SLSA
Socio-Legal Studies Association

Justice, Power and Law

In the pursuit of development

10 December 2007 **Birkbeck**

Programme

9.30	Tea and coffee in the foyer	
10.00	Session I	The transnational institutional landscape
	Fiona Macmillan, Birkbeck	Development, cultural self-determination and the World Trade Organization
	Julio Faundez, Warwick	The World Bank's dilemma: Rule of law promotion or doing business
	June McLaughlin, Queen Mary	Dispute resolution at African stock exchanges
11.30	Tea and coffee in the foyer	
12.00	Session II	Struggles over natural resources
	Patrick McAuslan, Birkbeck	Land and power in Afghanistan: In pursuit of law and justice?
	Andreas Kotsakis, LSE	Locality of tension: The conflicting spaces of biodiversity regulation
1.00	Lunch in the foyer	
2.00	Session III	Private sector, public interest?
	Sally Wheeler, QUB	Corporate social responsibility
	Anne Stewart, Warwick	Consuming our way to gender justice: The governance of agribusiness
	Valentina Sara Vadi, EUI	International knowledge governance and investment agreements: The case of access to medicines
3.30	Tea and coffee in the foyer	
4:00	Session IV	Pulling the threads together
	William Twining, UCL	
	Bronwen Morgan, Bristol	
5.00	End	

Organisers

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Selected abstracts

Kotsakis, A 'Locality of tension: The conflicting spaces of biodiversity regulation'

Within the context of the regulation of natural resources, the local community has emerged in recent times with an increasingly crucial role. Local participation in sustainable development processes is presented as an alternative to previous development paths that have led to environmental degradation, poverty and exploitation. The Convention on Biological Diversity appears to support this discursive shift by-seemingly-prioritizing a homogeneous local/indigenous community as the primary site that biodiversity regulation refers to and takes place in, especially in relation to regulating access to genetic resources and benefit sharing. The paper analyses this locality, which is required and shaped by current biodiversity regulation, as a product of the necessary but problematic relationship between the global and the local that characterises the Biodiversity Convention. The paper proceeds to analyse how this highly symbolic site of the local community functions within the context of a particular form of bioeconomic development advocated by a biodiversity concept constructed as a global, top-down, managerial abstraction. The requirements for participating in this biodiversity discourse not only create spatial conflicts between global, national and local institutions, but also directly produce and legitimize changes in the conception of the self and the relationship with the local environment, especially for local and indigenous communities of the South.

McAuslan, P 'Land and power in Afghanistan: In pursuit of law and justice?'

Afghanistan would come near the top of most people in the development industry's list of a 'failed state'. (Somalia probably wouldn't qualify as its hardly regarded as a 'state' any more). There is a belated recognition that in post-conflict societies and failed states, conflicts over land have been at least a part of the cause of the wider conflicts within or between countries and that even where conflicts over land have not been a particularly significant cause of the outbreak of a conflict, such conflicts are likely to break out during attempts to bring about and consolidate peace and restore a modicum of law and justice. This paper, based on work undertaken in Afghanistan in 2005 and 2007, reviews the present state of land matters (management would be too strong a word to use) within the country and discusses the dissonance between the state of affairs on the ground and the 'received wisdom' of the collective views of the experts on resolving land issues in post-conflict societies. Some suggestions are offered on why more progress has not been made on dealing with land issues in a framework of law and justice in Afghanistan since 2001.

