

Welcome to postgraduate delegates

10:00 - 10:10 Tuesday, 4th April, 2023

Location MD108

Stream Postgraduate programme

942 Welcome to postgraduate delegates

Maddy Millar¹, Lara MacLachlan²

¹University of Exeter, Exeter, United Kingdom. ²University of Liverpool, Liverpool, United Kingdom

Stream or current topic

Postgraduate programme

Abstract

Welcome to the postgraduate programme at SLSA 2023, with the Association's PGR reps Maddy Millar and Lara MacLachlan.

Presentation

In person

Collaborating internationally

10:10 - 10:55 Tuesday, 4th April, 2023

Location MD108

Stream Postgraduate programme

943 Collaborating Internationally (for PGRs)

Ian Smith¹, Elke Olthuis², Shahab Saqib³, Arpeeta Mizan⁴, Raghavi Viswanath⁵

¹La Trobe University, Melbourne, Australia. ²University of Amsterdam, Amsterdam, Netherlands. ³King's College London, London, United Kingdom. ⁴University of Bristol, Bristol, United Kingdom. ⁵European University Institute, Florence, Italy

Stream or current topic

Postgraduate programme

Abstract

Ian Smith - Law and Society Association of Australia and New Zealand (LSAANZ)

Ian is a PhD candidate in the Law School at La Trobe University Australia. The LSAANZ works to promote and foster scholarship broadly focusing on the interactions and intersections between law and society.

Elke Olthuis – Dutch and Flemish Law and Society Association (VSR)

Elke is in the final stages of her PhD and is an Assistant Professor at the University of Amsterdam. The VSR is an association for researchers and practicing lawyers who conduct research in the field of the empirical workings of law or are interested in it.

Shahab Saqib – Kings College London PGR Representative

Shahab Saqib is a PhD scholar of Law at King's College London, visiting lecturer at SOAS UOL and member of the Lahore High Court Bar Association. Shahab is connected with different academic institutions in Pakistan, working in different sociological genres.

Arpeeta Mizan – University of Bristol/ University of Dhaka

I have an LLM from Harvard Law School and am working on my PhD thesis at the University of Bristol Law School. I am also the Bangladesh Senior Legal Officer for iProbono, a UK based organization working to promote social justice in South Asia.

Raghavi Viswanath - European University Institute in Florence

Raghavi is a doctoral researcher at the European University Institute in Florence, a consultant for cultural rights collectives/ministries in India, Italy, and Kenya, Research Fellow at the Global Citizenship Observatory and Senior Research Associate at Public International Law and Policy Group.

Presentation

In person

Empire colonialism and law

11:00 - 12:30 Tuesday, 4th April, 2023

Location MU302

Stream Empire, colonialism and law

The PhD toolkit

11:10 - 11:55 Tuesday, 4th April, 2023

Location MD108

Stream Postgraduate programme

944 The PhD toolkit (for PGRs)

Maddy Millar¹, Phil Thomas²

¹University of Exeter, Exeter, United Kingdom. ²Cardiff University, Cardiff, United Kingdom

Stream or current topic

Postgraduate programme

Abstract

Maddy Millar – University of Exeter

Maddy Millar is a PhD student in the Evidence-Based Justice Lab at the University of Exeter. Her interests lie in understanding biases in cognition, and, more specifically, in uncovering the cognitive processes involved in sub-optimal decision making. Maddy's PhD research focusses on the effects of System Justification on jury decision making; she is interested in how juries perceive threats to their social system, and how their responses to such threat may result in a failure to engage in critical evidence evaluation as required by the adversarial model.

Phil Thomas - Journal of Law and Society

Professor Phil Thomas was educated at the universities of Cardiff, Aberystwyth and Michigan. He has held academic positions at the universities of Yale, Dar es Salaam, and Lusaka. In addition, he has been a visiting professor in law schools including, Oslo, Utrecht, Prague, Kuala Lumpur, Hong Kong and Macquarie. External examinerships held include the universities of Birmingham, Makerere, Nairobi, Leeds Metropolitan, Oxford Brooks, Warwick, Ulster and Leicester. He retired after spending 36 years at Cardiff Law School. Currently, he is a Visiting Professor at HELP University College, Kuala Lumpur, Symbiosis University, Pune, and the London College of Legal Studies, Dhaka. His research was focused in the area of socio legal studies and he is a founding member, and former executive committee member of the Socio Legal Studies Association. In addition, he is the founding and remains the editor of the Journal of Law and Society, a leading international socio-legal journal

Presentation

In person

Navigating social media

12:10 - 12:55 Tuesday, 4th April, 2023

Location MD108

Stream Postgraduate programme

945 Navigating social media (for PGRs)

Ciara Fitzpatrick, Micheál Hearty

Ulster University, Belfast, United Kingdom

Stream or current topic

Postgraduate programme

Abstract

Ciara Fitzpatrick – Ulster University

Ciara Fitzpatrick is an Early Career Researcher and lecturer at Ulster University School of Law and the Transitional Justice Institute. Her primary area of interest is social security law and social justice. Her current research focuses on using Universal Credit claimants' lived experience to influence policy change. Ciara is a committed social justice advocate and campaigner. She is currently an academic adviser to the Cliff Edge Coalition, which is pushing for a strengthened social security system in Northern Ireland. She is also currently working with the Independent Scientific Advocacy Group to push for better financial support for those who are on a low-income and who are required to self-isolate due to Covid-19 restrictions. She is also a volunteer in her local community, providing hardship support to those in immediate need. She is a frequent commentator on issues of poverty and social security on the local media.

Micheál Hearty – Ulster University

Micheál Hearty is a PhD researcher at the Transitional Justice Institute. Joining the TJI in September 2020, Micheál's thesis examines the memorialisation and commemoration of actors who were neither security forces personnel nor paramilitaries in NI. Prior to beginning his PhD, Micheál pursued undergraduate studies in history and sociology at QUB and later gained an MA in Conflict Transformation and Social Justice from The Senator George J. Mitchell Institute for Global Peace, Security and Justice. His research interests include the memory-making process, the politics of memory, framing within collective memory, and the materiality of memory.

Presentation

In person

Family Law and Policy 1

13:00 - 14:30 Tuesday, 4th April, 2023

Location MD007

Stream Family law and policy

906 "Same children, different proceedings"; An intersectional approach to transforming the public and private divide in family law.

Jane Krishnadas

Keele University, Newcastle-under-Lyme, United Kingdom

Stream or current topic

Family law and policy

Abstract

The quote 'Same children, different proceedings' is taken from the President of the Family Court's reflections upon my question regarding case studies which intersect private and public family law, shared at the launch of the JUSTICE Report on 'Improving Access to Justice for Separating Families' (2022), which focused upon private family law reform.

In this paper, I consider the conceptual challenges and empirical evidence informing how the framing of the Public and Private Family Law Reforms lead to national and local bodies often working in silo; addressing the same children, same risks but different risk assessments, representation and outcomes for children in private and public law proceedings (Bainham, 1990; Norgrove, 2010; McCormick, 2016; Cusworth, 2021, and Krishnadas, 2022).

Drawing upon the CLOCK evidence submitted to the JUSTICE Report, and Maclean's written evidence to the Justice Committee on the Future of Legal Aid (2021) and proposal for 'A Legal Support Bill for Children in Cross over cases' (2021), I consider how the recommendations highlight the potential for transformative reform beyond the public and private divide.

This paper highlights the progressive proposals of the JUSTICE report, for the multi-agency, holistic approach to triage, uniform risk assessment and case management from a child centred approach. To be reframed as a public issue, a public duty of the State for which public resources are necessary to meet the State's domestic and international obligations for the same children, same risks, same Act and same rights of the child, across all Children Act proceedings.

Presentation

Virtual via Microsoft Teams

437 Vulnerable Adults and the Inherent Jurisdiction: Exploring Safeguarding Practice

Philip Bremner¹, Daniel Bedford²

¹Royal Holloway, University of London, Egham, United Kingdom. ²University of Portsmouth, Portsmouth, United Kingdom

Stream or current topic

Family law and policy

Abstract

Local authorities can seek to invoke the inherent jurisdiction of the High Court to safeguard a category of 'vulnerable adults' who do not lack capacity for the purposes of the Mental Capacity Act 2005. However, findings from Safeguarding Adult Reviews suggest that local authorities have not always effectively used the inherent jurisdiction to protect vulnerable adults. In this paper we outline our ideas for a small-scale, exploratory study to explore how the inherent jurisdiction is understood in adult safeguarding practice and the extent to which decision-making on whether to seek authorisation from the High Court for protective measures is supported by case law, policies, procedures, and guidance. Our intention is to develop this project in order to identify potential improvements in the legal literacy of safeguarding practitioners, and in the decision-making frameworks within which they operate, to promote better protection of vulnerable adults who fall within the scope of the inherent jurisdiction.

Presentation

In person

342 The potential benefits to the development of Integrated Domestic Abuse Courts in England and Wales

David Gibson

Northumbria University, Newcastle upon Tyne, United Kingdom

Stream or current topic

Family law and policy

Abstract

This paper will examine the potential benefits to the development of specialist/integrated domestic abuse courts (IDACs) in England and Wales, similar to past pilots in Croydon and Gwent. I will also draw reference to comparable specialist courts in Scotland and the USA, specifically Florida and New York. It will examine whether IDACs could reduce the difficulties victims of domestic abuse face when deciding if they wish to support the police and CPS in a trial against their partner (and child's mother or father) or if the family courts would offer a better long-term solution, decisions they often make with little or no legal advice.

This paper shall consider the 3 different model systems which are considered when developing IDACs across the USA and how these could be adapted to fit the complex system that currently straddles the criminal, family and civil courts in England and Wales. The paper shall also consider how IDACs could build on the positive impact the current Family Drug and Alcohol Courts (FDACs) have had for families.

In order to support the above research, the author is currently undertaking a PhD at Northumbria University Newcastle entitled 'Analysing existing approaches to the victim evidence process in domestic abuse cases in the criminal and family justice systems, and consideration for implementing Integrated Domestic Abuse Courts (IDACs)'. The author currently has an open application with the Judiciary requesting the participation of both criminal and family court judges in their research.

Presentation

In person

560 How do the courts in Northern Ireland respond to victim/survivors of domestic abuse during the court process: the gap between expectation and reality from the victim/survivor's perspective.

Josie Scott, Brian Payne, Linda Moore, Connor Murray, Julie Harris

Ulster University, Belfast, United Kingdom

Stream or current topic

Family law and policy

Abstract

As a crime, domestic abuse rates are rising resulting in an increased number of women involved in the court process seeking justice and protection. While awareness of domestic abuse and its harm has progressed, access to safety and justice during the court process remains inconsistent. Through a procedural justice lens, this ongoing study aims to give a voice to women in Northern Ireland who have been subjected a domestic abuse crime and experienced the court process. Completed in two stages, the first stage of this study used semi-structured interviews with professionals who work with women engaging with the court process following domestic abuse, the data highlighted a few challenging areas. Thematic analysis of the data using Braun and Clarke's (2006) framework, identified difficulties in balancing victim/survivor needs with limitations associated with the court environment, court processes and decision-making capacity. Barriers to victim satisfaction included negative perceptions of victim/survivors based on domestic abuse myths and minimisation of domestic abuse as a crime. Difficulties with ensuring victim/survivor safety during and after the court process were highlighted, with regional variations in the court granting Non-Molestation Orders as well as challenges to managing breaches of these Orders. Participants' recommendations for improving the victim/survivor experience of the court process include enhanced training on domestic abuse, safer spaces within court buildings, continuity in decision making on Orders designed to protect and the availability of domestic abuse coordinators working directly in courts.

Presentation

In person

Indigenous rights 1

13:00 - 14:30 Tuesday, 4th April, 2023

Location MD012

Stream Indigenous rights

194 Custom and capitalism – challenges and prospects of traditional governance of valuable resources

janine ubink

leiden law school, leiden, Netherlands

Stream or current topic

Indigenous rights

Abstract

This paper considers the continuing relevance and even resurgence of traditional authority structures and customary justice systems in capitalist, democratic societies in a strongly globalized world. It poses questions such as how customary justice systems that used to regulate communal resources in pre-capitalist societies operate in capitalist societies where access to land and natural resources offer huge money-making opportunities; how systems in which leaders used to be constrained in their conduct by people's mobility function in an era in which mobility is constrained; and whether such a system can operate new checks and balances on its leaders? This paper aims to analyze these questions through a study of the functioning of traditional authority structures and customary justice systems in contemporary capitalist, liberal democracies in Africa, with special reference to the case of South Africa.

Presentation

In person

566 Indigeneity, Adivasi, and Law: Understanding the Significance of Adivasi Stories and Oral Narratives as Sources of Law

Arvind Kumar

University of Victoria, Victoria, Canada

Stream or current topic

Indigenous rights

Abstract

Adivasis, the de-facto Indigenous peoples of India, has their stories that have been told and retold for thousands of years. Historically, Adivasi stories have been studied to understand the past, culture, and customs of Adivasis, however, it has been found that we have missed the idea of looking at Adivasi stories as sources of law and legal principles which the Adivasi communities have used to manage human and non-human relationships. In this context, this paper aims to understand and highlight the need for studying Adivasi stories as sources of law to revive Adivasis traditional laws and legal traditions. I will draw upon John Borrows, Val Napoleon, and Hadley Friedland's approach to Indigenous stories as sources of laws and legal principles to manage human and non-human relationships.

This paper is a part of my doctoral research which argues for the revival and constitutional recognition of Adivasis traditional governance systems in order to extend self-governance and autonomy to Adivasis. My research is informed by the voices which have been marginalized within studies of religion, societies, histories, and law in India. My efforts to learn 'from below' are influenced by my readings in Feminist Standpoint Theory, Dalit and Anti-caste Studies, Adivasi Studies, Postcolonial and Subaltern Studies, Postcolonial Legal Theory, Critical Indigenous Scholarship, and Legal Pluralism.

Presentation

In person

Art, Culture and Heritage: Identity

13:00 - 14:30 Tuesday, 4th April, 2023

Location MD021

Stream Art, culture and heritage

Miroslaw Sadowski

51 European Union Actorness via the European Heritage Label – Square Pegs in Round Holes?

Noelle Higgins

Maynooth University, Maynooth, Ireland

Stream or current topic

Art, culture and heritage

Abstract

This paper will address the issue of European Union (EU) actorness in the sphere of heritage via the European Heritage Label (EHL). The EHL initiative, launched in 2011, seeks to harness the potential of heritage sites to enhance Europeans' sense of belonging to the EU, and to strengthen their appreciation of national and regional diversity, mutual understanding and intercultural dialogue. The EHL is awarded to sites that illustrate European values or are of significance in the context of European history and of a European identity. The paper will set out the rationales behind the creation of the EHL initiative, explain its process and address the significance of EHL status for heritage sites. It will discuss how the EU has sought to develop and increase a role for itself in the sphere of heritage over the years and how it has employed the EHL to become an 'actor' in this area. It will question if the creation of a 'European' identity via the EHL is valid and / or appropriate and discuss the potential negative impact of EU actorness via the EHL on heritage in Europe.

Presentation

In person

159 National Identity, State Boundaries and Intangible Cultural Heritage: Charreira as a Case Study

Sarah Sargent

University of Buckingham, Buckingham, United Kingdom

Stream or current topic

Art, culture and heritage

Abstract

“Charreira, equestrian tradition of Mexico” is an intangible cultural heritage element approved for inscription on the UNESCO list of Representative cultural heritage in 2016. This paper provides a case study that highlights two critical issues in the listing of intangible cultural heritage. This paper considers the effects of listing heritage elements that cross national boundaries, but where a multinational nomination is not possible because one state does not have the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage in force. It also analyses the role of national identity in shaping cultural heritage information that is nominated to be inscribed. Charreira is part of Mexico’s expression of its national identity. It also is a cross-border element of cultural heritage, with communities in the United States also deeply involved with it both as part of community identity and in its actual exercise. While UNESCO has encouraged multinational nominations of intangible cultural heritage, this is not possible for Charreira since the United States does not have the 2003 Convention in force. This paper considers the effect that has on Charreira, both in the information included in its inscription and in its practice in different communities on both sides of the border. The concomitant effects on this being shaped by and helping to shape Mexican national identity are also considered. The paper draws conclusions on the larger implications of both issues for intangible cultural heritage.

Presentation

In person

107 A New Cultural Right Within Copyright

Anna Monnereau

Bangor University, Bangor, United Kingdom

Stream or current topic

Art, culture and heritage

Abstract

This research discusses the place of the Arts within Law before opening on a more philosophical take on the place of the Law in the Arts. The first part tackles the exclusion of cultural heritage within Copyright Legislation as well as its ‘re-insertion’ through cultural appropriation, normalising cooperation between countries to equally benefit minorities and other populations. Cultural creation thrives among the most educated but lacks resources in all countries. For a globalised and multicultural enriched society, cross-border, transnational and interregional cooperation requires educational qualities of communication, mutual understanding and respect for fundamental values. Legal provisions create a line that regulates exchanges. Music is the object of study as it is a neglected sector, representing 10% of cultural turnover behind books (50%), games (22%) and video (18%) in 2010. Aid to the music industry in 2010 represented less than 80 million euros, compared with music consumption estimated at 1,448 million. However, the

film industry received 297 million euros in direct aid, for a final consumption of 2,234 million. Jason Toynbee's book on migrant music affirms the centrality of music as a mode of translation and cosmopolitan mediation. Its role in socio-cultural change rivals, if not exceeds, literature, film and other language and image-based forms. This research aims at harmonising copyright under a system which could include Arts, culture and heritage from a variety of countries and artists. This involves a new access to culture through law which impacts social and political understanding of artistic and literary works.

Presentation

In person

IT Law: Thinking outside the box - designing new ways to regulate the digital world

13:00 - 14:30 Tuesday, 4th April, 2023

Location MD026

Stream IT law and cyberspace

105 "Let's create a city for all, a citizen-centric smart city." - Mission Impossible?

Sejal Chandak

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

IT law and cyberspace

Abstract

In the long line of urban developmental strategies, a current globally popular strategy is the smart city. While there is no one agreed-upon definition of a smart city, the general theme is of bringing the best innovative and disruptive technologies to make cities efficient, resilient, sustainable and inclusive. Smart cities see a push from different governmental actors and at all levels (international, national and local). In particular, each elevation pitch (or push) for a smart city now includes a call for ensuring that smart cities work for all, that they be citizen-centric. Historically, cities have never worked for all, rather they have been plagued by unequal access and inequality. Digital technologies are also strife with issues of bias, inequality, unequal access and disproportionate harm. How then will a smart city work for all? This paper will firstly, analyse how the inclusivity and citizen-centric narratives are crafted by different governmental actors. Further, how do such narratives actually travel from one level (for instance national) to the next (for instance local). Secondly, it will look at few generic on-ground smart city initiatives (such as, bike sharing; smart light; platform-for-complaints) to unpack how these narratives are actually converted into action. Finally, it will look to discuss what voices get privileged in such narratives and initiatives, and if there are voices that get washed over due to this very narrative. The objective of this analysis is to understand if citizen-centric narratives are empty rhetoric or if smart cities can indeed work for all.

Presentation

In person

782 Dark Patterns and Cute Design in Children's Learning Apps

Emma Nottingham, Caroline Stockman

University of Winchester, Winchester, United Kingdom

Stream or current topic

IT law and cyberspace

Abstract

Children's interactions with the online world have a formative effect on their understanding of society and their place within it. However, the online world has not been constructed with children's interests in mind. Online platforms have largely been designed to maximize profit-making, often through unethical data extraction practices. Cute design has become a firm staple of digital software development. It relates to design features in the form of visuals (avatars, colours, menu items etc.), sounds, or other technical features on the user interface, which the human user would interpret as endearing in some form. Specific features have been identified as enhancing the perception of 'cuteness', such as avatars with large eyes, childlike voices, and a head tilt. The associations of 'cuteness' with vulnerability and powerlessness stimulates the human user's trust response. 'Cuteness' can be operationalised to inspire uncritical acceptance of a technology, given its significant potential to spark feelings of emotional intimacy. Cute design features have been implemented in a variety of applications, for both adults and children, but in consumer design for children in particular, 'cuteness' is often a favoured strategy to influence their intended product purchases and use. This paper critically discusses 'cuteness' in digital learning apps as a potential dark pattern. It examines the concept of 'dark design' in children's education, through an exploration of 20 popular learning apps, as recommended by The Guardian as a resource list for parents, to keep children meaningfully engaged during the first UK lockdown of March 2020.

Presentation

In person

244 The Law work of Blockchain: Lawyers, Coders, and Entrepreneurs.

Lachlan Robb

Queensland University of Technology, Brisbane, Australia

Stream or current topic

Lawyers and legal professions

Abstract

Technology can restrict, enable, and promote desirable futures. This 'future building' is typically a role reserved for regulators and traditional legal structures, but new technologies such as blockchain have the potential to shift this

accepted order. It is easy to believe that lawyers and tech entrepreneurs are incompatible, the cultural approaches for each appear incommensurable as lawyers consider the complexity of the present while tech entrepreneurs see lawyers as the obstacles to innovation. However, this paper argues that this supposed incoherence is misplaced. Tech entrepreneurs can be understood as undertaking 'law work' insofar as they are engaged in the creation of normative orders, and this new power can create unintentional consequences. This paper builds off observations drawn from an ethnography conducted at an Australian blockchain start-up in 2019-2020 as well as early ethnographic and interviews of Australian Blockchain Lawyers to highlight how the lawyers, coders and entrepreneurs participate in the act of 'law work' despite differing definitions of law, rules, and risks. This involves an exploration of blockchain's normative functions including the way that blockchain raises questions of code-as-law, its interactions with time, the power placed in the hands of coders, and the impact this has upon the legal profession. Through technology that restricts and binds, this becomes a form of Technological Management that has unclear consequences upon the social shaping of digital futures and the balance that this must strike between the values, strategies and visions of the developers and the traditional keepers of regulatory power.

Presentation

In person

Sexual offences 1

13:00 - 14:30 Tuesday, 4th April, 2023

Location MD102 Great Hall

Stream Sexual offences and offending
Eithne Dowds

631 Image sharing, consent and young people: Regulatory challenges

Elizabeth Agnew

QUB, School of Law, Belfast, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

In recent years, important questions have been raised regarding the suitability of criminal law in cases involving young people (YP) and the sending of images and/or messages of a sexual nature ('sexting'). Within this context, the role of consent features as an important and fundamental concept. This presentation will explore some of the regulatory tensions at play and consider a need for a reformed definition which values the importance of consent. In tandem, an important question will be raised: how do we understand image sharing as a behaviour YP are engaging in? A continuum of sexual behaviour will also be presented, one which recognises more fully the highly complex forms of sexual behaviour YP are displaying. The continuum will demonstrate the need to differentiate between the wide remit of peer-based sexual behaviour. In doing so, a number of key factors will be noted as important, including consent, coercion, motivation and intention. These key themes which inform the continuum will help to reformulate current understanding of image sharing among YP and the categorisation of 'sexting' as either 'explorative' or 'exploitative.'

Presentation

In person

3 Reforming the international legal framework to address the criminal liability of online intermediaries for children trafficking

Michala Meiselles

Derby University, Derby, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

Notwithstanding the almost universal endorsement of the Palermo Protocol 2000 (Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime), no international legal framework has been introduced to tackle the responsibilities of websites hosting content advertising the services of minors trafficked for sexual exploitation. As such this paper poses two questions. Firstly, is it time for the international community to introduce an international legal framework addressing the criminal liability of such websites for children trafficking? Can the current US model act as a template?

To address question one, this paper argues that due to the international nature of such media, this is a matter best resolved at a universal level. To assess the role of such websites in furthering children trafficking, this paper delves into the recent case involving Backpage and the impact this case has on the evolution of US anti-sex trafficking law. To address the second question, this paper explores the current legal approach in the US to the criminal liability of such websites, before exploring its potential as a broader model for international law. In this context, this paper considers the evolution of US law and its current approach to such websites. Here reference is made to §230 of title 47 of the U.S.C. (§230) and FOSTA (Allow States and Victims to Fight Online Sex Trafficking Act).

Keywords: Children Trafficking; Online intermediaries; Internet technologies; International and US law governing criminal liability on online intermediaries.

Presentation

In person

373 Current Legal Problems and Strategies in Sexual Offences under International Criminal Law

Kirsten Campbell

Goldsmiths College, London, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

In 1996, Mahmoud Cherif Bassiouni (1996: 560) observed that 'there are significant gaps in protection from sexual violence, in the normative scheme for its prohibition and in the punishment of offenders' in international criminal law. Over twenty years later, these significant 'justice' gaps remain. These range from lacuna in the normative legal regime, as seen in the recent International Criminal Court call for amicus curiae briefs on legal elements of sexual violence crimes, to the difficulty of punishing these crimes, evident in recent Ukrainian efforts to prosecute sexual violence as an international crime. The area of sexual violence offences in international criminal law is marked by unsettled substantive and evidential law, contentious legal debates, significant prosecution challenges, and divergent strategies addressing these problems.

This paper explores current legal problems in sexual violence offences under international criminal law, and the strategies that seek to address them. The paper first outlines key legal issues in this category of offences, which range from defining elements of offences to identifying appropriate evidential assessment. The paper argues that these issues reflect the problematic legal concept of sexual violence as a gender-based international crime. The paper then examines current strategies for addressing these legal problems, and their limitations. The paper argues that it is necessary to develop an alternative feminist concept of sexual violence offences under international criminal law, and a new feminist legal and policy framework to enable their effective and equitable prosecution.

Presentation

In person

Criminal law 9

13:00 - 14:30 Tuesday, 4th April, 2023

Location MD106 Minor Hall

Stream Criminal law and criminal justice

Maddy Millar

438 Shifting the jury: The effect of threat on ideological representativeness in jury decision-making

Madeleine Millar, Rebecca K. Helm

University of Exeter, Exeter, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

Jury representativeness is important in ensuring fair procedures and outcomes for complainants and defendants, with the balance of jurors' attitudes supporting the impartial administration of justice. However, research has demonstrated that threat can influence attitudes in group settings, and has the potential to be significant in jury decision-making. In two experiments, we examine how threat can shift jurors' attitudes and influence their judgments, testing predictions informed by System Justification Theory (SJT) and literature in political science. In Study 1, we examined the impact of terrorism on legal judgments. Counter to predictions informed by SJT, case facts involving terrorism led to ideological polarisation of mock-juror verdicts, when compared to matched case facts not involving terrorism. In a follow-up study, we distinguished normative and personal threat to better understand the results from Study 1. We found that higher perceptions of both threats in mock-jurors were associated with higher guilt ratings, but that the impact of threat on decision-making depended on the tendency of mock-jurors to engage in System Justification (the motivation to defend existing societal arrangements, particularly when society is threatened). When feeling normatively threatened, those high in SJ shifted towards more punitive decision-making, whereas those low in SJ did not. Drawing on our findings and literature more broadly, we consider the threat invoked in many legal cases, and the potential for this threat to compromise community decision-making. Strategies to address threat felt by jurors may have potential in ameliorating this effect, although strategies must consider balancing bias reduction with procedural fairness.

Presentation

In person

487 The Challenges Of The Adversarial Criminal Procedure – The Managerial Turn, Early Guilty Pleas And Video Conference Schemes of Justice

Benjamin Newman

Tel-Aviv University, Tel-Aviv, Israel

Stream or current topic

Criminal law and criminal justice

Abstract

The managerial turn of the criminal procedure within the last two decades had immensely altered the adversarial character of the criminal procedure, vesting courts with managerial powers, undertaking a proactive role in facilitating, endorsing, encouraging and mediating guilty pleas in the name of efficiency. The day-to-day criminal process has

long been in dispute, diverting from the ideal adversarial picture of the criminal process, with induced guilty pleas and plea bargains as the predominant mode for dissolving criminal cases; however, it is the recent managerial turn which has transformed the adversarial criminal process into a governmental bureaucratic penal machine. Further efficiency means have significantly changed the court setting, with videoconference hearings implemented in various jurisdictions within the last two decades, recently enhanced by the response to the Covid-19 pandemic.

While managerial guilty pleas have been legitimised based on the defendant's consent, in view of the criminal trial as a process of calling to account, the defendant's consensual admittance of guilt is inherently valuable. Further limitations exist, and as the process is valued by calling defendants to account, physical presence is required, putting in doubt the recent implementation of virtual guilty pleas as a means of efficiency, consensual or not. Though legitimised on the defendant's consent, managerial guilty pleas have alienated the already silenced defendants, with virtual hearings further disengaging defendants from the adversarial ideal of the criminal process.

Presentation

Virtual via Microsoft Teams

318 THE TWO FACES OF RETRIBUTIVISM: A RESTORATIVE ANALYSIS

HALIL CESUR

The University of Warwick, Coventry, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

All theories of punishment include the idea of restoration, and retributivism is no exception to this. It is often taken as a theory marked by legal punishment that finds its justification in the ideas of desert and pay-back and the restoration of law. This view of retributivism, however, provides only a narrow conception of restoration. For a deeper form of restoration, this work presents an ethical approach in which retributive punishment can also be generated by the structure of intersubjective relationships that have been broken by criminal violation. Flowing from the offender's distressful realisation of another having been injured, ethical retributivism entails a moral experience that improves the way the offender sees himself and relates to the world. Once undertaken, punishment in this approach becomes truly restorative, setting the scene for forgiveness and reconciliation. There are, thus, two faces of retributivism. In the first part of this work, I will juxtapose the two faces of retributivism via Hegel's later and early works. By revisiting contemporary retributive theories, the second part will be concerned with the analysis of whether the ethical face can be incorporated by the legal face within three perspectives: the victim, offender, state. From the victim's perspective, punishment repairs the moral injury done to the victim by vindicating his value and dignity. From the perspective of the offender, it repairs the moral self-harm suffered by the offender. Finally, from the perspective of the state, it restores the system of rights as a matter of justice. I conclude that legal retributivism in its more recent iterations has become restorative insofar as it has aligned itself with the ethical form. But the pull of legal retributivism is often so strong that the voice of ethical retributivism is silenced.

Presentation

In person

745 The Effectiveness of Article 20 Rome Statute: A Quantitative Approach

Nina Herzog

University of Leeds, Leeds, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

As one of the fundamental principles of criminal law, *ne bis in idem* embodies the maxim that no one should be tried twice for the same, underpinning the protection of individual human rights and the fair administration of justice. One of the underlying issues of Article 20 Rome Statute is that the possibility of defendants facing subsequent prosecution remains open, either at the ICC or in domestic jurisdictions.

This paper aims to empirically ascertain how widespread subsequent prosecutions are through the determination of rigorous metrics. Currently, there is no compact, numerical information on how many individuals involved in international criminal trials are affected by subsequent prosecutions. It is suggested that a quantitative understanding of the effectiveness of the current provisions is essential to answering whether Article 20 Rome Statute provides an effective *ne bis in idem* protection at the ICC. As part of this paper, a dataset on subsequent prosecutions has been created by identifying every *ne bis in idem* complaint involving ICC defendants for one of the core international crimes since the ICC began operations. In doing so, the dataset allows to situate the scope of this problem in the international context and ultimately provides partial information on the effectiveness of the international *ne bis in idem* protection offered by Article 20.

Presentation

In person

Criminal law 1

13:00 - 14:30 Tuesday, 4th April, 2023

Location MD108

Stream Criminal law and criminal justice

Hannah Quirk

752 Does the use of AI based forensic evidence in criminal proceedings affect the fundamental principles of the criminal trial?

Oriola Sallavaci

University of Essex, Colchester, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

This research focuses on the use of AI and computational algorithms to produce forensic evidence for purposes of criminal proceedings and their impact on fundamental principles of the criminal trial. In recent years, concerns regarding the increasing use of AI in various sectors of life, including criminal justice, have led to calls for legal reform and its regulation. While these concerns are often legitimate, there is a lot of confusion and misunderstanding surrounding inter alia the way scientific evidence is produced and subsequently used in criminal trials. This confusion could result in changes that undermine other important initiatives made by the scientific community over the recent years to ensure that the best evidence is presented in court in accordance with the standards of logic and proof. This research aims to throw light on the possible impact of AI based forensic evidence on fundamental principles of a fair trial such as the presumption of innocence, the right against self-incrimination, equality of parties in adversarial trials, the allocation of the burden of proof as well as on the role of the expert in criminal proceedings. An enhanced understanding of these issues will result in a better regulation of AI without diminishing the contribution that the scientific evidence can make in criminal proceedings and beyond.

Presentation

Virtual via Microsoft Teams

775 Rethinking 'regulation' in carceral contexts

Tom Kemp

Nottingham University, Nottingham, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

Across the world, states are expanding both their capacities to detain and imprison and the regulatory mechanisms that oversee institutions of incarceration (prisons, police custody, court custody, immigration and mental health detention amongst others). While regulatory mechanisms purport to stem the potential of harm in these institutions, a broad array of carceral harms are well-documented. Very little is known in the academic literature about prison regulation's practices and effects, the impact upon spaces of detention and on the penal discourse, the reasons for their failure to limit the range of harms produced by sites of detention, and the processes for making regulation more effective to achieve these ends. This paper draws on critical regulation studies, documentary analysis and interviews with UK-based regulators to critique prevailing conceptions of 'regulation'. The paper argues that the concept of 'regulation' mobilised has a narrowing, governmental effect on challenges to harmful penal practices. Furthermore it argues that broadening the understanding of who can regulate, expanding the vision of regulatory bodies beyond policy compliance, critically examining the relationship between the CJS and race, class and disability, and introducing conceptions of the carceral institutions as sites of situated, relational power-in-practice are necessary components of regulatory actions that can more effectively limit carceral harm.

Presentation

In person

173 European Stakeholder Perspectives on the Requirement of Human Trafficking Victim Cooperation

Muiread Murphy

Maynooth University, Kildare, Ireland

Stream or current topic

Criminal law and criminal justice

Abstract

A growing range of stakeholders relevant in addressing human trafficking are increasingly recognised as necessary actors. This presentation will focus on labour inspectorates, trade/labour unions, law enforcement officials, NGOs and government officials with experience of implementing responses to human trafficking, with a specific focus on the purpose of labour exploitation. This research will present key findings based on 61 semi-structured interviews with these stakeholders. The main issues in focus will be the legal framework as it relates to victim cooperation requirements and the implementation of state duties in practice. A discussion of reflection and recovery periods and the granting of (temporary) residence permits will be central to this debate. Furthermore, this presentation will assess the necessity of victim testimony and alternate forms of evidence required to prosecute this offence. As such, the presentation will conclude with a consideration of whether victim protection is ensured, or viewed as a facet of the criminal justice process.

Presentation

In person

Human rights and war: Weapons and violence

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU001

Stream Human rights and war

59 Technological Advances in Weaponry and Trust in Armed Conflict

Rebecca Hall

University of Nottingham, Nottingham, United Kingdom

Stream or current topic

Human rights and war

Abstract

Victory in armed conflict has normally been achieved by the possession of the most advanced weaponry and an effective military strategy. Recent technological advancements have introduced a growing application of artificial intelligence (AI) in the defence sector. Whereas technological change appears to be constant to meet the needs of states, International Humanitarian Law (IHL) has remained largely stagnant since 1977. The obligations under IHL depend on human decision-making, such as the requirement to distinguish between civilians and combatants. But how is IHL affected when battlefield decision-making is made remotely, or even by AI? The difficulty is compounded when considering that many conflicts involve irregular forces, who cannot be identified and distinguished from civilians by a distinctive uniform.

My paper, entitled Technological Advances in Weaponry and Trust in Armed Conflict, reflects an element of my broader thesis and explores how the use of remote weaponry and artificial intelligence affects military strategy and dynamic decision-making. In particular, whilst a requirement for meaningful human control has emerged as an area of consensus amongst civil society and the international community, an exact definition is still illusive. For example, at what stage(s) do humans need to have meaningful control? Article 36 would argue that there needs to be control over individual attacks, whilst others point to trust by a human soldier in the accurate and predictable operation of an autonomous weapon to be enough to be labelled meaningful control. Agreement on this is essential in the development of weapons that are compliant with IHL.

Presentation

In person

515 The Perspective of the Domain of Weapons Use in the Political Declaration on Explosive Weapons in Populated Areas – An Element of Consideration in Future Weapons Regulation Instruments?

Ciara Finnegan

Maynooth University, Maynooth, Ireland

Stream or current topic

Human rights and war

Abstract

On 18th November 2022 in Dublin, eighty or so States signed a political declaration on 'Strengthening the Protection of Civilians from Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas'. The use of explosive weapons in populated areas in armed conflict situations has been a central concern in International Humanitarian Law (IHL) in recent times, as illustrated by its inclusion in the UN Secretary General's Agenda for Disarmament in 2018 and an International Committee of the Red Cross report in 2022. While the political declaration is not legally-binding, it demonstrates a perspective which this paper argues should be considered during the formation of future weapons regulation – that of a focus on the domain of use of a weapon. In the past, the majority of weapons regulation in IHL has limited or prohibited a weapons use due to the inherent characteristics of the weapon or its use in specific ways. However, the approach to explosive weapons in populated areas also includes the consideration of the urban environment and the direct and indirect consequences to the dense civilian population therein alongside the nature of the weapons. This paper will analyse this approach of considering the domain of weapons use and advocate for the implementation of this approach in future weapons regulation, especially as the potential domains of armed conflict continue to increase, such as to include the domain of Outer Space.

Presentation

In person

869 The Use of Human Shields in the Jurisprudence of The International Criminal Tribunal for the Former Yugoslavia

Chris McQuade

University of Portsmouth, Portsmouth, United Kingdom

Stream or current topic

Human rights and war

Abstract

This paper aims to assess the contribution of the International Criminal Tribunal for the Former Yugoslavia (ICTY) to a clearer understanding of the use of human shields, as both a war crime and a violation of international humanitarian law (IHL). To date, the ICTY is the only international criminal tribunal to address multiple allegations of shielding conduct. To assess the Tribunal's contribution, the paper analyses ICTY jurisprudence concerning shielding by thematically grouping the offences under which such conduct has been charged.

It argues that a combination of inconsistent prosecutorial policy and a failure by the Tribunal to seize opportunities to further elaborate upon shielding in its own right, has resulted in the offence developing in the background, almost exclusively through reference to other crimes. As a result, detailed discussion of shielding within the relevant judgments is scarce and there remains work to be done within the fields of IHL and international criminal law to develop and clearly distinguish the offence from those with which it overlaps.

Nevertheless, the paper further argues that the Mladić trial judgment does offer a significant contribution to an understanding of human shielding. Additionally, the Tribunal's shielding jurisprudence as a whole, despite its limitations, still proves useful as an indicator of the elements of the act that require further development as an international crime. It can also be harnessed to help build a fuller understanding of the precise nature of the act as a violation of IHL.

Presentation

In person

419 The 'Crime of Crimes' in war - does the narrow definition of genocide risk undermining human rights?

Samuel White

University of the West of Scotland, Paisley, United Kingdom

Stream or current topic

Human rights and war

Abstract

Although there is no hierarchy of crimes in international criminal law, genocide's status as the "crime of crimes" suggests that it ranks as first amongst equals. Those interpreting the crime often stress the importance of the narrow definition of the crime and seek to apply this rigorously. The four protected groups of people (national, ethnical, racial or religious group) have remained unchanged since the crime of genocide was defined in the Genocide Convention of 1948, despite dramatically shifting social values. At the same time, as warfare, and the weapons and tactics used to engage in it, have developed, so too has the possibility to seek to destroy "in whole or in part a national, ethnical, racial or religious group, as such", as Article II of the 1948 Convention puts it.

Against this backdrop, the narrow definition of the crime of genocide risks undermining the ability of those groups who are targeted, but do not conform neatly to one of the four protected groups, to assert their rights. Whilst it may be possible in these cases to resort to the crime against humanity of persecution, the moral weight afforded to the crime of genocide offers a powerful avenue both for punishment and deterrence of offenders as well as the vindication of victims' human rights. This paper therefore concludes that the time is ripe for a revisiting of the definition of the crime of genocide, with a view to widening the scope of those to whom it offers protection.

Presentation

In person

Environment: National laws

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU021

Stream Environmental law

20 Adopting rights for nature in the Mexican constitution: The transformation of the Mexican environmental constitutionalism.

Frida Hernandez

Birmingham City University, Birmingham, United Kingdom

Stream or current topic

Environmental law

Abstract

In the past ten years, countries such as Ecuador and Bolivia have adapted their legal and constitutional frameworks to create and give effect to new rights and processes for environmental protection in ways that have allowed the participation of marginalised actors. The rights of nature movement have resonated in Latin American countries such

as Colombia, Argentina, Chile and Mexico. This paper focuses on the inclusion of rights of nature in Mexico's state constitutions (Guerrero, Mexico City, Colima and Oaxaca). This paper aims to analyse the socio-legal aspect of the construction of rights of nature as a legal concept in the Mexican context. This paper focuses on the constitutional changes that have allowed the most recent adoption of rights of nature in state constitutions. It presents a history of Mexican environmental constitutionalism that developed into the 2020 bill to reform the Mexican constitution to incorporate rights of nature presented to the Mexican Senate.

Presentation

In person

77 Localizing the Global Climate Commons in South Asian Environmental Governance

Garima Maheshwari

Vivekananda School of Law and Legal Studies, New Delhi, India

Stream or current topic

Environmental law

Abstract

The idea of commons has acquired increasing significance in climate governance, becoming a critical area in climate justice debates. It provides a moral underpinning and legitimacy to the idea of environmental globalization. However, the concept of commons not only implicates the global distributive climate regime, but also has interlinkages with the local community thereby impacting sub-national climate governance and revealing how global climate governance discourses translate into distinct sub-national outcomes. The paper will examine the predominant discursive framings of the atmospheric commons in climate policy and legal discourses in key South Asian countries viz. India, Pakistan, Bangladesh and Nepal. In doing so, it will examine the significance of commons in these countries' local context, their framing in environmental jurisprudence and policy perspectives, and finally, the manner in which these policy frames engage with the construct of the community.

Presentation

Virtual via Microsoft Teams

624 Legislating for culture change: the Wellbeing of Future Generations Act 2015 and planning in Wales

Caer Smyth

Cardiff University, Cardiff, United Kingdom

Stream or current topic

Environmental law

Abstract

This paper explores Wales' landmark sustainable development legislation, the Wellbeing of Future Generations Act 2015 (WFGA). WFGA is an example of 'aspirational legislation'. It has been criticised for lacking effective enforcement mechanisms, with Lord Thomas in particular worrying that aspirational legislation like WFGA raises false hope and undermines the rule of law.

While acknowledging that there are important questions to be asked around the enforceability of the Act, this paper does not ask whether the Act is, or should be, enforceable. Instead, it takes the perspective of the Act's proponents. It assumes that the enforceability of Act is less significant because the real impact of the Act is in its capacity to engender cultural change in decision and policy-making. The paper looks at the approach the Act takes to deliver cultural change and the impact this approach has had in the planning system. The paper draws on original empirical research conducted at a planning inquiry in South Wales to explore some factors limiting the Act's approach.

This paper aims to add a fresh perspective to this Act, moving past questions of enforcement and looking at its impact 'on the ground' in a planning decision-making process. It is suggested that in better understanding how the Act is implemented and identifying obstacles the Act might encounter in engendering culture change, the impact of aspirational legislation like WFGA can be better understood and hopefully better facilitated.

Presentation

In person

677 Constitutional Environmental Duties with African Characteristics

Lovleen Bhullar

Birmingham Law School, Birmingham, United Kingdom

Stream or current topic

Environmental law

Abstract

Environmental constitutionalism encompasses rights as well as duties of the State and natural persons variously described as persons, citizens, etc. This paper examines the scope and limits of democratic citizenship, as reflected in environmental duties in African constitutions. It undertakes this exercise in the context of growing invocation of the universal concept of environmental/climate citizenship and the principle of inter-generational equity, and political attempts to shift the focus from the language of rights to duties on one hand, and the historical, cultural, and regional emphasis on duties in Africa on the other. This paper identifies the influence of internal and external factors on the origin and design of constitutional environmental duties. It also unpacks the relationship between constitutional environmental provisions – rights and duties, including their substantive and procedural dimensions. In the process, it offers a rich account of environmental constitutionalism in Africa besides contributing to the limited scholarship on constitutional (environmental) duties.

Presentation

In person

738 THE CONSTITUTIONAL APPROACH TO PROTECTING ECOSYSTEMS- A SHAM?

Oluwabusayo Wuraola

Anglia Ruskin University, Chelmsford, United Kingdom

Stream or current topic

Environmental law

Abstract

The protection of the environment has been going through different phases in law globally. It is being protected through constitutionalism of the fundamental human right of humans to a healthy environment in some countries. This to ensure humans have access to the unspoiled natural resources for their livelihood. It is also being protected through various national laws, agreements, and conventions. However, with the new phase of protecting the environment by constitutionalism, it is believed that despite the fact that it is envisioned under the protection of the fundamental human rights of humans, the focus of this new mode of protection is not for human purposes (anthropocentrism) but for the ecosystem itself to be preserved and healthy. With the assessment of different positions of scholars in journals and texts, this paper will assess the benefits of constitutionalising the legal rights of ecosystems and evaluate the effectiveness of constitutionalising the rights of ecosystems for the protection of ecosystems in an eco-centric way.

Presentation

In person

Gender, Sexuality and Law 1

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU125

Stream Gender, sexuality and the law

4 Silenced by the System: Can birth mothers whose children have been adopted find a voice via the artist book?

Samantha Davey¹, Stella Bolaki²

¹Essex Law School, Colchester, United Kingdom. ²University of Kent, Kent, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

After adoption without parental consent, birth mothers are often left with access to limited support services and struggle to make sense of life without their children. Due to the stigma attached to state removal of children, mothers often feel shameful and stigmatised and lack a voice. Dr Stella Bokai and Dr Samantha Davey conducted a pilot study with birth mothers in England. Tgis study explored the experience of birth mothers post-adoption and provided them with a means of expression via the artist book. Mothers were interviewed, took part in face-to-face and Zoom workshops and created their own artist books. The research indicates that utilising creative, interdisciplinary methods can provide tangible benefits to mothers in self-expression and making sense of their experiences of who they are post-adoption.

Presentation

In person

104 Lesbianism, the age of consent, and the *Maiden Tribute of Modern Babylon*

Caroline Derry

The Open University, Milton Keynes, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

In 1885, the *Pall Mall Gazette* published a sensationalist series on child prostitution and trafficking in London, the 'modern Babylon'. Its lurid story of a 13-year-old girl, apparently bought from her mother and trafficked to Continental Europe, provoked popular outrage and legal consequences.

The first legal consequence was the hurried enactment of the Criminal Law Amendment Act 1885 which raised the age at which a girl could consent to sexual intercourse from 13 to 16. The second was the prosecution of those involved in the 'purchase'. Most notoriously, the Gazette's editor WT Stead was convicted and imprisoned for three months; he would proudly wear his prison uniform on the anniversary of his conviction for the rest of his life. The story of his co-defendant Louise Mourey was very different. A French midwife, she was alone among the defendants in allegedly being part of the brothel industry rather than a campaigner against it. Convicted of indecent assault, she received the heaviest sentence of all those involved and died in prison.

Mourey's prosecution drew upon, and reinforced assumptions about, nationality, class, gender and sexuality. It also raised the legal question of whether a woman could be convicted of indecent assault upon a female; the question and its answer reveal a great deal about the criminal law's approach to sex between women. This case is therefore significant both in revealing the social attitudes underpinning the age of consent campaigns, and for its wider implications for the legal position of lesbianism.

Presentation

In person

524 Nihil sub sole novum: comparing the Anglo-Saxon victim with the modern Irish personal injury plaintiff.

Chloë Cass

Maynooth University, Maynooth, Ireland

Stream or current topic

Gender, sexuality and the law

Abstract

This historico-legal paper aims to compare and contrast the Anglo-Saxon victim with the 21st century Irish plaintiff. Both plaintiff and victim had/have harm occasioned to them through the actions of another and there was/is a legal response to this harm. The Anglo-Saxon approach to compensating harm bears remarkable similarities with the modern Irish system. Although the common law was established by the Normans, Anglo-Saxon law acted as substantive law within the Norman procedural system well into the 12th century and legitimating concepts from the Anglo-Saxon era such as honour continued to underlie legal responses to harm until at least until the 18th century.

This paper will explore the legal context in which the plaintiff and the victim were/are situated, and compare the Textus Roffensis (a manuscript containing the oldest written laws on compensation and injury in England) with the 2021 judicial guidelines and the Personal Injury Assessment Board's Book of Quantum. It will consider the concepts which legitimated/legitimate legal response to harm caused by another and what compensation was/is granted for a particular injury. This paper will investigate what role gender played in constructing the concept of victim in Anglo-Saxon society and what impact that construction had on compensation. It will also consider how gender might impact the amount and type of compensation which a personal injury plaintiff in the Republic of Ireland can receive today.

Presentation

In person

273 FemTech, Gendered Venture Capital Markets and the Law of Contract: exploring the potential and limitations of equality laws

Asta Zokaityte

Kent Law School, Canterbury, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

Access to healthcare is profoundly unequal and gendered. Women generally are diagnosed and treated later than men, spend longer living with a disability, experience worse physical and mental health, and remain longer on anti-psychotic or sedative medication than their male equivalents. To tackle gender inequalities in health, a new and rapidly growing sector in female health technology (FemTech), is developing highly innovative products, services and treatments, and helping millions of women globally to manage their health and make important decisions about their lives and bodies. FemTech also generates new and historically neglected data on women's health issues, such as menopause, incontinence, menstruation, infertility and much more, bridging gender gap in medical research. FemTech is rare and unusual in being led by women. Their voices and concerns dominate the production, design, and ownership of the products and services of the FemTech market. It is gendered in its community, focus, production, and usage. Despite being significant to many women, and despite FemTech's growing social and commercial importance, the FemTech sector faces considerable challenges. Accessing venture capital from the male-dominated investment community to fund research and innovation in women's health is one of them. This paper aims to interrogate how the law of contract responds to gendered funding of FemTech within gendered venture capital markets. It also seeks to explore if and how equality laws can resolve the limitations of the law of contract to respond to such inequalities.

Presentation

In person

Social Rights: Access to Justice

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU201

Stream Social rights, citizenship and the welfare state

Chair: Jackie Gulland

585 Quantifying the impact of legal advice on households trajectories: what can we learn from administrative benefits data

Juliet-Nil Uraz

London School of Economics, London, United Kingdom. Policy in Practice, London, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

Legal advice and assistance plays a crucial role in helping low-income households overcome debt, benefits, and housing disputes. While practitioners see the impact of their work on the individuals they help, the LASPO Post-Implementation Review concluded that evidence was still too sparse to quantify the societal impact of legal intervention. This presentation will discuss the potential of administrative benefits data held by local authorities to assess the multidimensional impact of social welfare advice. Local authorities routinely process rich longitudinal data on households receiving means-tested local benefits, such as housing benefits and council tax reduction schemes.

Policy in Practice has shown this data can be used to track the welfare and housing outcomes of households over time. Specifically, we can compare the socioeconomic trajectories of households that benefit from a policy intervention, such as accessing legal advice, with a 'matched control' group of households with similar characteristics, but who did not receive legal assistance in the past. So-called retrospective matched control methods were initially developed to evaluate healthcare services. Working with the Justice Lab, we are exploring the extent to which these methods can be extended to evaluate legal services. In this presentation, we will discuss the challenges of identifying a credible control group in the absence of information on the distribution of unmet legal needs among benefits recipients. We will reflect on the promise of administrative data, as well as on the inherent limits of such an approach to capture the multifaceted impact of legal advice

Presentation

In person

384 Access to justice and digitalisation in universal credit

Sophie Howes, Rosie Mears

CPAG, London, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

The majority of attention on the digitalisation of social security has focused on digital exclusion on the one hand and automated decision making and machine learning on the other. In contrast, our research is concerned with how simple digital design decisions, such as the way a claimant communicates with officials and how information is stored and presented, can end up determining whether a social security system is administered in accordance with the rule of law.

Using interviews with claimants, welfare rights advisers, and evidence from CPAG's Early Warning System (which collects case studies from frontline advisers on the problems they are seeing in the social security system), CPAG has been gathering evidence on the extent to which the universal credit (UC) system upholds the rule of law principles of transparency, procedural rights and lawfulness. The research is due for publication in Spring 2023. Key findings suggest that certain aspects of UC design and implementation prevent claimants from understanding and accessing their rights, and result in claimants missing out on their full legal entitlement to UC.

Our presentation will share some key findings, including

- A failure to ask all the necessary questions during the claims process to correctly calculate awards for all claimants;
- A lack of adequate information about appeal rights;
- 'Gate-keeping' of attempts by claimants to challenge decisions via the online journal.

Presentation

Virtual via Microsoft Teams

920 Contextualising legal need: insights from a local, qualitative legal needs study

Tara Mulqueen¹, Lisa Wintersteiger²

¹University of Warwick, Coventry, United Kingdom. ²Law for Life, London, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

This paper will present developing findings of a local, qualitative legal needs study in Coventry focused on the experiences of marginalised groups during and in the aftermath of the COVID-19 pandemic. The study develops co-produced research with a local law centre and seven 'trusted intermediaries' – frontline organisations that are not specialised in law - and the communities they support in dealing with law-related issues, particularly in social welfare law. The study focuses on the intersections between legal and digital capability and systemic and structural barriers to accessing justice. Our approach draws on semi-structured qualitative interviews with staff groups and a purposive sample of 30-35 individuals supported by the organisations who have struggled to deal with law-related issues since March 2020. The accounts offered by frontline staff and individuals themselves highlight the complexity of legal need in practice, contextualising it in relation to wider life experiences as well as the broader social and political environment in which problems occur and access to justice is sought. In turn, our emerging findings both build on and trouble conceptions of legal need, as well as approaches to meeting it, reflecting on the role of trusted intermediaries and public legal education alongside traditional forms of legal advice and representation.

Presentation

In person

874 Agreeing an Advice Strategy for Liverpool: Challenges and lessons learned

Jennifer Sigafoos, James Organ

University of Liverpool School of Law and Social Justice, Liverpool, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

For many people in the UK, understanding and accessing their social rights (and associated social citizenship) in an increasingly residualised welfare state is dependent on obtaining advice. Free legal advice has become increasingly scarce, however, creating a widening gap that is imperilling people's health and wellbeing. For the past three years, we have been working on a project in Liverpool to create a referral network to improve access to the remaining free legal advice resources. As part of this project, in the autumn of 2022 we worked with the Liverpool Access to Advice Network (LATAN) to draft a proposal to Liverpool Council for a new citywide Advice Strategy. In this paper we will discuss LATAN's agreed strategy proposal, which is still under review at the Council, and consider some of the challenges encountered. These included balancing competing interests to agree basic definitions, such as what

constitutes legal advice. This experience can provide an illustration of the difficulties (and hopefully rewards) of translating academic research into 'real world' impact.

Presentation

In person

Children's Rights: Privacy, data and digital rights

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU202

Stream Children's rights

151 My Daughter Did Not Ask for This Life': A Child Rights Approach to Press Photography

Ali Struthers

University of Warwick, Coventry, United Kingdom

Stream or current topic

Children's rights

Abstract

There are numerous examples of pleas by celebrity parents for their children to be left alone by persistent and frightening paparazzi. Model Gigi Hadid took to social media to implore that her young daughter's face is pixelated in any published photographs, further observing that for a child, 'close or dramatic paparazzi frenzies must be overwhelming and disorientating'. English actress, Sophie Turner, also lambasted the practice of 'grown old men taking pictures of a baby without their permission', pleading with media photographers to stop following her family around in order to photograph her young daughter. Despite two seminal cases heard in UK courts in 2008 and 2014 concerning, respectively, the privacy rights of the children of J.K. Rowling and Paul Weller, a glance at the online pages of UK news outlets reveals that unpixelated photographs of celebrity children remain commonplace.

This paper will argue that not enough is being done to protect the children of celebrities from press intrusion, and that a child rights-based approach, couched in the best interests of the child, privacy rights, and the child's right to a voice, should be adopted to regulate the behaviour of the media when it comes to the taking and publishing of photographs of children, even if pixelated.

Presentation

In person

172 What's the right age to know (about) your donor? Exploring age, agency, best interests and children's decision-making capacity in relation to DNA testing and donor conception.

Caroline Redhead

The University of Manchester, Manchester, United Kingdom

Stream or current topic

Children's rights

Abstract

The ConnecteDNA research project explores the impact of direct-to-consumer genetic testing (DTCGT) on donor conception. One of the implications of the increased popularity of DTCGT is that parents through donor conception can register their child(ren) on DTCGT databases and thus search for the donor, donor siblings or other donor relatives during their child's childhood. This raises questions about the viability of current regulatory systems of information sharing in third party reproduction, which are often premised on ensuring that donors of reproductive material remain anonymous to the people and families they help to create, either permanently or until the child(ren) conceived of their donation reach adulthood.

Developing the concept of 'sharenting,' conventionally used to describe parental sharing of images and videos of their children in online media, we draw on semi-structured interviews and focus group discussions with donors, parents and donor-conceived people to explore parents' 'privacy stewardship' of their children's online presence in the context of donor-conception. Our findings suggest that parents' use of DTCGT to build genetic kinship relations for their donor-conceived children requires a re-evaluation of children's rights and best interests in this specific digital environment, and raises legal questions concerning their age-related agency and decision-making capacity (not) to search for information relating to their donor and/or donor-conceived relatives by sharing DNA data online.

Presentation

In person

267 Children's Data Privacy Online in Nigeria: A Call for Effective Regulation

Oghomwen Rita Ohiro, Hadiza Omoyemhe Okunrobo

University of Benin, Benin City, Nigeria

Stream or current topic

Children's rights

Abstract

The proliferation of electronic devices, websites, applications, and online services has created a digital environment where children generate and share a large amount of their personal data without even realizing the consequences. Hence, the Convention on the Rights of the Child 1989 (CRC), General Comment No 25 (2021) enjoins States to review, adopt, and update national legislation in line with international human rights standards, to ensure that the digital environment is compatible with the rights of the child set out in the Convention and the Optional Protocols.

Nigeria being a signatory to the CRC, has enacted a child specific law and other legislation which contain snippets of provisions on digital protection particularly in cases of online abuse. However, there is no specific legislation on data protection that adequately addresses the changing technological advances and the rights of the child as a data subject. Accordingly, this paper argues for an effective legislation that regulates the child digital environment, which takes into consideration, child rights impact assessment, parental consent, obligations of operators of websites and online services, and effective safeguards to ensure security and accountability in respect of the use of children's data.

Presentation

Virtual via Microsoft Teams

Disruptive Technologies and the Future of Parenthood

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU203

Stream Disruptive technologies: reproduction, genetics, and the family

11 Legal Parenthood and Emerging Reproductive Practices

Alan Brown¹, Elizabeth Chloe Romanis²

¹University of Glasgow, Glasgow, United Kingdom. ²Durham University, Durham, United Kingdom

Stream or current topic

Disruptive technologies: reproduction, genetics, and the family

Abstract

This paper (re)examines the attribution and determination of legal parenthood in light of potential developments in reproductive practices and technologies that change fundamental aspects of the reproductive process.

The existing rules on legal parenthood are being stretched by developments in assisted reproductive technologies and the growing diversity of family forms. There have been various legislative reforms relating to parenthood and assisted reproduction, but these have not created a framework that effectively determines legal parenthood across technologies and circumstances. The law continues to face challenges across contexts – surrogacy arrangements, trans parenthood and collaborative co-parenting – that it is struggling to resolve.

However, these technologies do not fundamentally challenge the basis of reproduction – the need for sperm, eggs, and someone to gestate the pregnancy. This paper will consider potential future reproductive technologies and practices that do fundamentally challenge that underlying reproductive process – ectogestation/artificial placentas, uterine transplants, and In Vitro Gametogenesis (IVG) – and their implications for the determination of legal parenthood.

The literature on these emerging reproductive technologies and practices focuses on ethical questions around their permissibility, and regulatory questions regarding access to such technologies. Consequently, there has been limited consideration of how these technologies and practices will challenge the framework that determines legal parenthood. In this paper, we argue that these emerging reproductive technologies force the law to examine the principles that it values when attributing parenthood, and therefore, the potential of such technologies provides an opportunity for a principled reconsideration of legal parenthood - its purpose, its functions, and its basis.

Presentation

In person

98 Family law and the future of reproduction: let's think ahead!

Machteld Vonk

Radboud University, Nijmegen, Netherlands

Stream or current topic

Disruptive technologies: reproduction, genetics, and the family

Abstract

While legislators and judges are grappling with questions about the legal consequences of multiparent families in all its guises, be it reconstituted families after divorce, intended multi-parent families or foster families, other developments loom on the horizon. Where the discussion now focusses on who should be a parent and whether this is a matter of genetics, giving birth, care, intention or a combination of these factor, genetic multiparenthood through IVG may be an option in the future. In a way this is already the case with mitochondrial replacement therapy, which results in a child with DNA from three people. Despite the fact that the genetic contribution of the woman who donates the healthy mitochondrial DNA is very small, it does raise questions about the role genetics play in assigning parenthood on the one hand and the child's right to know who contributed to its conception on the other. Though, mitochondrial replacement therapy could be a test case for our approach to multigenetic parenthood, this aspect of the treatment is quietly swept aside. Developments like IVG, that would allow humans to procreate with the help of stem cells and would open the possibility for creating a child genetically related to four (or more) parents, require a much more proactive approach on the side of legislators and academics. We need to approach these new techniques and the questions they may pose for our conception of legal parenthood from a multidisciplinary perspective, involving at least ethicists, developmental psychologists, medical scientist and lawyers.

Presentation

In person

521 (Legal) Motherhood: More than just Womb and Board

Zaina Mahmoud

University of Exeter, Exeter, United Kingdom

Stream or current topic

Disruptive technologies: reproduction, genetics, and the family

Abstract

British law attaches a significant amount of importance to gestation as the defining feature of legal motherhood. A mother is defined in section 33 of the Human Fertilisation and Embryology Act 2008 as 'the woman who is carrying or has carried a child.' At birth, legal parents are necessarily mothers, deemed ideal as this provides clarity and guarantees that the baby is cared for by someone. Legal fathers and second female parents are recognised by virtue of their relationship with the legal mother. In this way, British law adopts a matrifocal approach to legal parenthood, and thus families. Recent case law has suggested demonstrated how British law privileges hetero- and cis-normative understandings of family centred around a mother (and complementary second parent): otherwise put, without a (legal) mother, there is no family. This paper uses three case studies to explore the inconsistencies inherent with the current approach to legal motherhood: widowers, stillbirths, and surrogacy. In doing so, this paper questions the extent to which legal privileging of gestation is at odds with the actual contingencies of care-taking relationships and dependency. An alternative approach is proposed, allowing for legal parenthood to truly be real and effective protection of rights and responsibilities.

