmen differ, their expectations of the procedures to reach an outcome are the same. Secondly, four different normative roles (expected) of ombudsmen were identified: instrument, partner, translator, and supporter.

Session Three: Methods and Actors

Should we aim to generalize or to compare (or do both)?

Mike Adler

In an article on the changing fortunes of empirical research on law in the US entitled 'Law after Society', published in Law and Social Inquiry, my colleague Jonathan Simon demonstrated that there were three peaks in activity and that these were shaped by developments in American society – by urbanism, industrialisation and immigration in the 1920s, by the civil rights movement and its aftermath in the 1960s and by the massive increase in incarceration in the 1990s. An attempt to replicate this study in the UK two peaks in activity but failed to identify any comparable developments in British society of the changing fortunes of empirical research on law in the US that could account for them. This prompted Jonathan and I to conduct a comparative study of the changing fortunes of empirical research on law in the US and the UK, which was published as 'Cycles in Empirical Legal Research: A comparison of the United States and the United Kingdom' in the Journal of Law and Society last year. Since changes in society, changes in the economy and changes in the dominant political ideology did not appear to account for the differences in the trajectories of empirical research on law in the two countries, we had to fall back on more 'institutional' explanations for them and the three we came up with were path dependency, sequential development, and responsiveness to opportunities.

In this paper, I use this example to consider some of the differences in terms of what we can expect to learn between generalising from explanations that apply to a single country and comparing them with developments in other countries.

Law and legality, consciousness and technicality: interdisciplinary, methodology and (socio)legal studies

Dave Cowan & Dan Wincott

Law often seems isolated as a discipline, while socio-legal studies appears quintessentially interdisciplinary. On inspection, the interdisciplinary character of socio-legal studies may be less secure. Socio-legal or 'law and society' scholars sometimes seem to repudiate law as either a distinct subject for study or as a set of methods/methodology - Riles notes that 'culturalists' find the technicalities of law tedious or distasteful (2005: 976). 'Law-in-the-books' and formal descriptions of legal practices are relegated to (at most) a secondary position and scholars deploy methods from other social sciences and/or humanities. Yet without a sense of Law - as subject matter and/or methodology, interdisciplinary legal studies become impossible. Focusing on the 'legal' in socio-legal studies, we reflect on legal subject matter and methodology, engaging with concepts of legality and legal consciousness, while building on Riles' invitation to 'take on legal technicalities'. A decade ago Silbey announced that 'legal consciousness' was 'conceptually tortured and ultimately ... compromised', suggesting that it might be 'tossed into the storage closet of academic fashion' (2005: 323). Associated with a move away from a 'law-first' approach, legal consciousness, generated a sense of the ubiquity of legality (ever-present within, almost saturating, the social). As a consequence of being 'found everywhere', legality was emptied of content (Silbey 2005). Drawing on comparisons with sociology, economics and political analysis, we reconceptualise legality as a 'moment', potentially (but not necessarily) present within social processes. We consider this 'legal' moment of social relations, through critical interrogation of legal technicalities and analysis as (or from the perspective of) research methodology and offer case-studies of our approach.

Too trifling to be significant' – moving boundaries of 'permitted work' in claims for incapacity benefits across the twentieth century

Jackie Gulland

Across the twentieth century, claimants of sickness and incapacity benefits have had to prove that they were 'incapable of work' in order to qualify for benefit. The idea of incapacity for work requires an understanding of the meaning of the term 'work', a concept which has a commonsense simplicity but which is much more difficult to define in practice. This paper forms part of a project which considers the development of understanding of the concept of work in claims for incapacity benefits in the UK across the twentieth century. The paper focusses on the particular borderland between 'work' and 'not work', where claimants of benefits have been permitted to do small amounts of paid work while retaining entitlement to benefit. This concept of 'permitted work' has its roots in the early twentieth century when claimants of sickness benefits were sometimes entitled to benefit if any work that they did was considered to be sufficiently trivial to not count as 'work'. Policy and case law on this has changed across the twentieth century, with particular activity in the post-war period once the legislation introduced a clause permitting work 'under medical supervision'. This paper uses archive material on appeals against refusals of benefit and policy documents and case law to consider the social meanings of the moving boundaries of permitted work.

The changing concept of 'permitted work' operates at the borderland of 'work' and 'not work'. It helps us to understand how both social and legal constructions of the concept of 'work' are important in the construction of benefits entitlement.

Session Four: Administration

From Medical Guidelines to Medical Norms

Friso Jansen

First they were only guidelines and now they are rules, will medical guidelines soon be adhered to like law? Controversially medical guidelines have been used by healthcare insurers, government and medical tribunals in a much more stringent and normative way than envisaged by their drafters. This article asserts while guidelines started out as an attempt to keep out the 'law', paradoxically they have provided the basis for 'law-like' rules in the medical field.

This paper examines the social process of constructing medical guidelines in England and the Netherlands: focusing on the evidence for how guidelines are used normatively to make judgements on the quality of medical care and of medical professionals. The article outlines how treatment guidelines are drafted by medical professionals as part of the wider project of Evidence-Based Medicine. Asserting that they are a form self-regulation, it is proposed that these guidelines were originally conceived by medical professionals as a form a self-defence in response to pressure from governments. Using an interdisciplinary qualitative research design, which combines stakeholder interviews with document analysis, empirical case studies of the Netherlands and England are presented. An innovative comparison between these two countries demonstrates the contextual nature of guideline construction and use.

This paper highlights that the normativity of guidelines is context dependent and contested, but that the project of guideline construction has created its own momentum and is unlikely to reverse in the near future. When working in the murky waters of the legal borderlands, we must understand the socially constructed transition from non-legal to legal. Guidelines provide a critical example of how social actors unintentionally create law-like rules: have medical guidelines been compromised by other interests and agendas?

Domestic Compliance with International Normative Frameworks relating to Disaster Management

Ronan McDermott

Law carries the potential to structure efficient and effective disaster management, for example through the clarification of roles and responsibilities and through providing a framework for accountability. It also carries the potential to undermine disaster management, for example through the erection of burdensome bureaucratic obstacles. The recognition of the central importance of law in disaster management has arguably fueled the emergence and development of various normative frameworks relating to disaster management at the international level in recent years. Nonetheless, disasters have largely evaded the attention of socio-legal scholars, especially when compared with the gradual accommodation of disaster studies by sociology and other cognate disciplines. This paper argues that the phenomenon of domestic compliance with international norms, a well-established area of scholarship, is a fruitful starting point in addressing this deficit. By drawing on existing bodies of literature in sociology, political science as well as international and comparative law, and by grounding the analysis in case studies drawn from Indonesia and Ireland, this paper maps a range of research avenues by which disaster studies can be linked more systematically with socio-legal studies to the mutual enrichment of both fields.

Determining the boundaries of the public and private spheres

Claire Bessant

Whilst English law has never provided explicit protection for family privacy (beyond that now offered by Article 8 of the European Convention) it has been suggested that until the nineteenth century, the notion of family privacy 'largely shielded the family from state intervention' (Diduck and Kaganas, 2012, p547). It is arguable that in the twenty-first century an ideology or ethic of family privacy still underpins the law and aids in its interpretation.

This ethic or ideology of family privacy is founded on certain key assumptions; that the family is synonymous with the private sphere (Fineman, 1999; Fahey 1995) and that the home is a private place, a refuge from society (O'Donovan, 1985). It is arguable, however, that as family members increasingly reveal intimate details of family life online and in public, these longstanding assumptions about the private nature of the family and the extent of the private sphere need revisiting.

Of course many conceptions of the public and private sphere exist. For some the public sphere is a world of debate (per Aristotle, Arendt and Habermas); for others the public sphere is synonymous with the state (Fineman); and the private sphere has been defined to include both the family and the market (Gavison, 1993). Critical feminists such as Olsen (1983) have alternatively argued that there is in fact no separate private sphere, since the state defines those aspects of life which are 'private'.

Ultimately this paper seeks to determine where the boundary of the private sphere now lies, whether the private sphere should still be equated to the family and the home and raises the question 'are traditional social and legal notions of family privacy still appropriate?'

Session Five: Meet the Author – 2015 Hart-SLSA Prize for Early Career Academics

Joint winner; Kirsten McConnachie, Governing Refugees: Justice, Order and Legal Pluralism, Routledge, 2014

Discussant: Julio Faundez

'Governing Refugees' is an ethnography of governance and justice among Karen refugees living in camps on the Thailand-Burma border. It is the first book to examine administration of justice in refugee camps and the first socio-legal analysis of camp governance. Focusing on the work of refugees themselves in coping with and adapting to encampment, it also situates refugee-led governance as one component of a complex environment shaped by a variety of local, national and international influences. In doing so, it challenges assumptions of refugee camps as anarchic and dangerous and recognises that they can instead be spaces of broadly successful self-governance and strong social capital.

This session will briefly outline the main findings of 'Governing Refugees'. It will also relate them to a new research project examining local governance among another population of refugees from Burma, the Chin. In contrast to the Karen, the Chin have tended to become urban refugees. Contrasting the experiences of refugees in camps and in cities adds an extra dimension to the analysis presented in 'Governing Refugees', and further insight into governance, justice and security as it is experienced by refugees.

Session Six: Corporate Banking

Legal Transplants and Local Contexts – the Troubled Case of Afghan Banking Reform -

Michael Leach

Legal transplantation has been studied quite extensively, and with some controversy, at least since the 1970s with Alan Watson's pioneering work on the subject. However, the question how whether and how law travels across borders is still controversial because prevailing theory is chronically unable to explain or predict why some transplants 'work' and others 'fail'. This paper will study the Law of Banking that was transplanted to Afghanistan by experienced, international banking exports as a 'best practice' legal reform. Despite the law's merits, it failed to facilitate the growth of a modern, functional regulatory environment for the country that it was expected to do. In fact, seven years later in 2010, Afghanistan's banking and finance system suffered a rude shock when Kabul Bank, the largest private bank in the country, nearly collapsed after the public learned that the bank was missing nearly $1 billion of depositor assets. Although the crisis was averted when the Afghan state stepped in to seize the bank and guarantee its deposits, subsequent investigations revealed that the Afghan banking industry as a whole suffered from ineffective supervision and was wracked by bountiful problems of poor accounting controls, related party lending, and outright fraud. This paper will explain why the Afghan banking sector evolved the way it did over the past decade by employing a unique three-layered methodological approach based on complex systems and game theory that can elucidate how contextualized even something as technical as banking regulation can be, especially in a post-conflict setting. It is only by understanding the idiosyncratic socio-economic context in which banking occurs that can one understand why a 'best practice' transplanted banking law was unable to deliver the kind of dependable and stable banking sector that its architects envisioned for Afghanistan.

Creditors' priorities in insolvency proceedings: a contribution to the theories of institutional complementarities -

Federico Mucciarelli

This work aims at assessing the institutional complementarity between creditors' priorities in insolvency proceedings and other social security mechanisms, having regard to the U.S. and a sample of relevant E.U. member states.
The first goal of insolvency law is to address creditors' collective action problems. On top of that, insolvency law also affects the redistribution of debtors' assets among creditors, by way of rules on creditor priorities, claw-back actions and set-off rights.
This "redistributive" function of insolvency law is particularly clear having regard to rules prioritising certain creditors over others. Many jurisdictions, indeed, in order to protect specific classes of creditors, curb pre-insolvency entitlements stemming from private bargaining between creditors and debtors. The political decision on whether to prioritise certain claims, disregarding pre-existing entitlements, or to fully respect private negotiations, reflects the hierarchy of interests that has prevailed in a specific country and the regulatory strategies adopted by policy-makers. The regulation of employee priorities is a telling example of those "redistributive" rules. Many jurisdictions prioritise, at least in part, employees' claims for unpaid wages and security payments over claims of other creditors. Employees, however, could also be protected by way of tax-paid social security mechanisms or job-protection rules.
This example makes clear that, in order to understand the impact of "redistributive" insolvency rules, they must be assessed in parallel with other legal and social institutions, such as welfare-state mechanisms or employment protection. More precisely, the relationship between creditors' priorities and other institutional mechanisms is a test for theories on institutional complementarities, since "redistributive" insolvency rules could either aim at equilibrating weaknesses of social security institutions or reinforce the impact of strong social security mechanisms. This work, therefore, will attempt to assess the relation between creditors' priorities and social protection mechanism in a sample of states (U.S., Germany, U.K., France and Italy).

Corporate Social Responsibility and Development: a Socio-Legal Approach -

Renginee Pillay

Corporate Social Responsibilty (CSR) is now a well-established area of academic study. Moreover, in recent years, CSR and Development has become an important area of study in its own right. However, the socio-legal dimension of this field of study has somewhat been neglected as the majority of the literature appears to be in the areas of business and management. In fact, CSR is not usually seen as being a law subject since a number of definitions of CSR tend to use terminology such as 'beyond the law' and 'voluntary'. This paper seeks to address this lacuna by focusing on the socio-legal dimension of CSR and Development.
It argues that since the concept of CSR is fundamentally about the relationship between the corporation and society (that is, the nature of the corporation, in effect, the corporate purpose), it is undeniably within a legal, and, more so, a socio-legal framework. In this respect, the paper looks at the limits of CSR as a purely voluntary concept as well as the role of the newly emerging corporate accountability movement (its main emphasis being on answerability and enforceability) in international development. From this perspective, the paper draws on empirical (qualitative) data gathered through fieldwork in the developing country of Mauritius, the first jurisdiction in the world to have implemented a CSR legislation, to argue that a socio-legal approach allows for a richer and more insightful understanding not only of CSR and development in practice but also of the role played by the law. The paper concludes by reflecting on the implications of this for socio-legal research in this area.

Rethinking Surrogacy Laws **Debra Wilson and Rhonda Powell**

Session One: Surrogacy, parenthood and construction of the family **Chair Debra Wilson**

Surrogacy and the Problems of the Binary, Two-Parent Model of Legal Parenthood **Alan Brown**

This paper will argue that surrogacy poses particular problems for law's approach to legal parenthood. It will be suggested that determinations of legal parenthood remain premised upon, a binary, two-parent model, based around the traditional, separate gendered roles of 'mother' and 'father'. This approach is rendered problematic in cases of assisted reproduction, where genetic material from donors is used and where the intended social parenting may not coincide with the genetic progenitors.

The paper will further argue that such issues are exacerbated by the factual circumstances in cases of surrogacy. Firstly, due to the complete reliance on gestation as the factor to determine legal motherhood, the surrogate is considered the child's legal mother at birth. Secondly, the continued privileging of marriage within determinations of legal fatherhood means that if the surrogate is married, legal parenthood will be ascribed to a man with no genetic relationship to the child, who also has no intention of forming any social relationship with that child in the future. Finally, the paper will suggest that the divergence of approaches to legal parenthood in cases of surrogacy different jurisdictions creates further complexities due to the growth of international surrogacy.

Therefore the paper will suggest that the Human Fertilisation and Embryology Act 2008, through applying the same parenthood provisions to all cases of assisted reproduction, creates incongruous results in surrogacy cases, which they were are not designed for. Consequently, it will be argued that it is necessary to develop a distinct approach to legal parenthood for surrogacy cases. To conclude, the paper will tentatively suggest that such an approach should be premised upon intention and then consider the implications of this suggestion for wider determinations of legal parenthood.

Surrogacy: A challenge to the traditional legal construction of family. A Nordic perspective **Freya Semanda**

Reproduction by the means of surrogacy fundamentally challenges the traditional legal regulation of families and personal relationships. The roman principle 'mater semper certa est' (the mother is always certain) does no longer hold truth, which leads to a blurring of the legal concept of motherhood. The aim of this research paper is to examine the way in which relationships resulting from surrogacy arrangements are in- or excluded from legal protection. I will analyze and scrutinize recent legal practice on surrogacy from different courts such as the European Court of Human Rights, the Court of Justice of the European Union and domestic Danish courts. The ambition is to illuminate the way in which law deals with surrogacy and how surrogacy can pose a threat to traditional legal constructions and conceptions of 'family', 'motherhood' and 'fatherhood'. Taking a children's perspective, especially drawing on the principle of non-discrimination and the right to protection of private and family life, I will argue that not only the regulation of surrogacy, but the regulation of families and relationships in general, is in need of an update in order to fully embrace, acknowledge and protect relationships, that might not correspond to the traditional nuclear family model, but are nonetheless meaningful and important to the people involved.

What have genes got to do with it? **Rhonda Powell**

In New Zealand surrogacy regulation, the existence of a genetic connection can be pivotal. The Advisory Committee on Assisted Reproductive Technology's Guidelines on Surrogacy Arrangements Involving Assisted Reproductive Procedures treat surrogacy as unethical if there is no genetic relationship between one of the intending parents and the child. Further, Immigration New Zealand requires a genetic connection with one New Zealand parent before a New Zealand visa is granted to a child born overseas to a surrogate mother. Yet genetic relationships are irrelevant under the Status of Children Act 1969, which determines a child's legal parents. Similar inconsistencies exist in other jurisdictions.

Surrogacy is the latest form of family formation to challenge the importance of a genetic parent-child relationship. A surrogacy arrangement can include up to seven different adults (egg-donor, sperm-donor, mitochondrial donor, surrogate, surrogate's partner, intending parents), some of whom have a genetic relationship with the child and some of whom do not. Some but not all of these adults will have an ongoing social relationship with the child.

This paper considers the genetic parent-child relationship and the role that this should play in surrogacy regulation. It is argued that a consistent approach should be taken for the purposes of immigration, assisted reproductive treatment and parenthood laws.

Session Two: Issues in international surrogacy **Chair Rhonda Powell**

Exploitation in International Paid Surrogacy Arrangements

Stephen Wilkinson

Many commentators have suggested that paid surrogacy, especially cross-border or international paid surrogacy, is (or is very likely to be) exploitative. Taking such concerns as its starting point, this paper addresses the following questions.
(1) How defensible is the claim that international paid surrogacy is exploitative and what could be done to make it less exploitative?
(2) In the light of the answer to (1), how strong is the case for attempting to prohbit international paid surrogacy?
After making some preliminary points about exploitation, it goes on to argue that concerns about exploitation can in principle be dealt with just by improving surrogates' pay and conditions. However, doing so may generate or exacerbate problems with the surrogates' consents. Foremost amongst these is the argument that surrogates from economically disadvantaged countries cannot validly consent because their background poverty is coercive. Several versions of this argument are examined and I conclude that at least one has merit. We do therefore have cause to be concerned about the quality of surrogates' consents.
I conclude that while ethically there is something to be concerned about here, paid surrogacy is likely to be in no worse a position than many other exploitative commercial transactions which take place against a backdrop of global inequality and constrained options, such as poorly paid and dangerous factory work. Hence, there is little reason to single surrogacy out for special condemnation. Similarly, on a policy level, the case for prohibiting international commercial surrogacy is weak, despite people's legitimate concerns about consent and background poverty.

Commercial vs altruistic surrogacy- a principled or imperceptible distinction? **Debra Wilson**

The New Zealand Human Assisted Reproductive Technology Act 2004 makes it an offence, punishable by imprisonment and/or a $100,000 fine, to give or receive valuable consideration for participation in a surrogacy arrangement. An exception is made for certain 'reasonable and necessary expenses'. This prohibition on commercial surrogacy is usually justified by reference to ethical concerns relating to exploitation of the surrogate and commodification of the child, and is intended to draw a distinction between commercial and altruistic surrogacy arrangements. Similar provisions exist in the UK, Australia, and other jurisdictions.
What does 'valuable consideration' mean? What are 'expenses' and when are they 'reasonable and necessary', as opposed to unacceptable and imprisonable?
This paper will examine surrogacy cases in New Zealand, Australia and the United Kingdom to consider how judges have responded to this challenging distinction.

Session 3: Surrogacy Workshop: Networking and Collaboration Opportunities

Old dilemmas, new controversies: Children in international adoption and global surrogacy **Gabriela Misca**

Over the past decades, the movement of children across borders has become a global phenomenon of family formation. International adoption of children has acquired a tradition with (often) humanitarian connotations, in which vulnerable children from impoverished countries are 'rescued' and in their best interest, placed with adoptive parents in wealthy countries. Whilst in intercountry adoption there is no intention to 'create a baby' as the adoptive child already exists, increasingly children are created through surrogacy arrangements across the globe, a process driven by the commissioning parents.
The aim of the presentation is to draw parallels between the burgeoning field of surrogacy and the long-standing field of adoption, with a focus on children's development and children's rights, highlighting what surrogacy can learn from adoption. The presentation draws on research findings on the outcomes of international adoption and its impact on various aspects of adopted children's development – including issues of cultural and self-identity identity development - and focuses on the challenges for surrogacy field to make use of lessons from intercountry adoption research. The relevance of further research and messages for both policy and practice will be highlighted.

Law and Justice in Colonies and 'Post'-Colonies — Raza Saeed

Session One:

Legal instrumentalism in pre and post-¬-Independent Zimbabwe: Assessing understandings of law by the State

David Hofisi

Pre-colonial Zimbabwe was a typical jurisdiction in which law was promulgated to implement the State's goals of segregation, discrimination, repression and oppression of the native majority. However, this did not end with political liberation. The State continues to use law to suppress dissenting voices and perpetuate limited access to resources by an elite and well connected minority. By analysing pre and post-independence land laws, law and order legislation and constitutional court pronouncements, the paper concludes that there is no disconnect in the understanding of law on the part of pre and post-colonial Zimbabwean State. There is no discernible ideological difference in the conception of the rule of law neither is there any disconnect in the understanding and use of law. Liberation movements, it is argued, were mainly opposed to the non-representative nature of colonial governments. Their governance models do not show any corresponding revulsion with the use of law to exclude, segregate and discriminate in ways congruent to those used by the colonial governments which they opposed. The paper contributes to the cannon of legal history and adds to the burgeoning literature on understanding of law and legalism in the post-colonial State. It locates colonial history as the foundation for understanding legal instrumentalism in post-colonial Zimbabwe.

Legal Parenthood in Hindu Law

Padmapriya Srivathsa

Hindu law governs about 800 million people in India and the term 'Hindu' is used as a default category to include persons who are not Muslim, Christian or Parsi. With the arrival of the British as colonizers, pre-modern Hindu jurisprudence was gradually replaced by modern liberal principles, leading to the creation of Anglo-Hindu law. Several common law principles, such as restitution of conjugal rights and welfare principle, found their way into a traditional legal system having its roots in the Vedic literature. This paper explores the creation of the legal subject in this body of law and outlines the trajectory that led to the creation of gendered subjects in Hindu family law, especially during the years of transition from the colonial to the post-colonial regime.

From Colonialism to Coloniality: Deconstructing the Logic and Form of colonial law in British India

Raza Saeed

Discussions on 'colonial law' are often confined within the discourse on colonialism as a historical event, the problematisation of which either call for a nostalgic return to the legal forms of the past or for the propagation of those legal mechanisms that emerge from a radical rejection of 'alien impositions'. This paper argues that in order to understand the nature of colonial laws and the post-colonial situation, it is not just colonialism within the legal frameworks that needs to be problematised and challenged, but Coloniality. Divesting the notions of colonial law and Coloniality from the actual historical event of colonialism changes the mode of our analysis.

Taking a lead from Walter Mignolo and Anibal Quijano, the assertion here is that Coloniality, and therefore colonialism that stemmed from it, was not only a political act of conquest or domination. Rather, it involved a 'cognitive model' both for the colonisers as well as the colonised, which was based on introducing a hierarchy of knowledge, customs and traditions, as well as racial, cultural, temporal and historical differentiation. In this argument, Coloniality emerges as a systemic tendency which can be present in systems other than those emerging from the European traditions of modernity/rationality. It focusses the discussion on the totalitarian trends that negate and exclude difference as well as conflict with other totalities.

The paper expands on the link between Coloniality and Law. It argues that, through the instrumentality of law and the state, Coloniality and colonialism introduced three major tendencies within the socio-legal terrain of the Indian sub-continent. These are identified as the introduction of Colonial Logic, the Transformation of Rationality and the Fetishisation of Legal Form. The paper proposes that this lens allows us to further our analysis of the socio-legal setup of British India, as well as shed light on the legal issues that grip Pakistan in the post-independence era.

Session Two:

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Between 'Activism' and 'Pragmatism': The changing narrative of Public Interest Litigation in India and Judicial Meanderings of the Supreme Court

Jhuma Sen

The formal premise of my argument is to understand how the Indian Supreme Court as the law making agency has negotiated (judicial) activism with (political) pragmatism while attempting to balance the needs of a postcolonial nation heading into an industrial future. The informal premise of my proposition is to understand how the shift in the priorities of the court from activism to pragmatism is also symptomatic of the deeper realignments of political economies of developing nations.

The post-Emergency Supreme Court has been described not just as the Supreme Court of India, but 'the Supreme Court of Indians' when the Court radically articulated the relationship between the citizen and the state by reaffirming procedural and substantive due process. The emergence and evolution of public interest litigation (PIL) was one of the most distinctive features of this procedural aspect of the Court's changing approach. While the advent of the PIL in the judicial 1980s was widely hailed as the strongest catalyst in the judicial articulation of social and economic rights, hitherto couched in the language of non-enforceable Directive Principles of State Policies, the new economic policies which commenced in the 90s marked a shift in the Court's activism of the 1980s.

