

SLSA



Lancaster University
Law School

SLSA Annual Conference 2016
School of Law, Lancaster University
5th—7th April 2016



Conference Programme

Contents

Click the section you want to jump to.

Sponsors	3
Outline programme	4
Welcome to the SLSA Annual Conference.....	6
Welcome from the Head of Lancaster University Law School	7
Wi-fi and Internet Access	8
Plenary Session Social Constructions of Crime in a Liberal Society.....	9
SLSA Skills Session – ‘Impact’	12
The Law Commission Special session hosted by <i>Criminal Law and Criminal Justice, Sentencing and Punishment, and Vulnerable Suspects and Defendants</i>	12
Poster Session.....	14
Charity Roundtable Discussions	17
Session Overview Timetable.....	Error! Bookmark not defined.
Streams and Themes Timetable	23
Session 1, 13:30 – 15:00	24
Session 2, 15:30 – 17:00	30
Session 3, 9:00 – 10:30	37
Session 4, 11:00 – 12:30	42
Session 5, 14:00 – 15:30	48
Session 6, 16:00 – 17:30	54
Session 7, 10:00 – 11:30	59
Session 8, 12:00 – 13:30	64
Conference abstracts.....	67
Session 1, 13:30 – 15:00	67
Session 2, 15:30 – 17:00	86
Session 3, 9:00 – 10:30	112
Session 4, 11:00 – 12:30	135
Session 5, 14:00 – 15:30	158
Session 6, 16:00 – 17:30	181
Session 7, 10:00 – 11:30	202
Session 8, 12:00 – 13:30	220
Conference planner	233

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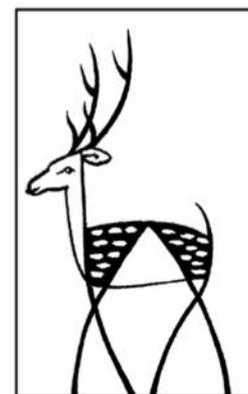


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Outline programme

Day 1, Tuesday 5th April 2016

10:00 - Registration, Great Hall Foyer, refreshments available

12:30 - 13:30, Lunch, Great Hall

13:30 - 15:00, Session 1

15:00 - 15:30, Refreshments, Great Hall

15:30 - 17:00, Session 2

17:15 - 18:45, Plenary Session, Faraday Lecture Theatre

19:00 - 21:00, Buffet and Wine Reception, Barker House Farm

Day 2, Wednesday 6th April 2016

08:30 - Registration, Great Hall Foyer, refreshments available

09:00 - 10:30, Session 3

10:30 - 11:00, Refreshments, Great Hall

11:00 - 12:30, Session 4

12:30 - 14:00, Lunch, Great Hall

13:00 - 14:00, SLSA AGM

14:00 - 15:30, Session 5

15:30 - 16:00, Refreshments, Great Hall

16:00 - 17:30, Session 6

19:00 - 00:00, Conference Dinner and Prize-giving, LICA Building

Day 3, Thursday 7th April 2016

09:30 - Registration, Great Hall Foyer, refreshments available

10:00 - 11:30, Session 7

11:30 - 12:00, Refreshments

12:00 - 13:30, Session 8

13:30 - 14:30, Lunch (packed), Great Hall



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Welcome to the SLSA Annual Conference



As chair of the Socio-Legal Studies Association, it gives me great pleasure to welcome you to the 26th Annual SLSA Conference at Lancaster University Law School. With nearly 500 papers across 53 streams and themes, this promises to be an exciting and engaging conference. I am particularly pleased that the Conference is visiting Lancaster for the first time, in the light of the long-established tradition of socio-legal research undertaken here.

It is the delegates who make a Conference a success. I would like to thank all of you who have made the journey to Lancaster from within the United Kingdom and much further afield. Having such a varied group of delegates ensures not only excellent comparative discussion, but also the strengthening of our individual and collective international socio-legal research networks. As well as welcoming regular participants, who ensure continuity and represent the backbone of the Conference, I would particularly like to extend a warm welcome to those attending the Conference for the first time. Every year the Conference sees cutting edge research presented by new delegates, especially post-graduate researchers and early-career colleagues, many of whom will have attended one of our very successful Postgraduate Conferences.

In addition to the traditional paper sessions, this year we are continuing to offer the opportunity for delegates to present a poster. The poster session has proved popular since it was first introduced three years ago, and this year sees an increase in the number of posters to be presented across a varied and intriguing range of topics. I encourage you to join us at the poster session which will be held alongside the wine reception and hot buffet dinner on Tuesday evening in the welcoming environment of Barker House Farm on Lancaster University Campus.

This year also sees a number of charitable organisations enabled to attend the Conference through the provision of bursaries. The charities will be giving talks on their work during the Conference. These bursaries are in addition to the PGR Travel Grant and Hardship Grant programmes.

I would like to extend my thanks on behalf of the Executive Committee to all those involved in the organisation of the Conference, particularly from Lancaster University Law School, Richard Austen-Baker, Mark Butler, Amanda Cahill-Ripley, Bela Chatterjee, Gina Collins, Catherine Easton, Georgina Firth, Claire Fitzpatrick, Ben Mayfield, Emily Mead, Gary Potter, Siobhan Weare and Tom Webb, together with Lancaster colleagues from the Conference Team and Professional Support Services, especially Emma Beaumont, Daniel Cairns, Leanne Fairgrieve, Luke Gacesa, Sarah Harrison, and Benjamin Milby, for all of their hard work. I would also like to thank our sponsors – their continuing generosity enables us to support the work of the socio-legal community in many ways.

I also wish to congratulate this year's prize winners Martin Partington (contributions to the socio-legal community), Luis Eslava (Hart Socio-Legal Book Prize and ECR Book Prize), Jiří Přibáň (Socio-Legal Theory and History Book Prize) and Lynette Chua (Socio-Legal Article Prize).

Finally I would like to thank the plenary panel participants Donald M Ferencz (Middlesex), Nicola Lacey (LSE), Alexandra Mullock (Manchester), and Toby Seddon (Manchester), together with the invited speakers on Impact: Nina Fletcher (Law Society), Paul Iganski (Lancaster) and Sally Wheeler (QUB), and from the Law Commission: David Ormerod (Criminal Law) and Rebecca Probert (Family Law).

If you would like to know more about the SLSA, please visit our stall at the Conference, speak to a member of the Executive Committee, or attend the Annual General Meeting (Wednesday lunchtime, Faraday Lecture Theatre). I hope you enjoy the Conference and look forward to meeting you all over the next three days.

Professor Rosemary Hunter FAcSS

Chair of the SLSA

Welcome from the Head of Lancaster University Law School



On behalf of Lancaster University Law School I would like to welcome you to Lancaster, to Lancaster University and to the 2016 Socio-Legal Studies Association Annual Conference. We are delighted to be holding this conference and to be welcoming so many scholars from around the world to Lancaster University.

Lancaster University Law School has a long history of socio-legal scholarship. We have one of the oldest Centres for Law & Society in England and much of our curriculum is underpinned by socio-legal scholarship. The SLSA is an important organisation that has helped make socio-legal scholarship a fundamental part of the methodology of both academic law and, increasingly, the law itself. The law cannot operate in a vacuum and understanding how it applies in context is vital to its success.

I hope you find this an interesting and informative three days. After perusing the conference programme, it is clear that we have attracted some of the very best in socio-legal scholarship from around the world, covering a large variety of themes. The increasing number of streams and themes demonstrates the importance of socio-legal studies, and the place the SLSA has at the forefront of pushing this discipline.

I would like to thank the Conference Committee, our professional support staff, and the SLSA Executive for organising this conference. I would like to give special thanks to our student ambassadors who have volunteered to help us during this conference, making the sessions run smoothly and allowing you to navigate the campus.

I hope you enjoy your time at the conference and your time at Lancaster University.

Professor Alisdair A. Gillespie

Head of Lancaster University Law School

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Plenary Session

Social Constructions of Crime in a Liberal Society

Chair: Suzanne Ost, *Lancaster University*

The theme of Social Constructions of Crime in a Liberal Society continues to be of contemporary socio-legal importance. Each year there is a new piece of criminal justice legislation, with terrorism seeming to be the current Government's primary concern and the prioritisation of tackling risk to avoid harm. This has led to, for example, the creation of new obligations on schools and universities to prevent individuals being drawn into terrorism, and powers to seize passports from people thought to be leaving the UK to engage in terrorism-related activities and to exclude British citizens suspected of being involved in terrorism-related activity abroad from the UK. Yet whilst we see moves such as this which broaden ideas of what constitutes criminal behaviour and may be perceived as an attack to liberal values, elsewhere we see bids to decriminalise other behaviour, such as medicalised assisted dying, gaining increasing momentum. The time is ripe to examine contemporary constructions of crime and, in so doing, to explore and re-examine connections and disconnections between risk, criminalisation, liberalism and human rights. This leads to questions such as: How can changing constructions of crime be balanced with human rights concerns? Is risk-based thinking compatible with liberalism? Can the criminalisation of subjects such as pornography be defended according to liberal values? Is the medical exception that exists in relation to some crimes defensible on liberal grounds? Does and should international criminal justice reflect the values of liberalism?

Speakers

Donald M. Ferencz, *Middlesex University*, 'Criminalizing the Illegal Use of Force in Global Affairs: 70 Years Since Nuremberg, and Illegal War-Makers Still Cannot be Tried For Their Crimes'

Abstract: This paper will provide a review of the debate over granting the International Criminal Court jurisdiction over the crime of aggression. In 1946, the Nuremberg judgment branded aggressive war-making as "the supreme international crime," and the judgment's legal principles were unanimously affirmed by the United Nations. Yet 70 years later, the crime of aggression remains beyond the reach of the International Criminal Court. Although efforts to activate the Court's aggression jurisdiction appear close to fruition, the prospect of activating such jurisdiction has both supporters as well as detractors, and the debate over points of contention may well continue for the foreseeable future.

Speaker biography: Don was born in Nuremberg, Germany, where his father, Ben, had served as a prosecutor at the American-led Subsequent Proceedings. He earned a BA in Peace Studies at Colgate University in New York. He holds degrees in education, law, business, and taxation, leading to an eclectic career as school teacher, adjunct professor of law, and two decades as a consultant and senior tax executive. In 1996, he and his father established The Planethood Foundation, to educate toward "replacing the law of force with the force of law". Don was a non-governmental advisor to the International Criminal Court's Assembly of States Parties' working group on the crime of aggression through the ICC Review Conference in Kampala, Uganda, in 2010. He subsequently organized a virtual working group of professionals coordinating efforts to advance the ratification and adoption of the Kampala amendments on aggression (known as the Global Institute for the Prevention of Aggression). He is currently affiliated with Middlesex University School of Law and is a Research Associate at the Oxford University Faculty of Law's Centre for Criminology.

Nicola Lacey, *London School of Economics*, 'Constructing Responsibility without Blame'

Abstract: In a series of recent papers, Hanna Pickard and I have argued that there is a strong moral, political and practical case for distinguishing between the concepts of responsibility and blame, and for redesigning certain aspects of the criminal prosecution, trial and sentencing process so as to mark a clear distinction between affectively blaming on the one hand and holding to account on the other. In this presentation, I focus specifically on criminal law's conception of responsibility, asking how it might be constructed – or reconstructed - so as to minimise the probability of its lending weight to stigmatisation as a feature of the criminal process. In this context, I argue in particular that the recent resurgence of a form of character-based criminal responsibility, in a distinctive, hybrid form which associates the presentation of risk with criminal character, is an unfortunate development from the point of view of an ideal of responsibility without blame.

Speaker biography: Nicola Lacey is School Professor of Law, Gender and Social Policy at the London School of Economics. From 2010 until September 2013 she was Senior Research Fellow at All Souls College, and Professor of Criminal Law and Legal Theory at the University of Oxford. She has held a number of visiting appointments, most recently at Harvard Law School and at New York University Law School. She is an Honorary Fellow of New College Oxford and of University College Oxford, and a Fellow of the British Academy. She is an elected member of the Council of Liberty, and a Trustee of the British Museum. She served as a member of the British Academy's Policy Group on Prisons, which reported in 2014.

Nicola's research is in criminal law and criminal justice, with a particular focus on comparative and historical scholarship. Over the last few years, she has been working on the development of ideas of criminal responsibility in England since the 18th Century, and on the comparative political economy of punishment. She is currently working, with David Soskice, on American Exceptionalism in crime, punishment, and social policy; and, with Hanna Pickard, on the philosophy and psychology of punishment. Nicola also has research interests in legal and social theory, in feminist analysis of law, in law and literature, and in biography. Her most recent monograph is *In Search of Criminal Responsibility: Ideas, Interests and Institutions* (Oxford University Press 2016).

Alexandra Mullock, *Manchester University*, 'The medical exception to the criminal law: what is 'proper medical treatment' in end-of-life care?'

Abstract: The medical exception removes activity, such as surgery, that would otherwise be treated as criminal from the remit of the criminal law. Certain contentious procedures, such as abortion, have come to be regarded as 'proper medical treatment', yet other contentious treatments, such as helping a patient to die, have remained resistant to liberalisation. Indeed, doctors and other health professionals may be at greater risk of prosecution than lay people in this matter, while the doctrine of double effect in end-of-life care has become a troubled and disputed notion. This paper attempts to illuminate the legal and ethical minefield over what is 'proper medical treatment' in end-of-life care.

Speaker biography: Dr Alexandra Mullock is a Lecturer in Medical Law at the University of Manchester. Alex completed her PhD at Manchester in 2011 within the AHRC funded project on the Impact of the Criminal Law on Health Care Practice and Ethics and her research has primarily focused on end-of-life law and criminal issues in health care law.

Toby Seddon, Manchester University, 'Deconstructing Drugs: A legal-regulatory perspective'

Abstract: The trade in, and consumption of, illicit drugs has become perhaps the archetypal 'wicked problem' of our time – complex, globalised and seemingly intractable – and presents us with one of the very hardest legal and policy challenges of the twenty-first century. Somewhat surprisingly, the central concept of a 'drug' remains under-theorised and largely neglected by critical socio-legal and criminological scholars. Drawing on a range of primary archival material and secondary sources, this paper sets out a genealogy of the concept, showing how it was assembled a little over a century ago out of diverse lines of development. It is argued that the drug label is an invented legal-regulatory construct closely bound up with the global drug prohibition system. Many contemporary features of the 'war on drugs' bear traces of this genealogy, notably the ways in which drug law enforcement often contributes to racial and social injustice. To move beyond prohibition, radical law and policy reform may require us to abandon the drug concept entirely.

Speaker biography: Toby Seddon is Professor of Criminology in the School of Law at the University of Manchester. He has been researching drugs and drug policy for over 20 years. His current focus is on developing a theoretical and conceptual framework for rethinking global drug control.



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SLSA Skills Session – ‘Impact’

Chair

Rosemary Hunter, Queen Mary University of London

Speakers

Nina Fletcher, Head of Research, The Law Society

Paul Iganski, Lancaster University

Sally Wheeler, Queen’s University Belfast

Session details

Time: Day 1, Tuesday 5th April 2016, Session 2, 15:30 – 17:00

This skills session will reflect on the experience of documenting and assessing the ‘impact’ of socio-legal research in the 2014 REF, and provide advice for socio-legal researchers concerned to ensure their research has impact, and to document that impact, in the future. The panel members offer a range of experience and expertise on the subject. Nina Fletcher was a ‘research user’ member of the 2014 REF Law sub-panel, directly involved in reading and assessing impact case studies. Paul Iganski is a Criminologist who prepared and submitted an impact case study to the 2014 REF. Sally Wheeler is a Head of School and former Chair of the SLSA who has both long experience in the socio-legal field and a role in advising and supporting academics in generating impact and developing future impact case studies.

The Law Commission

Special session hosted by Criminal Law and Criminal Justice, Sentencing and Punishment, and Vulnerable Suspects and Defendants.

Speaker

David Ormerod, Law Commissioner for Criminal Law and Evidence

Session Details

Time: Day 2, Wednesday 6th April 2016, Session 5, 14:00 – 15:30

David Ormerod QC will be presenting at the SLSA in a jointly hosted session by the Criminal Law and Criminal Justice stream, Sentencing and punishment stream and the Vulnerable Defendants and Suspects theme. David will be summarising some of the recent Law Commission projects for delegates and is keen to hear from SLSA members what ideas they have for the new programme of reform that will start in 2017.

JOURNAL OF LAW AND SOCIETY

Established as the leading British periodical for Socio-Legal Studies *The Journal of Law and Society* offers an interdisciplinary approach. It is committed to achieving a broad international appeal, attracting contributions and addressing issues from a range of legal cultures, as well as theoretical concerns of cross-cultural interest. It produces an annual special issue, which is also published in book form. It has a widely respected Book Review section and is cited all over the world. Challenging, authoritative and topical, the journal appeals to legal researchers and practitioners as well as sociologists, criminologists and other social scientists.

March 2016 Special Issue: Law's Metaphors: Interrogating Languages of Law, Justice, and Legitimacy

Journal of Law and Society

(Formerly the British Journal of Law and Society)

VOLUME 43 NUMBER 1

MARCH 2016

Contents

Articles

Law's Metaphors: Introduction	<i>David Gurnham</i>	1
Metaphor as Analogy: Reproduction and Production of Legal Concepts	<i>Angela Condello</i>	8
The Metaphor of Proportionality	<i>Nicola Lacey</i>	27
Flesh of the Law: Material Legal Metaphors	<i>Andreas Philippopoulos-Mihalopoulos</i>	45
The Trials of Lizzie Eustace: Trollope, Sensationalism, and the Condition of English Law	<i>Ian Ward</i>	66
M. NourbeSe Philip's <i>Zong!</i> : Metaphors, Laws, and Fugues of Justice	<i>Anne Quêma</i>	85
'We Want to Live': Metaphor and Ethical Life in F.W. Maitland's Jurisprudence of the Trust	<i>Adam Gearey</i>	105
Debating Rape: To Whom does the Uncanny 'Myth' Metaphor Belong?	<i>David Gurnham</i>	123
Is the Blush off the Rose? Legal Education Metaphors in a Changing World	<i>Michelle LeBaron</i>	144

Poster Session

To be held on **Tuesday 5th April** in Barker House Farm alongside side the Wine Reception and Hot Buffet.

Presenters and Posters

Felicity Belton (Glasgow)	<i>Gendered Violence and Human Rights Law: Forced Marriage in the Twenty First Century</i>
Caroline Casey (Bradford),	<i>Social Class and the Development of Professional Identity in the Legal Profession</i>
Natalie Elizabeth Corbett (Exeter),	<i>Bentham's Panopticon as the Socio-Legal Demonstration of Pickering's Mangle: A Cyborg Rehabilitation Model</i>
Gustavo Espinoza-Ramos (Westminster),	<i>Corporate Social Responsibility in Peruvian Mining Companies: The Forgotten Land?</i>
Thomas Giddens (St Mary's),	<i>What is Graphic Justice?</i>
Wendy Hart (King's College London)	<i>Legal Pluralism in Conflict: Detention and Human Rights in Afghanistan</i>
Rachel Heah (Liverpool),	<i>Sexuality Education – Should the Child be Heard?</i>
Anna Heenan (Exeter),	<i>Has the time come to reconsider the legal disconnect between financial settlements on divorce and the arrangements for children?</i>
Joshua Hughes (Lancaster),	<i>Automated legal decision-making in targeted killing of terrorist suspects</i>
Bruno Obialo Igwe (Maynooth),	<i>The impact of domestic violence legal regulation and enforcement in Ireland on Nigerian immigrants</i>
Alexander Maine (Northumbria),	<i>How does the Marriage (Same-Sex Couples) Act 2013 construct the contrasting homonormative and homoradical socio-legal identities, in turn affecting the experience and perspectives of LGBTQ narratives?</i>
Sara Mohammadzadeh (Northumbria),	<i>A preliminary analysis of data collected: is king illicit'</i>
Rebecca Moosavian (Northumbria),	<i>Power/Knowledge Dynamics in the Iraq Affair</i>
Maria Moscati (Sussex),	<i>Children's Rights and Same-Sex Couples: Yes, No, Maybe... It's all about Adults</i>
Katharine Parker (Northumbria),	<i>Public Sex and the City</i>
Karen Richmond (Strathclyde),	<i>The construction of DNA profiling evidence within public and private models of forensic science provision</i>

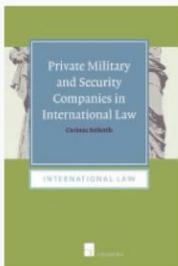
- Samantha Samkange (Salford), *The Definition of Forced Socio-Economic Migrants in Refugee Law and the Role of NGOs in the UK*
- Stacy Sinclair (Westminster), *Designing + (Dis)assembling Disputes: an ethnography of disputes & lawyers in the construction industry*
- Sara Solmone (East London), *State jurisdiction on the internet and respect for human rights in contemporary international law*
- James W.A. Thornton (Southampton), *The 'Toolbox' approach to analysing qualitative data in socio-legal research*
- Suzanne van Rossenberg (Middlesex), *Towards a Graphic Representation of Intersectional Justice*
- Jo Wilding (Brighton), *Someone else's problem? Unaccompanied children seeking asylum in England*

Further posters from the second call for posters to be announced soon.



Intersentia's prize-winning publications

Giardi Prize 2015



Private Military and Security Companies in International Law

Corinna Seiberth
ISBN 978-1-78068-182-5
2013 | xlvi + 296 pp. | hardback

£80.75

Max van der Stoep Human Rights Award 2015



Towards Shared Accountability in International Human Rights Law, Procedures and Principles

Arne Vandenberghe
ISBN 978-1-78068-386-7
2016 | xviii + 354 pp. | hardback

£80.75

Cambridge Law Faculty's Yorke Prize 2015 and Inner Temple New Author's Prize 2015



Children's Rights in Intercountry Adoption A European Perspective

Claire Fenton-Glynn
ISBN 978-1-78068-228-0
2014 | xvi + 254 pp. | paperback

£63.65

Runner-up of the Inner Temple Book Prize 2015



Andrews on Civil Processes Vol. 1: Court Proceedings & Vol. 2: Arbitration and Mediation

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In addition to full length articles and book reviews, the journal has an innovative occasional **Dialogue & Debate** section, which allows direct scholarly engagement between a range of positions on a topic of general interest to the socio-legal community.

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In the April issue of **Social & Legal Studies**
Volume 25, Number 2 (April 2016)

- **The Legal Question of Morality: Seal Hunting and the European Moral Standard** - Nikolas P Sellheim
- **Imagining the International: The Constitution of the International As a Site of Crime, Justice and Community** - Nesam McMillan
- **The Symbolic Power of Legal Kinship Terminology: An Analysis of 'Co-motherhood' and 'Duo-motherhood' in Belgium and the Netherlands** - Frederik Swennen and Mariano Croce
- **Human Trafficking Heroes and Villains: Representing the problem in anti-trafficking awareness campaigns** - Erin O'Brien
- **Legislating Consent: Creating an Inclusive Definition of Consent to Sex** - Anna Arstein-Kerslake and Eilionóir Flynn

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Charity Roundtable Discussions

This year the Local Organising Committee and the SLSA are providing funding to support attendance at the Conference for charitable organisations. As part of the award, delegates representing charities are asked to meet with other delegates to discuss the work of their charity, and how researchers might work with them.

The Peter Scott Gallery – Discussion Room

This room will be available for discussions with the charitable organisations attending the Conference. Specific times during which the charities will be available here TBA.

The Gallery is located within the Great Hall Building Complex. The internal entrance is located in opposite the internal entrance to the Great Hall itself. An accessible route into the Gallery is available via the external main entrance to the Gallery.

About the charitable organisations in attendance

Chartered Institute of Arbitrators

The Institute is a professional body that works in the public interest to promote and facilitate the use of arbitration as well as other ADR mechanisms within the UK and internationally, through education and training programmes, examinations, research, the provision of guidelines and professional codes.

Scottish Refugee Council

The Council is an independent human rights charity dedicated to providing advice and information to refugees. The current aims of the charity (2014-17) are to: increase public empathy with refugees and campaign for an end to discrimination, racism and prejudice; advocate for the rights of refugees and people seeking asylum and for fair and justice legislation and policies; support refugees' integration and inclusion; and ensure that refugees and people seeking asylum have access to quality advice services, information and support.

South Lakes Citizens Advice

The SLCA covers the footprint of South Lakeland District Council (1534km²), a largely rural district with a population of 103,700 people, 62.1% of whom live in rural and isolated areas. The SLCA offers a free, independent, confidential and impartial advice service to people on their rights and responsibilities (e.g. in relation to debt relief orders, benefit appeals, employment tribunals, support for people living with cancer).

Survivors Manchester

Survivors Manchester is a third sector organisation that offers evidence based clinical services, advocacy and criminal justice support to male survivors of sexual abuse, rape and sexual exploitation. Support ranges from online to telephone, individual face to face to group work.

The Birchall Trust

The Trust was founded in 1991 by Christine Birchall who recognised the lack of services for those affected by rape and sexual abuse in South Cumbria and North Lancashire.

When and where the charities are presenting within streams/themes:

Organisation and Presenter	Stream/Theme	Session
Paulette Morris, Chartered Institute of Arbitrators	Civil Procedure and Alternatives to Litigation, ADR	Wednesday, Session 4, 11:00 - 12:30
Gary Christie, Scottish Refugee Council	Refugee and Asylum Law: Theory, Policy and Practice	Wednesday, Session 6, 16:00 -17:30
Karen Evans, South Lakes Citizens Advice	Social security: Ideology, law and society in the 21st Century	Wednesday, Session 3, 9:00 – 10:30
Tom Taylor, Survivors Manchester	Sexual Offences and Offending	Wednesday, Session 1, 13:30 – 15:00
Karen Greenhow, The Birchall Trust	Sexual Offences and Offending	Wednesday, Session 4, 11:00 – 12:30

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Session Overview Timetable

Room Name	SESSION 1	SESSION 2	SESSION 3	SESSION 4	SESSION 5	SESSION 6	SESSION 7	SESSION 8
BNSR 6	Criminal Law Criminal Justice 1 - defence and defendants	Criminal Law Criminal Justice 2 - Reflections on criminal justice and criminal law	Criminal Law Criminal Justice 4 - Young Offenders	Criminal Law Criminal Justice 3 - Victims	Criminal Law Criminal Justice 5 - Law Commission	Criminal Law Criminal Justice 6 - Police and Crime Management	Criminal Law Criminal Justice 7 - Sentencing and Detention	Criminal Law Criminal Justice 8 - Trial Processes
BNSR 10	Family Law and Policy 1	Family Law and Policy 2	Family Law and Policy 3	Family Law and Policy 4	Family Law and Policy 5	Family Law and Policy 6	Family Law and Policy 7	
BNSR 20	Sentencing and Punishment 1	Sentencing and Punishment 2	Sentencing and Punishment 3	Sentencing and Punishment 4	Gender, Sexuality and Law 12 - Author Meets Reader	Sentencing and Punishment 5		
FASS Building MR 2/3	Gender, Sexuality and Law 1	Gender, Sexuality and Law 2		Gender, Sexuality and Law 3	Gender, Sexuality and Law 5	Gender, Sexuality and Law 6	Gender, Sexuality and Law 7	Gender, Sexuality and Law 8
Marcus Merriman LT		Gender, Sexuality and Law 10		Sexual Offences and Offending 4 - Support Charities	Refugee and Asylum Law: Theory, Policy and Practice 5 - Treatment of asylum seekers and refugees	Refugee and Asylum Law: Theory, Policy and Practice 6 - Protection limitations and failures	Gender, Sexuality and Law 11	
BNSR 2								
BNSR 7	Sexual Offences and Offending 1	Sexual Offences and Offending 2	Sexual Offences and Offending 3	Challenging Ownership: Meanings, Space, Identity 5	Challenging Ownership: Meanings, Space, Identity 1	Challenging Ownership: Meanings, Space, Identity 2	Challenging Ownership: Meanings, Space, Identity 3	Challenging Ownership: Meanings, Space, Identity 4
Faraday SR 3	Refugee and Asylum Law: Theory, Policy and Practice 1 - Comparative International Refugee Protection (a)	Refugee and Asylum Law: Theory, Policy and Practice 2 - Comparative International Refugee Protection (b)	Refugee and Asylum Law: Theory, Policy and Practice 3 - Comparative International Refugee Protection (c)	Refugee and Asylum Law: Theory, Policy and Practice 4 - Children and Asylum	Indigenous and Minority Rights			

Room Name	SESSION 1	SESSION 2	SESSION 3	SESSION 4	SESSION 5	SESSION 6	SESSION 7	SESSION 8
Faraday SR 4		SLSA Skills Session - IMPACT	Children's Rights 1 - Immigration, asylum and children's rights	Children's Rights 2 - Adopting a new children's rights-based approach to legal and social problems	Children's Rights 3 - Education, exclusion and exposure	Children's Rights 4 - Children's Rights and Family Justice	Pluralist Citizenship in a Time of European Double Standards	
BNSR 1			Banking, Finance and the Business of Organised Crime 1	Banking, Finance and the Business of Organised Crime 2	Banking, Finance and the Business of Organised Crime 4	Banking, Finance and the Business of Organised Crime 3	Law and Literature 1 - Legal Life Writing	Law and Literature 2
BNSR 3	Human rights, Religion and Discrimination 1	Human rights, Religion and Discrimination 2	Vulnerable Suspects and Defendants 3	Vulnerable Suspects and Defendants 1	Law and Neo-Liberalism 1	Vulnerable Suspects and Defendants 2	Law and Neo-Liberalism 2	Law and Neo-Liberalism 3
BNSR 4	International Criminal Justice: Theory, Policy Practice 1	International Criminal Justice: Theory, Policy Practice 2	International Criminal Justice: Theory, Policy Practice 3	International Criminal Justice: Theory, Policy Practice 4	International Criminal Justice: Theory, Policy Practice 5	International Criminal Justice: Theory, Policy Practice 6	International Criminal Justice: Theory, Policy Practice 7	
BNSR 5	Law's Empire? Justice, Law & Colonialism 1	Law's Empire? Justice, Law & Colonialism 2	Law's Empire? Justice, Law & Colonialism 3	Law's Empire? Justice, Law & Colonialism 4	Legal Education 1	Legal Education 2	Legal Education 3	Legal Education 4
BNSR 8	The Law and Unintended Consequences 1	The Law and Unintended Consequences 2	The Law and Unintended Consequences 3	The Law and Unintended Consequences 6	The Law and Unintended Consequences 4	The Law and Unintended Consequences 5	The Law and Unintended Consequences 7	
BNSR 9	Graphic Justice 1	Graphic Justice 2		Lawyers and Legal Professions 1	Lawyers and Legal Professions 2	Lawyers and Legal Professions 3	Transitions from Conflict: The Role and Agency of Lawyers - 1	Transitions from Conflict: The Role and Agency of Lawyers - 2
BNSR 11	EU Law 1	EU Law 2	Spatiality and Inclusivity	Civil Procedure and Alternatives to Litigation, ADR 5 - CIArb	Research Methodologies and Methods 3		Private International Law 1	

Room Name	SESSION 1	SESSION 2	SESSION 3	SESSION 4	SESSION 5	SESSION 6	SESSION 7	SESSION 8
BNSR 12	Social security: Ideology, law and society in the 21st Century 1	Social security: Ideology, law and society in the 21st Century 2	Social security: Ideology, law and society in the 21st Century 3	Social security: Ideology, law and society in the 21st Century 4	Labour Law 1	Labour Law 2		
BNSR 13	Research Methodologies and Methods 1	Research Methodologies and Methods 2		Research Methodologies and Methods 4 - Author Meets Reader	Civil Procedure and Alternatives to Litigation, ADR 3	Civil Procedure and Alternatives to Litigation, ADR 4	Workplace Dispute Resolution in the 21st Century 1	Workplace Dispute Resolution in the 21st Century 2
BNSR 14	Administrative Justice 3 - Participation in Administrative Justice	Judicial Biographies and Justice for Human Rights	Administrative Justice 1 - Administrative Justice and the Courts	Administrative Justice 2 - Ombudsman	Administrative Justice 4 - Law and Policy		Culture Clash, Peace and World Order 1	Culture Clash, Peace and World Order 2
BNSR 15	Intellectual Property 2	Intellectual Property 1	IT Law and Cyberspace 1	IT Law and Cyberspace 2	Law, Trust and Emerging Technologies	IT Law and Cyberspace 3	Civil Procedure and Alternatives to Litigation, ADR 1	Civil Procedure and Alternatives to Litigation, ADR 2
BNSR 16	Medical Law and Ethics 1	Medical Law and Ethics 2	Medical Law and Ethics 3	Medical Law and Ethics 4	Mental Health and Mental Capacity Law 1 - Services for People Lacking Capacity	Mental Health and Mental Capacity Law 2 - Dementia and Treatment	Mental Health and Mental Capacity Law 4 - Mental illness, stigma, and non-discrimination.	Mental Health and Mental Capacity Law 3 - The challenges of legal reform in a human rights context
BNSR 18	Exploring Legal Borderlands 1	Exploring Legal Borderlands 2 - Constructing Plural Socio-Legal Identities	Exploring Legal Borderlands 3 - Making use of the law: the role of social context and legal consciousness	Exploring Legal Borderlands 4 - Space and Socio-Legal Borderlands	Exploring Legal Borderlands 5 - Exploring Borderlines of Legality and Rights Regimes	Exploring Legal Borderlands 6	Exploring Legal Borderlands 7 - Socio-legal margins: at the edge of the law	
BNSR 21	Systems Theory 1	Systems Theory 2	International Environmental Law and the North-South Perspective	Systems Theory 3 - Author Meets Reader	Information 1 - Private Information	Information 2 - Whistleblowing	Information 3 - Surveillance and Disclosure	Information 4 - Access to Information
BNSR 22	International Economic Law in Context 2	International Economic Law in Context 1	Law, Politics and Ideology 1	Law, Politics and Ideology 2	Law, Politics and Ideology 3	Intersectionality		

Room Name	SESSION 1	SESSION 2	SESSION 3	SESSION 4	SESSION 5	SESSION 6	SESSION 7	SESSION 8
BNSR 24	Environmental Justice 1 - Environmental Justice and Effective Remedies	Environmental Justice 2 - Community Based Environmental Justice	European Solidarity and its Limits	Art, Culture and Heritage 1 - Law and Ethics: Heritage and the State	Art, Culture and Heritage 2 - Law, society, and the identification of art and heritage	Art, Culture and Heritage 3 - Trafficking cultural objects		
Faraday SR 1		Sports Law 1	Economic, Social and Cultural Rights 1 - ESCRs, Politics, Ideology and Theory	Economic, Social and Cultural Rights 2 - ESCRs in times of Crisis	Economic, Social and Cultural Rights 3 - ESCRs and Contemporary Issues - Issues around Labour	Law's Empire? Justice, Law & Colonialism 5	Rethinking Surrogacy	
BNSR 19								
Faraday SR 2			Private International Law 2	Trans* / Law				

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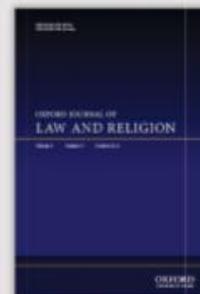
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Streams and Themes Timetable

On the following pages you will find a breakdown of all the papers currently scheduled to be presented at the Conference with details of chairs and locations.

The papers are sorted by parallel session slot and by stream or theme title.

Session 1, 13:30 – 15:00

Day 1 – Tuesday 5th April 2016

Administrative Justice 3 - Participation in Administrative Justice <i>Chair: Michael Adler</i> Bowland North SR 14	Grainne Mckeever, <i>Modelling legal participation: from tribunals to courts</i>
	Jackie Gulland, <i>'She is not able to write and does not know what to do': appellant knowledge and representation in early twentieth century appeals about national health insurance</i>
	Margaret Doyle, <i>Update on the work of the UK Administrative Justice Institute</i>
Criminal Law Criminal Justice 1 - defence and defendants <i>Chair: Samantha Pegg</i> Bowland North SR 6	Tatiana Tkacukova and Gavin Oxburgh. <i>Patterns of co-operation between police interviewers with suspected sex offenders</i>
	Abenaa Owusu-Bempah. <i>The defendant's role in criminal proceedings: Is participation voluntary?</i>
	Yu Mou. <i>From the Law of Torture to Plea Bargaining: Understanding Plea Bargaining from the Evolutionary Theory of Law</i>
Environmental Justice 1 - Environmental Justice and Effective Remedies <i>Chair: Sophia Kopela</i> Bowland North SR 24	Eghosa Osa Ekhaton, <i>The SERAP Judgement and implications for the Environmental Justice Paradigm and regulation of Multinational Corporations in Nigeria</i>
	Irene Antonopoulos, <i>Moving forward: bringing human rights to the centre of sustainable development in the European Court of Human Rights</i>
	Julie Adshead, <i>The Cost of Oil Pollution Damage: The tales of the 'Erika' and the 'Prestige'</i>
	Iñaki Lasagabaster Herrarte and María del Carmen Bolaño Piñeiro, <i>Right to Effective Remedy and Projects with a High Environmental Impact Approved by Acts of the Parliament</i>

EU Law 1 <i>Chair: Ian Kilbey</i> Bowland North 11	Angus Macculloch. <i>State Intervention in Pricing: An Intersection of EU Free Movement and Competition Law</i>
	Katerina Kalaitzaki. <i>The application of the principle of European Solidarity: Another victim of the EU financial crisis?</i>
	Vesco Paskalev. <i>Impact Assessments in the EU: A chance for Discursive Representation?</i>
Exploring Legal Borderlands 1 – Authors Meets Reader Prize winner Hart Socio-Legal Book Prize Winner <i>Chair: Anneloes Hoff</i> Bowland North SR 18	Luis Eslava. <i>Local Space, Global Life: The Everyday Operation of International Law and Development</i>
Family Law and Policy 1: Family law, policy, research and reform <i>Chair: Anne Barlow</i> Bowland North SR 10-	Rebecca Probert. <i>Getting married: the Law Commission’s scoping paper and future work</i>
	Mavis Maclean. <i>Research and Government : 1997 -2017</i>
	Karen Broadhurst and Judith Harwin <i>Introducing the Centre for Child and Family Justice Research</i>
Gender, Sexuality and Law 1 <i>Chair: Chris Ashford</i> FASS Building MR 2/3	Marian Duggan, <i>Evaluating Risk and Responsibility in Domestic Violence Disclosures</i>
	Katherine Brickell, <i>Domestic Violence Law and the Denial of ‘Active Citizenship’ in Cambodia</i>
	Siobhan Weare and Amanda Potts, <i>Corpus Linguistic Approaches to Women Who Kill: Explorations of gendered identities and agency in sentencing remarks</i>
Graphic Justice 1 – Law as Comics <i>Chair: David Yuratich</i> Bowland North SR 9	Suzanne van Rossenberg, <i>Towards a graphic representation of intersectional justice</i>
	Marietjie Botes, <i>Using comics to adequately communicate contract cancellation</i>
	Thomas Giddens, <i>Lawmakers and mapmakers</i>

Human Rights, Religion and Discrimination 1 <i>Chair: Ilias Trispiotis</i> Bowland North SR 3	Yi Ren Thng and Benjamin Mak. <i>In Tax We Trust? Tax Law and the (Mis)-allocation of Rights</i>
	Rodrigo Cespedes, <i>The Right to Education and Religious Discrimination Under the Euroean System of Human Rights: The Case Studies of Italy and Spain</i>
	Martin Browne and Pablo Meix Cereceda. <i>A Comparative Assessment of Religious, Philosophical and Ideological Rights in Education: A Study Across the Council of Europe</i>
Intellectual Property 2: <i>Chair: Jasem Tarawneh</i> Bowland North SR 15	Smita Kheria, <i>Copyright and Publicly-Funded Arts and Humanities Research: Identifying and Developing Sustainable Exploitation Models in the Digital Economy</i>
	Elaine Maguire O'Connor, <i>How France's history of protecting its fashion industry with intellectual property laws has contributed to its role as a world textile and fashion leader.</i>
	Jane Cornwell, <i>Between the formal and the informal: enforcing IP rights - an empirical investigation</i>
	Bela, Chatterjee, <i>The future of stem cell patenting: Considering the import of the recent CJEU decision in the International Stem Cell Corporation Case (2015) Case C-364/13.</i>
International Criminal Justice: Theory, Policy Practice 1 - Transitional Criminal Justice in Post-Dictatorial and Post-Conflict Societies (Intersentia 2015) <i>Chair: Anna-Marie Brennan</i> Bowland North SR 4	Agata Fijalkowski (author)
	Raluca Grosecu (author)
	Jennifer Balint (Discussant)
	Christos Boukalas (Discussant)
International Economic Law in Context 2 <i>Chair: Mervyn Martin</i> Bowland North SR 22	Osayomwanbor Bob Enofe, <i>Developing Countries, Nigeria, and Cartel Criminalisation: of Transplantation and Desirability</i>
	Jing Wang, <i>When the Chinese Economic Law Facing Administrative Powers: Regarding Survival Conditions of Chinese Privately-Owned Small and Medium-Sized Enterprises</i>
	Azadeh Chalabi, <i>The UN Guiding Principles in Practice: A Cross Case Analysis of National Action Plans on Business and Human Rights</i>

Law's Empire? Justice, Law & Colonialism 1 <i>Chair: Raza Saeed and Carol Jones</i> Bowland North SR 5	Jen Hendry, <i>Legal Pluralism and the Benefits of Legal Form</i>
	Evan Stanley Jones, <i>Compromised Justice, Partition and the Decolonial in Ireland, 1920-2016</i>
	Chad Frazier, <i>The Best Way to Americanize Puerto Rico: The Insular Commission and the Debate over the Introduction of the Common Law after the Spanish-American War</i>
Medical Law and Ethics 1 <i>Chair: Glenys Williams</i> Bowland North SR 16	Stephen Wilkinson and Nicola Williams. <i>Should Men with Dyslexia be allowed to Donate Sperm?</i>
	Samantha Halliday. <i>Conceiving Better Birth Plans: Mental Illness, Pregnancy and Court Authorised Obstetric Intervention</i>
	Sally Phillips. Investigating the science of “Shaken Baby Syndrome”: Tensions between Law and Science
Refugee and Asylum Law: Theory, Policy and Practice 1 - Comparative International Refugee Protection (a) <i>Chair: Dallal Stevens</i> Faraday SR 3	Dallal Stevens, <i>Welcome</i>
	Carrie Perkins, <i>The new colossus: Entering a new Era of refugee reception in the US</i>
	Neža Kogovšek Šalamon, The effects of humanitarian corridor on customary international law: emerging entry and transit rights
Research Methodologies and Methods 1 <i>Chair: Eleanor Pritchard</i> Bowland North SR13	Lois S Bibbings, <i>The Uses of Empirical Ethics: ‘Conscience’, Socio-Legal Studies and Historical Data</i>
	Amanda Keeling, <i>Observing ‘Vulnerable Adults’: The Interface between Methods and Ethics</i>
	Vanessa Richardson, <i>The Test of Harm in Care Proceedings: A Psychosocial Study</i>
Sentencing and Punishment 1 <i>Chair: Gavin Dingwall</i> Bowland North SR 20	John Stannard and Faith Gordon. <i>Exploring Penal Heat: Emotional Reactions to Crime and the Law's Response</i>

Sexual Offences and Offending 1 <i>Chair: Anna Carline</i> Bowland North SR 7	Anna Carline. <i>'The Same as it Ever Was'? Exploring the implementation and actualization of rape law reform and policy</i>
	Tom Taylor, <i>Survivors Manchester</i> (Charity)
	Naomi-Ellen Speechley. <i>Researching Persons Falsely Accused of Sexual Abuse</i>
Social security: Ideology, law and society in the 21st Century 1 <i>Chair: Mark Simpson</i> Bowland North 12	Lisa Scullion and Katy Jones. <i>Conditionality and welfare: Exploring the experiences of disabled people and migrants</i>
	Ciara Fitzpatrick. <i>Trajectory of Change: Rising Conditionality in the UK Social Security System</i>
Systems Theory Thinking 1 <i>Chair: Sarah Sargent</i> Bowland North SR 21	Adrienne Barnett. <i>Family Law Without Lawyers – a systems theory perspective</i>
	Su Bian. <i>Multiplication without integration: some comments on the social register of Teubner's 'societal constitutionalism'</i>
The Law and Unintended Consequences 1 <i>Chair: Phil Thomas</i> Bowland North SR 8	Phil Thomas and Richard Craven, <i>The law and unintended consequences: introduction</i>
	Owain Johnstone, <i>Unintended by whom? The power of ambiguity in lawmaking</i>
	Tola Amodu, <i>The Law and Unintended Consequences: The Community Infrastructure Levy: displacing discretion by the Imposition of Rule?</i>
	Richard Craven, <i>Competition, government contracts and unintended consequences</i>

*** End of Session ***

SLSA BLOG – Invitation to Submit Posts!

Following the conference, the SLSA will be launching a blog. This is intended to be a site for information and conversations about issues of current socio-legal interest.

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Session 2, 15:30 – 17:00

Day 1 – Tuesday 5th April 2016

SLSA Skills Session – Impact <i>Chair: Rosemary Hunter</i> Faraday SR 4	Nina Fletcher
	Paul Iganski
	Sally Wheeler
Criminal Law Criminal Justice 2 - Reflections on criminal justice and criminal law <i>Chair: Samantha Pegg</i> Bowland North SR 6	Philip Harris. <i>The Politics of ‘Legitimate Protest’</i>
	Ffion Llewelyn. <i>Deconstructing the Castle: Location and Self-defence</i>
	Joe Purshouse, <i>Pushing the Boundary: The Retention of Arrestees’ DNA and Fingerprint Data</i>
	Sophie Doherty. <i>Susanna the Slut: Depictions of the Rape Victim in Art and in Law.</i>
Environmental Justice 2 - Community Based Environmental Justice <i>Chairs: Saskia Vermaylen and Ben Mayfield</i> Bowland North SR 24	Louisa Parks, <i>Comparing benefit-sharing ‘on the ground’: evidence from 5 local community case studies</i>
	Elsa Tsioumani, <i>Reconstructing agrarian justice in the quest for sustainability: assessing the potential and limitations of law in defending agricultural biodiversity and farmers’ rights</i>
EU Law 2 <i>Chair: Ian Kilbey</i> Bowland North 11	Julia Bradshaw. <i>Closing the Door on Xenia: When Guests Become Unwelcome.</i>
	Alexandra Pimor. <i>Europe as the witness of the world: reflecting the response to the refugee crisis in light of the Union’s spiritual and moral heritage</i>
	Rufat Babayev. <i>Transnational solidarity in the EU in the wake of recent UK welfare reforms</i>

Exploring Legal Borderlands 2 - Constructing Plural Socio-Legal Identities <i>Chair: Owain Johnstone</i> Bowland North SR 18	Elizabeth Rhoads - <i>Yangon's Plural [Landholding] Society: The Case of the Waqf</i>
	Katarina Sipulova, <i>Role of Constitutional Courts in Post-Communist Transitions: the Czech Republic and Slovakia</i>
	Adithya Chintapanti, <i>The Regulator as the Borderland – Regulatory Globalisation and the Emergence of Alternate Regulatory Legality in the Indian Sub-National Electricity Sector</i>
Family Law and Policy 2: Changing Family Justice <i>Chair: Anne Barlow</i> Bowland North SR 10	Michelle Waite. <i>Family law, legal aid and the ECHR: the variable protection of human rights in family law cases after LASPO</i>
	Lola Akin Ojelabi. <i>Conceptions of Justice in Alternative Dispute Resolution and Access to Family Justice</i>
	Jess Mant. <i>Reimagining the Family Courtroom: Self-Representing Litigants and Access to Justice</i>
Gender, Sexuality and Law 10 <i>Chair: Alexander Maine</i> Marcus Merriman LT	Elizabeth Acorn and Whitney Taylor, <i>Overcoming Constraints: Courts and Social Change in Canada</i>
	Sara Mohammadzadeh, <i>A preliminary analysis of data collected: Is kink illicit?</i>
	Kayliegh Richardson, <i>Looking at domestic violence from a male victims perspective</i>
Gender, Sexuality and Law 2 <i>Chair: Katherine Parker</i> FASS Building MR 2/3	Charlotte Bendall, <i>"I think that [...] the law has looked at monogamous, heterosexual relationships for too long, and the world out there isn't actually like that": Constructions of adultery in intimate relationships</i>
	Veronca Nelson and Adie Nelson, <i>Adultery in Canadian Family Law: A Zombie Category</i>
	Azadeh Chalabi, <i>National Action Plans on Women, Peace and Security: A Problem-Based Approach</i>
Graphic Justice 2 – Comics and Democracy <i>Chair: Thomas Giddens</i> Bowland North SR 9	Angus Nurse, <i>See no evil, print no evil: The criminalization of free speech and Vertigo's DMZ'</i>
	Neal Curtis, <i>Doomed Sovereignty</i>
	David Yuratich, <i>Exploring dissent in Saga</i>

Human Rights, Religion and Discrimination 2 <i>Chair: Ilias Trispiotis</i> Bowland North SR 3	Maria Smirnova, <i>School Choice and Religious Freedom in Russia</i>
	Noel McGuirk, <i>Profiling in the Name of Terror: An Analysis of How Profiling Methodologies Use Sensitive Characteristics to Assist in the Selection of Suspects for Enhanced Scrutiny by Law Enforcement Officers.</i>
Intellectual Property 1 <i>Chair: Jasem Tarawneh</i> Bowland North SR 15	Toshani Mukherjee and Tanvi Muratee, <i>Insurance of Patents: An Overview</i>
	Yuanqiong Hu, <i>Patentability as a Social Legal Bargaining: Discussions on Second Medical Use Patent in the Context with focus on Lyrica Case UK</i>
	Titiyayo Adebola, <i>What You Sow, You Reap: The Political Economy of Plant Variety Protection</i>
	Abhijeet Mishra, <i>Ambush Marketing: Need for balanced approach vis-à-vis Intellectual Property Law</i>
International Criminal Justice: Theory, Policy Practice 2 <i>Chair: Anna-Marie Brennan</i> Bowland North SR 4	Birju Kotecha, <i>The Office of the Prosecutor at the International Criminal Court: Towards Prevention through Transitional Justice</i>
	Noemí Pérez-Vásquez, <i>The United Nations' Impact on the Implementation of Transitional Justice Laws and Mechanisms for the Protection of Women's Rights in Post-Conflict Societies.</i>
International Economic Law in Context 1 <i>Chair: Mervyn Martin</i> Bowland North SR 22	Anlei Zuo, <i>Regime Interaction between WIPO and WTO TRIPS Agreement in A World Society: An Analysis of Authority and Legitimacy</i>
	Valentina Vadi, <i>Charting New Frontiers in International Economic Law: The Cultural Diversity Conundrum</i>
	Maryam Shadman-Pajouh and Mervyn Martin, <i>How Strategic Can Ambiguity Be? The Role of Ambiguity in the Quest for Legal Certainty and the Myth of the Toothless Tiger</i>

Judicial Biographies and Justice for Human Rights <i>Chairs: Agata Fijalkowski and Raluca Grosescu</i> Bowland North SR 14	Rodrigo Cespedes, <i>Judging Chilean Judges: Human Rights Abuses During Pinochet's Rule and the Sceptical & Activist Judges</i>
	Agata Fijalkowski. <i>A Judicial Biography of an East German Judge: Hilde Benjamin</i>
	Raluca Grosescu. <i>Challenging Impunity in Post-Dictatorial Argentina: A Judicial Biography of Gabriel Cavallo</i>
	Priyamvada Yarnell. <i>Judge Meron: Does his commitment to human rights and due process make him lenient towards perpetrators of atrocity crimes?</i>
Law's Empire? Justice, Law & Colonialism 2 <i>Chair: Raza Saeed and Carol Jones</i> Bowland North SR 5	Raza Saeed, <i>Sovereignty and Law in Colonialism and Empire</i>
	Emily Whewell, <i>Imperial Law without Borders: Borderland jurisdiction and transnational legal connections across western China, Burma and India</i>
	Aitor Jimenez, <i>Periphery, Nation and Race</i>
Medical Law and Ethics 2 <i>Chair: Glenys Williams</i> Bowland North SR 16	Michael Thomson. <i>Paradox, Distinction, and the 'almost irrational' in Health Law</i>
	Stephanie Pywell. <i>The ethical imperative of ascertaining and respecting the wishes of the minimally conscious patient facing a life-or-death decision</i>
	Amanda Jane Ward. <i>A comparative overview of the legal regulation of Assisted Dying: lessons to be learned</i>
Refugee and Asylum Law: Theory, Policy and Practice 2 - Comparative International Refugee Protection (b) <i>Chair: Dallal Stevens</i> Faraday SR 3	Sara Palacios Arapiles, <i>Asylum as a human rights in Europe and in the Americas: A comparative perspective</i>
	Khalida Azhigulova, <i>Asylum systems in transition: An emerging area in refugee law research</i>
	Linda Kirk, <i>Australia's sui generis approach to the refugee definition</i>

Research Methodologies and Methods 2 <i>Chair: Eleanor Pritchard</i> Bowland North SR13	<i>Natalie Ohana, The Role of Discourse Mechanisms in the Construction of Legal Meanings The Role of Discourse Mechanisms in the Construction of Legal Meanings: The case study of constructing the meaning of domestic violence against women by courts in England</i>
	<i>Petra Mahy, The Functional Approach in Comparative Socio-Legal Research: Reflections Based on a Study of Plural Work Regulation in Australia and Indonesia</i>
Sentencing and Punishment 2 <i>Chair: Gavin Dingwall</i> Bowland North SR 20	<i>Adnan Sattar. Retributivism and the Discourse of Human Rights: Partners in Crime</i>
	<i>Tracey Booth. Using a common law imagination to reconceptualise the sentencing hearing as a restorative event</i>
Sexual Offences and Offending 2 <i>Chair: Susan Leahy</i> Bowland North SR 7	<i>Omar Madhloom. Can the distinction between lying and deceiving in the law of rape be justified?</i>
	<i>Susan Leahy. A Defendant's Right or Information Overload? The Introduction of Complainants' Personal Records in Sexual Offence Trials</i>
	<i>Eithne Dowds. Challenging the Definitional Parameters of the Crime of Rape in International Criminal Law</i>
Social security: Ideology, law and society in the 21st Century 2 <i>Chair: Jed Meers</i> Bowland North 12	<i>Mark Simpson and Grainne McKeever. Worlds of welfare collide: implementing a European Unemployment Benefit System in the UK</i>
	<i>Christos Boukalas. From Welfare Providers to Mind Police? Counter-extremism and the Co-option of the Welfare State by National Security.</i>
	<i>Michael Adler, Is the UK an Outlier or is it Much Like Other Countries - The Case of Benefit Sanctions?</i>

Sports Law <i>Chairs: Simon Boyes and John O'Leary</i> Faraday SR 1	Simon Boyes, <i>Rugby Union: consent to bodily contacts and the protection of players' rights</i>
	Teng Guan Khoo and John O'Leary, <i>Equality Act - Empowering 'positive action' in UK sports?</i>
	Jack Anderson, <i>Not an Olympian Fiddle: Vanessa Mae and the Moral Panic about Match-Fixing at the Court of Arbitration for Sport</i>
	Simon Boyes and John O'Leary, <i>Whither Sports Law?: Towards a critical perspective</i>
Systems Theory Thinking 2 <i>Chair: Adrienne Barnett</i> Bowland North SR 21	Sarah Sargent. <i>Time Travel and Structural Coupling: A Luhmannian Analysis of Aboriginal Land Title in the US and Australia</i>
	Thomas Webb. <i>Vulnerability, Crisis and System Boundaries – Autopoiesis and Complexity Considered</i>
	Jamie Murray. <i>Stuart Kauffman's Laws of Complexity</i>
The Law and Unintended Consequences 2 <i>Chair: Roxanna Dehaghani</i> Bowland North SR 8	Steven Vaughan and Emma Oakley, <i>COLP'ing Mechanisms: The Unintended Consequences of the Legal Services Act 2007</i>
	Elisabeth Griffiths, <i>Only Relatively Equal? – The unintended consequence of the Equality Act 2010</i>
	Julia Jennings, <i>Consumers – the unintended victim of the one-man company</i>

*** End of Session ***

Session 3, 9:00 – 10:30

Day 2 – Wednesday 6th April 2016

Administrative Justice 1 - Administrative Justice and the Courts <i>Chair: Richard Kirkham/ Naomi Creutzfeldt</i> Bowland North SR 14	John McGarry, <i>Genuiness as an Element of Sufficient Interest</i>
	Harriet Samuels, <i>Public Interest Litigation and the Role of Civil Society</i>
	Maria Smirnova, <i>New Administrative Litigation Code of the Russian Federation: Empowering Citizens to Bring the State to Court</i>
Banking, Finance and the Business of Organised Crime 1 - The Business of Organised Crime and the Role of International Norm Makers in Combatting It <i>Chair: Clare Jones</i> Bowland North SR 1	Akilah Jardine, <i>What's in a name? That which we call slavery: Exploring the analogy of Modern Slavery and the Trans-Atlantic Slave Trade</i>
	Olivia Anku-Tsede, <i>Organised crime & the regulatory regime: The sale and consumption of expired good and drugs in Ghana</i>
	Simon Sneddon, <i>The quasi legitimisation of transnational organised crime and the impact on the legitimate economy</i>
Children's Rights 1 - Immigration, asylum and children's rights <i>Chairs: Nuno Ferreira and Helen Stalford</i> Faraday SR 4	Ruth Brittle. <i>Best Interests of the Child: Gateway or Barrier to International Protection?</i>
	Devyani Prabhat and Jessica Hambly. <i>A Brave New British Citizenry? Reconceptualising the Acquisition of British Citizenship by Children</i>
Criminal Law Criminal Justice 4 - Young Offenders <i>Chair: Simon Boyes</i> Bowland North SR 6	Simon Flacks. <i>Drugs, minors and the criminal law</i>
	Kate Gooch and Piers Von Berg. <i>Police interviews of child suspects: neglected in a time of change.</i>
	Mark Dsouza. <i>Accessory Responsibility</i>

Economic, Social and Cultural Rights 1 - ESCRs, Politics, Ideology and Theory <i>Chair: Amanda Cahill-Ripley</i> Faraday SR 1	<i>Azadeh Chalabi, How to make a distinction between Economic, Social and Cultural rights?</i>
	<i>Katie Boyle, Re-conceptualising constitutionalism, deliberating rights and enabling social change: legitimate and viable alternatives in contemporary constitutional theory</i>
	<i>Thomas Murray, Our 'Right2Water'? On distinguishing between discourse and ideology and why it matters</i>
European Solidarity and Its Limits <i>Chairs: Esin Küçük and Clemens Rieder</i> Bowland North SR 24	<i>Egle Dagilyte. European workers' solidarity: what's law got to do with it?</i>
	<i>Carsten Gerner-Beuerle and Esin Küçük, Fiscal Solidarity in the EU: A Question Between Law, Economics, and Politics</i>
	<i>Esin Küçük. The Principle of Solidarity and Fairness in Sharing Responsibility- More than window dressing?</i>
	<i>Clemens Rieder. The Manufactring of Solidarity</i>
Exploring Legal Borderlands 3 - Making use of the law: the role of social context and legal consciousness <i>Chair: Owain Johnstone</i> Bowland North SR 18	<i>Sofia Graca -Portuguese women's invocation of law: a legal consciousness approach</i>
	<i>Anneloes Hoff -Public participation, legal mobilisation and local appropriation of law: The case of Colombia's popular consultations on mining</i>
	<i>Fernanda Farina -Trusting the courts: a socio-legal inquiry on judicial empowerment</i>
Family Law and Policy 3: Children and Family Justice <i>Chair: Liz Trinder</i> Bowland North SR 10	<i>Annika Newnham and Maebh Harding. Caring is Sharing? Childcare disputes in the County Court</i>
	<i>Tina Haux and Lucinda Platt. The links between fathers' involvement with their children before and after separation</i>
	<i>Mavis Maclean, The Future of Family Law: Blending the Professions</i>

International Criminal Justice: Theory, Policy Practice 3 <i>Chair: Anna-Marie Brennan</i> Bowland North SR 4	Anna Marie Brennan, <i>Accountability Gaps in the Doctrine of Superior Responsibility: Exploring the Efficiency of the International Criminal Court to Prosecute Leaders of Transnational Terrorist Groups</i>
	Tetyana Krupiy, <i>Closing the Accountability Gap for War Crimes Committed by Robots: Envisaging the Doctrine of Command Responsibility as a Microcosm of Social Relations</i>
	Satwant Kaur, <i>International Criminal Law and the Development of 'Ending Impunity'</i>
International Environmental Law and the North-South Perspective <i>Chair: Jona Razzaque</i> Bowland North SR 21	Kate Wilkinson. <i>International Environmental Law through an Ecofeminist Lens: Are contemporary responses to environmental problems masking the North-South Divide?</i>
	Eghosa Ekhatior. <i>International Environmental Law and the North-South Perspective: Any role for the African Union?</i>
	Jona Razzaque. <i>The green economy and forest ecosystem services: Assessing the global north - south divide</i>
IT Law and Cyberspace 1 <i>Chairs: Brian Simpson and Mark O'Brien</i> Bowland North SR 15	Chunxiao Zhang, <i>New Angles for the Definition of Personal Data Protection and the Application of the Proportionality Principle</i>
	Magali Eben, <i>The New Economy and Its Challenges for Traditional Antitrust Tools: The Prospect of Data as a Price</i>
	Lu Xu, <i>The Myth with "Wisdom Court" in China – from the application of cloud technology in civil procedural process</i>
Law, Politics and Ideology 1 <i>Chair: Dermot Feenan</i> Bowland North SR 22	Jack Meakin. <i>(Re)Defining Constituent Power</i>
	Dimitrios Tsarapatsanis. <i>'Political Theology' Naturalized: Realist Political Theory, Schmitt and Political Constitutionalism</i>
Law's Empire? Justice, Law & Colonialism 3 <i>Chair: Raza Saeed and Carol Jones</i> Bowland North SR 5	Muhammad Abbasi, <i>Co-existence of Shari'a and the Modern State: A Historical Perspective from South Asia</i>
	Petra Mahy, <i>The Comparative Evolution of Company Law in Indonesia, Malaysia and the Philippines: Colonial Polices and their Legacies</i>

Medical Law and Ethics 3 <i>Chair: Glenys Williams</i> Bowland North SR 16	Glenys Williams. <i>The discrimination and equality provisions in assisted suicide: Nicklinson and Carter</i>
	Jo Samanta, Sarah Sargent and Kudret Yeldon. <i>Should people in the minimally conscious state have a right to formal reassessment?</i>
	Kevin De Sabbata, <i>Dementia and Treatment Decisions: Towards a Relational Approach</i>
Private International Law 2 <i>Chair: Emma Roberts</i> Faraday SR 2	Federico Mucciarelli, Carsten Gerner-Beuerle, Mathias Siems and Edmund Schuster. <i>Companies' freedom of establishment in the European Union: A Comparative and Empirical Investigation</i>
	Emma Roberts. <i>Rome II and Road Traffic Accidents: A critique of recent case law</i>
Refugee and Asylum Law: Theory, Policy and Practice 3 - Comparative International Refugee Protection (c) <i>Chair: Dallal Stevens</i> Faraday SR 3	Hakan Ergin, <i>Syrian students' right to higher education at Turkish universities: lecturers' perspectives</i>
	Jasmin Fritzsche, <i>Uniquely protected or uniquely protracted? The recent displacement of Palestinian refugees from Syria</i>
	Bahija Jamal, <i>Current Moroccan migration and asylum policies: Two years after the adoption of the "new policy"</i>
Sentencing and Punishment 3 <i>Chair: Gavin Dingwall</i> Bowland North SR 20	Debra Wilson, <i>The "Genetically Programmed" Killer: Evaluating the Increasing Use of Behavioural Genetics Arguments in Sentencing</i>
	Alison Cronin, <i>Antisocial Personality Disorder, The Criminal Law and 'Victim-Offenders'</i>
	Gavin Dingwall. <i>The Minor Majority and the Limits of a Risk Penology</i>
Sexual Offences and Offending 3 <i>Chair: Jamie-Lee Mooney</i> Bowland North SR 7	Robert Blackash, <i>UK Prison X: A Counter-Public Space? Service Users' lived realities; intimacy, support and acts of resistance.</i>
	Elizabeth Agnew. <i>'Sexting' among Children and Young People: Exploring the Challenges</i>
	Jamie-Lee Mooney. <i>Protecting Children from the Risk of Harm? A Critical Review of the Social and Legal Responses to the Recent Manifestations of Child Sexual Grooming</i>

Social security: Ideology, law and society in the 21st Century 3 <i>Chair: Ciara Fitzpatrick</i> Bowland North 12	Chris Grover. <i>In-work benefits: confusion and contradiction in an age of neoliberalism?</i>
	Keith Puttick. <i>Evaluating the NLW at the Wage/In Work Welfare Interface</i>
	Karen Evans, <i>South Lakes Citizens Advice</i>
Spatiality and Inclusivity <i>Chair: Jill Dickinson</i> Bowland North 11	Amy Ludlow and Ruth Armstrong. <i>Learning Together in Prisons: the Transformative Potential of Curating Inclusive Spaces of Encounter</i>
	Jill Dickinson and Vicky Heap. <i>Place-making and shopping centres: exploring the tensions between stakeholders and the law</i>
	Antonia Layard, Briony McDonagh and Carl Griffin, <i>The Spatiality of Protest: Diggers 2012</i>
The Law and Unintended Consequences 3 <i>Chair: Adam Ramshaw</i> Bowland North SR 8	Rebecca Moosavian, <i>Injunctions, Jigsaws and Curiosities: Unintended Consequences in Misuse of Private Information</i>
	Aleksandra Cavoski, <i>Lost in Translation? From Science to Regulation</i>
	Emma Jones, <i>Football Fans, Fair Play and the Localism Act 2011</i>
Vulnerable Suspects and Defendants 3 <i>Chairs: Nicola Wake and Nicola Wortley</i> Bowland North SR 3	Nicole Asquith and Isabelle Bartkowiak-Theron, <i>Policing Fragility: Accounting for Ontological & Situational Vulnerability</i>
	Roxanna Dehaghani, <i>Interrogating Code C vulnerability: a critical analysis of vulnerability under Code C to the Police and Criminal Evidence Act 1984</i>

*** End of Session ***

Session 4, 11:00 – 12:30

Day 2 – Wednesday 6th April 2016

Administrative Justice 2 – Ombudsman <i>Chair: Richard Kirkham/ Naomi Creutzfeldt</i> Bowland North SR 14	Naomi Creutzfeldt and Christian Gill, <i>The Ombudsman Watchers: Understanding the Critics of the Ombudsman System</i>
	Stephen Daly, <i>Oversight of HMRC soft-law: lessons from the Ombudsman?</i>
	Richard Kirkham, <i>The impact of judicial review on the work of the ombudsman</i>
Art, Culture and Heritage 1 - Law and Ethics: Heritage and the State <i>Chair: Janet Ulph</i> Bowland North SR 24	Robin Palmer, <i>Whose Flag is it Anyway? The 2016 New Zealand Flag Referendum in Constitutional Context.</i>
	Sarah Sargent <i>The Alluring Nomad: Law, Sentiment and Heritage.</i>
Banking, Finance and the Business of Organised Crime 2 - Digital Currency and the Law Relating to Financial Crime <i>Chair: Mary Alice Young</i> Bowland North SR 1	Immaculate Motsi-Omoijade, <i>The regulation of cryptocurrencies Financial Institutions: legal insight from the empirical analysis of Bitcoin exchanges – the lacuna where law, financial and technology meet.</i>
	Alison Cronin and Stephen Copp, <i>The failure of the “failure to prevent” model of financial crime: A bespoke solution for corporate fraud</i>
	Gauri Sinha, <i>Anti -money laundering compliance: Contradictions in the risk based approach</i>
	Aleksandra Jordanoska, <i>Reputational sanctions for corporate crime: Naming and shaming in the UK financial markets</i>
Challenging Ownership: Meanings, Space, Identity 5: Common spaces and the law <i>Chair: Francis King</i> Bowland North SR 7	Louise Burns, <i>Law, Landscape and the Common Good. Access to the Countryside for Recreation</i>
	Sarah Blandy and Simone Abram, <i>Ownership and belonging in urban green space: a tale of three parks</i>

Children's Rights 2 - Adopting a new children's rights-based approach to legal and social problems <i>Chairs: Nuno Ferreira and Helen Stalford</i> Faraday SR 4	Jonathan Brown. <i>Plagium: 'An Archaic and Anomalous Crime'</i>
	Daniel Cullen, <i>The children of parents sentenced to death or executed: using a child rights framework to explore the wider impacts of the death penalty</i>
	Oliver Bartlett. <i>Can the right to health be invoked in court to prevent children from being recruited as life-long heavy drinkers by the alcohol industry?</i>
Civil Procedure and Alternatives to Litigation, ADR 5 – CIArb <i>Chair: Masood Ahmed</i> Bowland North 11	Paulette Morris, representative from <i>The Chartered Institute of Arbitrators</i>
Criminal Law Criminal Justice 3 - Victims <i>Chair: Louise Taylor</i> Bowland North SR 6	Alan Cusack, <i>The Collapse of the Public Character of Justice: The Costly Consequences of Victim Participation in Criminal Proceedings</i>
	Robyn Holder, <i>Citizens first: the justice interests of crime victims</i>
	Verona Ní Drisceoil. <i>The Law on FGM in the UK: In whose best interests?</i>
Economic, Social and Cultural Rights 2 - ESCRs in times of Crisis <i>Chair: Katie Boyle</i> Faraday SR 1	Ben Warwick, <i>In the Thick of It: The Approach(es) of the Committee on Economic, Social and Cultural Rights in the Crises</i>
	Amanda Cahill-Ripley, <i>Exploring the Local: Protestant/Unionist Borderland Community Attitudes to the use of Economic and Social Rights as a Tool for Peacebuilding in Northern Ireland</i>
	Thomas Bundschuh, <i>Rule of law schizophrenia as an obstacle to transitional justice and how to overcome it</i>
Exploring Legal Borderlands 4 - Space and Socio-Legal Borderlands <i>Chair: Anneloes Hoff</i> Bowland North SR 18	Stacy Topouzova - <i>Navigating Through De Jure Asylum Provisions and Forms of 'Embedded Discretion': The Process of Status Determination Proceedings at the Bulgarian-Turkish Border</i>
	Evgenia Kanellopoulou and Nikolaos Ntounis - <i>Normalising Heterotopias: The Effect of Place Branding on Spaces of Ambiguous Legal Status</i>
	Ahmed Raza Memon - <i>Reinterpretation of Sovereign Spaces in International Law: A Socio-Spatial reading of Vitoria's political writings</i>

Family Law and Policy 4: Family law, property and finance <i>Chair: Anne Barlow</i> Bowland North SR 10	Kathryn O'Sullivan. <i>The Devil in the Detail: Property Division under British Columbia's Family Law Act 2011</i>
	Sharon Thompson. <i>Good Housekeeping? The Married Women's Association, Women's Right to Housekeeping Money and the Value of Work in the Home</i>
	Jane Mair. <i>Principles in Practice: financial provision on divorce in Scotland</i>
Gender, Sexuality and Law 3 <i>Chair: Katherine Parker</i> FASS Building MR 2/3	Silvana Tapia Tapia, Sumak Kawsay, <i>Coloniality, and the Criminalisation of Violence Against Women in Ecuador</i>
	Elizabeth A. Hoffman, <i>Pumping Breast Milk at Work: New Rights, Old Discrimination</i>
International Criminal Justice: Theory, Policy Practice 4 <i>Chair: Anna-Marie Brennan</i> Bowland North SR 4	Noelle Higgins, <i>Attacks on Cultural Heritage in International Criminal Law: A New Consideration for the International Criminal Court</i>
IT Law and Cyberspace 2 <i>Chairs: Brian Simpson and Mark O'Brien</i> Bowland North SR 15	John Rumbold and Barbara Pierscionek, <i>Are Cyber Rights the Key to The Digital Future?</i>
	Pulkit Kaushik, <i>Cyber Laws to Curb Cyber Victimization of Women in India and other Developing Countries: A Comparative Critical Legal Analysis</i>
	Shashank Sheakhar and Siddharth Tiwari, <i>Constitutional Analysis of Right to Privacy vis-à-vis Surveillance: The Indian Experience</i>
Law, Politics and Ideology 2 <i>Chair: Dermot Feenan</i> Bowland North SR 22	Devyani Prabhat. <i>Radicalism through Legal Formalism: National Security Cases in Present Times</i>
	Gary Wilson, <i>The Subtle Constitutional Reform Agenda of the Conservative Government and the Politico-Legal Forces Driving It</i>
	Iain Frame. <i>The Bank of England, the London & Westminster Banking Company, and the Rise of Deposit Banking</i>

<p>Law's Empire? Justice, Law & Colonialism 4</p> <p><i>Chair: Raza Saeed and Carol Jones</i></p> <p>Bowland North SR 5</p>	<p>Campbell Munro, <i>The Advent of Aerial Empire: Air Policing, Imperial Airways, and the Spatio-Legal Construction of Airspace</i></p>
<p>Lawyers and Legal Professions 1</p> <p><i>Chair: Andy Boon</i></p> <p>Bowland North SR 9</p>	<p>Andy Boon and Avis Whyte. <i>An Analysis of Cases Before the Solicitors Disciplinary Tribunal in 2008 and 2015</i></p> <p>Michael Webster. <i>Facilitating Access to Justice: Alternative Business Structures in the United States</i></p> <p>Rachael Field and Laurence Boule. <i>Dispute Resolution and 21st Century Lawyering</i></p>
<p>Medical Law and Ethics 4</p> <p><i>Chair: Glenys Williams</i></p> <p>Bowland North SR 16</p>	<p>Edward Dove. <i>Promoting health research and protecting participants? The impact of 'next-generation' health research regulation on NHS research ethics committees</i></p> <p>Barbara von Tigerstrom. <i>Use of patient registries in the development and regulation of therapies for rare diseases</i></p> <p>Morgan Shimwell. <i>Understanding Social Demands for Modafinil: A Legal and Sociological Investigation</i></p>
<p>Refugee and Asylum Law: Theory, Policy and Practice 4 - Children and Asylum</p> <p><i>Chair: Yewa Holiday</i></p> <p>Faraday SR 3</p>	<p>Ruth Brittle, <i>Best interests of the child: Gateway or barrier to international protection?</i></p> <p>Georgina Firth & Barbara Mauthe, <i>Personhood, best interests and the asylum seeking child'</i></p>
<p>Research Methodologies and Methods 4 – Author Meets Reader</p> <p>2015 Prize Winner</p> <p><i>Chair: Petra Mahy</i></p> <p>Bowland North SR 13</p>	<p>Henry Yeomans, <i>Alcohol and Moral Regulation: Public Attitudes, Spirited Measures and Victorian Hangovers</i></p>

Sentencing and Punishment 4 <i>Chair: Gavin Dingwall</i> Bowland North SR 20	Joanne Clough. <i>Why carry a knife? An analysis of the effect of deterrence in the decision to carry a blade.</i>
	Liam Dempsey. <i>Exploring Socioeconomic Disparities in the Irish Sentencing System: A Comparative Examination of the Existing Evidence and suggestions for Further Empirical Research</i>
	Max Lowenstein. <i>Judicial Communication in the English Youth Court: Expressing sentencing explanations to young offenders.</i>
Sexual Offences and Offending 4 – Support Charities <i>Chair: Anna Carline</i> Marcus Merriman LT	Tom Taylor, <i>Survivors Manchester</i>
	Karen Greenhow, <i>The Birchall Trust</i>
Social security: Ideology, law and society in the 21st Century 4 <i>Chair: Chris Grover</i> Bowland North 12	Hartley Dean. <i>The Struggle for Social Security in a Twenty-first Century Context: The evolving significance of rights and legality</i>
	Jed Meers. <i>Shifting the Place of Social Security: Welfare Reform, Social Rights and Austerity in the UK</i>
	Philip Larkin. <i>The Reach Exceeding the Grasp: Judicial Activism, Human Rights, and Social Security Law</i>
Systems Theory Thinking 3 – Author Meets Reader SLSA Socio-Legal Theory and History Book Prize winner <i>Chair: Tom Webb</i> Bowland North SR 21	Jiří Přibáň (author), <i>Sovereignty in Post-Sovereign Society</i> (Ashgate, 2015)
	Jack Meakin (discussant)
	Richard Nobles (discussant)
	Thanos Zartaloudis (discussant)

The Law and Unintended Consequences 6 <i>Chair: Rebecca Moosavian</i> Bowland North SR 8	John Rumbold, <i>The pernicious effect of the external factor doctrine in non-insane automatism on expert evidence</i>
	Andrew Henley, <i>'Debt to society' or 'moral mortgage'? Criminal records and the unintended consequences of the Rehabilitation of Offenders Act 1974</i>
	Paulina Wilson, <i>Presumed Equivalence of Foreign and Domestic Criminal Offences: Evidential Issues and Unintended Consequences for the Criminal Process</i>
Trans*/ Law <i>Chair: Bela Chatterjee</i> Faraday SR 2	Grietje Baars, <i>Queer cases unmake gendered law, or, Fucking law's gendering function</i>
	Chris Dietz, <i>Reforming the Gender Recognition Act 2004: from Denmark, with caution</i>
	Sandra Duffy, <i>Gender Identity in Indian Law: From Colonial Doctrine to Gender Recognition</i>
Vulnerable Suspects and Defendants 1 <i>Chairs: Nicola Wake and Nicola Wortley</i> Bowland North SR 3	Claire McDiarmid, <i>Beyond Non-Age: A Defence for Children who Offend</i>
	Fabio Ferraz de Almeida, <i>Bullying, Fight or Assault? Building alternative versions in a police interview with a juvenile suspect</i>
	Elizabeth Tiarks, <i>Translating Restorative Justice theory into practice: implications for young offenders</i>

*** End of Session ***

Session 5, 14:00 – 15:30

Day 2 – Wednesday 6th April 2016

Administrative Justice 4 - Administrative Justice, Law and Policy <i>Chair: Richard Kirkham</i> Bowland North SR 14	Richard Craven, <i>PFI procurement: a case study of public authority compliance</i>
	Florence Anaedozie, <i>Combating Grand Corruption in Nigeria from the Lens of the Administration of Criminal Justice Act 2015: Progression or Retrogression?</i>
	Edward Kirton-Darling, <i>Death, Decision making and the Work Capability Assessment</i>
	Robyn Holder and Kathleen Daly, <i>Money: exploring the meaning of financial assistance for survivors of sexual victimisation</i>
Art, Culture and Heritage 2 - Law, society, and the identification of art and heritage <i>Chair: Janet Ulph</i> Bowland North SR 24	Carolyn Shelbourn, <i>The Writing's on the Wall: Graffiti as Crime, Art and Archaeological Artefact.</i>
	Colin R Moore, <i>Private Corporations and the Preservation of Cultural Heritage: Harnessing the Power of Corporate Social Responsibility.</i>
	Josh Nelson and Adie Nelson, <i>Searching For Authenticity in Art: Snarkhunting in Canadian Law.</i>
Banking, Finance and the Business of Organised Crime 4 - Corporate and Commercial Banking Law <i>Chair: Clare Jones</i> Bowland North SR 1	Catriona Hyde, <i>Revisiting auditors liability for their reports in the light of Jetivia and Livent</i>
	Bolanle Adebola, <i>The intersections between effective oversight and enterprise control: Towards the attainment of sustained business rescued through the administration procedure</i>
	Andreas Kokkinis, <i>Why would the UK benefit from the introduction of a 'benefit corporation' statute</i>
	John Quinn, <i>The Irish codification of director's duties: A comparison with enlightened shareholder value</i>
Challenging Ownership: Meanings, Space, Identity 1: Property and Origins <i>Chair: Sarah Blandy</i> Bowland North SR 7	Penny English, <i>Lost in the mists of time: looking for property rights in the past</i>
	Thanos Zartaloudis, <i>"On the oldest, perhaps, challenge to western legal ownership and its consequences"</i>
	Jonathan Brown, <i>Defining Property: From Roman Roots</i>

Children's Rights 3 - Education, exclusion and exposure <i>Chairs: Nuno Ferreira and Helen Stalford</i> Faraday SR 4	Marion Oswald, Helen James and Emma Nottingham, <i>Eavesdropping on a child's 'secret world'. The rights of children featured in fly-on-the-wall reality documentaries on broadcast media.</i>
	Seamus Byrne. <i>Education and Exclusion: A Question of Justice?</i>
	Hazel Katherine Larkin. <i>The Lack of Provision for the Special Educational Needs of Children of Gifted Intelligence in the Republic of Ireland is a Breach of their Human Rights.</i>
Civil Procedure and Alternatives to Litigation, ADR 3 <i>Chair: Masood Ahmed</i> Bowland North SR 13	Masood Ahmed, <i>The Briggs Civil Courts Structure Review: Some Observations</i>
	Sue Prince, <i>Designing an 'Online Court': Is ADR Emerging from the Shadows?</i>
	Ya-Fei Chang. <i>Modeling Judicial Behaviors of Post-award Procedural Dynamics for the Legislative Design of National Arbitration Laws</i>
Criminal Law Criminal Justice 5 – The Law Commission <i>Chair: Samantha Pegg</i> Bowland North SR 6	David Ormerod, <i>Law Commissioner for Criminal Law and Evidence</i>
	This is a joint session organised by Sentencing and Punishment, Vulnerable Suspects and Defendants and Criminal Law and Criminal Justice
Economic, Social and Cultural Rights 3 - ESCRs and Contemporary Issues - Issues around Labour <i>Chair: Ben Warwick</i> Faraday SR 1	Fulvia Staiano, <i>The Legislative Precariousness of Migrant Domestic Workers and Human Rights Law's Focus on Victimisation</i>
	Elena Samonova, <i>Bonded labour in Nepal from human rights' perspective.</i>
Exploring Legal Borderlands 5 - Exploring Borderlines of Legality and Rights Regimes <i>Chair: Anneloes Hoff</i> Bowland North SR 18	Madhavi Ramankutty - <i>The Human Rights of Postnational Europe</i>
	Ivo Gruev - <i>Individual Rights Protection Before the Bulgarian Constitutional Court: A Critical Evaluation of the Judicial Review Model in Post-communist Bulgaria</i>
	Ling Zhou - <i>The Consuming 'Professionals' of China</i>

Family Law and Policy 5: Perspectives on Family law in multi-cultural Britain <i>Chair: Annika Newnham</i> Bowland North SR 10	Zainab Naqvi. <i>"I suffered with this thing – English marriage..." – Experiences and Views of Polygamous Marriage and the UK Legal System</i>
	Samia Bano. <i>Critical Inquiries: Religious Tribunals, Muslim Feminist scholarship and the emergence of new family governance mechanisms in British Muslim communities</i>
	Rajnaara Akhtar. <i>Unregistered Muslim Marriages in the UK; Examining Normative Influences Shaping Choice of Legal Protection</i>
Gender, Sexuality and Law 5 <i>Chair: Chris Ashford</i> FASS Building MR 2/3	Fae Garland and Mitchell Travis, <i>Exploring the Possibility of Being 'X': Lessons from Australia's Legal Construction of Intersex</i>
	Clare Patton, <i>The Corporation and CSR: When good intentions turn bad.</i>
Gender, Sexuality and Law 12 – Author Meets Reader SLSA Socio-Legal Article Prize Winner <i>Chair: Rosie Harding</i> Bowland North SR 20	Lynette Chua (author), 'The vernacular mobilization of human rights in Myanmar's sexual orientation and gender identity movement (2015) 49(2) <i>Law and Society Review</i> 299-332
	Mairead Enright (discussant)
	Rosie Harding (discussant)
	Kay Lalor (discussant)
Indigenous and Minority Rights <i>Chair: Sarah Sargent</i> Faraday SR 3	Gustavo R Espinonza-Ramos. <i>Regulatory Framings of Community Interests in the Peruvian Mining: Corporate Social Responsibility Potential or Wishful Thinking?</i>
	Robert Hamilton. <i>"Dispossession by Legislation: New Brunswick's 1844 Act to Regulate the Management and Disposal of Indian Reserves in This Province"</i>

Information 1 - Private Information <i>Chairs: Richard Hyde and Ashley Savage</i> Bowland North SR 21	Richard Hyde. <i>Damages for Misuse of Private Information: A Critical Evaluation</i>
International Criminal Justice: Theory, Policy Practice 5 <i>Chair: Anna-Marie Brennan</i> Bowland North SR 4	Daniel Wand, <i>The Consequences of Adopting an Expansive Interpretation of the Law on Immunities: The International Criminal Court and the Case of Omar al-Bashir</i>
	Ketevan Shushanashvili, <i>Complementary and Concurrent Competences of United Nations Security Council and International Criminal Court: Specific Focus on Darfur Conflict</i>
	Jerusha Owino, <i>The International Criminal Court in Crisis: Quo Vadis?</i>
Labour Law 1 <i>Chair: Margaret Downie</i> Bowland North 12	Keith Puttick, <i>Evaluating the National Living Wage</i>
	Polly Lord, <i>The Precarious Employer? Farmer as case study</i>
	Xin Zhang, <i>Study of Migrant and Urban workers in China</i>
Law and Neo-Liberalism 1 <i>Chair: Annette Morris</i> Bowland North SR 3	Emily Rose and Nicole Busby, <i>Asserting individual employment rights: Where does the power lie?</i>
	Alison Tarrant, <i>The struggle for independence in adult social care</i>
	Beverley Clough, <i>Choosing the 'lesser of two evils': Access to services and the powers of the Court of Protection</i>
Law, Politics and Ideology 3 <i>Chair: Dermot Feenan</i> Bowland North SR 22	Philip Harris. <i>Article 1F(b) of the Refugee Convention : Is Identifying the 'Non-Political' a Political Decision?</i>
	Dermot Feenan. <i>Compassion: Judging and Ideology</i>
	Edin Hodžić, <i>Law and Politics of Democratic Transition: The Role and Impact of Constitutional Courts in the Successor States of the Former Yugoslavia</i>