Presentation

In person

841 International surrogacy and the provision of Irish citizenship rights and travel documents to resultant children

Shauna Colgan

Griffith College, Dublin, Ireland

Stream or current topic

Disruptive technologies: reproduction, genetics, and the family

Abstract

The current regulatory regime in Ireland as it pertains to the provision of citizenship rights and travel documents to children born on foot of international surrogacy agreements is fraught with legal and practical difficulties. Said issues are magnified when set against a backdrop of the intensifying war in Ukraine. In this paper, the author builds upon

previous work to provide an overview of Irish law relating to international surrogacy as well as a discussion of those aforementioned issues impacting the provision of Irish citizenship rights and travel documents to children born to surrogate mothers on behalf of Irish intending parents. The author will discuss the inadequacy of the Health (Assisted Human Reproduction) Bill 2022, in its current form, in responding to current lacunae in the law. The author will examine possible and proposed legislative amendments to the 2022 Bill, taking a comparative perspective, with emphasis on the UK and EU Member State approaches.

Presentation

In person

DEVELOPING DEMOCRACIES: POLITICIZATION OF JUDICIARY

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU207

Stream Constitutionalism in developing democracies

238 Strategically Prudent Judges and Power Expansion in the Colombian Constitutional Court

Santiago Virgüez¹, Juan Carlos Rodriguez²

¹University of Massachusetts, Amherst, USA. ²Universidad de Los Andes, Bogota, Colombia

Stream or current topic

Constitutionalism in developing democracies

Abstract

How do high courts build autonomy and power facing the Executive's interests? An increasing number of studies on judicial autonomy and independence in Latin America are based on strategic accounts of judicial behavior involving institutional and political-contextual factors. Comprehensive empirical tests of these theories have modeled courts' behavior and interaction with other political actors as one-shot games, and have used multivariate statistical analysis to explain courts' or justices' decisions. Nevertheless, few have addressed the dynamic processes involving medium-to-long-term interactions and strategies.

Based on qualitative evidence, we use an analytic narrative approach to explore how the Colombian Constitutional Court strategically expanded its power and competences, in order to review the use of states of exception by the Executive and the contents of constitutional amendments. Justices have policy preferences over issues under their review, but they also care for their own stability and that of the court as an institution. For that reason, under certain

circumstances, the court plays a longer-term game beyond the outcome of a particular case, asserting review competences but not actually exerting them.

Presentation

In person

26 Cabinet Appointments in Africa: A Comparative Study Between South Africa, Botswana and Kenya

Molefhi Phorego

Nelson Mandela University, Port Elizabeth, South Africa

Stream or current topic

Constitutionalism in developing democracies

Abstract

This paper investigates the role of the court in holding the President accountable for appointing cabinet members in emerging constitutional democracies. It is a comparative study between South Africa, Botswana and Kenya. In the countries under review, there has been pronouncements from the highest courts to the effect that the President unlawfully exercised the power bestowed on him by the Constitution. The proposed paper compares and contrasts the approach followed by the countries, and whether there is an emerging trend of judicial overreach on the President's powers and functions.

For instance, in *President of the Republic of South Africa v Democratic Alliance* the Constitutional Court found that rule 53 of the Uniform Rules of Court is applicable to the President's power to appoint and dismiss cabinet members. This is despite the fact that the President is the only repository of the power in terms of the Constitution. Similarly, in *President of the Republic of South Africa v The Office of the Public Protector*, the North Gauteng High Court in Pretoria upheld the remedial action directing the President to establish a commission of inquiry. This is despite the fact that in terms of the Constitution, only the President may exercise the power.

The paper weighs the various scholarly debates on the subject, but proceeds from the premise that the President's powers in South Africa are too broad and should be curtailed in order to enhance presidential accountability for the utilisation of such powers.

Presentation

In person

912 The Mexican (Un)Stable Constitution: Judicialization and Politization

Imer B Flores

UNAM, Mexico, Mexico

Stream or current topic

Constitutionalism in developing democracies

Abstract

The Mexican Constitution of 1917 has been reformed by 252 decrees, i.e., 2.4 per year, and half of those decrees in the last 30 years. Among them, the constitutional reform no. 133, published December 31, 1994, reorganized the federal judiciary by reinforcing its independence from other branches of government and requiring it to be guardian of the Constitution. As such its function is not only to guarantee the determination of rights of the people but also to secure the division of powers among the branches of government and more recently with other independent agencies. As it is well known Mexico was characterised for many years as either one-party or hegemonic party system with no alternation in the presidency and as such very stable politically with any coup d'état. Moreover, after this reform took place, since 2000, in three out of the four presidential elections, there has been alternation between parties in the presidency and as such it appears not to be as stable politically. Somehow and so far, it has been the Federal Judiciary who has stepped in to provide some form of stability and by holding the other branches checked. Certainly, this phenomenon has led to both the judicialization of politics and the politization of justice, and my paper intends to emphasize it and its impact in the judicial making process.

Presentation

In person

Legal Education 1

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU208

Stream Legal education

150 Perceptions of Wellbeing in UK Law Schools

Caroline Strevens¹, Emma Jones²

¹University of Portsmouth, Portsmouth, United Kingdom. ²University of Sheffield, Sheffield, United Kingdom

Stream or current topic

Legal education

Abstract

In recent years there has been increasing acknowledgment of wellbeing issues within law schools both in the UK and elsewhere. Existing evidence suggests that there are aspects of law as a discipline, its norms and its culture, which may contribute to lower levels of wellbeing and higher levels of mental health issues amongst students and staff. Although a range of data has been collected from both law students and legal academics, there has been little focus to date on the perceptions of Heads and Deans of UK Law Schools.

This paper will introduce an empirical project designed to investigate such Heads and Deans perceptions of wellbeing within UK Law Schools. It will provide an analysis of 16 qualitative, semi-structured interviews with Heads and Deans of UK Law Schools that took place in 2022. Key themes emerging include: Changing understanding of wellbeing; The role of Head; Impact of Covid; Resources; and centralisation. These themes will be analysed using self determination theory in order to highlight institutional contexts and leadership approaches that enhance as opposed to obstruct academic wellbeing.

This empirical work is part of a wider to develop and disseminate wellbeing good practice international guidelines for Law Schools and Faculties. These will be discipline-specific principles which can both incorporate best practice in the higher education sector overall and be used by individuals to inform their interventions and evaluations. This international project is supported by academics from Australia and Europe and the Association of Law Teachers.

Presentation

Virtual via Microsoft Teams

549 Meaningful teaching: some preliminary thoughts about content-related topics to consider for lectures and seminars.

Pascal Kurt Gotthardt

Royal Holloway, University of London, Egham, United Kingdom

Stream or current topic

Legal education

Abstract

At university, students should at least have the possibility to learn in a meaningful way, to develop a critical perception of knowledge and to gain a thorough understanding of a topic. If we also want to teach in a meaningful manner, this goal should encourage us to think about the content we want to address in lectures and seminars. In this context and based on my own experience as a student, researcher and teacher, I am convinced that we have to teach and learn about law in a holistic manner. Thus, besides considering substantive and procedural law in a precise, coherent and comprehensive way, questions regarding the definition of law, comparisons as well as relationships between legal areas, interdisciplinarity and legal research methodologies are of significance as well.

Furthermore, a proper understanding of the methods inherent in specific legal areas, like international law, are of the greatest importance. The presentation highlights some preliminary thoughts regarding the topics mentioned before.

Presentation

In person

190 Embedding Compassion Pedagogy into Law Curricula as a Response to the Crisis Continuum

Noel McGuirk, Rafael Savva, Laura Hughes-Gerber

Lancaster University, Lancaster, United Kingdom

Stream or current topic

Legal education

Abstract

The change in the route to gaining a professional legal qualification alongside the continuum of crises experienced over the past decade, from the Covid-19 pandemic to the war in Ukraine to the constant economic crises, has provoked the imperative for law schools to re-evaluate their law programmes. One of the factors determining such re-evaluation points to supporting students' progression as well as their development as future legal professionals.

The primary aim of this paper is to present the potential that the integration of compassion pedagogy has in delivering support for students' progression. We draw upon core academic literature establishing the care theory and pedagogy of compassion to demonstrate that there are at least two core potential benefits in law programmes. First, a tutor's care giving role in the teaching process can support students to achieve their educational goals. Second, compassion pedagogy also helps students to become better thinkers throughout the course of their studies so that they are equipped with the skills to make better judgments in their professional careers.

We then present a framework showcasing how one can appreciate the integration of different levels of compassion that can be utilised in law tutors' interactions with students, inside and outside of class. We employ our previous research on student support systems to inform the development of the said framework and establish five key steps in integrating it: contact, assurance, dialogue, signposting, information and follow-up. The framework will then be assessed against broader prevailing considerations in legal education.

Presentation

In person

Health Law and Bioethics: Lived Experience of Healthcare

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU210

Stream Health law and bioethics

Bonnie Ventner

915 Vulnerable to Pressure or Active Enablers? Ethical Concerns with the Judicial Framing of Parents with Gender Diverse Children

Ed Horowicz

University of Liverpool, Liverpool, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

In England, the high-profile case of *Bell v Tavistock* gave rise to judicial scrutiny of medical interventions for gender diverse minors and was met with profound clinical, legal and ethical concerns. Importantly, these concerns focussed on the health and well-being of gender diverse minors potentially facing additional barriers to medical care and inappropriate interference with decision-making. Despite the Court of Appeal returning decision-making back to clinicians, parental consent is still seemingly required in addition to the consent of the competent minor. Beyond the question of why this is legally required lies an ethical problem, which is the way in which parents of gender diverse minors are framed and the impact this might have. In this paper I consider two different positions; one where a parent is considered an active enabler of gender diversity with resulting judicial criticism, and the other where parents are considered as being vulnerable to coercion from their gender diverse child and thus pressured into supporting the provision of medical interventions. I argue that these different narratives do no more than reflect socially conservative views and assumptions, which are ethically problematic given the authority of judicial reasoning. I conclude by arguing that parental welfare consideration is important but these two divisive characterisations obstruct meaningful parental engagement in an area of adolescent healthcare that is already ethically, socially, clinically and now legally heavily scrutinised.

Presentation

In person

705 Locating an entitlement to access procreative assistance within the human right to health: A lived experiences approach

Jinal Dadiya

University of Cambridge, Cambridge, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

Despite a recent move to recognise reproductive health as an integral part of the international human right to the highest attainable standard of health, the meaning and contours of the right to reproductive health remain underexplored. In this paper, I focus on the right's implications for those grappling with involuntary childlessness. Based on an examination of peoples' lived experiences with involuntary childlessness and reproductive decision-making, this paper contends that the right to reproductive health should be viewed as giving rise to an entitlement to procreative assistance. My argument relates, in the first instance, to IVF and gamete cryopreservation – methods of procreative assistance that are ubiquitously available and ethically acceptable in most parts of the world. However, it has implications for emerging reproductive technologies as well.

My central argument, that the right to reproductive health should be understood in light of peoples' lived experiences, draws on definitions of the right provided by the CESC and the ICPD. A socially-embedded approach to reproductive health is justified not only by the language of current definitions, but also under capabilities based accounts of health. I argue that while involuntary childlessness should not be viewed as a disease or pathology, there nevertheless exists, an entitlement to procreative assistance.

I contend that involuntary childlessness arising from 'social' reasons is sufficiently similar to instances where it is caused by physiologically diagnosable infertility. Developing this idea, I make a case for parity in access for same sex couples, older women, single women, and seekers from underserved communities.

Presentation

In person

322 Listening to Women's Voices: The Law's Perpetuation of Paternalistic and Gender-Biased Behaviour in Healthcare Practice

Melinee Kazarian

Southampton University, Southampton, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

This paper discusses the law's perpetuation of paternalistic and gender-biased behaviour in healthcare practice. The paper focuses on maternity care provision. The paper uses the UK's Shrewsbury maternity scandal as a case study. This scandal highlighted an institutional culture of failing to listen to women in maternity units which led to the death of at least 200 babies. Most of these deaths could have been avoided if female patients' voices had been heard, and if their autonomy had been respected. Furthermore, 'in many cases, mother and babies were left with life-long conditions as a result of their care and treatment and 'there was a tendency of the Trust to blame mothers for their poor outcomes, in some cases even for their own deaths' (Ockenden Review 2022). No one has yet been held accountable for these failings. Disrespectful maternity care has also been seen in other jurisdictions, suggesting strong power imbalances which the law tends to preserve (Diorgu 2021). Legal standards of care expected in healthcare practice are outdated and impact female patients' autonomy in making decisions about pregnancy and child-bearing. This paper proposes that legal standards of care used in healthcare practice should be reconsidered with a view to reduce paternalistic and gender-biased behaviour in healthcare practice. The research uses interviews conducted with female patients and healthcare professionals working in maternity units and their insight on suitable legal and ethical standards in healthcare practice and female patient care.

Presentation

In person

308 'Lost Tomorrows and Forgotten Yesterdays' - a social work perspective on the need for an ethics of care to be central to the reform of the Irish mental health act 2001

Aidan Cooney¹, Elamin Dr Mohamed¹, Michael Gibbons²

¹HSE CHO8, Dundalk, Ireland. ²HSE CHO8, Drogheda, Ireland

Stream or current topic

Health law and bioethics

Abstract

In a recent study on health inequalities amongst sample of in-patients in Ireland, we found a range of unmet social care needs that impacted on patient, family & community outcomes. Yet in the debate in Irish mental health act 2001 reform, the legal right to access social care was absent.

A Vision for Change (2016) & Sharing the Vision (2021) while advocating for a Stepped Care Approach; health and social care in the delivery of mental health services. Yet, Social care remained absent in the debate on Mental Health Act reform.

Unlike other jurisdiction in Northern Ireland, Scotland, England & Wales; mental health legislation recognises the right to social care rights of those who access mental health services. Ireland currently has no plans to legislate for a right to social care support. Social care is still perceived as a form of charity.

Feminist care ethics offers a framework to consider social care as a core part of mental health legislation reform. Feminists have problematised care, whether it be formal and informal, as a practice in public and private spaces. Yet, limited attention has been paid by Irish social worker to draw on care ethics when call for Mental Health Act reform.

The presentation will consider practice theme reflections that calls for care ethics to inform mental health law reform in Ireland -

Theme 1 – Government recognise care ethic principles

Themes 2 - Services recognise care ethics as part of patient centred approaches

Theme 3 – Legal right to social care support to tackle the health Inequalities

Presentation

In person

Mental Health 1/Disability and Law: The CRPD and Human Rights

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU211

Stream Disability, law and social justice in times of uncertainty

Joint panel hosted by streams 'Disability, law and social justice in times of uncertainty' and 'Mental health and mental disability law'

349 Legal Endogeneity and the Problem of Institutionalized Ableism: Critical Reflections from the United States

Alexis Padilla

Disability Policy Consortium, Boston, USA, Director of Research, USA

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

The United States is the only western industrialized nation from the global north which has not ratified the UN Convention on the Rights of Persons with Disabilities (CRPD). Nevertheless, it could be argued that several of this nation's civil rights components have been incorporated as a matter of principle into CRPD, particularly when it comes to its educational provisions. This paper builds on the notion of legal endogeneity developed by Edelman and collaborators to show how there is a great deal of irony in this tendency. Endogeneity refers to how law gains meaning from the areas it seeks to regulate rather than solely from written law. As Catherine K. Voulgarides has demonstrated in several of her recent works, legal endogeneity serves to mask ableist and racialized acts of injustice as instances of compliance within the parameters of IDEA, the main legislative body regulating the education of disabled students prior to their entry into university level courses in the United States. On the basis of this fake logic of compliance, this paper invites to reflexively consider the legal endogeneity dangers intrinsic to CRPD dynamics around the globe. It thus warns about the need to conduct careful empirical analysis to unpack the mechanisms by which this takes place, consolidating policy and societal responses which might ameliorate legal endogeneity's pernicious role in perpetuating injustices grounded on institutionalized ableism and other intersectional matrices of oppression.

Presentation

Virtual via Microsoft Teams

479 Beyond the Liberal Subject: The CRPD, the 'Wholistic' Approach, and the Challenge to Conventional Human Rights Models

Peter Bartlett

University of Nottingham, Nottingham, United Kingdom

Stream or current topic

Mental health and mental disability law

Abstract

People with disabilities are particularly problematic subjects in human rights law. Frequently, they require support in the attainment and exercise of their human rights, and frequently, that support is required on an ongoing basis. This is recognized in the CRPD by the right to reasonable accommodations being a core and pervasive right, and in numerous obligations on states to provide support for people with disabilities in their attainment of individual rights.

CRPD interpretations have been attempting to find articulations of this. One of these, which I am labelling the 'wholistic' approach, views the CRPD as an integrated package, creating a unified vision of a world that facilitates people with disabilities in attaining the life they want to have: analysis of the articles in isolation is at best unhelpful, since they function together.

There is a great deal to be said in favour of that approach, but it poses significant challenges to conventional human rights theory. Some of these will be discussed in this paper. At the core of the affirming analysis is that the wholistic approach must be right: disability law may have pointed that up with particular force, but the interdependence of rights is a matter long known in human rights circles. At the core of the negative criticism is the problem that by emphasising the connections, there is a risk that the fundamental power of the individual rights may be lost: enforceability gets lost in the smudge.

Presentation

In person

254 Keeping a Sheep in the Garden: On Disability Rights and Novel Ideas

Danielle Watson

University of Nottingham, Nottingham, United Kingdom

Stream or current topic

Mental health and mental disability law

Abstract

The Convention on the Rights of Persons with Disabilities was a ground-breaking document. It marked a new chapter of inclusive and accessible human rights for persons with disabilities. Within the preamble, it reaffirms the universality, indivisibility, interdependence, and interrelatedness of all human rights, and highlights the barriers persons with disabilities have faced. As such, the convention aims to reconceptualise existing rights to make them accessible and relevant to persons with disabilities. However, Don McKay, the chair of the convention drafting committee, stated that the convention stops short of establishing new rights, focusing instead on demonstrating the

practical application of existing individual rights. This paper argues against this notion and that the convention goes beyond mere rearticulation. Provisions within the convention sit along a scale from trite at one end to novel at the other. Some provisions indeed alter existing human rights principles to apply to persons with disabilities. Whereas, other provisions deviate so far from established non-disability-specific rights to suggest that they are completely unique and new. This paper provides examples of provisions, which sit at different points of this scale: the right to equal recognition; to independent living; and to habilitation and rehabilitation. It argues that the convention takes a novel approach to ensure respect and equal access for persons with disabilities to human rights. Creativity can expand horizons and solve problems. After all, keeping a sheep in the garden is a novel way to cut the grass.

Presentation

In person

Law and Emotion 1

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU218

Stream Law and emotion

467 The Dichotomy of Reason and Emotion in Law and Beyond

Jiaqi Zhang

The University of Leeds, Leeds, United Kingdom

Stream or current topic

Law and emotion

Abstract

In recent decades, many scholars have questioned the dichotomy of emotion and reason in law and even successfully proved that this dichotomy is false. However, there is not yet an adequate theory of how we should think and understand law once we leave this dichotomy. My doctoral project hopes to contribute to this important question. This research goal was not there in the first place; instead, it emerged during my exploration. I would like to talk about three stages in my doctoral journey and how I concretised this research goal. The first stage is what focused my attention on the study of law and emotion – the relationship between law and disgust, such as Uganda's anti-homosexual law and the effect of disgust behind it. While trying to understand and find a cure for disgust's effect in law, Martha Nussbaum provided an answer: compassion. Next, I studied compassion's role in law through the traditional cognitive judgment approach, however, my research found this approach left more questions than it solved, such as: who is making the judgments, on what criterion, who decides the criterion, and why I should care about others. Finally, with a concern about the traditional cognitive judgment approach of analysing emotion in law, at the latest stage, I explored alternative approaches. This research found that the key point of analysing emotions in law is how to understand law beyond the dichotomy of emotion and reason. I now approach this question from the perspective of new materialisms.

Presentation

In person

218 'Law v Emotion' under the Chinese Legal Tradition: Rethinking and Re-orientation

Yong Han

University of Reading, Reading, United Kingdom

Stream or current topic

Law and emotion

Abstract

China resorts more and more to discourses of emotion in international law and diplomacy. Nevertheless, beyond Eastern Asia, there is little attention to China's legal approach to emotion. This approach has two prominent features. First, the particular generic word *qíng*, which etymologically means emotion, has been frequently used in major traditional and contemporary Chinese law codes and many judgments. Second, in China there has been the entrenched traditional legal/judicial philosophy that law reflects nothing but emotions and that emotions shall prevail over law.

This paper rethinks that philosophy by investigating the meanings of *qíng* not only in prototypical traditional and contemporary Chinese law code, but more importantly also in researched historical and judgments which effectively are socio-legal records. The investigation shows that the legal relevance of emotion to Chinese law is arguably more apparent than real, and hence the particular Chinese legal/judicial philosophy is highly debatable. This is because in Chinese legal discourses the word *qíng* could and did/does also often mean 'fact/circumstance', a meaning which however has been eclipsed by the more readily etymology-based intuitional (mis)reading of *qíng* predominantly as emotion.

As a corollary to the investigation and rethinking, emotion is only of limited relevance in Chinese law and legal tradition. The misconceived traditional Chinese legal/judicial philosophy shall therefore be subject to a reversed reorientation: law should prevail over emotion, as is the case in the Western legal tradition.

Presentation

In person

576 Reflections: Objectivity of law leads to emotional dis(connection)

Smita Gupta

Delhi Metropolitan Education, Guru Gobind Singh Indraprastha University, Delhi, India

Stream or current topic

Law and emotion

Abstract

The paper closely observes the interconnections of objectivity in law and how it impacts emotional (dis)connection. Paper addresses the intertwined issues of emotional disconnection in pursuing the objective of legal problems. Whether handling of clients or resolving their legal questions, dealing with victims of sexual harassment or while meditation or while incurring regulatory legal responses to panics, in all such conditions emotions are neglected. Emotions are indeed the fusing energy to bloom the dimensions of human civilization. To seek truth and achieve it, the journey of a lawyer treads a path of various emotional arousals but holding the reins of the objective of the case tightly, in the essence. But in all this, emotions get roller coaster rides. This paper is a reflection of such experience-based empirical study.

Presentation

In person

684 Animal sentience as a case of emotions in law

Tomi Lehtimäki

University of Helsinki, Helsinki, Finland

Stream or current topic

Law and emotion

Abstract

Nonhuman animals are the only sentient beings that are categorised as property in law. They are protected to a certain degree from harm, but at the same time they remain categorized as they were inanimate objects. Animal rights activists, among many others, have argued that the law should account for animal sentience in order to enhance their treatment. Animal sentience provides then a two-fold approach to emotions in law. First, it presents a debate where emotions are at the centre of contestations, i.e., the disagreement between different actors concerns the degree or significance of animal sentience. Second, the debate also concerns humans' capacity to account for animal sentience. Those aiming to enhance the position of animals have promoted for example empathy as a central way to account for sentience. This case then deals with emotions not only as 'humanising' law, but also as a way for extending the scope of law in order to account for nonhuman animals. In this presentation, I will focus on Finland's Animal Welfare Law reform (c. 2010–2022). The law reform aimed to bring about a change from animal protection to animal welfare, shifting from a negative understanding of animal sentience to a positive one. At the same time, it opened up the discussion of the status of animals in law. I examine how different civil society actors aimed to create commonality between humans and animals based on sentience, and how these attempts were either accounted for or contested during the law reform.

Presentation

In person

Civil Justice 1

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU219

Stream Civil justice systems and ADR

144 Being good at doing good: How do service providers in the Legal Aid Board consider legal capability?

Lara MacLachlan

University of Liverpool, Liverpool, United Kingdom

Stream or current topic

Civil justice systems and ADR

Abstract

Legal capability is best understood as the knowledge, skills, attributes and resources needed to deal with legal problems. While many of the foundational aspects of legal capability were explored in Felstiner, Abel and Sarat's (1980) seminal paper on the emergence of legal disputes, the term has received increased attention since 2009. This increased interest can be seen as part of the global access to justice policy shift from top-down institution led justice to a more people-centred justice. Much of the existing research on legal capability has been focused on trying to assess individuals' level of legal capability. Understanding how service providers consider client's needs will not only allow us to provide more user-centred services, but also help to ensure that services can effectively help the largest number of people. This paper draws from 15 semi structured interviews with service providers at the Legal Aid Board in the Republic of Ireland, to assess whether and how they consider clients' legal capability. The paper will draw some preliminary conclusions as to whether or not legal capability is a useful framework in understanding client's needs in this context.

Presentation

In person

421 How can business meet human rights in third-party litigation funding? Some guidelines for future regulations

Maria Carlota Ucin

Erasmus School of Law, Rotterdam, Netherlands

Stream or current topic

Civil justice systems and ADR

Abstract

Access to justice, conceived as a human right, is part of the rule of law and well recognised in several international instruments (Articles 8 and 10 of the UDHR; Articles 2.3 and 14 of the ICCPR; Articles 6 and 13 of the ECHR; and Article 47 of the CFR). The present fulfilment of this right includes some forms of privatisation like private insurance covering the costs of litigation, contingency-fee arrangements between lawyers and clients, crowdfunding applied to support the costs of litigation and third-party litigation funding (TPLF). I will here restrict my analysis to TPLF, as a private form of investment-oriented to finance access to justice. The aim of this article is to provide some arguments in support of the regulation of TPLF as well as some normative guidelines to inform that regulation. For achieving this purpose, I will start by presenting different attitudes towards TPLF and will then assess — from the human rights perspective — some examples of regulation, applying for this purpose the matrix of obligations, namely the duty to respect, to protect and to fulfil human rights. Finally, I will present some conclusions following the results of this evaluation and suggest some guidelines to improve future regulations.

Presentation

In person

507 The Small Claims Determination Pilot: Acceleration of Reform in the Wrong Direction

David Sixsmith

Northumbria University, Newcastle, United Kingdom

Stream or current topic

Civil justice systems and ADR

Abstract

The Small Claims Determination Pilot (“the Pilot”), which commenced on 1st June 2022 and runs until 1st June 2024, allowed some small claims matters to be determined without a hearing, without the consent of the parties, across six County Courts. This paper discusses its relationship to the model of the Online Solutions Court proposed by Lord Briggs as part of his Civil Court Structure Review and, using the responses to Freedom of Information requests to the Ministry of Justice, considers what empirical evidence, if any, was used to support its introduction. The paper argues, drawing on evidence and data from the Civil Resolution Tribunal in British Columbia, that the Pilot disregards the intended trajectory towards a linear, continuous online resolution process for low value civil claims which protects parties’ rights to effective participation, by failing to incorporate any meaningful steps to implement the earlier stages of the Online Solutions Court model.

Presentation

In person

933 English Civil Justice Reforms: Opportunities and Challenges

Masood Ahmed

University of Leicester, Leicester, United Kingdom

Stream or current topic

Civil justice systems and ADR

Abstract

The English civil justice system is experiencing major reforms with the aim of increasing access to justice. The government's court modernisation programme focuses on the digitisation of court procedures and the integration of alternative dispute resolution (ADR) procedures within the online court process. This paper critically considers a number of significant procedural reforms and reviews, including the Online Civil Money Claims (OCMC), the Civil Justice Council's (CJC) Report on Mandatory Mediation, the Small Claims Review and the on-going CJC review of the Pre-action Protocols.

Presentation

In person

Administrative justice 1

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU301

Stream Administrative justice

380 In Conversation with the Academic Panel of the Administrative Justice Council

Linda Mulcahy¹, Joe Tomlinson²

¹Centre for Socio-Legal Studies, Oxford, United Kingdom. ²York University, York, United Kingdom

Stream or current topic

Administrative justice

Abstract

The Administrative Justice Council (AJC) is the only body with oversight of the whole of the administrative justice system in the UK. It advises government, including the devolved governments, and the judiciary on the development of that system. One of its key functions is to identify areas of the administrative justice system that would benefit from research and in pursuit of this goal it has an academic sub-committee. The AJC is interested in exploring how it can work more closely with the socio-legal community and encourage proposals about research which could usefully be undertaken. This session will take the form of an open discussion between the newly appointed co-chairs of the academic panel, Linda Mulcahy and Joe Tomlinson and administrative justice scholars at the conference.

Presentation

In person

880 Narratives on digitalisation reforms of administrative justice systems in the Netherlands and Belgium: neo-liberal or human-centered?

Anna Pivaty

Radboud University, Nijmegen, Netherlands

Stream or current topic

Administrative justice

Abstract

This paper presents the results of a comparative narrative analysis of 'digitalisation' or 'digital transformation' of administrative justice in the Belgian and Dutch political discourses. The corpus consists of texts representing government discourse on the digitalisation of justice, such as policy papers, government reports, coalition agreements, interviews with government officials and others. We distinguish three elements of a narrative: setting, characters (heroes and victims), and emplotment.

First, the existing narratives present digitalisation reforms as 'positive'. Five main 'supportive' narratives are distinguished: that of 'archaic justice', 'slow/clogged justice', 'inaccessible justice', '(too) complex justice' and '(too) expensive justice.' Despite the differences in emplotment, all five narratives paint a similar image of the individual (presented as the 'victim'): namely, that of a (fully) autonomous, rational and capable person, prevented from acting by faults of the system. This image is hardly reconcilable with the contemporary view based on the theory of responsive law/government (Nonet & Selznik, 2016), where humans are conceived as embodied creatures inexorably embedded in social relationships and institutions (Fineman, 2019), which as posited lies in the centre of the notion of 'human-centredness'.

The paper thus concludes that the existing political narratives of digitalisation of administrative justice in the Netherlands and Belgium are informed by the neo-liberal agenda and lack genuine 'human-centeredness.' 'Grand narratives' are powerful, because they can shape political action and influence policy. Thus, it is argued that if the existing narratives of digitalisation of administrative justice reforms are maintained, individuals might be prevented from becoming their true beneficiaries.

Presentation

In person

923 Access to information and length of procedure challenging access to justice in a small Nordic state: Initial main results form a new Finnish legal needs survey.

Yaira Obstbaum, Terhi Esko, Riikka Koula

University of Helsinki, Helsinki, Finland

Stream or current topic

Administrative justice

Abstract

Legal needs surveys have, worldwide, become an important way of assessing access to justice. This paper focuses on administrative challenges and access to information as important access to justice challenges, in the light of initial results from a first round of the Finnish Everyday Problems, Disputes and Solutions survey. The population survey inquired about problems regarding consumer issues, family, housing, work, money, debt, problems, public authorities, welfare benefits or pension, and crime victimisation, along with efforts to solve problems.

The paper focusses on the solution process. This might include negotiation with the opposing party, mediation, or action by responsible or supervisory authority, or – considerably more seldom – legal process. Results indicate that portions of everyday legal problems seem to be solved in a satisfactory manner in Finland. However, there are noteworthy numbers of people facing barriers to solutions.

Relatively high numbers of respondents answered they did not obtain enough information or advice to solve their problem. This is worrisome for instance considering the vast information obligation of Finnish public authorities. Also, a considerable part of respondents felt that the resolution process was too lengthy. The problematic length of Finnish legal procedures has been criticized both by national and international bodies. This survey, indicates, that length of procedure is a problem also regarding everyday legal problems, although efforts to solve the mainly occur on the outskirts of the legal system, for instance by administrative bodies or with the assistance of other experts or laypersons.

Presentation

In person

Empire, Colonialism and Law: Regulation, Development and Empire

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU302

Stream Empire, colonialism and law

639 Regulating traditional medicine in Ghana: postcolonial politics, scientific standards and the technicalities of law

Michael Ashworth, Emilie Cloatre

University of Kent, Canterbury, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

Against a colonial backdrop in which traditional healers, practices and knowledge have been subject to legal prohibition and scientific delegitimisation, postcolonial governments around the world have grappled with the question of whether and how to acknowledge traditional medicine. Adding to the complexity of such a process is the vast heterogeneity of traditional medicine itself, which encompasses diagnostic and therapeutic categories that include the physiological, social, ancestral, spiritual, ecological and cosmological. This paper, based on recent fieldwork in Accra, interrogates Ghana's efforts since the 1990s to regulate traditional medicine through two primary regulatory bodies: the Traditional Medicine Practice Council, which licenses all non-biomedical healers in the country, and the Food and Drug Authority, which grants marketing authorisation for manufactured traditional medicines of 'proven' safety and quality. Drawing on interviews with regulators, representative bodies, and traditional practitioners, this paper teases out the tensions with the current regulatory framework - and highlights the potentially depoliticising effects of a seemingly neutral regulatory drive underpinning the promotion of tradition medicine in Ghana.

Presentation

In person

721 The Continuing Impact of Colonialism on the Ownership of Land in Southern Nigeria.

Olayinka Lewis

University of Essex, Colchester, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

Pre-colonial ownership and management of land in Nigeria was governed by customary law and expressed through family and communal ownership. However, colonisation exposed indigenous communities to a different system of land ownership and control which led to various problems ranging from the removal of ownership rights on land, changes to land administration and control and legal pluralism on land matters. Legal pluralism is prevalent where more than one legal system operates within a country on a range of matters, including land ownership. The Nigerian legal system is an example of a country where legal pluralism exists. This paper argues that the application of customary law which generally applies to members of indigenous tribes in Southern Nigeria, alongside statutory law in the form of the Land Use Act 1978, an Act modelled on English common law, creates a tension between both legal systems.

This paper applies a range of methodology in addressing the issues examined. It also employs the use of legal theory in underpinning customary law and critically examines the legal framework on land ownership under customary law and under the Land Use Act 1978. It concludes that colonialism continues to have an impact on the ownership of land in Southern Nigeria and proffers ways of resolving the impact of colonialism on the ownership and management of land in Southern Nigeria.

Presentation

In person

97 Examining postcolonial structures of corporate power through the lens of development induced projects in Africa.

Oyeniya Abe¹, Janet Uosu²

¹University of Huddersfield, Huddersfield, United Kingdom. ²University of Pretoria, Pretoria, South Africa

Stream or current topic

Empire, colonialism and law

Abstract

This paper examines the relationships between socio-economic inequalities of power, race, wealth engendered by corporate structure, and domination in post-colonial Africa. In Africa, the drive towards infrastructural development and economic growth has increasingly led to the displacement of local populations by TNCs. This intractable challenge confines the experiences of Indigenous people, their decolonial imaginations, to an unwarranted historicizing parochialism. However, corporate power and structure - the weapons that enforce it, the knowledge institutions that legitimize it, the financial institutions that operationalize it - continues to sever indigenous peoples from their properties, including land, water, rivers and natural resources. The colonial practice of displacing locals from their ancestral land, which recasts black indigenous people as black bodies for biopolitical disposal, continues post-colonial in a nuanced being recreated in form of development induced displacement.

This paper proceeds on the basis that conversion of land into property for corporate domination in the pretext of development induced displacement, and of people into targets of subjection, continue to mutate. Projects such as dams, urban highways, extraction of resources and urban renewal were initiated in several countries as monuments of economic hope. In some cases, these projects were greatly eulogised. Over the years, issues of inadequate compensation, improper resettlement, cosmetic consultations and coercion, have significantly precipitated counter-hegemonic resistance to development projects. At the core of this resistance is the fact that displaced minorities are necessary sacrifices for development - a feature of colonial heritage.

Presentation

In person

185 The lingering shadow of the Raj: transplanted legal institutions and economic development

Amber Darr

University of Manchester, Manchester, United Kingdom. University College London, London, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

75 years after the departure of the British from the Indian sub-continent, the three successor states of the Raj, India, Pakistan, and Bangladesh, continue with the English legal system and continue to struggle with economic growth and development and more equal distribution of wealth. This paper argues that the persistent inability of these former colonies to realise their economic and social aspirations is in considerable part attributable to the transplanted English legal institutions which remain at odds with the contexts of these countries and therefore fail to support their economic institutions in their operations. The paper draws upon legal transplant and literature to argue that while legal transplants are shaped by the context of the adopting country, they also impact it by suppressing, but not eliminating, institutions pre-existing in the context. These suppressed institutions make their presence felt by interfering with the smooth functioning of core non-market institutions such as separation of powers, a strong judiciary, and representative political institutions. The paper also draws upon new institutional economics literature which states that core non-market institutions form the backdrop against which all economic activity takes place and are, therefore, critical to economic growth and development to argue that the split between core non-market institutions caused by the suppression of pre-existed institutions by transplanted institutions has the potential to obstruct and impede the economic process in these countries. The paper substantiates this argument with reference to institutions implicit in the Pakistani context that interfere with the operation of its economic institutions

Presentation

In person

Transformative Justice 1

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU303

Stream Human rights, memory and transformative justice

330 Disruptive accountability? Temporal regimes and social change in decolonization struggles in Belgium

Tine Destrooper

Ghent University, Ghent, Belgium

Stream or current topic

Human rights, memory and transformative justice

Abstract

To address the legacies of colonialism, several former colonial states have implemented a range of initiatives commonly considered to belong to the domain of transitional justice (TJ). These contexts are, however, very different from those for which TJ was initially conceptualized. As such, the implementation of elements from the TJ toolbox in these decolonization struggles raises several questions which this article seeks to address. One of these questions relates to how diverging temporalities affect central normative objectives of TJ, such as accountability, social

transformation, and disruption of the harmful status quo. The Belgian case is used here to explore how a more pertinent approach of transitional temporalities enables a thicker understanding of accountability that re-centers the debate around accountability's normative objectives of social transformation and disruption of the harmful status quo, which is also better aligned with the objectives of decolonization struggles. I call this encompassing approach to accountability 'disruptive accountability' to underline the normative objective of disrupting harmful social structures and relations.

Presentation

In person

406 Reckoning with the Colonial Past: Historical Commissions and the Pursuit of Structural Justice

Cira Palli-Aspero

Ghent University, Ghent, Belgium

Stream or current topic

Human rights, memory and transformative justice

Abstract

Colonial injustice can be characterized as slow violence that permeates pre-, trans- and post-colonial times and that is inscribed in many social and political structures. Amid demands for the implementation of robust strategies and concrete measures to tackle the enduring consequences of colonial injustice, former colonial powers are increasingly facing pressures to address the legacies of their colonial pasts.

As issues of historical responsibility, recognition, and redress of colonial injustice are placed at the centre of the public and political debate, we are witnessing an increased use of the transitional justice paradigm to think about historical injustice. Nevertheless, this has destabilized some of the transitional justice's foundational principles. Questions about (historical) accountability or about how to disrupt cycles of (in)direct violence, for example, come to mean something very different in contexts where the same systematic inequalities and epistemic structures that inspired colonial injustice still affect large groups within society.

This paper zooms into the work of the recently established state-sanctioned historical (truth) commissions (Belgium, Norway, Sweden, and Finland), as an entry point to examine, on the one hand, the implications of using the logic and rhetoric of transitional justice to address historical injustice. On the other, the ways in which these truth-seeking initiatives can potentially contribute to (historical) accountability and social change in the (post-)colonial state.

Presentation

In person

643 Reparations for Palestine in the context of ongoing settler colonialism

Bana Abu Zuluf¹, Brendan Browne², Maath Musleh³

¹National University of Ireland, Maynooth, Maynooth, Ireland. ²Trinity College Dublin, Dublin, Ireland. ³Vienna University of Technology, Vienna, Austria

Stream or current topic

Human rights, memory and transformative justice

Abstract

In the ever-evolving field of transitional justice, the issue of how to conceive of reparations for victims and survivors of historical harm is a key theme. However, relatively little analysis has examined the issue of reparatory justice in contexts of ongoing settler colonial erasure. Reparations for colonialism, both past and present, remain under-theorised. Building on a critical body of Palestinian scholarship, we argue that careful consideration of reparations, one that centres justice, decolonisation and an end to Israeli hegemonic control over indigenous Palestinian land, is one way of ensuring a more legitimate, 'just' transition. We first unpack the situation on the ground in Palestine and outline the impact of settler-colonialism across the region, whilst also highlighting the practical limitations to such a framing. We argue the point that almost all reparations programmes imposed in post-conflict spaces to date have called on victim magnanimity and concession, rather than acting as a more meaningful attempt to hold perpetrators, including states and their allies, to account. In the context of ongoing settler colonialism in Palestine we argue that any reparations must avoid falling into a trap that allows for the dilution of indigenous claims to 'justice' and thus allows for the salving of the conscience of the perpetrators for the sake of 'conflict' stability. We conclude by asking how and by whom decolonial reparations can be shaped considering the lack of a body that carries these principles and aims for such decolonial political goals.

Presentation

In person

409 Coping with a State's Colonial Past—A Shift in Transitional Justice

Selen Kazan

TU Dortmund, Dortmund, Germany

Stream or current topic

Human rights, memory and transformative justice

Abstract

Transitional justice mechanisms have been increasingly employed by democratic states Such as Canada, Australia, Belgium, and other Scandinavian countries that are seeking to address their histories of colonialism. These mechanisms, which include truth commissions, reparations, and institutional reform, aim to address past human rights abuses and promote reconciliation between Indigenous, non-Indigenous, and formerly colonized communities. This paper will examine the use of transitional justice mechanisms and rhetoric in these democratic states that have grappled with their colonial legacies. However, with this new form of usage of transitional justice mechanisms, these countries enter themselves into the broader normative objectives of transitional justice. While transitional justice is often seen as promoting reconciliation and healing, it has also been the subject of significant debate and criticism. Some argue that it is insufficient to address the ongoing structural inequalities impacting Indigenous communities.

Although the contribution of commissions to the more comprehensive reckoning of colonialism's effects is essential, it is still unresolved how they contribute to the concept of accountability. In contrast, others question the effectiveness of individual-level remedies in addressing systemic wrongs. By analyzing these case studies, the paper aims to contribute to the broader literature on transitional justice and colonialism and to provide insights into how democratic states can address and move beyond their complicated pasts.

Presentation

In person

Equality and Human Rights Law: Socio-Economic Inequality and Human Rights

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU308

Stream Equality and human rights

892 SOCIAL STRATIFICATION AND LAW:LEGAL PROCESS IN THE MAKING OF SOCIAL INEQUALITY

GBEMISOLA HANNAH

ADEKUNLE AJASIN UNIVERSITY, ONDO STATE, Nigeria

Stream or current topic

Equality and human rights

Abstract

Over the years, the unfavorable situation of masses been stratified under demeaning situations has prompted very thoughtful debates among scholars, policy-makers, and human rights' activists worldwide. However, through the Marxist culture conflict, law is viewed as a tool of oppression whereby, the interest of the bourgeoisie is protected by legal process and masses are kept at bay. The manifestation of stratification through law over the years is a crucial factor in explaining social inequality. Studies on law and society had focused on law as a whole. However, little attention has been given to law as an ideological apparatus used by the state to construct social inequality. Understanding law and stratification could offer a deeper look into the legal process of making social inequality in contemporary society. Hence, the goal of this study was to examine social stratification and law, thus constructing social inequality in contemporary society.

Law works by covering existing bourgeoisie ideology and adding to different perceptions after assigning social value to law. For this paper, I viewed law as a means to an end, i.e., an instrument to satisfy the self-interest of the bourgeoisie. To achieve these goals, I adopted a cross-sectional research-design to elicit data. The data generated were analysed with the use of computerised qualitative analysis software Atlas-ti version 7. In my proposed presentation, I will discuss how law demands new strata from people in order to perform as a means to an end and it has compromised its status of defining rights and liberties globally.

Presentation

Virtual via Microsoft Teams

491 Racialised Poverty in Discrimination Law: Towards a Vulnerability-based Approach under Article 14 ECHR

Vandita Khanna

University of Cambridge, Cambridge, United Kingdom

Stream or current topic

Equality and human rights

Abstract

Poverty is a racialised phenomenon and disproportionately affects racialised minorities. However, despite persisting bids to introduce poverty as an independent ground or claim discrimination on more than one ground, the grounds-based architecture of discrimination law continues to resist racialised poverty.

Instead of subsuming poverty under a grounds-based approach, the European Court of Human Rights has charted a different path by invoking the concept of 'vulnerability' to describe certain racialised minorities (eg blacks, Roma, asylum seekers). A close reading of Article 14 jurisprudence reveals that in deploying the language of vulnerability, the Court is referring to the poverty of such racialised minorities without explicitly stating so. This article explores the potential and functions of the Court's strategic use of vulnerability in addressing racialised poverty under Article 14 ECHR.

First, it explores possible explanations for the Court's reluctance to invoking poverty explicitly under Article 14, including concerns about the Court's institutional legitimacy. Second, the article argues that the Court's vulnerability-based approach holds potential to contextually recognise racialisation and poverty as simultaneous and inseparable. It thereby frames racialised poverty as a form of racial discrimination and holds potential to narrow states' margins of appreciation and develop positive obligations to redress racialised poverty under Article 14. Third, the article addresses essentialisation and inconsistency as limits to the vulnerability-based approach to identify racialised poverty. In welcoming this 'quiet revolution' of vulnerability, the article thus contributes to existing judicial strategies to address racialised poverty in discrimination law beyond the grounds-based approach.

Presentation

Virtual via Microsoft Teams

366 Citizenship for Sale and the ‘Right’ to Belong: the Commodification of Access to VIP Destinations.

Magdalena Zabrocka

University of Aberdeen, Aberdeen, United Kingdom

Stream or current topic

Equality and human rights

Abstract

Citizenship can be argued to be a ‘necessary evil’ where its discriminatory roots, troubled history and inequality of access are undeniable, however, none of the scholars have yet been able to provide a robust alternative proposal, addressing all the legal and socio-political implications of such an order shift. The issue of inequality of access and further commodification of citizenship can be exemplified by the practice of selling it through Citizenship by Investment schemes by selected Member States to High-Net-Worth Individuals for a pre-determined amount of money. In terms of citizenship as a gendered concept, it is interesting to observe how investment schemes have been strategically used as a tool of power and mobility by fleeing Russian oligarchs, attempting to avoid prosecution.

It is proposed that a legal doctrinal analysis fails to encompass the complexity of the matter and, therefore, necessitates further considerations utilising the socio-legal method. The dangerous occurrence of commodification of the ‘right’ to belong, if normalised could lead to further pronouncement of the already visible distinction between ‘wanted’ and ‘unwanted’ immigrants. Further, one should consider the implications of capitalising on the sale of ‘belonging’, including the risk of creating VIP communities where the most vulnerable would not have access to. The meritocracy of investment schemes and the difference between capital and human capital will be discussed. The paper further explores the concept of citizenship, what it entails, and how EU citizenship merits a separate carefully designed ‘ideal type’ methodology to assess its legal, sociological, and political dimensions.

Presentation

In person

30 Hungry for more than an education: food insecurity among university students in the UK

Katie Morris

Durham University, Durham, United Kingdom

Stream or current topic

Equality and human rights

Abstract

Entry into higher education is recognised as a time of increased autonomy and independence for many students as they leave the family home and face new responsibilities, both academic and domestic. Included within the latter is the planning, purchasing and preparing of regular meals, which is often limited by financial and time constraints as well as the student’s cooking skills. Consequently, university life in many nations, including the UK, has become synonymous with a diet of instant noodles and takeaways. Yet, this characterisation underplays the severity of food

insecurity among this population and its impacts upon mental and physical health, academic performance and relationships. This paper examines young people's experiences of food insecurity within UK universities from a rights-based perspective, highlighting the barriers students encounter accessing nutritious foods which accommodate cultural and/or dietary requirements. It draws attention to the increasing pressures posed by the COVID-19 pandemic and, most recently, the cost-of-living crisis, which have necessitated the establishment of food pantries within a number of higher education institutions alongside other emergency support. In light of the growing risk of hunger, the paper concludes that more comprehensive measures are needed on the national level to protect, respect and fulfil the right to adequate food of university students, as required under Article 11 of the International Covenant on Economic, Social and Cultural Rights.

Presentation

In person

25 Years of Constitutional Change: Beyond

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU309

Stream 25 years of constitutional change - past and future

847 Local autonomy: a threat to the "Texas model?"

Sabah Athar

Birmingham City University, Birmingham, United Kingdom

Stream or current topic

25 years of constitutional change - past and future

Abstract

In recent decades, localism has reared its head across the United States with local governments asserting themselves against the state and/or the federal government. This is a result of the exponential shift from rural to urban in what has been coined "the century of the city" (Ran Hirschl). However, despite this shift, the United States Constitution notably lacks any mention of local governments, leaving them at the mercy of the state. The response to localism in the state of Texas is a prime example of the impact of the absence of local governments from the federal constitution. Known for its preference for small government, Texas has relished in this by pushing back on local government attempts to benefit their residents. The Lone Star state's super-preemption laws proscribe a host of innovative local democratic measures, such as sanctuary city policies and firearms regulation, in a conscientious effort to reaffirm the inferiority of local governments as "creatures of the state." Republicans have perceived attempts at local regulation as a threat to the fabric of their respective states with the Governor of Texas claiming they "erode the Texas model." This paper challenges this to suggest that in fact the constitutional fragility of local governments only serves to erode the *American* model, particularly the democratic foundations of the nation, and with urban populations projected to grow further in coming years, it is time for the United States to recognize the role of local governments in the constitutional order.

Presentation

In person

660 The effectiveness of legislative mechanisms and executive agreements for the devolution of powers to Wales: the case of rail transport

Gareth Evans

Swansea University, Swansea, United Kingdom

Stream or current topic

25 years of constitutional change - past and future

Abstract

It is now a well-rehearsed adage that the experience of devolution in Wales has been a 'process, not an event'. Over the past two decades, the Welsh devolution settlement has undergone a number of significant changes, and the Senedd and Welsh Ministers have received a range of new powers. This paper will investigate the legislative mechanisms and executive agreements that have been used for devolving powers on an incremental basis to Wales since 2011. To provide a case study, the paper will analyse the case of rail transport in Wales and will focus on the mechanisms for cross-border cooperation, agency agreements and the devolution of powers to Wales.

Presentation

In person

510 A Socio-Legal Experiment in Participatory Democratic Design: The Florence Young Citizens' Forum

Daniel Rozenberg

European University Institute, Florence, Italy

Stream or current topic

25 years of constitutional change - past and future

Abstract

In March 2022, I invited 50 local high-school students to participate in a 'DIY deliberative youth forum': the 'Florence Young Citizens' Forum'. I modelled our socio-legal participatory experiment to mirror the CoFoE 2021, but with the critical aim of being more accessible, engaging and fun. Through our Forum I introduced emerging research in participatory democracy (cf. Hélène Landemore) to the parallel field of participatory (legal) design, which 'applies human-centred design to law to make it more accessible and innovative to users' (Margaret Hagan; cf. also Amanda Perry-Kessaris). Our youth participants were tasked with

ideating recommendations on an assigned theme used in the CoFoE, and then presenting these on collaboratively co-designed visualised posters. Design and pedagogical research were used to inform the organisation of our Forum as a whole, including its central deliberation exercise which followed a 'double diamond' design-thinking methodology and was assisted by visual media such as post-its, exercise cheat sheets, and the mind-mapping website 'Miro'.

This paper will auto-ethnographically compare my experience as a note-taker for the CoFoE to the lessons learned in designing our own researcher-led Forum. I will compare the procedural organisation of both mini-publics as well as the substantial output regarding the deliberations and recommendations themselves. My aim is to inductively glean conclusions as to how participatory spaces and the deliberation therein can be made more accessible, diverse and agonistic through applying socio-legal research from the fields of inclusive design, critical disability and pedagogy - and how this might tie into popular constitution-making and drafting processes.

Presentation

In person

Exploring Legal Borderlands: Exploring Borderlands of Socio-Legal Education and Research Agenda

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU310

Stream Exploring legal borderlands

638 Exploring Constitutional Borderlands: Interdisciplinary Aspects of Constitutions

Pedro Fortes

UCAM, Rio de Janeiro, Brazil

Stream or current topic

Exploring legal borderlands

Abstract

This paper explores the constitutional borderlands, by examining the sociological, political, and economic dimensions of constitutional orders. Additionally to the normative dimension of defining rules and norms, constitutions are shaped by and shape the political community, set expectations for the members of a given society and are also decisive for the institutional architecture of the markets. Importantly, constitutions need to be seen and studied as institutions through interdisciplinary perspectives. This paper is also animated by the debates on constitutional realism and how constitutions must be really connected to the social experience, protected by bodies that posit constitutional norms, and establish a sustainable economic order. Importantly, this paper examines classical works on these interdisciplinary dimensions and more contemporary works about these constitutional borderlands too.

On one hand, this perspective bring us back to the studies on the theory of the state and how political bodies have emerged and developed into a complex bundle of organizations that is supported by and supports a constitutional structure. On the other hand, the literature on law and development studies pursues the interdisciplinary perspective on how the quality of institutions may influence the interaction between organizations and rules of the game that will ultimately create a positive political environment, social cooperation, and growth for progress. In contrast, some constitutional arrangements are merely symbolic and result in a sham constitutional order, which doesn't really connect with the social experience. In summary, the borderlands of constitutions reveal the points of contact between law, politics, society, and the economy.

Presentation

In person

307 Social representation of "case-law" among Czech lawyers

Terezie Smejkalova¹, Anežka Smejkalova²

¹Faculty of Law, Masaryk University, Brno, Czech Republic. ²Université libre de Bruxelles, Brussels, Belgium

Stream or current topic

Exploring legal borderlands

Abstract

Social representations approach (Moscovici 1961, Marková 2005, and others) has been established as a useful way to study social objects and phenomena. Precedent, settled case-law, and similar notions based on the normative nature of opinions expressed in the course of judicial decision-making are such phenomena that – in order to fulfil any type of function within given legal systems – must be represented in and by the society. As such, it has been recently empirically studied, usually by means of utilising network analysis of citations (Fowler and others 2007, Derlén and Lindholm 2017). A recent study of this kind in the Czech legal system uncovered that while referring to past case-law is an acceptable and desirable practice, the nature of case-law itself remains rather unclear and shapeless (Harašta and others 2021).

In order to explore the nature of case-law within the Czech legal system further, we have conducted research to determine its social representation among members of Czech legal community. Utilizing the means of similarity analysis (Bouriche 2005) we believe we have uncovered a possible answer to the confusing results of previous studies. We show that the Czech legal system (and by extension other similar Continental legal systems) conceptualize case-law as a strange mixture between binding precedent and argument from authority. Moreover, our results suggest that the representation of case-law leans towards the concept of legal norm.

Presentation

In person

337 Why laws do not work properly? The grey areas between laws and their implementation based on empirical evaluations

Kati Rantala, Inka Järvikangas

University of Helsinki, Helsinki, Finland

Stream or current topic

Exploring legal borderlands

Abstract

In this paper, we examine the borderland between law and its implementation regarding the functionality of laws; when problems arise in practice, are they the result of poorly designed laws or poor implementation? The empirical data consists of 45 ex post evaluations of legislative reforms conducted in Finland, published during 2011 – 2020. The data includes all evaluations from that period that have been conducted by an independent agency and are based on empirical evaluations. We ask 1) how do legislative reforms work in practice, 2) how is the result related to the types of legal reforms in question, as well as to the types of evaluation methods, and 3) why legislative reforms do not work when that is the case. In our empirical analysis, we categorize legislative reforms into three groups based on the work of Werner Bussmann (2010): those aimed at social ordering, problem solving or both. Overall, legislative reforms do not seem to work well. The reasons relate to unclear legal formulations, problems in the implementation, and not considering the everyday realities of those affected. Then again, the type of reform partly determines the nature of the evaluation, and they both determine what can be said about the functionality of the reforms. The results will be discussed, for example, against the notions of intervention theory (Vedung), street level bureaucracy (Lipsky, Halliday), and realistic evaluation (Pawson & Tilley).

Presentation

In person

907 “The borderline between cosmetics and drugs, of course, rests upon the claims which are made”: composing cosmetics in Canada with law, gender, and time (1949-1952)

Lara Tessaro

University of Kent, Canterbury, United Kingdom

Stream or current topic

Exploring legal borderlands

Abstract

In April 1949, Canada proclaimed into force a statutory provision that made cosmetics a sub-class of drugs. However, some Department of National Health and Welfare officials disagreed with this legislative decision, most notably Robert Curran, the Department's legal advisor. Wanting to draw a hard line between cosmetics and drugs, Curran argued that these products were distinguished not by their ingredients, but rather by the different claims made about them by manufacturers and marketers. Over the next three years, through administrative and enforcement practices rather than formal regulations, National Health officials performed an ever-firmer line between these substances, deploying the device of product claims on labels and in advertisements to divide cosmetics from drugs.

To explore this shifting borderline, this paper considers three sites using archival methods and other primary sources. First, U.S. case law on false and misleading claims drew distinctions between products with “temporary” versus

“permanent” effects, in disputes regarding deodorants and dandruff shampoos. Second, under the Canadian Excise Tax Act, a product for which therapeutic claims were made could nonetheless be a cosmetic, as shown in an appeal to the Tariff Board regarding Chap Stick, a lip balm marketed to men. A final site examines how National Health officials struggled with outlandish claims made for estrogenic breast creams.

In examining these events, this paper apprehends product claims not merely as textual or visual representations but as a techno-legal device used to perform ontological separations. Moreover, the boundaries produced by these claim-making practices were frequently gendered.

Presentation

Virtual via Microsoft Teams

Legal professions 1

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU318

Stream Lawyers and legal professions

75 Circumventing Minimum Mandatory Sentences through Legal Representation in Drinking and Driving Violations

Jonathan Hasson^{1,2}, Abraham Tennenbaum³

¹University of Haifa, Haifa, Israel. ²Erasmus University Rotterdam, Rotterdam, Netherlands. ³Sapir Academic College, Ashkelon, Israel

Stream or current topic

Lawyers and legal professions

Abstract

Mandatory minimums limiting judicial discretion often appear in sentencing guidelines; however, they are often not applied in practice. Plea bargains offered by the prosecution are used to circumvent these mandatory driving disqualifications, while allowing judges to refrain from sentencing offenders to a mandatory license disqualification. We used three databases (N = 106,292, N = 98,190, N = 1209) of traffic court (magistrate) which include all cases in which defendants were convicted of driving under the influence of alcohol from 2008-2022. We also conducted survey among attorneys (N = 33). Results indicate that judges implement mandatory minimum rules only in 20% of cases. The average license revocation is less than 12 months, half of the mandatory sentence. In cases resulting in plea bargaining, the average penalty is even lower, 8.1 months. A positive correlation was found between the level of intoxication measured and the length of the disqualification in months. Nevertheless, even for high intoxication levels, disqualification still does not reach the minimum penalty required by law. Considering these findings, needed implications for the current limiting enactments are discussed. We propose replacing the minimum penalty with a gradual and proportionate punishment while simplifying toxicology testing procedures.

Presentation

In person

791 Asserting Diversity: What is revealed in published responses to Canada's Federal Judicial Questionnaire?

Sonia Lawrence

Osgoode Hall Law School of York University, Toronto, Canada

Stream or current topic

Lawyers and legal professions

Abstract

The idea that a "diverse judiciary" is required is one that has taken hold in many jurisdictions but precisely what diversity means and how best to achieve it remain elusive. In this paper I describe the development of Canada's "Federal Judicial Questionnaire," required of all aspirants for appointment to Superior Courts, and the transparency rationale behind making responses from successful candidates publicly available. Using a selected sample, I analyse responses to some specific questions including "How has your experience provided you with insight into the variety and diversity of Canadians and their unique perspectives?" and "Please describe the personal qualities, professional skills and abilities, and life experience that you believe will equip you for the role of a judge." What do judges think diversity means in this context? How do they assert that they have insight and skills to judge in a diverse society? The responses reveal different understandings of what diversity means. While some judges assume themselves to be in the mainstream and then describe "encounters with diversity" (or "diversity adjacency"), others position themselves as representing something other than the mainstream or the traditional judicial class. A number of visible minority / BIPOC candidates addressing their personal "difference" but follow up by strongly asserting "Canadianness". The paper will address both research methodology issues and the question of what can really be learned from responses provided under these conditions.

Presentation

In person

259 Impartiality in practice: can judges keep the promise that is given?

Elke Olthuis

University of Amsterdam, Amsterdam, Netherlands

Stream or current topic

Lawyers and legal professions

Abstract

Judges are expected to be independent and impartial. More specifically, they are expected to steer away from arbitrariness, perform their duties without favour, prejudice or bias and ignore their own attitudes. Research on the role of attitudes on decision-making shows it might be difficult to live up to such expectations. Attitudes, e.g. evaluations based on cognitive, affective and behavioral information, are deemed necessary to make

decisions and people hold attitudes towards anything that can be evaluated. Attitudes can, however, also create biases and prejudices. It is not clear if personal attitudes play a role in a judge's decision-making process. Yet, if personal attitudes play a role in a judge's decision-making how does this relate to impartiality? Do judges think they have to mediate between their personal attitudes and professional values, especially impartiality, and if so, how? This paper aims to answer the latter question based on findings from 78 semi-structured interviews with Dutch first instance court judges. From these findings the following pattern arose: in practice a narrow, more hollowed-out, version of the value of impartiality is applied. The broad version, e.g. the version more in line with how impartiality is described in the "law", is barely applied. Therefore, you could argue that practice and the "law" do not coincide which could imply judges don't see a need to mediate between their personal attitudes and their impartiality. Or that impartiality is seen perceived differently in theory than by those in practice.

Presentation

In person

Intellectual Property 1

13:00 - 14:30 Tuesday, 4th April, 2023

Location MU319

Stream Intellectual property

Jasem Tarawneh

31 Nollywood To the World: Engaging Lessons from Kogan v Martin in Tackling Misogynoir in The Representation of Nigerian Women in Film

[Uchechukwu Ani](#)

Queen Mary University of London, London, United Kingdom

Stream or current topic

Intellectual property

Abstract

Whilst providing a welcome alternative to the 'starving African child' lens through which Africans are usually portrayed in Western media, Nollywood, the behemoth Nigerian film industry, unfortunately often reinforces misogynistic views of the women of the continent.

Asides the patriarchal culture within which Nollywood films are created, there is also the male gaze through which its mostly male filmmakers depict women. This gaze is further strengthened by the rigid structure of the Nigerian Copyright Act which severely limits the possibilities for joint authorship in Nigerian filmmaking. Analysed through the lens of feminist legal theory, these provisions of the legislation function to keep women from positions of authorship and ownership, which translate to economic and cultural capital within the industry.