The 1990s brought structural adjustments in the economy as well as the judicial governance of the country. The judicial behavior of the 80s which had transformed the court from a mere apparatus of governance into an institutionalized social movement had to be reimagined at the backdrop of a changed economy. What language did the court employ to undo its activist past and strategically realign the same with an industrial future? Was this act of undoing uniform across all sectors of judicial intervention? How did this jurisprudential realignment negotiate its boundaries with the judicial language of people which was created by the same court? And, finally, how did these alterations impact the lived reality of its people? These are some of the questions the paper shall engage with.

Study of the Application of the Doctrine of Stare--Decisis in Some Islamic Law Cases in Northern Nigeria

Ahmed Salisu Garba

The doctrine of stare-decisis originates from the common law of England and it is applied in all courts in common law countries including Nigeria. Some Islamic Law scholars however have criticized the application of this doctrine in Islamic law cases on a number of grounds some of which are that its application retards the development of Islamic law and rubbishes its discursive nature. This paper evaluates the application of the doctrine in some Islamic law cases in Northern Nigerian. The paper reviews some Islamic Law Cases and demonstrates that in contrast to some of these misgivings, the application of the doctrine has not hampered the development of Islamic law and practice in Nigeria.

Session Three:

Post -colonial intervention: Victim Participation at the International Criminal Court – the real at The Hague and the impossibility to symbolize trauma

Gianna Magdalena Schlichte

Modes of victim participation at international(ized) Courts are topic of controversial discussions among practitioners and scholars likewise. Since the implementation of victim participation at the International Criminal Court (henceforth ICC) and the Special Tribunal for Lebanon, making victim participation 'meaningful' within the international criminal legal framework is the topic of numerous publications. While there are feminist contributions to the debate, there are hardly any post-colonial analyses of the issue, yet I consider it necessary given the post-colonial situatedness of the ICC to fill this gap. Against this backdrop, an analyse of the narratives of truth and justice for victims and giving a voice to victims drawing on Derrida´s critique of justice, Spivak`s critical conception of representation within the post-colonial framework and the insights of trauma theory on the effect of trauma on the symbolic order and the concept of the unified subject will be the topic of this paper.

Through the elaborated theoretical lens, the exclusive violence of the practice of victim participation is revealed and reflecting the jurisprudence on the victims´ interest, I will carve out what is considered to be the "relevant victim" in the eyes of the judges at the ICC. Who fits into the narrow legal framework defining who is allowed to speak for whom about what. In so doing, I will draw on legal texts and empirical data acquired during my research in Kenya and The Hague. Furthermore, I will analyse genuinely western concepts with regard to truth and justice as achievable through law and the therapeutic healing potential of participation in the legal process and its fixing function with regard to the nation state and the related concept of an autonomous, rational subject. Legal process is according to this theoretical conception productive of a notion of closure that is theoretically deemed to fail and haunted by the ghosts of the traumatic real. Hence, it is revealing to trace the moments where this real enters the legal arena and traces of the inherent undecidability of justice pop up.

Looking Backward for the Future of the Right to Development: Communitarian is as the 'Old Wine in a New Bottle' **Salim Bashir Magashi**

Traditionally African societies developed collectively. However, the influence of colonialism and globalisation forced African communities to become individualistic shattering the erstwhile harmony that existed between and among them. In an effort to retrace this communal egalitarianism, the African Charter on Human and Peoples' Rights not only used the African philosophy of Communitarianism as a guiding principle it also provided a unique catalog of rights peculiar to the African people. This paper commends this giant stride and argues that looking backwards can indeed help African countries to solve the unending socio-economic crisis of poverty, insecurity, women and children's rights as well as other aspects of its economic development. It examines the issues from a legal perspective through the lens of the jurisprudence of the African Commission on Human and People's Rights particularly as it relates to collective rights under the Charter and more specifically on the right to development. It concludes that the right to development as a collective right against identified duty-bearers can serve as a unique basis for the future of the regions sustainable development.

Public trust in policing in Hong Kong **Maggy Lee and Michael Adorjan**

Until the recent events of Occupy protests and heated debates about police actions against student protesters in Hong Kong, opinion surveys have consistently shown a remarkably high level of public confidence in the local police. In a survey of over thirty world cities conducted by the United Nations, for example, Hong Kong citizens were found to be 'the most positive about police performance'. But what do people actually mean when they say the police are doing 'a good job'? This paper is based on the focus group findings of a three-year research project on the fear of crime and trust in crime control in Hong Kong funded by the HK Research Grants Council (HKU740211H). It argues for the need to conceptualise citizens' everyday understandings of policing and fairness as socially situated and culturally embedded in a low crime but restless society. More specifically, it suggests there are at least two contrasting ways of making sense of public confidence in police: an instrumental account where people believe the police are there to fight crime, and an expressive account where people are more concerned with whether police are successful in representing social values and cohesion. Overall, the paper aims to theorize the co-existence of two contrasting approaches to understanding policing in the Hong Kong case study and to draw out the implications for policing research in postcolonial societies.

Culture Clash, Peace and World Order — Nwudego Nkemakonam Chhinwuba

Session One

Co-opting Human Rights Narratives to Justify the 'Security State' **Lynsey Mitchell**

The aftermath of the 9/11 attacks has often been characterised as involving a turn to the 'security state' by Governments around the world. The 'security state' can be described as being encased within a masculinist protectionist narrative that presents a benign image of powerful armed forces, police and intelligence services protecting the nation. The result of this narrative was domestic legislation such as the US PATRIOT Act and the UK Anti-terrorism, Crime and Security Act 2001, whose resulting effects on civil liberties have been well-documented.

However, this paper suggests that despite the continuing opposition to the eroding of civil liberties, the message promulgated by this protectionist narrative has been assimilated largely unchallenged into Western public consciousness. So much so that these masculinist protectionist narratives, which have increasingly resulted in the erosion of civil liberties or restriction of human rights, now actually utilise the language and values of human rights to justify their aims. This is evidenced by the consistent invocation of such language to justify military action around the globe. This was initially seen in the lead up to the military intervention in Afghanistan, where the protection of women's rights was invoked as a leading justification for attacking Afghanistan. Recourse to similar language and ideology can be seen in the debates around military action in more recent crises, e.g. in Libya and then Syria where intervention was characterised as protecting democracy and freedom of expression and in the recent discussions on military action against the Islamic State, where protection of 'civilised values' was repeatedly invoked.

Thus this paper seeks to question whether the real danger of unqualified acceptance of the protectionist narrative post 9/11 has been the co-opting of liberal human rights language and ideology in order to silence opposition.

The Right to Self-Identify and Cultural Belonging in Post-Conflict and Divided Societies **Elizabeth Craig**

'To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice.' (para 32, Copenhagen Document)

This paper will examine the role of the right to self-identify in addressing tensions relating to cultural belonging and group membership in post-conflict and divided societies. The paper will begin by exploring the historical and normative roots of the right to self-identify, as well as the development and consolidation of such a right within European minority rights law. Particular emphasis will be placed on its role in the work of the OSCE High Commissioner on National Minorities and on its application by the Advisory Committee established under the Framework Convention for the Protection of National Minorities. The paper aims to provide a critique of the Framework Convention Advisory Committee's current position, and to consider the usefulness of a cosmopolitan framework in addressing tensions between the right to self-identify and different approaches to cultural belonging and to group membership. The paper will discuss the role of choice in recognition of competing affiliations and the wider implications for inter-generational transmission of culture and peaceful coexistence in post-conflict and divided societies. Case-studies to be drawn upon include Northern Ireland and Bosnia and Herzegovina.

Session Two

ELECTION DISPUTE RESOLUTION AND THE QUESTION OF JUSTICE IN NIGERIA **Muiz Banire**

It is getting widely accepted that key to electoral democracy is the concept of free and fair elections. This has been critically in jeopardy in Nigeria for so many years that it is ultimately warranted that concerted efforts must be embarked upon to ensure that we do not have a democracy anathema in the committee of nations. It is in this vein that this paper seeks to critically examine the performance of Nigeria in electoral democracy, identify problems and challenges bedeviling electoral dispute resolution and to proffer alternative to what is currently obtainable in terms of electoral dispute resolution in order to arrest the degeneration of confidence in the system and prevent the resort to violent choice as being canvassed in some political circles.

GOVT POLICIES, CULTURE AND SURROGACY IN WEST AFRICA: ISSUES ARISING. **Dennis Odigie**

In most countries in the West African sub-region, family planning programs only propagate and provide medical assistance for child spacing with a view to controlling population explosion. These programs are visibly exclusive of Assisted Reproductive programs such as I.V.F(In-vitro fertilization) and surrogacy, thereby leaving out the interests of families who desire to have children but are unable to. Second, most West African traditional and cultural beliefs stigmatize women who are unable to biologically procreate. Such cultures also do not recognize surrogacy as an alternative mode of child bearing. The net effect of the foregoing is that a woman who is unable to bear a child of her own is left in a quandary as she cannot openly and legally seek the option of surrogacy. This paper critically examines the uncomplimentary scenario thrown up by the aforementioned issues of the unfair government policies and cultural beliefs obtainable in most societies in the West African sub-region. The paper also offers suggestions on how these challenges can be surmounted with a view to accepting surrogacy as a legitimate alternative to direct child bearing.

Session Three

SEA LEVEL CHANGES, RESOURCE LOSSES AND IMPLICATIONS FOR COMMUNAL AND SOCIO-POLITICAL CONFLICTS AROUND THE COASTAL SLUM AREAS OF LAGOS, NIGERIA **Alabi Soneye**

Interest on disasters around coastal environment is on the increase and with significant attention paid to the causes, their impacts and adaptation strategies by victims in low income countries. Though the West African coastline is infamous for large-scale coastal disasters such as earthquakes and tsunamis, recent effect of sea level rise and property losses occasioned by unsustainable anthropogenic activities such as oil and gas exploration and projects development are generating notable environmental disorders in many places. Their poor management results in potential communal and socio-political conflicts of both local and regional magnitude. The paper attempts a discourse on sea level changes around the Nigeria coastline, assesses the implications on loss of land resources of the Lagos coastal area empirically using remotely sensing data and geo-information system analysis; and, discusses the implications for communal and socio-political conflicts around the slum settlements in the area. The results show that except purposeful decisions are taken, a large expanse of valuable properties will continue to be lost to the changes in sea level due to both natural and human activities locally and beyond. This will make the urban poor who live in the highly populated slums to become more volatile because they depend on the land resources for means of livelihood significantly. The implication for peace and order in the neighbouring high-brow areas of the region is presented in the paper

From Ancient to Modernity: Uneasy Transformation of the Culture of British West Africa and Unending Tensions **Amos Enabulele**

From the very first contact with the outside world through the machinery of colonialism, the sharp differences between the culture of the colonised people and those of the British made it inevitable for both cultures to maintain a coordinate status of superiority. For the indigenous people, their culture was their law and the substratum of communal cohesion, so that cultural transformation affected the jurisprudential foundation of their existence and invariably created disequilibrium in societal relations. To the British, indigenous culture was 'barbaric' and antithetical to colonial institutions.

Bashed by the rushing wind of modernity that would not stop at the dyke but got stronger ashore to the extent of being able to wipe away the cultural heritage of the people, culture and indeed customary law had to adapt under the transformative influence of foreign cultures and laws. Not surprisingly, very early in time, the adaptive and flexible character of native West African culture was judicial acknowledged.

This transformative influence, however, was and continues to be an uneasy one that culminates in recurrent tensions between indigenous culture and modern laws. The cumulative effect of these is mainly reflected in the uneasiness, if not the caution with which judges who were raised with strong cultural bias relate with legal rules that seek to ameliorate the ancient but 'uncivilised' ethos of their culture. On the other hand, even in instances where judges had risen to the occasion to declare an ancient and presently 'uncivilised' custom unenforceable by judicial means, the custom retains its normative character and continues to be practiced within its inner circle of influence.

Based on the experience of West Africa, this paper explores the tension that often arises from the transformation of ancient ethos of culture through the intervention of the forces of modernity with a view to showing its impact on law enforcement.

World Order: Understanding the Interlock of Custom, Culture and Religion as a Fundamental Tool of achieving Peace **Nwudego Chinwuba**

Culture, Custom and Religion are intricately interwoven, each striving for a unique and superior position and yet pulling on one another for meaning and relevance. Ultimately, all three are the forbears of political stance and, perhaps, relevance. Custom and culture are more related. The two would usually interact within the society, implicating the question of sovereignty. Religion is different, more often than not extending its frontiers beyond its geographical origin. Clash ensues because the line between custom, culture and religion are often blurred. When politics is engaged, an avenue is made for the proper outlet of the ideas contained in the three. Politics envisages sociological evolution for success while the other three thrive in being static unless conscious and deliberate attention is paid to them for change and growth. Through socio-political evolution, many societies attain a reasonable level of co-operation, civility and peace. This evolution must encompass custom, culture and religion. When this is not the case, but only custom and culture are given pre-eminence in governance, in the form of secularism, an avenue is immediately provided for an internal or external attack on the structure of that society with religion as an impetus. This would normally flow from reflection, rage to chaos and reaction. Against this background, this discourse will delve into the nature of and relationship between custom, culture and religion respectively and in relation to each other. The clash which may ensue from failure in politics and the question of secularism within an evolving paradigm of the world as a global village is also examined. Implicated in this line of discourse is the response which should be adopted where cross regional outcomes are negative, thereby forming the source of threat to peace and destabilisation. The analysis will draw principally on the Nigerian experience.

Refugee and Asylum Law: Theory, Policy and Practice **Dallal Stevens**

Session One: Comparative International Refugee Protection (1)

'Asylum, migration and natural disasters: A new perspective from the Americas' **David Cantor**

There has been considerable discussion among scholars of the challenges to the international protection framework posed by environmental problems and climate change. It is fair to say that such scholarly interest in the migratory implications of these environmental factors has far outstripped the State response in terms of law and policy. Yet even among scholars opinion remains divided as to the true implications of these natural phenomena for our conception of 'refugees' and the future of refugee protection. This paper leaves behind stale and abstract debates about whether the refugee regime can or should accommodate these 'new' flows of disaster migrants. Instead, it draws on research across States in the Americas (North America, Central America and South America) to show how these States do in fact already use both refugee and migration law and policy to respond to flows of persons from States affected by a natural disaster. It shows that – at least in the Americas – calls for a new treaty to respond to the protection needs of persons comprising these flows are both presumptuous and unlikely to bear fruit in view of current State practice.

Instead, it is argued that an essential first step towards addressing the cross-border migratory consequences of natural disasters consists rather in seeking alternatives that positively guide the use of existing refugee and migration law and policy to the benefit of disaster migrants. In adopting this stance, the author suggests that analytical frameworks based on the idea of crisis migration may serve to blend together what are, in reality, rather different types of flows and migratory situations. The author concludes that the approaches adopted at the national and regional level in the Americas hold valuable lessons for future efforts to develop a humanitarian response in other parts of the world for the benefit of migrants fleeing from natural disasters.

'The role of international law in defining the protection of refugees in India' **Mike Sanderson**

India has not acceded to either the 1951 Refugee Convention or its 1967 Protocol. The admission and protection of refugees in India continues to be controlled by the 1946 Foreigners Act, which gives the state sweeping powers to detain and expel all foreigners in India. India is bound by a wide range of general human rights and customary norms that combine to produce a broad norm prohibiting forced return ("refoulement"). Yet no provision is made in the domestic law of India to protect displaced persons from refoulement. Efforts to introduce a comprehensive refugee law that would provide for such protections have been consistently defeated following objections from the Indian security and intelligence agencies.

In my paper I will consider the current position of India in light of its domestic legal regime, its membership of the UNHCR Executive Committee (ExCom) and the limitations it continues to impose as a matter of policy on UNHCR operations in the country. I describe the standards applied in the admission and protection of refugees in India, with a particular focus on Tibetan and Sri Lankan refugees. While Indian admission and protection policies have often been quite generous, they are also obviously unequal with standards among refugee communities varying widely according to ethnicity, country of origin and date of arrival. I explain the international standards which control in this matter and, in particular, argue that both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention Against Torture (CAT) each carry obligations of non-refoulement for India. This is in addition to the well-established obligations imposed by the International Covenant on Civil and Political rights (ICCPR) and the Convention on the Rights of the Child (CRC).

Finally, I will suggest that the various norms relevant to the issue of non-refoulement in both the refugee law and human rights context, although superficially disparate, have now largely converged. As such, a more general rule can be construed which forbids India from returning individuals to situations where there is a real risk of serious human rights violations. This norm is non-derogable and can be properly evaluated only with respect to the seriousness of any potential violation and not the category of the rights concerned.

This analysis has clear implications for the development of socio-legal work in respect to the protection of refugees in India. Although the legal standards that define their protection are, properly construed, both clear and binding on India, in practice their application varies widely depending on the national origins of the population of concern. As a result, there is now a compelling need for field research into the variable treatment of these communities so as to properly define the appropriate legal response. While the relevant standards can be assessed doctrinally, the appropriate legal and programmatic responses can only defined after engagement with the lived experience of those communities seeking protection within India.

Session Two: Comparative International Refugee Protection (2)

'Democratic or autocratic regime? The paradox of Ghanaian refugees' **Cristiano D'Orsi**

My paper presents an analysis of the paradoxical situation of asylum-seekers and refugees from Ghana, a supposedly democratic country.In my paper I will interrogate the paradoxical situation for which a country that is supposed to have very few nationals fleeing from it for alleged persecution records, in contrast, has a significant number of asylum-seekers and refugees.

'From refugee producing to refugee receiving countries – A comparative study of asylum policies and practices in Croatia and Bosnia and Herzegovina' **Selma Porobic & Drago Zuparic-Iljic**

During the last two decades the Western Balkan's countries have transformed from war-affected and refugee 'producing' to refugee receiving countries and transit routes for out-of-regional migrants attempting to reach the Western Europe. Despite these changes little empiric research and data are available on the existing asylum policies and practices in these transitional settings. This paper will discuss the current provisions of the asylum systems in Bosnia and Herzegovina and Croatia, particularly looking at interaction of state and non-state actors within the frame of external conditioning (EU membership/EU accession requirements and EU external strategy) in the process of establishment, development and implementation of the policies and programs pertaining to the asylum procedures followed and the reception of asylum seekers, both at level of policies and practices. Based on the recently conducted policy-oriented analysis of the two countries' asylum system, we will draw attention to how refugees' legal right to asylum in transitional settings of Western Balkan is being accessed and practiced and provide recommendations on how to strengthen the capacity building of protection and reception services for asylum seekers and refugees in BiH and Croatia. With this comparative analysis we seek to initiate the systematic academic research into the asylum policies and practices in the two countries and to open up the wider debate on the international protection in the Western Balkan.

Session Three: Historical Perspectives on Refugee Protection and 'Burden-Sharing'

'From informal to formal burden-sharing: an alternative insight into the early development of refugee law and international forms of cooperation' **Paolo Biondi**

The legal formulation of the modern refugee status and of burden-sharing appears to be the product solely of a restricted series of causes and effects of the early twentieth century. In particular the freedom of movement accorded to the protection seekers with open arms seem was not affected till the early twentieth century. This paper attempts to provide a different background to the early development of refugee law in connection with burden-sharing. It contests that the adoption of instrumental immigration policies by Western countries in the early twentieth century has been the only cause affecting freedom of movement. It argues instead that these restrictive immigration policies have been in the first place the effect of antecedent causes and factors. It asserts that it has been the inevitable result of increased refugee movements that influenced the policy of States, decades before the twentieth century, and that these elements had a great impact on both the immigration policies and the future development of international law in the asylum field. The paper adopts a comparative analysis overtime of major refugee movements in Europe and outside, which had an impact of the construction of the European asylum policy, using two main criteria of comparison: the external policy measures resulting in the granting of asylum and the internal dispersal systems. The analysis on the period 1681-1922 fills a gap into the academic studies on this topic before 1938, and provides an alternative insight on the relation cause/effect in the development of the emerging refugee law and burden-sharing. It concludes that the modern international law build in this area had its basis strongly shaped not only in the early twentieth century but also in the previous practices of informal and practical burden-sharing during the period 1681-1922.

The historical background to Article 31(1) of the 1951 Refugee Convention from a UK perspective' **Yewa Holiday**

Article 31(1) of the 1951 Refuge Convention provides that refugees shall not be penalised for offences of entry or presence relating to a flight from persecution subject to the refugee 'coming directly', making him or herself known to the authorities without delay and showing good cause. The fact that Article 31(1) exists suggests that there was a need for it. But what was the background to the formation of Article 31(1) and is there, additionally, any historical evidence which demonstrates a need for such an Article? This paper traces the historical legal and political background to Article 31(1) by considering British legislation, in particular that of the 1793 and 1905 Aliens Acts, including the 'refugee exemption' in the latter Act; the development of passports in Britain and beyond; and the emergence of prosecutions of refugees for offences of entry or presence in the first half of the twentieth century in the UK and France. Currently, the UK prosecutes refugees to conviction for offences relating to entry or presence in the UK despite being a signatory to the 1951 Refugee Convention and enacting a defence for refugees in its domestic law. This paper argues that an understanding of the historical background to Article 31(1) may help us to understand what it was designed to prohibit by helping to conceptualise Article 31(1) protection as well as understand its role in refugee protection today in the context of current prosecutions of refugees in the UK.

'The Dublin Regulation: Balancing efficiency and individual protection' **Harriet Gray**

The European Union's Dublin regulation governs the responsibility of its Member States, as well as a handful of participating non-Members, for refugee status determination. It allocates responsibility according to a hierarchy of criteria to only one state with the aim of fostering efficiency in the face of free movement between Member States following the removal of their internal borders under the Schengen acquis. This is facilitated by the EURODAC database, which records the point of first entry to the Union and the place where any application for refugee status is made together with identifying personal information including fingerprints. Together, these provisions allow for the prompt removal of asylum seekers who have moved to the designated responsible Member State. In practice, the Dublin system's prioritisation of efficiency and maintenance of a working system has conflicted with the rights of the individuals on which it operates. The European Court of Justice maintained the importance of efficiency when asked to balance these competing interests in N.S. and set a high standard to be reached before the needs of the individual would be able to disrupt this. Yet more recently, this seems to have been questioned, both by the UK Supreme Court in EM (Eritrea) and by the European Court of Human Rights in Tarakhel v Switzerland. This paper will examine the underlying objectives of the Dublin system and the different roles played by the courts seeking to determine this balance in order to better understand the recent judicial developments. This analysis explains the difficulty faced by the European Court of Justice, and ultimately the Dublin system, to maintain efficiency and protect the interests of individuals.

Session Four: Children, Gender and Asylum

'Conceptualising child refugees: A review of child-specific forms of persecution considering developments in the international children's rights and refugee law frameworks' **Samantha Arnold**

The pursuit of children's rights developed into an international movement during World War I and the interwar period. The campaign for children's rights largely centred on safeguarding and protecting children during times of war. This movement gained momentum during, and in the aftermath of, World War II. However, children were notably absent from the Convention relating to the Status of Refugees 1951, which was also a product of this era. This paper looks at the relationship between the international children's rights movement and the development of international refugee law. This paper looks at the development of both regimes and discusses points where they converged or influenced one another. Through this, the paper looks at the ways in which the child is conceptualised within the context of refugee law starting from this point in history.

Existing research primarily looks towards contemporary refugee law and the ways it might be informed by the Convention on the Rights of the Child, 1989. The objective of this paper, however, is to conceptualise the child refugee reflecting historical and contemporary norms and principles. This is done through the five convention grounds upon which an individual may seek international protection from persecution, namely: race, nationality, religion, political opinion and membership of a particular social group. Through this examination, the paper asks two principle questions:

Why were children not explicitly referred to in the 1951 Convention given the concurrent development of international rights discourse which dealt with the protection needs of children during wartime?

At what point do breaches in children's rights amount to persecution in the context of refugee law?

This paper concludes with a discussion on three distinct frameworks for the conceptualisation of child refugees today, while also considering the multitude of variables that present in child cases.

'[En]gendering international protection: are we there yet?' **Heaven Crawley**

Over the past twenty years there has been a growing body of research, often written from a feminist perspective, which has argued that refugee law and policy has marginalized and excluded women because the 1951 Refugee Convention has been interpreted through a framework of male experience. Academic literature as well as evidence from campaigning and advocacy groups suggests that women fleeing with gender-related persecution, such as rape, forced marriage, honour crimes, threats of female genital mutilation, and trafficking for forced prostitution, are often turned down when they claim asylum due to a lack of gender sensitivity in current procedures and a failure to understand the political, legal and social contexts within which these experiences occur. This has led to the introduction of gender guidelines by UNHCR and a number of countries to try to improve the protection available to refugee women. Significant concerns remain however about the procedural implementation of these guidelines in practice and about the way in which women's experiences are understood and represented.