Law, Trust and Emerging Technologies <i>Chair: Catherine Easton</i> Bowland North SR 15	Lisa Collingwood. <i>Autonomous cars: privacy implications and issues of liability.</i>
	Aratz Ramirez de La Piscina. <i>European Union environmental law and engineered nanomaterials: the particular case of nanowaste</i>
	Holly Hancock. <i>The DIY Detective in a Digital Age – a helping hand or hindrance to the justice system?</i>
	Catherine Easton. <i>Law and emerging technologies: an analysis of power, access and the technology-enabled self</i>
Lawyers and Legal Professions 2 <i>Chair: Andy Boon</i> Bowland North SR 9	Atalanta Goulandris. <i>Getting in and fitting in: Selection processes, playing by the new rules and the regulated pupillage experience</i>
	Lucy Floyd, <i>Becoming a female solicitor: vocational legal education and professional identity formation</i>
	Chalen Westaby. <i>Empathy: an essential element of professional legal practice or 'never the twain shall meet'?</i>
Legal Education 1 <i>Chairs: Fiona Cownie and Tony Bradney</i> Bowland North SR 5	David Sugarman. <i>When We Were Young: The Construction and Transmission of Legal Contextualism and Socio-Legal, Critical and Interdisciplinary Legal Studies in Britain, c.1965-1985</i>
	Sally Wheeler. <i>Socio-legal Studies and the Curriculum</i>
	Dave Cowan. <i>Socio-Legal Studies - Past, Present and Future</i>
Mental Health and Mental Capacity Law 1 - Services for People Lacking Capacity <i>Chair: Peter Bartlett</i> Bowland North SR 16	Session collapsed into Mental Health and Mental Capacity Law 2 (session 6)

Refugee and Asylum Law: Theory, Policy and Practice 5 - Treatment of asylum seekers and refugees <i>Chair: Linda Kirk</i> Marcus Merriman LT	<i>Nick Gill & Andrew Burrige, Equal treatment? Patterns of judgecraft in Britain's asylum tribunals</i>
	<i>Nora Honkala, "An unhappy interlude": Trivialisation of forced marriage in asylum seeker women's cases</i>
Research Methodologies and Methods 3 <i>Chair: Petra Mahy</i> Bowland North SR11	<i>Eleanor Pritchard, Informants' Understandings of the Researcher as an Actor: Reflections on Empirical Socio-Legal Research in Post-Conflict Kosovo</i>
	<i>Jo Samanta, Sarah Sargent and Kudret Yeldon, The Use of Focus Groups and Constructivist Grounded Theory in Medical-Legal Empirical Research</i>
	<i>Fabio Ferraz de Almeida, What is Missing in Socio-Legal Studies? An Ethnomethodological Contribution</i>
The Law and Unintended Consequences 4 <i>Chair: Aleksandra Cavoski</i> Bowland North SR 8	<i>Abigail Jackson, From Revenge Evictions to Retaliatory Rent Rises: The Unintended Consequences of the Deregulations Act 2015</i>
	<i>Roxanna Dehaghani, Automatic authorisation: assessing necessity to detain under PACE 1984</i>
	<i>Jonathan Brown, Overlooking the Obscure: Unintended (and Unsavoury) Consequences of Reforming the Age of Criminal Responsibility in Scotland</i>

*** End of Session ***

Session 6, 16:00 – 17:30

Day 2 – Wednesday 6th April 2016

Art, Culture and Heritage 3 - Trafficking cultural objects <i>Chair: Carolyn H Shelbourn</i>	Hao Liu, <i>A Battlefield without Flames and Smoke: Claim for Repatriation of Chinese Cultural Objects</i>
	Sue Farran, <i>The fight against the illicit trafficking of cultural property in the Pacific.</i>
	Janet Ulph, <i>The Illicit Trade in Antiquities: new dilemmas, new initiatives.</i>
Bowland North SR 24	
Banking, Finance and the Business of Organised Crime 3 - Corporate Social Responsibility, Financial Inclusion and Microfinance: A Focus on Developing Economies <i>Chair: Mary Young</i>	Sunduzwayo Madise, <i>Mobile money and financial inclusion: The case of Malawi</i>
	Colin R Moore, <i>Rehabilitating corporate social responsibility: Fulfilling legitimate expectations</i>
	Katharina Moser, <i>Debt relief for low-income debtors</i>
	Ngosi Okoye and Julian Siwale, <i>Regulation and effective corporate governance in microfinance banks: A comparison of Nigeria and Zambia</i>
Bowland North SR 1	
Challenging Ownership: Meanings, Space, Identity 2: Property as a zero-sum game <i>Chair: Helen Carr</i>	Martin George, <i>The Immorality of Property</i>
	Tola Amodu, <i>Computing Competing Rights in Registered Title to Land</i>
	Francis King, <i>The Winner Takes It All? The Reality of the Coventry v Lawrence action</i>
Bowland North SR 7	
Children's Rights 4 - Children's Rights and Family Justice <i>Chairs: Nuno Ferreira and Helen Stalford</i>	Jill Marshall. <i>Secret Births and Law Seeking to Open Windows Into Women's Souls</i>
	Brigitte Clark and Mariya Ali. <i>The Legal Position of Separated Siblings in Public Care – Do Legal Principle and Practice Concord?</i>
	Lama Karame. <i>Custody under Legal pluralism: Children as silenced victims</i>
Faraday SR 4	

Civil Procedure and Alternatives to Litigation, ADR 4 <i>Chair: Masood Ahmed</i> Bowland North SR 13	Kartina A. Choong, <i>A Comparative Study of the Islamic and Western Models of Mediation</i>
	Mohamed Salem Abou El Farag, <i>The Role of Arbitration in the Enforcement of Mediated Settlement Agreements: Arab Countries' Perspective</i>
Criminal Law Criminal Justice 6 - Police and Crime Management <i>Chair: Vanessa Bettinson</i> Bowland North SR 6	Laurene Soubise. <i>Reviewing Police Investigations in the Prosecutor's Office</i>
	Jake Phillips, Andrew Fowler and Chalen Westaby. <i>Emotional labour and probation practice: emotion management in offender management</i>
Exploring Legal Borderlands 6 – Author meets reader session <i>Chair: Owain Johnstone</i> Bowland North SR 18	Helen Dancer, <i>Women, Land and Justice in Tanzania</i>
Family Law and Policy 6: Regulating shifting meanings of family <i>Chair: Anne Barlow</i> Bowland North SR 10	Chung-Yang Chen. <i>Unmarried fathers legal rights to children in Taiwan</i>
	Alan Brown. <i>The Shifting Meaning of 'Family': the Example of the Rent Acts</i>
	Jessica Willis. <i>Soviet Family Law: Internalized, Socialized, Collectivized</i>
Gender, Sexuality and Law 6 <i>Chair: Alexander Maine</i> FASS Building MR 2/3	Kay Lalor, <i>Spaces of resistance: Law, development and LGBTI rights</i>
	George Harrington, <i>Alpha's, Beta's and Toxic Masculinity</i>
	Katharine Parker, <i>The Role of Visual Methods in the Study of Illicit Sex: Empirical Reflections</i>

Information 2 - Whistleblowing <i>Chairs: Richard Hyde and Ashley Savage</i> Bowland North SR 21	Richard Hyde and Ashley Savage. <i>Whistleblowing in the Aviation Sector: Intelligence Sharing and Pro-active Regulatory Practice</i>
	Ashley Savage. <i>Whistleblowing in the Civil Service: a patchwork state</i>
International Criminal Justice: Theory, Policy Practice 6 <i>Chair: Anna-Marie Brennan</i> Bowland North SR 4	Hendrik Vandekerckhove, <i>The Elusive Concept of International Criminal Justice and the Contribution thereto by Domestic Courts</i>
	Giulia Pecorella, <i>The Definition of the International Crime of Aggression and the Practices of the U.S. Administration</i>
	Elizabeth Acorn, <i>The Limits of State Socialization: International Pressure and Institutional Constraints in Canadian Foreign Bribery Enforcement</i>
Intersectionality <i>Chair: Charlotte Skeet</i> Bowland North SR 22	Felicity Benton, <i>Forced marriage in Scotland: Stalled at the intersection?</i>
	Langton Miriyoga, <i>Do socioeconomic rights work for non-citizens?: Experiences of Zimbabweans living in South Africa</i>
IT Law and Cyberspace 3 <i>Chairs: Brian Simpson and Mark O'Brien</i> Bowland North SR 15	Magnus Eriksson, <i>Regulating Complexity: the Swedish Co-production of Law and Technology in Autonomous Driving</i>
	Marion Oswald, <i>Jordan's dilemma: can large parties still be intimate?</i>
	Mark O'Brien, <i>From Stead and Whitehouse to Big Brother: Historical Perspectives on the Legal Regulation of Child Pornography and Sexual Abuse</i>
	Brian Simpson, <i>Robots, Intimacy and the Law</i>

Labour Law 2 <i>Chair: Margaret Downie</i> Bowland North 12	Margaret Downie, <i>Shifting Burdens of Proof in Equality cases</i>
	Olawale Ajai, <i>Human Rights, Corporate Duties, Workers Rights: The Juridification, internationalization and Humanization of Labour Law and – an international survey from a Nigerian Perspective</i>
Law's Empire? Justice, Law & Colonialism 5 <i>Chair: Raza Saeed and Carol Jones</i> Faraday SR 1	Jennifer Balint, <i>The Minutes of Evidence and the Record of Law</i>
	Mirosław Michał Sadowski, <i>Crossroads of the World, Crossroads of the Law: Hong Kong and Macau Legal Systems approaching 20 years post-transition</i>
	Carol Jones, Discussant
Lawyers and Legal Professions 3 <i>Chair: Andy Boon</i> Bowland North SR 9	Ian King. <i>The Decline of Professionalism in Law</i>
	Andrew Francis. <i>Legal Professional Identities, Jurisdictional Collaboration and State Intervention</i>
	Sundeep Aulakh and Ian Kirkpatrick. <i>The Demise of the 'Professional Partnership'? A Qualitative Study of Externally-Owned Alternative Business Structures in England and Wales</i>
Legal Education 2 <i>Chairs: Fiona Cownie and Tony Bradney</i> Bowland North SR 5	Rachael Field. <i>The Australian Wellness Network for Law: Promoting Psychological Well-Being for Law Students and Lawyers</i>
	Emma Jones. <i>Emotion and learning in the law school</i>
	Anil Balan. <i>A critical review of the effectiveness of the feedback practices within an institution teaching an undergraduate Qualifying Law Degree to students from widening participation backgrounds</i>
Mental Health and Mental Capacity Law 2 - Dementia and Treatment <i>Chair: Jill Stavert</i> Bowland North SR 16	Laura Pritchard-Jones. <i>"This man with Dementia" – 'Othering' the Person with Dementia in the Court of Protection.</i>
	Jaime Lindsey. <i>Social Worker Accounts of Mental Capacity Law</i>
	Alex Pearl. <i>"People who think they know better are taking out your rights and throwing them in the bin... and forgetting... that everybody should have the same human rights as everybody else" [Superman, white male, 34, learning disability]</i>

Refugee and Asylum Law: Theory, Policy and Practice 6 - Protection limitations and failures <i>Chair: Nick Gill</i> Marcus Merriman LT	Rebecca McGregor, <i>Expanding Protection for asylum seekers with mental illness/disability: Exploring the interplay between the 1951 Convention Relating To the Status of Refugees and The United Nations Convention on The Rights of Persons with Disabilities</i>
	Gary Christie, <i>Prosecuting the persecuted in Scotland: A socio-legal study of the U.K.'s international obligation under Article 31 (1) Of The 1951 Refugee Convention and the Scottish criminal justice system</i>
	Yewa Holiday, <i>Refugees and the misuse of the criminal law</i>
Sentencing and Punishment 5 <i>Chair: Gavin Dingwall</i> Bowland North SR 20	Supakit Yampracha. <i>Understanding Yee-Tok: A Thai-style Sentencing Guidance</i>
	Christine Piper and Susan Easton. <i>Privatising rehabilitation: whither community?</i>
The Law and Unintended Consequences 5 <i>Chair: Richard Craven</i> Bowland North SR 8	Phil Thomas and Kevin Kerrigan, <i>The case of the disappearing Human Rights Act 1998</i>
	Adam Ramshaw, <i>Unintended Consequences: Protocol 12 and Horizontal Effect</i>
	David McGrogan, <i>The Unintended Consequences of Human Rights Monitoring</i>
Vulnerable Suspects and Defendants 2 <i>Chairs: Nicola Wake and Nicola Wortley</i> Bowland North SR 3	Alison Cronin, <i>Vulnerable users and digitally-induced deviance: questions of liability in cybercrime</i>
	Samantha Fairclough, <i>"Well you've committed a serious offence - you can't be that vulnerable." The conceptualisation of vulnerability and defendant use of special measures.</i>
	Caroline Gibby, <i>Using the firm meeting within Student law Office: to support understanding of vulnerable clients within the Criminal justice System</i>

*** End of Session ***

Session 7, 10:00 – 11:30

Day 3 – Thursday 7th April 2016

Challenging Ownership: Meanings, Space, Identity 3: Multi-Level Ownership <i>Chair: Martin George</i> Bowland North SR 7	Tom Sparks, <i>Who Owns the State? Secession and Self-Determination after Kosovo</i>
	Jim Robinson, <i>Land, Legal Orders and Legitimacy: UN-Habitat, Mediation Teams and Eastern Democratic Republic of Congo</i>
	Anne Fitzgerald, <i>Can formalization create land tenure security for pastoralists in Tanzania ?</i>
Civil Procedure and Alternatives to Litigation, ADR 1 <i>Chair: Masood Ahmed</i> Bowland North SR 15	John Kong Shan Ho. <i>Bringing Commercial Litigation Funding to the proposed class action regime in Hong Kong?: Lessons and experiences from Australia</i>
	Tatiana Kyselova. <i>Mediation in Ukraine: Challenges of War and Peace</i>
Criminal Law Criminal Justice 7 - Sentencing and Detention <i>Chair: Samantha Pegg</i> Bowland North SR 6	Tom Smith. <i>Pre-trial Detention in England and Wales: Policy, Practice and Effectiveness</i>
	Jane Mulcahy. <i>An analysis of the recent focus on sentence planning, prisoner progression, rehabilitation and resettlement in Ireland</i>
	Simon Barnes. <i>Psychopathy, cognitive neuroscience and criminal responsibility: problems with focusing on insanity</i>
Culture Clash, Peace and World Order 1 <i>Chair: Nwudego Nkemakonam Chinwuba</i> Bowland North SR 14	Rosie Taylor-Harding. <i>Developing an In- and Out-group Theory of Law in Japan</i>
	Oluwatoyin Adejonwo-Osho. <i>Peace and World Order: The Need to Achieve a Delicate Balance between Civil Liberties and National Security</i>

Exploring Legal Borderlands 7 - Socio-legal margins: at the edge of the law <i>Chair: Owain Johnstone</i> Bowland North SR 18	Friso Jansen - <i>Lower back pain: The search for the optimal medical guideline</i>
	Tola Amodu - <i>Guidance and rule – the pervasive effects of informal oversight?</i>
	Lindsey Bell - <i>Trial by Ordeal: an interdisciplinary approach yields fresh insights</i>
Family Law and Policy 7: Family Law Futures? <i>Chair: Annika Newnham</i> Bowland North SR 10	Devyani Prabhat. <i>Bettering the Best Interests of the Child: Of Checklists and Balancing Exercises</i>
	Anne Barlow, Rosemary Hunter, Janet Smithson and Jan Ewing. <i>Online Family Mediation: Progress or Panacea?</i>
	Liz Trinder. <i>Finding fault?: a new study on the role of fault in divorce and civil partnership dissolution.</i>
Gender, Sexuality and Law 11 <i>Chair: Katharine Parker</i> Marcus Merriman LT	Katie Cruz, <i>Migrant Sex Work and the End of ‘Trafficking’</i>
	Mei-Hua Chen, <i>Divided legal mobilizations on commercial sex in anti-trafficking era in Taiwan</i>
Gender, Sexuality and Law 7 <i>Chair: Alexander Maine</i> FASS Building MR 2/3	Kathryn McNeilly, <i>Abortion Law Reform, Or Can Feminist Legal Studies Facilitate Legislative Change?</i>
	David Mcardle and Barbara Osborne, <i>Pregnancy Discrimination, Governance Feminism and the US Model of College Sports</i>
	Olaleye Ebuloluwa, <i>Sexual Violence as an Instrument of War in Sub-Saharan Africa. The Role of International Criminal Justice in Women’s Sexual Rights</i>
Information 3 - Surveillance and Disclosure <i>Chairs: Richard Hyde and Ashley Savage</i> Bowland North SR 21	Angela Macfarlane. <i>When using surveillance to monitor an employee’s internet usage in the workplace, has the employer’s interference of an employee’s right to private life and correspondence become so unfettered that the legitimacy of it is disregarded?</i>
	Marion Oswald, Helen James and Emma Nottingham. <i>The not-so-secret life of five year olds, Legal and ethical issues relating to disclosure of information and the depiction of children on broadcast and social media</i>

International Criminal Justice: Theory, Policy Practice 7 <i>Chair: Anna-Marie Brennan</i> Bowland North SR 4	Charlotte Wick, <i>The Legacy of the International Criminal Tribunal for Rwanda: Incitement to Commit Genocide, Learning from the ICTR Experience</i>
	Diana Sankey, <i>Sexual Violence and Contested Narratives of the Past: Towards Justice in Cambodia for Victims of the Khmer Rouge Regime</i>
Law and Literature 1 - Legal Life Writing <i>Chair: Julia Shaw</i> Bowland North SR 1	Jesse Hohmann, <i>The Lives of Objects: Writing the Life of International Law</i>
	David Sugarman, <i>A.W.B. Simpson in Context: The Life of Brian</i>
	Dvora Liberman, <i>Conducting the Court: The social world of Crown Court clerks from the 1970s onwards</i>
	Linda Mulcahy (Discussant)
Law and Neo-Liberalism 2 <i>Chair: Annette Morris</i> Bowland North SR 3	John Linarelli, <i>What is Wrong with Debt</i>
	Tanya Josev, <i>The Role of Neoliberal and Neoconservative Critique in the Shaping of the Term 'Judicial Activism'</i>
	Karen Richmond, <i>Streamlined Forensic reporting and the Neo-liberalisation of Expertise</i>
Legal Education 3 <i>Chairs: Fiona Cownie and Tony Bradney</i> Bowland North SR 5	Ian Kilbey. <i>A contextual approach to teaching EU Law</i>
	Simon Sneddon, Nick Cartwright and Kate Exall. <i>Impact on students of online and blended learning methods</i>
	Omar Madhloom and Nicolette Butler. <i>Rethinking the Teaching of Land Law: Bridging the Gap between Theory and Practice</i>

Mental Health and Mental Capacity Law 4 - Mental Illness, stigma, and non-discrimination. <i>Chair: Amanda Keeling</i> Bowland North SR 16	Peter Bartlett, Mudigonda Mohan, Arun Chopra, Morriss Richard and Jones Stephen. <i>Advance Decisions under the Mental Capacity Act 2005 in Cases of Bipolar Disorder</i>
	Annika Frida Petersen. <i>The psychiatric patient in Danish Health Law - Discourses, stigma, discrimination</i>
	Leigh Roberts. <i>Professionals, decision making and barriers to disability equality</i>
Pluralist Citizenship in a Time of European Double Standards <i>Chair: Johana Etxezarraga</i> Faraday SR 4	Adrienne Yong. <i>The constitutional crisis of the EU citizen in fundamental rights protection and EU citizenship law</i>
	Johana Echezarraga Aldamiz-Echebarria. <i>EU citizenship today: salient challenges of its making and its accommodation in the EU constitutional order.</i>
Private International Law 1 <i>Chair: Emma Roberts</i> Bowland North 11	Lu Xu. <i>New choice-of-law approach in relating to property rights in China</i>
	Naheed Ghauri. <i>Secular and Religious Discourse in Europe: Conflicts of Law – The Debate on Shari’a Councils in the UK</i>
	Chukwuma Okoli. <i>Do We Really Need an Implied Choice of Law in the European Union Choice of Law Rules for Contractual Obligations?</i>
Rethinking Surrogacy <i>Chair: Debra Wilson</i> Faraday SR 1	Alan Brown. <i>“Two means two, but must does not mean must”: recent decisions on the conditions for parental orders in surrogacy</i>
	Bruno Obialo Igwe. <i>The Irish Supreme Court Judgment on Surrogacy: Echoing the Dissenting Voice</i>
	Katherine Wade, <i>The United Nations Convention on the Rights of the Child 1989: A Framework for a Transnational Approach to Surrogacy in the UK</i>
The Law and Unintended Consequences 7 <i>Chair: Steven Vaughan</i> Bowland North SR 8	Hannah Quirk, <i>The Unintended Consequences of Curtailing the Right of Silence</i>
	Gareth Evans, <i>The Unintended Consequences of Devolution: Dis-Union within Plurinational States</i>
	Simon Brooman, <i>Two thousand years of mistakes: Defining Animals as ‘property’ or ‘environment’</i>

Transitions from Conflict: The Role and Agency of Lawyers – 1 <i>Chairs: Anna Bryson</i> Bowland North SR 9	Alex Batesmith. <i>Agents of change: can Myanmar’s lawyers help re-shape the justice sector following the November 2015 elections?</i>
	Anna Bryson. <i>Obstacles, Opportunities and Obduracy: Women Lawyers and the Struggle for Change in Conflict & Transition</i>
	Kieran McEvoy. <i>Lawyering, Legislation and Transition: Dealing with the Past ‘From Below.’</i>
Workplace Dispute Resolution in the 21st Century 1 <i>Chair: Eleanor Kirk</i> Bowland North SR 13	Nicole Busby and Emily Rose. <i>Experiences and Perceptions of Claimants to the Employment Tribunal</i>
	Amy Ludlow and Catherine Barnard. <i>Routes to Workplace Dispute Resolution: the Experiences of EU Migrant Workers</i>
	Rupert Harwood. <i>The impact of tribunal fees on access to justice for disabled workers</i>

*** End of Session ***

Session 8, 12:00 – 13:30

Day 3 – Thursday 7th April 2016

Challenging Ownership: Meanings, Space, Identity 4: Research ing lives and housing <i>Chair: Penny English</i> Bowland North SR 7	Robert Blackash, <i>UK Prison X: A Counter-Public Space and the Surveillance Regime. Service Users' lived realities; acts of resistance and the challenge to regulation</i>
	Dave Cowan and Helen Carr, <i>The histories of shared ownership</i>
	Leigh Roberts, <i>Social Housing, Antisocial Behaviour and Disability: Decision Making of Housing Professionals at a Conflicted Intersection of Law and Policy</i>
Civil Procedure and Alternatives to Litigation, ADR 2 <i>Chair: Masood Ahmed</i> Bowland North SR 15	Tatiana Tkacukova, Hilary Sommerlad and Robert Lee. <i>Litigants in Person in the Civil Justice Centre: Access to Legal Information and Advice</i>
	Andrew Agapiou. <i>The co-optation of the techniques and language of Alternative Dispute Resolution: A critique of developments in the UK</i>
Criminal Law Criminal Justice 8 - Trial Processes <i>Chair: David McArdle</i> Bowland North SR 6	Kevin Crosby. <i>Female Jurors in the 1920s Assize Courts</i>
	Yvette Tinsley. <i>How to thrill a juror: jury responses to improvements in judicial communication</i>
	Oriola Sallavaci. <i>Expert Evidence in Criminal Proceedings: Where now? What next?</i>
Culture Clash, Peace and World Order 2 <i>Chair: Nwudego Nkemakonam Chinwuba</i> Bowland North SR 14	Obadina Ibrahim. <i>Rethinking Socio-Legal Problems in Africa: Beyond Legal Approaches - Submission</i>
	D. U. Odigie. <i>An Appraisal of the Socio-Legal Perspectives to the Interface Between Culture and Inter-Tribal Marriages</i>
	Yomi Olukolu, <i>Cultural Secularism and the Importation of Colonial Laws and Culture as an Antidote to Socio-Cultural Legal Conflict in Africa</i>

Gender, Sexuality and Law 8 <i>Chair: Chris Ashford</i> FASS Building MR 2/3	Michael Ashworth, <i>In the Shadow of the State: Governing through Disgust in Uganda</i>
	Emilie Cloatre and Mairead Enright, <i>Regulation, disobedience and the socio-legal construction of condoms in Ireland 1935-1993</i>
	Nick Cowen, <i>Millian Liberalism and Extreme Pornography</i>
Information 4 - Access to Information <i>Chairs: Richard Hyde and Ashley Savage</i> Bowland North SR 21	Edward Mitchell. <i>An instinct to conceal: urban property development and freedom of information requests</i>
	Erin Ferguson. <i>Follow the Money? : Examining the Argument in Support of Extending Freedom of Information to Additional Bodies</i>
	Oliver Bartlett. <i>“Choice is an illusion created between those with power and those without”: Investigating who really controls the flow of information surrounding non-communicable diseases.</i>
Law and Literature 2 <i>Chair: Julia Shaw</i> Bowland North SR 1	Sarah Sargent, <i>Truth and Consequences: Law, Myth and Metaphor in American Indian Contested Adoption</i>
	Emma Patchett, <i>Re-reading the normative: temporal shifts, legal sovereignty and disturbing dances</i>
Law and Neo-Liberalism 3 <i>Chair: Annette Morris</i> Bowland North SR 3	Aurora Voiculescu, <i>From Transnational Regulatory Capacity to Governance Opacity: Winners and Losers of the Neo-liberal Agenda</i>
	Jennifer Lander, <i>The (Self)-Discipline of the State: Dependence on Foreign Direct Investment and Mining Governance in Mongolia</i>
	Liviu Damsa, <i>Feeding Neo-liberal Nirvana in post-socialist Central Eastern Europe? The case of Association of Owners and the problems face by have nots in Romania</i>
Legal Education 4 <i>Chairs: Fiona Cownie and Tony Bradney</i> Bowland North SR 5	Anthony Bradney. <i>More Madness: The TEF and University Law Schools</i>
	Laura Holloway. <i>Diverse attainment: mapping and understanding variation in attainment on the GDL and LPC by protected characteristics</i>
	Stephen Bunbury, <i>Disability in higher education – do reasonable adjustments contribute to an inclusive curriculum</i>

Mental Health and Mental Capacity Law 3 - The challenges of legal reform in a human rights context <i>Chair: Alex Pearl</i> Bowland North SR 16	Hope Davidson. <i>Mental Health and Mental Capacity Law in the Republic of Ireland.</i>
	Jill Stavert. <i>Closing the 'Bournewood Gap' in Scotland?: ECHR and UNCRPD considerations</i>
Transitions from Conflict: The Role and Agency of Lawyers – 2 <i>Chair: Anna Bryson</i> Bowland North SR 9	James Sweeney. <i>Kosovo – from traditional to transitional justice, and back again?</i>
	Yassin Brunger. <i>The Art and Science of Lawyering in International Criminal Trials</i>
	Lynsey Mitchell. <i>The Limits of Law: Mistaking Legal Accountability for Protection during Conflict</i>
Workplace Dispute Resolution in the 21st Century 2 <i>Chair: Nicole Busby</i> Bowland North SR 13	Eleanor Kirk. <i>Austerity and the Vilification of Tribunal Claimants: Challenging the Myths</i>
	Morag McDermont. <i>Working with Work-Place Disputes: Citizens Advice as Brokers</i>

*** End of Session ***

*** End of Conference ***

Conference abstracts

On the following pages you will find all the abstracts for papers delivered during this conference. Abstracts are sorted by parallel session slot and then by stream or theme title.

Session 1, 13:30 – 15:00

Stream: Administrative Justice 3 - Participation in Administrative Justice

Paper 1: Grainne Mckeever, Modelling legal participation: from tribunals to courts

A model of legal participation based on empirical research with tribunal users has been created to define and measure user participation in tribunal processes. This identifies different types of participative experiences and a corresponding range of operational indicators to measure user participation. Further empirical research has been funded by the British Academy to pilot this model of legal participation with court users, to establish whether the operational indicators of tribunal participation can be applied to court litigants. This paper sets out the initial findings of the research which tests, through litigant observation and interview, whether the tribunal-based operational indicators reflect the participative experiences of court litigants. The objective is to establish comparative differences between courts and tribunals, to identify the participative value to litigants of legal support and to identify alternative indicators of participation for court litigants.

Paper 2: Jackie Gulland, 'She is not able to write and does not know what to do': appellant knowledge and representation in early twentieth century appeals about national health insurance

The title of this paper comes from a letter written by a doctor in support of claimant's appeal against refusal of sickness benefit in 1916. It exemplifies the problem of appellant knowledge and the need for advice in pursuing claims for benefits, at a time in the early 20th century when illiteracy was common. Despite a popular assumption that benefits claimants are 'knowledgeable agents', lack of information, advice and representation constitutes a barrier to justice which continues today. This paper contributes to the literature on state run tribunals and hearings designed to enable people to defend their claims for social security benefits. There is a long tradition of work in this field both in the UK and in the USA. Most of this work has been carried out in the late 20th and early 21st century and has tracked the relationship between changes in rights, rules and discretion in social welfare and the role of appeals in maintaining fairness and due process in welfare provision. Other writers have focussed more on the ways in which the mechanisms define and enforce discourses of poverty, welfare and deservingness. This paper sets out to consider the role of representation and claimant knowledge in the system of appeal hearings which dealt with disputes between approved societies and their members under the early twentieth century National Health Insurance scheme. Using archival and published sources it reveals an early version of today's social security tribunals. It considers the roles played by the range of actors in these under-researched appeal hearings, and considers what they can tell us about key socio-legal debates on access to justice, the role of representation and the discursive effect of appeals.

Paper 3: Margaret Doyle, Update on the work of the UK Administrative Justice Institute

The UK Administrative Justice Institute (UKAJI) was established in 2014 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. Our activities reviewing research literature on administrative justice, identifying gaps and potential future research; organising inter-disciplinary workshops throughout the UK; engaging early-career researchers; and improving 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 will be from the core team. This session will give an update on the work of the project and invite discussion and ideas from participants. In particular the presenters will invite participants to discuss what resources would help them in their work.

Stream: Criminal Law Criminal Justice 1 - defence and defendants

Paper 1: Abenaa Owusu-Bempah. The defendant's role in criminal proceedings: Is participation voluntary?

In 1822, the French observer, Cottu, stated that the defendant's 'hat stuck on a pole might without inconvenience be his substitute at the trial.' Conversely, in more recent times, there has been an increase in demand for accused persons to actively participate throughout the criminal process. The increase in demand for participation has accompanied an increase in demand for convictions and efficiency in criminal proceedings. This has resulted in the imposition of requirements on defendants to actively participate during the pre-trial and trial stages of the criminal process, backed by penalties for non-cooperation. The penalties include the imposition of criminal sanctions for failing to provide self-incriminatory information, the drawing of adverse inferences from a defendant's silence, and the drawing of adverse inferences from a failure to comply with pre-trial disclosure obligations. This paper critically examines the practice of penalising defendant non-cooperation and explores the effect that it has had on the role of the defendant as a participant in the criminal process, as well as the nature of criminal procedure. It identifies a shift away from a system of voluntary participation, in which individual autonomy and fair trial rights can be accorded the utmost respect, towards a system of obligatory participation, in which the defendant's cooperation is required in order to reach accurate outcomes as efficiently as possible.

Paper 2: Yu Mou. From the Law of Torture to Plea Bargaining: Understanding Plea Bargaining from the Evolutionary Theory of Law

Perhaps one of the least controversial observations of today's criminal justice system across various jurisdictions is that plea bargaining and its variants have been a predominant feature. The domain of full adjudication has retreated and given away to plea bargaining. How did plea bargaining come into existence? Why did it take on the form of sentence reduction in return for a guilty plea? Although different theories have shed light on the rise of plea bargaining as a systematic regime, by drawing on its wide socio-legal setting in the 19th century, this paper argues that the origin of modern plea bargaining rests within its own history. Applying legal evolutionary theory, or more specifically the theory of legal memetics and Lubmann's systems theory, this paper proposes that plea bargaining, as a cumulative product of legal evolution, has undergone a process of alternation, selection and stabilisation, reflecting an internal dynamics shaped by historical conditions to adapt to a socio-political environment. In light of Simon Deakin's memetic theory, which identifies legal concepts as memes storing and coding information about social adaptation by analogy with the genetic code, this article suggests that the concept of legal practice can also be seen as a form of memes, functioning as a vehicle to transmit and ascribe its mutated traits. Tracing the origin of plea bargaining back to medieval times, it examines the inner connection and paradigm between the law of torture and modern plea bargaining. Delving into the dichotomised historical accounts of torture between England and Continental Europe, it explores how the judicial torture and different legal structures have framed distinct practices of plea bargaining in the modern age.

Paper 3: Tatiana Tkacukova and Gavin Oxburgh. Patterns of co-operation between police interviewers with suspected sex offenders

Over the past decades, the research on police interviews has produced a number of different categorisations of questioning techniques and question typologies (see Oxburgh, Myklebust & Grant, 2010 for a full review). The aspect that remains to be largely ignored is that two interviewers conducting the interview create unique interview dynamics and distinct co-operation patterns, which ultimately influence the questioning process and interview strategies. The official guidelines on co-operation between the interviewers are vague (see CENTREX, 2004) and it is thus up to individuals how they manage the interview and their co-operation during the interview. The paper presents the analysis of interview dynamics and co-operation patterns (e.g., turn-taking patterns, ratio of questioning turns between the two interviewers, coherence links between the interviewers' turns) from twenty-five investigative interviews with suspected sex offenders illustrates the different approaches to co-operation adopted by interviewers. The paper discusses the effectiveness of different approaches and makes suggestions for clearer guidelines on co-operation between the interviewers for investigative interviewers.

Stream: Environmental Justice 1 - Environmental Justice and Effective Remedies

Paper 1: Eghosa Osa Ekhaton, The SERAP Judgement and implications for the Environmental Justice Paradigm and regulation of Multinational Corporations in Nigeria

CSOs in Nigeria have also relied on the Economic Community of West African States (ECOWAS) Court of Justice, (ECCJ) to seek redress for victims of environmental injustice in Nigeria. ECOWAS is a regional group of fifteen states founded in 1975 and its mission is the attainment of regional and economic integration of the member states.

One of the major institutions of the ECOWAS is the Community Court of Justice (ECCJ). To redress the inherent anomalies in the regulatory regime in the oil and gas sector in Nigeria, CSOs and other activist groups have risen to the challenge. Thus, to by-pass the institutional ills besetting the Nigerian judiciary, CSOs are instituting cases at the ECCJ on behalf of themselves and Niger Delta communities in trying to hold the government and oil multinational corporations (MNCs) accountable for their actions.

In *SERAP v Federal Republic of Nigeria* the ECCJ held the Nigerian government culpable for environmental degradation in the Niger Delta. This paper will undertake an extensive review of this decision and its impacts on the Environmental Justice Paradigm in Nigeria. Also, this paper will also undertake the likely impacts on the regulation of MNCs in Nigeria.

Paper 2: Irene Antonopoulos, Moving forward: bringing human rights to the centre of sustainable development in the European Court of Human Rights

The paper responds to previous proposals for protocols to be incorporated in the European Convention on Human Rights, seeking to protect rights affected by environmental challenges. In light of the developing jurisprudence of the European Court of Human Rights on environmental claims and global sustainable development concerns, the paper focuses on the question on whether environmental protection would be achieved through human rights protection and vice versa. With a focus on the rights of minorities and of vulnerable groups, the most recent acknowledgement of the relationship between environmental degradation and human rights came from the Paris Agreement. The Agreement commits member states to a reduction of their greenhouse gas emissions aiming at limiting temperature rise to 2oC.

The European Convention on Human Rights does not reflect any environmental concern. It is argued that a new draft protocol should avoid the definitional shortcomings of previous attempts, most important of which has been the lack of clarity over states' duties and the purpose of the suggested protocols: protection of the affected human rights or a 'right to a healthy environment'. In addition, the paper identifies potential interferences of human rights deriving from not only environmental degradation but by the enforcement of environmental policies, unlike previous work in the field.

The paper concludes that allowing both a wide 'margin of appreciation' to member states and applying the 'fair balance test' is contradictory to sustainable development concerns. They have not allowed/. uniform and consistent decision-making between applications that claim interferences caused by environmental

degradation and interferences caused by environmental protection policies. This lack of uniformity is evident when comparing the decisions in *Öneryildiz v Turkey* (App no 48939/99 ECtHR, 30 November 2004) and *Depalle v France* (App no 34044/02, ECtHR, 29 March 2010).

Paper 3: Julie Adshead, The Cost of Oil Pollution Damage: The tales of the 'Erika' and the 'Prestige'

The long term environmental effect of the spillage of persistent heavy fuel oils can be devastating. The sinking of the vessels 'Erika' and 'Prestige' in 1999 and 2002 respectively provide prime examples of the consequences of oil pollution which are still being felt both ecologically and legally. There is a complex web of interests involved in the shipping of oil and difficult questions surround just who the polluter is in such cases and who should pay the costs of environmental damage. The international regime put into place following the Torrey Canyon disaster in 1967 has strict limits of liability, which are virtually unbreakable even when there is evidence of negligence. Also, in the first instance, under the Civil Liability Convention, sole responsibility is channelled to the ship owner. This paper considers some fairly recent developments in case law from a number of different jurisdictions relating to the demise of these two vessels. The starting point is a bold judgment on liability for the 'Erika' spill from the Court of Justice in 2008. The Court of Cassation 'Erika' judgment of 2012 and consequent recommendations on liability for pure environmental damage are also considered. The discussion then turns to three cases on the 'Prestige' disaster: The judgment of the New York Court of Appeal in 2012, the decision of the Galician Region High Court in 2013 and the conclusions of the Commercial Court in the UK, also in 2013. The long awaited decision in the 'Prestige' case in the Galician Court along with successful enforcement of the arbitral awards in the Commercial Court are starkly in contrast with the decision of the Court de Cassation just over a year earlier and do appear to re-enforce the limits and immunity of the international regime, which were circumvented in the 'Erika' cases.

Paper 4: Iñaki Lasagabaster Herrarte and María del Carmen Bolaño Piñeiro, Right to Effective Remedy and Projects with a High Environmental Impact Approved by Acts of the Parliament

The aim of this presentation is to analyse, from a critical point of view, the acts of Parliaments that are used to pass single projects with a high negative impact on the environment –e.g., a swamp–. Worryingly, Parliaments in Spain have begun to adopt large infrastructure projects by legislative acts. Until now, this practice did not exist. However, currently, there is a sort of legislative activism to pass projects by legislative acts.

From a legal perspective, the Parliament's intervention in this field implies a number of problems. Although a project may have been passed by administrative acts and declared prohibited by courts before, Parliaments, afterwards, approve the same project by a legislative act. As it is well-known, it is only up to Public Authorities to adopt purely administrative acts. Such is the case of the approval of infrastructure projects.

This role of the legislator is contrary to the principle of separation of powers and leaves citizens with no option to defend themselves from these projects -due to the lack of legal means to appeal a legislative act by citizens-. Moreover, this proceeding leads to the misapplication of other sets of Laws, such as those that oblige to carry out the Environmental Impact Assessment or the Treaty of Aarhus, which sets citizens' right to participate in the approval procedure of projects that affect the environment.

Not only the European Human Rights Court but also the Constitutional Court, the Supreme Court and other courts in Spain have already handed down their ruling in this issue. Nevertheless, the court-rulings have not been as clear as they should and there are contradictions among them.

Stream: EU Law 1

Paper 1: Angus Macculloch. State Intervention in Pricing: An Intersection of EU Free Movement and Competition Law

In contemporary European economies the direct regulation of prices is not normally seen as being the role of the State. Competitive markets are the preferred method of determining the market price for goods and services. There have, however, been a number of recent attempts to impose direct price regulation within the EU which have been challenged as being incompatible with EU law. Member States have chosen to use price control as a regulatory tool to alter the incentives for consumer or producer behaviour. The State's

concerns are not related to a lack of competition on the market, but it is using pricing as a regulatory mechanism to promote some other goal, for example, road safety or the reduction in the consumption of a potentially harmful product.

This paper analyses the mechanisms through which EU law restricts a Member State's ability to directly regulate prices. The restrictions on price regulation are interesting because they fall under three distinct types of EU regulatory control: the antitrust prohibitions, the EU Regulations governing the organisation of markets, and the free movement provisions. All three regulatory forms have their own rationales and perspectives, but I will show that the protection of price competition is central to all three, and how EU law uses competition rationales within all three areas to limit Member States' ability to regulate.

Paper 2: Katerina Kalaitzaki. The application of the principle of European Solidarity: Another victim of the EU financial crisis?

The paper focuses on the application of European Solidarity in the Euro-zone through the European Stability Mechanism (ESM), since 2008, when numerous European countries were hit by the economic crisis. Along this background the paper will answer the questions of; whether solidarity is undermined rather than promoted due to the ESM and/or the EU strategy, ending in being the victim of the Eurozone crisis, of whose mechanisms merely grow introversion instead of cooperation and whether such limits placed to solidarity can be justified.

The paper firstly analyses the legal development of solidarity within Europe and the idea that it is the essential component to solve the current crisis, which constitutes the theoretical background of the research. The legitimacy of the ESM will be examined, since even though it is designed to safeguard financial stability, doubts exist regarding its legitimacy. This examination focuses on issues such as the compatibility of ESM with EU Treaties and the Charter of Fundamental Rights, according to EU case-law and particularly on whether citizens are provided effective judicial protection in Europe, against possible interferences of the ESM with national law and/or human rights. An assessment on the exercise of solidarity during the crisis follows, discussing the type of solidarity applied, the terms of conditionality and the aftermath of assistance packages, in order to identify reasons that hampered the application of solidarity. Finally, short and long term suggestions for an effective application of solidarity are given.

The paper aims in proving that although there can be limits to solidarity, those traced during the Eurozone crisis can hardly be justified. The ESM represents an efficient mechanism capable of promoting solidarity but weaknesses can be easily detected especially in the human rights sector and its wrong usage has indeed hampered solidarity.

Paper 3: Vesco Paskalev. Impact Assessments in the EU: A chance for Discursive Representation?

The traditional forms of democratic representation through parliaments and elections are increasingly challenged, in the EU and worldwide. In the face of the proliferating regulations originating from apparently unelected bodies, John Dryzek and Simon Niemeyer developed the conception for discursive representation, which is pertinent to cases like the EU, where it is difficult to identify a demos or even a clearly defined group of affected citizens. On this account, for their decision to be democratically legitimate, the rule-makers must actively seek to take into consideration all relevant positions on the given regulatory problem, with the relevant information and associated arguments. Instead of counting the people behind certain position, political process is representative to the extent that it reconstructs all societal concerns. The proposed paper considers the legitimacy of the process of adoption of EU legislation from such perspective. It conceives the increasingly common impact assessments (IA) as fora where justificatory discourses meet. As all major pieces of legislation nowadays must be accompanied by an IA and the process of making, approving and contesting an IA involves identification, description and evaluation of the array of relevant discourses on an issue, I argue that it can essentially perform the function of the Chamber of Discourses which Dryzek and Niemeyer call for. At the very least IAs inform the decision-maker and offer a justification, which is acceptable to the various publics, in a way that parliaments usually fail to. In addition, such elaborate justification on the basis of factual assertions exposes the adopted regulation to contestation across borders. Thus, discursive representation, especially in the context of the EU, promises a better way of legitimate public authority and accountable governance. At the very least, it provides a useful conceptualization of the *raison d'être* of the IAs, which is so far missing.

Stream: Exploring Legal Borderlands 1 – Authors Meets Reader

Luis Eslava, Local Space, Global Life: The Everyday Operation of International Law and Development

Stream: Family Law and Policy 1: Family law, policy, research and reform

Paper 1: Rebecca Probert. Getting married: the Law Commission's scoping paper and future work

In December 2014 the Government asked the Law Commission to conduct a review of the law governing how and where people can marry in England and Wales. The question underlying the review was whether the current law, which has evolved over a long period of time, provides a fair and coherent legal framework for enabling people to marry. At the end of 2015 a scoping paper was published to provide an initial analysis of the issues that needed to be addressed in order to develop proposals for the reform of marriage law.

This paper will set out the conclusions of the scoping phase and the questions that would need to be asked as part of any full review of the law.

Paper 2: Mavis Maclean. Research and Government : 1997 -2017

This paper (or panel contribution) describes the setting up of the Research Secretariat within the then Lord Chancellor's Department with input from Socio Legal scholars including Robert Dingwall, Joanna Shapland, and the author, with strong internal support from Peter Graham Harris now a visiting scholar at Exeter College Oxford after several years with the Oxford Centre for Family Law and Policy . The new Secretariat enjoyed a close relationship with the SLSA. The then Lord Chancellor Lord Mackay came to the SLSA meeting in Cardiff in 1997, and a procedure was developed of identifying research issues facing policy makers, presenting these key issues to the SLSA community at conference with a request for expressions of interest. These were then checked for feasibility by the Research Secretariat (Sarah Tyerman Mavis Maclean and Sally Atwood) and presented to the then Policy Committee which placed them in order of priority and we commissioned as many as we could afford. Trust and communication lead to high quality high volume output.(see the National Archive)

As the research group became more established procedures became more complex, and sadly a procedure developed by Cabinet Office requiring the use of preferred providers seriously compromised this relationship. Hopefully this trend is now being reversed thanks to the work of the Family justice research team at MoJ, including the editor of the Bulletin who will be attending this year's conference.

This paper argues that in time of economic stringency, that both MoJ and the research community should benefit from a closer relationship, whereby officials can contribute to the research agenda and researchers can be confident that their voice is heard.

Paper 3: Karen Broadhurst, Introducing the Centre for Child and Family Justice Research

The session aims to introduce the new Centre for Child and Family Justice Research at Lancaster University. We propose to share with audiences the current work and aspirations for the new Centre, inviting both feedback and suggestions for collaboration.

Stream: Gender, Sexuality and Law 1

Paper 1: Marian Duggan, Evaluating Risk and Responsibility in Domestic Violence Disclosures

The 'Domestic Violence Disclosure Scheme' (also known colloquially as 'Clare's Law') offers people the opportunity to request information from the police about a new partner's potentially abusive history. This paper presents initial findings from ongoing research into the Scheme following its national implementation in England and Wales. The analysis examines the nature, scope, uptake and inferred 'success' of the Scheme, while a discussion of these issues draws on the broader themes of risk, responsibility, feminist theory, domestic violence prevention and victim-blaming rhetoric.

Paper 2: Katherine Brickell, Domestic Violence Law and the Denial of 'Active Citizenship' in Cambodia

In September 2005 the Cambodian National Assembly ratified the 'Law on the Prevention of Domestic Violence and the Protection of the Victims'. Drawing on in-depth research with domestic violence victims, legal professionals, NGO workers, police officers and other authority leaders, the paper explores the hiatus

that has emerged between promises enshrined in law (citizenship as status) and progress realised on the ground (citizenship as practice). Combining data from a large-scale household survey with a suite of interviews with different stakeholders, it traces the socio-legal conditions which are denying women of their ability to claim legally and morally enforceable rights via 'active citizenship'. These constraints encompass structural gender inequities; customs and traditions around silence and harmony; a weak rule of law environment; and inadequacies of financial and human resources to support domestic violence law training, implementation and enforcement. The paper is based on research findings emerging from a joint funded study by the UK Economic and Social Research Council and UK Department for International Development (DfID) entitled 'Lay and Institutional Knowledges of Domestic Violence Law: Towards Active Citizenship in Rural and Urban Cambodia' (2012-2015).

Paper 3: Siobhan Weare and Amanda Potts, Corpus Linguistic Approaches to Women Who Kill: Explorations of gendered identities and agency in sentencing remarks

This paper illustrates some of the latest work being undertaken at the legal-linguistic interface in relation to gendered legal analysis, more specifically women who kill. Although there is a growing body of theoretical research in this area, there is a distinct lack of linguistic analysis that explores the way in which these women have gendered identities discursively constructed for them within the legal system. As such, applying computational, statistical methods from corpus linguistics allows for a novel approach to analysis. We analysed recurrent (statistically significant) patterns in a collection of English Crown Court sentencing remarks from 2012-2015, where a female defendant was convicted of a homicide offence.

Our analysis focuses on three particular areas. Firstly, we quantify the extent to which members of the judiciary invoke gendered language and stereotypes within their sentencing remarks to construct the female defendants in gendered terms. Secondly, we identify particular narratives and identities that emerge within the sentencing remarks for women who kill. Finally, we describe the extent to which the agency of these women is acknowledged, if at all, within the language used and gendered identities constructed in the sentencing remarks.

In sharing the results of our analysis, we argue that common referencing strategies are used in sentencing remarks to discursively construct gendered identities for these women in relation to their social and familial roles, as well as their behavioural processes. Although previous research has indicated that women who kill have their agency denied, collocation analysis suggests what is taking place is neither absolute agency denial nor absolute agency acknowledgment. Therefore, we consider the possibility that the agency of these women being recognised by degrees, or that what is being recognised is instead a gendered, female-specific agency.

Stream: Graphic Justice 1 – Law as Comics

Paper 1: Marietjie Botes, Using comics to adequately communicate contract cancellation

Financial institutions finance millions of vehicle sales annually and trust their vehicle dealership representatives to adequately communicate the content of these sales and financing agreements, including the termination requirements as prescribed in the National Credit Act 34 of 2005 (NCA). However, due to language and literacy barriers, the vast majority of buyers of second hand vehicles in South Africa do not understand the content or consequences of these agreements.

In *Standard Bank of South Africa v Dlamini* 2013 (1) SA 219 (KZN), Dlamini returned a second hand vehicle, financed by Standard Bank, to the dealership from which he bought it after the vehicle broke down. However, Dlamini was illiterate and was the agreement, and more specifically the cancellation provisions in terms of the NCA, never explained to him. Standard Bank subsequently alleged that Dlamini did not properly cancel the agreement and insisted on payment of the monthly instalments.

Section 3(ii) of the NCA highlights the act's purpose to provide "...consumers with adequate disclosure of standardised information to enable them to make informed choices..."

The court found that Standard Bank failed to provide Dlamini with sufficient information to enable him to make an informed choice by failing to provide him with an agreement in plain or understandable language, or any other form of communication, considering Dlamini's illiteracy and inability to understand the language spoken by the dealership agent. The court held that the agreement was null and void ab origine

and that Dlamini did not need to repay Standard Bank, notwithstanding Dlamini's failure to properly cancel the agreement.

Subsequently, to bridge communication gaps between financial institutions and vehicle buyers, and more specifically the cancellation requirements as prescribed by the NCA, I created a comic to visually communicate "How to terminate a Purchase Agreement".

Paper 2: Suzanne van Rossenberg, Towards a graphic representation of intersectional justice

In *Demarginalizing the Intersection of Race and Sex* (1989), Kimberlé Crenshaw uses an analogy to illustrate the position of black women in the US: individuals disadvantaged on the basis of race, sex, class, age and physical ability are stacked in a basement. Above them are those disadvantaged by fewer such categories, and so on to the top layer, where people suffer only one disadvantage. One can imagine that when they try to reach the ceiling, they push each other further down – an image that political scientists have theorised as the reproduction of inequality. Crenshaw's calls for the urgent development of a praxis of intersectionality are yet to be addressed, and so is Mieke Verloo's call for a strategic displacement of categories (*Intersectional and Cross-Movement Politics and Policies*, 2013). Yet, equality policies and legislation cannot be fully implemented in practice without understanding the intersectional impact of disadvantage and privilege in society.

A key question is how this intersectionality can be represented in order to achieve the necessary understanding in the various stakeholder categories that can use the legal framework to attain practical intersectional justice for all. What channels can efficiently communicate implications of racism, sexism, violence and exclusion, while acknowledging the author's own disadvantages and privileges, as well as inspiring change? One such channel that I have explored as part of my PhD research is that of graphic representation in the form of cartoons (see examples). Within the field of Art History, my cartoons contribute to feminist epistemology and politics by challenging the reproduction of inequality and reviving the call for a praxis of intersectionality. Using my research discipline as a starting point, I explore the potential of the cartoon to crystallise, in an accessible format, the intersection of theory and practice in academia and social justice activism and advocacy.

Paper 3: Thomas Giddens, Lawmakers and mapmakers: Knowing the world via image and text

How do we know the world? Law is deeply invested in rational text as its dominant way of knowing. Examining law in the context of comics and graphic fiction challenges this presumption, opening up knowing to visual and aesthetic avenues beyond the rational texts of law. This paper critically engages with the beautiful and charming work of Isabel Greenberg, whose 'Encyclopedia of Early Earth' contains musings on the limits of knowing the world, alongside comics theory and the critical cultural and aesthetic theory of Lyotard and Didi-Huberman, to explore the relationships between words and images. Reduced to a simple statement: text may be preferred due to its 'plain' clarity, as opposed to the fluid 'uncertainty' of interpreting images, but the primary visual nature of text undermines this assumption--text is as uncertain as image--thereby exposing the arbitrariness of using text to know and do justice.

Stream: Human Rights, Religion and Discrimination 1

Paper 1: Yi Ren Thng and Benjamin Mak. In Tax We Trust? Tax Law and the (Mis)-allocation of Rights

Tax law is crucial to translating our moral commitments to social justice into reality. The Stamp Duty Land Tax (SDLT) anti-avoidance provision and the General Anti-Abuse Rule (GAAR) in the amended Finance Act 2003 reflect the determination of successive UK governments to curb the excesses of tax avoidance. However, the implementation of tax law may lead to discrimination and social injustice. We explore two recent controversial court decisions involving HMRC's application of the SDLT and the GAAR – *R(APVCO 19 Ltd) vs HMRC* [2015] EWCA Civ 648 and *Project Blue Ltd vs HMRC* [2013] UKFTT 378 (TC). While the commercial implications have been discussed extensively, their implications for human rights, religion and discrimination law remain underexplored. This paper takes a socio-legal perspective on these cases, focusing on the appellants' respective claims of alleged breaches of the ECHR.

In *R(APVCO 19 Ltd) vs HMRC*, the Court of Appeal denied APVCO's challenge to HMRC's application of the amended Finance Act 2013, partially on the grounds that the determination of tax disputes falls outside the

scope of civil and political rights and thus the right to a fair trial under Article 6 of the ECHR was not engaged. We consider this ruling against the facts in *Project Blue Ltd vs HMRC*, where the First-tier Tax Tribunal's held in favour of HMRC's decision to impose a higher SDLT tax notwithstanding Project Blue's use of Shari'a-compliant financing instruments and the potential breach of the non-discrimination provision in article 14, ECHR.

Consequently, we discuss two solutions that balance the competing priorities of combating tax avoidance and recognising religious rights within commercial transactions: (1) including Shari'a - based transactions within HMRC's 'Whitelist' of approved transactions, and (2) using motive as a legal test to determine if a financial transaction is part of the performance of religious obligations.

Paper 2: Rodrigo Cespedes, The Right to Education and Religious Discrimination Under the Euroiean System of Human Rights: The Case Studies of Italy and Spain

In my paper, it is postulated that the interpretative culture of the European Court of Human Rights (ECtHR) and its underlying ethos influence the Italian and Spanish courts' rulings in the matter of religious discrimination in school education. It does so by comparing the case law of these three jurisdictions using the analytical frameworks of Hohfeld, Alexy and Dworkin as well as the international and regional norms of non-discrimination, the right to education and freedom of religion. The different ways of balancing of children's rights, parental authority and state powers according to domestic cultural and legal tradition are analysed, giving a better and deeper understanding of the doctrine of margin of appreciation. Additionally it studies concepts underpinning the ECtHR's doctrine such as abuse of rights, proportionality and the margin of appreciation.

Paper 3: Martin Browne and Pablo Meix Cereceda. A Comparative Assessment of Religious, Philosophical and Ideological Rights in Education: A Study Across the Council of Europe

The European Association for Education Law and Policy is conducting a large-scale, comparative survey of the form of judicial reasoning in a specific category of case. A number of researchers are analysing the key jurisprudence of 27 countries to see if approaches differ in the determination of how religious, philosophical, or ideological convictions are protected in the context of educational systems in the different countries.

This work covers areas such as; how does the human rights balancing act differ depending upon the precise nature of the characteristic being protected, how are minorities defined, does this affect the occasions when are their interests not protected, and finally, how the justification of public safety differs in its definition and deployment amongst the three characteristics (religious, philosophical, cultural convictions). The scope in each country is limited to only the key judicial decisions, with a desire for these decision to be recent, and under-reported. Preliminary findings on 12 countries were discussed at the Education Law Association Annual Conference in Rome in September 2015. The present research will form a special issue journal in spring 2016. At the same time we wish to disseminate and discuss the findings with those interested in the field.

We are flexible in our approach to presenting at the conference, we would seek to provide an overview of the common trends, as well as highlighting less obvious themes that emerge from the comparative survey. It is also possible to focus upon two or three countries or regions depending on the focus, interests, and needs of the organisers, particularly concerning the UK, Greece, Turkey, Brazil, Chile, Kenya, or Russia.

Stream: Intellectual Property 2

Paper 1: Smita Kheria, Copyright and Publicly-Funded Arts and Humanities Research: Identifying and Developing Sustainable Exploitation Models in the Digital Economy

The digital era is one of the most challenging legal, technological, political, economic and social environments that the copyright framework has dealt with since it was formally recognised in the Statue of Anne in 1709. The copyright framework seems always to have raised challenges for arts and humanities researchers, research processes and for the content that they develop, but these challenges have intensified now. Copyright was established with individual authorship, limited borrowings, and analogue copying in mind. While research content was once predominantly text based, it now takes varied forms, making the application of copyright increasingly convoluted. With digitisation and digital technologies—which embrace

co-creation, unlimited re-use, and the absence of barriers to copying—the materials, processes, and outcomes of research have changed. Tensions arise at the interface of creating, managing and exploiting copyright content, and also of conducting innovative research which is accessible, exchangeable and engaging.

This paper reports findings from a pilot project, which examined the relationships between copyright, publicly funded arts and humanities research, and research processes in the digital era. The examination was based on case studies of six different AHRC-funded projects. Semi-structured interviews with selected participants from each of the projects were conducted and this data was used to address the following research questions: (1) How do researchers engage with copyright during the research process and in the production of creative works, and what copyright related challenges emerge? (2) How is researchers' engagement with copyright affected by digitisation, collaboration, legislation, and government policies? (3) Does copyright provide benefits to researchers as they undertake publicly funded research? (4) What range of works is produced during research, what do researchers identify to be of value in their projects, and can any of the benefits provided by copyright be mapped onto these values?

Paper 2: Elaine Maguire O'Connor, How France's history of protecting its fashion industry with intellectual property laws has contributed to its role as a world textile and fashion leader.

Historically France has been the fashion and textile capital of the world and fashion has always held an important role in French society. Laws to protect the industry can be traced back to the 15th century when the French Monarchy granted exclusive rights for the fabrication of textiles and a government ordinance penalising the counterfeiting of waving patterns was introduced for the first time in Lyon in 1711 under King Louis XIV. Unlike other countries, including the USA, France affords fashion the same intellectual property protections as other art forms. - copyright for garments can be traced back to the Revolutionary Act of 1793. Throughout the first half of the 20th century the Chambre Syndicate de la Couture Parisienne rigidly controlled access to the opening shows for French Haute Couture and ready-to-wear collections. The press signed agreements that they would not make unauthorised drawings and would refrain from taking photographs. This in stark contrast to the USA where the fashion and textiles roots are in copying and not considered a protected art form. Scholars remain divided on the issue of whether intellectual property protection prohibits or encourages creativity in design. This paper argues that the historical laws have significantly contributed to France's position as a world leader in fashion and textiles and encouraged creativity.

Paper 3: Jane Cornwell, Between the formal and the informal: enforcing IP rights - an empirical investigation

This paper will present preliminary findings from an empirical investigation into the formal and informal enforcement of IP rights in Scotland. Funded by the RCUK as part of CREATE, the RCUK Centre for Copyright and New Business Models in the Creative Economy (www.create.ac.uk), this project uses mixed empirical methods combining quantitative and qualitative analysis of data gathered from a survey and interviews with Scottish legal advisers and a dataset compiled for this project on IP litigations before the Scottish Court of Session.

There has been little empirical research in the UK investigating non-court based aspects of IP enforcement and no research into IP enforcement in Scotland. Covering all IPRs but with particular focus on copyright, the creative industries and the challenges of responding to online IP infringement, the project aims to map formal and informal IP civil enforcement activity involving legal advisers in Scotland, and to explore the various different factors influencing the conduct, trajectories and outcomes of infringement disputes.

Influenced by the writings of Galanter, Mnookin and Kornhauser, Felstiner and others, the project combines different empirical methods and data sources with the aim of mapping both observable formal litigation activity and unobservable informal private enforcement practices - including negotiation, mediation and settlement – taking place 'in the shadow of the law'. This paper will identify key preliminary findings from the empirical research conducted to date, reflecting in particular on the divisions and relationships between formal and informal IP enforcement activity, transitions between these levels, and comparison of the profiles and outcomes of different types of infringement dispute, including enforcement against 'real world' and online infringement.

Paper 4: Bela Chatterjee, The future of stem cell patenting: Considering the import of the recent CJEU decision in the International Stem Cell Corporation Case (2015) Case C-364/13.

Research using human embryo stem cells (hESCs) has long been controversial. The tension between the needs of science, particularly in the medical field, and the demands of ethics and respect for the *ordre public* have recently been heightened with advances in biotechnology which promise to revolutionise the field and threaten to leave the law behind. The legal framework itself is particularly complex; existing at international, regional and national level. The Biotechnology Directive 98/44 was designed to balance some of the tensions, but with recent advances in tissue and cell technology, there is an increasing question over whether the law is striking the right balance between the various stakeholders and interest groups. Whilst patenting in the human embryo stem cell field followed a restrictive line in the cases such as *WARF* and *Brustle*, the recent decision of the Grand Chamber of the CJEU in *International Stem Cell Corporation* arguably signals a new direction for the developing jurisprudence. The timing of the decision, particularly given the emerging background of a potential 'Brexit' and the leadership of the UK in the tissue and stem cell field, prompts questions about the current and future state of patent law in relation to hESC inventions, and asks us to consider a number of competing visions of the future. What those futures might be, and their implications, are explored in this paper.

Roundtable: International Criminal Justice: Theory, Policy Practice 1 - Transitional Criminal Justice in Post-Dictatorial and Post-Conflict Societies

Leads: Agata Fijalkowski and Raluca Grosecu, Transitional Criminal Justice in Post-Dictatorial and Post-Conflict Societies (Roundtable).

Discussants: Dr Jennifer Balint (School of Social and Political Sciences, University of Melbourne) and Dr Christos Boukalas Cardiff Law School, Cardiff University)

This roundtable brings together the editors of *Transitional Criminal Justice in Post-Dictatorial and Post-Conflict Societies*. This project argues for rethinking and revisiting filters that scholars use to interpret main issues of transitional criminal justice, such as: the relationship between judicial accountability, democratisation and politics in transitional societies; the role of successor trials in rewriting history; the interaction between domestic and international actors and specific initiatives in shaping transitional justice; and the paradox of time in enhancing accountability for human rights violations. The study considers cases of domestic accountability in the post-1989 era, from different geographical areas, such as Europe, Asia and Africa, in relation to key events from various periods of time. This approach, which investigates space and time-lines in key examples, also takes into account a longitudinal study of transitional criminal justice itself.

International Economic Law in Context 2

Paper 1: Osayomwanbor Bob Enofe, Developing Countries, Nigeria, and Cartel Criminalisation: of Transplantation and Desirability

The optimal means by which developing countries can effectively curtail cartel practices has been the centre of major academic discussions, both at the international, regional and national levels. As had been pointed out, cartels are harmful. They increase prices for consumers, exact "economic tolls" on countries, and undermine the overall integrity of affected markets. Particularly, in developing countries, where cartel activity has been known to be particularly severe, consumer trust in affected markets, as well as entire segments of economies, have been destroyed. In view of all the above, together with experiences of the U.S, criminalisation (up to and including jail time) has been suggested as the most effective means of curtailing such conduct.

Despite the above, however, the list of authorities, both empirical and theoretical, dealing with specific characteristics of developing countries, and the manner in which such might affect the applicability, and as such desirability, of cartel criminalisation has been sparse. This paper critically outlines various characteristics of developing countries, particularly Nigeria as an example of such, which might negatively interface with cartel criminalisation, to produce highly sub-optimal (if not counter-productive) results.

It is broken down, generally, into three parts as follows: part one discusses the overarching (and somewhat generalistic concept) of 'developing countries'. Specifically, it outlines various differentiating characteristics of such countries, and then elaborates how such might frustrate or undermine the purported (theoretical) desirability of cartel criminalisation. Part two introduces Nigeria as a particular example of a developing country, properly situating it within the context of discussions carried out in part 1. It then proceeds to hermeneutically differentiate the country from the USA: both as a developing country and as a distinct, socio-cultural and institutional entity, possibly not be receptive of cartel criminalisation. Part three concludes.

Paper 2: Jing Wang, When the Chinese Economic Law Facing Administrative Powers: Regarding Survival Conditions of Chinese Privately-Owned Small and Medium-Sized Enterprises

This paper investigates State intervention in China, including industrial policies and relevant economic laws, namely the Law of China on Promotion of Small and Medium-Sized Enterprises 2002 and the Anti-Monopoly Law of China 2007, relating to survival conditions of Chinese privately-owned small and medium-sized enterprises (SMEs). The approach to economic growth in China has pursued the "partnership dance" principle between enterprises and the government for many years. After 'the Reform and Opening Up' policy (1978) was enacted, many Chinese privately-owned SMEs showed up and aspired to operate independently, following the market rules. However, administrative intervention prefers to develop State-owned enterprises (SOEs) as a matter of priority, and to consider the fate of privately-owned SMEs at a later stage. Nowadays, the actual competitiveness of SOEs, which have been developing fast under State intervention, could not be strong enough. It seems therefore that the incomplete development of SOEs cannot satisfy all the demands of long-term economic growth. By contrast, China's prosperity expectations may depend on the flourishing of privately-owned SMEs. Although the Law of China on Promotion of Small and Medium-Sized Enterprises 2002 and the Anti-Monopoly Law of China 2007 are designed to promote privately-owned SMEs, they fail to do. Thus, in China, privately-owned SMEs continually face discrimination without effective legal remedies. Accordingly, this paper concludes that both the State's industrial policy and relevant economic laws fail to offer suitable support to privately-owned SMEs because of the unchallenged administrative powers in the Chinese market.

Paper 3: Azadeh Chalabi, The UN Guiding Principles in Practice: A Cross Case Analysis of National Action Plans on Business and Human Rights

To manage the adverse consequences of business activities on human rights, the UN Working Group on Business and Human Rights strongly recommended all States to develop a National Action Plan (NAP) on Business and Human Rights as part of the state responsibility to disseminate and implement the UN Guiding Principles on Business and Human Rights (endorsed by the Human Rights Council in 2011). The European Commission and the Council of the European Union (EU) also encouraged all EU Member States to adopt a NAP for the implementation of the UN Guiding Principles. So far, nine countries including the United Kingdom, Finland, The Netherlands, Italy, Denmark, Spain, Norway, Lithuania and Sweden have developed these plans and many more, such as the US, Germany, Greece, Mexico, Colombia, Jordan, Malaysia and Ireland are in the process of developing such plans. However, very little has been written on these plans and, thus, many aspects of them, legal and practical, remain remarkably unknown. By conducting a cross-case analysis of the existing NAPs on Business and Human Rights, this paper first seeks to explore various form-related problems of such plans in the five phases of planning, including: (1) initiation; (2) assessment and consultation; (3) drafting; (4) implementation; and (5) update. It then examines the content of these NAPs with respect to the three pillars of the UN "Protect, Respect and Remedy" framework.

Stream: Law's Empire? Justice, Law & Colonialism 1

Paper 1: Jen Hendry, Legal Pluralism and the Benefits of Legal Form

In a recent article in the *Journal of Comparative Law*, the legal anthropologist Fernanda Pirie argued in favour of an approach to comparison that included consideration of the legal form inhabited by the 'explicit rules and legal categories [used] to organize and describe the social world'. Pirie makes the case that studying the social forms of law, its legalism, can provide fresh insights into the role and function of law

within different societies, and references a variety of historical and anthropological examples to support this claim. Implicit within this argument is the allegation that the focus of those of us purporting to be legal pluralists has been somewhat myopic, concentrating on the specifically normative qualities of the legal at the arguable expense of the structural or stylistic – a focus on content over form, as it were. It is my intention in this paper to consider these two different dimensions of the legal with reference to one particular example of legal pluralism, namely that of the Indian tribal law within the United States, and to rely upon these insights to make the case for a relational conception of legal culture. I am interested in Pirie's argument that the 'legal form' idea of legalism allows for a broadening of the characterization of law, one that facilitates the shedding of much of its overtly Western baggage. Moreover, in light of its pervasiveness, I want to consider what the appeal and benefits of the legal form might be – I will argue that, in situations of legal plurality, sub-altern legal cultures gain increased legitimacy by 'replicating' texts, settings, procedures and formats.

Paper 2: Evan Stanley Jones, *Compromised Justice, Partition and the Decolonial in Ireland, 1920-2016*

This paper seeks to argue that in the evasion and denial of Ireland's colonial past, the segregatory and divisive mechanisms of colonialism have not yet been decolonized and still manifest themselves in the differentiation of Irish society today (particularly noting Ireland's position within the West and as a participating state in the European Union). This differentiation, I argue, is not recognized by the Irish state, nor is it widely thought that Ireland is a racist country where hostility to cultural differences is masked by an image of congeniality. I specifically draw reference to the British legislation of Ireland's partition (The Government of Ireland Act, 1920), as well as recent reports on racism (Afrophobia in Ireland, 2015) to provide evidence to this proposal. My argument develops this thesis within the discourse of decolonization, and aims to coincide and link with other theories that have better adopted and consolidated decolonization as a political issue within former colonies.

If the colonial project's inherent structural racism was bound in the tying up of difference with forms of rule (Hussain, Nasser, 2003), the initiation of a piece of divisionary legislation, i.e. partition, actively legalized and normalized division as the ramifications of restructuring, and essentially the segregating of a nation into two geographic, social, and political spaces, took hold. Thus, I argue here, the legal and moral mechanisms of British Empire have been internalized and institutionalized within the social and political frameworks of Irish governmentality and perpetuated within society as racialisation and differentiation. In this paper, I articulate these internalizations through the concept of partitionality.

Paper 3: Chad Frazier, *The Best Way to Americanize Puerto Rico: The Insular Commission and the Debate over the Introduction of the Common Law after the Spanish-American War*

The Insular Commission urged the U.S. government in June 1899 to substitute the common law for the civil law that had ruled Puerto Rico when it was a Spanish colony. "The Spanish system of laws and procedures, while not all bad, differs so radically in principle and structure as well as in methods and forms of practice from our own," explained commissioners Robert P. Kennedy, Henry G. Curtis, and Charles W. Watkins. The three distinguished members of President William McKinley's Republican Party concluded that introducing the common law represented "the best way to Americanize Porto Rico [sic]." The majority of Puerto Rican and U.S. attorneys, including Secretary of War Elihu Root, questioned the commissioners' research into Puerto Rico's legal system and disapproved of their racially-inflected assumptions of U.S. legal superiority. Root buried the commissioners' report subsequently in the vaults of the Bureau of Insular Affairs, the agency responsible for U.S. colonial policy until the early Thirties. Based on the records of the Bureau of Insular Affairs, as well as the correspondence of Root, McKinley, and Assistant Secretary of War George D. Meiklejohn, my paper reconstructs the reasons for the widespread repudiation of the work of the Insular Commission and meditates on its significance for the development of law in the twentieth-century United States. In so doing, I describe how the decision largely to preserve the civil law in Puerto Rico simultaneously furthered the economic and military interests of the United States and placated the indigenous staff of the U.S. colonial state. My paper demonstrates further that the struggle to establish a working legal order in Puerto Rico intersected with the tendency of U.S. legal scholars and practitioners to see each society's laws as the repository of its most-cherished values and celebrate their own legal system for its tolerance and adaptability.

Stream: Medical Law and Ethics 1

Paper 1: Stephen Wilkinson and Nicola Williams. Should Men with Dyslexia be allowed to Donate Sperm?

In December 2015, a London sperm bank's policy of rejecting dyslexic donors generated media controversy and subsequently an HFEA review. This paper asks whether it is morally acceptable for clinics to 'screen out' dyslexic sperm donors, and whether such selection policies should be allowed.

We begin by outlining two possible bases for the exclusion of dyslexic donors: the child welfare justification and the consumer choice justification. The child welfare justification claims that using non-dyslexic donors will create children with higher levels of health and/or wellbeing and thus that the exclusion of dyslexic donors should be permitted and perhaps even encouraged. The consumer choice justification suggests that screening out dyslexic donors is permissible because most recipients (if offered a choice) would prefer to use sperm from non-dyslexic donors.

We then examine each justification in turn. Regarding the child welfare justification, we suggest that while its overall structure is sound – i.e. child welfare is, in principle, a reasonable basis for donor selection – it may not be applicable in this case. For several important empirical and conceptual questions regarding the extent to which dyslexia can count as heritable, and whether or not it can really be said to constitute disability of disease, cast doubt on the applicability of this justification here. Regarding the consumer choice justification, we argue that arguments of this kind only engage when the choice on offer is not itself defective: e.g. it must not 'pander to' discriminatory or irrational attitudes and preferences.

Finally, we evaluate some additional arguments, including the suggestion that such screening policies are eugenic and 'devalue' the dyslexic population. These arguments are generally found wanting and do not, we claim, add much to this particular debate.

Paper 2: Samantha Halliday. Conceiving Better Birth Plans: Mental Illness, Pregnancy and Court Authorised Obstetric Intervention

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

Paper 3: Sally Phillips. Investigating the science of "Shaken Baby Syndrome": Tensions between Law and Science

The 'traditional hypothesis' of "Shaken Baby Syndrome" (SBS) surmises that if a child were to present with subdural haematoma and retinal haemorrhages, but was absent a history of accidental trauma, then that child had most likely been violently shaken. Despite extensive research, this hypothesis is still subject to significant criticism and media attention. In 2015, 34 professionals, who were through various disciplines experienced in the issues of SBS, signed an open letter regarding the syndrome, otherwise known as Non-Accidental Head Injury. The letter voiced concerns over the prosecution of caregivers, based on disputed

evidence, and recommended that courts re-examine the way these cases are conducted, in order to prevent wrongful convictions.

Examination of the medical and scientific literature, from SBS's historical roots in the 1800s through to present day, highlights five spheres of criticism: (1) blanket hypotheses that claim to holistically explain SBS injuries without shaking; (2) biomechanical thresholds which claim to prove shaking cannot produce enough force to cause injury; (3) alternative explanations for individual symptoms of SBS; (4) questions around the pathogenesis of retinal haemorrhages; and (5) diagnostic failings. These criticisms have enabled cynics to claim there has been a paradigmatic shift in medical opinion towards uncertainty in diagnosis, a discussion that has made its way into the courts in England and Wales, most notably in the last 15 years. This paper will argue that the realistic scientific picture does not reflect such a drastic change, rather an evolving diagnosis with shrinking windows of uncertainty. However, unanswered questions do remain, and this paper will identify areas for further medical research which may simplify discussions in courts. Ultimately, this paper aims to inform a wider discussion on how courts in England and Wales respond to appeals based on developing science.

Stream: Refugee and Asylum Law: Theory, Policy and Practice 1 - Comparative International Refugee Protection (a)

Paper 1: Carrie Perkins, The new colossus: Entering a new Era of refugee reception in the US

Drawing on interviews conducted with resettled refugees, policy makers and those working for NGOs involved in the resettlement process, this paper explores the current reception of refugees in the United States. With a specific focus on Dallas, Texas, issues related to the governor's appeal to block Syrian refugees in Texas in 2015 opens the discussion for understanding what legal rights states retain in refugee resettlement as well as what role NGOs play in this process. Further, the lack of clarity among the general population regarding the legal differences between asylum seekers and refugees creates misinformation in the public discourse concerning vetting procedures and potential security threats. As the debate over the Syrian refugee crisis intensifies in the United States, both sides of the political spectrum have sometimes failed to account for the actual laws regarding refugee resettlement. The result has been a serious misrepresentation of the policy question at hand, with predictable results including political rhetoric steeped in demagoguery. Concluding remarks center on the future challenges the U.S. faces in expanding the resettlement program to accommodate the rising demands of the global refugee crisis.

Paper 2: Neža Kogovšek Šalamon, The effects of humanitarian corridor on customary international law: emerging entry and transit rights

The paper addresses the gaps between law and state practice in managing mass migration movements, particularly in light of the humanitarian "corridor" established in 2015 in South-Eastern Europe for Syrian refugees. The paper focuses on the right to entry, the rights of transit and detention issues, showing that some state practices in this field are outside the national and European Union normative frameworks which govern the aforementioned areas. It points at new emerging rights that are being formed from state practice producing new rules of customary international law applicable for people who are entering the state irregularly within mass migration movements. The paper analyses the "corridor" which presently facilitates the migration route used for transferring people to their desired country of destination. The discussion in the paper indicates that a certain parallelity of several systems exists. First, there is a parallelity of the legal system generally in place (EU and national rules on border control and migration management) and a de facto "corridor" that emerged as the actual state practice that is not foreseen by law. Second, there are two parallel systems of treatment that irregular migrants are experiencing depending on whether they are part of the state-managed corridor or they are traveling individually or in smaller groups outside the corridor. The third element of parallelity is visible from the comparison between the visa system and the corridor showing that at the moment the corridor is the most optimal choice to reach Europe than the legal channels provided for this purposes. The paper concludes that the law is not responding adequately to the needs of people involved in current mass migration movements into the EU, and stresses that in order to maintain a state governed by the rule of law, the law should respond adequately to these needs.

Stream: Research Methodologies and Methods 1

Paper 1: Lois S Bibbings, The Uses of Empirical Ethics: *'Conscience', Socio-Legal Studies and Historical Data*

This paper reflects upon an investigation of people's thinking about conscience. The research utilised a methodology drawn from the field of applied ethics and, more specifically, bioethics. Empirical bioethics has been described as an 'inter-, or even trans-disciplinary field that is still developing its identity' (Molewijk and Frith 2009, ii). However, it already encompasses a range of approaches which, in different ways, bring together the social sciences, medicine and related disciplines with the arts and, in doing so, seeks 'to improve the context-sensitivity of ethics' (Musschenga 2005). As the label implies, empirical bioethics involves the study of ethics in practice utilising some form of empirical element, whether utilising quantitative, qualitative or mixed methods.

This research focused upon descriptive and meta-ethical questions, as opposed to normative ethics. The analysis aimed to focus upon people's ideas about conscience, how conscience-based dilemmas were dealt with in practice, as well as where they thought conscience came from.

The case study selected was an historical one – men who conscientiously objected to military conscription during WW1 and whose stand was, at least in theory, recognised by statute (so legal definitions/accounts of conscience played a role here too). The research analysed a range of sources (eg diaries, memoirs, interviews, letters, autobiographies, statements made in courts and tribunals) and drew upon my previous socio-legal-historical research on this subject.

The aims were: to produce multiple descriptive accounts of 'conscience' rather than a single definition; to investigate the potential usefulness of such empirical ethical approaches to socio-legal studies; to explore their potential application to historical data.

Paper 2: Amanda Keeling, Observing 'Vulnerable Adults': The Interface between Methods and Ethics

Participant observation research always presents ethical challenges, as the strict protocols set out for the ethical approval process are often not flexible enough for the real world. However, this paper suggests that those challenges are magnified with a 'vulnerable' participant group, and discusses how they may be dealt with in future.

The research project explored how social workers were empowering their clients to make decisions around their own safety within adult safeguarding processes. Adult safeguarding is a social work framework which seeks to protect adults who are considered 'vulnerable' from abuse and exploitation. It is a practice which is surrounded by a great deal of law and policy, and therefore participant observation was chosen as a method as it gave the opportunity to observe how this practice of empowerment was (or was not) being enacted by social workers in real cases, rather than simply through repetition of the law and policy in interviews.

Such a method did provide a valuable insight into social work practice, but it came with significant challenges; in particular, there were difficult decisions around involving adults who gave consent freely, but who were very trusting and who did not really appear to understand the project (despite claiming to have read the information sheet and not having any further questions). Dealing with these challenges required the researcher to be responsive and to work closely with the service user's social worker and any family or support workers. It also highlighted that formal paperwork was far less important than verbal discussion and consent – and indeed that formal paperwork could be extremely disruptive to the social worker's practice.

Paper 3: Vanessa Richardson, The Test of Harm in Care Proceedings: A Psychosocial Study

This paper reports on the use of a psychosocial methodology in an empirical study of the issue of harm in applications for care orders in England and Wales. It involved 21 free association narrative interviews with 14 people, between the age of 18 and 30, who had lived in care. The paper discusses the success and many challenges of this study which aims to privilege, in the legal criticism, the subjective experiences of those whom the law has set out to protect (West, 1997), enriched by a psychosocial (Hollway and Jefferson, 2013) interpretation of each participant's account of harm. It covers the ethical issues, interpretive and iterative nature of the study and the approach to making it socio-legal. The paper will discuss how a psychosocial basis for legal criticism may contribute to the humanistic study of law as an instrument to minimize the harms to individuals suffered in social life. In particular this study has been able to illuminate the harm

arising from the participants' experience of their mothers' own difficulties such as domestic violence, before and after they were taken into care. The paper ends by discussing the possible contribution of psychosocial studies, to critical legal studies, whether this may be as 'a healthy disruption and challenge' (Minnow, 1996, p.36) or something more determining of change.

Stream: Sentencing and Punishment 1

Paper 1: John Stannard and Faith Gordon. Exploring Penal Heat: Emotional Reactions to Crime and the Law's Response

How can the criminal justice system best deal with the punitive reactions to crime often seen in the print media and in wider popular discourse? As the House of Lords pointed out in relation to the James Bulger case, the emotional and ill-informed nature of such reactions can frequently militate against key goals of the system, most notably the rehabilitation of offenders; yet to ignore them or dismiss them out of hand risks undermining its legitimacy in the eyes of the public. In 2011 Jonathan Simon coined the term "penal heat" to describe reactions of this sort, and argued that one of the key tasks of the criminal justice system was to act as a radiator of penal heat, much as a car radiator serves to dissipate the heat of the engine. This paper, which is based on a pilot study of articles in the print media conducted by the authors, seeks to explore the nature of penal heat and other related concepts discussed in the literature such as "hatred of criminals", "grievance-desires", "penal populism" and "the retributive urge". Drawing on recent studies in the field of law and emotion, the paper will address the following issues: (1) what penal heat is; (2) the philosophical and sociological factors underlying it; (3) possible legal responses to penal heat; and (4) other ways in which penal heat may be dissipated. It will be argued that penal heat is but a single aspect of a wider phenomenon, and that despite the law's traditional distrust of emotion some degree of empathy with penal heat is needed for the effective functioning of the criminal justice system.

Stream: Sexual Offences and Offending 1

Anna Carline. 'The Same as it Ever Was'? Exploring the implementation and actualization of rape law reform and policy

Successive governments in England and Wales have implemented a plethora of substantive and procedural reforms, reviews and policy documents, all aiming to improve the criminal justice system's response to rape. Effective rape legislation can increase access to justice, act as a deterrent and reduce future sexual offences. However, research indicates that reforms and policies have not always positively influenced practice. Drawing upon two empirical studies with barristers,* this paper will explore practitioners' perspectives on the development, implementation and actualization of policies and reforms introduced from 2003 to 2015. Whilst previous research has highlighted concerns regarding an 'implementation gap', in this paper we differentiate between processes of implementation and actualization. In so doing, we aim to explore the extent to which relevant provisions and measures are supported by barristers, applied in cases and have been effective in their stated aim of improving the prosecution of rape cases. Accordingly, we examine not only the manner in which measures are utilized by barristers, but also the (sometimes) reciprocal and complex relationship between policy development and everyday practice. Related to this, the research highlights the complexities of preconceived ideas about rape and the nuanced way in which such assumptions influence policy makers, barristers and ultimately the response of the justice system.

* Study one consisted of 14 barristers in the North West of England, conducted in 2010. The second study, which commenced in 2014 and is funded by the British Academy, involves interviews with 39 counsel in the North West, North East, Midlands and London.