The landmark ruling of the UK Court of Appeal in *Kogan v. Martin* changed the landscape of joint authorship under UK law. Whilst the ruling concerns the authorship of a screenplay, when considered alongside the IPEC decision in *Martin v. Kogan 2*, it contains valuable insights into the authorship of the film work.

This paper shall analyse the novel principles laid down in *Kogan* (which itself plays out across gendered lines) and propose changes to the framework of joint authorship of film works in Nigeria. In acknowledgement of the colonial history which prompted the similarities between British and Nigerian law, the paper shall employ a decolonial approach in applying the principles to a Nigerian context as an attempt to close the gulf of gender representation in Nigerian filmmaking behind the screen.

Presentation

In person

845 Exploitation or Exclusion: What do creators want from copyright?

Smita Kheria

University of Edinburgh, Edinburgh, United Kingdom

Stream or current topic

Intellectual property

Abstract

Copyright has both an external and an internal aspect in terms of the potential benefit it can provide to the right owner. The external aspect captures the essence of copyright as a 'negative' right, that is the ability to exclude others from the market i.e. prevent infringers from undertaking uses of a protected work that are exclusively granted to the copyright owner. In contrast, the internal aspect is the ability to exploit the uses of a protected work that are exclusively granted to the copyright owner, through contractual arrangements (e.g. an assignation or license) in return for economic or other gain. This paper draws upon empirical research from several projects by the author that have examined how copyright intersects with the everyday lives and practices of a range of creators (digital and new media artists; participants of online creative communities; arts and humanities researchers; and professional writers, illustrators, musicians and visual artists) to discuss how such creators view the internal and external aspects of copyright. It examines how the role of copyright is perceived and understood by creators, considers the similarities and differences across divergent practices, and explores what the resulting findings mean for the legitimacy and necessity of copyright.

Presentation

In person

890 Web3 for 'amateur-but-aspiring' creators: Resolving or replicating copyright problems

Rachel Maguire

Royal Holloway, University of London, Egham, United Kingdom

Stream or current topic

Intellectual property

Abstract

The creative internet has been well-explored in copyright scholarship, with much focusing on Web 2.0 and the read-write culture that it facilitates. Web 2.0 was supposed to democratise access to creative markets and amateur creators increasingly use online social spaces as routes to professionalism, including distribution, marketing, training and feedback. However, the opportunities for these ‘amateur-but-aspiring’ creators have been limited by copyright problems in the online context.

Narratives about opportunities offered by Web3 – a vision of an improved internet based on decentralised systems – seem to run parallel to those of Web 2.0, with talk of wealth-equalisation and entrepreneurial disruption. Web3’s relationship with copyright law, however, seems to be different.

This paper interrogates whether Web3’s relationship with copyright law better meets the needs of amateur-but-aspiring creators online. It considers specifically whether Web3 resolves problems for copyright law in the existing online creative environment. To do so, it focuses on an element of Web3 that has received widespread attention: non-fungible tokens (NFTs).

Drawing in part from qualitative work into online creative communities, the paper identifies that amateur-but-aspiring creators face several difficulties in taking advantage of the opportunities available to them in Web 2.0. It then argues that while NFTs theoretically offer solutions to some of these problems – for example, by providing a means to create scarcity in an online context or by challenging the need for copyright law at all – in practice, NFTs seem to replicate or reinforce the copyright issues these creators face in Web 2.0.

Presentation

In person

657 Enclosure of the Image in UK Law

Rebecca Moosavian

University of Leeds, Leeds, United Kingdom

Stream or current topic

Intellectual property

Abstract

UK law has had a long-standing scepticism towards a sui generis commercial image right. But in recent decades, IP protection for image in the UK has expanded (in real terms) despite repeated judicial claims that there remains no image right. This paper argues that expansion of protection for image has occurred across confidence, passing off

and trade marks via changing strategies of celebrities and their advisers. They have adopted strategies of enclosure of the image, a process that has certain parallels with the enclosure of the land across the 18th-19th centuries. In turn, the common law has recognised such strategies by 'responding to commercial practices', thus incorporating them into existing IP doctrines, particularly confidence and passing off. This has the effect of legal enclosure of the image (or at least legal recognition of enclosure of the image).

Presentation

In person

Family Law and Policy 2

14:45 - 16:15 Tuesday, 4th April, 2023

Location MD007

Stream Family law and policy

212 Understanding the relation between Parental Alienation (PA) and Parental Responsibility (PR) in England and Wales: Legal entrapment of women and children to perpetrators of domestic abuse

Sonja Ayeb-Karlsson¹, Adrienne Barnett²

¹UCL, London, United Kingdom. ²Brunel University, London, United Kingdom

Stream or current topic

Family law and policy

Abstract

Concerningly, over recent years mothers in England and Wales attempting to follow legal domestic abuse (DA Act 2021) guidance to protect their children from harm and safeguarding concerns are increasingly being penalised and seen by family courts and professionals as obstructing parental involvement. There is a growing body of evidence indicating that mothers raising allegations of domestic abuse in the family courts are silenced with the use of counter-allegations of parental alienation. To fully understand the history, values and meaning behind the 'contact at all costs' culture in the family courts of England and Wales we must align the recent focus on parental alienation with law and practice concerning parental responsibility and the presumption of parental involvement (Section 1(2A) Children Act 1989). The presumption that the involvement of both parents after parental separation is always in the child's best interests fails to reflect the fact that behind Section 1(2A) lies a contingent, contradictory, and ambiguous body of research, clinical findings and theoretical literature that reveals no firm conclusions on how children's welfare on parental separation can best be served. Perhaps more importantly, it has created a dangerous power tool that has ended up trapping vulnerable children and women in endless cycles of abuse and violence and fails to protect children from harmful parenting and parents. The parental responsibility system enables tremendous power over the child, and their resident parent, by parents whose presence is harmful and/or inconsistent.

Presentation

In person

142 Domestic Abuse in Private Family Law Proceedings: Instrumentalising the Family Court and Weaponising Children

Aleisha Ebrahimi

UCL, London, United Kingdom. Domestic Abuse Commissioner, London, United Kingdom

Stream or current topic

Family law and policy

Abstract

Child Arrangement Order cases are legal disputes between separated parents which arise when agreements cannot be reached with regard to child contact and other aspects of a child's upbringing. Within these private family law cases, allegations of domestic abuse are increasingly common.

There is an established concern for: the manner in which the family courts become an arena for continued abuse in protracted and costly cases; the poor engagement and minimisation of domestic abuse; and an improper balancing of parental rights, parental responsibility and rights of domestic abuse victims, usually mothers.

Such minimisation of domestic abuse is said to be attributed to the English court and its 'pro-contact' culture. Notwithstanding the widening legal scope of abuse to encompass emotional abuse, which includes coercively controlling behaviour, the Family Court has continued to receive criticism for sustaining post-separation control.

Central to the research is the statistic that coercively controlling relationships are more likely to see endeavours to achieve post-conflict control. The aggressive pursuit of child contact, to continue abuse and control, is acknowledged as a mechanism of domestic abuse perpetuation. Mothers, who are usually the primary carers of children, are disproportionately affected by domestic abuse, and the Family Courts may be instrumentalised, and children weaponised for this purpose.

My research considers the current shortcomings of assessing and addressing domestic abuse in the Family Court, particularly in relation to allegations of coercive control, as a matter of international human rights law concern.

Presentation

In person

94 Breaking the bond: The threat of child removal and the experiences of survivors of domestic abuse when an expert has been instructed in private law family court proceedings.

Rachael Ann

Brunel university, London, London, United Kingdom

Stream or current topic

Family law and policy

Abstract

This paper initially discusses crucial findings of a small scale, feminist post-structural, qualitative study which explored the lived experiences of female survivors of domestic abuse when an expert had been instructed in private law family court proceedings. Survivors' lived experiences indicated how the failure to acknowledge domestic abuse by the family court judges and professionals can make a survivor further vulnerable to the threat of child removal early on in proceedings. This can be exacerbated by the instruction of an expert who may carry out psychological assessments on family members, with particular focus placed upon mothers.

Child removal is an under-researched area of private law children proceedings and there is very little understanding of how a perpetrator can harness a legal mechanism to further regulate mothers and children, within the wider context of post-separation abuse and coercive and controlling behaviour. Furthermore, several survivors' lived experiences highlighted how women from non-white communities were further oppressed in the family court, by court orders that did not take into account their cultural needs.

The paper concludes by discussing Project Lighthouse, an online trauma-informed mental health service, which has arisen from the study. The organisation will support all women who have endured domestic abuse and child removal and is currently working with marginalised communities to find better ways to help women access this service. (250)

Presentation

In person

748 Understanding the nature of Intractable Contact Disputes in family proceedings: Empirical evidence from Northern Ireland.

John McCord

Ulster University, Belfast, United Kingdom

Stream or current topic

Family law and policy

Abstract

Intractable contact disputes (ICDs) remain problematic in family proceedings and have been described as the scourge of the family courts. Recently, ICDs have been the subject of repeated calls from the President of the Family Division in England & Wales for greater research, insight and understanding. Despite this, relatively little research exists which has investigated the nature of such disputes within the family law arena. Building on existing doctoral research, this research develops a conceptual model of ICDs and presents the findings from exploratory empirical research into the prognosticators of ICDs in the Northern Ireland court system. In doing so, the research undertakes principal component analysis to further understand and identify the key components and issues of ICDs in order to offer a clearer typology of these disputes and inform debate on family law policy, practice and reform recommendations. Finally, the research sets out a number of recommendations for further research and legal innovation in this complex and difficult area of family law.

Presentation

In person

Indigenous Rights 2

14:45 - 16:15 Tuesday, 4th April, 2023

Location MD012

Stream Indigenous rights

687 Protecting the Arctic Indigenous Peoples' Livelihoods in the Face of Climate Change: The Potential of Regional Human Rights Law and the Law of the Sea

Lisa Mardikian¹, Sofia Galani²

¹Brunel University London, London, United Kingdom. ²Panteion University Athens, Athens, Greece

Stream or current topic

Indigenous rights

Abstract

Climate change presents existential challenges for the livelihoods of indigenous peoples, which depend on vulnerable ecosystems prone to extreme weather phenomena. Of all indigenous communities, those living in the Arctic have been worst affected. This raises the question to which extent international law can be mobilized to address the endangered livelihoods of Arctic indigenous peoples in light of rapid changes in the Arctic environment. This paper examines two dimensions of the protection of livelihoods: an internal one – i.e., legal entitlements over assets, land and income – and an external one – i.e., the living environment in the Arctic. In so doing, the paper analyses the right to property under regional human rights law and rules on the protection of marine resources under the law of the sea. Reflecting on relevant jurisprudence, it shows that both legal areas could provide important elements of litigation strategies to address the human rights costs of climate change.

Presentation

In person

272 Repairing historical wrongs: the Church of Sweden's approach to redressing past abuses against the Sami

Ebba Lekvall

Essex Law School, University of Essex, Colchester, United Kingdom

Stream or current topic

Indigenous rights

Abstract

This paper explores the reconciliation process recently undertaken by the Church of Sweden to repair past abuses against Sweden's indigenous people – the Sami. The Church, formerly the State church and a State institution, played an important role in the colonisation and oppression of the Sami which led to loss of land, language, religion, and culture - the effects of which are still felt today. The Church has since the 1990s worked to address its past and to embark on a path towards reconciliation. This paper first investigates the past abuses of the Church against the Sami before examining how historical abuses against indigenous peoples can be redressed through transitional justice mechanisms, particularly reparation. The paper then examines the reconciliation work of the Church of Sweden regarding its past abuses and the reparation measures the Church has announced. Lastly, the paper critically analyses the limits of the Church's approach to reparation and reconciliation. It argues that while it is early to tell, it appears that more is needed for the process and substance of reparation to be adequate. The paper concludes by thoughts on the way forward for redressing historical abuses against the Sami in Sweden.

Presentation

In person

538 Questions of Identity; Internal Self-Determination in Wales

Olivia Brennan

Liverpool John Moores University, Liverpool, United Kingdom

Stream or current topic

Indigenous rights

Abstract

Group identity is a fluid and travelling concept, but there are prevalent features within the notion that can contribute to the desire for self-determination. Using the case example of Wales, I will be questioning if there are salient features of group identity that heighten the aspiration for self-determination, such as a linguistic or ethnic divide. Self-determination is a right recognised by international law, claimed by a 'people' to control their own destiny when they feel they have been unjustifiably excluded from the community of other individuals that are acknowledged by international law. The appeal of the right to participate in the democratic processes of governance and to influence one's future, politically, socially, and culturally, draws many people in, yet it is also what incites its instability. Although the right is viewed as an attractive beacon of hope for those oppressed within their nation, it becomes disruptive when viewed from differing perspectives, as the right often favours a breakup of States, posing a profound challenge to the integrity of the international legal order. Without the presence of a shared group identity, internal self-determination cannot exist, it is this, that then forms my question, querying what truly motivates groups to identify outside of their mother state.

Presentation

In person

Art, Culture and Heritage: Contentious Heritage

14:45 - 16:15 Tuesday, 4th April, 2023

Location MD021

Stream Art, culture and heritage

Noelle Higgins

60 Between Justice and Protection: The Place of Contentious Cultural Heritage During a Transition. The Case of Iran

Mirosław Michał Sadowski^{1,2,3}, Seyed M. A. Zavarei¹

¹McGill University, Montreal, Canada. ²Institute of Legal Sciences, Polish Academy of Sciences (INP PAN), Warsaw, Poland. ³Centre for Global Studies, Universidade Aberta, Lisbon, Portugal

Stream or current topic

Art, culture and heritage

Abstract

Cultural heritage and transitional justice both seem to be established terms with fixed connotations: the former of universally valued and appreciated cultural objects, the latter of processes related to replacing a non-democratic regime with a democratic one. The social, political and legal realities of actual transitions, and cultural objects caught in their midst, however, are much more complex. One of such cases was the Iranian Revolution of 1979 and its immediate aftermath, which, despite being a distinct transition from one non-Western regime to another, encountered similar issues with regards to the preservation of cultural heritage objects linked to the former establishment. The purpose of this paper is thus twofold: to provide a better understanding of the non-traditional processes of transitional justice, with a special focus on the place of cultural heritage objects during a transition. In the introductory part of the paper the authors provide the background for their investigations, while the second part is devoted to the questions of transitional justice, with the authors venturing to compare the established, Western concepts of transitions to democracy with those taking place in different contexts and leading to other outcomes. In the third part of the paper, the authors ponder upon a particular place of some cultural heritage objects during any transition, be that Western or non-Western, applying the results their investigations to two case studies in part four. In the final part of the paper the authors venture to propose less radical approaches towards dealing with contentious heritage during future transitions.

Presentation

In person

199 Restitution, Locus Standi and Transnational Litigation

Andreas Giorgallis

University of Glasgow, Glasgow, United Kingdom

Stream or current topic

Art, culture and heritage

Abstract

This paper investigates the notion of locus standi of claimants - being states, organisations or indigenous peoples - in cases of restitution of (sacred) colonial cultural objects before foreign Courts. By employing a gamut of cases from across the world, it illustrates how Courts have rejected to grant in certain instances legal standing. Such a paradigm, according to the author, constitutes the "paradigm of confirmation" of the "colonial present".

Yet the presentation does not end there. Its second contribution lies in arguing that within the remit of the "colonial present", opportunities exist for judges to undo colonial bias. It suggests in particular that an emergent "paradigm of resistance" of the "colonial present" is looming, with foreign Courts to be eager to recognise the locus standi of entities other than the "traditional" ones during restitution proceedings twisting around (sacred) colonial cultural objects.

Presentation

In person

777 A continuation of colonialism: the role and assumptions of the federal government under the Native American Graves Protection and Repatriation Act (NAGPRA)

Isabella Atencio

University of Warwick, Coventry, United Kingdom

Stream or current topic

Art, culture and heritage

Abstract

The Native American Graves Protection and Repatriation Act (NAGPRA) facilitates the return of Native American cultural objects, taken from their communities either directly or indirectly as a result of settler colonialism. Since 1990, federally recognised Native American tribes have been able to claim their cultural property back from the possessor institutions using this process. Although gratitude has been expressed for the Act's achievements, it has also been criticised. This paper presents a specific criticism: even during the process of return, the Act ultimately reaffirms the dominant position of the coloniser over the colonised, in two ways. First the federal government retains the power to write, implement and, to an extent, adjudicate the law. Second, the legislation assumes the neutrality and objectivity of Western socio-legal norms.

Building on Laura Jane Smith's theory of the Authorized Heritage Discourse (AHD) and especially its privileging of a particular understanding of 'expertise' and 'care', this paper asks; what can the AHD tell us about the dominance of the American socio-legal framework under NAGPRA? In doing so, I expose the colonial hegemonic framework that NAGPRA operates within. I conclude by situating the American privileging of settler 'expertise' in a broader global context, through the AHD. This has significant ramifications for acknowledging the work yet to be done, both in cultural property repatriation and decolonisation more generally.

Presentation

Virtual via Microsoft Teams

IT Law: Playing by the rules - new rules for digital technologies?

14:45 - 16:15 Tuesday, 4th April, 2023

Location MD026

Stream IT law and cyberspace

161 Beneath the label: Assessing video games' compliance with ESRB, PEGI and IARC loot box warning label industry self-regulation

Leon Y. Xiao

Center for Digital Play, IT University of Copenhagen, Copenhagen, Denmark. School of Law, Queen Mary University of London, London, United Kingdom. Department of Computer Science, University of York, York, United Kingdom. The Honourable Society of Lincoln's Inn, London, United Kingdom

Stream or current topic

IT law and cyberspace

Abstract

Loot boxes are bought with real-world money to obtain randomised rewards within video games. Concerns have been raised about loot boxes' similarities with gambling and their potential harms (e.g., overspending). The ESRB and PEGI are industry self-regulatory organisations that moderate content and provide video game age ratings in North America and Europe, respectively. Recognising players' and parents' concerns, in mid-2020, the ESRB and PEGI announced that games containing loot boxes or any forms of in-game transactions with randomised elements will be marked by a new warning label stating 'In-Game Purchases (Includes [Paid] Random Items).' This measure is intended to provide more information to consumers and allow them to make more informed purchasing decisions. This measure is not legally-binding and has been adopted as industry self-regulation or corporate social responsibility. Previous research has suggested that industry self-regulation might not be effectively complied with due to conflicting commercial interests. Two empirical studies separately assess (i) whether the ESRB and PEGI applied the warning to games consistently since the label's introduction 2.5 years ago and (ii) whether 100 randomly-chosen popular games containing loot boxes accurately display the warning on the Google Play Store. These studies are conducted as a registered report and therefore have already received pre-data collection peer-review. Conclusions will be drawn as to whether the measure has been complied with by companies to an adequate degree and whether the measure has achieved its self-regulatory aims or require improvements. These insights are relevant to countries considering mandating loot box presence warnings.

Presentation

In person

573 'Doing Your Own Research' is a Natural Component of Freedom of Expression. However, is it Compatible with Fighting Harmful Online Disinformation?

Conor Logue

Open University, Milton Keynes, United Kingdom

Stream or current topic

IT law and cyberspace

Abstract

Disinformation is 'false or misleading information produced and disseminated to cause public harm,' (Bayer and others, 2019) while misinformation pertains to the same phenomenon without the appropriate mens rea. On account of new digital technology and communication mediums, in addition to wider factors such as decreasing trust in legacy media, the distortion of information is more accessible.

Harmful online disinformation and misinformation (hereafter 'HODAM') can cause serious negative effects, including and not limited to political and social considerations such as undermining belief in democracy and public health guidance. However, it involves subjective standards in judging whether reactions to it are warranted. For instance, a piece of false information may in fact be satirical and, though deceptive, public harm is not its intention.

The point is that HODAM is known to be a serious global problem. However, there is a mismatch between the seriousness of the problem, and effective practical understanding behind potential anti-HODAM strategies.

My research concerns how to address the scourge of HODAM while not undermining the human right to freedom of expression. A natural extension of this freedom is the ability to access information (however unreliable) and form one's opinions accordingly. Therefore, it is important to consider the modern information ecosystem and assess whether the idea of 'doing your own research' is compatible with tackling these serious problems.

Presentation

In person

870 The multiplicity of cybercrime legal frameworks and the upsurge of Nigerians' perpetuation of internet fraud

Felix Eboibi

Faculty of Law, Niger Delta University, Yenagoa, Nigeria

Stream or current topic

Abstract

Globally, Nigerians, especially Nigerian youths' involvement in internet fraud seem to be on the increase, mostly against foreign victims. Nigeria is a federal nation through its National Assembly enacted the Nigerian Cybercrimes Act 2015 as a comprehensive law to regulate cyber and computer-related offences, including internet fraud made applicable throughout the federation. One of the primary objectives of the statute is to enhance the investigation and prosecution of perpetrators of cybercrimes to punish perpetrators for serving as a deterrent to others. However, law enforcement agents' enforcement of cybercrimes in Nigeria has shown that several traditional legal frameworks are being utilized, which arguably makes prosecution difficult since they were not established to deal with crimes perpetrated through the instrumentality of computers. This has resulted in the controversy as to which of these multiple legal frameworks is the extant law for investigating and prosecuting internet fraud in Nigeria. Hence, perpetrators of internet fraud are arguably being tried before courts and judicial personnel without jurisdiction. In this regard, this research seeks to answer thus: What should be the extant cybercrime legal frameworks for investigating and prosecuting cybercriminals in Nigeria? What experiences can Nigeria learn from the United States of America?

Presentation

Virtual via Microsoft Teams

Sexual offences 2

14:45 - 16:15 Tuesday, 4th April, 2023

Location MD102 Great Hall

Stream Sexual offences and offending

Elizabeth Agnew

700 Redefining consent: rape law reform, reasonable belief, and communicative responsibility

Eithne Dowds

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

Contemporary trends in rape law reform have resulted in the adoption of more affirmative or communicative conceptions of sexual consent across many jurisdictions. Drawing on empirical research conducted by the author in the wake of the 2019 Gillen Review into serious sexual violence in Northern Ireland and proposed changes to the law on consent, this article illuminates the social and cultural norms that inform and complicate the construction and interpretation of consent models. Three broad themes from the primary data are identified: the law's (in)ability to capture the complexity of human interactions, societal ambivalence around consent and rape, and consent confusion.

The article concludes by introducing and further developing the notion of communicative responsibility and arguing that it should be used as a prism through which to make sense of the enduring challenges in this area of law and human interaction.

Presentation

In person

833 Freedom to Negotiate: An Alternative to the Consent Standard for Rape and Sexual Assault

Tanya Palmer

University of Sussex, Brighton, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

I have argued elsewhere (see e.g. Palmer, 2017) that consent is poorly suited to distinguishing sex from sexual violation as it views agreements to engage in sex through an individualistic, asymmetric, binary frame, which disembodies and decontextualises sexual encounters and places the complainant under considerable scrutiny (were they consenting? Did they do anything that might reasonably be taken to signal they were consenting?) As an alternative, I have proposed a model of 'freedom to negotiate' in order to shift the spotlight to the defendant's actions and relevant context, and to emphasise the relationality and fluidity of sexual encounters.

In this paper I explore how 'freedom to negotiate' can be used to reframe sexual offences law in three particularly challenging areas:

Using the case of *F v DPP* [2013] EWHC 945 I show that asking whether a complainant had the freedom to negotiate can sensitise us to broader abusive dynamics within a relationship which constrain the complainant's choices.

Using *R v McNally* [2013] EWCA Crim 1051 I argue that freedom to negotiate can provide a starting point for reframing our analysis of the so-called 'rape-by-deception' cases.

Using *R v Bree* [2007] EWCA Crim 804 I explore how freedom to negotiate can shift our analysis of cases involving a voluntarily intoxicated complainant by moving from an individualised assessment of C's capacity to consent to an assessment of the relative power of the parties in the encounter.

Presentation

In person

561 Shifting Definitions of Sexual Consent: The Drafting Process of Consent-Based Rape Law in the Netherlands (2020 – ongoing)

Annelien Bouland¹, Hoko Horii²

¹University Carlos III, Madrid, Spain. ²Leiden University, Leiden, Netherlands

Stream or current topic

Sexual offences and offending

Abstract

The past years have seen a European trend toward the adoption of consent-based definitions of rape. Across the continent, a number of countries have recently moved, or are moving from coercion-based definitions of rape to consent-based definitions of rape in criminal law. However, understandings of sexual consent differ between these countries. How rape is represented and how sexual consent is given form in the application of rape law has received ample scholarly attention. Yet already in the process of lawmaking, specific framings of rape and understandings of what sexual consent entails take shape, and may become the subject of serious debate. The definition of sexual consent may also be left intentionally ambiguous. This paper focuses on the Netherlands where a first Bill to criminalize sex without consent was introduced in 2020 and the legislative process of rape law reform is ongoing. The paper analyses how sexual consent is given shape in rape law reform and traces the changing meanings of consent that emerge and decline in the legislative process. It pays specific attention to the way representations of rape and sexual consent are shaped by the following three factors: (1) national politicization of rape and consent (2) the influence and mobilization of international law (notably the 'Istanbul Convention') and (3) the influence and mobilization of the legal certainty principle and mens rea requirement.

Presentation

In person

725 The condition of consent in commercial sex and the criminal law

Jane Scoular

University of Strathclyde, Glasgow, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

This paper considers the condition of sexual consent in the context of commercial sex and sexual violence. It begins by contextualising this discussion within the broader debate on consent in commercial sex and makes the case for distinguishing those approaches that see sex work as intrinsically a form of gendered violence and those that create space to allow analysis of the social contexts that pattern sexual violence. The legal construction of sex-workers non consent is, it is argued, part of this context. The paper explores the developments in this area in a small number of common law systems, looking in particular at;

(i) how consent and non-consent by sex workers has been recognised historically

(ii) the current legal norms with regards to the rape and sexual assault and

(iii) how conditional consent in the context of sex work (typically cases where condoms have been removed and non-payment) is classified in different legal systems

The paper concludes by asking what these developments in legal norms may mean for justice, recognising the limits of law and the bearing of wider structural issues on this issue.

Presentation

In person

Criminal law 10

14:45 - 16:15 Tuesday, 4th April, 2023

Location MD106 Minor Hall

Stream Criminal law and criminal justice

Hannah Quirk

651 'The thing that made me want to prove myself was the judge': Children, Communication and the Sentencing Courts

Kathryn Hollingsworth

Newcastle University, Newcastle, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

Each year, thousands of children are sentenced in the criminal courts; about five per cent of which are in the adult Crown Court. Remarkably, given the immediate and longer-term impacts, the sentencing process and in particular sentence delivery has received relatively little attention from a children's rights perspective in either the courts or in academic scholarship. Drawing on a qualitative study with justice-experienced children, this paper examines children's meaning-making in relation to the sentencing process. It offers an interpretation of their views of the sentencing process and their responses to different judicial styles or approaches to sentence delivery, and it considers the implications for a rights-based system for sentencing children.

Presentation

In person

741 The Impact of “Ageing Out” on the Rights of Children in Conflict with the Law

Ursula Kilkelly^{1,2}, [Louise Forde](#)³

¹University College Cork, Cork, Ireland. ²Leiden University, Leiden, Netherlands. ³Brunel University, London, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

International children's rights standards set out clear requirements with regard to the treatment of children in conflict with the law. In particular, the UN Convention on the Rights of the Child and the European Guidelines on Child-Friendly Justice emphasise the need for adapted processes and procedures for children in the youth justice system, including the right to privacy and sanctions that promote reintegration withy detention as a last resort. This has led to the development of specialised youth justice systems in many jurisdictions, designed to ensure that the age and maturity of the child are taken into account.

Although the Convention on the Rights of the Child defines the child as a person below 18 years, many states treat children as adults, especially when accused or convicted of serious crime. Children can also 'age out' of the justice system, by turning 18 while awaiting trial or sentence. In such cases, young people can lose the protections of the Convention and its specialised approach to youth justice are are denied the right to age appropriate court and sentencing processes.

This paper considers the role of the upper age in youth justice with particular regard to the circumstances and impact on children of the process of 'aging out' in the justice system. Consideration will be given to how best to maximise the protection of the justice system to all children who come into conflict with the law in line with international human rights standards.

Presentation

In person

743 Science, Penal Populism and Raising the Age of Criminal Responsibility in England and the United States

[Rose Tempowski](#), Mark Telford

University of Southampton, Southampton, United Kingdom

Stream or current topic

Abstract

According to the US Supreme Court, 'any parent knows' young people lack maturity and responsibility, leading to poor decision-making. An established body of neuroscience now evidences the physiological reason for this common-sense observation: brain development continues throughout adolescence and into young adulthood. The prefrontal cortex—responsible for impulse control and decision-making—is the brain region which varies the most with age.

Age-crime curves from the US and UK show that offending peaks in the late teens and decreases sharply into the early twenties, continuing to decline as age increases. Young people naturally age out of crime along a timeline corresponding with continuing brain development. As the ability to control impulses increases, risk taking and sensation-seeking is reduced.

This increasingly well-established neuroscientific and criminological evidence base supports the continued need for special procedures and principles for young people encountering the criminal justice system. This evidence increasingly suggests that approaches distinct to the standard adult criminal justice system should include not only adolescents, but young adults.

A tension is often apparent in criminal justice policy between this evidence and a penal populist 'adult time for adult crime' mentality. Rather than extend distinct processes and practices for young people to young adults, this thinking points in the opposite direction: more adult-like processes and punishments for adolescents. This paper seeks to explore this tension comparatively through examination of 'raise the age' debates in a number of legislatures in the United States, and debates on the age of criminal responsibility in England and Wales.

Presentation

In person

806 "17 going on 23": Sentencing Children to Life in Canada

Debra Parkes, Isabel Grant

Peter A. Allard School of Law, University of British Columbia, Vancouver, Canada

Stream or current topic

Criminal law and criminal justice

Abstract

International human rights bodies have long recommended the abolition of life sentences for children but these punishments remain legal in many countries, including Canada. In 2008, the Supreme Court of Canada recognized the presumption of diminished moral blameworthiness of young people as a constitutional principle of fundamental justice and overturned a law that presumed young people (those under 18) should be sentenced as adults for some serious crimes, including murder. The burden is now on the Crown to prove that a youth sentence would not be of sufficient length to hold the young person accountable for their behaviour. For murder, the only available adult sanction is the mandatory sentence of life.

This paper analyzes the reasoning in reported Canadian cases since 2008 in which the Crown sought a life sentence for a young person convicted of murder. We investigate how judges make sense of a law providing that a teenager must either receive a maximum sentence of 10 years under the youth system or a minimum penalty of life in adult

prison, but nothing in between. We consider the extent to which Indigenous, Black and other young people of colour may be more likely to be sentenced to life and the conceptions of (White) childhood that may ground these decisions. We also examine how judges justify these adult sentences on the basis of unproven assumptions about rehabilitative programs in prisons and pay little attention to the *lifelong* nature of a life sentence, reflecting the troubling normalization of this extreme punishment.

Presentation

In person

Criminal law 2

14:45 - 16:15 Tuesday, 4th April, 2023

Location MD108

Stream Criminal law and criminal justice

Lyndsey Black

466 A New Approach to Sentencing Principles, Purposes and Guidelines in Northern Ireland – ‘A Place Apart’ Sometimes

Kevin Brown

Queen's University Belfast, Belfast, Ireland

Stream or current topic

Criminal law and criminal justice

Abstract

Northern Ireland's approach to sentencing policy whilst sharing commonalities with its neighbouring jurisdictions, is distinctive in various important respects. Recently, the Department of Justice in the province has concluded a substantive review of sentencing policy, with a host of recommendations for reform to be included in a forthcoming sentencing bill. These reforms are proposed within the context of the uniqueness of the Northern Irish post-conflict political and legal systems. This paper reviews these reforms exploring the rationales, practicalities and likely impact of them. This paper should be of interest not only to those wishing to gain an understanding of the evolving policy in a post-conflict society such as Northern Ireland, but also those interested in sentencing more generally, as reforms in the province may provide inspiration or, indeed, may point to pitfalls to be avoided.

Presentation

In person

604 Far away from the flow – strategies of resilience in the border community.

Artur Pytlarz

TU Dublin, Dublin, Ireland

Stream or current topic

Criminal law and criminal justice

Abstract

A recent study of strategies of resilience in the Irish countryside suggests relying on the informational networks either of the official Text Alert Networks, overseen by Garda, or privately run Facebook or WhatsApp groups. In the general sense, this might suggest a shift in rural security towards strategies based on the exchange of information, which allows members of the involved communities to be both the consumers and the producers of the crime prevention information. This might signal the emergence of what can be called liquid security forms based on access and participation in the information flow. This can be viewed as evidence of deeper rural transformation which means that many communities, especially in commuter belts of the near urban hub, start to organize themselves around the flows of resources, transportation, work, or power. At the same time, remote border communities located further away from the flow have to adopt different strategies of resilience tailored to the local circumstances such as the proximity of the border, or disposition towards a quasi-vigilante activity which wasn't observed in actions but it did surface in their crime talk.

This paper presents the findings of the recent study focused on strategies of resilience implemented in rural Ireland. During this project, qualitative data was collected from two rural communities one near Dublin and one near the border. The findings suggest the shift towards informational crime prevention and uneven tempo of adaptation to late modernity.

Presentation

In person

716 Penal Nationalism and the Northern Ireland Border

Lynsey Black, Danielle Jefferis

Maynooth University, Maynooth, Ireland

Stream or current topic

Criminal law and criminal justice

Abstract

This presentation lays out the framework of CONSPACE, an IRC-funded project which takes Northern Ireland's border as an organising concept. The work investigates successive phases of penal nationalism, each of which has

been distinguished by the centrality of the Northern Irish border – a border which has been a locus of security, penalty and crime control since its inception a century ago and which achieves an urgent timeliness post-Brexit. Commenced in September 2022, CONSPACE takes a multi-strand approach to the research; this presentation will address two strands of the work, exploring questions of border living and sovereignty. The border living strand will investigate the ways in which ordinary people have lived and continue to live under border security regimes, as well as the experiences of those who have and continue to police the region and the role/s of border policing and penalty in the social and legal contributions of identity. The question of sovereignty will be examined by an historic case study of conflict at the border, encompassing also consideration of more recent conflict in relation to the so-called 'Irish sea border'. The work employs the field of border criminology, and the concept of penal nationalism, turning the analytic capacity of these lenses to an under-studied region.

Presentation

In person

765 The Post-Brexit Security Field on the Island of Ireland: The Role of Civil Society in Everyday Security - Introducing Project BORDEX

Matt Bowden¹, Amanda Kramer²

¹Technological University Dublin, Dublin, Ireland. ²Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

25 years of constitutional change - past and future

Abstract

Based on its history of colonisation and prolonged periods of conflict, security has long been of critical interest on the island of Ireland. The instability following the Brexit vote in the UK and more recent significant events (such as the collapses of the NI Assembly, responses to the NI Protocol, and the review of policing in South Armagh) have fuelled renewed concern about the future of peace, stability and security on the island of Ireland. Recognising that we are currently at a critical juncture in relation to security – and that there is an important gap in the literature on the scope and role of 'informal security' actors, we developed a project that aims to map the role of informal actors in security production, detail their interactions with formal security actors, develop an understanding of current practice, and assess the relative value of this sector to security production. While the project is currently in the early stages, this paper will provide an overview of the conceptual and theoretical assumptions that frame the research, the methodology we will use to carry out the research, and provide an update on our current progress. The research design for BORDEX combines a survey of security actors, ethnographic fieldwork and deliberative workshops. We also hope to provide some very early observations from the field work about the role(s) and value of the often intangible interventions by 'informal' security actors.

Presentation

In person

Property, People, Power and Place 1

14:45 - 16:15 Tuesday, 4th April, 2023

Location MD122

Stream Property, people, power and place

780 Lough Neagh and the Law

Bróna McNeill

Queen's University, Belfast, Ireland

Stream or current topic

Property, people, power and place

Abstract

At one hundred and fifty square miles, Lough Neagh is the largest freshwater lake in Britain or Ireland and holds enormous cultural and economic significance for the communities who live and work in and around it. The lough has also been mired in controversy for generations. This controversy has centered around fishing rights, and the validity of a territorial claim that encompassed these rights, but also legal title to the bed and soil of the lough. The current owner of the lough is the Twelfth Earl of Shaftesbury, who resides at his family seat in East Dorset.

The ownership of Lough Neagh highlights how property can forge tensions between different stakeholder groups, especially surrounding the proper ownership and use of a geographically significant landscape feature. In this case, the lough provides employment and resources for local communities and industries. However, this must be balanced against its identity as a fragile and complex ecosystem, and a vital habitat for wildlife. In addition, the ownership of the lough has also come to be regarded as symbolic of a different kind of tension: the power dynamics between the public and the private; the interests of an individual owner weighed against the interests of the wider community.

This paper will consider how the ownership of Lough Neagh raises social justice issues and specific environmental concerns, as well as pressing questions about the nature of property itself and the ways in which this is conceptualized in law.

Presentation

In person

520 The Accountability Issue of Conservation Covenants

Mengyu Cui

Newcastle University, Newcastle upon Tyne, United Kingdom

Stream or current topic

Property, people, power and place

Abstract

Introduced in the Environment Act 2021(EA), a conservation covenant is a private, voluntary agreement between a landowner and a responsible body (RB), such as a conservation charity or public body, allowing for positive or restrictive obligations to fulfil a conservation objective. They can bind not only the current landowner, but also subsequent landowners. This instrument is expected to address complex environmental problems flexibly and respond to regulatory overreach. Despite the functions, the accountability issue of conservation covenants (CCs) deserves specific examination because 1) The RB can violate private property rights since CCs may include provisions for public access to land. 2) Both parties may lack the motivation to enforce agreements since CCs aim to achieve environmental public interest through private agreements that traditionally protect the private interest. 3) It lacks surveillance from the third party and the public.

First, this paper demonstrates different layers of accountability of CCs in terms of relation between different parties: the Secretary of State, the RB, the current landowner, the future landowner, representative parties for the environment, parties affected by the breach and the courts. Second, it answers who should be accountable for whom and for what within each relation channel under EA. Third, it interrogates what accountability rules are further required to achieve the conservation objective through borrowing experience from the civil law jurisdiction of China, in which agreements between private and public parties apply to special accountability rules.

Presentation

In person

809 The persistence of memory. Evidence for a new narrative on the problem of rural property in Chile.

Eduardo Villavicencio-Pinto

University of Kent, Kent, United Kingdom

Stream or current topic

Property, people, power and place

Abstract

The 1967 Chilean Agrarian Reform's response to land concentration, low agricultural productivity, and rural poverty was the establishment of a property right characterised by its social function, with the argument that an absolute, individualistic, and exclusive conception of this right is incompatible with the social development of peasants. Subsequently, between 1973 and 1989, the military dictatorship returned a significant portion of the expropriated land and instituted a tenure system based solely on private property, which democratic governments have not altered. Since the 1970s, there has been no political or academic discourse on land distribution in Chile.

In contrast, rural productivity has increased steadily over the past few decades, while, as we have shown, the land concentration remains extremely high and rural poverty has decreased dramatically. This is based on absolute, individualistic, and exclusive private property in a tenure framework. Does this imply that Pinochet's dictatorship resolved land-related issues? In the article, we attempt to explain that they are, in fact, still present but require a specific analysis.

We argue that it is necessary to construct a new narrative on the land issue in Chile, based on empirical evidence and the theoretical contributions that critical legal geography and legal consciousness offer to investigate the operations of invisibilisation enabled by the tenure regime. We discuss the real estate market and food security, two contemporary pressures for which the tenure model may provide insufficient results.

Presentation

In person

Human rights and war: The peripheries of human rights in conflict

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU001

Stream Human rights and war

815 Preventive Detentions: The Black Magic of Executive

Aarash Pirzada

O.P Jindal Global University, Sonipat, India

Stream or current topic

Human rights and war

Abstract

Preventive Detentions are the preferred method for quashing dissent anywhere in the world and the situation in the Indian Administered Kashmir remains no different to keep the dissidents "out of circulation"

Regulated through Public Safety Act 1978, the final authority rests on the executive who must be satisfied for grounds of detention which are communicated to him by the local police in conjunction with the intelligence grid prevailing in Kashmir, through a "dossier". The provisions of the Act, provide for satisfaction of supplied grounds only upon the legal application of mind by the executive.

This dossier under the prism on national security purposefully uses vague, cryptic and open-ended language which communicate a measured amount of fear based on the persons position who is to be detained in the socio-political system. It includes an amalgamation of words such as "clout in public", "separatist", "Pakistani" and "Secessionist" in a random pattern based on persons "notoriety"

This paper using a mixture of primary and secondary data sources, seeks to examine the vague and quasi-legal terminology used in such dossiers to highlight the non-application of legal reasoning by the executive in turn questioning the legality of such detentions. The paper argues that at the centre of this dance of incarceration lies a carefully concocted spell formed with words, which when used in a particular order severity of such detentions

Presentation

Virtual via Microsoft Teams

207 The Cost of Legitimacy: The US Effort to Reform Detainee Operations in Afghanistan

Michelle Hughes

The London School of Economics and Political Science, London, United Kingdom

Stream or current topic

Human rights and war

Abstract

Afghanistan has been called the “birthplace of the United States’ post-September 11 detention and interrogation practices,” so given the record of detainee abuse in the early years of the conflict, it is no small irony that it later became the site of the most ambitious effort by any Western military to reform detention operations in the post-9/11 wars. The transformation began in 2009, when then-US secretary of defense Robert Gates established a special military task force to assume oversight of detentions in theater; develop a country wide, coalition-supported corrections and detention plan to help establish unity of effort within ISAF and with the Afghan government; and build Afghan capacity to do the same. This paper is a case study on that task force, later designated as “Coalition Joint Interagency Task Force-435” (CJIATF-435). The study examines its origins, evolving mandate, organization, and impact. It is a complex analysis of obstacles, limitations, and intent that exposed myriad legal, operational, and capacity gaps that Western military commanders had experienced in other conflicts, but which were magnified in the Afghan context. At its core, CJIATF-435 represented an investment in legitimacy for both international forces and the Afghan government. As a case study, it is instructive for what it teaches about the cost of getting battlefield detentions wrong, the level of commitment required to try to get them right, and the operational impact on the battlefield when detainee operations in internationalized, noninternational armed conflict become situated in host nation law.

Presentation

In person

613 Riots in occupied territory: the end of human rights in war?

Ayesha Malik

RSIL, Lahore, Pakistan. LUMS, Lahore, Pakistan

Stream or current topic

Human rights and war

Abstract

The International Court of Justice has held in its *Wall* Advisory Opinion that human rights law applies in occupied territory. It seems the matter has been put to rest and the displacement doctrine (under which once war starts only the law of armed conflict applies) has now fallen out of favour. The question now is no longer whether human rights applies in war but how? However, I argue that in seeking to determine the how, we may have to reconsider whether human rights should apply at all to conflict. The argument seems to fall apart when we look at how riots in occupied territory should be governed - the International Committee of the Red Cross states that both regimes need to be apply in parallel to such riots - i.e. that the law enforcement paradigm applies to civilians whereas the law of armed conflict applies to fighters in the crowd. This seems to be highly impractical and not feasible. This guidance has since been followed Israeli Supreme Court's recent Yesh Din decision in which the court had to determine which legal paradigm applied to mass demonstrations near the Gaza border. Do we need to throw the baby out with the bathwater, though, and argue human rights tout court should not apply or just alter their application in this instance? I argue that this situation indicates the incongruence in the human rights in armed conflict doctrine in its entirety, and is perhaps the straw that breaks the camel's back.

Presentation

In person

298 Realizing reparations for conflict-related displacement via regional human rights bodies: a case study on the *Moiwana v. Suriname* implementation process

Deborah Casalin

University of Antwerp Faculty of Law - Law & Development Research Group, Antwerp, Belgium. Nelson Mandela University Faculty of Law - Department of Public Law, Gqeberha, South Africa

Stream or current topic

Human rights and war

Abstract

Regional human rights courts offer exceptional avenues for victims of conflict-related violations to claim reparation beyond the domestic level. However, even the most favourable judgment only marks the start of an implementation process which is likely to be lengthy, complex, and influenced by various contextual factors. Insights into the dynamics and outcomes of such processes are crucial to better understand the role and potential of regional courts in realizing reparation in (post-)conflict contexts. This paper aims to contribute such insights through a case study of the implementation of the Inter-American Court of Human Rights' seminal 2005 *Moiwana v. Suriname* judgment, which elaborated comprehensive and innovative reparative measures for conflict-related displacement.

The compliance and extra-compliance effects linked to this judgment over time, as well as associated contextual factors, are examined through an in-depth analysis of official court documents, stakeholder-generated public documentation, academic and grey literature, domestic legislation, and media reports (in English and Dutch). The analysis shows that while once-off and/or symbolic reparative measures eventually met with compliance, more complex measures regarding accountability and land rights have faced greater difficulties. While obstacles relate to

political and economic factors beyond the court's remit, the judgment has nevertheless stimulated and reinforced longer-term legal and social processes towards integral reparation.

Beyond the case study conclusions, the paper will proceed to draw preliminary parallels and distinctions with implementation processes of regional displacement reparation decisions in other conflict contexts – most notably, the European Court of Human Rights' judgments regarding Cyprus.

Presentation

In person

Environment: Resources laws

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU021

Stream Environmental law

44 The Role of Religious institutions towards realizing Sustainability and Energy Justice in Developing Countries – The case of Christianity in Nigeria.

Love Alfred

University of Birmingham, Birmingham, United Kingdom

Stream or current topic

Environmental law

Abstract

There are numerous interrelated variables and overlaps between religion and environmental sustainability. On the one hand, sustainability tells a story bearing on the values of fairness and equality, which are arguably the derivatives of religion. On the other hand, religion enmeshes the plausibility of exercising these values as a way of life via teachings such as stewardship over nature and natural resources, reducing transboundary environmental harm and preventing the imposition of unsustainable development choices on other countries, the vulnerable, and future generations. For instance, the basic norms guiding varying religions are exemplars of the principles of equality, fairness, and justice. Religion may contribute to a just and sustainable global economy in several ways, including its ability to connect faith with social challenges through corporate social responsibility investments in renewable energy. This could impact a community's adoption of sustainability as a way of life and help accelerate the sustainable energy transition. Yet, discussions in environmental law scholarship have not sufficiently addressed the role of religious institutions towards realizing sustainability and energy justice, especially within developing country contexts. This paper acknowledges the variety of religious approaches and focuses on how Christianity might help to promote sustainability and thus connects to the more extensive debate on sustainability and energy justice. The paper, therefore, argues that religious institutions can deliver sustainability as historical justice arbiters with established norms capable of driving sustainable energy transitions and sustainability.

Presentation

In person

883 What can international disaster law offer regarding an international duty to cooperate?

Therese O'Donnell

University of Strathclyde, Glasgow, United Kingdom

Stream or current topic

Environmental law

Abstract

Co-operation is seen as an indispensable element for the effective operation of international law. The existence of cooperation is often presumed unthinkingly and never more so than when disaster strikes. In the face of calamities that overwhelm the capacity of individual states there are usually immediate calls for politics to be put aside, alongside rather generalized and intuitive appeals to (a relatively un-contoured) altruism on the part of international actors. In general, defining what co-operation is, or imagining what it could be, has often appeared to proceed on a stop-go basis. It has relied on instinct and pragmatism, developing in a somewhat episodic fashion. However, the Covid-19 pandemic has produced renewed calls to realise genuine international cooperation. In so doing it has prompted a hard revisiting of what is meant by 'international cooperation'. This discourse has generated fresh challenges to notions of passivity and philanthropy that have hitherto dominated the discourse of 'international aid and assistance'. This paper will consider what international disaster law can offer regarding understandings of international co-operation. In particular it will consider the 2016 International Law Commission's Draft Articles on the Protection of Persons in Disasters and the specific attention they give to a cooperative duty as it relates variously to states, the UN and 'other assisting actors'. The draft Articles will not of themselves realise international alliance. However, they create space for discussing the granularity of an international cooperative duty and its potential to move beyond the uncertainties of relying on beneficence.

Presentation

In person

825 The role of decentralised water governance in the realisation of the right to access to water in South Africa

Nani Mangoale

University of Lincoln, Lincoln, United Kingdom

Stream or current topic

Environmental law

Abstract

Section 27(1)(b) of the Constitution of the Republic of South Africa (1996) enshrines the right to access to water, and places an obligation on the State to fulfil, promote, protect, and respect this fundamental right. The right to water entails, amongst others, water of an appropriate quality and also quantity for basic human needs, and also in terms of ecological sustainability. The right to water, is therefore dependent, to a large extent, on how water is managed and governed. While there have been notable studies on water governance in South Africa, knowledge gaps exist with regard to the role decentralised water governance through Catchment Management Agencies (CMAs) can play in the realisation of the right to access to water. In this paper, the findings of a socio-legal study, utilising a qualitative research design, will be presented. Data collected from interviews with elite research participants representing various roles and capacities in South Africa's water governance management structures will be presented. It will be shown that the realisation of the right to access to water is dependent not only on the prevailing public trust doctrine in South Africa, but also on decentralised water governance through established CMAs with full delegated authority to manage water resources at local level.

Presentation

Virtual via Microsoft Teams

208 Beyond enclosures? Highly Protected Marine Areas and English marine conservation law and policy

Margherita Pieraccini

University of Bristol, Bristol, United Kingdom

Stream or current topic

Environmental law

Abstract

This paper focusses on a new addition to the English marine conservation seascape: the Highly Protected Marine Area (HPMA). HPMA's are strict marine reserves, prohibiting extractive, destructive and depositional uses and allowing only non-damaging levels of other activities to the extent permitted by international law. They will be designated as Marine Conservation Zones (MCZs) using the powers under the Marine and Coastal Access Act 2009. Defra consultation on five pilot HPMA's has recently been closed and data is in the process of being analysed.

This paper is intended as an initial mapping exercise of HPMA's, critically discussing the history behind HPMA's' introduction and issues related to definition, designation strategy and management measures. The paper frames HPMA's within the literature on commons, asking whether HPMA's shall be understood simply as enclosures, or can be understood as new commons and/or underpinned by commoning strategies.

Presentation

In person

Gender, Sexuality and Law 2

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU125

Stream Gender, sexuality and the law

147 Construction of Gender, the Culture of Sports and the Role of the State in Haryana, India: Fluidity, Complexities and Contradictions

Prachy Hooda

Jawaharlal Nehru University, New Delhi, India

Stream or current topic

Gender, sexuality and the law

Abstract

The state of Haryana in India has been known for lagging behind in terms of social progress despite rapid economic transformation due to patriarchal structures, poor sex ratio, sex differentials in mortality, female feticide, and persisting gender bias with respect to educational attainment and control over property and resources (Hassan, 2008). With patriarchal norms refashioning themselves to accommodate these changes, contemporary Haryana has come to be marked with high economic but low social indices (Ahlawat, 2012). However, the social milieu of rural Haryana has shown signs of rapid change lately (Snehi and Baghel, 2018).

The paper intends to focus on the culture of sports and how it has provided women players a direct access (with considerable societal acceptance) to public spaces, thereby challenging (what has been referred to as) the 'masulinisation of such public spaces' (Chowdhry, 2014) and transforming performances and cultural expectations which construct gender.

Secondly, the paper will focus on the implementation of the sports and fitness policy of the state government aimed at promoting participation (especially of women) in sports. It shall help in exploring how the laws and policies of the state are implicated in everyday forms of social transformation. How is such policy part of the larger public policy interventions that aim for social change? The study shall also interrogate how the focus of the policy on issues like self defence relates to presuppositions about women, their roles, impact of such representations on the subjects of the policy and the effects produced by such representation.

Presentation

Virtual via Microsoft Teams

57 'You all smell like semen!': exploring the economies of smell in the "debates" on gender-neutral public bathrooms

Lizzie Hughes

Birkbeck, London, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

In 2022, the UK government issued a regulation that new public buildings must have gender-segregated toilets on the grounds of women's hygiene and safety, stalling the implementation of gender-neutral bathrooms. In this paper, I trace the appearance of smell in arguments made against the gender-neutral bathroom to explore the governance of gender from an affective sensory perspective. I analyse comments from prominent "gender critical" sources and a variety of social and online media to study how the smells of urine and semen are involved in the production of men and trans women as predatory in a shared cultural imagining of the public bathroom space. These extracts deploy smell as part of a rhetoric strategy that claims to be common-sense, drawing from racist and classed historic miasma theory and exploiting the characteristics of smell as a deeply affective and ambiguous sensory process that can reanimate trauma. I show how the experience of encountering "bad" smells helps to generate multiple forms of hygiene-based and sexualised disgust about men, which affectively rationalises gender-segregation as a legitimate method of reducing risk and preventing gendered harm. At the same time, trans women are situated through smell as either "secretly" men or predatory like men, revealing how smell is used as an informal policing technique to discover the "truths" of bodies. I suggest that these arguments co-opt smell to reconsolidate problematic bio-essentialist notions of bodies as mineable containers of innate information, in turn limiting the queerly expansive potentialities of embodied existence.

Presentation

In person

383 Gender Recognition Laws in Scotland: an analysis of the recent reforms

Carolynn Gray

University of the West of Scotland, Paisley, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

This paper examines the recent reform of gender recognition laws in Scotland – the Gender Recognition Reform (Scotland) Bill, which was passed by the Scottish Parliament in December 2022 and, subject to challenge by Westminster, is awaiting Royal Assent. The paper examines the provisions of the legislation as passed and engages with the debates surrounding the Bill, spanning five years, from initial consultation in 2017 through the second consultation in 2020 and the various court cases relating to gender recognition in Scotland in this period along with the various media reports and comments on the legislation. The paper also examines the Bill in light of the report of the Scottish Government's Working Group on Non-Binary Equality, of which the author was a member, and examines the gaps that remain in the passed legislation.

Presentation

In person

Social Rights: Disability

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU201

Stream Social rights, citizenship and the welfare state

Chair: Jed Meers

729 THE WAY WE WERE - THE ASSESSMENT OF MEMORY IN PIP

Mike Robinson

University of York (Law School), York, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

Drawing on Personal Independence Payment (PIP) appeal case studies, this paper examines in detail the process by which “memory” is assessed within modern disability benefit entitlement.

Memory is central to the PIP process in two respects.

First, since the introduction of PIP in 2013, disability benefit entitlement has increasingly been assessed on the capacity to undertake specific functional activities, which memory impairment has been shown to impair.

For instance, a need for “prompting”, a component in many PIP descriptors, includes “reminding”; therefore Working Memory plays a central role in this area. Autonoetic memory, which concerns self-awareness and identity, is relevant to social engagement. Forgetting routes was recognised by Upper Tribunal judges as applicable to the “Planning and Following Journeys” criteria.

Second, the assessment process often relies on the claimant’s autobiographical memory of events.

However, notwithstanding its importance to PIP applications, how memory is treated in PIP administration and appeals (and in disability benefit adjudication more broadly) is heavily under-interrogated.

Drawing on claimant data, this paper argues that there can be a number of ways in which memory problems can be mistakenly categorised, including:

- A lack of precision regarding the nature of memory type
- The misapplication of procedural memory to activities concerning semantic/episodic memory
- The potential danger of context affecting recall

- The inexactness of memory assessment from a claimant's perspective

Drawing on case studies of PIP applications and appeals, this paper provides the first detailed consideration of the role of "memory" in disability benefit assessment/adjudication.

Presentation

Virtual via Microsoft Teams

667 Work, Care and the Welfare State: the hidden labour of older carers

Jackie Gulland

University of Edinburgh, Edinburgh, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

This paper looks at older unpaid carers. Statistics across Europe suggest that around 25% of unpaid carers are over the age of 65. However most research on 'carers' is focussed on the so-called 'working age' population, with those who are considered to be 'beyond work' often ignored or sidelined in carer policy. The paper will outline the initial findings of a literature review on older carers, bringing together literature on older carers, literature from critical social gerontology on understanding older age and policy documents relating to carers in the four nations of the UK.

From a socio-legal perspective Stewart's (2017) analysis of the legal status of carers shows that carers are largely invisible in law except in certain specific circumstances – social security, some new rights within social care and some tenuous employment rights. These focus mostly on working age carers and are largely concerned with enabling carers to stay within the labour market or compensating carers for loss of wages. Social care provision, including receiving a carers' assessment, advice and sometimes support services, is patchy and has been subject to severe cut backs during the Covid-19 crisis and ongoing austerity cutbacks in local authority services.

This paper will consider the social construction of 'caring' as a 'working age' activity which excludes the social reproduction work of older people.

Presentation

In person

484 Reducing Claimants' Confusion of Social Security Eligibility Assessments and Decision-Making Processes in Ireland and the UK by Applying CRPD Accessibility Standards

Steve Atkin

Nottingham Trent University, Nottingham, United Kingdom. Midlands4Cities, Nottingham, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

A concern common to both Ireland and the UK is the prevalence of disability welfare benefit claimants, upon receiving a notice of rejection, reporting a lack of understanding of why they were deemed ineligible for social security. This lack of understanding makes it difficult for claimants to identify the grounds upon which to appeal their decision and thus represents a barrier to justice. The lack of understanding as to why claims are rejected seems to share a common cause, that of confusion regarding the eligibility assessment for social security (SWAO 2016/16; Machin and McCormick 2021). However, the reasons for this confusion occurring in Ireland and the UK are diametrically opposed.

In Ireland, Disability Allowance (DA) claimants face the issue of legal opacity and vagueness, resulting in a lack of clarity as to what claimants should record in their benefit applications in order to satisfy an eligibility assessment. Conversely, in the UK, Personal Independence Payment (PIP) claimants can access myriad information that explains the exact level of impairment they must report in order to satisfy an eligibility assessment and still find their claim rejected.

This paper analyses social security provisions through the lens of accessibility obligations espoused by the Convention on the Rights of Persons with Disabilities (Arts 9, 21) so as to suggest future directions for the welfare systems of Ireland and the UK which ensure that claimants better understand the eligibility criteria for PIP and DA, and the decision-making process through which they are applied.

Presentation

In person

69 Women's health and the welfare state: assessment criteria reform

Mhairi Campbell, Lynsay Matthews

University of the West of Scotland, Paisley, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

In Scotland, Adult Disability Payment (ADP) replaced Personal Independence Payment (PIP) as a support for people living with health conditions. The original PIP criteria were criticised for their lack of criteria to fairly assess 'fluctuating

conditions' i.e. conditions that are present <50% of the time. The Scottish Government, following an independent review of ADP, may reform the criteria.

Premenstrual Dysphoric Disorder (PMDD) is an example of a fluctuating condition. PMDD is a serious mood disorder known to affect 1 in 20 women (and individuals assigned female at birth). PMDD has a debilitating impact on all aspects of life, with 1 in 3 people attempting suicide. Although PMDD affects people in the luteal phase of their menstrual cycle (typically 2wks per month), the impact of PMDD, with its monthly recurrence between adolescence and menopause (approximately 30yrs) results in long-lasting effects outside of their luteal phase.

The eligibility criteria of >50% is a discriminatory method when assessing fluctuating conditions, in particular menstrual-related disorders, such as PMDD. ADP criteria, therefore, require reform to ensure people with PMDD and other fluctuating conditions are provided with fair and appropriate support. We aim to explore opportunities for improving ADP processes for fluctuating conditions such as PMDD.

Presentation

In person

Children's rights: Migration and asylum

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU202

Stream Children's rights

719 Children abroad: a relational analysis of cross-border child protection cases in the Finnish central authority

Sanna Mustasaari

UEF Law School, University of Eastern Finland, Joensuu, Finland

Stream or current topic

Children's rights

Abstract

Children's mobility and concerns relating to child protection in the cross-border context is an emerging field of study that has hitherto largely remained unexplored. Central to the effectiveness of transnational child protection are structures that facilitate collaboration between the local child protection and welfare authorities of different countries. Under the Hague Conventions on Child Protection 1996 and Child Abduction 1980, as well as EU Regulation

Brussels IIter, Member States are required to appoint a central authority to serve as a contact point for this collaboration. Drawing on a study of cases handled by the Finnish central authority from 2012 to 2020, this article provides a unique window on the concrete practices of cross-border child protection. Informed by the idea that the state is a social relation and the notion of 'stategraphy', the article examines how the state is brought into being in the practices of authorities who work on child welfare and protection and draw boundaries that exclude or include children. It is argued that particular ideas and normative expectations about the state lead to misunderstandings of local child protection authorities concerning jurisdiction, which may result in a failure to fulfil the positive obligations to secure protection of the child in a cross-border context.

Presentation

In person

766 The violence of delays in asylum decision-making – insights from the LOHST project

Helen Stalford, Edmira Bracaj

University of Liverpool, Liverpool, United Kingdom

Stream or current topic

Children's rights

Abstract

This paper draws on the findings of a 20-month ESRC-funded project – Lives on Hold, Our Stories Told (LOHST) – which explores the impacts and legacies of the pandemic for young unaccompanied asylum seekers in England (age 16-25). Delays are a long-standing feature of the UK asylum system, with many asylum-seekers waiting for in-excess of one year for an initial interview and in-excess of two years for an initial decision. This paper illustrates how delays impact on unaccompanied children and young people in particularly traumatic and damaging ways and interrogates why measures aimed at minimising delay in other areas of legal decision-making involving children do not extend to those in the asylum system.

Presentation

In person

771 Inclusive and equitable quality education for all? Barriers and challenges to securing education rights for children from sanctuary seeking backgrounds

Ruth Brittle

Nottingham Trent University, Nottingham, United Kingdom

Stream or current topic

Children's rights

Abstract

The right to education is a fundamental right guaranteed by international treaties, declarations and global compacts. It is the fourth sustainable development goal (SDG 4), with an emphasis on inclusive and equitable quality education for all. For children seeking asylum this right is not prioritised or is inaccessible or unavailable in the host state. For children arriving in a host state there are several barriers to securing their education rights, and their access to educational provision may depend on whether they are separated from their parents, the immigration status of their parents, how effectively their parents are able to advocate for access to schools and to navigate the asylum process. The minimum standard for education rights is based on availability, accessibility, adaptability and acceptability (Tomasevski 2006) and should be inclusive of all children whatever their status.

This presentation will briefly outline the international obligations of a state in the context of education rights' - an interlinked set of rights which reveal that education is much more than access to a school building or to a school curriculum, but includes rights to, in and through education. I will assess the negative impact of the asylum procedure on a child's education rights and examine rights-based approaches which address the barriers to securing education rights for refugee and asylum seeking children.

