

Socio-Legal Studies and the Humanities

1-Day Conference

Hosted by the Socio-Legal Studies Association, with the support of the Institute of Advanced Legal Studies

November 5, 2008, Institute of Advanced Legal Studies, London

Abstracts

PARALLEL SESSION 1

Mark Coen

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The Past as a Judicial Country: Reported Judgements and Social History

This paper will consider the valuable insights into social history which can be gleaned from the law reports. The facts of legal disputes and prosecutions evoke the habits, lifestyles and problems of previous times, while the reasoning and verdicts of judges provide a fascinating historical pathway to the outlook and worldview of our senior legal officers. The paper will advocate the consideration of these aspects of judgments in a consolidated and thematic way, rather than as distractions to the lawyer's task of distilling legal principles.

The factual scenarios and judicial utterances present in case-law can be both evocative and entertaining in retrospect. Judicial observations of little relevance to the case at hand are sometimes bizarre and often revealing. Lord Denning, while pre-eminent in this field, is by no means the only contributor. References to literature, popular culture and the use of analogy and metaphor bring the essence of a time – or sometimes the essence of ossified judicial sentiment – to life.

The greater democratisation of society, the decline in deference and the emergence of values based on equality and political correctness are placed in sharp relief by historical dicta on women, gays and other disadvantaged groups.

The paper will thus argue that the law reports are an untapped source for the historian, a repository of valuable non-legal as well as legal material. Too often the focus of general history is on the extra-judicial, political comments of judges to the neglect of their judgments from the bench. Both the legal and non-legal communities must engage with the presence of seemingly irrelevant dicta in written judgments, taking into account the value such dicta may have for disciplines other than law.

Robin Lister

University of Bradford

Estates, Identity and the Novel: From Real Property to Personal Attributes in the Narratives of Tom Jones and Middlemarch

Estates, identity and the novel: from real property to personal attributes in the narratives of *Tom Jones* and *Middlemarch*

'Who was ever awe-struck about a testator, or sang a hymn on the title to real property?'

George Eliot, *Middlemarch*, p.336

Property and succession operate as a structural principle and central theme in the eighteenth- and nineteenth-century English novel. From Fielding to Dickens, Austen to Eliot, plots turn on settlements, wills and prudential and transgressively romantic marriages. Since property in general

and landed estates in particular were a person's main attribute, constituting individual (via) family identity and the major currency of relationships, social status and political power, it was inevitable that novelists should have represented the coercive, controlling effect of property and property law. This paper suggests that we can identify a shift in the relationship between persons and property from the height of the estates system in the eighteenth century world of *Tom Jones* to the changing political landscape of *Middlemarch*. The paper explores that shift from the physical mixing of person and property, title and identity, in the Lockean discourse that Schmidgen finds underpinning the narratives of Fielding, Defoe and Richardson, to the disruptive separation of the two in Eliot's fictional worlds, where a person's main attributes no longer depend on estate ownership and, indeed, her identity can be established by rejection of the dead hand of settlements and inheritance. Whereas in *Tom Jones* a person's identity and attributes are subsumed by estate ownership (she is the estate) and problems of original title are glossed in the mists of time immemorial and the organic ideal of the manor, in *Middlemarch* the relationship between a person and her property – her status as property – has become problematic, as have the origins of title and identity. The paper traces the changing discourses of property and identity and the relationship between these in the changing narratives of Fielding's and Eliot's novels.

Professor Penny Booth

Staffordshire University Law School

Moll Flanders and Married Bliss: A Study of the Literature and Context of Marriage Law in Daniel Defoe's Moll Flanders

Moll Flanders is a story about what it was to be a female and the consequences of being without power at the turn of the seventeenth and eighteenth centuries. The acclaimed novel by Daniel Defoe tells the story of Moll and her moral and immoral activities in the context of marriage, re-partnership and search for financial security. The story takes place in England and the American colonies over decades of sexual adventure, and involves varying degrees of fortune and misfortune. Critics are divided over whether the character of Moll is self-assured or simply self-seeking, but the novel is a neat expose of marriage law and partnership lore at a time when being sure in the knowledge of personal rights and financial security was far less exact than it is today – or is it?