Paper 2: Naomi-Ellen Speechley. Researching Persons Falsely Accused of Sexual Abuse

Lord Woolf commented that sexual abuse cases could result in the most grievous wrongful convictions. Since then, the justice system has become increasingly victim-centred, with police taking a standpoint of believing accusers before investigating – effectively reversing the burden of proof for the accused, In a social climate where it is believed that certain crimes are rife and where there is a moral and political agenda to secure conviction of those offences, the dangers of miscarriages of justice are higher. Post-Savile, the abundance of

complainants coming forward can constitute a guilty verdict in the public eye. Media vindication of anyone accused of child sexual offences (particularly historically) has been shown to prejudice trials, and spark vigilante action – almost sanctioned by the courts after Sarah Sands’ extraordinarily lenient sentence. Added to the difficult nature of sexual abuse cases – often one person’s word against another, the likelihood and consequences of wrongful convictions worsen.

The study highlights the persistent stigma, wide-reaching ramifications and damaging effects of false allegations of sexual abuse (mostly historic, and of children) on the lives, mentality and emotional wellbeing of the accused and those close to them. I interviewed and collected written accounts from those claiming to have been falsely accused of abuse in a professional setting. Findings indicate a trauma-like experience, with many suffering depression, anxiety, and severe social withdrawal, family breakdown including suicidal tendencies, hatred of police and a complete loss of faith in the justice system. Some were prevented working with children again despite acquittals, exoneration or dropped charges. Methodological difficulties arose, researching a population falsely accused of sexual abuse – those worst affected are those who are still fighting to overturn their convictions, however their innocence is unknown.

Stream: Social security: Ideology, law and society in the 21st Century 1

Paper 1: Lisa Scullion and Katy Jones. Conditionality and welfare: Exploring the experiences of disabled people and migrants

Conditional welfare arrangements require people to behave in certain ways in order to access benefits, housing and other support services. These conditions are often enforced through the use of sanctions, which reduce or suspend access to welfare for those who do not follow the prescribed rules. However, conditionality also includes the provision of support, primarily aimed at assisting people into paid employment. Successive UK Governments have increasingly sought to intensify the use of welfare conditionality across a number of policy areas, impacting on a range of different groups of welfare service users.

This presentation will provide an introduction to a five year project called ‘Welfare Conditionality: Sanctions, support and behaviour change’, which aims to provide an understanding of the effectiveness and ethicality of conditionality. The project involves qualitative longitudinal interviews with 480 welfare services users across England and Scotland, alongside consultation with policy makers and practitioners. Drawing on the fieldwork completed to date, we will consider some of the impacts of conditionality more broadly, before focusing discussions on two specific groups of welfare service users: disabled people and migrants. Through this analysis, we aim to provide an initial understanding of how these particular groups may experience this increasingly conditional turn in policy, as well as how they position themselves – and their claims – as welfare service users in comparison to other groups.

Paper 2: Ciara Fitzpatrick. Trajectory of Change: Rising Conditionality in the UK Social Security System

The latter years of the 1970’s witnessed a dramatic unravelling of Britain’s post-war Keynesian economic consensus. This sea-change in economic policy aligned with the coming to power of the Conservative Government in 1979 led by Margaret Thatcher; whose time in office was characterised by an attempt to resurrect the free market as part of a wider effort to modernise the British economy.

Beveridge’s intention – according to which the majority of social security entitlement could be supplied by the insurance mechanism through flat-rate contributions and benefits was to be displaced. Means-tested benefits, initially structured as a safety net, became the welfare state and formed a complex system of different categories of benefit. Beveridge’s rejection of claiming short-term benefits and long-term benefits was abandoned and the division became a key factor in reviving moralistic ideas on the deserving and undeserving poor.

During this time, the control function within the social security system became more pervasive and the welfare state graduated from being passive to active, whereby the main function of social security is to change individual’s labour market behaviour by placing significant emphasis on getting the unemployed back to work. This paper will seek to understand the socio-legal context of the period following the collapse of the Keynesian economic consensus to the end of Thatcher’s time as Prime Minister, in an attempt to develop a valid perspective on rising conditionality in the contemporary social security system.

Stream: Systems Theory Thinking 1

Paper 1: Adrienne Barnett. Family Law Without Lawyers – a systems theory perspective

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) was implemented in England and Wales in April 2013. Amongst other things, it has severely curtailed the availability of legal aid for litigants in child arrangements proceedings (formerly known as 'residence' and 'contact' proceedings) under the Children Act 1989. As a consequence, family courts are experiencing an increase in the numbers of litigants in person (LIPs). Lawyers play a vital function in screening out, narrowing down and reconstructing the 'wrong' information that clients bring to the court process and in selecting out cases altogether. The available evidence suggests that judges and magistrates are struggling to manage cases involving LIPs, particularly where both parties are unrepresented. This paper explores the consequences of the large numbers of LIPs for private family law, from the perspective of Niklas Luhmann's systems theories. It considers the possibility of a transformed role for the centre of the system, when it increasingly has to play the role formerly attributed to the periphery. It examines how law can construct an environment amenable to legal decision-making without the assistance of lawyers, and how new norms may be applied without the generation of redundancy. It considers how the transformation of 'legal disputes' into 'relationship problems' may enable increasing numbers of litigants to be hived off to the mediation system, thereby narrowing the need for legal decision-making. Finally, it poses the question whether private family law may wither away altogether.

Paper 2: Su Bian. Multiplication without integration: some comments on the social register of Teubner's 'societal constitutionalism'

In applying the systems theory to deal with contemporary constitutional crisis, Gunther Teubner develops an intermediate level of 'capillary constitutions' as the key to re-constitutionalization in the global context. 'Capillary constitutions' mediate between the organized and the spontaneous spheres; such as for the contract system, 'network contract' encompasses the organizational as well as the contractual levels. This intermediation, as claimed by 'societal constitutionalism', also keeps its distance from simple re-hierarchization and re-politicization.

This shows that societal constitutionalism in fact does not seek a trans-systematic moment of 'hitting the bottom'. Facing the asymmetry of rationalities between social subsystems, Teubner still resorts to an intra-systematic reflexivity that tunes in to the social evolution as Hayek does. 'Societal constitutionalism' hence instead of registering 'the social' in a collective bond, adopts the 'law in context' position and reads 'the social' in a thin sense. Further it delves into cultural multiplication and re-configuration, as intended by Teubner's formulation of 'double fragmentation'. Thus to this extent, 'double fragmentation' has not answered when and how the systematic asymmetry could be redressed and the 'limitative movement' of societal constitutionalization will start. Using the distinction suggested by Luhmann between 'inclusion' and 'integration', this paper argues that the constitutional moment from a systems theory perspective lies in how the fragmented systems could be re-integrated and symmetry be restored, which Teubner's 'multiplication' thesis should further attend to.

Stream: The Law and Unintended Consequences 1

Paper 1: Phil Thomas and Richard Craven, The law and unintended consequences: introduction

This paper will provide an introduction to the stream, the law and unintended consequences.

Paper 2: Owain Johnstone, Unintended by whom? The power of ambiguity in lawmaking

Who intends unintended consequences? We often think of the law as an instrumental tool for governments – and unintended consequences are what happen when the government in question lacks foresight or simply finds itself subject to the vicissitudes of implementing bureaucracy. But sometimes it can be helpful for governments to conceal the intent behind a particular law, passing legislation that is ambiguous (in the sense that other actors understand it differently) so as to avoid contentious debate. Once passed, the law can be implemented however the government may see fit.

Government attempts at vagueness or ambiguity are not always successful, however. In this paper I will argue that the ability to force a government to reveal or further specify its intent behind particular legislative

provisions can be a powerful tool for legislatures during the lawmaking process, preventing that government from using ambiguously drafted legislation to get away with unforeseen (to others) consequences when implementing.

I will use the records of the Public Bill Committee debates on the recent Modern Slavery Bill in the UK to demonstrate this. In such Committees, opposition members are usually outnumbered by the Government, so are unable to force through amendments. What they can do is use proposed amendments and careful questioning to force the Government to show its hand, compelling it to commit to certain legislative interpretations on the public record and therefore limiting its freedom to implement as it may wish.

This finding speaks to a burgeoning literature on the effectiveness of Select Committees in the British Parliament. It also suggests that more attention should be paid to the role of legal hermeneutics in the lawmaking process.

Paper 3: Tola Amodu, The Law and Unintended Consequences: The Community Infrastructure Levy: displacing discretion by the Imposition of Rule?

The reframing of legal processes from discretionary activity to rule-based action is commonly thought to confine the flexibility of the ultimate decision-maker, so as to align with the aims of those exercising control at higher levels. Although this may be so, this is not always the case. In the land-use planning domain, the armoury of discretionary powers (ranging from the allocation of land uses at a meta-level, to the determination of individual planning applications), have been attenuated in one particular context – that which was introduced in the Planning Act 2008 in the form of the community infrastructure levy (CIL). The CIL is a fixed rate charging structure, 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) by the substitution of a rule-based system, it provides an illustration of the effects of attempting to constrain one of the many forms of discretionary activity in the given context and the consequences of so doing. This paper, by considering the use of flexibility, in the form of negotiation and bargaining in the land-use planning domain historically, argues that an imposition of fixed charging structures can have the effect of displacing rather than eliminating discretionary activity and, as such creates more problems than it seeks to overcome.

Paper 4: Richard Craven, Competition, government contracts and unintended consequences

In the UK the bidding processes for public contracts have historically been relatively free from legal regulation. Due to EU obligations, this is no longer the case. EU public procurement directives, in place to promote the internal market, provide a detailed and prescriptive regulatory framework. This paper, drawing upon empirical data, will present (arguable) unintended consequences of these legal rules.

Session 2, 15:30 – 17:00

SLSA Skills Session - Impact

Panel: Nina Fletcher, Paul Iganski, Sally Wheeler

This skills session will reflect on the experience of documenting and assessing the ‘impact’ of socio-legal research in the 2014 REF, and provide advice for socio-legal researchers concerned to ensure their research has impact, and to document that impact, in the future. The panel members offer a range of experience and expertise on the subject. Nina Fletcher was a ‘research user’ member of the 2014 REF Law sub-panel, directly involved in reading and assessing impact case studies. Paul Iganski is a Criminologist who prepared and submitted an impact case study to the 2014 REF. Sally Wheeler is a Head of School and former Chair of the SLSA who has both long experience in the socio-legal field and a role in advising and supporting academics in generating impact and developing future impact case studies.

Stream: Criminal Law Criminal Justice 2 - Reflections on criminal justice and criminal law

Paper 1: Philip Harris. The Politics of 'Legitimate Protest'

In this paper I intend to discuss the relationship between ss.4A and 5 of the Public Order Act 1986 and Article 10 of the European Convention of Human Rights. In particular I intend to look at 3 cases where there is a divergence of approach with regards to the extent to which the requirements of Article 10 impose limitations on the scope of prosecutions that can legitimately be brought under these two sections. I intend to show that there is a lack of consistency between these cases (leading to a lack of surety in the law) and I will suggest that this inconsistency is a function of the lack of determinacy in Article 10 itself (which indeterminacy results in decisions which are prey to judicial attitudes towards public protests or forms of expression). I intend to interrogate the notion of 'legitimate public protest as a concept (?) which is gaining currency in contemporary judicial discourse in this area. Given that the balance between Public Order and the right to protest is under-determined by ECHR and we are left exploring specific judicial answers to the familiar question of the balance between Public Order and the right to Public Protest, I argue that the question of this balance is strictly a 'political' one as defined by Keenan in his Fables of Responsibility (a 'political' issue is one where the matter of decision is not determinable in advance but is a function of contestation and struggle) and that the question of the 'use' of rights in this area is, too, a question of political strategy – a function of political discourse - rather than a matter of the simple application of transcendental 'Human Rights'.

Paper 2: Ffion Llewelyn. Deconstructing the Castle: Location and Self-defence

The law of self-defence in England and Wales draws direct distinctions between homes and public places. The general position requires the use of force in self-defence to be reasonable, which has traditionally required two components: a necessity to act, and a proportionate response to the threat. However, since the enactment of section 43 of the Crime and Courts Act 2013, enhanced protection has been provided within 'householder' contexts. This extension took effect by amending section 76 of the Criminal Justice and Immigration Act 2008, permitting the consideration of disproportionate force as reasonable force. This paper will consider the distinguishing features of the home in search of an explanation for the differential legal treatment of locations.

The home is regarded as a special institution, providing sanctuary and security for its inhabitants. It is suggested that individuals form strong attachments, meanings and identities within their homes. Castle doctrine is an historical notion supporting the special nature of the home, advancing the values that the home is 'one's castle and fortress' and 'home is where the heart is'. However, more is needed to explain the different legal interpretation than emotive values alone. It is argued that many important aspects differentiate the home from public places, and this paper will explore these to seek an explanation.

One feature of the home is the householders expected control over entry. This is connected to the important rights of privacy and autonomy. It may be suggested that these rights are interfered with to a greater degree in home invasions. Similarly, another potential contribution is the presence of fear, which may be more acute in the context of the home. This paper will question the nature of the home and discuss fear of crime and environmental influences to critique the perception that the home merits extended legal protection.

Paper 2: Joe Purshouse, Pushing the Boundary: The Retention of Arrestees' DNA and Fingerprint Data

The ever-increasing capacity of the police to analyse DNA and fingerprint data taken from individuals subject to the criminal process has undoubtedly been of assistance in the identification, prosecution, and elimination of suspected offenders. It is for this reason that successive governments from the early 1990s to the late 2000s sought to continuously expand police powers to retain such biometric information from those subject to the criminal process. The cumulative effect of this expansion in police powers led to a situation where the police could lawfully retain DNA and fingerprint data taken from anyone arrested for a recordable offence for an indefinite period of time. This expansionist approach only relented in 2009 when, in the case of *S and Marper v United Kingdom*, the European Court of Human Rights found that the 'blanket and indiscriminate' nature of the law in this area was in violation of the applicants', two non-convicted arrestees, right to respect for private life under Article 8 of the European Convention on Human Rights. Since this time, under the Protection of Freedoms Act 2012, new measures regulating arrestee DNA retention have been

said to bring the law in England and Wales into compatibility with Article 8. This paper draws upon socio-legal scholarship and philosophical literature regarding the scope and normative value of privacy interests to challenge this notion, arguing that, whilst domestic policy makers and judges do seem to have taken significant steps to afford increased protection to the privacy interests of arrestees in this area, there is more to be done before the law regulating these practices can be said to afford adequate protection to the privacy interests of arrestees.

Paper 3: Sophie Doherty. Susanna the Slut: Depictions of the Rape Victim in Art and in Law.

This paper focuses on the parallel between the portrayal of the rape victim in art and the portrayal of the rape victim in socio-legal discourse. To support this parallel, the paper concentrates on an artistic depiction of the story of Susanna and the Elders by painter Artemisia Gentileschi, in contrast to the works of her male counterparts such as Alessandro Allori, Jacopo Tintoretto and Giovanni Francesco Barbieri during the High Renaissance/ Baroque period.

The purpose of this research is to use the artistic depiction of the story of the intended rape of Susanna alongside socio-legal discourse to provide a case study for the interdisciplinary movement broadly defined as Law and Art. This aim of this paper is to also show that both law and art are cultural mirrors and can be used in conjunction with one another to produce unique and interesting studies.

This research paper argues that the portrayal of the rape victim is gendered differently in both visual depictions in art and in aural description in the socio-legal sphere. This will often expressly result in the portrayal of the victim as the temptress of her own fate. Additionally, this research paper argues that interactions in both art and in the criminal justice system, force the victim to relive their rape, resulting in The Second Rape.

Throughout this research paper, a feminist methodology applying secondary, desk- based research is be used to form a coherent link between the artistic world and the legal sphere to provide a unique insight into the gendered construction of the rape victim.

Stream: Environmental Justice 2 - Community Based Environmental Justice

Paper 1: Louisa Parks, Comparing benefit-sharing ‘on the ground’: evidence from 5 local community case studies

The proposed contribution will focus on whether and how the concept of fair and equitable benefit sharing related to ecosystem management can contribute to environmental justice ‘on the ground’. In an effort to understand the potential definitions of benefits, beneficiaries and how their sharing is negotiated, 5 cases of local communities, covering different forms of environmental management, and different issues related to environmental justice will be discussed in a comparative perspective. The cases represent distinct stages of discussions around the theme of benefit sharing, and a global geographical spread. Specifically, the research has focused on Ikaria, Greece, with traditional pastoralists around land access issues; Bushbuckridge, South Africa, with traditional healers seeking access to plants within national parks; Jujuy, Argentina, with communities opposed to lithium mining on traditionally managed salt plains; Bwabwata national park, Namibia with communities involved in wildlife and forest management within the park; and Bario, Malaysia, on a tri-partite, public-private agricultural management project for rice cultivation. For each case, the contribution will reflect on how benefits are defined both socially and politically by different stakeholders in each case, the power relationships involved, and the effects of local, national and international legal and political frameworks. By comparing the cases, some impressions on common problems met with in the negotiation of fair and equitable benefit sharing as well as some potential lessons on how they may be overcome through open and consensus-oriented processes may be drawn.

Paper 2: Elsa Tsioumani, Reconstructing agrarian justice in the quest for sustainability: assessing the potential and limitations of law in defending agricultural biodiversity and farmers’ rights

The proposed contribution focuses on agricultural ecosystems and biodiversity, which have been shaped for centuries through an interaction of environmental factors and the traditional knowledge of farmers. The aim is to review the wave of enclosures and injustices linked to the intensification of agriculture, threatening both agricultural biodiversity and smallholder farmers’ traditional practices, rights and livelihoods.

The paper will take a holistic approach, from the global to the local and from the ecosystem to the seed level. It will critically assess existing and emerging legal tools aiming to defend farmers' and peasants' rights. At the ecosystem level, it will address legislative and policy instruments aiming to respond to the loss of land tenure and access rights linked to large-scale agricultural investments (land grabs); and community protocols - a novel tool promoting self-organization at the grassroots level. At the seed level, it will review the International Treaty on Plant Genetic Resources for Food and Agriculture, which arguably creates a global commons of plant genetic resources of particular importance to food security; and open-source seed initiatives, which use open-source licenses to counteract intellectual property rights and corporate concentration.

Arguing that agricultural eco-social systems are prime laboratories for the study of sustainability and justice, this contribution draws light on why and how threats to rights related to the use of land, seeds and natural resources correspond to threats to agricultural biodiversity. It shows how protection of rights would lead to improved environmental outcomes, and concludes that recognition of smallholder farmers' contribution is indispensable if humanity is to talk about sustainability seriously.

Stream: EU Law 2

Paper 1: Julia Bradshaw. Closing the Door on Xenia: When Guests Become Unwelcome.

The European Community arose from the ruins of two World Wars, when Europeans fled their homes to escape the horrors besetting their homelands, engulfing the continent in an internal refugee crisis: more than 60 years later, the integration process and all that it has achieved is being threatened with derailment by a different refugee 'crisis'. Yet the EU's foundations are based on a tradition of fundamental movement rights, welcoming migration between the Member States, and incoming third country nationals whilst developing human rights policies and asylum rights.

In Ancient Greece, the principle of Xenia ('guest-right') afforded travellers (the modern-day migrant or refugee) the protections of a household, or state. Treating such guests disrespectfully broke one of the fundamental tenets of Greek society. In modern Europe, that principle has been incorporated nationally and supranationally, recognising refugees' and migrants' movement and residence rights. The Union has, since 1999, been working to create a Common European Asylum System, founded upon the jointly held principles of the Member States, reflecting the openness of European society.

Despite initially welcoming the influx of refugees, and in spite of Decision 2015/1601 (purporting to share responsibility for the wellbeing and costs of those refugees between the Member States), internal borders are being reasserted, movement restricted and legislation proposed that highlights the 'otherness' of these individuals, as opposed to the 'togetherness' of society. The 'guests' are unwelcome.

This paper will consider the nature and extent of Xenia as a concept, before examining the attitudes and behaviour of modern Europe to the modern guest and assessing whether European openness is likely to cease being a thing of the past and present: in other words, has the 'welcome' mat been replaced by 'no entry' signs?

Paper 2: Alexandra Pimor. Europe as the witness of the world: reflecting the response to the refugee crisis in light of the Union's spiritual and moral heritage

The aim of a spiritually united Europe, *une Europe des esprits* (a Europe of the minds) was two-fold: to ensure peace and reinstate its prestigious position on the world stage. As to the latter, the mission of a united Europe was to restore its standing as a moral beacon of civilisation; and to show the world the way to 'organised freedoms' through the Community model. De Rougemont claimed Europe to be a 'witness of the world' which should 'reanimate its powers of invention for the defence and illustration of human rights and duties, for its real conquest was the dignity of humankind and its strength was in freedom'.

Schuman also believed in Europe's mission to become great again and to serve not only itself but the world in general. Consequently, inspired by a 'consciousness of European unity, common destiny, obstacles and tasks to be fulfilled', the creation of supranational institutions for a united Europe was deemed the means by which this vocation, this spirit of service, would be facilitated. For a peaceful united Europe, he pointed out the need to combat the *état d'esprit contraire* (a contrary state of mind) which characterised the European nation-states' antagonistic mentality.

The attachment to national sovereignty led to a culture of separation, hegemony and superiority; and gave rise to political nationalism, autarkic protectionism, cultural isolationism, mistrust, resentment and hatred. This 'contrary spirit' was to be substituted by the notion of solidarity, which Schuman defined as the 'concordance between fraternity and the instinct of enlightened conservation'.

The financial and refugee crises, however, are testing the European spirit of unity, service and solidarity. This paper will discuss the dissonance between Europe's spiritual and moral legacy, the aspirations of the founding fathers, and the reality of Member State and Union responses to the current crises.

Paper 3: Rufat Babayev. Transnational solidarity in the EU in the wake of recent UK welfare reforms

Labour migration within the European Union has recently turned into a major issue on the political agenda of several EU Member States. Along with political debates dominated by rather populist arguments, national governments have already introduced, or are aiming to introduce, new legislation designed to affect the position of EU citizens coming from other EU Member States. For instance, the British government's recent reforms have amended the criteria for the entitlement of EU citizens to welfare benefits such as: Job-seeker's Allowance, Income Support, Employment and Support Allowance, Housing Benefit, Universal Credit, Child Benefit and Child Credit Tax. Moreover, several significant changes have also been made with respect to the determination of the status of 'worker' and 'job-seeker' under EU law.

This paper aims to examine from a legal standpoint whether such a national initiative complies with EU law, according to which EU citizens have a fundamental right to seek and engage in work, both in an employed and self-employed capacity, anywhere in the European Union on the basis of equality and non-discrimination on grounds of nationality. The primary focus in this regard, therefore, will be on the relevant provisions of EU secondary law and, more importantly, the jurisprudence of the Court, including the recent rulings delivered in Brey, Dano and Alimanovic. While some of the changes introduced by the British government are, in fact, in line with EU law, it is difficult, however, to formulate this conclusion in general terms. More specifically, it appears that the possible inconsistencies with EU law that are exhibited in the current UK welfare policy, in a way, reflect the lingering uncertainty as regards the actual boundaries of transnational solidarity in the EU.

Stream: Exploring Legal Borderlands 2 - Constructing Plural Socio-Legal Identities

Paper 1: Elizabeth Rhoads -Yangon's Plural [Landholding] Society: The Case of the Waqf

Yangon's colonial and post-colonial legislation and policies have created a complex web of urban landholdings with government and religious land, private ownership by citizens and non-citizens, nationalized commercial properties, and ownership by religious trusts and secular associations. This web, created by a colonial legal system which privileged certain types of buildings, land uses and bodies over others, was exacerbated by layers of post-colonial nationalization and protectionist land use and urban development policies. Currently, as Yangon's property market booms and land values are on par with some of the most expensive cities in the world, Yangon's plurality of land tenure and property ownership has received increasing attention from developers, heritage conservationists, and academics. The amalgam of land and urban development policies from across historical periods, religions, political ideologies, and institutions is now the site of new negotiations and potential exacerbation of existing social conflicts as urban freehold land skyrockets in value.

This paper will explore Muslim property ownership in the form of waqf (Islamic trusts or 'pious endowments'). This research on waqf is based on six months of fieldwork in Yangon from 2013-2016, archival materials in the British Library and the Myanmar National Archives, and is interdisciplinary in nature, including anthropological, historical and legal research. Focusing on waqf in this case study illustrates the intersections and gray areas in citizenship, ownership, religious and secular legal systems, and most importantly in this case, the legal and extra-legal means through which minority communities can access and control land. A detailed examination of this particular colonial legacy and its relationship with current land and property rights issues in Yangon will highlight the ways in which past and present social conflicts between the city's class, ethnic, and religious groups, are mapped onto the physical environment through property relations.

Paper 2: Katarina Sipulova, Role of Constitutional Courts in Post-Communist Transitions: the Czech Republic and Slovakia

Born into the realm of global constitutionalism and strong human rights movement, post-communist constitutional courts undoubtedly belong among the most powerful actors of democratization processes. While there is a vast literature on constitutional review and judicialization of policy in USA, Western Europe, and some unconsolidated semi-democratic countries (Ginsburg 2003, Whittington 1990, Chavez 204, Helmke 2005, Finkel 2005, Vanber 2005, Moustafa 2007, Trochev 2008), Central and Eastern European constitutional courts remain surprisingly under-researched. This fact is all the more surprising considering the role they played in the transitional justice processes in the wee hours of new regimes. Transitional jurisprudence, i.e. constitutional review of lustrations, prosecutions, regime condemnations and reparations represented a dominant part of their post-transitioning case-law.

However, transitional justice issues surpass the usual human rights language and touch upon topics directly related to the constitutional (political) design of the state, making the constitutional review and its legitimacy all the more controversial. Lustration processes bore consequences for passive voting rights, challenging not only the core democratic principle, but whole electoral system. Condemnation of communist parties had repercussions for the competitiveness of the party system.

Therefore, while the decision on the model of transitional justice and form in which to address the previous atrocities laid in the hands of the new elite, constitutional courts stepped into this game with their ex-post constitutional review, often changing the fragile results of political compromise in a profound way. How did the constitutional courts justify their reasoning? The paper proposal addresses the position of constitutional courts in transitions and looks on different points of references used to justify and build up the legitimacy of constitutional review, with particular focus being put on the references on international human rights law.

Paper 3: Adithya Chintapanti, The Regulator as the Borderland – Regulatory Globalisation and the Emergence of Alternate Regulatory Legality in the Indian Sub-National Electricity Sector

The paper argues that regulatory pluralism in the Indian electricity sector emerges as a result of tensions between the global (globalising regulatory regimes), national legislation and sub-national implementation. Electricity legislation by the nation state resulted in the establishment of sectoral regulators at the sub-national state level. While the regulator's statutory autonomy aimed at insulating regulatory decision making from sectoral politics and larger social processes, in practice the regulators became the 'borderland' for the emergence of an alternate regulatory legality.

When federal India announced economic reforms in 1991, the state owned sub-national electricity sector was on the verge of bankruptcy. The crisis had its origins in populist sectoral subsidies and politically motivated managerial policies. The national government accepted the World Bank's sectoral regulatory solution and attempted to provide normative controls which would promote free market policies, and redefined the role of the state (both national and sub-national) in economic activity from a 'direct participant' to a 'sectoral regulator'. This was reluctantly accepted by the sub-national states, which predominantly owned and managed the sector.

Nearly fifteen years after the introduction of the new regulatory arrangements, pre-reform issues persist and the electricity sector is in financial crisis. Political and social processes have circumvented the statutory autonomy and reorganised themselves into pre-reform patterns, emerging as an alternate regulatory legality.

The paper is based on data from 1998-2014 in the sub-national state of Andhra Pradesh. The complexity of the relationship which results in a conflict between regulatory autonomy and construction of alternate regulatory legality is examined from a structural and behavioural viewpoint. The structural aspect is established by mapping the regulator's staffing patterns and an examination of the sub-national political economy and resultant bureaucratic culture. The behavioural aspect is examined through a review of appellate orders and interviews with lawyers, technocrats and civil society interveners.

Stream: Family Law and Policy 2: Changing family justice

Paper 1: Michelle Waite. Family law, legal aid and the ECHR: the variable protection of human rights in family law cases after LASPO

Legal aid is a key mechanism through which the state ensures access to justice in family law cases. The current legal aid scheme in England and Wales is provided for by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”). Family law disputes frequently engage the article 6 and article 8 rights of individuals which can give rise to an obligation on the state to provide legal aid. However, eligibility criteria can lawfully be applied so that not every person whose rights are so engaged will qualify for legal aid. In England and Wales these eligibility criteria concern the likelihood of the individual succeeding in obtaining the outcome they want in their case (the “merits test”) and their ability to pay for legal representation from their own resources (the “means test”).

However, analysis of the circumstances in which such limitations are imposed, and the results of doing so, reveals that not all family law cases are created equal when it comes to the protection of the rights contained in the ECHR. The variable application of means and merits tests has led to a number of undesirable consequences or ‘LASPO gaps’ in rights protection in the field of family law. This paper offers a typology of cases and explores the impact on access to justice for family law litigants from an equalities perspective, and concludes that it is imperative that the scheme be re-designed to ensure consistent and adequate protection of the rights provided for by the ECHR.

Paper 2: Lola Akin Ojelabi. Conceptions of Justice in Alternative Dispute Resolution and Access to Family Justice

In Australia, family disputes may be formally resolved either through adjudication or using family dispute resolution (FDR) processes. The Family Law Act 1975 (Cth) defines FDR as a process, not including a judicial process, involving an independent family dispute resolution practitioner (FDRP) who assists those affected by separation or divorce to resolve their disputes. The FDR process is now compulsory for all parties seeking a parenting order unless exempt. Parties are exempt where there is family violence although research shows that some family violence matters fall through the gaps. The compulsory nature of FDR raises a number of justice issues including the appropriateness of FDR for cases involving family violence and parties from culturally and linguistically diverse (CALD) communities. This paper identifies issues of access to family justice from existing research and literature and explores how these justice issues may be addressed. Drawing from findings from empirical research, it then considers conceptions of justice in mediation practice within the civil justice system and compares those with conceptions of justice in FDR practice. Finally, it discusses ways in which access to family justice may be improved in FDR practice.

Paper 3: Jess Mant. Reimagining the Family Courtroom: Self-Representing Litigants and Access to Justice

In the post-LASPO family court, there has been an influx of people appearing in person in relation to their family law problems. Judges, charitable organisations and the professions have commendably responded to this by producing a vast array of resources, with the aim of easing the experiences of people appearing without representation. It is however unknown to what extent this assistance is sufficient in plugging the gap left by the removal of legal aid for the purposes of legal representation in court. The aim of this paper is to identify the potential ways in which self-representing litigants may have difficulties in accessing and navigating the processes of the family court without representation, so as to map areas for further, empirical investigation to be undertaken as part of my doctoral project next year. This paper will use an approach derived from John Law’s Actor-Network Theory to review the processes of the family court and the resources that are currently available to self-representing litigants. Actor-Network Theory is a means of focusing on the relationships that self-representing litigants have with other human and non-human actors in the courtroom, from judges to case law to court signage. Traditionally, legal representatives have navigated these relationships on the behalf of litigants. This paper will review the ways in which available resources may enable self-representing litigants to navigate these relationships without this advocacy, and in doing so it will be possible to see the ways in which self-representing litigants may have particular difficulties in engaging with the family court or making use of some resources. This paper will conclude that these are important areas in which the perceptions and experiences of self-represented litigants themselves must be

understood, in order to overcome these gaps and ensure that family law and justice remains accessible to all.

Stream: Gender, Sexuality and Law 10

Paper 1: Elizabeth Acorn and Whitney Taylor, Overcoming Constraints: Courts and Social Change in Canada

Numerous scholars have noted the recent judicialization of politics, whether at the national (Vallinder, 1994; Hirschl, 2008) or international level (Alter, 2014), reinvigorating debates about the role of law in political outcomes. Around the world, individuals and social movements advance claims in the name of promoting social change through courts. Yet, dominant scholarship on law and social change in the United States cautions against this kind of legal mobilization, pointing to constraints that limit the viability of significant change through the judiciary (Rosenberg, 1991; McCann, 1994). While this debate has been fruitfully expanded to the Global South (e.g., Gauri and Brinks, 2008), there are important differences between the courts in these countries and in the United States (Landau, 2010). This paper extends the debate to Canada, a country with a well-established tradition of judicial review and whose courts face constraints on implementation similar to U.S. courts. Acknowledging that all courts face constraints on their actions, this paper asks nonetheless: can constrained courts produce social change, and, if so, under what conditions?

The paper examines litigation efforts in Canada related to two contemporary social issues: women's reproductive rights, principally abortion, and same-sex relationship rights, including marriage, adoption, and tax treatment. The paper will consider the effect of litigation in these areas on policy, public opinion and issue salience, and the operation of the law in practice, including practical realities concerning the exercise of rights. To do so, the paper draws on a variety of sources, including semi-structured interviews with social movement organizations, as well as survey evidence, legislation and public debates, and other secondary sources. Ultimately, the paper seeks to contribute to the developing comparative courts literature (Hilbink, 2008) by further specifying the theorized constraints on courts to produce social change and the conditions under which these constraints may be overcome.

Paper 2: Sara Mohammadzadeh, A preliminary analysis of data collected: Is kink illicit?

This project will address whether the law applies a homonormative stance when criminalizing gay kink sex, and if so what the impact is on gay males who act/self-identify within the kink community.

The theoretical underpinning from this research is rooted in Foucault's (1978) idea that sexuality is socially constructed, through society and history in which the outer limits and inner limits (Rubin, 1984) create a sexual hierarchy of sexual value. It is through this theoretical framework that I aim to further develop and explain how gay kink is defined in the outer limits as illicit sex.

In this paper I aim to discuss the preliminary data I collected from interviews with participants. The interviews were designed to be semi-structured with the hope that participants would discuss openly with me their perceptions of kink and how this fits in with the law. Participants were sourced from established gatekeepers and snowball sampling.

In these interviews I started by asking participants to walk me through their everyday sexual experience. From there I ask participants to explain to me what they identify as kink. Given what the participants said I then asked follow up questions, which allowed me to follow any themes, which had been presented by the participants.

Paper 3: Kayliegh Richardson, Looking at domestic violence from a male victims perspective

Case studies and research regarding Domestic Violence have most commonly focused on female victims, as it is generally accepted that they are the gender most likely to suffer violence at the hands of a partner in today's society. Research around male victims of Domestic Violence has focussed mainly on the societal issues which may prevent male victims from speaking out against the violence or harassment that they have suffered. This paper will take a different approach by looking at domestic abuse from the perspective of "minority" male victims and more specifically at the approach of Family Courts to applications for protection under Part IV Family Law Act 1996 by such victims.

This paper will begin by considering the changing approach that the Family Courts have taken to applications for protection under Part IV Family Law Act 1996 by both male and female victims of domestic violence. In

particular, it will consider the approach taken in *R v R* and the changing definition of what will constitute “molestation, together with providing suggestions as to what implications these changes may have for future applications by male victims. The paper will then go on to briefly consider the potential motivators and deterrents for male victims seeking protection from domestic violence and harassment, including consideration of the recent research carried out by Dr Jessica McCarrick in the context of the Criminal Justice System. This paper will finally review the changes to Legal Aid eligibility and will suggest that this could be a strong motivator for male victims to speak out regarding allegations of domestic violence in the future. In summary, the aim of this paper is to critically evaluate the approach of the Family Court and the Legal Aid Agency to male victims of domestic violence.

Stream: Gender, Sexuality and Law 2

Paper 1: Charlotte Bendall, “I think that [...] the law has looked at monogamous, heterosexual relationships for too long, and the world out there isn’t actually like that”: Constructions of adultery in intimate relationships

Early opinions were polarised as to what the impact of including lesbian and gay relationships within ‘the law’ would be. On the one hand, it was argued that being ‘queer’ entails innovation, carrying multiple sexual possibilities. Conversely, it was contended that, in privileging two partner relationships, same-sex marriage would impose the norms of heterosexual culture onto the lesbian and gay community. At a time when increasing numbers of jurisdictions have created frameworks for same-sex partnership recognition, this paper considers the degree to which these possible outcomes have come to fruition. It does so through examining data from interviews with 14 family law practitioners and 10 clients relating to their experiences of civil partnership dissolution.

Amongst my client sample, infidelity was the most common reason for relationship breakdown. Yet, there is no adultery provision contained in the Civil Partnership Act 2004, or the Marriage (Same Sex Couples) Act 2013. A ‘real’ sexual act remains one of vaginal penetration, with the Hansard debates suggesting an unwillingness to redefine adultery away from its heterosexual definition. The clients that I interviewed, and those described by the practitioners, found this aspect of the legislation difficult to accept. They voiced confusion as to its rationale, arguing in favour of ‘transplanting’ the heterosexual provision into the same-sex legislation. Strikingly, the respondents were less concerned with their partners’ physical acts than by the consequent breakdown of trust. Nevertheless, they advocated formal equality, reflecting wider strategies adopted in the implementation of formalised lesbian and gay relationships. This paper will argue that relying too heavily on heterosexual definitions works against the transformative possibilities of formalised lesbian and gay partnerships. Legal recognition under such terms is not supportive of the multiplicity of relationships that might provide care, and neither does it challenge the constructed nature of the heteronormative binary of relationships.

Paper 2: Veronca Nelson and Adie Nelson, Adultery in Canadian Family Law: A Zombie Category

In coining the term “zombie category,” Ulrich Beck directed attention to institutional fields which “govern our thinking but are not really able to capture the contemporary milieu” with the potency and vigour they once possessed. Although Beck did not suggest that these categories should be jettisoned, he did commend that they be reshaped and re-imagined creatively. In emphasizing the protean nature of “adultery” as a legal construct, we direct attention to the changing contours of “adultery” in Canadian family law. We note, *inter alia*, that the court’s acceptance of “adultery by doctor” in *Orford* is continuous with the identification of procreation as the *sine qua non* of the (patriarchal) family. In observing that legal definitions of adultery have served historically to bolster heteronormativity and a phallogocentric model of sexuality, we argue for an expanded legal definition of “adultery” that is both sensitive to technological innovations and responsive to the harms of extramarital intimate relations that are forged online.

Paper 3: Azadeh Chalabi, National Action Plans on Women, Peace and Security: A Problem-Based Approach

To manage the adverse consequences of business activities on human rights, the UN Working Group on Business and Human Rights strongly recommended all States to develop a National Action Plan (NAP) on

Business and Human Rights as part of the state responsibility to disseminate and implement the UN Guiding Principles on Business and Human Rights (endorsed by the Human Rights Council in 2011). The European Commission and the Council of the European Union (EU) also encouraged all EU Member States to adopt a NAP for the implementation of the UN Guiding Principles. So far, nine countries including the United Kingdom, Finland, The Netherlands, Italy, Denmark, Spain, Norway, Lithuania and Sweden have developed these plans and many more, such as the US, Germany, Greece, Mexico, Colombia, Jordan, Malaysia and Ireland are in the process of developing such plans. However, very little has been written on these plans and, thus, many aspects of them, legal and practical, remain remarkably unknown. By conducting a cross-case analysis of the existing NAPs on Business and Human Rights, this paper first seeks to explore various form-related problems of such plans in the five phases of planning, including: (1) initiation; (2) assessment and consultation; (3) drafting; (4) implementation; and (5) update. It then examines the content of these NAPs with respect to the three pillars of the UN "Protect, Respect and Remedy" framework.

Stream: Graphic Justice 2 – Comics and Democracy

Paper 1: Angus Nurse, *See no evil, print no evil: The criminalization of free speech and Vertigo's DMZ*

This paper examines contemporary notions on free speech and the criminalisation of journalistic expression in a post 9/11 world via discussion of Brian Wood's DMZ comics (DC Vertigo). The question of free speech and censorship is inextricably linked with the comics industry. Both historical attempts to limit publication and contemporary censorship and restricted comics' access through library bans and reader/publisher prosecution under obscenity laws illustrate how comics are objects of legal regulation and (mis)use of law to enforce dominant ideological/moral paradigms.

Free speech and the importance of a free press are widely accepted (and explicit within the European Convention on Human Rights), yet journalistic and artistic freedom are widely under attack in a post 9/11 world. State responses to global terror threats have criminalised free speech, particularly speech seen as 'glorifying' or 'supporting' terrorism via anti-terror or restrictive media laws. This paper examines these issues via discussion of DC's DMZ which imagines a future in which freedom of the press has all but disappeared.

Set in the near future, DMZ imagines a second American civil war; focusing on New York's demilitarized Manhattan zone (DMZ) and the war between the Free Armies, controlling New Jersey and the inland, and the United States, holding New York City's boroughs. Protagonist, photojournalist intern Matty Roth, becomes stranded but continues his assignment, discovering that the official line about the 'enemy' (the Free States) is not entirely truthful and the news reaching the public is of questionable veracity.

This paper argues that DMZ's War on Terror depiction and its associated control of news access and reporting serve as allegories for contemporary free speech restrictions. While graphic fiction, DMZ raises/illustrates contemporary concerns about a perceived social problem in its representation of corruption, abuse of power and restrictions on the public's right to know.

Paper 2: Neal Curtis, *Doomed Sovereignty: Resisting the law in Marvel's Secret Wars*

Sovereignty is both the foundation and source of law and the determination of the territory to which the law applies. In this latter sense sovereignty and the law it supports is an explicitly spatial phenomenon as can be seen in the meanings of the Greek word *nomos*, which aside from the law can also refer to a division—even more specifically a wall—that marks out a specific territory. I will argue the recent Marvel cross-over event entitled *Secret Wars* perfectly encapsulates this conception of sovereignty. The event saw the destruction and amalgamation of the regular universes into temporary universe known only as Battleworld. This was a constellation of fragments from the old worlds held together by the will of Dr. Doom who had been given the power of a God. God Doom ruled over the regions of Battleworld using a police force of Thors to ensure his law and the limits of each territory were maintained. As the story unfolds a series of border incursions are recorded each of which accompanies loss of faith in God Doom and the reality of Battleworld. Interestingly, these incursions nearly always involve female superheroes who seem to lead the resistance against Doom's law and his absolute control—a resistance that often manifests itself as memories of the old worlds. Most notable are the new female team known as A-Force; Captain Marvel and the Carol Corps; Excalibur; and Jane Foster, the current Thor. This paper analyses this event in terms of how it might help us

understand the nature of sovereignty, but also reflects upon how these border crossing, incursions and interruptions might be read allegorically for the cultural struggle currently taking place in superhero comics where female characters and female writers have been making increasingly important and visible incursions into a traditionally male domain.

Paper 3: David Yuratich, *Exploring dissent in Saga*

Saga, published since 2012, is one of the most acclaimed comics of recent times. Often characterised as space opera, the series follows Alana and Marko and their child Hazel, pursued by both sides of an ancient intergalactic war.

Saga's relationship to law might be discussed by observing issues, including the regulation of war and the body, arising within its textual narrative. This would be too narrow: graphic fiction's depth arises from its ability to communicate through text and image. The most interesting protagonists in this regard are the members of the Robot Kingdom. The robots are humanoid yet electronic, identifiable because their heads are monitors which occasionally display images with varying relationships to their words. These can intensify, contradict, quieten, or render ambiguous their speeches; laying bare the tension between what is said and what might otherwise have been said creates a tension that nuances their role in the narrative. Law enters into this discussion because the robots share characteristics with the seriatim judgments associated with the common law. Like them, judgments project a surface certainty – the ratio decidendi – amplified or muddled by additional signals in concurring and dissenting opinions.

This paper uses the Robot Kingdom to visually explore dissenting judgments. The literature broadly claims that dissents undermine or enhance the majority judgment, a debate generally revolving around whether they provide valuable diversity or unfortunate disunity. The contrast between the robots' words and the image on their screens initially aids the visual representation of these arguments. Further, it creates space within which to consider the wider impact of dissenting judgments on the legal system's deliberative legitimacy. Analysing the potentially destabilising nature of dissents within a fictional narrative helps us understand that judgments often tell different stories, through which a richer and contested account of legal norms may arise.

Stream: Human Rights, Religion and Discrimination 2

Paper 1: Maria Smirnova, *School Choice and Religious Freedom in Russia*

This research paper will draw on empirical evidence to specify the balance between the right to education and the freedom of religion in its current state in some Council of Europe countries, particularly, Russia, Turkey, Italy, Austria, Belgium, Portugal and Greece based upon the detail that emerges from key recent under-reported judicial decisions of these countries. Observations on these countries show how the highest courts consider various definitions of 'minorities', how they approach the issue of delivering education on religious holidays, and how the interests of the secular state is balanced depending on the context. This overview of the main themes, will be complemented by drilling down into detail in the following areas.

A particular focus will be the rich jurisprudence emanating from Russia especially considering that the freedom of conscience and the right to education are guaranteed at the supreme – constitutional – level. However, the problem of accommodating religious rights in the secular sector of public services remains a challenge across all of the countries studied. Although the right to establish private religious schools and universities is well-developed, certain restrictions are still imposed by the state. Uniquely in Russia, the introduction of a compulsory subject in the public schools' curriculum 'Basics of religious culture and secular ethics' was preceded and followed by an intense public debate on whether such a course is appropriate in a secular state. Finally, in the public school system the 'appropriate appearance' of students and teachers including attitudes to wearing religious symbols is a concern. This is particularly apparent regarding Islamic headscarves in schools which vary across domestic regions from absolutely prohibited, to forced imposition, compulsory for all, regardless of religious beliefs. It was not until 2013 that the Russia Supreme Court confirmed the wide margin of discretion of the regional legislator in terms of setting the requirements for school uniform.

Paper 2: Noel McGuirk, Profiling in the Name of Terror: An Analysis of How Profiling Methodologies Use Sensitive Characteristics to Assist in the Selection of Suspects for Enhanced Scrutiny by Law Enforcement Officers.

The threat to security posed by terrorism is frequently cited to justify the need for enhanced levels of 'special powers' so as to assist law enforcement officers manage the threat in protecting our national security. The development and adoption of these 'special powers' in the context of terrorism are frequently packaged as being part of a counterterrorism strategy that combine to allow law enforcement officers tackle terrorism from a variety of perspectives.

One such counterterrorism mechanism is terrorist profiling, which is where law enforcement officers can rely on profiling methods/approaches to assist in the identification of those suspects likely to be engaged in acts of terrorism or associated preparatory acts.

The discussion in the first part of this paper contends that the use of terrorist profiling can be manifested in at least two ways; formally or informally. Terrorist profiling can be classified as being 'formal' where there is a systematic and official use of any profiling method or approach by law enforcement officers that is aimed at identifying likely terrorist characteristics so as to assist law enforcement officers prevent, detect and deter acts of terrorism and preparatory activities. Informal terrorist profiling can be considered as being the label used to define any means of identifying or selecting individuals for enhanced screening or questioning by law enforcement officers so as to detect, prevent or deter acts of terrorism or preparatory activities.

The discussion in the second part of the paper progresses to analyse how profiling methodologies use sensitive characteristics so as to assess the impact of including sensitive characteristics such as race, religion and ethnicity. This part of the paper argues that the inclusion of sensitive characteristics in formal manifestations may be justified in light of the threat of terrorism. However, the discussion argues that the inclusion of sensitive characteristics in manifestations of informal terrorist profiling are not only unlawful on the basis of discrimination but are also likely to be harmful.

Stream: Intellectual Property 1

Paper 1: Abhijeet Mishra, Ambush Marketing: Need for balanced approach vis-à-vis Intellectual Property Law

Ambush marketing has been a matter of concern for the organisers of major sporting events who have been demanding effective statutory protection for the marks, logos etc., associated with the events against unauthorized use by non-sponsors. This paper examines the essential features of ambushing practices vis-à-vis common trademark infringement claims and their impact of on the sports events, its organisers and sponsors. Besides, it attempts a critical evaluation of the effectiveness of the existing Intellectual Property laws in preventing such practices as well as the rationale and negative aspects of the event-specific legislations, otherwise known as super-IP, enacted by the governments of host countries, apparently under pressure from the transnational sports bodies, to extend protection beyond the provisions and scope of existing laws. The analysis takes into consideration relevant case laws on different aspects of the subject. In recommendations, the author argues that the event specific enactments are not the appropriate remedy and, instead, suggests a series of legal measures to reconstruct the existing IP laws by incorporating certain standard guidelines and doctrines drawn from international conventions and national jurisprudence. The author also recommends a package of non-legal measures that could be adopted for plugging the source of ambushing activities. Ultimately, the author advocates a balanced approach keeping in view the need to reconcile the competing interests of the sponsors on the one hand and legitimate commercial practices and freedom of speech and expression on the other.

Paper 2: Toshani Mukherjee and Tanvi Muratee, Insurance of Patents: An Overview

This paper is an overview of intellectual property rights as a concept, specifically the application of insurance law with respect to patents. We look into the efficacy of insurance as a remedy to patent litigation, advertising injury and the plausibility of employing the same in India vis-à-vis United States. Intellectual property rights as a safeguard have come a long way in the protection of novel production processes and path breaking inventions. Patent protection in particular is the most encompassing form of intellectual property protection, and thus the most obvious field to exploit in terms of insurance as a

remedy. Patent insurance as a policy is offered by insurance companies in two ways, patent liability insurance as a defense instrument and patent pursuance insurance as an offensive instrument. This is not to be confused with insurance patenting as the latter deals with the patenting of an insurance product.

The emergence of patent insurance would be the much needed respite that Small and Medium Enterprises (SME) look for to be seen as serious competitors in the business scenario. Patent infringement claims lead to intense patent litigation conflicts which are potentially devastating for SMEs as even a single lawsuit could culminate into severe monetary setback or bankruptcy.

The patent laws with respect to the insurance industry in the US witnessed a revolutionary change after the *State Street Bank and Trust Co. v. Signature Financial Group, Inc.* case and have gained popularity in the last two decades. The insurance industry in India, from the patents perspective, is underdeveloped. Indian insurance companies argue that the Indian Patents Act 1970 does not allow patenting of Insurance products. The Indian government should thus clear the ambiguity in the patents act with respect to the patenting of software and computer programs which has been elaborated in the paper.

Paper 3: Yuanqiong Hu, Patentability as a Social Legal Bargaining: Discussions on Second Medical Use Patent in the Context with focus on Lyrica Case UK

The diversity of patentability criteria and doctrines in different jurisdictions has long been a point of discussion and controversy, especially those concerning pharmaceutical patents which bear public interests implications. Among the others, the debate on whether second medical use should be considered as patentable is one of such examples while practitioners, scholars, advocates and public policy makers have different views on. The essence of second medical use in medical clinical senses has also presented a significantly different picture and understanding on its merit from what legal professions have been constructing in the context of patent applications and disputes. The question of whether and how second medical use can and should be considered as something new and innovative and hence be subject to patent protection, is thus more a process of bargaining from different stakeholders in the given context.

The paper starts with reviewing the major recent arguments around the patentability question on second medical use of medicines, and focus on its analysis on a recent case before the courts of England concerning second medical use patent claims by Pfizer on its drug Lyrica. While Pfizer has lost the case in the interim proceedings so far, the phenomenon of social legal bargaining around the case has presented an interesting picture of analysis in terms of how the concepts involving patentability terms have been constructed, defended and contested by multiple players in the situation, including those concerning patent attorneys, judges, health practitioners, NHS agencies and the company. Comparison will be drawn from other jurisdictions concerning the patentability question on second medical use.

Paper 4: Titilayo Adebola, What You Sow, You Reap: The Political Economy of Plant Variety Protection

This paper is about constructing plant variety protection systems. The expansion of intellectual property rights to plant varieties poses challenges on the global, national, and local levels. On the global level, the legal architecture for plant varieties consist of overlapping treaties, with contrasting systems, norms, and principles. The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) provides a useful starting point, as it obliges all member states of the World Trade Organization to protect plant varieties. While TRIPS does not prescribe any system of protection, treaties such as the International Convention for the Protection of New Varieties of Plants (UPOV), the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), and the Convention on Biological Diversity (CBD), provide systems, norms and principles that countries may adopt or borrow from. These treaties engender a set of legal, political, and socio-economic issues concerning domestic and international intellectual property law-making.

Employing theories of international law-making and international regimes, this paper explores the political economy of plant variety protection. The paper is divided into 3 parts. Part I discusses the history of treaties applicable to plant variety protection. It explains the role of state and non-state actors in shaping the treaties. Part II examines the provisions of the treaties, as well as the implications of domesticating the treaties both in the Global North and Global South. Part III unpacks the tensions, debates, and responses to the existing plant variety protection regimes, considering the perspectives of all actors involved. Drawing from the theories, history, practical applications, and existing discourses, this paper proffers an analytical framework for countries seeking to construct plant variety protection systems.

Stream: International Criminal Justice: Theory, Policy Practice 2

Paper 1: Birju Kotecha, The Office of the Prosecutor at the International Criminal Court: Towards Prevention through Transitional Justice

This paper highlights the connection between the International Criminal Court's Office of the Prosecutor and the field of transitional justice. This overlapping relationship is ultimately based on the common ambition of preventing international crimes in conflict-affected states. The paper's specific focus is on how to improve the OTP's existing language and discourse through an accompanying transitional justice vocabulary, in order to help enhance the prevention mission. It firstly appraises how that mission is translated into the OTP's institutional objective to maximise its preventive impact, and identifies how it is currently beset with complexities that have not been adequately addressed. It then considers the current conceptual attraction to legalism within OTP language, declarations and pronouncements, and explores the limitations and negative consequences. Legalism is critically a theoretical dogma ill-equipped at capturing the social and political complexities of domestic societies shaped by conflict and post-conflict momentums. Given this, any purported preventive impact of the OTP is significantly reduced. In light of the prevailing arguments, conceptual and substantive evidence will justify the OTP as a transitional justice actor in those situations shaped by and demanding it. Therefore the paper makes the case for the OTP to adopt an accompanying transitional justice focus within its language and discourse. Through adopting a multifaceted and reasoned case for its prosecution decision-making in conflict-affected situations, the OTP could better dovetail itself into inclusive domestic transitional justice strategies. This would allow a more local and domestic contestation of ICC prosecutions including a fuller assessment as to how and why they contribute to a range of transitional reforms on the ground. In so doing the OTP could fully integrate and join-up its justice mandate with domestic transitional agendas, and ultimately help establish the social and political forces necessary to prevent future crimes.

Paper 2: Noemí Pérez-Vásquez, The United Nations' Impact on the Implementation of Transitional Justice Laws and Mechanisms for the Protection of Women's Rights in Post-Conflict Societies.

The resurgence of the transitional justice phenomenon in the 1990's took place in parallel with the advancement of the women's rights agenda. As such, transitional justice and gender mainstreaming have become central policy options recommended by the UN for post-conflict societies. Nevertheless, international involvement might contribute to the silence of some women's rights issues. In the case of Akayesu for instance, the prosecutor's strategy was based on demanding witnesses to focus not on rape but on other grievances in order to facilitate the accusation, contributing therefore to their continued silencing and the revictimisation of victims. On the other hand, there is also criticism about the emphasis on sexual violence, mainly rape, at the international prosecutorial level, which has sexualized the experience of women in conflict. In this context, my paper is aimed at studying the transitional justice policies designed and implemented in post-conflict societies under international administrations, and more specifically to answer the following research question: 'What is the impact of the transitional justice policies implemented by the United Nations for the protection of women's rights?' My paper will study the cases of two post-conflict societies that have been exposed to the most direct level of international intervention in their transitional justice processes – Kosovo and Timor-Leste - and will focus on trials, truth commissions and reparations. In this regard, based on a feminist interpretation, the main objective of my research is to analyse if the legal norms and practices designed and implemented by the United Nations in post-conflict societies reiterate and/or transform existing hierarchical gender relations. Because of the vast literature on the prosecution of sexual violence crimes, particularly rape, my paper will focus on other types of violations of women's rights, elements that might have remained silenced and that impede them to have access to justice.

Stream: International Economic Law in Context 1

Paper 1: Anlei Zuo, Regime Interaction between WIPO and WTO TRIPS Agreement in A World Society: An Analysis of Authority and Legitimacy

How to analyze the establishment and evolution of WIPO and WTO TRIPS Agreement to rectify the “institutional fragmentation” rhetoric and understand the evolutionary dynamics of international IP regimes in this world society? Existing literatures on the relationship between WIPO and WTO TRIPS Agreement, institutional fragmentation of international IP law, and regime interaction in international law are inadequate to analyze and explain the relationship, interaction and evolution of WIPO and WTO TRIPS Agreement in a world society. Through investigations on the evolution of WIPO and WTO TRIPS Agreement in a world society, three representative examples of the regime interaction between WIPO and WTO TRIPS Agreement, and an analysis of authority and legitimacy on regime interaction in this world society, it is argued in this study that there are the law of universal gravitation and the structure of tensional integrity among international IP regimes, regarding regime interaction and international IP regimes as a network in a world society where the absence of an overarching authority and the dynamics of international IP politics are the realities. Both WIPO and WTO TRIPS Agreement are individually distinct, functionally complementary and interactively competitive, from the perspective of ontological and bottom-up regime interaction. In this world society, regime interaction between WIPO and TRIPS constantly influences the comparative legitimacy of them as international authorities with different functions, self-positioning and evolution strategies. And international IP regimes should be responsive, adaptive and accommodative to those latest dynamics and momentums in international IP politics so as to be relevant, effective and legitimate. Those are the ontological ethos of international (IP) law as a legal system in a world society that lost in translation in international legal scholarship.

Paper 2: Valentina Vadi, Charting New Frontiers in International Economic Law: The Cultural Diversity Conundrum

International trade offers unprecedented opportunities for cultural exchange. Nonetheless, globalization and international economic governance can also jeopardize cultural diversity as trade in cultural products can lead to cultural homogenization. Despite this conundrum, culture receives very limited attention in the text of trade treaties. In the GATT 1947, only two provisions address cultural matters. Article IV GATT allows WTO member states to establish screen quotas by exempting cinematographic films from the national treatment principle. Article XX(f) GATT allows member states to adopt or enforce measures to protect ‘national treasures of artistic, historic or archaeological value’, provided that such measures ‘are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade’.

Although the United Nations Organization for Education, Science and Culture (UNESCO) has adopted a number of international law instruments to protect different aspects of cultural diversity, their relationships with international economic law instruments remain unclear. In fact, most UNESCO instruments provide a compatibility clause providing that nothing in them is meant to change or alter the existing provisions under other relevant international agreements. Rather, such agreements seem to presuppose a mutual supportiveness between themselves and other instruments of international law and merely require to be ‘taken into account’ ‘when [parties] interpre[t] and appl[y] the other treaties to which they are parties or when [they] ente[r] into other international obligations.’ As several cases have touched upon the linkage between trade and culture, this contribution aims to map this frontier of international economic law, questioning whether the linkage between international economic law and cultural diversity can be conceptualized ‘a new frontier’ or rather cultural diversity should be conceived as a constitutive element of international economic exchanges, therefore requiring new approaches.

Paper 3: Maryam Shadman-Pajouh and Mervyn Martin, How Strategic Can Ambiguity Be? The Role of Ambiguity in the Quest for Legal Certainty and the Myth of the Toothless Tiger

The evolution of the regulatory system governing the multilateral trading system demonstrates the need for a regulatory system that is rule-based as opposed to one premised on power-based relationships. This is a result of developments within the MTS itself, especially to accommodate all players within the

international trading system (ITS). The current regulatory forum for the MTS is the WTO. There is pronounced disparity in the wealth, capability and power between trading nations within the WTO. Against this backdrop, a rule-based MTS is more appropriate for providing “security and predictability” in relations through the WTO.

The main issue for the purposes of this paper is that recommendations of the DSB do not empower the WTO to require the removal of the measure found to be inconsistent, although it is said to be the first objective, but recommends the measure be brought into conformity. This lack of clarity has resulted in claims that the intention for maintaining this ambiguity is strategic, to keep parties in negotiations, whilst the outcome jurisprudentially, has damaged the credibility of the DSU and the WTO in providing a rule-based system to off-set power differences in a diverse platform.

Stream: Judicial Biographies and Justice for Human Rights

Paper 1: Rodrigo Cespedes, Judging Chilean Judges: Human Rights Abuses During Pinochet's Rule and the Sceptical & Activist Judges

The prosecution of gross human rights violations was one of the great challenges of the XX Century. This work explores the role of two judges in the trials for human rights abuses during Pinochet’s rule: Carlos Cerda, the activist, and Juan Guzman, the sceptical judge who become an activist after prosecuting Pinochet. During the dictatorship, and until 1998, the courts had dismissed claims for human rights violations, applying the 1978 Amnesty Act and the statute of limitations, with the exception of Carlos Cerda. Juan Guzman, initially sceptical about the magnitude of human rights abuses became one of the most important symbols of the Chilean transitional justice. Both contributed to challenge and change the traditional approach. Consequently, several officers were convicted for crimes against humanity

The struggle for truth and justice in domestic courts poses problems related to legal interpretation. Judges have given different interpretations about criminal and human rights law principles, from the application of the plain letter of law to the activist “spirit” of it.

The Chilean experience poses an example of contemporary legal dilemmas and it is an excellent case study in order to judge the judges who contributed to the Chilean process of transitional justice. Justices Cerda and Guzman were pioneers of a change in legal interpretation.

Paper 2: Agata Fijalkowski. A Judicial Biography of an East German Judge: Hilde Benjamin

Hilde Benjamin, former prosecutor, vice-president of the High Court (1949-1953), and Minister of Justice (1954-1967), played an integral role in the creation of the East German legal system. Referred to later as ‘Red Hilde’ or ‘The Red Guillotine’, she supervised the selection, and presided over the adjudication of, the most notable political cases to come before the East German courts. This paper explores how Benjamin’s personal biography, education, forms of socialisation, subjective values, and representations regarding the role of law in society at that time shaped different approaches to, or policies of reckoning with violent pasts in modern day Germany.

Paper 3: Raluca Grosescu. Challenging Impunity in Post-Dictatorial Argentina: A Judicial Biography of Gabriel Cavallo

In March 2001, the Argentine Judge Gabriel Cavallo declared unconstitutional and null the Due Obedience and the Punto Final laws. Since 1987, these laws had blocked any prosecutions of human rights abuses committed by the military authorities during the Dirty War (1976-1983). Cavallo’s decision thus dealt a severe blow to the wall of impunity in Argentina and it was soon followed by other judges who indicted and convicted military officers of forced disappearances, torture, or extra-judicial killings. Until 2001, Cavallo had been known very little in circles of human rights activists and lawyers. In the middle 1980s, as a public defender, Cavallo had represented a military officer accused of torture and kidnapping. Since 1995, he had investigated cases of baby-stanching, without however putting into question the impunity laws. Moreover, in 2010, several years after renouncing the judicial career, Cavallo will become the defence lawyer in a highly politicised case of alleged appropriation of children during the Dirty War. This paper explores Judge Cavallo’s biography and examines the way his intellectual background, his professional career, and his understanding

of the role of law in society had impacted on his legal and historical approaches to the Argentine dictatorial past.

Paper 4: Priyamvada Yarnell. Judge Meron: Does his commitment to human rights and due process make him lenient towards perpetrators of atrocity crimes?

Judge Meron described his judgeship at the ICTY as the most “rewarding assignment in my life [...] It allowed me to put into practice my personal commitment to accountability, rule of law, due process.” (American Council of Learned Societies, 2008.) The two international criminal tribunals (ICTs) for the former Yugoslavia (ICTY) and Rwanda (ICTR) were established with the aim of, among others, holding those guilty of atrocity crimes (genocide, crimes against humanity and war crimes) to account. It has sentenced over 141 perpetrators to imprisonment for these crimes. However, despite perpetrating the most heinous crimes, just over half of those sentenced have been granted unconditional early release. Judge Meron has granted at least 24 early releases.

Judge Meron has an impressive biography: since 1978 he has been a professor in international law and has “helped build the legal foundations for the international criminal tribunals” (ICTY website). Formerly he has served on advisory boards to human rights organisations, including Americas Watch. Judge Meron has championed the ICTs for having “enhanced the bite of human rights law” while ensuring the “accused are accorded due process and fair trial protections” (Meron, 2011) These ‘protections’ (negative rights) appear to have been extended to positive rights in the granting of early release; generally after serving two-thirds of the sentence at the ICTY, which Judge Meron later extended to perpetrators sentenced at the ICTR, citing “fundamental fairness and justice” (Bisengimana, 2012).

This paper will examine how Judge Meron’s commitment to due process appears to have tilted his judgments in favour of perpetrators of atrocity crimes, and it will also assess the appropriateness of applying principles such as *lex mitior* (retrospective reductions in the severity of criminal law) and rehabilitation (established best practice for ordinary criminals) to perpetrators of atrocity crimes when granting them unconditional early release.

Stream: Law's Empire? Justice, Law & Colonialism 2

Paper 1: Raza Saeed, Sovereignty and Law in Colonialism and Empire

When Warren Hastings, the first Governor-General of the emerging British colonial setup in the Indian sub-continent, was impeached before the House of Commons in 1780s, a whole host of issues were brought to light. While the trial focussed on the charges of ‘high crimes and misdemeanour’, including extortion, misuse of political and judicial authority and despotism, a significant aspect of the arguments between Hastings and Edmund Burke was the debate on Sovereignty and its link with the colonial empire.

At the time when continental Europe was beginning to experience and celebrate the ‘modern’ notion of state sovereignty claimed to have originated from the peace of Westphalia in the 17th century, this trial in particular and the policies of the British East India Company and the British Crown in general shed light on a concept of sovereignty of a radically different nature. They present us with a notion of sovereignty that could be bought or sold, that could be chartered or leased; sovereignty that did not rely on the oft-celebrated social-contract but on repression of people, even though it did claim to be based on local norms and customs; this was sovereignty that effectively argued against the rule of law, only to be challenged by another form of imperial authority. Engaging with Hasting’s impeachment trial and the political-legal discourses surrounding the Company, this paper will explore the issues surrounding sovereignty and bring to light the phenomena that are omitted from conventional historical and conceptual accounts of sovereignty.

Paper 2: Emily Whewell, Imperial Law without Borders: Borderland jurisdiction and transnational legal connections across western China, Burma and India

Law was central to the expansion of British colonialism and imperialism in all its forms across the world. As has been richly explored, colonial contexts were sites of plural legal norms and systems that operated within on local, regional and global frames. What crucially remains to be explored in more depth is how different British jurisdictions – such as British colonial law and British extraterritoriality - came together to mediate local and regional spaces in global perspective. This paper therefore aims to show how different types of

British law operated, negotiated, and accommodated each other (and local legal systems) in the Asian borderland region between China, India and Burma. It focuses on the late nineteenth and early twentieth centuries as a formative period negotiating state building projects and transnational security against a rising tide of anti-British protest. It was also an age of increasingly mobile populations and a period marked by legal-political maneuvering against other empires – such as Russia, Germany, France, and China. Drawing upon an extensive and rich body of archive material, the paper finishes by emphasizing two conclusions; how extraterritoriality and projects of colonial territoriality were paradoxically complementary goals of British legal officials in the region, and how legal pluralism was a central part of British legal governance, drawing upon recent works of the inherent pluralized nature of law and working of legal systems in the British Empire and beyond.

Paper 3: Aitor Jimenez, Periphery, Nation and Race

Nation –and its belonging– and state –and its meaning– are not absolute categories, as the West Universalist notions claim. They are voluble and changeable terms that depend on a political context based on conflict, dominance and conquest because the categories of nation and state, as well as the means to define their belonging, have their origin in a historical moment characterised by the colonial taking of America.

Nation and state did not mean and do not mean the same for the colonised and subalternised people who have been constituted as an enemy. French Algerians, Cuban and Haitian resisting people, German Jews, Mesoamerican indigenous people, all of them evidence how the nation's fickleness and its relationship with the Modern and colonial state result in inconsistencies, some of which can lead to the extermination of millions of human beings.

Nationality and state are far from being both a right and an imposition, regardless of what has been proclaimed by International Law. They are sometimes aberrant and imprisoner. The eurocentrism that has prevailed until now talked about nation and state as concepts attached to the very notion of civilisation and civility. The fact of not belonging to the state and the fact of not resigning in accordance with Eurocentric terms have historically been forceful arguments to legitimise robberies, spoils and murders.

Stream: Medical Law and Ethics 2

Paper 1: Michael Thomson. Paradox, Distinction, and the 'almost irrational' in Health Law

Legal outcomes often depend on the adjudication of what might appear to be somewhat self-evident and uncontroversial distinctions. This paper addresses two such distinctions prevalent in medical and family law deliberations; that is, those drawn between religion and culture, and the therapeutic and non-therapeutic. These can have significant impact on the legality of parental action and choice. Such distinctions are often imagined to be asocial facts, there for the judge to discover. However, in both instances these distinctions and designations are not unproblematic and uncontested. Indeed, as the paper illustrates, rather than being ahistorical or apolitical facts, dominant understandings can be influenced by considerations of gender, race and class. To explore this, the paper mobilises a recent child protection case. In January 2015, Sir James Munby held that the genital cutting of both male and female children constituted “significant harm” for the purposes of the Children Act 1989. Nevertheless he (not uncritically) went on to explain law's current asymmetrical treatment of male and female genital cutting by drawing on the distinctions between religion and culture and the therapeutic and non-therapeutic. Responding to this, the paper draws on work by John Harrington that has sought to understand processes of change in medical law by reference to systems theory. In this, Harrington has drawn attention to the place of paradox in medical law and how this is managed by processes of distinction and displacement. In examining the specific distinctions and displacements deployed in this case and the wider field within which it sits, the analysis presented has relevance beyond genital cutting to other parental choices, and understandings of reasonable parenting, which may rely on similar reasoning and may also remain insufficiently interrogated.

Paper 2: Stephanie Pywell. The ethical imperative of ascertaining and respecting the wishes of the minimally conscious patient facing a life-or-death decision

Many individuals who have disorders of consciousness or locked-in syndrome (LIS) are unable to communicate in any way. Given that some such people – including all those with LIS – have an awareness of

their situation, their situation poses legal and ethical dilemmas, notably when decisions about their care and treatment need to be made. The most acute dilemma arises when a patient's condition is considered to be permanent: although the patient may wish to end his or her life, they are physically unable to do this themselves, and assisted suicide is unlawful in England and Wales. In some circumstances, of course, a patient's life may lawfully be ended by withholding or withdrawing artificial life-sustaining treatment. In such a situation, the wishes of the patient should be paramount; even if the patient has drafted an advance directive, it would be desirable to know whether that still reflects their wishes. Recent and emerging advances in neuroimaging techniques, notably functional magnetic resonance imaging, mean that it may become possible for some patients who cannot communicate conventionally to make their views known. If such techniques are proven to be robust, a failure to make use of them could potentially constitute a breach of a patient's human rights. This paper will present the hope that, in future, these techniques will be used whenever possible to confirm diagnoses and to ascertain patients' wishes, thus respecting their autonomy in life-or-death decisions.

Paper 3: Amanda Jane Ward. A comparative overview of the legal regulation of Assisted Dying: lessons to be learned

Reflecting on my experience at the Scottish Parliament, as legal advisor on the Assisted Suicide (Scotland) Bill, I will outline the research I am now undertaking as the basis of my PhD. This includes a comparative analysis of Assisted Dying in the UK and overseas, namely Oregon and Quebec.

Specific consideration will be given to 'lessons for Scotland' and an analysis of the possibilities for legal reform will be explored. This includes examining the responsibilities of the UK's legal institutions; Parliament, the Courts and the COPFS. Reference will be made as to why in light of recent publications, that between 69-82% of the UK population are in favour of law reform, to legislate for an Assisted Death, this is not being brought to fruition, despite numerous attempts in both the Scottish and Westminster Parliaments.

Stream: Refugee and Asylum Law: Theory, Policy and Practice 2 - Comparative International Refugee Protection (b)

Paper 1: Sara Palacios Arapiles, Asylum as a human rights in Europe and in the Americas: A comparative perspective

At the universal level, States have not committed to adopt an international instrument that would legally bind them to comply with the duty to grant asylum, in the sense of admission to residence and lasting protection against the jurisdiction of the country of origin, to those who have the right to seek it. At the regional level, whilst no provision guarantees the right to asylum within the scope of the European Convention on Human Rights, the Inter-American Convention on Human Rights is the most effective instrument for the protection of asylum-seekers among all strictu sensu human rights instruments at regional or international level. Yet, whilst a large number of cases concerning asylum have been brought before the European Court, the same cannot be said for the Inter-American Court, which has only been asked to decide on one case concerning asylum. Given these differences in approaching asylum, the paper attempts to provide a comparative study of how the right to asylum has been framed within the European and Inter-American human rights systems, i.e. the main supranational instruments for human rights protection; and to discuss how both human rights mechanisms have evolved towards giving protection to the right to asylum. It is argued that international human rights law is then the key to the encouragement of complementary forms of protection to asylum-seekers, in addition to refugee law and national asylum regimes. The paper also aims to give answers to questions such as: a) Which are the reasons behind the overload of the European Court in cases concerning asylum? b) Are there any lessons that the European Member States can learn from the Americas in this regard, and which could they be?

Paper 2: Khalida Azhigulova, Asylum systems in transition: An emerging area in refugee law research

A term 'asylum system in transition' refers to an asylum system established under the 1951 Refugee Convention regime, where the transition is taking place from either non-existent asylum regime or refugee status determination (RSD) run by UNHCR to a state-run RSD. The development of this concept started some

two decades ago when more and more states around the world were introducing state-run RSD in their asylum systems. While in the refugee law theory and from the UNHCR's perspective the state-run RSD should lead to a more effective refugee protection, in practice states may introduce RSD to limit their international responsibility and effective refugee protection depending on a state's domestic and international policies.

The importance of the research of this area is argued by the need to expand effective refugee protection space in new asylum states outside the liberal democracies of the West and long-standing refugee resettlement countries, such as the US, Canada and Australia. With the escalation of refugee crises worldwide, more burden of hosting refugees should be shared with other countries that have ratified the 1951 Refugee Convention. The research of asylum systems in transition offers valuable findings about states' motivations to ratify the Refugee Convention and comply with refugee law, the challenges that may impede the effectiveness of refugee protection, and solutions that could be offered to improve the effectiveness of refugee protection in these asylum systems.

This paper analyses refugee laws, policies and practices in a few asylum systems in transition in Central and Eastern Europe, South Africa, Middle East and East Asia. While moving a relatively similar path in development, these asylum systems ended up falling along a broad protection spectrum, from being extremely restrictive to being quite receptive towards refugees.

Paper 3: Linda Kirk, Australia's *sui generis* approach to the refugee definition

On 18 April 2015, the amendments contained in the Maritime and Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 (Cth) came into effect. The purpose of the amendments is to create an Australian refugee law system that is 'independent and insulated from international refugee law and the Refugee Convention' and to ensure that Australia is 'not subject to the interpretations of foreign courts or judicial bodies which seek to expand the scope of the Refugees [sic] Convention well beyond what was ever intended' by Australia or its Parliament.

The amendments codify key concepts of the refugee definition including 'refugee' and 'well-founded fear of persecution' and introduce provisions into the Migration Act that are intended to modify existing Australian and internationally accepted approaches to interpretation of the scope of the Refugee Convention. In contrast to the international practice of numerous State parties to the Convention, the Australian Parliament has, through these recent changes to the Migration Act, sought to introduce a *sui generis* approach to the interpretation of the refugee definition that diverges from international refugee law jurisprudence and practice. In so doing Australia 'sailing against the wind' in resisting the international move towards the adoption of an autonomous meaning of the terms of the Convention, including the definition of a 'refugee' under Article 1A(2).

Stream: Research Methodologies and Methods 2

Paper 1: Natalie Ohana, *The Role of Discourse Mechanisms in the Construction of Legal Meanings: The case study of constructing the meaning of domestic violence against women by courts in England*

My presentation will focus on the relationship between discourse mechanisms and the construction of accepted legal meaning. The first part of my presentation will be dedicated to the concept 'discourse mechanisms' which will be explained by locating the discussion within Foucault's knowledge-power theory and by introducing his archaeological analysis research method.

In the second part, I will demonstrate the role of discourse mechanisms in the construction of legal meaning by presenting a case study – the legal understanding of domestic violence against women. I will focus on two discourse mechanisms – classification and continuity and analyse their operations in English judgments in which the meaning of domestic violence was constructed. I will present the persistent gap, revealed by feminist legal scholars, between women's experience of domestic violence and law's understanding of it, and ask whether the analysis of the operations of discourse mechanisms can contribute to the understanding of the roots of this gap and the conditions that enable it to persist.

Paper 2: Petra Mahy, The Functional Approach in Comparative Socio-Legal Research: Reflections Based on a Study of Plural Work Regulation in Australia and Indonesia

This paper examines the potential use and limits of Zweigert and Kötz' classical functional approach in comparative law for an empirical socio-legal research project. The project involves a comparison of the formal labour laws and informal norms and institutions which regulate restaurant work in the cities of Melbourne, Australia and Yogyakarta, Indonesia. The paper argues that the functional approach is a necessary but incomplete method for overcoming the many issues of comparability between the two research sites; it requires both extension of the method and explicit explanation of its limitations.

Stream: Sentencing and Punishment 2

Paper 1: Adnan Sattar. Retributivism and the Discourse of Human Rights: Partners in Crime

The central assertion of this paper is that the discourse of human rights, which has come to acquire a hegemonic status in the contemporary world, is inadequate to resolve fundamental problems underlying the institution of state punishment. That discourse, it shall be argued, has historically been entangled with often contradictory and mutually incompatible stated justifications for punishment, namely, deterrence, incapacitation, rehabilitation and retribution. However, given its theoretical affinity with Kantian and Hegelian philosophy, the concept of human rights lends itself to be used most effectively as the justificatory basis for retribution.

An attempt shall be made to demonstrate that almost the entire corpus of human rights scholarship is virtually silent on the idea of offender rehabilitation and alternatives to prison-based retributive justice. Contemporary human rights scholars do not seem to have any interest in either the context of crime or the collateral consequences of punishment, for example, in terms of the effects of incarceration on a prisoner's children. Human rights discourse as embodied in academic commentaries and textbooks, it shall be argued, signifies an implicit approval of the central tenets of retributivism, i.e. individual criminal responsibility, retribution and proportionality as the basis of sentencing, and the fragmentation of criminal justice and social justice.

Paper 2: Tracey Booth. Using a common law imagination to reconceptualise the sentencing hearing as a restorative event

Increasingly, opportunities are being made available for victims and offenders to engage in restorative justice initiatives at multiple points in the criminal justice process across several common law jurisdictions including the United Kingdom, Australia, New Zealand and Canada. Examples of restorative initiatives at the sentencing point include: deferring the passing of sentence to allow a pre-sentencing restorative event to proceed outside of the courtroom in the UK and the use of circle sentencing for indigenous offenders as occurs in New South Wales. Restorative initiatives that impact directly on mainstream sentencing proceedings however – such as extending the purposes of sentencing to include restoration of the victim or enhancing victims' entitlements to participate in the courtroom – are regarded as particularly controversial and resisted in many jurisdictions.

This paper will explore restorative possibilities in the sentencing hearing and, in particular, Doak's suggestion that such hearings should be restructured to reflect aspects of the *partie civile* model and relevant innovations at the International Criminal Court in order to be better responsive to victims' interests (Doak, 2015). Using Shapland's conception of the sentencing hearing as a 'community forum' that deals with the aftermath of crime (2010) as the frame, the paper will challenge the idea that restoration in mainstream sentencing hearings is well outside the perceived 'normative boundaries' of the ordinary legal proceedings. Findings of an ethnographic study of sentencing hearings in New South Wales will be used to highlight restorative possibilities that could contribute to the transformation of the sentencing hearing as a restorative event.

Stream: Sexual Offences and Offending 2

Paper 1: Omar Madhloom. Can the distinction between lying and deceiving in the law of rape be justified?

This paper argues that the current law of rape fails to protect sexual autonomy in cases involving deception. This is highlighted by the recent cases of undercover police officers who engaged in sexual relationships with female suspects, *R v McNally* and the conviction of Gayle Newland.

Rape is sexual intercourse without consent, and violating sexual autonomy means that the complainant did not freely agree to sex. Therefore, violating sexual autonomy results in non-consensual intercourse, regardless of whether the defendant is male or female. The law fails to protect sexual autonomy because the courts appear to have drawn a distinction between lying and deception. It is only when the defendant has actively deceived the complainant (lying), that the courts will find consent was vitiated. Deception, which includes non-disclosure, does not vitiate consent, even if the deception relates to a material fact (e.g. HIV status of the defendant).

It is argued that the distinction between lying and deceiving cannot be justified where it relates to a material fact. A commitment to protecting sexual autonomy should allow individuals to set their own boundaries in terms of what is acceptable in sexual relations.

Paper 2: Susan Leahy. A Defendant's Right or Information Overload? The Introduction of Complainants' Personal Records in Sexual Offence Trials

A significant source of trauma for complainants in sexual offence trials is the highly personal and sensitive nature of the cross-examination by defence counsel which touches not only on the alleged attack but also on other aspects of their character and/or previous sexual experiences. Evidentiary reforms (s 41-43 Youth Justice and Criminal Evidence Act 1999) have sought to curtail the inappropriate use of irrelevant introduction of sexual experience evidence to unfairly prejudice the complainant's testimony. However, whilst inappropriate use of previous sexual experience evidence has, to some extent at least, been curbed, a new concern for complainants is the introduction of personal records such as counselling notes, school or social welfare records at trial. This paper considers the use of this evidence in sexual offence trials, questioning whether defendants have any right to access this material or whether it is simply a question of 'information overload'. In light of this discussion, the paper will consider whether the introduction of personal records in sexual offence trials should be more tightly controlled by legislation. In this regard, the potential for reform will be debated with reference to reforms proposed in the Irish Criminal Law (Sexual Offences) Bill 2015.

Paper 3: Eithne Dowds. Challenging the Definitional Parameters of the Crime of Rape in International Criminal Law

The crime of rape, along with related sexual offences, has been in a state of rapid evolution in international criminal law. Indeed, this maps onto a wider process of evolution in terms of the very idea of what rape is and what the crime entails. In international criminal law the process has involved a debate around whether non-consent should form a constitutive element of the crime, or whether elements such as force or coercion should be included instead, due to the particular context of international crimes. Divergence across international criminal courts and tribunals tends to involve the abandonment of one or other aspect.

This paper argues that the process of defining rape in international criminal law has illuminated the different ways in which the crime of rape may be perpetrated, which cannot be captured in a simple definition that refers only to the non-consent of the victim. The argument is developed through critical engagement with the definition of rape as set out in the Elements of Crimes for the International Criminal Court 2002. The definition contained within the Elements of Crimes omits reference to non-consent, instead setting out a number of situations in which the perpetrator undermines the victim's autonomy. This raises an intriguing problem about the relation between the elements of an offence and the affirmative offences that apply to it. It is argued that – as the definition of rape is currently structured – consent cannot be used as an affirmative defence. Drawing on case-law from the International Criminal Court this paper will demonstrate the flawed application of this definition in terms of grasping the proper role of consent.

Stream: Social security: Ideology, law and society in the 21st Century 2

Paper 1: Mark Simpson and Grainne McKeever. Worlds of welfare collide: implementing a European Unemployment Benefit System in the UK

To date, the primary concerns of European Union law in the field of social security have been the elimination of discrimination and the extent to which EU citizens exercising their right to freedom of movement may access benefits on the same basis as host state nationals. Each member state otherwise controls its own social security system. The post-2007 financial crisis has brought renewed calls for the creation of a European Unemployment Benefit System (EUBS) as a manifestation of solidarity between citizens of different member states and an economic stabiliser in the event of future asymmetric shocks. The EU-wide benefit would operate in tandem with existing national unemployment benefits. This creates challenges of compatibility given the diversity of approaches to social security within the Union, based on at least four distinct philosophies of welfare: liberal, conservative, social democratic and southern European. This paper examines potential legal, operational and political difficulties associated with implementing a EUBS that is at heart a conservative system of social insurance in the UK, whose liberal welfare state has very different priorities. Few legal obstacles exist and although the addition of a new, earnings-related benefit to an already complex mix of social protection would raise significant operational issues, these need not be insurmountable. However, fundamental differences of ideology mean the EUBS as proposed is unlikely to gain political buy-in from the UK. Notably, a contributory income maintenance benefit is a poor fit with a residual, largely means-tested national system whose role is limited to offering protection against severe poverty while maintaining work incentives and minimising costs. The paper provides an overview of proposals for a EUBS, situating it and the UK's national unemployment benefits within (respectively) Esping-Andersen's conservative and liberal welfare state models before discussing the difficulties associated with the marriage, or collision, of the two systems.

Paper 2: Christos Boukalas. From Welfare Providers to Mind Police? Counter-extremism and the Co-option of the Welfare State by National Security.

This paper examines the main contours of the UK counter-extremism strategy, and notes that it constitutes a peculiar redefinition of the mission of welfare institutions and their co-option by the security mechanism.

It starts with a discussion of Part 5 of the Counter-terrorism and Security Act 2015, which imposes on local authorities, health, education, police, and correction institutions a new duty: to prevent people from being 'drawn into terrorism'. Legally undefined, this duty is cast as part of welfare institutions' mission to protect individuals from harm, under the guidance and control of the Home Secretary.