Presentation

In person

Socio-Legal Jurisprudence 1

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU203

Stream Socio-legal jurisprudence

177 On the universality of Hart's concept of law: Is 'Islamic law' really Islamic 'law'?

Ali Ekber Cinar

McGill University, Montreal, Canada

Stream or current topic

Socio-legal jurisprudence

Abstract

In the postscript of his pathbreaking work, *The Concept of Law*, H. L. A. Hart (p. 94) defines law as "a union of primary rules of obligation with such secondary rules." He also claims that his theory is "not tied to any particular legal system or legal culture" but rather general and applicable to all contexts (pp. 239-40).

This paper seeks to test the validity of Hart's claim on the generality of his theory in the example of Islamic law. To see whether it "qualifies" as law in Hartian terms, I explore whether Hart's "secondary rules" is applicable to the system of rules prescribed by Islam. Reading Islamic law through the lens of "The Concept of Law," I argue that Hart's theory is not applicable to all contexts, nor is it meaningful in the Islamic legal tradition. The paper

demonstrates that either Islamic law fails to meet Hartian criteria to qualify as law or, as I will argue, Hart's concept of law is flawed and should be revised.

Presentation

In person

195 Narratives of Legal Consciousness: What is law for Bangladeshi people?

Arpeeta Shams Mizan

University of Bristol, Bristol, United Kingdom. University of Dhaka, Dhaka, Bangladesh

Stream or current topic

Socio-legal jurisprudence

Abstract

My PhD project explores what ordinary people understand by 'law', how they approach and experience law in a post-colonial Bangladeshi society deeply influenced by religious formalism. For the Conference, I wish to present a concise version of a chapter from my PhD thesis that focuses on the meanings of law as perceived in everyday life in Dhaka. I will analyse the patterns of legal consciousness by analysing the field data obtained through qualitative interviews with 50 adult citizens of Bangladesh (through purposeful sampling and snowballing), and field observations to understand the 'meaning and role of law in the(ir) lives.' My paper explores how ordinary people approach and experience law in a post-colonial Bangladeshi society that is deeply influenced by religious formalism. I will analyze people's behaviour and their rationale for frequent ordinary breaches of law in urban public spaces in order to understand whether Bangladeshi people's 'lived experience of law' is more guided by religion. In *The Common Place of Law* (1998), Ewick and Silbey talked about non-state legalities, exemplified by chairs in a shovelled parking spot. My project asks 'what' people consider to be laws in the first place, to understand whether legal experience in Bangladeshi society may go beyond state laws. Drawing on the identity school of legal consciousness as explained by Chua and Engel (2019), the paper argues how legality may be constructed through religion, and resultantly their decisions of conformity and resistance are influenced more by non-state law normativities.

Presentation

Virtual via Microsoft Teams

473 Inherited Judges as a Rule of Law Paradox

Teodora Milojkovic

Central European University, Vienna, Austria

Stream or current topic

Socio-legal jurisprudence

Abstract

This paper aims to illustrate how the protection of judicial independence, through the stability of judicial tenure, may compromise the rule of law instead of upholding it. Through a theoretical conceptualization of the phenomenon of inherited judges in regime shifts and political transitions, this paper reveals the inherent tension between the principles of the rule of law and judicial independence, which the orthodox constitutional theory essentially overlooks.

The inherited judges' paradox represented a puzzle throughout the 20th century, as the responsibility of the judges for supporting and legalizing gross human rights violations had to be addressed in many transitions from authoritarian regimes. Hence, the constitutionalism of nascent democracies is precisely the environment in which the inherited judges' dilemma emerges.

The transitional justice theory addressed this problem incidentally through the more holistic prism of lustration and post-authoritarian and post-conflict capacity-building politics. Nevertheless, mainstream transitional justice approaches are not sensitive to the issues of judicial independence.

On the other hand, the international standards on judicial independence that translate into national constitutional texts construe formal guarantees of judicial tenure in a manner that presumes that the judiciary operates in an institutional vacuum, shielded from the socio-political contingencies, which is manifestly not the case.

This paper aims to bridge the gap between these two theoretical paradigms on inherited judges by offering a theoretical concept of contextualized judicial independence, which is mindful of the rule of law principle but more sensitive to constitutional politics on the ground.

Presentation

In person

DEVELOPING DEMOCRACIES: JUDICIAL POLITICS IN THE MIDDLE EAST

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU207

Stream Constitutionalism in developing democracies

278 The Danger of Politicisation of the Judiciary in Turkey

Nurullah Gorgen

Durham university, Durham, United Kingdom. King's College London, London, United Kingdom

Stream or current topic

Constitutionalism in developing democracies

Abstract

The transition has come true from 'tutelary democracy' to 'competitive authoritarianism' under the rule of the Justice and Development Party (AKP) in Turkey. This caused both the weakening of the separation of powers in favour of the executive and the incumbents' abuse of their current position to acquire the power against their opponents. Accordingly, Turkish judicial independence has been adversely affected by this because a dependent and cooperative judiciary needs by incumbents to maintain their positions.

The composition and powers of the Constitutional Court and the High Council Judges and Public Prosecutors (HSYK) were the centres of the Turkish judicial system, so the executive has considerably endeavoured to politicise the judiciary for its benefit. For this, the executive has applied the constitutional amendments and legislation.

This paper claims that the existence of long-standing tutelage democracy, lack of legal regulation to protect the separation of powers, the presence of populism, the close relationship between the executive and legislative organs, the desires of incumbents to maintain their powers are the main factors to undermine the judicial independence in Turkey.

In this article, the relationship between the power-seeking executive and judicial independence shall be addressed by examining the constitutional amendments and legislation that have changed the compositions and powers of the Constitutional Court and the HSYK and the mentioned factors. The effects of the new partisan presidentialism model introduced with 2017 Constitutional amendments upon judicial independence also shall be analysed to comprehend the current politicisation of the judiciary in Turkey.

Presentation

In person

895 Courts in Consociations – Institutional Role Theory and Making-Power Sharing Work

Sophia Schroeder

University College London, London, United Kingdom

Stream or current topic

Constitutionalism in developing democracies

Abstract

Courts in consociational systems of power-sharing play a crucial but delicate role in the regulation of identity-based conflicts. Consociational settlements are often negotiated after violent conflict and various communities have to be

accommodated. With the aim of discerning how courts function and what role they play precisely in consociational systems, the research takes a socio-legal approach and examines two deeply divided societies that have adopted a consociational system: Northern Ireland and Lebanon.

Case-law analysis in both jurisdictions shows that courts in consociations display a 'making power-sharing work' attitude, instead of unwinding ethnic political bargains. Domestic courts uphold and reinforce consociational features, break deadlocks, and manage - to a certain extent - sectarian conflict.

Judges turn into guardians and umpires for consociational regimes for a variety of reasons, which include the institutional context and judges' background as well as socialisation into the legal profession. This paper, however, focuses on the role political actors and lobby groups ascribe to the courts. Using institutional role theory (Boulanger 2013), it argues that their expectations and strategic (non-)use of the courts contribute to shaping judicial role performance in consociations. A thematic analysis of semi-structured interviews with key actors (incl. politicians, judges, and senior lawyers) provides additional support for this explanation.

Presentation

In person

597 Israel's Paradox of Authority: Rethinking Authority, Official Records, and Constitutionalism

Yoav Sivan

I/A, New York, USA

Stream or current topic

Constitutionalism in developing democracies

Abstract

This reconceptualization of Israeli constitutionalism will prompt a rethink of important questions in political theory and constitutionalism. The focus is on Israel's early history, a surprisingly unexamined critical period, largely ignored even by Israeli constitutionalist scholarship: Having committed itself in its very first decision of the May 14, 1948, proclamation to govern through a constitution, Israel elected a constitutional assembly that convened in February 1949, but got distracted immediately, and two days later morphed into the parliament that we know today. I show here, the metamorphosis was not fully successful: the assembly's decision, not being an official constitution, could not be properly promulgated through the Hebrew/Arabic Official Gazette—that would have amounted to an acknowledgement of failure—instead, the new state started another gazette, in Hebrew, in which legislation is no longer numbered nor promulgated in Arabic. To this day, Israeli laws no longer declare their authority with an enacting clause, a common practice everywhere. This unresolved and unacknowledged workaround led to a paradox of authority: the two competing gazettes establish an inconsistent order of priority that hinders reform with considerable consequences. The particulars of the Israeli case have profound theoretical implications and would challenge assumptions. I propose identifying an authority with its official record. I argue for minimal formal conditions for official legal decisions to be normatively binding (a decision should identify its decision-maker). Given that these conditions have been wanting in Israel since 1949, Israeli decision-making thereafter could be viewed as private and even unfair.

Presentation

In person

393 Judicialisation of politics in Iraq: The Tale of Two Courts

Majida Ismael

Liverpool John Moores University, Liverpool, United Kingdom

Stream or current topic

Constitutionalism in developing democracies

Abstract

In the context of a post-conflict developing democracy in Iraq, the role, and the legitimacy of the newly established Federal Supreme Court (FSC) has been particularly controversial. The Court has taken every opportunity, developing an extensive and often controversial case law, to speak up in almost any policy area, ranging from election, government formation, the legitimacy of the country's President, the dissolution of the parliament to the constitutionality of the independence referendum in Kurdistan and the legitimacy of the FSC itself.

Federalism is the most controversial and under-implemented constitutional matter in Iraq, the Court's case law includes fewer cases concerning country's federal system. The government of the Kurdistan Region -the only existing federal region in Iraq- and the federal government are less likely to bring legal challenges against one another, although the two had longstanding contentious interpretations of constitutional matters significant to the application of the federal system and constitutionalism. The few cases that were brought before the Court were frequently dismissed or indefinitely postponed. Recently, the Court has been extensively involved in addressing constitutional questions defining the foundation of the federal system that matters to the two governments. This is imperative not only with power-struggles between the two governments, but with everyday politics in the country.

This paper analyses the 2021 Amendment to the Law of the FSC which expands Court's jurisdiction beyond what was originally provided in the 2005 constitution, and its relation to the latest increase in judicialisation of politics in Iraq.

Presentation

In person

Legal Education 2

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU208

Stream Legal education

152 School Tasking: Primary Outreach and Widening Access to Legal Education

Ali Struthers

University of Warwick, Coventry, United Kingdom

Stream or current topic

Legal education

Abstract

In this presentation, I will talk about 'School Tasking', a project that developed from an observation that the television show, Taskmaster, is a useful and engaging way of teaching about law and legal interpretation. From this observation came the idea to develop legal education outreach work with primary schools using activities based around Taskmaster.

There is not enough legal education happening in schools, and particularly in widening participation ('WP') schools. School Tasking has the aim of engaging Year 5 children from WP primary schools in learning about the law by doing legal 'tasks', and using resources on different aspects of the law. Legal education in schools can be dry and/or complex for primary-aged children, so this project seeks to utilise the format of a popular TV show to make learning about law at a young age more stimulating and relatable.

In this presentation, I will talk about the project itself, but will also make connections between the project work and the importance of engaging WP outreach work for children of primary school-age. Existing research and my own experiences have shown that outreach work with primary-aged children is an important step in introducing children from less advantaged backgrounds to the idea that university study, and the study of Law, are realistic options for them.

Presentation

In person

303 A Theoretical Foundation for Public Legal Education

Dawn Watkins, Charlotte Mills

University of Sheffield, Sheffield, United Kingdom

Stream or current topic

Legal education

Abstract

Public legal education describes a diverse range of educational practices that seek to improve legal knowledge, or to develop so-called legal capability among the general population. Despite being offered internationally and diverse pedagogical approaches being undertaken (Wintersteiger, 2020), how to provide effective public legal education is currently undertheorized. This paper addresses this gap by presenting a new theoretical foundation for public legal education developed for Project FORTITUDE, a UK-based empirical study funded by the European Research Council that aims to improve children and young people's legal capability.

Our theoretical foundation takes an interdisciplinary approach to the design of public legal education and draws upon multiple disciplines and perspectives, including social psychology and critical pedagogy, alongside utilising problem-based learning that is playful, creative, and intersectional in its method of delivery. In this paper, we argue this approach builds a robust and grounded structure in which to provide public legal education that is meaningful, effective, and potentially unifying.

While FORTITUDE focuses on children and young people, we argue that our theoretical approach can shape the design of public legal education for children, young people, and adults alike. Thus, within this paper, we will ultimately introduce an adaptable design for public legal education for all that has applicability now and in the future, for not only the UK but also internationally.

Presentation

In person

499 Becoming 'poemish', an exploration of the use of narrative inquiry and poetic transcription as methodological approaches in legal education research.

Rachel Wood

University of the West of England, Bristol, United Kingdom

Stream or current topic

Legal education

Abstract

I think it's interwoven.

I know that there are rules in law,

it's a strict way to think and stuff,

but it's all around you,

you're kind of just in it,

Bea - Third year LLB Student

This session examines the implications of adopting a qualitative methodology in legal education research. It discusses the use of narrative inquiry and poetic transcription in the context of a doctoral inquiry into the 'ways of knowing and being' of undergraduate law students, an inquiry which explores theories of personal epistemology and self-authorship. This session focuses on use of a model of narrative inquiry which approaches research into the lived experience of participants using a three-dimensional model of time, place and social relationships (Clandinin and

Connelly, 2000) to create narrative perspectives. It examines the reflexive process of interpretation and representation of participant voices through poetic transcription. This is a method which draws explicit attention to the constructed nature of research findings, and allows for a written representation of data which can more closely represent the spoken word than traditional prose (Richardson, 2001). Using examples drawn from the study, the presenter will suggest that poetic representation creates a form of 'slow' data which enhances meaning, creating a richer perspective of participant experiences for the reader.

This session will be of interest to delegates wishing to explore and discuss the wider issues and challenges arising for legal scholars using qualitative methods of research.

Presentation

In person

485 Disrupting patterns of dominance and whiteness in legal education.

Nick Cartwright

University of Leeds, Leeds, United Kingdom

Stream or current topic

Legal education

Abstract

This paper is based on research carried out over one academic year of an Introduction to Public Law module. 72 students were taught using a socially constructive pedagogy and observation data was collected. 17 of the students were then interviewed. The study was contextualised by interviewing 5 members of staff, including the VC and Director of L&T.

The research questions were:

1. How do students 'participate' in group and team learning activities?
2. Which students display relations of dominance or subordination?
3. How do students describe these activities?
4. How do staff within the institution describe learning and teaching?

The key findings were that:

1. Participation in the law seminars was gendered and racialised.
2. Dominance correlated with whiteness and maleness, whilst subordination correlated with blackness and femaleness.
3. Students did not report perceiving racial or gendered dominance or subordination, instead describing a meritocratic and democratic learning environment.
4. Staff also described a colour-blind and gender-blind meritocracy. Any disengagement was instead explained by SEN, socio-economic class, previous educational experience, or personal choice

Based on the key findings I argue that we have a responsibility to disrupt patterns of dominance and whiteness and make 5 recommendations to this end, these are that:

1. The primacy of race must be acknowledged.
2. The extent of racism must be acknowledged.
3. Reflexivity should be part of the student learning journey.
4. Reflexivity should be part of our CPD.
5. Learning and teaching should be an explicitly liberatory experience.

Presentation

In person

Health Law and Bioethics: Genetics & Organ Donation

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU210

Stream Health law and bioethics

Rees Johnson

352 The Advertising of Direct-to-Consumer Genetic Testing

Kathryn Sandilands

University of Leicester, Leicester, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

Members of the public can now purchase tests online which claim to provide information about their likelihood of going on to develop certain conditions based on their genetic profile. The role of such tests is unclear: on extreme, they may represent nothing more than a whimsical Christmas gift, while on the other, they may constitute a more serious replacement for services usually offered in traditional healthcare settings. Advertising from the providers relies on rhetoric which emphasises the empowering nature of genetic testing and yet disclaimers remind users that the tests are not intended to diagnose disease, to influence the making of medical decisions, or even to substitute for a clinical consultation. The degree to which users should rely on their results is therefore unclear.

I will review the marketing of direct-to-consumer (DTC) genetic test providers and the motivations of users to better understand how such tests are intended to affect the choices of individuals concerned for their future health. This literature review will also enhance our understanding of how DTC genetic tests impact the provision of public healthcare where users seek clarification or reassurance from their general practitioner by looking at their initial expectations of testing. In an already overburdened National Health Service, such use of resources cannot be considered negligible. This research will ultimately require consideration of the most appropriate management of direct-to-consumer genetic testing and the healthcare provided to users.

Presentation

In person

451 The Right to Genetic Privacy in An Era of Genomic Medicine

Jasmine Blow

University of Leicester, Leicester, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

The availability of genetic testing and the increasing identification of genetic variants has resulted in concerns regarding the erosion of patient privacy. In circumstances where probands have refused to disclose their genetic disorders to their at-risk relatives, the question arises whether healthcare professionals should be legally and ethically justified in informing the proband's relatives of their risk of inheriting a genetic disease without consent. Through a critical analysis of academic opinion and case law, this paper will investigate the future of patient privacy within genomic medicine by determining whether individuals have a right to genetic privacy. It may be argued that the relational nature of genetic information and its significance for the health of the proband's relatives makes the data distinct from general medical data, which usually only pertains to the health of one individual. This suggests that it is possible for patients to simultaneously have a right to privacy concerning general medical information and not have a right to genetic privacy. However, due to advances in genomics the ability to truly differentiate between these rights can be criticised on the basis that many common medical conditions are polygenic, multifactorial disorders, meaning the conditions are caused by the combined action of several gene interactions and environmental factors. Consequently, most medical information could be considered genetic information. Therefore, this research aims to justify why different genetic disorders and medical conditions should give rise to varying levels of privacy protection and propose how this may be achieved in practice.

Presentation

In person

798 Share Your Spare: Living Kidney Donors' Experience of the Assessment Pathway

Bonnie Venter

University of Bristol, Bristol, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

One of the most important questions raised by organ transplantation is how to increase the number of available organs in a way that is respectful of individual rights and accords with the public interest. In the living kidney (LK) donation context, the answer can be found by exploring the factors contributing to the organ shortage which relate to the public, healthcare professionals, and most importantly the donors.

In this paper, I draw upon 27 semi-structured interviews conducted with LK donors in Great Britain to firstly, provide an empirically informed understanding of the assessment process of a potential donor, and secondly, to explore the relationship between the legal framework and clinical practice. The latter relates particularly to the fact that both the law and clinical practice has played a role in creating a distinction between the assessment process of a specified and unspecified donor.

By relying upon Charmaz's constructivist grounded theory, I evaluate LK donors' experience of the pathway by distinguishing between *donation as a practical process* and *donation as an emotional process*. LK donors' accounts of their donation reveal that i) the complexities of specified donations are underestimated; ii) the autonomy focus of the pathway might require a re-evaluation; and iii) improvements can be made to the Human Tissue Authority Interview, as well as the Mental Health Assessment of the prospective donors. The aim of this paper is to utilise these findings to propose potential policy reforms for the LK donation framework and to ultimately increase access to LK donation.

Presentation

In person

554 Donors' rights in tissue exchanges

Rebecca Gulbul

University of Kent, Canterbury, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

The regulation of tissue exchanges does not reflect donors' motivations for giving their material and their interests in it post-donation. Tissue donation takes place within a framework of altruistic giving. This approach was adopted in relation to blood donations for transfusions and has since been applied to other exchanges of bodily material, from organ donation to tissue donation to biobanks for research. An altruistic regulatory approach has avoided associations of money with the body and has avoided considering whether property rights should be recognised in the body. This approach has resulted in difficulties for donors to retain control over their material after separation, including having some input into how it is used, accessing remedies in cases of misuse, and being able to participate in the outcome of research performed on their material.

Using theories of temporality, I argue that, though the regulatory framework addresses tissue donation as a momentary transaction within a linear timeline, giving in fact takes place within a cyclical temporality where donors' future expectations are key to encouraging them to give in the present. The regulatory framework facilitates the pursuit of future interests while paying lesser attention the role of the past, resulting in research and commercial interests being favoured and in donors' interests often being left unaddressed. The discrepancy of rights between

those who give and those who benefit is widened as an increasing number of private for-profit biobanks participate in tissue exchanges.

Presentation

In person

Disability and Law: Ableist Practices and the Right to Life

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU211

Stream Disability, law and social justice in times of uncertainty

311 The Transition to a State Led Market Economy in China: The Impact of Social Change and the Commodification on Disabled People

Cunqiang Shi

Cardiff University, Cardiff, United Kingdom

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

This paper explores the mechanisms behind the devaluation of Chinese disabled people's labour and in doing so develops a lens to study China's transition towards a commodified labour market. Data, based on 48 semi-structured interviews found that Chinese disabled people have distinctive labour market experiences affected by their social, spatial, cultural, and political status, but the character of economic transformation is also highlighted as significant.

The paper firstly reveals how deeply rooted ableist practices and norms in traditional social and cultural values interact with contemporary economic processes, leading to the ghettoization of disabled people. Secondly, it contributes to an understanding of the important role that the commodification of labour market relationships in China during its transition from a predominantly collective agricultural economy to a marketized economy, has played in disabled people's lives. Comparisons between different regions and sectors are made to fully reflect the sectoral and spatial effects of commodification of impaired labour. Finally, it addresses how changes in the mode and relations of production have specifically impacted on disabled workers. This paper links the debates developed by UK disability studies scholars who argue that changes in the means of production from feudalism to a capitalist free market

economy had a negative impact on people with impairments to the Chinese context. Through disabled participants' experiences in different forms of employment, it evaluates whether impaired labour has come to be devalued in different modes of production that currently co-exist in the Chinese economy.

Presentation

In person

335 Setting the stage for the assessment of the criminal liability of autistic defendants in an age of Neurodiversity

Matthew McCallion

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

Courts have long struggled to assess and determine the criminal liability of autistic defendants due to a reliance on approaches largely based on neurotypical views and rationales. The use of such approaches tends to lead to outcomes whereby autistic defendants risk being judged according to neurotypical cognitive standards or be forced to rely on the partly stigmatising insanity defence.

Drawing from the author's ongoing PhD research, this paper builds on previous literature holding these approaches as problematic as they fail to account for autistic traits and thought processes when assessing criminal liability. The main aim of this paper is to preliminarily set the stage for an alternative lens for determining the criminal liability of autistic defendants based on principles emanating from the so-called 'neurodiversity paradigm'. This proposed new perspective will be informed by three factors: (i) the history of autism and the philosophy of neurodiversity; (ii) the impact and influence of the neurodiversity paradigm across various disciplines; and (iii) a critical discussion of ongoing trends in approaches towards determining the liability of autistic defendants taken by criminal courts thus far.

The paper concludes by arguing that approaching the issue via a new neurodiversity-based lens provides several benefits, including: (i) a departure from the exclusion of autistic defendants from a fully fair adjudication within the criminal legal system; and (ii) the capturing of the ongoing emergence of a paradigm shift that has proliferated in other disciplines in order to inform and refine the law on the status of autistic defendants.

Presentation

In person

483 Abortion on the Grounds of Disability, and Abortion on the Grounds of a Life-Limiting Condition: How Similar are the Ethical Considerations?

Heloise Robinson

University of Oxford, Oxford, United Kingdom

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

Abortion on the grounds of disability raises a number of difficult ethical issues. While some think that there is an especially strong moral justification for abortion in such a case, there are also arguments that abortion for this reason 'expresses' a negative message about the value of disabled lives. These issues received renewed attention recently due to the Court of Appeal's decision in *R (Crowter) v Secretary of State for Health and Social Care*, which concerned the disability ground in the Abortion Act 1967, applicable in England, Wales and Scotland.

By contrast, it is often considered that even stronger moral justifications for abortion apply where the fetus has a life-limiting condition (often referred to as a 'fatal fetal abnormality'). This is illustrated for example through several recent developments in the law in Northern Ireland.

It might be thought that the reasons that could justify abortion in the case of disability might simply apply more strongly if the death of the fetus is likely. However, upon closer examination, some potential justifications that would apply in the former case appear to have less merit in the latter, and it would seem that separate analysis is needed. This paper will compare the moral justifications that could be put forward for both grounds, and examine what messages each of these grounds 'expresses' about the value of disabled lives.

Presentation

In person

893 Rights Death and Research Creation

Eliza Chandler, Esther Ignagni

Toronto Metropolitan University, Toronto, Canada

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

In this paper we explore how socio-legal insights can be generated and advanced through a research-creation project, *Deathnastics*.

In 2016, legal sanctions prohibiting MAiD were lifted in Canada. Although MAiD is widely understood as advancing the autonomy and dignity of Canadians, tensions persist about expanding access to death as access to the resources for life become more elusive. In an effort to draw attention to degraded and degrading social and health care systems, some disabled Canadians have exercised their 'right to die' as a form of political protest.

Beginning with Archie Rollan in 2016, and continuing with the more recent deaths of Roger Foley, "Kat", and "Sophia".

MAiD has been deployed agentively not to the end of suffering, but as a public plea for access to state resources that enable a dignified life.

Deathnastics creatively animates Archie Rollan's decision to pursue MAiD in response to the violent neglect within institutional care.

Comprised of installations, a performance and death cafe, *Deathnastics* offers the full story of the agentive and devastating strategy of accessing MAiD as political protest. It reveals affective nuance; the sedimentation of minute insults to dignity, the debilitating impact of segregation and the absence of caring touch. Audience conversations enable political participation outside formal legal discourse. Like the decisions of those who pursue MAiD as political protest, *Deathnastics* questions the contradictory enactment of autonomy and dignity.

Ultimately, research creation opens collective space to draw attention to state action and inaction that results in vulnerable disabled people's deaths.

Presentation

Virtual via Microsoft Teams

Law and Emotion 2

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU218

Stream Law and emotion

66 Managing emotion in international criminal law: display rules, identity and emotional labour performance by war crimes lawyers.

Alex Batesmith¹, Chalen Westaby²

¹University of Leeds, Leeds, United Kingdom. ²Sheffield Hallam University, Sheffield, United Kingdom

Stream or current topic

Law and emotion

Abstract

Recent research has shed light on the conflict between those international criminal law (ICL) legal professionals who view themselves as 'cause lawyers' (those whose primary motivation in practising law is to advance their own moral, political or ideological commitments) and those who identify with a more conventional understanding of legal practice as the provision of a dispassionate, technical service. While the former sees emotional and personal connections as central to their work, the latter eschews emotional displays as antithetical to their identity as detached legal professionals (Batesmith, 2021). However, while we see glimpses of the role – or otherwise – of emotion in the work of ICL legal professionals there remains a significant gap in the literature. This paper aims to begin to fill this gap by analysing the emotional labour performed by ICL legal professionals (prosecutors, defence lawyers and victim advocates) and its potential impact on lawyer wellbeing. Using interview data gathered from 62 international criminal lawyers who work, or have worked, at UN-sponsored international criminal tribunals we analyse the display rules that

drive emotional labour expectations for the different groups of ICL legal professionals. We then consider how identity – including entrenched gendered perspectives of ICL practice – influences the way in which emotional labour is performed and the prioritisation of certain emotional displays. We then consider the potential impact of these performances on the various legal professionals working in ICL, and the 'communities of coping' that they develop to sustain them through their work.

Presentation

In person

608 Scrutinizing Gut Feelings: Emotional Reflexive Practices in Italian Courts

Alessandra Minissale

Uppsala University, Department of Sociology, Uppsala, Sweden. Bologna University, Department of Legal Studies, Bologna, Italy

Stream or current topic

Law and emotion

Abstract

Narratives are powerful emotional devices. They can trigger our curiosity, make us suspicious, compassionate, empathic, or even horrified. In this article, I focus on gut feelings evoked by written and oral narratives of witnesses, defendants, and victims, and I show how Italian judges and prosecutors emotionally navigate their gut feelings towards 'what really happened' in criminal cases. Gut feelings emerged as emotional states experienced as intuitive, subjective knowledge – when judges and prosecutors feel they know 'in their heart' or 'inside them' the 'true story' of the crime, but they also contrasted this type of knowledge with the 'objective story' based on the evidence available in a case. Drawing on observations of hearings and deliberations, shadowing, interviews, and analysis of written judgments, the analysis delineates different emotional practices used by judges and prosecutors to manage their gut feelings. First, I show that legal encoding – the translation of lay narratives into legal categories – constitutes an emotion management strategy used to distance the gut feeling for the 'true story', restricting the span of interest towards the story validated by the evidence. Second, I describe instances where gut feelings are endorsed, rather than constricted, because they morph into suspicion and curiosity of knowing more about the story than what is legally relevant to decide the case. Building on previous research problematizing the longstanding view of emotions as blind causes for action, the current analysis renders visible that emotions and emotional reflexivity are vital components of legal decision-making, consistent with principles of impartiality and objectivity.

Presentation

Virtual via Microsoft Teams

358 Reflecting on legal practice through psychotherapeutic supervision

Marc Mason

University of Westminster, London, United Kingdom

Stream or current topic

Law and emotion

Abstract

Psychotherapists, social workers, and counsellors engage in a particular form of supervision that deals with the emotional aspects and relational dynamics of their work. A number of solicitors have begun to engage in a similar process. This presentation shares some of the findings of a reflexive thematic analysis of interviews with a number of these solicitors. Through the transcripts I explore stories about the nature of legal practice that leads solicitors to supervision, the processes that make supervision valuable to these solicitors and the impact this form of supervision has on their practice and more broadly.

Presentation

In person

Civil Justice 2

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU219

Stream Civil justice systems and ADR

691 Exposed Whistleblowers: Whistleblowers' Legal Proceedings in Israeli Labor Court in Light of Therapeutic Jurisprudence

Noa Yosef

Bar Ilan University, Ramat Gan, Israel

Stream or current topic

Civil justice systems and ADR

Abstract

Whistleblowers are employees, who were exposed to violations of the law in their organizations, and who reported this to an authority capable of remediating the violation. Unfortunately, whistleblowing often results in retaliation by employers and colleagues. Such retaliation is made possible due to the power gaps between the whistleblowers and their employers. It may include unjust harm to the whistleblower's working conditions and social-organizational life (e.g., dismissal, work deprivation, and slander). Such Retaliation adversely affects whistleblowers' work stability and emotional well-being, causing health, financial, family, and professional injuries.

In Israel, whistleblowers exposed to retaliation may initiate civil-legal proceedings in the labor court, under the Protection of Employees (Exposure of Offenses of Unethical Conduct and Improper Administration) Law, 1997 (hereinafter: "PEL"). Entering the legal proceeding after suffering retaliation is an ordeal that exposes the whistleblowers to secondary harm caused by the trial itself. This paper uses the perspective of therapeutic

jurisprudence to examine how the PEL, and procedural practices under it, lead whistleblowers to suffer a complex experience that negatively affects their well-being, due to the promotion of victim blaming, offensive interactions, and a very narrow view of the whistleblowing experience.

It then draws inspiration from solutions already implemented in legal proceedings of another vulnerable litigants' group – survivors of sexual violence. This paper reveals the similarity between whistleblowers' legal experience and the legal experience of survivors of sexual violence. It offers to reform the whistleblowers' legal procedure based on solutions that helped reduce secondary victimization of crime victims in legal proceedings

Presentation

In person

430 What are the determinants of effective participation for litigants in person as an element of the right to a fair trial: A Q-methodology study

Gráinne McKeever, Lucy Royal-Dawson, Priyamvada Yarnell, John McCord

Ulster Uni, Belfast, United Kingdom

Stream or current topic

Civil justice systems and ADR

Abstract

As part of a Nuffield Foundation-funded project on understanding and supporting participation of litigants in person (LIPs) in family law proceedings, our research seeks an operational understanding of how effective participation can be better protected in family court proceedings. As an element of Article 6 ECHR the right to a fair trial, effective participation takes on added significance for parties who are not legally represented in court systems that are not designed with them in mind. This study seeks to understand how to determine whether effective participation is being reached by LIPs.

The restrictions on access to observe court hearing in the Northern Ireland jurisdiction as a result of the Covid-19 pandemic required the researchers to seek an alternative methodology. We opted for Q-methodology as it explores subjective perspectives on any topic allowing us to obtain the views of court users and court actors on a conceptual understanding of effective participation.

Our presentation sets out how we used Q-methodology to identify what constitutes effective participation in practice. Based on empirical data collected between Nov 2022-Feb 2023, we present where court actors (lawyers, judges, court staff) and court users (LIPs and McKenzie Friends) reach consensus in their views on what constitutes effective participation, and where their views diverge. From this, we develop an operational understanding of effective participation and evaluate the use of Q-methodology for this purpose.

Presentation

In person

865 Do Women Judges Do It Differently? A Case Study of Irish Judicial Opinions

Caoimhe Kiernan

TU Dublin, Dublin, Ireland

Stream or current topic

Civil justice systems and ADR

Abstract

The aim of this research is to attempt to account for, and investigate, the difference women judges have made to the Irish judiciary and to Irish jurisprudence, and to define the importance of women judges to the Irish judiciary. As part of my broader research, I am undertaking an analysis of Irish legal judgments in order to see if women judges in Ireland write judicial opinions differently to their male counterparts. I am analysing a specific set of Irish judicial opinions in order to make this comparison.

This study compares the amount of novel citations (per word) in concurring judgments in Supreme Court and Court of Appeals cases, to measure whether men judges and women judges write their judgments differently. I have focussed my research on Irish Supreme Court and Court of Appeals cases between 2011 and 2020, which have concurring judicial opinions by both a woman and man judge. I am reviewing the amount of novel citations contained in each concurring judgment, and examining on average, how many citations each judge uses per word.

With my analysis, I intend to see whether there is a discernable difference in the way women judges approach writing judgments. In adherence with a post-positivist approach to this research, an empirical, quantitative investigation into case data is merited to offer broader perspectives on issues pertaining to gender on judging in Ireland, to complement the qualitative approach taken in the survey and interview studies.

Presentation

In person

85 What is a Language Commissioner? Some implications of the Identity and Language (Northern Ireland) Bill

Diarmait Mac Giolla Chríost

Cardiff University, Cardiff, United Kingdom

Stream or current topic

Civil justice systems and ADR

Abstract

The Identity and Language (Northern Ireland) Bill, introduced in the House of Lords in May 2022, makes provision for the creation of two new Language Commissioners. These are an Irish Language Commissioner and a Commissioner for the 'enhancement and development of the language [...] associated with the Ulster Scots and Ulster British tradition', as is noted in the Explanatory Notes accompanying the legislation. The Bill also makes provision for the official recognition of the Irish language.

The discourse driving this Bill is informed by ideas about the office of Language Commissioner in Canada (at federal, provincial and territorial levels), the Irish Language Commissioner in Republic of Ireland, and that of the Welsh Language Commissioner in Wales.

Interdisciplinary research by the author on these Language Commissioners (including a major project sponsored by the ESRC) revealed complications relating to the identity and functioning of these offices. These complications contributed to the resignation of first Irish Language Commissioner and to the first Welsh Language Commissioner being subject to Ministerial direction along with the office's regulatory powers being largely taken over by the Welsh Government.

In this paper, the author applies the analytical techniques developed by this research to the Language Commissioners as are framed by the Bill, identifying the key issues arising for these offices as a result.

These issues pertain to complaint-handling, promotion, monitoring, democratic accountability, and, decision-making and risk-management processes. Issues also pertain to the meaning of the official recognition of Irish and the concept of language standards.

Presentation

In person

Administrative Justice 2

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU301

Stream Administrative justice

119 Judicial Review in the Devolved Nations

Liam Edwards

Ulster University, Belfast, United Kingdom

Stream or current topic

Administrative justice

Abstract

Lord Diplock stated that the purpose of judicial review is the “means by which judicial control of administrative action is exercised”[1] In the devolved nations of Scotland, Wales, and Northern Ireland, this power is extended to include devolved primary legislation,[2] which extends the scope of judicial review in these nations compared to England.

The rate of non-Immigration judicial review claims proceeding to substantive hearing varies greatly between the three nations. In Northern Ireland, the rate is highest at one substantive hearing per 36,000 inhabitants. This decreases to one hearing per 129,000 in Scotland and one per 507,000 in Wales.[3] A ten-year case study of judicial review judgments from the three nations examine the divergence between the rate of cases. The case study is combined with experiences of legal professionals to reflect the nature of judicial review cases in the devolved nations.

Initial findings suggest problems with access to justice through the complexity of the administrative justice system, cost and time issues, asymmetry of the devolved powers, and differences in the type of respondents claimed against as reasons for the divergence in case numbers. The project

[1] *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374

[2] *AXA General Insurance Ltd, Petitioners* [2011] UKSC 46; [2012] 1 A.C. 868.

[3] England remains highest, at around one per 25,000. Public Law Project, *The Number of Judicial Review Cases* (PLP 2014).

Presentation

In person

293 The Proof of Criminal Allegation in Election Petitions: A Critique of the Traditional Approach

Othuke Amata Aso

Ph.D., Candidate, College of Law, Osun State University, Ifetedo, Osun State, Nigeria

Stream or current topic

Administrative justice

Abstract

One of the evidential issues in the determination of election petitions is the requirement that all criminal allegations must be proved beyond reasonable doubt. Ostensibly the position of the Nigerian judiciary stems from the application of the provisions of the Evidence Act as it relates to the standard of proof in civil or criminal cases. The author, using the analytical research method with data sourced from a review of decided cases, especially those of the Supreme Court, therefore sought to interrogate the issues surrounding the application of the proof beyond reasonable doubt to election petition and identify the contradictions imposed a herculean evidential burden on a petitioner to prove the allegations beyond reasonable doubt. Given that the judiciary has over time sustained the standard of proofing criminal allegations in election petitions, the paper found that there is no legal or jurisprudential basis for the court to continue with the approach that criminal allegations in the election petition must be proved as in other criminal

proceedings. The paper, therefore, articulates the need for a review of the standard of proof for election petitions to allow for judicious determination of election disputes filed at the election tribunals. The paper recommends the amendment of the Electoral Act to specifically provide that the standard of proof applicable to an election petition is the preponderance of evidence.

Presentation

Virtual via Microsoft Teams

813 The Right to Litigation (Access to Justice) in Matters of Personal Status for Non-Muslims in Saudi Arabia

Nawaf Alqahtani

University College Dublin, Dublin, Ireland

Stream or current topic

Administrative justice

Abstract

Nearly three million non-Muslim immigrants reside in Saudi Arabia, constituting 9.27 % of the country's population (30 million). Saudi Arabia constitutionally recognizes that the country's religion is Islam, and that Sharia is the primary source of legislation. Consequently, the Saudi judicial system applies Sharia rules in most cases, including personal status cases. The situation of non-Muslims in personal status cases is legally and practically ambiguous. Contrary to the practice in Egypt, Jordan, the United Kingdom, Canada and other countries, Saudi Arabia does not recognize a special judiciary for non-Muslims or guarantee alternative dispute resolution, such as arbitration. This research will provide a comparative analytical study on the question of whether the right to litigation in matters of personal status for non-Muslims in Saudi Arabia should be guaranteed and institutionalized and to what extent the guaranteeing of this legal autonomy; 1) would in line not only with the principles of universal human rights, but also with the principles and purposes of Sharia itself; 2) would make Saudi Arabia an attractive environment for foreign talents to reside in line with Saudi Vision 2030. This research will examine the law currently applied to non-Muslims and the reality of the Saudi judiciary towards non-Muslims. It also aims to highlight the legal developments accompanying Vision 2030, which seek to make the country an attractive environment for foreign investments and minds. Vision 2030 has so far led to changes in several laws, including laws of naturalization, immigration, work, residence, and public morals.

Presentation

In person

857 The Duty of Candour in Judicial Review: A Content Analysis

Elizabeth O'Loughlin

Durham University, Durham, United Kingdom

Stream or current topic

Administrative justice

Abstract

In England, Wales, and Northern Ireland the duty of candour is triggered if a person seeks judicial review of an administrative action or decision. It requires that both parties must provide a full and accurate explanation of all the facts relevant to the review before a court or tribunal. The operation of the duty is unclear, with the recent Independent Review of Administrative Law concluding that 'there is a need to clarify the scope of the duty of candour'. To date, however, neither the policy-making nor academic community have conducted a systematic, empirical study of how the duty of candour works in practice.

This paper responds to that gap through a content analysis study of judicial decision-making and practice relating to the duty of candour. This paper outlines the results of the study. Part 1 presents empirical findings, including the prevalence of findings of breaches of the duty where it has been raised in argument; judicially enforced consequences of breaches; and the types of disclosure that have been required by the courts to comply with the duty of candour. Part 2 presents more qualitative findings gathered, including judicial commentary on when the duty of candour arises; and judicial commentary on the interaction between the duty of candour, the presumption of disclosure and claimed grounds of review, including the principle of transparency.

Presentation

In person

35 How has the pandemic changed the way people access justice? Digitalisation and reform in the areas of Housing and SEND

Naomi Creutzfeldt¹, Arabella Kyprianides²

¹University of Kent, Canterbury, United Kingdom. ²UCL, London, United Kingdom

Stream or current topic

Administrative justice

Abstract

We present the findings of our Nuffield research project on 'access to justice after the pandemic'.

Covid-19 has forced the justice system, where possible, to go digital at a rapid pace. By empirically understanding areas that work well and those that need improvement, there is a huge opportunity to draw positive (potentially radical) lessons from this crisis. This can inform the court modernisation programme.

We present data collected from our research project on the effects of the rapid digitalization on the delivery of justice in the areas of (a) housing, (b) SEND. Our interview data with judges, Ombuds, case handlers, marginalised people, and the advice sector provided a rich and nuanced account of how people dealt with digitalisation. We build on the map we developed and follow the help-seeker journey through both housing and SEND pathways and show that, in reality, it is a challenge for people to access the (digital) system. We develop the notion of digital legal consciousness (Creutzfeldt 2021) and argue (with examples from our data) that people must possess both digital and legal capabilities to navigate the justice system. This highlights the challenge for the online justice system to be designed for access for people with diverse needs and abilities, not only for those who are digitally and legally savvy.

Presentation

In person

Empire, Colonialism and Law: Colonialism and Cultural Encounters

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU302

Stream Empire, colonialism and law

860 Going Back to Dulka Hoyo/Motherland - What Are the Factors that Impact Decisions to Send Finnish Somali Children Back to the Motherland.

Rahma Hersi

University of Eastern Finland, Joensuu, Finland

Stream or current topic

Empire, colonialism and law

Abstract

Dhaqan Cellis/ re-immersion are all terms used to refer to Somali children whose parents take them back to their country of origin for various reasons. Previous literature shows these reasons vary from sending troublesome, to those who are mentally ill, to those who look to reconnecting with extended family & their culture, to those parents who have experienced racism/stigmatization from their host communities and do not want their children to experience the same. We will also look at those who go back for better economic opportunities & a "better lifestyle".

Finland as a country prides itself on offering its citizens all the rights. To understand whether equality does exist for all we will turn to the theory of Finnish Exceptionalism which showcases how there is no historical past with colonialism and thus has no burden of racism and is a color- blind society and no inequality exists. In this article we would seek to understand what are these factors that impact the Finnish Somali community

In addition to existing research done in the past, we will use the qualitative method with ethnography being the main method of inquiry. Our contribution would be understanding, the factors that impact the Finnish Somali community's decision to return with their children to their countries of origin. This research is part of a PhD study looking at the choice/access of higher education and employment of Finnish Somali women in Finland, as well as being part of a greater research project on transnational child protection.

Presentation

In person

143 Constitution Reckoning: Between Past and Present Colonialism and Imaginary Form of More Portuguese Perfect Union Society

Rui Marques Pinto

Partnerschaft Demokratie Leben - Projekt Demokratie Cafe Reutlingen, Reutlingen, Germany

Stream or current topic

Empire, colonialism and law

Abstract

Based on author's life story bound up with African class struggles against social imagination, representation and reproduction of colonial normativity and ideologies of power (Morrison 1994), the author argue that as long as race is written in the Portuguese constitution (Art. 13 (2)), it will endure the landscape of class struggle, rather than "Principle of equality" to all citizens before the law (Art. 13 (1)) under auspicious of human dignity in harmony with Universal Declaration of Human Rights (embedded on Art. 16 (2) – "Principle of equality").

As a result, this paper suggests the decolonization of the constitution as the primarily roots of reproduction of knowledge of colonial systemically epistemological view, which Ciocchini and Joe Greener (2021) designate neocolonialization against principles of equality. Some scholars argue that the focus on reproduction is a key dividing line in European racism. It is a new racist avatar which Siddiqui (2021) terms reproductive racism. According to the sociologist Cristina Roldão, the Portuguese Afro descendants are twice as unemployed as a white Portuguese and fail twice as much in school, are three times more in menial professions, earn 18% less and go to prison 15 times more (El País website). Nevertheless, the pre-existing inequalities had been threatening their economic wellbeing during the pandemic (Martins et al 2022). Those statistics are reflecting the ongoing author struggle under neo-colonialization knowledge that challenging among other aspects the social mobility through merit (meritocracy), and hence the fairness distribution of the common good to form a more perfect union.

Presentation

In person

296 Remote Yet Colonized: Rurality, Indigeneity, and the Evolving Functions of the Alaska Net Income Tax, 1949 – 1980

Maximilien Zahnd

University of Sussex, Brighton, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

To what extent can a tax impact rurality in a settler colonial context? To answer this question, the paper focuses on the history of the Alaska net income tax. I posit that the tax, throughout its life, served two successive functions. First, it was one of Alaska's most efficient fiscal instruments, helping the territory become the forty-ninth US state. The tax then lost its revenue-raising importance and political dimension once statehood was secured and oil was later found on the Alaska North Slope, thus paving the way for more effective taxes. Yet the evolving role of the tax affected Alaska Natives who lived in rural Alaska and relied on subsistence activities. While the tax initially ignored them as taxpayers, changing economic and sociocultural conditions across rural Alaska made the presence of the tax in Alaska Native villages more ubiquitous. The article argues that as a colonizing legal instrument, the tax reshaped rurality and indigeneity. It first did so through spatial exclusion and later through control at a distance.

Presentation

In person

Empire, Colonialism and Law: Human Rights and Empire

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU303

Stream Empire, colonialism and law

223 The Slow and Structural Violence of Economic Sanctions: Beyond the Human Rights Framework

[Helyeh Doutaghi](#)

Carleton University, Ottawa, Canada

Stream or current topic

Empire, colonialism and law

Abstract

In this article I will first illuminate the limits of existing human rights framework and scholarship on the violence of sanctions produced by academics, thinktanks and international organizations, and the need to rethink how victims and harms of sanctions are conceived and imagined as imperial capitalist violence. Second, my analysis aims to expand our current understanding of different and uneven impacts that sanctions have across class, rural/urban positions, and socio-economic status in Iran. Through adopting 'slow and structural violence' as my conceptual

framework, I look at the broader structural economic transformation of the state under coercive measures by investigating the relationship between sanctions and the unfolding neoliberal processes in Iran and particularly how coercive economic measures have contributed to the acceleration of privatization in Iran's post war history (1989-present). The argument is not that sanctions regimes by themselves caused neoliberalism in Iran, or that every dimension of the existing unequal socio-economic conditions can be reduced to the harms of sanctions. Rather, the argument is that nothing is untouched by the conditions that sanctions produce, and that sanctions 'are not external, but inherent to neoliberalism in Iran.' [1]

[1] Oslanloo, Arezoo. "Entanglements: Lives Lived Under Sanctions" Rethinking Iran: Johns Hopkins SAIS, accessed: https://static1.squarespace.com/static/5f0f5b1018e89f351b8b3ef8/t/6074aa7c815ed607dde6dcd8/1618258557269/IranUnderSanctions_Article11_v2.pdf, Pg.7.

Presentation

Virtual via Microsoft Teams

749 Apartheid in Palestine: Evolution of a Framework

Rania Muhareb

University of Galway, Galway, Ireland

Stream or current topic

Empire, colonialism and law

Abstract

The relevance of the apartheid framework in Palestine has been the subject of considerable debate in recent years, particularly as a result of reports published by human rights organisations, including recently by Al-Haq and others. That Israel practices apartheid against the Palestinian people is not a new finding, however. While Palestinians have repeatedly engaged with the apartheid discourse within an understanding of Zionist settler colonialism, Israeli and

international human rights organisations have to date avoided discussion of apartheid as a (settler) colonial project. As a result, their calls for dismantlement of Israeli apartheid have disregarded decolonisation. Does dismantling Israeli apartheid encompass the right of return of Palestinian refugees, remedying Palestinian dispossession, and restoring Palestinian sovereignty over their lands and other natural resources? These questions, which result from varying approaches to Israeli apartheid, remain open. This paper examines the evolution of the apartheid framework in Palestine and the varying approaches to it adopted by practitioners in order to explicate its relevance and implications for the future.

Presentation

In person

755 Preliminary Findings of Palestinian Perceptions of Justice vis-à-vis Israeli Settler Colonialism

Tamara Tamimi

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

The Palestinian-Israeli conflict has been predominantly conceptualised within the military occupation framework. As such, the UN and its organisations have persistently called for “ending of the occupation” since 1967, and have relatedly framed “conflict resolution” through the advancement of a two-state solution, without meaningfully engaging the wishes of the Palestinian people. Four issues arise from the imposition of a two-state solution within the framework of military occupation. First, it failed in ending Israeli settler-colonial endeavours. Second, it fails to recognise the Palestine question as an issue of settler colonisation. Third, it inaccurately presupposes Israel’s adherence to the legal principles of military occupation. Fourth, it excludes key Palestinian groups and accounts for historical events within Israeli settler colonial trajectory; namely, Palestinian citizens of Israel and Palestinian refugees, and the Nakbe of 1948 and military rule imposed on Palestinian citizens of Israel.

This paper reframes the question of Palestine within settler colonialism and proposes an alternative ‘decolonisation’ approach that centralises Palestinian perceptions of justice at the heart of any peace proposition. This paper includes some preliminary reflections on the fieldwork component of my research that seeks to capture Palestinian perceptions of justice in its ‘political’ and ‘accountability’ dimensions. This paper will i) explore and analyse key issues arising from the imposition of solutions from the outside and top-down, ii) showcase the utility of reframing the question of Palestine within the framework of settler colonialism, and iii) present primary findings among the Palestinian public and societal actors on these perceptions of justice.

Presentation

In person

306 Perpetuating Colonial Dichotomies: Reimagining United Nations Peacekeeping and the Local

Jennifer Giblin

Edge Hill University, Ormskirk, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

For Third World Approaches to International Law (TWAIL) scholars, colonialism was central to the formation of international law, with many of the basic doctrines of international law emerging from the colonial confrontation and the hegemonic powers attempts to create a legal system which could manage relations between European and non-European worlds. As a result, it is argued by TWAIL scholars that international law is 'animated' by colonialism, resulting in a body of laws and legal systems which reinforce colonial dichotomies of 'civilised' and 'uncivilised', further elevating the dominant actors whilst continually marginalising the 'other'.

Adopting a TWAIL lens, this paper explores how colonialism has animated United Nations (UN) peacekeeping and its relationships with local populations. Firstly, it examines how colonialism has shaped the legal and normative frameworks governing UN peacekeeping, focusing on how the power dynamics between states within the UN have influenced the development of these frameworks. Secondly, it argues that this animation has sometimes resulted in peacekeeping practices reinforcing the colonial patterns of domination and subordination. When examining these practices, the paper will focus, in particular, on the peace operation's relationship with the marginalised communities within the conflict-stricken, Global South states in which they are deployed. Finally, the paper argues that reinforcing the power of the local, through a bottom-up approach to peacekeeping, would contribute to a re-imagining of peacekeeping that could counter a TWAIL critique of peacekeeping.

Presentation

In person

Epistemic Injustice: Liberal Confinements in Legal Discourses

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU305

Stream Epistemic injustices in law

486 Rearticulating cultural rights in international law using Global South epistemologies: A case study of the Irulars

Raghavi Viswanath

European University Institute, Florence, Italy

Stream or current topic

Epistemic injustices in law

Abstract

My research investigates how cultural rights in international human rights law can be re-articulated using Global South epistemologies. The starting point is the oppression of the Irulars in India. The Irulars are a semi-nomadic community based in south India, who have been historically criminalized for their traditional subsistence activities, prevented from speaking in their tribal tongue(s), and displaced from their ancestral lands. Typically, such treatment would qualify as violations of “cultural rights”. However, cultural rights are absent from the discourse that has emerged in relation to the Irulars.

I surmise that one reason for the lack of engagement may be that cultural rights under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights – which are the primary treaties binding India – are under-equipped to capture Irular readings of culture and rights. Illustratively, the interpretive bodies of the Covenants still read “indigeneity” as denoting nature-society harmony and ascribe material grammars of empiricism/uniqueness to culture. However, for the Irulars, culture is predominantly spiritual. Irulars reject mainstream labels such as “tribe” and “indigenous”, which they associate with colonial ordering. Irulars rely on dance and music-based conversations with nature/deities, departing from the purely written frameworks prevalent in international law.

Drawing on collaborative fieldwork with the Irulars, my paper makes a case for why and how cultural rights in the Covenants can be rearticulated using Irular epistemologies. Through this exercise, the paper proposes a revised epistemic framework that can benefit Global South communities generally.

Presentation

In person

353 Bringing together justice and rights: a materialist account of "the right to choose" over the body

Angelica Cocoma

University of Oxford, Oxford, United Kingdom

Stream or current topic

Epistemic injustices in law

Abstract

Submission for Theme B 'Epistemic Injustices in Law: Articulating Alternatives'.

Reproductive justice activists have recently criticised reproductive rights for focusing on individual choices as a

narrow approach to achieving reproductive freedom. Focusing on the individual's "right to choose" can deflate attention from changing the social conditions in which individual choices occur. As the individual right to choose does not account for structures of social oppression, it does not challenge them. As a result, focusing on individual rights might legitimise coerced choices as free and voluntary without questioning the social background in which choices occur.

This is a problem for reproductive rights advocacy because relying on individual choices can be insufficient and problematic to change current reproductive arrangements. At the core of the critique towards the "right to choose" lies an essential topic in feminist legal theory: a tension between protecting women's autonomy through rights and, on the other hand, the limits of rights to change structural forms of oppression. This paper analyses the dichotomy between "rights" and "justice" using elements from feminist Marxism, particularly social reproduction theory, and social movements in Latin America. The paper proposes a materialist account of "choice" as a possible and desirable way to respond to reproductive justice critiques and revindicate the right to choose over the own body. I use examples from the social movement's uses of reproductive rights in Latin America to exemplify what a materialist account of choice might look like.

Presentation

In person

769 Religious Women's Standpoint in the Paradox of Multicultural Vulnerability and the Failure of Liberal-Democratic Mechanisms

Sagy Waternberg Izraeli

Law, Bar-Ilan University, Ramat Gan, Israel. Study of Religions, Abo Akademi University, Turku, Finland

Stream or current topic

Epistemic injustices in law

Abstract

The paradox of multicultural vulnerability frequently experienced by religious women ensues from the meeting of a religious community's norms and multicultural legislation of liberal-democratic States. States' solutions to the paradox, however, impose liberal standpoints to solve the paradox, failing to touch upon the aspects of religiosity internal to the paradox – of the community and of the religious woman, or other vulnerable member, herself. Thus, States maintain an epistemic distance from the religious community and from the religious women themselves whom the State is attempting to aid. For, religious women's emic situatedness within the religious community is an element in the paradox they experience due to their "dissenting" religious norms, and it simultaneously imparts them a profound knowledge of complexity of the paradox neglected by etic agents.

This paper suggests that the chronic failure of liberal-democratic States to remedy the paradox of multicultural vulnerability lies in the incongruity between the problem and the solutions attempted, taking three primary forms. 1. The lack of recognition of the role of liberal-democratic laws in producing the paradox. 2. The misidentification of religious women's normative claims as external to the religion rather than deriving from within their religiosity. 3. The religious tenet of legitimacy that underscores the paradox and is constructed through the socio-legal interaction of the emic definition of the religious community and the etic legal one. This paper offers a new understanding of the paradox of multicultural vulnerability for implementation in both research and legislation, specifically regarding religious women.

Presentation

Virtual via Microsoft Teams

Equality and Human Rights Law: Dignity, Vulnerability and Intersectionality

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU308

Stream Equality and human rights

317 Is Human Dignity the Missing Link between Discrimination and Degrading Treatment under the European Convention on Human Rights?

Helen Jennings

New York University School of Law, New York City, USA. University of Cambridge, Cambridge, United Kingdom

Stream or current topic

Equality and human rights

Abstract

This paper considers a development in recent judgments of the European Court of Human Rights regarding the prohibition of degrading treatment under Article 3 in conjunction with the prohibition of discrimination under Article 14 ECHR. Cases of particular interest are *Identoba v Georgia* (73235/12), and *Aghdgomelashvili and Japaridze v Georgia* (7224/11). In these cases, it appears that the Court is using “human dignity” as a catalyst or vehicle to extend Article 3 protection to LGBTQ+ applicants who have suffered discrimination where typically, the threshold test of pain and suffering would have precluded their success. The Court’s use of the human dignity in these cases has not been clearly articulated or given content, nor has the Court explained why the vehicle of human dignity allows them to expand Article 3 protection in this way. In this paper, I explore how human dignity is operating in relation to Article 3 and Article 14 and consider why the Court has extended protection against degrading treatment in these non-paradigmatic factual contexts. I suggest that the Court’s reliance on human dignity to extend the protection of Article 3 to LGBTQ+ individuals in these cases exemplifies Waldron’s account of human dignity as a juridical concept able to “level-up” the rank of marginalised groups as rights-holders. I argue that the Court’s new sensitivity to the interaction of human dignity, discrimination and degrading treatment could have significant consequences if embraced by the Court as part of their pursuit of the Convention’s dignitarian ideals.

Presentation

In person

397 Hate Crimes as Crimes against Dignity

Jen Neller

Manchester Metropolitan University, Manchester, United Kingdom

Stream or current topic

Equality and human rights

Abstract

Dignity is sometimes cited as a value that justifies hate crime law but is less commonly incorporated into definitions of hate crime. In this paper, I consider the implications of placing dignity at the heart of our understanding of both what hate crime is and how it should be legislated against. While the concept of dignity itself may be contested, I argue that it has absolute, inalienable and equalising qualities that could render it a useful safeguard against six concerns in hate crime scholarship. These concerns are: 1) the application of hate crime laws in ways that essentialise groups, 2) the use of hate crime laws against disadvantaged groups, 3) the backlash against hate crime laws as 'special treatment' for minorities, 4) the reduction of hate crime laws to gestures of recognition, 5) the expansion of hate crime laws to the extent that their 'special' nature is diluted, and 6) the investment in 'more punishment' as a remedy to hatred. In relation to these issues, dignity is more useful than general notions of 'harm', as harms are more susceptible to being 'balanced' in ways that reproduce existing power relations. Conversely, the concept of dignity maintains a focus on the experiences of individuals in a manner that is both flexible enough to respond to evolving forms of hatred and rigid enough to guard against majoritarianism. This paper therefore argues the benefits of viewing hate crimes as crimes against dignity.

Presentation

In person

456 VULNERABLE GROUPS AND TREATMENT OF THE DIFFERENCE

M. Isabel Garrido Gómez

University of Alcalá, Alcalá de Henares, Spain

Stream or current topic

Equality and human rights

Abstract

We live in a world which moves towards an heterogeneous pluralism that must be harmonized as an expression of globalization. The migratory movements and the resurgence of nationalisms make the situation become more complex, with certain consequences in sovereignty's traditional concept, in Law's production sources and in the creation of new jurisdictional bodies.

Thus, legal norms should recognize and protect the vulnerable groups, assuming and appreciating them in a positive way, with the limit of respect to their inherent human dignity and inviolable rights. To sum up, the most correct thing is that the social integration of the difference is to be carried out by means of its recognition and acceptance as legal-political principle. The open society implies a constant opening to the change, allowing the comparison with other ways of acting or thinking, that can enrich and improve ours.

Presentation

In person

864 Facilitating Minority-Refugees' Access to Refugee Rights Through An Intersectional Approach

ISILAY TABAN

University of Brighton, Brighton, United Kingdom

Stream or current topic

Equality and human rights

Abstract

Host States are under an obligation to allow refugees to enjoy basic refugee rights equally without discrimination under international human rights law. In the implementation of these rights, however, States often adopt a 'one size fits all' approach that has the potential to undermine this obligation. This approach perceives refugees as a homogenous group, failing to acknowledge the unique forms of disadvantage that they experience as a result of the intersection of their distinct identity groups. This paper illustrates the negative consequences of this approach through the example of minority-refugees who were minorities in their country of origin and have become refugees as a result of persecution. Drawing on intersectionality, it highlights the specific challenges that minority-refugees face in the enjoyment of their rights as a result of the intersection of their minority and refugee status. By failing to appreciate this intersection, host States run the risk of not only discriminating against them in their enjoyment of the right to housing and the right to health, but also violating the principle of non-refoulement. This paper argues that if host States are to achieve their commitment under international human rights law to ensure that refugee rights are accessible to all refugees, including minority-refugees, and enjoyed equally, it is essential that they adopt an intersectional approach to the implementation of these rights.

Presentation

In person

25 Years of Constitutional Change: Constitutional identity

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU309

Stream 25 years of constitutional change - past and future

233 The Czech Constitutional Identity: An Imaginarian Approach

Lukáš Červinka

Charles University, Faculty of Law, Prague, Czech Republic. Ca' Foscari University of Venice, Department of Economics, Venice, Italy

Stream or current topic

25 years of constitutional change - past and future

Abstract

The prevailing understanding of constitutional identity is ingrained within the global defensive stance of (legal) constitutionalism. In other words, the constitutional identity is understood as a core of the constitutional system located in, above all, the Constitution and the constitutional adjudication. The essential nature of this legal understanding of constitutional identity is that it cannot be changed without a major constitutional break. However, the constitutional system is not frozen.

In my paper, I propose a socio-legal understanding of constitutional identity reflecting the living nature of the constitutional systems. In the example of Czechia, I argue that the constitutional identity is a product of the constitutional imaginary articulated in the State's decisions. Following the concept of social imaginary of Charles Taylor, the constitutional imaginary is nothing more, and nothing less, than a self-understanding of the State that is constantly changing. Furthermore, adapting the social systems theory of Niklas Luhmann, I argue that the constitutional imaginary might be recognised only through the communication of the State—its decisions articulated thanks to the organisational structure of the State.

Therefore, I analyse the three-decades-long development of the Czech constitutional imaginary by analysing the organisational structure of the Czech State: the personal elements articulating the imaginary into decisions, procedural elements regulating the decision-making process, and the value elements interconnecting the individual decisions into a series of decisions and creating the constitutional narratives that serve as a synthesis of the constitutional imaginary into the constitutional identity.