In this context the paper explores the ways in which gender is understood, conceptualized and represented in policies to address the protection needs of refugee and asylum seeking women. It aims to push forward current academic and policy thinking on gender issues in the asylum claim by bringing men and masculinity into the analysis of gender and international protection, and by developing an approach which explores the relationship between gender and other aspects of identity and experience, particularly age and race. In so doing the paper challenges policy, practice and advocacy that tries to raise awareness about, and promote the rights of, refugee and asylum seeking women by essentialising their experiences and positioning them (alongside 'children') as 'victims' of (predominantly male) violence and discrimination. It will be suggested that this approach misrepresents the agency and capacity of refugee women and may, ultimately, undermine rather than enhance the protection available under international refugee law.

'Cessation, revocation and control over the movement of the body of the refugee in Canada' **Anne Neylon**

Under the 1951 Convention, there is no reference to refugees' access to permanent residence. In the Convention, the solution to refugeehood that is emphasised is naturalisation in the country of asylum. In theory therefore, the country of asylum may cease to provide refugee protection on the grounds set out in article 1 of the Convention right up to the point that the refugee naturalises. However, after a refugee has been granted permanent residence status, many states do not enforce cessation provisions. However, recent developments in Canada indicate that permanent residence status does not provide the security of status to refugees that it once did. Under the Protecting Canada's Immigration System Act (PCISA), refugees who have been granted permanent residence status could potentially have that status removed in parallel to the cessation of their refugee status. This would cause the refugee to become inadmissible in the state, leaving her vulnerable to ultimately being removed from Canada.

Under this new interpretation of the cessation provisions, a refugee could face the removal of both residence and refugee statuses if she returns to her country of origin. This would be on the ground that this movement indicated her re-availment of the protection of her country of origin, as per article 1C(1) of the Convention. These provisions therefore mark a notable increase in the surveillance and control of the refugee. Further, it is argued that this application of the cessation provisions to permanent resident refugees regulates the body of the female refugee in a different and arguably discriminatory way. As will be developed, the application of the cessation provisions to the permanent resident refugee on the basis of the re-availment of protection, fails to acknowledge the complex relations between the female refugee and the borders between the state of asylum and the country of origin.

Session Five: The Problems of Process

'The detained fast track asylum process: inherently unfair, or a necessary qualification to the right to liberty?' **David Sellwood**

The right to liberty and security is often described as a fundamental human right, protected under international and domestic law. It remains, however, a qualified right. One such qualification concerns the detention of those who unlawfully enter or remain in a country other than their own, including those seeking asylum. Whilst the general principle of detaining asylum seekers has long been discouraged by influential bodies such as UNHCR, the UK government - along with many other others – continues to detain those deemed to meet certain criteria, processing their claims under a detained fast track procedure (DFT).

The lawfulness or otherwise of the DFT procedure has been challenged on a number of occasions over the years, in the High Court (R (L and another) v SSHD [2003] EWCA Civ 25), through to the European Court of Human Rights (Saadi v UK (2008) 47 EHRR 17). Each time the courts have stressed the fundamental human right to liberty, while upholding the States' right to detain those who seek asylum in certain circumstances, where checks and balances are adhered to. Those very checks and balances have however recently been found to be wanting, by the High Court (Detention Action v SSHD [2014] EWHC 2245 (Admin)), and the Court of Appeal (R (Detention Action) v SSHD [2014] EWCA Civ 1634). Having found the procedure to be inherently unfair and regulated by an unlawful policy, DFT was temporarily suspended in December 2014, only to be reopened in January 2015.

This paper seeks to review and scrutinise the DFT procedure, drawing on previous and current litigation. It touches on key concepts, including the rule of law in achieving (or diminishing) access to protection; regional protection regimes and access to asylum; and the future of asylum and refugee protection.

'Accelerated refugee status determination procedures in the UK and Australia: "Fast track" to refoulement?' **Linda Kirk**

A number of leading asylum host states adopt 'fast track' or 'accelerated' procedures as part of their national refugee status determination (RSD) process. The Courts in the United Kingdom have on several occasions considered the Detained Fast Track (DFT) procedure adopted for certain categories of asylum claims. In R (Refugee Legal Centre) v SSHD, Lord Sedley observed that, whereas the choice of a RSD system is a matter for the executive taking into account "perceived political and other imperatives for a speedy turn-around of asylum applications", it may not "sacrifice fairness on the alter of speed and convenience ... and whether it has done so is a question of law for the courts." The UK courts have emphasised that "asylum cases are of such moment that only the highest standards of fairness with suffice" and that asylum procedures must include "an irreducible minimum of due process".

Recent amendments to the Migration Act 1958 (Cth) have introduced a similar 'fast track' procedure in Australia to expedite the protection status determination process for applicants who form the 'asylum legacy caseload'. Primary decisions in relation to protection claims will be made via a fast track process by officers of the Department of Border Protection (DIBP) and merits review of negative primary decisions made will be conducted by a newly created body, the Immigration Assessment Authority (IAA). Certain applicants, termed 'excluded fast track review applicants', will not have access to merits review by the IAA.

This paper examines the 'fast track' procedures in the United Kingdom and Australia, and assesses the degree to which they meet, or fall short of, the "irreducible minimum of due process" requirement for asylum procedures identified by Lord Sedley in R (Refugee Legal Centre) v SSHD.

'Fresh claims for asylum since Rahimi - legal consequences and procedural barriers' **Sheona York**

An asylum claim in UK law, and the right to have that claim determined inside the UK, both rest straightforwardly on the UN Convention on Refugees and the prohibition of refoulement to the country of persecution. More problematic, and more contested, are the procedures applied to asylum-seekers, and the conditions under which they are forced to live. Driven by the significant increase in asylum-seeker numbers in the late 90's, major new legislation dealt with the asylum process, with legal aid for asylum appeals, and with housing and social assistance for asylum-seekers. Lengthy delays in processing claims, along with rapid changes in country conditions, new wars, internal strife and genocides, led to the phenomenon of the 'fresh claim for asylum'.

In 2005 Kent Law Clinic's case of Rahimi, confirmed on appeal in WM(DRC), determined that the threshold of 'realistic prospect of success' for a fresh claim was low, and that that 'prospect' referred to success before an adjudicator in an appeal.

The legal and practical importance of that judgment cannot be understated. The 'recording' of a claim as a fresh claim attracted a fresh in-country right of appeal, provided a passport to asylum support and, for some, the right to work. For many asylum-seeking communities and many representatives, a 'fresh claim' came to be seen as simply the next stage in their 'case'. Government responses include controlling the instigation of a fresh claim and its consequent entitlement to housing and social assistance, the decision to hive off 'fresh claim' judicial reviews to the Upper Tribunal, and, from 26/2/2015, to require all 'further submissions' to be lodged in person in Liverpool.

This paper examines developments in the law on fresh claims, the impact of Home Office defensive measures, and legal challenges in response.

Session Six: Who is a refugee?

'The tale of two men: Testimonial styles and presentation of asylum claims' **Forough Ramezankhah**

In determining refugee status, the credibility of an asylum seeker is significantly influenced by the way s/he presents the claim. The UK Visas and Immigration asylum process guidance expects an applicant to "be more expressive and include sensory details such as what they saw, heard, felt or thought about an event, than someone who has not had this experience". However, research has shied away from investigating the factors that influence testimonial styles and how claims are perceived by initial decision makers. Although familiarity with western forms of argumentative strategy and criteria for truth are favoured (Barsky, 1994) and known to influence how claims are received, there has never been a comparison of two asylum seekers with similar characteristics and claims, in order to explore how presentational style may impact on their claims.

Drawing on a range of disciplines (psychology, sociology, linguistics and law) and empirical data from Free Association Narrative Interviews, two asylum seekers with similar attributes and asylum claims were compared and found to present significantly dissimilar claims due to differing presentational skills and knowledge of the mode of communication expected. The paper illustrates how these two individuals present their claims very differently. In the light of the UNHCR Handbook's emphasis on the fact that an asylum seeker is not necessarily equipped to analyse his/her own claim in detail, the paper challenges the assumption that asylum seekers should be left to their own devices to present a detailed and coherent claim. The paper concludes that, if individuals possess different testimonial skills that can affect the outcome of their claims, then, in the interest of justice, asylum seekers deficient in such skills should be supported, through coaching or education.

'Refugees and migrant workers? LM, AA and MA (Syrian Nationals) v Russia' **Agnieszka Kubal**

In May 2014 Federal Migration Service (FMS) raided a sweat shop in a town K. near Moscow, three Syrian men were arrested. They were found working without work permits, on expired tourist visas. The FMS promptly took them to the District Court where they were found guilty of administrative offences against Art. 18.10 of the Russian Code of Administrative Procedure. The local judge sentenced 'the minimum' punishment prescribed by the Russian migration law – a fine of 5,000 Roubles and expulsion (deportation). The case was referred to the Civic Assistance Committee in Moscow, a partner organization of the UNHCR in Russia (since 1998). The lawyer who took the case promptly filed application for refugee/temporary asylum on behalf of the Syrians and prepared an appeal in their administrative proceedings to the Regional Court. The appeal did not dispute the facts of the case – the men were working without documents – but it asked for the exclusion of the deportation from the punishment. First, the applicants had now pending asylum applications and second, if enforced, the punishment would be disproportionate to the administrative offence committed – the men would be returned to war, facing risk to life and torture. The District Court rejected the appeal stressing that the men arrived in Russia as migrant workers, worked without documents and should bear the punishment as prescribed by law.

Having exhausted all domestic remedies the lawyer and the author petitioned the European Court of Human Rights for the 39 Rule of the Rules of the Court, halting the deportation until the men case on Art 2 and Art 3 is heard. The rule has been granted and yet the Syrian men troubles are far from over – they have been indefinitely and without the possibility of review placed in administrative detention in K., where they have initially retracted and then – after an intervention of their lawyer – re-submitted their refugee applications. Their 'precedent' case before ECtHR is pending.

This paper uses this case study to pursue broader theoretical question – that of the origins, circumstances and actors of the persisting separation of the analytical and legal categories of 'workers' with that of 'refugees', even though the empirical boundaries between migrant workers and refugees have long been recognized as continuously porous (Kay and Miles 1988, Zetter 1991, Lindley 2010, Betts 2013, Long 2013, O'Connell Davidson 2013). My aim is to contribute to further nuancing the debate around refugees-migrants by drawing on observations from a fairly unexplored though complex and interesting structural context of the legal environment of Russia. This paper is based on empirical material gathered by the author between April and October 2014.

'Examining Article 1 if the 1951 Convention relating to the Status of Refugees: Does it go far enough?' **Olayinka Lewis**

The growing number of persons seeking refuge outside the country of their nationality and indeed the reasons for seeking asylum call into the question the adequacy of the definition of a refugee under the 1951 Convention.

Article 1 of the 1951 Convention Relating to Refugees defines a refugee as a person 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country'. Although the Convention and indeed its Protocol, cover a good range of 'qualifying criteria' used by receiving countries in determining refugee status for asylum seekers, there is still uncertainty for a large number of 'unqualified persons' who have 'well-founded fear of being persecuted' for reasons not expressly covered by Art. 1 of the Convention.

This paper looks at other factors not covered by Art. 1 and examines the adequacy of Art. 1 of the Convention. It further examines how the United Kingdom addresses the issue of asylum applications using relevant national instruments to determine qualification for refugee status in the UK.

Private international law **Emma Roberts**

Session Seven:

The Continuing Evolution of Habitual Residence' **David Hill**

Between September 2013 and January 2014 the Supreme Court delivered three judgments that provided guidance on the approach to take when determining the habitual residence of children: A v A (Children) (Habitual Residence) [2013] UKSC 60, [2014] AC 1; Re L (A Child) (Custody: Habitual Residence) [2013] UKSC 75, [2014] AC 1017 and Re LC (Children) (International Abduction: Child's Objections to Return) [2014] UKSC 1, [2014] AC 1038. These three decisions considered a range of factors relevant to the evaluation of the habitual residence of children and have been described by one commentator as having "fundamentally changed" the approach to this evaluation (David Williams, 'The Supreme Court Trilogy: A New Habitual Residence Rises!' [2014] IFL 84). This paper will analyse the subsequent case law reported throughout 2014 and early 2015 in which the guidance provided by the Supreme Court has been applied in a diverse range of factual contexts. In particular, the paper will consider how later courts have interpreted what are arguably the two key developments emanating from the Supreme Court regarding, first, the relevance of parental intentions in determining the habitual residence of a child and, second, the weight to be given to the child's state of mind when identifying whether s/he is integrated in a social and family environment. Reference will also be made to European Union developments, notably the decision of the Court of Justice of the European Union in C v M (C-376/14 PPU) [2014] Fam. Law 1674. Finally, the 'refreshed' approach to the determination of habitual residence in the United Kingdom will be compared to recent developments elsewhere, notably in the United States Court of Appeals for the Ninth Circuit in Murphy v Sloan 764 F.3d 1144 (9th Cir. 2014).

A blessing in disguise - International traffic accidents and insurance' **Christopher Bisping**

Traffic accidents abroad are empirically the most common international tort. For the parties involved, the complexities added by the international element are a daunting prospect. In the majority of cases, a driver's insurance will have to settle claims. To facilitate the settlement of claims, EU law provides for direct actions against insurers. This protects drivers while in the EU only. For other situations, the Rome II Regulations allows direct actions against insurers if these are allowed under the law governing the tort or the law governing the insurance contract. The law applicable to the tort is, however, not uniformly decided as the Rome II Regulation, in several member states, steps back behind the Hague Convention on the Law Applicable to Traffic Accidents, creating gaps in the protection.

In this paper I will be looking at the overlapping regimes for international traffic accidents and the influence this has on insurance. The inconsistent approaches taken at the level of choice of law will be contrasted with the jurisdictional protection of the claimant and set against the context of insurance as the ultimate bearer of loss.

State versus minority groups: Can equilibrium on gender equality be reached? **Naheed Ghauri**

This paper examines the influence of European human rights and private international law, the UK and France on minority rights. Should the State wish to keep control, then they have to learn about 'the other' in the law itself. On 22 April 2013, the BBC Panorama programme made a covert documentary on Muslim Shari'a Councils operating in the UK; this attracted a lot of controversy about the inequality issues against Muslim women resorting to these Councils to seek advice. This also attracted political scrutiny by Baroness Cox, a politician who introduced the Arbitration and Mediation (Equality) Services Bill [HL] 2014-15 that has just gone through its first reading on 11 June 2014. The Bill addresses gender discrimination within religious tribunals and the parallel legal system. This paper addresses the question of whether gender equilibrium can be reached with the limitations on human rights for minority groups living in the UK and whether state laws accommodate different legal systems. This study investigates this by conducting a critical examination of judgments delivered in Muslim religious tribunals in the UK. The secular-religious debate has been politically influenced. For example, inequality for women seeking advice from Shari'a Councils and the veil (face covering) prohibition in France, legal implications of the ruling given by the European Court of Human (ECtHR) in the case of S.A.S v. France (Application no. 43835/11) in July 2014, a French-Muslim woman filed an application against France to challenge the prohibition on wearing a veil in public places. It was concluded that France did not violate the ECHR. Islamic law is not monolithic and practice-based study identified the specifics of religious-legal pluralism within secular-religious debate. Gender inequalities existed within traditional shari'a law.

International Economic Law: Governing Markets in Context — **Celine Tan, Guiliano Castellano and Stephen Connelly**

Session Two: International Financial Law and Regulation

Sharing, Ranking, Matching, and Pricing: A Socio-Psychological Perspective on EU Financial Regulators — **Genevieve Helleringer and Giuliano Castellano**

The paper looks at financial regulation in Europe from a socio-psychological perspective. It assesses the underlying dynamics defining regulatory and supervisory actions by reference to four fundamental forms of 'sociality' isolated by Alan Fiske: i) communal sharing, when members of the group share resources equally; ii) authority ranking, when members of the group are hierarchically organised and resources are distributed accordingly; iii) equality matching, when relations among members are governed to ensure an imbalance between individual inputs and resources allocation; iv) market pricing, when members seek a form of value maximisation. The paper fills a gap in the literature that is represented by the study of regulators' behavioural dynamics within the financial system. It steers away from the idea that individuals and institutions are isolated, exclusively aiming at maximising their personal utility. More complex social dynamics describe the functioning and the interactions of regulatory and supervisory bodies and define how decisions are made in order to achieve key policy goals, such as financial stability and market confidence.

After introducing the four psychological models, the paper maps the decision-making process characterising each of the layers of EU markets governance. All four models are present in the regulatory sphere, but each layer is characterised by one specific model only. Treaty institutions, such as the Council and the EU Parliament, appear to follow the 'communal sharing' and the 'equality matching' forms of sociality. While the European Commission, the European Supervisory Authorities, and the Colleges of Supervisors appear to organise their social relationship around the 'authority ranking' and 'market pricing' models. Through these lenses regulatory behaviours, vis-à-vis sensitive policy decisions, are isolated by reference to past behaviours. Prospective analyses over the unfolding European architectural framework for financial regulation and supervision will be then conducted.

Certainty in Uncertain Times: Conflicting Visions of the European Project — **Dania Thomas and Maren Heidemann**

This paper examines the conflicting notions of economic and legal certainty that emerge from the German Constitutional Courts recent declaration on the European Central Bank (ECB) Outright Monetary Transactions policy. The OMT was declared illegal on the grounds that it enhanced moral hazard, reduced fiscal competitiveness and normalised austerity to preserve the Euro. In the process, the OMT threatened the constitutional democracy of debtor states such as Greece. The cost of preserving the Euro was too high. This view has been challenged as misplaced by central bank experts. This paper does not engage with this technical challenge but explores the general trajectory of ECB policy. It unpacks the conflicting visions of the European project offered by both institutions to legitimize the distinct notions of certainty that have emerged from the conflict.

The court articulates a notion of legal certainty that is ex post and imagined. To legitimize this notion, it appeals to an imagined vision of the European project: an integrated Europe that exists independent of the economic imperatives of a common currency. On the other hand, in its resistance to debt workouts, ECB policy reveals an ex ante and technical notion of economic certainty. This certainty is underpinned by its unconditional guarantee of repayment to creditors who lend to sovereigns in distress. This ensures that distressed sovereigns have access to capital markets to finance budgetary deficits. The economic certainty it offers aims to achieve a particular ex ante market reality, one in which sovereign lending is risk free. In its vision of the European project sovereigns are integrated as a union of states reliant on self-sustaining, self-regulating Euro debt markets.

The resurgence of the far-left Syriza in Greece on an anti-austerity and debt renegotiation political platform indicates that both notions of certainty are vulnerable to the challenge of preserving a union of unequal states. The imminent victory of Syriza forcefully highlights the risks of sovereign lending and challenges the ECBs technical notion of certainty. This paper views this inherent uncertainty as an opportunity to re-imagine the European project itself.

Law and Finance in Emerging Economies: The Case of Germany 1800-1913 **Carsten Gerner-Buerle**

Britain in the mid-19th century was not only the preeminent industrial power in the world, but also possessed more developed capital markets than any other country. The country was far ahead of the industrial economies in continental Europe in terms of stock market capitalisation and the volume of securities issues. The probably most widely accepted explanatory theory attributes this gap in financial development to the more stringent disclosure requirements imposed on issuers and the more effective enforcement mechanisms existing in Britain at the relevant time. These explanatory models, however, are commonly not based on a detailed comparative legal analysis of the regulatory environment, but consider only isolated major legislative reforms. This article, on the other hand, constructs a comprehensive time series of the evolving disclosure framework and private enforcement mechanisms during the formative stage of the capital markets in Britain and in one leading emerging economy in continental Europe, Germany, taking account of alternative regulatory factors that either stymied stock market development or functioned as substitutes for insufficient disclosure regulation. It concludes that disclosure and private enforcement did not play a pivotal role in the development of the capital markets in the two countries. Capital markets were already relatively well developed in the UK before demanding disclosure obligations and effective private enforcement mechanisms were introduced, and they remained comparatively underdeveloped in Germany even though the courts were innovative in shaping existing liability provisions in a way that would render them operational in anonymous markets. Instead, it is submitted that changes to German stock corporation law, as a consequence of which incorporations of public companies became more costly and entailed a higher risk of liability, set German capital markets on a different path from Britain. The article, thus, contributes to the wider debate about the legal determinants of stock market development.

Session Three: Finance and Corporate Governance

When Overseeing Becomes Overlooking: The Post-GFC Reconfigurations of International Finance

Stephen Connelly

Have new supervisory instruments, from the international Financial Stability Board to the Bank of England's Financial Policy Committee, been developed to fight the last war? Will they be inadequate to deal with a crisis in the reconfigured international financial landscape? In Spring 2014 Blackstone, the US private equity outfit, made a signal purchase—the entirety of a Las Vegas casino—from Deutsche Bank. Some at the time remarked that the fact that Deutsche held a casino was indicative of the excesses that led to the credit crunch and that the sale amounted to a shedding of the past. In this paper I will argue differently; that the transfer of that casino is symptomatic of an empirically verifiable and material shift in the structure of international finance since the Global Financial Crisis—from Global Systemically Important Financial Institutions (G-SIFIs) to a more diffuse range of operators. The paper will consider (A) these developments through an analysis of (i) the evidence for such a shift from financial data; (ii) the market responses to this shift, with particular reference to the recent development of new 'standardised' loan structures in London; and (B) the possible implications of this trajectory through (i) a prospective consideration of the potential for crisis in such a diffuse financial system by reference to analogous historical financial crises; and (ii) a high-level questioning of whether the new supervisory architecture, and in particular the resolution and recovery regime of the EU, overlooks the potential systemic importance of actors other than G-SIFIs.

Drawing a Synergy between Theory and Practice: A Move towards a More Stakeholder-Oriented Regulatory Framework for Modern Islamic Finance Institutions, - **Sheharyar Hamid**

This paper argues that to devise an appropriate international regulatory framework for IFI's(Islamic financial institutions) the regulators have to devise a framework that is in line with the stakeholder theory as the stakeholder theory is deemed to be the most appropriate conventional theory for modern day IFI's because a stakeholder oriented Meta regulatory framework will allow individual IFI's to cater for the Maqasid al Sharia (objectives of sharia) framework taking into account the socio economic responsible nature of financial intermediation of the Islamic financial institutions. Therefore a supra national regulatory authority (like the IFSB or AAOIFI) needs to ensure the compliance of sharia governance standards that have been laid down. The paper argues that the major corporate governance issue that arises in the Islamic finance industry arises at the compliance end primarily because many of the jurisdictions where IFI's operate have secular laws and regulations pertaining to finance and banking. This lack of central sharia supervision especially in a secular jurisdiction is a systemic risk for the overall Islamic finance industry that can only be catered for by adapting a flexible, principle based Meta regulatory framework which caters to the 'Islamic' nature of financial intermediation.

Between the State and Market: Sovereign Wealth Funds and Transnational Regulation in South-East Asia,

Celine Tan

Sovereign wealth funds (SWFs) have become significant players in the global economy. Transacting as private actors, yet subject to varying degrees of state ownership and control and accountable to a wider range of stakeholders than commercial entities, SWFs exemplify the progressive erosion of traditional (and, some would argue, false) legal and political dichotomies between states and markets. In the transnational regulatory sphere, SWFs are complicating the conventional distinction between public and private law and raising questions about the expression and treatment of sovereign authority and activity in international markets. As state-owned or, at the very least, state-controlled entities operating across borders in a commercial capacity, SWFs are located in a hybrid legal sphere, governed by a plethora of statutory, contractual, administrative and quasi-regulatory regimes at national and international levels.

This paper explores the role of SWFs in south-east Asia as these institutions intersect with international economic law and regulation. Here, SWFs reflect the outward manifestation of the developmental, state-led capitalism that has characterised economies in the region and their interactions with external regulatory frameworks have significant impact not only on their operations but on broader national regulatory practices. In particular, the paper considers the potential effect of the enmeshment of these funds within the growing global network of informal regimes governing institutional investors – such as the OECD G20/OECD High-Level Principles of Long-Term Investment Financing by Institutional Investors, the Generally Accepted Principles and Practices (GAPP) for SWFs (the Santiago Principles) and the UN's Principles of Responsible Investment – has or will have on corporate and economic governance in south-east Asia.

Session Four: Structures of International Economic Law

International Economic Institutions: Developing the Concept of Substantive Accountability,

Abayomi Al-Ameen

This paper supports the contention that International Economic Institutions (IEI) should be recognised as possessing authoritative status and should thus be duly held accountable for their actions. The particular contribution of this paper is the observation that most claims of accountability seem to focus on the need for IEIs to follow acceptable procedures. While it acknowledges the importance of procedural due diligence, the paper contends that it is imperative to also ensure "substantive" accountability. The paper therefore develops the concept by stating the importance of substantive accountability and also by demonstrating how it could/should be achieved.