This paper will explore the novel *Moll Flanders* as a means of examining marriage laws and lore as they applied at the turn of the seventeenth and eighteenth centuries. It is hoped to analyse and evaluate how the novel *Moll Flanders* is an example of journalistic truth of marriage laws and lore, and provides the context for the operation of the 'successful' woman and her many partnership adventures. The paper will permit some exploration of the application of law in that most personal of contexts, and the importance of financial security and the lack of it in the personal partnership situation of the time, exploring how this may shed light on personal partnership law today.

PARALLEL SESSION 2

Stefan Machura

Bangor University

Law and Cinema Movement

Popular cultural portrayals of the law, its institutions and its personnel have been the focus of an academic interest which developed since the 1980ies. The paper applies Lasswell's formula – who says what to whom in which channel with which effect? – to the law and cinema movement. First, TV products and movies are analysed, followed by exposition of the unfolding scholarly debate on law and cinema.

Arguably, people today in most parts of the world have substantial parts of their knowledge of law from pop cultural representations. Also, legal scholarship and teaching at university level can gain from this field which borders to films studies and socio-legal studies. Law films even transcend sometimes hegemonic interpretations of law and challenge established social practices. The article concludes with a tentative outlook on future developments and on the broader meaning of its findings.

Professor Kate Nace Day and Professor Russell G. Murphy

Suffolk University Law School

Just Trying to be Human in This Place: Storytelling and Film in Legal Education in the United States

Recently, the US legal academy renewed its interest in the social sciences, including careful examination of legal education. The empirical research of linguistic anthropologist Elizabeth Mertz examined how legal education translates information about the wider society into legal language. She found an epistemology that excludes narrative, context and justice while silencing women, men of color, and GLBT students.

Professors Day and Murphy use storytelling and film to alter classroom experiences that affect learned lessons of caring, justice and self-worth. Murphy will explain how he uses storytelling/film to humanize substantive discussions of death penalty law in first year Criminal Law courses. News video of the sentencing of a capital defendant in a case *People/NY v. Cahill*) in which Murphy represented the victim's family pro bono, and a showing of docudramas like "The Exonerated" (telling the stories of death row inmates found innocent and released), take the abstraction out of capital punishment doctrine. They also expose how human beings bring values, life experiences and prejudices into the classroom.

Day uses storytelling/film in advanced seminars to re-imagine the relationship between sex, power and law. She will present stills from Hollywood lawyer films, like the classic *To Kill A Mockingbird*, that construct the male lawyer as hero and others that depict women lawyers as "dangerously ambitious, professionally and personally deficient, and in need of heroic intervention of men." Day counters these images with narratives and videos developed by women students that merge their claim to male power with an alternative tradition based on their sex.

Dr. Penny English

Anglia Law School

Indiana Jones and the Looted Cultural Property

This year has seen the release of the fourth film in the successful Indiana Jones series: *Indiana Jones and the Kingdom of the Crystal Skull*.

Part academic, part fearless adventurer, the media image of Indiana Jones has entered the public consciousness as the embodiment of the romantic view of the archaeologist as a bold adventurer seeking lost treasures from the past.

However, this popular (mis)conception of the nature of archaeology is increasingly unsettling. The direction taken by much of the ethical and legal debate over the regulation of the market in antiquities and the role of universal museums. The looting of archaeological sites to feed a largely Western market in antiquities (and the consequent destruction of archaeological knowledge) has become an increasing problem, one which international law has begun to address. High profile cases have resulted in the return of items from major museum collections to the country from which they were removed. Museum codes of ethics have been adopted, generally to require proof of ownership before artefacts are accessed, reflecting an increasing distaste for the acquisition and exhibition of unprovenanced antiquities.

This paper looks at Indiana Jones from this perspective. In contrast to his popular image, he is not the intrepid hero but little more than a professional looter at home in the legal and moral climate of a past century but out of step with the reality of the present.