Presentation

In person

788 A Lost Constitutional Moment for Equality

Charlotte Skeet

University of Sussex, Brighton, United Kingdom

Stream or current topic

25 years of constitutional change - past and future

Abstract

The 1990s saw a period of unprecedented constitutional activism and discussion on equality in the UK which produced the proposals for constitutional change ultimately implemented in Labour's first term in government post-1997. Although it was believed at the time that this period of discussion had created a 'sea-change' around constitutional equality in the UK (Meg Russell 1999), the momentum for change was not maintained. The changes that did occur have been well-charted but the extent of the activism that led to them are largely forgotten.

This paper utilises a theory of constitutional moments and argues for the significance of a UK 'constitutional moment' for equality in the 1990s. It suggests the importance of remembering the activism that drove changes and asks what understandings of the constitution have been lost as this history of activism is forgotten, and what this has meant for understanding and interpretations of the UK constitution. It concludes that unless we look back and properly take on board the history of past change, any current proposals for constitutional change, for example the recent New Britain (2022) Labour Party proposals will never create, as they claim, a 'radical blueprint' for change.

Presentation

In person

807 Critical constitutionalism: an inquiry into the past, present, and future

Can Turgut

York University, Toronto, Canada

Stream or current topic

25 years of constitutional change - past and future

Abstract

Recent years have seen an increase in scholarly attention given to illiberal constitutional politics in advanced capitalist and democratic states, which have long been deemed the flag carriers of liberal constitutionalism. The illiberal turn presents a significant contrast against the prominent narratives of the late 20th century when liberal democracy was considered to be the most important creation of Western civilization that all societies and states aspire to become. This paper will shed light on three significant avenues wherein the use of critical constitutionalism in and of itself is worthy of further scholarly attention, as opposed to the Eurocentric descriptions of constitutionalism. First, by drawing upon Uppendra Baxi's emphasis on conceptualizing constitutionalism as a medium to unfold state formative practices, this article will illustrate how critical constitutionalism itself is a venue to re-evaluate and rewrite history. Second, the article proposes to use critical constitutionalism as a medium to describe today's political power relations in the neo-liberal era, through the dominant discourses of global constitutionalism, particularly in the nexus of the global North and South relations. The third and last section of the article considers critical constitutionalism to be a key area wherein an epistemic and political knowledge mobilization movement is produced as a way of imagining emancipatory futurities and emphasizing organized solidarity movements that can be grounded in the notion of counter-hegemonic globalization.

Presentation

680 Referendums as Constitutional Norm: Indyref2 and the case for referendums in the UK constitutional architecture

Nicky Gillibrand, Somsubhra Banerjee

University College Dublin, Dublin, Ireland

Stream or current topic

25 years of constitutional change - past and future

Abstract

Does the Scottish Parliament have power to legislate for the holding of a referendum on Scottish independence? This was the primary question referred to the Supreme Court by the Scottish Lord Advocate under the Scotland Act 1998. While the question was framed and referred to in the context of an Act of Parliament, the Court took the opportunity to clarify broader issues of constitutional significance. Central to these was the continued uncertainty over the status and significance of referendums within the UK's constitutional structures.

While the Court had previously been hesitant to directly engage with the constitutional status of referendums, it took the opportunity to discuss not just the legal validity but also the implications regarding legitimacy that referendums must have, given the UK's democratic constitutional system. The Court however, reverted to more orthodox foundational principles of parliamentary sovereignty and was reluctant to view the Scottish electorate as an independent constitutional actor. With the continued use of referendums in highly salient political contexts like Scottish independence or Brexit, a strong argument regarding referendums being an exercise of constitutional significance can be made.

This paper seeks to place referendums in the constitutional architecture of the UK and examine how it relates to more traditionally foundational principle of parliamentary sovereignty. It further hopes to investigate if the Scottish electorate can be treated as an independent constitutional actor by using original qualitative data mapping based on focus groups conducted in England and Scotland.

Presentation

In person

Exploring Legal Borderlands: Empirically Interrogating Legal Borderlands: Probing Entangled Spaces, Theories and Legalities - Part 1

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU310

Stream Exploring legal borderlands

740 Interrogating legal borderlands through the lens of 'hybrid' courts

Sapna Reheem Shaila

European University Institute, Florence, Italy

Stream or current topic

Exploring legal borderlands

Abstract

My paper analyses legal borderlands through the lens of 'hybrid' judicial arrangements, where non-state procedures and institutional arrangements are incorporated into a state legal system. By examining instances of 'hybridity' as meeting points of two or more normative worlds, the paper raises questions about how such sites contribute to our understanding of legal borderlands. The paper will build on a survey of hybrid arrangements in Timor Leste, Rwanda, India, Papua New Guinea, South Sudan, Nigeria (to list a few) and show different typologies of hybrid courts. Underlying the variety of hybrid courts, I will argue that 'hybridity' in itself is a bridge to cross the legal and normative borders to gain more authority and legitimacy for state institutions. My paper thus moves away from the existing scholarship on hybrid court arrangements, which focuses on legal pluralism or its impact in reducing crime and violence in different parts of the world.

Presentation

Virtual via Microsoft Teams

598 Legal Entanglements between Market and State

Nafay Choudhury

University of Oxford, Oxford, United Kingdom

Stream or current topic

Exploring legal borderlands

Abstract

What happens to law in the legal borderland, when state and nonstate legalities come into contact with one another? Drawing on ethnographic fieldwork from the markets of Afghanistan, this paper explores the two-way dependencies that form between state and nonstate legal systems. In Afghanistan, market norms interact with the state in a way that simultaneously undermines state legal authority while also reifying it. The concept of legal entanglement is used to interrogate the interactions between state and nonstate legalities. Legal entanglement moves beyond descriptive approaches legal pluralism that recognizes the presence of "semi-autonomous social fields" (Moore) and "inter-legality"

(Santos) and turns attention to the various ways in which legal systems (state and non-state) interpenetrate one another and what that means for notions of legal ordering. Entanglement is distinct from both separate and integration, as it entails a socially constructed arena of interaction between two distinct forms of legality. Entanglement entails the meeting of separate legalities but simultaneously represents a liminal space where linkages between them bring them together – creating both opportunities and inconsistencies. The borderland, in turn, is constantly being renegotiated, as markets actors and state actors alike pursue their respective interests, capitalizing on varying power differentials and changing market and societal circumstances.

Presentation

In person

431 Mapping human rights trajectories through process research

Cathérine Van de Graaf

University of Cologne, Cologne, Germany

Stream or current topic

Exploring legal borderlands

Abstract

There has been a growing interest in studying organisational phenomena in a processual manner. Such research is concerned with 'capturing and theorizing about change in time and paying attention to the unfolding of events, activities, and flows' (Chahrazad, Lusiani, and Langley 2019). The course of justice can be approached as such an organisational phenomenon and the time is right to perform holistic process research in human rights litigation. While much of the relevant socio-legal research is focusing on specific contextual elements (actors, conditions or narratives) and their impact on change (processes), only by developing an integrative approach can we get to the root of how, why and where change occurs through litigation. A fragmented and pre-determined focus on specific elements is unlikely to capture the unexpected one-time players, accidentally influential factors and the barely noticeable narrative elements or allow us to understand practises underlying networks of indecision. In this contribution, process research will be positioned among other empirical-legal methods to study (human rights) case law and litigation, to identify how the approach differs from methods/models and which associated benefits/pitfalls this entails. The final objective is to establish a model for the empirical reconstruction of processual chronologies (retrospective data collection) through which the observed change or standstill is analysed. The model does not pursue to ensure representativeness. Yet, it is aimed to pass the test of replicability so that it can serve as a model to be re-used by others (Burawoy 1998).

Presentation

In person

737 Defining the use of alcohol and other drugs in the Finnish law drafting regarding the rights of social and health care customers

Veera Kankainen¹, Anu Katainen¹, Katariina Warpenius², Lotta Hautamäki¹, Josefin Westermarck¹

¹University of Helsinki, Helsinki, Finland. ²Finnish Institute for Health and Welfare, Helsinki, Finland

Stream or current topic

Exploring legal borderlands

Abstract

This study explores the law drafting as a borderland in which legal concepts, policy goals, and different agencies become re-opened, redefined and reproduced. As an empirical case, the study analyses how the use of alcohol and/or other drugs (AOD) is defined in the law drafting process reforming the act on the rights of the social and health care customers in Finland. Previous research has addressed that AOD use is stigmatized across societies and even social and health care service staff often have negative attitudes towards customers who use AOD. However, less is studied how law drafting as discursive practice reproduces the ideas regarding AOD use. As its data, the study uses the draft on the government proposal (2018) on the rights of the social and health care customers in Finland and stakeholder comments on the draft. The methodological framework is Carol Bacchi's critical discourse analytical tool "What is the problem represented to be?" (WPR). Bacchi suggests that legislation does not objectively intervene society but participates in the reproduction the ideas of the societal 'problems'. The study concludes that the Finnish reform defines AOD use through three discourses: One reproduces the idea of people using AOD having multiple problems and needing special services. Another defines them as risk customers needing to be socially controlled. The third discourse put emphasis on the rights of people in social and health care or in general, also when they are intoxicated or otherwise perceived to use AOD.

Presentation

In person

Interrogating the Corporation 1

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU318

Stream Interrogating the corporation

109 The Neoliberal Logic of Thabo Mbeki's Black Economic Empowerment in South Africa and Corporate Media Discourse

Metji Makgoba

University of Limpopo, Polokwane, South Africa

Stream or current topic

Interrogating the corporation

Abstract

This article investigates how former president Thabo Mbeki conceptualised Black Economic Empowerment (BEE) as an extension of his neoliberal agenda through his political speeches when he formalised BEE as the official policy of the African National Congress (ANC) government in the early 2000s. His neoliberal capitalist discourses have

shaped, guided, and structured the conception of BEE and are crucial for understanding its outcomes in various sectors of the economy and society. However, several BEE studies have ignored these political discourses and proceeded to study BEE as an alternative to the hegemony of neoliberal capitalism. Using Critical Discourse Analysis (CDA), the article argues that rather than challenging this neoliberal capitalism, BEE is one of its microcosmic expressions that conform with its racialised relations of power. This is expressed by Mbeki's definition of the concept of empowerment through the scorecard approach in ways that conform with the logic of managerial and corporate power. This logic favours the use of business-like mechanisms of measuring business performance through an audit culture that preserves corporate hegemony by promoting the symbolic appearance of compliance. By ignoring Mbeki's discourse of neoliberal capitalism, studies have tended to analyse BEE outside its political context and social structures of power that underpinned its conception and formalisation, thereby compounding the problems created by the policy.

Thabo Mbeki, Discourse, Neoliberalism, Capitalism, BEE

Presentation

In person

283 Corporate crime, capitalism and the dawning of a new zeitgeist?

Alison Cronin

Bournemouth University, Bournemouth, United Kingdom

Stream or current topic

Interrogating the corporation

Abstract

Unlike individual criminality, which is essentially premised on concepts of blameworthiness and gravity of harm caused, the substantive approach to corporate crime conforms to an economic analysis, and is thus ethically neutral, involving little or no stigma. One of the reasons for the differential approach is the so-called Andersen effect, and the fear that criminal conviction will lead to a lack of investor confidence such that the corporation will fail and thereby cause collateral damage to otherwise innocent stakeholders, such as shareholders and employees. Accordingly, no amount of legal tinkering will address the problem of corporate crime unless the economic arithmetic is reformulated, with a realistically enlarged conception of "collateral damage" to include the wider economic and social costs that are incurred through the preservation of incalcitrant corporations.

Furthermore, the differential approach to corporate criminality is also implicitly bound up with the prevailing Chicago school credo, that the social responsibility of business is simply to make as much profit as possible, and this has undoubtedly served in reinforcing its ethically neutral depiction. However, literature emanating from various different disciplines now signals the dawning of a new zeitgeist, with calls for a fundamental repurposing of capitalism itself. This paper draws together examples from a range of anthropological, philosophical, historical, cultural, social, neoclassical economic and environmental perspectives, to demonstrate the emergence of a shared recognition that a new (or perhaps not so new) version of capitalism is now urgently required if we are to address the most important challenges of our time.

Presentation

Virtual via Microsoft Teams

778 Social and Legal Barriers to a Socially-Focussed Corporate Purpose: A Luhmannian Systems Analysis

Colin Moore

University of Essex, Colchester, United Kingdom

Stream or current topic

Interrogating the corporation

Abstract

Corporate purpose is being reimagined away from profit and shareholder value maximisation, towards a wider social corporate purpose (SCP), thereby potentially involving a wider range of stakeholders in corporate governance and creating value for wider society. However, it is argued that such a reimagination needs to take account of the embedded nature of the shareholder primacy value within both law, individual companies, and wider societal practices. Luhmann's systems theory is deployed here to identify the specific legal and extra-legal challenges that those wishing to steer corporate purpose towards SCP are likely to face. Existing socially orientated corporate governance initiatives, such as corporate social responsibility (CSR), are also critiqued with reference to systems theory. The potential for steering corporate purpose using deliberate path creation is also examined, along with indicative doctrinal solutions.

Presentation

In person

817 Challenging the corporation to enact rights of nature at board level

Brontie Ansell

University of Essex, Colchester, United Kingdom

Stream or current topic

Interrogating the corporation

Abstract

'Rights of nature' is the understanding that nature has legal rights. One aspect of this is about giving nature 'legal personhood' and acknowledging that it has the right to persist, maintain and regenerate through vital cycles.

In recognising the rights of nature, we acknowledge that all life forms are interconnected, and the decisions we make should be based on what is good for the whole planet, not just humans. Furthermore, we accept that we must stop treating nature as the property of humans, where it can be destroyed at will, and instead recognise it as having its own legal status, rights and remedies.

In 2022 Brontie Ansell worked with Faith In Nature to examine how taking a rights-based approach could help them realise their duty to protect and preserve the natural world. Ultimately this resulted in amendments to the company's

constitution to make nature a company director, giving it legal rights and recognition at the heart of the business's decision making.

Governments can be very slow to enact constitutional change. Very few around the world have enacted rights of nature provisions into their constitutions. However, corporations are generally independent of the political system and can move much faster to change, and that can have a cascading effect.

In this paper the methodology used to achieve the project is examined. The paper presents Faith in Nature as a case study and offers suggestions on how a rights of nature approach in the board room can be realised internationally.

Presentation

In person

Conspiracy theories and pseudolaw 1

14:45 - 16:15 Tuesday, 4th April, 2023

Location MU319

Stream Conspiracy theories and the rise of pseudo-law

Kate Leader

113 “First Safe Country”: State Sponsored Fake Law?

Alex Powell

Oxford Brookes University, Oxford, United Kingdom

Stream or current topic

Conspiracy theories and the rise of pseudo-law

Abstract

Listening to contemporary UK debates regarding migration and asylum, anyone would be forgiven for thinking that the question of where an asylum seeker had arrived in the UK from was of central importance to their asylum claim. This is because politicians and the media have repeatedly promoted the idea that asylum claimants should settle in the first safe country in which they arrive. While the idea of an asylum claim being undertaken in the first EU country a potential claimant entered forms a part of the Dublin Regulations, Brexit has now removed this element from the UK. In 2022, section 16 of the Nationality and Borders Act 2022 legislated to allow the Secretary of State for Home Department to declare a claim inadmissible where a claimant has a connection to a third safe country. However, this does not change the fact that, under the Refugee Convention, the UK is bound by international law to recognize as refugees all who meet Article 1A(2). Drawing on discourse analysis of media and political statements, this paper seeks to explore the ways in which the idea of 'safe-countries' has impacted debates around and legislative responses to people entering the UK by crossing the English Channel. Furthermore, the paper considers the role that concepts such as the 'economic migrant' have played in supplanting a formal legal process of recognising refugees with a process of social and political attribution regarding who is or is not entitled to benefit from the surrogate protection of the UK.

Presentation

In person

367 Conspiracy, Ethics, and the Legal Academy: How Law Schools Can Govern the Profession

Joshua Kastenberq

University of New Mexico, Albuquerque, USA

Stream or current topic

Conspiracy theories and the rise of pseudo-law

Abstract

In the aftermath of World War II, several faculty members at universities and colleges in the United States advanced conspiracy theories. John Beaty at Southern Methodist University in Dallas, Texas published Iron Curtain over America in which he claimed that President Franklin Roosevelt conspired with Jewish leaders to bring the United States into a war with Japan and Germany so that Communism would prevail across the world. He opposed racial equality as well. Harry Barnes, a history professor who concentrated on legal and sociological history agreed with Beaty and was a leading Holocaust denier. The “marketplace of ideas” and free speech protected them from retribution. However, their conduct occurred in the 1950s.

Today, the United States is experiencing a number of prominent law professors engaging in conspiracy theories. For instance, Amy Wax at the University of Pennsylvania claimed that Asian-Americans cannot become trusted stewards of democracy. And Professor John Eastman assisted former President Trump's efforts to remain in office even though Trump's false election claims had been debunked. Wax and Eastman contributed to a violent atmosphere in a manner similar to Beaty and Barnes. Wax and Eastman are attorneys responsible not only for academic standards but also ethical codes of legal practice. At what point should the legal academy – the law school – determine that a person's conduct has been of a nature as to stoke violence and undermine democracy, so as to divest them of tenure or job security? My paper proposes a rule to this effect.

Presentation

In person

703 The Causes and Impacts of Conspiracy Theories on the Covid-19 Pandemic in the Muslim-Populated Northern Nigeria

Salisu Gumel

Jigawa State Polytechnic, Dutse, Nigeria. Commission of Legal Pluralism, Leiden, Netherlands. Union of African Muslim Scholars, Bamako, Mali. Nigerian Bar Association, Dutse, Nigeria

Stream or current topic

Conspiracy theories and the rise of pseudo-law

Abstract

Like in other Muslim populated countries, conspiracy theories exist in Northern Nigeria, on the premises that Islam is being targeted by non-Muslim countries. This belief is majorly on the US foreign policy in relation to Arab and Islamic world, such as the US invasion of Iraq and the cases of Abu Ghraib and Guantanamo, and islamophobia in the Western countries, such as the Oslo mass murder in 2011, and also the controversy of Prophet Muhammad cartoons with the Danish Cartoonist winning a German Prize and the President Macron's support for Charlie Hebdo. Many Muslims believe that the non-Muslim countries employ various international public health programmes and agendas to achieve their goal and that Covid-19 is one of them, employed to deter large gatherings of Muslim worshipers in local mosques and Mecca. In Kaduna State, the government had to criminalise disobedience of covid-19 protocols and even impose a 24-hour curfew, killing at least five before the protocols can be enforced. This paper will analyse the impact of non-Muslim countries' foreign policies relative to Arab and Islamic world, islamophobia and the cases of blasphemy – also viewed by Muslims as part of islamophobia – on Northern Nigerian Muslims' belief in conspiracy theories, and how such belief affects the international fight against covid-19. The paper will suggest the best approach to addressing this challenge in order to pave ways for the success of government policies on international public health.

Keywords: Conspiracy theory, Covid-19, Islam, Non-Muslim countries, Islamophobia, Northern Nigeria

Presentation

In person

Socio-legal and interdisciplinary research: 2021 and beyond

16:30 - 17:30 Tuesday, 4th April, 2023

Location MU011

Interdisciplinary research is central to socio-legal studies. This panel reflects on the opportunities and challenges for scholars at all levels in developing this aspect of their work. Drawing on lessons from REF 2021, our panel will be joined by the heads of the Law and Social Policy panels, as well as the chairs of SLSA and the Social Policy Association. The panel will see the launch of SLSA's initiative to partner with learned societies in other disciplines to support the interdisciplinary capacity and ambitions of our members.

Panelists: Professor Joanne Conaghan, Professor Nick Ellison, Professor Ann Marie Gray and Professor John Harrington

Family Law and Policy 3

09:00 - 10:30 Wednesday, 5th April, 2023

Location MD007

Stream Family law and policy

385 “All marriages are equal, but some are more equal than others!” Transgender Annulment Provisions in England and Wales

Peter Dunne¹, Alan Brown²

¹University of Bristol, Bristol, United Kingdom. ²University of Glasgow, Glasgow, UAE

Stream or current topic

Family law and policy

Abstract

The rights of transgender people have long been intertwined with marriage. When, in *Corbett v Corbett*, Justice Ormrod declared that April Ashley was not legally a woman, he determined her status for marriage rather than the law more generally. In *Goodwin v UK*, the ECtHR held that the UK could not absolutely withhold legal gender recognition because it violated both the rights to private life and to marry.

The Gender Recognition Act 2004 opened the possibility for transgender people to marry. Yet, compared with the unions of cisgender peers, marriages formed by transgender persons remain uniquely vulnerable to annulment in three respects.

First, under s. 12(1)(a) and (b) MCA 1973, different-sex marriages are voidable where there exists incapacity or wilful refusal to consummate. However, case law suggests that transgender individuals may never be able to consummate a marriage in their affirmed gender. Second, under s. 12(1)(h), a marriage is voidable if, entering that marriage, one party did not know that their spouse had obtained a Gender Recognition Certificate. Therefore, to secure their marriage, transgender persons are forced to involuntarily disclose their gender identity. Finally, under s. 12(1)(g), and the Marriage (Same-Sex Couples) Act 2013, a transgender individual can be required to annul their marriage if their spouse objects to remaining married post GRC.

This presentation analyses the transgender-focused rules in s. 12(1), considering whether the current law is justified, consistent with general principles of English law, and potentially in violation of the ECHR.

Presentation

In person

50 Care as the Basis of Family Law: A Philosophical Examination of the 'Care-Proposal'

Ira Chadha Sridhar

University of Cambridge, Cambridge, United Kingdom

Stream or current topic

Family law and policy

Abstract

An emerging view in academic literature is that family law should focus its interventions on caring relationships, rather than conjugal and/or sexual ones (Herring-2014, Metz-2010). I will call this the 'care-proposal' and draw from work in analytic moral philosophy and care ethics to investigate its validity. The care-proposal rests on the following two claims: first, that family law must promote "valuable" relationships; and second, that caring relationships are valuable in ways that other relationships (conjugal relationships) are not. I begin by analysing the first claim. If family law's core function (or one of its core functions) is to promote valuable relationships, we must have a clear account of value with which to proceed. I argue that for relationships to be recognised and promoted by family law, they must be robustly morally valuable in a way that possesses relevant public or political character. With this account of value in place, I turn to the second claim made in the care-proposal. Does care have moral value in a way that other candidate concepts – such as marriage, cohabitation, or sex – do not? I draw from literature on thick concepts in moral philosophy, traced back to Bernard Williams, to show that some concepts (like the concept of care) have both descriptive and evaluative elements, unlike other concepts (like marriage, cohabitation, or sex) which are predominantly descriptive considering prevalent social realities. Unlike available candidate concepts, then, care is robustly morally valuable in a public and political sense and the care-proposal finds preliminary justification.

Presentation

Virtual via Microsoft Teams

679 "The system is not built for this kind of family": Queer parents' reflections on birth registration in England and Wales

Liam Davis

University of Bristol, Bristol, United Kingdom

Stream or current topic

Family law and policy

Abstract

For many in society, it is generally assumed that the birth certificate operates as a place to see one's family and, by extension, (bio)genetic heritage. Not only does this interpretation seem to conflict with the history of the birth registration system, but the emphasis on registering (bio)genetic connections means that a certain type of family – usually cisgender and heterosexual – is more likely to be registered on the birth certificate in a way cognisant with their own sense of identity. It must therefore be investigated what those types of family that do not come within the law's ideal – and are perhaps not as adequately acknowledged on the birth certificate – see as the purpose and function of the birth registration system alongside whether, and if so how, they would reform the system. In this light,

reflexive thematic analysis was conducted on semi-structured interviews with 12 queer parents based in England and Wales. Themes identified include: (i) the cis/hetero-normativity of the birth registration system; (ii) anxieties around engaging with bureaucratic institutions; and (iii) a generic desire for the birth certificate to be more inclusive. Findings suggest that current birth registration policy, specifically the birth certificate, needs to be expanded to cater for the many diverse families in existence.

Presentation

In person

Indigenous Rights 3

09:00 - 10:30 Wednesday, 5th April, 2023

Location MD012

Stream Indigenous rights

361 Tribal Nations, the United Nations Economic Sustainable Development Goals, and the Land Back Movement: Transforming the World One Goal at a Time (Working Title).

Aliza Organick

University of New Mexico School of Law, Albuquerque, New Mexico, USA

Stream or current topic

Indigenous rights

Abstract

The United Nations Sustainable Development goals and securing community land rights through the Indigenous Land Back movement are closely aligned. Tribal nations in the United States and the U. S. government, under the principals of tribal sovereignty and self-determination, have articulated sustainable and economic development for over 30 years. However, these goals have been thwarted in a variety of ways due to on-going conflict and tension between tribal, state, and local governments.

Nevertheless, over the last several years, there has been a growing grass-roots, socio-political movement that underscores Indigenous land rights with a goal toward bringing indigenous lands back into indigenous hands in order to reestablish a stewardship with land. This movement, known as the Land Back Movement, ties land stewardship to all aspects of indigenous life, such as, culture, language, food, education, and self-governance. In particular, the Land Back Movement shines a light on climate change-which disproportionately affects tribal and indigenous communities, and the loss of diversity of plant and animal habitat, as a direct threat to the culture and livelihood of indigenous peoples.

Interestingly, governments have recently begun to recognize the value of indigenous land stewardship and have begun to return some land to the aboriginal inhabitants of the land. This paper will look at the nexus between the UN's Sustainable Development goals, the implementation of those goals, and the potential for the Land Back movement to engage governments in the positive principles of indigenous stewardship of the land.

Presentation

In person

584 Unearthing Unmarked Graves at Former Indigenous Residential and Boarding Schools: The Role of International Law

Colin Luoma

Brunel Law School, London, United Kingdom

Stream or current topic

Indigenous rights

Abstract

The discovery of the probable remains of approximately 200 Indigenous children on the grounds of the former Kamloops Indian Residential School in July 2021 shocked Canadian and global audiences, but also validated the accounts of Tk'emlúps te Secwépemc elders and knowledge keepers. Since then, a flurry of subsequent investigations into unmarked gravesites has occurred or been contemplated across former residential and boarding schools in both Canada and the United States. These investigations have ranged in scale from community-based projects to federally sanctioned government studies, such as the US Department of the Interior's Federal Indian Boarding School Initiative. Such extraordinary processes, however, have been pursued and discussed almost entirely outside the context of international law.

This paper interrogates the international legal framework applicable to the identification, recovery, and repatriation of the remains of Indigenous children located at former residential and boarding schools. Some of the most effective protections regarding the return of Indigenous human remains have been promulgated at the national level. Notwithstanding, there is also an underrecognized and underleveraged set of international standards that govern and guide State conduct in this area. While significant gaps exist, these normative standards have the potential to influence State policy and support Indigenous communities to identify and recover the remains of their children. Crucially, international law demands that any such initiatives respect Indigenous Peoples' inherent right to self-determination, which may lead to instances in which the remains of Indigenous children are not ultimately identified or recovered.

Presentation

In person

Power and Resistance in Law and Literature

09:00 - 10:30 Wednesday, 5th April, 2023

Location MD021

Stream Law, literature and the humanities

72 The Dark Well of Choice: Liberal Anxiety and Cruel (Kinky Sex) Contracts

John Enman-Beech

King's College London, Dickson Poon School of Law, London, United Kingdom

Stream or current topic

Law, literature and the humanities

Abstract

Leopold von Sacher-Masoch's 1870 novel, *Venus in Furs*, is about a man who seeks the erotic domination of his mistress—to the extent that they sign a “contract” stipulating that he be her “slave” for a time. I call this a “cruel contract”. This paper is a queer-theoretical exploration of the depths of contract, using Sacher-Masoch and other texts as a focus. Cruel contracts evoke a classic problem in liberal contract: can we contract ourselves into slavery, or would that be a contradiction in terms? Can we freely choose to be unfree? The problem reveals an anxiety with the dark well of choice. Liberal contract is uncomfortable with the very possibility of choosing slavery, poor working conditions, or other exploitative deals. But choosing such things is a fact of everyday life. Liberal contract wants to regulate these mundanities to exceptional status, pointing to oppression or coercion to explain such choices. Yet cruel contracts offer concrete cases of people making “contracts” of slavery without the power differentials that have historically led to indentured servitude, self-sale and bad work. Cruel contracts offer examples of people who, in some sense, want to be slaves; they don't just choose it, they desire it without coercion. The force of this analogy between “contract” and certain deviant sexual practices seems to be that contract's opposition to slavery is not an incident of its notion of personhood, as liberal contract theorists would have it; the opposition is instead a commitment against a formless cruelty.

Presentation

In person

124 Rumpole and the Quiet Resistance

Michelle Coleman

Swansea University Hillary Rodham Clinton School of Law, Swansea, United Kingdom

Stream or current topic

Law, literature and the humanities

Abstract

Horace Rumpole, the main character in John Mortimer QC's tv and book series *Rumpole of the Bailey*, is a disheveled criminal barrister who never prosecutes, usually represents legal aid clients, and staunchly believes in the

presumption of innocence. This paper argues that this belief enables Rumpole to practice quiet resistance while working within the criminal justice system.

The paper evaluates Rumpole's understanding of the presumption of innocence and whether it is used as a tool for quiet resistance. Examining how his conception of the presumption compares to the law, it argues that Rumpole's understanding largely comports with the law, however is sometimes less nuanced than criminal evidence requires. The paper also evaluates how Rumpole discusses the presumption and to what effect. Rumpole's treatment of the presumption of innocence has an impact on both the case he is litigating and the criminal justice system as a whole. Notably, by invoking the presumption of innocence Rumpole gives clients hope, highlights police corruption, debates with colleagues, and educates the public. While representing his clients, Rumpole focuses on applying the presumption to the case at hand. This causes changes in attitudes toward his client and the case's evidence. His discussions about the presumption with other barristers and members of the public allows him to facilitate systematic change. The paper concludes that Rumpole's understanding and application of the presumption of innocence, both inside and outside the courtroom, enabled him to be a force of quiet resistance within criminal justice.

Presentation

In person

327 Terror and (Necro)-Territory in Joydeep Roy-Bhattacharya's *The Watch*

Zaynab Seedat

University of York, York, United Kingdom

Stream or current topic

Law, literature and the humanities

Abstract

"Featureless landscapes. Futureless deathscapes". So describes a US soldier of the Afghanistan camp he is based at while on watch. The soldier's featureless/futureless aphorism about Afghanistan bespeaks a land that is subjugated by death, a necroterritory. I employ my coinage "necroterritory", drawing on Achille Mbembe's notion of necropolitics, to explore the spatial aspect of a sovereignty with the unlawful power to kill. Necroterritorial descriptions of Afghanistan and its citizens, in Joydeep Roy-Bhattacharya's 2008 novel *The Watch*, connects the affective state of terror, with territory. My investigation of necroterritory in this paper draws on a Gothic framework, which has its roots in the civilising missions of colonial Christianity, to demonstrate how a Gothicised figure of the terrorist other and the terrorist landscape of Afghanistan is created. Such framing, Roy-Bhattacharya shows, invents a terror used to justify the dubious legal status of the war on terror and the unjust territorialisation of terror within Afghanistan. I draw on both Thomas Gregory's notion of a "rhetoric of humanitarianism" at play in the war on terror, where a humanitarian civilian interest was underscored in the US's "winning hearts and minds" public relations campaign; and Samera Esmeir's concept of "juridical humanity", where the status of humanity is determined by human rights law. In doing so, I explore the language of humanisation (or dehumanisation) in *The Watch*, which when framed by a Gothic colonial imaginary, configures Afghanistan as a necroterritory through which both people and place are othered.

Presentation

In person

824 “LAW AND LITERATURE”: A COMPARATIVE STUDY BETWEEN THE MOVEMENT'S ACADEMIC PRODUCTION IN THE UNITED STATES AND BRAZIL

Amanda Oliveira

Universidade Federal de Juiz de Fora, Juiz de Fora - MG, Brazil

Stream or current topic

Law, literature and the humanities

Abstract

This research seeks to understand the similarities and differences between the law and literature movement in the United States and Brazil. From the selection of 126 Brazilian studies, it was possible to establish a comparative study between Brazilian and American productions. Therefore, it was possible to identify the origins of law and literature in Brazil, as well as the epistemological and methodological differences in studies of law as literature and law in literature. We defend the existence of what Thomas Duve, anchored in Peter Burke, called cultural translation: the transfer of an American movement to Brazil ended up creating a new movement, with its own characteristics and singularities.

Presentation

Virtual via Microsoft Teams

IT Law 3: Protecting consumers and young people in cyberspace

09:00 - 10:30 Wednesday, 5th April, 2023

Location MD026

Stream IT law and cyberspace

269 Digital Wage Payment needs Consumer Protection

Hironao Kaneko

Tokyo Institute of Technology, Tokyo, Japan

Stream or current topic

IT law and cyberspace

Abstract

Workers spend their wages on daily living. A worker is a consumer who can use a cashless payment system. In Japan, it was regulated that workers' wages must be paid in cash principally and deposited into their bank accounts with the agreement. The regulation ensured that workers retain money for daily living expenses. Workers can withdraw wages paid into their bank accounts even if they have debts, as some amounts of the deposited wages are excluded from seizure by the Civil Execution Procedure.

From April 2023, in Japan, through "digital wage payment," the employer will be able to pay workers' wages into a payment service provider account if the workers agree to it.

Through cashless payment promotion, convenience will increase for workers. Digital wage payment lies at the intersection of worker and consumer protection.

Various payment methods, electronic money, and credit card payments, etc., are linked with each other. If linked services could automatically receive payment from a digital wage payment account, workers could not save money for daily living expenses. This may lead to using a lending service linked to payment services.

The overuse of credit or over lending by payment service providers to consumers is a common issue. In the worst cases, consumers may become bankrupt. A safeguard mechanism is required to protect workers not involved in any trouble as a change in the wage payment system.

This article aims to discuss digital wage payment referring to workers' and consumers' protection regarding cashless payment services in Japan.

Presentation

Virtual via Microsoft Teams

879 Proliferating Ex-convicts Stigma on Nigeria youths for Internet fraud: Comparative Legal Implications

Ebi Robert¹, Felix Eboibi²

¹LL.M Candidate, Faculty of Law, Niger Delta University, Yenagoa, Nigeria. ²Faculty of Law, Niger Delta University, Yenagoa, Nigeria

Stream or current topic

IT law and cyberspace

Abstract

As a sequel to Nigeria's quest to curtail the increasing involvement of Nigerian youths in cybercrime perpetration, Nigerian courts' and institutions' data show the proliferating nature of Nigerian youths being convicted for internet fraud. Apart from the negative international image resulting from Nigerians' involvement in internet fraud, there seems to be no literature on ex-convict stigma against these internet fraudsters and its negative implications. Consequently, this paper seeks to answer thus: What is the legal implication of the proliferating ex-convict stigma on Nigerian youths for internet fraud? From a comparative perspective, it examines the implications of ex-convict stigma on internet fraudsters and how sensitization can help curtail Nigerian youths' involvement in internet fraud.

Presentation

Virtual via Microsoft Teams

Sexual offences 3

09:00 - 10:30 Wednesday, 5th April, 2023

Location MD102 Great Hall

Stream Sexual offences and offending

Eithne Dowds

410 Should they stay or should they go: Exploring the possibility of removing juries in rape trials in Ireland

Sarah Bryan O'Sullivan

The Open University, Milton Keynes, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

For some time, the low conviction rate in rape and sexual offence trials has been a cause for concern. While several factors have been identified as contributing to this issue, of particular concern is the extent to which myths, incorrect stereotypes and prejudicial attitudes about rape play a role in jury deliberation and decision-making.

Attempts have been made to counteract these prejudicial attitudes through the introduction of expert evidence or the issuing of judicial warnings. Another, albeit more radical, possible solution put forward has been the removal of the jury in such cases and its replacement with a judge, either sitting alone, or with a number of assessors.

While still a deeply contentious topic, the debate around the possible removal of juries in such cases continues to grow in the UK and has advanced quite significantly in some of its jurisdictions. In Scotland, for example, the possibility of a pilot scheme of judge-alone rape trials is currently being considered following a recommendation put forward by a cross-justice Review Group.

Little discussion of this topic exists in Ireland to date and there is a clear gap in the research surrounding juries in rape trials in the jurisdiction. This paper seeks to explore the possibility of removing juries in rape trials and to assess whether such an approach merits consideration in Ireland.

Presentation

In person

763 The Impact of Rape Myth Beliefs on (Mock) Rape Trial Jurors in Northern Ireland

Rosie Cowan

Queen's University, Belfast, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

The notorious 'Rugby Rape Trial' (Jackson and others, Belfast Crown Court 2018) and subsequent major review of Northern Ireland criminal justice processes regarding sexual offences (Gillen, 2019) highlight the inherent tensions of the adversarial system and potential prejudicial impact of rape myths on jurors in such cases (Craig, 2018; Leverick, 2021). This paper features innovative research with members of the Northern Irish public eligible for jury service, exploring how rape myth beliefs impacted their reasoning in a typical rape trial scenario. The unique online vignette study examines individuals' responses to two versions of a fictional yet typical rape trial scenario featuring three common rape myths: alcohol consumption by complainant and defendant; complainant struggle and injury or lack of; and prompt or later complainant reporting to police. It reveals fascinating links between participant gender and qualitative and quantitative responses, including how individuals constructed contrasting narratives in order to evaluate the evidence they were given (Pennington and Hastie 1992; Devine 2012) and how rape myth beliefs interacted with respondents' understandings of consent, reasonable belief in consent and reasonable doubt (Gore, 2020; Dowds, 2022). With rape conviction rates dropping in sharp contrast to rising reporting rates (Public Prosecution Service of Northern Ireland 2018-2021; Police Service of Northern Ireland 2018-2021), it considers limitations of proposals for pre-trial juror training and current law regarding rape and asks whether a widespread radical public education programme could prove more effective long-term (Smith, 2018; Gillen, 2019).

Presentation

In person

416 'It's like a rock filled with bugs, and no one wants to lift it.' Exploring Student Attitudes Towards Responses to Sexual Violence in Elite UK Universities.

Alice King

University of Warwick, Coventry, United Kingdom. London Southbank University, London, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

In recent years, discussions have emerged with regards to how universities ought to be engaging with the persistence of sexual violence within their communities. On the one hand, we have seen a push for universities to take account and responsibility for the problem of sexual violence coming from student activists and regulating bodies alike (OfS 2020, UUK 2016). On the other, we have seen scepticism within the academic community about the extent

to which institutions can and will engage with the problem of sexual violence within the current landscape of Higher Education policy (Phipps 2016, Phipps 2020).

This paper contributes to this discussion, with a focus on bringing students' voices to the fore more prominently. Using attitudes of students attending Russell Group institutions in 19/20, I posit that students do see their institution as responsible for dealing with sexual violence. However, this responsibility, I argue, is rooted in a sense of belonging, community and identity experienced by students during their time at university as opposed to marketisation and/or neoliberalist notions of value for money.

Then, through fine-grain analysis of current preventative and disciplinary mechanisms at three institutions coupled with an exploration of student attitudes at these institutions, I argue that despite the pressure from students and regulators alike, institutional responses so far have been underwhelming.

From these discussions, I conclude by offering some reflections as to how universities might be able to better address the problem – using a holistic model of sexual citizenship and ethics education.

Presentation

In person

768 Exploring the capacity of artistic methods in creating a sense of justice for victim-survivors of sexual violence

Sophie Doherty¹, Elisa Iannacone²

¹The Open University, Milton Keynes, United Kingdom. ²Reframe House, London, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

In 2018, Elisa Iannacone's *The Spiral of Containment: Rape's Aftermath* (hereafter, *The Spiral of Containment*), a multimedia art installation, was exhibited in London, England. This project involved visualising the experiences of victim-survivors of sexual violence. Building on McGlynn and Westmarland's kaleidoscopic justice (2018), my analysis of Iannacone's work has discussed the extent to which visual art projects such as *The Spiral of Containment* may provide a sense of justice (Doherty 2020). This previous study centring Iannacone's work developed "justice through expression" as an innovative justice process through which victim-survivors may achieve justice interests such as: "education and prevention"; "collective justice"; "expression and engagement"; and, "closure."

In 2021, Elisa Iannacone and I were awarded funding to further explore justice through expression and related themes. Through semi-structured interviews with survivors, our project, 'Exploring the Capacity of Artistic Methods in Creating a Sense of Justice for Victim-Survivors of Sexual Violence', developed understandings of how art and art

processes relate to a sense of justice and the impact that creative methods of communicating experiences of sexual violence can have on survivors.

This paper firstly introduces *The Spiral of Containment*, situating the installation alongside both feminist art practice and feminist jurisprudence. The second section considers the 'Exploring the Capacity of Artistic Methods in Creating a Sense of Justice for Victim-Survivors of Sexual Violence' project, detailing the methods used to complete the project. The final section discusses preliminary findings from the semi-structured interviews.

Presentation

In person

Criminal law 11

09:00 - 10:30 Wednesday, 5th April, 2023

Location MD106 Minor Hall

Stream Criminal law and criminal justice

Chalen Westaby

887 Efficiency and bureacratism of criminal justice: findings of a comparative socio-legal study

Anna Pivaty¹, Ed Johnston²

¹Radboud University, Nijmegen, Netherlands. ²Northampton University, Northampton, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

This paper is a comparative analysis of the findings presented in the book co-edited by the authors (forthcoming with Routledge), which tackles the growing issues concerning the managerialism, the strive towards 'efficiency' and bureacratism of criminal justice systems across several jurisdictions. The authors of national chapters explore the phenomenon from a socio-legal and (often) empirical perspective in selected criminal legal systems, covering all stages of criminal case processing from arrest to the imposition of sanction. The selected countries represent diverse socio-economic, political, cultural and legal traditions including common law, civil law, mixed common and civil law and post-Soviet tradition. The authors critically examine whether and to what extent the trend towards managerialism is indeed discernible, and what are its likely effects in the given national criminal legal systems.

One striking comparative finding is that striving towards 'efficiency' and managerialisation is present in all examined systems, no matter whether they are facing backlogs or long(er) case processing times. We reflect on the nature and possible factors that drive this development, and on the meaning(s) of 'efficiency' or 'effectiveness' as a goal underlying the criminal justice system. We further examine the possible effects of managerialism, bureaucratisation, and the drive to efficiency on professional cultures of various actors notably public prosecutors, judges and defence lawyers, which exhibit striking similarities across different legal systems and procedural traditions. Finally, we specifically focus on the role of digitalisation reforms in the move towards greater 'efficiency' in criminal justice.

Presentation

In person

897 Beyond Judicial Solitude: Listening and Legitimacy in Sentencing

Jeffrey Kennedy

Queen Mary, University of London, London, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

Despite a complex political reality in which various interlocutors provide sentencing judges with information, perspectives, and views as to what a given sentence ought to be, scholarship has neglected to theorize the relational dynamic between judges and these actors. Conventional accounts of sentencing convey a picture of judicial *solitude* while established judicial ethics emphasize independence from—rather than closeness to—others. This picture of sentencing, however, is not only descriptively incomplete, but, given the need to theorize the political legitimacy of sentencing decisions, normatively insufficient. Addressing this gap, this paper draws on recent work in democratic theory to develop one aspect of a relational dynamic in sentencing: a judicial ethic of *listening* and corresponding willingness to be influenced. Accordingly, the paper clarifies the meaning and significance of 'deliberative' listening in sentencing decision-making, and demonstrates its compatibility with established ideals of judicial independence. Conversely, it also explores the ways in which interrelated notions of judicial solitude and ownership not only impact whether and how listening is discussed in legal scholarship, but also undermine deliberative listening in sentencing practice through a pre-emptive silencing of competing views.

Presentation

Virtual via Microsoft Teams

5 The case for reforming the powers of the Criminal Cases Review Commission

Lucy Welsh

University of Sussex, Brighton, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

The Criminal Cases Review Commission (CCRC) was created by the Criminal Appeal Act 1995 (CAA). While the CCRC is a significant improvement on its predecessor, it is criticised for the way it uses its statutory powers to refer cases to the Court of Appeal.

Our empirical study – conducted over three years - revealed that the impact of funding cuts on potential miscarriage of justice cases is exacerbated by statutory provisions that constrain the CCRC's powers. In line with the findings of the Westminster Commission on Miscarriages of Justice, we found that three particular provisions appear to require reform.

The study revealed that uncertainty exists about how (1) the exceptional circumstances and (2) the real possibility tests for referral (s.13 CAA) operate. This affected lawyers' decisions about whether or not an application to the CCRC would be pursued.

The third area for reform related to disclosure provisions found in ss.23-25 CAA. Lawyers faced problems examining evidence that could form the basis of an application (or referral), especially since the decision in Nunn [2014] UKSC 37. However, the CCRC's ability to work with lawyers who raise a potential post-appeal disclosure point is hampered by the restrictions in their powers.

In light of these findings, and the announcement that appeal procedures would form part of the Law Commission's current programme of reform, this work presents empirical support for amending powers found in the CAA.

Presentation

In person

Criminal law 3

09:00 - 10:30 Wednesday, 5th April, 2023

Location MD108

Stream Criminal law and criminal justice

Emma Milne

118 The future of the Infanticide Act 1938 – time for reform?

Emma Milne

Durham University, Durham, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

The Infanticide Act 1938 (re-enacting the Infanticide Act 1922) was designed to offer leniency to women who kill their infants while the balance of their mind was disturbed “by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child”. However, application today suggests that leniency is saved for the select few women who meet a narrow definition of mental illness (akin to diminished responsibility) and who conduct the “correct” form killing (for example, women who kill newborn children or who shake babies rarely succeed with infanticide). Consequently, this paper will discuss the potential future of the Infanticide Act, considering if reform is required and/or changes in how it is applied. In doing so, I will present data from interviews with legal professionals who have experience of these types of cases and the Infanticide Act.

Presentation

In person

127 ‘It is difficult to imagine anything which would cloud the skies of life more blackly than that’: Child Murder, Medico-Legal Opinion and the Formation of the *Infanticide Act 1938*

Kelly-Ann Couzens

University of Warwick, Coventry, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

On the 23 June 1938, Lord Dawson’s Infanticide Bill was granted royal assent in British Parliament, passing into law the amended offence of infanticide across criminal courts in England and Wales. Under the terms of the new *Infanticide Act 1938*, a mother who was found to have caused the death of her child by any ‘wilful act or omission’ while ‘her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation’ could be found guilty of infanticide, rather than murder. The guilty woman would subsequently be punished according to the lesser penalty of manslaughter, rather than felony murder. For the Bill’s chief agitator, physician and former President of the Royal College of Physicians, Lord Bertrand Dawson, passing the Bill into law marked more than legislative change. It also heralded the destruction of the ‘stigma about which public opinion has been disturbed for sixty years’ by formally recognizing within the criminal justice system (and proportionately responding to) the sometimes-fatal link between motherhood, mental illness, and inter-personal violence. This paper proposes to analyse the medical and legal context surrounding the creation of the *Infanticide Act 1938*. More specifically, it explores the role British medical practitioners had in campaigning for and effecting legal change, and the grounds upon which they argued such reforms were vital for improving outcomes for accused women and their families.

Presentation

In person

497 The Defence of Diminished Responsibility, Developmentally Immature Children and Young Persons – the Need for Reform.

Hannah Wishart

University of Sunderland, Sunderland, United Kingdom. University of Manchester, Manchester, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

The scientific evidence reveals that a child/young person with developmental delays will lack legally relevant capacities similar to the abnormal developing child, such as defective risk assessment, distorted temporal perspectives and impulsivity. Although, they suffer a high degree of developmental immaturity than the norm for a person of their age who might lack legally relevant capacities. The problem is that their degree of incapacity is not significant enough to warrant a diagnosis of “a recognised medical condition” under Section 52 of the Coroners and Justice Act 2009. This means they cannot successfully plead the defence of diminished responsibility if they kill because they cannot prove they suffer an “abnormality of mental functioning” arising from “a recognised medical condition.” In this paper, I argue that the Government wrongly anticipated that there would be interpretational flexibility with “a recognised medical condition” under Section 52 for juveniles. Developmental immaturity is not accepted as a medical disorder, illness, or condition; thus, these persons who kill and lack legally relevant capacities fall outside the remit of the defence and are convicted of murder.

The Law Commission subsequently considered whether a new complete defence of “not criminally responsible because of developmental immaturity” for those who kill under 18 years of age should be introduced. The scientific evidence suggests that a developmentally immature child or young person typically suffers diminished capacities, not a complete loss of capacity. Thus, they would not be found “not criminally responsible by reason of developmental immaturity” and convicted of murder.

Presentation

Virtual via Microsoft Teams

600 Loss of Control in Practice: An Empirical Analysis of Appeal Judgments

Anna Carline¹, Matthew Gibson¹, Sarah Singh¹, Laurene Soubise²

¹University of Liverpool, Liverpool, United Kingdom. ²University of Leeds, Leeds, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

After decades of feminist activism and academic critique, the Coroners and Justice Act 2009 replaced the partial defence to murder of provocation with a successor partial defence: 'loss of control'. As the Law Commission acknowledged, this reform was necessary as provocation failed on multiple fronts, including the failure to cater for women who killed their abusive partners, privileging men who killed out of anger and was poorly understood in respect of its rationale and legal tests.

Based on an empirical and systematic analysis of all appeal cases featuring loss of control, this paper goes beyond existing assessments, revealing how each limb of the defence is interpreted in practice. This comprehensive exploration helps understand the present application and future evolution of loss of control in three ways. First, it clarifies doctrinal trends in the approaches adopted by the appeal courts – for example, the ways in which courts fail to grapple with a loss of control arising from fear, rendering the fear trigger largely redundant; or the interaction between this defence and other defences which often run in parallel. Secondly, it highlights gatekeeping tensions between how trial judges, juries, prosecutors, and defence barristers interpret and apply the plea – thereby determining its success or failure. And thirdly, it yields insights into the realisation, or otherwise, of the reform aims underpinning loss of control – including, more broadly, the role of loss of control as a key part of the government's homicide law-reform agenda.

Presentation

In person

Property, People, Power and Place 2

09:00 - 10:30 Wednesday, 5th April, 2023

Location MD122

Stream Property, people, power and place

889 Law and its social reception on the example of the land reforms in Prussia in the early 19th century.

Franciszek Ignacy Fortuna

University of Warsaw, Warsaw, Poland. Catholic University of Leuven, Leuven, Belgium

Stream or current topic

Law, literature and the humanities

Abstract

Land reform in 19th century Prussia has been developed quite thoroughly by historians. However, the legal aspects of this process have still not been completely researched.

One of these unexplored topics is the exceptional responsiveness of the legislation established as part of the land reform. Depending on the situation, the Prussian authorities both at the ministerial level and at the level of the regional commissions have been adapting their actions to the new realities. When the existing norms proved impossible to meet expectations, the legislation itself also changed. For example, a few years after the beginning of these reforms, the scope of the regulations was restricted to peasants with their own draught animals.

In the light of the above, the multi-level impact of the law is clearly visible. In order to better understand it, an application of Adam Podgórecki's hypothesis of the three-level influence of law can be useful. In the case of the nineteenth-century land reform in Prussia, this division would be as follows: the first tier - the royal edicts and decrees; the second - the local Peasants' traditions; the third - the individual situation of a singular villager.

The methodology adopted in the study boils down to a multi-level analysis of Prussian legislation using theories and hypotheses known from the sociology of law. Their application in legal history research is somewhat of a novelty. Undoubtedly, it can contribute both to a better understanding of the historical events as well as to broader theoretical reflections on the sociology of law.

Presentation

In person

390 Revocation of Wills: Protection Against Predatory Marriage

Juliet Brook

University of Portsmouth, Portsmouth, United Kingdom

Stream or current topic

Property, people, power and place

Abstract

When an individual marries / enters into a civil partnership, their prior will is automatically revoked, unless it was made in contemplation of marriage. If that individual dies without making a new will, then under the intestacy rules the majority of their estate will pass to their spouse or civil partner on death. Whilst this rule provides a level of protection to a new spouse, it can also thwart an individual's previously expressed wishes.

A particular problem arises where an individual who lacks testamentary capacity enters into a marriage or civil partnership. If the individual is not likely to regain testamentary capacity, a new will could only be made by an application to the Court of Protection for a statutory will. Furthermore, even if that person lacked capacity to marry, the marriage would merely be voidable, which would not prevent the automatic revocation of any will made prior to the marriage.

The effect of these rules on victims of 'predatory marriages' have been highlighted by the family of Joan Blass (<https://www.predatorymarriage.uk/>). They argue for reform of the law so that marriage does not automatically revoke a will. In their Consultation Paper 'Making a Will', the Law Commission proposed a more restricted reform, namely that marriage by a person who lacks testamentary capacity should not revoke a will.

By analysing the general capacity requirements for revocation of a will, this paper will evaluate the various proposals for reform, to determine which is best able to protect individuals against predatory marriage.

Presentation

In person

Human rights and war: Accountability and responsibility for war

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU001

Stream Human rights and war

551 Conflict-Driven Starvation as a War Crime Violation – Triggering (Individual) Criminal Responsibility?

Jolanda Andela

Erasmus School of Law, Rotterdam, Netherlands

Stream or current topic

Human rights and war

Abstract

Conflict-driven starvation regards an all too frequent facet of armed conflict. Although the use of conflict-driven starvation concerns a common and recurring strategy in warfare, until this moment the tactic has enjoyed great levels of impunity. No case of starvation has been prosecuted at an international level so far, even though, generally, hunger presents a greater threat to victims in conflict areas than direct physical attacks. This raises the question to what extent conflict-driven starvation could be brought within the ambit of the existing war crime provisions and, as such, trigger individual criminal responsibility. This research proposes to re-think the way in which the concept of starvation is interpreted in terms of a war crime violation in the Rome Statute. To this end, this research suggests to look at starvation as a concept that extends beyond a mere conduct-related concept.

Presentation

In person

618 Accountability, Impunity and the ‘Witch-hunt’ Against British Army Veterans in Northern Ireland : Implications for Transitional Justice in the Post Truth Era.

Kieran McEvoy

Queens University Belfast, Belfast, United Kingdom

Stream or current topic

Human rights and war

Abstract

This paper examines how conflict related investigations and prosecutorial efforts against a few British army veterans in Northern Ireland became a 'witch-hunt' against such veterans. That witch-hunt required the unilateral abandonment of a hard won agreement with the Irish government and the local Northern Ireland parties on legacy and the introduction of legislation - the Northern Ireland Troubles (Legacy and Reconciliation) Bill - designed to secure impunity for such veterans. The paper first provides some historical background on the notion of a witch-hunt. It then analyses how state actor investigations and prosecutions were actually dealt with during the Northern Ireland conflict and transition – arguing that the witch-hunt narrative is a classic variant of 'fake news'. The paper then reflects on broader lessons of the Northern Ireland experience for transitional justice in the post-truth era where 'alternative facts' readily replace actual facts, where feelings are privileged over data and where lies are systematically deployed to undermine democracy and the rule of law. It concludes by questioning how can transitional justice respond to such a political landscape.

Presentation

In person

571 Beyond the “justice façade” at the Extraordinary Chambers in the Courts of Cambodia: hybrid tribunals, ‘success narratives’ and impunity for modern-day domestic human rights abuses

Alex Batesmith

University of Leeds, Leeds, United Kingdom

Stream or current topic

Human rights and war

Abstract

This paper examines the local impact of ad hoc hybrid international criminal tribunals established to address the accountability gap for historic atrocity crimes, but which additionally lay claim to improving the future domestic implementation of human rights norms and protections as a key justification for their creation. The paper will explore international criminal law's 'success narratives' in relation to hybrid tribunals, particularly insofar as such narratives are further undercut by ongoing abuses in the domestic human rights environment. As a case study, this paper will discuss the Extraordinary Chambers in the Courts of Cambodia ('ECCC'), which delivered its final judgment in September 2022. Despite transitional justice benefits in terms of memory, historical record and truth-telling, the ECCC's promised influence over the country's enjoyment of human rights has not materialised. On the contrary, Cambodia now functions as an hegemonic authoritarian regime (Lawrence 2019, 2020; Morgenbesser 2019), correlated to rather than caused by the ECCC's failure to positively impact the political, legal or judicial systems. The paper will highlight the consequences of hybrid tribunals overpromising on their domestic human rights impact, not simply in terms of the global accountability movement but also in relation to their avowed relevance to modern-day impunity. The paper ultimately argues for an urgent need for more sober and realistic narratives of success – and more importantly an acknowledgement of failures – both from international criminal law's principal advocates as well from within the hybrid tribunals themselves.

Presentation

In person

116 Justice For All? How International Criminal Trials Can Meet The Needs Of War-Torn Communities

Caleb Wheeler

Cardiff University, Cardiff, United Kingdom

Stream or current topic

Human rights and war

Abstract

The United Nations defines justice in conflict and post-conflict situations as 'an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs.' From the UN's perspective, it is through international criminal trials, and the punishment meted out following a conviction, that a wrongdoer is 'brought to' justice and held accountable for their crimes. Making punishment a central aspect of justice tends to prioritize international criminal trials over other types of accountability mechanisms as it is the only one for which punishment is an outcome. Unfortunately, the ways in which international criminal trials produce accountability do not necessarily meet the needs of individuals and communities seeking peace, reconciliation and justice for the victims of atrocity crimes. This paper will evaluate the relationship between international criminal trials and the communities they are intended to benefit. It does this first by discussing the sort of legal accountability established during a trial and how it is narrower than accountability understood more generally. Second, it examines the limits of legal accountability and how those limits reduce trials' effectiveness in facilitating peace negotiations, reconciliation efforts and delivering justice to victims. Third, it will consider ways in which international criminal trials might be reformed to better serve the needs of the communities they are meant to benefit. The paper will conclude that international criminal trials can positively benefit communities effected by armed conflict, but only by taking a more expansive approach to how those trials construct justice.

Presentation

In person

Environment: Climate change and general environmental law

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU021

Stream Environmental law

669 Eco-eco migration: beyond the paradigm of the climate refugee.

Samuel Ballin

Radboud University, Nijmegen, Netherlands

Stream or current topic

Environmental law

Abstract

The project sets out to develop a theory of 'eco-eco migration' as it relates to the legal regulation of economic migration in the EU in the context of the climate crisis.

Migration is a defining feature of the climate crisis, often studied in relation to three broad categories. These are sudden displacement due to 'natural disasters'; domestic and international migration in response to 'slow onset changes' to local economic and ecological conditions; and self-organised mobility in anticipation of future risks.[1] Eco-eco migration is concerned primarily with the latter two categories, but specifically evaluates the regulation of international migration that is not either economic on the one hand or climate-driven on the other, but which is motivated by 'a complex at once economic and ecological.'[2] The project represents a shift away from the climate refugee paradigm, and its narratives of migration as both humanitarian crisis and security threat.[3] Eco-eco migration instead considers the empirical reality of human responses to on-going economic-ecological change, asking how this may influence patterns of economic migration into the EU.

[1] Mathias Czaika and Rainer Münz, 'Climate Change, Displacement, Mobility and Migration: The State of Evidence, Future Scenarios, Policy Options' (Delmi 2022).

[2] Tom Cohen, *Telemorphosis: Theory in the Era of Climate Change*, Vol. 1 (Open Humanities Press 2012).

[3] Andrew Baldwin, 'Racialisation and the Figure of the Climate-Change Migrant' (2013) 45 *Environment and Planning A: Economy and Space* 1474.

Presentation

In person

557 Out Standing in the Field: Practical approaches to teaching and learning in environmental law

Ben Mayfield, Georgina Collins, Alexandra Harrington

Lancaster University, Lancaster, United Kingdom

Stream or current topic

Environmental law

Abstract

The teaching of environmental law has not escaped the sector-wide challenges relating to student engagement and attendance. The impact of the pandemic, declining student mental health and wellbeing, and a learning culture that prioritises assessment and attainment has exacerbated these barriers to learning.

This paper explores the innovative teaching strategies we have adopted to overcome some of these challenges, to engage students with the curriculum and to inspire them as future researchers, teachers and practitioners. In particular, we argue that students should be encouraged to gain practical experience outside the classroom through site visits, volunteering and group activities. The paper also explores opportunities for student learning in partnership with organisations such as environmental charities.

We will discuss the steps that we have taken in our own teaching, explain what we have learned from our experiences, and will welcome suggestions for collaboration and building on this work in the future.

Presentation

In person

265 A Historical Exposition on the Resilience of International Environmental Law in the Age of Global Isolationism

Chitzi C. Ogbumgbada

University of Huddersfield, Huddersfield, United Kingdom

Stream or current topic

Environmental law

Abstract

International environmental law has developed a body of principles targeted at addressing the negative impacts resulting from the activities of humans on the environment, with the ultimate objective of protecting and conserving the environment. International environmental law has also provided the context in which solutions have been proffered to common problems plaguing humanity. However, international environmental law has also faced difficult problems, some of which have posed existential challenges to the core of the system. An example is the problem of isolationism that has emerged in recent times. Isolationism is a deliberate state practice of showing more interest in domestic matters and less interest in international affairs and matters of global concern. Isolationism could be because of populist or nationalistic philosophy, a stark example of which is the 2016 British EU Referendum, or because of domestic politics, such as the 2020 withdrawal of the US from the Paris Agreement. Isolationism means that states are less interested in cooperating to take measures to address the problems facing the global environment. Taking a historical and expository approach, this paper will argue that, despite the problem of global isolationism, international environmental law appears built to withstand existentialist threats. Global isolationism is not exactly a new threat, though its perennial manifestation amidst existential environmental problems such as global warming and its attendant consequences, could be problematic. However, its lack of novelty could be the spur for international environmental law to continue to find solutions to the problem.

Presentation

In person

Gender, Sexuality and Law 3

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU125

Stream Gender, sexuality and the law

176 Management Perceptions of Sexual Violence on Campus: Implications for Institutional Policy and Legal Requirements

Melanie Crofts¹, Kimberley Hill², Zainab Naqvi³

¹De Montfort University, Leicester, United Kingdom. ²University of Northampton, Northampton, United Kingdom.