Exploring 'the Empirical' in International Economic Law Linkage Debates,

James Harrison

This paper builds upon my concept of 'investigative legal pluralism' (ILP) which I have previously argued is crucial to legal scholarship on IEL and other branches of international law e.g. human rights, environmental law (see Harrison, The case for investigative legal pluralism in international economic law linkage debates LRIL, 1;2 (2014) 115-145). ILP is an approach to IEL scholarship which does not assume that international law is a coherent whole. It explores (rather than shies away from) the frictions between the values, preferences and priorities of the different regimes in order to better understand what the impacts of IEL norms and obligations are/might be.

I argue that, because investigative legal pluralism prioritises the identification of regime-specific answers to individual legal problems, it opens windows for academic legal scholars to play a much greater role in interdisciplinary empirical research work. I then present an inter-disciplinary empirical research project for which I have recently received funding from the ESRC. The project explores the issue of labour standards in the context of EU Trade Agreements (EU FTAs). It argues that we should be sceptical of claims that labour standards clauses in EU FTAs create 'coherence' between IEL norms and standards on the one hand, and International Labour Law standards on the other. The paper goes on to set out the types of empirical research that need to be undertaken in order to explore the actual impact of EU trade law obligations in third countries, and whether they are progressive from a labour law perspective.

The paper concludes with ideas about a broader empirical research agenda which would re-invigorate existing linkage debates and, I argue, make international law more likely to respond justly and appropriately to the serious and multi-dimensional problems of an increasingly globalised world.

The Institutional Fragmentation of International Law and Democratic Governance in a World Society: A Crisis or An Opportunity?, **Anlei Zuo**

The institutional fragmentation of international law has been considered as a significant deficiency of international legal system for international governance and democracy, alleging that this phenomenon is the culprit for the stagnation of democratic governance and global integration. But from a realistic perspective of international law's ontological ethos, including the characteristics of international law-making, legal implementation and regime interaction, many benefits and rationalities for this "institutional fragmentation" phenomenon are understated. This paper argues that the "ontological ethos of international law" perspective could rectify the chaos of this rhetoric of "institutional fragmentation", and this realistic bottom-up approach of international legal studies is more analytical and explanatory than the constructive top-down governance perspective. The concept of "institutional fragmentation" is more of a descriptive rhetoric, rather than an analytical and explanatory concept of the regime interactions and evolutionary processes in international law. The fundamental contradiction contained in this "institutional fragmentation" debate is between the specialization of international law (the "functional approach" of modern international law's development, as the endogenous factors) and top-down systematic theoretical conception of international law (international law as a legal system, as the exogenous factors); and the junction of those forces is the "concerns on the legitimacy of international law" against national legal systems in a world society. The "ontological ethos" perspective reveals that institutional fragmentation has its benefits and rationalities. The "post-ontological era" is not coming yet for this "institutional fragmentation" debate since the "institutional fragmentation" is the "new normal". And the institutional fragmentation of international law is not a crisis but a good opportunity for the development of democratic governance in this world society.

Politics and Technocracy in International Corporate Taxation, - **Sol Picciotto**

In 2012 the G20 and the OECD initiated a far-reaching reform of the international tax system, to end the systematic tax avoidance by transnational corporations, described by the OECD as Base Erosion and Profit Shifting (BEPS). The political impetus came from the backlash against austerity policies following the great financial crisis, while the reform has been largely a technocratic process, led by tax officials at the OECD, with consultations dominated by corporate tax advisers and tax departments (with a small but relatively effective presence of civil society organisations active around `tax justice'). Although the reforms which are emerging are far-reaching, they mainly aim to reinforce the broad contours of the system which originated in the 1920s, but was formalised in the last 40 years. The skeleton of the system is the `hard' law of international tax treaties, its sinews the soft law of treaty commentaries Guidelines and reports, while the flesh is provided by the specialist community of tax experts in both the private sector and the public service (with a revolving door). The paper reflects on the changing but relatively stable dynamics of the system since its creation to the present crisis.

Session Five: International Investment Law I

Reforming International Investment Law: Is it Time for a New International Social Contract to Rebalance the Investor-State Regulatory Dichotomy? - **Dessilav Dobrev**

Under the pressures of globalization, the modern role of the state as a self-governing unit and the bounds of sovereignty are subject to intense regulatory soul-searching. Once considered an immutable feature of the sovereign state, the scope of state sovereignty has consistently contracted in recent history. Some of the principal forces at play leading to the gradual chipping away at governments' independent regulatory powers are trade agreements and the exponential increase in bilateral investment treaties. Over time, the limitations gradually moved closer to states' essential powers by constricting their ability to adopt measures on whole range of socio-economic matters if such measures, inter alia, constitute discrimination against a trade contracting party's businesses (e.g., under NAFTA) or do not meet the fair and just treatment standard (e.g., under BITs). Concurrently with this trend of erosion of the regulatory function of the state, foreign investors have enjoyed an ever-expanding gamut of rights in pursuing their foreign direct investments. In a see-saw-like manner, the more of its regulatory domain the state relinquishes, the more expansive the sphere of foreign investors' protection becomes.

In exploring this subject-matter, this study first examines the asymmetry in the legal frameworks governing the obligations of host states and the foreign investors who undertake direct investments therein, namely that the host state is bound by rules of international law whereas no such equivalent exists for foreign investors. The paper then makes suggestions on how to remedy this asymmetry and restore some balance to the international framework, arguing for a new international social contract on international investment. A principal element of this new international contract would be the creation of an international regulatory framework for social obligations binding on foreign investors in operating their investments in host countries, in such areas as environmental protection, labor standards, human rights, and anti-corruption. The paper advances possible models for the design of such a framework.

The benefits of establishing an international system for the operations of foreign investors in host countries are multi-faceted. Such standards would strengthen the accountability of foreign investors in important social areas and thus protect paramount public interests. Situating such rules on an international rather than a domestic platform would counter the selection of jurisdictions for operational location based on their low standards of social and environmental protection. Overall, it will make the international legal system, and the architecture of globalization, more balanced and equitable and thus more sustainable. It would also bolster enforceability by ensuring that only foreign investors that comply with internationally set standards can obtain the protection under investment treaties. Thus, the improved enforcement mechanism would be in incentivizing foreign investors to adhere to such standards or face the punitive prospect of non-protection.

In summary, this paper is an effort to step back and rethink the current approach of international investment law in balancing the various interests involved in the realm of foreign direct investment. It posits that it is time to recalibrate the system in existence today in a renewed direction having regard to lessons that have sprung from the recent socio-economic experience with globalization. Foreign direct investments are a critical element of economic development. Market liberalization in the field of investment has proven essential to the encouragement of FDI flows. But international investment need not be a zero-sum game where a loss to one group of stakeholders (e.g., local communities) is a benefit to others (e.g., foreign investors), or vice versa. As history has shown, reliance solely on unharnessed market forces can be counterproductive, and even destructive. A threshold level of rules-based protection of essential social interests, through international mandatory standards on foreign investors, is a measure with a harnessing effect. And while human societies are too complex to be amenable to a same-size-fits-all framework, setting minimum international standards shielding fundamental environmental and social interests is a sensible compromise.

Re-thinking International Investment Law's 'Utopia', =

Edward Guntrip

International investment law (IIL) is characterised by an inherent tension between investment protection and the retention of sovereign powers by the host state. Consequently, the principle of sovereignty is central to the resolution of any disputes between the foreign investor and the host state. Yet, despite relying on the same principle, each party will conceptualise sovereignty in a manner that solely supports its claim.

Koskenniemi asserts that the dichotomous interpretation of principles sourced in international law is reflective of the manner in which public international law functions. He explains the operation of public international law by reference to 'apology' and 'utopia'. He asserts that a balance must be achieved between legal (utopian) and factual (apologetic) understandings of the principles at issue. Koskenniemi recognises that this dynamic equally applies to lex specialis regimes such as IIL.

Using this framework, this paper seeks to examine the notion of sovereignty as it is currently used in IIL. It argues that the dominant understanding of sovereignty in IIL is a legal one. As a result, IIL fails to consider the role of a factual (or sociological) conception of sovereignty. As such, this paper presents an alternative view of sovereignty as a counterbalance to the prevalent legal approach. To achieve this goal, the paper relies on the principle of economic self-determination to assert that a sociological view of sovereignty is conceivable. As recent reforms in IIL support the development of a sociological view, it asserts that this approach is feasible and does not require wholesale change. Given this, the paper concludes by arguing that IIL is capable of achieving a more appropriate balance between 'apology' and 'utopia' through the use of a sociological conception of sovereignty.

The Impact of Investment Treaty Law on Government Behaviour: A Socio-legal Perspective on State Compliance with Good Governance Standards,

Mavluda Sattarova and Mustafa Erkan

The proposed paper forms part of the author's ongoing project which examines the role of international investment law in fostering good governance and rule of law at a national level. What role does international investment law play in generating national law? Can investment treaty remedies induce governments into compliance with the rule of law and good governance standards? To what extent and how do investment treaty norms influence government decision-making in host states? To answer these questions, the project examines the evolving objectives of international investment law and undertakes socio-legal and interdisciplinary analysis of the impact, both ex ante and ex post, of international investment law on governmental conduct. The aim of the proposed paper is to introduce the key strands of the argument developed in the project and to discuss some of the preliminary findings stemming from empirical case-studies and interviews conducted to date. The paper will focus on the findings that emerged from our empirical investigations, including the small-scale interviews and case-studies conducted in two developing countries. In particular, two aspects of the interplay between investment treaty and government behaviour that merit attention are (1) the extent of awareness of investment treaty law and its implications among government officials in developing states and (2) the ways in which investment treaty law is internalised leading to changes in government behaviour, both prior and subsequent to the respective state's exposure to investment treaty claims.

Session Six: International Investment Law II

Power and Contract in International Investment Law: The Dynamics of Investor-State Arbitration,

Edward Cohen

International investment law is an area of increasing contestation over the rules and governance of the global economy. In this paper I focus on one central area for the development of investment law – arbitration under investor-state treaties – to theorize the ways in which the contracting norms and practices in private arbitration have shaped the governance of international investment, and to examine the impact of growing challenges to these norms and practices on the regulation of the global economy more broadly. The paper proceeds in three steps. First, I present a framework for a political economy of contracting in contemporary capitalism, which identifies private contracting practice as a central factor in the changing relationships of states and private commercial actors in the contemporary global economy. At the center of this framework is the intersection of "public" and "private" as concepts and spheres in which power is constituted and mobilized. Second, I apply the framework to advance our understanding of the role of one particular contracting practice – private arbitration – in the governance of relationships between investors and states. The spread of arbitration as the preferred tool to resolve conflicts in investor-state treaties, I argue, transforms the ways in which the "public" is constituted by incorporating the practices of private contracting into the means and contexts by which public power is exercised. Third, I examine the increasing contestation surrounding investment arbitration and evaluate its potential impact on the governance of international investment more broadly. The analysis in this paper, then, centers on the ways in which the spread of one contracting practice is working to re-constitute the dynamics of public and private power and law in the contemporary political economy.

TTIP-ing Nanotechnologies? (Unwanted) Implications of the Investor-State Dispute Settlement Chapter and Chemical Chapter

Daria Davitti

The paper addresses one of the questions raised by the organisers ('Are policies, regulation and supervision, and legal interventions in markets effective in dealing with the new global challenges?') by examining the implications of the coexistence of two controversial chapters in the US-EU Transatlantic Trade and Investment Partnership (TTIP): the Chemical Chapter (CC) and the Investor-State Dispute Settlement (ISDS) Chapter.

More specifically the paper outlines the implications of the proposed chapters vis-à-vis the human right to health. In doing so, it first examines whether and how the CC, in its current form, could result in the EU abandoning its precautionary approach in assessing the risks related to nanotechnologies and regulating their commercialisation.

Second, whilst the ISDS Chapter has not yet been disclosed, the article analyses the attempts to conceptualise Intellectual Property (IP) rights as an investment in the on-going investment dispute Eli Lilly and Company v Canada (ICSID Case No. UNCT/14/2) filed under the North American Free Trade Agreement (NAFTA). The dispute was triggered by Canadian court rulings which invalidated two of Lilly's pharmaceutical patents for failing to meet the requirement of the 'promise of the patent doctrine' enshrined in Canadian patent law. The article examines the claims made by the US claimant (Lilly) in this dispute and looks at the implications that a potential TTIP conceptualisation of IP as investment would have on the right to health within the context of nanotechnologies.

Investment in Human Rights: Defragment or Reboot?

Aurora Voiculescu

This paper is addressing the issue of bilateral investment treaties (BITs) and 'governing markets' in the sense of markets being proposed as regulators of spheres beyond the market itself, of social spheres that have until not long ago been the prerogative and duty of governments and community structures.

The paper highlights the prodigious 'structural power' that markets can wield over increasingly unprotected social spheres. It analysis the various ways in which the nexus between international investment agreements and human rights is articulated, through discourses such as the ones of corporate social responsibility and development. This highlights how the conceptual links are predominantly focusing on the state onus to address the nexus between investment on the one hand and development and human rights on the other hand, while the actual power resides increasingly with powerful market actors such as the transnational corporations (TNCs). This de facto corporate power, supported by the use of theories proposing 'networked governance' beyond the state and processes of systemic constitutionalisation, requires scrutiny. The study will help gauge the extent to which this type of governance can be social values- and human rights-friendly and can resolve the points of tension between the competing normative discourses proposed by the market and civil society.

The paper looks to those elements of the BIT system that make of the TNCs the main vectors of the network governance beyond the states, analysing the mechanisms of this governance and the way in which these can impact on society and, ultimately, bringing under scrutiny the democratic deficit of the proposed constitutionalisation of this regime. Taking critical stock of the networked governance perspective, the paper assesses the extent to which the latest movement for reform of the BIT mechanisms is likely to answer the social expectations for the protection of human rights and the enhancement of social justice.

Session Seven: Panel 6: International Trade

World Trade Organization and Subsidies in the Renewable Energy Sector,

Paola Davide Farah

The support that governments give to the renewable energy sector covers a wide variety of measures—from taxes on carbon emissions to measures aimed at transferring an economic advantage to firms and companies investing in renewables or to consumers that buy them, such as grants, loans, tax incentives, or pricing support (like feed-in tariffs). One might even say that public support is not just preferable but rather necessary in the specific case of measures intended to fight climate change: according to economic analysis, public support is needed whenever the market fails to tackle specific externalities or to provide consumers with the goods and services they ask for. This seems to be the case when it comes to global warming, if we believe the Stern Report when it labels climate change as the "greatest and widest-ranging market failure ever seen." The real problem, when it comes to promoting the use and diffusion of renewable energy, lies in the fact that neither the benefits of the deployment of such energy nor the true costs of fossil fuels are included in their prices. This makes fossil fuels relatively cheap and renewable goods and services relatively expensive. The standard economic reaction to this situation is the introduction of governmental provisions as well as pigovian taxes or subsidies intended to redress economic injustices or imbalances.

Within the framework created by the ASCM, there is category of non-actionable subsidies, which represented a narrowly tailored exception to the ASCM discipline and covered certain assistance to research activities, to disadvantaged regions, and to promote the adaptation of existing facilities to new environmental requirements. Unlike other Agreements, such as the GATT or the General Agreement on Trade in Services (GATS), the ASCM imposes a very strict discipline and contains no general exception clause. This is partly due to the fact that the Agreement was negotiated in the late 80s and early 90s when the world was moving towards embracing the free market and privatization. The category of non-actionable subsidies could have been used to allow renewable energy subsidies but, as already mentioned, it is no longer in place and therefore other WTO rules need to be examined that might achieve the same result.

Subsidization of renewable energy raises certain issues, which are specific to this particular economic sector. In this paper, we will give an overview of three of the most relevant aspects of energy subsidization—which are central in the case law analyzed in this Article: a) feed-in tariffs; b) local content subsidies; and c) the relationship between the rules on subsidies provided for in the ASCM and those set out in the Agreement of Agriculture.

Assumptions in WTO Law: WTO Accession of Non-Market Economies

Dylan Geraets

The General Agreement on Tariffs and Trade 1947 (GATT 1947) and its successor, the World Trade Organization (WTO) operate under the assumption that its Members, its participants, are "market economies." Economies that are characterized by a substantial or complete governmental monopoly of its trade have received special attention in the context of the multilateral trading system. In the context of Anti-dumping measures, the ad note to Article VI:1 General Agreement on Tariffs and Trade 1947 (GATT 1947) already stipulated that in the context of Anti-dumping investigations concerning imports originating in such 'Non-Market Economies' (NMEs), it might not 'be appropriate' to rely on a strict comparison with domestic prices. The integration of NMEs into the multilateral trading system continues to raise interpretative questions for WTO panels and the Appellate Body. This paper proceeds in two parts. First, it examines the way in which the incumbent membership of the GATT, and subsequently the World Trade Organization (WTO), has historically dealt with the accession of NMEs. How has the (liberal) economic theory that underpins the multilateral trading system influenced the way in which it has sought to integrate economies that arguably do not fit within this theory? The WTO Accession Protocols of NMEs such as China, Vietnam and Tajikistan for example explicitly stipulate that, for a limited period of time, special dumping methodologies may be used by the incumbent membership. This first part outlines the prevalence of 'WTO-Plus' commitments in the field of Anti-dumping.
In the second part of this paper the practical implications of this approach will be assessed by taking a closer look at the use of the NME-methodology in the Anti-dumping practice of the European Union (EU) and the United States (US).

Rethinking Assumptions: Interrogating the Scope of 'Food Security' in International Economic Law

Fiona Smith

This is a paper that explores the meaning of 'food' in the context of the regulation of 'food security' in international economic law. Much of the existing literature assumes that any discussion of 'food' in 'food security' regulation is accommodated by the discourse on the human right to food, leaving the 'security' aspect as the only 'live' area for debate. However, this paper argues this assumption may be premature and that there is more to the idea of 'food' that must be excavated before effective regulation can be constructed in international economic law.

Session Eight: Challenging International Economic Law

Does the Invisible Hand have Green Fingers, or Would International Economic Law be viable International Environmental Law?

Paul Anderson

The governance of markets in world affairs is hallmarked by convergence and dissonance. There is growing convergence, for example, between (multilateral) international economic law and international environmental law (IEL) or more narrowly, between governance of markets for the purposes of facilitating 'free trade', competition and finance capital and their governance for the purpose of protecting environments from free trade, competition and finance capital. Much of this convergence is made possible by the influence of orthodox, in particular neoclassical, economic theory (NET). NET represents environmental problems as arising from deviations from ideal market conditions, in most cases, from undervaluing natural resources for want of adequate prices and/or markets ('market failure'). It commonly posits as solutions the corresponding creation of markets by privatisation and/or correction of markets by (shadow) pricing. The adoption of market-based instruments, norms and perspectives favoured by NET can be seen in IEL governing, for example, the climate, biodiversity, ecosystems and natural habitats as well as in overarching approaches to render global capitalism sustainable such as that of the 'green economy'.
The dissonance mentioned lies, however, in an inverse relationship between the influence of NET and the efficacy of its prescriptions for sustainability. Building upon existing critique, this paper gives reason to think that the purposed solution may be in fact part of the problem. It does so, first, by outlining some generic limitations with the prescription of price/market-based approaches to environmental problems. Second, it outlines how the market failure account of environmental problems misunderstands the nature of those problems. Taken together, it gives reason to think that (multilateral) international economic law (at least as is characterised by neoclassical economics) would not be viable IEL. Finally, it points to but, in the space afforded, does not substantiate, an alternative basis for the governance of markets for sustainability.

The Rights Resurgence, Social Movements and Post-War Capitalism **Radha D'Souza**

The end of the Cold War witnessed resurgence in the idea of rights and democracy everywhere. Political conservatives in the West led democracy promotion campaigns at least since the early seventies that eventually culminated in the fall of the Berlin Wall, an event that symbolises the victory of capitalism over socialism. Alongside these developments there was another type of rights resurgence which was spearheaded by what has come to known as the New Social Movements. Thus the resurgence of rights discourse came from the political Right and Left. What were the economic drivers of this resurgence in the rights discourse, however? Unlike rights in the eighteenth and nineteenth century, contemporary resurgence of rights and democracy walks hand in hand with globalisation, neoliberalism, debt crises and structural adjustment programmes and embraced and advanced by international organisations including international financial organisations. Is there a connection between the transformations in the global political economy and the expansion of rights and democracy as an international discourse and a legitimate subject for international organisations? This paper maps the transformations in the nature of capitalism in the post-World Wars era from national-competitive-industrial to transnational-monopoly-finance capitalism and the rights discourse. It argues that the rights resurgence needs to be located in the transformations in post-War capitalism and the need to establish institutions and regimes appropriate for the operation of transnational finance capitalism. The convergence of the political Left and Right raises interesting questions about the links between discourse, ideology and the economic drivers that underpin the convergence.

What the World Needs Now is....Corruption **George Meszaros**

The drive against corruption among global governance institutions like the World Bank, OECD, UN, G20 and EU is both well established and gaining further traction. Academics are providing some of the evidence driving the process. Leading texts routinely assert the connection between corruption, growth and law thus: "corruption weakens economic growth and undermines the rule of law for every nation, and invariably deters investment".[1] This paper stands such notions on their head and questions whether instead corruption (a fashionable but conceptually elusive and therefore suspect term) may in fact have contributed to economic growth and encouraged investment, while legal institutions have either turned a blind eye to, proved incapable of addressing, or even actively underpinned the economics of corruption and growth. According to data from the Economist/IMF, for instance, over the period 2001-2010 the world's top 10 fastest growing economies were: Angola (11.1%), China (10,1%), Myanmar (10.3%), Nigeria (8.9%), Ethiopia (8.4%), Kazakhstan (8.2%), Chad (7.9%), Mozambique (7.9%), Cambodia (7.7%) and Rwanda (7.6%). These enviable figures contrast with Transparency International's 2014 Corruption Perception Index which ranked Angola among the most corrupt countries in the world, ranking it 161st place. China came 100th; Myanmar 156th; Nigeria 136th; Ethiopia 110th; Kazakhstan 126th; Chad 154th; Mozambique 119th; Cambodia 156th; and Rwanda 55th. As for countries that rank highly in terms of lower corruption levels, like Candada (10th); Japan (15th), the US (17th) and Europe, they have experienced anaemic rates of growth. Prima facie such statistics should raise significant doubts about the supposedly invariable and negative nature of the relationship between corruption, investment and economic growth. Indirectly too they invite observers to re-examine the historical and contemporary role that legal institutions have played - and continue to play - in the growth-corruption nexus. This paper tentatively explores these complex variables, from a conceptual, empirical and historical perspective. Its aim is partly to stimulate debate about the use of such terms, for instance the notion that corruption is external to the formation of the state and private capital. The aim is to sketch out the beginnings of a more broad-ranging and robust research agenda.

[1] Adam Graycar and Russell G. Smith "Research and practice in corruption: an introduction" in Adam Graycar and Russell G. Smith (eds.) Handbook Of Global Research And Practice In Corruption, Edward Elgar, 2011.

Registering Registration — Julie McCandless and Ed Kirton-Darling

Session Two: Hiding and Revealing

What's in a birth? **Julie McCandless**

Birth registration forms part of the civil registration system in England and Wales and has been in place since the 1830s. Two things are noticeable despite this long history. First, a birth certificate looks remarkably similar to how they looked almost 200 years ago. While interesting tweaks have certainly occurred, shedding light on changing social mores and preoccupations (e.g. unlike my own birth certificate, a mother's occupation is now recorded and since 2009 it has been possible to record a second female parent where the father's details have traditionally been recorded) the key details recorded remain very similar and the birth certificate continues to be an effectively unchangeable document that captures (to different degrees of effectiveness and 'truth') and categorises a particular story of a particular moment of a particular person. Second, there is still ambiguity, tension and lack of consensus over precisely what it is that a birth registration records. Is it an event? Is it a person? Is it an identity? Is it legal status? Is it relationships? Is it a mixture of all of these and more?

In this paper I examine the information that has been required in order to register a birth in an effort to assess whether we can make any coherent observations on the purpose of birth registration in contemporary society. I also look at some recent challenges to birth registration whereby individuals have campaigned to have their birth certificate changed or to register information that did not match the accepted categories. I ask what pressures the current system of birth registration is under and what it says about the role of state bureaucracy and contemporary preoccupations with identity and recognition.

Making land liquid: registration of title as technology of dispossession **Sarah Keenan**

Registration of title is steadily becoming the preferred system of determining who is entitled to land globally, with the World Bank stating that registered land rights are necessary to support investment, productivity and growth (Deininger 2003). Title registration systems are an important mechanism in turning land into a liquid asset. In this paper I argue that the compulsory registration of land title is a technology of dispossession which works in two ways: firstly, it produces physical spaces determined by a centralised state or corporate-controlled register at the expense of physical spaces determined by local lived practice and memory; and secondly, it produces groups of subjects who are displaced and often criminalised. Legally belonging nowhere except prison or immigration detention, these groups are vulnerable to premature death. Drawing on Ruthie Wilson Gilmore, I argue that this technology is therefore racist (2007). It is well documented that compulsory registration of title systems are pivotal in the ongoing dispossession of Indigenous people from their land in settler colonies (Harris 2010, Pasternak 2014). Looking elsewhere, I also argue that the Land Registration Act 2002 was a necessary prerequisite for the 2012 criminalisation of squatting in England and Wales, which disproportionately affects traveller communities and those with irregular migration statuses. In the USA, the registration of mortgage titles through "MERS", the corporate Mortgage Electronic Registration System which currently holds the legal title to 60% of American mortgages, has been instrumental in facilitating the trade of sub-prime mortgages, which have disproportionately resulted in the evictions of black families from their homes (Chakravartty and Ferreira da Silva 2012).