Treating the law as an encapsulation of the broader counter-extremism strategy, the paper goes on to examine its flagship programme, Prevent. It discusses the institutional structure of Prevent, which brings together the central state with local authorities, health, social care and education institutions, and civil society organisations, in a structure that combines aspects of network and hierarchical organisation. Through it, welfare institutions and their personnel have their mission and work partly re-defined as policing. To identify the object of this policing, the paper examines the rationale and objectives of Prevent. Prevent seeks to disrupt the process of radicalisation through which vulnerable people may come to espouse extremist ideas and, possibly, resort to terrorism. By construing a 'vulnerable' subjectivity, prone to espousing extremism, Prevent connects with the traditional care-oriented work of welfare institutions, and recasts it as security-oriented. By construing extremism as a harm in itself, and defining it as any ideology that contravenes British values, Prevent redefines welfare institutions as a terrain of ideological struggle, and mobilises their professionals in a war of ideas. Paper 3: Michael Adler, Is the UK an Outlier or is it Much Like Other Countries - The Case of Benefit Sanctions?

In a paper entitled 'A New Leviathan: Benefit Sanctions in the 21st Century', which will appear in the Journal of Law and Society, I draw attention to the spectacular growth of benefit sanctions in the UK in the period since 1998. In 2012, the number of benefit sanctions imposed by the DWP actually exceeded the number of fines imposed in the criminal courts. In that paper, I compare benefit sanctions with fines and parking penalties in terms of their main aims, how they are imposed, the extent to which adjudication protects the interests of those who are sanctioned, their severity, the socio-economic characteristics of offenders, the extent to which they cause hardship, the extent to which they are proportionate and whether or not they

are compatible with justice, and conclude that benefit sanctions are particularly problematic, both because of their incidence and because their severity causes great and disproportionate hardship.

In this paper, I use available sources of data to compare the incidence and severity of benefit sanctions in the UK with those in other European countries in order to determine whether, as far as benefit sanctions are concerned, the UK is an outlier or whether, on the other hand, the sanctions regime in the UK is much like those elsewhere in Europe.

Stream: Sports Law

Paper 1: Simon Boyes, Rugby Union: consent to bodily contacts and the protection of players' rights

Rugby Union has recently developed a significant focus on the effects of physical contacts between players during the game. The issues of player welfare generally and concussions in particular, have become prominent issues in the sport. This paper emanates from a research project which seeks to identify the extent to which Rugby Union players subjectively consent to physical contacts that are within, marginal to and clearly outside the rules of the game and the degree to which legal and regulatory responses respond adequately in securing players' rights. In designing this project we chose to avoid using the term "violence" out of a concern that the term might be seen as pejorative and may influence participants' responses. On that basis an alternative means of describing such interactions was sought. The result is a development of Michael Smith's typology of sports violence (Smith, 1983), to create a classification which develops the key issues of the rules, culture and regulation of sports as indicators in assessing the legitimacy of bodily contacts. This adapted scale was then used to allow participants to rank a set of case studies demonstrating variations of bodily contact within Rugby Union. This paper explains the development of that classification and reports our preliminary findings. This is done to add to the legal (e.g. Anderson, 2014 and 2013; Hawkins, 2012; James and Cooper, 2012) and sociological (e.g. Young, 2012; Fields, Collins and Comstock, 2007; Messner, 1990) research in this area, and in a bid to bridge the gap between these two disciplines. In particular we aim to offer a measurement of the true extent of players' subjective consent to bodily contacts in order to assess the adequacy and effectiveness of responses from sports regulators and prosecuting and judicial authorities in protecting the rights of participants.

Paper 2: Teng Guan Khoo and John O'Leary, Equality Act - Empowering 'positive action' in UK sports?

The Equality Act 2010 marks the modern era in part of the UK government's overriding aims to eliminate discrimination at all levels. The legislation is aimed at simplifying the anti-discrimination by including all the nine protected characteristics into a single Act of Parliament. The Equality Act 2010 therefore makes it illegal to discriminate anyone on the grounds of his or her race, sex, sexual orientation, disability, religion or belief, being a transsexual person, pregnancy, being married or in a civil partnership and age. The Act and its predecessors, in particular reference to Sex Discrimination Act 1975, Race Relations Act 1976 and the Disability Discrimination Act 1995, had achieved a significant impact in changing the perception of societies towards minorities and disadvantaged groups. While advances have been made, there remain areas where certain groups are still not benefiting under the provisions of the Act, more so within the context of race. Welch has suggested that there is more than a suspicion that racism remains an issue, affecting different sports in different ways – the lack of professional footballers of Asian origin being a clear example. At present, there is only one Asian semi-professional player making appearances in the Vanarama National League for the 2015/16 season. The session therefore aims to examine and revisit the aims of Equality Act 2010 within the context of race discrimination; and in particular the notion of positive action with reference to the area of sports and employment. The relevance of positive action will be considered, in terms of its current practice and whether it should be empowered to give meaningful attributes to the concept.

Paper 3: Jack Anderson, Not an Olympian Fiddle: Vanessa Mae and the Moral Panic about Match-Fixing at the Court of Arbitration for Sport

In last place at the women's grand slalom event at the Sochi Winter Olympics of 2014 was Thailand's Vanessa Vanakorn better known as Vanessa Mae, a classical violin soloist of world renown. How was it possible for a ski racing novice in her mid-thirties to become an Olympian only a few months after beginning training?

The governing body of the sport, the International Ski Federation's (FIS) blunt reply was that Mae and her entourage had likely used her private wealth to manipulate the qualification process. For this, Mae was banned for 4 years for breach of various regulations in the FIS's Betting and Anti-Corruption Violation Rules. The FIS's reaction must also be understood in light of what might be called the "moral panic" surrounding match-fixing; epitomised in 2014 by the launch of a Council of Europe Convention on the Manipulation of Sports Competitions.

Mae appealed to the Court of Arbitration for Sport (CAS) and was partially successful in June 2015. The CAS award has three points of interest. The first relates to an athlete's legal interest or standing in challenging a disciplinary sanction. The second is the Panel's elaboration on the use of the "comfortable satisfaction" standard of proof. The most welcome aspect of the Mae award is that the Panel did not "panic" in the face of the various allegations against Mae, holding that what had occurred could not be conflated to a charge of sporting fraud.

As match-fixing allegations continue to bedevil sports such as tennis and cricket, it is hoped that future CAS panels will take a similarly scrupulous and objective approach to claims of match-fixing against individuals from sports governing bodies who sometimes seek to use such persons as scapegoats for, or distractions from, poor governance in that sport.

Paper 4: Simon Boyes and John O'Leary, Whither Sports Law?: Towards a critical perspective

Sports law as a discipline is ill-defined, and much work in the field is premised on orthodox positions and as a result there is little in the way of critical scholarship in the field.

This paper seeks to review the various claims made for – and against – the existence of a distinct legal sub-discipline of sports law. The paper identifies that such claims can be broadly classified into two approaches: first the body of work which seeks to argue for the existence of a *lex sportiva*, premised on the characterization of sports' regulatory schemes and the jurisprudence of the Court of Arbitration for Sport; second, the application of domestic and regional (i.e. European Union) laws to sports participants, regulators and other stakeholders, as well as their broader relationship with legal institutions.

The paper highlights the critical approaches that have been taken to sport's relationship with the law and draws on other disciplines to highlight the limitations of the present body of literature, and builds on this to map out a path by which this might be addressed.

Stream: Systems Theory Thinking 2

Paper 1: Sarah Sargent. Time Travel and Structural Coupling: A Luhmannian Analysis of Aboriginal Land Title in the US and Australia

Luhmann's theory of autopoiesis explains that as societies become more complex, they develop specialised sub-systems, such as political, economic and legal systems. Each sub-system has developed its own unique binary code for communication. It is through these different binary codes that communication occurs. Structural coupling describes the process of two sub-systems are working in tandem, with a more or less harmonious interpretation of information through their respective binary codes. Luhmann argues that societies became more complex and thus developed more sub-systems in a move to highly specialised communications that occur with industrialisation and development.

Aboriginal (or native) title is a form of title that gives indigenous groups the right to use and occupy land but without the power to buy or sell. This form of title is found in both the United States and in Australia. Both were originally British colonies, and share common law origins for aboriginal title. The way in which this form of title has developed in each has taken a very different trajectory.

It is a form of title that "time travels" across increasingly complex societies—with a beginning in a period of conquest and colonisation. It remains a highly utilised concept in post-industrial US and Australia.

Through the use of Luhmann's theory, the creation and continued existence of aboriginal title through the increasingly complex societies within the US and Australia is examined. An explanation is offered as to how it has survived these changes and why these two states have evolved different meaning and responses to it in their legal and political systems. In particular, the effects of structural coupling of these two are considered. Through this a greater understanding of the implications of the continued use of aboriginal title is gained.

Paper 2: Thomas Webb. Vulnerability, Crisis and System Boundaries – Autopoiesis and Complexity Considered

In this paper I seek to develop a concept of vulnerability in complexity theory to sit alongside that developed in an earlier piece of co-authored work (Philippopoulos-Mihalopoulos and Webb 'Vulnerable Bodies, Vulnerable Systems' (2015) *International Journal of Law in Context*) concerning the concept in the autopoiesis. In particular, it is suggested that a consideration of the means by which vulnerability is realised by both forms of systems theory, and the consequences which flow from the suppression of it, including the under-integration of certain elements (see Neves, 'From the Autopoiesis to the Allopoiesis of Law' (2001) *Journal of Law and Society*) might point to a deep conceptual connection between the two approaches. However, in their responses to crisis it is argued that systems predicated upon one or the other theory, would respond quite differently, with significant consequences for the life of the system. The tension between conceptual affinity and response will be considered. It is proposed to explore the concept of vulnerability in the context of the multifaceted challenges posed by the mass movement of refugees into Europe, and the strikingly linear legal and political responses adopted thus far.

Paper 3: Jamie Murray. Stuart Kauffman's Laws of Complexity

Stuart Kauffman has been a pioneering complexity biologist and complexity theorist from the start of the development of Santa Fe complexity theory from 1985 onwards. The 2016 publication of his book *Humanity in a Creative Universe*, joining the 2010 book *Reinventing the Sacred: A New View of Science, Reason and Religion*, the 2000 book *Investigations*, and the 1996 book *At Home in the Universe: The Search for Laws of Self-Organisation and Complexity*, provides a point from which to survey Kauffman's broad take on complex systems theory. In line with the titles of his books, Kauffman's complexity theory is hugely expansive and ambitious, firmly breaking with the reductive materialism of the dominant scientific paradigm ('the Galilean Spell') and setting forth an emergent ontology of complexity for science, reason, economy and society. In this Kauffman has been characteristically focused on the nature of law, and in addition to his much repeated enthusiasm for the common law system as an example of complex adaptive systems, Kauffman has worked on identifying candidates for the laws of complexity. The paper argues that, as such, Kauffman is a key theoretical inspiration and source for developing a jurisprudence of complexity and accompanying concepts of emergent law. In addition, the paper in exploring Kauffman's complex systems theory attempts to emphasise his productive synthesis of Maturana and Varela systems theory with complexity systems theories of self-organisation and emergence.

Stream: The Law and Unintended Consequences 2

Steven Vaughan and Emma Oakley, COLP'ing Mechanisms: The Unintended Consequences of the Legal Services Act 2007

The Legal Services Act 2007 was introduced to liberalise and regulate the market for legal services in England and Wales, to encourage more competition and to provide a new route for consumer complaints. At its heart are a series of regulatory objectives for the legal services regulators, and a list of professional principles to which all authorised persons are subject. The Act created the role of 'Compliance Officer for Legal Practice' (COLP) as part of a regulatory shift towards the authorisation of practices as well as individuals (a move towards "entity based" controls). The thinking was that this would create a culture of compliance and responsibility at both firm and individual levels. The reality, however, has been quite different. As part of an ESRC 'Future Research Leader' project, and drawing on elements of interviews with 133 COLPs, private practice lawyers and law firm risk officers in global law firms, we argue that the Act has had the opposite effect to the one intended in the context of lawyer's professional obligations - our data shows that COLPs have become the 'holders' of professionalism in large law firms such that they are relied on (excessively) by practising lawyers in those firms. We have found that individual lawyers know very little about the way in which they are regulated via the Act and about their own professional obligations. As such, entity level regulation via the Act and the creation of the office of the COLP has reduced the sense of professional responsibility of individual lawyers.

Elisabeth Griffiths, Only Relatively Equal? – The unintended consequence of the Equality Act 2010

The aim of the Equality Act 2010 ('the Act') is principally equal treatment. The Act brings all 'protected characteristics' together into one piece of legislation, all separate 'silos' but in theory equal before the law, no one more important than the other. However in recent years as the number of protected characteristics has increased, tensions have emerged within the case law. Some protected characteristics may have an impact on one's ability to do a particular job at particular times, such as disability, and are subject to special rules. Others, such as sexual orientation, sex, race and religion, should have no impact and ought therefore to be ignored by an employer. As demonstrated by religious discrimination cases and disability discrimination cases, the Act can lead to tensions and a possible 'emerging hierarchy'. This paper seeks to explore the equal treatment principle and the protection offered by the Act and suggests that a developing hierarchy is inevitable given the way the law is framed. These tensions and inequalities are surely an unintended consequence of the Act?

Julia Jennings, Consumers – the unintended victim of the one-man company

The Limited Liability Act was passed in 1855 amidst concerns that making limited liability widely available on incorporation would encourage abuse of the corporate form and excessive risk-taking by rogue directors of small companies. However, these concerns were overshadowed by the economic imperative to attract greater investment in large UK companies who, until then, were losing out to less risky overseas investments.

Minimum capital requirements and minimum shareholder numbers were legislative prerequisites to incorporation and the one-man company was neither foreseen nor intended. However, in 1897, the House of Lords applied the literal rule of interpretation in *Salomon v Salomon* by ruling that, provided the legislative formalities for incorporation had been complied with, then what was in reality a one-man company could benefit from both limited liability and separate personality; Mr Salomon had appointed mere nominees to comply with the then statutory requirement for seven shareholders. Very few exceptions to this unshakeable precedent exist today, and the market is now saturated with one-man companies. By allowing individual rogue HRI traders to incorporate their business, UK company law has placed consumers in a more vulnerable position yet provides no commensurate remedy. This thesis aims to expose any deficiencies in the law in order to identify the potential for law reform, with a view to closing this lacuna created by company law.

Session 3, 9:00 – 10:30

Administrative Justice 1 - Administrative Justice and the Courts

Paper 1: John McGarry, Genuineness as an Element of Sufficient Interest

As is well known, in claims for judicial review, the sufficient interest requirement has been interpreted liberally by the courts. Generally, a claim that raises an issue of public importance will not be blocked on sufficient interest grounds. The rationale of this expansive approach is to protect the rule of law by ensuring that, where a prima facie case of government illegality is raised, the courts are prepared to hear it regardless of the personal interest of the claimant.

One element in the development of this expansive approach to standing has been to recognise the genuineness of the claimant's interest. For instance, in *Rees-Mogg* [1994] 1 All ER 457, the court accepted that the claimant had standing to bring the claim, noting his 'sincere concern for constitutional issues.' In *Greenpeace (No 2)* [1994] 4 All ER 329, the court acknowledged Greenpeace's 'genuine concern for the environment'.

Yet, the genuineness of the claimant's interest may also be used to deny standing to a claimant. In *Walton* [2012] UKSC 44, Lord Hope stated that a claimant should be permitted to bring a claim on environmental grounds, even though not personally affected, provided they can 'demonstrate that they have a genuine interest in the aspects of the environment that they seek to protect ...' In *Chandler* [2009] EWCA Civ 1011,

the claimant was denied sufficient interest to challenge the establishment of an academy school on the grounds that it breached public procurement rules because her real motive was a political objection to academy schools.

In this paper, I examine the potential conflict between the requirement of genuineness in the assessment of a claimant's standing and the underlying rationale of the expansive approach adopted by the courts: adherence to the rule of law.

Paper 2: Harriet Samuels, Public Interest Litigation and the Role of Civil Society

The legal climate is becoming increasingly chilly towards public interest litigation (PIL). The gaps in legal services consequent upon the reductions in legal aid exemplified by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the changes to the judicial review procedure, made by the Criminal Justice and Courts Act 2015 make it more difficult to conduct PIL. At the same time civil society organisations (CSOs) are concerned that their independence and advocacy roles are compromised. It is in this context that it is timely to reconsider the case for the participation of CSOs in the adjudicative process. Those supportive of PIL need to anchor their arguments not only on the benefits of PIL to judicial decision making, but also on the legitimate constitutional place that *independent* CSOs have within court based litigation. The conduct of PIL should respect law's parameters, but its governing frame must also recognize the contribution CSOs can make.

The boundary between government and civil society has become blurred as new methods of governance have led some CSOs to become involved in service provision on behalf of the state. This has created spaces beyond the traditional constitution where government has extended its reach. Attention has been given to the problem of liability when the public/private divide is blurred but there has been less reflection on the need for CSOs to remain autonomous to fulfill their functions. From the perspective of many CSOs the changes to the judicial review process are one of a series of moves that have reduced their capacity to challenge the government. Any evaluation of PIL has to be based on an understanding of the nuances of the association between government and the voluntary sector. PIL principles need to be re-thought to account for these changes and to find methods that secure the independence of CSOs.

The discussion here considers the legitimacy of PIL by or on behalf of civil society and puts it in the context of these complexities. It argues that PIL is consistent with the UK domestic constitutional tradition, it has already made a valuable contribution to the development of public law including human rights, and it is a necessary adjunct to any future attempt to root the protection of rights in the common law.

Paper 3: Maria Smirnova, New Administrative Litigation Code of the Russian Federation: Empowering Citizens to Bring the State to Court

Understanding a growing demand for a legal framework for public interest litigation and anti-government litigation as a constitutional guarantee, President Putin in one of his 2012 post-election memorandums outlined his vision of priorities for the development of the judicial system. Harmonization of public services standards with international norms became the main driver of the reform of administrative litigation. As a part of the reform Putin suggested making justice more accessible to citizens, especially in disputes between state bodies and the most vulnerable category of litigants. This strong political initiative resulted in adoption of the Administrative Litigation Code (2015).

Paradoxically, the Code simplifies and encourages anti-government litigation, although the number of such cases in Russia is unusually high (on average 300,000 judgments per year) and their success for the applicants reaches incredible 84-91%. This paper argues that there are pragmatic reasons for facilitating administrative litigation and its promotion amongst Russian citizens, such as strengthening the vertical ties between the federal center and the regions, and establishing a direct channel of communication between the state and the citizens in a situation where traditional methods of political participation are limited. The paper considers the Code as one of the main links in the comprehensive strategy aimed at increasing legal accountability of the state.

Stream: Banking, Finance and the Business of Organised Crime 1 - The Business of Organised Crime and the Role of International Norm Makers in Combatting It

Paper 1: Akilah Jardine, What's in a name? That which we call slavery: Exploring the analogy of Modern Slavery and the Trans-Atlantic Slave Trade

At present, slavery in all forms is illegal in every country in the world. Nonetheless, such a practice not only continues to exist but flourishes within 21st century society due to the sophisticated manner by which it operates. Contemporary western debate on slavery tend to focus on the Trans-Atlantic slave trade which subjected Africans to extreme exploitation and degradation. The Trans-Atlantic slave trade contributed to the destruction and depopulation of an entire continent, which centuries later is still suffering from its atrocities and legacy.

In bringing awareness to modern slavery many activists highlight the fact that there are more slaves in the world now than the slave trade. Though this may be so, there is a failure to stress that in combatting modern slavery, the existence and impact of the Trans-Atlantic slave trade should not be belittled. In failing to do this, modern day abolitionists appear to be using modern slavery and human trafficking to devalue the atrocities of the Trans-Atlantic slave trade and the reparations movement. This is grossly incorrect and unjust. Conversely, one should not use the Trans-Atlantic slave trade to degrade and diminish the suffering and dehumanization of the victims of modern slavery.

The aim of this paper is to shed light on the similarities and differences of the Trans-Atlantic slave trade and modern slavery. The concept of slavery and the factors that influence its existence will be explored. This paper also proposes to highlight various matters, such as the notion that a slave is property, legality issues, slave owners' modus operandi, the role of power relations, the social death of a slave, and ultimately, the impact of slavery. It is the objective of this paper to stress on the moral authority and duty to fight against slavery in all forms.

Paper 2: Olivia Anku-Tsedee, Organised crime & the regulatory regime: The sale and consumption of expired good and drugs in Ghana

Whilst dealing with the production of fake products, organised criminal groups also hijack authentic food and medicines, for instance, smuggling, repackaging and altering the expiry dates for the purposes of re-selling the products and re-introducing them into the market. Instead of being destroyed, useless, expired and ineffective drugs get into the markets for which some delinquents receive huge profits. Factors contributing to the spread of counterfeit food and medicines are not only reported to be intrinsically linked but considerably vary from institutional and legislative issues to matters of economics, production, trade and marketing, etc. In many instances, the distributors, wholesalers, and retailers do not belong to the criminal network but are involuntarily cajole into the system via attractive prices, huge profits and the deeply entrenched patronage systems, making the business appealing and very promising for organised crime (UNICRI, 2012).

In Africa where border controls are mainly haphazard and porous, it is not exceedingly challenging for counterfeiters to infiltrate the markets with bogus, expired and counterfeit products. The numerous cases of seizures, alerts and recalls of expired and counterfeits foods and medicinal products across the regions of the world substantiate the transnational scope of the phenomenon, making it a complex and sophisticated structure. As many nations seem constrained by inadequate logistics, human and financial resources, limited inter-agency coordination, in Ghana the infiltration has undermined the legitimacy of the security agencies by providing an enabling framework for organized criminals to operate with considerable impunity (Aning, et al 2013). Drug trafficking in particular has intensified over the last decade with Ghana seen as transit country for cocaine trafficked from Latin America and South Asia en route to Europe and the United States, yet the capacity to respond to the menace is limited. Unfortunately, the span between legitimate and illicit food and drugs activity

Paper 3: Simon Sneddon, The quasi legitimisation of transnational organised crime and the impact on the legitimate economy

Globally, the revenue and profit generated by Transnational Organised Crime are incalculable. This has not stopped estimates being made, mostly in the trillions of US dollars.

This paper will look at one particular Organised Crime Group, the Neapolitan Camorra, who have been estimated to have an annual revenue of \$4.9bn (Matthews, 2014). The Camorra has its roots in Naples, but its reach extends across all of Italy, and beyond.

The paper will assess the encroachment of the group into the legitimate economies of Naples, Campagna and Italy. Vincenzo Iurillo revealed in relation to the Camorra's Casalesi clan in 2011 that "the great majority of firms dealing with major economic transactions in their territory of influence is either directly or indirectly connected to the Mafioso group."

What the paper will show is that the local, regional and national economies have been infiltrated at all levels by investments from the Camorra (and other Italian OCGs) and that this will continue until the regional and national authorities are able to bolster the effectiveness of their Money Laundering legislation (Article 648bis, Italian Criminal Code) and asset forfeiture (Article 416bis, Italian Criminal Code). The paper will build on the results of a UNODC Region of Calabria project in 2014 (UNODC, 2014)

Stream: Children's Rights 1 - Immigration, asylum and children's rights

Paper 1: Ruth Brittle. Best Interests of the Child: Gateway or Barrier to International Protection?

The concept of the best interests of the child is one of 4 key principles in the UN Convention on the Rights of the Child (CRC) and is a familiar standard in many domestic jurisdictions, particularly in Europe. It is so widely accepted that it has been described as a customary norm of international law. Whilst universally accepted as a guiding principle in children's rights' law, it is an indeterminate concept and perhaps the least understood principle in the Convention. It has been described negatively as a 'smokescreen' for dominant ideologies or a 'mantra' behind which the discretion of officials is exercised with little scrutiny. For a refugee child or a child applying for asylum, best interests should be a primary consideration and under the European Union's Common European Asylum System (CEAS), the best interests of the child is purported to be a primary consideration in decisions granting or denying international protection. This paper explores the impact of a best interests determination (BID) in asylum applications by children and the extent to which a BID enhances or diminishes a child's access to international protection. This paper will review some of the recent decisions of the European Court of Human Rights and the Court of Justice of the EU and consider whether the supranational courts promote a holistic approach to children's rights and best interests in the context of a child seeking international protection.

Paper 2: Devyani Prabhat and Jessica Hambly. A Brave New British Citizenry? Reconceptualising the Acquisition of British Citizenship by Children

This article identifies children's rights as a neglected area in citizenship studies. It presents reasons why children are overlooked in citizenship literature. It proposes that children's rights are of critical importance in evaluating citizenship and, conversely, citizenship is of critical importance in children's political participation. It presents a dichotomy in current approaches to the best interests of children in family law cases and in nationality law matters. Through the case study of the registration of children as British citizens the article proposes a new approach to acquisition of British citizenship by children, with the best interests of the child as a critical evaluative principle in nationality matters as in family law cases.

Stream: Criminal Law Criminal Justice 4 - Young Offenders

Paper 1: Simon Flacks. Drugs, minors and the criminal law

The use of drugs by people under the age of 18 is a cause of considerable social anxiety, yet although there is no shortage of literature on youth and drugs in general, or on the complicated relationship between crime and adult drug use, there has been scant research on, or theorising about, attempts to control the use of illicit drugs by minors. Moreover, public discourse on the issue is dominated, in the present day, by two overarching themes: the criminal status of psychoactive substance and, relatedly, the relationship between drug harms and criminalisation and; neuroscientific and psychological evidence, resulting in part from technological advances in brain studies, suggesting possible links between adolescent substance use and physical/psychological abnormalities.

The aim of this paper is to problematise the ways in which ‘children’ and childhood are represented within law and policy debates, particularly in respect of law reform campaigns and criminal sentencing. It is perhaps no surprise that images of childhood are deployed in order to warn against the dangers of drug law liberalisation, and drug use in general, but drug law reformers also tend to exempt under-18s from any new regulatory model, even though young people, including teenagers, are particularly vulnerable to the harms resulting from criminalization and the policing of drug laws. Moreover, in both the UK and the US, images of childhood have been used in order to press for harsher criminal sanctions for dealers thought to be targeting children, despite the absence of any evidence to suggest that under-18s are, or would be, appropriate clients. The paper will suggest that, rather than necessarily responding to ‘real’ threats to children, such law and policy developments reflect unconscious anxieties about children’s desire, the will to limit the contagiousness of transgressive behaviour and a collective, proprietorial claim over children’s bodies.

Paper 2: Kate Gooch and Piers Von Berg. Police interviews of child suspects: neglected in a time of change.

How a child gives evidence in the criminal justice system has transformed in the last 30 years. This includes the understanding of and rules on competence, obtaining best evidence, cross-examination. This has radically changed the manner of questioning and treatment of children who are witnesses, complainants and defendants. However, child suspects have been neglected. Our research, through Freedom of Information requests to every police force in England, reveals that no comparable system to the Achieving Best Evidence (ABE) guidance exists for child suspects. Similarly, none of the measures, approved by the Criminal Practice Direction (CPD), for child defendants in court, exist in a police interview.

This paper evaluates whether police practice for interviewing child suspects is fit for purpose to obtain reliable evidence and have adequate regard for a child’s welfare. Current practice fulfills neither requirement. It contains very little of the safeguards found in the ABE or the CPD. What measures do exist rely on individual officer’s training and retrospective court rulings. This is contrary to a child’s Article 8 rights in police custody as enhanced by the United Nations Convention on Children’s Rights (UNCRC) and applied by domestic courts. It also endangers a child suspect’s Article 6 rights. These rights can be engaged pre-proceedings in the case of child suspects as effective participation is premised on effective communication. For these reasons, a system and practice for obtaining best evidence of child suspects should be introduced. It should aim to obtain reliable evidence whilst safeguarding a child’s welfare.

Paper 3: Mark Dsouza. Accessorial Responsibility

The law of accessorial liability is often criticised for being too complex, and yet, in some ways, it is arguably too simplistic. Persons with vastly differing contributions to the criminality of their principals, and vastly different attitudes towards the harm perpetrated, are held liable as accessories, and are in principle, liable to be convicted of the same offence as the principal.

In this paper, I normatively evaluate the law of accessorial liability, and critique the one-size-fits-all doctrinal approach to accessorial liability. I start by identifying the philosophical notion of responsibility relevant to criminal liability and outlining the preconditions for holding a person criminally liable, whether as principal or as accessory. I argue that two distinct steps are involved, viz. first, ascertaining that a proscribed outcome can be attributed to the agent (‘attribution responsibility’), and next, evaluating the agent’s blameworthiness for bringing about that outcome (‘accountability responsibility’). I separately enumerate the principles governing attribution and accountability, and apply these to a series of subtly different cases to demonstrate the outcomes generated. I rely on the plausibility of these outcomes for additional support for my arguments, and to make suggestions for doctrinal reform. In particular, I suggest that

1. persons who had no influence on the principal’s criminality should not be held liable as accessories irrespective of their personal culpability, as the outcome is not attributable to them; and
2. the doctrinal law of ordinary accessorial liability be reformed so that secondary parties are convicted of variegated offences depending on their personal commitment to bringing about the outcome.

Finally, I briefly examine the joint enterprise rule of accessorial liability and argue that while it can support accessorial liability, a fairer system of accessorial liability would punish a joint enterprise accessory on a scale lower than that applicable to an ordinary accessory.

Stream: Economic, Social and Cultural Rights 1 - ESCRs, Politics, Ideology and Theory

Paper 1: Azadeh Chalabi, How to make a distinction between Economic, Social and Cultural rights?

Despite extensive use of the classification of economic, social and cultural rights in various international human rights documents and academic writings, it still remains widely unclear that how to make a distinction between economic rights, social rights and cultural rights. Strikingly, this 'formal' classification lacks a clear theoretical foundation and that is why sometimes one specific right is classified as belonging to all or different categories. It is unfortunate that the International Covenant on Economic, Social and Cultural Rights does not make explicit any distinction between economic, social or cultural rights and thus all the rights embodied in the covenant are used as "economic, social and cultural rights" loosely and imprecisely. By adopting a soft axiomatic method, this paper seeks to give a theoretical foundation to economic, social and cultural rights and provide objective criteria to make a distinction between these groups of rights. It will first set out four axioms with respect to human needs, human capabilities, human interests and human rights and then will extract a principal theorem on different types of rights.

Paper 2: Katie Boyle, Re-conceptualising constitutionalism, deliberating rights and enabling social change: legitimate and viable alternatives in contemporary constitutional theory

Legally binding economic and social rights (ESR) in international law are not fully accounted for in the domestic legal framework in the United Kingdom. ESR and their legally binding nature continue to be misunderstood and misapplied (or not applied) in academia and in practice. The paper identifies that the dysfunctionality of law and the myths and legal errors surrounding the nature of ESR may be challenged as part of democratic transitional processes. Essentially, the paper considers how to create a space and place where people can change the framework within which society operates on an informed basis should there be impetus to do so and, in so doing, enable social change. This is framed in terms of deliberative democracy principles at the micro level where constitutional change is best secured through informed, participative and inclusive deliberation, and at the macro level, where multi-institutional (parliament/ executive/ judiciary) interaction engenders legitimacy, accountability and fairness in the exercise of state power. The paper challenges existing concepts of political constitutionalism in the UK through the prism of parliamentary supremacy. The paper then considers alternative framework models of constitutionalism combining both the political and legal pillars of democracy. The paper proposes that a re-conceptualisation of constitutionalism is possible through an exercise of deliberative and informed democratic decision making. The legitimacy of this exercise requires that evidence on the emancipatory nature of rights, the legally binding status of ESR and innovative structural models for legitimate realisation feature as part of the decision making process as viable and legitimate alternatives in contemporary constitutional theory.

Paper 3: Thomas Murray, Our 'Right2Water'? On distinguishing between discourse and ideology and why it matters

Critical discourse analysis is an interdisciplinary approach to the study of discourse that views language as a form of social practice, often with a view to understanding how societal power relations are established or defended through language use. This paper demonstrates the usefulness of critical discourse analysis for interrogating the politics of constitutionalising economic and social rights. The real politics of constitutionalising socio-economic rights, I suggest, centres on a division between state and civil society actors, between those who utilise a value-consensus discourse, thereby presenting the state as a consensual, value-neutral framework within which to resolve conflicts fairly, and those who do not.

I illustrate this argument with examples drawn from my use of critical discourse analysis in *Contesting Economic and Social Rights in Ireland: Constitution, State and Society, 1848-2016* (In Press, CUP). I focus, in particular, on recent state and society discourses concerning water rights and water privatisation in Ireland, a conflict which has mobilised tens of thousands of people to take to the streets in large anti-austerity demonstrations. The critical discourse analysis of associated texts illustrate how diverse groups across the political spectrum can use the discourse of universal socio-economic rights ideologically, which is to say in a manner that promotes particular forms of politics in order to advance particular interests and values. Recognising the distinction between discourse and ideology is analytically important and politically

necessary. For socio-economic rights advocates and scholars today, this paper's findings invite fresh reflection on the possibilities and limits of claiming rights 'from below' in a capitalist society.

Stream: European Solidarity and Its Limits

Paper 1: Egle Dagilyte. European workers' solidarity: what's law got to do with it?

The legal arguments raised by the Viking Line and Laval cases on the protection of social rights between posted and local workers and their trade unions have been explored by many excellent scholars. However, there has not been much socio-legal discussion about how such conflicts of national trade union law and EU internal market law impact on trans-national workers' solidarity, and in turn - on European integration itself. This paper analyses the concept of organic European solidarity; the idea that social cohesion is formed because of the complex differentiated individual roles in the society (Émile Durkheim), not because of what the Court of Justice or the European legislator say that European solidarity should be. Thus, transnational solidarity is formed because of social forces, not because of law (Michael Baurmann): law only confirms the organic solidarity that grants legitimacy to legal norms.

The author puts forward an argument that such European solidarity can only form bottom-up in cross-border situations, where certain segment of the society (e.g. workers and their trade unions in the host and sending Member States) decide to collaborate together and are able to see each other's interests as worth protecting. Support for this thesis will be sought in analysing specific empirical examples of collaboration between posted workers and local workers acting with the purpose to protect social rights, as indicated by research in industrial labour relations, social and public policy, and economic sociology (by e.g. Nathan Lillie, Markku Sippola, Lisa Berntsen, Katarzyna Gajewska).

Paper 2: Carsten Gerner-Beuerle and Esin Küçük, Fiscal Solidarity in the EU: A Question Between Law, Economics, and Politics

The Eurozone crisis has exposed the defects of the constitutional design of the European monetary union. It is now widely accepted that the Eurozone does not meet the conditions of an optimal currency area, and the existing mechanisms under the Treaty on the Functioning of the European Union (TFEU) to deal with asymmetric shocks are insufficient. Responses to the crisis were therefore partly adopted outside the existing Treaty framework at the intergovernmental level (European Stability Mechanism) and partly by the European Central Bank (ECB) without a clear legal basis (Outright Monetary Transactions). The legality of these measures has been challenged in view of the limited mandate of the ECB, the prohibition on monetary financing in Article 123 TFEU, and the no-bailout-clause in Article 125 TFEU. Attempts by advocates general and in the academic literature to conceptualise these Treaty provisions in the light of the Union objective of solidarity have not been taken up by the Court of Justice, which draws on largely technical arguments in assessing the legality of the financial assistance mechanisms. This article examines the role that economic considerations play in determining the relevance and limits of fiscal solidarity. It argues that a coherent interpretation of the framework governing the functioning of EMU can be developed by focussing on the broader purpose of safeguarding the stability of the Eurozone. A precondition for financial stability, in turn, is the acceptance of a certain level of fiscal solidarity within the Union, which is informed by the state of integration and the nature of the monetary union that the Member States have created.

Paper 3: Esin Küçük. The Principle of Solidarity and Fairness in Sharing Responsibility- More than window dressing?

The lack of fairness in asylum responsibility sharing has been a chronic problem in the EU. The repeated attempts to enhance solidarity have only led to modest instruments that remained rather symbolic and ineffective. One notable step taken recently is the elevation of solidarity and fair sharing of responsibility to a treaty principle under Article 80 TFEU. Despite being judicially cognisable, the principle has never been used in the litigation to create solidarity obligations, raising questions about its legal value. This article explores the legal relevance of the principle and discusses to what extent it serves to the enhancement of solidarity. It argues that the principle can be used to challenge the Dublin III Regulation, which manifestly disregards solidarity and fairness considerations. Despite the limitations to its enforceability, the article sees

the principle as an important venue in both the enhancement of solidarity and the protection of conditions of refugees, and advocates for its proactive use by the Court.

Paper 4: Clemens Rieder. The Manufacturing of Solidarity

The aim of this paper is to address the question ‘What makes us behave solidaristically?’ The way this question is answered will have considerable influence as to whether solidarity can be transferred from the national to the supranational level. The approach chosen in this paper is not doctrinal but functional in nature which means that the conclusions which will be drawn from the discussion are generic and are therefore not restricted to a specific field of EU law. The focus of discussion will be particularly on boundaries. It will be examined whether the character of boundaries has an influence on the nature of solidarity. The paper will distinguish between philos-boundaries and interest-boundaries – only the latter, arguably, can be ‘manufactured’ more or less easily on the supranational level.

Stream: Exploring Legal Borderlands 3 - Making use of the law: the role of social context and legal consciousness

Paper 1: Sofia Graca, Portuguese women’s invocation of law: a legal consciousness approach

This paper discusses Portuguese women’s invocation of law in situations of domestic violence. It proposes that Portuguese women’s reactions to domestic violence are to a great extent shaped by cultural characteristics, some of which also act as barriers to immigrant women’s ability to engage with the justice system of the country of destination (such as familism, shame and community pressure and acculturation). The theoretical approach adopted is heavily influenced by theories of legal consciousness, as these permit the decentralisation of the law from the analysis in order for the role of culture to emerge more clearly in its influence on individuals’ invocation of law.

Paper 2: Anneloes Hoff, Public participation, legal mobilisation and local appropriation of law: The case of Colombia’s popular consultations on mining

This paper analyses local communities’ invocation of a legal mechanism for public participation as a strategic resource for mining protest in Colombia – a phenomenon that falls within the borderland of legal and law-like social practices. Public participation in Colombian mining governance forms a politico-legal conundrum. Whereas the Colombian Constitution promotes decentralisation, territorial autonomy and public participation, decision-making on mining is increasingly centralised as a result of investor-friendly mining law reforms. In an attempt to protect their environment and livelihood, several peasant communities living in the vicinity of a large-scale gold mining project in the Colombian Andes have resorted to the constitutional mechanism of popular consultation (‘consulta popular’). This mechanism is a form of direct democracy in which citizens vote on issues that are likely to affect their community, in this case whether mining activities should be permitted on their territory. This paper analyses Colombia’s first popular consultation related to mining, which took place in 2013 in the municipality of Piedras (Tolima), and the initiatives of neighbouring communities that attempted to follow in Piedras’ footsteps. The analysis reveals how on the one hand, the popular consultations can be regarded as a social activation of constitutional provisions on public participation, which have generated an increased local appropriation of these provisions. On the other hand, governmental authorities undermined subsequent attempts of other municipalities to follow Piedras’ precedent, by enacting new legislation, alongside political pressure on local authorities. Nevertheless, the popular consultations pose a powerful challenge to the state’s traditional decision-making monopoly in natural resources governance by generating significant politico-legal debate on the role of local authorities in decision-making on mining, in which even the Constitutional Court became involved. The analysis is based on interviews with peasants, grassroots activists and local public officials, conducted during four months of field research in Tolima, Colombia.

Paper 3: Fernanda Farina, Trusting the courts: a socio-legal inquiry on judicial empowerment

During the last few decades, expansion of constitutionalism discourse and constitutionalisation of rights have enabled judges around the world to interpret public and private norms in light of broad/vague constitutional principles (eg. human dignity, right to life, equality), all in the name of the sacred “rule of law”. Much has been written about how that discourse has allowed the expansion of judicial power and how it has

enabled judicial activism in the broadest areas of public policy. However, what the legal community has left out of debate is the socio-legal phenomena behind this systemic change in the role of courts. In fact, judges can only exercise their power if citizens actively become litigants.

So what drives citizens to face litigation and all its inherent costs (personal, social and economical) and leave the decision of their problems in the hands of a judge? And when it comes to second-generation rights, supposedly guaranteed by the state, why do people choose to judicialise such rights?

In this research I propose that judicial empowerment is more than a consequence of normative phenomena, such as constitutionalism. There is a social aspect that cannot be forgotten. The hypothesis I then suggest is that trust can be that reason. Hence, are citizens allocating into courts their expectations for the fulfilment of their rights? In trusting the courts are we empowering the judges?

Stream: Family Law and Policy 3: Children and family justice

Paper 1: Annika Newnham and Maebh Harding. Caring is Sharing? Childcare disputes in the County Court

This paper uses a study of 174 disputes between parents in five county courts in 2011 to examine the translation of claims made at a general or policy level about the desirability (or even necessity) of involving both parents in a child's life into specific decisions about contact and residence in challenging circumstances. The focus is on the relative paucity of discussion caring practices in these disputes.

This can be linked to feminist accounts of how women's taken-for-granted caring has been hidden within the private sphere, and how this has enabled men to participate in the public sphere as law's unencumbered, autonomous subjects. A state of affairs, which privileges a powerful group is not easily changed: law remains reluctant to recognise the true value of care.

In our 174 cases, caring was generally not discussed until it could no longer be taken for granted. It became visible in cases where mothers were no longer able to carry on raising their children. In contact disputes, concerns over fathers' willingness and ability to engage in practical caring were often overshadowed by the courts' push to implement contact. In sole residence disputes, there was a reluctance to upset the status quo which can be seen as an implicit recognition of the value of good caring routines; in the paper this will be contrasted against the courts less cautious approach to applications for shared residence or contact orders.

Paper 2: Tina Haux and Lucinda Platt. The links between fathers' involvement with their children before and after separation

With increasing rates of separation and divorce, and the extent to which fathers lose contact with their children following separation, concerns have grown about the involvement of fathers in their children's lives. Much of the concern focuses around the wellbeing of children of separated parents and the potential benefits from maintaining contact with their birth father. While the evidence suggests that there may be positive consequences of maintained contact in most instances, and this is reflected in policy moves towards establishing 'shared care' as a default, it is of course difficult to assess the counterfactual of what the experience of the child would have been had there been no separation. There is currently little research which links a father's parenting after separation to that which took place while the family was still intact. In this paper, we draw on a nationally representative study of children born in 2000-2001 in the UK to provide an original analysis of the relationship between pre-separation fathering and post-separation contact. We provide new insights into the drivers of post-separation contact and the extent to which such post-separation contact represents a continuation of pre-separation fathering practices. We find that fathers who were more active parents prior to separation tend to have more frequent contact after separation, and vice versa. Nevertheless there is still a tendency of even more involved fathers to reduce or lose contact over time. We conclude that measures to increase the possibilities for fathers to be involved in parenting more comprehensively through the first decade of their children's lives, is likely to have positive payoffs for contact should the parents subsequently split.

Paper 3: Mavis Maclean, The Future of Family Law: Blending the Professions

This paper addresses a question which arose during our recent study of lawyers, mediators and lawyer mediators: when is a lawyer a lawyer? (see Lawyers and Mediators ,Maclean and Eekelaar, Hart, 2016)

As our investigation into services helping separated families developed, this question led to further questions: when is lawyer a mediator? or a conciliator? or an arbitrator? or a financial adviser? When is a mediator a counsellor? or a legal adviser? or an arbitrator? When is a judge a case manager? or a negotiator? or an adjudicator? When is a lay adviser a mediator? or negotiator?

In law, as in medicine and in teaching, professional boundaries are becoming blurred: lawyers are mediating, nurses are prescribing, ex soldiers are teaching. is this simply an unfortunate result of neo liberalism and austerity? Or are there positive aspects? As TS Eliot asks in the Waste Land, " what branches are growing out of this stony rubbish?"

This paper looks at one such branch. If we consider how best separating families can be helped post LASPO, given that MoJ's latest study " Varying Paths to Justice " ,December 2015, describes how people want authoritative advice from conciliatory lawyers who help both parties reach their own decisions, might it not be possible, helpful, and cost effective for 1 lawyer to see both parties? This paper develops the argument for this proposal put forward at the Resolution Conference October 2015 , showing that there is no Law Society bar to joint work, that legal advice is not a reserved activity, and that a blending of law and mediation may be both possible and desirable. There is an excellent example in the Netherlands known as vFAS. (verenigen van Familerecht Advocaten Scheidingsmediators).

Stream: International Criminal Justice: Theory, Policy Practice 3

Paper 1: Anna Marie Brennan, Accountability Gaps in the Doctrine of Superior Responsibility: Exploring the Efficiency of the International Criminal Court to Prosecute Leaders of Transnational Terrorist Groups

The International Criminal Court (ICC) plays a significant role in contemporary international law through its jurisdiction to prosecute the perpetrators of the most serious crimes of concern to the international community. Furthermore, the Preamble of the Rome Statute commits the ICC to "put an end to impunity ... and thus to contribute to the prevention of such crimes." Nonetheless, the question whether the doctrine of superior responsibility is applicable to leaders of transnational terrorist groups conceals a deep problem that might not be so easily resolved. The provenance of the doctrine of superior responsibility was strongly fused to the concept of hierarchy. Its critical facet, effective control, necessitates a stream-lined organisation with a clear-cut chain of command, sufficient channels of communication which is operative during hostilities. Such an archetypal model begs the question whether the doctrine can be applied at all to transnational terrorist groups. Absent such an organisational framework, it would be unfair to hold superiors responsible, because they would lack the tools necessary to exercise effective control over their subordinates. It requires little imagination to understand that if the issue arose before the International Criminal Court, it would have to disentangle a hotchpotch of network-based organisational structures in order to attribute criminal responsibility to leaders for abhorrent crimes.

Paper 2: Tetyana Krupiy, Closing the Accountability Gap for War Crimes Committed by Robots: Envisaging the Doctrine of Command Responsibility as a Microcosm of Social Relations

This paper engages with a pressing issue of how to assign appropriately liability when a lethal autonomous robot malfunctions and as a result kills individuals entitled to protection under international humanitarian law. Scholars have identified the doctrine of command responsibility as a prime candidate for assigning responsibility to actors such as the software programmer, the corporation manager, the corporation shareholders and the military commander, when a lethal autonomous robot malfunctions and triggers a war crime. Because the doctrine of command responsibility governs a relationship of power between the superior and the subordinate, the nature of the relationship of power and how power relationships are linked to particular institutional structures should be analysed. Using Foucault's theory of the nature of power, the paper deconstructs the doctrine of command responsibility to illuminate that this doctrine is patterned on the structure of government institutions and how they exercise power. Perspectives from sociology and the cultural study of law will be utilised to argue that power relationships exhibit a horizontal flow of power in both directions. It will be demonstrated that the doctrine of command responsibility does not reflect the reality of relationships in organisations involving non-state actors because the doctrine is patterned on a model of the exercise of public power. The doctrine of command responsibility ignores the horizontal aspect of power relations. The paper will put forward how the "effective control" test may be

redrafted to reflect the horizontal and vertical flow of power inherent in relationships between non-state actors so as to extend the command responsibility accountability framework to them. Through using a law and society approach to legal analysis, the paper contributes to current scholarship by offering a new approach to solving the accountability gap posed by the development of lethal autonomous robots.

Paper 3: Satwant Kaur, International Criminal Law and the Development of 'Ending Impunity'

The Preamble to the International Criminal Court (ICC) outlines that the most serious crimes of concern to the international community must not go unpunished and emphasises the determination to put an end to impunity for the perpetrators and thus contribute towards the prevention of such crimes. This notion of 'ending impunity' and bringing perpetrators to account is not a recent development. In 1919, under Articles 228 and 229 of the Versailles Treaty, a list of 896 German war criminals were asked to be surrendered to the Allies. The German Government proposed a compromise of bringing to trial the accused themselves and the Leipzig War Crimes Trials commenced in 1921. While these trials were seen as a failure and in opposition to the spirit of the Treaty, the notion of bringing all perpetrators to account was introduced and gained further momentum during World War II and the Declaration of Moscow proclaimed that 'justice' should be done on the evil doers, distinguishing between 'major' and 'minor' criminals. Between 1945-1948, 1,000 cases were tried in addition to the Nuremberg trials in an elaborate scheme to 'end impunity' and bring all of those responsible to account. It was always, however, restricted to those that lost the war, there was no question of bringing any prosecutions for crimes committed by the Allies. This paper explores how notions of 'ending impunity' and holding those responsible to account have developed within International Criminal Law and what this means within the context of the International Criminal Court. Can the ICC effectively 'end impunity'?

Stream: International Environmental Law and the North-South Perspective

Paper 1: Kate Wilkinson. International Environmental Law through an Ecofeminist Lens: Are contemporary responses to environmental problems masking the North-South Divide?

This paper examines the way in which States from the Global North and South seek to balance the often paradoxical goals of development, economic growth, environmental protection and sustainability in the form and content of international environmental law and policy (IELP). Drawing on ecofeminist theory, I develop an analytical framework through which I examine the content of the negotiating documents and adopted legal agreements in the climate change, biodiversity and desertification regimes. These agreements include the Paris Agreement under the United Nations Framework Convention on Climate Change (2015), Nagoya Protocol (2010) and the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (1994). I focus on the interconnected and interrelated tensions contained in the texts between the balancing of environmental concerns, development needs, economic growth, and trade interests.

By using ecofeminist content analysis, I reveal the presence of underlying assumptions, values and beliefs which inform the ways in which these regimes attempt to balance these competing interests. I show that the presence and origins of these assumptions, values and beliefs not only reflect the historical origins of the North-South divide, but also indicate that it continues to manifest itself in troubling and gendered forms in contemporary IELP.

Extrapolating from this, I suggest that contemporary responses to environmental concerns may not be as effective without explicitly engaging with the continuing manifestations of the North-South divide, and addressing the underlying assumptions that inform it. Finally, I conclude that the use of ecofeminism offers an original approach to examining this tension because it can reveal the gendered and environmental impacts which disproportionately affect the Global South.

Paper 2: Eghosa Ekhator. International Environmental Law and the North-South Perspective: Any role for the African Union?

This paper will focus on the roles of the African Union (AU) in the promotion and protection of the Environment in Africa. Arguably, the role of the African Union is neglected in the scholarly discourse in International Environmental Law and North-south Perspective. This paper will highlight the various

(environmental) mechanisms that have been developed by the AU. Also, this paper will focus on the roles of the AU in the contemporary sustainable development agenda. One of the AU mechanisms in focus in this paper will include the Revised African Convention on the Conservation of Nature and Natural Resources (Revised African Nature Convention) in July 2003. The Revised Convention provides for a plethora of environmental principles including the right to satisfactory environment enshrined in Article III of the Convention. Also, Bamako Convention on the Ban of the Import into Africa and Control of Transboundary Movement and Management of Hazardous Wastes within Africa (Bamako Convention) will be in focus. Other AU measures in focus in this paper will include the NEPAD (New Partnership for Africa's Development), the African Charter on Human and People's Rights, the Protocol to the African Charter on Human and People's Rights on Women and the Agenda 2063 amongst others. This paper will contend that on the basis of the aforementioned mechanisms, there is a distinct and coherent framework on (international or regional) environmental law under the auspices of the AU.

Paper 3: Jona Razzaque. The green economy and forest ecosystem services: Assessing the global north - south divide

Both the global North and the global South are actively engaged with the concept of green economy, and policies are in place in many developed and developing countries to facilitate the transition to inclusive and resource-efficient green economy. At the international level, it is hailed as a great enabler for economic rebalancing between the North and the South leaving aside the disagreement over who reaps the benefits of unsustainable economic activity and who bears the burden of resource depletion and pollution. Approaches such as payments for ecosystem services can help to secure an economically efficient shift to a sustainable economy, offer incentives to forest conservation, and encourage sustainable development in sensitive forest areas. Sustainable investment in forest ecosystem services can assist the global South gain a competitive edge and contribute to enhance the livelihoods and wider well-being of poor people. However, for such payment schemes to work, appropriate national laws, policies and institutions are needed along with adequate economic settings and incentives. This paper explores the opportunities and concerns of forest ecosystem services in the context of conflicting priorities of the North and the South.

Stream: IT Law and Cyberspace 1

Paper 1: Chunxiao Zhang, New Angles for the Definition of Personal Data Protection and the Application of the Proportionality Principle

Privacy and personal data protection have become a huge issue in the digital age. However, there is no consensus on the definition of privacy and personal data protection, let alone the corresponded regulatory framework. Informational self-determination is too vague to illustrate the meaning of personal data protection and its relationship with the right to privacy. Moreover, the lack of empirical evidence to justify the stringent legal protection for personal data has long been criticized. On the other hand, the intense and intrinsic conflicts between the right to data protection and other fundamental rights require deeper questioning on the real essence of personal data protection.

The differences between data and information can be used as a new angle to rethink about the essence of the right to data protection and its relationship with the right to privacy. In the big data era, neither of them would be an absolute right. The proportionality principle plays a vital role when balancing different rights and interests. The hierarchical structure of the data-information-knowledge system throws light upon the application of the proportionality principle in this field. Further, more empirical studies concerning this issue have been done from both corporations' and individuals' perspectives. All these new insights would help lawmakers to fill the details of the proportionality principle in the field of personal data protection in a consistent way.

Paper 2: Magali Eben, The New Economy and Its Challenges for Traditional Antitrust Tools: The Prospect of Data as a Price

These are exciting times: society changes at an astounding pace, driven by rapid innovation. Competition authorities are increasingly confronted with Internet businesses. Difficulties arise with market definition, the assessment of market power, or regarding practices specific to a type of online business. The traditional

tools (such as the SSNIP test) are not adapted to these cases. The question arises how practitioners, authorities and regulators should respond to this challenge. This paper aims to contribute to one part of the debate: how to define the market for free online goods or services. Specifically, the study focusses on the possibility of conceptualizing personal data as the price consumers pay for free goods or services, for the purpose of performing the SSNIP test to define the market.

The first part of the paper discusses the notion of 'free' on the Internet and its challenges. It explores the concept of market definition when no monetary price is charged for the service provided. The possibility of personal data as the price paid by the consumer is put forward.

The second part discusses the requirements data have to meet to be considered as a price. Traditionally, eight requirements are put forward as the qualities of the ideal medium of exchange (stable value, durability, acceptability, portability, divisibility, storability, recognisability and homogeneity). The paper focusses on two of them, value and acceptability, engaging with the literature on media of exchange, and with research regarding consumer behaviour and economics.

Finally, the paper recognizes the difficulties raised by this new notion of data as a price. The paper concludes that rapid changes in society need not be an obstacle to legally sound decisions. With the necessary flexibility and creativity, traditional tools can become modern solutions.

Paper 3: Lu Xu, The Myth with "Wisdom Court" in China – from the application of cloud technology in civil procedural process

On 24th Nov 2015, the Zhejiang People's High Court completed a collaboration deal with an E-commerce giant, Alibaba Group, regarding the use of cloud technology in facilitating judicial procedures such as service process. In this deal, Alibaba, who owns the biggest e-commerce platform in China, Taobao, agrees to assist the court to establish a big data service system aimed at collecting and calculating personal, geographical information for judicial purposes based on its accumulated data of millions of users. The ultimate goal of this package is to reshape the court towards "Wisdom Court" equipped with modern technological, intelligent tools. The idea of Wisdom Court highlights the need that judicial practice shall also keep up with the scientific and technological development in contemporary world in order to function effectively. However, this scheme might create side-effects as infringement of rights of privacy due to possible abuse of power in personal data collection and sharing process. In this regard, this paper would look into current legal regime in China regarding online privacy rights protection and identify possible issues which shall concern any further strategic plan in court. Also, the role of companies such as Alibaba Group in this arrangement requires to be further examined, especially when it actually starts to perform some judicial duties such as restricting parties from transferring money in their Alipay account.

Stream: Law, Politics and Ideology 1

Paper 1: Jack Meakin. (Re)Defining Constituent Power

Constituent power as normative principle is the popular will that grants legitimacy to the constitution (Loughlin and Walker 2007) with both a 'surface' (external) projection of constitutional legitimacy, and an internalised function of constituent power that provides a legitimate base for political action exercised on behalf of the people (Thornhill 2014). This conception distorts our aesthetic understanding of political potential. This constituent power is a mere abstract term separated from agency with a politically performative function.

This paper calls upon a (re)definition of constituent power, to discuss its relationship with constitution and the political potential of the multitude. To recognise contemporary theory's deficient comprehension and return to consider the contemporary 'role' of the constituent power; a non-systems theory centric methodology is essential. The starting point is to recognise the subaltern. Constituent power is resistance; exercised when and where we do not necessarily consider it (Negri 1994). This conception rests on the elevation of the subject over the system. Here, constitution is not a transcendental project but "a theory about our immersion in being and about being's continuous construction." It is to say, the multitude exists in a state of immanence, capable of questioning their act of constitution and what the people seek to achieve through community. This definition seeks to establish the constituent power's potential for decision-making and shaping constitution by 'the people'. The rupture and reconstruction of the current epistemological

pacification of constituent power is the essential step toward a critical discourse of contemporary politics, democracy and constitution.

Paper 2: Dimitrios Tsarapatsanis. 'Political Theology' Naturalized: Realist Political Theory, Schmitt and Political Constitutionalism

The paper takes its inspiration from recent debates between 'moralist' versus 'realist' ways of politics to provide a characterization of the relationship between law and politics. It explores two main ideas. First, a social-scientific conception of politics constrains normative constitutional theorizing. Second, it renders necessary at least some forms of political constitutional theory. The paper draws on an unorthodox interpretation of Carl Schmitt's work. It begins by taking its cue from recent realist criticisms of normative approaches to politics. These criticisms invoke the idea of the specificity of the political and its non-reducibility to morality. The paper then turns to a revisionary interpretation of Carl Schmitt's theory of the political, placing particular emphasis on the distinction between ordinary and extraordinary politics. Its main contention is that Schmitt's agonistic conception of politics can be profitably 'naturalized', i.e. approached by means of enquiry continuous with those of the natural and social sciences. It is then argued that understanding Schmitt's two major works on politics, i.e. 'Political Theology' and 'The Concept of the Political', as providing elements of a positive theory of politics puts us in a position to recast his criticism of normative constitutional theory in the following terms: in extraordinary conditions, politics has priority over law in the specific sense that pertinent legal norms are typically causally inert. I argue that at least two conclusions follow. First, Schmitt's thesis places a significant constraint on normative constitutional theorizing: such theorizing is useful only insofar as it identifies norms that can actually motivate political actors. Second, apprehending the peculiar unity of public law requires appropriate theorizing for both ordinary and extraordinary political conditions: when it comes to the latter, conceptual space is thus opened up for a descriptive form of political constitutionalism.

Stream: Law's Empire? Justice, Law & Colonialism 3

Paper 1: Muhammad Abbasi, Co-existence of Sharī'a and the Modern State: A Historical Perspective from South Asia

This paper explores the process of the incorporation of Sharī'a into the state structure in British India by looking into the developments in waqf law during the colonial period. The primary sources of this study are the judgments of the Privy Council delivered between 1800 and 1950 and the related literature such as legal commentaries and fatāwā. It is argued that despite replacing the traditional institutional structure, the overall legal system became more interactive and inclusive. It could interact with various stakeholders and represent them in the process of law making, which responded to social change. The colonial state transformed Sharī'a to adjust it within its institutional structure by using the techniques of translation, adjudication, legislation and education.

Adjudication was preferred over legislative codification as a mode of rule making because of its flexibility. The translation of classical Islamic legal texts, the *Hidāya* and parts of the *Fatāwā al-Ālamgīriyya*, relieved English judges of the need for a reliance on local legal advisors. However, Muslim lawyers, judges, legal commentators, and some 'ulamā' simultaneously negotiated and collaborated with, and resisted colonial administrators in the process of this legal transformation. English educated Muslims replaced 'ulamā' as intermediaries between the state and society. This however did not eliminate the role of 'ulamā' as the custodians of Islamic law. They established closer links with society and issued a large number of fatāwā. They also lobbied for the enforcement of Islamic law to promote women's rights of inheritance and to get a divorce.

Paper 2: Petra Mahy, The Comparative Evolution of Company Law in Indonesia, Malaysia and the Philippines: Colonial Polices and their Legacies

This paper provides broad brush comparative accounts of how company law has changed over a long period of time, what political and economic factors have been involved in change, or lack of change, and what conclusions can be drawn about the evolution of this area of law in three different countries: Indonesia, Malaysia and the Philippines. In these three countries, company law was originally a colonial era transplant

which was mostly made just as an incidental general extension of the law of the metropolis to the colonies, within the general goal of building colonial legal systems. This paper analyses the patterns of legal adaptability following the original transplant and seeks to provide explanations for the similarities and differences in those patterns.

Stream: Medical Law and Ethics 3

Paper 1: Glenys Williams. The discrimination and equality provisions in assisted suicide: Nicklinson and Carter

Although there is a difference between the legislative provisions in England and Wales on the one hand, and Canada on the other, an analysis of two assisted suicide cases from each jurisdiction (Rodriguez (1993) and Carter (2012-15); Pretty (2001-2) and Nicklinson (2012-14) will demonstrate that there is enough of a resemblance between them to facilitate a comparison of the main issues the courts have considered when determining whether or not blanket bans on assisted suicide impinge upon fundamental rights, particularly as regards discrimination/equality. In England and Wales, the relevant provisions are contained in s2(1) Suicide Act (as amended) and Article 14 European Convention on Human Rights. As Article 8 is not free-standing, Article 8 will also be pertinent. In Canada, the focus will be on s241(b) of the Canadian Criminal Code and s15 of the Canadian Charter of Rights and Freedoms. Following Carter and Nicklinson, it can be suggested that judicial awareness of the discrimination/equality provisions has changed considerably, and for the better.

In comparing Rodriguez and Carter; and Pretty and Nicklinson, the following issues will be briefly examined. Firstly, what are the aims of the UK and Canadian legislation in light of the concept of vulnerability which is said to be protected by the prohibition on assisted suicide? What does vulnerability mean in this context? Secondly, it is necessary to demonstrate the proportionality of the blanket ban to satisfy the (utilitarian) justificatory criteria in Article 8(2). The margin of appreciation awarded to states is relevant here as is the need to balance collective interests against individual rights. Thirdly, another component to be satisfied in both jurisdictions to justify an infringement of rights is minimal impairment. This goes to the erroneous belief that simply because the current law applies to all, that it cannot be discriminatory.

Paper 2: Jo Samanta, Sarah Sargent and Kudret Yeldon. Should people in the minimally conscious state have a right to formal reassessment?

People in the minimally conscious state (MCS) lack decision-making capacity. Absent a valid and applicable advance refusal of care, all decisions must be made in their “best interests” which engage in commencing, continuing or intensifying neuro-rehabilitative programmes and particularly before withdrawing or withholding life-sustaining treatment. Ethically more challenging is whether subtle changes in conscious awareness should trigger the need for re-assessment.

A qualitative study was undertaken to ascertain whether people in MCS should have a ‘right’ to be reassessed. Four focus groups were used (comprising lawyers and senior decision-makers). A standard three-phase format (open coding, axial coding, and creation of relational statements) was used to establish correlation and concurrence. From the relational statements, a grounded theory explaining the results of the data and answering the research question was developed.

This study revealed that a range of factors influenced whether people were considered for re-assessment. These included changes in clinical condition, relatives’ requests, environmental factors and opportunity. These act as “triggers” for possible further action of which re-assessment is one of a range of options for their therapeutic management. Re-assessment was not seen as a ‘right’ on strict legal principles. Nevertheless, there was a groundswell that re-assessment is a ‘moral’ entitlement for people in MCS.

Decisions to reassess are highly subjective, arbitrary and influenced strongly by factors such as opportunity and environment. It is essential therefore that decisions for re-assessment are taken on a principled basis. This study shows that the emergent basis for reassessment, founded upon a grounded theory analysis of the data is that this is fundamentally a context driven process. The challenge lies in how to integrate a moral entitlement to reassessment within a managed care framework, which will be discussed.

Paper 3: Kevin De Sabbata, Dementia and Treatment Decisions: Towards a Relational Approach

Dementia is a degenerative disease that causes the progressive impairment of memory and reasoning ability. In 2015 it is thought to have affected around 850,000 people in the UK. This condition may last several years and involves both elderly people in need of medical treatments, and younger individuals with other health problems.

In the UK, the law prescribes that a person must give their free and informed consent before receiving any medical treatment. However, people with dementia may not have the sufficient mental capacity to make conscious treatment decisions and they may express unclear or contradictory opinions. Deciding how to act in such situations poses particular challenges for healthcare professionals.

A possible solution comes from Article 12 UN Convention on the Rights of Persons with Disabilities (UNCRPD). This Article indicates supported decision-making as the way to promote the exercise of legal capacity and decisional power also in the case of people with serious mental impairments. Referring to a relational understanding of autonomy, Article 12 leads to a new, less individualistic notion of treatment decisions. Indeed, it requires to depart from the vision of treatment decisions underpinning current legislation, which mainly focuses on protecting the person from external influences. Instead, it proposes a regulatory model which acknowledges the importance of being supported by relatives and doctors, and of sharing decisions with them regarding medical treatments.

This paper analyses the implications of the new vision expressed in Article 12 UNCRPD with regard to treatment decisions of individuals with dementia. In particular it shows how, in the British legal context, this vision leads to a new approach based on shared decision-making and more intense dialogue between the person and the people who care for them.

Stream: Private International Law 2

Paper 1: Federico Mucciarelli, Carsten Gerner-Beuerle, Mathias Siems and Edmund Schuster. Companies' freedom of establishment in the European Union: A Comparative and Empirical Investigation

The authors have been entrusted by the European Commission to draft a 'Study on the law applicable to companies with the aim of a possible harmonization of conflict of laws rules on the matter'. This paper explains the preliminary findings of our study. The first task of the study is drafting a thorough comparative analysis of company private international law mechanisms in all 28 Member States of the European Union, based upon national reports drafted by national correspondents in each Member State. Such analysis is related to foreign incorporated companies, to newly incorporated companies according to domestic law and to moving-in and moving-out cases. Our preliminary findings reveal in several Member States private international law regimes are unclear, and that they sometimes do not comply with CJEU case law interpreting freedom of establishment. Another task of the project is collecting empirical data on whether and to what extent companies make use of EU freedom of establishment and whether 'pseudo-foreign' companies are a diffuse phenomenon. The preliminary findings show that certain Member States are used for incorporating 'pseudo-foreign' companies, which operate exclusively in other states. The data are presented in the form of descriptive statistics, in graphical form, and with the help of correlation tables. Where the quality of the data allows, we use regression analysis to identify determinants of cross-border mobility and trends over time. Eventually, following the comparative and empirical analysis, we will formulate suggestions for harmonising company private international law rules at EU level.

Paper 2: Emma Roberts. Rome II and Road Traffic Accidents: A critique of recent case law

The Rome II Regulation has established a uniform regime of conflict of law rules across the European Union (except for Denmark) which determines the law applicable to non-contractual obligations. It marks a significant development towards the Europeanization of private international law and aims to provide the most appropriate connecting factors to achieve both legal certainty and justice in individual cases. Many non-contractual obligations are recognised to present such distinct factors that, to achieve these aims, a special rule is provided for determining the applicable law in cases in respect of product liability and environmental torts, for example. Throughout the legislative process, the European Parliament sought to establish a separate rule for road traffic accidents, recognising that these cases too present such novel situations that a blanket application of a *lex loci damni* approach would not provide an appropriate answer.

Such attempts were rejected and, as a result, cases arising out of road traffic accidents are subject to the Regulation's general *lex loci damni* rule along with its escape clause and limited exception. This paper offers a critique of the Regulation's response to cross-border cases of personal injury, especially those resulting from road traffic accidents, paying particular attention to the Regulation's impact on the law of England and Wales. There have been few cases that have applied the Regulation's provisions to date, but significantly the majority of such cases are in respect of road traffic accidents. This paper examines those decisions and questions whether applying the Regulation's general rule to cases of road traffic accidents can truly give rise to an outcome that provides 'justice in individual cases'.

Stream: Refugee and Asylum Law: Theory, Policy and Practice 3 -Comparative International Refugee Protection (c)

Paper 1: Hakan Ergin, Syrian students'right to higher education at Turkish universities: lecturers' perspectives

Lecturers of Turkish Language at universities in Turkey have been charged with the duty of teaching Syrian students Turkish Language. As the war in Syria does not seem to come to an end soon, policies have been employed to help the social integration of 2,5 million Syrian migrants in Turkey. In this sense, the Syrians in Turkey have been provided with the right of studying at universities in Turkey without taking an entrance exam and paying a tuition fee. Thanks to this policy, 5560 Syrian migrants could already have the chance of studying at a university in Turkey. Nevertheless, as most of them do not speak Turkish, they are taught Turkish at universities at first. Thus lecturers of Turkish Language who teach Syrian students are first practitioners of this governmental policy and have been the first to closely witness the Syrian students' adaptation to universities in Turkey. Therefore, revealing the perceptions of those Turkish Language lecturers towards this adaptation process would be of value. In this context, this qualitative study aims to explore ten Turkish Language lecturers' perceptions towards the implementation of this policy and the adaptation processes of their Syrian university students to the university environment in Turkey. The data were collected through semi-structured interviews and analyzed by conventional content analysis technique. The findings reveal that the participants have both positive and negative opinions, feelings, observations and experiences towards their 'migrant students' and their right to higher education in Turkey.

Paper 2: Jasmin Fritzsche, Uniquely protected or uniquely protracted? The recent displacement of Palestinian refugees from Syria

The establishment of the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) and the subsequent exclusion of Palestinian refugees from the 1951 UN Convention relating to the Status of Refugees and the protection mandate of the United Nations High Commissioner for Refugees (UNHCR), was intended to protect the identity and rights of the Palestinian people. This institutionally manifested division has contributed to the construction of a separate and unique category of 'Palestine refugees'. In this paper I argue that the international measures adopted for Palestinian refugees are unsuitable and inadequate to manage their protracted and multiple displacements occurring since the 1940s, as they have not only failed to resolve or cope with it but have rather contributed to its perpetuation. In particular, this paper looks at the effects this exclusion as well as the differing conceptualization of protection by UNRWA and UNHCR have on the individual protection of Palestinian refugees during secondary displacement. To approach this, I will take a closer look at the most recent displacement of Palestinian refugees from Syria and their individual protection in Jordan, Lebanon and Egypt. With this, the paper aims to contribute to the broader critical debate on the shortcomings of the global refugee regime.

Paper 3: Bahija Jamal, Current Moroccan migration and asylum policies: Two years after the adoption of the "new policy"

For centuries, Morocco's geographical location attracted migratory flows. Today Morocco is a land of emigration, immigration, return migration and transit. It hosts many regular immigrant workers, a relatively large number of foreign students, but also many asylum seekers and refugees and irregular migrants who remain "in transit" often for years.

September 2013 was a turning point in Morocco's view towards irregular migrants and granting them more human rights. In response to a report on the situation of migrants and refugees in Morocco, King Mohamed VI initiated a new global, integrated and humane migration and asylum policy, in accordance with Morocco's international human rights commitments. In line with other Moroccan efforts' in the reform process for structural human rights, the Moroccan Government has undertaken numerous measures to implement a new public migration policy. For example, in 2014, large numbers of undocumented immigrants were regularized. Moreover, three draft laws on asylum, migration, and human trafficking have been elaborated, a number of bilateral agreements have been signed with key governmental stakeholders (related to immigrants access to basic civil, social and economic rights), and in December 2014 the Moroccan Government Council adopted the National Integration Strategy (initiated by the Ministry in Charge of Moroccans Living Abroad and Migration Affairs).

This article explores the lessons learned two years after the implementation of the new migration and asylum policies. In particular, it also asks to which extent migrants and refugees have benefited from this "New Policy" and what are the remaining challenges for Morocco's migration and asylum policies?

Stream: Sentencing and Punishment 3

Paper 1: Debra Wilson, The "Genetically Programmed" Killer: Evaluating the Increasing Use of Behavioural Genetics Arguments in Sentencing

A US appeal court in 2001, faced with an argument that evidence providing a genetic explanation for a convicted murderer's actions ought to have been considered during sentencing, commented "it is highly doubtful that the sentencing court would have been moved by information that [he] was a remorseless, violent killer because he was genetically programmed to be violent," Since then, however, behavioural genetics arguments to mitigate sentence are becoming more common, and are supported by an increasing number of scientific studies. This paper will consider some of the scientific research linking the MAOA gene to criminal conduct, and its successful use as a mitigating factor in sentencing decisions in the US and in Italy. It will also consider some recent empirical studies involving judges and members of the public which seek to determine whether such evidence will affect sentencing, and if so, whether it is likely to act as a mitigating or aggravating factor. Evidence related to genetic explanations for behaviour may have an important role to play in sentencing hearings, but may also require us to reconsider some of the long accepted theories behind sentencing policies.

Paper 2: Alison Cronin, Antisocial Personality Disorder, The Criminal Law and 'Victim-Offenders'

Antisocial personality disorder is now a recognised mental health condition. Although only 4 – 11% of the UK population is affected, over 60% of the UK prison population display identified traits of the disorder. Indeed, criminality is not a likely result of having the disorder but is a medically recognised characteristic of it. However, in the sentencing process, if taken in isolation the traits are aggravating in nature whereas, taken collectively, and symptomatic of the mental illness, they are potentially mitigating. Even more troubling, the disorder results from external childhood influences, with triggers such as emotional, physical and sexual abuse, bullying and neglect. Furthermore, recent neurological and neuropsychological research demonstrates an internal predisposition to personality disorder. Put simply, the defendant does not choose antisocial personality disorder. Arguably this undermines liability based on 'freewill' but also poses challenging questions for the criminal law given that the offender is likely to have been the child victim of some form of criminal abuse or neglect. Whereas the Sentencing Council may consider a victim of crime who suffers anxiety, disabling mental illness or personal injury for compensation, in this case the vulnerable 'victim-offender', whom the justice system has seemingly already failed, is now deemed worthy of punitive sanction. Arguably this is counter-intuitive and must offend any sense of even-handedness, particularly since child victims are considered more deserving, with considerably larger compensatory awards than adults. This paper argues that although criminality is deserving of punishment, mental illness is deserving of treatment. Aspects of antisocial personality disorder are treatable and, given the early manifestation of the defining characteristics, the Youth Court could offer an opportune point for appropriate intervention for such victim offenders.

Paper 3: Gavin Dingwall. The Minor Majority and the Limits of a Risk Penology

Pioneering work by Feeley and Simon in the 1990s identified trends that supported a thesis that risk had become an increasingly important determinant of criminal justice response and/or penal outcome. To the authors, this represented no less than a 'new penology'. Vital to any risk-based strategy is a process of differentiation and prioritisation. The existing scholarship, which tends to support Feeley and Simon's claims, is extensive and often rich but has focussed almost exclusively on those adjudged (rightly or wrongly) to pose significant risk. However, the reality is that the vast majority of offenders are classified and processed as posing no or little risk. Does the minor nature of most offending, and our responses to it, undermine the perceived centrality of risk in contemporary penal policy? Or, alternatively, do official responses to no-risk or low-risk offenders paradoxically enhance claims that risk is an increasingly prevalent determinant of outcome?

Stream: Sexual Offences and Offending 3

Paper 1: Robert Blackash, UK Prison X: A Counter-Public Space? Service Users' lived realities; intimacy, support and acts of resistance.

In this paper I explore the extent to which we might use the queer-theory concept of 'A Counter-Public Space' to describe a UK Prison. The discussion draws upon extracts from a vast body of primary research materials based on the lived realities of a group of male prisoners who collaborated directly with the author during 2014. This collaborative research was undertaken as an act of resistance and exemplifies the importance of biographical material, diaries, observational records, letters and recollections as sources of valid data from 'service users', data on which future policy decisions should be based. This material is intended to expose the reality of prison life and further the research agenda in relation to the rehabilitation of offenders. The exploration focuses on acts of intimacy as expression of more than a 'counter-culture', but as an alternative 'queer' challenge to the Surveillance Regime in Prison X. The actions discussed here exemplified the formation of complex, nuanced non-normative but highly positive social relationships between vulnerable prisoners, sex offenders and inmates placed in Prison X for their own safety.

The article is a direct response to recommendations from The Clinks Report UK (May, 2015) 'Tackling Inequality in the Criminal Justice Systems' calling for more qualitative information drawing on service users experiences, valuing this information and making effective use of it at a national policy level. In addition the article seeks to further the academic debate regarding the implementation of a single equality duty, improving all aspects of equality and diversity in the UK Justice System as recommended by the EHRC Research Summary 38 (2009).

Paper 2: Elizabeth Agnew. 'Sexting' among Children and Young People: Exploring the Challenges

This paper explores the emergence, nature and extent of sexting among children and young people and considers some of the key challenges sexting presents for legal and other professionals. My research will explore the power dynamics at play within popular discourses about 'new' youth sexual cultures and 'deviant' or 'risky' sexual behaviour, especially the emerging new phenomenon of 'cyberbullying' and 'sexting'. Reflecting on, and challenging, what is termed 'risky' behaviour and the social and political debates on youth sexuality and agency is crucial in addressing what is deemed premature sexualisation and 'risky' behaviours among young people.

This working paper also outlines key challenges faced by policy makers in their understanding of cyberbullying and sexting among young people. Sexting among young people is a criminal offence under the Protection of Children NI Order 1978 and the Protection of Children Act 1978 (amended under the Sexual Offences NI Order 2008 and the Sexual Offences Act 2003). This raises significant challenges for legal and other professionals in responding to sexting among young people including issues surrounding consent, gender stereotypes, distinguishing between exploratory and coercive sexual behaviour(s) and when to utilise legal response mechanisms. This paper will argue that, only through understanding the cultural paradigm young people operate within and challenging childhood ideologies can more progressive and effective responses be put in place to address sexting and other online harmful and exploitative behaviours among children and young people.

Paper 3: Jamie-Lee Mooney. Protecting Children from the Risk of Harm? A Critical Review of the Social and Legal Responses to the Recent Manifestations of Child Sexual Grooming

In 2012, McAlinden noted that Group Localised Grooming (GLG) was 'one of the most high profile forms of grooming, but remains one of the hardest forms [of grooming] for justice and support agencies to detect and target' and over three years later, this statement retains its accuracy. As such, this paper makes two main contentions. First, the ability to proactively and indeed, effectively target GLG, is hampered by the lack of understanding about how grooming techniques effect the victimisation process. Second, criminal law provisions, in particular the offence related to grooming under s.15 of the Sexual Offences Act 2003 as amended, is of limited use in prosecuting the complexity of the recent manifestations of the phenomenon.

While, 'accurate data is essential' in order to identify and safeguard victims who are particularly vulnerable to sexual exploitation, it is argued that the term 'vulnerability' is restrictively associated with children with obvious vulnerabilities, such as being in local authority care, for example. Despite recent research suggesting that these victims are at an increased risk of harm, recent legal responses have portrayed victims who displayed increased vulnerability as a result of grooming as 'delinquents' who 'consented' to their experiences and as a result, labelled them as 'imperfect victims'. It is concerning that perceptions of culpability within the offence process, resulted in lower levels of perceived harm; a contradiction to current understandings of risk of harm within public child protection law.

Turning to the criminal law, despite the s.15 offence being amended in 2015 to enable intervention at an earlier stage in the grooming process, elements of the offence are difficult to establish and consequently fail to effectively protect children. It is vital to assess if other provisions appropriately capture the recent manifestations grooming whilst appreciating the fluidity of victimisation arising from the phenomenon.

Stream: Social security: Ideology, law and society in the 21st Century 3

Paper 1: Chris Grover. In-work benefits: confusion and contradiction in an age of neoliberalism?

In the first Conservative budget for 18 years the Chancellor of the Exchequer announced the severe retrenchment of tax credits for people in low paid wage work. While as a consequence of resistance from various sources he withdrew the more controversial aspects of the cuts to tax credits later in 2015, they will be delivered, albeit later than desired, through cuts to the replacement for tax credits (universal credit). The retrenchment of in-work financial support was seen as being a move that was indicative of a neoliberal-informed government rolling back the size and scope of the state. This interpretation, however, needs interrogating because the position of the Conservative government elected in 2015 (retrenched in-work benefits, partly off-set by an increasing minimum wage) is a volte-face approach compared to the also described neoliberal Conservative governments of the 1980s and 1990s. They expanded in-work benefits and fiercely opposed minimum wage regulation. Given these observations, the paper will question how the recent developments in support for the poorest paid working people might be understood as being neoliberal in the context of arguments about the contradictory functions of social security policy in socio-economic legitimation and the reproduction of an economic environment conducive to growth.

Paper 2: Keith Puttick. Evaluating the NLW at the Wage/In Work Welfare Interface

Citizens' 'welfare' depends on a number of sources including wage income from the labour market, State social security, and targeted use of tax easements and reliefs - a source with some significant limitations (Alstott). Whilst wage income arguably remains the most source within that mosaic (Barr), it is also an increasingly problematic one given the precarious and short-term nature of much of the work on offer, casualisation, underemployment, and the phenomenon of 'dwindling wages' (ILO, 2014). The National Minimum Wage (NMW) has provided a basic wage floor, but in many sectors it has become a 'going rate' or wage ceiling rather than a minimum floor (Resolution Foundation, 2013). Furthermore, labour market deregulation has neutralised mechanisms for securing better wage levels, particularly in sectors where higher wages could be paid. This, in turn, means that State support, including support for unregulated housing costs, is likely to remain a vital element in the social wage income for many workers and their dependants.

The introduction of the National Living Wage will give 6 million or so low paid workers a 'pay rise' (Resolution Foundation, 2016). However, it will come at a price, including longer working hours and cuts to

occupational benefits, as low paying employers introduce 'productivity' gains to fund the costs and on-costs of implementation. Furthermore, the scheme will be accompanied by roll-backs of State support in the quest for the government's 'lower welfare, higher wages' strategy, including reductions in the value of Universal Credit and freezes to benefits' up-ratings through to 2020 – features criticised by the Child Poverty Action Group and the Fawcett Society, given the likely impacts on women and children. This paper will evaluate these and other features of the NLW scheme.

Paper 3: Karen Evans, *South Lakes Citizens Advice*

The work of the South Lakes Citizens Advice charity will be outlined, and the possibilities of collaboration between the Charity and conference delegates will be discussed.

Stream: Spatiality and Inclusivity

Paper 1: Amy Ludlow and Ruth Armstrong. Learning Together in Prisons: the Transformative Potential of Curating Inclusive Spaces of Encounter

In some ways prisons and universities have common missions: they are both social institutions that seek to capacitate and invest, in people, recognising that social transformation is achieved through inclusive individual growth. There are parallels between what we know from research about how people maximise their potential after being imprisoned and how people maximise their potential in learning environments. People's mindsets influence their capacity to desist from crime, or move towards non-offending lives, as much as their capacity to learn. Just as important for desistance and learning is that people are afforded avenues through which new mindsets can into practice by opportunities for inclusive growth and learning that recognise that potential is malleable. In this paper we explore how an initiative called Learning Together, which brings students in prisons and universities together to study degree level material in the prison environment, is seeking to create places of learning that are inclusive spaces of encounter which nurture pro-social subjectivity and facilitate social and civic inclusion and cohesion. Drawing upon our experiences of designing, delivering and evaluating a pilot Learning Together course in criminology at HMP Grendon, we explore the power of connectedness and inclusion through education and the spaces this creates in students' perceptions of themselves, their places in the world, their futures and our institutions.

Paper 2: Jill Dickinson and Vicky Heap. Place-making and shopping centres: exploring the tensions between stakeholders and the law

The UK retail sector was one of the many areas negatively affected by the global recession of 2008-2012. Whilst investment is now starting to be pumped back into commercial property, the focus is clearly on the development of new, rather than the redevelopment of old, shopping centres. Changing consumer demands for a more holistic shopping 'experience' mean that investors are favouring the creation of larger, purpose-built shopping centre complexes which are much better-placed to provide the range of different leisure activities that today's consumer seeks, alongside the more traditional retail offer. Questions arise as to how these new developments may impact upon their older counterparts, with the two sometimes almost standing side-by-side in primary centre hot-spots.

But regardless of the type of centre at stake, it is clear that both during and since the recession, there has been a rather bloody 'survival of the fittest'-type battle across the whole of the retail sector. Whether they fall within the old or new bracket, savvy shopping centres have spotted the necessity for re-thinking their practices, policies and procedures in a bid to simply survive in such a competitive market, let alone consider ways within which they can develop and expand their business further.

The effects of these mutations have had far-reaching consequences for those who hold a stake in shopping centre spaces, such as business owners, landlords, tenants, consumers and the wider public. This paper aims to better understand the complexities surrounding the symbiotic relationships of these stakeholders in the current economic climate, with particular consideration given to the complex legal framework that these stakeholders are required to operate within.

Paper 3: Anotonia Layard, Briony McDonagh and Carl Griffin, *The Spatiality of Protest: Diggers 2012*

In June 2012, a group calling themselves the Diggers 2012 established the Runnymede Eco-village on disused land owned by a private property developer and formerly part of the Runnymede Campus of Brunel

University in Surrey. This site was consciously chosen, as it was both close to the Runnymede Magna Carta memorial and a spatial echo of the 'original' Diggers, a group of self-proclaimed, seventeenth-century radicals who, in 1649, occupied part of the common at St George's Hill near Weybridge (Surrey) and established an agrarian squatter settlement where they planned to grow their own crops and practice a communal form of living which valued the land as a 'Common Treasury for all'.