PARALLEL SESSION 3

Dr. Judith Rowbotham

Nottingham Trent University

Law, Literature and History: What Kind of Trinity?

This paper takes as a starting point a conviction that interdisciplinary debate is essential to the health of individual disciplines, and that law, literature and history are particularly fruitful participants

in such a debate. All, in their own ways, are disciplines which depend heavily on narratives addressed to carefully targeted audiences. For some commentators, the reality that these disciplines have not only different methodologies but also different agendas casts doubt upon the usefulness of a debate between these three areas. However, a socio-legal studies approach, which accepts that law is always contingent and culturally driven, provides a fruitful way forward. This paper explores the ways in which the narratives produced by law, literature and history reveal certain motivations in common between all three, and argues that in drawing on literature and history, law can enrich its own self-knowledge and awareness, while also aiding in a greater public comprehension of the legal process. But law is not the only area which requires a greater interdisciplinary consciousness. Where, once, authors such as Mrs Henry Wood and Charles Dickens could write with authority and authenticity about the law, and historians like J.R. Green and William Stubbs were lawyers *manqué*, today's historians and authors can be woefully ignorant of the realities of the legal process. Using the Victorian experience as a case study, this paper reflects on the need for writers and historians today to be more conscious of the law in a juristic sense and more informed of the law itself.

Dr. Lorie Charlesworth

Liverpool John Moores University

On the Contemporary Relevance of Historico-Socio-Legal Research: The Humanities in Juristic Scholarship

This paper agrees that interdisciplinarity has potential to enrich, challenge and/or illuminate many aspects of socio-legal studies. The writer has written elsewhere that she considers historical reconstructions to be embedded within the sub-discipline if not always recognised as such.¹ This paper develops that theme to consider that those whose focus remains resolutely fixed upon the present leave themselves vulnerable to challenge if they continue to ignore certain elements of the past that, it is argued, permeate their field of research. In that context, a number of such instances emerge from this writer's historico-socio-legal reconstructions of German war crimes, their investigation and prosecution.² One consequence was that the empirical archival research was necessarily extended into consideration of the nature of law and legality in the Third Reich. As a result, it became increasingly evident that aspects of current legal scholarship, especially those drawing upon the works of the Nazi jurist Carl Schmitt, would benefit from re-evaluation within an historical context. Similarly, discussions about the implications of legality, law, even art, post-Auschwitz, particularly by Agamben, have become decoupled from extensive scholarly research and analysis of the contingent social, political, cultural and juristic circumstances of the Third Reich. This paper will suggest that this developing orthodoxy of ahistorical scholarship tends to distort textual and other readings and hence destabilise and subvert the legitimacy of such approaches.

Dr. Stuart Weinstein and Dr. Charles Wild

University of Hertfordshire, School of Law

Theodor Adorno on Poetry After Auschwitz: Does Carl Schmitt Make the Study of Jurisprudence Barbaric?

Cultural criticism finds itself faced with the final stage of the dialectic of culture and barbarianism. To write poetry after Auschwitz is barbaric. And it corrodes even the knowledge why it has become impossible to write poetry today.

Stanley Fish suggests that a defined community of readers invests a text with its particular meaning because, by dint of professional training or other common characteristics, they share

¹ Lorie Charlesworth: 'On historical contextualisation: some critical socio-legal reflections,' *Crimes and Misdemeanours: Exploring Law and Deviance in Historical Perspective*, 1/1 (2007), pp. 1-40.

² Lorie Charlesworth: 'Forgotten Justice: forgetting law's history and victims' justice in British 'minor' war crimes trials in Germany 1945-8', *Amicus Curiae*, 74, Summer (2008), pp. 2-10: '2 SAS Regiment, War Crimes Investigations and British Intelligence: Intelligence Officials and the *Natzweiler Trial*', *Journal of Intelligence History* 6 (Winter 2006/7), pp. 1-48.

interpretive strategies for reading and interpreting the properties of that text. By correlation to Fish's concept of the interpretive community, David Fraser in *Law After Auschwitz* argues that the idea of a 'legal text' refers to all legal texts that together brought the Holocaust into being. At the heart of these 'legal texts' is the jurisprudence of Carl Schmitt whose brilliance gave intellectual succour to the Nazi ideology behind the Final Solution. The question that the authors posit is whether Adorno would say that to study jurisprudence – like writing poetry -- after Auschwitz is barbaric. The authors come to the conclusion that jurisprudence must survive in order to resist the perversion to which it has been subjected by Schmitt.