Recording marriages **Rebecca Probert**

The registration of marriages has a lengthy history in this jurisdiction, with civil registration dating back to the 1830s and the parochial system to the 1530s. But what is registered, and by whom, has changed considerably over time and reveals much about the respective roles of individual, family, church and state.

After setting out the changing context of registration, this paper briefly reviews the evidence from some early Anglican registers to assess what was actually being recorded and how those recording marriages saw their role. It then moves on to discuss the registration of marriages by other denominations, highlighting the differences in what was recorded and the different status of their registers. Finally, it examines a sample of marriage registers from the nineteenth century in which it has been ascertained that deliberately false information was given. No category of information was immune from falsification, with misstatements being uncovered relating to the parties' names, ages, occupations, addresses at time of marriage or paternal relations. More fundamental misstatements as to marital status broadly fall into three categories: cases where the bride and groom were already married to each other, but were going through a second ceremony for some reason; cases where the bride or groom was married to someone else and was trying to conceal this fact; and cases where the first marriage of either the bride or groom had been terminated by divorce. While these were by definition exceptional cases, they do cast light on how the process of registration was viewed from a number of different standpoints. The evidence of misstatements also raises questions about the reliability of official statistics derived from marriage registers.

Regulatory registers: unwinding the list and the strike-through **Marie-Andree Jacob**

The short 10 min 'think paper' explores the General Medical Council's Registered List of medical practitioners as one of the cultural forms the regulation of medicine takes. More specifically I will discuss the various types of sanctions (suspension, conditional registration, or erasure (striking off) that this 'list' elicits and obviates.

Session Three: 'Secrecy, privacy and addressing 'the public'

"Anyone can register a death, well, within reason" **Ed Kirton-Darling**

The role of the coroner and the inquest in both the official recording and classification of death and a community meaning-making of death is an ancient one, stretching back to the time of Alfred the Great. The contemporary system retains a crucial role, with around 227,000 or 45% of all deaths registered in the UK being reported to Coroners for further investigation.

This paper draws on empirical research to explore the multiple ways in which registration arises in the coroners court, beginning with stories Coroner's officers told about registration, including the use of birth registration to evidence family claims to amend an "incorrect" name given by a civil partner. In another instance, a Coroner relied on a violent father's absence from a birth certificate to deny him access to the inquest of his deceased child, whilst permitting the involvement of an individual who had played the role of father without any formal relationship.

Some of the tensions between potentially opposing demands of registration can be seen in tensions between a significant growth in narrative conclusions to an inquest – with attention directed to making the conclusion meaningful for the family & community – but criticised by public health experts as undermining effective collection of statistical information.

The inquest illustrates the link between registration and place, in the light of historic accounts of communities moving bodies out of their jurisdiction to avoid the imposition of an inquest, and contemporary collection of statistics divided into Coroner's areas (currently subjected to a process of 'rationalisation').

The paper concludes that registration of death highlights the contingent and constructed role of family in a system in which law and practice frame them as simultaneously dispensable and central; subjugated, duty bound and enabled to act.

The changing identity of title registration data: from record to resource **Victoria Moss**

This paper investigates the changing identity of Land Registry data in response to the development of title registration and its transition from a record of land into a resource. The introduction of a public register of title under the Land Registration Act 1988 changed the original principles of land registration following its inception in 1862. Public access to the register was hailed to be an 'historic and significant change', enabling the Land Registry to take 'the scope of its activities beyond the purely conveyancing field.' Since public access to the register commenced, the scheme of title registration has undertaken a transition. An open register of title has facilitated the extraction of title data and, as a consequence, the commodification of Land Registry data to begin. In response to the objectives of the Registry to 'maximise the reuse' of title data, Land Registry data is now widely used as a resource.

The transition of title registration into a resource has resulted in conceptual changes to title data. Through an extensive programme of mining data initiated by the Land Registry, title data has evolved into a form of property, independent of the register in which it is embedded. As a consequence, Land Registry data has attained its own economic value in response to this transformation.

The development of title registration into a resource demonstrates that in response to change, systems of registration can be transformed. As evidenced by the introduction of a public register of title, registration can be reshaped into different forms. Schemes of registration can be manipulated, dissected and exposed, altering the original principles that schemes of registration were built upon.

Registration "below the waterline": public review of secret surveillan **Bernard Keenan**

The act of registration counts as a form of first-order observation, which is to say that registration is a mode by which a system communicates to itself some information about its environment, thus producing itself as a functioning system while co-producing the environment as a subject of the system's knowledge. Framing registration in these terms, adopted from the sociological theory of Niklas Luhmann, implies that registration is first and foremost a mode of reducing complexity, making manageable the contingencies of an unknown future by constantly taking stock of the present in a manageable way. Registration thus means recording variables that matter to the system, thus making the world amenable to analysis at the level of second-order observation, either by the system itself, or by other observing systems.

One could go so far as to argue that this is the constitutive mode of existence of modern society. Political arguments, for instance, are framed in terms of who is counted or not, what is counted or not, and how that information is either stored or forgotten. Economic confidence, to take another example, depends on rigorous and accessible modes of accounting. And so on. Society's expectation of proper registration practices is expressed normatively through law: there are strict sanctions for poor practices of registering.

But what happens when the legal system alone is required to perform second-order observations that will stand in for the rest of society? This is precisely the problem presented by the need for legal oversight of secret organisations whose communications must be performed according to law, but which must not be publicly disclosed (at least not for many, many years). In recent years there has been a proliferation of courts, commissioners, and independent reviewers whose function is to 'stand-in' for the public by reviewing secret action. How, under these conditions, does the act of registration appear? My paper addresses this question by focusing on the reporting practices of the Interception of Communication Commissioner's Office.

Session Four: 'Excluding and over-promising'

Birth registration and same-sex parenting in the UK and Canada: some unanswered questions **Phil Bremner**

This paper seeks to provoke discussion about what society is aiming to achieve through systems of birth registration with respect to same-sex parenting particularly following assisted reproduction. It considers the position in the UK and contrasts this with various jurisdictions in Canada, which adopt differing approaches to birth registration in this context. Since the adoption of the Human Fertilisation and Embryology Act 2008, it has been possible for two female parents to appear on a child's birth certificate immediately following birth and for two male parents to be registered following the court granting a parental order in their favour. A number of issues remain unaddressed, however. For example, the terminology used in birth certificates needs to be explored further. Why are we reluctant to record a child as having two mothers or two fathers? There also needs to be greater discussion about the number of adults that can be recorded on a birth certificate. A number of jurisdictions in Canada allow more than two adults to be registered on a child's birth certificate in order to reflect the parenting reality in some same-sex families. This raises questions about what the functions and legal effects of birth certificates should be. This is relevant in both a domestic and international setting, where a court declaration of parentage in addition to the birth certificate may be required before recognising the parent-child relationships in same-sex families when crossing national borders. Rather than reaching any firm conclusions on these points, the intention of this paper is to highlight these potentially controversial issues in the hope of stimulating debate around a topic that is of considerable importance in the lives of increasing numbers of same-sex families.

The land register in England and Wales: reflection of reality or history? **Emily Walsh**

Registration of land In England and Wales has been a process notable both in terms of its significance and the length of time it has taken. The aims of land registration were laudable, to make the disposition of land faster and cheaper. One of the three principles of land registration was that the register should be a mirror which reflects accurately and completely the current facts that pertain to a title. This was reiterated by the Law Commission in its 2011 report which states that 'the register should be a complete and accurate reflection of the state of the title of the land at any given time'. However anecdotal evidence from practitioners, and prior reports by the Law Commission and other advisory bodies, suggests that retention on the register of obsolete restrictive covenants contradicts this principle. In this paper I draw on the various reports and assess the disparities within. I then take an empirical approach by carrying out content analysis on a sample of 600 registered titles in order to plot the relationship between age and likely usefulness of the restrictive covenants revealed. I argue firstly that whilst there is a relationship between age and obsolescence this relationship is a complex one. Further, that registered titles are often not a mirror of the land at the given time but of the land frozen in a previous time. Finally, I argue that the current law and procedure and the proposed changes will do little to change this position. I conclude that changes are needed ideally in law, but if not in practice to prevent the further disparity between the principle, that the title is a mirror, and the reality.

The lake home **Henrietta Zeffert**

Around 3500 families have been evicted from Boeung Kak Lake since 2009. This is the largest forced movement of people in Cambodia since the Khmer Rouge genocide. The evictions are to make way for a luxury residential development planned by a foreign-owned company that has leased the lake from the government. The evictions at the lake coincided with a World Bank land registration project in the same area. The project aimed to improve security of tenure for lake residents and stimulate land markets. However, residents were excluded from registration when the lake was declared 'unclear' land. The lake automatically became state land and the lease to the foreign company could go ahead.

Renewing Critique in Criminal Justice **Henrique Carvalho**

Session Two:

The Preventive Turn in Criminal Justice: From Liberal Imagination to Neoliberal Insecurity **Henrique Carvalho**

This paper examines the theoretical foundations of the so-called 'preventive turn' in criminal law and justice, by analysing then problematizing the relation between the idea of individual autonomy and liberty within the liberal social imaginary, and the increasing concern towards security and prevention manifested by criminal justice practices. At the core of this problematic relation, there arguably lies a tendency, in criminal justice, to separate matters of normative justification – such as the notion of individual responsibility, or the justification for punishment – from the practical implementation of criminal justice policies and institutions. However, this separation between principle and policy, when properly scrutinised, reveals an inherent ambivalence within the normative framework of criminal justice, which both reflects and conditions the tensions found within criminal justice practices. The first part of the paper explores the foundations and development of this ambivalence, while the second part focuses on an application of this analysis to a study of preventive measures and phenomena in contemporary criminal justice. In particular, this paper aims to critically assess the extent to which the liberal model of criminal law and justice, besides being challenged and compromised by the rise of preventive measures, is also deeply implicated in these measures' genesis and normative legitimation.

Holding Responsible and Taking Responsibility **Craig Reeves**

In criminal justice theory a virtual consensus now exists concerning what could be called the retributive package: agency = freedom > responsibility + culpable wrongdoing = individual blameworthiness > retributive punishment. Agency and freedom are thought identical; responsibility is tied, by freedom, to agency; culpable wrongdoing is identical to blameworthiness, and from blameworthiness follows retributive punishment, not only as a permissible, but as a morally required response. It is morally required because, since there is a continuous line from agency to punishment, to deny retributive punishment would be identical to denying someone's agency: the only alternative to retributivism is claimed to be reification – disrespecting someone by treating them as a mere thing. In this paper I outline a critique of the retributive package: we must distinguish between agency and freedom, and thus agency and responsibility. Agency is not necessarily free agency: drawing on recent developments in the philosophy of action, I argue we must abandon the pervasive assumption that only where someone can be assumed to be morally free can they be understood as exercising agency at all. It is then possible to get into view how we could consistently deny individual responsibility and blameworthiness, as these are usually understood in moral philosophy and criminal justice, without reifying people – denying them respect as fellow persons. This makes it possible to break the entailment relation between respecting people as agents and punishing them as morally free wrongdoers on which the revival of retributivism has been premised. This possibility raises the further question of the extent to which people are in fact unfree in modern societies, and I suggest that many offenders have suffered from damaging social experiences that might reasonably be thought to undermine their possibilities for moral freedom. If that is right, it raises the question of what kind of ethical practices of judgment and justice could be appropriate responses to the wrongdoing of unfree agents who are not responsible in the retributivist's sense, but who are still ethical agents – which calls for radically rethinking our ethical life in a way that unveils the suppressed space between the moralistic stance of absolute retributive blame and the reifying stance of treatment, risk-management and control. To this end, I suggest we distinguish between holding someone responsible and calling on them to take responsibility; while the former is central to our current responsibility practices, the latter offers a new model of ethical response beyond the retributive package. And I use the therapeutic action of psychoanalysis to illustrate the activity of calling on someone to take responsibility without holding them responsible, a process which in the context of criminal justice, conceived as a genuine dialogue, must require the community to taking responsibility as well.

Criminal Justice and the Blaming Relation **Alan Norrie**

This paper explores how we might relate normative concerns about blame to the institutional dimensions of a criminal justice system that is grounded in and shaped by political and economic exigencies. It is now not uncommon to think of blaming in relational terms as a consequence of the dialogic argument developed by Antony Duff. Dialogue can become conversations in which both sides can make a point. But an account of how blaming actually works in a political and institutional setting requires not just an understanding of normativity, but of how normativity is filtered through institutional form. Thus the law's 'responsible subject' is both a figure that is shaped and grounded in history and the site of limited normative work. The important thing to understand is that there are two things going on here, and an adequate account of the blaming relation would need to understand how this works. I suggest we could understand the blaming relation at three levels: the level of political and economic shaping of legal form; the 'formal' level of the shaping of law understood 'sui generis' (legal architectonics); the ethical outcomes that result from filtering normative judgments through institutional forms. In this way, we are able to think about law across space and time, while understanding that the key issue is what sort of blaming relation it develops in different contexts. For example we could explore the normative differences in criminal justice systems operating in the welfare liberal and the neo-liberal state, or the role criminal justice plays in socio-political transitions.

Session Three:

The Law of Crowds **Illan Rua Wall**

The paper addresses two recent attempts to think about crowds in law. The much remarked 'kettling' case of Austin gives us a metaphysical sense of the crowd that would be familiar to the crowd theorists of the nineteenth and early twentieth century. The crowd is divided between innocent sheep under the spell of violent wolves. The police are given no option but to kettle, because of the metaphysical 'nature' of the crowd itself. The more recent prosecution of the UK Uncut protestors that occupied Fortnum and Mason in Bauer has a very different idea of crowds. It is closer to current sociological thinking of the dynamic crowd. Yet paradoxically it remains much more deeply problematic, criminalising the very crowd-ness of the crowd. From this, I draw a number of reflections on the manner in which crowds are thought in law, and the manner in which we might begin to think about a law of crowds.

Criminalizing protest: silencing disputes over property, public space and natural resources in so-called postconflict scenarios **Maria C Olarte**

Drawing on the peace processes taking place in Colombia over the last ten years, this paper explores the relationship between new forms of property rights and the increasing deployment of criminal law to disarticulate or deter social protest. It focuses on the deployment of criminal law in scenarios where the destination of land and natural resources are in dispute in contexts framed within so-called post-conflict policies. In doing so, the paper emphasizes the different conceptions of property underlying competing claims and meanings over land, public space and criminal law itself. The underlying question the paper seeks to explore is what kind of assumptions about democracy permeates the current configurations of criminalization of social protests which are related to competing understanding of land, property and natural resources.

Families' Interrogation of State Violence: The Subversive Potential of Kinship in Deaths in Custody Cases **Nadine El-Enani**

This paper draws on the historiographical work of Silvia Federici and Peter Linebaugh and the work on racism of Sherene Razack and Ruthie Wilson Gilmore to inform our understanding of contemporary deaths in custody cases. The paper examines the historical trajectory of the role played by families in their interrogation of state violence through the criminal justice system, exploring the way in which grief and kinship operate in families' struggles for truth and justice when their loved ones are killed by the state. The state habitually evades criminal responsibility for the structural violence it and its agents mete out, in particular to racialised people. While kinship ties frequently form the initial springboard for a family's legal battle for justice, family members often become politicised over time, forming alliances with political groups which proclaim broader social justice goals. The suggestion is that kinship ties, which tend to be understood as closing family units off and militating against principles of egalitarianism and solidarity, often have different effects in cases of deaths in police custody. Appreciation for kinship ties traditionally lies with conservative approaches which propose a strong gradient of value and duty beginning with family, followed by nation and only then to others. The paper illuminates the subversive potential of kinship through exploring its operation as a basis for politicisation and solidarity in cases where state violence is the subject of interrogation.

Para-nomic, Ec-nomic, A-nomic: Art Between Law and Lawlessness **Julia Chryssostalis**

On 30th October 2013, two actors, Vassilis Spyropoulos and Dimitri Drossos, were arrested while rehearsing in the premises of 'Embros' Theatre in central Athens. The actors were held in the Acropolis Police Station overnight and then released the following day. Their case is yet to be heard. Their crime? Rehearsing in 'Embros'. Or to put it in the language of the law: breach of a public seal placed in the theatre's premises, disturbing domestic peace, and the continuous occupation of a public building (arts. 178, 254, and 334 par. 3 of the Greek Criminal Code respectively). The occupation of 'Embros', very much like the occupation of the 'Teatro Valle' in Rome (along with other less well-known theatres in Italy), is different from other squats and occupations that have simply a political character. What sets apart the former from the latter is that the occupations of both 'Embros' and 'Teatro Valle' locate themselves in the interface of politics and art creating hybrid spaces of artistic practices and political praxis. These occupations experiment with a new politics of art and with a new 'art' of politics we can call 'commoning', which are both profoundly dissensual and political (in Lefort's sense). In addition, the occupations of both 'Embros' and 'Teatro Valle' qua occupations challenge the absolute character of private property and show in a concrete way how, in cases where the trespass of private property is not simply another appropriation but serves a social purpose, trespass may not be unlawful. By countering the dominant equation of trespass/ occupation with illegality and lawlessness, the occupations of 'Embros' and 'Teatro Valle' also challenge established understandings of the binary distinction between legality and illegality and show the ways in which the boundaries of law are drawn (and re-drawn). Drawing on the work of critical legal scholars and the recent work of Hans Lindahl on a-legality, the paper explores the category of the 'unlawful', or 'lawlessness', and its different configurations, and the ways in which art can be the site at which the boundaries of law are both tested and contested.

Session Five: International edges of law, politics and ideology

Networked Governance for Implementing Human Rights: A Promising Way Forward **Azadeh Chalabi**

The traditional notion of hierarchical, top down government has always been an imperfect match for implementing the universal idea of human rights. This pressing chronic challenge calls for new approaches to governance. This paper suggests the idea of network model of participation, known as "networked governance" and "engaged governance", as a promising way against the lack of political commitment to implement human rights. A fundamental idea behind the network governance approach is to create a synergy between different competences and sources of knowledge, legitimacy, management, capacity building and financial resources, without external top-down directives, in order to deal with complex and interlinked problems such as the non-realisation of human rights. Networking as a method of organization has the ability to link the global to the local level and foster constructive solutions based on universal human rights devoid of any ideological tinge. Although over the last decade or so, networked governance has gained increasing prominence in different policy areas, it is still widely unknown among legal scholars. As will be discussed in this paper, advancing the networked governance strategy at the UN level can not only mitigate the lack of political will of the Sates to implement human rights but also harmonise and align UN human rights and development bodies and programs. This paper proceeds as follows. First, it will briefly introduce the general idea of networked governance. Second, it will address the question of who is required to be included in a global network for implementing human rights. Third, it will examine the role of network facilitator. Finally, an effort will be made to illustrate how these partners can cooperate in practice.

The Involvement of Former Colonial Powers in their Former Colonies and the use of International Law: the Case of France and Mali **Amanda Kramer**

Colonialism is typically regarded as a historical process, no longer in operation today. However, several notable authors have argued that in fact, while the techniques and discourses may have changed, forms of neo-colonialism are still very much in operation today (Mahmood Mamdani, Onder Bakircioglu, Antony Anghie, Kamari Clarke, Asad Kiyani, B. S. Chimni, and Henry J. Richardson III). The presentation will examine this argument, focusing specifically on the ties between colonialism and international law. It will be argued that historical colonial processes played a significant role in the formation of international law, and that similar themes of control and domination can be found in the creation and use of international treaties, such as the Rome Statute of the International Criminal Court.

The current involvement of France within its former colony of Mali will be used as a case study to examine this argument. Since 'de-colonization', France has fostered a special kind of relationship with its former colonies – one that has often been referred to as 'la Francafrique'. It will be argued that the tools of international law have played a role in maintaining, and potentially even furthering France's connections with Mali, particularly within the economic and military spheres.

Compassion in Law: the Personal and the Political **Dermot Feenan**

This paper examines the place and absence of compassion in law, and argues for greater attention to be paid to this topic in socio-legal studies. Though considered an important aspect of inter-personal relations, compassion is rarely present in law. This may stem from a perception that compassion is an emotional reaction, whereas law should be a system based on rational principles. Yet, law often entails recourse to considerations of compassion when determining matters such as release from detention. It also informs recurrent debates on assisted suicide. And, judges have used compassion to determine the content of rights in such cases as the manual handling of disabled persons. Exploring the contested place of compassion in law, the paper considers the personal and political significance in whether and if so how to attend to the suffering of others, and its implications for socio-legal studies.

Session Six: Law under control; law as control

Law & 'Counter-law': Regulating surveillance out of the shadows? **Rebecca Moosavian**

Modern society is pervaded by myriad surveillance activities undertaken by a range of parties, both public and private. Surveillance in many of its forms is an inherently covert activity. This raises certain practical and legal dilemmas for those seeking to ensure it is effectively regulated by law because such regulation requires surveillance activity to be accountable to standards set and thus, in some sense, open to scrutiny or knowable.

This paper outlines the latter part of ongoing research into tensions between meaningful protection of the Article 8 privacy right and covert state surveillance activity. These tensions are particularly manifest in a crucial question that implicitly recurs across surveillance-related caselaw and reports: how can subjects of surveillance know they have been subject to it? This issue is particularly profound in light of the Edward Snowden revelations about large-scale surveillance programs at the US National Security Agency and GCHQ in Britain.

This paper undertakes analysis of European Court of Human Rights caselaw and wider literature on state surveillance. It focuses on the Article 8(2) privacy limitations, particularly the requirement that any interference be 'in accordance with law'. This has been taken to mean that surveillance systems must have a legal basis, but also that such laws should be 'accessible' and 'foreseeable'. But governments and the ECtHR show repeated concern that such requirements must not undermine the very efficacy of surveillance activities that necessarily rely on secrecy. Ultimately this research raises profound questions about how, and indeed whether, state activity 'in the shadows' can be made accountable. In doing so it draws upon Foucault's work on panopticism and power/knowledge.

Social citizenship in the devolutionary state: a clash of law and politics? Some initial findings

Mark Simpson

The nature of the citizen's social rights, and how these are realised in practice, is intimately linked to ideological perspectives on social citizenship. Reform of UK social security law since 2007 has been firmly grounded in the political belief that paid employment should form the "key to citizenship" (Lister, 2003), as the route to economic security and social participation. The same period has seen an apparent erosion of political support for the view that social citizenship and social protection systems should be "national in character" (R (Carson) v SSWP [2005]) as devolved regions' concern with UK government policy has translated into demands for increased regional autonomy in the field of social security. This paper presents provisional findings from a socio-legal study of social citizenship in the devolutionary UK. Through legal and policy analysis and qualitative interviews with elected representatives and civil servants it considers the extent to which devolved level political responses to the Welfare Reform Act 2012 present a challenge to the 1998 devolution settlement. At first glance, there appears to be a contrast between Northern Ireland, where full devolved competence has to date resulted in little divergence from UK government approaches to social security (Simpson, 2015), and Scotland, whose government's open hostility to the 2012 Act can find little legislative expression due to lack of competence. Whether this distinction survives closer inspection and the role of conceptions of social citizenship and national identity in informing views on the merits of a shared UK social citizenship will be interrogated. As Northern Ireland questions to an unprecedented extent the merits of parity with Great Britain in social security and Scotland looks to the devolution of new powers in the field, consideration will also be given to ways in which policy in the devolved regions might diverge from the Westminster model. (300 words)

Research conducted under the supervision of Gráinne McKeever and Ann Marie Gray, and with the support of an SLSA PhD fieldwork grant.

The 'English Question': Regionalism, Federalism and the Electoral Politics of the UK

Gary Wilson

To a large extent, the outcome of the Scottish Independence referendum has largely settled the constitutional status of Scotland within the United Kingdom, at least in the short term. The major UK wide parties agreed that a 'No' vote would be followed by a package of further devolved powers to Scotland and efforts are already underway to finalise the exact scope of these powers. Wales and Northern Ireland are beginning to push for an expansion of their own devolved powers, but arguably the most strongly felt calls in the aftermath of the referendum have concerned the 'West Lothian' question; decisions being taken on matters only affecting England by a UK Parliament that comprises representatives from all four constituent parts of the UK. There is much consensus on the need to address this anomaly of the current UK constitutional framework, but less agreement on how this ought to be done.