This paper draws on the call made in an earlier paper, (Spatial Detectives, Bennett & Layard, 2015), to look for both the presence and the absence of spatiality in legal thinking and practices. It examines the way in which this spatial, historical nexus for protest – the protest splice – was consciously chosen by the protestors and yet largely ignored in recorded form in late 2015, when the application for possession came to be determined (Hampton & Ors v Orchid Runnymede, QB/2015/0285). Reflecting on this contrast, the paper then considers previous protest decisions to suggest that express recognition of spatiality in judgments is often left to the choice of individual judges when writing their decisions. It concludes that the absence of recognition of the spatial context in legal decisions is as significant as its finding. By eliminating the landscape (spatial, historical, cultural) from their decisions in favour of a 'rules -based' neutrality, judges are doing significant legal work, which needs to be assessed.

Stream: The Law and Unintended Consequences 3

Paper 1: Rebecca Moosavian, Injunctions, Jigsaws and Curiosities: Unintended Consequences in Misuse of Private Information

This paper examines the unintended consequences of injunctions granted to successful claimants in misuse of private information (MPI) disputes. The MPI action enables successful claimants to obtain injunctions, often anonymised, to prevent publication of a story (or parts of it) that infringe upon their Article 8 privacy rights. This paper specifically focuses upon the perverse incentives or perverse results of MPI injunctions, with reference to two specific examples.

First, it considers the efficacy of privacy injunctions in suppressing the dissemination of private information, particularly in an online era. Cases including *Streisand v Adelman* (in the US) and *Giggs v News Group* (in the UK) highlight the challenges of such injunctions; they may draw more attention to the disputed material by piquing wider curiosity about it, a phenomenon that has been colloquially termed the 'Streisand effect'. Second, this paper considers the perverse results that may arise from partial injunctions which restrict only part of a disputed story, such as the parties' names or certain details beyond bare facts. Cases such as *Goodwin v NGN* illustrate the difficulties that may arise in such cases, namely the risks of what the court in *DFT v TFD* termed 'jigsaw identification'. The paper analyses these MPI cases in light of literature regarding perverse incentives, considering the role of curiosity in such matters.

Paper 2: Aleksandra Cavoski, Lost in Translation? From Science to Regulation

A major challenge in regulatory control lies in the accurate assessment of impacts on human health and the environment. This entails an intersection between science, law and the connections with public policy, technology, ethics, public opinion and politics. The regulation of chemicals and climate change at the EU level represents a good example of where the regulator, in preparing policy and proposals relating to consumer safety, public health and the environment, is highly dependent on the input of scientific expertise provided by independent scientific groups and institutions. However, scientific findings can often get lost in translation through the legislative and policy processes. This can lead to over-regulation or under-regulation, with may have unintended consequences on human health and the environment and/or on innovation and the economy. This misunderstanding between policy makers, regulators and scientists can be seen both at the EU and national levels. For example, at the EU level, with regulatory reactions to potential harms from carbon nanotubes (when the EU's flagship chemicals regulation, REACH, was amended in a knee-jerk fashion with little underpinning scientific evidence).

In order to assess if EU regulation of environmental policy leads to unintended consequences on human health and environment, the paper will assess the process of translating science into law by knowledge into legal texts by looking at the different stages of the EU legislative procedure. Jasanoff's distinction between science in policy and research science is extremely useful in identifying the translation of scientific findings into law. Lawyers and policy-makers are especially interested in 'science in policy' which entails the

improvement on the use of science in legal decision-making and looks at how science advisors act as policy-makers (Jasanoff, 1990). This approach is invaluable in unveiling different phases in the use of scientific knowledge by Commission officials in EU legislative drafting.

Paper 3: Emma Jones, Football Fans, Fair Play and the Localism Act 2011

This paper will explore arguably unintended consequences which have arisen in relation to the community right to bid under the Localism Act 2011. Under this Act, groups can nominate a building or piece of land to be registered as an “asset of community value” (s89). A moratorium of six months can be placed on the sale of such an asset once it has been included on the relevant local authority’s register. After the landowner has notified the local authority that they wish to sell, community interest groups have six weeks in which to request to be treated as a potential bidder. If such a request is received, the landowner will have to wait the full six months before disposing of the asset (s95).

The stated purpose of this right to bid is to protect “buildings or amenities that play a vital role in local life” by allowing local groups an extended period of time to generate funding and finance to purchase the asset once it comes on to the open market. The examples given in Government non-statutory guidance reflect the needs of small communities, such as community centres and village shops.

However, there is increasing evidence that this right is being used in a wider variety of ways. One example of this is the way football supporter’s trusts have successfully applied to register a significant number of football stadiums, including Manchester United’s Old Trafford ground. Another is the attempt to register a skate boarding park on London’s Southbank. There have also been accusations that the right is being used as a weapon to thwart redevelopment. This paper will consider to what extent these applications of the community right to bid represent unintended consequences and whether the impact is positive or negative.

Stream: Vulnerable Suspects and Defendants 3

Paper 1: Nicole Asquith and Isabelle Bartkowiak-Theron, Policing Fragility: Accounting for Ontological & Situational Vulnerability

Criminal justice stakeholders and support agencies are increasingly focussed on the wicked problems that arise out of practitioners’ and clients’ vulnerabilities. Managing the artefacts of vulnerability has become a policy and practice imperative throughout the justice system, with policing at the front end of this process. However, the explosion of terminology, policies and practices that aim to address vulnerability are inconsistent across and within jurisdictions, often dependent upon soft relational and high level analytical skills (which are difficult to inculcate through traditional training models), and are difficult to evaluate except through failure. In this paper, we suggest that defining vulnerability as a group attribute yet responding to vulnerability as an individual pathology, leads to the multiplication of vulnerable groups and specialised services, with each group competing over smaller budgets, less available training time, and a burgeoning list of critical issues for agencies. It creates a checklist approach to frontline policing that cares little for the individual distress and harm of offenders, undervalues the relational skills of officers and ignores the structural impediments and structural reproduction of vulnerability. Apart from failing to manage even the most rudimentary and transitional needs of vulnerable people, we argue that conventional strategies are also incapable of accounting for intersectional or enduring vulnerabilities. We suggest that a realignment to ‘critical diversity’ can help identify and address those processes and practices likely to create or enhance vulnerability in the criminal justice system. Approaching vulnerability with a universal precaution model may also help design out the most common consequences of vulnerability and create the mechanisms through which susceptibility to increased vulnerability can be more readily identified and addressed where necessary.

Paper 2: Roxanna Dehaghani, Interrogating Code C vulnerability: a critical analysis of vulnerability under Code C to the Police and Criminal Evidence Act 1984

This paper critically examines the conceptualisation of vulnerability with reference to Code C to the Police and Criminal Evidence Act (PACE 1984) 1984 through the lens of sociological, philosophical, feminist and ethics renderings of vulnerability. It (briefly) explores how vulnerability is understood in the broader literature and thereafter how Code C conceptualises vulnerability. To do so, the paper will engage with

empirical qualitative data produced through observation of and interviews with custody officers at two custody suites in England. The Code C conceptualisation of vulnerability is problematic as it largely neglects both situational vulnerability (resulting from the coercive nature of police detention) and inherent vulnerability (by virtue of being human). The narrow focus on innate vulnerability also perpetuates an impression of weakness or feebleness, an image that those labelled 'vulnerable' may reject. The main tenet within this paper is that Code C should be broadened to more accurately reflect the multi-various renderings of vulnerability.

Session 4, 11:00 – 12:30

Stream: Administrative Justice 2 - Ombudsman

Paper 1: Naomi Creutzfeldt and Christian Gill, The Ombudsman Watchers: Understanding the Critics of the Ombudsman System

United Kingdom's most important public sector ombudsman schemes have been subject to sustained criticism by groups of citizens dissatisfied with the way in which their complaints have been handled. Following the name of the first such group to be set up, we refer to these groups collectively as 'ombudsman watchers'. Using the Internet and social media, as well as more traditional campaigning mechanisms, these groups can be seen to have developed a distinctive critique of the ombudsman institution. This distinctiveness lies in providing a perspective, which, although undoubtedly born of unsatisfactory individual experiences, offers a rare insight into the way ordinary citizens who have turned their minds to analyzing the institution perceive it. The paper will argue that these perspectives are interesting for two reasons: (1) they provide a counterbalance to the academic and provider perspectives that have dominated discussions of the ombudsman institution to date and (2) whether or not their critiques are accepted, they may point to important ways in which ordinary citizens are likely to understand (or, as some have argued, misunderstand) the ombudsman institution. The paper will also suggest that the ombudsman watchers' critiques provide a qualitative window into the relatively high levels of dissatisfaction reported by public sector ombudsman schemes in customer satisfaction surveys. More broadly, the paper will situate its analysis of the ombudsman watcher phenomenon by drawing on the following theoretical and contextual perspectives: (1) procedural justice theory and legitimization (2) legal consciousness and legal alienation (3) declining public trust in formal authority. This will provide the basis for the authors' empirical analysis of the critiques set out by ombudsman watchers on websites, blogs, public petitions, and parliamentary submissions. Overall, the paper will seek to provide a framework for understanding the ombudsman watchers and for assessing the value and significance of their criticisms.

Paper 2: Stephen Daly, Oversight of HMRC soft-law: lessons from the Ombudsman?

There is now almost universal acceptance that tax law is overly complex and indeterminate. If the primary law offers few answers to the taxpayer, then HMRC's role as administrator of the system becomes apparent. Soft-law elaborating upon how HMRC will apply the primary law is rendered indispensable. In practice however, HMRC soft-law has often been found to be deficient. The question which immediately follows the exposition is: why?

Analysis of the current oversight arrangements for HMRC soft-law immediately reveals the genesis of these issues. Being a non-ministerial body, the traditional elements of individual ministerial responsibility are eschewed. Control is not effectuated at a ministerial level and so accountability must be sought through alternate avenues. To this end, select committees exercise Parliamentary control, an independent body performs external audits and the courts undertake indirect regulation. These entities however incommensurately examine the soft-law. Into this void, steps the Parliamentary and Health Service Ombudsman, its own inception owing to perceived deficiencies in the existing apparatus for scrutinising executive action.

The paper seeks first to illustrate the need for a new framework for the supervision of HMRC soft-law and thereafter elaborate upon its minutiae, drawing upon lessons from the history of the Ombudsman. It is set out in 4 parts. The first part briefly explains the issues in relation to HMRC soft-law, namely favouritism, lack

of publication, undermining the primary law, and lack of clarity. The second part analyses the inutility of the existing mechanisms for oversight of HMRC, namely, the PAC, NAO, Comptroller and Auditor General, Treasury Select Committee and the Courts. The third part assesses the contribution that the Ombudsman has made to the scrutiny of HMRC soft-law. The final part puts forward a proposal for a new robust supervisory scheme.

Paper 3: Richard Kirkham, The impact of judicial review on the work of the ombudsman

The relationship between the courts and the ombudsman is an important one for a number of reasons. One of the key aspects of that relationship is the intensity and nature of scrutiny of the ombudsman's work by the judicial branch. Over the last 15 years in particular, the scale of case law that has built up around the work of the ombudsman has increased. This paper interrogates that case law and establishes its impact on the ombudsman community in a number of respects, including:

- Establishing the scale of judicial review of the ombudsman;
- Analysing patterns of behaviour eg. most common sources of claimants;
- Testing the success rate of claimants in JR;
- Providing a map of the resultant case law, including identifying any commonalities in successful arguments.

In my paper I will present my early findings on these questions. However, I will also interrogate further the impact of the work of the courts on ombudsman schemes highlighting issues of interest to public law scholars more generally. For instance:

- the relationship between pre-action protocol letters, cases settled out of court or applications withdrawn, and cases that are heard in court;
- the relationship, between cases in which JR proceedings and internal review processes used to resolve complaints against an ombudsman;
- additional evidence of demonstrable impacts of case law on ombudsman schemes.

Stream: Art, Culture and Heritage 1 - Law and Ethics: Heritage and the State

Paper 1: Robin Palmer, Whose Flag is it Anyway? The 2016 New Zealand Flag Referendum in Constitutional Context.

On 11 March 2014, the Prime minister of New Zealand, Mr John Key, announced a public referendum process for considering the adoption of a new flag for New Zealand (possibly replacing the existing flag which has been the country's official flag since 1902).

The winning design in the first referendum was a black, white, blue and red design, incorporating a silver fern and retaining the four-star Southern Cross element of the current flag. In the final binding referendum to be held in March 2016, the public will vote for either this option, or to retain the current flag.

The flag referenda process has been mired in debate and controversy, with a number of opinion polls finding limited public support for a flag change.

The primary focus of the paper is a consideration of the omission to situate the flag-change proposals in a constitutional context. Particularly relevant are the failure to effectively involve all relevant stakeholders in the process, together with the egregious omission of the government to comply with a recommendation of its own Constitutional Advisory Panel to, '... invite and support the people of Aotearoa New Zealand to explore the following topics in any further consideration of our constitutional arrangements, including the role and functions of the symbols of state.' Four months later, in March 2014, the New Flag project was announced with no reference to this recommendation - also ignoring the role and function of the existing Maori flag in the process.

The conclusion of the paper is that the legitimacy of the flag reconsideration process has been fatally compromised, and that whatever the outcome of the March 2016 referendum, the New Zealand flag debate is far from being settled.

Paper 2: Sarah Sargent The Alluring Nomad: Law, Sentiment and Heritage.

This paper explores what prompts safeguarding of a particular heritage element at the state level, when the chosen method includes state legislation and state level inscription with the specific aim of protecting that

element. It argues that laws at the state level arise because of the emotional connections that a particular element may have, where value is placed on it because of that emotion and sentiment, thus judging it worthy of safeguarding. Through a case study on the protection given to wild horses through federal law in the United States and inscription in 2013 of “Chovgan”, a sport played on horseback in Azerbaijan on the UNESCO list for Intangible Cultural Heritage (ICH) in need of Urgent Safeguarding, this paper analyses the allure of the nomad and ideals about nomads in the safeguarding of intangible cultural heritage.

This discussion considers the idea of “space” in the understanding of intangible cultural heritage. Romantic visions of nomadic life can imbue a heritage element with a nostalgic view of life that may not be an accurate one. Nevertheless, it is romanticised sentiment that is a driving force behind safeguarding. Often this version stands at odds with reality where the heritage element is regarded as inferior and in need of eradication. Tensions thus arise over the value of intangible heritage and the need to safeguard it. These are particularly acute when heritage elements have nomadic associations.

The paper concludes by identifying the continued tensions that arise in decisions to safeguard ICH elements at both the state and international level, because of the very strong role that sentiment plays in this process. Whether emotion is a useful basis for promotion of heritage protection through inscription and state level legislation is a question that remains difficult to answer.

Stream: Banking, Finance and the Business of Organised Crime 2 - Digital Currency and the Law Relating to Financial Crime

Paper 1: Immaculate Motsi-Omoijiade, The regulation of cryptocurrencies Financial Institutions: legal insight from the empirical analysis of Bitcoin exchanges – the lacuna where law, financial and technology meet.

Technological innovation invariably requires regulators to muster an equal amount of ingenuity in order to both harness the benefits and address threats posed by the innovation. This has been evident with the advent of cryptocurrencies (open-source, virtual or digital currencies used and traded anonymously and autonomously online) such as Bitcoin. Since its inception in 2009, regulatory authorities have grappled with how best to oversee the phenomenon, taking differing approaches and strategies to its regulation. This regulatory attention has focused almost exclusively on the financial intermediaries that facilitate cryptocurrency transactions, namely, Exchanges. Exchanges play the pivotal role of converting cryptocurrencies into fiat currency, allowing currencies generated online to be used in standard transactions. Not only are Exchanges the means through which cryptocurrencies are integrated into the everyday economy, they are also the primary sources for trading activity (mostly in derivatives) and the storing investments through vault services that secure cryptocurrencies offline. In this way, the regulatory concerns in the areas such as consumer protection, potential future systemic risk and financial disruption have cryptocurrency intermediaries as their locus. However, despite the innovative and distinctiveness in both the form and function of cryptocurrency intermediaries, regulators have resorted to existing licensing, conduct and prudential legal frameworks, particularly in the areas of Anti-Money Laundering (AML) requirements, Money Transmitter Regimes and Capital Requirements without considering the extent to which these are appropriate, ideal or even relevant to cryptocurrency exchanges. This study aims to provide an empirical assessment of this novel breed of financial institution through Stress Testing Methodology using variables of regulatory interest to highlight the differences between cryptocurrency Exchanges and existing fiat-based non-bank financial institutions. In this way, the boundaries between Law, Technology and Finance will be empirically breached to present a more nuanced and complete overview of the cryptocurrency market for regulatory purposes.

Paper 2: Alison Cronin and Stephen Copp, The failure of the “failure to prevent” model of financial crime: A bespoke solution for corporate fraud

Concerns over corporate behaviour in areas as disparate as homicide, bribery, economic crime and tax evasion have led to experimentation with new models of corporate criminality to avoid the individualist obstacles posed by the common law. Foremost amongst these is the “failure to prevent” model introduced by the Bribery Act 2010. This has been perceived to have been successful in changing corporate behaviour with the widespread adoption of new practices to evidence that compliance is taken seriously.

Consequently, it has been proposed that the model be extended to economic crime and tax evasion. HMRC has warmly endorsed the model in its consultation on offshore evasion. Central government, however, has been more lukewarm with the abandonment of its extension to economic crime, specifically fraud. This paper evaluates: the rationale for the “failure to prevent” model in its historical context; its relative effectiveness in combating bribery; the ongoing failure to adequately deter economic crimes, particularly in the financial sector; whether a “one size fits all” approach is appropriate for the diversity of corporate behaviour it is sought to change, examining, for example, differences between the inherent nature of bribery and fraud; alternative models of corporate fault attribution; and finally broader issues of compliance with the rule of law and human rights expectations. In conclusion, it will argue that while the “failure to prevent” construct of organisational fault is suited to dealing with bribery and tax evasion, it is wholly unsuited to addressing every instance of fraud, which poses unique challenges on account of its dishonesty element. Aside from cases involving a dishonest ‘rogue’ individual, an altogether different approach to corporate culpability is needed. This is provided by the 2-level approach to dishonesty, with its adoption of evidential presumptions, such that the substantive offence of fraud itself can be sustained against corporations.

Paper 3: Gauri Sinha, Anti -money laundering compliance: Contradictions in the risk based approach

Dominant opinion within published work in the area of Anti-money laundering (“AML”) compliance presupposes the inability to tackle money laundering as being due to a lack of sense of responsibility within banks. Contrary to this belief, the presenter of this paper aims to analyse the contributory role of weak laws as well as regulation towards this inefficiency. Banks have been chosen as the focus of this study as they are the biggest contributor of ‘suspicious activity reports’ that forms the cornerstone of AML compliance.

In order to test the efficiency of the AML regime with respect to compliance by banks, it is critical to test the UK’s risk-based approach (“RBA”) to AML compliance. It is argued that although minimising creative compliance and loophole behaviour is particularly problematic because of rules being too rigid, in reality the RBA has not been successful in removing these deficiencies of the rule-based approach. This will be demonstrated in two primary ways: (i) by questioning the concept of ‘risk’ and discussing the inability for banks to formulate an accurate risk model and (ii) by highlighting the contradiction between how the legal and regulatory requirements define the RBA, and how the Financial Conduct Authority seeks to implement it. Although the RBA lends a degree of flexibility to private compliance partners, being more flexible than required is ending up being detrimental to the final objective of the AML regime, and begs the question: is it really possible to compartmentalise risk in an AML system?

As a way forward, a combination of rule and risk based approaches to AML is suggested as the most efficient way forward, allowing the AML regime to leverage the benefits of both.

Paper 4: Aleksandra Jordanoska, Reputational sanctions for corporate crime: Naming and shaming in the UK financial markets

Informal sanctions or reputational damages have long been suggested as an efficient mechanism in tackling corporate crime. The argument has been that the naming and shaming of corporate offenders might be a more viable route towards achieving social control of corporations in comparison to formal fines that can be written off as costs of doing business. This paper examines the use of the informal sanction of publicity for misconduct by the financial regulator, the Financial Conduct Authority (FCA) in the context of the UK financial markets. Under section 391 Financial Services and Markets Act (FSMA), the FCA has significant publication powers, and the paper examines their use in practice. Empirically, the research combines qualitative and quantitative data from three sources: observations of enforcement decision-making; semi-structured interviews (FCA staff; sanctioned firms and individuals; regulatory lawyers and compliance officers) and the coding of enforcement decisions (2009-2013).

The publication of enforcement outcomes is examined through two lenses. First, the importance of using this informal sanction is examined from the perspective of agency-level enforcement tools. Second, the importance of the naming and shaming is examined through corporate priorities and considerations during the process of settling the enforcement decision. The paper provides an analysis, based on empirical findings, on how the publication power is interpreted and implemented in practice, the ways in which its use may be affected by corporate responses ‘on the ground’ and its worth as an informal sanction for corporate offending in the financial markets.

Stream: Challenging Ownership: Meanings, Space, Identity 5

Paper 1: Louise Burns, Law, Landscape and the Common Good. Access to the Countryside for Recreation

Signatories to the European Landscape Convention (Florence) 2002 are encouraged to value landscape, to appreciate its contribution to human well-being, and to enable its accessibility to European citizens. Different jurisdictions have different attitudes towards the ownership of private property and towards the concept of the 'societal ownership of landscape'. These differences in attitude are reflected in jurisdictions' provisions for public access to the countryside, particularly over private land, for recreational purposes. In Ireland there is an apparent conflict between perceived rights to cross private land for recreational purposes and private property rights. The central question for this research project is, what constitutes the barrier to the enactment of "right to roam" legislation in Ireland?

This research project takes a Bourdieusian approach, seeking to establish aspects of habitus shared amongst the farming community; the (Bourdiesian) fields occupied by members of this community; and factors associated with capitals, particularly symbolic capital, which may influence or reflect the attitude towards recreational access to private land.

'Farmers' as a group are vigorously represented in Ireland by the Irish Farmers' Association, and as a result are perceived in the mind of the general public as a cohesive group with similar interests. Preliminary results from the semi-structured interviews indicate that the so-called 'farming community' in fact consists of disjointed groupings of farmers who share few aspects of habitus both in general terms, and also with regard to matters regarding recreational access to their land.

Despite Irish landholders' issues with potential liability resulting from the public crossing their land having been largely resolved through legislation, it is apparent from early results that fears about this issue are still strongly in evidence in many areas of farming, and that these fears form a significant part of the barrier to legislation for access.

Paper 2: Sarah Blandy and Simone Abram, Ownership and belonging in urban green space: a tale of three parks

This paper examines issues of ownership and belonging through the histories, and the current connections between, three urban parks in Sheffield, UK. These histories illuminate the complex shifts in power over time between public, private and third sectors, allowing investigation of 'ownership', in both legal and popular understandings of that term, and the implications for democratic forms of governance.

The paper also interrogates the value of categorising different types of property by rights of ownership, and by rights of access, use and management. It contributes to the conceptual understanding and application of the literature on common pool resource, communal property, the commons and commoning. In more practical terms, the paper addresses the issues of sustaining collective governance in the long term, and the structures and processes that might prove successful in liberating urban green space from unstable sources of funding.

Stream: Children's Rights 2 - Adopting a new children's rights-based approach to legal and social problems

Paper 1: Jonathan Brown. Plagium: 'An Archaic and Anomalous Crime'

In the 2015 case of *SB v HMA*, the Court of Criminal Appeal held that any person who abducts a 'pupil' child may be charged with the crime of plagium. The crime of plagium is 'an aggravated form of theft'. In Scotland, the crime of theft involves the wrongful and intentional appropriation of a corporeal thing which is owned by another person. Moveable corporeal things may be termed 'goods'; the 'goods' which are stolen in instances of plagium are prepubescent children. The aggravation in a charge of plagium arises as a result of the importance ascribed to the stolen object, not for any other reason. The child is consequently considered to be an object of 'property' in the eyes of Scotland's criminal law. This raises an uncomfortable question: Are children regarded as mere things according to the law of Scotland?

The question that this piece proposes to address may appear absurd, at least initially. Nevertheless, consideration of it is scholastically justifiable. 'For something to be stolen it must belong to someone, [that] is the definition of theft in its purest sense'. It is therefore submitted that, since the common law denies that children have personality and the criminal law regards them as property, so too must it be concluded that

the law necessarily regards them as 'mere things'. This notion is, however, evidently 'at odds with contemporary thinking'. Sir Gerald Gordon himself noted that plagium is an 'archaic and somewhat anomalous crime' in 1978. Accordingly, it is pertinent to ask why, when the crime of abduction mirrors the salient elements of plagium, yet treats the child as a person and a victim rather than a mere thing, the law still maintains that children may be 'stolen' in the 21st century.

Paper 2: Daniel Cullen, The children of parents sentenced to death or executed: using a child rights framework to explore the wider impacts of the death penalty

Based on the ongoing work of the Quaker United Nations Office (QUNO) and its partners, this paper uses a child rights framework to explore the impacts on children of the imposition and implementation of the death penalty on a parent.

Stemming from a growing body of literature on the rights of the children of incarcerated parents, the paper analyses issues specifically affecting the children of parents sentenced to death or executed, which are distinct from those affecting individuals who are themselves facing the death penalty.

Some of the issues affecting this group of children are common to a wider group of children of incarcerated parents, including: impacts on psychological and emotional health; traumas following parental arrest; reductions in standard of living; social stigmatisation and discrimination; and difficulties in maintaining a relationship with an incarcerated parent.

Other issues are unique to the children of parents sentenced to death or executed, including: exacerbated psychological and emotional harms; restrictions on access to a parent incarcerated on death row; impacts of public or secret executions; a conflicted relationship with the state; and permanent denial of a parental relationship, where execution takes place.

This paper suggests that a focus on such intergenerational impacts on the rights of children can serve to develop understandings of the wider impacts of the death penalty. In particular, it is argued that the execution of a parent constitutes a form of state-perpetrated violence against children.

Drawing on developments in international standards, including from the UN Committee on the Rights of the Child, it is argued that an approach taking into account the best interests of the child as a primary consideration in all decision-making, including at sentencing, is required, and that states' duty of care necessitates the provision of support and protection for these children.

Paper 3: Oliver Bartlett. Can the right to health be invoked in court to prevent children from being recruited as life-long heavy drinkers by the alcohol industry?

Corporations that market health hazardous consumer products – particularly the alcohol industry – are fully aware of the importance of childhood in the development of consumer preferences. They furthermore realise that products may be promoted to make them more appealing to children, and that a disproportionate amount of their revenue is generated by the heaviest consumers. Combining this knowledge results in large economic incentives to target marketing efforts at children, in order to guarantee a future customer base of regular and heavy consumers. Individuals who are 'captured' by corporations in childhood however will be at much higher risk of suffering serious adverse health consequences in adulthood – this is clear from evidence on the links between marketing of health hazardous products, consumption levels, and harm.

This paper explores whether the right to health – which affords every individual the right to an environment in which they can pursue their highest attainable level of health – can be invoked before a court to prevent the alcohol industry from targeting children in their marketing campaigns. This involves analysing three issues. First, whether the right to health as articulated in international, supranational and national law confers an entitlement upon children to a childhood environment that is free from exposure to marketing messages. Second, whether sufficient evidence demonstrating a violation of this particular aspect of the right to health can be gathered, and whether infringement actions should be brought by the children who have suffered them, or by advocates acting on their behalf. Finally, whether a mechanism could be established through which the right – traditionally understood to lack horizontal effect – could be enforced against corporations. The paper ultimately argues that invocation of the right to health in this manner would be difficult, but possible if suitable enforcement mechanisms are put in place.

Stream: Civil Procedure and Alternatives to Litigation, ADR 5, CI Arb

Paper 1: Paulette Morris, representative from the Chartered Institute of Arbitrators

The work of the Institute will be discussed, and the possibilities of collaboration between the Institute and conference delegates will be explored.

Stream: Criminal Law Criminal Justice 3 - Victims

Paper 1: Alan Cusack, The Collapse of the Public Character of Justice: The Costly Consequences of Victim Participation in Criminal Proceedings

Few features of contemporary criminological inquiry have attracted as much media attention, political debate or academic commentary in recent years as has the issue concerning the appropriate role of the crime victim within our modern criminal justice paradigm. Cast as a vulnerable emblematic character- whose experience might one day be shared by any other member of society- the crime victim has become the central focal point for a new wave of inclusionary criminal justice activism. Thus, from the introduction of the Victim's Charter to the admission of Victim Impact Statements, a movement has emerged in Ireland to address the needs and concerns of crime victims. However, while the moral importance of responding to the individualised concerns of victims is hardly deniable, the capacity of Ireland's adversarial legal system to accommodate the private participatory interests of these third parties is far from assured.

By placing this emergent trend towards victim-inclusion in an historical context, this paper shall demonstrate that victim-centered justice is not a distinctly modern phenomenon. Indeed the machinery of justice in the 17th century was almost entirely fuelled by the private exploits of the victim. However, for the past three centuries, this private enforcement paradigm has been eschewed in favour of a State-controlled adversarial legal framework. Organised around an exclusively impersonal State/accused axis and predicated upon an inculpatory value system, the adversarial tradition has long been celebrated for its depersonalised, public character and its defence of due process rights. These long-cherished values are now, however, under significant threat as the State/accused model begins to creak and strain under the weight of the participatory demands of the re-emerging victim.

Paper 2: Robyn Holder, Citizens first: the justice interests of crime victims

The politicised discourse on victims of crime has led to narrow conceptualisations of their relationship to criminal justice. This paper uses the lens of citizenship theory to suggest a different reading to victim engagement with criminal justice authorities. It argues that a 'citizens first' perspective transforms understanding the basis of victim standing in the public realm. Rather than focus on the needs of victims, the paper develops the idea that citizen-victims have 'justice interests'. That is, interests in the modes and mechanisms of justice governance as well as its normative content. Justice interests, moreover, that are co-determined by private and public concerns. Through this framework it is argued that a stronger foundation upon which to base people's right to participate in criminal justice is a democratic one that rests on their political status as citizens, and not some gesture granted by law.

Paper 3: Verona Ní Drisceoil. The Law on FGM in the UK: In whose best interests?

This paper provides a critical analysis of recent legislative reform to the law on Female Genital Mutilation (FGM) in the UK. Taking sections 70-75 of the Serious Crimes Act 2015 as the primary focus for discussion, the paper maps a broadening of territorial jurisdiction in the Female Genital Mutilation Act 2003, the offence of failing to protect a girl under 16 from FGM, the introduction of the FGM protection orders and the duty on persons who work in a regulated profession to report on FGM. In this respect the paper provides a platform within which to consider the intersection of punitive, pre-emptive and protectionist objectives in criminal law and criminal justice. Though welcoming greater political attention in the so called 'fight against FGM', the paper challenges the overly punitive approach and questions whether reform under the Serious Crimes Act 2015 is, in fact, in the best interests of the girls it seeks to protect.

Stream: Economic, Social and Cultural Rights 2 - ESCRs in times of Crisis

Paper 1: Ben Warwick, In the Thick of It: The Approach(es) of the Committee on Economic, Social and Cultural Rights in the Crises

While crises of rights protection are not in themselves all that unusual, the severity and speed of the financial and economic crises in 2007/8 made these events especially noteworthy. In such a context the UN Committee on Economic, Social and Cultural Rights (CESCR) had little opportunity or scope for normative (re)development or especially tailored responses. Indeed, the CESCR has been criticised for the sluggishness of its response

This paper aims to provide a more systematic analysis of the CESCR's response. By studying the large number of Concluding Observations that have been issued since the crises broke and the smaller number of other documents (such as Statements and General Comments), themes in the CESCR's approach will be drawn out. Particularly the paper will address the strategies adopted by the CESCR in its examinations, the effect of the Committee's procedures on its response, and the ways in which the CESCR safeguarded its legitimacy in the crisis.

Through these three themes the paper will explore trends in the legal mechanisms used by the CESCR (was there a greater use of minimum core, non-discrimination or individual rights arguments?) and in the tone adopted by the Committee (was a persuasive, threatening or supportive approach used?). The timing of State Reports, Concluding Observations and CESCR sessions will also be examined to provide an assessment of the impact of the reporting cycles upon crisis enforcement of the rights. Instances where the Committee defers to States or international organisations will also be highlighted as part of an assessment of the CESCR's approach to rights enforcement in the context of contentious political policies.

Paper 2: Amanda Cahill-Ripley, Exploring the Local: Protestant/Unionist Borderland Community Attitudes to the use of Economic and Social Rights as a Tool for Peacebuilding in Northern Ireland

This paper will explore the attitudes of members of Protestant/Unionist(P/U) borderland communities towards economic and social rights (ESR) in order to identify challenges to the use of ESR as a tool for peacebuilding within such communities in Northern Ireland (which have been impacted significantly by the conflict and its legacy).

Using primary data collected in a pilot study the paper will explore local grassroots experiences of engagement with human rights, specifically ESR, within the peacebuilding process in Northern Ireland. It also seeks to examine the particularities of the post-conflict legacy in the southern border regions and its impact upon attitudes to human rights and their potential for peacebuilding.

The paper draws upon socio-legal and legal anthropological approaches to human rights. In particular the author will assess the 'vernacularization' of rights within this particular group considering how international and national human rights agendas and programmes can be adapted and adopted but also resisted by the local community. The way in which ESR are 'framed' within the context of Northern Ireland and specifically within the P/U community nationally and locally are also key to understanding how ESR could be utilised within wider peacebuilding strategies.

The aim of the paper is to establish what such communities think about human rights and economic and social rights as having potential for peacebuilding within their group, as well as to make some provisional recommendations as to which approaches and strategies are appropriate and acceptable to these communities in terms of positive engagement with ESR and peacebuilding both locally and more widely, including commitment to national and international standards and institutions. Although the paper will focus on the specific case of Northern Ireland, more general conclusions will be drawn as to the implications of local grassroots adaption of human rights for wider peacebuilding processes.

Paper 3: Thomas Bundschuh, Rule of law schizophrenia as an obstacle to transitional justice and how to overcome it

The complementarity of transitional justice and the rule of law in contexts of post-authoritarian and post-conflict societies finds much acclaim. At the same time, the prevailing understanding of the rule of law reveals a resistance to socioeconomic rights. This is due to rule of law schizophrenia, which the present

paper aims to remedy by offering a different approach of thinking about the rule of law. Such rethinking is necessary to maintain the significance of the rule of law for societies in transition.

A rule of law conceptualization excluding socioeconomic rights from the outset is unable to address historical socioeconomic injustice. The prevailing schizophrenia is revealed in Josef Raz' dictum: "A non-democratic legal system, based on the denial of human rights, on extensive poverty, on racial segregation, sexual inequalities, and religious persecution may, in principle conform to the requirements of the rule law... The law may... institute slavery without violating the rule of law" (Raz, 1979). Based on such a formal (thin) understanding of the rule of law, can law really provide a legitimate justice response to slavery and apartheid? It cannot, as it is argued here - unless an epistemological shift to a comprehensive and substantive (thick) understanding of the rule of law that includes socioeconomic rights takes place.

This paper will demonstrate that such a shift is warranted and can indeed take place, thus preserving the relevance of the rule of law for societies in transition wishing to come to terms with the monstrous socioeconomic injustices engineered by law in the past. This paper will begin with an analysis of the UN Secretary General's reports on transitional justice and the rule of law. The paper will then show how rethinking the rule of law can benefit from Amartya Sen's work on law and development and his capability approach.

Stream: Exploring Legal Borderlands 4 - Space and Socio-Legal Borderlands

Paper 1: Stacy Topouzova -Navigating Through De Jure Asylum Provisions and Forms of 'Embedded Discretion': The Process of Status Determination Proceedings at the Bulgarian-Turkish Border

Bulgaria has within a short timespan become transformed into one of the core asylum-seeker receiving countries of the European Union (EU). Since December 2013, an unprecedented number of asylum-seekers, primarily from Syria, have arrived in Bulgaria to seek protection. In response, the State Agency for Refugees(SAR) has undertaken the principal role of undertaking status determination proceedings at the Bulgarian-Turkish border, in accordance with the Law for the Asylum and Refugees.

The status determination process is complex and multi-layered, involving multiple forms of 'embedded discretion' that confer upon SAR officials the authority to discern how status determination proceedings are conducted. In particular, provisions containing 'embedded discretion' within the domestic legal asylum regime confer upon SAR officials the authority to determine if Bulgaria is the competent state to examine an asylum claim; to evaluate whether an asylum-seeker should have access to legal aid; to discern if an asylum-seeker can hold a full interview; and ultimately, whether an asylum-seeker is granted status. In practice, the provisions of 'embedded discretion' within the domestic asylum regime constitute a disjuncture between the de jure process for status determination and the de facto process by which SAR officials determine which, if any, should be granted.

This paper draws upon empirical data to examine how the process of status determination is conducted at the main refugee reception centre, Harmanli, on the Bulgarian-Turkish border. More specifically, this paper examines how officials navigate through formal de jure asylum provisions and inter-subjective interpretations in order to render a status verdict. Ultimately, this paper argues that the status determination process is simultaneously constituted by de jure provisions, SAR officials' inter-subjective interpretations, and institutional constraints. As such, status determination proceedings are not linear, standardized procedures by which claimants can seek protection status, but rather, are layered proceedings simultaneously embedded in multiple socio-legal spheres.

Paper 2: Evgenia Kanellopoulou and Nikolaos Ntounis -Normalising Heterotopias: The Effect of Place Branding on Spaces of Ambiguous Legal Status

Place marketing and place branding are 'umbrella' terms for a plethora of activities that are used for promoting a place's image to relevant audiences (Jones & Kubacki 2014). These activities are not only confined to traditional geographical nomenclatures (Kavaratzis & Ashworth 2008), such as the 'City', the 'High Street', or even the 'Jurisdiction'. In fact, alternative forms of place marketing and branding can also target heterotopias, which represent spatial 'otherness' alongside existing spaces (Stone 2013), reveal certain utopias/dystopias, and may even "promote" illegal events/activities (Medway & Warnaby 2008;

Medway et al. 2010; Brown et al. 2013; Chatzidakis et al. 2012). In these heterotopias, the borders of legality remain unclear and so does the role of marketing/branding therein.

It can be argued that place marketing and branding contribute to the promotion of human rights in such heterotopias of ambiguous legal status, like Christiania in Copenhagen or Metelkova in Ljubljana (Gržinić, 2007; Vanolo, 2013). Additionally, they can also assist in the promotion of de jure illegal events, such as consumption of cannabis in cannabis festivals, whereby people create temporal heterotopias by sharing the knowledge of partaking in illegal events but consciously choosing to lift the veil of legality.

In this paper, we examine place marketing and place branding under the prism of legal geography. We aim to provide an additional knot that ties law and space by examining the role that place marketing and branding approaches play in understanding and interpreting the perception of heterotopic legal spaces outside the borders of the traditional jurisdiction (Blomley 2012; Ferguson & Gupta 2005). By extension, the paper will explore the spatial legal relevance of heterotopias, by answering how place marketing/branding can affect a heterotopia's legal status.

Paper 3: Ahmed Raza Memon - Reinterpretation of Sovereign Spaces in International Law: A Socio-Spatial reading of Vitoria's political writings

Looking primarily at how space is social product of human agency which influences and shapes social, political, legal relations through different socio-spatial structures such as 'network' and 'territory'. I argue that space is socially produced and reproduced through the correlation of different socio-spatial structures that reify specific spatial representations as ontological truths rather than social products of space such as 'sovereignty as territorially bounded'. Through textual analysis of Vitoria's political writings, I look at how sovereignty as a spatial representation is situated within socio-spatial structures extends and interacts with the 'others' of International law. Further that that these encounters create specific spatial representations ('sovereignty') through socio-spatial structures ('territory') also create the inside/outside, us/them and otherness of International law. While at the same time reification of spatial representation of Natural law of nations through socio-spatial structure of 'networks' of trade/religion correlate and facilitate creation of otherness in International law that the spatial representation of sovereignty through territory does. Thus I am arguing that the making of international law can also be looked at from the way in which spatial representation, such as sovereignty, is deployed through different socio-spatial structures in correlation with each other. This in turn reflects International law's universalizing project to actualize the 'other' through its claim of ontological standards of civilization.

Stream: Family Law and Policy 4: Family law, property and finance

Paper 1: Kathryn O'Sullivan. The Devil in the Detail: Property Division under British Columbia's Family Law Act 2011

Family law in British Columbia, Canada has witnessed significant change in the last 5-6 years. Family property law, in particular, has seen drastic reform. One of the most significant changes which has arisen in the province is the introduction of the Family Law Act 2011 which, among other functions, now governs the distribution of assets on divorce and on the breakdown of common law marriage. Repealing and replacing the Family Relations Act 1996, the new 2011 Act aimed to make the law governing the division of assets simpler and easier to apply, reducing judicial discretion and bringing the province more in line with the rest of Canada. However, since the commencement of the legislation exactly two years ago (March 2013), a number of weaknesses inherent in the Act have already generated significant case law in the province. This paper seeks to highlight the main shortcomings which have emerged and analyse judicial responses to date.

Paper 2: Sharon Thompson. Good Housekeeping? The Married Women's Association, Women's Right to Housekeeping Money and the Value of Work in the Home

There is no mention of the Married Women's Property Act 1964 in contemporary Family Law textbooks because on the face of it, this is an ad hoc piece of legislation that was arguably rendered obsolete by the Matrimonial Causes Act 1973. This statute simply provided that money given by a husband to his wife for housekeeping was to be held by husband and wife in equal shares. However, as this paper explores, the

story behind this short piece of legislation forms an important part of feminist discourse surrounding the value of care in the family home today.

Drawing on records of the Married Women's Association, the memoirs of Edith Summerskill, and Parliamentary debates, this paper will outline the activism behind the 1964 Act, and the arguments between members of the Married Women's Association as to how married women's work in the home should be valued. The response to this issue was so starkly divided that it resulted in the fragmentation of the Married Women's Association and the resignation of Helena Normanton (who later established the Council of Married Women in 1952).

Significantly, the feminist debates surrounding the 1964 Act continue to divide opinion in the twenty-first century. In particular, as this paper will argue, the concerns of the Married Women's Association are just as important today as they ever were. The wife is not in as precarious a position as she was sixty years ago; she is more likely to be economically independent and her non-financial contributions will more likely be recognised on divorce. But women's earning capacity is still damaged (often permanently) by motherhood or by caring for elderly parents, the sexual division of labour in the home is pervasive, and the new norm for wives is the 'double day' of work outside and inside the home.

Paper 3: Jane Mair. Principles in Practice: financial provision on divorce in Scotland

The Family Law (Scotland) Act 1985 has been in force for 30 years. In a recent project, funded by the Nuffield Foundation, we sought to explore, by statistical analysis of 200 reported cases and in-depth interviews with solicitors, advocates and judges, how its principles work in practice.

In reforming financial provision on divorce, the Scottish Law Commission identified a range of objectives; including the desirability of a clean break. The resulting highly sophisticated statutory framework of the 1985 Act, was designed to achieve these objectives by a carefully constructed jigsaw of orders, principles and guidance. The legislation was well drafted but how well has it worked in practice?

Often admired, the 1985 Act has nonetheless attracted criticism: harsh on homemakers; too little discretion; an overly simplistic outcome of equal sharing? Our research provides much needed data to address these questions.

Beyond Scotland, the Act has attracted interest as an example of a modern, principle-based regime. It sits at the point of intersection between the matrimonial property regimes of European civilian systems and the common law tradition of England. How the 1985 Act works in practice is of relevance not only within Scotland but as a point of comparison for other jurisdictions.

The 1985 Act is notable for its combination of family law and family life. Clearly drafted and carefully constructed, it epitomises the attention to detail of a lawyer. It is also notable, however, for its grounding in social policy, research evidence and family life; demonstrated through its statutory principles, reflecting a variety of models of marital and family relationships. How this combination works in practice is of considerable significance for the purposes of wider lawmaking and legal reform.

Stream: Gender, Sexuality and Law 3

Paper 1: Silvana Tapia Tapia, Sumak Kawsay, Coloniality, and the Criminalisation of Violence Against Women in Ecuador

This paper asks if the integration of Sumak Kawsay (a concept from Andean philosophy) into the Constitution of Ecuador has had an impact on the recently reformed legislation that regulates violence against women (VAW), whereby the latter was criminalised. It examines the country's trajectory of penal reform in the field of domestic violence and suggests that the decolonial shift in the Constitution has failed to significantly disrupt the dominant framework of penalty in which gender violence regulation is still inscribed. At the same time, feminist demands have been reframed through the formations of criminal law and the dominant political discourse, resulting in legal provisions that reproduce a positivistic logic and a family-protection rationality. These framings are having problematic consequences for women's access to justice on the ground. If securing success in legal reform entails translating emancipatory demands into established and unchallenged penal paradigms, the potential of decolonial notions is overshadowed by the language, formalities and underlying assumptions of criminal law.

Paper 2: Elizabeth A. Hoffman, Pumping Breast Milk at Work: New Rights, Old Discrimination

This paper examines application of a new U.S. federal law that “requires employers to provide reasonable break time for an employee to express breast milk.” (U.S. Dept. of Labor: 1). This study draws on open-ended interviews with over 300 lactating workers and managers across 14 industries. Despite this federal law – mirrored in 29 state laws as well – many lactating workers continue to face discrimination at work partly because these women must be able to place their situations under the law are sometimes unwilling or perceive themselves as unable to do so. Moreover, I find that managers, supervisors, and human relations specialists often hesitate to embrace this new law. They often perceive the law as confusing and unclear, unduly onerous, and inappropriate. This, alone, is not surprising; workers are often subject to the biases of their supervisors as well as how their managers interpret or misinterpret various laws. The situation of the lactating worker is complicated further in that the behaviors addressed by the new law (pumping breast milk at work) have been considered deviant at the workplace and yet are now becoming normalized. While the status of this behavior is in flux, many still considered it to be inappropriate behavior at the workplace. As such, both managers and employees may be hesitant to apply the law and acknowledge the rights it provides to protect this behavior because they may have their own reservations of this intersection of private and public.

Stream: International Criminal Justice: Theory, Policy Practice 4

Paper 1: Noelle Higgins, Attacks on Cultural Heritage in International Criminal Law: A New Consideration for the International Criminal Court

This paper will discuss how attacks on cultural heritage are dealt with in international criminal law. In particular, it will focus on the case of *The Prosecutor v Ahmad Al Faqi Al Mahdi* which is currently ongoing before the International Criminal Court (ICC). This is the first time that the ICC has dealt with a case which focuses solely on the destruction of cultural heritage and has been heralded as an important development in the protection of cultural property. The paper will also draw on relevant jurisprudence from the International Criminal Tribunal for the Former Yugoslavia to assess the current cultural property protection framework and to analysis the current ICC case.

Stream: IT Law and Cyberspace 2

Paper 1: John Rumbold and Barbara Pierscionek, Are Cyber Rights the Key to The Digital Future?

Regulation of cyber-space is a contested area. There are concerns about criminal activity but equally concerns about the ability of repressive regimes to control free expression. There is a body of academic literature on the marginalisation of women and other groups on social networking sites (SNS) by aggressive trolling, plus high profile incidents involving female celebrities and Twitter abuse. This reduces the value of cyberspace as a public square for discussion. The approach of the authorities is perceived to be patchy and biased towards celebrity. Only the rich can afford investigation and legal action in the face of official indifference and lack of cooperation from SNS. On the other hand, current mechanisms can be abused to silence critics – either via use of statutory offences or via pressure on employers and other non-legal means. The current problems are a classic illustration of the Collingridge dilemma.

Although cyber harassment and stalking are lower priority crimes than more direct harassment and stalking (or more serious crime), this does not explain the apparent inconsistencies. Recent judgments have shown a willingness by the EU and member states to take on internet giants such as Google and Facebook where they have infringed the rights of EU citizens. SNS are free to draw up and interpret terms and conditions as they see fit.

It is our argument that fuller participation of EU citizens in cyberspace will require the establishment of rights to develop and protect one’s digital personality.

Paper 2: Pulkit Kaushik, Cyber Laws to Curb Cyber Victimization of Women in India and other Developing Countries: A Comparative Critical Legal Analysis

The research paper attempts a comparative critical analysis of the legal provisions against cyber victimisation of women from an Indian legal standpoint with parallels drawn to developing countries viz. Pakistan, Jordan,

Jamaica and South Africa. The research paper is divided into four parts. Part one provides an overview of the various slants of cyber victimization with emphasis on stalking, hacking, pornography and voyeurism outlining the extent of the definition which is included in the acts. With part two the paper advances to a situational and legal analysis of the various statutory laws available to women in India to counter cyber victimisation of women. Offences such as indecent communication, obscenity, cheating by impersonation, indecent representation of women on cyber space are discussed with support drawn from cases decided by the Indian Supreme Court. All offences are discussed in conformity with and according to provisions of Indian Penal Code, 1860 and Information Technology Act, 2000 of India, strongly influenced by the Model Law on Electronic Commerce, adopted by the General Assembly of the United Nations. The third part of the research paper draws parallel to cyber victimisation laws in other aforementioned developing countries and evaluates them in light of their strengths and weakness keeping practical application as a yardstick. The last part of the research focuses on legal loopholes, lacunae, and real life obstacles faced by the provisions dealt with at the time of their implementation. The author utilises the comparative analysis with the other countries to suggest changes to be incorporated in further amendments to make cyber laws to curb victimisation of women infallible.

Paper 3: Shashank Sheakhar and Siddharth Tiwari, Constitutional Analysis of Right to Privacy vis-à-vis Surveillance: The Indian Experience

From the time when volatile Snowden revelations were made in May 2013, state surveillance and citizens' right to privacy have been at the vanguard of international debate. The Snowden documents were illuminating the facet of American and British intelligence agencies' wide-ranging surveillance systems (PRISM and TEMPORA, amongst others) used to spy both on their own citizens, and upon communications elsewhere, reports about Indian bulk surveillance began to seep in. It is now identified that there are at least two surveillance systems in India, in indeterminate stages of preparation: the Central Monitoring System (CMS), which be responsible for the collection of telephony metadata by tapping into the telecommunications' companies records; and NETRA, a dragnet surveillance system that spots and sweeps up electronic communication that uses definite keywords such as "attack", "bomb", "blast" or "kill". These programs, wide in their reach and scope, have suspicious statutory support. They also, very clearly, intrude upon basic fundamental rights. A discussion of the legal and constitutional implications, therefore, is long overdue.

This paper presents an investigative and sequential history of the Indian Supreme Court's engagement with the right to privacy. While discussions for a privacy statute have stagnated and are presently in indeterminate state, the Court has been active for nigh on fifty years. This paper purposes to appreciate an all-inclusive, doctrinal understanding of the constitutional right to privacy, as developed, understood and applied by the law lords. Such an understanding, undeniably, is a vital precondition to get on a legal and constitutional evaluation of mass State surveillance in India.

Stream: Law, Politics and Ideology 2

Paper 1: Devyani Prabhat. Radicalism through Legal Formalism: National Security Cases in Present Times

Post-9/11, coalitions of lawyers on both sides of the Atlantic have raised issues of basic freedoms in many cases linked to national security measures. Many of them have high profiles in human rights work while some of them are novices to this work. Although they are a diverse group, they appear to be able to mobilize resources, share strategies and exchange ideas. Outside of courts, they are involved in mobilizing around issues of basic freedoms through speaking to media, lecturing on university campuses and events at NGOs, blogging and writing personal accounts of their cases and clients, organizing training sessions and lobbying for legal change. However, their court submissions are narrow and technical without much reference to the wider political context. In the UK it appears that the Human Rights Act 1998 has presented more occasions for conventional-like rule of law lawyering in the context of terrorism cases rather than facilitating a wide range of arguments and the in the US the SC cases fail to engage with substantive points of law relating to basic freedoms. Why is there an apparent dichotomy in the behaviour of lawyers outside of courts and in their in-court roles? Data for this study indicates that there are two likely root causes: 1) heightened state action which uses new legal mechanisms to create preliminary barriers for consideration of rights issues and

2) the construction of legal issues in constitutional law cases which privileges the narrowest issues for determinations and, in most cases, precludes consideration beyond preliminary issues. Alternatively. It is also possible that the parameters of what constitutes “radical” may have shifted. In this paper I explore these various possibilities to develop a more coherent understanding of radical lawyering and legal formalism. It appears the two are not always at loggerheads in legal mobilization.

Paper 2: Gary Wilson, The Subtle Constitutional Reform Agenda of the Conservative Government and the Politico-Legal Forces Driving It

Constitutional reform within the UK has predominantly been associated with the parties of the centre-left, while the Conservative Party has traditionally been ideologically adverse to most proposals for constitutional change and opposed virtually all of the major planks of the Labour government’s unprecedented constitutional reform agenda implemented from 1997 onwards. However, attitudes to constitutional change are not static and must not be seen purely in ideological terms. The current Conservative government came to power on a manifesto which contained several policy proposals bearing very significant potential constitutional implications. While some objectives, such as the replacement of the Human Rights Act, represent an intention to reverse changes introduced by the Labour government, the Conservative government has a much more substantial, albeit subtly presented, agenda for constitutional reform. The recent introduction of ‘English Votes for English Laws’ in the House of Commons, the forthcoming referendum on the UK’s membership of the European Union, proposals to replace the Human Rights Act with a ‘British’ Bill of Rights, and initiatives to devolve power through the localities and regions of England all serve as evidence of this.

The apparent newfound Conservative appetite for constitutional reform poses a real prospect of fundamental change to the legal and political cornerstones of the modern UK constitution, yet the driving forces behind Conservative policy are in large part merely pragmatic. This paper seeks to explore the factors which underpin the Conservatives’ agenda for constitutional change, demonstrating these to represent a combination of a small degree of ideological principle and a series of pragmatic political calculations grounded in electoral ambition and the appeasement of key stakeholders. The substantial legal and political consequences of some of the current constitutional reform proposals will also be considered.

Paper 3: Iain Frame. The Bank of England, the London & Westminster Banking Company, and the Rise of Deposit Banking

This paper is about the so-called “declaratory clause” in the Bank of England Act of 1833. The declaratory clause permitted the formation of other joint stock banks of deposit in and around London besides the Bank of England on the condition that these banks did not issue their own bank notes payable on demand. Thanks to this declaratory clause, London’s first joint stock bank of deposit, the London and Westminster Banking Company, was formed in late 1833.

This paper’s first aim is to analyze the politics behind the passing of the declaratory clause. It does so by considering the interactions between the Bank of England, the government, and the proponents of London joint stock banks of deposit as they bargained over the structure of banking in London. This bargaining took place during a “critical juncture”, one that presented a broad range of options to key policy-makers. These options were made possible by legal ambiguities in the traditional interpretation of the Bank of England’s Charter, ambiguities the proponents of joint stock banks of deposit tried to exploit and the Bank of England resist. Both sides did so under the shadow of the Reform Act of the year before and from conflicting ideological positions, with the proponents of joint stock banks of deposit embracing what Harold Perkin calls the “entrepreneurial ideal” to challenge the regime of “Old Corruption”, a regime with which the Bank of England had long been associated.

As its second aim, this paper explores the sizeable time-lag between actors’ actions, such as challenging and defending the status quo, and long-term consequences. Unintended consequences are likely to be widespread. One such unintended consequence – to which the declaratory clause of 1833 contributed – was the exponential growth in bank deposits as a component of the money supply in the 1830s.

Stream: Law's Empire? Justice, Law & Colonialism 4

Paper 1: Campbell Munro, The Advent of Aerial Empire: Air Policing, Imperial Airways, and the Spatio-Legal Construction of Airspace

At the turn of the twentieth century the airplane ushered in a 'new geography for a new empire,' as the advent of aviation coincided with a rebooting of imperial formations and modes of rule. That empire took to the skies is well documented, yet what have escaped scholarly attention are the implications of this aerial imperial formation for the legal regulation of airspace. This paper marries the 'territorial political economy' framework deployed by Philip Steinberg in *The Social Construction of the Ocean*, with the fundamental tenet of legal geography, that law and space are mutually constitutive, to propose a spatio-legal construction of global airspace - both then and now - as imperial space. During the 'golden age' of aviation, the air was used, regulated, and represented in ways that produced airspace as a primary locus for the entanglement of international and imperial law and entailed its construction as imperial space. Airspace had two primary uses that reflected the changing material organisation of empire. Firstly, as a 'space of communication,' through which Britain's Imperial Airways linked outposts of 'white civilization' in the Dominions with the imperial metropole. Secondly, as a 'force field' through which imperial power was projected and the unruly periphery policed from above. The regulation of airspace also manifested the imbrication of the indivisible sovereignty of international law with the divisible sovereignty of imperial law. The 1919 Paris Convention reified the abstract spatiality of international law through the provision of complete and exclusive sovereignty in (primarily) European airspace, while simultaneously enabling the contingent territorialisation of airspace through the exercise of imperial jurisdiction outside of Europe. Thirdly, through the multivalent discourse of airmindedness, 'the very idea of airspace - what it was, whose rightful place it was, who should control it' - was represented as imperial space.

Stream: Lawyers and Legal Professions 1

Paper 1: Andy Boon and Avis Whyte. An Analysis of Cases Before the Solicitors Disciplinary Tribunal in 2008 and 2015

This paper explores the work of the Solicitors Disciplinary Tribunal by comparing two sets of data; one from 2008 and the other from 2015. The initial study was intended to provide a benchmark for considering the evolution of the disciplinary system following the Legal Services Act 2007. The research process identified a number of variables available in the tribunal reports. These include, for example, the age, sex and practice experience of respondents, the type of offences with which they were charged, the types of firm they came from and the outcomes of the cases. The paper will explore differences between the two sets of data and consider the effectiveness of regulation in dealing with the lawyer default.

Paper 2: Michael Webster. Facilitating Access to Justice: Alternative Business Structures in the United States

Access to justice is under threat in the United States with reductions in the Legal Services Corporation's Legal Aid Budget. Lobbying groups such as The American Bar Association ('ABA') also recognise that the provision of legal services is growing increasingly more expensive, time-consuming and complex. In its opinion, the effect has been to create a deficiency in legal services provision. This exists between individuals who can no longer afford to use lawyers, and are often forced to represent themselves, and individuals who can afford to use lawyers, but who do not recognise their problem as having a legal solution, or would prefer less expensive alternatives.

This has prompted the ABA to consider other modes of access, and in particular, growing experience of federally-authorised legal services providers ('LSPs'). In recent years, LSPs have been authorised in several States to operate within courthouses. LSPs can include licensed legal technicians and bankruptcy petition preparers for example. However, historically there has been a reluctance to go quite as far as England & Wales in authorising non-lawyer owned legal services providers (also known as Alternative Business Structures). By contrast, these are actively promoted by the English legal services oversight regulator, the Legal Services Board.

In October 2015, the ABA's Commission on the Future of Legal Services launched a consultation paper on new categories of LSPs. This seeks to address the questions as to whether access to legal services can be improved if the pool of providers was expanded to include individuals without a J.D. and full law license; and the extent to which those who are not licensed to practice law should be permitted to have an ownership interest in law firms. This paper attempts to address these questions from a US/UK comparative perspective.

Rachael Field and Laurence Boule. Dispute Resolution and 21st Century Lawyering

This paper is concerned with what it means to be a lawyer in the 21st century. We focus on dispute resolution knowledge, skills and values as increasingly important components of legal discipline expertise, critical to effective contemporary legal practice. The paper argues that DR knowledge and competence are central to both transactional and dispute resolution lawyering, and important to the future global viability of the legal profession.

First, the paper briefly considers the nature of the modern legal profession. We then explore the philosophical framework of the practice of law, the rule of law, and particularly its relevance to the role of lawyers as dispute resolvers. Next, we consider the current tide of change facing the legal profession and the implications of these developments for the way in which legal services are delivered. We demonstrate that dispute resolution knowledge, skills and attitudes are a critical factor in the legal profession's response to these challenges. Our concluding argument is that as dispute resolution is so central to the future of legal practice, it should also be central to every law graduate's experience of legal education.

Stream: Medical Law and Ethics 4

Paper 1: Edward Dove. Promoting health research and protecting participants? The impact of 'next-generation' health research regulation on NHS research ethics committees

NHS research ethics committees (RECs) serve as the gatekeepers of health research involving human participants. They have the power to decide, through a regulatory 'event licencing' system, whether or not any given proposed research study is ethical and therefore appropriate to undertake. RECs have several regulatory functions. The primary function has been to protect the interests of research participants and minimise risk of harm to them. But RECs also provide stewardship for the promotion of ethical and socially valuable research. While this latter function traditionally has been seen as secondary, the 'function hierarchy' is increasingly blurred in regulation. Regulatory bodies charged with managing RECs now emphasise that the functions of RECs are to both protect the interests of research participants, and also promote ethical research that is of potential benefit to participants, science, and society. While the UK has held in some of its previous regulations (broadly defined) that RECs equally function to facilitate (ethical) health research, in my paper, I argue that the 'promotionist' ideology has moved 'up the ladder' in the regulation of RECs and in the regulation of health research, all the way to implementation in law, specifically in the Care Act 2014, and in the regulatory bodies charged with overseeing health research, namely the Health Research Authority. What impact does this ostensibly twinned regulatory objective have on the substantive and procedural workings of RECs? Invoking regulatory and anthropological theory as well as empirical research findings, I query how RECs, with a classic primary mandate to protect research participants, now interact with regulatory bodies charged with promoting health research and reducing perceived regulatory barriers. I further query what this changing environment might do to the bond of research and ethics as seen through REC processes of ethical deliberation and decision-making.

Paper 2: Barbara von Tigerstrom. Use of patient registries in the development and regulation of therapies for rare diseases

In many jurisdictions there is increasing interest in using sources of data beyond clinical trial results to inform regulatory decisions about medical products. Nowhere is there a more pressing need to explore this potential than in the context of rare diseases, where small patient populations make it difficult or sometimes even impossible to recruit sufficient numbers of participants for clinical trials to yield significant results. At the same time, rare disease patient registries are being recognised as critical tools for research, and efforts to develop and harmonise these registries are an important part of national rare disease strategies. These

efforts face a number of legal, ethical, and policy challenges, along with technical ones, which will need to be addressed in order for registries to reach their potential as research tools.

This paper examines the legal and ethical issues involved in using registries in the regulation of medical products for rare diseases, including in the development and approval of products and in post-marketing surveillance and risk management. It explores the ways in which the law – including specific regulations and policies on medical products as well as the broader body of law on relevant matters such as privacy and consent – could enable or impede effective use of registry data. The regulatory framework could be an important influence on the development and use of registries, helping to either promote or undermine important values such as transparency, collaboration, and the empowerment and protection of patients. The analysis will critically examine existing and proposed laws and policies to identify issues and recommend ways forward, with particular attention to recent initiatives such as the European Medicines Agency strategy on patient registries.

Paper 3: Morgan Shimwell. Understanding Social Demands for Modafinil: A Legal and Sociological Investigation

Pharmaceutical cognitive enhancers, such as modafinil (brand name Provigil), have captured the public imagination as the new drug of choice of professionals, students and even military personnel. The ‘lifestyle’ uses of modafinil and the ways that patient/consumers access the drug raise serious concerns about the safety and quality of the products that are being consumed.

At least two interrelated factors contribute to the social demand for modafinil as a cognitive enhancer and the consequent problems that arise. First, the phenomenon of pharmaceuticalisation – the translation of aspects of the human condition into opportunities for pharmaceutical intervention – seemingly drives the endless (re-)incorporation of pharmaceuticals into daily social existence. The multilevel interactions between medical needs, patient/consumer identities, social and corporate constructions of health and illness, industry strategies of product development and marketing, the dual function of the Internet as a site of health information and a market for products and regulatory attitudes towards safety and quality of medicines make demands for pharmaceuticals intensely complex to understand, engage with and respond to.

Secondly, the legal regulation of pharmaceutical products like modafinil is similarly multifarious and, as such, ultimately struggles to control demands for cognitive enhancers and exposes consumers to currently uncertain risks. The classification of legitimate forms of modafinil and attempts to control the means of access (to products as well as information and advertising), as well as the regulation of potentially illegitimate (‘falsified’) versions, shape, co-produce and problematize social interactions with the drug. In exploring both aspects of these wider problems, using modafinil as a specific case study, the paper will identify aspects of social demands for pharmaceuticals which require more nuanced, appropriate regulatory mechanisms to ensure the protection of the health of the public.

Stream: Refugee and Asylum Law: Theory, Policy and Practice 4 - Children and Asylum

Paper 1: Ruth Brittle, Best interests of the child: Gateway or barrier to international protection?

The concept of the best interests of the child is one of 4 key principles in the UN Convention on the Rights of the Child (CRC) and is a familiar standard in many domestic jurisdictions, particularly in Europe. It is so widely accepted that it has been described as a customary norm of international law. Whilst universally accepted as a guiding principle in children’s rights’ law, it is an indeterminate concept and perhaps the least understood principle in the Convention. It has been described negatively as a ‘smokescreen’ for dominant ideologies or a ‘mantra’ behind which the discretion of officials is exercised with little scrutiny. For a refugee child or a child applying for asylum, best interests should be a primary consideration and under the European Union’s Common European Asylum System (CEAS), the best interests of the child is purported to be a primary consideration in decisions granting or denying international protection. This paper explores the impact of a best interests determination (BID) in asylum applications by children and the extent to which a BID enhances or diminishes a child’s access to international protection. This paper will review some of the recent decisions of the European Court of Human Rights and the Court of Justice of the EU and consider

whether the supranational courts promote a holistic approach to children's rights and best interests in the context of a child seeking international protection.

Paper 2: Georgina Firth & Barbara Mauthe, Personhood, best interests and the asylum seeking child'

The politicization of the category of asylum seeker over the last twenty years has had serious consequences for children in asylum seeking families. Despite a rash of legislation in this area aimed primarily at tightening restrictions and despite continual lobbying by pressure groups, the special vulnerability of children caught up in the system has often been disregarded. In general, there has been a tension between law and policy designed to protect children in the UK and the experience of children subject to immigration control, who have been marginalized from mainstream processes.

In 2009, the government introduced a 'welfare principle' in section 55 of the Borders, Citizenship and Immigration Act 2009. Whilst this provision marks an important step forwards and indicates that the welfare of children in asylum seeking families should now be a primary consideration for the UKBA, refugee groups and practitioners have remained rightly sceptical of the practical impact of these measures.

The aims of this paper are to explore the concept of 'best interests' as it is understood and applied in Asylum law and to suggest that the notion of personhood may be useful in developing the concept. In this paper, we recognize that child refugees have little or no power to influence the manner in which decisions are made about them. We also appreciate that those who create the identity that child applicants must live with, at least in the asylum context, must be very conscious of the potential effects of our constructions and ask whether the identities that we create are inhabitable by the people we create them for. Our proposal aims to use the concept of personhood in an attempt to encourage a more complex construction of the realities of refugee children's myriad experiences.

Stream: Research Methodologies and Methods 4 – Author Meets Reader

Henry Yeomans and discussants *Alcohol and Moral Regulation: Public Attitudes, Spirited Measures and Victorian Hangovers*

Stream: Sentencing and Punishment 4

Paper 1: Joanne Clough. Why carry a knife? An analysis of the effect of deterrence in the decision to carry a blade.

Possession of a bladed article in public is an offence which initially carried a financial penalty but is now considered so serious that it attracts up to four years imprisonment. This significant increase in sentence was to deter potential offenders as the incidence of knife crime reached "epidemic proportions" (Squires, 2009). To be effective, such a deterrent sentence requires certainty, celerity and severity (McGuire, 2004). The offender must be aware of the sentence awaiting them and thereafter, rational choice theory suggests the potential offender must choose not to commit the crime by calculating that the cost of harsh punishment outweighs the gain of committing the crime (Kennedy, 2009).

Much research has been undertaken in relation to young offenders, who are predominantly motivated to carry knives out of fear or fashion (Lemos, 2004); these motivators are unlikely to be outweighed by the threat of imprisonment. The current deterrent sentencing guidelines are aimed at dealing with adult offenders yet little research has been undertaken to understand the motivations of this group. Given that an adult may be less likely to be influenced by social norms (Neugarten, Moore & Lowe, 1965) and more likely to exercise rational thought (Wood et al., 2005), this raises questions as to what drives an adult offender to carry a blade and whether the threat of imprisonment features in the decision making process.

This paper will outline the rationale, methodology and initial conclusions of a UK wide qualitative research project which aims to produce a theory of motivation for the offence of possession of a bladed article in order to determine whether a strict deterrent sentencing policy is an effective means of reducing knife carrying amongst adult offenders.

Paper 2: Liam Dempsey. Exploring Socioeconomic Disparities in the Irish Sentencing System: A Comparative Examination of the Existing Evidence and suggestions for Further Empirical Research

The Irish sentencing system has received considerable scholarly attention over the past three decades. The overarching finding stemming from these studies is that Irish sentencing practice is plagued with inconsistencies. However, whilst inconsistencies at the sentencing stage are wholly undesirable, these variations are partly justified owing to the fact that judges are simply availing of the broad sentencing discretion conferred on them through Irish constitutional jurisprudence. Indeed, much more disconcerting is the potential presence of disparities at the sentencing stage based on a certain extra-legal characteristic of the defendant in question (gender, class, race). An ocean of US scholarly literature has been dedicated to the nature and causes of disparities at the sentencing stage. Unfortunately, however, only one study (Bacik et al, 1998) has been carried out to this effect in an Irish context. Through an in-depth methodological analysis of this study, it will be demonstrated that, for the most part, this study adheres to the general rules of empirical legal scholarship. Consequently, when taken at face value, the findings of this piece of research are strongly suggestive of class-based sentencing disparities in the Irish sentencing system. However, this paper also highlights how future research in this may be of a more methodologically rigorous nature in deciphering whether or not the findings of Bacik et al (1998) are applicable to the sentencing system as a whole in 2015. Finally, through an in-depth comparative analyses of the make-up of the Irish and US prison populations, it will be proposed that class-based disparities in the Irish sentencing system is, theoretically, a distinct possibility, notwithstanding the fact that the over-involvement of the lower-classes in the criminal justice system cannot be discussed in isolation from the wider socio-structural context in which it exists.

Paper 3: Max Lowenstein. Judicial Communication in the English Youth Court: Expressing sentencing explanations to young offenders.

There is little recently published research on the actual workings, including the extent of judicial participation and engagement within youth courts, (Lowenstein, 2015: 260) Most studies, not all focussed on England and rarely including qualitative data, date back to the late 1970's and early 1980's and hint at marginal judicial participation (Weijers, 2004: 23-30). This small pilot project, funded by the SLSA has qualitatively investigated (Kvale, 1996:200-04) the sentencing explanations from those who predominantly produce them, i.e.) Magistrates. Such sentencing explanations and the way they are communicated (expressed) matter because they can promote offender understanding of the sentence and help to prevent future re-offending, (Home Office, 2001). Furthermore, they form part of the statutory duty to give reasons for and explain the effect of a sentence passed in Court (s. 174, Criminal Justice Act 2003). This research has considered the expression of sentencing explanations through face to face/telephone interviews with 16 youth court Magistrates across Southern England. Indicative shared judicial perceptions (norms) regarding their sentencing explanation experiences in court will be provided in the following way: 1) The source(s) which inform sentence explanations; 2) The influence of other court room actors; 3) The extent of judicial perceived participation and engagement with young offenders including the recidivist impact; 4) The predominant mode of expression (positive to negative); 5) The detailed reasons for sentence explanations, beyond what we currently know, i.e.) human behaviours, language simplification and moral education, (Weijers, 2004: 30). The data will be discussed and conclusions posited for the audience, which help inform judicial communication via shared best practice examples within the youth court. The importance of gathering qualitative data matters because it helps us to understand youth sentence explanations, it informs judicial training and it provides an understanding of court culture changes over time, (Allen, Crow & Cavadino, 2000).

Sexual Offences and Offending 4 – Birchall Trust

Speaker 1: Karen Greenhow, The Birchall Trust

The speakers will discuss the work of their charities and explore the possibilities for collaboration between their organisations and conference delegates.

Stream: Social security: Ideology, law and society in the 21st Century 4

Paper 1: Hartley Dean. The Struggle for Social Security in a Twenty-first Century Context: The evolving significance of rights and legality

With a focus on the right to social security as a right to an 'adequate standard of living' (Articles 22 and 25, Universal Declaration of Human Rights), this paper reflects on the potential synergy between, on the one hand, the author's recent attempt to define a post-Marshallian concept of social citizenship (Dean 2015) and, on the other, Stuart Scheingold's (2004) attempt to outline a new politics of rights, premised on a constitutive theory of rights and legality. The paper acknowledges that rights are socially constructed; it contends that they are constituted through the naming and claiming of human needs; and that social citizenship provides the context for the struggle specifically to articulate our dynamic need for social security. It is argued that needs precede rights, but both are constitutively framed through processes of social negotiation that will have begun before the inception of the city or the nation state, and before the invention of the law and the polis. It is a process that now extends and will continue to evolve in a global context; in a variety of (often suboptimal) modes and at a variety of sites at the points at which competing understandings of needs and rights collide; that may transcend territorial boundaries; that may be shaped by a spectrum of means, ranging from local customs to national legislation to international covenants; that may to varying degrees and in varying ways be invested or imbued with legal meanings and strategic possibilities.

Paper 2: Jed Meers, Shifting the Place of Social Security: Welfare Reform, Social Rights and Austerity in the UK

In assessing the aims behind one of the most controversial planks of the UK Coalition Government's welfare reform agenda – a housing benefit penalty for under-occupation, commonly known as the "bedroom tax" - Laws LJ stated that in addition to the perceived imperative of saving public funds, the change was seeking to "shift the place of social security support in society." This paper is focused on how the courts have engaged with this "shift" in the UK.

By drawing on judicial review challenges to the Welfare Reform Act 2012, it argues that the courts have struggled to delineate their role in the wake of this austerity-induced shift, with the intensity of proportionality review proving an almost insurmountable bar to many claimants' challenges. The twin-gears of a "cut-and-devolve" approach, where central budgets are reduced and responsibility for provision pushed downwards to local government, introduces complicated multi-level considerations as the welfare reform agenda becomes fragmented across institutions. Deficiencies elsewhere lead to an over-reliance on limited procedural obligations, which prove ineffective to deal with the complicated cumulative effect of large-scale welfare reform programmes.

The paper will be in two sections. The first provides a concise overview of the UK constitutional context, the motivations for reform, and the importance of (and associated problems with) "localism." The second outlines themes which emerge from the case law: (i) the reliance on procedural challenges under equality obligations – particularly the Public Sector Equality Duty (PSED) – in the appeals, (ii) the increasing importance of discretionary mitigation mechanisms as opposed to statutory exemptions, and how their role in a number of flagship reforms raises questions about the ability of discretion at the local authority level to sit alongside austerity at the central level, and (iii) the over-reliance and inherent limitations of discrimination challenges to assert social rights.

Paper 3: Philip Larkin. The Reach Exceeding the Grasp: Judicial Activism, Human Rights, and Social Security Law

The notion of judicial activism has come in for criticism from both academics and leading members of the judiciary itself. This has not prevented other judges from using their powers of interpretation, particularly in relation to the field of human rights, to achieve a vision of social justice for groups of benefit recipients in the United Kingdom. However, it will be a key contention in this paper that due to the wide gulf between human rights jurisprudence and legal entitlement to social security, and the reality that benefit entitlement has become largely conditional, any judicial activism in this area would be a largely wasted effort.

Stream: Systems Theory Thinking 3 – Author Meets Reader

Jiří Přibáň (author), Sovereignty in Post-Sovereign Society (Ashgate, 2015)

Jiří Přibáň will discuss his book with three discussants:

- Jack Meakin
- Richard Nobles
- Thanos Zartaloudis

Stream: The Law and Unintended Consequences 6

John Rumbold, The pernicious effect of the external factor doctrine in non-insane automatism on expert evidence

The external factor doctrine in non-insane automatism arose from a desire to draw a line in the sand between conditions where public safety was an issue and where it was not. The status of non-insane automatism as a "lack-of-proof" defence and the contrast with the special verdict leads to the application of the doctrine to circumstances and medical conditions not originally envisaged. This has a distorting effect on expert evidence provided, judicial instructions, and jury decision-making. The net effect is a bypassing of social control mechanisms in certain circumstances where there are still issues of public safety.

Andrew Henley, 'Debt to society' or 'moral mortgage'? criminal records and the unintended consequences of the Rehabilitation of Offenders Act 1974

The Rehabilitation of Offenders Act (ROA) 1974 allows certain criminal records to become 'spent' following the passage of a specified 'rehabilitation period'. Once spent, the individual to whom the record pertains becomes a 'rehabilitated person' in law and they no longer need to declare their conviction for most purposes. This includes applications for insurance and employment (although many exceptions apply here). The ROA also created specific offences concerning the disclosure of spent convictions by third parties, rendered such records inadmissible in civil proceedings and (technically at least) made the future publication of any spent conviction actionable under defamation law.

Critics of the Act argue that it is unnecessarily complicated, that it has been made subject to far too many exemptions and that it shuts off the possibility of legal rehabilitation to genuinely reformed people with convictions who received longer prison sentences (prison sentences of more than four years are excluded from the Act). Prior to the ROA, however, all people with old convictions remained vulnerable to possible discrimination for life. Thus the Act must also be recognised as a significant milestone in the social reintegration of former lawbreakers.

In this paper, I consider more fundamental questions about the approach taken by the ROA and whether a number of 'unintended consequences' have stemmed from it. For instance, by creating the 'rehabilitated person' as a legal entity, has the Act unwittingly reimaged as un-rehabilitated those whose rehabilitation period has not yet passed or whose sentence was too long for them to benefit from its provisions? This may have implications for how employers, insurers and others approach information about criminal background. Moreover, I suggest that the ROA's rehabilitation periods create a state of 'civic purgatory' for people with convictions which undermines the notion that guilt is fully expiated through the suffering of punishment.

Paulina Wilson, Presumed Equivalence of Foreign and Domestic Criminal Offences: Evidential Issues and Unintended Consequences for the Criminal Process

In this era of globalised legal communication, documents with references to foreign legal concepts are frequently shared between jurisdictions as part of Mutual Legal Assistance (MLA). For instance, the European Criminal Record Information System allows one state to request non-native defendants' criminal records from another for the purposes of the investigation or prosecution of criminal offences, such method of cooperation now being commonplace in, although not limited to, EU Member States. Notwithstanding cultural differences between legal systems, specifically between those that have evolved from different legal traditions, in the absence of applicable supranational or intergovernmental harmonisation provisions, it is presumed that domestic and foreign laws are the same unless expert evidence to the contrary is adduced (*El Anjou v Dollar Land Holdings plc & another*).

Against this backdrop, the paper considers instances where the construction of criminal liability does not overlap between common law and civil law systems, particularly in the case of criminal offences of perceived lesser seriousness and/or no cross-border dimension, and thus excluded from harmonisation at the EU level (art 83(1) TFEU). It is argued that the presumption of conceptual equivalence in such circumstances may have unintended consequences for the domestic criminal process. By way of illustration, potential implications of using foreign criminal records as bad character evidence are explored from the perspectives of the prosecution, the defence and the court. The paper concludes with recommendations for improving the process of legal communication between jurisdictions and interpreting foreign law at domestic level.

Stream: Trans*/ Law

Paper 1: Grietje Baars, Queer cases unmake gendered law, or, Fucking law's gendering function

Law's role in upholding and continually reproducing the heteropatriarchy is increasingly being challenged. This is happening directly, by those wishing to undo law's compulsory binary gender performance through asking to be recognised as non-gendered (the case of Norrie in Australia, and K in the Netherlands), and by those seeking to 'queer' law's gender binary through cases that assert the recognition of, what are called in the popular media, 'pregnant transfathers' – for example the case of Warren Kunce in Sweden, and the case of the anonymous Berliner currently waiting to be decided by the German Supreme Court. In the UK and The Netherlands, proposals have been tabled to minimise the obligation to declare a gender in official documents, in Australia, New Zealand, Nepal and India it is now possible for some to have a passport with gender "x", in the UK the gender-neutral Mx title was officially adopted last year. Indirectly 'fucking' law's gendering function are the so-called 'gender deception' cases of which three have recently gathered an increasing level of media coverage (McNally, Newland, Lee). The latter sees the judicial system reasserting its hegemony as heteronorm-maker, while the popular press amplifies the vehemence of the lesbo- and trans*phobia in these judgments. This paper evaluates the effects of these queer cases and legal reform efforts, and asks what the queer struggle with the heteronormative can tell us about law's social function, material effects and emancipatory or liberatory potential more broadly. Is now the time to say 'fuck law'?

Paper 2: Chris Dietz, Reforming the Gender Recognition Act 2004: from Denmark, with caution

The Women and Equalities Committee's recommendation that the UK Government 'update the Gender Recognition Act, in line with the principles of gender self-declaration that have been developed in other jurisdictions' (Transgender Equality (HC 2015-16, 390) para 45) represents an opportune moment to reflect upon the findings of an empirical study of gender recognition in Denmark; the first European state to enact the 'self-declaration model' of legal gender recognition, in 2014.

Danish law has been celebrated for granting individual citizens the opportunity to make a statutory declaration of their self-defined gender identity; bypassing gatekeeping medical and legal authorities, and allowing trans people to amend their gendered social security number without having to first undergo surgical castration for the first time in Danish history. Yet this reform only required the Danish Government to extend an existing possibility – changing the sex/gender one is registered as – without significantly amending the registry system, or devising a whole new system of registering sex/gender altogether. Moreover, new medical guidelines – also authored in 2014 – have formally centralised authorisation for body modification in the Sexological Clinic at the National Hospital in Copenhagen.

Given this mixed picture, it might be helpful to understand these developments not as part of a progressive human rights narrative, but as a reallocation of jurisdiction. Drawing on the work of Valverde, Dorsett and McVeigh, I argue that while recent changes do inaugurate a personal jurisdiction for the purposes of legal gender, this jurisdiction is designed such that the self-declared gender status is limited in scope; in terms of what can be declared, and where that declaration will be considered authoritative. By applying jurisdictional analysis to these particular developments, I illuminate the processes through which law orders and contains the knowledge claims, politics, and embodied effects of medical and legal institutions.

Paper 3: Sandra Duffy, Gender Identity in Indian Law: From Colonial Doctrine to Gender Recognition

This paper explores the relationship between law and gender identity in India. In recent years, a series of landmark cases, *Naz Foundation v NCT of Delhi* (2009), *Koushal v Naz Foundation* (2013), and *NALSA v Union*

of India (2014), have dealt with the questions of same-sex sexual activity and gender identity. In particular, NALSA addresses gender identity in India with reference to many international sources of human rights law. As Western observers, we can often be ignorant of the pantheon of queer and trans* identities that exist across the globe. The fixed definitions of binary gender used even in human rights law do not neatly fit a society such as India's, which has a large and visible third-gender community. Equally, the distinction between gender identity and sexual orientation in Indian society is not as rigidly defined as it is in Western law - the category of "third gender" comprises transgender individuals, hijras (persons male-assigned at birth, identifying as female or non-binary gendered and often invoked in symbolic cultural rites), as well as male homosexuals - who are seen as "abnormal" men due to their sexual desires. Under Section 377 of the Indian Penal Code (a legacy from British colonial law), it is an offence to have intercourse "against the order of nature" - a provision which is a de facto criminalisation of sex acts between men. This law remained in force after India gained its independence. The process of decolonisation led to an uprising of nationalist sentiment, bringing with it a redefinition of Indian norms which included a strict moral order to gender and sexuality. This paper will illustrate the ways in which law as written can clash with the society on which it operates, and asks how human rights law should best adapt to diverse jurisdictions.

Stream: Vulnerable Suspects and Defendants 1

Paper 1: Claire McDiarmid, Beyond Non-Age: A Defence for Children who Offend

In Scotland, the age of criminal responsibility is eight though children cannot be prosecuted until they are twelve. In England and Wales, for all purposes, the age is ten. This paper will argue that a further mechanism is needed to protect the young who do wrong within the criminal process. It will consider the age at which criminal responsibility is imputed in relation to the ages at which law confers other rights and responsibilities. It will look at the existing legal mechanisms and defences available to children, examining both advantages and shortcomings. It will touch upon material from other disciplines - neuroscience and developmental psychology - offering insights in relation to young people's appreciation and ability to control risk, and their understandings. It will take into account the importance of their limited experience in determining how to exercise choice and freewill and the way in which their generalised disempowerment may impact upon their ability to be criminally responsible. Ultimately, it argues for the provision of a bespoke children's defence. It will consider proposals already made in this respect by the Law Commission and argue for its own conception of such a defence.