³Manchester Metropolitan University, Manchester, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

Following an in-depth exploration of one English University's responses to sexual violence on campus, in this paper we argue that there is a gap between the legally required measures that Universities must take in this area and the measures that are actually taken. Policies, procedures, and support mechanisms for survivors of sexual violence and harassment are inadequate and fail to meet equality obligations. Further, University management teams' attitudes towards sexual violence are dismissive and underpinned by racism and classism which explains the lack of progress made to tackle these issues. It is likely that these attitudes are indicative of wider higher education approaches to sexual violence and harassment which means that institutions are not only neglecting but breaching their legal duties. Universities must work to change the normative beliefs of management teams towards sexual violence and develop rigorous monitoring and reporting mechanisms.

Presentation

In person

286 Locating (In)Justice in Anti-Sexual Harassment Laws in India: A Study of University Spaces

Atreyee Sengupta

SOAS, University of London, London, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

When it comes to higher educational institutes in India, anti-sexual harassment laws/guidelines are multiple. On one hand there is the Prevention of Sexual Harassment (POSH) Act 2013 and on the other, there is also the University

Grants Commission Regulations (UGCR) 2015. Intermediately there have also been committee reports such as the Justice Verma Committee (JVC) report and the Saksham Report 2013. Feminist politics against sexual harassment in India has repeatedly criticised the deplorable state of institutional redressal mechanisms or the Internal Complaints Committees (ICC) in failing to secure justice for survivors in cases of sexual harassment in the universities. However, these feminist critiques have seldom deeply engaged with the different anti-sexual harassment laws to analyse whether the legally mandated ICCs, are at all envisioned by the anti-sexual harassment laws as mechanisms to secure justice or they are solely mandated to identify the legality/illegality of acts/behaviour when it comes to sexual harassment. Presently, when complaints of sexual harassment are on a rise in higher educational institutes, this paper interrogates whether justice is at all the aim of the anti-sexual harassment laws that are supposed to regulate the ICCs. This paper, contextualising the study of ICCs in Indian universities, focuses on the different articulations of the injustice of sexual harassment and the prospect of justice, if any, in the different levels of anti-sexual harassment law in India. Finally, the paper dwells upon the possibility of a more robust idea of justice or rather of identifying injustice through law.

Presentation

Virtual via Microsoft Teams

237 The Rise of Femicide and the Need for a Convention on Violence against Women in International Law

Daniela Nad

St. Mary's University, London, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

After many years of delay, the United Kingdom finally ratified the Council of Europe Convention on preventing violence against Women and Girls (Istanbul Convention) on the 1st of November, 2022.[1] The UK's recent ratification of the Istanbul Convention should provide a new impetus for drafting and enacting a convention on the prohibition of violence against women in international law. This is particularly necessary, as there has been a notable rise in femicide around the world in recent years. The Covid 19 pandemic has, moreover, exacerbated the situation for women in many countries, and there has been a notable increase in the rates of domestic violence and femicide in countries like India, the United States of America and South Africa.[2] Gender-based violence is a structural issue that reflects the unequal power dynamics between men and women in society. This paper argues that the time is now ripe for the international community to produce a binding convention prohibiting violence against women. This would allow laws to be implemented at national level in order to safeguard women, to provide greater scope for support services and to punish perpetrators of gender-based violence to the full extent of the law.

[1] 'The United Kingdom ratifies the Istanbul Convention', Council of Europe (July, 2022). Available at: <https://www.coe.int/en/web/istanbul-convention/-/the-united-kingdom-ratifies-the-istanbul-convention> (last accessed in August, 2022).

[2] M. Weller, 'Around the World Femicide is on the Rise; Fair Observer (December, 2020). Available at: https://www.fairobserver.com/more/global_change/monica-weller-femicide-violence-against-women-covid-19-istanbul-convention-womens-rights-news-16200/ (last accessed in August, 2022).

Presentation

In person

328 Should Misogyny be a Hate Crime?: Unpacking a contemporary debate

Meghan Hoyt

Queen's University, Belfast, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

In recent years some legislators, feminist lobby groups and VAWG service providers from across the UK have advocated to “make misogyny a hate crime” as a means of addressing the on-going endemic problem of gender-based violence. Legal reviews conducted into hate crime in all three legal jurisdictions of the UK have not led to a formal consensus on this issue. Moreover, running alongside the formal legal review process, is an evolving and conflicting discourse between legislators, feminist lobby groups and VAWG service providers which suggests there is uncertainty on whether misogyny can, or should, be addressed by the existing hate crime framework.

Against this backdrop, this paper will use feminist philosopher Kate Manne's theoretical account of misogyny coupled with initial insights from qualitative interviews with feminist lobby groups and VAWG service providers to explore this terrain. The paper will unpack the complexities inherent in the misogyny hate crime debate, troubling what might initially be understood as an appealing or uncomplicated approach to addressing violence against women and girls. Ultimately this paper will argue that hate crime is a flawed framework through which to address misogyny, while also engaging more broadly with the tensions within feminist legal reform projects.

Presentation

In person

Social Rights: Homelessness

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU201

Stream Social rights, citizenship and the welfare state

Chair: Jed Meers

901 Procedure and Substance in Homelessness Statutory Duties

Carla Reeson

University of Nottingham, Nottingham, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

With cost of living pressures, increasing private rents and unaffordable mortgage payments, a fresh homelessness crisis is imminent. A critical interpretation of English statutory homelessness duties suggests these duties do not go far enough to guarantee substantive outcomes for people experiencing homelessness, despite significant reform with the Homelessness Reduction Act 2017. Data obtained from empirical research conducted on the implementation of the Homelessness Reduction Act suggests this key reform, creates a new process, a process which removes some of the previous barriers to accessing local authority resources and creates a richer assessment procedure. However, these processes do not address any of the underlying causes of homelessness, increase the availability of affordable accommodation, or guarantee individual provision of suitable accommodation.

While these conclusions alone are interesting, this paper seeks to explore the extent to which apparent 'proper' statutory procedure and due process can assist in achieving more desirable substantive outcomes for people experiencing homelessness, despite apparent deficiencies in duties. It explores a handful of recent High Court decisions concerning applications for housing assistance under the Housing Act 1996, which appear to utilise what might be categorised as procedural flaws in a local authority's handling of an applicants case, to avoid undesirable substantive outcomes in the delivery of statutory duties - primarily relating to the provision of unsuitable accommodation. These cases raise interesting questions regarding the interplay between procedural and substantive justice and create potential opportunities for new duties to have unexpected impact.

Presentation

In person

746 Street homelessness, adult safeguarding and 'compassionate coercion'?

Amanda Keeling

University of Leeds, Leeds, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

Adult safeguarding practice has not, in general, dealt with the issue of street homelessness. However, a Local Government Association briefing on 'positive practice' in March 2020 encouraged Safeguarding Adults Boards to take more proactive approaches. In many local authorities, this has resulted in local policies bringing street homelessness within the remit of adult safeguarding, and therefore within the scope of the Care Act 2014.

This has been the case in Leeds, but in parallel with other measures such as the use of a Public Space Protection Order to ban the use of temporary shelters in the City Centre. This is a mechanism which seems to directly target and potentially criminalise homelessness in the city, despite clear guidance from the Home Office that PSPOs should not be used to directly target people experiencing street homelessness. This creates an approach in the city where homelessness is being cast as both inconvenient deviancy which must be dealt with via pseudo-criminalisation and a 'vulnerability' approach which explores needs for care and support under the Care Act.

This paper explores this tension, considering how this approach to 'adults at risk' shapes safeguarding practice, and how mechanisms like PSPOs work as 'compassionate coercion' to open access to support.

Presentation

In person

739 'The Perfect Storm': A crisis of welfare injustice, cost of living, affordability and homelessness in rural England.

Carin Tunaker, Laura Burke

University of Kent, Canterbury, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

This paper will present findings from a year-long ethnographic project on homelessness in the countryside, which explores experiences, exacerbating factors and barriers in rural homelessness. The research shows that homelessness in rural areas is neglected, because we have no national strategy to tackle it; our welfare systems and policy responses do not adequately identify and respond to homelessness in rural locations. Services are either not funded and available or ill equipped to respond to problems in rural areas. The cost-of-living crisis has hit rural communities particularly hard, as well as the affordability crisis in the private rented sector (Rural Services Network 2022).

Many aspects of homelessness in rural areas are referred to as 'hidden'; a term we re-consider and problematise in this paper. The very vastness of land in rural locations make social disadvantage more difficult to see and measure and stigma associated with wealthy countryside-living, prevent individuals from seeking support when needed. Factors that are increasing homelessness across the country, such as the high cost of living, Brexit (Morgan 2022), Covid-19 pandemic, austerity measures in social care (Dobson 2019) and decreased public transport, are felt even more in remote rural areas, putting into question social justice in localism. National policies have inadvertently placed rural areas at disadvantage, on a misplaced assumption that the 'future is secured' in the affluent English countryside.

Presentation

In person

154 'Without an address, you do not exist'. The invisibility of people experiencing homelessness in Belgium.

Laure-lise Robben¹, Adele Pierre², Koen Hermans¹

¹KU Leuven, Leuven, Belgium. ²UC Louvain, Louvain, Belgium

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

Civil registries have become essential instruments in the expansion of European welfare states to determine a person's eligibility for social rights and benefits. These registries accordingly serve as an entry to society, and have become an instrument for inclusion and exclusion of citizens. Given the importance of this registration for citizens, Belgium introduced the 'reference address' to (temporarily) register persons without a permanent address, such as persons experiencing homelessness. In this presentation, we explore the uncertain status of persons without an official address, and the administrative and social exclusion this entails. In our theoretical framing, we combine the literature on administrative exclusion, welfare conditionality and citizenship. When discussing the concept of the domicile-based and local citizenship, we argue it disproportionately hampers the access to rights for persons experiencing homelessness and creates an 'invisible crisis' in Belgium.

Presentation

In person

Children's rights: Parent's rights

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU202

Stream Children's rights

9 What's in a name (or even pronoun)? Should it be parents or the children themselves as to who give consent in schools.

EJ-Francis Caris-Hamer

University of Essex, Colchester, United Kingdom

Stream or current topic

Children's rights

Abstract

Choosing a name for your child can be one of the most emotional decisions to make as a parent and often names are associated with the sex identity assigned to a child at birth. Consider though, the experience growing up realising that the name/pronoun assigned does not match your chosen gender identity. For you to explore your own identity and feel more comfortable with who you are, you wish to take steps to socially transition, for example by changing your pronoun and maybe your name. The UK law states that you can legally enroll a change of name by deed poll from aged 18 years old but there is no age for social transition of names or pronouns. As a result, schools/colleges are increasingly having to navigate whether it is the young person, to whom the name belongs to, or the parents/guardians, who should have autonomy over the name change within the education sector. How important is gaining parents 'consent' when it comes to calling someone by their preferred name/pronoun? How important it is that students can explore their identity within a safe space? This presentation explores, from interviewing teachers, the complexities that education institutions, and the teachers that work within them, face around the debate of consenting to a change in name/pronoun of a student who chooses to challenge the cis-gender normative environment by adopting non-traditional-gender-conforming identities. Who has/should have the right to consent within this context?

Presentation

In person

405 Naming, claiming, shaming and blaming? The complex relationship between parents' rights and children's rights explored through the choice of the child's forename.

Laura Lundy

Queen's University Belfast, Belfast, United Kingdom. University College Cork, Cork, Ireland

Stream or current topic

Children's rights

Abstract

One of the first things that parents do for their children and one of the most profound and enduring is to decide what to call them. It is also now well established that the choice of forename can have significant consequences for the child with, for example, names that convey a particular race or social class attracting advantage or disadvantage in schooling and later in job prospects. From a children's rights perspective, it is also a very distinctive moment in the parent/child/ state triad. Parents' motivations are varied but usually child-centred and mostly the state will give them a large degree of discretion. However, there are few societies where naming goes unchecked by states. Many have detailed naming laws while others, such as the UK, leave it to be monitored by the birth registrar. In this paper I will use the practice of baby naming to explore the relationship between the state, parents' and children's rights with a focus on three issues: (a) what parents should be permitted to do (claiming); what parents should be prohibited from doing (shaming) and (c) what a child can do if they are unhappy with that initial choice (blaming). This important but hitherto neglected issue provides a fresh springboard to reflect on the wider relationship between the state and parents' rights, with a focus on the boundaries of state interference with parents' rights and choices in raising their child.

Presentation

In person

676 Informed ≠ Understood: parental experiences and understanding of 'voluntary' accommodation of children under s.25 in Scotland

Robert Porter, Brandi Lee Lough Dennell

University of Strathclyde, Glasgow, United Kingdom

Stream or current topic

Children's rights

Abstract

In Scotland, voluntary care arrangements (under s.25 of the Children (Scotland) Act 1995) are frequently used as a legal basis for accommodating children and young people away from their parents (Anderson et al., 2020; The Scottish Government, 2022). While there is significant regional variation in implementation, the full realisation of parental rights in practice is required to support children's rights in these contexts.

This paper presents parental experiences gathered through semi-structured interviews conducted between October 2022 and January 2023 during the first phase of a 2-year research project on Section 25 in Scotland (2022-2024). Exploring the understandings and experiences of a number of parents in Scotland whose children were accommodated 'voluntarily', the paper describes parents' experiences of the accommodation process, focusing on their understanding of their own and their children's rights, as well as the extent to which the accommodation was perceived as 'voluntary'. These experiences are placed within the international literature relating to 'voluntary' accommodation of children and young people.

Key findings relate to parents' understanding of: the process of accommodation; parental rights to reclaim their children; 'contact' or family time arrangements; consequences of not agreeing to the arrangement; withdrawing consent; and, the long-term plans for their child's residence.

Presentation

In person

Disruptive Reproductive Technologies - Ethical and Legal Questions

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU203

Stream Disruptive technologies: reproduction, genetics, and the family

540 Uterus transplantation and selection criteria: a need for change?

N Hammond-Browning

Cardiff University, Cardiff, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

Uterus transplantation offers the potential to revolutionise reproductive options for those with absolute uterine factor infertility. Currently, clinical trials worldwide are utilising selection criteria that offer the clinicians and potential recipients the greatest chance of reproductive success. This paper seeks to explore the selection criteria and how they may need to be expanded or altered to allow greater access to uterus transplantation, whilst also maximising patient safety and clinical success.

Presentation

In person

930 Fertility, Futility, and Refusal: How and when to draw the line in uterine transplantation?

Laura O'Donovan, Nicola Williams

Lancaster University, Lancaster, United Kingdom

Stream or current topic

Disruptive technologies: reproduction, genetics, and the family

Abstract

Uterine transplantation is a novel treatment option for individuals experiencing absolute uterine factor infertility. Given its high costs in terms of resources, time, and finances, coupled with the high risks of the procedure and subsequent treatment protocols for recipients, donors, and potential children, it is important to explore the question of how to determine whether, how and when to both refuse and discontinue treatment in the face of futility. In this paper we explore the numerous ethical, legal, and policy questions raised by low success rates, and futility in this context. We also explore how the unique status of uterine transplantation (such as with respect to the relationships built between clinicians and patients) may contribute to an unwillingness to admit futility in this context and discontinue treatment.

Presentation

In person

79 Novel Forms of Assisted Gestation and the Legal Challenges: Perspectives of Reproductive Rights Advocates

Elizabeth Chloe Romanis

Durham University, Durham, United Kingdom. Harvard University, Cambridge, USA

Stream or current topic

Health law and bioethics

Abstract

Novel forms of assisted gestation –uterus transplantation and artificial placentas – are highly anticipated in the ethico-legal literature for their capacity to enhance reproductive autonomy. There are also, however, significant challenges anticipated in the development of novel forms of assisted gestation. While there is normative exploration of these challenges in the literature, there has not yet been (to my knowledge) empirical research undertaken to explore what reproductive rights organisations and advocates identify as potential benefits and challenges. This perspective is invaluable. These organisations/individuals have an awareness not only of the needs of individuals, but also of the political landscape in which regulatory decisions are made and which individuals navigate when seeking reproductive assistance.

In this study, data was generated from two semi-structured focus groups (n = 11). Reflective thematic analysis was used to examine the views raised by study participants in these focus groups. This paper explores three of the themes constructed in the data. First, the need to re-evaluate the fundamentals of legal parenthood. Second, concerns about the policing of gestation and choices about gestation. Third, the role of speculation in law-making. These results can enhance conceptual understanding of the legal challenges that might result from use of novel forms of assisted gestation and ensure that attention is paid these understandings of the legal challenges in further doctrinal and critical research.

Presentation

In person

DEVELOPING DEMOCRACIES: CONSTITUTIONAL RESPONSES TO SOCIAL CHANGES IN THE GLOBAL SOUTH

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU207

Stream Constitutionalism in developing democracies

842 The Fourth Branch, Separation of Powers & Transformative Constitutionalism

Neil Modi

Georgetown University Law Center, Washington D.C., USA

Stream or current topic

Constitutionalism in developing democracies

Abstract

The proposed paper studies the operation of entrenched fourth branch institutions and, more broadly, their interaction with the tripartite organs of government (viz. the effect on separation of powers) in a transformative model. Alternatively, it aims to answer the question of how 'transformative constitutionalism', which demands a concerted 'State' effort, including a collaborative engagement between legislature, executive, judiciary and fourth branch towards reimagining the State, reconceptualizes the question of separation of powers. It uses the experiences of India and South Africa- both labelled and studied as explicitly transformative as comparators.

Part I is introductory, and situates 'transformative constitutionalism' and the 'fourth branch' in the context of India and South Africa. Part II examines competing conceptual theories of the 'proper' functions that might be ascribed to the fourth branch. It argues that constitutional entrenchment coupled with their proper functions renders the fourth branch as an integral characteristic of transformative constitutions. Part III uses principles of transformative constitutionalism and separation of powers, and argues that the mandate of the transformative model fundamentally recasts our understanding of the 'modern' separation of powers, transitioning to a radical model encompassing collaboration of the 'State' as a whole. Part IV employs case- law and highlights the current position of separation of powers law in both India and South Africa. Attention is paid to the interaction between fourth branches and the other organs of government, its effect on judicial legitimacy, and the standards of review applied by Constitutional Courts. Part V concludes.

Presentation

In person

728 How powerful are executives in Latin America? Debunking the myths. A case study of emergency responses to Covid-19 in Chile, Argentina and Peru

Pablo Grez¹, Guillermo Jimenez²

¹University of Strathclyde, Glasgow, United Kingdom. ²Universidad Adolfo Ibanez, Santiago, Chile

Stream or current topic

Constitutionalism in developing democracies

Abstract

Latin American Constitutionalism has historically favoured strong executives to the detriment of other branches of government. This has prompted the critique that powers should be taken away from the executive in a quest for the democratisation of Latin American Constitutions. While instances of executive's formal pre-eminence are apparent in situations of normalcy, it is in the context of emergencies that the potency of Latin American executives is thrown into sharp comparative relief. Thus, a distinctive feature of Latin American Constitutions is that they regulate a multiplicity of states of emergency which can be triggered on the sole authority of the President in a variety of circumstances such as external war, public order crisis, natural disasters, etc. As expected, constitutional emergencies furnish the executive with sweeping powers to respond to the emergency and authorise the derogation of fundamental rights. Against received wisdom, we question this formalistic focus on the suite of constitutional powers and advance a contextual approach which is sensitive to the power-dynamics that underpin an increasingly fractioned and unstable Latin American political landscape. We test this claim by looking at the recent emergency responses to the Coronavirus pandemic in the following country case studies: Chile, Argentina and Peru. Our analysis will show how the complex interplay between overlapping constitutional and statutory frameworks providing wide ranging powers to the executive, on the one hand; and the perils of lacking a disciplined congressional majority, on the other, call for a more nuanced analysis of otherwise 'overpowerful' Latin American executives.

Presentation

In person

21 Unprecedented perspectives of comparative constitutional law: constitutional court case law during the Covid19 pandemic

Boldizsár Szentgáli-Tóth, Bettina Bor

Centre for Social Sciences - Institute for Legal Studies, Budapest, Hungary

Stream or current topic

Constitutionalism in developing democracies

Abstract

Our research project aims to map out the constitutional implications of the Covid-19 pandemic with a global database from the related constitutional case law. Several scholars have pointed out several legal aspects of the public health emergency during the recent months. Significant contributions have focused on the extra-ordinary restrictions on fundamental rights and also the separation of powers aspects of the crisis. The deeper understanding of the constitutional practice would lead to the reconsideration of several issues even in the theoretical and practical field concerning the scope and the extent of emergencies, the limitations on fundamental rights during these periods, on the separation of powers between the main constitutional actors under extra-ordinary circumstances, and also on the constitutional impact of a global pandemic. Therefore, our research group, comprised of constitutional lawyers and experts with relevant informatics and database-related knowledge, will establish a database from the constitutional court rulings linked to the extra-ordinary public health situation. This data set will serve as a key source for numerous further research projects.

Presentation

In person

Legal Education 3

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU208

Stream Legal education

33 Inclusive legal education: Views on access in South African Higher education

Leani Van Niekerk

University of the Free State, Bloemfontein, South Africa

Stream or current topic

Legal education

Abstract

Equity of success or outcome is as important as equity of access and redress. Equity considers the effects of discrimination and aims for an equal outcome. Due to the legacy of Apartheid in South Africa, a higher education qualification is seen as a means to escape poverty for most black students and in obtaining such a qualification, they will obtain high skills needed to participate in a globalised economy. The failure to graduate these students impacts negatively on the economic development and can create bigger inequality.[1] Understanding the social context of students have a far greater influence on students' success than the teaching method that is used by the lecturer.[2] Conceptualization of the concept of access to higher education need to be situated within the relevant historical, political and economic context. Therefore, the concept of access and subsequent success, cannot be analysed without considering the relevant political and social issues. Access is often measured in terms of increasing participation of especially previously disadvantaged students, but seldom through a social justice lens where equity of access is closely linked to equity of success.[3] In 2005 the University of the Free State, South Africa introduced the extended LLB (Bachelors of Law) programme in order to address the need for widening access. This paper will investigate the concept of access in higher education and specifically the extended LLB programme.

[1] Boughey 2012:137.

[2] Jacobs 2019:4.

[3] See the work of Boughey 2012 and Wilson-Strydom 2011.

Presentation

In person

354 Cherishing All The Children of the Nation Equally: Constructing An Effective Model for Cultural Diversity In Undergraduate Legal Education in Ireland

John Eardly

Griffith College, Dublin, Ireland

Stream or current topic

Legal education

Abstract

Cherishing All The Children of the Nation Equally: Constructing An Effective Model for Cultural Diversity In Undergraduate Legal Education in Ireland.

This paper analyses models for the incorporation of cultural diversity into undergraduate legal education in Ireland. In particular, an analytical framework is used that focuses on the concepts of multicultural and intercultural education and how these two concepts have evolved in recent decades (Ní Chonaill 2018). Important differences between multiculturalism and interculturalism are highlighted. The paper suggests that an enduring degree of ambiguity remains in current understanding in this area and seeks to address this by exploring a more precise basis for incorporating culturally diverse themes into legal education (Akkari & Radhouane (2022); Ní Chonaill 2018). Specific reference is given to the European model of interculturalism and how this contrasts with the traditionally, more established U.S./U.K. multicultural model (Tarozzi (2012)). Finally, the analysis and literature reviewed examines the effect of some institutional or structural barriers to cultural diversity both in the classroom and in the use of assessments (Royal Irish Academy 2021; Fass & Ross 2012). Reference is also given to how the incorporation of effective intercultural education and learner experience (both domestic and international) can be improved through programme design and teaching practices (Bono 2019; Dennis 2010; Karacsony 2022).

Key words: multiculturalism, interculturalism, evolution, Ireland, law, undergraduate.

Presentation

In person

433 Structural barriers to inclusion for international students coming to British Law schools.

Jane Richards

University of Leeds, Leeds, United Kingdom

Stream or current topic

Legal education

Abstract

There is a growing cohort of international students at both the undergraduate and postgraduate levels in British law schools. This brings particular challenges to creating inclusive learning environments, and also in enabling international students thrive during their degree programs. Not only do students come from diverse linguistic backgrounds, but perhaps even more significantly, differences in education systems, communication methods, presentation skills, confidence, and so on, often manifest in challenges to designing curriculums which accommodates this diversity. This paper considers these barriers in British law schools' hidden curriculum, which act as barriers to inclusion for international students. In particular, the paper focuses on students coming from Mainland China, to examine issues that they face such as lacking confidence, different expectations surrounding class participation, and misunderstandings about academic integrity. These are identified as recurring structural issues which are encountered by this segment of international students, and which have the potential to negatively impact their university experience and outcomes. In recognising these issues as structural, the paper explores how minor adjustments to the law curriculum can be made to better accommodate growing cohorts of international students at both undergraduate and postgraduate levels in a way that will benefit all.

Presentation

In person

629 Evaluating the effectiveness of Facebook as an interactive tool for the promotion of sharing current affair articles and the enhancement of learning in Criminal Justice

Rachel Dixon

The University of Hull, Hull, United Kingdom

Stream or current topic

Legal education

Abstract

The aim of this research was to introduce and assess the effectiveness of Facebook as an interactive communication tool within a Criminal Justice module. The current communication tool utilized within the Law School is a multipurpose Virtual Learning Environment (VLE). However, as a source of student engagement within the context of Criminal Justice discussion and a sense of creating a Criminal Justice fraternity, the platform is underused. The VLE does not create a sense of 'community' as a form of Criminal Justice discourse, nor does it encourage student engagement within broader Criminal Justice discussion and debates, unlike Facebook. Facebook is a social media

site that aims to encourage and allow participation in various micro-communities, which could be educational, and therefore potentially address this issue. This study adopted an action research approach, a method that aims to identify a problem within teaching practice, to act on the problem, to observe or gather evidence from the action and reflect on the observations from the evidence gathered. Using action research, this study found that although very few students posted an article on the Facebook page, a number of students did feel greater engagement with Criminal Justice as a subject and therefore greater engagement with the module as a whole.

Presentation

Virtual via Microsoft Teams

Health Law and Bioethics: Health Technologies & Ethics

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU210

Stream Health law and bioethics

Ed Horowicz

858 Realising the Potential of Digital Health: Key Ethico-Legal Considerations from the MyPal Policy Workshop

Dunja Begovic¹, Anna Nelson^{2,1}

¹Lancaster University, Lancaster, United Kingdom. ²University of Manchester, Manchester, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

Increasingly, there is a push towards the use of digital interventions and innovations in the delivery of healthcare. The World Health Organisation and the European Union have both outlined the importance of developing digital health tools to improve healthcare. The 'digitisation' of healthcare has the potential to increase efficiency of healthcare provision, allow seamless communication between patients and clinicians, and bring about improved patient outcomes. However, actually achieving these benefits will require careful planning by key stakeholders. In this presentation we will focus on the core ethico-legal issues which must be considered as part of this process.

We use the recently concluded Horizon 2020 Project, MyPal – which examined a digital health platform for symptom reporting among adult and child patients receiving palliative cancer care - to illustrate the core issues which need to be addressed at organisational, national and global levels in order to realise the potential benefits of digital health. Furthermore, we highlight the importance of recognising that digital health solutions will not be an appropriate replacement for conventional care in all circumstances, or for all patients.

This presentation draws from the insights of experts from across healthcare, health policy and technology, gathered during a one-day workshop about the policy implications of the MyPal platform. In this presentation, we will focus primarily on recommendations by the workshop participants aimed at those with the power to influence and design legislation in the burgeoning area of digital health – regulators, policy makers, national governments and international organisations such as the European Union.

Presentation

In person

801 Regulating Telemedicine: A Legal-Historical and Cross-Jurisdictional Analysis

Andra le Roux-Kemp

University of Lincoln, Lincoln, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

Telemedicine – different from e-health, telehealth, and cybermedicine – generally refers to the delivery of healthcare services by way of information and communication technologies and for a wide range of health-related activities. Despite telemedicine having become an important and widely used tool in health service delivery in many countries the world over (especially since Covid-19), specific laws and regulations to govern telemedicine remain curiously absent, or at least limited. While traditional healthcare services are therefore increasingly being “taken online”, the laws and legal principles governing health- and medical care seemingly remain “grounded”. In this paper, a legal-historical and cross-jurisdictional analysis will be applied in exploring the genesis and development of telemedicine, the various possible legal issues that may arise, as well as its regulatory field. Some of the questions that will be considered include the following: To whom and by whom is a duty of care owed in the online network of relationships that constitute telemedicine? When is a duty of care owed in terms of the various online functionalities and possibilities that may arise? Who is the patient, and who is the axiomatic doctor? And how has medical responsibilities and ethics evolved in our new normal of digital medical practice?

Presentation

In person

695 Patents on 'Technologies' related to the Form, Function and Modification of our Human Bodies: The Urgent Need for Greater Bioethics Scrutiny

Aisling McMahon

Maynooth University, Maynooth, Ireland

Stream or current topic

Health law and bioethics

Abstract

A patent is an intellectual property right which allows rightsholders to control to what extent and the terms around how others access and use a 'technology' under patent for twenty years. Patents are available in all fields of technology, including health-technologies. Moreover, although the human body itself is not patentable, many 'technologies' that relate in significant ways to the *form, functioning and modification of our human bodies* are patentable. For example, under European law, patentable 'technologies' include: isolated elements which form the human body such as isolated human genes which are patentable in Europe; 'technologies' which relate to the functioning of the body such as medicines, and 'technologies' that can potentially modify the human body, such emerging neuro-technologies, gene-editing technologies etc.

This paper develops a novel five-category taxonomy of patentable 'technologies' related to the human body, and using this taxonomy, it argues that patents over such types of technologies – and how they are used - can pose significant bioethical implications, including, impacting how we treat, use and modify our bodies. Yet, such bioethical issues, and this relationship of 'technologies' with the form, functioning or modification of the human body is not considered in a routine manner - bar limited exceptions – within the patent decision-making system. Instead, a patent on an engine part is viewed the same as a patent on a medicine. Accordingly, this paper argues that far greater scrutiny is needed over the bioethical issues posed by patents and how they are used over such 'technologies' related to the human body.

Presentation

In person

787 Artificial intelligence (AI) and public (dis-)trust? A case study on using AI in mental health services

Rose Worley¹, James Thornton², Caroline Jones¹, Age Chapman³, Chloe Harrison⁴, Jeremy C Wyatt³, Donna Chaves⁴

¹Swansea University, Swansea, United Kingdom. ²Nottingham Trent University, Nottingham, United Kingdom.

³University of Southampton, Southampton, United Kingdom. ⁴Adferiad Recovery, Swansea, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

Within the artificial intelligence (AI) community, trust refers to the confidence that someone has in a tool/system; whereas systems are considered trustworthy when their design, engineering, and operation ensures they generate positive outcomes and mitigate potentially harmful ones. AI has enormous potential in the healthcare sector, including mental health care, but policymakers have concerns over its trustworthiness and the publics' (dis-)trust of AI. Yet, while the importance of trust and trustworthiness is repeatedly highlighted, precisely what policymakers mean by these two concepts is unclear.

In addition, empirical research has shown that healthcare practitioners are reluctant to trust AI tools, citing concerns including validity, confidence and legal liability. Also, with some notable exceptions, patients' perspectives are often assumed or ignored altogether. Hence, although AI could support overburdened mental health services through effective triage, assessment, engagement and maintenance support, there are substantial concerns about trust and trustworthiness in the uptake and use of such tools.

In partnership with the Welsh mental health charity, Adferiad Recovery, our empirical case-study project seeks to address knowledge gaps concerning service-users' and therapists' concerns over the use of AI systems in the context of mental health services and support. This paper reflects on the very early findings of the project – reporting on the initial engagement with service-users and therapists as research co-creators in shaping survey and interview questions: exploring their respective concerns around the use of AI in mental health care services, and identifying some of the foundational characteristics of trustworthy AI in this context.

Presentation

Virtual via Microsoft Teams

Disability and Law: Care and Caregiving

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU211

Stream Disability, law and social justice in times of uncertainty

315 'Vulnerable monsters': constructions of dementia in the Australian Royal Commission into Aged Care

Kristina Chelberg

Queensland University of Technology, Brisbane, Australia

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

This paper argues that while regulatory frameworks in institutional aged care authorise restraints to protect vulnerable persons with dementia from harm, they also serve as normalising practices to control challenging monstrous Others. This argument emerges out of an observed unease in aged care discourse where older people living with dementia are described as 'vulnerable', while dementia behaviours are described as 'challenging'. Using narrative analysis on a case study from the Final Report of the Australian Royal Commission into Aged Care Quality and Safety (RCAC), this paper investigates how the RCAC (re)produced constructions of persons with dementia as 'vulnerable monsters'.

Drawing upon disability scholarship on monstrous theory about 'unruly and leaky' bodies, extracts from the case study reveal how the RCAC repeated and reinforced monstrous constructions of dementia. Dementia behaviours, particularly 'wandering', were constructed through a dehumanising crisis frame that produced 'challenging' bodies and legitimised 'last resort' normalising practices, such as physical and chemical restraints. In failing to resist monstrous constructions of dementia behaviours, the RCAC accepted and authorised a regime of scaled responses leading to restrictive practices for control of challenging bodies in institutional aged care. Although dementia care and restrictive practices received substantial attention in the RCAC, this paper reveals a missed opportunity for deeper review of institutionalised use of restraints that has relevance for ongoing reform of Australian aged care following conclusion of the RCAC.

Presentation

In person

370 Recognition, accountability, change ... now!: A framework for reparations for violence, abuse and neglect of people living with dementia in residential aged care

Linda Steele¹, Kate Swaffer²

¹University of Technology Sydney, Sydney, Australia. ²University of Wollongong, Wollongong, Australia

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

People living with dementia experience diverse harms in Australian residential aged care. To date, the wide ranging and ongoing impacts of these harms on people living with dementia and their care partners and family members have not been acknowledged and redressed. Our presentation will introduce a set of principles which provide advocates and policymakers with evidence-based guidance on the scope, form and processes for reparations for the harm of people living with dementia in residential aged care. The principles are informed by: (a) international human rights norms on access to justice and remedies (particularly the UN Convention on the Rights of Persons with Disabilities), (b) empirical data from focus groups with people living with dementia care partners and family members of people with dementia who have been harmed in Australian aged care, and advocates and lawyers, and (c) the design and lived experiences of other Australian redress schemes (institutional child sexual abuse redress scheme and Indigenous Stolen Generations reparations schemes). We will also discuss the four key interrelated concepts which our research established that must drive the approach to reparations: recognition, accountability, change, now. The project has implications beyond Australia, to how other domestic jurisdictions respond to harm in residential aged care and to the application of international human rights norms on reparations to the residential aged care context.

Presentation

Virtual via Microsoft Teams

543 A Child with Disabilities is a Mother's Child: Caregiving Experiences from Low Income Settings in Nairobi, Kenya.

Damarie Kalonzo

University of Leeds, Leeds, United Kingdom

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

Globally, care work has been historically undervalued and rendered invisible due to privileged patriarchal societal norms. Furthermore, the intersection between race relations, class, geographical location, and the stigma associated with disability often means that the care work carried out by women caregivers of children with disabilities in the Global South is especially overlooked. Their experiences are rarely recognised or widely documented. This paper seeks to platform these neglected narratives by exploring insights gained from 13 semi-structured interviews with women caregivers of children with disabilities from low-income settings in Nairobi, Kenya. In these interviews, participant caregivers detail their daily struggles and life histories, revealing complex and nuanced accounts of their experiences. This paper explores the various challenges caregivers face, and strategies they employ when seeking social assistance to cope with their caregiving responsibilities, while simultaneously navigating complex familial and societal relations. In the analysis of these accounts, it emerges that the Kenyan home is not a conducive site of care, despite legal and political steps taken to ensure the implementation of the rights of children with disabilities. In conclusion, this paper asserts that the lived experiences of these caregivers and of their children are indicators of the progress – or lack thereof – in the implementation of rights of children with disabilities contained in domestic and international laws and treaties.

Presentation

In person

Law and Emotion 3

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU218

Stream Law and emotion

537 Reconciling the Sexual Autonomy and Protection of Adults with Intellectual Disability: What place is there for 'desire' in Section 30 of the Sexual Offences Act 2003?

Emnani Subhi

Newcastle University, Newcastle, United Kingdom

Stream or current topic

Law and emotion

Abstract

Key words: Sexual Offences Act, capacity, consent, intellectual disability, sexual autonomy, desire, animal instincts, emotions

Historical notions of consent reflected a concern with the bodies and actions of intellectually disabled women, referred to as 'imbeciles' possessing dangerous sexual impulses. The pendulum has swung from the archaic 19th century notion of consent as an expression of their 'animal instincts' to the emergence of a rights-centric debate concerning the sexual freedom of both men and women with intellectual disability.

Under Section 30 of the Sexual Offences Act 2003, in determining the retrospective sexual capacity of an alleged victim with intellectual disability, questions are set entirely in terms of what they understood about the incident rather than whether they consented to the said activity. Through a theoretical exploration of the concept of 'desire' as a starting point, and with reference to recent civil cases, this paper observes that this threshold raises the often-overlooked question of whether consent should rely on a person's intellectual understanding of sex. It argues there is room to appreciate the intricacies of sexual relations, and the question of emotion inherent within it.

Research Questions

1. Should the capacity to consent be based primarily on an intellectual understanding of sexual activity?
2. Can 'desire' or a related concept be used as a potentially useful conceptual touchstone in broadening the notion of consent in the criminal law?

Presentation

In person

819 Emotional overpowering, Cultural and Social Practices, Equality discourse & Succession Rights of the Women : Case Studies from India

Namita Malik

Galgotias University, Greater Noida, India

Stream or current topic

Law and emotion

Abstract

Constitution of India provides equality of law and equal protection of laws to all its citizens. Property rights of legal heirs are based on the concept of fairness and equality between gender. But due to social, cultural & religious practices of the country which are skewed towards patriarchy, sons are preferred over the daughters in property discourse. Emotion is highly relevant in claiming or refuting legal rights.

Laws in India have failed to uproot the biased practices in succession matters. Female heirs though aware of their legal rights are overpowered by their emotional connect embedded in their childhood memories, parental upbringing and sibling's love.

The proposed study aims to discuss and deliberate upon the role of emotions in gender rights discourse revolving around succession laws in India. This study is drawn on the assumption that over powering of cultural and social practices coupled with lack of emotional strength encourages women to surrender their succession rights in India. Case studies from rural and urban areas are compared to see the pattern of emotions and influence among women, due to factors like age, education and empowerment. Towards the end the qualitative study shall highlight the jurisprudential points embedded in social, cultural and religious beliefs and how it interjects with law and emotional wellbeing for women.

Presentation

In person

Civil Justice 3

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU219

Stream Civil justice systems and ADR

682 The role of compulsory mediation in helping civil justice achieve its contemporary goals.

Zora Kizilyurek

Newcastle University, Newcastle, United Kingdom

Stream or current topic

Civil justice systems and ADR

Abstract

Given the recent proposals on implementing compulsory mediation, this paper will make a novel contribution to the debate by going beyond the merits of compulsion and approaching it from the lenses of contemporary civil justice goals.

First, this paper will consider the evolving journey of England in integrating mediation as part of broader efforts to widen access to justice in a civil justice system with limited resources.

The second part of this paper will argue that compulsory mediation aligns with the current civil justice goals by proposing disputants, acceptable, affordable and timely resolutions. The civil justice is transitioning from traditional substantive justice goals towards its contemporary goals such as proportionality, settlement-focus, court as a last resort system. This paper will discuss the role of court-mandated mediation in helping civil justice achieve its overriding objective of allocating no more than appropriate amount of court resources and prioritising cases that necessitate court's involvement.

Finally, this paper will address the reservations on court-mandated mediation being an unethical, low-cost replacement to clear court-backlog. It will demonstrate that through a coherent understanding, informed acceptance, and practical implementation, inherent risks of court-mandated mediation can be minimised.

To do so, the paper will consider existing literature and law to critically analyse shifting goals of civil justice and growing support for compulsion. Against this background, this paper will then rely on existing empirical data such as scholarly works, consultation and justice reform papers, to explore the impact shifting goals have on the efforts of integrating compulsory mediation.

Presentation

In person

268 Potential Risks of Violation of Article 6 of the ECHR in connection with the Integration of Mediation into the Judicial System

Viktoriia Hamaiunova

Newcastle University, Newcastle Upon Tyne, United Kingdom

Stream or current topic

Civil justice systems and ADR

Abstract

Implementation of mediation into the judicial system entails redefining justice criteria in the legal realm because less formal consideration of the case during mediation procedure inevitably has bearing upon the formation of legal and court culture as well as the conception of justice. However, the text of the ECHR, as well as the current jurisprudence, does not contain either a direct recognition of the possibility of exercising the right to a fair trial through the mediation procedure or a direct indication that justice must be administered exclusively by courts. The Convention appears to be silent on this issue, in the absence of a clear-cut answer, we must shed some light on the nature of the right to a fair trial in modern realities. One such gap is in the relative lack of insight into the criteria for disputes that are unjustifiably resolved through mediation and cases that are not suitable for a court decision. There has not yet been any application to the ECtHR regarding the violation of the right to a fair trial in connection with participation in a mediation procedure. However, there is a national practice of several countries-participants of the ECHR in this regard. In the Helsinki Court of Appeal, one of the parties in the case claimed that the confirmed mediation agreement was invalid because the other party used manipulations during the mediation procedure.

Presentation

In person

15 Securing Therapeutic Justice Through Mediation: The Challenge of Medical Treatment Disputes

Jaime Lindsey, Katarzyna Wazynska-Finck

University of Essex, Colchester, United Kingdom

Stream or current topic

Civil justice systems and ADR

Abstract

This paper analyses the use of mediation in medical treatment disputes through a lens of therapeutic justice. Therapeutic justice is a theoretical approach which considers the use of legal interventions as having a potentially therapeutic effect on people who take part in them. The therapeutic benefits of certain legal processes are relatively well established, for example a person is more likely to be accepting of a court or administrative decision if it is one that they have participated or 'given voice' in. However, the potential therapeutic benefits of mediation, particularly in the medical treatment disputes context, have not been considered. This is despite mediation being recommended as a solution to challenging and high profile medical treatment disputes such as in the Charlie Gard case and similar factual scenarios.

This paper presents an analysis of whether mediation might be a therapeutic way of resolving medical treatment disputes concerning adults and children and, if so, in what ways. It argues that there are a number of indicators of therapeutic justice which mediation is likely to be able to achieve, including reduced hierarchies, flexibility, greater collaboration and voluntariness. However, mediation also poses challenges for therapeutic approaches, including in relation to participation/voice and what ought to be the appropriate measure of success.

Presentation

In person

49 Distinguishing Cultural and Biological Behaviour; Avoiding Ethnocentricity in International Commercial Mediation

Ronán Feehily

University of Canterbury, Christchurch, New Zealand

Stream or current topic

Civil justice systems and ADR

Abstract

It is difficult to segregate or isolate culture in a pure state or reserve it specifically for a particular group or enclose it within national, regional, geographical or any other type of border or boundary. Indeed, cultural issues can arise within borders in increasingly multicultural societies. Cultural differences can be reflected in different approaches to meeting needs, shaping the interests of parties and party behaviour during the mediation process. A failure to take account of cultural differences can result in disputants being ethnocentric, adopting a myopic perspective and viewing the dispute only through their own cultural prism. Effectively mediating international disputes involving different cultures can require cultural relativism: parties knowing, understanding and accepting cultural differences. Where cultural elements are less visible or are unconscious, aspects of behaviour or 'neuro-wiring' can lead to a breakdown in understanding, as each side assesses the other through the prism of its own cultural realities. Because culture permeates how we process thoughts and respond to ideas and proposals, it can be difficult for us to distinguish cultural and biological behaviour; cultural adaption is consequently a challenge. Culture informs how we perceive, identify, approach and communicate about conflict. Inextricably bound up in conflict, culture influences how parties mediate. This paper explores these issues, and focuses on the instrumental role a mediator can play by using their cultural awareness and, with experience, their cultural fluency, to adapt their interventions throughout the process to assist parties in cross-cultural mediations.

Presentation

Virtual via Microsoft Teams

Administrative Justice 3

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU301

Stream Administrative justice

252 Systemic administrative justice failures: what are they and why do they happen?

Robert Thomas

University of Manchester, Manchester, United Kingdom

Stream or current topic

Administrative justice

Abstract

The conventional way of understanding administrative justice is to focus upon external redress mechanisms (courts, ombuds and tribunals) and their accessibility, effectiveness, fairness and so on. An alternative approach is to investigate administrative justice by analysing the institutional processes through which government bodies make and implement policy. Adopting the latter approach, this paper explores systemic administrative justice to make sense of the various failures and fiascos that have occurred over recent decades: the DWP's failure to communicate changes to the SERPS inheritance rules (2000) and the women's state pension age (2021-), compensation schemes that do not compensate the people they were created for, the flawed transfer of disability benefit claimants, the Windrush scandal and underpayments of the state pension. Each of these episodes will be analysed to identify their underlying causes. The paper seeks explanations for these systemic failures in the complex nature and practices of administrative bodies and their institutional dysfunctions. These include: the internal organisation of administrative bodies; their failure to integrate ends and means; gaps in their knowledge and internal management controls; and weaknesses in their cultures, behaviours and operations. Another explanation concerns how administration collects information to make the social world legible and how it then relies upon and uses that information. The paper concludes by offering some reflections about systemic administrative justice failures, their inevitability, how they might possibly be avoided in future and the institutional means by which they are scrutinised (in particular the role of audit bodies and parliamentary committees).

Presentation

In person

290 Welfare Professionals' Situated and Relational Legal Consciousness: The Case of Youth Homelessness in Denmark

Stine Piilgaard Porner Nielsen¹, Ole Hammerslev², Marc Hertogh³

¹University of Southern Denmark, Odense, Denmark. ²Lund University, Lund, Sweden. ³University of Groningen, Groningen, Netherlands

Stream or current topic

Administrative justice

Abstract

Previous research has demonstrated that the social location of individuals, and the experiences that arise from that location, play an important role in the shaping of their legal consciousness (e.g. Nielsen 2000; Cowan 2004). Also, more recent studies conceptualise legal consciousness as a fully collaborative phenomenon in which people's thoughts and ideas about law reflect their interactions with other individuals, groups and institutions (e.g. Young 2014; Chua & Engel 2019). This paper aims to link and integrate these two bodies of literature. Based on document analysis, observations, and more than 30 in-depth interviews, this study explores the situated and relational legal consciousness of local welfare professionals who work with young homeless people in Denmark.

After introducing the legal and the theoretical background of the Danish case, the paper will also discuss the conceptual and methodological dimensions of this study. How can we empirically examine situated and relational legal consciousness and what are potential pitfalls in using these concepts? To this end, we will introduce the first outlines of a methodological toolbox which offers essential steppingstones to analyse empirical data on legal consciousness.

Our study suggests that both welfare professionals' social locations and their work relations shape their experiences and perceptions of law, thereby stressing the dynamic and co-constitutive character of legal consciousness. Moreover, it offers new directions for the study of situated and relational legal consciousness in future research.

Presentation

In person

346 How do first instance decision makers understand discretion and the controls on their discretionary powers?

Aisling Ryan

University College Cork, Cork, Ireland

Stream or current topic

Administrative justice

Abstract

Administrative justice is a field of research largely ignored in favour of over-constitutionalisation of administrative problems in the Irish context (Donson & O'Donovan, 2015). Irish scholarship on control of discretionary power has been heavily focused on doctrinal and comparative research, with a dearth of empirical research. As most administrative decisions go unchallenged, considerable power rests with the first instance decision makers who exercise discretion on a daily basis. Their voice is currently absent from the dialogue on control of discretionary power, the test for which has been in a state of flux for decades.

This paper offers a novel understanding of control of discretionary power by providing findings and reflections from semi-structured interviews with first instance decision makers. Interviews with immigration officials in the Department of Justice and adjudicators in the Workplace Relations Commission, produced rich data that captures the understandings, views and instincts decision makers have in relation to their discretion. These officials are the face of the State for thousands of individuals who turn to administrative functions in search of justice.

While rooted in the context of Irish administrative law and practice, this paper represents a wider contribution to the administrative justice field by identifying a key learning gap that may explain why judicial reviews with very similar facts keep coming before the courts. The testimony of decision makers themselves illuminates the disconnect between control of discretionary power as ruled on in judgments of the superior courts and the exercise of discretionary power by first instance decision makers.

Presentation

In person

526 Rule of law system weaknesses and the digital welfare state: Exploring policy fiascoes in social security enforcement

Maarten Bouwmeester

University of Groningen, Groningen, Netherlands

Stream or current topic

Administrative justice

Abstract

In recent years, scandals in social security enforcement have appeared across Western welfare states. Cases like the Dutch childcare benefit scandal and the Australian 'Robodebt fiasco' reflect systemic failures in administrative justice systems. The outcomes shared between these cases (social damages and rule of law-violations) emerged from a similar culmination of problematic factors, including rigid social security law and policy (further 'dehumanized' by extensive digitalization) and a weakened functioning of parliamentary and judicial control of the executive branch of government.

This contribution explores the culmination of risks in the 'digital welfare state' discussed above. It aims to compare the Dutch childcare benefit scandal and the Australian Robodebt fiasco and draw generalizable conclusions related to administrative justice, focusing specifically on (deficiencies in) parliamentary and judicial control.

After providing a brief review of the existing literature on the digital welfare state and administrative justice, the paper theoretically examines the relationship between administrative justice and policy success/failure. It then explores the two cases through a document analysis of the most informative public records (e.g., parliamentary inquiries), complemented by a meta-analysis of existing scientific studies.

The results show much convergence between the two cases. The scandals emerged due to a combination of problems related to legislative design (harsh provisions with limited legal safeguards for individuals) and problems that emerged after policy implementation (deficiencies in parliamentary and judicial scrutiny of administrative decision-making). The paper thereby highlights the importance of holistically analyzing 'systemic administrative justice failures', examining both legislation and control of public administration.

Presentation

In person

Empire, Colonialism and Law: Recognising Colonial injustices

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU302

Stream Empire, colonialism and law

911 Creeks, Murder and Microhistory in Canada's West: Devising Stories to get Colonialism Better Considered

Signa Daum Shanks

University of Ottawa , Faculty of Law, Ottawa, Canada

Stream or current topic

Empire, colonialism and law

Abstract

One of the many frustrating matters for those studying colonialism is the continued lack of appreciation other researchers and society have for the breadth and depth of colonizing policies actually had (and have). Concepts like "Western history" and "common law" are still too often the norm to measure the rule of law. Lawyers, judges, academics and researchers demonstrate this failure to acknowledge colonialism properly when considering pre-Crown existences in various colonies. Indigenous histories, laws and modern cultural viewpoints are still too often othered as "alternative" or "minority" information.

So how to get colonialism better appreciated? I propose that the subfield of 'microhistory', especially when it includes a judicial decision, holds promise because of how it can expose the deeply rooted colonizing construct. By using a particular region in Canada's west and a set of topics for that region, I propose the storytelling of Indigenous place, physical geography and a case demonstrating the absence of the rule of law can be of important use when trying to shift perspectives of those who view democratic, common/civil law regimes as the norm. Colonialism is here today, in the current borders that make Saskatchewan, in the unconfirmed boundary line for treaty space, in the lack of family cohesion after a trial's results. We should want to decolonize. But doing so means thinking strategically about what stories can be especially helpful tools in illustrating to others that all of us have a responsibility to stop the inconsistent and illegal processes colonialism imposes.

Presentation

In person

287 Against Abandoning Critical Questions of Coloniality, Decolonisation and Race in Legal Research

Foluke Adebisi

University of Bristol Law School, Bristol, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

Fuelled by the killing of George Floyd and the #MustFall movements, increasingly, law schools in the Global North have engaged in 'decolonisation'. These moves recognise that Euro-modern colonial enterprises and their afterlives have had an impact, on the socio-political realities of indigenous, colonised and racialised peoples, as well as on fundamentals of legal knowledge. Nevertheless, in much discourse on decolonisation, especially in higher education in what is designated the Global North, there has been a focus mostly on administrative practice and teaching, to the detriment of theory and research. Especially in research-focused schools, failure to link decolonisation to strategies of research-informed teaching suggests a fundamental failure of decolonisation in knowledge. Decolonisation is restricted to the classroom, but does not find its way there through research, and so often does not critically find its way there.

Therefore, this paper proceeds from the position that decolonisation as a theory and as a praxis has a vital role to play in legal research. Thus, relying on a broad range of academic traditions, this paper examines several questions and approaches that can be considered when seeking to embed decolonisation in legal research – practically and theoretically. It argues that any engagement with decolonisation as an approach must be backed up by deep intellectual enquiry as to its history, thought and possibilities. Consequently, we need to be able to, in legal research, respond to questions about colonially-derived and global entanglements of power in the knowledge bases, theoretical frameworks, methodologies, ethics, and transmission of legal knowledge.

Presentation

In person

533 Comic narratives as a means of subverting the end of the world: the case of the Alberta tar sands

Sahar Shah

University of Bristol, Bristol, United Kingdom. University of Warwick, Coventry, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

Peter Fitzpatrick in *The Mythology of Modern Law* (1999) argued that modern Occidental law is substantively and operationally mythic. However, unlike the myths that supposedly characterized the 'ancients', modern mythology acquires its content from the negation of mythic belief. I argue that Fitzpatrick's claim is visible in the context of recent legal cases on extraction and development in the Alberta tar sands region of Canada, which have in aggregate ensured virtually unrestrained extraction, processing, and transport of bitumen from one of the world's largest oil reserves. Ongoing extraction in this vein can push the global climate past "tipping points" (Firempong 2018), setting in motion non-linear and irreversible processes that can ultimately result in human extinction (Huseman and Short 2012, p. 230; de Goede and Randalls 2009, pp. 868–869). Continued extraction in this region thus has the power to bring about the apocalyptic 'end' that haunts the settler colonial imaginary. However, these cases also reveal the presence of 'Other' myths and narratives – those of Indigenous people and allied activists seeking to interrupt and subvert the "negative mythology" (Chalmers 2019) of the Canadian legal system. These narratives encourage a legal genre shift from the tragic to the comic (Gross 2016) and introduce the mythic figure of the trickster into the courtroom, both of which enable us as legal subjects to grapple directly with the sacred and spiritual tenets that underlie the Canadian legal system, but have thus far refused to reveal themselves as such.

Presentation

In person

73 Pluriversal Politics and Political Reconciliation

Camilo Ardila

University of Edinburgh, Edinburgh, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

Pluriversal politics has received more attention in theoretical debates on the reverberations of European colonialism and imperialism (Blaser & de la Cadena, 2018; Escobar, 2020; FitzGerald, 2022; Kothari et al., 2019; Mignolo, 2018; Reiter, 2018; Savransky, 2021). The pluriverse, as the Zapatista dictum suggests, means "a world in which many worlds can fit." The assumption here is that, despite a modern and violent project of civilisation, there still exist alternative worlds like Indigenous, peasant and Afro-descendant communities with their own ontological, epistemological and socio-political proposals.

In this paper, I explore the implications of this theoretical framework for political reconciliation. One may argue that political reconciliation consists in a world in which many worlds coexist together without one subsuming the others. This is what I call in this paper "pluriversal reconciliation", i.e. a new beginning in the realm of politics for groups alienated from one another by a terrible past and deeply divided by their incompatible or even incommensurable frameworks. I argue that pluriversal politics offers a conception of political reconciliation.

The paper proceeds as follows. First, I introduce the notion of the pluriverse as part of decolonial debates on the monism of the European project of civilisation. The second section deals with the democratic potential of pluriversal politics as a horizontal dialogue between different frameworks. I outline in the last section the implications of pluriversal politics for political reconciliation and its emphasis on the recuperation and preservation of historically excluded ontologies, epistemologies and socio-political proposals.

Presentation

In person

Transformative Justice 2

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU303

Stream Human rights, memory and transformative justice

138 'There is no denying it is political. We archive with a purpose': Archivists as Actors with Agency in Transitional Justice

Julia Volkmar

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Human rights, memory and transformative justice

Abstract

Archives are increasingly recognised as important institutions in transitional justice processes. They have for example substantiated judicial processes with documentary evidence, have become repositories for truth commissions, and have served as sites of commemoration. Preserving a nation's memory and culture, archives are however important battlegrounds around the narrative of the past, as well. Non-state independent archival movements have been commended for their role in highlighting marginalization and leading transitional justice 'from below.' This discussion currently neglects the role of archivists. Often thought of as the neutral gatekeepers of records, this paper argues that archivists can and do consciously impact transitional justice processes. In post-conflict environments with contested narratives of the past, their influence can impact contemporary discourse and policy-making.

Based on substantive oral history interviews with archivists in Eastern Germany and Northern Ireland, this paper will propose three 'ideal types' of archivists in post-conflict environments. These are derived both from archivists' self-identification and careful contextualisation across transitional environments. Drawing on archivists' reflections of the German reunification process and the Northern Ireland peace process, the paper evaluates how archivists navigate emotionally challenging institutional environments and hierarchies. It argues that all archivists engage in purposeful activism, influencing processes of justice, truth, and reconciliation. The holistic study of relationships between archival actors in state and independent archives further provides a reflection of power struggles in transitional justice

legislation. The paper asserts that the agency of archivists is under-studied but can highlight structural issues in the wider transitional justice landscape.

Presentation

In person

395 Exploring the role of memoir in dealing with the past: narrative victimology, 'quiet transitional justice,' and memory.

Lauren Dempster, Kevin Hearty

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Human rights, memory and transformative justice

Abstract

Given the increased recognition of the role that non-state actors can, and do, play in transitional justice, this paper critically examines the perspectives of victims who have engaged in unofficial transitional justice initiatives with non-state armed groups. This paper builds on the concept of 'quiet transitional justice,' in which efforts to deal with the past take place behind closed doors (Dempster 2019). Mirroring the emergence of narrative victimology, we will use insights from victim memoirs to explore the victim experience of 'quiet transitional justice.' We will use a selection of memoirs written by a range of protagonists who have engaged in 'quiet transitional justice' efforts in Northern Ireland. These memoirs provide a valuable insight into key transitional justice themes such as memory, truth, and voice. We argue that this points to the potential utility of 'quiet transitional justice' for offering a victim-centric approach 'from below' in which victims are active agents – not only in telling their stories, but in articulating their individual needs and expectations.

Presentation

In person

452 When Law and History Collide: Oral History, Transitional Justice and 'Dealing with the Past'

Anna Bryson

QUB, Belfast, United Kingdom

Stream or current topic

Human rights, memory and transformative justice

Abstract

Reflecting on the respective roles of historians and lawyers in dealing with the legacy of conflict and violence, this paper examines the intersections between the theory and practice of oral history and transitional justice. Taking Northern Ireland as a case-study, the first part of the presentation traces the evolving role of oral history in efforts to advance (and thwart) truth, justice and accountability since the Good Friday Agreement. The second part will then turn to a pre-Troubles oral history archive and the relevant theoretical literature on memory and the politics of the past to demonstrate how a 'from below' and 'longer view' approach to the history of conflict can usefully unsettle the presentist and political perspectives underpinning state-centric approaches to 'dealing with the past'. Connecting this case-study to my own recent advocacy work on the UK government's proposals for a post-conflict Oral History Archive in Northern Ireland, the paper argues that a rigorous and comprehensive oral history approach, far from being a soothing 'add-on' to the real business of pursuing truth and justice through the courts, can make a powerful contribution to 'big picture' efforts to advance peace and reconciliation.

Presentation

In person

742 Archiving Activism: memorialising civil society and the “Comfort Women” at the Women’s Active Museum

Rhiannon Griffiths

University of York, York, United Kingdom

Stream or current topic

Human rights, memory and transformative justice

Abstract

The Women’s Active Museum of War and Peace (WAM) consists of but a few rooms, nestled inconspicuously in a busy ward of Tokyo, Japan. But in the 17 years since it opened, WAM has been on the front lines of a monumental battle over memory of the so-called “Comfort Women” – sex slaves of the Japanese military during the Asia-Pacific War (1937-1945). Part archive, part exhibit space, this small organisation is a repository for materials produced during an international people’s tribunal, which heard from survivors and sought to provide civil society justice where state-led mechanisms have been absent. WAM is thus not only a space for exploring a traumatic history, but also for remembering the survivors and activists as dynamic participants in its legacy.

Through its public engagement activities, transnational activism, and victim-focused design, WAM’s position in the metaconflict of Japanese war memories can highlight the challenges and opportunities of non-state initiatives within hostile narrative environments. This paper situates WAM within the transitional justice literature and offers new insights through the thematic analysis of data collected by the author, in English and Japanese, from site visits, interviews, and archival documents. This paper argues that the archiving of a civil society initiative, and subsequent exhibitions and activities, frames WAM as a key activist and necessary counterpoint to state sanctioned narratives. The transformative potential of non-state archives and museums should be considered an essential component of post-conflict justice; one that is increasingly urgent in modern Japan.

Presentation

In person

Epistemic Injustice: Linguistics and Epistemic Injustice

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU305

Stream Epistemic injustices in law

832 The (De-) Construction of Victim Credibility in Sexualised Violence Cases as an Epistemic State-Practice - Institutional Ethnography in the German Criminal Justice System

Leonie Thies

Berlin Social Science Center, Berlin, Germany

Stream or current topic

Epistemic injustices in law

Abstract

For Theme B:

Based on institutional ethnography in the Berlin Criminal Justice System (CJS), this contribution explores the question of how credibility is (de-) constructed in sexual violence cases. This empirical question helps to understand how state practices as epistemological practices stand in relation to diverse epistemic positions and lived experiences. Drawing on court observations, qualitative interviews and case file material, the analysis shows how institutional practices operate through frameworks and modes of technical languages aiming at institutional intelligibility and efficacy. Rape narratives are attempted to be made legible through the a framework of a Federal Court decision on credibility assessments, which discursively structures dialogue and textualisation of these in the multiple local settings of the German CJS. The practices mobilising this framework make it especially difficult for victim-survivors to have their case proven “objectively” when their lived experience is particularly complex from the institutional point of view. Furthermore, certain subjects who do not fulfil the image of a “rational” person are rendered as too “difficult” from an institutional perspective, which is especially exclusive for persons with cognitive disabilities, persons with little formalised education and persons with mental illnesses such as a borderline diagnosis. I argue that the current institutional practices and underlying logic are at odds with the lived realities of victim-survivors and can be understood as a form of epistemic injustice. This empirical case opens up further questions on the limits and possibilities of epistemic justice in the aftermath of sexualised violence in the CJS and beyond.