PARALLEL SESSION 4

Gary Watt

University of Warwick, School of Law

Law, Society and the Humanities: What Connexion Can There Be?

The overarching observation of Dickens' *Bleak House* is that sections of society are alienated from each other, blinded to each other by accidents of birth and breeding – thus the rural aristocrat appears alien to the street urchin, and vice-versa. The overarching aim of the novel is to search for connections capable of overcoming this alienation. Dickens demands that we join him in asking "What connexion can there be between the place in Lincolnshire...and...Jo the outlaw with the broom?" The alienation of law's society from the rest of society is as profound as any. We are told in the opening chapter that the Lord Chancellor is "directing his contemplation to the lantern in the roof, where he can see nothing but fog" while "the uninitiated from the streets...peep in through the glass panes in the door" to see nothing but fog. Thus the law looks out on society and can see only obscurity; while society looks in on law and sees the same. In this paper I will explore the techniques by which Dickens employs literature to overcome alienation and to cultivate humane appreciation of the connections between social strata, including connections between law's society and society at large. I will compare his techniques to those employed by E. M. Forster in *Howards End*, to consider how Forster's demand that we should "only connect" compares with that of Dickens. I will demonstrate, finally, how literary imagination has the potential to connect the scholarly strands of law, society and the humanities.

Dr. Meg Arnot

Roehampton University, School of Arts

Images of Motherhood: Achieving Justice in Nineteenth-century Infanticide Cases

Law and the administration of justice is just as much a product of the human imagination as the 'Venus de Milo' or 'Star Wars'. Although neo-Kantian understandings of law suggest that law occupies an exclusive, discrete, autonomous, rational space separate from the arts, 'Law and Literature' scholarship has explored in detail the ways in which its narratives are intermeshed with broader cultural tropes. However, much of this scholarship continues to focus on the privileged textual, linguistic domain. This paper contributes to a related, growing field in 'Law and Humanities' scholarship by exploring the relationship between images and the administration of justice in infanticide cases in nineteenth-century England. I define 'image' widely, examining how imagined monstrous mothers, respectable but seduced maidens, and infant corpses were manifested in both cultural production – such as changing representations of *Medea* on stage and in visual representations – and in the judicial domain. I hope thereby to show some ways in which visual and narrative conventions were related in the administration of justice in infanticide cases. Neo-natal and infant murder are highly charged emotionally and psychologically. By exploring historically some influences of imagination and visualization on justice in these cases, it is possible to better understand the co-existence of both the much vaunted 'lenience' shown to infanticidal mothers in the nineteenth century, and the 'monstrous mother' trope which found expression both culturally, and in occasional cases coming before the courts.

Roger Welch

Portsmouth Law School, University of Portsmouth

Judicial Language and Restricting the Right to Strike: An Historical Perspective

There is a long-established tradition of cross-fertilisation between labour historians, writers on industrial relations and labour lawyers in using historical methodologies to formulate a critical understanding of the development of the law regulating trade union behaviour. The types of insights that can be gained through synthesis of these disciplines is exemplified by works such as 'The Right to Strike: From the Trade Union Disputes Act 1906 to a Trade Union Freedom Bill 2006', edited by Keith Ewing and published by the Institute of Employment Rights.

My own contribution to using history to produce a critical analysis of current law is to focus on the language used by judges, in the past and in more recent times, in judgments concerned with constraining the organisation of industrial action. My central contention is that the language used in the development of common law liabilities and/or restrictively interpreting pro-union legislation has created a legal mystification of industrial relations. This mystification percolates into the public domain via statements from politicians and the media which are derived from judicial language. This process proved to be particularly important at the end of the nineteenth century and during the 1960s and 1970s.