Paper 2: Fabio Ferraz de Almeida, Bullying, Fight or Assault? Building alternative versions in a police interview with a juvenile suspect

My research is about how police interviews with suspects are conducted in the United Kingdom. I'm particularly focused on how police officers and suspects deploy multiple descriptive resources to build, sustain, challenge and negotiate alternative versions of the same event throughout the interview (Pollner, 1987). My data set is comprised by 50 audio-recorded police interviews with suspects, conducted between 2004 and 2005. I'm analysing that data using ethnomethodology (Garfinkel, 1984) and conversation analysis (Drew & Heritage, 1992). Although the core of my research is based on these recordings, I'm also conducting ethnographic observations in a police station in the Midlands in order to inform my analysis (Maynard, 2005). In this paper, I will focus on a quite mundane case in which two police officers interview a teenage girl who was arrested on suspicion of having assaulted another girl on the way home from school. By using a real police interview and analysing it through a conversation analytic approach, I will show in details how an understanding of law in action can be achieved through the thick description of both professionals' and ordinary persons' orientation to and production of legal categories as they arise from actual interactions in legal settings.

Paper 3: Elizabeth Tiarks, Translating Restorative Justice theory into practice: implications for young offenders

There are a number of significant areas of dispute within Restorative Justice theory. One of these is whether Restorative Justice should promote certain restorative outcomes, such as reparation or rehabilitation ("outcome-focused"); or whether the process is more important and participants should be empowered to

decide between themselves as to what the outcome for a particular case would be (“process-focused”). Despite the tension between these two approaches (as participants may have different views to externally held ideas of what an appropriate outcome might be), Restorative Justice practice often operates so as to incorporate both, tending either to prioritise external considerations, such as proportionality; or to prioritise the wishes of participants.

This paper will examine the trade-offs made between outcome-focused and process-focused ideals within restorative justice practice, looking in particular at the implications for vulnerable, young offenders involved in RJ conferences. This will involve exploring issues such as the balance of power and role of professionals in conferences; and the impact of young offenders contributing to, and having some level of ownership over outcomes. This will draw on a small scale study of Restorative Justice youth conferencing in Northern Ireland, which involved interviews with young offenders, victims and conference co-ordinators. It will also involve reference to secondary empirical research concerning young offenders in Restorative Justice conferences in Northern Ireland.

It will be argued that, on the one hand, there is much to recommend the empowerment of Restorative Justice conference participants to make their own decisions, with as few external constraints as possible, i.e. practice weighted towards the process-focused account of Restorative Justice. However, the issues highlighted by an examination of Restorative Justice practice demonstrate significant problems which would need to be addressed, which affect in particular vulnerable participants such as young offenders.

Session 5, 14:00 – 15:30

Stream: Administrative Justice 4 - Administrative Justice, Law and Policy

Paper 1: Richard Craven, PFI procurement: a case study of public authority compliance

The paper presents findings of empirical research into the impact of EU public procurement regulation on the tendering of PFI contracts. The scale and complexity of PFI means that the process followed to select the winning private partner and to set the terms of the agreement is invariably resource intensive and crucial for value for money. In 2004, to cater for modern procurement, like PFI, the EU introduced a new procurement procedure: “competitive dialogue”. The paper examines the way in which regulated actors interpreting and applying these new legal rules in practice respond to rules that conflict with legitimate needs, to legal uncertainty and complexity, and the factors that influence responses.

Paper 2: Florence Anaedozie, Combating Grand Corruption in Nigeria from the Lens of the Administration of Criminal Justice Act 2015: Progression or Retrogression?

Grand corruption has challenged the economic, social, political, and cultural fabric of Nigeria to the extent that the image of the country remains battered domestically and internationally. Attempts at ending the scourge of endemic grand corruption have not yielded sufficient result due to the slow pace of criminal justice administration that has ensured that Powerful individuals standing trial for corruption cases often use legal technicalities to delay cases for years. These protracted cases have led many accused persons standing trial for high- profile corruption and related offences to contest and win elections to very sensitive positions in the country with many of them enjoying effective immunity from prosecution.

This paper critically reflects on the provisions of the recently enacted Administration of Criminal Justice Act, 2015. It interrogates whether it is progressive, timely and, in conformity with international best practices. Does it stand to progress or regress the battle against grand corruption in Nigeria? Is it capable of rooting out the malignancy resulting from delays in the criminal justice administration in Nigeria? The paper suggests that the new Act if properly implemented, could facilitate the speedy trial of corruption and related cases thereby preventing the oligarchs from unduly manipulating the justice system to their advantage.

Paper 3: Edward Kirton-Darling, Death, Decision making and the Work Capability Assessment

Shortly after coming into office in 2010, the Coalition Government changed the way in which entitlement to disability benefits was assessed. The Work Capability Assessment (WCA) which the Government introduced

has been subject to a range of critiques, including fierce criticism from both the Public Accounts Committee and campaigning organisations in relation to the impact of incorrect initial decisions on the most vulnerable claimants. This criticism has received particular media attention where the claimant has died, with a series of national and local media reports of cases where an unsuccessful claimant subsequently died from their condition, or a suicide was linked to the withdrawal of benefits. In 2014, it was revealed that the DWP had conducted internal reviews into 60 deaths linked to the assessment, and in 2015 academic research (Barr et al 2015) confirmed a correlation between the WCA and deaths from suicide, finding that 590 deaths between 2010 and 2013 were associated with the assessment.

In the context of this emotionally and politically charged debate on the impact of the WCA, my paper sets out a proposed research project on the role of the inquest in administrative justice. I contend that investigations by the Coroner are a critical part of oversight and possibilities of accountability of this system: inquests into individual deaths form the basis for statistical analyses and the inquest hearing has provided a public platform for both Coroners and family members to criticise the system. In a context of outsourcing of WCA decisions, an enhanced emphasis on the inquest as a standard setting forum and greater powers for the Coroner to require disclosure and produce critical narrative verdicts, I argue that a case study of inquests into deaths linked to the WCA holds out the prospect of valuable insights into contemporary administrative justice.

Paper 4: Robyn Holder and Kathleen Daly, Money: exploring the meaning of financial assistance for survivors of sexual victimisation

This presentation explores the meaning of money for survivors of sexual victimisation through interviews with female recipients of a state-based financial assistance scheme. We situate the analysis within wider debate about the nature of justice and recovery from crime. Women's comments are related to differing rationales given by scholars and the state for the provision of state-based compensation, and to research on victim preferences for compensation from offenders and from the state.

The research will be of interest to researchers examining justice in domestic and international justice settings, particularly reparations for sexualised violence. It will also be of interest to public policy-makers. Empirical research in this area is extremely limited.

Stream: Art, Culture and Heritage 2 - Law, society, and the identification of art and heritage

Paper 1: Carolyn Shelbourn, The Writing's on the Wall: Graffiti as Crime, Art and Archaeological Artefact.

Graffiti has been defined as 'writing or drawings scribbled, scratched, or sprayed illicitly on a wall or other surface in a public place', (OED) but in its broadest sense might be regarded as 'any sort of unofficial text or image, on any surface, created by any means' (Historic England). Although graffiti, is considered as a relatively modern phenomenon, it is something which goes back centuries, dating back to Classical times.

Graffiti is a common sight in many urban settings, and can produce very differing reactions in the observer: it could be perceived as an act of vandalism, a piece of art or even a political statement. For those with an interest in art, culture and heritage, graffiti raises some interesting questions. If people are willing to pay large amounts to own it, as they are with the works of Banksy for one, is it art? If it is the work of a well-recognised exponent of this form of street art, could it mean that the image and the building to which it is attached could be listed? If it is inscribed on the walls of listed buildings and scheduled monuments, is it vandalism or 'heritage crime'? Does it depend on the age of the graffiti? What might be termed 'historic graffiti' has been the subject of academic study and is now regarded by Historic England as a valuable source of information about the past which should be recorded, and recently two archaeologists published an article in which they examined graffiti as an archaeological object with many similarities to ancient cave art. Could modern graffiti have equal importance for the historians and archaeologists of the future?

Paper 2: Colin R Moore, Private Corporations and the Preservation of Cultural Heritage: Harnessing the Power of Corporate Social Responsibility.

The business enterprise, particularly in its larger forms, does not simply exist and operate within the economic sphere of human activity, but also dominates the public sphere, where debates on cultural heritage also reside. Consequently, the large private corporation, when wielding such influence,

simultaneously creates, shapes, distorts, challenges, and even destroys, both physical and non-physical aspects of cultural heritage. The point is that such corporate-cultural heritage interactions can be either extremely positive for the preservation of such heritage, or enormously damaging in other circumstances. So the question is how the positive aspects of corporate activity towards cultural heritage can be preserved, while the damaging aspects are prohibited, restricted, or at least discouraged.

The paper will firstly focus on the controversial question of how cultural heritage ought to be defined, thereby mapping and delimiting the scope of the interaction between the corporate and cultural heritage, before, secondly, considering the role corporate social responsibility (CSR) can play in the regulation of such a relationship. It will be argued here that cultural heritage must be defined widely to include both tangible and intangible aspects of society's living culture, and that CSR, even in its neoliberal soft-law form, can fulfil cultural heritage goals. It will be further argued that the fulfilment of such a goal also provides benefits for the corporation itself, given that it offers a least some level of corporate legitimacy, which has long been recognised as fundamental for organisational survival. Consequently, as a whole, this paper furthers debates on the limits and scope of cultural heritage preservation, the shape of CSR, as well as the corporate-cultural heritage interaction.

Paper 3: Josh Nelson and Adie Nelson, Searching For Authenticity in Art: Snarkhunting in Canadian Law.

The epideictic oratory that concludes a courtroom adjudication of alleged art fraud may function as a "status degradation ceremony," recasting the identity of the person on trial. It may impose simultaneously a derivative form of banishment upon an object that is judged fraudulent with an order for its literal stigmatization, via the affixment of a mark of disvalue, or total destruction. Conversely, should its contents be structured as a narrative of exoneration rather than excommunication, it may operate akin to the chrysopoeia of alchemy and, with a pronouncement of an object's authenticity, transform a hitherto base or debased object into "gold." Yet, despite the commonplace polarization of the "authentic" and "fraudulent" in art, these epithets of praise and opprobrium are floating signifiers that allow for multiple meanings.

Recalling that Lewis Carroll's "agony in eight fits" ends with the epiphanic "for the Snark was a Boojum, you see!" our paper does not discount similarly grand pronouncements on "authenticity" and "fraudulence" in art as mere gibberish. Rather, it takes heed of Michael Holquist's contention that when Carroll's "nonsense" is considered in its totality, what emerges "is not chaos, but the opposite of chaos. It is a closed field of language in which the meaning of any single unit is dependent on its relationship to the system of the other constituents." Drawing upon this insight, it proceeds with the assumption that definitions of "authenticity" and "fraudulence" in art also beg consideration of the systems that coax them into being and endow them with significance. As Mary Douglas observed, "a heavy social load ...is carried by apparently innocent-looking taxonomic systems." It notes that in settler societies, the legacy of colonialism endures in socio-legal constructions of "authentic" and "inauthentic" "Indigenous art," with its zeitgeist infusing definitions of "Indian" art and an "Indian artist."

Stream: Banking, Finance and the Business of Organised Crime 4 - Corporate and Commercial Banking Law

Paper 1: Catriona Hyde, Revisiting auditors liability for their reports in the light of Jetivia and Livent

When someone wants information about a company the primary place to go is the annual report. This contains a wealth of data (both financial and non-financial) regarding the performance of a business. One guarantee of accuracy is the statutory audit that must be performed. However, those seeking information may be disappointed. In some cases this is due to a misunderstanding of the nature of audit, which is based on samples and materiality, meaning that an audit does not provide a check on every number in the accounts, and is not a perfect policeman against fraud. In other cases this is due to a failure of auditors to act in accordance with accepted practice, but in such cases tort law may not provide the disappointed party with a remedy. The liability of auditors is a constant battleground. Whilst liability to third parties is relatively settled, both by the decision of the House of Lords in *Caparo v Dickman* and the liberal use of exclusion notices on the face of the audit report, liability to the audited company and its shareholders is more disputed, particularly in cases of fraud by directing minds. The decision in *Stone & Rolls v Moore Stephens* provides an unclear basis for refusing compensation to a company damaged by fraud perpetrated by its director, and similar issues have recently arisen in both the UK (*Jetivia v Bilta*) and Canada (*Livent Inc v*

Deloitte & Touche). Drawing on an examination of case law, accountancy practice and financial statements, this paper seeks to reanalyse the auditors' duty of care, particularly in fraud cases, in the light of the challenges faced by auditors, financial statement users and the courts.

Paper 2: Bolanle Adebola, The intersections between effective oversight and enterprise control: Towards the attainment of sustained business rescued through the administration procedure

One of the important contemporary debates in corporate insolvency law is about the control of the distressed enterprise at the time it defaults to all its creditors. In England and Wales, enterprise control at the point of corporate distress is exercised by the senior secured creditor, typically the banks. Three arguments have been made about their role. First, that the bank has a liquidation bias. Second, that they are unlikely to maximise the value in the assets. Thirdly, that their control of the process results in the expropriation of junior creditors. The counter argument has been that banks in fact tend towards rescue/organization. To facilitate rescue there has been an increase in the use of 2 mechanisms: deferred consideration and sale to previously-connected persons.

Recent empirical research demonstrates that 77% of companies that fail after their businesses have been rescued previously are characterised by the continued participation of previous management or the presence of deferred consideration. In 2015, the government introduced oversight provisions for pre-packaged administration which will supervise the participation of previous management. No reforms have been targeted at the use of deferred consideration. Interestingly, the same two elements are present in the subsequent failure of businesses which are rescued by the traditional administration procedure but the reforms have been limited only to the pre-pack variant. This paper examines the extent to which one may argue that the traditional administration procedure is better suited to effective corporate rescue than its pre-pack variant. It explores the manner in which the twin mechanisms have been regulated in other jurisdictions and provides some recommendations for the system in England and Wales.

Paper 3: Andreas Kokkinis, Why would the UK benefit from the introduction of a 'benefit corporation' statute

Corporate law theory and the corporate governance debate have for decades centred around the appropriate level – if any– of social control over large public companies. This paper examines the movements of corporate social responsibility and ethical investing and the alleged merits of a stakeholder approach to managing large corporations. It argues that UK company law, as it currently stands, although seemingly embracing an enlightened shareholder value approach that appears to implement a mild version of stakeholder theory, in fact embeds shareholder exclusivity via a combination of mandatory and default provisions. This means that UK businesses are less likely to implement extensive CSR policies or to take a stakeholder approach even if they think that it would lead to the best possible outcome for shareholder value in the long-term.

One way to respond to this problem would be to introduce special legislation creating a distinct corporate form – open for new or existing businesses to select – the directors of which would be obliged to balance the interests of various stakeholders. This is already happening in the United States where the majority of States have adopted 'Benefit Corporation' statutes introducing a new type of body corporate which aims to achieve a public benefit purpose. To this effect, the paper reviews the US experience of 'benefit corporations', explains why introducing this new corporate form is even more necessary in the UK, and explores the key legal features that such a corporate type ought to have in order to be effective in ensuring that it is used genuinely to pursue broad stakeholder interests rather than as 'green washing'.

Paper 4: John Quinn, The Irish codification of director's duties: A comparison with enlightened shareholder value

Enlightened shareholder value has been the subject of significant academic scrutiny since its implementation in 2006 and has proven to be one of the most controversial aspects of the company law reform in the UK. Recently Ireland has undergone a similar reform, with the Companies Act 2014 replacing all previous legislation. One of the most far reaching reforms of the 2014 Act has been the codification of directors' duties, yet the Irish Company Law Reform Group stated that it was 'not convinced' by enlightened shareholder value and believed it to be 'susceptible to fossilisation'. The group stated that it preferred a

more general statement of directors' duties which would give the judiciary more 'interpretational latitude'. Instead of enlightened shareholder value, which requires directors to promote success of the company for the benefit of the shareholders and then requires them to 'have regard to' various stakeholders, the Irish Act simply requires directors to act in the interests of the company. This provides both directors and the courts with a wide discretion on how to interpret this duty and does not automatically require directors to maximise value for shareholders. Traditionally however, the Irish courts have equated the duty to act in the interests of the company with a duty to act in the interests of shareholders. However, in more recent times the Irish courts have taken the view that directors' duties should serve a public interest function rather than simply protecting the interests of shareholders. This paper evaluates this shift in Irish corporate law from a focus on shareholder value to directors being expected to serve wider interests and assesses the likelihood of the Irish courts altering the traditional interpretation of the duty to act in the interests of the company.

Stream: Challenging Ownership: Meanings, Space, Identity 1

Paper 1: Penny English, Lost in the mists of time: looking for property rights in the past

Legal geography looks at 'how legal norms and practices construct space and places' (Blomley 1993, 63). This paper explores the potential for reverse engineering this process. Can an examination of space and places help to reconstruct the property rules and power relations that shaped the physical territory? Recent research into the historic environment has increasingly recognised the remarkable persistence of boundaries in the English landscape. This applies to the intensely local (such as field boundaries), to estates, the basic unit of agricultural production, and to larger territories which mark the extent of political control and social governance. This has implications for the reassessment of our understanding of periods in the past which appear to be characterised by disruption and discontinuity. A prime example, and the focus of this paper, is the transition from Roman Britain to Anglo-Saxon England. Can we become 'spatial detectives' (Layard 2015) and use increasing evidence that Roman, and quite possibly prehistoric, boundaries survived the political and economic dislocations of what is sometimes termed the 'Dark Ages' to uncover the socio-political and ultimately, legal structures of the period.

Paper 2: Thanos Zartaloudis, "On the oldest, perhaps, challenge to western legal ownership and its consequences"

In this paper I will briefly outline a very long dispute (legal, theological and philosophical) between the Franciscan monastic order and the Papacy from the 13th century on, with regard to the apostolic poverty of the Friars, which among else centred on their claim to have no private or common property rights or ownership (or indeed any relation to the law as such). The necessarily brief account will focus on key arguments from both sides. The eventual failure of the Franciscan argument, while innovative and important (for its consequences to legal and social and economic developments remain highly significant), is perhaps a cautionary tale for anti-positivist, critical claims against property rights. Yet that is not the end of the matter. The inherent paradox, as I will suggest, of the Franciscan claim brings to the fore, ultimately, the questioning of the oldest legal division between life and rule (or legal qualified personality).

Paper 3: Jonathan Brown, Defining Property: From Roman Roots

In 2007, Professor Gretton observed that modern 'property law' remains predicated upon the schema developed by the Roman jurist Gaius in his *Institutes*. This is true of both the Civilian tradition and Common law, even in spite of the fact that the Anglo-American legal tradition (ostensibly) lacks a legal concept of 'ownership'. The 'Gaiian schema' divides objects which might be considered 'property' into two categories; corporeal and incorporeal things (*res corporales et incorporales*). The former category includes all tangible objects which might be held in a person's patrimony. The latter is comprised of juristic creations such as inheritance and servitudes (easements). Most *res incorporales* would contemporaneously be conceptualised as 'rights', yet 'the sovereign, or primary real right' of 'ownership' (*dominium*) is notably absent from the elucidated list of *res incorporales*.

This paper presents an explanation for the omission of 'ownership' in the Gaiian schema. It submits that modern rights-based understandings of 'ownership' have their roots in Roman law, though they do not accurately reflect it. The interpretation of *dominium* as a 'right' is ultimately fallacious. The Romans had no

concept of 'rights'; their law recognised only relationships and remedies. As such, it is submitted that, in spite of the philosophical or metaphysical difficulties of such a conceptualisation, dominium is better understood as a legally recognised relationship between a person and a thing which naturally confers innumerable benefits upon the dominus. Accordingly, if contemporary property law does indeed remain predicated upon Gaian principles, then no particular 'incident of ownership' may be regarded as the definitive aspect of 'property' or 'ownership'. Incidents such as 'right to exclude' may indicate 'ownership', but they do not represent the 'irreducible core concept of property'. They arise indirectly, as a result of the proprietary relationship, and so their existence is wholly consequential; it is not essential.

Stream: Children's Rights 3 - Education, exclusion and exposure

Paper 1: Marion Oswald, Helen James and Emma Nottingham, Eavesdropping on a child's 'secret world'. The rights of children featured in fly-on-the-wall reality documentaries on broadcast media.

Over the last 5-6 years, hashtags have been used increasingly by broadcasters in conjunction with television programmes as a way of encouraging interactive tweeting during broadcast (and thus an increase in viewer numbers and advertising revenue). Recently, reality programmes have begun to feature ever younger children, sometimes under the mantle of behavioural advice or social experimentation, examples being 'Boys and Girls Alone' 'Three Day Nanny' 'My Violent Child' 'Born Naughty?' and 'The Secret Life of 4, 5 and 6 Year Olds', described by Channel 4 as eavesdropping on the children's 'secret world'. These programmes typically publish hashtags on the screen to encourage associated conversation on Twitter.

This type of programming has become so ubiquitous in such a relatively short period of time that one has to ask whether society is at risk of embedding a new privacy-intrusive norm. How can child welfare considerations which apply in 'real-world' care, education and medical environments apparently be so easily overcome in the world of broadcast programming? What additional risks to a child's longer term privacy and dignity arise from the availability of such programming on the Internet, from associated social media commentary and from the often high risk of full identification of the child due to availability of other information online? Is relying on parental consent a fair and ethical way of protecting the best interests of the child when material on the Internet may have a long term effect i.e. beyond the age that the child would gain capacity? Is there a need for change, in the law, governance processes or both, in order to ensure that the interests of the child are better represented?

Paper 2: Seamus Byrne. Education and Exclusion: A Question of Justice?

Exclusion within the education sector is and always has been a persistent phenomenon. In anchoring itself as both an institutional and material reality within the education system, the subject of exclusion and the consequential issues it raises and causes deserve attention, in particular its overlap with the concept of 'access to justice'.

Access to justice is a broad church and encompasses a myriad of issues. While children's rights scholars have focused much attention on the twin issues of both juvenile justice and family law proceedings, the question of access to justice outside its traditional confines has remained relatively unexplored. In this regard, the paper will examine the question of access to justice as it exists within the framework of other substantive human rights; namely the right to education. This paper will examine the core tenets of access to justice from a children's rights perspective and analyse how such features are largely and almost exclusively absent from the educational exclusion process in England.

The paper will analyse the exclusion process in England, the law underpinning it and its direct impact on children. It will re-position the issue of exclusion within a children's rights framework, arguing the current configuration is incompatible with both basic procedural and substantive rights which collectively and disproportionality impact children.

Paper 3: Hazel Katherine Larkin. The Lack of Provision for the Special Educational Needs of Children of Gifted Intelligence in the Republic of Ireland is a Breach of their Human Rights.

Up to 5% of school-aged children are 'Gifted' or 'Exceptionally Able'. In many countries across Europe and the rest of the world, education policies and laws protect the rights of these children to access adequate, appropriate education.

This paper addresses the lack of provision, by the Irish government, for the special educational needs of these children and examines how this lack breaches their human rights.

In 1998, the Irish government enshrined the rights of all children with special needs – including children of gifted intelligence – in the Education Act. Six years later, however the Education for Persons with Special Educational Needs Act, (2004) dissolved the National Council for Special Education, and also omitted the term ‘exceptionally able’ from the legislation. Other Acts which refer to children who have special educational needs include the Equal Status Act, (2000), and the Equality Act, (2004).

Since the passing of the EPSEN Act in 2004, Gifted and Talented children no longer have their special needs recognised in national law, so are unable to access their rights to equality. The Education (Welfare) Act of 2000 charges the National Education and Welfare Board (now known as TUSLA) with the promotion and fostering, in recognised schools, of ‘an environment that encourages children to attend and participate fully in the life of the school’.

The Irish government is ignoring the rights of gifted children in spite of the fact that Ireland is a signatory of the United Nations Convention on the Rights of the Child, and this disregard for the special needs of gifted children is contrary to several Articles in that document. In addition, the special needs of gifted children place them at a high-risk of disengagement with the school system when their needs are not met, and places their mental and emotional health at risk.

Streams: Civil Procedure and Alternatives to Litigation, ADR 3

Paper 1: Masood Ahmed, The Briggs Civil Courts Structure Review: Some Observations

In his recent Civil Court Structure Review (Interim Report), Lord Justice Briggs recommends, inter alia, the creation of an online court for claims worth up to £25,000. The aim of the online court is to give litigants effective access to justice without having to incur the disproportionate cost of using lawyers. It is envisaged that there will be three stages to the online court: Stage 1- a largely automated, inter-active online process for the identification of the issues and the provision of documentary evidence; Stage 2 – conciliation and case management, by case officers; Stage 3 resolution by judges. It is proposed that the court will use documents on screen, telephone, video or face to face meetings to meet the needs of each case. A further proposal is to introduce Case Officers who will take on some of judges’ more routine and non-contentious work and who will form part of the Stage 2 process of the online court. This paper critically considers these two significant recommendations.

Paper 2: Sue Prince, Designing an ‘Online Court’: Is ADR Emerging from the Shadows?

Lord Justice Briggs in his recent ‘Civil Courts Structure Review’ has announced that the court system in England and Wales is being radically redesigned in light of the problems of delay, accessibility and cost of the legal system. The number of civil cases going to court is declining and yet the time it takes for a case to go through the courts is taking longer. It is clear that the role of the courts is changing.

This paper asks how we design an effective dispute resolution system to handle 21st Century civil justice problems. The Civil Justice Council Advisory Group Report ‘Online Dispute Resolution for Low Level Claims’ advocated a separate Online court for low value claims and this proposal has been supported by LJ Briggs.

The proposed design for the online court has a three tier structure composed of firstly online advice and triage; secondly, the embedding of ADR as a normal part of the civil justice process and thirdly, an online rather than a face-to-face meeting with a judge. Much has been made of the use of technology to support the use of ADR in the small claims track.

This paper will discuss how designing a digital future for civil justice raises exciting challenges for ADR and calls for empirical research to underpin the design of the court as well as the role of the Case Officers who staff it.

Paper 3: Ya-Fei Chang. Modeling Judicial Behaviors of Post-award Procedural Dynamics for the Legislative Design of National Arbitration Laws

Grounds for annulments of domestic or foreign arbitral awards diverge from the judicial control conferred by national arbitration laws. The actions of challenge of arbitral awards for the parties would be at variance

with the reactions of complex adaptivity of role of courts and the national arbitral legislations, which are the judicial behaviors impacting the arbitral finality.

Modeling the judiciary for the legislature in order to observe and predict the long-term behaviors of arbitral post-award review systems is the theme of my paper. Transdisciplinarity of legislative analysis is generalized for the methodological concerns of my research work

In legislative design, building up self-organized mechanisms in the trends of harmonization and procedural delocalization are desirable control of power for jurisdictional competitions in arbitral post-award review procedures, of both domestic and international commercial arbitrations. Post-award review systems function with decentralized power control of judicial behaviors in the international reviews of national courts which evolve with the legislative design on both international and national arbitration laws.

In this paper, firstly I study how the role of national courts interacts with the distributions of power in post-award judicial review procedures, in comparison with Taiwan, U.S., U.K., French, German arbitration laws. Secondly, I construct mathematical models for observing and interpreting the long-term judicial behaviors of the post-award review systems and propose theoretical frameworks of the legislative design of national arbitration laws. Thirdly, I make game-theoretical models to develop reciprocal and self-organized mechanisms for examining the post-award judicial reviews of foreign arbitral awards in national legislative design. Finally, I generalizing the equilibria of interests and power control of long-term judicial behaviors in post-award procedural dynamics of domestic or foreign arbitrations and making recommendations for future legislative design on arbitration laws.

Stream: Criminal Law Criminal Justice 5 – The Law Commission

David Ormerod, Law Commissioner for Criminal Law and Evidence

David Ormerod QC will be presenting at the SLSA in a jointly hosted session by the Criminal Law and Criminal Justice stream, Sentencing and punishment stream and the Vulnerable Defendants and Suspects theme.

David will be summarising some of the recent Law Commission projects for delegates and is keen to hear from SLSA members what ideas they have for the new programme of reform that will start in 2017.

Stream: Economic, Social and Cultural Rights 3 - ESCRs and Contemporary Issues - Issues around Labour

Paper 1: Fulvia Staiano, The Legislative Precariousness of Migrant Domestic Workers and Human Rights Law's Focus on Victimisation

Throughout Europe, migrant domestic workers are in high demand. The lack of developed care services and the push factors encouraging this group to accept low pay and poor working conditions contribute to the high concentration of migrants, especially women, in this sector. This demand, however, has not generated comprehensive legal regimes regulating the domestic work sector. On the contrary, migrant domestic workers experience "legislative precariousness" (a term coined by Einat Albin and Virginia Mantouvalou in 2012), fostered by both labour law and immigration law. The United Kingdom and Ireland offer telling examples of this phenomenon. In the UK, the Overseas Domestic Workers visa removed the possibility to change employers, thus making it more difficult for domestic workers to abandon abusive and exploitative situations. In Ireland, the possibility to access the country through a residence permit for the purpose of employment as a domestic worker has been eliminated altogether, pushing this category into informal work in the unregulated au pair sector.

Against this background, since its landmark judgment of *Siliadin v. France* the European Court of Human Rights has established key principles in the field of labour exploitation of domestic workers. However, it has so far exclusively recognised positive state obligations to devise criminal law responses to egregious civil rights violations, including slavery and domestic servitude. More common forms of "everyday" exploitation, as well as state obligations beyond criminal law, remain to date unexplored. This focus mirrors a broader tendency of international human rights law to concentrate on victimisation of vulnerable subjects rather than adopting a more holistic approach and address the socio-economic roots of this vulnerability. In this light, this paper resonates on possible strategies to bridge the gap between human rights law and the reality of migrant domestic workers in Europe, with the aim of remedying their legislative precariousness.

Paper 2: Elena Samonova, Bonded labour in Nepal from human rights' perspective

In the modern world around 27 million people are held in slavery or are engaged in slavery like practices. Debt bondage as exploitative interlinking of labour and credit agreement is one of the oldest forms of human servitude. According to the recent data today more than 12 million people are still living in debt bondage and the majority of them live in South Asia. In this region debt bondage is connected with the systematic marginalisation of certain minority groups as well as with unequal power distribution in the society.

This paper aims to analyse two systems of bonded labour in Nepal (namely Kamaiya and Haliya systems of bonded labour) from the perspective of human rights and show how systematic violation of social, economic and cultural rights of potential bonded labourers creates and re-creates a circle of exclusion and exploitation. The paper will also formulate some recommendations for future policy development. The paper is based on the field study that was conducted in 2015 in Nepal as a part of PhD studies.

Stream: Exploring Legal Borderlands 5 - Exploring Borderlines of Legality and Rights Regimes

Paper 1: Madhavi Ramankutty - The Human Rights of Postnational Europe

Today, two postnational legal regimes claim jurisdiction over human rights law in Europe. First, the European Court of Human Rights (ECtHR) enforces the European Convention on Human Rights and Fundamental Freedoms (ECHR) across the CoE and its 47 State Parties. Second, the Court of Justice of the European Union (CJEU) enforces the European Treaties and the EU Charter of Fundamental Rights (CFR) – loosely based on the ECHR, but different in significant respects – across the EU and its 28 Member States. Given that all 28 EU Member States are also State Parties of the CoE, EU citizens can access both the CFR and ECHR and are subject to the jurisdiction of both the CJEU and the ECtHR on matters of human rights.

Thus, there is a complex relationship between the various layers of postnational legal orders and courts, especially given that the EU is not a signatory member of the CoE. That is, despite Article 6(2) TEU's requirement regarding EU accession to the ECHR, there continues to be no formal legal relationship or constitutional hierarchy between the EU and the CoE – and their respective courts. Yet, despite having a formal legal relationship, the two courts have managed to work together in relative harmony, as is made evident by the absence of jurisprudential conflicts rendered in cases.

This paper will present a socio-historical analysis, exploring the extent to which the practices of the CoE and the EU manage to transgress a purely legal relationship to achieve the particular social and political aims for human rights jurisprudence in Europe. Unlike much work done on the nature of the relationship between these two institutions – which is largely doctrinal and/or normative – this analysis will allow us to understand the relationship between these institutions through a historical, political, and social lens.

Paper 2: Ivo Gruev -Individual Rights Protection Before the Bulgarian Constitutional Court: A Critical Evaluation of the Judicial Review Model in Post-communist Bulgaria

My research seeks to answer the question: how does the Bulgarian Constitutional Court, established with the adoption of the new Bulgarian Constitution of 1991, uphold the protection of individual rights? To this end, the work strives to provide a critical evaluation of the performance of the Bulgarian model of post-communist judicial review with regard to the protection of individual rights in the country 25 years after its adoption.

The project falls within the scope of exploration of legal borderlands for at least two reasons. Firstly, the analysis aims to shed light on the possible discrepancies between the law on the books and the law in action with regard to the protection of human rights, endemic to many countries sharing Bulgaria's authoritarian past. The main focus of inquiry lies on the (in)formal practices applied by two sets of actors: state institutions with standing before the Court, applying various criteria for (not) challenging the constitutionality of a law for alleged violation of human rights; and non-state actors (such as concerned individuals and NGO's), applying alternative mechanisms for human rights protection given their lack of standing before the Court.

The second reason is the interdisciplinary nature of both the research question and the methodology applied for answering it. Understanding constitutional justice and human rights in post-communist Europe demands an analysis of the Constitution as a tool for social engineering in the transition from totalitarian past to

liberal democratic future. The role of the law in such societies defies the common attempts for 'post-communist' generalisations and cannot be properly understood outside of its historical and political context. Methodologically, the work would combine legal analysis of the Bulgarian constitutional model with empirical research on its sociological implications, thus situating the project in the socio-legal borderland.

Stream: Family Law and Policy 5: Perspectives on family law in multi-cultural Britain

Paper 1: Zainab Naqvi. "I suffered with this thing – English marriage..." – Experiences and Views of Polygamous Marriage and the UK Legal System

This paper explains the findings from a qualitative, semi-structured interview based study with women regarding their experiences of monogamous and polygamous marriage. This study forms part of my wider doctoral project which explores the viability and desirability of incorporating polygamy into current legal understandings of marriage in the UK. I draw on this empirical research to share the stories of participants, seeking to highlight the legal questions and issues provoked by their experiences. Using the theoretical tools supplied by Critical Race Feminism, I will set out a key argument emerging from this project that the lack of legal recognition for Islamic marriages, whether monogamous or polygamous impacts negatively upon women in these relationships in two main ways. First, in excluding these women from being recognised as spouses, they are at greater risk of being denied their rights as the need for a separate civil ceremony is being abused by their husbands. This leaves them vulnerable to abuse and mistreatment as they fail to be recognised as wives and in some cases divorcees. Second, denying these women the status of being married treats them as inferior for exercising their choice to live in a polygamous marriage. This subordinates them and as noted in existing literature, feeds into wider debates about the inferiority of non-Christian religions as polygamy in many instances is closely-linked to other faiths. Based on these findings, it is evident that current legal responses to polygamous marriage need to be re-evaluated to address the harms suffered by women based on their choice of marriage.

Paper 2: Samia Bano. Critical Inquiries: Religious Tribunals, Muslim Feminist scholarship and the emergence of new family governance mechanisms in British Muslim communities

Notions of choice, agency, autonomy, welfare and responsibility underpin feminist critiques of religious personal systems of law in the UK and its potential to promote equality, justice and human rights for women living within minority religious communities. This literature has been accompanied too by a rise in Muslim feminist scholarship with critiques on rethinking and reinterpreting the meaning and practice of Muslim marriage, divorce and matrimonial rights upon breakdown of the relationship, as part of a rethinking and reformulating of Islamic texts and intellectual thought and practice that aims to 'accommodate' the needs of Muslims living in Muslim minority contexts. With a focus on issues of sexual rights, financial obligations, honour, authority, consent and choice this scholarship provides important insights into the conceptual frameworks upon which issues of Muslim marriage and divorce in Islam are discussed in Muslim communities living in the 'west'. In this paper I trace the emergence of Muslim family law in the UK as epitomised by religious tribunals and argue that it must be understood as part of specific historical, social and political conditions under which postcolonial migrations emerge. More specifically drawing upon new ethnographic research of women-led religious tribunals and critiques of the 'Muslim female subject' I examine the nature of Muslim dispute resolution in the UK and its potential to critically engage with Islamic feminist critiques on textual interpretations and new methodologies in re-reading sacred texts. I argue that a Muslim feminist interrogation with issues of power, authority and the dynamics of power in relation to family disputes, marriage, family, community in British Muslim communities reveals important insights into the ways in which Muslim dispute resolution has been shaped, accepted, contested, resisted and challenged as epitomised by new forms of family law governance.

Paper 3: Rajnaara Akhtar. Unregistered Muslim Marriages in the UK; Examining Normative Influences Shaping Choice of Legal Protection

Unregistered marriages are reportedly on the rise within Muslim communities in Europe. Such unions are the outcome of couples performing a religious form of marriage which does not adhere to the requisite

legislative instruments precipitating state recognition as an official marriage with subsequent rights and responsibilities attached and protected by the law.

Marriage and the family remains very much central to Muslim communities. Normative religious influences ensure that Muslim couples entering unregistered marriages are abiding by religious formalities, and many weddings are celebrated with the pomp, ceremony and grandeur associated with any publicly celebrated nuptials. Yet, the decision to remain unregistered places them beyond the protections of the state and its legal infrastructure. The impact of this status is a precarious relationship, assumed to be regulated by Islamic legal traditions which are largely unenforceable in the jurisdiction and thus reliant on goodwill and social pressures for realisation. In England and Wales, the relationship arising from an unregistered marriage can be closely associated with cohabiting couples, who have few legal rights arising from the relationship, regardless of its duration. Cohabitants have no legal obligation to support each other financially, and the courts have no power to transfer assets between them.

This paper will focus on the question of unregistered Muslim marriages in England and Wales drawing on data, which supports the contention that this is a growing trend. Personal autonomy in decision-making when acceding to normative religious influences raises the question of whether consent is in actual fact informed. What legal recourse is open to such parties on the termination of the marriage whether this occurs through divorce or death? Consideration of these pertinent issues will revolve around the idea of a developing 'culture' and its impact on the decision to register and attribute recognition to a couple's marriage.

Stream: Gender, Sexuality and Law 5

Paper 1: Fae Garland and Mitchell Travis, Exploring the Possibility of Being 'X': Lessons from Australia's Legal Construction of Intersex

This paper reports findings from an SLSA Grant Scheme awarded in 2013. The Australian legal system, in contrast to the UK, now legally recognises intersex embodiment. Since 2003, intersexuality has been accommodated by Australian passports; designated as 'X'; and in 2013 the Sex Discrimination Amendment Act (Cth) introduced intersexuality as a possible ground for discrimination. Beyond the federal level, the states of Victoria and New South Wales have allowed for birth certificates to not specify sex. Thus, Australia's path-breaking approach offers a range of inclusive legislation that recognises intersex rights. Together, these sources of law present fertile ground for a contextual discussion of the construction of intersex embodiment and can help inform debates in the UK. However, such comparisons must be approached cautiously as Australia's policy may also produce new legal challenges which include competing constructions of intersex at the institutional (legal and medical) and discursive (terminological) level. Moreover, the construction of a third gender has been problematised by intersex activists and gender theorists alike: legal recognition is not always a liberating experience and rigid categorisations of intersex could actually be harmful to some individuals.

In seeking to place the experience of intersex individuals at the centre of reconsiderations of both legal practice and gender theory, this paper explores how the intersex community have responded to these Australian developments. Thus, the paper draws upon the findings of a small-scale qualitative project which interviewed individuals and organizations from within Australian and International Intersex communities. In so doing, this study aims to address the erasure of intersex individuals from theoretical and political debates that surround their medical and legal intelligibility. Fundamentally, this research questions the effectiveness of Australian legal approaches to sex and gender and considers how this can inform UK legal policy.

Paper 2: Clare Patton, The Corporation and CSR: When good intentions turn bad.

This paper will discuss the impact of corporate social responsibility ('CSR') programmes of transnational corporations on society. There is particular focus on Cause Marketing campaigns associated with breast cancer and specifically the Pink Ribbon campaign. The paper argues that corporations engage with CSR because positive and popular actions result in enhanced reputation which in turn lead to legitimacy, loyalty and ultimately increased profits. This impact on society can be viewed at both macro and micro levels; that is, the impact on stakeholders generally and individually.

The paper approaches the issues of Pinkwashing and aggressive gender targeting in CSR through the lens of role theory. There is consideration of the role of the transnational corporation in society; for example, many are powerful and influential lobbyists of government. Following a discussion on the role of corporations and why they engage in cause marketing campaigns the paper then moves on to assess the impact of Pinkwashing on society. Pinkwashing occurs when corporations camouflage damaging behaviour, such as using known carcinogens in their products, through their association with and support of breast cancer charities. The paper then analyses the impact on those living with breast cancer of aggressive, gender-targeted, cause marketing campaigns, viz. the corporatisation of the disease can lead to feelings of loneliness and inadequacy and moreover can place women in a childlike and regressive position in society. The paper concludes with the presentation of figures which demonstrate that breast cancer awareness has peaked; so consequently, funds raised should be put to better use. There is no harm with a transnational corporation joining forces with a breast cancer charity. The damage occurs when there is a corporate takeover of a disease that kills, maims and devastates women all over the world.

Stream: Gender, Sexuality and Law 12 – Author Meets Reader

Lynette Chua, ‘The vernacular mobilization of human rights in Myanmar’s sexual orientation and gender identity movement’ (2015) 49(2) *Law and Society Review* 299-232

The author will discuss their paper with three discussants:

- Mairead Enright
- Rosie Harding
- Kay Lalor

Stream: Indigenous and Minority Rights

Paper 1: Gustavo R Espinonza-Ramos. Regulatory Framings of Community Interests in the Peruvian Mining: Corporate Social Responsibility Potential or Wishful Thinking?

The impact of the mining industry in developing countries with weak governance has been subject to intense scrutiny through the ‘resource curse theory’. During the last decade, mining in Peru has become one of the major contributors for growth in employment and one of the main sources of Foreign Direct Investment (FDI) and fiscal revenues in the country. In contrast to the positive economic effects, the extractive industry also brings considerable transformation in the environment that could lead to social conflict. However, the number of active socio environmental conflicts related to the Peruvian mining industry has reduced from 157 in 2010 to 97 in 2014. A reason of this can be related to the implementation of Community Partnership Agreements between mining companies and communities in Peru in order to gain the ‘social license’ to operate.

The purpose of this research is to evaluate the contribution of community partnership agreements to the development of Corporate Social Responsibilities (CSR) initiatives in the Peruvian Mining industry. In addition, this study explores the effects of the current regulatory framework in the development of participatory CSR actions, that includes the ‘Prior Consultation Law’ (Law No. 29785) approved in September 2011; and the ‘works in lieu of tax law’ (Law No. 29230) published in May 2008 that promotes private companies to implement Public Investment Projects in exchange of a reduction in the profit taxes.

The methodology selected for this investigation is a case study based on the Glencore-Espinar Framework Agreement signed in Cuzco town in Peru in September 2003. Interviews to experts on CSR; community, NGO and government representatives will be carried out in order to assess how this agreement has improved the economic, social and environmental standards in this rural community.

Paper 2: Robert Hamilton. “Dispossession by Legislation: New Brunswick’s 1844 Act to Regulate the Management and Disposal of Indian Reserves in This Province”

In 1844, the colonial government of the present day Canadian province of New Brunswick passed an Act allowing the government to dispose of “unused” Indian reserve lands in the colony. The 1844 Act was the immediate result of two converging forces: the desire to alleviate the provincial coffers of the burden of

annual relief payments to Indians and the desire open lands to settlement, agricultural development, and the lumber industry. More broadly, though, the Act was the culmination of a comprehensive system of dispossession that began in earnest with the arrival of Loyalist settlers following the American war of Independence. Thus, while the 1844 Act was precipitated by the two immediate factors outlined above, it was also the culmination of two broader processes that characterized settlement of the province: the wholesale dispossession of Mi'kmaq and Maliseet lands at the hands of a voracious colonial government and the improper abdication of legal, if not ethical, obligations on the part of the Crown.

This paper analyzes the circumstances under which the 1844 Act was passed as a means of assessing how the law facilitated the dispossession of Indigenous lands in Atlantic Canada. This analysis demonstrates that, contrary to the assertions of the Supreme Court of Canada, the doctrine of terra nullius facilitated the settlement of Canada by creating a legal vacuum wherein the extension of the common law could legitimize the seizure of Indigenous lands and resources. This sheds light on the role of law in the colonization of Atlantic Canada and provides important insights for Indigenous title litigation in the present day.

Stream: Information 1 - Private Information

Paper 1: Richard Hyde. Damages for Misuse of Private Information: A Critical Evaluation

This paper will consider the theoretical and practical issues surrounding the award of damages for misuse of private information. Drawing on the judgment of the Court of Appeal in *Various Claimants*, and drawing on a study of the damages awarded by the court in misuse of private information cases since 2004, the paper considers various questions about remedies for misuse of private information. Is reputational damage or distress the underlying justification for the damages award in misuse of private information cases? Is it something else? Can the damage to a Claimant's ability to market their own image be taken into account? Does an infringement of privacy that does not lead to a publication give rise to liability in damages, and will damages be less in such a case than in a case where the information is published? What is the relationship between damages for misuse of private information and other damages awards? Are damages worthwhile, and how might the right to privacy be realised more fully?

Stream: International Criminal Justice: Theory, Policy Practice 5

Paper 1: Daniel Wand, The Consequences of Adopting an Expansive Interpretation of the Law on Immunities: The International Criminal Court and the Case of Omar al-Bashir

This paper considers the interpretative approach adopted by the ICC in respect of the immunity provisions contained within the Rome Statute, namely Articles 27 and 98, and the consequences of this approach for its reputation and future effectiveness, as well as the sustainability of the norm that Heads of State should not have immunity from prosecution before international criminal tribunals.

In this paper I argue, with particular reference to the case against the President of Sudan Omar al-Bashir that the Court has adopted an expansive approach to the interpretation of the jurisdiction and immunities provisions contained within the Rome Statute, and that this interpretation and application of the rules is incorrect – both legally and normatively. I suggest that the expansive interpretation adopted by the Court, which goes beyond a proper interpretation of international law, is informed by its cosmopolitan ambitions to protect human rights (even if this results in a highly controversial and contested challenge to state sovereignty) and that this is a result of the Court's cosmopolitan and constitutional identity.

I further argue that the consequence of this is that the perception of Court's legitimacy amongst states and its reputation has been negatively affected which has resulted in states contesting the Court both rhetorically and also through actions including by refusing to arrest al-Bashir, as shown by the recent decision of South Africa to allow Bashir to flee the country and also by states such as India and China inviting Bashir to their countries, and also by states threatening to withdraw from the ICC. This undermines more generally the pursuit of international criminal justice. The contestation is primarily on the part of African and other emerging and post-colonial nations because the Court's approach challenges the traditional positivist international order and is thus perceived to be a neo-imperialist project.

Paper 2: Ketevan Shushanashvili, Complementary and Concurrent Competences of United Nations Security Council and International Criminal Court: Specific Focus on Darfur Conflict

Interrelationship between International Criminal Court (hereinafter: "ICC") and United Nations Security Council (hereinafter: "UN/SC") is very essential in 21st century for deciding the question of individual criminal responsibility and punishment of war criminals.

The paper firstly refers to the competences of UN/SC and ICC concerning issues of international justice, peace and security in the positive context – complementary context. In this respect paper analyzes coexisting functions of UN/SC and ICC, referral of situation by UN/SC to ICC. The UN/SC has the capacity and the enormous power to make the jurisdiction of the ICC universal on the one hand, and on the other, to ensure the assistance to the Court disrespecting the limits of the jurisdiction of the Court provided by the Rome Statute in order to implement its mandate prescribed by the Chapter VII of the UN Charter.

Another main issue is negative influence of UN/SC on the jurisdiction of ICC. UN/SC can effectively block the activities of the Court. It is true, that the UN/SC will always be able to make the ICC defer investigation for as long as the UN/SC so wishes in order to avoid criminal liability of a person whose protection will be desired by the permanent members of the UN/SC.

Acting under Chapter VII, the Council adopted Resolution 1593 referring the situation in Darfur to the ICC on 31 March 2005. The resolution was justly heralded as a major advance for the Court, allowing investigation and prosecution of crimes committed in a major humanitarian crisis that would otherwise be outside the court's jurisdiction, as the Sudan was not a state party to the Rome Statute.

The last part of the paper by summing up the above mentioned considerations and issues will give recommendations and possible ways of solution for productive coexistence of UN/SC and ICC.

Paper 3: Jerusha Owino, The International Criminal Court in Crisis: Quo Vadis?

I should like to see a sunset ... Do me that kindness ... Order the sun to set ...'

'If I ordered a general ... to change himself into a sea-bird, and if the general did not carry out the order that he had received, which of us would be in the wrong?' the king demanded. 'The general or myself?'

'You,' the prince said firmly.

'Exactly.

Accepted authority rests first of all on reason ...

'Then my sunset?' the little prince reminded him...

'You shall have your sunset. I shall command it. But, according to my science of government, I shall wait until conditions are favourable.'

'When will that be?' inquired the little prince.

'Hum! Hum!' replied the king; and before saying anything else he consulted a bulky almanac. 'Hum! Hum! that will be this evening about twenty minutes to eight. And you will see how well I am obeyed!'

This research synthesises international law and international relations to chart the record of state engagement with the Court in order to illustrate the forces that act upon the Rome system of justice, because the Statute did not revolutionise international society. By drawing from an 'instrumentalist optic' that views law as a tool designed by and reproducing state interests in contrast to the linear legalist methodology of maintaining a rigid distinction between law and politics and insisting that state behaviour will conform to legal rules even when this is nakedly contrary to state interests, this research highlights the blind-spots caused in our understanding of the Court when we fail to give premium to the political provenance of the law. Matters outside the law's own field cannot be explained by reference to internal methodologies but by reference to the social sciences.

Stream: Labour Law 1

Paper 1: Keith Puttick, Evaluating the National Living Wage

Citizens' 'welfare' depends on a number of sources including wage income from the labour market, State social security, and targeted use of tax easements and reliefs - a source with some significant limitations (Alstott). Whilst wage income arguably remains the most source within that mosaic (Barr), it is also an increasingly problematic one given the precarious and short-term nature of much of the work on offer, casualisation, underemployment, and the phenomenon of 'dwindling wages' (ILO, 2014). The National

Minimum Wage (NMW) has provided a basic wage floor, but in many sectors it has become a 'going rate' or wage ceiling rather than a minimum floor (Resolution Foundation, 2013). Furthermore, labour market deregulation has neutralised mechanisms for securing better wage levels, particularly in sectors where higher wages could be paid. This, in turn, means that State support, including support for unregulated housing costs, is likely to remain a vital element in the social wage income for many workers and their dependants.

The introduction of the National Living Wage will give 6 million or so low paid workers a 'pay rise' (Resolution Foundation, 2016). However, it will come at a price, including longer working hours and cuts to occupational benefits, as low paying employers introduce 'productivity' gains to fund the costs and on-costs of implementation. Furthermore, the scheme will be accompanied by roll-backs of State support in the quest for the government's 'lower welfare, higher wages' strategy, including reductions in the value of Universal Credit and freezes to benefits' up-ratings through to 2020 – features criticised by the Child Poverty Action Group and the Fawcett Society, given the likely impacts on women and children.

This paper will evaluate these and other features of the NLW scheme.

Paper 2: Polly Lord, The Precarious Employer? Farmer as case study

Modern employment relationships are entering a new phase of conceptualisation. Out is the previously standard 9-5 Monday to Friday working week, and in are the atypical working relationships which embody casualness and seasonality. This shift, however, creates cracks in which a concerning trend appears; where legal standards which were originally designed around the standardised week, fail to protect the most vulnerable. Recognised as "precarious employment", this problem is now a key focus of European initiatives and academic research within the wider field of industrial relations.

Yet despite the debate's momentum, little attention has been spent on the role of the employer within this relationship. This paper thus seeks to contribute to the wider debate on precarious employment by exploring the idea of the "precarious employer", using the farmer as a case study.

It begins by asserting two facts peculiar to agriculture; that farmers are both the employer and worker as there is no true division of labour, and that in reality farmers and their businesses are so susceptible to external pressures that they are placed in precarious positions themselves. Through drawing on my own previous research into family farms and applying it to the models of precarious employment discussed in the literature, this paper argues for the concept of the "precarious employer", as shown in agriculture but with the potential extension into other sectors.

The problem of how the law deals with precarious employment is difficult to solve. By incorporating a further lens from which to examine the problem, light may be shed on the debate. In addition, the promotion of sector-specific enquiry may also contribute to potential solutions. For employment regulation to effectively manage the risks posed by precarious employment, a broad and creative approach is both desirable and necessary.

Paper 3: Xin Zhang, Study of Migrant and Urban workers in China

This paper seeks to describe and explain differences in the ways in which migrant and urban workers in China deal with problems arising out of work-related injuries from the perspective of labour market. A socio-legal approach is adopted and a mixed-method research design, involving a questionnaire completed by 291 migrant and urban workers and qualitative interviews with 22 injured workers, 28 mediators and human resource managers, is used. This study shows that the paths and outcomes of the claiming and dispute process for migrant and urban workers are different. Migrant workers who are dissatisfied with the initial decision are more likely to follow a 'private route' for seeking compensation and to achieve a less satisfactory outcome, while urban workers are more likely to follow an 'administrative route' for claiming insurance and to achieve a more satisfactory outcome.

A dual labour market hypothesis, which attributes the differences to differences in the way firms treat migrant and urban workers, is tested. It indicates that firm-level practices reinforce and reproduce the labour market inequalities between migrant and urban workers. Priority for participating in the insurance scheme is given to those who are highly skilled, formal workers, higher wage earners, workers who are paid on a time basis and trade union members. These workers are more likely to be urban workers. Temporary, unskilled employees and workers who have a higher risk of experiencing an industrial accident, who are

often migrant workers, are marginalised by these practices. Such a situation is more common in foreign-owned and collectively-owned enterprises and domestically-owned private enterprises than in state-owned enterprises. In the case of private bargaining, whether workers achieve a satisfactory outcome relates to the internal dispute resolution system of the enterprise. In state-owned-enterprises and foreign-owned enterprises, migrant and urban workers have more equal access to internal dispute resolution.

Stream: Law and Neo-Liberalism 1

Paper 1: Emily Rose and Nicole Busby, Asserting individual employment rights: Where does the power lie?

This paper examines workers' ability to assert their employment rights. The employment relationship is inherently unequal. In most circumstances, the purchasers of labour have greater power than the suppliers of labour. Collectivism amongst employees is one way to counter this. However, since the early introduction of neo-liberal policies by the Thatcher government, this approach has been systematically dismantled. In its place are a range of individual employment rights which have increased and decreased during recent decades. In the context of labour law, the regulation of the employer–employee relationship has not simply been the case of the 'rolling back' back of the state in terms of legal protections, rather a re-appropriation of how it operates in this domain.

We argue that, in addition to revising the substantive content of legal protections for workers, the state has played a critical role in shaping the administration of employment law and employee perceptions of appropriate outcomes for workplace disputes. We highlight Kahn-Freund's foundational theory on the role of labour law and develop this by introducing Foucault's articulation of social power and Gramsci's conception of state power and hegemony. This provides us with a theoretical basis from which to understand findings from research undertaken on the experiences of workers when they face employment problems. Instead of lamenting the demise of collective bargaining and the apparent resulting increase in power to employees we provide a different interpretation. We suggest that the state in exercising its prerogative has devolved its extensive power to the market so that market forces are the main determinants of social relations and, by implication, the exercise of power in the employment relationship. We apply these ideas to our empirical findings about how employees respond to and make decisions about workplace disputes.

Paper 2: Alison Tarrant, The struggle for independence in adult social care

'Independence' is a theme of particular importance to disabled people. As a minority, disabled people have a social history characterised by medicalisation, exclusion, incarceration, and lives subject to professional control. In response, the UK disabled people's movement has developed the concept of 'independent living' – the principle that 'independence' is determined not by an individual's ability to do things for him or herself, but by the level of choice and control exerted over one's own life. Thirty years on, extensive lobbying has resulted in remarkable policy successes. 'Independent living' is incorporated as a central theme of UK policy and enshrined as a right under Article 19 of the UN Convention on the Rights of People with Disabilities (UNCRPD).

Despite these developments, the Care Act 2014 – a statute of vital importance to disabled people – lacks an explicit commitment to independence for users of support services and fails to incorporate Article 19 into domestic legislation. Guidance states that the new wellbeing principle underpinning the Act is "intended to cover the key components of independent living, as expressed in the [UNCRPD]". But a close examination of the language of the Act, accompanying guidance and policy suggests that 'independence' means different things to legislators and disabled people.

As the neoliberal drive to minimise the state and residualise welfare support continues, this paper examines whether policies and principles of vital importance to disabled people are being appropriated to further a new role for 'service users' as consumers in a welfare market, with 'independence' the latest legal casualty.

Paper 3: Beverley Clough, Choosing the 'lesser of two evils': Access to services and the powers of the Court of Protection

The UNCRPD represents a radical rethinking of the rights of people with disabilities, moving from a view of the harms or problems experienced by people with disabilities as being inherent and instead positing that it

is society and the states response which disables. This apparently simple shift has the potential to challenge many of the political, legal, social and ethical norms surrounding disability, and our approach to human rights more generally. The potential residing within the CRPD has been explored and analysed closely by commentators in recent years, with particular focus being given to Article 12. What this paper seeks to do is to move away from this battleground, and to focus instead on some of the broader public law issues around access to services and resources arising through this increasingly complex interface between the MCA, the fledgling Care Act 2014, and the powers of the Court of Protection. Recent case law in the Supreme Court and the Court of Appeal has brought this seemingly mundane issue to the fore. In terms of the structural, societal and institutional barriers which the social model approach to disability is keen to dismantle, the legal approach taken in these cases provides a fertile ground for debate. I argue that the constraints placed on the Court of Protection through this developing case law have the potential to 'hollow out' the obligations placed on authorities to provide access to vital services, and moreover to facilitate equal recognition before the law (Article 12 CRPD) and to live in the community, with choices equal to others (Article 19 CRPD). The process driven direction of the law in this context exposes its neo-liberal underpinnings, and this emerges as the necessary focus of challenge if we are to facilitate empowerment, as the MCA 2005 purports to do.

Stream: Law, Politics and Ideology 3

Paper 1: Philip Harris. Article 1F(b) of the Refugee Convention : Is Identifying the 'Non-Political' a Political Decision?

In this paper I examine Article 1F of the Refugee Convention and, in particular, the interpretation of the phrase 'non-political crime', found in Article 1F(b), by the English courts in *T v SSHD* (1996). I argue that Article 1F, in general, is inconsistent with the aims of the Refugee Convention and that the phrase 'non-political crime' as interpreted in *T* is incoherent. The weight of these claims will be supported by the methodology of 'immanent critique' which method is intended to explore the internal consistency of claims to their own presuppositions and to confront these claims with an empirical reality which they do or do not capture : I argue that the interpretation of Article 1F(b) by the English courts is deficient under both of these tests imposed under scrutiny by way of immanent critique. I conclude that the decision to define article 1F(b) in the way that it has been defined is a political one.

Paper 2: Dermot Feenan. Compassion: Judging and Ideology

Compassion is often posited as inimical to judging. The former is seen as subjective, emotional, and partial. The role of judging by contrast is seen to be objective, rational, and impartial. Much recent scholarship has sought to debunk the separation of emotion and reason, yet compassion remains, generally, excluded from jurisprudence. This paper seeks to explore the exclusion with reference to the separation identified above, arguing at the same time for greater attention to be paid to the ideological premises of law and judicial reasoning in order to help understand the exclusion.

Paper 3: Edin Hodžić, Law and Politics of Democratic Transition: The Role and Impact of Constitutional Courts in the Successor States of the Former Yugoslavia

It is widely assumed in constitutional scholarship that constitutional courts have the potential to act as important "liberalizing" actors in states in democratic transition, playing the role of a key democratic control and dispute-resolution mechanism in the face of considerable constitutional uncertainty characterizing transitional states. But did they manage to realize this widely assumed potential? Filling a considerable gap in literature, this paper addresses this complex question focusing on four successor states of the former Yugoslavia: Bosnia and Herzegovina, Kosovo, Macedonia and Serbia.

The paper is based on insights from empirical research in which Kim Lane Scheppele's methodology of "constitutional ethnography", which focuses on deep analysis of particular cases, but also has a theoretical ambition, was employed. I examine whether, to what extent and how the constitutional courts have positioned themselves as proper constitutional-political actors and effective agents and facilitators of social change in the countries studied. Given the dominant doctrinal presuppositions, one could expect that constitutional courts would face more challenges and would essentially be weaker in the more complex states studied – Macedonia, Kosovo, and Bosnia and Herzegovina – due to complexities of power-sharing,

federalism and imperatives of providing for the balance of power among the dominant ethnic groups in such contexts. The findings of this research are, however, cautiously counter-intuitive: despite similar origins, tradition, competences, institutional features, and similar social challenges the constitutional courts in the four countries studied herein have been facing, their respective roles, activism and impact vary significantly, with those operating in the politically more challenging environments generally scoring higher. Discussing various factors, from history and institutional features through legitimacy, to wider political constellation, this paper also suggests a theoretical framework for understanding the established differences between the four constitutional courts in terms of their overall political and social transformation performance.

Stream: Law, Trust and Emerging Technologies

Paper 1: Lisa Collingwood. Autonomous cars: privacy implications and issues of liability.

Autonomous vehicles have the potential for a variety of societal benefits. Individual mobility can be expanded to parties including the physically challenged, the elderly and the young. However, this paper will consider two aspects of autonomous driving:

- i. privacy implications of self-driving vehicles; and
- ii. issues of liability.

Despite the many advantages of connected vehicles, the downside in respect of privacy is that the ability to move about in relative anonymity will be lost. A secret rendezvous with a lover will be a thing of the past because the data bank associated with such vehicles will include information regarding exactly who is riding, where the passengers were picked up and dropped off, at what time and what route was taken. This information is a legitimate business asset of the companies that own and operate autonomous vehicle fleets, who rely on such data to analyse how many vehicles are needed, in which locations and when they should be charged or re-fuelled, but the consequences on privacy are tangible.

Similarly, whilst one of the major advantages of autonomous driving is that traffic accidents may be virtually eliminated, the fact is that people will die in accidents involving autonomous vehicles. Therefore, in autonomous driving, a key question is that of liability. Arguably, the software maker cannot be held responsible in this context, except for cases of gross negligence. That being the case, what is the policy for approval of autonomous systems, what is the nature of standardised testing and crash testing, in particular? The paper will consider these questions so as to evaluate how best to compensate for liability or harm involving autonomous vehicles. This second discussion will also extend to robotics in general as machines will become more prevalent in dangerous or non-glamorous roles (like driving!) and questions of liability remain paramount.

Paper 2: Aratz Ramirez de La Piscina. European Union environmental law and engineered nanomaterials: the particular case of nanowaste

Nanotechnologies, the group of technologies which through the manipulation of materials at nano-scale (10^{-9}) seek out their different and beneficial properties, have experienced substantial growth over the past decade. The quantity of different engineered nanomaterials (ENMs) is immense and they are already extensively used in a variety of products. Nevertheless, the scientific knowledge base about ENMs is a particularly complex issue. A substance which has the same chemical nucleus may have different physico-chemical properties at nano-scale and at conventional scale and consequently, they may have rather different risk profiles. Furthermore, ENM properties are heterogeneous and extremely complex to scientifically assess and understand. Therefore, there is still considerable scientific uncertainty surrounding the knowledge of their behaviour and their potential health and environmental risks.

In the European Union, no single legal change has been made in environmental legislation (including waste, water, air and other relevant acts) in connection with ENMs. In this context, there are significant deficiencies in the conventional administrative mechanisms set out within this wide legal framework regarding the detection, traceability, evaluation and control of the sources of ENM emissions into the environment. In the case of European waste legislation, the same legal criteria are applied to waste containing ENMs ("nanowaste") and conventional waste and as a result, nanowaste could end up in the wrong waste streams or be subjected to recovery processes which might have doubtful efficacy. The precautionary principle provides the legal basis to both reverse this situation and to ensure a high level of protection to the

environment and health. In this respect, the objective of this paper is to identify any possible regulatory gaps within European waste legislation with regard to ENMs, and to propose certain specific legal measures to properly manage the potential risks of these materials.

Paper 3: Holly Hancock. The DIY Detective in a Digital Age – a helping hand or hindrance to the justice system?

In recent times there has been a revolution in the criminal justice system. Whilst programmes such as Crimewatch have for many years encouraged the public to get involved in the tracking and capturing of offenders, since the advent of social media has this role been taken a step too far, with public reaction amounting to the modern day equivalent of the stocks, or a secondary justice system? Whilst technology encourages us to take more and more photographs, and engage in forms of private CCTV, on what legal footing are these based, and do they encourage the public to take matters into their own hands?

One such example is that of Mary Bale, labelled ‘the most evil person in Britain’ after having been captured on private CCTV throwing a cat into a wheelie bin. After the clip was uploaded to YouTube it led to Bale receiving death threats and requiring police protection. Although the (official) reaction from the courts was a fine and ban on keeping animals, the public reaction was far greater and ultimately led to Bale resigning from her job. What are the legal and social implications of such actions and what might happen in the future as technology continues to develop and the public plays an ever-increasing role in the administration of justice, with particular regard to the rights-based implications on the Internet of such behaviour.

Paper 4: Catherine Easton. Law and emerging technologies: an analysis of power, access and the technology-enabled self

Technology is not neutral; fundamental decisions about how it functions are embedded at early stages of design. Even a well-informed end user may not understand the shaping nature of the interface with his or her own personal data. This leads to a lack of control and, ultimately, enshrines a power imbalance. This paper examines key issues of power and access in relation to emerging technologies such as healthcare robotics, driverless cars and human augmentation technologies. There is a need to examine current legal frameworks relating to areas such as privacy, liability and insurance to determine the extent to which they need to be amended or reformed to address these innovations. Furthermore, an often-overlooked area is that of the law supporting access to these technologies while enabling individuals to maintain control in spheres in which technology is increasingly becoming more prevalent.

Perceived power imbalances are linked to the idea of the augmented human, able to use technology to validate the self and to interact with a technology-enabled world. Key questions include: What is the position of those who are unable to harness these technologies for reasons such as disability and/or a lack of resources? If the individual’s position in the world becomes inherently linked to the quantification of the self, is it right to think that those who do not do so are somehow lesser humans? If services, both public and private, become predicated on the provision of a level of highly personalised data then there is a risk that divisions will arise, perhaps leading to a dangerous, tiered approach towards what it means to be human.

Stream: Lawyers and Legal Professions 2

Paper 1: Atalanta Goulandris. Getting in and fitting in: Selection processes, playing by the new rules and the regulated pupillage experience

The transition process from law student to pupil barrister has changed considerably in the last 20 years, both in terms of the regulatory framework that shapes it and the increasingly competitive conditions under which law students seek to enter the profession. Based on interview research, this paper explores what steps aspiring barristers are taking to acquire added value and create a ‘special CV’ in order to secure a pupillage. Despite the imposition of more transparent and fairer selection processes, nebulous, intangible criteria, such as ‘fitting in’ or ‘being good for chambers’ continue to influence barristers when choosing new pupils, raising issues of what kind of cultural, social and economic capital an aspiring barrister needs and whether acquiring such capital is equally possible for all. Lastly, this paper considers the effect of the Bar Standards Board’s regulation of pupillage, the processes involved and how new entrants perceive the experience.

Paper 2: Lucy Floyd, Becoming a female solicitor: vocational legal education and professional identity formation

Current problems within the solicitors' profession in England and Wales include entry barriers for non-traditional applicants, the hegemonic masculinity of the profession, and the tension between the 'financialisation' (Faulconbridge & Muzio, 2015) of legal practice and more traditional principles of professionalism. If 'formal education now occupies the core of every profession's self-conception' (Abel, 2015) then legal education is a significant actor in the process of legal professional socialisation and it is arguable that vocational legal education (VLE) is particularly significant because it is the only part of the formal legal education process through which (almost) all aspiring solicitors must go. To date, however, the role of VLE in the formation of professional identities has not been extensively investigated.

This paper reports on a longitudinal study to investigate the significance of the LPC in the formation of female solicitors' professional identities. The study looked at 23 female LPC students at 4 institutions and aimed to obtain detailed qualitative data by conducting semi-structured interviews with them. An initial study was conducted at one institution in Spring 2013 and the main data collection phase took place during the academic year 2013/14, when students across 3 further institutions were interviewed as they began their LPC and again as they finished the course.

The study draws on theoretical concepts of professional identity and gender. Its findings suggest that the effect of VLE in its current form is complex and variable but that it may reflect and thereby tacitly endorse the status quo within the profession so that opportunities to exert a positive influence on the process of professional socialisation are missed.

Paper 3: Chalen Westaby. Empathy: an essential element of professional legal practice or 'never the twain shall meet'?

In 2012-13 I conducted a research project examining the impact of Law Clinic on law student's perceptions of emotional labour expectations. The analysis revealed that while over half the participants regarded empathy as an important emotional skill possessed by solicitors in their interactions with clients, it was not considered to form part of professional legal practice. This has led to my current interest in the role of empathy and professional legal practice.

The paper will begin with a discussion of how empathy can form part of the everyday work of legal practitioners. However, empathy is an emotion and has therefore traditionally been denied a place in the practice of law. It is therefore regarded by some as presenting a number of challenges and obstacles which make it unsuitable as a tool to be used in professional legal practice. Additionally, even where it is seen as an important element of everyday legal practice, there remains debate as to what empathy is and how it should be used. Therefore, a consideration of the literature relating to empathy and its perceived obstacles and challenges will be presented. This will be followed by an examination of the term's meaning and how it is operationalised. The next part of the paper will consider arguments as to why empathy should form part of professionalism in light of discussion in previous sections of the paper. Given the initial motivation for conducting this research it seems fitting to examine in the final part of the paper how empathy might be introduced to law students as an element of professional legal practice.

Stream: Legal Education 1

Paper 1: David Sugarman. When We Were Young: The Construction and Transmission of Legal Contextualism and Socio-Legal, Critical and Interdisciplinary Legal Studies in Britain, c.1965-1985

The institutional and intellectual framework for legal scholarship in Britain changed dramatically during the period c.1965-1985. While legal scholars had long been interested in, and recognised the value of, non-legal methodologies and insights, modern university legal education and scholarship sustained a dominant tradition that distanced legal study from easy communication with other disciplines, or indeed, non-lawyers addressing shared questions. The period c1965-1985 was legal contextualism's "tipping point": it was when the interest of legal scholars in non-legal methodologies and insights developed on a scale and extent that was unprecedented. The numbers and characteristics of those who produced and those who consumed legal scholarship, the institutions within which this activity occurred, and the media through which scholarship was communicated all underwent transformation. We are heirs of this key moment.

In this paper, I describe and assess contextualism's turning point, including the construction, transmission and reception of the different, but overlapping movements associated with law in context, socio-legal studies, critical legal studies and interdisciplinary legal studies at this formative moment, and the continuing significance of this neglected, but vital, conjuncture

This research is derived from interviews, primary and secondary sources. It builds on my published work on the development of English legal education and scholarship since 1870s.

Paper 2: Sally Wheeler. Socio-legal Studies and the Curriculum

Socio-legal studies has made very little impact on the foundational subjects of the conventional Law Degree either in methodological terms or in content terms. This is not a particularly new observation. It has been remarked upon before, for example in the Nuffield Report of 2006. Following that an edited collection (*Integrating Socio-Legal Studies into the Law Curriculum*, ed Hunter and Cowan, Palgrave 2012) attempted to provide teaching ideas and materials for those who wished to change the traditional content of the Foundation Subjects. However there is little evidence to suggest that anything very much has changed. The recent SRA consultation exercise on the future of the QLD offers an opportunity to reflect on this lack of impact; to consider why it is the case and to speculate on whether the loss of the QLD might be a gain for socio-legal studies.

Paper 3: Dave Cowan. Socio-Legal Studies - Past, Present and Future

Various socio-legal series have been produced in the past and some have petered out. Socio-legal studies seems to be stronger now than it has been for some time, and the monograph and journal markets boast significant advances. As part of this roundtable, I will reflect on the directions taken in the five years since the Palgrave Macmillan Socio-Legal Series was set up, its successes but also the gaps it might have filled, but has not (so far). One particular gap has been in pedagogic material, facilitating the dissemination of socio-legal scholarship to undergraduate students. If there is that gap, why has it not been filled. There have been some notable achievements of the series, but how might (or should) it develop? What are the strengths of the various series publishing socio-legal work, and where might they develop?

Stream: Mental Health and Mental Capacity Law 1 - Services for People Lacking Capacity

Session collapsed into Mental Health and Mental Capacity Law 2

Stream: Refugee and Asylum Law: Theory, Policy and Practice 5 -Treatment of asylum seekers and refugees

Paper 1: Nick Gill & Andrew Burrige, Equal treatment? Patterns of judgecraft in Britain's asylum tribunals

Judges are charged not only with the responsibility to reason about cases, apply legal rules and reach decisions. They are also entrusted with the responsibility to conduct hearings in a way that is accessible and intelligible to the parties involved and that convince the parties of their fairness. In no other area of law is this more challenging than in asylum law, where language and cultural barriers, stigma and mistrust are often in close attendance. By drawing on in-person survey evidence of 240 British asylum tribunal hearings in 2014, this paper offers a rare quantitative picture of in-court judicial behaviour carried out in order to make hearings more accessible and intelligible to participants. It reports four statistical patterns in the frequency with which discretionary measures to facilitate the full participation of appellants in legal proceedings are undertaken: 'vulnerability-redressing' behaviour, which describes how immigration judges undertake more measures when faced with appellant disadvantages such as being under 18 and being unrepresented; 'vulnerability-neutral' measures which describe how judges' behaviour is impervious to other disadvantages; 'vulnerability-amplifying' behaviour which describes how fewer measures are taken in the face of certain appellant characteristics such as being female; and 'extraneous' patterns that refer to correlations between the scheduling of cases, the dress of the appellant and judicial behaviour. We discuss how these patterns raise important questions in relation to the 'equal treatment' of disadvantaged groups. Drawing critically on recent scholarship about judgecraft and legal consistency we conclude by reflecting upon the appropriate limits of in-court judicial behavioural discretion in modern legal systems like Britain's first tier asylum and immigration tribunal.

Paper 2: Nora Honkala, "An unhappy interlude": Trivialisation of forced marriage in asylum seeker women's cases

Over the past decade, the UK government has introduced a range of policy and legislative measures to tackle forced marriage of its nationals. At times paternalistic yet at times enjoying the support of women's organisations, from the beginning these measures have been framed within human rights discourse. Several measures have therefore been taken to increase awareness of forced marriage. However, women fleeing forced marriages who claim asylum in the UK have not benefitted from this awareness. Using examples from my study of forced marriage claims in the Upper Tribunal (Immigration and Asylum Chamber) and its predecessors from 2004 till 2014, this paper examines the ways in which asylum appeals adjudicators have addressed the issue of forced marriage. It is argued that there exists a noteworthy trend of trivialisation of the issue within these cases. This problem of trivialisation emerges through the use of euphemisms and several gendered and 'cultural' assumptions prevalent in the characterisations of forced marriage. Drawing on feminist critiques, the paper challenges the particular ways in which women asylum seekers' experiences are represented and argues that this presents a cause for concern for the realisation of women's rights within the refugee determination context.

Stream: Research Methodologies and Methods 3

Paper 1: Eleanor Pritchard, Informants' Understandings of the Researcher as an Actor: Reflections on Empirical Socio-Legal Research in Post-Conflict Kosovo

This article reflects on fifteen months of fieldwork in post-conflict Kosovo, during which I examined understandings of Albanian law in the context of nation-building. Over the course of my fieldwork, it became apparent to me that this was a process still in progress, which was shaping many of my informants' responses, and also shaping what they expected me to do with the information I was collecting. I consider the specific challenges I encountered, and how I addressed them, as well as reflecting at more general level on fieldwork on highly-politicised topics and in high-politicised societies.

Paper 2: Jo Samanta, Sarah Sargent and Kudret Yeldon, The Use of Focus Groups and Constructivist Grounded Theory in Medical-Legal Empirical Research

This paper reflects on the experience of a multi-disciplinary research group on the use of focus groups and constructivist grounded theory to explore the issue of whether people in a minimally conscious state should have a legal right to be reassessed.

It will present information on the rewards and challenges of empirical work to explore questions with a moral or ethical overlay, and will focus on the particular choices made about focus groups and the use of grounded theory as the means to analyse focus group transcripts.

It will provide insights into the questions that must be addressed and challenges that can arise in designing an empirical research project, and will suggest ways that this team identified and addressed these. The particular benefits and barriers in the use of both focus groups and grounded theory will also be discussed, and considerations given as to what would be important in planning and designing further research following on from this initial project.

Paper 3: Fabio Ferraz de Almeida, What is Missing in Socio-Legal Studies? An Ethnomethodological Contribution

My research is about how police interviews with suspects are conducted in the United Kingdom. I'm particularly focused on how police officers and suspects deploy common sense knowledge to build, sustain, challenge and negotiate alternative versions of the same event throughout the interview (Pollner, 1987). My data set is comprised by 50 audio-recorded police interviews with suspects, conducted between 2004 and 2005. I'm analysing that data using ethnomethodology (Garfinkel, 1984) and conversation analysis (Drew & Heritage, 1992). Although the core of my research is based on these recordings, I'm also conducting ethnographic observations in a police station in the Midlands in order to inform my analysis (Maynard, 2005). Ethnomethodology and conversation analysis have been used to study legal practices since their creation in the late 1960's and their contribution can be summarised into four main themes: a) the relation between law in action and law in books; b) the 'missing what' of socio-legal studies; c) the local orders of

practice that are missed by traditional formal analysis; and d) the alternative reorientation of research on legal work (Dupret, Lynch, & Berard). In this paper, I will discuss each of these contributions by reflecting upon my experience on researching police interviews with suspects.

Stream: The Law and Unintended Consequences 4

Paper 1: Abigail Jackson, From Revenge Evictions to Retaliatory Rent Rises: The Unintended Consequences of the Deregulations Act 2015

Last year, the Government introduced provisions in the Deregulation Act 2015 preventing private landlords from engaging in a practice known as ‘revenge eviction’, where a tenant is evicted for making a complaint about the condition of the property. Generally, these measures have been welcomed by tenants’ associations and housing activists, with the Chief Executive of Shelter, Campbell Robb, claiming that tenants “will no longer face the appalling choice between living in a home that puts them or their family in danger, or risking eviction if they complain”. However, there is little evidence that this legislation will have that effect or prevent retaliatory conduct by landlords.

Against that background, this paper will examine the unintended consequences of the Deregulation Act 2015. It will argue that landlords may engage in creative compliance with the law, by serving notice earlier in response to a verbal complaint by the tenant, or raising rents. If a tenant’s rent becomes unaffordable, that may have the effect of ‘forcing’ her to give notice on a property, even if she wishes to remain in occupation. It could also lead to rent arrears, which would allow the landlord to evict her from the property under one of the mandatory grounds in Schedule 2 of the Housing Act 1988. As such, many tenants will remain vulnerable to the actions of their landlords, with little protection from eviction. This paper will conclude by arguing that if the Government wishes to tackle the problem of ‘revenge eviction’, the law should provide tenants with greater security of tenure and adopt a broader definition of retaliatory conduct, covering a wide range of poor behaviour by landlords.

Paper 2: Roxanna Dehaghani, Automatic authorisation: assessing necessity to detain under PACE 1984

The Police and Criminal Evidence Act 1984 was implemented in 1986 to, inter alia, routinize police powers and procedures. Yet in the thirty years since its inception some powers have been used in a manner that the legislature perhaps had not quite envisaged. One such procedure is the assessment of ‘necessity to detain’. This paper engages with empirical data and builds upon previous studies to argue that, in relation to the authorisation of detention, any envisaged ‘check’ on police procedures has been manipulated by those responsible for authorising detention (custody officers). As such, PACE 1984 has been successfully absorbed by the police.

Paper 3: Jonathan Brown, Overlooking the Obscure: Unintended (and Unsavoury) Consequences of Reforming the Age of Criminal Responsibility in Scotland

The Police and Criminal Evidence Act 1984 was implemented in 1986 to, inter alia, routinize police powers and procedures. Yet in the thirty years since its inception some powers have been used in a manner that the legislature perhaps had not quite envisaged. One such procedure is the assessment of ‘necessity to detain’. This paper engages with empirical data and builds upon previous studies to argue that, in relation to the authorisation of detention, any envisaged ‘check’ on police procedures has been manipulated by those responsible for authorising detention (custody officers). As such, PACE 1984 has been successfully absorbed by the police.

Session 6, 16:00 – 17:30

Stream: Art, Culture and Heritage 3 - Trafficking cultural objects

Paper 1: Hao Liu, A Battlefield without Flames and Smoke: Claim for Repatriation of Chinese Cultural Objects

When it comes to recovering the stolen archaeological objects from other “Market” nations rationally and effectively, Chinese academics has hardly seen relevant academic interest in its problem of illicit excavation and trafficking in Chinese archaeological objects. There also have been quite little academic research and papers in this area. In order to evoke Chinese people’s consciousness of protecting Chinese archaeological objects, resolve this knotty problem duly, Chinese government and those so called “Market” nations have to face some enormous problems of lawful impediment and ethical dilemma. This paper elaborates on cultural property and archaeological objects in Chinese context. For a better understanding of Chinese archaeological objects, this paper introduces the case of gold foils (ornaments) stolen from Eastern Zhou Tombs in Dapuzishan Mountain Region, Li County, Gansu Province, PRC and also analyses the case involving transfer and change of title to the subject matters, lays emphasis on the original owner and a third person in good faith, limitation of action, balances the interests of “Source” nation and “Market” nation, according to the relevant domestic laws between China and France as well as international conventions. The author suggests that the Chinese government and the French government should be based on the principle of consulting and negotiating on just grounds, to their advantage, and with restraint, rather than consider the possibility of international civil litigation against opposite side. It will be an effective way for the two sides to sign a bilateral agreement based on preventing the theft, clandestine excavation and illicit import and export of cultural property. Some other practicable advice have been summarized on the recovery of Chinese archaeological objects and cracking down on cultural objects smuggling.

Paper 2: Sue Farran, The fight against the illicit trafficking of cultural property in the Pacific.

In August 2014 I attended a three day workshop held in the National Cultural Centre of the Pacific island country of Vanuatu. The theme was the illicit trafficking of cultural property in Melanesia - an umbrella term which encompasses Vanuatu, Solomon Islands, Papua New Guinea and Fiji. It was suggested that the region is a target for trafficking in cultural objects and that there is a ready market for such items. The fight against such trafficking faces numerous obstacles, not least that these are small island states consisting of many islands located in the vastness of the Pacific ocean. Resources are limited and above all there is a shortage of information about what cultural property there is and an absence of awareness regarding trafficking. Different agencies and stakeholders at the workshop urged different approaches some of which were a pre-requisite to future assistance in this area. This paper considers the various options open to Pacific island states and considers the viability of some of these in the light of very real constraints of capacity, skills and resources available at national and regional levels.

Paper 3: Janet Ulph, The Illicit Trade in Antiquities: new dilemmas, new initiatives.

This paper will focus upon the destruction and looting of antiquities in the Middle East. These actions attack people’s shared sense of history and identity and can lead to a lack of social cohesion. Some of the worst affected countries are Libya, Syria and Iraq. This paper looks at recent initiatives by the Government, the art trade and museum sector to protect the world’s heritage where there is armed conflict. It seeks to provoke discussion about what more can be done to provide a concerted front at both domestic and international level. This will involve a debate concerning the extent to which the law and ethics can be used in an effort to protect vulnerable cultural treasures of source countries.

Stream: Banking, Finance and the Business of Organised Crime 3 - Corporate Social Responsibility, Financial Inclusion and Microfinance: A Focus on Developing Economies

Paper 1: Sunduzwayo Madise, Mobile money and financial inclusion: The case of Malawi

Most people in rural areas of Africa remain unbanked without access to financial services. For most banks; operating in far flung rural areas is not only a logistical nightmare but also unprofitable. Mobile money is

now touted as the most innovative financial product in the global south. This paper analyses how mobile money fits in and can contribute towards the financial inclusion agenda. It uses Malaŵi as a case study. Because it presents a unique meeting point of technology and finance, regulation of mobile money is still in a state of flux. In most jurisdiction the task is shared between the financial services and the communications regulators.

Malaŵi's has a small financial sector where banks dominate. Emergence of mobile money has been touted as a way of putting on board the financial ship people who would otherwise be financially excluded. The departure point is that rural people are capable of banking but they are not being serviced. This results in them being rendered the unbanked and under-banked, or commonly: financially excluded. The paper however argues that financial inclusion needs to be contextualised. It argues that while most people in rural areas of Malaŵi may be deemed financially excluded, this is a result of the definition of financial inclusion adopted by the financial system. It further argues that although many Malaŵians remain unbanked and outside the formal financial system, they are not really financially excluded. This is because within their own village settings, they can mobilise savings and access finance; key ingredients in the definition of financial exclusion.