Presentation

In person

626 The truthfulness or falsity of statements”: negotiating domains of expertise and discursive categories at the trial of Dominic Ongwen

Elena Barrett

University of Jyväskylä, Jyväskylä, Finland

Stream or current topic

Epistemic injustices in law

Abstract

The ICC trial of Dominic Ongwen represents an especially rich example of the interplay between in-court interaction, complex notions of justice and culture, and the tension between the respective epistemologies of law and social science. In order to further investigate these intricacies, this study looks at instances of testimony given by two defense expert witnesses and the de- and recontextualization of these instances in the Chamber's ultimate judgment. The analysis focuses on how domains of expertise are interactionally and textually negotiated between these experts and legal actors, particularly surrounding two discursive categories that were integral in arguing against Ongwen's legal responsibility: belief, and capacity. This negotiation takes place through the delineation of these categories, wherein the experts and legal actors deploy three discursive strategies: boundary-work, contrast and opposition. This discursive negotiation reveals a fundamental epistemological opposition that prevented the Court from both hearing and adequately considering important cultural evidence.

Keywords: epistemology, interaction, discourse, categories expert testimony

Presentation

Virtual via Microsoft Teams

652 Accented universality: exploring non-translatability of legal concepts in international law

Natalia Zakharchenko

Vrije University Amsterdam, Amsterdam, Netherlands. Institute of Development Research and Development Policy, Bochum, Germany

Stream or current topic

Epistemic injustices in law

Abstract

An éminence grise of human rights – the principle of accountability - has been continuously advancing its normative presence in international law and rights discourses in the last couple of decades. Its transformative promises, on the other side, are hindered by the conceptual dubiety rooted, inter alia, in the non-translatability of the concept to many world languages. The current article attempts to examine how universal aspirations about the principle are appropriated in local contexts of the Central Asian region. In the outset, the research scrutinizes theoretical perplexities around the term and argues for the (obscured) role of law in these discussions. Then, drawing on interviews with human rights specialists in Central Asia, it converses the ways local lawyers translate, engage, and value the idea. Findings reveal the heterogeneity of approaches to accountability, and the reiterative relations between the word and the concept, informed by one's language, thematic area of human rights, and advocacy strategies amid various political regimes. The article exposes often omitted pitfalls of the existing multilingual setting of international law and its institutions, which undermine the communicative value of local languages and reinforce colonial narratives in the post-Soviet states when favoring Russian.

Presentation

In person

753 Methodological Reflections on a Court Ethnography

Vanessa Long

University of Sussex, Brighton, United Kingdom

Stream or current topic

Epistemic injustices in law

Abstract

Theme B: Epistemic Injustices in Law: Articulating Alternatives

Reflecting on my own doctoral fieldwork, I will consider how my personal and professional identity as a lawyer impacted my research design and data collection, within the context of my research on social class in the Criminal Magistrates' Court. This includes my choice and understanding of the research 'field' as being based solely within the Court building, my initial focus on the words and language of court hearings as opposed to broader embodied understandings of the process as well as the relative ease/difficulty of recruiting professional and lay participants.

Using Bourdieu's theory of 'participant objectivation' to engage in a further reflexive analysis of my own study and the socio-legal discipline, I seek to examine how the insights discussed above might apply more broadly to legal research. I analyse the ways in which legal knowledge is produced and presented, as well as the voices that may be over- and under-represented. Ultimately, I will examine the mechanisms that may contribute to the reproduction of inequalities – both of researchers and subjects of research – within the academic space and how these might be addressed.

Presentation

In person

Equality and Human Rights Law: Protected Characteristics and Inequality

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU308

Stream Equality and human rights

245 Demystifying the Protected-Grounds of Discrimination in Law

Shahab Saqib

King's College London, London, United Kingdom

Stream or current topic

Equality and human rights

Abstract

Discrimination is a “ground” oriented concept in law. Law enumerates certain grounds and then limits protection against discrimination to those categories. This has shifted the understanding of discrimination in law as per which its wrongfulness is best expressed on the basis of X, where X is a protected ground. However, this has generated various problems as well. In this paper, I provide a critique of this model by identifying the potential challenges that are associated with it.

This argument is made by using the methods of critical legal theory and providing a two-tier critique, one that is focused on the process of the enumeration of grounds, and the other one on the analysis that is driven from it. For the first part, it is argued that the factors required to enumerate a ground only provide a partial justification for its recognition. The second part demonstrates how certain problems are generated during the analysis of discrimination, such as assimilationist bias, single-axis analysis of discrimination etc. Collectively, these problems limit the scope of protection against discrimination offered by law.

By illustrating these challenges, a case is made for the evolvement of law beyond these grounds. Discrimination law has progressed rapidly in the last couple of years. It is argued that there is no reason it should stop now.

Khaitan, A Theory of Discrimination Law.

Blum, 'Racial and Other Asymmetries. A Problem for the Protected Categories Framework for Anti-Discrimination Thought'.

Eidelson, Discrimination and Disrespect.

Yoshino, 'Assimilationist Bias in Equal Protection'.

Atrey, Intersectional Discrimination.

Presentation

In person

850 Caste in the diaspora: challenges to the recognition of caste discrimination in American and UK equality law

Annapurna Waughray¹, Kevin Brown²

¹Manchester Metropolitan University, Manchester, United Kingdom. ²Indiana University, Maurer School of Law, Bloomington, USA

Stream or current topic

Equality and human rights

Abstract

Caste discrimination is a powerful mechanism for social exclusion and an egregious violation of human rights. It is outlawed in India and other South Asian states but its emergence as a legal issue in the South Asian diaspora has met with backlash and contestation. There are over 6 million people of South Asian heritage in the US and over 3 million in the UK. Caste discrimination is not expressly outlawed by statute in either country but both have seen caste discrimination claims brought under existing law, first in the UK under the Equality Act 2010 as a form of race/ethnic origins discrimination and more recently in the US where claimants are arguing that caste is already covered by federal and state civil rights legislation under existing characteristics including race, ancestry, national origin and religion. In both countries, legal developments have been driven by activists, NGOs, lawyers and academics working together to co-produce research and share knowledge and expertise on legal arguments and strategy. This paper discusses current legal developments in the recognition of caste discrimination in US and UK law. It highlights the different contexts in which discrimination and equality law has developed in each country and their correspondingly different conceptual and legal approaches, and it addresses the backlash against the legal regulation of caste discrimination which is similar in both countries. The paper is co-authored by legal experts who have been closely involved with caste issues in both countries.

Presentation

In person

132 Understanding and Combating Fathers' Experiences of Discrimination

Manisha Mathews

University of Birmingham, Birmingham, United Kingdom

Stream or current topic

Equality and human rights

Abstract

Fathers are a marginalised sub-group within men who experience discrimination when attempting to be more involved in childcare. In England & Wales, employment law treats fathers as lesser than mothers by providing fathers with limited leave entitlements to firmly establish their position in the home. As a consequence, the perception of

fathers as secondary to mothers in employment law has partly influenced the workplace culture and the court system to perpetuate the stigmatisation of men in caring roles. My paper largely undertakes a secondary data analysis of the surrounding institutional reports, government publications, journal articles and books in order to firstly argue that the lesser treatment of fathers should be more accurately defined as paternity discrimination. Secondly, my paper will discuss how the specific discriminatory practices directed against fathers on the basis of their gender and parenting status are not sufficiently addressed under equality law. Mothers are afforded specific legal protection under the protected characteristic of “pregnancy and maternity” under the Equality Act 2010. However, fathers in the court system have continued to unsuccessfully combat the discrimination that they experience through reliance upon “sex” as a protected characteristic under the Equality Act 2010. My paper will ultimately conclude that “paternity” needs to be included as a protected characteristic under the Equality Act 2010 and a ground of discrimination under the Human Rights Act 1998. If paternity discrimination is not adequately recognised under important pieces of equality law in the United Kingdom, fathers will struggle to actively participate in childcare.

Presentation

Virtual via Microsoft Teams

464 Trust, Human Rights and the Right to Health of Travelling communities

Erin Thomas

Cardiff University, Cardiff, United Kingdom

Stream or current topic

Equality and human rights

Abstract

Religious, cultural and linguistic minorities have long-faced discrimination relating to their distinct identity. One such community are Gypsies and Travellers, an 'invisible' ethnic minority group in academic and policy-making discourse. Of course, this issue of 'visibility' is ironic. The 'invisibility' of Travellers in an intellectual and policy space contrasts with their extremely high 'visibility' in the media, for example accusations of 'aggressive begging' on the streets, where they become all too visible, and nearly always in a negative and prejudiced light.

Travellers in the UK continue to experience significant barriers to accessing healthcare. Challenges, such as Covid-19, Brexit, and new legislation targeted at Travelling communities are exacerbating long-standing challenges, however, studies addressing these health inequalities have seldom had widescale impact. My work explores these barriers, considering ways in which they might be resolved in order to make Travellers more visible, within the legal, academic and policy context.

Longstanding stigmatisation of the Travelling community has led to a lack of trust between Travellers and mainstream health services. The sense of fear and distrust will be explored, considering how trust has potentially hindered the realisation of human rights in Travelling communities, with reference to the right to health. The right to health purports to prohibit and eliminate racial discrimination in all its forms, [guaranteeing] the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law. To what extent has this right been forgotten about, or altogether abandoned, when it comes to Travelling communities?

Presentation

In person

Comedy Controversies 1

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU309

Stream Comedy controversies - humour and free speech

80 Trade mark law in need of recalibration to facilitate trade mark parodies and other artistic expressions.

Sabine Jacques

University of East Anglia, Norwich, United Kingdom

Stream or current topic

Comedy controversies - humour and free speech

Abstract

The trade mark system has evolved towards granting increasing protection to trade mark holders on both sides of the pond. If the most recent trade mark EU Directive made an attempt at redefining the scope of protection of well-known marks through the recalibration of infringement tests and the commitment in recital 27 to ensure that the application of trade mark law does not unreasonably prejudice other fundamental freedoms, the reality remains that trade mark owners often control uses of signs ways which stifle freedom of expression and creativity. Where should the balance be struck? Should any commercial use render a use for humoristic or artistic purpose within the remit of the trade mark right-holder's control or are there instances whereby trade mark interests should be set aside to facilitate these expressions? The wheels of change are in motion. In the US the recent *VIP Products LLC v. Jack Daniel's Properties, Inc.*, No. 18-16012 (9th Cir. 2020) in relation to a dog toy replicating the trade dress of the Budweiser beer bottle and taking the mickey of its trade mark proposes to expand the Rogers test outside artistic uses to commercial expressions. Concomitantly, EU trade mark owners have increasingly been successful in dilution claims outside any commercial context setting the wheels in motion towards accrued protection for trade mark holders. By adopting a comparative analysis, this paper evaluates the scope available for humoristic expressions reproducing protected signs which, themselves, have become important cultural symbols.

Presentation

In person

454 Interpreting Humour in Court

Alberto Godioli, Jennifer Young

University of Groningen, Groningen, Netherlands

Stream or current topic

Comedy controversies - humour and free speech

Abstract

This paper will present some preliminary findings from the 'Humour in Court' project (funded by the Dutch Research Council, 2022-2027). The project consists of an interdisciplinary analysis of 400+ humour-related cases from the European Court of Human Rights and domestic courts in France, the United Kingdom and the Netherlands. Building on insights from linguistics, semiotics and literary theory, the project aims to set the basis for a more consistent, fairer treatment of humorous material in courts of law, with special regard to cases revolving around freedom of expression and its limits. In addition to providing an overview of the project's corpus and methodology, our presentation will offer concrete examples of how humanities-based research can help courts tackle the interpretive challenges posed by humour in free speech adjudication. Particular attention will be paid to the importance of contextual factors and to theoretical issues concerning the 'reasonable reader' in humour-related jurisprudence.

Presentation

In person

99 Humour as an online safety issue

Ariadna Matamoros-Fernandez, Louisa Bartolo, Luke Troynar

QUT, Brisbane, Australia

Stream or current topic

Comedy controversies - humour and free speech

Abstract

The policies and content moderation processes of digital platforms are currently not well equipped to recognise the harms derived from humour, nor to distinguish it from other forms of expression – decisions that are always relative to specific cultural contexts and complex due to humour's inherently ambiguous nature. There is the risk, therefore, that content moderation practices may result in the removal of important critical or harmless humour and/or fail to effectively moderate humour that sows division and hate. The challenge of moderating humour is exacerbated by the reluctance of tech companies to limit the flow of highly engaging and profitable controversial humorous content, such as viral videos trading in racist stereotypes.

This paper makes a case for addressing humour as an online safety issue so that social media platforms can include it in their risk assessments and harm mitigation strategies. We take the 'online safety' regulation debate, especially as it is taking place in the UK and the European Union, as an opportunity to reconsider how and when humour targeted at historically marginalised groups can cause harm. Drawing on sociolegal literature, we argue that in their online safety efforts, platforms should address lawful humour targeted at historically marginalised groups because it can cause individual harm via its cumulative effects and contribute to broader social harms. We also demonstrate how principles and concepts from critical humour studies and Feminist Standpoint Theory can help platforms assess the differential impacts of humour.

Presentation

In person

449 Offensive jokes as performance: Do intentions matter?

Eleni Kapogianni¹, Chi-Hé Elder², Ibi Reichl¹

¹University of Kent, Canterbury, United Kingdom. ²University of East Anglia, Norwich, United Kingdom

Stream or current topic

Comedy controversies - humour and free speech

Abstract

This paper examines explicitly offensive stand-up comedy jokes, with the aim of distinguishing their various effects within and beyond the comedic performance. The divisive discourse regarding the limits of comedy is taking place both off-stage and on-stage: comedians like Jimmy Carr and Ricky Gervais use jokes that target sensitive characteristics (race, disability, gender identity etc.) with the ostensible goal of proving that no social group or topic should be “off limits”, while taking a stance against recent calls for a comedic tradition that does not perpetuate discriminatory stereotypes (Perez 2013).

A matter of frequent debate is whether or not the “true” beliefs and intentions of comedians need to be considered when they are held publicly (and legally) accountable for the content of their jokes. Taking an interactional pragmatic approach to this debate, we begin by clarifying the following important distinctions:

- (a) the explicit target (“butt”) of the joke versus its rhetorical target (Kramer 2011)
- (b) the performer versus the comedic persona
- (c) the joke within the comedic performance versus the public sphere

We argue that jokes have a life-cycle which expands beyond their original performance and are thus able to carry offence outside the context of their production. Even though it is important to examine the birth and original context of an offensive joke, it is equally important to consider the issue of comedian accountability when it comes to producing jokes that are bound to enter the public sphere, given the modern format of video-recorded and social media-covered comedy sets.

Presentation

In person

Exploring Legal Borderlands: Empirically Interrogating Legal Borderlands: Probing Entangled Spaces, Theories and Legalities - Part 2

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU310

Stream Exploring legal borderlands

888 The law of the resource frontier

Laura Knoepfel

basleradvokat:innen, Basel, Switzerland

Stream or current topic

Exploring legal borderlands

Abstract

Anna Tsing, an anthropologist, discusses the frontier as “a travelling theory, a foreign form requiring translation” in her book on the making of a resource frontier in the rainforests of Indonesia (Anna Tsing, *An Ethnography of Global Connection* (Princeton University Press 2005, p. 31). Drawing on ethnographic fieldwork in the coal mining region of Northern Colombia, this paper examines one, albeit bi-directional mode of translation of a resource frontier. Firstly, the making of a resource frontier involves translating legal imaginaries of development and progress into the tangible elements of a coal mine, the pit, lorries, transport infrastructure and water supply. Secondly, the reality of the resource frontier, including its violence and disruptions, has led to its (anew) translation into legal imaginaries in the Global North, this time, however, in transnational laws on corporate social responsibility in global value chains. To analyse these modes of translation between the legal and the non-legal of the resource frontier, we require a conceptual (epistemological) translation that combines legal methods and theories with an understanding of the conditions, effects, and negotiations of responsibilities on the physical resource frontier. These translations, which are both empirical and conceptual, demonstrate the utility of the concept of legal borderlands for analysis.

Presentation

In person

696 Legal consciousness at the borderlands of legal orders: A case study of British Muslim women and marriage practices

Harsimran Kalra

King's College London, London, United Kingdom

Stream or current topic

Exploring legal borderlands

Abstract

Within the context of migration and legal transplants, there is a need for legal consciousness studies to account for legal pluralism, not only as a state of affairs, but as a means of understanding and doing law. Notably, within the field

of legal pluralism there has been a recognition of the value of adopting legal pluralism as an analytical frame. Scholars have observed the emergence of interlegality and the adoption of rules and frames of meaning making across legal orders. Yet, legal consciousness scholarship has advanced without much recognition of the realities of legal plurality and findings within that literature. Overcoming the lacunae, recent work indicates that alternative orders can act as impediments to legal compliance and lead to legal alienation; or alternatively that these can advance legal consciousness.

The paper argues that the interaction across legal borderlands is more complex. Relying on data on marriage choices of Muslim women in England, where nikah-unions are not recognized as marriage in law, I will examine how laws are redefined by individuals within the social field. Challenging monist dogmas supported by attitudinal approaches to legal consciousness, the paper shows that among British Muslims, marital statuses are not a product of a preference between legal orders. At the borderlands, the meaning of social arrangements and laws themselves, is understood through the lens of the alternative legal orders. Alternative legal orders offer an additional means of understanding legal rules, which are not merely adopted but adapted to each other.

Presentation

In person

678 The centres and margins of transnational law: potential developments and methodological challenges

Florian Grisel

University of Oxford, Oxford, United Kingdom

Stream or current topic

Exploring legal borderlands

Abstract

This paper challenges the dominant socio-legal focus on the nation-state by placing emphasis on its margins. Based on a review of the vibrant scholarship in the socio-legal literature, the paper sketches the features of social facts that can be found in the interstices of national legal systems and professions. Though these facts are marginalized from the perspective of these systems and professions, their role is no less real in the global arena, in whose centres they are situated. The study of these facts raises methodological questions that this paper seeks to address. By attempting to shift the research focus from one object to another, in particular, the paper casts light on methodological debates concerning the need to define research categories on a preliminary basis.

Presentation

In person

Legal professions 2

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU318

Stream Lawyers and legal professions

168 Civil Justice and Trauma-informed Lawyering in the Context of Sexual Violence

Nikki Godden-Rasul¹, Clare Wiper²

¹Newcastle University, Newcastle, United Kingdom. ²Northumbria University, Newcastle, United Kingdom

Stream or current topic

Lawyers and legal professions

Abstract

Over the last decade there has been an increase in civil claims for sexual violence, primarily against institutions for negligence or vicarious liability for intentional torts to the person. Many of these are historic cases of child sexual abuse and have been the subject of the seven-year long Independent Inquiry into Child Sexual Abuse, but others involve abuse of adults and are against institutions such as care homes and police forces, or against high-profile wealthy perpetrators. From survivors' perspectives, the few studies which have been undertaken show that a particular benefit of the civil legal system compared to the criminal legal system is that they are more likely to feel believed, listened to and treated with respect, primarily because they have legal representation. However, lawyers are likely to be first and foremost personal injury lawyers working in a market that increasingly profits from civil claims for sexual violence. Therefore, whether they have appropriate knowledge of sexual violence and the varying impacts on survivors can be questioned. In particular, 'trauma-informed' approaches have been gaining traction in many fields, within and outside of law. In relation to sexual violence there have been calls for more trauma-informed work, but the Report of the Independent Inquiry into Child Sexual Abuse (2022) makes no mention of trauma-informed lawyering. Drawing on interviews with lawyers working in this area, this paper explores the extent to which trauma-informed work is taking place in civil cases for sexual violence and what trauma-informed practices can look like.

Presentation

In person

829 Mexican Lawyers and Chinese Capital: Building Legal Capacity Across Distant Jurisdictions

Marco Germanò

Peking University, Beijing, China. University of São Paulo, São Paulo, Brazil

Stream or current topic

Lawyers and legal professions

Abstract

The last decades of economic globalization have been particularly intense for the Mexican legal profession. After a period of profound transformation during the 1990s, Mexican lawyers and law firms are now faced by a notable increase in interactions with Chinese parties, as Chinese capital is pouring into the country through growing investment and trade flows. If at first glance this new meeting point for the local legal profession could be seen as yet another facet of globalization, a more careful analysis reveals a rich field of interactions happening beyond the usual legal forms preconceived by the Global North. Thus, this research empirically analyzes the recent encounter between the Mexican legal profession and Chinese capital. In doing so, it tries to answer: (a) who are the lawyers and law firms that provide legal services (transactional and contentious) to Chinese companies operating in Mexico; (b) how and under what legal terms these lawyers and law firms have supported Chinese capital in practice, especially in dispute resolution and the USMCA automobile industry; and (c) how public and private agents from both countries have tried to create greater legal capacity between the two jurisdictions in recent years. Methodologically, this research employs mixed methods and is informed by publicly available documents, contracts between Chinese and Mexican parties, and semi-structured interviews with relevant stakeholders. It is also based on fieldwork carried out in Mexico City between September and December 2022 with the support of the Center for Chinese-Mexican Studies (CECHIMEX) of the UNAM Faculty of Economics.

Presentation

Virtual via Microsoft Teams

849 Legal technologies and legal futures: scoping the legal profession in Northern Ireland:

Ciarán O'Kelly, John Morison

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Lawyers and legal professions

Abstract

Legal Technologies, including all the ways in which digital technology can support legal practice broadly defined, are fundamentally transforming the practice of law. While there is growing information about how legal tech is deployed in Great Britain and in the Republic of Ireland, information about the reach and nature of legal tech adoption in Northern Ireland is sparse. Drawing on interviews with solicitors, this paper seeks to remedy this gap by giving an account of the take-up of and attitudes towards legal technologies among practitioners in Northern Ireland.

We are particularly interested in how perceptions of legal technologies inform attitudes towards the profession, specifically in Northern Ireland's bifurcated legal services industry. What future for single person or small practices in a tech-infused environment? How do practitioners view client engagement in the context of and through technology?

Presentation

In person

242 Defence Counsel "Maestro"

Agata Fijalkowski

Leeds Beckett, Leeds, United Kingdom

Stream or current topic

Lawyers and legal professions

Abstract

The SLISA-funded project 'Defence Counsel "Maestro"' will identify what shapes a brilliant defence strategy. It will explore the strategies that a defence lawyer adopts in high-profile cases. Cases that are driven by attempts to seek justice for crimes of an egregious nature are noteworthy, making them high-profile. The tactics deployed by defence lawyers in such cases are a matter of political and social justice in relation to the question of accountability. At the same time, there are lessons to be learned going forward in cases that might not be considered high-profile but are equally important for justice. Most literature in international criminal justice and law, for example, has considered the victim; the prosecutor; or the perpetrators. Yet, the defence lawyer as a key protagonist is largely ignored. This project aims to rectify this gap. It will focus on the Polish defence lawyer Stanisław Hejmowski (1900-1969). Hejmowski made a mark at the national war crimes trials of 1946-1948 and later in the high-profile trials of 1956. This project will involve access to Hejmowski's recently discovered private personal archive and case notes, which have never been revealed in the public domain. These artefacts will be used to inform a better understanding about the defence lawyer and the strategies that are used in high-profile cases.

Presentation

In person

Conspiracy theories and pseudolaw 2

09:00 - 10:30 Wednesday, 5th April, 2023

Location MU319

Stream Conspiracy theories and the rise of pseudo-law

Jack Head

38 Method and Madness: How to Make Sense of Pseudolegal Nonsense

Stephen Young¹, Joe MacIntyre², Harry Hobbs³

¹University of Otago, Dunedin, New Zealand. ²University of South Australia, Adelaide, Australia. ³University of Technology Sydney, Sydney, Australia

Stream or current topic

Conspiracy theories and the rise of pseudo-law

Abstract

Courts have described pseudolegal argumentation as 'obvious nonsense', legal 'gibberish', and 'gobbledygook'. Building on our previous research, in this paper we provide an overview of the methods that have been used to make sense of pseudolegal nonsense. There have been doctrinal approaches, which examine reported cases to understand the common arguments and patterns that arise. These approaches often provide some historical foundation to explain where and how these arguments have emerged. Those methods are complemented by socio-legal or empirical approaches that include media reports, case studies, interviews, and (auto)ethnographic reports. Alongside histories or historical methods are materialist accounts that seek to theorise the growth of these movements and their pseudolegal manifestations as reactions to globalization, neoliberalism or unregulated financialization. Other theoretical approaches look at the formal uses of pseudolaw and claimants' desires for justice as well as the function of legal systems in producing radical Others to establish boundaries of 'acceptable' law. The desire for justice, which occurs through a misdirected medium, has inspired psychoanalytic approaches. Examining how claimants mis-use law to construct counter-narratives of 'truth', meaning and self-identity are analysable in terms of post-structural discourses, performativity or narrativity. And given the proliferation of pseudolaw on social media, YouTube, and internet platforms the former approaches can mix with multiple methods in the digital humanities. In providing this typology, we self-consciously reflect upon and performatively demonstrate how scholars implicitly and explicitly use methodology to legitimate themselves and construct their subject Others to make sense of complex phenomenon.

Presentation

Virtual via Microsoft Teams

495 Is „COVID-19” negationism” really a Conspiracy Theory? „Anti-Conspirationism” as a discourse of structural necessity.

Arkadiusz Barut

Humaniats University, Sosnowiec, Poland

Stream or current topic

Conspiracy theories and the rise of pseudo-law

Abstract

The category of conspiracy theory is very popular in both political and scholar discourse.

The main argument of those who adopt this category (e.g. Karl Popper) is the assertion that although conspiracies do happen, they cannot have a decisive impact on social phenomena, because social processes depend on a huge number of factors independent of individuals.

From this, the conclusion is drawn that any explanation that assumes that a given event was influenced by the action of some group of people who wanted to keep it secret, and its causes or effects are different than those assumed in the majority of statements formulated in the political or scientific discourse is a "conspiracy theory" that should not be discussed.

However, the statement about the influence of individuals acting in secret on social phenomena is not the same as the statement that a given event is exclusively or even to a large extent the result of their actions. In any case, criticism towards restrictions on subjective rights justified by the COVID-19 pandemic or climate change cannot be interpreted in this way.

So the question is what causes popularity of „Anti-Conspirationism“. In my opinion, it is too far-reaching identification with the current institutional and ideological state of Western societies. In particular, certain phenomena are considered as scientifically proven, and at the same time they are excluded from scientific criticism due to the negative social effects that criticism could bring (I call it a discourse of "structural necessity").

Presentation

Virtual via Microsoft Teams

133 Pseudo-law: conformist expression of a rebellious agenda. A case study from Germany

Anna Löbbert

Centre for Socio-Legal Studies, University of Oxford, Oxford, United Kingdom

Stream or current topic

Conspiracy theories and the rise of pseudo-law

Abstract

In the last decades, countries across the globe have seen the rise of so-called sovereigntist movements. These categorically reject claims to authority and legitimacy by the state. Using the German movement as a case study, I investigate groups that view the state as factually non-existent based on an understanding of law that is entirely different from mainstream legal discourse.

I undertook one year of fieldwork for my doctoral research. I interviewed judges and sovereigntists, and did participant observation in courts and online. I analysed what makes law an attractive framing for conspiracy theories: How and why do people enter such an alternative community of knowledge? What societal conditions enable its growth? How do people make sense of their experience of two mutually exclusive legal worldviews clashing?

Sovereigntists constantly refer to legal formalism as a compelling justifying logic for their actions – this is simply what the law *is*, regardless of personal or moral preferences. However, what principally made sovereigntist law plausible to my interlocutors, was that it coincided with their experience of the legal system and how they understood society. In

deciding on strategies to be used in a court hearing, they put greater emphasis on the 'energy' or 'feel' of proposed solutions, than on whether others had used them successfully. I argue that legal language is used to make permissible otherwise taboo or politically unavailing sentiments. Conspiratorial legal argument allows people to see the world as they hope (or fear) it is, and to "lawfully" act on that understanding.

Presentation

In person

937 Conspiracy! Litigants in Person v the legal profession

Kate Leader

York University, York, United Kingdom

Stream or current topic

Conspiracy theories and the rise of pseudo-law

Abstract

How do some Litigants in Person come to be conspiracists? While it is widely held that some LiPs hold eccentric beliefs, there has been little attempt to understand how and why LiPs may come to acquire or articulate these beliefs. This is partly because it is easier to dismiss such individuals as "cranks" or "nutters". Alternatively, because such individuals form so small a percentage of LiPs, too much attention placed on them risks misrepresenting other LiPs. Both explanations, however, share the presumption that such cases involve pathological individuals who happen to be involved in legal proceedings. In this paper, I take a different approach by arguing that conspiracist behaviours and beliefs are affected, reproduced and created by contact with the legal proceedings. Drawing on my oral history interviewing of litigants in person, this paper traces the degree to which negative encounters with legal professionals affect LiP beliefs about the law, lawyers and the courts. Negative encounters with the law lead many LiPs to become critics of a legal system they feel fails to adequately perform and leads beyond this, for some, to the development or elaboration of conspiracist ideas to explain the failures they experience.

Presentation

In person

Family Law and Policy 4

11:00 - 12:30 Wednesday, 5th April, 2023

Location MD007

Stream Family law and policy

277 The 'invisible' first mother in family law and popular fiction: rights, redress, and myths of relinquishment

ALICE DIVER

QUB, BELFAST, United Kingdom

Stream or current topic

Family law and policy

Abstract

Maternal invisibility is a common trope of both adoption law and literary fiction. This paper looks mainly to the recent findings of the England/Wales Joint Human Rights Parliamentary Committee (2022) on The Violation of Family Life: Adoption of Children of Unmarried Women 1949–1976, which confirm that unwed motherhood in this era required a permanent walling away – if not a lifetime of silent sham[ing]. The testimonies of mothers and adoptees evidence egregious violations that challenge the notion of family life rights. Ill-treatment by medical staff (during, before, and after labour and delivery) appears near-normative as does non-consensual infant relinquishment, highlighting how such ‘social working’ easily negated blood-ties, maternal dignity, and autonomy. A state apology has yet to be made, in sharp contrast to some other jurisdictions where unmarried mothers and infants were similarly ill-treated. As such, key details of the submissions echo many of the darker plot points of classic and modern works of fiction: in addition to the need for maternal invisibility (*Jane Eyre*, *An Episode of Sparrows*), there is torture and degrading treatment (*The Handmaid’s Tale*), memory-altering drugs (*The Giver*), and dystopian altruistic anonymity (*Logan’s Run*, *Never Let Me Go*) all of which ensured compliance and a good supply of ‘adoptable children.’ Until, indeed unless, a state apology is made to those affected by harsh adoption processes within the UK, no progress can be made towards determining or providing some form of redress for intergenerational harms and sharp othering.

Presentation

In person

446 Post-adoption contact in Northern Ireland: findings from a socio-legal study with birth parents and lawyers

Sarah Hansen

Queen's University, Belfast, United Kingdom

Stream or current topic

Family law and policy

Abstract

After adoption there may be contact between an adopted person and their birth family, in particular their birth parents. In Northern Ireland there would seem to be a higher proportion of such contact occurring ‘directly’ or face-to-face rather than ‘indirectly’ for example through cards or photographs. The plans for such contact are often formulated during the court process leading to the child being adopted.

This paper explores the findings from a doctoral study which involved qualitative interviews with five birth parents and twelve lawyers in Northern Ireland about post-adoption contact. It considers the continuing sense of parenthood experienced by birth parents and how that is treated in the legal processes leading to and after adoption; what participation means in the context of forming post-adoption contact plans and the factors which seem to influence plans in Northern Ireland.

Presentation

In person

734 Surrogacy Law and the 'Parental Paradigm'

Julie McCandless

Kent Law School, Canterbury, United Kingdom

Stream or current topic

Family law and policy

Abstract

This paper offers an evaluation of the Law Commissions' recommendations relating to legal parenthood in Building Families Thought Surrogacy: A New Law (2018) in order to enlarge discussions around the role of law in surrogacy. If implemented, these recommendations would mean that an exception to the long-standing automatic presumption of legal status for women and persons who give birth would exist in UK law for the first time.

I locate my evaluation in a wider analysis of the role of parenthood in surrogacy law, arguing that whatever the policy approach to surrogacy arrangements, legal parenthood is used as a governance tool. Termining this the 'parental paradigm', I argue that the either/or model of legal parenthood underpins the legal work of other parts of the surrogacy arrangement. So, for example, while a surrogacy agreement may not be legally enforceable per se, the position a legal jurisdiction takes on the attribution of (exclusive) parental status, is, in effect, the means of enforcing (or not) the agreement.

I use my evaluation of the proposals to illustrate other consequences and limitations of the either/or 'parental paradigm'. I suggest that the law needs to move away from exclusive parental status and take seriously the possibility of the surrogate and intended parent(s) simultaneously having status at birth. This would a) better acknowledge the collaborative process that surrogacy is b) better protect and safeguard the parties involved and c) better allow legal proceedings following the birth to focus on practical matters and child welfare.

Presentation

In person

558 In Search Of Logic: Deconstructing The Prohibition On Commercial Surrogacy

Debra Wilson

University of Canterbury, Christchurch, New Zealand

Stream or current topic

Abstract

Many Commonwealth jurisdictions create a clear distinction between commercial surrogacy (which is prohibited), and altruistic surrogacy (which is permitted or regulated). Early Parliamentary debates often provided little or no rationale for this distinction except for the characterisation of commercial surrogacy as evil and exploitative and altruistic surrogacy as noble and selfless. With several jurisdictions now considering surrogacy law reform, it is arguable that what might have been a clear distinction has now become so blurred in practice that it is now approaching non-existence. There is value, therefore, in revisiting this distinction and asking whether its continued existence is necessary and desirable, or whether it is out of focus with modern surrogacy practices.

This paper will identify and explore three elements of commercial surrogacy that are often raised to distinguish it from altruistic surrogacy and to justify its prohibition:

1. The payment of money (the profit distinction);
2. The use of profit-making agencies and surrogacy contracts (the process distinction);
3. The potential for exploitation of women and the commodification of the child (the morality distinction).

It will ask whether these elements (either individually or in combination) do, in fact, create a clear distinction between commercial surrogacy and altruistic surrogacy, and if so whether this distinction is sufficient to justify the ongoing difference in approach to regulation.

Presentation

In person

Transition, Borders and Belonging in Law and Literature

11:00 - 12:30 Wednesday, 5th April, 2023

Location MD021

Stream Law, literature and the humanities

29 “He shall find no rest”: A transitional justice analysis to the legal, political and poetic mechanisms implemented after the sabra and Shatila massacre

Lior Weinstein

Hebrew University, Jerusalem, Israel

Stream or current topic

Law, literature and the humanities

Abstract

The Sabra and Shatila massacre, its' memory, and legal consequences still play a significant role in the Israeli-Palestinian conflict and led to many legal, social, and artistic reactions throughout the years. This paper aims to examine many of those significant responses comprehensively, for the first time, from the paradigm of transitional justice, using archives and secret documents that were unavailable to the public until shortly. I argue for the existence of a transitional gap – lack of successful mechanisms.

After doing so, I offer to examine two predominant poems, by Dalia Ravikovitch, from the anti-war movement, and examine the imagined pre-transitional justice imposed there, as an oppositional space to the institutional actions, utilizing her symbolic fortune as an Israeli poet and using the witness function, in order to bridge the narratives of the perpetrator and the victims of the massacre. By doing so I ask to engage critical theory, based on the ideas of Benjamin and Derrida of State violence and its ghostly aspects, and seek to address the concepts of criminality versus neutrality.

I thereby show, that even mechanisms implemented years after the poems and the national responses, failed in doing so. Moreover, the years has shown that many of the positions in those poems were correct, and offer a valuable addition to the discourse about the massacre, and TJ in the context of Israel-Palestine and the role of Law and Literature within it.

Presentation

Virtual via Microsoft Teams

642 Figuring the migrant refugee in law, literature and art: a new kind of ghost story?

David Eric Gurnham

University of Southampton School of Law, Southampton, United Kingdom

Stream or current topic

Law, literature and the humanities

Abstract

If the recent history of refugee migration and legal responses to it constitutes a story, then what kind of story is this? The *bildungsroman* genre of fiction (the 'formation' or 'coming of age' story) and its themes of a marginalized individual's journey towards final self-realisation and acceptance in a nation state is often thought of as a suitable basis for understanding the refugee's claim for legal protection: free from the dehumanizing implications of metaphors of overwhelming tides, invasions, hordes associated with 'border control' rhetoric, though not without its own normative demands for narrator integrity and plausibility. However, policy developments including the Nationality and Borders Act 2022 have undermined this idea by insisting that migrant refugees who reach the UK on their own steam via irregular routes and who arrive illegally in 'little boats' should not in future have any cause to hope for acceptance in the sense celebrated in *bildungsroman*. These policy developments are significant enough to force us to look to different literary forms and conventions to understand the figure the migrant refugee before the law. This paper proposes we look instead to the character of the *ghost*: who traditionally issues an unsettling reminder about some injustice, imposing a sense of duty that calls one to action but also inspires dread and consequent efforts to make it

disappear and to retreat to where it came from. This paper considers these qualities as a basis for better understanding the figuring of the migrant refugee in relevant law, literature and art.

Presentation

In person

751 Towards an Impossible Polis: Sea-level Rise and State Continuity

Alex Green

University of York, York, United Kingdom

Stream or current topic

Law, literature and the humanities

Abstract

Human-cause climate change threatens many vulnerable communities. The existential position of Small Island Developing States (SIDS) is but one pressing example. SIDS face a unique threat from rising sea-levels, encompassing not only the shrinking of their land and maritime boundaries but also, within the not too distant future, the possibility of complete submergence. The traditional interpretation of the law that governs state continuity is, as I have argued elsewhere, peculiarly austere. On this view, States cannot exist without land-based territory, implying that SIDS are doomed to legal as well as physical extinction, with all the concomitant dangers that such formal dissolution may bring, including, importantly, the statelessness of their erstwhile populations. In this paper, I attack this austere interpretation of international law. In particular, I criticise it for lacking both existential and, importantly, *jurisdictional* imagination. My argument uses China Miéville's award-winning 'weird fiction' novel, *The City & The City*, as an analytical lens. Set within a geographical space occupied by Beszel and Ul Qoma, two fictional cities that exist both side-by-side and on top of one another, this text provokes us to ask: if we can imagine two cities that occupy the same space, why not imagine a State that exists, notwithstanding the total submergence of the landmass it once occupied? I contend that international law should make greater space for the existence and status of political communities that do not comply with its standard conceptions of statehood. The pressing dangers of human-caused climate change demand no less.

Presentation

In person

855 The Importance of Narrativity in Law - An Eastern European Perspective

Marta Dubowska

Jagiellonian University, Krakow, Poland

Stream or current topic

Law, literature and the humanities

Abstract

The Law and Literature movement (L&L), amongst its other postulates, emphasizes the inherent narrative character of law. The importance of how narratives are built on all levels of creation and application of law, and at the same time how narratives about law are constructed, cannot be overstated.

Narrativism promotes perspectival thinking and analysis. For example, fundamental legal theories (positivism, iusnaturalism etc.) are not perceived as objective dogmas, but rather as concepts explaining the nature of law according to a certain theoretical perspective. The role of a narrative is to combine contrary perspectives into one large but convincing story - in that the narrativistic approach is a meta-theoretical one.

For several reasons that will be further analyzed, the movement has been apprehended in Eastern European countries in its mostly esthetic incarnation, that is law IN literature. The humanistic aspect of legal education, the rhetoric and narrative studies are completely foregone. Ironically, hermetic textual approach, typical for Eastern European academia, rejects literary methods and the notion that law and literature are inextricably linked. There is no space for teaching legal writing, no encouragement for narrative perspectivism and skepticism, not to mention acknowledging which social phenomena or values ground portrayals of law in popular culture.

This paper aims to analyze the misapprehensions of the L&L in Polish academia and propose remedies on how to genuinely apply the L&L methodology in Eastern European legal education systems.

Presentation

In person

Banking and Finance: Centralised and Decentralised Finance - Challenges or Opportunities to Traditional Finance

11:00 - 12:30 Wednesday, 5th April, 2023

Location MD026

Stream Banking and finance

918 Cryptocurrencies - A Regulatory Response

Deirdre Norris

University College Dublin, Dublin, Ireland

Stream or current topic

Banking and finance

Abstract

The creation of bitcoin in 2009, the first cryptocurrency, was heralded as revolutionary by some, but widely criticised by many, especially in the financial services sector, as a 'fad' or gimmick. Its ability to operate without the need for third party oversight or Government intervention was an attractive prospect, especially post the Global Financial Crises where trust in Governments and banks had been damaged. Yet its connection with scandals and use for illegal purposes (Silk Road, Mt Gox, FTX) placed it firmly on many regulators radar. Its use of consensus, although not new, was novel in conjunction with protocols, algorithmic authority and the blockchain, emphasised the creator's desire to remain outside of any state regulatory framework. This caused a conundrum for central banks whose main focus is financial stability and prudential supervision and many adopted a wait and see approach. Initially cryptocurrencies were considered insignificant relative to the size of the global financial market but by late 2021 their market cap reached just over \$3 trillion, still small compared to the global bond market (\$119 trillion) and global equity market (\$120 trillion) but the volatility in the market was causing concern.

This paper explores how regulators respond to a disruptor - cryptocurrencies - and how cryptocurrencies are impacting the emergence of this possibly new regulatory framework, while also discussing the clash of cultures between 'crypto enthusiasts' and those in charge of maintaining financial stability.

Presentation

In person

396 The United Kingdom's transition into Open Finance as a Path for Financial Inclusion: A Role for Reciprocity?

Clara Martins Pereira

Durham Law School, Durham, United Kingdom

Stream or current topic

Banking and finance

Abstract

Laws and legal institutions across the globe have long normalized, and indeed reinforced, an unequal relationship between financial institutions and consumers. As a result, access to finance remains deeply unequal and consumers remain vulnerable to increasingly opaque forms of discrimination and exclusion.

Open Finance—the revolutionary idea that the data supplied by and created on behalf of the consumers of financial products and services are owned by them—could threaten this status quo. As the UK begins its transition from Open Banking into Open Finance, it has a golden opportunity to take a decisive step towards the democratization of finance.

At a time when the UK Financial Conduct Authority is working alongside the UK Government to create a new Open Finance Framework, my paper investigates how such a framework can help consumers take back power over their data—and use it to reshape their relationship with financial service providers. Specifically, I investigate whether a principle of reciprocity—whereby consumers can take ownership of personal data held by large technology firms—can help unlock access to financial products and services by those who have been historically excluded from finance.

My paper builds on discussions held at a Policy Sprint recently undertaken by the FCA where industry members gathered to explore key considerations for a regulatory framework for Open Finance. Ultimately, I propose that the new UK Open Finance framework should be underpinned by the staggered implementation of a reciprocity principle partly inspired by Australia's regulatory approach to Open Data.

Presentation

In person

898 Networked Governance and Compliance Monitoring in the FinTech Industry

Aleksandra Jordanoska

King's College London, London, United Kingdom

Stream or current topic

Banking and finance

Abstract

Regulatory regimes are often fragmented, multi-sourced, and 'decentred' in that governing is also undertaken outside of the State. 'Regulatory' authority may therefore be shared between public and private actors within networked governance systems where interdependent organisations engage in governance-related interactions. This paper conceptualises the networked governance systems that develop in industries premised on disruptive technological innovation. In particular, the paper maps out the actors that exert regulatory authority, and the tools at their disposal, in the context of mitigating regulatory risks related to financial crime in the fast-paced and innovative financial technology (FinTech) industry. It draws upon qualitative data from interviews with compliance and risk management officers in UK FinTech companies and incumbent banks. The paper discusses the hierarchy of actors, the multidirectional regulatory interactions and the exchanges of power and influence through the network that permeate the management of financial crime compliance and regulatory risks in the FinTech industry. Technological tools play a central role in this networked governance system, and the paper examines the various interactions taking place between the public (regulator) and private (different types of corporate actors) nodes in the network.

Presentation

Virtual via Microsoft Teams

Sexual offences 4

11:00 - 12:30 Wednesday, 5th April, 2023

Location MD102 Great Hall

Stream Sexual offences and offending

Sarah Bryan O'Sullivan

856 Survival sex work in Croatia: no-choice and no-control position

Marija Antić¹, Rašeljka Krnić¹, Tihana Štojs Brajković²

Stream or current topic

Sexual offences and offending

Abstract

Empirical studies show that different people engage in prostitution for different reasons, and that their agency varies significantly depending on the type of prostitution they engage in, as well as reasons and motivations for entry. Different structural factors, such as legal framework and policy context, also affect sex workers' agency. In terms of survival sex work, which is mostly street-based and often motivated by the needs related to substance abuse, studies show that people engaging in survival sex are at higher risk of victimization. In Croatian criminalized context, this vulnerability is compounded by system of repression aimed mostly at sex workers engaged in low-level sex work, and lack of sex work-specific policies. This paper focuses on experiences of people who engage in survival sex work in Croatia and draws on research conducted in the period 2020-2022 for the larger project "Regulation of prostitution in Croatia". In our sample, people who engage in survival sex work were mainly opioid addicts, exchanging sex services for money or drugs. In total, 10 interviews were conducted in Split and Rijeka. Preliminary analysis showed that most participants who engage in survival sex work are completely devoid of agency, understanding their situation as a no-choice or no-control position. That lack of agency is elaborated through their experiences in 'doing' sex work, both in terms of (lack of) work and risk-related choices and in the context of systemic repression and policy disinterest.

Presentation

In person

165 Working sex: culture, criminal law and sex work; gateways or guardians of trafficking in persons in Belize and Guyana

Cherisse Francis

University of Warwick, Coventry, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

Since the early 2000s Caribbean nations transposed the Palermo Protocol to create domestic legislations with almost identical 'offences' and challenges. Recently these territories have began legislative reform questioning what can reasonably be captured by a criminal law. This paper seeks to unravel the links between culture, criminal law and Trafficking in Persons (TIP) in the Caribbean.

Presently, a range of 'sexual-economic relations' are anecdotally affiliated with TIP but un-regulated by TIP legislations. This paper will draw on two such practices; 'fichera' in Belize and 'caimoons' in Guyana. Both are 'public knowledge' but exist in a 'blind spot'; rarely discussed by the general population yet described as 'prostitution' so frequently that stakeholders are advocating for their legal regulation. Thus, there is an uncomfortable reality where policymakers admit that culture impacts whether society perceives acts and omissions as criminal but struggle with including these perspectives in legislation. Dangerously, such denials create 'victims' of migrant women or autonomous sex workers while instilling unrealistic thresholds for 'true victims'.

This paper will argue that culture is a relevant factor for TIP legislation. Using thematic analysis of semi-structured interviews from stakeholders and desktop review, it will interrogate the existence of 'fichera' and 'caimoons' to assess the extent to which they are 'gateways' to TIP requiring legal intervention. Finally, it will add to discussions about the regulation of sex-work, TIP and 'borderline' practices by drawing on approaches from jurisdictions such as the United States to suggest potential resolutions.

Presentation

In person

525 Close encounters with a third leg: including fieldwork experiences of sexual harassment as research data.

Danielle Chevalier

Leiden Law School, Leiden, Netherlands

Stream or current topic

Sexual offences and offending

Abstract

When sexual harassment is prevalent in a setting one researches through participant observation, it can progress from a conceptual topic of research to a directly experienced reality. Qualitative research conducted through ethnographic methods easily incurs situations in which researchers are susceptible to sexual harassment and violence.

Sexual harassment experienced during ethnographic fieldwork plays an important role in power dynamics both in the research field and in the academic domain, but is marginalized in academic discourse. Whereas sexual harassment appears to be widely experienced, it is not typically incorporated in the tales of the field (Hanson & Richard 2017).

This presentation argues that experiences of sexual harassment during fieldwork should be considered as potentially relevant data and analyzed as such, without reservations whether this will be deemed appropriate within a 'malestream' academic reference frame. The paper demonstrates the possible relevance of such data by building on empirical fieldwork executed as part of a larger research project on the role law plays in social interactions in diverse public space. Using the experience of sexual harassment during participant observation in the field as research data, the paper unpacks the role law plays in the moment physical sexual harassment in public space plays out. Theoretically the paper connects to discussions on sexual(-ized) harassment, intersectionality and embodied ethnography. The presentation is based on a paper currently under 'revise and resubmit'.

Presentation

In person

43 Leaving it all on the Field? Vicarious Liability for Off-the-Field Sexual Abuse by Professional Athletes

James Brown

Manchester Metropolitan University, Manchester, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

This paper analyses the appropriate scope of vicarious liability for the off-field sexual misconduct of professional athletes. Whilst the doctrine of vicarious liability has been explored extensively in the context of on-the-field acts, it has received remarkably little attention in relation to off-the-field acts. In seeking to respond to this gap in the literature, I suggest that sports clubs and governing bodies ought to be held responsible for a wide array of off-field sexual offences committed by their athlete-employees.

I focus on two particular types of injury here: sexual harm caused during initiation rituals, and the sexual abuse of women away from the locker room. In highlighting that these injuries are an inherent risk of many professional sports, this paper argues that we should not shy away from utilising various interdisciplinary sources – such as feminist theory and masculinities studies – to help inform an enterprise liability-based approach to vicarious liability. This socio-legal perspective is, I believe, likely to lead to more superior results than those provided by the current law.

Importantly, this interdisciplinary approach to vicarious liability also reveals that off-the-field sexual abuse is closely connected to one's employment as a professional athlete. Indeed, multiple risk factors unique to the sports industry suggest that it is both normatively and empirically desirable to impose vicarious liability on clubs for such behaviour. As such, the paper concludes by outlining six guiding considerations that should determine when a sports employer ought to be held responsible for the off-field sexual misconduct of their athletes.

Presentation

In person

Criminal law 12: Roundtable

11:00 - 12:30 Wednesday, 5th April, 2023

Location MD106 Minor Hall

Stream Criminal law and criminal justice

206 Cultures of Responsibility

Henrique Carvalho

University of Warwick, Coventry, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

This paper advances a cultural analysis of criminal responsibility. Within the modern social imaginary, the criminal law is intimately related to ideas of individual autonomy and justice, which scholarship suggests are best expressed through the 'capacity' form of criminal responsibility. This paper deploys insights from cultural theory to argue that, even in areas where capacity responsibility seems to be dominant, such as the law of murder, it is in fact significantly influenced by cultural factors that deny the ideas of equality and individual justice at the core of capacity, and mostly resemble forms of character, risk and dangerousness. Building on Mary Douglas's work on patterns of blaming and Raymond Williams's conception of structures of feeling, this paper proposes that criminal liability is underpinned by 'danger formations', articulations of material and symbolic factors which condition responsibility attribution and betray the abstract universality suggested by legal categories such as intention. After developing the framework for understanding danger formations as part of the cultural apparatus of criminal responsibility, the chapter applies this framework to an analysis of intention in the context(s) of murder. By looking at how the meaning of intention and murder shift in relation to different contexts and laws, this paper aims to suggest that what predominantly matters to criminal liability is the extent to which different harms, circumstances and subjectivities are culturally constructed as dangers to the security of civil order.

Presentation

In person

357 HAPPY VALLEY AND THE QUALITY OF JUSTICE

Alan Norrie

Warwick University, Coventry, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

Crime drama tells a story about the nature, the limits, and the quality of criminal justice which can illustrate its complexity and ambivalence. The first BBC series of Happy Valley is a dramatically compelling example of the genre in which gender and family commitments are linked to questions about public conduct, personal responsibility and social inequality in a tale of horrible violation. The main focus is a woman police officer who is personally invested in catching the perpetrator. The resolution through her agency is both public and private. A backdrop to violation is the violence of drugs networks and the perpetrator's deprived past, but the overall dramatic moral truth is that of vindication of the policewoman's conduct as both mother and grandmother and as law officer.

The drama is as practically unlikely as it is compelling, but it has important things to tell us about how we understand criminal justice today. It is powerfully vindictive but ambiguously so. It falls back into vindictiveness on the one side and pushes towards a sought-for validatory resolution on the other. It raises the question as to whether we should see the criminal justice system in moral terms as vindictive, vindicative, or validatory. What do these three different

terms mean, how are they linked, and how relatable to the meaning of criminal justice? The paper elaborates these terms dialectically and considers through them the quality of modern criminal justice as portrayed in Happy Valley.

Presentation

In person

443 Justice Inside Out: Individual, Community, and Restorative Justice

Amanda Wilson

University of Warwick, Coventry, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

The idea of community is central to restorative justice, yet to date, an adequate account of community in ethical terms is found wanting. This paper seeks to address this gap by providing an explanatory account of community as an ethical concept. Drawing on Plato's Republic and Freudian metapsychology, it brings into dialogue the individual and the social to advance a conception of community that is able to do justice both inside and outside the individual. Such a concept of community is both ethically real and (necessarily) ideal, a dynamic that will be further elaborated through an engagement with Jean Luc Nancy's 'inoperative community'.

Presentation

In person

103 What's law got to do with it? 'Dealing with the past', legacy case prosecutions and the court of public opinion.

Kevin Hearty

Queen's University, Belfast, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

This paper merges the literature on transitional justice, crime and punishment, and law and performance to critically examine the prosecution of Soldier F for the deaths of unarmed civil rights protestors on Bloody Sunday in Derry in January 1972. Recognising the wider socio-political climate of fundamental disagreement over the causes, consequences and nature of violent conflict in the North of Ireland some 25 years on from the Good Friday

Agreement, the paper draws on media analysis and social media coverage to suggest that opposition to proceeding with a criminal prosecution against Soldier F is primarily based on what are patently non-legal grounds. This has seen the formal criminal justice arena being displaced as the primary theatre of contest by what is often referred to as 'the court of public opinion'. By dragging the case into the more favourable environment of the 'court of public opinion', supporters of Soldier F are disrupting the underpinning logic of the criminal trial as a 'degradation ceremony'. In this new arena, military veterans, politicians and the right-leaning UK media have publicly demonstrated that they 'stand with Soldier F' as he fights his prosecution in the criminal court.

Presentation

In person

Criminal law 4

11:00 - 12:30 Wednesday, 5th April, 2023

Location MD108

Stream Criminal law and criminal justice

Kevin Brown

42 REFORMULATING HATE CRIME LAWS IN SCOTLAND: A COMPARATIVE ANALYSIS

Kirstin Beverley Hagglund

Stellenbosch University, Stellenbosch, South Africa

Stream or current topic

Criminal law and criminal justice

Abstract

It has been argued that hate crimes are different from their non-hate crime counterparts in that they cause greater harm to the victim, to the victim's group, to the extended community, and to society in general. Despite this, the newly enacted Hate Crime and Public Order (Scotland) Act of 2021 has been described as 'the most controversial' piece of legislation passed by the Scottish Parliament. Not only does the Act fail to recognise certain protected characteristics from its ambit, but the addition of 'stirring up hatred' has been described as vague and open to interpretation and, as such, has been criticised for its potential impact on freedom of expression. Considering the lack of clarity, this paper examines the concept of hate crime with a focus on the current Hate Crime and Public Order (Scotland) Act and, in particular, whether the crime of 'stirring up hatred' can be more clearly defined, including specifying in which cases it should not apply so as to preserve freedom of expression, as well as whether the current list of protected characteristics in the Act is too narrow to have sufficient application. South African law and academic opinion is consulted to establish how South Africa has dealt with hate crimes and, in particular, hate speech, whilst preserving its constitutional recognition of freedom of expression.

Presentation

In person

155 Neurodiversity, Autism and the Appropriate Adult Safeguard

Roxanna Dehaghani

Cardiff University, Cardiff, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

Neurodiverse suspects and defendants may be disadvantaged by the processes and procedures within the criminal process. Whilst these disadvantages may emerge at any point of the process, they are particularly pertinent during detention in police custody. The various processes and procedures that suspects are subjected to, in combination with the critical nature of the first stage of the criminal process (such as the investigative interview), may be destabilising or detrimental to the interests of the neurodiverse suspect. Focusing on autism, this paper examines the difficulties that autistic individuals may face and the ways in which their 'vulnerability' may emerge when engaging with the criminal process. Examining the appropriate adult – a procedural safeguard in police custody – and its implementation, this paper provides a robust analysis of the problems faced by autistic suspects, drawing upon, inter alia, empirical research. It also provides suggestions for law, policy, and practice, serving as a useful starting point to critically reflect upon the safeguarding of neurodiverse suspects.

Presentation

In person

468 Legislating at the EU Level on Hate Crime and Hate Speech: The Art of the (Im)Possible

Kevin Brown, Martin Regan

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

This presentation explores the EU Commission's proposal to add hate crime and hate speech to the list of EU Crimes under Article 83(1) TFEU. The paper examines the factors motivating the Commission's proposals including an EU funded study which has found increasing levels of hate crime and speech across the continent. It explores the likelihood that the Commission will be successful in its endeavours given sharp differences between Member States on the categories of individuals deserving of such protection, particularly when it comes to sexual minorities. Finally, the paper examines the possibilities for better protection of minorities across the EU if the Commission is successful.

Presentation

In person

180 'You're a little bit of everything': The consequences and coping strategies of Senior Probation Officer in England and Wales who perform emotional labour.

Chalen Westaby, Sam Ainslue, Andrew Fowler, Jake Phillips

Sheffield Hallam University, Sheffield, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

Previous research has shed light on the role played by Senior Probation Officers (SPOs) in England and Wales in their position at the 'front and centre' of the Probation Service (PS). It has been demonstrated how SPOs as skilled emotion managers fulfil their role as both a manager and developer of frontline probation practitioners and thus 'control' their emotions as well as those they supervise (Westaby et al, 2022). The potential effects on SPOs of having to perform emotional labour in this way were alluded to and ways of potentially alleviating the emotional burden placed on SPOs broadly referenced. However, there remains a significant gap in the literature relating to the potential consequences for SPOs in relation to the important role they play as frontline managers in the PS. Using data gathered with 28 SPOs and managers across England and Wales we fill this gap by analysing the effects on SPOs of having to fulfil an increasingly varied and ever-expanding role. Expanding on previous research, we consider the implications of performing emotional labour and the boundary spanning work undertaken by SPOs. We conclude by probing the coping mechanisms used by SPOs and the potential barriers to their effective implementation and finish by discussing in light of our findings how best to support SPOs in their role.

Presentation

In person

Property, People, Power and Place 3

11:00 - 12:30 Wednesday, 5th April, 2023

Location MD122

Stream Property, people, power and place

76 Platform Real Estate and Housing Hactivism: Re-scaling Ownership in the Network Society

Lorna Fox O'Mahony^{1,2}, Marc Roark^{3,2}

¹Essex Law School, University of Essex, United Kingdom. ²University of Pretoria, Pretoria, South Africa. ³Southern University Law Centre, Baton Rouge, USA

Stream or current topic

Property, people, power and place

Abstract

Technology is rapidly transforming the landscape of land ownership and housing transactions. As markets and systems, consumers and social movement activists navigate the new opportunities of 'platform real estate' (or 'PropTech'), land laws, policies and practices—and the theories we build to make sense of these—require 're-scaling'. In this article we set out the theoretical framework for this re-scaling project, drawing on our earlier work to develop Resilient Property Theory (RPT). RPT offers a new theoretical and methodology approach for analyzing the complex, large-scale property questions that are re-defining legal, political, economic, social, environmental and technological conceptions of land ownership in the rapidly changing world of the 'network society' and the 'network state'.

In the de-materialised realm of the 'network society', digital networks, platforms and innovations are re-scaling land ownership transactions: from person-to-person 'on-the-ground' transactions to data-driven land transfer and registration businesses. In this data-driven world, land transactions are financialized, depersonalized, remote from the materiality of land and housing. As new capabilities in digital land transaction systems reach back into the underlying law of ownership, official (state), insider (global capital markets) and outsider (social movement activists) networks have evolved to leverage their relative positionality.

This paper uses techniques developed in RPT to examine the re-scaling of land ownership through digital network technologies. We consider the implications of resilience needs in the network society for the public sovereignty of the state, the private sovereignty of land ownership, and for practices of resistance to public and private sovereignty through 'housing hacktivism'.

Presentation

In person

394 Towards a Feminist Legal Geography of Home

Beverley Clough¹, Henrietta Zeffert²

¹MMU, Manchester, United Kingdom. ²UCC, Cork, Ireland

Stream or current topic

Property, people, power and place

Abstract

The socio-political landscape for home has been irreversibly changed over the last decade by diverse forces and events: from financial crashes and recessions to multiple, overlapping humanitarian and environmental disasters, the rise of hostile immigration and border regimes, the effects of climate change, a pandemic and most recently, the nexus of war and an energy crisis. In that time, a rich interdisciplinary literature on home has emerged. While legal scholars have considered how home is understood in law (Fox 2002, 2007, 2013; Carr and Hunter 2020), the complicity of law and regulation in shaping 'home', and the material-discursive webs the concept is entangled in, remains relatively unexplored.

This paper argues that a critical legal geography grounded in feminist theory and methodology offers productive ways for engaging with home. This approach foregrounds how the spatial imaginary of home is constituted and the role of law in this process. Crucially, it also invites reflexivity in the questions we ask about home. What, for example, is problematic about law's construction of home (and what is worth holding onto?); what commitments do law and home share (and where do they conflict?); what alternative values or understandings should we counter law's challenges to home with (and how do we do that?); what demands are being made (resistance leading to reform, or radical transformation?); and what are the risks of this (and for whom?). The paper anchors these enquiries in case studies drawn from the COVID-19 context and beyond.

Presentation

In person

58 Real rights and personal rights as property

Marda Horn

University of the Free State, Bloemfontein, South Africa

Stream or current topic

Property, people, power and place

Abstract

The definition of property and property rights remain contested in many jurisdictions. Similarly has the distinction between real and personal rights lead to academic debates. The distinction lies mainly in the vast differences in the legal nature of these rights. Although both are property rights in terms of a broad definition such as found in the South African Constitution, these rights are acquired, exercised and protected differently.

This distinction in the South African context is especially problematic, because due to its colonial history, the South African law knows no *numerus clausus* of limited real rights. Therefore, due to freedom of contract and testation, the establishment of new, peculiar real rights in respect of especially immovable property remain a reality in the South African context. To enhance this problem, only real rights may be registered in the Deeds Office.

An interesting test, the "subtraction from the dominium test", was developed by South African courts to make this distinction. By scrutinising relevant case law, this paper will investigate the relative success of this test in providing more legal certainty to this conundrum. This contribution does not intend to provide an exhaustive and complete study of the historical development of the test, but the focus will rather fall on its current application. Subsequently this paper will investigate whether South Africa can employ some of the principles of the *numerus clausus* of limited real rights that is enforced in the United Kingdom and Europe to assist in drawing the distinction clearer.