The primary purpose of this paper is to demonstrate the ideological role played by this legal or judicial mystification in helping to create an environment in the 1980s and 1990s in which governments could enact legislation that prevents trade unions from effectively protecting the interests of those whom GDH Cole termed the 'common people'.

PARALLEL SESSION 5**Megan Wachspress**

Ph.D. Candidate, University of California, Berkeley

Historical and Anthropological Perspectives on Colonial Sovereignty

What is sovereignty? How can historical and anthropological accounts help answer this question for political theory? Schmitt's definition of the sovereign as the person(s) capable of suspending law and creating a "state of exception" has dominated recent political theory scholarship on sovereignty. But understanding sovereignty as opposed to a legal order tends to presume that the state is the fundamental unit of political power and the organizing principle of legal order. This presumption obscures historical debates about the "rise of the state" and the difficulty, discussed in the legal pluralist literature, of developing criteria of recognition for dominant legal orders. These problems are magnified in the colonial and post-colonial contexts. This paper investigates how historical and anthropological accounts of the production of sovereign and state legal orders from colonial interactions can inform political and legal theories of sovereignty. It suggests two provisional hypotheses about how state sovereignty developed into a global organizing principle of political power. First, *contra* Foucault's opposition of legal and normalizing regimes in understanding modern power, legal sovereignty rested on the production of "citizens" as particular sorts of persons; that is, the processes of normalization were the primary criteria of recognition of legal sovereignty by colonizers. Second, state sovereignty was not a European export, but rather, developed as a response to and in parallel with discourses and experiences of colonization.

Professor Eric Heinze

Queen Mary, University of London

Empire, Nation, Liberation, Oppression: Cosmopolitanism and Nationalism in Shakespeare and Beyond

The discourses of conquering empire and vassal nation are varied, and often internally contradictory. The empire may represent openness and diversity, or militarist brutality. The underling nation may represent autonomy and self-determination, or narrow provincialism. Those discourses spawn whole ideologies of liberation ('the empire liberates the nation'; 'the nation must be liberated from the empire') and corresponding ideologies of oppression ('the empire oppresses

the nation from without'; 'the empire prevents oppression by dominant national groups of subordinate national groups').

Such concepts are central to Shakespeare's *Cymbeline*. Rome had defeated Britain under Julius Caesar, extending *pax romana* far and wide. Under Augustus, Britain's King Cymbeline now contemplates a national rebellion. (Parallels to the reign of James I are apparent, where Britain is embarking upon its ascent to empire, its *pax britannica*, in the face of Welsh, Scottish or Irish resistance.) Several viewpoints emerge: cosmopolitan empire, oppressive empire, cosmopolitan nation, oppressive nation. If Shakespeare ultimately embraces the first of those, *Cymbeline* nevertheless serves more to explore these various discourses than to disseminate any simple propaganda for or against them.

Dr. Eugene McNamee

University of Ulster, School of Law

The Parker Project and the Agreement to Disagree

Of the dramatists at work in Northern Ireland during the Troubles Stewart Parker stands alone as having produced a body of work that at once addressed and renounced the conflict as a human tragedy, but also countered the prevailing political and social orthodoxies through a historically informed and lyrically acute utopianism very much at odds with the prevailing tenor of realism and/or pessimism. This paper measures the ideas within Parker's writings against the informing ideas and eventual provisions of the 1998 Good Friday Agreement, situating this within a broader argument regarding the influence of the literary imagination on constitution building in Ireland, and more general arguments on the theme of the practical constitutive force of imagining (national) communities. It focuses in particular on the Lyric Theatre's 'Parker Project'; the staging together in April 2008 of Parker's first and last published plays, each of which addressed the politics of Northern Ireland, as an event to mark ten years since the 1998 Agreement and to celebrate the life and work of Parker before his tragically early death in 1987.