Paper 2: Colin R Moore, Rehabilitating corporate social responsibility: Fulfilling legitimate expectations

Corporate social responsibility (CSR), in its radical form at least, was an early casualty of late twentieth-century neoliberalism, which was, of course, a central tenet of both 'Thatcherism' and 'Reaganomics'. Early radical reconceptualization of the corporation as a social or public institution, or transformative CSR, gave way to soft law provisions, self-regulation and voluntary codes of conduct, which Pillay (2015) has labelled as 'ameliorative' CSR. This paper, as a contribution to the corporate accountability movement, pushes back against ameliorative self-regulatory CSR, by taking the normative position, as proposed by Bendell (2004) amongst others, that those who are affected by the activities of a corporation ought to be able to regulate its activities. In other words, given the power wielded by corporations in society, the law should intervene to ensure that these private corporations have a duty to act fairly towards stakeholders.

The requirement of fairness is not unknown to company law, given that such a requirement already exists towards shareholders via the Companies Act 2006, s 994(1), but primarily exists as a legal doctrine deployed, both procedurally and substantively, in public law. In both cases a key implementation of fairness rule comes through the doctrine of legitimate expectations, and it argued here that it is this legal doctrine that ought to be extended to protect CSR goals. Specifically, it will be posited that companies generate legitimate expectations, both by virtue of their existence society, as well as in relation to specific acts or omissions by the corporation in relation to particular stakeholder groups. So ultimately the legitimate expectation doctrine could do much to address the current weaknesses, and indeed near-failure, of the CSR project.

Paper 3: Katharina Moser, Debt relief for low-income debtors

There are several social policy reports establishing a link between low-income, social and financial exclusion and an increased risk of over-indebtedness. I will build on this research and argue that the current system of personal insolvency law has the potential to increase the problems experienced by this group. While in theory there are a variety of debt relief options available, in practice, the only debt relief option which low-income debtors can usually afford, is the Debt Relief Order (DRO, introduced in 2009), available to so called "NINA (no assets, no income) debtors" who owe £20,000 or less. Low-income debtors are therefore required to rely on a limited form of means-tested poor relief, which imposes a strong stigma on this group of debtors. Furthermore, by allowing the debtor to simply escape her previously incurred payment obligations, reliance on the DRO undermines the trustworthiness of the debtor. The direct result is the financial exclusion of individuals that have made use of this procedure, but there may also be a danger that the option of a DRO increases the financial exclusion of low-income debtors as a group. While the law does nothing to reverse this effect, it reinforces it by imposing automatic restrictions on persons subject to a DRO, which limit their ability to participate in both economic and social aspects of society. Finally, the availability of debt relief for low-income debtors may lead to the wrong conclusion that there is a lesser need for measures preventing low-income households from becoming over-indebted, such as a sufficient level of social welfare and access to affordable credit.

Paper 4: Ngosi Okoye and Julian Siwale, Regulation and effective corporate governance in microfinance banks: A comparison of Nigeria and Zambia

Microfinance is the provision of financial services to poor and low-income clients who have little or no access to conventional commercial banks. For the reason that poverty is an enormous problem in numerous parts of the world, microfinance has been adopted as a key mechanism for enhancing economic development. There have been various forms of regulatory intervention by the central banks of countries in order to streamline microfinance activities. An important reason for the regulation of microfinance is argued to be for the purposes of ensuring effective governance of microfinance banks. This emphasis on governance is justified because microfinance is delivered through organisational structures and corporate governance is a mechanism which ensures that organisations pursue their objectives in an effective manner. It is, therefore, essential to evaluate the impact of regulatory provisions on the achievement of effective corporate governance in microfinance banks. This paper presents key findings from a research project undertaken in two African countries, Nigeria and Zambia, to evaluate the regulatory provisions in relation to corporate governance of microfinance banks, with the aim of determining the extent to which these provisions enable these banks to achieve their double bottom line of social goals delivery and profit generation in order to remain sustainable. The project involved interviewing the regulators at the Central Bank of Nigeria and the Bank of Zambia, the apex associations, as well as the directors and key management officers of some microfinance banks in both countries. The data from the interviews highlights a number of intriguing issues which are presented in the paper and include that the regulations have enabled negative outcomes in areas such as board composition, the certification requirements are problematic and ineffective in practice, supervision by regulators is questionable as regards effective risk management, and engagement with stakeholders is inadequate in both countries.

Stream: Challenging Ownership: Meanings, Space, Identity 2

Paper 1: Martin George, The Immorality of Property

Where do our property rights come from? Does property law reflect the way that people act, or wish to act, in support of those rights? In order to know who has the right to own something, or what things can be owned, or the extent to which someone can control those things, we must make value judgements about the relationship that property encapsulates. As Gray put it, property is a relationship of social and legal legitimacy between people and valuable resources. But how is that social legitimacy, or morality, over property shaped and enforced? Modern political philosophy suggests two possibilities: first, that people are imbued with an innate, natural understanding of property - they invoke basic elements of control, permission and exclusion without external rules or institutions. These views underpin our interactions between people and resources, and a legal framework can add clarity, certainty and stability in dealing with these rights. If a law contradicted our innate understanding of property, therefore, it should not be enforceable - it should not work. The second possibility is that the existence of property is ultimately state-dependent. Kant argued that we need a law of property to identify who owns, rather than simply possesses, any given resource. A person can only be under a duty to respect the resources of others if the law confers a correlative right to those resources; if it does not, people can only exclude others through the mere exercise of power rather than right. I will argue that, in some cases, it is our underlying or natural view of property that leads to the law, or a change to it, but ultimately that our property law is increasingly immoral because it conflicts with how we wish to act in support of our property rights.

Paper 2: Tola Amodu, Computing Competing Rights in Registered Title to Land

The Court of Appeal's decision in *Best* affirmed what, at first glance, appears to be a counter-intuitive outcome; that the commission of, what is ostensibly, a criminal offence can contribute evidentially to support a claim of adverse possession. In the case the applicant was held by the court to be able to substantiate a claim to the title of a residential property by way of his adverse possession despite the fact that the Legal Aid, Sentencing and Punishment of Offenders Act 2012 at s144 made 'squatting' a criminal offence.

Whilst the case itself is interesting in relation to the role of illegality in the making of applications for title to land, it highlights also the evident tensions in the broad rationales of title by registration dating from the

early twentieth century and in particular the value attributed to land utilization as against 'ownership' per se and, in particular, how these are to be resolved. This paper looks at the implications for land registration when the courts attempt to reconcile the effects of criminal and civil law provisions in this context. In particular, the limitations and opportunities offered by registered title to land and, indeed, the implications of false hope offered by the rationale of title by registration by permitting the making of applications, which inevitably must fail will be considered.

Paper 3: Francis King, The Winner Takes It All? The Reality of the *Coventry v Lawrence* action

This paper seeks to unpick the case of the recent private nuisance case *Coventry v Lawrence* (2014) UKSC 13, and the subsequent Supreme Court costs decision, through an examination of the properties, and people, at the heart of the matter.

This paper draws on empirical interviews with the appellant in the case, Mr. Ron Coventry, and uses photos and maps of the properties to explore the nature of the complaint and the impact on the parties involved. It also uses material such as petitions and organised actions from the community, in their attempts to be heard and to articulate the 'public interest' element of the case.

It is advanced that the action in private nuisance, while successful from the claimants perspective, has produced a result that would not encourage people to use the law to protect their 'private property rights'. With a costs bill of £428,000, the price of protection for a £300,000 house appears to be prohibitive: This case has produced an outcome that results in financial ruin for all parties, and a significantly adverse impact on the local community.

Stream; Children's Rights 4 - Children's Rights and Family Justice

Paper 1: Jill Marshall. Secret Births and Law Seeking to Open Windows Into Women's Souls

Relinquishment of new born babies is rare but it still exists in the twenty-first century. In many countries, such as the U.K., giving birth in secret or in concealed circumstances demands identification of the birth giver whose name is registered as the mother. In continental Europe, the legal position varies. In France, anonymous birthing is permitted; in Italy, discreet birthing occurs. Even in countries, such as Germany, where the position is legally ambivalent, the use of baby boxes may be on the rise. Such boxes or hatches can form part of a hospital wall where babies can be anonymously deposited in a modern day version of the medieval foundling wheel. The UN Committee on the Rights of the Child commented recently on the 'alarming spread' of baby boxes in Europe.

This paper analyses aspects of the legal regulation, including the need for registration and documentation, of secret and concealed births. It argues for a framework and approach that is caring, compassionate and respectful of women's choices in these circumstances, guarding against, as one of the British judges describes it, law 'seeking to open windows into people's souls'. It explores the need for documentation of the new born's life from birth to help create a sense of identity but queries the need for documentation of ancestry.

Paper 2: Brigitte Clark and Mariya Ali. The Legal Position of Separated Siblings in Public Care – Do Legal Principle and Practice Concord?

Family relationships beyond marriage and parenthood are often crucial to family life and the sibling relationship offers a striking illustration of a significant, yet legally neglected, family tie in English law. However, the courts have held that, although it is desirable that siblings are brought up together, this factor is not of such importance to override other factors in the balancing exercise, particularly where there is a large age gap between children (*B v B (Minors) (Custody, Care and Control)* [1991] 1 FLR 402.) Although sibling relationships are recognised as especially important when other family relationships change, or end, siblings who have lived together for years are sometimes separated when they are adopted or fostered after being taken into care.

In the first part, this paper examines the legal position of siblings in care, focussing particularly on their position on adoption and in foster care. Research and the overall principles of the welfare of the child and his or her Article 8 rights to family life should inform the practice of the law in this regard. In the second part

the paper proceeds to analyse the findings of the primary research conducted by Shaftesbury's Siblings United.

Programme in this regard. The paper argues that there is some divergence between the findings of this research, the principles laid down in case law and the implementation of the law in regard to the position of siblings in England and Wales. Drawing on research done in the United Kingdom and Australia in regard to sibling placement and contact in out of home care, this paper concludes that these children require more careful accommodation in the fostering and adoption system and that there should be greater openness to facilitate contact between siblings in these situations.

Paper 3: Lama Karame. Custody under Legal pluralism: Children as silenced victims

Family law in Lebanon is governed by sixteen religious personal status codes. Each of the different sects follows a distinct law and thus conditions of marriage, divorce and custody are fractured along sectarian lines. Analysing the legal pluralism resulting from the coexistence of these laws, the paper sheds light on the matter of children's custody. Its main purpose is to examine the extent to which children's rights are respected during a custody lawsuit and the impact of legal pluralism on those rights. Accordingly, it starts by exploring the legal order in which different custody regulations exist in both national and international law. Furthermore, it analyses the legal nature of the right to custody through a Hohfeldian lens, while shedding light on the tensions that exist between recognising children's rights and paternalism. The compliance of custody decisions with children's rights will be examined through the analysis of more than a hundred court decisions and the standards used to reach such decisions. The findings are analysed through a theoretical framework relating to the debate surrounding the secularisation of family law and legal pluralism. In an attempt to contribute to this debate, a comparison will be drawn between the interpretation of the child's best interest within religious and civil courts. The paper finally looks at the opportunities and risks that exist in guaranteeing children the right to access to justice and to self-determinism within family law disputes, to finally conclude that whichever standard is employed, whether in civil or religious courts, the custody system will be incomplete if children are not consulted.

Stream: Civil Procedure and Alternatives to Litigation, ADR 4

Paper 1: Kartina A. Choong, A Comparative Study of the Islamic and Western Models of Mediation

Mediation has a primacy of place in both Islamic and Western jurisprudence. In Islam, just as it is in the contemporary Western world, recourse to legal remedies should ideally rank second when it comes to conflict resolution. Priority should instead be given to informal efforts which not only seek to restore peace between the disputing parties, but also ensure that the needs of both sides are met through a win-win resolution that could see their relationship survive into the future. One such method is Mediation where impartial third-parties, with the consent of the disputing parties, intervene to help explore options that could break the deadlock. This paper seeks to highlight the similarities and differences between the Islamic and Western models of mediation. Re the former, it examines the emphasis placed on this method of dispute resolution in the primary sources of Islamic Law, namely the Qur'an and Hadith. It also explores literature on the Islamic theory of dispute resolution, and those relating to the characteristics and qualifications expected of a mediator. Re the latter, it studies the revival of interest in Mediation following the publication of the Woolf Report, the Western approach to conflict resolution and the characteristics and qualifications expected of a mediator. By comparing and contrasting the two models, this work concludes by recommending the absorption of certain Islamic methods and principles into the secular Western model when resolving disputes involving Muslims and Islamic countries.

Paper 2: Mohamed Salem Abou El Farag, The Role of Arbitration in the Enforcement of Mediated Settlement Agreements: Arab Countries' Perspective

Enforcement of mediated settlement agreements is one of the most important issues confronting those engaged in commercial mediation. This is due to the increasingly high number of non-enforcement of such agreements. In general, the settlement agreement resulting from mediation can be enforced by several ways, including through the contract (given that this agreement is, ultimately, a contract) or through the intervention of the courts. It can also be enforced through arbitration. The latter means is the essence of the

current presentation. This work will examine the extent and manner in which mediated settlement agreements can be subjected to a decision rendered by an arbitrator or an arbitral tribunal that has been appointed after reaching this agreement. In this regard, the question arises about the possibility of considering this decision enforceable under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Arbitration Convention 1958). This Convention has a great importance in the enforcement of foreign arbitral awards in many countries. It should be noted that a large number of Arab countries have special laws (or provision in laws) on arbitration, and some have or are in the process of developing laws on mediation. With the increased use of mediation in Arab countries, the paper explores how parties to mediated settlement agreements use arbitration to enforce these.

Stream: Criminal Law Criminal Justice 6 - Police and Crime Management

Paper 1: Laurene Soubise. Reviewing Police Investigations in the Prosecutor's Office

Public prosecutors are tasked with reviewing cases investigated by the police in order to decide whether to prosecute or not. Empirical studies have shown that, in practice, prosecutorial decision-making is largely determined by the police, both in France and England and Wales. Basing its analysis upon direct observations and interviews in both jurisdictions, this paper evaluates the impact of recent reforms in each system on the relationship between police investigators and public prosecutors. I show how the 'Philips' principle of strict separation between investigative and prosecuting functions has been fully embedded in CPS professional culture and largely explains CPS prosecutors' reactive attitude towards criminal investigations. By contrast, different legal structure and tradition mean that French procureurs take a more cooperative stance in investigations. I argue that the CPS is the weaker party in their asymmetric relationship with the police, which fuels tensions and resentment between the legal actors with no equivalent in France due to different structures of authority. Whilst fully objective reviews of police investigations by public prosecutors remain an inaccessible aim due to the dependence of public prosecutors upon police information, public prosecution services can regain some influence over the way this information is collected, in particular through national policies agreed with the police, as well as local policies and inter-agency cooperation.

Paper 2: Jake Phillips, Andrew Fowler and Chalen Westaby. Emotional labour and probation practice: emotion management in offender management

This paper forms part of a larger project considering probation practice in England and Wales through the lens of emotional labour in Community Rehabilitation Companies and the National Probation Service. In this paper we will present findings from research which uses the concept of emotional labour to analyse probation practice in the National Probation Service, and specifically the emotion management expectation of probation officers in their interactions with clients.

Emotional labour has been operationalised in a range of criminal justice institutions as a way of shedding light on the way in which practitioners manage their emotions in potentially difficult working conditions yet it has not been used in the context of probation. We argue that this leaves a significant gap in the application of this concept because the inherently relational nature of much probation work means that emotions play a considerable role in this arena.

In presenting an analysis of data generated through semi-structured interviews with staff in the National Probation Service we will consider the ways in which probation officers effectively manage the emotions of clients as well as considering where the expectation that they perform emotional labour comes from. We will also consider the potential consequences of performing emotional labour.

Stream: Exploring Legal Borderlands 6 – Author meets reader session

Helen Dancer – *Women, Land and Justice in Tanzania*, with discussants

Stream: Family Law and Policy 6: Regulating shifting meanings of family

Paper 1: Chung-Yang Chen. Unmarried fathers legal rights to children in Taiwan

Under Taiwan Civil Code, a parent-child relationship for unmarried fathers can be legally recognised by law under these circumstances: a child born out of wedlock whose natural father and mother have concluded a marriage to each other; a child born out of wedlock who has been acknowledged or maintained by the natural father; adoption. In general, an unmarried father who is not recognised as a legal parent has no rights to children under Taiwan Civil Code, e.g. custody, a part-time living arrangement, an equal say in child-rearing decisions and consent to an adoption.

In practice, the Justices of Constitutional Court held that, the law which disqualifies an unmarried father from bringing an action for disavowal his child presumed to be born in wedlock has not been contrary to the Constitution. Furthermore, they also found the law is intended to prevent damage to marriage stability, family harmony and the right of a child to education and nurture, so as to whether the law is to be amended to loosen the restrictions for such actions to an unmarried father, this is a matter of future legal reforms.

At present, the Code still put more focus on how the law to protect the legal father's rights to a child born within a marriage, rather than giving some rights to biological father in the case of an unfit legal father. Although in the case of adoption, the Code stipulated that the consent of the "parents" shall be obtained, however, the family court's latest judgement excludes unmarried father from the term of "parents" and firmly denies his right to consent under any circumstances before he becomes a legal father.

This paper intends to review the unmarried fathers' rights to children on the basis of best interest of the child.

Paper 2: Alan Brown. The Shifting Meaning of 'Family': the Example of the Rent Acts

This paper considers whether there is a single, irreducible core to the concept of 'family' within the law. As Lord Nicholls observed in *Sterling v Fitzpatrick Housing Association*, '[f]amily is a word with several different meanings.' The law in the United Kingdom lacks a single, universally applicable definition of 'family' and there are relatively few instances of statutes utilising the term 'family' as a concept activating legal consequences.

This paper considers the example of one specific area - succession by 'family members' to private sector tenancies under the Rent Acts - where the term 'family' was used to determine statutory entitlements. There was no guidance within the Rent Acts as to the definition of 'family', therefore this paper will examine the judicial interpretation of the provision in a series of cases throughout the 20th century; in these cases the courts considered and interpreted the definition of 'family'.

The paper will observe that the definition was developed and expanded from a relatively restrictive concept, limited to spouses and children (including de facto adopted children), in the initial decisions to a wider concept, which was capable of including unmarried opposite-sex cohabitants and then later same-sex cohabitants. As well as this, in the course of these decisions, the courts delineated the boundaries of 'family' through the recurring use of the concept of the 'de facto familial nexus'.

The paper seeks to use this historical example of the judicial interpretation of the concept of 'family' in one specific, statutory context to explore the features, characteristics and values of relationships which may be considered to be important to establish a familial relationship within law more widely.

Paper 3: Jessica Willis. Soviet Family Law: Internalized, Socialized, Collectivized

This study will examine how the Soviet regime reformed family law across their empire relative to the local demographic and how much of those reforms were internalized and retained after the collapse of the Soviet Union. First, what legal systems and codes governed family relations in the various corners of what was to become the Soviet Union prior to the advent of the Soviet legal system? Second, what was Soviet family law and how was Soviet family law different for different ethnicities across the Soviet empire? Thirdly, which aspects of Soviet family law were internalized and retained after the collapse of the Soviet Union in each constituent Soviet Socialist Republic? And, finally, how did Soviet family law impact long-term gender parity across the Former Soviet Union?

Hypothesis: The Soviet legal system treated ethnic minorities differently than ethnic Russians vis-à-vis family law reform. Reforms were based on previous Russian family legal systems, which were privileged over other

family law systems. There was a high rate of internalization where force was NOT utilized (Central Asia, Tatarstan, and the Baltic states) and a low rate of internalization where force was utilized (Caucasus). Furthermore, gender parity is more likely in those regions where there was a higher rate of internalization of Soviet family law.

Reviewing the impact of Soviet family law on gender parity gives the socio-legal studies community a unique opportunity to identify how law can influence gender parity in developing societies specifically because the 'Grand Soviet Experiment' was so vast; temporally, geographically, and practically. In fact, the various programmatic processes implemented provide an isolated 'within' case study, complete with control (i.e. Russia proper). Thus, the socio-legal studies community can and should learn from the Soviet experience in family law and its impact on gender relations and gender parity.

Stream: Gender, Sexuality and Law 6

Paper 1: Kay Lalor, Spaces of resistance: Law, development and LGBTI rights

A number of international actors – including international financial institutions - appear increasingly willing to discuss and defend LGBTI/SOGI rights. The impact of these engagements can have far reaching consequences for LGBTI communities, and activists have emphasised the need to carefully manage international support in order to avoid causing harm to the most vulnerable. This paper begins with an analysis of the delay of a World Bank loan to Uganda in the wake of the Anti-Homosexuality Act, focusing on the complex and multifaceted relationship between the national and international in the current context of sexuality and gender identity rights. It suggests that this analysis can be placed alongside an examination of recent case law from Uganda, and argues that an understanding of the way in which law demarcates and regulates civil society spaces is central to an examination of the operation of law and sexuality within particular legal, political and material contexts. Indeed, to focus solely on the actions of IFIs or other powerful international actors occludes the centrality of these dynamics.

As such, the paper seeks to investigate potential sites of resistance that might emerge from the spaces in between neoliberal co-option of queerness and state violence that seeks to erase the capacity of LGBTI groups to operate. It focuses on the way in which sexuality and law permeate and mediate space, demarcating boundaries, and belongings and holding an increasingly complex network of overlapping spaces in tension. The tensions and contradictions that emerge suggest that an understanding of the terrain in which the law operates and the complexities of this operation is vital to formulating an effective response.

Paper 2: George Harrington, Alpha's, Beta's and Toxic Masculinity

Toxic masculinity encapsulates the idea that patriarchy can be as detrimental to men (and masculinity) as it can be to women (and femininity). It refers to the socially constructed cisgender heteronormative expectations of gender and the sometimes damaging and harmful impact these traditional gender roles can have. A 'Beta Male' has emerged from these pervasive ideas. This idea evidences particularly harmful attitudes about gender, hierarchy and sex against the typical 'Alpha' masculine standard. The Beta's are often viewed as inferior men because of their effeminate traits and are rejected by men and women alike for not conforming to the traditional modal of masculinity.

The societal ideas surrounding toxic masculinity forge a connection between men, violence and sexual aggression. Recent research (William Pollack) suggests that there is a correlation between this narrow construct of masculinity (and their societal entitlement) with the omnipresent theme of homicidal revenges in America as men are unable to deal with their emotions rationally. Privileges that existed for men are being gradually eroded as society becomes more egalitarian and this can cause men to turn to social media where these feelings can become reinforced through misogynistic and racist rhetoric's. This is being touted as a leading cause of gun violence specifically targeting women in America (Cliff Leek).

The perils of masculinity are real and can cause serious psychological harm to afflicted men and women who are consequently suffering in the crossfire of men's forced re-appraisal of their masculinity. In this paper I will argue that men who feel marginalised by masculinity can become radicalised by the rejection they face for non-conformity. The paper will then look at the correlation between gender and the mass shootings in America specifically addressing the 'beta' males that commit these acts as a form of retribution; the 'Beta Rebellion'.

Paper 3: Katharine Parker, The Role of Visual Methods in the Study of Illicit Sex: Empirical Reflections

The introduction of the Sexual Offences Act 2003 arguably highlighted the gendered nature of the law in terms of its exclusive use to prosecute men who have sex with men. In conjunction with the Public Order Act 1986 the law is being increasingly used to regulate public sexual behaviour and in particular public homosexual sex. Subsequently, those wishing to engage in homosexual sex in public places are having to take increasing risks in order to avoid detection and prosecution. This paper aims to present some initial methodological reflections from an ongoing programme of empirical research examining the risk taking behaviours of men who have sex with men in public sex environments in Newcastle upon Tyne. Informed by feminist methodology discourses concerned with researcher/researched power relations, the incorporation of visual methods was implemented into the research design with a view to empowering participation and dialogue. Due to the sensitive or indeed taboo nature of the subject being examined and my own positionality as a female researcher in a male dominated environment, it was anticipated that not only would the use of visual methods assist with centralising participants within the research process, but also act as an important tool for addressing the gender imbalance of the interview situation. Whilst visual methods have developed within particular disciplines such as cultural studies, education and geography, they have rarely been used for the purposes of socio-legal research and as such this paper aims to reflect upon both the challenges and benefits of adopting such an approach.

Stream: Information 2 – Whistleblowing

Paper 1: Richard Hyde and Ashley Savage. Whistleblowing in the Aviation Sector: Intelligence Sharing and Pro-active Regulatory Practice

The regulation of civil aviation provides multiple avenues for agency co-operation, as well as creating jurisdictional hurdles and cultural differences. Where an international flight crosses jurisdictional boundaries, it is vital that regulatory authorities work closely, sharing information which could have significant value to regulatory agencies across jurisdictions. Whether it be the Air India crash in 1985 where 329 people lost their lives due to failures to detect explosive devices hidden in luggage, the Colgan Air Flight 3407 which crashed as a result of pilot fatigue or the horrific outcome of the 9/11 attacks, regulation of the aviation industry presents a myriad of challenges.

In this paper, the result of an SLSA Small Grant, the authors shall consider the role of whistleblowing disclosures in international regulatory practice. The 9/11 Commission recognised the importance of whistleblowing stating that ‘democracy’s best oversight mechanism is public interest disclosure.’ Whistleblowers are generally regarded as employees who become aware of wrongdoing, malpractice, health and safety and other issues considered being of public concern and who bring those matters to the attention of employers, regulatory bodies or to members of the public directly.

The paper will summarise the approach taken in EU, considering in particular the system of occurrence reporting. The paper will also critically analyse available laws protecting whistleblowers, freedom of expression and privacy. The authors will identify that tensions can where the transfer of information exposes comparable differences in the legal regimes of different states. The paper will conclude by suggesting best practice principles for the handling of whistleblowing concerns by aviation authorities.

Paper 2: Ashley Savage. Whistleblowing in the Civil Service: a patchwork state

Whistleblowers can provide vital intelligence on wrongdoing and or malpractice in their workplace. Authorised whistleblowing mechanisms can provide an alternative to unauthorised leaks. However, recent reported experiences of several high profile whistleblowers in the Civil Service suggest a number of institutional failings in the way in which concerns are handled. This paper, based on a chapter in the author’s forthcoming work: *Leaks, Whistleblowing and the Public Interest: the Law of Unauthorised Disclosures* (Edward Elgar) will consider the results of a comprehensive analysis of the state of whistleblowing concerns raised under the Civil Service Code in departments and agencies across the Civil Service. Using data obtained from 71 organisations, the author will identify that there is a considerable variation in approaches to deal with concerns and that these variances can have a detrimental impact on the treatment of individuals. The author will recommend a number of key reforms to the current system and will suggest the need for clarification as to the rights and obligations of individuals under the Civil Service Code.

Stream: International Criminal Justice: Theory, Policy Practice 6

Paper 1: Hendrik Vandekerckhove, The Elusive Concept of International Criminal Justice and the Contribution thereto by Domestic Courts

Many authors have defined the term 'international criminal justice' in different ways. This has led to some confusion as to what this concept truly entails. For example, in A. CASSESE's book *The Oxford Companion to International Criminal Justice*, the contributors all focus on (international) criminal trials as the only way to bring about international criminal justice. So, does international criminal justice mean that perpetrators of violations of international law are being brought before criminal courts? Is it that simple? No, according to R. VOGLER, who argues that the practice and procedure of these trials are most important in order to achieve a situation of international criminal justice. Some others, like G. BOAS, however say that defining the concept is impossible. The goal of this article is therefore to clarify where clarification is mostly needed, namely with regards to a comprehensive and unified definition of international criminal justice.

Moreover, the second purpose of the article is to provide a list of international criminal aspects or elements upon which domestic courts, specifically, can and need to act in order to achieve a situation of international criminal justice. It has to be noted that the list of elements or aspects will be limited to the mere action that is required of national courts. To illustrate, the action that is required of the international community in its entirety to bring about a situation of international criminal justice might include the adoption of legislation on the prevention and/or punishment of international crimes but of course this cannot be a task of national courts. Hence, while the purpose is to be comprehensive when defining the concept of international criminal justice, the second goal concerning the list of elements will focus on the contribution of domestic courts in particular to international criminal justice.

Paper 2: Giulia Pecorella, The Definition of the International Crime of Aggression and the Practices of the U.S. Administration

On the occasion of the 2010 Kampala Review Conference, States Parties to the International Criminal Court finally adopted by consensus an amendment to the Rome Statute containing a definition of the international crime of aggression. The Court shall have jurisdiction over aggression only when at least 30 states ratify such an amendment, and in any case no sooner than 2017. However, it is necessary to analyse this definition. In particular, it seems opportune to consider whether or not it reflects, influences, or contributes to the crystallization of a correspondent norm of customary international law. In case of an affirmative answer, although the Court would be probably be hindered from initiating any proceedings against a leader of a state not party to the Rome Statute, this treaty definition might be used as an important reference by those national courts that exercise universal jurisdiction, or even just a passive jurisdiction, over international crimes. Therefore, the definition might turn out by being relevant also for those states that are not party to the Rome Statute. These latter, on their side, might contribute to clarify the nature of the norm in question (whether it is just a treaty one or reflects an international custom which, by its very nature, could be included among those pertaining to the sphere of *jus cogens*) throughout their practice. Moreover, states not party, especially when they are also global powers, might try and influence the interpretation of such an amendment when it comes of the so-called grey areas of the *ius ad bellum*, namely, humanitarian intervention and self-defence. As a consequence, my paper will focus on and analyse the US Administration's recent practice regarding the crime of aggression.

Paper 3: Elizabeth Acorn, The Limits of State Socialization: International Pressure and Institutional Constraints in Canadian Foreign Bribery Enforcement

The paper examines the OECD's 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and its obligation on state parties to criminalize what is often called "foreign bribery" or the "supply" of bribery in international business. The Convention encompasses most of the world's largest exporters of good, services, and foreign investment and holds real promise to combat corruption globally by stifling its supply. Nonetheless, we observe wide variation in the operation of these foreign anti-bribery rules across OECD states, where only half of the original 29 OECD state parties to the Convention concluded a prosecution for foreign bribery. Why? Does this variation tell us anything about the influence and success of the Convention and of international law more generally?

To begin to address these questions, the paper focuses on Canada, a country that many expected would be a leader in foreign bribery enforcement given its early support for the Convention, its strong legal institutions, and its close economic integration with the U.S., which had exposed many Canadian corporations to U.S. foreign bribery rules that had been introduced in the 1970s. But despite these favorable conditions, Canada has nonetheless come to be seen as a laggard in foreign bribery enforcement and has been criticized for its low enforcement by the OECD and others. To explain this outcome, the paper draws on the distinction between the law-on-the-books and the law-in-action. While Canada has been quick to make legislative changes that established the offense of foreign bribery and, later, to amend its law to respond to evolving OECD recommendations, these on-the-books legal advances have been hampered by institutional constraints, principally the presence of an exclusively criminal model of accountability that minimizes private sector cooperation and amplifies the challenges of transnational crime enforcement.

Stream: Intersectionality

Paper 1: Felicity Benton, Forced marriage in Scotland: Stalled at the intersection?

Inequality at the heart of a forced marriage is not solely based on gender. In addition, intersections with ethnicity, culture, religion, race, sexuality and disability may also be relevant to the core inequality. These are also shaped by colonialism, patriarchy, racism, homophobia and ableism.

Comparatively, research as to how Scotland is combating forced marriage is sparse, with 'UK' research focusing on England. However, evidence has emerged of a separate hyphenated ethnic identity and of fruitful consultation regarding an initial legal framework to address forced marriage in 2011

Regrettably, with the acceptance of UK wide criminalisation in 2014 that positivity is now called into question. Both NGO and legal practitioners have questioned its' effectiveness. Specifically, differing evidential requirements in Scots law and the refusal of victims to criminalise family members, resulting in a reduction in reporting and no successful prosecutions.

A desire to combat forced marriage within the communities has been expressed along with recognition that existing patriarchal and cultural barriers need to be urgently addressed, in an effort to reduce isolation and ensure that membership of kinship groups can be retained.

If efforts in Scotland to combat forced marriage are to be reignited, consideration could be given as to how other religions have approached marriages where consent has been coerced. The Catholic Church has a significant structure for cases where consent to the marriage has been compromised. Resultant annulments allow kinship retention and remarriage.

Reassessment of the viability of criminalisation and the possibility of including forced marriage in the definitions of other offences also merit consideration.

Paper 2: Langton Miriyoga, Do socioeconomic rights work for non-citizens? Experiences of Zimbabweans living in South Africa

Do migrants living in South Africa really benefit from socioeconomic rights enshrined in Chapter 2 of the South African constitution? Between two to five million immigrants already live in South Africa (BBC, 2015). A large number of migrants continue trek down to South Africa every year often after being displaced from their home countries by a host of factors; and flight from extreme poverty and socioeconomic deprivation particularly represents one of the major drivers of migration within Sub-Saharan Africa (Castles et al, 2004; Bloch, 2010). Moving into a country with the most developed economy supported by a system of social protection entrenched in its supreme law, immigrants from backgrounds of material deprivation often anticipate better socioeconomic outcomes. Post-apartheid South Africa is generally considered the most economically developed country in Sub-Saharan Africa, with a developed welfare system that guarantees social protection to all who live within it. This system of social protection is anchored in an elaborate socioeconomic rights framework entrenched in what is perhaps one of the most progressive constitutions across the world. The South African constitution, adopted in 1994, is considered progressive and transformative largely because it seeks to protect the values of human dignity, equality and social justice for everyone living within South Africa irrespective of one's citizenship status (Polzer-Ngwato and Jinnah, 2013; Brand, 2005). But do the socioeconomic rights really work for those considered not to belong in South Africa, the non-citizens? Why? These are pertinent questions not least in the context of growing exclusion and

marginalisation of immigrants, coupled with escalating socioeconomic problems facing post-apartheid South Africa at present. And to answer these questions, this paper draws on findings from field research conducted in 2015 on perceptions and experiences of Zimbabweans living in Cape Town. It also relies on an array of theoretical tools including citizenship and legal empowerment lenses to explain observed dynamics.

Stream: IT Law and Cyberspace 3

Paper 1: Magnus Eriksson, Regulating Complexity: the Swedish Co-production of Law and Technology in Autonomous Driving

While autonomous driving is partly enabled by advances in software technologies, the execution of the code takes place in an unpredictable environment filled with laws, norms and regulations, making it different from traditional IT development projects.

In Sweden, auto manufacturer Volvo and the regulators realized that they were dependent on each other to make the technology come about and launched a cooperative project called DriveMe aiming to put 100 autonomous test vehicles with ordinary commuters behind the wheel on the roads in Gothenburg by 2017.

At the same time, the Swedish regulators have analyzed the Swedish legal and regulatory system for automobiles and involved themselves in lobbying on the EU and UN level to influence laws and international regulations in a way they deem favorable to autonomous driving, hoping the technology will provide benefits for safety, environment, and the Swedish auto industry.

Among the regulatory problems discussed in the study from the Swedish Traffic Department is the problem of certification of automobiles that up until now have been conducted with standardized tests and rigorously defined thresholds and criteria. However, according to the study, autonomous driving is a complex systemic function of many interacting components and actors acting in an unpredictable and ever-changing environment. The technology is thus unfit to be regulated with rulesets and standardized tests.

This paper, which is mainly based on interviews with people involved in the DriveMe project, will analyze this notion of complexity as an encounter of regulators and software-based technologies that are hard to inspect and whose behaviors are hard to predict upon inspection, but also as an encounter with new imperatives to support innovation that makes the regulators hesitate to dictate a socio-technic environment that is partly out of their capacity to understand and control.

Paper 2: Marion Oswald, Jordan's dilemma: can large parties still be intimate?

At one of the Great Gatsby's spectacular parties, the golf champion Jordan Baker remarked to Nick Carraway that she likes large parties: 'They're so intimate. At small parties there isn't any privacy.'

At first glance, this statement seems nonsensical. How can there be intimacy – a closely personal or private relationship - at a party where 'the cars from New York are parked five deep in the drive'?

In the early twentieth century, it was still possible to be relatively anonymous at a large gathering, to be visible, yet not the subject of detailed scrutiny or surveillance. A century on, the impact of digital technology has reduced our expectations of privacy. This paper discusses the interpretation of 'private' and 'public' in today's technologically enabled world by reference in particular to case-law on the reasonable expectation of privacy.

The paper goes on to discuss the potential of technological methods of controlling, blocking and lying on the Internet as means for a modern-day Jordan to regain control over her privacy, ultimately concluding that these technologies, themselves alone, do not provide a long term solution.

Finally, the paper reviews rights-based, trust-based and tort-based approaches put forward by scholars to target legitimate privacy harms, and then suggests a new tort of misuse of the online person pursuant to which certain information about individuals available to the 'masses' on the Internet, or which can be generated from such information, should no longer be regarded as 'public' in the sense of there being no privacy in respect of it.

Paper 3: Mark O'Brien, From Stead and Whitehouse to Big Brother: Historical Perspectives on the Legal Regulation of Child Pornography and Sexual Abuse

Child pornography and sexual abuse have a long history of preoccupying sections of British society. This chapter explores late nineteenth and twentieth century development of the law relating to this sphere. Importantly this is a process that is still underway well into the current century.

These legal developments resulted from a range of stimuli. In the 1970s, as will be seen, some came as a reaction to more permissive pornography laws, and a reaction to pressure groups such as the Paedophile Information Exchange in the United Kingdom, whose ideas sprung from the liberation theories of 1960s counter-culture. It was also the case that later, in the 1980s and 1990s, new dangers associated with the Internet and its ease of use, alongside changes to societal attitudes began to make such offences more visible, and thus changed the landscape in British (and wider) society.

In this context, it has been argued that there has been the development of a of 'moral panic' in reaction to child pornography and child sexual abuse. As will be seen, this is not new in relation to the subject matter of this paper, which explores this issue in the nineteenth and twentieth centuries, in the latter case via reaction to Internet-based material in the last two decades.

Notwithstanding a need to frame the law and its enforcement in a way that best addresses the criminality of child pornography and child sexual abuse, the impact of moral panics on public and legal debate has been significant. This means there has not always been sufficient critical scrutiny, and the prevailing discourses around such offences have not been receptive to different or innovative conceptual thinking about the subject. This has been less than useful in creating a more holistic response in the pursuit both of protection and of justice.

Paper 4: Brian Simpson, Robots, Intimacy and the Law

As artificial intelligence moves towards the creation of 'human-like' machines and robots, some have raised the question as to whether humans might one day seek to marry such robots. Certainly, human intimate relationships have already embraced cyber and machine based sex in various forms and, so an intimate relationship with a robot seems to be a logical extension of such activity.

But while new technologies may allow such behaviour to occur in a practical sense, what does all this mean for legal notions such as consent, duress and autonomy? And where do other members of families fit within these activities? Is the role of the best interests of the child in law to be recast to accommodate new forms of intimate relationships that are perfected and imperfect not within the frailties of humans, but by algorithms that miss little in terms of 'appropriate' parenting roles? In other words, will a robot parent end up raising the children of separated parents because it is programmed to do no wrong? Is this a proper application of the law?

Stream: Labour Law 2

Paper 1: Margaret Downie, Shifting Burdens of Proof in Equality cases

In a recent case on interpretation of section 19 of the Equality Act 2010, *Essop and ors v Home Office (UK Border Agency)* [2015]EWCA Civ 609,[2015] ICR 1063, the Court of Appeal considered what the claimant was required to do to prove indirect discrimination. The case is in the process of being appealed to the Supreme Court. This paper considers whether the court's interpretation was correct in light of other decisions of the Court of Appeal and the case law of the European Court of Justice. It also contemplates the impact on the use of statistical evidence on indirect discrimination claims if the decision is upheld and concludes that indirect discrimination cases will become increasingly difficult for the claimant to win.

Paper 2: Olawale Ajai, Human Rights, Corporate Duties, Workers Rights: The Juridification, internationalization and Humanization of Labour Law and – an international survey from a Nigerian Perspective

The world has come a long way in the area of decent work and workers rights, or so it seems. From slave labour, to the hellish working conditions of the industrial revolution and the Combination Acts of the UK prohibiting unionization or agitation for better working conditions, to constitutional guarantee of the right to work and unionize, extensive labour standards of health (promoted by the International Labour

Organization, voluntary business codes, such as the UN Global Compact). A legal and political economy survey of jurisdictions across the world offers a more sobering picture that suggests that conditions may not be too far from the industrial revolution era, even in leading democracies. Using a case study of recent developments in Nigeria and some other African countries, this paper examines the theme of too little workers rights and decent work in the face of updates of labour law replete with bespoke international best practice standards and human rights norms and offers some insights for reform.

Stream: Law's Empire? Justice, Law & Colonialism 5

Paper 1: Jennifer Balint, The Minutes of Evidence and the Record of Law

This paper is located in the Minutes of Evidence project (www.minutesofevidence.com.au), a collaboration between Indigenous and non-Indigenous education experts, performance artists, academics and government and community organisations. Through research, performance and education, the project examines how notions of justice have been formulated, invoked and confronted over time and place, and how the enduring legacies of past injustices continue into the present - despite official responses designed to redress them - so as to foster new ways of thinking about structural justice in the present and future.

The paper draws on research from the Minutes of Evidence project to consider the ability of law to respond to the call for justice for colonial harms and the maintenance of law's record as a space for a possible future structural justice. Despite the use of law as a core instrument in the subjugation and destruction of peoples, particularly under colonialism, the institution of law continues to be turned to as a site of justice. It is this question, what capacity a law that is deeply implicated in the structural injustice of colonialism has as a site of justice, in particular a future justice, that this paper considers. It shows how the record of law, called upon through colonial commissions of inquiry and other legal mechanisms, can be reactivated in the present. Law creates a record – that makes the structural injustice of colonialism appreciable – and alerts us to other possibilities. This record is an enduring one. It can be revisited, and returned to. That these records of harm endure allows for a possibility of a future structural justice, that may necessarily happen outside of law.

Paper 2: Mirosław Michał Sadowski, Crossroads of the World, Crossroads of the Law: Hong Kong and Macau Legal Systems approaching 20 years post-transition

2017 and 2019 will be the years of the 20th anniversaries of the, respectively, Hong Kong and Macau's transitions. As these commemorations are coming closer, the author of this article analyses the legal systems of the two China's Special Administrative Regions. He looks at them from the viewpoint of what are sometimes called 'the last great acts of History in the 20th century' (the transitions), and in the perspective of collective memory of the times of colonialism, and first post-transition years. In the introductory part of the article, M. M. Sadowski investigates the fascinating history behind the unique legal systems of the two Europe's entrepôts in Asia, describing how the power over the two cities was granted to Portugal and Great Britain, how the local laws had gradually been eradicated, and laws of colonial empires implemented instead. The second part of this essay is devoted to the current shape of Hong Kong and Macau's legal systems, which are, interestingly, at the same time different — Macau's belongs to the civil, and Hong Kong's to the common law family — and similar — at their cores lie two alike Joint Declarations. The author first analyses, then compares these two systems, remarking upon their exceptional form (the unique scope of independence granted to the two cities), noting at the same time how their laws were never shaped by the will of citizens, but first by colonial powers, and ultimately during the Sino-British and Sino-Portuguese negotiations. In the third part of the article, M. M. Sadowski reflects on the changes that have been introduced in law since the transition of power over Hong Kong and Macau, and tries to predict what the future will bring to their legal frameworks, and what will be left from their colonial past in terms of law.

Stream: Lawyers and Legal Professions 3

Paper 1: Ian King. The Decline of Professionalism in Law

Sociological attitudes towards professionalism have shifted significantly over the last century with two views having emerged. The first, influenced by Durkheim, views professions as a positive social and economic force in industrial societies, providing an ethical and moral framework for a society that would otherwise

fragment. Professions are distinguished from other forms of occupation by altruism and dedication to service. The second more sceptical view is heavily influenced by principles of liberal, free market economics, questioning the benefits to society arising from the monopolistic nature of professions. From a sociological perspective, this approach is influenced by Weber who saw professionalism as another form of rational bureaucratisation with professionals merely forming part of the bureaucratic machine. This neo-Weberian, neoliberal view has become increasingly dominant, and following fifty years of unprecedented growth and power, the legal profession is being challenged on many fronts. In the UK, much of this challenge stems from the removal of self-regulation and increasing competition arising from the liberalisation of legal service markets. Further challenge comes from government policy in other areas such as legal aid. Away from government policy, the legal profession faces unprecedented technological challenges, with the information society providing access to law in increasingly open ways which radically transform how consumers obtain legal services, hence disrupting the traditional model of delivery by professional law firms.

This paper seeks to identify what is meant by “professionalism” in law, and to analyse from a sociological perspective the various challenges facing the legal profession in England and Wales today. Is the decline of traditional professionalism terminal or merely temporary? Should we be redefining what we mean by professionalism to meet the needs of a post-modern world dominated by an information society?

Paper 2: Andrew Francis. Legal Professional Identities, Jurisdictional Collaboration and State Intervention

The legal services marketplace is experiencing a period of heightened change and uncertainty. While these changes necessarily bring challenges not only for the professionals, regulators and providers of education and training, they also challenge fundamental assumptions about how we view the organisation and activity of professions within the legal services marketplace.

This paper argues that an important feature of these changes concerns the relationships between and across previously held professional jurisdictions. Noordegraaf suggests that such professional connectivities may emerge when multi-professional working is demanded by the service context. Thus, there may be market driven imperatives in the corporate sector and imperatives of necessity in terms of survival and the provision of services to the most vulnerable in the social welfare sector. However, I suggest that the reconfiguration in terms of professional connectivities is potentially taking place at a much larger scale in England and Wales and in a more fundamental way (rather than simply responding to a specific client problem). Thus, the connections and alliances that may develop may signal a much more profound jurisdictional disruption, than simply greater willingness to work across jurisdictions between different professional groups.

Crucially, it is important to acknowledge the role of the State both in its intervention in the regulation of the market and in its decision to retreat from past areas of responsibility in the area of social welfare Law. Particularly in the social welfare law arena, contemporary legal professional identities are being challenged and re-shaped in different ways by the actions of the State. Such disruptions to previous jurisdictional settlements, arguably also raise questions about the nature of professional identity, legal education and the capacity of the legal profession to maintain its traditional role in this sector.

Paper 3: Sundeep Aulakh and Ian Kirkpatrick. The Demise of the ‘Professional Partnership’? A Qualitative Study of Externally-Owned Alternative Business Structures in England and Wales

The ‘professional partnership’ has long been the dominant organizational form within the professional services sector. Theoretically described as the ‘P2 archetype’ (Greenwood et al., 1990), its prevalence is typically attributed to it being the optimal model for, simultaneously, motivating hard-to-monitor professionals (Von Nordenflycht, 2014), reassuring clients, and satisfying shareholders (c.f. Greenwood and Empson, 2003). Amongst the highly regulated professionals, such as lawyers and accountants, the primacy of the ‘professional partnership’ is further attributable to a series of regulatory rules prescribing the types of organizations within which they are legitimately permitted to practice (Garoupa, 2004). In recent decades, however, key characteristics of the professional partnership have become diluted as developments in the global markets for professional services (Galanter and Palay 1992) have encouraged PSFs to adopt structures and management practices more akin to corporate entities (Powell et al., 1999). Nonetheless, with studies showing that practices of the P2 have not been displaced so much as overlaid with those of new archetypes, it is the resilience of the professional partnership that emerges as a key conclusion from scholarship exploring this phenomenon.

These conclusions are based on almost exclusively on professional service firms where ownership remains internal, that is, confined to professionals. Yet, given the recent trend for professional service firms to extended ownership rights to non-professionals (Von Nordenflycht 2007), there is a need to examine the implications this raises for the professional partnership. Following the removal of restrictions concerning the ownership and financing of law firms in England and Wales, this paper examines the introduction of radical new management structures, systems and practices within Alternative Business Structures that have either secured external investment or are subsidiaries of public corporations. Drawing on qualitative interviews undertaken with senior lawyers and investors, the findings suggest external ownership precipitates the demise of the professional partnership.

Stream: Legal Education 2

Paper 1: Rachael Field. The Australian Wellness Network for Law: Promoting Psychological Well-Being for Law Students and Lawyers

Studying law, teaching law and the practice of law can be rewarding and fulfilling, but also challenging, demanding and stressful. Research in Australia, the US and New Zealand has shown that law student well-being significantly decreases while students are studying undergraduate and graduate law degrees. This decline in well-being often commences in the first year of legal education and continues for some into the practising legal profession.

In 2010 the Wellness Network for Law was established in Australia to respond to the growing body of evidence that law students and lawyers are experiencing high levels of psychological distress. The Wellness Network is a collegial community of Australian academics, practitioners, regulators, students and wellness advocates who are committed to working to address the high levels of psychological distress experienced in law, and to promoting wellness in the legal academy and in the profession.

This paper discusses the work of the Network, and the key themes of a new book by members of the Network to be published in 2016. The paper argues for the relevance of the Network's endeavours to an international audience, and particularly to legal academics in the UK.

Paper 2: Emma Jones. Emotion and learning in the law school

This paper will explore the ways emotion and learning interact in undergraduate legal education. In doing so, it will consider the role of emotion within theories of learning. This includes its place within the constructivist theories which arguably dominate within higher education, as well as in relation to the humanist principles underlying much of lifelong education. It will also refer to other key ways in which emotion is linked with learning, including its impact on motivation and self-efficacy.

The current ways in which emotion is theorised in higher education generally, and the potential tensions between neo-liberalism and critical and humanist concepts of a holistic education, will be discussed. Relating this to legal education in particular, this paper will argue that emotion has traditionally been disregarded within law schools. This has led to a number of deleterious effects on both student learning and wellbeing. As well as impeding effective learning, it can also leave law students susceptible to emotional difficulties and lacking the emotional competencies required in future life.

Drawing on evidence from compulsory schooling (in particular, the use of the Social and Emotional Aspects of Learning programme in the UK) this paper will argue that social and emotional learning has an important role to play in undergraduate legal education and should be implemented through a holistic approach to the law school curriculum. Acknowledging emotion and allowing it to play a role within the law school can arguably increase academic achievement, enhance the student learning experience, promote wellbeing and develop key emotional competencies.

Paper 3: Anil Balan. A critical review of the effectiveness of the feedback practices within an institution teaching an undergraduate Qualifying Law Degree to students from widening participation backgrounds

The focus of this paper is a critical review of the feedback practices within an institution teaching an undergraduate Qualifying Law Degree to students from widening participation backgrounds by reference to the literature surrounding effective feedback. Before considering the specific feedback practices within this institution, the importance of feedback generally and what is meant by 'effective feedback', especially when

it comes to Law students from widening participation backgrounds, will be considered. In doing so, it will be noted that the concepts of passing on tacit knowledge and joining unfamiliar knowledge communities are highly relevant both to widening participation students generally and to those studying Law in particular. One conclusion is that, while the current feedback practices at the institution should not be scrapped entirely, there is a pressing need for them to be scaffolded extensively with the sort of proposals on effective feedback put forward in the literature, including but not limited to feedback on formative assessment (Weaver, 2006), small-group discussion (Nicol, 2010), model answers (Hendry, 2011) and interactive marking sheets (Bloxham, 2010).

Stream: Mental Health and Mental Capacity Law 2 - Dementia and Treatment

Paper 1: Laura Pritchard-Jones. "This man with Dementia" – 'Othering' the Person with Dementia in the Court of Protection.

In recent years, dementia has been subjected to an increasing ethical, legal and political gaze. This article analyses how the Court of Protection considers the perspective of the person with dementia when making best interests decisions on their behalf under the Mental Capacity Act 2005. The notion of 'othering', applied in the context of dementia, is used to demonstrate how the Court has, on occasions, depersonalised, marginalised and hidden the person with dementia from best interests decisions, in spite of law and policy increasingly emphasising that the views of the person who lacks capacity should be central to any best interests decision. Finally, using examples from recent cases, it is argued that by adopting an intersubjective approach, and by focusing on an individual's relationships, and by recognising and exploring the complexity of the relationships that the person with dementia has, the Court can go some way to avoiding the problems identified.

Paper 2: Jaime Lindsey. Social Worker Accounts of Mental Capacity Law

In this paper I draw on qualitative interviews with social workers, to explore their understandings and experience of using mental capacity law in practice. My focus is on social work responses to issues of exploitation within relationships, particularly capacity to consent to sexual activity and capacity to marry. I plan to explore three dimensions of the research findings in this paper: social workers' willingness to intervene in sexual capacity cases; the extent that supported decision-making is embedded in social work practice; and the hesitation to use formal legal frameworks to support decision-making.

Typically discussions about the role of social workers in this context raise concerns about paternalism, with suggestions that they unjustifiably interfere in the private lives of the mentally disabled. However, findings from these interviews have pointed towards reluctance by social workers to intervene. Based on this, I consider that our understanding of this area of law and social practice needs to be reconsidered because concerns about paternalism are, to some extent at least, misplaced. Instead we should focus on ways that we can support and encourage social workers to take action in appropriate cases. If social workers are not currently using the legal frameworks available to them then it is questionable whether further law is the answer. Instead an improved framework for supported decision-making might provide better outcomes in cases of sexual capacity; supported decision-making leaves open the possibility that even adults with severe mental difficulties might be able to give capacitous consent to sex in certain, highly supported circumstances and therefore allows for their sexual autonomy to be respected as much as protected.

Paper 3: Alex Pearl. "People who think they know better are taking out your rights and throwing them in the bin... and forgetting... that everybody should have the same human rights as everybody else" [Superman, white male, 34, learning disability]

This paper is an overview of the key themes and research findings emerging from an empirical research project, exploring how leading organisations in England are currently supporting adults with learning disabilities and autism to exercise legal capacity in dealing with financial contracts. Within the parameters of the study, financial contracts are understood as agreements which involve a financial obligation. The study has focused upon examining the operation of every-day contractual agreements which adults with learning disabilities and autism have identified as being important in their lives, and necessary for meaningful independent living and/or community inclusion. For example: accessing and using bank accounts, dealing

with mobile phones contracts, tenancy or mortgage agreements, utility bills and insurance. The study has examined the successes and challenges of supporting adults with learning disabilities and autism to deal with financial contracts from the perspectives of both disabled people themselves, leading support provider organisations, and banking institutions who stand at the other side of the contractual agreement. Given the concerns raised by the House of Lords Select Committee in 2014 about the paucity of information regarding the operation of the Mental Capacity Act 2005 in the context of property and financial affairs, this research data will be analysed and considered against the context of the current operation of the MCA, the proposed reform to the MCA (including the introduction of supported decision-making), and in light of the UK's obligations under the UN Convention on the Rights of Persons with Disabilities (2008).

Stream: Refugee and Asylum Law: Theory, Policy and Practice 6 - Protection limitations and failures

Paper 1: Rebecca McGregor, Expanding Protection for asylum seekers with mental illness/disability: Exploring the interplay between the 1951 Convention Relating To the Status of Refugees and The United Nations Convention on The Rights of Persons with Disabilities

It is widely acknowledged that there are high levels of mental illness amongst asylum-seekers attributable to a variety of factors (Vostanis, 2014), and that the presence of such mental illness/disability can potentially impact upon the ability to provide 'credible' narratives which are vital for the success of their claims (Crock et.al., 2013). This is particularly acute for persons with a mental illness /disability which affects their capacity to be coherent and consistent, to remember events accurately or to communicate their stories effectively (Asgary et.al., 2013).

Mental illness/disability can be integral (or an important peripheral consideration) to a claim for asylum under the 1951 Convention Relating to the Status of Refugees (1951 Convention) or a claim for humanitarian protection. However, persons with mental illness/disability may have difficulties proving that protection is required because of the existence of mental illness/disability, in particular if the condition is not easily discernible (Crock et.al., 2013). They may also have difficulties navigating the asylum system. Nevertheless, little research has been conducted on the operation of the asylum process for this group.

In this regard, this paper will explore the potential influence of UN Convention on the Rights of Persons with Disabilities (CRPD) on refugee protection. The CRPD obliges states to take 'in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk...' 'Situations of risk' for asylum seekers with mental illness/disability could encompass a range of circumstances not covered by the current regime. The potential for the CRPD to expand the reach of protection for asylum-seekers with mental illness/disability is therefore significant.

This paper will begin to advance arguments in favour of using the CRPD to encourage rights-based approaches to humanitarian protection.

Paper 2: Gary Christie, Prosecuting the persecuted in Scotland: A socio-legal study of the U.K.'s international obligation under Article 31 (1) Of The 1951 Refugee Convention and the Scottish criminal justice system

This study examines Article 31 (1) of the 1951 Refugee Convention, the right of refugees not to be penalised for illegal entry or stay, and its practical understanding and application within the Scottish criminal justice system. The study employs secondary quantitative data, qualitative interviews with immigration and criminal justice actors in Scotland and documentary data to assess the reasons why and the extent to which refugees are being prosecuted in Scotland without regard to Article 31 (1).

The research finds that refugees make up a proportion of the small number of convictions that have taken place in Scotland since 2006 for fraudulent and illegal entry offences where there is a statutory defence derived from Article 31 (1). The initial decision to prosecute is dependent on location, the police and immigration actors involved and the powers they are exercising. Once a decision to prosecute is made cases are dealt with through the Scottish criminal justice system in a perfunctory manner with no awareness of or consideration given to Article 31 (1) by prosecutors, legal representatives or judges. Theoretically, the research supports the case that criminal law in the field of immigration control is used infrequently in

practice compared to its symbolic and discursive effect. However, the research argues that criminal law performs not only an ancillary measure to administrative immigration powers to deal with immigrants who cannot be removed, but is the primary and only measure when deployed by police officers acting as de facto immigration officers. The study concludes that the intersection of Article 31 (1) with the criminal justice system in Scotland is highly problematic and recommends that all criminal justice actors are sensitised to the protection afforded by Article 31 (1) to avoid wrongful convictions of refugees in Scotland and to meet the UK's international obligations.

Paper 3: Yewa Holiday, Refugees and the misuse of the criminal law

The paper will consider offences committed by refugees relating to their flight from persecution (such as using and possessing false passports; failing to produce passports; and using deception to enter the UK) in the context of article 31(1) of the 1951 Refugee Convention. The offences used to prosecute refugees comprise both immigration offences and criminal law offences. This paper considers the use of the criminal law in criminalising refugees (via both immigration and criminal law offences) and concludes that it is a misuse of the criminal law as the prosecutions do not conform to principles of criminalisation but rather focus on the offender as being a certain type of person. This paper focuses on Spena's ideas relating to Täterstrafrecht and relates these ideas to the criminalisation of refugees. Täterstrafrecht has been described by Spena as being a criminal law ideal type according to which criminalisation should have types of offenders (Tätertypen), rather than types of offences (Tättypen), as its intentional objects, so that punishment is inflicted on people because of who they are or because they fit a Tätertyp, the ready-made (either criminological or legal) image of a certain type of person (Spena, 2014). Refugees and asylum seekers appear to be prosecuted precisely because they are perceived to conform to a stereotypical image. The actual refugee background which should result in no prosecution or, at the least, enable a defence to be run is often ignored. Protections apparently afforded to refugees under domestic law, to reflect the protection under article 31(1) RC, are therefore more illusory than real.

Stream: Sentencing and Punishment 5

Paper 1: Supakit Yampracha. Understanding Yee-Tok: A Thai-style Sentencing Guidance

Thailand lacks legal rules to effectively structure sentencing discretion. The Penal Code only provides statutory maximum and minimum sentences but does not state any sentencing principles on how to select an appropriate sentence. Yet Thailand's sentencing decision-making is not arbitrary but consistent and predictable as sentencing discretion is largely structured by judicially self-imposed rules: the Yee-Tok. Understanding how Yee-Tok works is crucial to the prospects of any sentencing reform initiatives but such knowledge is still a missing link in Thailand's sentencing literature. The main difficulty in researching Yee-Tok is that its details are not publicly available and accessible. Based on the data from focus groups and interviews of 27 Thai judges, the paper aims to examine some peculiar characteristics of Yee-Tok, without revealing its 'real' content, and propose how they should be best understood. It is divided into 5 parts. Part 1 illustrates what Yee-Tok looks like and explains its relationship to the Penal Code. Next, Part 2 discusses the Thai judicial career and how it makes Thai judges comply with Yee-Tok without statutory obligation. After that Part 3 investigates the localised nature of Yee-Tok and the fact that lower courts and courts of appeal have different Yee-Tok and argues that a sense of independence from each court, formulated by the practice of different courts having different Yee-Tok, appears to compensate the lack of personal independence for each judge in making sentencing decision. Then Part 4 explores the claims of Thai judges that the details of Yee-Tok cannot be made publicly available and accessible. Finally, part 5 proposes that the characteristics of Yee-Tok discussed earlier and consistency and accountability in sentencing it helps pursuing are best understood by referring to Thailand's political context of political instability, social context of hierarchical society and cultural context of deference to authority.

Paper 2: Christine Piper and Susan Easton. Privatising rehabilitation: whither community?

The rolling out of the community rehabilitation companies (CRCs) in 2015 has taken much further the privatisation of punishment. The majority of probation services have now been out-sourced with a residual public probation service managing high-risk cases. In addition by 2015 there were 14 contracted-out prisons

which means that the proportion of the prison population currently held in private prisons is higher than in the United States. Such developments raise important questions not only about the effectiveness of private provision but also about the ability of contestability and competitiveness to reduce costs. However, this paper will concentrate on the privatising of community programmes and supervision and consider how the meaning of 'community' is being constructed in this context. In particular it will look at the role of the voluntary sector in the CRCs.

Stream: The Law and Unintended Consequences 5

Paper 1: Phil Thomas and Kevin Kerrigan, The case of the disappearing Human Rights Act 1998

The paper briefly examines the history of the Human Rights Act, the media construction and interpretation of key cases that have shaped public perception. The position and intention of the conservative government on human rights and its stated intention to repeal and replace the Act.

Paper 2: Adam Ramshaw, Unintended Consequences: Protocol 12 and Horizontal Effect

This paper considers the potential effects of the UK ratifying Protocol 12 of the European Convention on Human Rights. In lieu of the UK's ratification, the Protocol has entered into force and now may be pleaded against ratifying States in the European Court of Human Rights. This paper argues that, if the UK were to ratify Protocol 12, this would have a significant impact upon the application of human rights within the domestic courts. This argument rests on the premise that the current approach to the Human Rights Act 1998 amounts to a breach of Protocol 12 due to the prerequisite that a public authority must be involved in the proceedings before the Human Rights Act 1998 (and therefore the Convention rights) are triggered.

Paper 3: David McGrogan, The Unintended Consequences of Human Rights Monitoring

The various United Nations treaty bodies, whose role is to monitor compliance with international human rights treaties, have increasingly come to interpret their role as being akin to human rights auditors - although the term 'audit' is rarely used. It was arguably 'ever thus', but in the past two decades the UN treaty bodies have increasingly engaged in formalised accountability procedures, which have come to resemble the kind of audit bodies that became prevalent in the domestic sphere in the UK during the 1980s and 1990s. This trend is best exemplified by the widespread adoption of human rights indicators, which are increasingly viewed, by both human rights advocates and the Office of the High Commissioner for Human Rights, as a cornerstone of human rights monitoring.

This paper considers the unintended consequences of audit (drawing in particular from the work of Power in *The Audit Society*) in the context of international human rights law. These unintended consequences are as follows: first, that international human rights law is becoming overtaken by a kind of managerialist tendency which Koskeniemi has identified, that shifts concern away from individual justice and towards the production of standards. Second, that conversation about justice within the domestic political sphere is becoming bypassed by the manifestation of internationally-agreed standards within domestic law. Third, that quantitative measurement comes with opportunity costs which may be greater than is initially apparent. Fourth, that measurement of performance immediately deflects attention away from what is not, or cannot be, measured. And fifth, that audit simply produces a game-playing mentality amongst the audit subject that is the opposite of what is intended.

Stream: Vulnerable Suspects and Defendants 2

Paper 1: Alison Cronin, Vulnerable users and digitally-induced deviance: questions of liability in cybercrime

While cyberspace provides a novel environment for the commission of 'traditional' crime, an immersed presence in a particular cyber-context can also induce a unique psychoactive state in a user from which deviant behaviour is a possible consequence. This digitally-induced change in the user's cyber-psychological status is comparable with that induced by other intoxicants and, where digital addiction ensues, it is characterised by excessive, obsessive, compulsive, impulsive and secretive behaviour. Although not necessarily manifesting in criminality, these traits are associated with a propensity to offend. Furthermore, beyond the passive facilitation of a medium in which digital addiction can develop, some software providers

design motivational approaches with the intention of altering the user's psychology and inducing a 'flow' state, characterised by impaired risk-awareness. Thus, while the existing criminal law has application to offending that takes place online, it lacks the sophistication to respond to the unique features of cyberspace. This raises questions of responsibility, for example, whether digitally-addicted online offenders can plead mitigation if they are unaware of the risk of the altered psychological state. Similarly, where an induced 'flow' state impairs awareness to such an extent that the user does not foresee the risk of his behaviour causing harm, whether he should escape liability altogether for want of criminal intent. Furthermore, given the exceptional relationship between provider, cyber-environment and user, whether there may be instances when criminal liability can be imposed on the provider on account of his passive or active influence. Given that cyberspace is unlike other platforms for crime and, of note, has the capacity to detect and react to online behaviour, the imposition of corporate criminal liability on the platform provider can be justified on the basis of a failure to disclose, or to prevent, online criminal activity from taking place.

Paper 2: Samantha Fairclough, "Well you've committed a serious offence - you can't be that vulnerable." The conceptualisation of vulnerability and defendant use of special measures.

Interviews with Crown Court practitioners suggest that special measures such as the provision to give evidence by video-link are rarely used by defendants who testify. It is likely that this low uptake can be attributed in part to the measures' limited statutory availability. Yet even those defendants who are sufficiently vulnerable to qualify for the special measures available to them rarely make use of them. This gives rise to a need to consider barriers to their use.

This paper identifies one such barrier as being the conceptualisation of vulnerability. It is argued that an assessment of vulnerability for the purpose of special measures eligibility is, in practice, layered. I argue that, prior to considering statutory criteria, a preliminary assessment is often made by criminal practitioners as to the witness' deservingness for special measures assistance. Where defendants are concerned, the attitudinal presumption of guilt evident within the legal profession commonly renders them as undeserving and, as a consequence, perceived as not being vulnerable. I argue that this presumption is underpinned by similar attitudes within the political and policy realms. This can be seen, for example, in the initial policy framing of special measures as being, at least in part, to protect vulnerable and intimidated witnesses from the defendant. It can also be seen in the marked disparity in the availability of special measures to those giving evidence, the statutory scheme being heavily weighted in favour of non-defendant witnesses over defendants.

Paper 3: Caroline Gibby, Using the firm meeting within Student law Office: to support understanding of vulnerable clients within the Criminal justice System

In this paper I shall consider the role of the Student Law Office firm meeting as a method of enabling students to gain and develop understandings of the needs of vulnerable clients

As a new Student law Office tutor I am involved in preparing activities which are used to support the promotion of professional practices, using 121s within individual students but also within the larger firm environment. I explore the use of different activities which can be carried out in developing student's awareness of the needs of vulnerable clients within practice. Using this collaborative form of learning students are able to share and contribute to others appreciation and understanding of the law, practice issues and professional conduct requirements in order to act in the best interests of clients.

It is hoped that this paper will offer opportunity for sharing of ideas and approaches, which might be relevant to developing materials which can support simulated client activities, PBL and other teaching and learning opportunities.

Session 7, 10:00 – 11:30

Stream: Challenging Ownership: Meanings, Space, Identity 3

Paper 1: Tom Sparks, Who Owns the State? Secession and Self-Determination after Kosovo

In its 2008 Kosovo Advisory Opinion the ICJ was asked to pronounce on the legality of the Kosovan declaration of independence from Serbia. The Court was, in effect, presented with a question of two competing legitimacies: whether the territory of Kosovo should be owned by the Serbian State or by the Kosovar population. The Advisory Opinion failed adequately to address either claim of ownership, and ultimately diminished both claims in favour of a solution applicable only to the facts of the Kosovo example. The Court chose to construe international law as a system of negative obligations, failing to consider positive rights held by States, non-State actors or individuals. In so doing it cast State ownership of territory as relational rather than absolute, relevant only to a State's interactions with other States. Concurrently, however, it refused to consider whether individuals or peoples were the owners of the territory in which they lived. It failed to address whether nations and peoples could have a right to secede territorially, instead construing secession as an act not prohibited nor enabled by international law.

The Court's Opinion was recently "tested" in the Crimean conflict, and this paper will argue that it has failed to promote international stability. Rather, the Advisory Opinion has cast ownership of territory into doubt. No longer can it be said that States own territory, merely that they have a right to exclude other States therefrom. Nor, though, does ownership of a territory devolve to its inhabitants, and the Court established a legal regime which inhibits self-determination. In so doing it removed the ownership of territory from the preserve of law and relegated it to power politics, and may have made future Crimea-style conflicts more likely.

Paper 2: Jim Robinson, Land, Legal Orders and Legitimacy: UN-Habitat, Mediation Teams and Eastern Democratic Republic of Congo

Through the case of the United Nations Agency for Human Settlements (UN-Habitat) land-dispute resolutions programme in eastern Democratic Republic of Congo (DRC), this paper considers what happens as an international organisation engages with informal legal systems in a humanitarian context.

The on-going experiences in DRC, and in particular UN-Habitat's policy processes, are contributing to a significant evolution in the approaches taken by UN-Habitat to land disputes in situations of conflict, post-conflict and peacebuilding across Africa and beyond. This is indicative of a shift in the approach of international organisations to the Rule of Law, which, in the case of the UN and World Bank for example, have typically been overly focused on the formal, state legal institutions and systems as the means to address the challenges of peacebuilding or post-conflict situations. Instead, the complex interaction, blending and mixing of legal orders (local, national, global) gives rise to new forms of legal meaning and action that Boaventura de Sousa Santos describes as 'legal hybrids'.

The UN-Habitat programme operates at the interface between numerous actors, interests and legal orders, and has evolved as informal local experiences meet national and international legal and policy perspectives. In such situations, the sources of law(s) are numerous and contested, and questions of legitimacy begin to highlight the sites of power, authority and jurisdictional agency. By situating UN-Habitat's DRC programme within their wider engagement with housing, land and property issues in areas experiencing violent conflict across Africa, it becomes possible to identify an emerging 'UN-Habitat approach', and to understand its genesis in light of engagement with legal pluralism, and Santos' concept of interlegality.

Paper 3: Anne Fitzgerald, Can formalization create land tenure security for pastoralists in Tanzania ?

The land laws of Tanzania have been praised as being among the most progressive on the African continent by recognizing as equal before the law, statutory and customary rights to land. Despite this progressive legislation, pastoralist communities in Tanzania continue to lose access to their traditional grazing lands. During the colonial period and at an even greater pace since independence, pastoralists have lost millions of acres of grazing land to conservation and agricultural projects in the name of public interest and 'development'. Land is a critical resource, as pastoralism is more than simply an economic activity, but, a

'moral economy' of relations between people, animals and ecology. Pastoralists assert their right to land and livelihood security against a public narrative which is hostile to the 'nomadic' lifestyle and invalidates their knowledge and skills in managing semi-arid grasslands.

This paper will discuss how civil society organisations utilize the land laws and the legal system as a strategy to assert the ownership rights of pastoralist communities over communal lands in Northern Tanzania. Land formalization of Maasai villages is an attempt by civil society organisations to secure land rights for pastoralist communities. Formal certification of village land is a tool which it is hoped can be used to compel the state to recognize their legal entitlement to land. Pastoralist advocacy organizations have fought in court to assert their rights to land against land grabbing by local and international investors. However, the successes achieved by going to court are few and far between, and raises the question of what value exists in formalisation of land rights for pastoralist lands?

Stream: Civil Procedure and Alternatives to Litigation, ADR 1

Paper 1: John Kong Shan Ho. Bringing Commercial Litigation Funding to the proposed class action regime in Hong Kong?: Lessons and experiences from Australia

In May 2012, the Law Reform Commission (LRC) of Hong Kong published a report and proposed for the creation of a class action regime. On the critical issue of funding for class actions, the LRC examined a number of options and came to the conclusion that it is not appropriate to permit litigation funding companies to finance future class actions in Hong Kong as the community at large does not accept the idea of funding litigation for profit. Contrary to the LRC's finding it is argued here that by drawing reference from Australian experiences, commercial litigation funding should be reconsidered as an option by the Solicitor General's working group which is currently studying the introduction of a class action regime in Hong Kong.

Paper 2: Tatiana Kyselova. Mediation in Ukraine: Challenges of War and Peace

The paper provides an analysis of mediation institutionalization in Ukraine before 2013 Russia-Ukraine armed conflict and dynamics of changes caused by the current geopolitical and economic crisis. First, the paper outlines historical development of mediation ideology and institutionalization process in Ukraine. It provides an overview of the legal framework for mediation and major interest groups involved in mediation development. Then, the paper explores institutional and cultural challenges that preclude mediation to develop to its full capacity in the post-Soviet context. Finally, the paper analyses an impact of the post-2013 international peace-making initiatives at the process of mediation institutionalization in Ukraine. In conclusion, the paper provides some policy implications for international community in dealing with the conflict in Ukraine.

In terms of methodology, the paper presents preliminary findings of the empirical study of mediation institutionalization in Ukraine based on a series of semi-structured interviews conducted in three cities in Ukraine in March-April 2016. The study employs broadly conceived socio-legal approach that analyses the filed-work data within a context of current Ukrainian socio-economic and political situation.

Stream: Criminal Law Criminal Justice 7 - Sentencing and Detention

Paper 1: Tom Smith. Pre-trial Detention in England and Wales: Policy, Practice and Effectiveness

This paper will report on the rationale, methodology and findings of an empirical study of pre-trial detention practice in England and Wales – the first of its kind conducted in the last decade. The use of pre-trial detention is undoubtedly an important issue, having as it does significant implications for the right to a fair trial and the presumption of innocence. It has been suggested that pre-trial detention is used excessively, at great cost to those individuals detained and to national economies. This study formed part of an EU-funded project covering 10 jurisdictions, aiming to provide an accurate picture of current regulation and practice in this area, and build an evidence-based for future policy recommendations.

The study in England and Wales focused on the extent to which criminal courts use remands in custody and release on bail at the pre-trial stage, when and why they do so, and how effective the current system is in balancing the rights of defendants and the needs of the justice process. Issues examined included the way in which decisions were made, the substance of those decisions, the use of alternatives to detention, review of

decisions, and outcomes of cases in which pre-trial detention was an issue. A range of methodological approaches were used, including observations of bail hearings, review of prosecution case files, a survey of criminal defence practitioners, and interviews with judges, magistrates and prosecutors.

The study provided a number of interesting findings, raising concerns about the length of time spent on pre-trial detention decisions, the provision of reasoning for detention decisions, the lack of adequate bail information schemes and bail hostels, problems with monitoring and enforcement of conditions, and the burden of proof in reviews of detention decisions.

Paper 2: Jane Mulcahy. An analysis of the recent focus on sentence planning, prisoner progression, rehabilitation and resettlement in Ireland

During the boom years of the Celtic Tiger, Ireland experienced a prison building frenzy as conditions deteriorated in the older prisons. International human rights bodies such as the CPT, the UN Committee Against Torture and the Human Rights Council condemned the Irish State for inaction resulting in the breach of prisoners' human rights. During this era of penal expansion and poor physical conditions there was little focus on rehabilitation or sentence planning and Temporary Release (early release) was primarily used as a safety valve to reduce overcrowding, rather than a tool to promote rehabilitation or facilitate resettlement.

In its report published in July 2011 the Thornton Hall Project Review Group recommended that "the Minister for Justice and Equality should introduce an incentivized scheme for earned temporary release coupled with a requirement to do community service under supervision."

This paper will describe the recent joint interagency working of the Irish Prison Service and Probation Service and their renewed focus on rehabilitation and resettlement. Examples of new rehabilitative initiatives include the development a system of Incentivised Regimes, Integrated Sentence Management and an increased recognition of the family and parenting as potential lever for change. The Community Return early release scheme for people serving sentences of between 1 and 8 years and the Community Support Scheme for people on sentences of less than a year have helped reduce prison numbers, and enhance the resettlement prospects of newly released prisoners by providing vital supports and structure in the community.

Paper 3: Simon Barnes. Psychopathy, cognitive neuroscience and criminal responsibility: problems with focusing on insanity

A number of commentators have asked whether psychopathic persons might be legally insane, and in recent years empirically-minded academics have asked whether findings in cognitive neuroscience might support this. In this paper I advance three arguments against this particular focus. First, arguments that it may be unreasonable or unfair to hold some psychopathic persons criminally responsible may be blunted by the need, should a defence be successful, for lengthy or indefinite hospital detention. Second, evidence in cognitive neuroscience only suggests rather subtle abnormalities in moral cognition. Third, the dimensional nature of psychopathy means that should, in the future, a subset of psychopaths be identified with severe impairments of moral cognition, these persons would likely occupy only the extreme end of a continuum. It is argued that, while insanity may have a theoretical appeal, any practically useful examination of psychopathy, cognitive neuroscience and criminal responsibility should, for now at least, focus on the possibility of responsibility impairments falling short of insanity.

Stream: Culture Clash, Peace and World Order 1

Paper 1: Rosie Taylor-Harding. Developing an In- and Out-group Theory of Law in Japan

Law in Japan continues to be a point of curiosity due to its complex relationships with various social norms and customary forms of regulation. The government of Japan appears to approach law in a Western-facing manner, meaning that laws take on a Western form, whilst its people continue to show preference for social customs in their everyday disputes, meaning that these Western-style laws do not necessarily function in a Western-style manner. Although Japanese can and do engage with the law, from its observance through to direct action in the courts, many are still wary of using the law to settle disputes or dictate regulation due to the negative effect it has on social relationships. While social obligations under *giri* (honour, duty, obligation) are still frequently observed, and the repayments of debts (*on*) and the pursuit of harmony (*wa*) are relevant

to many Japanese, the division of society into in- and out-groups (uchi and soto) is also highly significant. Japanese operate within many circles of uchi and soto, showing honest, open behaviour (honne) to the former and polite, deferent behaviour (tatemae) to the latter. It is contended in this paper that this social structuring can be applied to understanding how Japanese choose to interact with the law; it is not so broad as to say that all law, despite its Western origins, is considered soto, but that certain aspects of law and legal procedure are more accepted. This paper will explore examples of this in- and out-group theory of law in contemporary Japan and provide suggestions for its use as an alternative approach understanding the Japanese relationship with law.

Paper 2: Oluwatoyin Adejonwo-Osho. Peace and World Order: The Need to Achieve a Delicate Balance between Civil Liberties and National Security

In considering civil liberties and their reconciliation with the security of the State, a paradox is presented - acts of terror thrive in the freedom of democracies. The recent global wave of terrorism and terrorist attacks continues unabated. Terrorist attacks stands as an indictment of national security. It is also an indictment on peace and world order and it reopens the discourse on the clash of civilizations, cultures, etc. Global and multilateral efforts has been the 'war on terror' which requires a delicate balance between civil liberties, human rights and the imperative to ensure national security - a tall order. However, this paper advocates that in order to achieve peace and world order, it is imperative to achieve that delicate balance, while taking cognizance of the fact that culture and different strands of civilisation should not be ignored.

Stream: Exploring Legal Borderlands 7 - Socio-legal margins: at the edge of the law

Paper 1: Friso Jansen - Lower back pain: The search for the optimal medical guideline

Medical guidelines are an example of the enduring tension between health care as art and health care as science. This article exposes and interrogates these tensions in the drafting of medical guidelines on lower back pain in the Netherlands and England. The result reveals a 'legal borderland' where science and evidence collides with the interests of patients.

Guidelines form part of the self-regulation of the medical profession in both England and the Netherlands. Both countries use evidence-based methods, they vary however, in how they create the 'optimal guideline'. The social process of drafting a guideline involves a myriad of trade-offs between the demands of science, practicality, cost and acceptability. Through interviews and textual analysis of guideline documents we can shed a light on these trade-offs and illuminate this specific, but important, form of professional self-regulation.

The study finds that contrary to expectations, evidence plays only a limited role in the formation of medical policy and that group consensus is the driving force. Interdisciplinary socio-legal approaches have shown to be instrumental in providing 'thick descriptions' of these factors. The paper highlights the contradiction that evidence-based medicine can never be based solely on evidence.

Paper 2: Tola Amodu -Guidance and rule – the pervasive effects of informal oversight?

In the space between formal and informal law (the latter being defined here as those social practices developed by communities in the absence of external oversight) lies an area which, contesting parties struggle to control. It is, this grey area, in a public law context, that Government seeks to co-opt in an endeavour to regulate the activities of actors more 'tech savvy' or powerful than itself. One way of so doing has been a use of Departmental "guidance". This paper will consider the role of Ministerial guidance in regulating public action and its overlap with more formal law (in particular delegated legislation) by comparing the history of a use of Departmental guidance in the land-use planning control domain within England and Wales with the powers most recently enacted in the Deregulation Act 2015 at s110, (giving power to the Minister to issue "guidance" in the performance of regulatory duties, and the "growth duty" so-called contained at s108 of the same Act). It will be argued that in this space the interaction between parties creates the possibility of novel practices emerging that require very different forms of oversight that in fact transcend the "law" in both a positive and negative fashion.

Paper 3: Lindsey Bell - Trial by Ordeal: an interdisciplinary approach yields fresh insights

At its simplest, trial by ordeal is a physical test for an accused person which invokes supernatural or magico-religious forces where there is a question as to guilt or innocence. Desperately cruel and apparently irrational, its use as a means of decision-making transcends national borders and historical periods. Adopting a novel, interdisciplinary, approach in drawing on historical and anthropological materials from the ancient Near East to medieval Europe and twentieth century Africa, this paper examines the practice of trial by ordeal to offer fresh insights into how this apparently irrational mode of proof worked.

Those tried by ordeal were often – but not always – people on the margins of society. Ordeal was sometimes and someplaces a formal instrument of law, in other times and places a customary form of decision-making operating outside the legal machinery of state. Ordeal was often used as a mode of proof in relation to allegations of witchcraft or sorcery. This paper explores these grey areas to analyse why this may be more comprehensible in, say, medieval Europe where sorcery would have been in direct contravention of Christian norms; in the African material the boundary between legitimate and illegitimate use of magic is more difficult to discern as magic was often a generally accepted part of life with a multiplicity of uses. The paper concludes by exploring accounts of trial by ordeal to consider the border between human influence and the apparent supernatural involvement in the ordeal, arguing that the apparent appeal to the supernatural to make a decision was not always entirely as it seems.

Stream: Family Law and Policy 7: Family Law Futures?

Paper 1: Devyani Prabhat. Bettering the Best Interests of the Child: Of Checklists and Balancing Exercises

Data from the ESRC funded Citizenship Project highlights the precarious condition of children who acquire full social British identity but often fail to obtain secure legal status within the UK. Due to family migration status or lack of full citizenship status, many are unable to enjoy uninterrupted stay within the country, access to higher education, or to free movement within the EEA, in a manner that other British children are normally accustomed to enjoy. Corresponding to this insecurity experienced by children in nationality legal practice is the lack of coherent legal reasoning on children's rights. Gaps in legal reasoning are most apparent in crossover sites of legal practice such as immigration and nationality law where the situations of children and of adults could be at cross purposes. These areas of law test the commitment of the nation to the wellbeing of children given there is a national interest in regulating migration and promoting legal migration.

In this article the attempt is to identify the discrepancies in legal conceptualizations of rights of children and to look for common threads in the assessment of the wellbeing of children running through various laws. Debates which have been significant ones in the recent past in the field of family law have particular relevance for nationality cases where children are involved. A harmonised approach would enable keeping children always central in decision making in due recognition of their special position in society. This is of critical importance as children are excluded from most representative political processes and there is little scrutiny of their private world unless there is serious cause for concern for their safety or conduct. Thus, the onus is on law to play a strong normative and adjudicatory role for children and to speak with clarity of their rights at every possible opportunity.

Paper 2: Anne Barlow, Rosemary Hunter, Janet Smithson and Jan Ewing. *Online Family Mediation: Progress or Panacea?*

The Netherlands have introduced a system of online family mediation (Rechtsweijzer 2) through which divorcing couples can agree issues around their divorce or mediate or arbitrate, should they be unable to agree. In the UK, Relate are developing a similar online ESRC-funded Mapping Paths to Family Justice project completed in 2015. The online space is also becoming an increasingly important arena for legal 'advice'.

Drawing on impact work undertaken with Relate, One Plus One, MoJ, Family Mediation Council and Cafcass, this paper will consider the extent to which these developments can be viewed as progress for post-LASPO family justice or rather a panacea where notions of justice are shifted away from the shadow of the law.

Paper 3: Liz Trinder. Finding fault?: a new study on the role of fault in divorce and civil partnership dissolution.

Following the non-implementation of the no-fault divorce regime provided by the Family Law Act 1996, attention drifted away from the 'problem' of fault-based divorce in England. More recently, the apparently outdated mixed-fault regime provided by the Matrimonial Causes Act 1973 and Civil Partnership Act 2005 has been questioned by senior judiciary and the legal profession. This paper outlines the methodology for a major new Nuffield-funded study of fault, incorporating a national opinion poll of attitudes towards fault, a qualitative study of the experiences of petitioners and respondents and a court file study exploring the scrutiny process. Some of the early findings will also be presented.