This paper considers different options for addressing the 'West Lothian' question and uncovers a range of practical problems in all of them. 'English only votes' at Westminster are dismissed as an ill-considered gimmick. A new constitutional framework based upon regional or federal mechanisms represents the most logical and workable step forward, but it is doubtful whether sufficient political or public support exists for such a development to take place. The Scottish referendum campaign highlighted, if anything, the extent to which the UK's future integrity is threatened by ideas of political difference and constitutional reform must take account of such realities.

Session Seven: The changing landscape of law and reform

Politics and the Law Commission: Law reform as the policy-making lawyers are allowed to do

Richard Percival

In this paper, I will argue that law reform properly understood is a specialist form of public policy formation, not an expression of legal professional practice. This point is often overlooked by lawyers, policy officials and indeed law reformers themselves. Considered in this way, current perceived problems in law reform practice can be reappraised. I consider two examples. First, far from there being a "crisis" in non-implementation of Law Commission reports, considered alongside other actors in the policy arena, the rate of implementation is probably pretty good. Secondly, the new statutory protocol between the Government and the Law Commission has been criticised as eroding the Commission's independence. Certainly, independence in the conduct of law reform projects is key – otherwise, law reform would be just another form of Governmental "political" policy-making – a level of dependence on the Government in the selection of projects is a positive benefit.

But if law reform is the policy-making that lawyers are allowed to do, and what distinguishes it from other policy processes is that it is the public policy that a (semi-) independent body of lawyers can properly determine, how do we determine the boundary between what is accepted as the realm of lawyers' policy and what is "politics not law reform"?

(Neo)Liberalism and Legal Aid: an analysis of the effect of ideology at institutional level -

Lucy Welsh

This paper reflects on the ways in which governments have approached the issue of publicly funded representation in criminal proceedings. Although I consider policy making in relation to the provision of legally aided representation in criminal proceedings generally, I focus on magistrates' courts - that being the place in which all cases begin and therefore the first place in which legal aid is properly considered.

I reflect upon the development of legal aid from its beginnings at a time of liberal government through the era of welfarism and into the rise of neoliberal government from the late 1970s onwards.

I do not suggest that there is a clear trajectory during those phases of government from more to less availability of legally aided representation, as a basic understanding of neoliberalism and its early preference for roll back of state funded services might suggest. The process is more complex and subject to political nuance than such an understanding of neoliberalism might allow. I analyse the provision of state funded criminal court defence services to demonstrate that neoliberalism is not a monolithic political framework and instead demonstrate that micro-analysis of political policy can challenge the hegemony of political philosophy.

I argue that such complexity has resulted in a fragmented system, in which providers are disillusioned and defendants are (further) marginalised. This partly occurs because governments have, in response to immediate political need, altered their approaches to publicly funded representation - at times viewing lawyers as obstructive and self-serving and at times seeking their assistance to ensure both the efficiency and appearance of legitimacy in the process of state-led prosecution. We are left with an extremely fragile system which continues to undergo rapid change in light of the most recent government's desire to increase efficiency and cut cost in public services.

Governing Through Taxation? A Historical Study of Alcohol Excise Duties and Behavioural Regulation

Henry Yeomans

Particularly since the 1990s, it has been widely emphasised that the governance of human behaviour extends far beyond the limits of law or criminal justice. Scholars of responsive regulation have identified civil sanctions, warnings, education and persuasion as mechanisms of regulation (Ayres and Braithwaite, 1992) and, within govermentality literature, seemingly mundane phenomena such as insurance policies and noise codes have been linked to governmental projects (O'Malley, 2002; Valverde, 2011). The role of taxation in shaping people's behaviour, however, remains relatively unexplored. This is curious: in 2011, the Coalition Government justified changes to alcohol excise duties with reference to the aim of "helping to address the harms associated with problem drinking" and giving "responsible drinkers additional choice" (Seely, 2010: 19). Changes to taxation were thus justified explicitly with reference to governmental attempts to encourage and discourage certain forms of behaviour. Using the case study of alcohol excise duties, this paper explores the role of taxation in behavioural regulation through a historical perspective. Specifically, it examines the connections between the historical development of excise duties and wider processes of state formation and behavioural regulation. It is ultimately suggested that taxation is a significant part of how states seek to govern the behaviour of their subjects.

Session Five: Sharing of Forensic Bioinformation

A distinctive mark: Assessing the Present Parliament's Contribution to the Governance of Forensic Biometric Data

Tim Wilson

With an imminent General Election and the recent publication of the Forensic Biometric Commissioner's first annual report it is timely to compare the governance of forensic biometric data in England and Wales now with the situation five years ago.
This presentation will compare key aspects of the legislation passed by the present Parliament with that endorsed by its predecessor in terms of the both the legislation that determines the retention of data in the absence of a conviction and comment on the actions being taken to comply with Parliament's decisions. In doing so it will be suggested that the results of such an analysis might extend beyond the impact of political contingencies on law making and the discretion allowed to the Westminster Parliament by ECtHR in the Marper judgment. Consideration will be given to whether this analysis also offers insights into general questions about the contrasting challenges created for legislative drafting and decision making – at both national and EU levels - by (a) rapidly developing genetic science and (b) the claims made by law enforcement officials.

The Risks of Using and Sharing Biometric Data to Tackle Crime Across the EU

Chris Wood

In 2012 the British public perceived organised crime and terrorism as being two of the top three threats to the British way of life (Chatham House, 2012). Many Governments continuously look at ways in which these two threats can be tackled. In 2005 the European Union introduced the Prüm Treaty, a tool for law enforcement agencies supporting cross border cooperation to assist the EU and Member States in the identification, prevention, prosecution and conviction of criminals, terrorists and the networks associated to these threats.
Whilst such a measure may be welcomed by some, others would argue against it and suggest it is further evidence of creating a 'United States of Europe'. On either side of the argument, there are risks when looking at the use, sharing and interpretation of biometric data in criminal cases across Europe. The ability to use, share and understand the meaning of biometric data can aid in criminal investigation as well as unlock a wealth of knowledge relating to individual criminals, criminal activities and criminal networks. On the other hand, some countries have standards and procedures which are not necessarily shared or supported by others and create conflicts between two (or more) jurisdictions when attempting to use, share and understand biometric data.
A risk analysis of biometric data sharing to support criminal investigation, ensuring that:
(i) Risks of abuse in criminal investigations are reduced;
(ii) Risks of miscarriages of justice are reduced; and
(iii) A system of effective criminal investigation, international co-operation and mutual assistance to tackle criminals and terrorists is strengthened.
This paper will address some of the risks biometric data sharing across the EU presents, putting forward solutions to those risks as a way of supporting the above three aims.

Why should we share forensic bioinformation beyond national borders - towards a theoretical framework

Ashley Savage and Richard Hyde

The purpose of this paper is to test the intrinsic rationale for the sharing of DNA information between the parties to the Prum Council Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime alongside well established doctrinal theory relating to utilitarianism, privacy, bodily integrity and property. It will further consider the theoretical justifications for the effective sharing of DNA information between states.

The authors seek to provide a theoretical framework for the governance of forensic bio-information which places particular emphasis on the sharing of such information between member states. The paper will identify general theories relevant to the obtaining, storage and sharing of DNA information in a criminal justice context. It will seek to evaluate the doctrinal positions with direct application to DNA information sharing under Prum. The paper will discuss the difference between DNA stains, samples and profiles and shall question whether certain theoretical propositions are of greater relevance and importance dependent on the form in question.

The practical operation of sharing DNA information between member states under Prum will be discussed. Various theoretical propositions relating to the effectiveness of information sharing will be considered.

Discussion will identify that Prum only concerns the sharing of DNA profiles, yet at the domestic member state level, a range of theoretical considerations are engaged from the outset, from the initial obtaining of stains and samples to the subsequent storage of cellular material. In particular, concepts of privacy and property will be considered. It will be argued that the range of theoretical considerations must not be discounted when a transition is made from sample to profile.

Discussion will progress to consider arguments relating to utilitarianism with reference to Kant, Bentham and Mill. The rationale for Prum will be tested to identify the proposed benefits of firstly, the use of DNA information in criminal justice, and second, the sharing DNA information beyond domestic borders. The chapter will question whether there is a hierarchy of types of offence which warrant the sharing of DNA profiles or serve as a justification to not share information beyond the domestic jurisdiction.

The paper will question whether the variances in domestic laws and practices of different member states require different ethical considerations. In this context, Autonomy will be considered with particular reference to the works of J.S. Mill and Kant. Analysis will be provided as to how the retention and sharing of DNA information might inhibit autonomy. Focus will also be provided on whether it can be acceptable to share DNA profiles of persons not previously convicted of a crime.

Drawing upon the work of Beyleveld, the chapter will focus upon the tension between 'libertarian positions' versus 'communitarian positions' identifying whether the individual's rights or the rights of the community as a whole should have primacy. The concept of community will be tested in this context where emphasis will be placed on whether the communitarian position can extend to DNA information sharing with other EU member states.

Session Six: Whistleblowing

Empowering the Vulnerable to Speak Up: The migrant worker as whistleblower

Ashley Savage and Ian Fitzgerald

Workers in any organisation face the possibility of suffering detrimental treatment or dismissal as a result of raising a whistleblowing concern. The employment status of individuals and the culture of everyday working life within an organisation can provide additional considerations for those willing to speak up. This is amplified when migrant workers are considered and in the United Kingdom and Northern Ireland studies and news reports have consistently suggested that migrant workers are often placed in some of the most precarious positions (Citizens Advice, 2004; McKay and Winklemann-Gleed, 2005; Craig et al., 2007; TUC, 2008). For example in Northern Ireland recent research conducted by Potter and Hamilton (2014) found that mushroom pickers suffered a 'continuum of exploitation' whereby employers created a climate of fear by capitalising on the 'manipulation of residency status, ambiguous documentation, control over accommodation and movement, utilisation of language barriers and maintaining a climate of fear.' Whilst in October 2013, raids conducted by police, the National Crime Agency and the Gangmaster's Licencing Authority in Cambridgeshire found Latvian and Lithuanian workers living in squalid conditions whilst working extremely long hours for wages below the statutory minimum. Further in March 2014, Human Rights Watch released a report identifying that migrant domestic workers were suffering from very low wages, physical and psychological abuse and faced the risk of losing their immigration status if they did something about it.

The purpose of this paper is to consider how vulnerable migrant workers might be empowered to raise whistleblowing concerns. Consideration of the concerns raised will extend beyond focussing upon the poor working conditions such as those outlined above and will cover the broad categories of disclosures identified in the UK Public Interest Disclosure Act 1998 ('PIDA'). By focussing on the United Kingdom perspective, the authors will consider the current barriers to raising concerns outlined above alongside the availability of legal and enforcement mechanisms. The authors will question the effectiveness of the UK PIDA suggesting that the regime may not be suitable to assist migrant workers. This paper will offer proposals for enhancement and reform. The authors will consider the effectiveness of the Gangmaster's Licencing Authority by drawing upon evidence obtained using Freedom of Information requests. The authors will also make recommendations for improving the way in which whistleblower concerns are handled as well as making suggestions to increase the awareness and promotion of whistleblowing and the availability of legal protections.

Whistle while you work: effective data sharing and protection of the vulnerable

Helen James

In today's high-tech computer aged society, many of us express concerns around the electronic storage of our sensitive personal data. Such data includes information relating to physical and mental health. Whilst such concerns are perhaps understandable, especially in light of the many highly publicised data breaches of recent years, effective information sharing is an essential tool in affording protection to the vulnerable. Public inquiries such as those following the appalling abuses which took place at Winterbourne View Hospital and Mid- Staffordshire NHS Foundation Trust have focused on the need for good practice in data-sharing and whistle-blowing in order to eliminate further such instances.

As long ago as 1996 the Committee for Standards in Public Life identified that 'All organisations face the risks of things going wrong or of unknowingly harbouring malpractice...encouraging a culture of opened within an organization will help: prevention is better than cure' (2nd Report CM3270-1 May 1996. P21). Subsequently, a Private Member's Bill which attracted Government and cross-party support resulted in the Public Interest Disclosure Act 1998. The Act seeks to provide protection for whistle-blowers from detrimental treatment by employers. Events since 1998 would support the view that the Act has failed in its aim. Many of those opting to blow the whistle on instances of malpractice have been victimized and hounded from their jobs. However, good data-sharing coupled with the ability of those suspecting the existence of malpractice to safely expose it is crucial if we are to avoid replaying the past.

It is against this background that this paper considers mechanisms through which a culture of openness and transparency can be created, whilst maintaining public confidence in the protection of sensitive personal data.

The Halfway House is Only Halfway Built: Towards a Fit-for-Purpose Understanding of 'Prescribed Persons' in the Public Interest Disclosure Act

Richard Hyde

The Public Interest Disclosure Act seeks to encourage whistleblowers to make disclosures to the regulatory bodies, providing protection for such disclosures more readily than protection for disclosures made to the wider public. However, the report of the Whistleblowing Commission suggests that the Government should review the process for prescribing organisations under PIDA, and should look at the current prescribed persons list (now contained in the Public Interest Disclosure (Prescribed Persons) Order 2014) and examine the organisations that appear on it. Whilst the government has taken some steps to amend the list, the list is still narrow, with a number of bodies exercising regulatory functions not listed. Those who wish to disclose wrongdoing to public bodies that are not listed therefore have a more difficult task.

This paper takes up the challenge provided by the Commission, and aims to put forward a theoretically sound argument for an expansion of the prescribed persons list, with the aim of bringing more disclosures within the second step disclosure regime in PIDA whilst eliminating some of the inconsistencies and perverse incentives that arise due to the current limited list. First, the paper describes the stepped disclosure regime put in place by PIDA, and the important role played by prescribed persons in the regime. Second, it argues for the importance of whistleblowing disclosures, suggesting that they play both an important intrinsic role in democratic participation and free speech, and an important instrumental role in the functioning of society.

Third, it examines the current prescribed persons list, and suggests that it is both theoretically and empirically inadequate, failing to reflect the reality of the regulatory state and without a coherent theoretical basis. Drawing upon an empirical study of whistleblowing disclosures, the article reveals that the stepped disclosure regime is circumvented by transfers between bodies prescribed and those who are not, and reveals the potential for unfairness and perverse incentives that arise from the limited disclosure list. This part also demonstrates that regulators not prescribed under PIDA do receive whistleblowing disclosures, and considers whether there is a theoretical justification for placing individuals who disclose to these regulators in a more disadvantageous position than whistleblowers whose concern relates to a matter within the competence of a prescribed person. Finally, seeks to provide a coherent justification for an expansion of the prescribed persons list, and makes suggestions for changes that would enhance the ability of the list to achieve its goals.

Session Seven: Information Sharing I

Clare's Law' under the spotlight: The 'politics of public protection' in the promotion of a 'risk information' Disclosure Scheme'

Jamie Grace

This paper will seek to first present an argument that posits the Domestic Violence Disclosure Scheme, known as Clare's Law, as a potential 'regulatory failing' on the part of the Home Office and other 'regulatory actors'. Using a doctrinal-regulatory method of analysis developed by Julia Black, amongst others, the paper will address the conflicting aims of a risk management-driven, public protection-conscious regulatory framework in criminal justice, and assess the impact this conflict has on the civil liberties and human rights of some 'risky individuals'.

This paper will build on existing analyses of the common law doctrines and publically-available policy documentation; analyses that have shown the workings of the Domestic Violence Disclosure Scheme to be a distortion of the requirements of the law through the wording of policy-based regulation of the 'public protection routine'. This paper will then attempt to highlight the further distortion of the perceived legitimacy and effectiveness of the Scheme through an analysis of the treatment of the Scheme in the UK press and wider media - a process driven by police cultures of public engagement necessitated by a public confidence agenda in British policing, resulting in turn from a contemporary 'politics of public protection'.

The power of diversity data: a nudge in the right direction through voluntary benchmarking **Richard Collins and Laura Holloway**

The legal profession in England and Wales is less diverse than the society it serves. Although an increasingly diverse selection of people are qualifying as solicitors, this diversity is not reflected at partner level, and solicitors who are not white, male or privately educated are disproportionately working in lower paid roles. When compared with other professional services such as accountancy, progress in legal services has been slow.

As a regulator of legal services in England and Wales, the Solicitors' Regulation Authority (SRA) sees a diverse and representative profession as a priority in the public interest. A diverse profession drives the legitimacy of the legal system and recruitment of the best talent.

The SRA has required law firms to collect and report diversity data to us for the past two years, and there have been criticisms from some members of the legal profession that this is intrusive and not the role of a regulator. We disagree.

We set about designing a toolkit to use the diversity data to show why diversity is such an important priority, and why firms who lack a diverse workforce should be concerned about this. We drew on nudge theory, and wanted to frame prioritising diversity as a logical choice, rather than an unnecessary obligation.

This presentation will cover:

- The role of diversity data collection in driving accountability
- How we used statistical bootstrap resampling to improve an incomplete data set
- How we designed a non-compulsory benchmarking and self-assessment tool to nudge law firms into understanding the benefits of a diverse workforce
- Language we used to emphasise diversity as a positive business choice
- How we intend to assess whether the approach was effective

Our diversity toolkit is available to view here: http://www.sra.org.uk/solicitors/diversity-toolkit/diversity-toolkit.page

Auditors and Information Sharing: An Initial Exploration **Catriona Hyde**

Auditors are an important part of the regulatory networks that function to govern businesses. They perform the important function of verifying information published by businesses. In performing this function they may discover information that they wish to share. Both regulatory norms and customary norms govern the information sharing practices of regulators. This paper seeks to begin to explore these norms, considering when regulatory norms suggest auditors can share information and when customary practice shows that they do share information. By considering what information auditors may wish to share, when they may wish to share it, how they share such information and normative questions of whether such information should be shared, a conversation about the governance of information sharing by these important regulatory actors can be begun, and issues for further examination can be set out.

Session Eight: Information Sharing II

Information about information law and the effects of its release and restriction **Judith Townend**

There is a certain irony that the judicial process used to determine the release and control of data is not subject to a consistent data publication policy. In fact, public information records about the courts processes determining information release or restriction (and their outcomes) are often patchy and erratic. This is an observation which can be made about courts data more generally, but this paper specifically considers the nature of the information in the public domain about information and data law, focusing on cases that decide rights to information and relating to legal issues of data protection, breach of confidence and privacy, freedom of information and national security. It then examines the rationales used for releasing this type of information, developed from a longstanding principle of open justice, the right to freedom of expression, and democratic ideals of accountability and transparency. The paper finds that the release or restriction of courts data relating to information law, and the logic on which this is based, is often subject to administrative and judicial confusion, owing to the piecemeal way in which court communication systems have developed over time, involving both public and private agencies. Moreover, there has been a lack of scholarly, judicial and governmental attention given to the implications of this muddled practice and reasoning. This means that a number of social and legal effects have been overlooked and inadequately considered: first, the detrimental impact on society of withholding information about information law (inhibiting public understanding of the law, for example); and second, the potentially negative side-effects of releasing information about information law (infringing individual privacy rights, for example). This paper identifies some of these effects, and suggests some practical steps for the development of a coherent policy on the publication and availability of information about information law.

Note: This paper falls under a number of the sub-topics mentioned in the Call for Papers for this stream, primarily: ‘The role of information in ensuring accountability’ and ‘The public dissemination of information about individuals’.

Share and share alike? Trust, anonymisation and data sharing **Marion Oswald and Helen James**

In the context of ongoing issues surrounding the sharing of personal data with, and between, public sector bodies, this paper, based on the first author's recent article (1), will review the results of an exploratory empirical research project into attitudes to sharing personal data with the public sector.

The paper asks whether the necessity of many public services results in a readiness of individuals to share personal data, and thus sacrifice a certain level of privacy, in connection with their provision. It will explore the value of privacy in the context of the on-going debates around personal data sharing, with particular focus on the public sector in England, using the UK government's care.data project as an example. The impact on trust relations between the government, the National Health Service (NHS) and the citizen will be considered. The importance of anonymisation of personal data as a method of minimising privacy risks and increasing trust will be discussed. Using the results of the author's study into attitudes to sharing personal data with the public sector, the paper will suggest that the benefits-versus-costs privacy problem is particularly significant in relation to data sharing projects in the public sector. The lack of definitive answers in relation to the risk of re-identification contributes to the problem. Finally, the article will suggest that future work may wish to investigate how trust in, and acceptance of, data sharing initiatives could be improved by a bottom-up institution-led approach.

(1) Marion Oswald, "Share and share alike? An examination of trust, anonymisation and data sharing with particular reference to an exploratory research project investigating attitudes to sharing personal data with the public sector", (2014) 11:3 SCRIPTed 245 http://script-ed.org/?p=1667

Liberty, Security and the Permanency of Information in the Governance of Risk: Catt in the Supreme Court' **Jamie Grace**

This paper will review the doctrinal matters of the appeals from R (Catt) v ACPO & Metropolitan Police [2013] EWCA Civ 192, heard before the UK Supreme Court in December 2014. This discussion will be placed into a broader practical and theoretical context, highlighting issues of transparency and (a lack of) public understanding with regard to the extent to which police surveillance translates in practice into the growth of database systems that structure public protection information, and allow for the collation and retention of that 'criminality information' or 'security intelligence'.

The paper will also highlight the ways in which the Catt judgment from the Supreme Court will impact upon the scope and growth of the trend toward public protection information sharing between governance networks, in the light of European Court of Human Rights jurisprudence, including Brunet v France (2014) and Avilkina v Russia (2013). Parallels will be drawn in this paper to particular policy moves in the field of patient information governance under the auspices of NHS England, and the lessons that may be learned from the purported national 'roll-out' of the care.data scheme.

Transitions from Conflict: The Role and Agency of Lawyer **Anna Bryson**

Session Four:

Swapping Sides? Political Transitions and Cause Lawyers within the State **Louise Mallinder**

Transitions are moments of profound political change. During these periods, people who previously fought against the state can find themselves entering government. Lawyers are often among those who make this leap. As is documented in the academic literature, cause lawyers are generally understood as lawyers who work with or within social movements, non-governmental organisations and public interest law firms. However, following a change in political regime, these lawyers may move from opposing the state to working within it, either as government lawyers, civil servants or politicians.

Moving from opposing the state to working for it can provide cause lawyers with opportunities to affect change. However, it can also pose challenges for the lawyers involved including: whether the changes in the political context necessitate them shifting or reinterpreting their 'cause'; whether working within government forces them to make pragmatic compromises on their political goals or defend government positions with which they disagree; how they balance working for the public good with their ideological commitments particularly in deeply politicised transitional contexts; and where they join institutions that are still staffed by personnel appointed by and still faithful to the values of the previous regime, how this affects their working practices. Tensions between government lawyers can be most acute where state lawyers from different departments end up on opposing sides within a courtroom. Tensions can also develop between those who work for the state and their former comrades, the cause lawyers who remain outside the state and the wider social movement. Where lawyers shift towards political roles, it also raises questions of how their legal skills contribute to and shape their approaches to political life, and to what extent cause lawyers' involvement in government results in their social movement reorienting its activities towards more moderate, reformist and state-centric tactics, and away from radical and transformational approaches.

To date, there has been limited socio-legal scholarship on cause lawyers within the state, and even less on lawyers working within the governments of transitional states. This paper will draw on empirical data gathered from semi-structured interviews conducted in 2014 with lawyers in Cambodia, Chile, Israel, Palestine, Tunisia and South Africa to explore why some cause lawyers join state institutions in political transitions, and to explore they grapple with the opportunities and challenges outlined above.

The Gendered Professional: Lawyers in Conflict & Transition **Anna Bryson**

This paper puts a spotlight on female lawyers in conflict and transition. Their various roles will be contextualised with reference to the relevant litertuare on the sociology of the professions and women in conflict.It draws on a substantial data set of more than 120 semi-structured interviews (conducted in 2014 as part of the ESRC-funded Lawyers in Conflict and Transition project – www.lawyersconflictandtransition.org). The case studies vary widely – from societies at various stages of transition (Cambodia, Chile, Tunisia and South Africa) to those yet embroiled in seemingly intractable conflict (Israel and Palestine). This will facilitate a nuanced and culture-sensitive analysis.

By subverting, or at least stirring up, the 'natural' order, situations of conflict create opportunities and openings for female lawyers. There is, however, a sense in which the forces mediating between female lawyers and political causes can serve to 'educate' them into acquiescing with dominant – and predominantly male - hegemonies. These forces will be analysed with reference to issues such as the intersection of gender with ethical conduct, the performance of legality, and reform of legal collectives. The focus will be on the construction of inequality at the interface of conflict and tension – whether in the courtroom, the backroom, the Bench or the Bar.