PARALLEL SESSION 6

Dr. Wouter de Been

Postdoctoral Researcher, VU University, Amsterdam

Legal Language as a Social Work of Art

One common critique of American Legal Realism is that it was a school of legal theory which engaged in a crass form of scientific positivism when it questioned legal terminology. The aim of Legal Realism, according to this view, was to reduce the meaning of legal concepts to observable facts and behaviour patterns. It was a view closely related to the Realist program of developing empirically grounded, predictive rules of judicial behaviour. A second dominant view takes issue with this perspective. It holds that Legal Realism should be seen as an early formulation of post-modern theories of language. According to this perspective Realism expressed a profound scepticism about the meaning of legal concepts and cast doubt on the notion that words could have a stable meaning. What is interesting about Legal Realism, in other words, is not its misdirected scientism, but its profound cognitive relativism.

The paper will question both these perspectives. It will argue that the Realists did not engage in a positivistic program of reductionism, nor in a form of radical scepticism that cast doubt on the very possibility of shared and stable meaning. The Realists proposed a pragmatic theory of meaning. Like Dewey they saw language as "a work of social art." This Realist view of language has largely been obscured by the dominant trends in post-War legal scholarship. The paper will retrieve the Realist/Pragmatist theory of language and suggest it still holds promise for socio-legal study.

Alecia Simmonds

Ph.D. Candidate, University of Sydney & Visiting Scholar, Birkbeck College, University of London
Rousseau's Empire of Love and Law

This paper will explore the relationship between love and law and intimacy and imperialism through the political philosophy of Jean-Jacques Rousseau. Through an analysis of Rousseau's romantic, political and operative writings I will explore how liberal and Enlightenment philosophy in the mid to late 18th Century sought to anchor state and imperial authority in domestic and romantic relations. This was a period when the moral community was perceived as being torn asunder by individualism, imperial might, commercialism, increased wealth and urbanisation. Love, located within the bounds of the conjugal family and domestic sphere assumed heightened significance in resisting the morally corrupting effects of modernisation. This paper suggests that love was enlisted to transform militaristic and commercial imperial exploits into virtuous enterprises. Political commentators across Europe and England mapped discourses of love and domestic relations on to state and empire in an attempt to reconcile sentiment, virtue, inclusion and morality with sovereignty, liberty, exclusion and imperial expansion.

In so arguing this paper explores law not only as a social institution but as an affective institution which regulates emotions and regulates through emotion. It rejects the argument (posited by Weber, Foucault, Elias, Goodrich and others) that modernity was accompanied by the triumph of rationalism and the emergence of law as the self-proclaimed perfection of reason.

Through an interdisciplinary historico-legal analysis I argue that feeling and love were never banished from the public sphere in favour of reason. Rather, love assumed a paradoxical role in securing the virtue, freedom, egalitarianism and universal reach of liberal governance whilst simultaneously threatening the social order's demise.

Alexandrine Guyard-Nedelec

Ph.D. Candidate University Paris Diderot, & Visiting Scholar, Queen Mary, University of London
Outsider or Insider in the Field of Socio-Legal Studies?

Coming from the Humanities in France (English Studies, with a focus on "civilisation", i.e. socio-cultural history of the UK), the author has moved towards Socio-Legal Studies as an outsider, without in-depth legal knowledge, but analysing the legal profession in England and Wales as a social institution that is very telling in terms of cultural and historical heritage. Her paper intends to focus on the advantages and disadvantages that are produced by her particular background. The paper will also consider the methodological issues that are raised by her interdisciplinary research subject, which looks at women and intersectionality in the legal profession, in order to highlight the different requirements of the various disciplines her topic is linked to.

The author will try and assess whether coming from the Humanities and from a different academic culture to study the English legal profession automatically results in categorising the researcher as an outsider, or whether researchers who have a Humanities background may feel that they belong to the community of socio-legal scholars.

The aim of the paper, drawing mostly on the author's own empirical research and personal experience, is to insist on the assets of interdisciplinarity and non-segmented approach to academic research, but also to evoke the possible difficulties generated by the diverse methodologies involved.