Stream: Gender, Sexuality and Law 11

Paper 1: Katie Cruz, Migrant Sex Work and the End of 'Trafficking'

The criminal justice and border security approach to 'trafficking' and related 'sexual exploitation' framework have been roundly condemned by sex worker rights activists and academics. Empirical research conducted with migrant sex workers in London and my own interview material with UK based sex worker rights activists reveals that the law - immigration law and anti-trafficking law and policy - in fact produces and exacerbates coercion and exploitation between workers, managers, and third parties. A second claim stemming from this empirical research is that, contra the 'sexual exploitation' narrative, the vast majority of migrant sex workers are 'free', i.e. not 'trafficked', coerced, or exploited. I argue that the nuance and insight of the first claim is undercut by the second claim. This tension, between structural critique and liberal retreat, raises an important question: Is it necessarily the case that trafficking discourse obscures the coercion and exploitation of migrant sex workers and its basis in the law? Scholars developing a socio-legal structural labour paradigm for trafficking answer this question in the negative. I argue, however, that an alternative political signifier that has its roots in the labour movement – wage slavery – should be used to debate and mark the boundaries of unacceptable levels of coercion and exploitation in migrant sex work and role of key background rules, and holds more potential than 'trafficking' to unite (sex) workers in what is a collective, bottom up struggle against precarity and for social and labour rights and a radical alteration of border regimes.

Paper 2: Mei-Hua Chen, Divided legal mobilizations on commercial sex in anti-trafficking era in Taiwan

Although going to the court has been appeared as one of the strategies social activists appropriate to challenge the laws and mainstream society, it is not included in the agenda of Taiwanese sex workers' rights movement. Two judges of Taiwan Yilan District Court however claimed that the former prostitution law that punished sex workers while tolerated clients was unconstitutional, and therefore applied for the constitutional review. The Justice of Constitutional Court ruled that the prostitution law is unconstitutional in Nov 2011. Nonetheless, the Legislative Yuan failed to follow the Court's rule and made an amendment that punished both clients and sex workers. The legal mobilization for sex workers' rights ended up unsatisfactory and upset the sex workers' rights movement, however the legal mobilization of the anti- commercial sex or anti-trafficking camp is very successful. The Human Trafficking Prevention Act was passed in 2009. Moreover, they successfully lobbied the congress to replace the neutral term 'sex-trade' or 'commercial sex' in the Prevention and Punishment of Sex-Trade Act by 'sexual exploitation' that indicates a strong moral condemnation on sex work. The success of legal mobilizations of the anti-commercial sex is very much linked to the global anti-trafficking discourses in the past decade. Using in-depth interviews with key actors in both pro- and anti-sex work camps and judges of Yilan and Constitutional Court, the paper aims to reveal how the pro-sex work camp and the anti- commercial camp make sense of legal mobilization? What kinds of social factors foster or impeded their uses of legal mobilizations? How far the global anti-trafficking campaign severs to the legal mobilizations of local anti- commercial sex movement?

Stream: Gender, Sexuality and Law 7

Paper 1: Kathryn McNeill, Abortion Law Reform, Or Can Feminist Legal Studies Facilitate Legislative Change?

This paper is set in the context of current debate in Northern Ireland regarding the legal framework for abortion. Following judicial review undertaken by the Northern Ireland High Court in December 2015, the criminal prohibition of abortion in Northern Ireland has been deemed incompatible with UK human rights commitments in cases of fatal foetal abnormality and pregnancy due to sexual crime. Using the Human Rights Act 1998 to issue a declaration of incompatibility, the High Court have placed the onus on the Northern Ireland Assembly to enact remedial legislative change. However, comments made by the political parties, when taken within the longer-term context of conservative and heteronormative Northern Irish politics, seem to indicate that such change will not be readily forthcoming. Following these recent developments, a group of feminist academics in Northern Ireland, including myself, have initiated a collective to provoke discussions on legislative change amongst political actors and other local stakeholders. This marks a translation between the academy and elite-driven politics and law making which both draws from the experience of previous feminist engagements in the Republic of Ireland and marks a relatively uncharted move for abortion activism in the Northern Irish context. In this paper I seek to reflect on the beginnings of this process, discussing our experiences of the possibilities and stumbling blocks for feminist legal studies in working to help facilitate legislative change in this area.

Paper 2: David Mcardle and Barbara Osborne, Pregnancy Discrimination, Governance Feminism and the US Model of College Sports

The National Collegiate Athletic Association seems permanently embroiled in litigation, and in 2015 the decisions in *O'Bannon v NCAA* 14-16601 9Cir CA and *Northwestern University and College Athletes Players Association* 13-RC-121359 NLRB disappointed those who hoped litigation might finally compel reform of an organisation notoriously resistant to change. However, if those cases had been successful the beneficiaries would have been participants in the revenue-raising sports of men's basketball and football. Any benefits for others, including all female student-athletes, would have been limited.

Given the well-documented difficulty in imposing reform on the NCAA through litigation, this paper considers how other strategies can precipitate change within it, and in other sporting organisations notoriously indifferent to external influence. It does this by considering the example of pregnancy discrimination within college sports, where basketball players have been presented with the alternatives of either losing their place at university or terminating their pregnancy. The NCAA and the universities have failed to show leadership on what is an unlawful practice under Title IX of the Education Amendments 1972, 20 USC §§1681-1689 but the paper draws upon the work of Janet Halley, Susan Carle and others in the field of governance feminism to show how individuals have been able to cajole compliance through advocacy, institutional reform and, where necessary, the threat of litigation in the face of universities' concern with 'discrediting incidents', the financial realities of college sport and the feared reactions of university alumni and supporters. Although institutional reform of sports is not going to be achieved simply by having more women in positions of power, these responses afford some hope to those disenchanted by sports' systemic discrimination;

Paper 3: Olaleye Ebinoluwa, Sexual Violence as an Instrument of War in Sub-Saharan Africa. The Role of International Criminal Justice in Women's Sexual Rights

The Rome Statute, enumerates that sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence of comparable gravity as within its jurisdiction as crimes against humanity. It has been extensively recorded that the rate of civilian casualties have increased multi fold since World War I. Now, especially in conflict zones the civilians who cannot protect themselves amply are the target of war crimes. While the men are tortured extensively or forced to join the army or shot on sight, the female civilians are subjected to all manner of sexual deviations and degradations among such slavery and incessant rape or forced marriages to the soldiers in the rebel armies. The advent of International criminal justice especially with the International Criminal Court the supposition is that heinous war crimes that may be otherwise overlooked by the individual country will be amply tried by the international criminal

justice system. The biggest blow dealt yet was that of the abduction of over 200 girls by the Boko Haram terrorist sect in the North-eastern part of Nigeria. It is disheartening that there still are no laws geared toward the prevention of such violent acts in the domestic laws of sub-Saharan regions. This happened right under the noses of the nation and international organizations yet their reproductive health could not be ensured or protected. It is within the purview of International Criminal Justice that the rights of civilians be amply protected in conflict areas. Failure to do such would amount to the denial of said rights by said system. This paper seeks to examine the state of sexual rights in sub-Saharan Africa with reference to conflict zones and the theoretical role of international criminal justice.

Stream: Information 3 - Surveillance and Disclosure

Paper 1: Angela Macfarlane. When using surveillance to monitor an employee's internet usage in the workplace, has the employer's interference of an employee's right to private life and correspondence become so unfettered that the legitimacy of it is disregarded?

Internet and email communications are hugely important tools that we now use as second nature when communicating with colleagues and friends and family, both in work and outside of work. The advances in technology and the widespread use of smart phones and portable devices can blur the boundaries between work and personal life. Any expectation of privacy when communications relate to personal and sensitive information whilst at work is perhaps misplaced if you consider the judgment by the European Court of Human Rights (ECHR) in the case of *Barbulescu v Romania* No. 61496/08 on 12 January 2016. In this case, the ECHR held that whilst Article 8 of the Convention, the right to respect for private life and correspondence, is engaged in the workplace it was not violated by the employer in this case because it found that its monitoring of the employee's emails was sufficiently limited in scope and proportionate. The fact that the employer had made available the personal and sensitive content of the communications, which referred to sexual health problems, to the employee's work colleagues who then discussed it publicly did not seem to trouble the court when balancing the need to protect his private life and the right of the employer to regulate its business. This paper will examine the judgment in the case and explore how the Court's interpret the justification of an infringement of the employee's Article 8 rights.

Paper 2: Marion Oswald, Helen James and Emma Nottingham. The not-so-secret life of five year olds, Legal and ethical issues relating to disclosure of information and the depiction of children on broadcast and social media

Widespread concerns around the privacy impact of online technologies have corresponded with the rise of fly-on-the-wall television documentaries and public-by-default social media forums allowing parallel commentary. Although information about children has traditionally been regarded by society, law and regulation as deserving of particular protection, popular documentaries such as Channel 4's 'The Secret Life of 4, 5 and 6 year olds' raise the question as to whether such protections are being deliberately or inadvertently eroded in this technological 'always-on' online age. Whilst it may be possible to judge the privacy impact at the point of publication or broadcast, harm may be caused for years to come, and that harm may alter in nature. Is there a need for change, in the law, governance processes or both, in order to ensure that the interests of the child are better represented?

In order to consider these questions, this paper examines the documentary series 'The Secret Life of 4, 5 and 6 Year Olds', an example of the public depiction of young children alongside scientific and medical commentary designed for popular appeal and the encouragement of real-time interaction over Twitter by the publication of a hashtag. We first describe the series and the results of an analysis of related Twitter interaction. We then go on to discuss the responses received to freedom of information requests submitted to the university and health bodies which employed the scientists involved in the programme, and to Channel 4 itself.

Finally, the paper considers whether additional legal and ethical safeguards are needed to ensure that the best interests of children are properly considered when images and information are exposed on broadcast and social media.

Stream: International Criminal Justice: Theory, Policy Practice 7

Paper 2: Charlotte Wick, The Legacy of the International Criminal Tribunal for Rwanda: Incitement to Commit Genocide, Learning from the ICTR Experience

Following the final appeals judgment of the International Criminal Tribunal for Rwanda in December 2015, this paper explores the contribution of this tribunal to the development of international jurisprudence on incitement. This paper focuses on how the ICTR's first case, *Akayesu*, shaped subsequent judgments. At the core of this discussion is the nature of speech. *Akayesu* defined incitement to be speech that 'assumes a direct form and specifically provokes another to engage in a criminal act'. However, identifying such speech is not straightforward. People rarely speak in explicit terms. It is intended that the audience will understand precisely what is meant, whether that message is explicit or not. Such speech may be 'direct' to the intended audience, but not when viewed from an external perspective. After *Akayesu*, the Tribunal emphasized the significance of assessing the act of speech in the context in which it was delivered. However, as the ICTR drew to a close it became increasingly apparent that it is almost impossible to draw conclusions from these cases about when the context will render the act of speech criminal. The cases that have appeared before the ICTR have shown that incitement to genocide is not easy for the Tribunals to recognize or define. This paper explores the problems that the ICTR has faced in identifying incitement. By considering the context-based assessment of *Akayesu*, this paper will draw conclusions that will show the inherent problems of assessing criminal speech offences. This paper explores the lessons that may be learnt from the experience of the ICTR and how these lessons can help to shape the approach of the courts in future incitement cases.

Paper 3: Diana Sankey, Sexual Violence and Contested Narratives of the Past: Towards Justice in Cambodia for Victims of the Khmer Rouge Regime

Following years of impunity, the Extraordinary Chambers in the Courts of Cambodia (ECCC) was finally established in 2003 to prosecute former Khmer Rouge leaders. In addressing historic crimes, the Court faces particular issues and challenges regarding the old age of defendants and victims and, more profoundly, in dealing with memories of past violence that have been long suppressed, but not forgotten. While many histories of the Khmer Rouge regime have been written, the ECCC will inevitably provide not only a (limited) degree of criminal accountability, but also create a further narrative of the violence. In this context, the initial failure of the Court to address sexual violence has called into question the nature of the narrative produced by its judgments. The silencing of sexual violence at the ECCC stemmed both from an initial lack of gender awareness and the failure to interrogate claims that the Khmer Rouge regime prohibited such violence.

Nevertheless, the existence of the Court has provided a platform for civil society organizations and survivors to surface experiences of sexual violence. Indeed, civil society activism has promoted some shifts towards the recognition of sexual violence at the ECCC. The paper explores both the role of the ECCC in creating a historical record of past violence and the role of civil society in contesting the limitations of the narratives produced. In particular, the Court's focus solely on the violence of the Khmer Rouge regime, in line with its statute, precludes exploration of wider contexts of violence and on-going experiences of harm. It is left to civil society to hopefully foster a wider dialogue on the relationships between historic crimes and on-going experiences of sexual violence, in order to provide a (arguably) more meaningful form of justice to survivors and Cambodian society.

Stream: Law and Literature 1 - Legal Life Writing

Paper 1: Jesse Hohmann, The Lives of Objects: Writing the Life of International Law

Objects have biographies. They move through time and space, changing hands, sometimes changing form, and changing fortune. Anthropologists, scholars of material culture, and museum curators have long known that writing the biography of an object illuminates not only the object itself, but more importantly, our relationship to it. As such, the neglect of, or, alternatively obsession with, certain objects says much about our own (disciplinary) preoccupations, blind spots, and fetishes, and is thus entangled with how we view a discipline's objects as purposes.

This presentation raises two questions for critical enquiry: First, can we use material objects to write the life history of a discipline, of a body of law? How might any such attempt relate to legal life writing, and how might it challenge the boundaries of legal biography? Second, drawing on my work on the material and visual culture of international law, which arises out of a project on 'The Objects of International Law' [see <http://www.law.qmul.ac.uk/docs/news/141728.pdf>], this presentation will consider the relationship between objects as material artefacts, and the objects as purposes of international law. This provokes further enquiries about how and when a body of law or discipline becomes itself an 'object', the implications of such objectification.

Paper 2: David Sugarman, A.W.B. Simpson in Context: The Life of Brian

The death of Brian Simpson (1931-2011) robbed academic law of one of its leading and most popular figures. This paper examines Simpson's influential contribution to legal scholarship in the context of the interplay between his personal and professional development. The paper discusses the influence of his background, childhood, education (notably, his time reading Law at Oxford), his career in the British army and as a university law professor at schools ranging from Oxford, Cambridge, Kent and the University of Ghana to the Universities of Chicago and Michigan.

It is argued that Simpson's published work on the history of law and legal process spans three distinct but overlapping phases: the doctrinal phase (c. 1956-87); the leading cases in context phase (c. 1982-1996); and the history of human rights and colonialism phase (c. 1987-2011). Each phase is examined, assessed and related to both Simpson's personal and professional life. The paper draws upon interviews, correspondence and discussions with Brian Simpson and original archival research.

Paper 3: Dvora Liberman, Conducting the Court: The social world of Crown Court clerks from the 1970s onwards

Crown Court clerks are officers of the court without the standing of lawyers. They are the primary point of contact between the laity and lawyers and mediate between various participants in the trial.

This presentation will suggest that though Crown Court clerks have been largely invisible in the literature, they play a significant role in perpetuating the procedures and tradition of the criminal justice system.

Drawing on in-depth life history interviews conducted with former and retired Crown Court clerks around the country, this presentation will explore the clerks pivotal role in trials and hearings of the most serious criminal offences; their contribution to perpetuating the traditional image of the law and facilitating the revered status of the judge; and the emotional demands of their role.

This doctoral research project is a joint collaboration between the London School of Economics Legal Biography Project (LBP) and National Life Stories (NLS) at the British Library. The LBP aims to facilitate scholarship in legal biography and has an interest in marginalised actors in the justice system. NLS records first-hand experiences of people working in many different fields and their collections of recordings are an invaluable record of British life from diverse perspectives.

Stream: Law and Neo-Liberalism 2

Paper 1: John Linarelli, *What is Wrong with Debt*

A post-Great Recession consensus has emerged that persons, firms, and governments have too much debt. The article deals with legal solutions to what I call the debt dilemma: Many successful societies rely on a substantial infrastructure of consumer, commercial and sovereign debt, but debt can cause substantial private and social harm. Pre- and post-crisis law and policy solutions have see-sawed between subsidising and restricting debt, between leveraging and deleveraging. Unsophisticated solutions restrict debt without accounting for the risk of harm to persons least able to bear the risk, worsen pre-existing inequalities, push less well-off debtors to substitute into riskier debt, and in default contexts impose unfavourable distributive consequences on subordinated claim holders. This article offers normative tools to assist policy makers in identifying policy choices to complement the policy choice of economic stability. I argue for a policy architecture for debt that: (1) Incentivizes the development of hybrid instruments to relax the rigidity of debt contracts. (2) Is responsive to equality concerns. I advocate a luck egalitarian approach, a responsibility-catering form of egalitarianism offering policymakers options to take the debtor's choice and desert into

account. (3) Discourages, on moral grounds, policy relying primarily on private debt to finance public goods. The state should not require persons to take out significant debt to further a policy aim, unless that policy aim has no role other than to benefit the debtor, the debtor can make an informed decision about the debt, and the debt does not substantially impair the life projects of the debtor. Solutions to public goods problems require a mix of public spending, insurance, and hybrid instruments. I offer individual, firm, and sovereign debt case studies to illustrate how these normative prescriptions can be put into action.

Paper 2: Tanya Josev, The Role of Neoliberal and Neoconservative Critique in the Shaping of the Term 'Judicial Activism'

There is no doubt that 'judicial activism' is a ubiquitous term used today to describe 'controversial' judicial decision-making in the common law world, no matter how ill-defined that term may be. Initially, in the decades following its advent by the American historian Arthur Schlesinger, Jr., the term was regarded as a sufficiently neutral and utile descriptor to as to be adopted by both lawyers and political scientists alike in academic study. However, the term's meaning was popularised outside the academy in the 1970s and 1980s, first by the American New Right, and later, in other jurisdictions, as the term was imbued with meaning from both neoliberal and neoconservative critiques. 'Activism' was ultimately construed as a pejorative, and antithetical to the neoliberal project.

As a legal historian, I examine the changing meanings of the term 'judicial activism' in this paper from a historical perspective. My focus is on the impact of New Right commentary on the understanding of the term, and the consequent shift in the public understanding of judicial-decision making in the common law world, with a particular focus on the term's usage to describe superior court decisions on minority rights.

Paper 3: Karen Richmond, Streamlined Forensic reporting and the Neo-liberalisation of Expertise

Socio-legal studies frequently exhibit a lack of precision when dealing with the concept of neo-liberalism. Academics have tended to view commoditisation and marketisation as the ultimate goals of 'economic rationality', and have often been content to base their analyses on a confused and undeveloped approach to the subject: one which sees neo-liberalism as a mere 'ragbag of techniques' (Garland: 2010) lacking a coherent ideology or underlying logical structure. This 'strategically-limited' view is an inadequate basis for an accurate exploration of the topic and fails to explain the significant differences exhibited by neo-liberalism during successive stages of development.

This presentation proposes that such conceptual limitations can be overcome by returning to a Foucauldian understanding of neo-liberalism. An approach which see the ultimate goal of contemporary governmentality as the formation of neo-liberal subjects. The presentation draws on comparative ethnographic research which explores the construction of DNA profiling evidence by private commercial, and public sector, forensic science providers. It focuses on 'Streamlined Forensic Reporting': an attenuated form of 'efficient' forensic discourse that displays a marked ambivalence towards scientific expertise.

The study supports the view that the ultimate goal of neo-liberalism is not commoditisation. Rather, it is the reformation of attitudes and behaviours to conform with 'economic rationality'. It demonstrates how processes of neo-liberalisation have led to crisis of governmentality brought about by confrontation between the relational needs of forensic experts, and the realities of legal fact-finding.

Thus, the presentation will demonstrate that marketisation and commoditisation have disrupted expert forensic networks, but that the purpose of such disruption is to render techno-social networks open to neo-liberal reforms aimed at reconstructing the roles and identities of individual forensic scientists. The presentation concludes by discussing the potential practical effects of such processes, and considers the implications for resistance.

Stream: Legal Education 3

Paper 1: Ian Kilbey. A contextual approach to teaching EU Law

I am currently designing and researching a textbook on EU law that seeks to adopt a multi-disciplinary approach to address some common difficulties that the study of EU law presents to students. These difficulties appear to stem, firstly, from the negative portrayal of the EU by a generally Europhobic media and, secondly, from the fact that students do not grow up with EU law in the background in the same way

that national law forms part of their everyday lived experience. I hope that a broader, more contextualised, approach will enable student learning by providing the background that they learn by osmosis about national law and off-set the distorted picture presented by the mass media.

My basic position is that the EU is only the current stage in a process that Europeans have always been concerned with – peaceful co-existence, so there is a need appreciate how Europe has evolved in order to situate the EU into an historical context that explains how both the EU and its legal system have developed. This paper presents a reflection on the need for a multi-disciplinary approach to teaching a particular subject that students can struggle to engage with, as well as the research issues that such a venture throws up.

Paper 2: Simon Sneddon, Nick Cartwright and Kate Exall. Impact on students of online and blended learning methods

This paper will draw upon two projects which consider the impact of different types of blended learning activities on student experience.

One project takes two final year law modules and transforms parts of them into online, digitally-enhanced sessions using Blackboard Collaborate and other e-tivity methods. One module took a 6-week section of the content and enhanced face-to-face sessions with online sessions, and the other took discrete weeks and ran synchronous online sessions using Blackboard Collaborate. This project will analyse the levels of student engagement and satisfaction with these methods, compared to traditional classroom based delivery. It will also assess, as far as is practicable, the impact that this digital transformation has on different equality characteristics.

The second project looks at a subject-wide innovation in 2015, whereby all the timetabled activities for one week were replaced with blended and online activities. The important difference of this second project is that the research is being designed and carried out by an undergraduate law student. The student researcher will also seek feedback from students on the blended learning activities in project one and this paper will investigate the extent to which students give different responses to another student to those they gave to the tutors.

Paper 3: Omar Madhloom and Nicolette Butler. Rethinking the Teaching of Land Law: Bridging the Gap between Theory and Practice

This paper challenges the orthodox method of teaching Land Law at undergraduate level which focuses heavily on the historical aspects of land and highly technical theoretical concepts. Examination of this topic is particularly relevant given the Solicitors Regulation Authority's (SRA) recent proposals to reform the route to qualifying as a solicitor, most probably by way of the introduction of a universal competency examination. Such reforms could mean that the Legal Practice Course (LPC) is abolished. However, aspiring solicitors will need some way of acquiring the relevant substantive and practical knowledge of subjects in order to pass the examination. Thus, it is proposed that Land Law should be taught in a manner which highlights the practicalities of conveyancing in order to pass the examination, increase employability, as well as enhancing the overall student learning experience.

The current problems of teaching Land Law are identified and various methods to resolve these problems are examined. What distinguishes Land Law from other modules, such as Contract Law and Criminal Law, is that it requires the understanding of abstract concepts such as easements and covenants, which most students have not encountered in a practical context. By contrast, students are likely to have encountered other branches of law in their daily lives e.g. making a contract by purchasing a cinema ticket as well as through the media.

It is argued that by teaching Land Law in a manner which incorporates practical elements such as examining a draft contract, drafting a deed of transfer and examining Official Copies of the register, students will be able to acquire transferrable skills such as drafting and gaining an appreciation of ethics, as well as understanding the complexities of abstract concepts of realty.

Stream: Mental Health and Mental Capacity Law 4 - Mental Illness, stigma, and non-discrimination.

Paper 1: Peter Bartlett, Mudigonda Mohan, Arun Chopra, Morriss Richard and Jones Stephen. *Advance Decisions under the Mental Capacity Act 2005 in Cases of Bipolar Disorder*

This presentation will report the findings of a survey of 549 people diagnosed with bipolar disorder and 650 psychiatrists on their experiences of advance planning under the Mental Capacity Act 2005. Consistent with other studies, few of the service users surveyed had used these advance planning mechanisms, primarily because of a lack of awareness. Of those that did, most advance planning was limited to informal discussions regarding property and affairs, often not reduced to writing. Notwithstanding encouragement both in NICE guidance for the treatment of bipolar disorder and the Mental Health Act Code of Practice, fewer than one in ten service user respondents had made advance decisions regarding their treatment. Further, the legal effects of the various advance planning mechanisms were not well understood.

The study forms part of the PARADES programme on bipolar disorder, funded by the NIHR (Reference Number RP-PG-0407-10389).

Paper 2: Annika Frida Petersen. *The psychiatric patient in Danish Health Law - Discourses, stigma, discrimination*

This recently commenced Danish PhD project on mental health law examines the issue of discrimination and stigmatization of persons with mental illnesses within Danish health law. The main research question is, to which extent the legal framework of Danish health law contribute to discriminate and stigmatize persons with mental illnesses.

The thesis will examine mental illness as a discriminatory status and will focus on various types of discrimination including direct and indirect discrimination as well as legal and structural discrimination. Building on the results of the aforementioned analysis the thesis will examine the extent and character of discrimination on the grounds of mental illness within Danish health law.

Applying methods inspired by critical discourse analysis, case law and legal sources related to the Danish Health Law and the Danish Psychiatric Act will be analyzed with the purpose of disclosing to what extent different sources of law contribute to establish and sustain various stereotypical and stigmatizing views of persons with mental illnesses. The analysis will focus on the ways in which the different legal sources linguistically attempt to articulate and situate the psychiatric patient within the legal system.

The aim of the project is to shed light on the national legal discourses and the nature and extent of discrimination and stigmatization of psychiatric patients in Danish Health Law, and to set the scene for further debate on the importance of legal discourses in relation to the rights of psychiatric patients. Though the project will be written in Danish, the research results and knowledge produced during the project will be sought disseminated in relevant international journals.

Paper 3: Leigh Roberts. *Professionals, decision making and barriers to disability equality*

The Social Model of Disability illuminates numerous barriers to disability equality. In the context of mental health, antisocial behaviour and social housing, such attitudinal barriers relate to medicalised assumptions of categorisation leading, in turn, to stigmatising notions of risk and responsibility which cause further discrimination and social exclusion. This paper will argue that relevant professionals (here the judiciary and housing officers) have a role in perpetuating or eliminating such attitudinal barriers. With particular reference to the issues of impairment and identity, and by comparison with the minority rights and universalist versions of the Social Model of Disability it will be argued that these professionals view disability through a Medical Model lens. This argument will be furthered by analysis of antisocial behaviour case law where defences of disability discrimination have been raised. Such analysis demonstrates a focus on disclosure, evidence of impairment and related considerations of risk and responsibility suggesting how negative attitudes of scepticism and cynicism shape judicial decisions. An outline of findings of a small scale empirical study of housing officers involved in pre-litigation management of antisocial behaviour shows such officers have similar focus. It will be argued that domestic equalities legislation in this context has thereby had limited impact in achieving disability equality.

Stream: Pluralist Citizenship in a Time of European Double Standards

Paper 1: Adrienne Yong. The constitutional crisis of the EU citizen in fundamental rights protection and EU citizenship law

This paper discusses the relationship between EU citizenship law, EU fundamental rights protection and its effects on the EU citizen. The claim at the outset is that there is an inherent relationship between EU fundamental rights and EU citizenship as they both seek to achieve the same objective – the protection of the individual. The paper argues that although this claim was borne out early in the history of EU citizenship (Sala, Grzelczyk, Baumbast), the current case law indicates that the original claim should be now treated with caution (Dereci, McCarthy, Dano). The Court entered increasingly sensitive territory as regards protection of citizenship rights vis-à-vis fundamental rights, which saw a notable decline in the protection of fundamental rights in the citizenship case law, hence a constitutional crisis. There has been an increased number of occasions where the Court deferred significantly to the constitutional prerogatives of the Member States, readjusting the balance of power between the EU and its Member States. The paper argues that various existing judicial and constitutional developments indicated that fundamental rights protection should become an integral part of the decision-making, particularly in Union citizenship cases given the inherent links between the two concepts. However, the Court has been unwilling to confirm this, and as a result, the EU citizen appears to no longer be at the heart of EU citizenship or EU fundamental rights discourses. This paper will discuss why these choices sit uncomfortably within the EU's constitutional and judicial framework established since the Lisbon Treaty in both areas of rights protection and argue that the EU's constitutional crisis is no justification for the recent shifts away from protecting citizens' rights unprejudiced by the individual's nationality or economic status.

Paper 2: Iker Barbero. Immigrant Detention and Deportation regime in Spain: an State of exception?

Although the European Return Directive 2008 states that detention for deportation should be the last resort and should be in the least burdensome way possible, the Spanish empirical reality shows us a very different situation. The arrests because the mere infringement of the immigration law, mainly for irregular residence, are high; periods of detention are particularly long; and new deportation mechanisms that omit the judicial and lawyer defense are emerging. Besides this, the possible alternative measures to detention contained in the law are used to maintain uncertainty or deceive people for expulsion. In this text I will to note the exceptional nature of the legal status of aliens and will argue that the aim of this policy is to govern the foreign population through De Genova's notion of "deportability".

Paper 3: Johana Echezarraga Aldamiz-Echebarria. EU citizenship today: salient challenges of its making and its accommodation in the EU constitutional order.

What is the contemporary constitutional meaning of EU citizenship? This paper will look at the evolution of the European constitutional order and the process of construction of EU citizenship. Do current meanings consolidate recent interpretations? Do they start new paths? Have the rights expressly conferred by the Treaty of Lisbon evolved in the last years? How can we understand the current link between the citizens and the EU? What are the problems and limitations of the construction process of citizenship at EU level? The paper seeks to clarify the current legality of EU citizenship, determine its emerging meanings and evaluate its accommodation and function within the EU constitutional order, as well as appraising a top-down social impact of the concept. Consequently, it will be explored what the socio-legal aspects of the latest legislation and case law of the European Court of Justice (ECJ) are, and it will pay particular attention to what the European constitutional issues and political variables that shape the constitutional interpretations are. It will aim to provide a more accurate expression of the recent construction process of citizenship, for which the nature, scope and limits of the concept of citizenship will be explored. Ultimately, it will comprise a general EU level reflection on the configuration of citizenship and its legal protection framework as well as the possible next future paths. For these purposes, primary and secondary sources of EU law have been systematically reviewed, with particular focus in the case law of the ECJ, as well as a literature review on EU citizenship of the last ten years. The analysis has been completed with historiographic method and institutional theory.

Stream: Private International Law 1

Paper 1: Lu Xu. New choice-of-law approach in relating to property rights in China

As a choice-of-law principle, property rights are dealt with separately from the contract giving rise to that effect. Though parties can choose which law to apply for their contracts in a cross-border transaction, this law shall not extend to determine proprietary questions such as whether the title of the goods has been transferred. However, this traditional view has been changed quite dramatically in China. According to China Applicable Law Act 2010, the latest conflict of laws code, parties can also choose the applicable law for movable property rights. This is an unusual innovation not only from a Chinese perspective, but also from a general private international law perspective, in the sense that traditional choice-of-law rule would subject questions regarding movable property rights to the law where the property locates, i.e. the *lex situs* rule applies. Even from a *prima facie* level, this newly adopted method would leave several conundrums, such as what is the relation between contract choice-of-law and proprietary choice-of-law, and how could this approach be justified in choice-of-law theory. In this regard, this paper will examine why this liberal approach has been adopted in Chinese law, in what way it is applied in current practice and how it would impact on legal practice in international business.

Paper 2: Naheed Ghauri. Secular and Religious Discourse in Europe: Conflicts of Law – The Debate on Shari’a Councils in the UK

This paper examines the interaction between European human rights and private international law and private actors, in the UK on minority rights and conflicts of law. Should the State wish to keep control, it must 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 controversy. This issue also attracted political scrutiny when the Arbitration and Mediation Services (Equality) Bill[HL] was introduced in the UK. This paper also examines the legal and political implications of Shari’a Councils role in the UK through empirical research. The religious-secular debate in Europe has been politically influenced. Examples include inequality issues for women seeking advice from Shari’a Councils, and the veil (face-covering) ban in France. Both resulted in state intervention; the Arbitration and Mediation Services (Equality) Bill in the UK and the French authorities’ ban on veil in public. Article 9 of the European Convention on Human Rights (ECHR) has provided the basis for challenging and exposing ‘secular’ norms that upon review are seen to limit religious beliefs or practices. Islamic law is not monolithic and practice-based study identified the specifics of religious-legal pluralism within religious-secular debate. There is very little political recognition given to the foreign element and the state fails to create space in which recognition is given to complex identities and religion. Gender inequalities exist in culture and this is often conflated with religion, but the Qur’an and Sunna do not promote discrimination. This paper addresses the interaction between the state and Islamic law, whether gender equilibrium can be reached and are there any limitations on human rights for minority groups living in the UK and/or Europe or are they beyond the protection of the ECHR?

Paper 3: Chukwuma Okoli. Do We Really Need an Implied Choice of Law in the European Union Choice of Law Rules for Contractual Obligations?

Under the European Union choice of law rules, the right to make an express choice of law (also known as party autonomy) is the general rule. Member State Courts can also imply a choice of law that can be clearly demonstrated with reasonable certainty from the terms of the contract and the circumstances of the case. The distinction between an implied choice of law and the doctrine of closest connection is one that has been a matter of controversy among some private international law scholars. This paper seeks to question whether the doctrine of implied choice of law should have a place in the European Union choice of law rules in the Law of Obligations.

Stream: Rethinking Surrogacy

Paper 1: Alan Brown. “Two means two, but must does not mean must”: recent decisions on the conditions for parental orders in surrogacy

This paper will consider the approach taken by the High Court towards the conditions required for the granting of ‘parental orders’ in cases of surrogacy. The paper will focus on the decisions in *Re Z (Surrogate Father: Parental Order)* [2015] 1 WLR 4993 and *Re X (Parental Order: Time Limit)* [2015] 1 FLR 349 and examine the seemingly contrasting approaches taken to different conditions within s.54 Human Fertilisation and Embryology Act 2008.

In *Re Z (Surrogate Father: Parental Order)*, a parental order was denied to a single man, on the basis that the wording of s.54 (1) refers only to applications made by ‘two people’ and thus the court held that parental orders are not available to one applicant. However, the paper will suggest that the strict approach to the interpretation of this provision contrasts with the approach taken by the court in previous cases concerning the six month time limit for applications in s.54 (3). In *Re X (Parental Order: Time Limit)*, the court was prepared to hold that the time limit was not an absolute requirement, in spite of the statutory language, and consequently granted a parental order 2 ½ years after the birth of the child. Subsequently in *Re A (A Child)* [2015] Fam Law 1052, an application was allowed over 8 years after birth.

The paper will explore the reasoning employed in these judgments; noting that considerations relating to the ‘welfare of the child’ prevailed over the express statutory language in regard to the time limit, but similar welfare considerations were seemingly not considered applicable in regards to the requirement that parental orders are only available to two people.

Paper 2: Bruno Obialo Igwe. The Irish Supreme Court Judgment on Surrogacy: Echoing the Dissenting Voice

This paper will examine the dissenting judgment of the Irish Supreme Court judge, Mr. Justice Clark, in the case of *M.R. and D.R. & ors -v- An t-Ard-Chláraitheoir & ors* [2014] IESC 60, and its relevance in the development of jurisprudence and regulatory framework of surrogacy law in Ireland and other jurisdictions. As the courts and legislators in many jurisdictions grapple with the ethical and moral overtones in regulating surrogacy, further exploration of Mr. Justice Clack’s decision is desirable as a guide on this controversial issue riddled with divergent views.

The above case originated by way of an appeal by the State (Irish Government) of a High Court judgment, that the genetic mother of twins born through surrogacy was entitled to be registered as the legal mother on their birth certificates. The High Court judgment was as a result of a challenge by the genetic mother of the twins against the birth register’s decision not to register her as the legal mother of the twins on their birth certificates.

The State won the appeal by a six to one majority. All the judges agreed there was a “lacuna” in law, quintessentially, a matter for the legislator and not the courts to address. While the majority allowed the appeal affirming the decision of the birth registrar, the dissenting Judge, Mr Justice Clark, considered a “least bad solution” and recommended both the genetic and the surrogate mother to be registered in some way, as an interim measure pending legislation in the area. He believed both have some characteristics of mothers. The methodological approach would be by desk study of relevant journals, Court judgments, legislations and bills, newspapers articles, conference and seminar papers, and interaction with academics and practitioners.

Paper 3: Katherine Wade, The United Nations Convention on the Rights of the Child 1989: A Framework for a Transnational Approach to Surrogacy in the UK

Due to the current global nature of surrogacy arrangements, there have been increasing calls for an international response to the legal issues which arise. The major impediment to this however is the plurality of approaches to the regulation of the ethical issues which surrogacy raises.

This paper will argue that a starting point for the international response should be the United Nations Convention on the Rights of the Child 1989. There are four reasons for this. First, the UN CRC is ratified by all countries in the world, excluding the US. Thus, while agreement on the particulars of surrogacy regulation may not be reached, certain baseline principles regarding the rights of the child which have been agreed by the international community can be utilised and a framework consisting of rights-based benchmarks for the

regulation of international surrogacy can be identified. Second, taking a children's rights-based approach ensures that the approach is child-focused. This is important, since the practical implications of being a parentless or stateless child as a result of a surrogacy relationship must be fully explored, including the legal requirements when a child requires emergency medical treatment upon birth, as well as requirements around the child's right to know their origins. Third, the relational nature of the CRC, which recognises the importance of the role of parents and guardians in the realisation of children's rights, is an appropriate lens with which to view the issue of surrogacy which engages the rights of both intending parents and the surrogate mother. Fourth, a children's rights approach stresses the obligations of State parties not only to internally respond to practice which impact on children, but to engage in co-operation with other State Parties for the realisation of children's rights.

This paper will explore the justifications for a children's rights approach in this area, examine the implications of this in terms of the development of children's rights benchmarks and set out some core recommendations for the development of a children's rights-based response to the legal issues which surrogacy raises on an international level.

Stream: Transitions from Conflict: The Role and Agency of Lawyers – 1

Paper 1: Alex Batesmith. Agents of change: can Myanmar's lawyers help re-shape the justice sector following the November 2015 elections?

Myanmar's November 2015 elections resulted in an overwhelming majority for Aung San Suu Kyi's National League for Democracy, marking a critical juncture in the transition to democracy. First impressions are that the results will be honoured and Daw Suu and her party will be free to govern, but they have inherited a state with failed institutions. One such is the justice system. Chronic lack of infrastructure, poor training, widespread corruption – and an almost total absence of public trust in the integrity and ability of judges, law officers and lawyers – combine to present a formidable challenge to the new government. A report in late 2014 by the International Legal Assistance Consortium suggested that notwithstanding deficiencies in training and resources, and in the face of continued repression and systemic official corruption, Myanmar lawyers would be a pivotal component of future justice sector reforms. A plethora of recent justice sector capacity building initiatives, the majority of which have been facilitated by the international community with the assistance of individual Myanmar lawyers, have seemingly confirmed this prognosis. However, in the absence of an independent Bar Association, will lawyers be able to influence the structural change needed to implement countrywide reform, or will gains inevitably be far more modest? This paper will examine the impact of the 2015 elections on the role that lawyers will play in Myanmar's ongoing transition through justice sector reform. Drawing on the author's own work in justice sector capacity building projects in Nay Pyi Taw, Yangon and Mandalay between 2013-2015, and on more recent interviews with many of the current national and international justice sector stakeholders, a prognosis will be offered for the future of justice sector reform in Myanmar, and the role of lawyers within it.

Paper 2: Anna Bryson. Obstacles, Opportunities and Obduracy: Women Lawyers and the Struggle for Change in Conflict & Transition

This paper will examine the particular experiences of female 'cause lawyers' in conflicted and transitional societies in their struggles to build a better society. Drawn from an ESRC funded comparative project which involved fieldwork in Cambodia, Chile, Israel, Palestine, Tunisia and South Africa, the paper will look at opportunities, obstacles and the obduracy required from such lawyers to 'make a difference' in such challenging contexts. It begins with an overview of the literature on cause lawyers and the specific role of female lawyers in settled democracies and considers the applicability (or not) of that theoretical and empirical scholarship to the 'exceptional' circumstances of political conflict and transition.

Drawing from the historical institutionalism literature, it then posits three 'critical junctures' which (it is argued) broadly capture the lived experience of many female cause lawyers' in such contexts – namely the cauldron of conflict; the moment of change; and the 'dust settling' after the most intense elements of the conflict and transition have passed.

Issues considered include the notion of conflict and transition as an opportunity for women lawyers; the durability (or not) of patriarchal aspects of legal culture (including within bar associations and legal

collectives) in a conflict and transition; the particular role of female lawyers in social movements in conflicted societies, both those with a specific gender focus and those who work on other elements of the conflict and transition; and the consequences for personal, family life and relationships involved for women cause lawyers.

The paper will conclude by examining the potential to develop strategies and techniques of gendered legal struggle which may buttress against the powerful impulses towards patriarchal 'normality' once the exceptional circumstances of conflict or transition are deemed to be 'over'.

Paper 3: Kieran McEvoy. Lawyering, Legislation and Transition: Dealing with the Past 'From Below.'

This paper draws upon the 'from below' perspective which has emerged in transitional justice scholarship and practice over the past two decades to critically examine the dealing with the past debate in Northern Ireland. It focuses in particular on the efforts of the author and other academics in partnership with a local human rights NGO (the Committee on the Administration of Justice) to draft and disseminate a model bill on dealing with the past in parallel with similar efforts by the British government. The paper critically examines the broader theoretical and practical utility of this style of research and advocacy. In particular it focuses on the themes of technical capacity; organic legitimacy and 'international-savvy' local solutions for local problems as the basis for effective praxis which may be of relevance to other transitional contexts. It concludes that in addition to having practical and theoretical relevance, such partnerships may encourage a degree of legal humility from lawyers which is often elusive in such settings.

Stream: Workplace Dispute Resolution in the 21st Century 1

Paper 1: Nicole Busby and Emily Rose. Experiences and Perceptions of Claimants to the Employment Tribunal

This paper presents the findings of a large-scale, multi-site empirical project 'Citizens Advice Bureaux and Employment Disputes' which was undertaken by a team of researchers at the Universities of Bristol and Strathclyde over a 3-year period. Using a case-tracking methodology the project examined how CAB clients pursued employment disputes from their first interaction with the bureau adviser. By focusing on participants' decision-making processes involving whether to pursue their claims and, if so, which dispute resolution pathways to follow, the findings shed light on the Employment Tribunal system as experienced by workers who often lacked the resources and support necessary to advance their claims. Certain barriers to justice are identified, both in relation to the nature of UK employment law and its operation. The conclusions take the form of recommendations for reform which have relevance to the UK system, including the proposals for the future devolution of Tribunals, and to other similarly situated jurisdictions.

Paper 2: Amy Ludlow and Catherine Barnard. Routes to Workplace Dispute Resolution: the Experiences of EU Migrant Workers

Since accession of the so-called EU-8 states in 2004, over a million EU-8 workers have exercised their EU free movement rights and arrived to work in the UK. More recently, the accession of Bulgaria and Romania in 2007 has led to a statistically significant increase in migrant workers from these countries. The Financial Crisis, and the high youth unemployment that the Crisis has caused in southern European states, has also resulted in increased migration to the UK of job-seekers from these states. The exercise of free movement rights in these ways has changed the face of the UK's labour market. Some employers treat migrant workers with respect and try to meet their legal obligations. However, there is good evidence that some employers take advantage of migrant workers and deny them rights under UK law, especially rights to the minimum wage and to paid annual leave. This raises important questions of social justice. In this paper we draw upon mixed methods empirical evidence about the routes migrant workers take to manage and resolve their disputes in the workplace. We consider migrants' conceptions of dispute, their perceptions about the role of law in the workplace and in dispute resolution, the use that migrant workers make of employment tribunals and their experiences of them, and the interactions between employment tribunals and other enforcement bodies such as the Gangmasters' Licensing Authority.

Paper 3: Rupert Harwood. The impact of tribunal fees on access to justice for disabled workers

In July 2013, the Coalition government introduced fees of up to £1,200 to have a discrimination or other Type B claim heard at an employment tribunal. Ministry of Justice assessments of its fee proposals had suggested that tribunal users required to pay a fee might “not be especially price sensitive ...” and concluded that the proposed fees structure would have few if any adverse impacts on equality. The evidence to date, however, does not support either of these assessments. Total claims to employment tribunals fell by 81% between the first quarter of the 2013/14 financial year and the first quarter of the 2014/15 financial year. In addition, the 2015 qualitative study reported here (which collected information from 265 individuals) found that fees could be having a disproportionate adverse impact on disabled workers. Of particular note, fees were deterring substantial numbers from submitting disability discrimination claims; and it appeared that this reluctance to take legal action had in turn emboldened some employers to commit what might have been found to constitute unlawful acts if taken to tribunal. As well as presenting the study findings, this paper considers whether any disproportionate adverse impacts could render fees (or the fees regime) unlawful. It then goes on to propose possible strategies – combining national and grass roots campaigning and legal action in the courts – to assist efforts to see off tribunal fees and improve access to justice for disabled and other workers.

Session 8, 12:00 – 13:30

Stream: Challenging Ownership: Meanings, Space, Identity 4

Paper 1: Robert Blackash, UK Prison X: A Counter-Public Space and the Surveillance Regime. Service Users’ lived realities; acts of resistance and the challenge to regulation

In this paper I explore the extent to which we might use the queer-theory concept of ‘A Counter-Public Space’ to describe a UK Prison. The discussion draws upon extracts from a vast body of primary research materials based on the lived realities of a group of male prisoners who collaborated directly with the author during 2014. This collaborative research was undertaken as an act of resistance and exemplifies the importance of biographical material, diaries, observational records, letters and recollections as sources of valid data from ‘service users’, data on which future policy decisions should be based. This material is intended to expose the reality of prison life and further the research agenda in relation to the rehabilitation of offenders. The exploration focuses on acts of intimacy as expression of more than a ‘counter-culture’, but as an alternative ‘queer’ challenge to the Surveillance Regime in Prison X. The actions discussed here exemplified the formation of complex, nuanced non-normative but highly positive social relationships between vulnerable prisoners, sex offenders and inmates placed in Prison X for their own safety.

The article is a direct response to recommendations from The Clinks Report UK (May, 2015) ‘Tackling Inequality in the Criminal Justice Systems’ calling for more qualitative information drawing on service users experiences, valuing this information and making effective use of it at a national policy level. In addition the article seeks to further the academic debate regarding the implementation of a single equality duty, improving all aspects of equality and diversity in the UK Justice System as recommended by the EHRC Research Summary 38 (2009).

Paper 2: Dave Cowan and Helen Carr, *The histories of shared ownership*

During our Leverhulme Trust funded research project, Shared Ownership: Crisis Moments (<http://www.bristol.ac.uk/law/research/shared-ownership/>), two further distinctive research questions emerged: Why was “shared ownership” labelled as such? Why was the lease selected as the preferred model of conveying title to the “buyer”?

These questions are significant, both at a theoretical level and a practical, policy-related level. At a theoretical level, if we are enjoined to “start at the beginning” and “follow the actors”, to adopt the actor-network perspective which underpinned the Leverhulme work, these questions are particularly pertinent. The beginning appears to have been in or around 1973-4. At the practical, policy-related level, “shared ownership” is being touted as “ownership” in current tory housing discourses (when the model used by

housing associations in the 1970s was, in fact, “community leasehold”); secondly, as others (notably Sue Bright and Nick Hopkins) have argued, there were alternative conveyancing vehicles which might have been adopted; and, thirdly, it has become clear from our research that shared ownership provided the model for a public-private finance for social housing, which then came to dominate the provision of social housing and formed a model for other such funding initiatives.

Drawing on archival research and interview data, we uncover the layered histories of shared ownership, suggesting that the label became used because it tapped in to emerging discourses of ownership related to the right to buy; and suggest that the lease was adopted mimetically, following the pioneering work of Birmingham City Council (which used the lease for entirely different reasons, for the purposes of subsidy).

Paper 3: Leigh Roberts, Social Housing, Antisocial Behaviour and Disability: Decision Making of Housing Professionals at a Conflicted Intersection of Law and Policy

As a consequence of community care, homelessness and allocations legislation, a disproportionate number of occupants of social housing have mental and physical impairments. Social landlords are, however, positioned at a conflicted intersection of policies: On the one hand, the inclusion of persons with mental and physical impairments and on the other, the control of antisocial behaviour that may be perpetrated by such occupants. The paper will review law and literature relevant to this conflict. It will argue that the practices and attitudes of housing officers which affect their decision making at this intersection have been shaped by the history and development of their profession. It will further argue that the inherently conflicted position in which these street level bureaucrats find themselves is exacerbated by the degree of discretion they have, the competing interests of other professionals and neo-liberal policies that link “welfare rights to ‘responsible’ behavior” and deem non-compliant occupants risky and worthy of social exclusion. An outline of the findings of a small scale empirical study of housing organisations in the north of England will be used to illustrate this conflict.

Stream: Civil Procedure and Alternatives to Litigation, ADR 2

Paper 1: Tatiana Tkacukova, Hilary Sommerlad and Robert Lee. Litigants in Person in the Civil Justice Centre: Access to Legal Information and Advice

A range of macro-level socio-economic and political changes over the last two decades have transformed discourses and policies relating to access to justice. On the one hand there has been a drive to divert people from the courts towards alternative dispute resolution systems, underpinned by an attack on the perceived ‘litigiousness’ of ordinary litigants; on the other hand, legal aid provision has been dramatically reduced in terms of scope, levels of eligibility and the type of support which is offered. As a result, litigants in person (LIPs) are now a growing feature of English and Welsh courts. How to accommodate their needs and ensure that the online advice which is frequently their only source of support is clear and easily accessible is therefore a major concern for many key stakeholders such as legal aid lawyers and court personnel including the judiciary.

The study which this paper discusses originates from that concern, and is being conducted by the authors in conjunction with Birmingham Law Society and Birmingham Civil Justice Centre. Its primary focus is the extent and type of legal information and advice available to LIPs in the area and in particular the impact of the move to ‘digital by default’ (Susskind, R. 2000). The discussion draws on existing research in three strands: current developments in access to justice in person; studies of LIPs’ communication needs; and digital literacy. In our discussion of the wide range of digital literacy skills required for a simple search and effective self-representation, the paper will reflect on the challenges involved in accessing up-to-date information and analyse the type and quality of online advice available and its implications for providing ‘justice’ for LIPs.

Paper 2: Andrew Agapiou. The co-optation of the techniques and language of Alternative Dispute Resolution: A critique of developments in the UK

Alternative Dispute Resolution (ADR) is a consensual process where the parties agree to come to a solution, which means that autonomy is a central characteristic of this category of dispute resolution processes. Tidwell identifies that “mediation is predicated upon mediation’s flexibility informality and consensuality

opening up the full dimension of the problem facing the parties. Parties come to mediation because it is flexible and thus convenient. Mediation is used because it is not adversarial, but rather seeks to satisfy the needs of the presenting parties". The very nature of mediation and other ADR processes is that it is based upon a consensual process, which is outside of the judicial system. The problem with co-optation is that it is judicialising ADR processes through avenues such as mandatory mediation or adjunctive adjudication processes. The implication of this is that there is a framework in place that is no longer consensual in nature; rather, it is merely an extension of the coercive power of the judicial system. In the UK, there is arguably a system of co-optation through Civil Procedure Rules (CPR) and Family Procedure Rules (FPR), because instead of promoting consensual mediation and ADR processes they are coercing individuals to comply with an obligation to engage in ADR prior to entering the courts. Thus, this paper will examine the content of the CPR and FPR to determine whether there is a process of cooptation occurring within English law.

Stream: Criminal Law Criminal Justice 8 - Trial Processes

Paper 1: Kevin Crosby. Female Jurors in the 1920s Assize Courts

As we approach the 2019 centenary of the female jury franchise, it is surprising how little has been written on its early history. The 1919 Act allowed women to serve, but also gave judges a power to order single-sex juries. This power, combined with property qualifications, led to low numbers of women serving. Previous work exploring these issues has focused on political campaigns against these rules. This project takes a different approach, exploring the role officials had in expanding or contracting the female jury franchise.

Today, the overlap between electoral and jury franchises is often taken to mean jury service is part of citizenship. This overlap was only achieved in the early 1920s, however, when the electors and jurors lists were combined. This administrative decision had the consequence of disenfranchising many women in the ten English towns which had not previously been required to adhere to the property qualifications when summoning jurors. Despite the objections of many town clerks to this change, central government did not consider the disenfranchisement of many women from jury service to be a particularly serious matter.

But despite this insistence on the part of central government that qualifications for jury service must be standardised, even at the cost of some women being formally disenfranchised, the percentage of women actually serving varied remarkably. In the Midland circuit, the percentage of assize jurors who were women declined from a high of almost a third in 1921 to approximately twenty per cent by the middle of the decade. In the Western circuit, on the other hand, female participation was consistently around eleven per cent.

By exploring these issues in detail, this paper asks what the female jury franchise actually looked like in its first few years.

Paper 2: Yvette Tinsley. How to thrill a juror: jury responses to improvements in judicial communication

This paper reflects on one important aspect of the findings of a jury field study conducted in New Zealand and Australia: that of juror responses to efforts to improve judicial communication with them, particularly in summing-up. New Zealand courts now routinely use 'fact-based question trails' in criminal trials, a series of factual questions designed to assist with reaching a verdict. Question trails are an attempt to protect jurors from the law, prevent confusion, improve understanding, and assist with deliberation efficiency. This paper will use findings from post verdict interviews with jurors in 45 trials to discuss how they use question trails, the effect on length and efficiency of deliberations, and their satisfaction with the process. It will then consider how these findings contrast with the findings of previous New Zealand research by Young, Cameron and Tinsley, which was conducted prior to reforms to judicial communication methods.

Paper 3: Oriola Sallavaci. Expert Evidence in Criminal Proceedings: Where now? What next?

Forensic science and other expert evidence play a very significant role in criminal proceedings. Their impact in modern criminal litigation has been increasingly felt as the developments in science and technology have made possible that new forms of complex scientific evidence enter the courtrooms. At the same time, scientific evidence has been frequently associated with high profile miscarriages of justice which serve as a reminder of the dangers of over-reliance on evidence which, despite its undoubted power and comparative advantages over alternative forms of proof, is never completely infallible or beyond challenge. In striving to address the contemporary challenges of forensic science and expert testimony, the Law Commission

undertook a systematic review of admissibility standards for expert evidence in criminal proceedings and made significant recommendations. The main proposals were adopted through revisions to the Consolidated Criminal Practice Direction and Part 19 of the Criminal Procedure Rules which now contain a catalogue of important provisions on the duties of expert witnesses, the form of forensic reports and the procedures for adducing expert evidence in criminal proceedings. Throwing light on these recent developments, this paper argues that there are issues surrounding forensic evidence left outside the scope of the reform. The current standards of admissibility do not exhaust the evidentiary issues posed by expert evidence. More need be done in terms of validation and accreditation of forensic sciences as well as improving defence's access to expertise. Recently introduced reporting procedures for forensic evidence challenge the traditional relationship between experts, police and other parties and could potentially diminish the contribution of forensic expertise in criminal proceedings.

Stream: Culture Clash, Peace and World Order 2

Paper 1: Obadina Ibrahim, Rethinking Socio-Legal Problems in Africa: Beyond Legal Approaches – Submission

Central to this research is the recognition that law and society are mutually constitutive, that is, law is not an external force to which society is subject but, rather, represents a dynamic set of codes, practices, categories and deliberations that both shape and are shaped by broader social, political, and economic logics, contexts and relations. Theoretical perspectives on the relationship between law and society are informed by sociology, history, philosophy, economics, anthropology, political science, and psychology. The socio-legal understandings have moved from regional to global level. There are numerous transnational legal issues that require global understandings and focus of Law and Society Association, such as Poverty, Diseases, LGBT's rights, global inequality, gender rights, child rights, terrorism, human trafficking and money laundering and Corruption. Most of these issues are present in Africa.

Socio-legal studies focuses on the relationship between law and society; the influence of law on society and conversely, the influence of society on law. Some methods and theories of social sciences are needed in law to meet its global challenges. Currently, the approach adopted in Nigeria to tackle most socio-legal problems such as ethnic violence, fundamentalism and extremism is solely legal without any mediation of socio-legal research. The legal approach has been the major determinant of the solutions to most of socio-legal problems. Socio-legal dynamics in the legal approach have had a good understanding in the Western world, but in Africa, most especially, Nigeria still lags behind.

There is thus the need to combine socio-legal approach to solve socio-cultural problems challenges in Nigeria. The method promotes cross fertilization of ideas and removes academic chauvinism which is typical of legal research. The basis is that there should be a basic understanding of the importance of the social sciences in law, if fundamental issues are to be resolved in the legal system.

Paper 2: D. U. Odigie. An Appraisal of the Socio-Legal Perspectives to the Interface Between Culture and Inter-Tribal Marriages

Marriage is the voluntary union of man and wife with a view to living together as couple and for the purpose of procreation. Cultural practices vary from one community to another. Culture evolves from the norms, customary values and prescriptions of a society. Where a man from a particular tribe and cultural setting chooses to have a woman from a different community with its distinct cultural affinity, there is said to be inter-tribal marriage. Oftentimes, the varying norms and cultural practices of the couple conflict on basis of social and legal considerations. Such situation if not carefully managed could constrain one or both parties to the marriage to find comfort in the option of divorce. It also examines the socio-cultural and legal implications of inter-tribal marriages against the backdrop of acceptable norms and customary values that are relevant to the attainment of sustainable marital unions. The paper emphasizes the need for societies to give modernity its pride of place in the domains of culture and tradition as they relate to the sustenance of inter-tribal marriages within.

Paper 3: Yomi Olukolu, Cultural Secularism and the Importation of Colonial Laws and Culture as an Antidote to Socio-Cultural Legal Conflict in Africa

Culture refers to the ways of life of the members of a society, or of groups within a society. It includes how they dress, their marriage customs and family life, their patterns of work, religious ceremonies and leisure pursuits. Culture and society have close connections. Culture is secular all over the world, particularly in Africa. No cultures could exist without societies. Peoples' movements, gestures and expressions are strongly influenced by cultural factors, and the laws of a given society should and ought to be so influenced. Africans are deeply rooted in their culture. However, with the advent of colonialism and religion evangelism in Africa around the 17th and 18th century, the ways of life of traditional Africans, especially its laws have been greatly diluted. Hence, the Afro-legal system is majorly influenced by both the English and French laws, which caused conflict between laws and cultures in Africa. This paper intends to posit that with the strong affiliations to cultures by Africans in opposition to all these imported laws, there have been tendencies to flout all these laws without any or little sanctions. This is presented with a view to stating that any legal framework, which is expected to alter materially, the social habits and values as well as the economic orders of the people, can hardly be expected to succeed unless such framework are made in line with the cultural aspirations of Africans.

Stream; Gender, Sexuality and Law 8

Paper 1: Michael Ashworth, In the Shadow of the State: Governing through Disgust in Uganda

I draw on the insights of Michel Foucault and governmentality studies scholarship in order to explore the government of sexual minorities in Uganda. In doing so, I follow Foucault in decentering law and the state in my analysis and instead focus on one instance of power being exercised in its extremities: disgust. While Martha Nussbaum has written about 'the politics of disgust' in relation to anti-gay movements in the United States, I propose a Foucauldian counter-reading of her work, reorienting disgust from a personal, psychological phenomenon to a technology of government, deployed across entire populations. For the purposes of this paper, one technique is highlighted: the tabloid exposé. I suggest the exposé is a particularly effective technique as the tabloid can impart its message without even needing to be purchased, simply by way of its own visibility on newsstands in the streets of Kampala. Drawing on publicly available front pages and articles from two Ugandan tabloids – Red Pepper and the now-defunct Rolling Stone – I examine the tactics through which disgust has been incited. My thesis is that the inculcation of disgust towards Uganda's sexual minorities is a powerful technology of government, performed beyond the state albeit in its shadow, and deployed according to an underlying rationality that seeks to manage sexual minorities out of existence in Uganda, best exemplified by the 2014 Anti Homosexuality Act.

Paper 2: Emilie Cloatre and Mairead Enright, Regulation, disobedience and the socio-legal construction of condoms in Ireland 1935 1993

In Ireland, over a 60 year period, condoms changed from symbolic objects of deviance to medical devices. Until 1993, the sale and distribution of condoms were heavily regulated, being limited first to narrowly defined groups and conditions, and later to specific points and mechanisms of sale. In this paper, based on documentary analysis and qualitative interviews with activists involved in resisting the restriction to the sales and distribution of condoms up to 1993, we explore this shift in Irish political and legal discourse, the various meanings attached to law by those who sought to resist and challenge it, and the parallel transformation of condoms as social objects. In doing so, the paper questions the entanglement of law, social movements and technologies. It starts by mapping the history of the prohibition and legalisation of condom sales in Ireland 1935-1993, and situating it in the context of broader governmental projects designed to control sexual expression and reproductive autonomy. It then turns to analysing the emergence of resistance to state regulation of condoms by various social networks, and explore how this history sheds light on the complex ways in which legal change relates to resistance, disobedience and social movements in the context of medical technologies. Throughout we explore how shifting socio-legal constructions of the condom, organised practices of daily resistance, and official articulations of the public good evolved around a 60 year period to move from prohibition to the settling of condoms as an essential technology of health.

Paper 3: Nick Cowen, Millian Liberalism and Extreme Pornography

How sexuality should be regulated in a liberal political community is an important, controversial theoretical and empirical question—as shown by the recent criminalization of possession of some adult pornography in the United Kingdom. Supporters of criminalization argue that Mill, often considered a staunch opponent of censorship, would support prohibition due to his feminist commitments. I argue that this account underestimates the strengths of the Millian account of private conduct and free expression, and the consistency of Millian anticensorship with feminist values. A Millian contextual defense of liberty, however, suggests several other policy approaches to addressing the harms of pornography.

Stream: Information 4 - Access to Information

Paper 1: Edward Mitchell. An instinct to conceal: urban property development and freedom of information requests

My paper discusses urban retail property development and the conditional development agreements two local authorities recently entered into with private sector developers to enable development to take place in their respective areas. I use case studies taken from my research and show that these agreements merit consideration because they facilitate the public acquisition of privately-held land by those local authorities and set the conditions for the onward transfer of that land to the respective developers.

Both agreements contain confidentiality clauses that purport to bind the contracting parties not to disclose information about the agreements, although public law accountability requirements compelled the local authorities to disclose some details. But there are limitations to the extent of the information disclosed and, in both cases, members of the public have attempted to overcome these limitations by submitting requests for information under the Freedom of Information Act 2000. The requests sought the publication of the respective agreements and ancillary documents, and both local authorities initially refused the requests. The applicants in each case complained to the Information Commissioner and secured further disclosures. I analyse those applications and show that they were effective in providing a snapshot of the contractual arrangements between the parties. But there is much information, both contained within the contracts and pertaining to their implementation, that the local authorities fought to conceal. This paper considers the information disclosed before and after the freedom of information requests, and the extent to which public scrutiny of the documents is made possible.

Paper 2: Erin Ferguson. Follow the Money? : Examining the Argument in Support of Extending Freedom of Information to Additional Bodies

The increasing use of private contractors and voluntary organisations to deliver public services has resulted in calls to extend Freedom of Information responsibilities to additional bodies. As FOI legislation currently applies to designated public bodies, there is concern that rights of information access are being lost as services are contracted out, therefore making services less transparent and accountable to the public.

Those in favour of FOI extension frequently argue that any organisation receiving public funds should be covered by the FOI Act. Indeed, the financial justification appears to dominate the debate, with politicians and campaigners arguing that publicly funded services must remain accountable to taxpayers, no matter who is responsible for their delivery. The aim of this paper is to explore this justification, and although it does not dispute this position, it does argue that the debate needs to be broadened in order to consider additional reasons as to why FOI obligations should be extended.

The paper argues that access to information is important for a number of reasons beyond the fact that services are funded by taxpayers, and these reasons need to be explicitly recognised. The paper outlines these reasons, including the nature of the functions performed and the role of information access in supporting civic engagement. It also examines the dangers of relying too narrowly on the financial justification in support of FOI extension. The overall aim of the paper is to provide a contribution to the discussion on FOI reform that fully explores the conceptual underpinnings of FOI, thus facilitating evaluation of the possible approaches to FOI extension.

Paper 3: Oliver Bartlett. “Choice is an illusion created between those with power and those without”: Investigating who really controls the flow of information surrounding non-communicable diseases.

Many political debates on non-communicable disease (NCD) prevention concern information on the causes and effects of NCDs, and how this should be provided to consumers. Thus, the circulation and quality of information on NCD causation and consequences is an integral part of NCD prevention efforts. Commentators repeatedly point out though that information provision is an ineffective NCD prevention strategy, and argue that this is due to its lack of impact upon consumers. Informing consumers about health risks should however be a useful part of the necessarily multi-faceted approach to NCD prevention, and is not an inherently ineffective strategy.

This paper argues that a more fundamental problem for information provision on NCD causation relates to who controls the discussions on information provision in the first place. The paper will demonstrate that the balance of power between private corporations and public authorities in the NCD policymaking field is currently skewed in favour of corporations, which allows them to frame public debates over information provision according to their own private interests. This results in a flow of information on NCDs that has little impact on the attitudes of consumers towards NCD causation, and the illusion that governments are choosing the most desirable NCD prevention strategies.

The paper will first examine the skewed balance of power between private and public interests in NCD prevention. Second, it will analyse the tactics used by corporations to frame and influence discussions on whether and how to provide information. Third, it will explore the counter-tactics that can be employed by public health advocates to shift the power balance back towards public interests. The overarching argument will be that governments can only truly choose what the consumer information environment on NCDs looks like once they have regained the balance of power in NCD policymaking.

Stream: Law and Literature 2

Paper 1: Sarah Sargent, Truth and Consequences: Law, Myth and Metaphor in American Indian Contested Adoption

Barbara Kingsolver’s 1993 novel, *Pigs in Heaven*, stands in stark contrast to the 2013 US Supreme Court decision *Adoptive Couple v Baby Girl*, in their depictions of what it means to be an American Indian and of the value that should be given to the 1979 Indian Child Welfare Act (ICWA). ICWA is a law designed to prevent the unauthorized removal of an indigenous child from their family and community, to put an end to an era of forced assimilation when such removal was seen as in the best interests of the child.

In this comparison of a novel and court decision that involve a contested adoption of a Cherokee Nation child, myth and metaphor bear heavily on what interpretation is given to the law. The unresolved place that American Indians have and should have in modern US society contributes to the strength that myth and metaphor have in determining outcomes of legal decisions. The somewhat assimilated American Indian who maintains an identity as a tribal member is something that is difficult for the law to digest in real life— and is more easily accommodated in fiction.

The novel offers a decidedly more upbeat assessment than has proven to be so of the impact that ICWA will have for American Indian, believing it augers a time where Indian families and communities will be protected by the law. In fiction, law is seen as strengthened when addressing myth and metaphor. However, in real life, law is weakened when myth and metaphor are at odds with present day realities.

The great irony is that in fiction the law is more able address contradictions of myth and metaphor than a real life court case. This is reflected in the different outcomes of the adoption in each.

Paper 2: Emma Patchett, Re-reading the normative: temporal shifts, legal sovereignty and disturbing dances

This research considers the dismantling of normativity in Kim Scott’s *That Deadman Dance* (2011), a novel which reads the legal pluralist notion of reciprocity as a disturbance revealing the fiction of normative order. The novel is a disorientating non-linear passage through settlement governance, interacting with sites through a critical interplay with the temporal spaces of the postcolonial present.

This interdisciplinary analysis demonstrates a way of reading the multiple necropolitical moments in in the doctrine of *terra nullius*, whereupon law took on a more pugnant role as destabiliser of the counter-

archive, protecting law's hegemony not against pluralism nor settling a new dominion but rather working to dismiss the potential for indigenous sovereignty.

This paper will explore the way in which law can be read as kaleidoscopic through its cultural refractions in a 'Recovery' narrative of the process of informal colonialism – notably a text which fights against a post-reconciliation label and distinctively argues for a rupture or disturbance. I will argue that rather than acknowledging the confluence of transplanted colonial legal systems in confluence with Aboriginal customary laws, the rupture of settlement merely revealed the paradoxical flaw in the normative foundation of legal orders.

It will be argued that it is, therefore, necessary to extend discourse beyond a critical legal pluralism towards a focus on the notion of disturbance – after Luhmann – in order to read the tangle of non legal forms of normativity, offering a new way of theorising law as neither pre nor postcolonial but rather as in disturbance, in uproar, in medio peturbationem. This paper will put forward an innovative critical theorisation of law and legality through a literary jurisprudence of "contact" which argues that legal pluralism can never be enough, if law's imperial foundations are to be dismantled.

Stream: Law and Neo-Liberalism 3

Paper 1: Aurora Voiculescu, From Transnational Regulatory Capacity to Governance Opacity: Winners and Losers of the Neo-liberal Agenda

This paper addresses issues related to the international economic law governance sphere placed under pressure to reform in order to answer concerns of social justice and visibly failing to do so. Stemming from recent reform proposals, the paper addresses the so-called constitutionalisation of hybrid governance spheres, as complex manifestation of the neo-liberal agenda of liberalization, deregulation and small government. The critical perspective proposed here makes use of the international investment law frameworks and of their dispute resolution mechanisms as examples of governance spheres that struggle to internalize the require level of attention to social concerns and human rights. In this context, investor transnational corporations (TNCs) are presented as potential 'steering subjects' in certain investment normative environments such as the bilateral investment treaties, contributing to the governance process through instruments of hybrid character and engaging with governments 'at eye level'. The strengthening of the TNCs position in the dispute settlement mechanisms (e.g. agenda setting, norm development, enforcement), and the direct and indirect challenges brought by TNCs to the regulatory power of the states are analysed against the backdrop of the reform processes that have lately emerged within the international economic law platform.

The importance of this study lies in identifying the points of contact and tension in the governance networks specific to the current investment instruments, analysing the structural conditions that presently match the regulatory capacity of TNCs as 'steering subjects' with regulatory opacity, making 'small government' even smaller and undermining human rights and the rule of law. The paper assesses the extent to which the various advanced or proposed reforms can answer the social justice expectations for setting up more transparent governance networks that can answer higher standards of legitimacy.

Paper 2: Jennifer Lander, The (Self)-Discipline of the State: Dependence on Foreign Direct Investment and Mining Governance in Mongolia

This paper analyses the relationship between the Mongolian state's dependence on foreign direct investment in the mining sector and the deepening power of neoliberal forms of law and policy-making in the mechanics of the state between 2005 and 2014. Using Mongolia's extractive political economy as a case study, the author discusses the ways in which the normative ideal of private-sector led development has come to dominate the country's law and policy landscape. She argues that the neoliberalisation of mining governance has been enabled by the coincidence of a particular set of external and internal factors that reconfigured public-private power relations in a way that has politically delegitimised direct state control of mineral resources. Critical external factors include low commodity prices, growing public debt and the political power of international investment actors which crudely labelled attempts to reregulate the mining sector in favour of the state's interests as "resource nationalist" from 2006-2013. Crucially, these external influences have dovetailed with the internalisation of neoliberal ideas and governance structures by

strategic public institutions and powerful government actors, as evidenced by the author's fieldwork. This juggernaut of ideological and institutional "capture" of the state in relation to the mining sector is significantly facilitated by the central government's curtailment of resistant actors and institutions, particularly environmental NGOs and sub-national governments. This case study provides ample material to theorise the legal and political risks that accompany integration into the global extractive economy from a position of dependence on foreign direct investment.

Paper 3: Liviu Damsa, Feeding Neo-liberal Nirvana in post-socialist Central Eastern Europe? The case of Association of Owners and the problems face by have nots in Romania

In this paper I discuss several problems posed to the most vulnerable categories of owners by the neoliberal legal arrangements related to condominium associations and civil law litigation for non-payment of condominium fees or utilities by property owners in post-communist Romania. Because one important locus of such arrangements is the Law on condominium owners (2007), I focus on the novelties brought by this law, and I discuss the ways in which this law disproportionately affects the vulnerable Romanians. My argument is that this law, by upsetting old standing principles of civil and commercial law creates a heavy burden for the most vulnerable categories of citizens. This law, interlocked as it is with changes in civil procedure and with deregulation and privatization of utilities, emboldens judge to use experts and legal fictions, and to apply the law in manners that affect the most vulnerable customers of utilities companies. Such vulnerable customers are usually trapped in litigation with condominium associations, which are supposed to represent the interest of property owners, but in really act as collectors for utilities and often independently of the wishes of the property owners who supposedly they represent. And the litigation initiated by condominium associations could easily lead to the eviction of vulnerable customers from their homes. This paper aims to show that the post-communist state, as transformed by two decades of neoliberalism, does not treat equally and equitably customers and private economic agents, but heavily titles the economic fortunes in favour of special interests. Procedurally, it is a state where human and procedural legal rights, inherited from the communist era or even from the prewar period, are eroded slowly and continuously under the pretext of reform and modernisation, up to until the point that they are not recognisable and become inexistent as such.

Stream: Legal Education 4

Paper 1: Anthony Bradney. More Madness: The TEF and University Law Schools

The latest Green Paper "Teaching Excellence, Social Mobility and Student Choice" will add yet another audit regime to higher education in the United Kingdom. This paper will look at the aims that lie behind this new regime, assessing how they fit with the educational practices within university law schools in this country. The paper will look at the responses to the Green Paper from within the educational community. The paper will then end with a consideration of how far both the Green Paper and responses to it indicate a move to a managed higher education sector.

Paper 2: Laura Holloway. Diverse attainment: mapping and understanding variation in attainment on the GDL and LPC by protected characteristics

The Solicitors Regulation Authority has recently consulted on a proposal for a system where everyone wanting to qualify as a solicitor would undergo the same professional assessment based on the competences required to do the job.

As part of the evidence supporting this consultation, we presented our analysis into current differences in attainment in the GDL and LPC examinations depending on ethnicity, gender and disability.

We analysed exam results of the 2014 GDL and LPC cohorts to look at pass rates, how many people were referred for re-sits and how many people deferred the exams. We found differences between the pass rates and grades of different groups of students depending on protected characteristics such as ethnicity, and depending on mode of study and educational institution attended.

We will use this analysis as a baseline to measure any changes in variation in attainment as we continue to reform our approach to education and training.

This work on variation in attainment raises many questions about access to the top jobs in the legal profession and consistency of education and training, and should provide context for a lively conference debate on the future of legal professional assessment. This presentation will cover:

- Why we decided to look at variation in attainment
- How attainment varies across protected characteristics
- How attainment gaps persist or emerge after qualification
- How the legal sector compares with other sectors
- Whether there are any steps the regulator can take to help close the attainment gap

Paper 3: Stephen Bunbury, Disability in higher education – do reasonable adjustments contribute to an inclusive curriculum

The study focuses on the importance of inclusive curriculum design, and the impact of reasonable adjustments in ensuring inclusive practices. It draws on qualitative data collected from five participants by way of in-depth interviews, who have had experience leading a Level 4 core module on the LLB Qualifying Law Degree at Westminster Law School. It explores the perceptions of staff members, and offers practical recommendations in an attempt to ensure higher education institutions adopt inclusive practices in their curriculum design. The findings in the study suggest that having an inclusive curriculum can in some cases minimise or obviate the need to make reasonable adjustments. Although making reasonable adjustments attempts to ensure inclusivity, the data gathered suggests that some staff struggle to accommodate disabled students, due to a lack of knowledge, training and awareness of disability. This implies that most of the participants' views about disability are based on the medical model, which does not assist disabled students during their studies. It is suggested that higher education institutions should now switch their focus to embracing the social model, so as to transform the attitudes of staff towards disabled students. Additionally it offers practical solutions in an attempt to recognise that disabled students may need to be treated differently, in order to achieve their full potential, which ultimately ensures inclusion within the curriculum.

Stream: Mental Health and Mental Capacity Law 3 - The challenges of legal reform in a human rights context

Paper 1: Hope Davidson. Mental Health and Mental Capacity Law in the Republic of Ireland.

Mental health and mental capacity law in particular are going through substantial changes in the Republic of Ireland at the moment. The Assisted Decision-Making (Capacity) Bill 2013 was passed by the Irish parliament and signed in to law on the 31st of December 2015. It will repeal and replace the Lunacy Regulation (Ireland) Act 1871 (34 & 35 Vict., c. 22). There are some key differences between it and the equivalent legislation in England and Wales, the Mental Capacity Act 2005, and we have watched and learned from the experience of the operation of the Act over the last decade in England and Wales. The decision in Cheshire West is of particular interest as we have not addressed deprivation of liberty safeguards in our Act - nor informal health and social care decision-making (although there was substantial debate on this during the legislative process).

Again, our Mental Health Act 2001 (operative from 2006) and broadly equivalent to the Mental Health Act 1983 is currently being reviewed, and the Steering Group on the Review of the Mental Health Act 2001 produced their Final Report in March 2015. Important changes are proposed in this report in relation to the criteria for admission for involuntary patients, and in relation to the definition of a voluntary or informal patient. A new intermediate category of patient proposes to address the dilemma posed in H.L.v U.K. of the 'compliant incapacitated' patient. The report also addresses the issue of advance care directives which currently have no legal effect in Ireland. A draft General Scheme of Legislative Provisions to provide for the Making of Advance Healthcare Directives was published in February 2015. This paper aims to explore these important changes in our mental health and mental capacity laws.

Paper 2: Jill Stavert. Closing the 'Bournewood Gap' in Scotland?: ECHR and UNCRPD considerations

For over a decade Scotland has been attempting to address the implications of the HL v UK (Bournewood) relating to Article 5 ECHR (the right to liberty) and living arrangements of persons with incapacity. It has also had to consider the 2014 UK Supreme Court Cheshire West ruling that appears to have broadened the range

of settings in which persons who lack legal capacity may be deprived of their liberty. Moreover, Strasbourg rulings such as Shtukaturov, DD, Stanev, MH, MS and Stankov have highlighted in various ways the need for Article 5 safeguards to be real and effective in such deprivation of liberty situations.

Of particular concern in Scotland has been whether welfare powers of attorney and guardianship, as regulated by the Adults with Incapacity (Scotland) Act 2000, can authorise a deprivation of liberty and, if so, whether the necessary Articles 5(1) and (4) legal and procedural safeguards are present. To this end, the Scottish Law Commission published its Report on Adults with Incapacity in 2014 and in December 2015 the Scottish Government commenced a consultation on the report's recommendations.

An additional issue that has arisen is the apparent conflict between Article 5 ECHR and the provisions of the UNCRPD (particularly its Articles 12 and 14 as interpreted by the UN Committee on the Rights of Persons with Disabilities) and the extent to which it is in fact pertinent to consider the right to liberty of persons with incapacity in isolation. This paper will consider the current situation in Scotland in light of this although it may also have relevance to other jurisdictions.

Stream: Transitions from Conflict: The Role and Agency of Lawyers – 2

Paper 1: James Sweeney. Kosovo – from traditional to transitional justice, and back again?

This paper presents reflections on the author's involvement in post-conflict and transitional justice projects in Kosovo, since 2009; whilst also presenting interim findings on an SLSA-funded inquiry into traditional and transitional justice in Kosovo.

By participating in these internationally-funded post-conflict, transitionally-focused, interventions in Kosovo, I have been complicit in a form of mandated (legal) cosmopolitanism (in the loose sense used e.g. by the late Patrick Glenn); where centrifugal forces pull the domestic legal system outwards towards international concepts and standards. My work, in 2014, with the judges of the Kosovo Supreme and Constitutional Courts has witnessed particular constitutional and conceptual problems with the reception of European human rights standards, for example.

Yet, at the same time, there have been strong centripetal forces at work. Gaps in the rule of law in the immediate post-conflict period were sometimes filled by recourse to the ancient Kanun of Lekë Dukagjini – a traditional code notorious for its rules on blood feuds, but less well known for its detailed guidance on the mediation of conflicts. Despite huge domestic and international efforts to establish the rule of law in Kosovo, there is evidence that the Kanun may still play an important role. This stems in part from a nationalistic turn away from newer state structures in response to EU-sponsored attempts at normalization of relations with Serbia; and also in part from co-option of the language of the Kanun within organized crime. At the same time, the value of incorporating local ownership in post-conflict solutions, sometimes involving the use of traditional law, is well established.

These co-existent centrifugal and centripetal forces challenge linear narratives of intervention and transitional justice.

Paper 2: Yassin Brunger. The Art and Science of Lawyering in International Criminal Trials

From the practice of the international criminal trial process, it could be concluded that consultations between lawyers and victims and/or witnesses are an expected and normal part of pre-trial preparations. While, there has been considerable debate about the effectiveness of international tribunals, an often neglected aspect is that of understanding and improving the experience of lawyering in this process. In the legal world, there exists no other relationship as close and as complex as that between a lawyer and an individual who is a victim and/or witness in legal proceedings or an investigation. That special relationship puts unusual responsibilities and burdens on the lawyer and victim and/or witnesses. It is the goal of this paper to decipher the boundaries between a lawyer and a victim and/or witness that is related to the substance or presentation of the testimony at trial. The dynamics of such a relationship is complicated and magnified in the context of transitional situations where a number of obstacles lay in the pre-trial phase of proceedings. Quintessentially, concerns related to issues of the danger of the witnesses embellishing their story, or being prompted or coached by the lawyers, have fueled a lack of thinking about the role of lawyers operating in conflicted societies. In this paper it will be argued that ethical responsibilities to ensure that victims and/or witnesses who participate in the international criminal trial process should be protected from

being re-traumatized by the process. In addition, if victims and witnesses are not adequately prepared and supported throughout the process, this can adversely affect their in-court testimony and deter other victims and/or witnesses from coming forward to testify. Ultimately, in transitional societies, lawyering is both an art and a science.

Paper 3: Lynsey Mitchell. The Limits of Law: Mistaking Legal Accountability for Protection during Conflict

Despite the existence of law purporting to protect women during conflict, the reality is that women's lived experiences often do not mirror those presupposed by this legal regime. This paper focuses on the inability of international humanitarian law to protect women from rape and sexual abuse during conflict, and questions whether the promise of accountability for war crimes has somehow become conflated with the promise of protection from harm. In doing so it cautions legal scholars against acquiescing to such a conflation because doing so potentially affirms a narrative whereby military force is viewed as a benevolent gesture that has only positive consequences for women.

This paper postulates that the current framing of legal protection for women during conflict acts to cement a narrative that war is a tool of liberation that visits no harm on innocent civilians. It argues that this conception is problematic as the conflation of legal protection with legal accountability only obscures the reality, which is that women will always be at risk of abuse during conflict.

As such, this paper argues that, despite its intentions, progressive protectionist jurisprudence and legislation against rape and sexual violence have served only to cement gendered constructions of women as victims in need of protection bestowed by powerful men. However, it is not the intention of this paper to advocate the removal of international criminal responsibility for sexual crimes during conflict, but instead to draw attention to the complacency that is borne of the over reliance on such instruments and caution against the celebration of the legal regime as a panacea for those in conflict situations.

Thus this paper rebukes those who seek to use military force as a tool of emancipation and suggests that their overreliance on legal accountability is no substitute for simply preventing warfare.

Stream: Workplace Dispute Resolution in the 21st Century 2

Paper 1: Eleanor Kirk. Austerity and the Vilification of Tribunal Claimants: Challenging the Myths

Successive reforms of the Employment Tribunal System (ETS), culminating in the imposition of fees in 2013 have attempted to suppress the number of claims, a cause emboldened by austerity. However, the reforms have been justified by a number of interrelated myths, centring on the vilification of claimants as 'nuisance litigants' who bring 'weak and vexatious' claims. This paper draws upon the experiences of 159 clients of Citizens Advice Bureaux (CABx), from across the UK, as they sought to resolve work-related grievances. The paper charts the emergence of vilifying narratives and then uses the CABx clients' experiences of raising disputes to demonstrate the dubiousness of assumptions on which policy reforms have been based, and how the political rhetoric itself may deter people with legitimate grievances from pursuing redress.

Paper 2: Morag McDermont. Working with Work-Place Disputes: Citizens Advice as Brokers

Advice organisations, rather than professional lawyers, are becoming key actors in legal arenas, particularly for citizens whose relationship to rights is most precarious. At a time of ever deepening inequalities, it becomes crucial to understand how such organisations can mediate and make possible interventions into those spaces of everyday life that become infused with law, such as workplace relations.

In this paper, we use data from a research study that followed workers as they tried to resolve workplace disputes with the support of Citizens Advice to explore how advice agencies are working in the highly legalised and complex field of employment. Responding to the increasing need from clients for expert employment advice, and the withdrawal of legal aid funding, some bureaux have trained volunteers (who are rarely legal 'experts') to become special employment advisers. The data shows that these volunteer advisers have achieved significant successes in intervening in employment disputes: translating skills learnt in other fields of advice they have, in some instances, been able to act as effective brokers between workers and employers. A negotiated settlement can act as a 'boundary object' bringing together the interests of all parties.

However, as the possibilities of access to justice are diminished by regulatory changes such as the introduction of fees to take a claim to an Employment Tribunal, the limits of brokering become apparent. It is at this point that advice organisations can perform other translations, into the public policy field. Sometimes this means ignoring law altogether and utilising media relations to 'name and shame' employers operating bad practices; at other times, they translate casework into campaigning instruments for policy change. However, our research suggests tensions between the desire to be perceived as a credible, legitimate partner in delivering advice services, and the focus and tone of campaigning work.

Conference planner

Session	Stream/Theme	Location
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