Lawyers, Clients and Political Causes in Conflict and Transition **Kieran McEvoy**

Based upon fieldwork in a range of jurisdictions (including Northern Ireland, South Africa, Israel\Palestine, Cambodia, Chile and Tunisia), this paper explores the particular challenges for lawyers in managing relations with politically motivated clients charged with terrorism, treason, sedition and related offences. Lawyers in some cases will share the political objectives of their clients – in other cases they may not. Regardless, lawyers are inevitably faced with very direct ethical challenges in their interaction with such clients (e.g. the information which clients wish to pass on to family or indeed colleagues on the outside). In addition, often the broader political and military movements to which their clients belong will have a direct influence in terms of legal strategies deployed (including whether or not to recognise the court), lines of argumentation and the ways in which legality is 'performed' in what are inevitably highly politicised legal settings. This paper explores the ways in which lawyers navigate these complex issues; the versions of professionalism (including notions of neutrality) which are constructed by lawyers in such settings; the relationship between such lawyers and their professional associations and the ways in which such challenges are (or are not) addressed in backward looking transitional justice mechanisms exploring the role that lawyers play during periods of conflict or authoritarianism.

Session Five:

Working for and with Victims in the Extraordinary Chambers in the Courts of Cambodia. **Rachel Killean**

Victims are frequently utilised by those who establish and work in international(ised) criminal courts as a way of 'self-legitimising', and justifying the extensive financial, political, legal and psychological effort needed to proceed with transitional justice mechanisms. By citing the needs of 'victims', those involved in the process are able to bolster the more abstract justifications for transitional justice with something more real, human and immediate. This paper explores this process of self-legitimisation in the context of the Extraordinary Chambers in the Courts of Cambodia (ECCC). Drawn from interviews conducted with lawyers and NGO activists at the ECCC in 2013 and 2014, it explores the distinction frequently made between working for the benefit of 'the victims', and actually involving victims in judicial proceedings.

The paper notes that despite frequently citing victims as a primary motivation for their work, many lawyers working within the ECCC voiced frustration over the various procedural difficulties and setbacks brought about by the involvement of the victims and their representatives. Neither has this attitude been limited to the voiced opinions of staff. Since it began its proceedings, the Court has repeatedly cut back and limited the initially broad participation rights of victims, who are able to participate in the proceedings as 'civil parties'. While focusing on the ECCC, this paper draws broader implications for the role of victims in international criminal law.

Legal Culture and the Interpretations of Post-Justice in Rwanda **Nicola Palmer**

The rise of international criminal trials has been accompanied by a call for domestic responses to extraordinary violence. Yet there is remarkably limited research on the interactions among local, national, and international transitional justice institutions. Rwanda offers an early example of multi-level courts operating in concert. This paper proposes that a focus the role and agency of the judges and lawyers involved in the courts' work offers one avenue to explore these interactions.

The paper draws on material included in my forth-coming book 'Courts in Conflict: Interpreting the layers of justice in post-genocide Rwanda' (OUP, March 2015) and examines the pluralist responses to the Rwandan genocide though 182 interviews with judges, lawyers, and a group of witnesses and suspects within the United Nations International Criminal Tribunal for Rwanda (ICTR), the national Rwandan courts, and the gacaca community courts. This hermeneutic analysis shows that the 'real people' at work in the post-genocide courts offer notably different interpretations of Rwanda's transitional justice processes, illuminating divergent legal cultures.

An understanding of these plural readings of the courts' work better explains the interactions among these different sites of justice. Such interactions have occurred through the transfer of cases, the sharing of evidence and the experience of individuals subject to the authority of more than one of these jurisdictions. An interpretive analysis shows that although these courts that are compatible in law, they have often conflicted at these points on interaction. The potential for similar competition is apparent in the practice of the International Criminal Court (ICC). However, this paper argues that the lawyers and judges inside of the institutions offer the best means to militate against such competition through taking seriously the plurality of values attached to these processes.

Lawyers, 'Revolution' and Transitional Justice: The Case of Tunisia **Marny Requa**

This paper draws on empirical research from the ESRC-funded Lawyers, Conflict and Transition project, exploring critical junctures in recent Tunisian history and the activity of lawyers in each. The article seeks to explain the unique role played by lawyers in the Tunisian transition as well as complicated relationships with international norms, institutions and discourses. A small cohort of activist lawyers challenged the Ben Ali regime using a variety of methods; a wider group of Tunisian lawyers was instrumental in the political process leading to regime change and a new constitution. Activism has abated in the last few years, but individual lawyers remain politically engaged and at the forefront of legal reform and transitional justice movements. Analysis of Tunisian legal culture and perceptions of the legal profession sheds light on Tunisian society's receptivity to legal change, international and foreign law, and transitional justice discourses. The position of the 'international' in domestic legal and political circles remains contested. During the dictatorship law was used strategically as a political tool and, today, reliance on international law is often politicized. Developments related to transitional justice legislative initiatives are particularly insightful in this regard. Historic divisions amongst lawyers and the messy business of democracy are currently impeding reform within and outside the Tunisian Bar, and these conditions have a knock-on effect for the wider legal and political system.

Session Six:

Lawyers, the CCRC and Dealing with the Past in Northern Ireland **Hannah Quirk**

There is a significant gap in the transitional justice scholarship relating to wrongful convictions. Uniquely amongst post-conflict societies, Northern Ireland has a body for investigating miscarriages of justice, albeit one designed for 'ordinary' appeals. This paper examines the under-use of the appeals system during the conflict (in contrast to extensive use of judicial review). It explores some of the reasons for this and the ways in which lawyers have dealt with post-conflict appeals through the Criminal Cases Review Commission. It suggests possible lessons from this for Northern Ireland and for other transitional societies.

General problems of the post-national human rights regime and its socio-legal implications in the case of the crimes committed during the Spanish Civil War and Franco's Dictatorship **Ainhoa Martinez**

My research area consists in the performance of the Spanish legal system in the tasks of efficient legal decision-making and effective dealing with the crimes committed during the Civil War and the dictatorship. I am focusing in the ruling from the Spanish Supreme Court stating that the crimes cannot be judged by virtue of the constitutional principles of legality and non retroactivity (Ruling no. 101/2012, on the 27th of February 2012.). I claim that from the point of view of the post-national human rights law, there is a deficiency in the performance of the Spanish legal system, which is providing impunity to the victims of such crimes. What implies a collision of sovereignty between the post-national human rights regime and the Spanish legal system. This shows the lack of universality and the presence of partiality in human rights law in action, as well as the failure to universally translate them into practice. I suggest a focus in the legal decision-making of this case from a philosophical and legal point of view in order to analyze this partiality. Besides, I purpose to frame human rights in local terms and create a specific legal doctrine to fix the gaps drawn by the law in this case.

Cause Paralegals: Legal Empowerment in Post-Conflict Transitions **Lars Waldorf**

Over the past ten years, there has been a surge of legal empowerment programs in post-conflict states, most notably in Sierra Leone and Liberia. Legal empowerment has four key features. First, it takes a bottom-up approach, focusing on the needs of the poor and marginalized. Second, legal empowerment is a form of rights-based development and so emphasizes rights, participation, and accountability. Third, it adopts a pragmatic approach to legal pluralism, working with formal, customary, and religious law. Finally, legal empowerment engages civil society more than state institutions. In post-conflict environments, legal empowerment is mostly implemented by community-based paralegals. This is largely due to the small (and weak) professional bars, capacity deficits of state justice institutions, and salience of customary and religious dispute resolution mechanisms. The paper will examine the work of these community paralegals through the prism of the cause lawyering literature.

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THE UNIVERSITY OF WARWICK

For the most up-to-date version of this map go to warwick.ac.uk/go/maps

For further information see the University web site or mobile site www.m.warwick.ac.uk

BUILDING KEY

Arden	1	F2
Argent Court, incorporating Estates and Jobs.ac.uk	2	G3
Arthur Vick	3	F6
Avon Building, incorporating Drama Studio	4	G2
Benefactors	5	C5
Biomedical Research	6	D8
Bluebell	7	C6/D6
Chaplaincy	8	D5
Chemistry	9	D4
Claycroft	10	G5
Clinical Trials Unit	11	D8
Computer Science	12	E4
Cryfield and Redfern	13	B5
Cryfield Centre	14	A6
Education	15	H2
Engineering	16	E4
Engineering Management Building	17	F2
Games Hall	18	E2
Gatehouse	19	D3
Gibbet Hill Farmhouse	20	C8
Health Centre	21	D6
Heronbank	22	A4
Humanities Building	23	E4
International Automotive Research Centre (IARC)	24	E4
International Digital Laboratory (IDL)	25	F4
International House	26	C6
International Institute for Product and Service Innovation	27	F4
International Manufacturing Centre	28	E4
IT Services	29	H2
IT Services Training	30	G3
Jack Martin	31	E6
Lakeside	32	B3
Lakeside Apartments	33	B3
Library	34	D4
Lifelong Learning	35	G2
Life Sciences (Gibbet Hill)	36	D8
Materials and Analytical Sciences Building	37	D4
Mathematics and Statistics (Zeeman Building)	38	F4
Maths Houses	39	E8
Mechanochemical Cell Biology Building (MCBB)	40	D8
Medical School Building	41	D8
Medical Teaching Centre	42	D8
Millburn House	43	F3
Modern Records Centre and BP Archive	44	D5
Music	45	H2
Nursery	46	C3
Physical Sciences	47	D4
Physics	48	D4
Phytobiology Building	49	F4/F5
Porters/Staff and Student Postroom	50	G1
Psychology	51	E5
Radcliffe	52	C4
Ramphal Building	53	D4
Rootes	54	C6/D6
Rootes Building, incorporating Learning Grid Rootes	55	C6
Scarman	56	C3
Science Park (Venture Centre)	57	F4/G4
Senate House (formerly Coventry House)	58	D5
Sherbourne	59	B2
Shops	60	D5
Social Sciences	61	D4
Sports Centre	62	E5
Students' Union	63	D6
Tennis Centre	64	F2
Tocil	65	F5
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Warwick Arts Centre, incorporating Music Centre	68	D5
Warwick Business School (WBS)	69	D4
WBS Main Reception, Scarman Rd	69	D4
WBS Social Sciences	70	C5/D5
WBS Teaching Centre	71	C4
WarwickPrint	72	H2
Westwood	73	G1/G2
Westwood Café	74	G2
Westwood Gatehouse	75	H2
Westwood House, incorporating Occupational Health, Counselling and Student Calling Room	76	F2
Westwood Teaching and Westwood Lecture Theatre	77	H2
Whitefields	78	D5

SYMBOLS

- University Buildings
- Student Residences
- Car Parks
- Building Entrances
- Wheelchair-accessible Entrances
- Controlled Access
- Footpaths
- Food Outlets
- Footpaths/Cycleways
- One-way Road
- Bus Stop
- No Entry
- Restricted Access
- Road Closures
- Bus and Coach Route Only
- Temporary Permit Parking
- Planned works (traffic lights operational at times)

Stay informed by visiting
warwick.ac.uk/keepingcampusmoving

Campus Map (Marketing Communications) January 2015

How to find us

From the North

- From M69/M6 interchange (M6 Jct 2) take A46 towards Warwick and Coventry S & E.
- After approx 3.5 miles you will reach Tollbar End roundabout (junction with A45). At the roundabout, follow signs for A45 Birmingham.
- After approx 3 miles you will cross the A429 (Kenilworth Road). Half a mile after this junction take the left-hand turn signposted 'University of Warwick'. Follow signs for University of Warwick (and Warwick Arts Centre) across two roundabouts. You are now approaching The University of Warwick from Kirby Corner Road.

From the South East

- From M45 Jct 1 take A45 towards Coventry.
- After approx 7 miles you will reach Tollbar End roundabout (junction with A46). Follow signs for A45 Birmingham.
- Now follow the directions given in the final bulletpoint above.

From the South

- From M40 Jct 15 take A46 towards Coventry.
- After approx 8 miles leave A46 at junction signposted 'University of Warwick and Stoneleigh'.
- After a further 1.5 miles you will cross the A429 (Kenilworth Road). You are now approaching The University of Warwick from Gibbet Hill Road.

From the West

- From M42 Jct 6 take A45 towards Coventry.
- After approx 9 miles you will pass a large Sainsbury's store on your left. At the next roundabout (Canley Fire Station on right), take the right-hand exit, signposted 'University and Canley'.
- Follow signs for University of Warwick (and Warwick Arts Centre) across two roundabouts. You are now approaching the University of Warwick from Kirby Corner Road.

By Air Approx 30 mins by taxi from Birmingham International Airport.

By Rail *(nearest station is Coventry)* Approx 15 mins by taxi from Coventry railway station or take the National Express Coventry 11 or 12 bus from the Warwick Road (follow signs from the station), or Travel De Courcey W1 from the station concourse (Mon-Fri, 9.10 then hourly until 18.10).

Parking on Campus

www.warwick.ac.uk/go/carparks

Car parks are clearly marked on the campus map overleaf. Charges apply 6am-6pm, Mon-Fri, 52 weeks a year. Parking is free at weekends, evenings (up to midnight) and Bank Holidays.

Pay and Display – Car parks 8, 9, 10, 12 and Cryfield Road
Unrestricted entry. A ticket must be purchased on arrival and displayed in your vehicle. Overstay results in a Civil Parking Notice being issued. Permit holders can also use these car parks.

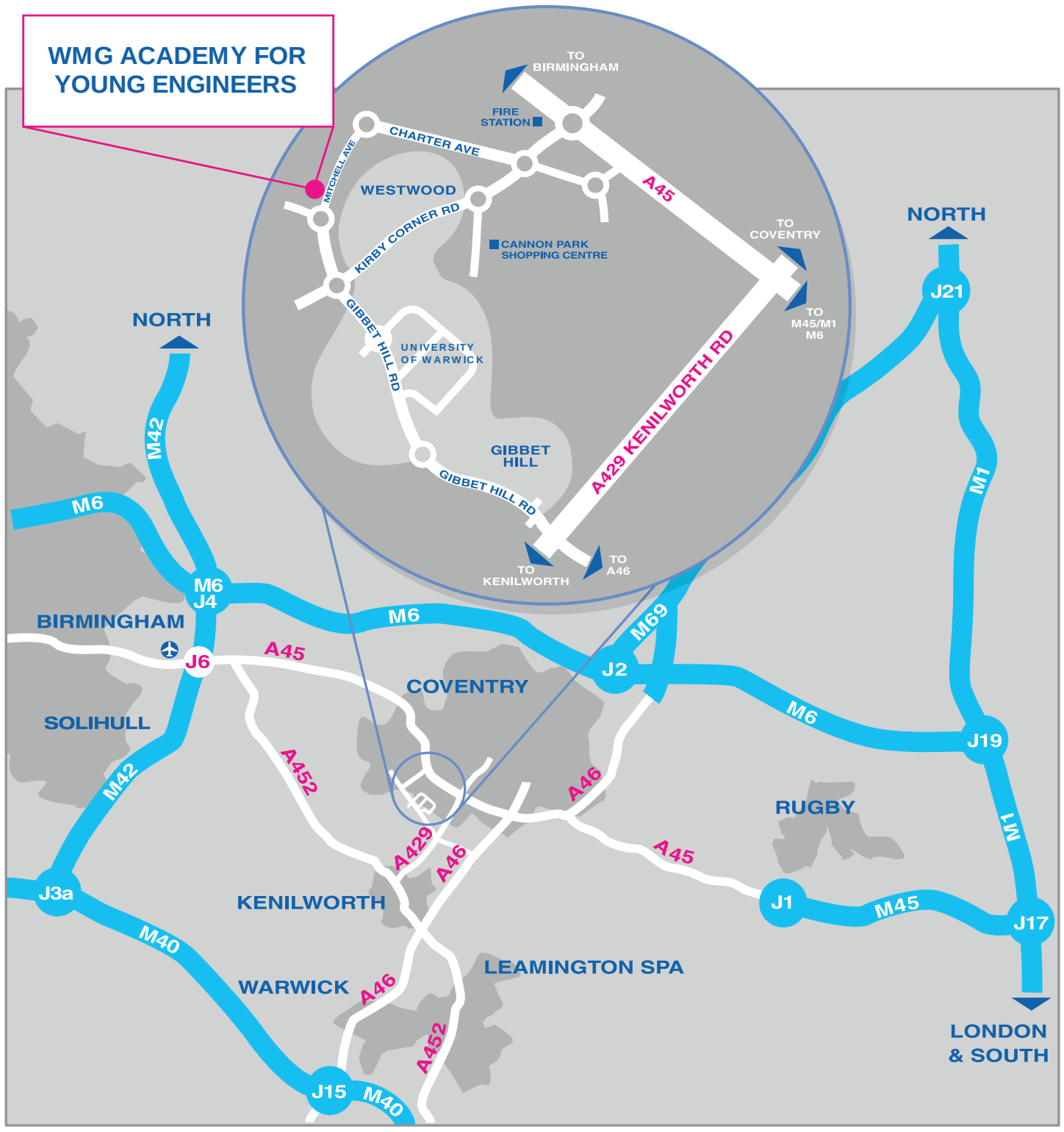
Pay on Foot – Car parks 7, 8a, 13 and 15
Barrier restricted access. Permit holders can use their University card to enter/exit the car park. All other users must take a ticket on entry and validate it at the pay station before exiting.

Charges: Up to 4 hrs – £1.50/Full Day – £3. NB: pay stations accept correct change only.

Permit-only car parks – Car parks 2, 3, 6, 14 and 16 are open to staff permit holders only. Car Parks 1 and 1a are dedicated to Gibbet Hill staff and approved users only.
All visitors to Gibbet Hill must request a visitor pass from Life Sciences or Warwick Medical School.

Disabled Parking
There are parking spaces for registered disabled blue badge holders near to all buildings on campus. Should you wish to use a barriered car park, please contact University House Reception for further assistance on (024) 7652 2033.

Overnight Parking
Visitors requiring overnight parking should contact University House Reception from 9am-5pm, and the Security Gatehouse out of hours.



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THE UNIVERSITY OF WARWICK

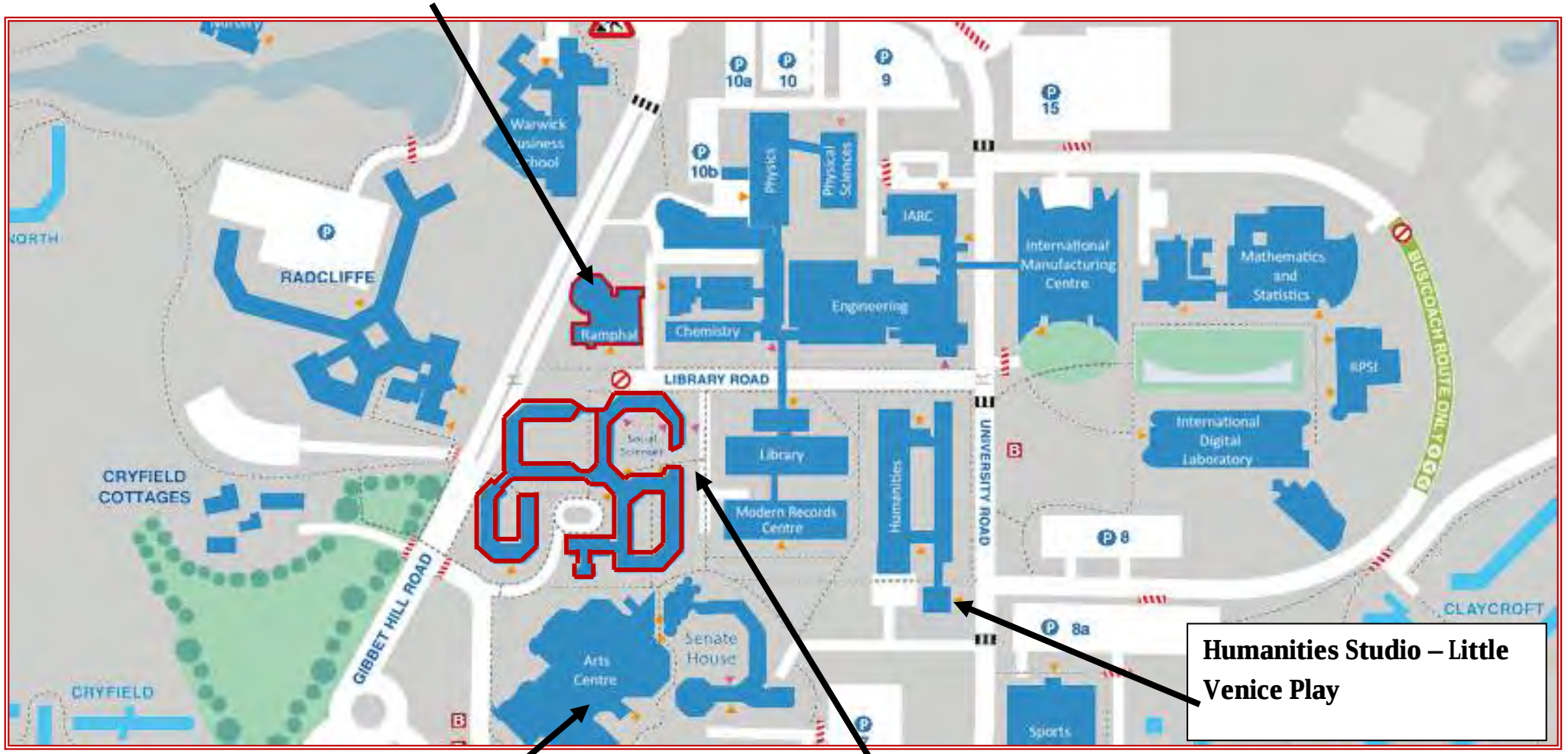
Keeping Campus Moving

warwick**campus**

January 2015

Conference Locations

RAMPHAL – Conference Reception, Parallel Sessions



Humanities Studio – Little Venice Play

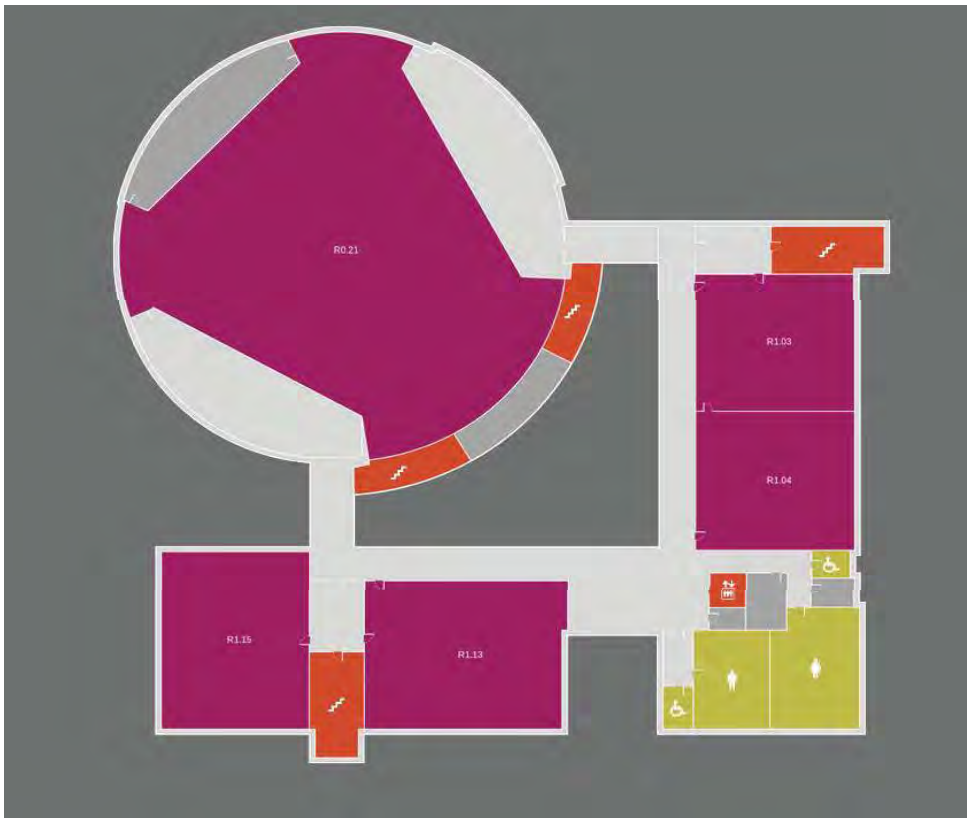
Mead Gallery – Poster session and Reception - Sponsored by Social and Legal Studies