[Full paper available]

McLaughlin, J 'Dispute resolution at African stock exchanges'

Dispute Resolution at Western financial exchanges is conducted outside the traditional court system. Ombudsmen, arbitration and mediation are the methods employed to resolve financial disputes in the United States and the United Kingdom. In the US, mandatory arbitration clauses bind investors to this method upon the opening of their account. Additionally, employees of investment companies are likewise bound to resolve employment disputes in the same way. Recently, the US Congress called into question the legality of these clauses as significant imbalances of power exist between disputants. Legislation banning such clauses is currently being drafted. Exchanges are heavily regulated by government Securities agencies. Dispute resolution in the securities industry from the beginning has been criticized as biased and unfair for investors by favoring the brokerage industry which essentially administers all disputes. Little empirical evidence is available to refute claims of fairness or unfairness as these disputes are private and tribunal decisions are confidential. Meanwhile, Alternative Dispute Resolution is increasingly the preferred method for business disputing domestically and internationally. Many African nations have stock exchanges in various stages of development. Newer nations lack the banking and legal infrastructure needed to sustain a liquid market for securities yet, they have exchanges in the express hope of growing domestic interest in investing and attracting international interest. Many of the newer exchanges on the continent are replicas of London and New York in terms of administration and regulation. This is a cause for concern as dispute resolution at the more developed exchanges raise serious concerns in terms of access to justice and power imbalances. Additionally, international commercial dispute resolution raises similar concerns as administrative bodies corner the market for disputes worldwide often at the expense of the less powerful disputant. What options are there for emerging exchanges in terms of workable dispute resolution processes?

Stewart, A 'Consuming our way to gender justice: The governance of agribusiness'

At the entrance to the supermarket there is a stand of cut flowers. The large sign above it states that these are ethically traded flowers from Kenya. The next shelves are made up of fresh fruit and vegetables, above the grapefruits is a picture of a black woman holding one up. She is named and placed in South Africa and is

part of a 'foundation' scheme which it says provides a good deal for farmers. In a bewildering array of teas and coffees there are a couple with FairTrade labels and one tea which is FairTrade and organic. And so on to the sugars and chocolates. The paper will explore the gender implications of the global food market. In particular it will consider the governance of the value chains in agribusiness which link the actors in the producer jurisdictions to those in the consumer jurisdictions. The paper will consider the impact of the World Trade Organisation Agreement on Agriculture on gender relations, the International Labour Office minimum standards and decent work approach to agricultural labour protection and civil society campaigns involving ethical trading initiatives and fair trade. The paper demonstrates the ways in which globalization is producing new gender relations across jurisdictions. These are often based upon profound inequalities. These issues new challenges for feminist legal scholarship. The paper will move on to consider the contribution of contemporary feminist legal debates on rights, responsibilities and justice.

Vadi, V 'International knowledge governance and investment agreements: The case of access to medicines'

Contemporary normativity is very much alike Frank Gehry's postmodernist architecture: complex and asymmetrical with inclined planes and slippery converging surfaces. This is particularly the case with regard to international knowledge governance which has recently become one of the strongest sub-sets of public international law. While Article 15 of the International Covenant on Economic, Social and Cultural Rights identifies the need to protect both public and private interests in knowledge creation and knowledge diffusion, proprietary approaches to knowledge governance have become stronger than ever since the inception of the Agreement on Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS) under the WTO. Importantly, the TRIPS Agreement introduced pharmaceuticals as patentable subject matter. This move was very controversial as it is not certain whether an adequate balance between public and private interests is reached in the context of pharmaceutical patents. Indeed, in its interaction with public health policies, the patent system has not proven to be effective in absolute terms. Thus, the Agreement has recently been amended in 2005 to favour access to medicines. Nevertheless, in recent years, the flourishing of investment treaties in the form of all-encompassing agreements that include intellectual property has determined a paradigm shift in medical knowledge regulation. In their vest of intellectual capital exporters, industrialised countries have increasingly used investment agreements in a strategic fashion to incorporate TRIPS-plus commitments that they would not be able to obtain in the WTO. Developing countries generally accept higher IP standards in order to obtain favourable concessions in other areas, notably agriculture. Besides providing an extensive protection to investor's rights, investment agreements offer foreign investors direct access to arbitration against the host state. Crucially, this option opens the doors to challenging national legislations that allegedly infringe investors' rights. Are investment agreements compatible with state international obligations to protect public health? If internal measures aimed to protect public health can be challenged by foreign investors, is mixed arbitration a suitable forum to protect public interests?