SOCIAL SCIENCES – Parallel sessions

Floor Plans

Ramphal Ground Floor

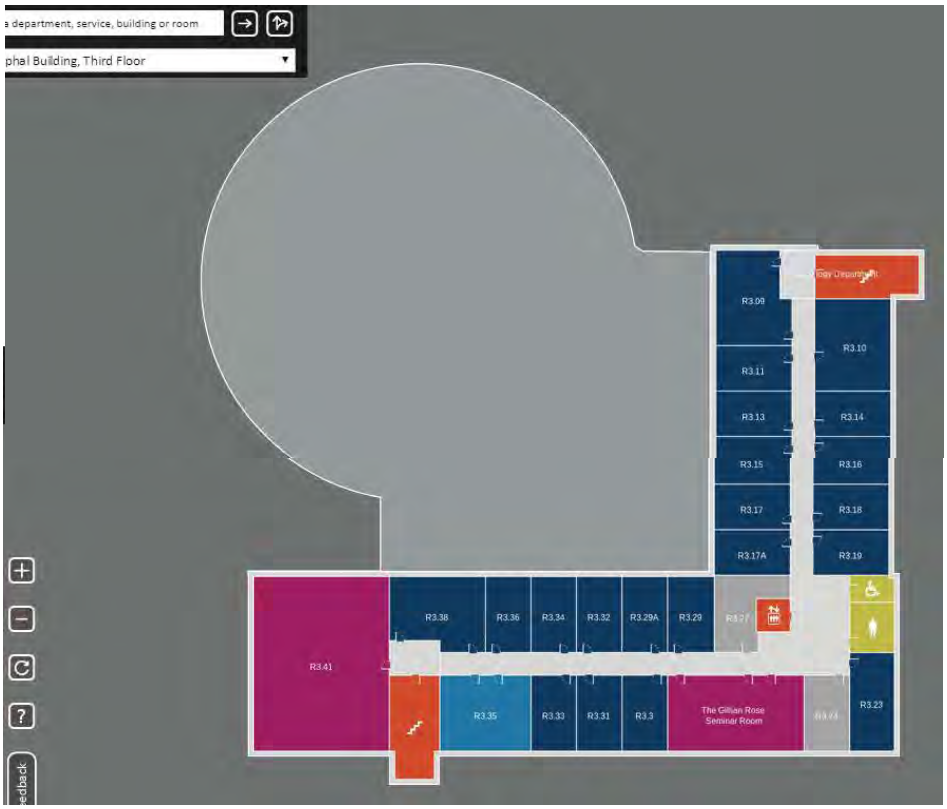
Ramphal First Floor



Floor Plans

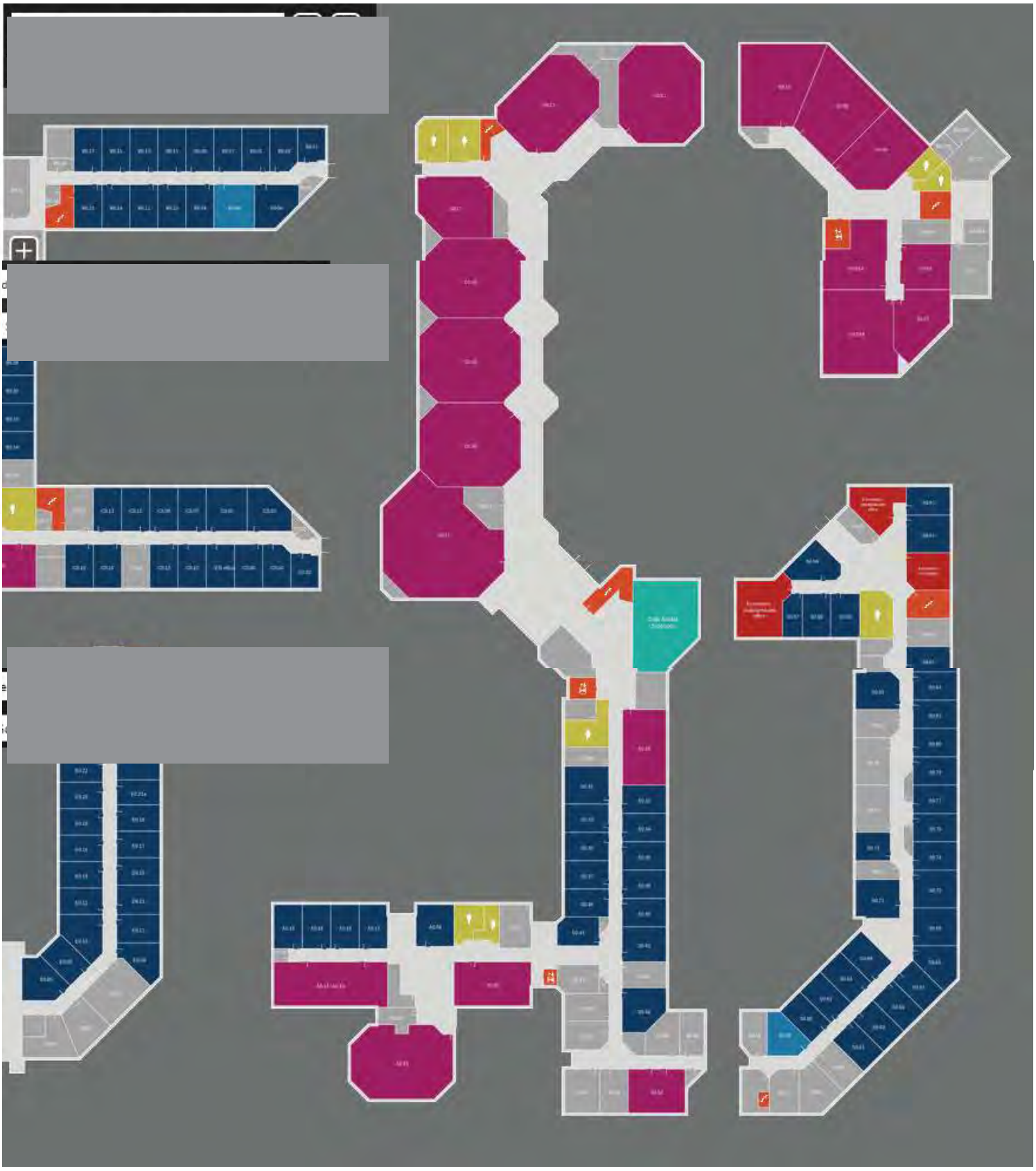
Ramphal Second Floor

Ramphal Third Floor



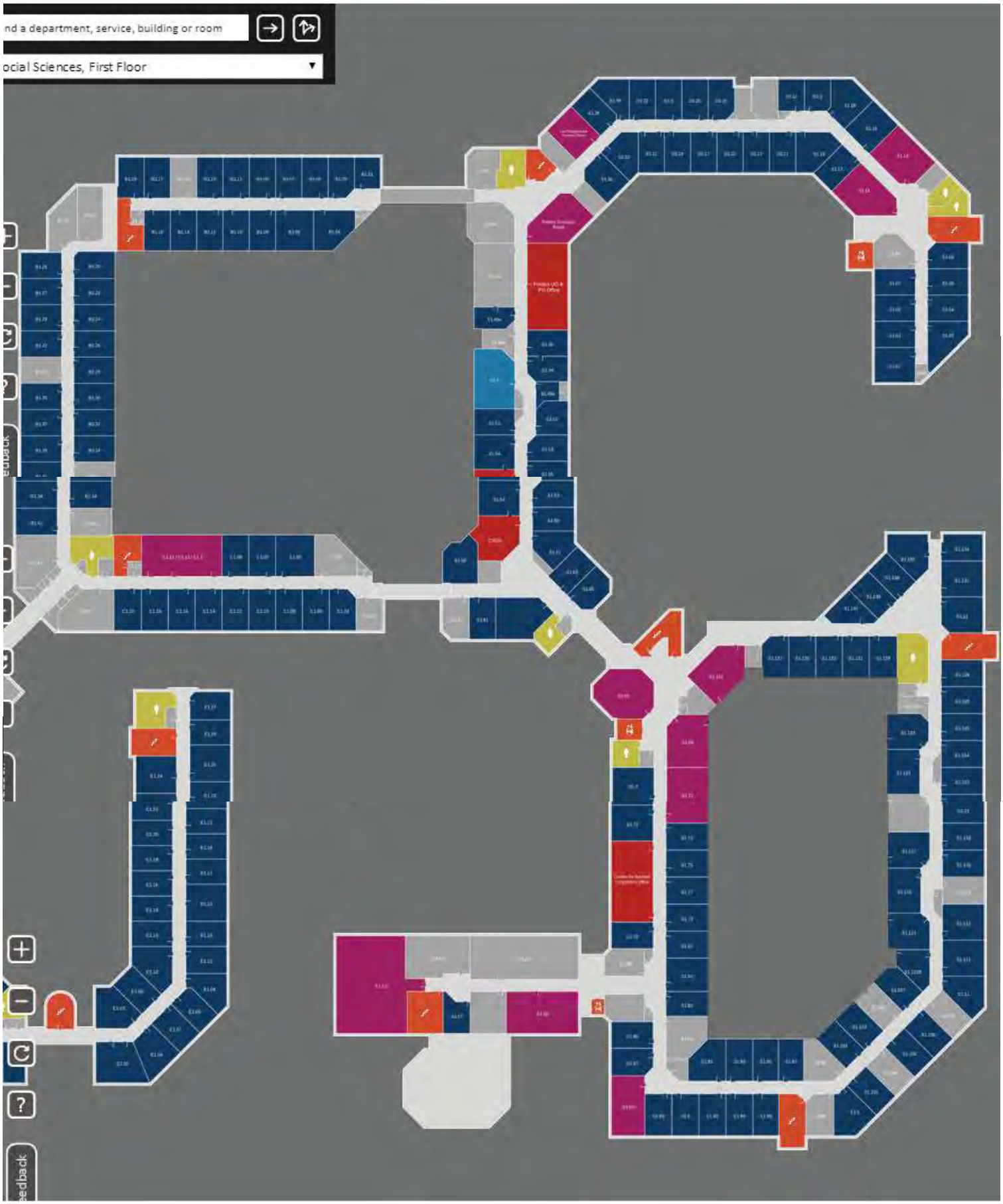
Floor Plans

Social Sciences Ground Floor



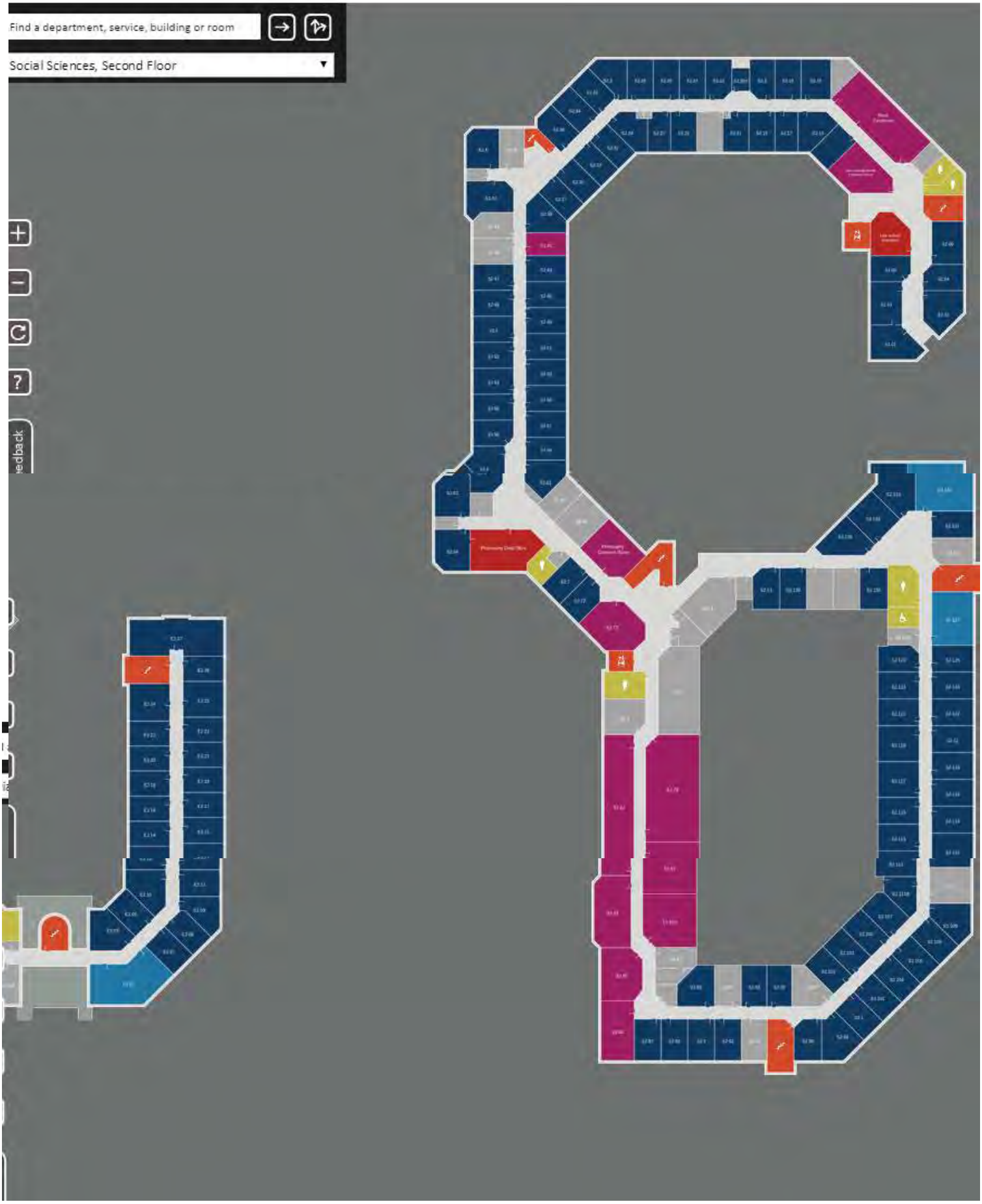
Floor Plans

Social Sciences First Floor



Floor Plans

Social Sciences Second Floor



Useful Information

Useful information for delegates

Conference registration

The conference registration is located in the foyer of the Ramphal Building, the main conference venue. Please note that this is separate to the accommodation check-in, details of which are below.

The conference registration will open at the following times:

- Tuesday 31st March from 10am
- Wednesday 1st April from 8.30am
- Thursday 2nd April from 9am

Pre-conference activities

At 11.30 on Tuesday 31st March, Gary Watt will be leading a walk around campus entitled: "A Moving Experience of Legal Education". This is an interactive walk around the Warwick campus to search for the material metaphors that first made legal language and to explore the stirring potential of education which legal standing so often denies. The walk will start from Ramphal foyer, weather permitting.

Lunch will then be served in the foyer of the Ramphal Building from 12.30-13.30 before the first session of the of conference.

Accommodation

Standard accommodation
For those who have booked standard accommodation, rooms are located in the Jack Martin Residence, a few minutes' walk from the main campus. Check-in is located at Warwick Conferences' main Reception in the Students Union Building on the main campus. The Reception team is available to answer your queries between 07:00 – 23:00. Here you can also:

- Find out general information
- Collect information on how to connect to the wifi around campus
- Ask about any lost property
- Request additional bedroom supplies such as pillows, blankets, clock radio or a bath mat
- Arrange for secure luggage storage

You will be provided with one key or key card which will access your room and entry door to the residence. Keys can be left at Warwick Conferences' main Reception (in the Students Union Building), Rootes Restaurant (in Rootes Building) or one of the boxes situated in the entrance halls of each residence on the day of your departure.

Bedroom keys will be available from 15:00 to 23:00 at Warwick Conferences' main Reception (Students Union Building). If you plan to arrive after 22.45, please contact them directly to arrange late key collection (wcpreception@warwick.ac.uk) from the University security lodge. Rooms need to be vacated by 09:30 on your day of departure and all luggage and belongings to be removed at that time. Please inform Warwick Conferences' Reception on arrival, of any difficulties you may have in the unlikely event of an evacuation from your accommodation (e.g. hearing or mobility difficulties).

Superior accommodation

For those who have booked superior accommodation, rooms are located in the Radcliffe Conference Centre, a few minutes' walk from the main campus. Check-in is located in the Radcliffe Reception. The Reception is open 24hrs. Bedroom keys will be available from 15:00. Rooms need to be vacated by 10:00 on your day of departure and all luggage and belongings to be removed at that time. Please inform Reception on arrival, of any difficulties you may have in the unlikely event of an evacuation from your accommodation (e.g. hearing or mobility difficulties).

Disability services

The University of Warwick aims to be accessible and welcoming to everyone and we are committed to making your visit as easy and enjoyable as possible. If you have any particular requirements that we should be aware of, then please email slsa@warwick.ac.uk.

Internet access across campus

If you would like to access the wifi network then please ask at Warwick Conference's Reception or any of the Information Points around campus (e.g. Rootes Building and Warwick Arts Centre) for details. Alternatively log onto your device and go to your web / wireless browser:

1. Connect your device to the **'**Warwick Guest' wireless network.
2. Upon your first attempt to access online content with the web browser, you will be redirected to the Warwick Guest Wireless web page (most Apple devices will automatically perform this step).
3. Create yourself a Warwick Guest account. N.B. This is not the same account used on the 'conferences' wireless network.
4. Click the link within the sentence 'Click here to create an account' and select 'Attending a conference'.
5. Please provide your details, including a valid mobile phone number, to which you generated guest login will be sent.
6. Follow the web links to return to the Warwick Guest Wireless webpage and log in.

7. If you do not have a mobile phone, choose the option 'Click here to register if you do not have a mobile phone' at the bottom of the page to have your login details sent to your email address.

Computer room and printing

For the duration of the conference there will be a dedicated internet cafe, with printing facilities, located in the Student Hub (S0.01a) in the Law School (Social Sciences Building). This will be staffed from 09.00-17.00.

Shops, Banks, Cafés and Bars on campus

The campus has many facilities available to all delegates, for all information and opening times please see the website: http://www.warwickretail.com. Warwick Arts Centre cinema offers discounted cinema ticket prices, these can be purchased from the box office and proof of delegate status is required (not applicable for Met Opera Live or NT Live screening).

Sports facilities

Delegates have the use of some of the comprehensive sports facilities including swimming and fitness suite free of charge. Other facilities are available for a nominal charge which will need to be booked in advance. Details and opening times are available at Warwick Conferences' Reception in the Students Union Building, or by visiting the website below. Delegates need to present their bedroom key at the reception to gain access. See www2.warwick.ac.uk/services/sport for more information.

Family facilities

Family Room
A dedicated Family Room will be available for the use of delegates with young children. This is located in the Student Hub (S0.01b) in the Law School (Social Sciences Building). The room will provide a suitable environment for parents and young children to have a break from the main activities of the conference. There will be play areas with toys and activities for children and accommodation for breastfeeding. Parents are also welcome to use the space to feed or bottle feed children. Nappy changing facilities are also available in the nearby disabled toilet.

There is no charge for use of this facility. A family member or appointed guardian will be required to remain with the child/children in the Family Room at all times. Although a qualified member of staff will be present in the Family Room during its operating hours, we are unable to cater for unsupervised childcare at this facility.

The Family Room will be open at the following times:

Tuesday 31st March: 12.30–17.30
Wednesday 1st April: 09.00–17.45
Thursday 2nd April: 10.00–13.30

University Holiday Scheme
Primary school children (aged 5-11 in academic year 2014-15) can enrol onto the University's Holiday Scheme which provides children with a wide range of activities including arts and crafts, performance and visual arts and outdoor activities. Further details of the scheme, including rates and activities, are available here: http://www2.warwick.ac.uk/services/childrensservices/holidayschemes/

Bookings for the Holiday Scheme can be made at the same time as your conference booking. Please email holidayscheme@warwick.ac.uk if you would like to book onto the scheme using childcare vouchers instead.

The Holiday Scheme operates from 09.00–17.00 with a wrap-around option from 08.00–09.00 and 17.00–18.00 for an additional cost. Please see website for details.

Please note that you will have to provide a packed lunch for children attending the scheme. The Rootes supermarket on campus stocks a selection of chilled sandwiches, snacks, fresh fruit and vegetables and bottled drinks but you should bring your own lunchboxes and water bottles. Alternatively, if you are staying in Radcliffe House, you may wish to check if their restaurants can provide you with a packed lunch.

Emergency Contact Numbers

Service	Phone number
Security Control Room (general enquiries)	22083 (internal phone) or 024 7652 2083 (external phone/personal mobile)
Emergency (Security, fire, police, ambulance)	22222 (internal phone) or 024 7652 2222 (external phone/personal mobile)
Police (non-emergency)	101 (press option for either Warwickshire or West Midlands Police when prompted)

Note: All calls requiring an external emergency service on campus should be made through to the Control Room on the **Emergency** number

Frequently Asked Questions

Location and travel

Where in Coventry is the University of Warwick?
Just four miles from Coventry City centre, we are sited at the hub of the central motorway network.

Where is the nearest Mainline Rail Station?
Coventry Intercity station is only four miles from the University. A taxi would cost approximately £11.00 from Coventry station to the University campus. Birmingham International Railway Station is also close to campus and a taxi from this location would cost approximately £27.00.

Is there a taxi rank on campus?
Taxis are available on Health Centre Road opposite Warwick Arts Centre at most times of the day. Alternatively you can contact Warwick Conference's main Reception in the Students Union Building for more information and relevant phone numbers.

Can I travel by bus from Coventry Railway Station or Bus Station?
The Number 12 bus runs from Coventry Bus Station via Coventry Train Station to the University

Is car parking free or do you have to pay?
The Conference Park offers limited complimentary parking in specified car parks. You will need to display your parking permit in the windscreen of your vehicle. The permit is appended to this document.

What time do I need to check out of my room?
Check out time for standard accommodation (Jack Martin) is 09:30 and for superior accommodation (Radcliffe) is 10.00. All luggage and belongings should be removed at that time.

What electrical supply is available in the bedrooms?
Electricity is supplied at 220/240v and 50 cycles AC. Most foreign appliances will require an adaptor or transformer. Adaptors are available to buy at Rootes Grocery Store.

Are there any laundry facilities on campus?
The launderette is situated between Rootes Building and Rootes residences, opening times are available from Warwick Conference's main Reception in the Students Union Building for self-service washing and drying. All machines require the correct change and you will need to provide your own washing powder and fabric softener.

Will I have access to a kitchen within my accommodation block?
Each standard accommodation room has access to a kitchen, although this may not be directly adjacent. Please note these areas will not contain any cooking equipment or utensils.

Facilities on campus

What Leisure facilities are there and do delegates have access?
Delegates may use some of the University's Leisure facilities free of charge providing they take along their bedroom key or delegate name badge as a means of identification. Other facilities are available for a nominal charge and may need to be booked in advance. The towel from your bedroom can be taken to the Sports Centre, alternatively you can hire an additional towel at the Sports Centre for £1.75. Please see www2.warwick.ac.uk/services/sportscentre for further details.

What religious services are available on campus?
The Chaplaincy is a vibrant space for all members of the University community and visitors. To gain access to the Chaplaincy, please ask at Warwick Conferences' Reception in the Students Union Building for details.

Are there any cash machines or banks on campus?
There are branches of Barclays and Santander, both have cash machines in the Students Union Building (directly next to Rootes Building).

Where can I access my emails?
Delegates can access the wifi network around campus and within their accommodation block. There is also a dedicated computer room in the Law School Student Hub available to delegates. Full details of how to connect to wifi, and the location of the Hub, are provided above.

If I am having mobility problems is there anything you can do to help?
Mobility scooters are available for conference delegates; please ask at Warwick Conferences' Reception in the Students Union Building for more information.

What should I do if I am not feeling well?
Please contact Warwick Conferences Reception on 02476 528910, who will ensure a message is given to the SLSA conference hosts. We do not have a resident doctor available for conference delegates, but in the event you require medical attention, this can be done via our 24 hour Security Team on 02476 522083. Alternatively there is a Walk In Medical Centre in Coventry.

Is there anywhere on campus I can buy toiletries or get pharmacist advice?
There is a pharmacy located in the Students Union Building and Rootes Grocery Store also sells a variety of items. These buildings are located next to Rootes Building.

Food and drink on campus

I have a particular special dietary need – can you manage this?

The Conference Park Team can manage all special dietary needs if they were made aware of the requirement when delegates made their booking. Once on campus, please ask any of the team in the restaurant for more information or guidance.

Where can I purchase alcohol on campus?

There are three licensed buildings where you can purchase alcohol for consumption within or outside of that building. These are:

- Rootes Building
- Warwick Arts Centre
- Students Union Building
- Rootes Grocery Store is also a licensed retail shop, however alcohol purchased from Rootes Grocery Store cannot be consumed in any of the above licensed areas.

Local Area

What is there to do in the local area?

There is a wide range of social and sports facilities available on campus, including woodland walks, a sports hall, swimming pool and squash courts. The largest Arts Centre outside of London - Warwick Arts Centre is also onsite where you can watch the latest cinema releases and/or performances. Coventry city centre is only three miles away and the towns of Warwick, Stratford Upon Avon and Leamington are close by.

Where are the nearest shops to campus?

There are a number of retail shops on campus including Rootes Grocery Store, Pharmacy, Bookshop and Hairdressers, for any other requirements there is:

- Cannon Park Shopping Centre is within ten minutes walk and has a large supermarket and several smaller retail shops
- Central Six Retail Park is a ten minute car journey (next to Coventry Railway Station) and has a large chemist and some good sized high street stores

Other useful information

What signage should I look out for on campus?

University Signage – these are positioned around campus highlighting all Academic Buildings and social spaces – they are white rectangular blocks

Warwick Conferences / Conference Park signage – these are blue swing signs used to highlight car parking spaces and spaces used for conferences. Look out for the conference logo.