Presentation

In person

Human rights and war: The boundaries of IHL and HR

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU001

Stream Human rights and war

22 On Discontinuous NIAC and the Proper Legal Regime

Eden Lapidor

Georgetown University Law Center, Washington D.C., USA

Stream or current topic

Human rights and war

Abstract

The paper deals with discontinuous non-international armed conflict (NIAC). Conflicts that are characterized by lulls, have periods where there are either no active hostilities at all, or that the level of the hostilities is low, lower than the NIAC intensity requirement. This kind of conflict raises the question of how international humanitarian law (IHL) should function understanding the nature of NIAC—that lulls occur—and that they do not, inherently, negate the applicability of IHL. During lulls, despite the lack of active hostilities, there are nevertheless some levels of hostilities. These hostilities could include riots or protests that start as peaceful and turn violent. Therefore, the question of which legal regime should regulate this period and in what way is important as it affects the lives of civilians and the scope of their rights as well as the rights and privileges of members of the non-state armed group.

First, the paper asks whether ceasefire agreements in NIAC can be viewed as the end of the conflict, that from that point on IHL cease to regulate the actions of the parties. The paper argues that the answer is negative. Then the paper proceeds to ask which legal paradigm – IHL, international human rights law, or a combination of the two – should govern discontinuous NIACs.

Despite the wide acceptance of the applicability of IHRL to armed conflict, the question of how exactly IHL and IHRL interact remains controversial. The paper, therefore, provides another perspective on the debate while focusing on discontinuous NIACs.

Presentation

In person

200 Cognising the Validity and Enforceability of Agreements between States and Armed Non-State Actors: a Mutual Practice in Respect of International Humanitarian Law

Saeed Bagheri

University of Reading, Reading, United Kingdom

Stream or current topic

Human rights and war

Abstract

Though it is widely accepted that international humanitarian law (IHL) binds all parties to non-international armed conflicts (NIACs), armed non-State actors (ANSAs) as parties to NIACs have often violated or ignored IHL rules and principles. Common Article 1 of the 1949 Geneva Conventions, however, creates positive obligations on States members to engage ANSAs as an extension of the obligation to respect for IHL.

Moreover, the more relevant rule IHL is Common Article 3 of the 1949 Geneva Conventions which applies only to the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties. It requires the parties to NIACs to further endeavour to bring into force, 'by means of special agreements', all or part of the other provisions of the present Convention. This, however, remains questionable, providing that the application of the preceding provisions shall not affect the legal status of the parties to the conflict.

This article builds on a factual question as to whether and to what extent special agreements concluded between the territorial States and ANSAs would have an effect and may serve as binding authorities under international law. As with IHL, the article also considers a further important question as to whether and to what extent the illegal character of ANSAs would detriment the obligation to respect and ensuring respect for IHL. This will further include an assessment of how non-recognition of the legal status of ANSAs and their activities triggered more violence.

Presentation

In person

375 IHL and the regulation of large-scale criminal violence

Miriam Bradley

Humanitarian and Conflict Response Institute, University of Manchester, Manchester, United Kingdom

Stream or current topic

Human rights and war

Abstract

The scale of violence in several Latin American countries has prompted many journalists, politicians and political scientists to use the language of war – the 'war on drugs', 'cartel wars', 'criminal wars', 'drug wars' etc. For the most part, however, the term 'war' is used rhetorically, rather than to denote a legal category. This paper asks whether contexts of large-scale criminal violence should in fact be classified as NIAC, and specifically whether organized

criminal groups could be expected to comply with IHL if it were deemed applicable. Analysis of contemporary criminal groups in Latin America suggests that many would meet the IHL threshold for intensity of violence, and some could also meet the threshold for organization. Drawing on recent security studies literature on the characteristics of criminal violence, however, this paper argues that an important but only implicit assumption of IHL—namely that the parties to conflict are fighting to win a military victory—does not hold for criminal groups, and hence that the basic logic of IHL, according to which military necessity is weighed against humanitarian concerns, does not apply. This argument is further developed by considering what scholarship on civil wars tells us about the factors determining the level of compliance with IHL by non-state armed groups, and assessing the extent to which these might apply to criminal groups.

Presentation

In person

392 Does Human Rights Law Normalise Violence in War? When the Right to Life Endangers Life

Andreas Piperides

University of Glasgow, Glasgow, United Kingdom

Stream or current topic

Human rights and war

Abstract

It is not anymore disputed that Human Rights Law (HRL) does not apply only during peace but continues to apply during wartime as well. Over the last three decades, various international tribunals have struggled to construct the relationship between HRL and International Humanitarian Law (IHL). From the early *lex specialis* approach, currently, the human rights tribunals have put forward a more nuanced approach that asserts the harmonious co-existence of the two legal spheres via the interpretation of the human rights rules in light of IHL. At the same time, the European Convention on Human Rights (ECHR), in Article 15(2), introduced an exception to the protection of the right to life for lawful killings under the laws of war, while the European Court of Human Rights has ruled that IHL will be taken into account even without an act of derogation under Article 15 ECHR. The above, are issues of the legal doctrine that have been the subject of great doctrinal legal debate. However, these issues form also part of the legal discourse; of how different actors speak and think about the law. This paper argues that the legal discourse about the right to life in times of war, especially through the ways described above, normalises the endangerment of life in war. Contrary to the widely shared view that human rights enhance the protection of individuals during warfare, the paper supports that the existing toothless application of human rights during wartime normalises violence in war and thus, legitimises war itself.

Presentation

In person

Gender, Sexuality and Law 4

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU125

Stream Gender, sexuality and the law

250 'Are you sure?': Abortion stigma, gendered assumptions and reproductive coercion and abuse

Pam Lowe

Aston University, Birmingham, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

Reproductive coercion and abuse (RCA) has been recognised as a specific form of abuse which attempts to promote, prevent or control pregnancy through interference, coercion, threats and violence. Whilst it can be enacted by institutions, here the focus is on RCA as a form of interpersonal violence, most commonly perpetrated by partners. It recently became a subject of political focus in the debates over the amendment of the 1967 Abortion Act to allow the continuation of telemedical early medical abortion services (TEMA). Within this, much of the focus was on claims that TEMA reduced safeguarding, and increased the risks to women and girls, particularly of coerced abortion. Yet the evidence of TEMA during Covid suggested that it was of particular value to those living with domestic abuse. Moreover, there was little attention given to cases of forced pregnancy, despite the evidence that pressure or coercion to start or continue a pregnancy is more common than forced abortion.

This paper will draw on preliminary data from a qualitative project exploring understandings and responses to RCA. I will argue that current understandings of RCA are rooted in wider gendered assumptions about women, pregnancy and motherhood. It will illustrate how this contributes to abortion stigma, and combined with the regulatory framework, shapes abortion consultations, and how this may have a detrimental impact on increasing disclosure of RCA. I will argue that the normative understandings created by abortion exceptionalism are a barrier to increasing awareness and support around RCA.

Presentation

In person

340 'Can we talk about abortion please?' The value of content warnings when exploring reproductive rights in the legal classroom

lynsey mitchell

University of Strathclyde, Glasgow, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

This paper explores legal academics' views on how content is chosen and discussed with students. It draws on data from a pilot study which explored how academics approach 'controversial' topics and how their views may be reflected in their curriculum. The impetus for the study was to explore the reasons for the paucity of reproductive rights content, and wider women's rights issues, and whether the fact that such issues might be deemed 'sensitive' meant academics choose not to include them in modules.

It explores whether certain issues were deemed 'controversial' or 'sensitive' and whether this contributed to a reluctance to teach these, and whether that accounted for a lack of focus on women's rights, reproductive rights, or issues of gender and sexuality more widely in modules. A key theme that emerged was the use of content warnings in the classroom, and the tensions around how academics should navigate them. The study found that academics were unsure about using content warnings and therefore reticent about the inclusion of any material that might warrant a warning. Accordingly, many avoid sensitive content altogether. This paper sets out the reasoning behind certain choices about module content.

While findings reflected wider literature on academics' views on content warnings, this paper argues that legal academics should embrace content warnings as a pedagogical tool to allow greater engagement with sensitive topics to ultimately teach law in a way that responds to students' desires to engage with real-world issues particularly pertaining to gender and sexuality.

Presentation

In person

260 The Human Rights Implications of using Civil Injunctions and Criminal Behaviour Orders Against Sex Workers

Laura Graham

Northumbria University, Newcastle-upon-Tyne, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

Although not created specifically for use against sex workers, civil instruments such as Criminal Behaviour Orders (CBO) and injunctions under the Anti-Social Behaviour, Crime and Policing Act 2014, are often used by police to spatially manage sex work and sex workers out of particular areas. Police are empowered by these orders to prohibit or require a range of behaviours for sex workers including, inter alia: exclusion from areas; prohibition on communication with particular people; prohibition from carrying condoms. As such, sex workers are displaced, peer networks are broken up, and sex workers' risk management strategies are jeopardised.

Police are on the front line in the state's regulation and facilitation of sex work, meaning that police interactions with sex workers are key to a human rights approach to sex work. Police, as public authorities under the Human Rights Act 1998 (HRA), must act compatibly with the European Convention on Human Rights (ECHR). This paper will consider the human rights implications of the police's use of civil instruments against sex workers in England and Wales.

Using the HRA, this paper considers first whether given the significant consequences of these orders, and their lack of due process, they could breach sex workers' right to a fair trial under Article 6 of the ECHR. The paper then

considers any potential violations under Article 8 right to private and family life caused by specific terms in the orders, and why police need more robust consideration of necessity and proportionality when using these instruments.

Presentation

In person

Social Rights: Social Rights and the State

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU201

Stream Social rights, citizenship and the welfare state

Chair: Jackie Gulland

216 Social detectives in action: enforcement styles of social security investigators in the Netherlands

Paulien de Winter

University of Groningen, Groningen, Netherlands

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

Enforcement is a standard part of municipal services in the social domain. In cases of benefit fraud, the Social Investigation Department is the investigative agency. This agency specializes in detecting fraud cases, such as undeclared work, working without reporting income, concealing assets or housing fraud. The Social Investigation Department employs social investigators (also known as 'detectives'), who are social security enforcement specialists.

The enforcement specialists are the "eyes and ears" of municipalities. They are in close contact with citizens. When fraud is suspected, the Social Investigation Department may use administrative control (comparing data) and other legal investigative methods. For example, hearing witnesses and conducting neighborhood investigations. The municipality recovers the unduly paid benefits and the fraudster runs the risk of a fine and.

Social investigators are street-level bureaucrats. They enforce rules, interact with citizens, and make decisions that can have a major impact on citizens' lives. Previous research has shown that municipalities differ in enforcement

strategy and municipal employees differ in enforcement styles. As a group of executive employees, social investigators have not been studied before. Insights into their behavior provides an enriched picture of the implementation of the social security in the Netherlands. The main question is therefore: *How do social investigators interpret and apply rules in encounters with citizens within the Dutch social security context?* This research aims to gain insight into the enforcement styles of social investigators based on a survey and in-depth interviews among social investigators in the North of the Netherlands.

Presentation

In person

736 'From social citizenship and democratic lawyering to market citizenship: reflections on a process of de-professionalisation and de-humanisation'

Hilary Sommerlad

University of Leeds, Leeds, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

This presentation combines analysis of macro- and meso-level structures with data from a series of qualitative studies of legal aid practice in England and Wales, conducted from the mid 1990s through to the current day, to consider the progressive colonisation of the welfare field. It will discuss how the concept of universal recognition and solidarity, generated by the incorporation of the mass of working people into the Keynesian economy, stimulated the emergence of the activist professional dedicated to democratising law and building an autonomous model of rights. The data will be used to illustrate the practices this project generated, and to consider how its reformism and framing by legal discourse and rules placed constraints on the activism of lawyers and NFP caseworkers.

This historically grounded presentation will then discuss the neo-liberal assault on this project, reflecting on how 'the economisation of the social' has underpinned the deployment of managerialist and discursive techniques to re-make professionals' subjectivities and transform their interactions with clients. Following Sassen, I argue that those now living in poverty represent 'surplus populations', deemed devoid of value, who have been effectively expelled from full citizenship. Research just conducted will be used to show how in recent years a number of factors have accentuated the conditions which create this, including austerity, compounded by the current economic climate, and Covid, reinforcing what one lawyer described as a "systematic, ideological attack to remove people's rights and curtail access to justice by making it as difficult as possible to be represented".

Presentation

In person

153 Once More With(out) Feeling? The return of individual examinations in EU welfare access law after CG.

Victoria Hooton

Max Planck Institute for Legal History and Legal Theory, Frankfurt, Germany

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

This paper examines the possibility for individual examinations to return as a constituent part of the law on welfare access for EU citizens resident in another Member State. In a now bygone era of EU citizenship jurisprudence, national decision-makers would have to consider the individual circumstances of EU citizens before refusing a claim for welfare benefits, as was required by the principle of proportionality. Decisions would be made based upon, inter alia, the length of the citizen's residence in the Member State, and any employment, educational, or even family ties with the territory. After the 'anti-benefit tourism' Dano judgment by the Court of Justice of the European Union (CJEU), certainty and administrative efficiency were considered more important, and the obligation to conduct individual examinations was (almost) entirely abandoned. However, the post-Brexit benefits access ruling from the same Court in CG again throws into question the role of individual examinations in welfare access cases. The new judgment appears to have created an obligation for individual assessments as to the potential fundamental rights impact of certain decisions to refuse benefits to EU citizens resident in a Member State (or ex-Member State). This paper examines the substance and extent of this obligation on Member States, particularly in light of the previous criticisms of individual assessments, and considers the potential longevity of the judgment.

Presentation

In person

Children's rights: Customary laws, decolonisation and child protection

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU202

Stream Children's rights

34 Does the UNCRC still fit for Indigenous peoples? Or are alternative frameworks required?

Luke Fitzmaurice-Brown

Victoria University of Wellington, Wellington, New Zealand

Stream or current topic

Children's rights

Abstract

The UNCRC has been lauded for its universalist approach to upholding children's rights. The rights of children of all ethnicities are protected by the UNCRC, including special protections for Indigenous children. But from an Indigenous perspective, are these protections enough, or are they actually contributing to the marginalisation of Indigenous children, rather than addressing it?

This paper seeks to answer that question, drawing on my doctoral research into the participation rights of tamariki Māori (Indigenous children) within the Aotearoa New Zealand child protection system. My doctoral research initially sought to find better ways to implement children's participation rights in this context, drawing on the discourse of 'children's voices', which is increasingly persuasive here. However, during the course of my research I came to believe that the international children's rights framework may be a barrier to progress for tamariki Māori in this context, rather than an enabler.

In this paper I will argue that the overrepresentation of tamariki Māori is a consequence of colonisation, and therefore approaches which promote decolonisation are required to address the issues those children's face. In an Aotearoa New Zealand context, this means upholding Indigenous people's rights to self-determination, and developing frameworks to support children based on Indigenous laws, values and principles. For Māori, individualist approaches to children's rights may inhibit that process rather than promote it. I ask whether this is an issue unique to Aotearoa New Zealand, or whether it is something to consider for children's rights advocates in other countries as well.

Presentation

In person

36 A Tale of Child Trafficking and the Anti-Trafficking Machine

Elizabeth Faulkner

Keele University, Keele, United Kingdom

Stream or current topic

Children's rights

Abstract

The phenomenon of child trafficking holds a unique position as an issue of significant contemporary relevance, occupying a principal place in debates about human rights today. The interchangeable terms trafficking and modern slavery evoke emotive responses and proclamations about abolition of contemporary ills, viewed as the ultimate aberration when a child is involved. The classification of children under legal frameworks marks them as different, as 'other' and in the context of laws implemented to address trafficking, slavery, and children on the move more generally this distinction is complicated.

This paper seeks to critique the entanglements of children's rights and colonialism in relation to the mobility and exploitation of children. Centralising the legacy of colonialism, the undercurrents of race, white supremacy, patriarchy, and their ongoing influence upon contemporary anti-trafficking legal and policy responses. Through utilizing what the author identifies as the 'Anti-trafficking machine' as a theoretical framework, the paper challenges contemporary law and policy responses to child trafficking. This theoretical framework has been adopted to illustrate a central hypothesis of the book – that the contemporary anti-trafficking agenda is both imperialist and a continuity of colonial attitudes.

Presentation

In person

550 Child Marriage in Ghana - challenges to the legal autonomy of children.

Augustina Akoto

University of East London, London, United Kingdom

Stream or current topic

Children's rights

Abstract

Ghana was the first signatory to the UN Convention of the Rights of the Child and in response enacted the Children Act 1998. The legal age of marriage in Ghana as stipulated in the 1992 Constitution is 18 years. Despite this, rates of Child, Early and Forced Marriages are amongst the highest in the world. In societies where law is one of a competing number of social orders, children often find it difficult to utilise its protection, and as a result remain vulnerable to harmful customary and traditional practices - particularly girls. Arguably, customary law and some religious laws do not place a great premium on the rights of the child; neither do they necessarily have a concept of legal autonomy for children. In a legally pluralist system which is in operation in Ghana, such conflicts between statutory provisions and customary law, highlight the problems faced whilst trying to enshrine gender equality and the protection of children. This paper will look at how far Ghana has attempted to resolve such conflicts; partially through the enactment of legislation, whilst at the same time recognising the need to adopt a multi-sectoral approach. Such an approach focuses on the causes as well as the consequences of Child, Early and Forced Marriages and the role of law in ending it. Also, it will look at how best to embed a rights culture in relation to children and their protection in a pluralist system with competing legal norms.

Presentation

In person

Socio-Legal Jurisprudence 2

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU203

Stream Socio-legal jurisprudence

Book panel discussion: 'Combining the Legal and the Social in Sociology of Law: An Homage to Reza Banakar' Colin Luoma, Discussant

674 Reza Banakar and the Quest for a Sociology of Law

Ole Hammerslev^{1,2}, Mikael Rask Madsen³

¹Sociology of law department, Lund University, Lund, Sweden. ²Department of Law, University of Southern Denmark, Odense, Denmark. ³Courts, University of Copenhagen, Copenhagen, Denmark

Stream or current topic

Socio-legal jurisprudence

Abstract

Since the beginning of his career, Reza Banakar was determined to disrupt the relative closure of Nordic sociology of law by communicating with the latest international developments. His fear was that without sufficient international outlook, Nordic sociology of law would lose intellectual momentum and risk being marginalised in both law and sociology. His push for change was largely successful.

His second and even bigger project concerned sociology of law more generally. Somewhat provocatively naming sociology of law a 'stepchild' of its parent-disciplines of law and society (Banakar, 1998b), his writings sparked a Nordic debate about the state and character of the sociology of law. Reza did however not stop with his diagnosis of the identity crisis of sociology of law but took it upon himself to develop the intellectual tools necessary for solving the crisis. The result was a series of texts on sociological theory and methodology, which are now fundamental readings for scholars and students of sociology and law. His Iranian studies are empirical masterpieces in their own right, but they also illustrate what Reza sought to achieve with his ambitious project of relaunching the sociology of law as distinct and worthy discipline.

Reza also made many other contributions. He was an unfaltering defender of the sociology of law and always fought for better research conditions for the discipline both through his academic positions at different universities and through his engagement in the discipline's various professional bodies.

Presentation

In person

929 Top-down and bottom-up approaches in qualitative socio-legal research on law in everyday life

Stine Piilgard Porner Nielsen

University of Southern Denmark, Odense, Denmark

Stream or current topic

Socio-legal jurisprudence

Abstract

To me, as a sociologist of law, Reza Banakar's work is pivotal and thought provoking. His critical perspective on the discipline of sociology of law, and his methodological approaches to analyses of law and society to a large extent influence my own socio-legal research. My contribution to the anthology honouring Reza Banakar focuses on

methodological divides of top-down and bottom-up approaches in qualitative socio-legal research on law in everyday life, and how these divides may be bridged.

First, the chapter introduces the case of employment case handling to provide the reader with an insight into the context of the analysis of law's role in everyday life. Then, a section outlines the methodological approaches applied and the analysis of, first, law's role in everyday life from a top-down approach, drawing on Sheila Jasanoff's co-production theory and empirical data from document analysis of relevant sections of formal law and from observations of caseworkers' practices in the employment case handling process. Then, the section applies a bottom-up approach to investigate how caseworkers' and citizens' perception of and experience with law inform their social practice, drawing on the concept of legal consciousness and empirical data from semi-structured individual interviews with both the citizens and the caseworkers. Subsequently, the chapter is concluded with reflections on the relevance of minding the gap between a top-down and a bottom-up approach in analysing law's role in everyday life and the potential explanatory forces of analyses that mind this methodological gap.

Presentation

In person

DEVELOPING DEMOCRACIES: JUDICIAL DICTATORSHIP

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU207

Stream Constitutionalism in developing democracies

820 The Samoa Experiment

Iutisone Salevao

Research, Sydney, Australia

Stream or current topic

Constitutionalism in developing democracies

Abstract

The Samoa Experiment

In a Court of Appeal 2022 decision, the learned Justices emphasized, when interpreting the Constitution of Samoa 1960, 'the Court has no power to impose its own ideas.' That was a timely blow to a disturbing trend in Samoa since May 2021: from constitutional interpretation and judicial review through judicial activism to judicial supremacy, even courtocracy and juristocracy.

Deleting Samoa's Head of State's reserve power to call a fresh election in the event of Samoa's first hung parliament in April 2021, exploiting constitutional silence regarding reserve powers and ignoring constitutional conventions as part of Samoa's constitutional remit, the Court then used the Constitution to resolve the political problem of a hung parliament. Notably, the Constitution does not say anything at all about hung parliaments which must then be resolved through conventions not coded in the text.

Later in 2021, the Court appointed a new government and used the Constitution to constitutionalize and legalize the swearing-in of a new speaker, members of parliament, prime minister and cabinet. That swearing-in was administered by a lawyer couple (in private practice) under a tent outside Chambers.

Thus far, Court actions cumulatively comprise what could only be rightly called judicial overreach. Surprisingly, this overreaching was fortified by the Court's own ridiculous conspiratorial thesis that the Head of State, the then caretaker government, and others were conspiring to prevent the convening of Parliament and allowing a change of government.

This was a case of judicializing politics and politicizing the judiciary contrary to the constitutional vision: judicial authority and political authority must be kept separate. Prior to May 2021, Samoa's Judiciary had followed suit. Since May 2021, that was no longer the case. Why?

Presentation

Virtual via Microsoft Teams

102 Can Constitutional Court Presidents become too powerful? Lessons from Mexico's judicial politics

Mauro Arturo Rivera León

University of Silesia, Katowice, Poland

Stream or current topic

Constitutionalism in developing democracies

Abstract

Constitutional Court Presidents have a wide range of powers. They lead deliberations, administer the Court, and sometimes are even perceived to be the voice of the Constitution, as they speak for the Court itself. Comparative law proves their powers may entice political actors to tangle with Court Presidents. The paper aims to provide a comprehensive analysis of the transformation of the Mexican Supreme Court presidency under Chief Justice Zaldívar from a comparative perspective.

Chief Justice Zaldívar successfully drafted and passed proposals enhancing its powers, supported by political branches. Its perceived ideological alignment led to the majoritarian parliament attempting to extend its term illegally. Via a study of the Chief Justiceship of the Mexican Supreme Court, the paper not only fills a gap in the doctrine by

contributing to the literature of Constitutional/Apex Courts Presidents but mainly adds to the literature on the centralization of faculties and individual decisions on multi-member Courts and the comparative debates on court-packing and Court capturing. Furthermore, the paper argues that an analysis of Mexico's Judicial politics after Chief Justice Zaldívar's designation contributes to the global conversation of the complex relationship between Constitutional Court Presidents and Political actors and the attempts of the latter to control the former. As the Mexican case will prove, the closeness between constitutional courts, presidents, and political branches contributes to an appearance of politicization of the judiciary and is detrimental to the rule of law.

Presentation

Virtual via Microsoft Teams

436 "Moraes Damages": Consequences of an authoritarian legitimacy in Brazilian judiciary.

Enio Viterbo

Coimbra University, Coimbra, Portugal

Stream or current topic

Constitutionalism in developing democracies

Abstract

Since the beginning of the Bolsonaro government, Brazil is facing several episodes of controversial actions by the Supreme Court, specifically Justice Alexandre de Moraes. Part of society, linked to conservative and radical values, no longer believes in the legitimacy of the orders coming from this supreme court judge. This has led to a rise in acts of civil disobedience and violent protests. While some argue that these actions are necessary to protest Moraes actions, others believe that they are counterproductive and only serve to further undermine the rule of law. Nevertheless, Moraes continues to his controversial actions without any signals of accountability.

The present work aims to analyze the relation between Moraes authoritarian use of Supreme Court powers and the raise of radicalization and civil unrest in Brazilian society. The issue of civil disobedience to illegal orders issued by the Brazilian supreme court is a complex one that requires careful consideration. While there may be valid reasons for engaging in such acts, it is important to weigh the potential benefits against the potential drawbacks. In the case of Brazil, the rise in acts of civil disobedience has raised questions about the legitimacy of such actions and the country will need to carefully balance the need for accountability with the need to maintain the rule of law.

Presentation

In person

Legal Education 4

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU208

Stream Legal education

356 Reimagining Learning and Assessment in Legal Education

Chloe Wallace

University of Leeds, Leeds, United Kingdom

Stream or current topic

Legal education

Abstract

In this paper, I seek to provoke creative thinking about the future role of assessment in legal education, moving beyond discrete debates about forms of assessment and even about what we assess, to an overarching consideration of whether we need radical change in what assessment looks like and its position within curriculum planning.

I will do this through two lenses: the concrete example of work I am doing now reimagining assessment of a study abroad year, and the wider conversations now taking place around the impact that artificial intelligence may (or may not) have on assessment and academic integrity. Both of these lenses, for me, lead in similar directions. If we agree that curricula, including assessment, ought to be 'constructively aligned' (Biggs, 2011) - by which we mean aligning assessments to learning outcomes expressed as things that students will be able to do - then the questions about assessment ought to be less about forms and content of assessment, and more about what we want students to learn. Arguably, we have traditionally put the cart before the horse, by limiting our learning outcomes to ones using verbs which are assessable using conventional means (essays, presentations, problem solving exercises), rather than choosing our learning outcomes based on what we actually think students should be able to do and then thinking imaginatively about what assessment of those outcomes looks like. I have no concrete answers to offer, but some important questions for us all to ask

Presentation

In person

64 In for the long ride? Law and technology teaching in the UK and its utility in pursuing responsible tech careers

Stergios Aidinlis

Keele University, Newcastle-under-Lyme, United Kingdom

Stream or current topic

Legal education

Abstract

'Law and technology' courses are mushrooming across UK law schools. As legal academics, we often encourage our graduates to pursue the path of contributing to the development of fair technologies, as it is one of the most impactful careers for public benefit considering the proliferation of AI and other cutting-edge technologies in society. This path leads to the 'responsible tech' market, where legal experts are expected to either conduct research or advocacy tasks related to technological development or contribute to the actual work of developing technologies as part of a multidisciplinary team. This paper asks: does contemporary legal education in the UK effectively prepare students for such a career? The analysis proceeds in four steps. First, the paper reviews the legal education literature to distil the key essential characteristics of a legal expert seeking to contribute to the alignment of technological development with ethical societal values. Second, it analyses two hundred (200) job adverts from three major 'responsible tech' job boards to identify which of the theoretically relevant skills are more salient in the real-world job market. Third, it assesses the extent to which these skills are cultivated by contemporary 'law and technology' curricula in the UK. Fourth, it reflects upon the need to address the main impediments in equipping law graduates with skills that would truly enable them not only to pursue a 'responsible tech' career path but to unleash the potential of legal expertise to meet the needs of the 'responsible tech' sector and meaningfully impact technology design.

Presentation

In person

Health Law and Bioethics: End of Life

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU210

Stream Health law and bioethics

Elizabeth Chloe Romanis

6 Ethnic Minorities and Assisted Death: The Need for Cultural Responsivity and Competency in Safeguarding Provisions.

Rees Johnson

University of Essex, Essex, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

The movement to change the law to allow people with terminal (and indeed, chronic) medical conditions to end their lives has picked up speed in recent years both domestically and internationally. In the England and Wales, attempts to reform the law have proved fruitless. This paper examines an important aspect of the debate – the issue of safeguarding. Safeguarding measures in assisted death can be traced back to the 1936 debate which introduced 'voluntary euthanasia' formally onto the legislative agenda. In subsequent Bills, safeguarding measures have remained a consistent feature deemed necessary for acceptability and palatability. These safeguards developed in

the age of patient protection, it will be argued, fail to account for racial and cultural differences in decision making and patient choice. This is a vital question because whilst safeguarding has rightly tended to prioritise the role of consent, there are clear racial and cultural differences in how consent and choice is arrived at. Furthermore, ethnic minorities are especially vulnerable in clinical settings due to the power imbalance that exists between them and medical professionals. This has resulted in certain structural inequalities that impact their decision-making processes and choice-making capacity. Until now, both domestic and international literature around safeguards and assisted dying lack proper consideration of the racial and cultural contexts of clinical decision making and therefore a more 'culturally responsive' and 'culturally competent' approach is needed for those ethnic minority patients who may make the decision to have an assisted death.

Presentation

In person

519 Law in the everyday of physicians making end of life decisions for people with dementia

Manni Ardzejewska

Lund University, Faculty of Law, Lund, Sweden

Stream or current topic

Health law and bioethics

Abstract

How we die is under increasing pressure from biomedical advancement and social and demographic change. What is more, the increasing number of people who are dying with and from dementia tests the presumption of autonomy that often underpins end of life law and ethics. Conventional wisdom is that the coercive power of law contains the tools to respond to such challenges. Rather than departing from this assumption, this paper seeks to explore the relationship between law and society in the context of end of life decision making for people with dementia. A plural legal consciousness framework will be applied to locate law in the everyday life of doctors making end of life decisions for this patient group. This will be implemented through a thematic analysis of interviews with doctors in Sweden. As a first step, the paper will develop an understanding of end of life decision making law through the stories of the everyday practice of these doctors. In doing so, it will be attentive to quasi-legal norms and regulatory regimes in addition to formal law. As a second step, the paper will utilise this focus on social processes to map the power of law in end of life decision making for people with dementia. Through sensitivity to diverse systems of regulation and control, this paper will offer a fresh perspective in the investigation of the power of law in end of life decision making that will contribute to a more complete picture of law in this space.

Presentation

In person

248 Deaths in State Custody and the Coroner: An Analysis of All Prevention of Future Death Reports 2013-2022

Harry Hudson

University of Bristol, Bristol, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

In England and Wales, deaths in state custody are investigated by numerous bodies. Coronial reporting is an under-utilised resource in understanding who dies, where, and how. When the coroner finds that deaths could be prevented, their Prevention of Future Death (PFD) reports provide a crucial resource for understanding why detainees die. Since 2013, over two hundred PFD reports have been issued relating to state custody. This is a small number: in prison alone almost three thousand have died since then. These reports illustrate, however, some of the worst deaths imaginable, often involving multifactorial and disastrous failings, violent means, and tragic personal histories. Most of those who die preventably are young, with a third dying between 26 and 35, male (95.0%), in prison (90.4%) and die by hanging (53.8%).

There are other important topics, however, that these reports illuminate: Immigration Removal Centres, police custody, and Young Offenders institutions are among various sites; women, race, and old age are all given an especial focus in my study. Whilst my focus is predominantly in providing an epidemiological account of the failure of the intersection of the health and criminal justice industries, latterly I identify some of the starkest matters of concern in PFD reporting, from lying officers to under-resourcing to architecture. In doing so, I seek to highlight the tragedy of PFD reporting: detainees continue to die by similar means in similar circumstances. Whilst PFD reports are a good resource for understanding, I argue they are deeply flawed, necessitating a radical rethink.

Presentation

In person

Mental Health 2

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU218

Stream Mental health and mental disability law

941 The curious case of Brexit and the Mental Capacity Act 2005

Lucy Series

University of Bristol, Bristol, United Kingdom

Stream or current topic

Mental health and mental disability law

Abstract

At face value, the Mental Capacity Act 2005 (MCA) – a private law framework for substitute decision making on behalf of adults who lack ‘mental capacity’ – has next to nothing to do with Brexit. Convergences of European Union

law with mental capacity law are few and far between. One operates at a macro-jurisdictional level, the other increasingly 'micro'. Yet there are strange coincidences and convergences between the politics of both: newspapers, politicians, and public figures who love Brexit often loathe the MCA; figures that promoted the MCA are associated with opposition to Brexit. I will present examples of this curious phenomenon throughout the MCA's history and offer a tentative explanation. That the politics of both Brexit and the MCA represent struggles over the eroding sovereignty of 'traditional' jurisdictions in 'liquid modernity' (Bauman, 1999), and conflicting views on the socio-legal logics of 'empowerment'.

Presentation

Virtual via Microsoft Teams

256 Reproductive Decision-Making in the Court of Protection

Sheelagh McGuinness¹, Suzanne Doyle-Guilloud², Aoife Finnerty¹, Judy Laing¹

¹Centre for Health Law and Society, University of Bristol Law School, Bristol, United Kingdom. ²NUI Galway, Ireland, Galway, Ireland

Stream or current topic

Mental health and mental disability law

Abstract

Over the past few years, several cases concerning decision-making and consent in pregnancy and/or birth have come before the Court of Protection of England and Wales (CoP). They have generally involved women with either intellectual or psychosocial disabilities, with decisions being made in their 'best interests' where they have been found to lack decision making capacity, in accordance with the Mental Capacity Act 2005 (MCA). Drawing on research undertaken as part of the Wellcome Trust funded BABEL Collaborative Award this paper explores themes that emerge from the approach to decision-making in the CoP, including issues of time, foetal interests/ value, and prospective decision-making. The paper draws from a review of relevant caselaw and the findings of interviews with a range of legal actors with experience in this area. The aim of this analysis is to look at how reproductive decision-making is conceptualised and treated in the CoP.

Presentation

In person

285 Of boundaries and binaries: legal consciousness, hospice care, and the Mental Capacity Act 2005

Caroline Redhead

The University of Manchester, Manchester, United Kingdom

Stream or current topic

Abstract

Hospice care encompasses physical treatment and emotional, social and spiritual support which recognises what is important to each patient and supports decision making where patients cannot make decisions for themselves. My research into the use of the Mental Capacity Act 2005 (MCA) in hospices found, amongst other things, that hospice staff interpret the MCA's principles and the patient's role in the decision-making process in a way that reflects the 'support paradigm' of the UN Convention on the Rights of Persons with Disabilities. Staff understand hospices to be distinctly and self-consciously different from other palliative care settings, and this influences their legal consciousness such that the facilitation of person-centred decision making is considered to be part of good quality care rather than simply reflecting a legally acceptable approach.

Legal consciousness is concerned with the way law is experienced and understood by ordinary people in their everyday lives. Legal consciousness theory contends that we are, to some extent, in a symbiotic relationship with law, in that even as law constrains us, in articulating or enacting how it contributes to meaning and values in our daily lives, we shape the law too. In their enactment of MCA decision-making, the hospice staff who participated in my research demonstrate a different understanding of mental capacity and the responsibilities of supportive decision-makers. In so doing, they take a relational approach that softens the much-criticised binaries inherent in the MCA (particularly the capacity / incapacity binary) and blurs the boundaries between autonomous agency and decision-making capacity.

Presentation

In person

Civil Justice 4

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU219

Stream Civil justice systems and ADR

764 Digitalising civil justice: can ODR enhance access to justice?

Emma van Gelder

Utrecht University, Utrecht, Netherlands

Stream or current topic

Civil justice systems and ADR

Abstract

Individual citizens increasingly resort to online dispute resolution (ODR) pathways in their quest for redress. Certainly, ODR procedures typically offer easy access and an affordable, timely and convenient procedure by centralizing the procedure online. In doing so, ODR can offer a solution to the increasing and ongoing pressure on access to justice. Indeed, individual citizens are increasingly struggling to find redress for the violation of their substantive rights, as available (offline) redress options are typically inaccessible given the cost, time investment and complexity of procedures. When citizens cannot access an enforcement mechanism to enforce their substantive rights, the law loses its meaning. At the same time, the quality of ODR procedures remains a severe challenge. In particular, it remains to be seen whether written ODR procedures with integrated time limits provide the parties with sufficient space and time to present their views; whether equality of parties is ensured when one party participates in the procedure via audio and the other via video; and whether online procedures ensure transparency, particularly if they use algorithms to resolve disputes.

The field of ODR is going through important developments in Europe, since new ODR providers are mushrooming and ADR entities increasingly rely on digital technologies to resolve consumer complaints. While ODR offers important assets such as speed, simplicity and affordability, concerns are raised about the quality of the procedures.

This research subjects ODR to an evaluation i to determine what legislative framework is needed in Europe to ensure both access and justice in ODR.

Presentation

In person

46 Artificial Intelligence and Blockchain Technologies in Online Dispute Resolution: A Solution to Consumer Disputes in South Africa?

Mnotho Ngcobo

O.P Jindal Global University, Sonipat, India

Stream or current topic

Civil justice systems and ADR

Abstract

With the growth of e-commerce transactions and people living their lives online, consumer disputes need to be tailored in a manner that is suitable for consumers and their types of disputes. Currently, South Africa is facing major delays in resolving consumer disputes, and consumers end up not pursuing their low-value claims as the current processes take a long time. Further, consumers do not have funds for attorney fees. The Consumer Protection Act encourages the use of Alternative Dispute Resolution (ADR) before a consumer dispute could be referred to a court of law. However, such ADR processes are lengthy and do not provide consumers with affordable and efficient relief. The current ADR processes do not meet the expectations of the consumers; thus, this paper proposes an integration of Artificial Intelligence (AI) and Blockchain Technologies in resolving consumer disputes via online dispute resolution (ODR). Various forms of AI and blockchain technologies are explored. The concept of ODR is introduced and current examples of online dispute resolution systems like eBay, and countries that have already moved to online dispute resolution with the integration of AI are used as model examples for a South African ODR powered by AI and blockchain technologies.

The research approach is a qualitative doctrinal research method. The doctrinal research method is considered suitable for this study since it entails contextual reading, finding primary materials, recognizing current legal questions, collecting pertinent information, scrutinizing the law for discrepancies, and reviewing all the subject matter throughout the background.

Presentation

In person

939 Criminal Matters under the Scope of matters settled in Alternative Dispute Resolution (ADR) in Nigeria

Chinwe Egbunike-Umegbolu

University of Brighton, Brighton, United Kingdom

Stream or current topic

Civil justice systems and ADR

Abstract

The Multi-Door Courthouse (MDC) is a court-connected ADR concept, and one of its prime duties is to appropriately allocate cases to the right door, thereby reducing the dockets of the courts, which has enhanced access to Justice for disputants. Hitherto, the MDC is a helpmate; therefore, some cases cannot be mediated to be precise Criminal matters.

Most of the respondents the writer interviewed during her PhD data collection and recent interviews revealed for the first time that the Enugu State Multi-Door Courthouse (ESMDC) and the Lagos Multi-Door Courthouse cover mainly disputes ranging from banking disputes, lease, family, land matters, matrimonial causes, alimony issues, intercommunity disagreements, child custody and child maintenance, tenancy matters, commercial transactions, constitutionally matters, felonies, fundamental rights, and inheritance. The findings from the interviews and statistical data revealed for the first time that this has significantly impacted the civil and of recent criminal courts' dockets in Enugu State and Lagos State.

The paper concludes that Enugu State Multi-Door Courthouse (ESMDC) settles minor criminal offences such as misdemeanours and malicious damages. To an extent, this finding extends to the Lagos Multi-Door Courthouse (LMDC).

Presentation

In person

332 Rethinking Remedies for Harmful Online Content

Anna van Duin, Naomi Appelman

University of Amsterdam, Amsterdam, Netherlands

Stream or current topic

Civil justice systems and ADR

Abstract

This paper analyses the results of a representative survey among the Dutch population into people's experiences and needs when they deal with online content that harms them directly and personally, such as hate speech. One in five have been confronted with such content, but only a few have taken legal action, even though it had a serious impact on them. Our study aims to fill a gap in empirical research into people's perspectives on online harms and possible remedies, by investigating to what extent these align with the existing legal framework. The available means of recourse, both in and out of court, are often not utilised, indicating that access to justice in practice is not guaranteed. The question arises whether civil justice systems in the EU requires rethinking when it comes to providing access to justice and effective remedies in the context of content moderation, most notably by social media platforms. This connects to ongoing debates about the implementation and enforcement of the Digital Services Act (DSA), platform governance, and conflict resolution in the digital age. The paper identifies a mismatch between the DSA's blanket approach and the wide variety of issues people encounter when dealing with harmful online content. It also shows how people's expectations do not correlate with legal categories and paradigms, e.g. as regards the conceptualisation of 'harmful' or 'illegal' content or the scope of individual redress. The paper concludes with a call for a more tailored approach that takes both individual and systemic factors into account.

Presentation

Virtual via Microsoft Teams

Administrative Justice 4

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU301

Stream Administrative justice

295 The Quest for Administrative Justice: Values and Actors

Sule Tomkinson

Université Laval, Quebec City, Canada

Stream or current topic

Administrative justice

Abstract

At the heart of administrative justice lies a paradox. The impetus for the creation of administrative tribunals came from the need to create a new type of public organization different from courts and government departments. By statute, legislatures empowered administrative tribunals to resolve disputes regarding rights and entitlements within independent, impartial, and specialized forums in a fair, inexpensive, accessible, and timely manner. However, administrative tribunals often fall short of fulfilling these objectives. This presentation, which draws on my book manuscript, argues that an empirical examination of administrative justice values, precisely a focus on who defines and implements them and how, is a much-needed perspective to advance theorisation in this area. The data comes from over a decade of research into administrative justice values and systems in Canada, covering direct observation of hearings, participation in training programs, interviews with adjudicators, analysis of decisions and internal tribunal documents. The presentation documents the efforts of administrative justice actors in defining and realizing the

values of accuracy, efficiency, consistency, and accountability and the tensions inherent in this exercise. It concludes with the importance of reimagining administrative justice through the public ethics of care that places the individual who seeks justice at the centre of these efforts.

Presentation

In person

325 The EU Rule of Law Crisis from an Empirical Perspective: Exploring the Contours of a Social Science That Does Not Yet Exist

Marc Hertogh, Erin Jackson

University of Groningen, Groningen, Netherlands

Stream or current topic

Administrative justice

Abstract

The European Union (EU) is in a serious rule of law crisis. This is not only important from a legal perspective, it also raises important sociological questions. Yet, now that we need empirical answers more than ever, our methodological toolbox is still mostly empty. The aim of this paper, therefore, is to explore the contours of an empirical approach to the rule of law. We develop this new 'social science that does not yet exist' in three steps: (1) we focus on the social foundations of the rule of law; (2) we introduce a Living Rule of Law approach; and (3) we use a mix of qualitative and quantitative research methods. The paper concludes that this empirical approach is not only relevant for our understanding of the EU rule of law crisis, it may also contribute to an interdisciplinary research agenda to study the rule of law in other social and legal contexts.

Presentation

In person

833 Freedom to Negotiate: An Alternative to the Consent Standard for Rape and Sexual Assault

Tanya Palmer

University of Sussex, Brighton, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

I have argued elsewhere (see e.g. Palmer, 2017) that consent is poorly suited to distinguishing sex from sexual violation as it views agreements to engage in sex through an individualistic, asymmetric, binary frame, which

disembodies and decontextualises sexual encounters and places the complainant under considerable scrutiny (were they consenting? Did they do anything that might reasonably be taken to signal they were consenting?) As an alternative, I have proposed a model of 'freedom to negotiate' in order to shift the spotlight to the defendant's actions and relevant context, and to emphasise the relationality and fluidity of sexual encounters.

In this paper I explore how 'freedom to negotiate' can be used to reframe sexual offences law in three particularly challenging areas:

Using the case of *F v DPP* [2013] EWHC 945 I show that asking whether a complainant had the freedom to negotiate can sensitise us to broader abusive dynamics within a relationship which constrain the complainant's choices.

Using *R v McNally* [2013] EWCA Crim 1051 I argue that freedom to negotiate can provide a starting point for reframing our analysis of the so-called 'rape-by-deception' cases.

Using *R v Bree* [2007] EWCA Crim 804 I explore how freedom to negotiate can shift our analysis of cases involving a voluntarily intoxicated complainant by moving from an individualised assessment of C's capacity to consent to an assessment of the relative power of the parties in the encounter.

Presentation

In person

68 Administering Prevent: a Case Study of Policy Implementation

Jessie Blackburn

Durham University, Durham, United Kingdom

Stream or current topic

Administrative justice

Abstract

Under the Counter-Terrorism and Security Act 2015, local authorities have a dual role in the UK's counter-extremism programme 'Prevent': they are subject to a statutory 'Prevent Duty' to 'have due regard to the need to prevent people from being drawn into terrorism' and they are responsible under the statutory 'Channel Duty', alongside the police, for providing support to individuals assessed as being vulnerable to being drawn into terrorism. How local authorities implement Prevent can therefore have a significant impact on vulnerable individuals in their area. However, neither the Prevent Duty or the Channel Duty provide specific detail about how they should be put into practice. This means that how Prevent is implemented is a matter that is left entirely up to the individual local authority, subject only to meagre statutory guidance and assisted by a range of other government documents and materials. This paper explores how individuals in one local authority understand, interpret, and implement their statutory duties under the Counter-Terrorism and Security Act 2015 to identify and support individuals vulnerable to being drawn into terrorism. It draws on interviews conducted with individuals in one local authority area in the North-East of England to assess how the Prevent and Channel duties have been implemented in practice, and what this means for those front-line workers responsible for making decisions about potentially vulnerable individuals. In particular, it highlights the role of training in mitigating the gap between the bare bones of the statutory duty and the implementation of Prevent in practice.

Presentation

In person

Empire, Colonialism and Law: Colonialism, Empire and the Politics of Belonging Session 1

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU302

Stream Empire, colonialism and law

345 Thoughtlessness and Ignorance of the Hostile Environment

Lizzy Willmington

Cardiff University, Cardiff, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

Stopping short of labelling the Home Office institutionally racist, the 'Windrush Lessons Learned Review' focused on the impact that thoughtlessness and ignorance had within the Home Office's actions, laws and policies which make up the hostile environment and produced the Windrush scandal. I believe it fruitful to consider the role of thoughtlessness and ignorance in producing harm. By understanding these as produced, as active structures, enables an enquiry into 'the strange interdependence of thoughtlessness and evil' (Arendt 1963), and who or what interests are being protected through these structures.

This enquiry will be directed at a state level, specifically through the Home Office's immigration laws and policies, how these are implemented through state institutions and result in harm and violence. It will demonstrate how the embeddedness of these harmful policies enables a banality of and apathy to this violence (Arendt 1963, Baldwin 2017). Further, through the collaboration of vital services within society, the hostile environment relies on institutions and individuals following the 'path of least resistance' to live an easier comfortable life (Bona Silva 2021). In turn, this complicity maintains the status quo of racial domination and a hierarchy of rights through immigration controls. This presentation will ground a theoretic analysis through examples of how thoughtlessness and ignorance produce harm and violence through the hostile environment.

Presentation

In person

623 Citizenship, allegiance, and electoral rights adjudication in the Commonwealth Caribbean

Timothy Jacob-Owens

University of Edinburgh, Edinburgh, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

The independent states and non-independent territories of the Commonwealth Caribbean – all current or former colonies of the United Kingdom – share a common constitutional provision, according to which individuals are ineligible to stand for election if they are 'by virtue of [their] own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state'. In a series of recent electoral disputes, courts across the region have been called upon to adjudicate on the scope and limitations of this provision, focusing in particular on the meaning of the term 'allegiance' in this context. In this paper, I explore whether and how the resulting case law is influenced by the historical relationship between citizenship and allegiance under British colonial rule. The analysis identifies two key areas of continuity: first, the tacit assumption that holding citizenship of a state necessarily entails an obligation of allegiance to that state and, second, the affirmation of the so-called 'allegiance-protection correlation' – that is, the conception of citizenship as a reciprocal bargain between subject and sovereign, wherein the latter offers protection in exchange for the allegiance of the former. I also highlight an important area of discontinuity, namely a break with the understanding of the territory of the British Empire (and later Commonwealth) as a single homogenous unit. Overall, the paper demonstrates that the boundaries of political membership in the Commonwealth Caribbean continue to be marked by the legacy of British colonialism.

Presentation

In person

793 Regulating (un) belonging in imperial contexts

Rachel Pougnet

University of Bristol, Bristol, United Kingdom. Max Planck Institute for the study of Crime, Security and Law, Freiburg, Germany

Stream or current topic

Empire, colonialism and law

Abstract

People have been made to belong and un-belong in novel and complex ways in the 21st century. We live at times when states can put their citizenship for sale, call on their imperial legacies to set up quick routes to naturalisation, or make the citizenship of millions of people unstable and contingent on their 'good' conduct. This paper seeks to learn about contemporary politics of (un)belonging by looking at the regulation of citizenship in imperial contexts. It focuses on the practices of France and the UK, two former colonial states which are increasingly calling into question the diverse character of their societies.

Both the French and British Empires construed multiple legal categories of belonging to which different rights, duties, and expectations of conduct were attached. As the Empires retreated and former colonies gained independence, most imperial subjects were 'incorporated' into France and the UK as citizens or as members of broader unions of independent states (the French Union and the Commonwealth). And while this legal inclusion remained illusory for many, it nevertheless participated in the transformation of both countries as multi-racial societies. This paper provides key comparative insights into different constructions of (and requisites for) belonging in imperial contexts. It also adds a unique constitutional view by asking what role constitutional imaginaries and structures played in articulating belonging in these contexts. It argues that this constitutional approach is crucial for getting a comprehensive understanding of the effects of past colonial hierarchies on present-day practices of citizenship.

Presentation

In person

Transformative Justice 3

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU303

Stream Human rights, memory and transformative justice

770 Learning from the past? How young Cambodians interact with transitional justice discourse(s) in narrating their conceptions of post-conflict justice, memory and non-recurrence

Elke Evrard, Tine Destrooper

Ghent University, Ghent, Belgium

Stream or current topic

Human rights, memory and transformative justice

Abstract

Within the field of transitional justice, the widely shared notion that young generations can and must learn from the past in order to prevent its recurrence in the future, underpins outreach efforts by formal justice mechanisms, as well as initiatives by civil society actors in their orbit. Yet, empirical research that studies the way young audiences actually receive, interpret and engage with such messages on 'dealing with' and 'learning from' the past, remains scarce. In this paper, we look towards the Cambodian context to examine to what extent young adults are actually receptive to the narratives disseminated by the Khmer Rouge Tribunal, civil society actors and survivors. Through iterative focus group discussions, we examine how youths draw on these messages in construing their own views and understandings of memory, citizenship, post-conflict justice, and societal reform as building blocks in non-recurrence. Four themes emerged: (1) studying and remembering the past, (2) nurturing intra- and interpersonal civic values, (3) seeking justice for the harms of the past, and (4) moving towards a democratic rule-of-law based society. These themes foreground personal agency and responsibility, as well as expectations for institutional performativity and change, illustrating strong receptiveness to the messaging of the Khmer Rouge Tribunal and civil society initiatives in its orbit. Yet, findings also point towards expressive friction and hegemony, whereby these influential

actors saturate the discursive space, lessening youths' recognition of alternative perspectives on memory or reflexive definitions of rights and justice emerging from the everyday lives and experiences of survivors.

Presentation

In person

658 Navigating between human rights and Transitional Justice: Perspectives from the African Commission on Human and Peoples' Rights

Tonny Raymond Kirabira

University of Portsmouth, Portsmouth, United Kingdom

Stream or current topic

Human rights, memory and transformative justice

Abstract

This paper aims to explore the ways in which the African Charter on Human and Peoples' Rights (African Charter) informs Transitional Justice (transitional justice) processes. It utilises the African Commission on Human and Peoples' Rights (African Commission) jurisprudence on amnesty in communication Thomas Kwoyelo v Uganda, as a prism through which to analyse the African Charter's engagement with the issue of transitional justice in Africa. The communication Thomas Kwoyelo v Uganda provides a practical scenario to examine the implementation of two key constitutive elements: amnesty and retributive justice. A key question relates to how the African Charter informs transitional justice, where there are competing narratives of Peace Vis a Vis Justice. The analysis rests primarily on an extensive study and review of secondary sources regarding the transitional justice process in Uganda. It also benefits from reflections based on the author's experience in Uganda. The analysis shows both challenges and opportunities of the African Charter framework on transitional justice, when applied within post-war contexts. The paper highlights opportunities for the domestic implementation of the African Commission's jurisprudence on transitional justice, across the African continent.

KEY WORDS: African Commission, Transitional Justice, Kwoyelo, African Union Transitional Justice Policy, Uganda.

Presentation

In person

931 CONTESTED NARRATIVES AND THE CONSTRUCTION OF COLLECTIVE MEMORY IN SUDAN'S TRANSITIONAL JUSTICE PROCESS

John-Mark Iyi, Hajer Musa

University of the Western Cape, Cape Town, South Africa

Stream or current topic

Human rights, memory and transformative justice

Abstract

Conflict has been a constant feature in the political life of Sudan since independence in 1956. These conflicts have been characterised by widespread violations of human rights in some cases bordering on genocide and ethnic cleansing. Human rights abuses, repression, political and socio-economic exclusion and marginalisation of minorities are among the root causes of the conflict. In April 2019, popular protests led to a revolution that toppled the government of Omar Al Bashir, which is largely blamed for the atrocities particularly in the Darfur region. The transitional Government put in place was overthrown by the military in October 2021, derailing the 14 month transition. In December 2022, a new Agreement was signed by the military and Forces for Freedom and Change. In this paper, I will examine three past attempts at transitional justice in Sudan—the Comprehensive Peace Agreement (2005), the Darfur Peace Agreement (2006) and the Doha Document For Peace In Darfur (2011). Drawing on this historical background, I examine the ongoing efforts at transitional justice in Sudan and how collective memory is appropriated and used to control and drive particular narratives in relation to contested historical issues, which underpin and drive conflict in Sudanese Society and constitute a major obstacle to a successful transitional justice process. The paper concludes that collective memory can be a double-edged sword in Sudan and the way in which has been deployed underscores while past transitional justice processes in Sudan failed and why the current process face significant challenges.

Presentation

In person

932 Timor-Leste in the Commission for Truth and Friendship Report aftermath – the socio-legal implications of an incomplete process

Miguel Lemos

University of Lisbon (guest lecturer), Lisbon, Portugal

Stream or current topic

Human rights, memory and transformative justice

Abstract

In 2008 the Commission for Truth and Friendship Indonesia-Timor-Leste presented its final report: Per Memoriam Ad Spem (Through Memory to Hope). The report focused on two periods in 1999 and the institutional responsibility for violations. Although acknowledging Indonesia responsibilities for the crimes committed in 1999 (crimes against humanity and war crimes), it did not recommend justice nor reconciliation between victims and perpetrators. The report, as well as the CAVR report (Timor-Leste Commission for Reception, Truth, and Reconciliation; Chega! Report), made several recommendations, namely in relation to the: training in human rights for the military and police; the establishment of a follow-up institution; healing for victims; and programs for the missing/separated Timorese children. In this context, our departure point for the study is to question these results vis-a-vis the post-conflict and post-authoritarian regime change and the state building process in Timor-Leste, namely the drafting of its legal framework, in vital areas such as the criminal code. How were those recommendations applied; were specific laws and regulations implemented to answer to these particular requirements? How did Timor-Leste complied and how was it reported in the international fora, such as, the Human Rights Council through the UPR mechanism? In order to relate the study with social justice we will also, question the presence, in these “conciliatory processes”, of non-judicial mechanisms, namely those related to customary leaderships. This will be a socio-legal study, based on the literature review and, as well, our professional experience of seven years in Timor-Leste, from 2009-2016.

Presentation

In person

Epistemic Injustice: Truth, Testimony and Credibility

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU305

Stream Epistemic injustices in law

331 Moving beyond formal truth practices and forensic truth in the Syrian conflict. How informal truth practices contribute to thicker understandings of truth

Brigitte Herremans, Tine Destrooper

ghent university, ghent, Belgium

Stream or current topic

Epistemic injustices in law

Abstract

Truth is a central concept in the struggle for justice for Syrians. Many justice actors have turned to the tools and rhetoric of transitional justice to further the quest for justice and truth. Yet, while doing so has allowed them to generate some international attention for Syrian victims, the transitional justice paradigm has several pitfalls. For one, the dominant understanding of truth and truth-seeking embraced in formal mechanisms tends to be narrowly defined as forensic truth. We argue on the basis of interviews with Syrian justice actors and artists that informal, including artistic, practices can entail a thicker understanding of truth. They have the potential to prevent the erasure of victims' experiences while also disrupting some shortcomings in forensic understandings of truth. Thus, we consider how transitional justice as a field of scholarship and practice could better engage with truth-seeking in inconclusive contexts where formal mechanisms may be unavailable.

Presentation

In person

838 Unforeseen: Airstrikes and Epistemologies of Ignorance

Christiane Wilke, Helyeh Doutaghi, Hijaab Yahya

Carleton University, Ottawa, Canada

Stream or current topic

Epistemic injustices in law

Abstract

When US or Coalition airstrikes in Syria, Iraq, or Afghanistan have resulted in civilian deaths, military investigations have frequently asserted that harm to civilians was unforeseen. For example, a May 2017 airstrike on two ISIS snipers on top of a building led to a “secondary explosion” of bomb-making material stored at the site and killed more than 100 civilians who had sheltered there. The report understands the secondary explosion as “unforeseen” and blames the casualties on ISIS. The file detailing this assessment is one of 1,300 recently released US military investigations into civilian casualty allegations arising from airstrikes. The vast majority of the allegations have been designated “not credible.”

This paper develops conceptual tools for analyzing the disavowals of responsibility for civilian harm that can be seen in the files. While sometimes the presence of civilians appeared “unforeseen,” in other cases the allegations were allegedly “unspecific” or not based on credible sources.

Drawing on the literatures on epistemic injustices and epistemologies of ignorance, I argue that these military investigations practice “imperial ignorance”: they claim that local lives and effects of imperial violence are not reliably knowable. This ignorance does not denote a lack of knowledge, but “unknowledges” and forms of obliviousness that sustain racial and colonial oppression (Tuana & Sullivan). In the investigation files, the claims to not know about the presence of civilians or the effects of “secondary explosions” sustain the appearance of legality of the violence under investigation.

Presentation

Virtual via Microsoft Teams

500 Sexual History Evidence and Epistemic Injustice

Joanne Conaghan, Yvette Russell

University of Bristol, Bristol, United Kingdom

Stream or current topic

Epistemic injustices in law

Abstract

This paper explores the relationship between the use of complainant sexual history evidence in rape trials and the concept of epistemic injustice. The paper draws from a larger project of work recently completed by Conaghan and Russell, *Sexual History Evidence and the Rape Trial* (BUP, 2023 forthcoming). The paper explores the epistemic foundations of claims that sexual history evidence is relevant, particularly to issues of consent and complainant credibility. It unpacks the epistemological model which supports and legitimates the use of sexual history evidence, exposing the ways in which problematic beliefs and assumptions about the credibility of rape complainants become embedded in the substrata of legal discourse. The paper also argues that sexual difference is at the heart of this epistemic regime, notwithstanding legislative and policy trends to construct rape in gender-neutral terms.

Presentation

In person

822 Institutional discrimination denial in the Grenfell Tower Inquiry: Denial as a mechanism of knowledge exclusion

Natalie Ohana

University of Exeter, Exeter, United Kingdom

Stream or current topic

Epistemic injustices in law

Abstract

The circumstances leading to the Grenfell Tower Fire in London in 2017 give rise to the possibility that institutional discrimination (ID) on behalf of the Royal Borough of Kensington and Chelsea (the owner of the Tower and the responsible body for the social housing residents who resided there) might have been one of the causes leading to the fire. Therefore, it should have been investigated by the Grenfell Tower Inquiry, a proceeding established by the government to examine the fire's causes.

Despite its relevance, ID was not included in the Inquiry's Terms of Reference and therefore was not examined as a separate question by the Inquiry, due to the government's decision not to include it. However, following the ongoing effort of the Grenfell community to include it despite the government's decision, the Inquiry's Chair has made a commitment to investigate ID should the Inquiry be presented with any evidence that points to its possible existence.

Using psychoanalytical concepts as a theoretical framework - 'denial', Freud's concept 'unheimlich' and Kristeva's concept 'the abject' - I argue that the Inquiry presents a site through which it becomes possible to see the existence and different manifestations of ID-denial. The denial has meant that there was never a real possibility that knowledge on ID could be recognised by the Inquiry. Denial acted in the Inquiry as a mental mechanism of knowledge exclusion, creating both an epistemological barrier, effectively preventing knowledge on discrimination from being submitted, and an oversight, ignoring submitted evidence that clearly pointed at it.

Presentation

In person

Equality and Human Rights Law: LGBTIQ+ Rights and Rights in Northern Ireland

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU308

Stream Equality and human rights

665 Queering anti-discrimination law in Northern Ireland: Moving away from categories?

Aislinn Fanning

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Equality and human rights

Abstract

Where Brexit poses continuing threats to equality protections across the UK, Northern Ireland (NI) has been recognised as unique in that context where equality and non-discrimination are central to the 1998 peace agreement. This paper uses NI as a case study to evaluate possibilities for reconceptualising anti-discrimination law to improve its usefulness in overcoming inequality. Analyses of EU anti-discrimination law continue to develop, as well as analyses of anti-discrimination law in NI in the Brexit context. However, there remains scope for analyses of anti-discrimination law in NI that push boundaries, considering how anti-discrimination law's potential for furthering the equality agenda could be better fulfilled or even expanded. This paper incorporates a queer theoretical and methodological approach, utilising an ethos of open-mindedly, maybe even pre-figuratively, considering possibility and its practicalities. This paper builds on ideas from scholars in the US and Germany to consider the possibility of moving away from the sustained focus on fixed and rigid identity categories in anti-discrimination law. Instead, focusing on group identity, and discrimination itself, as social processes influenced by structures, institutions and norms that produce inequality. It begins with an explanation of how anti-discrimination law in NI is currently conceptualised around categories based on group identities used to define discriminatory behaviour, imagining possibilities for re-thinking categories and their meaning in the discrimination context. It highlights some of the practical pitfalls of anti-discrimination law conceptualised in this way. The paper concludes by considering the practical implications and possibilities of moving away from categories in anti-discrimination law.

Presentation

In person

781 The (un)Conventional approach to human rights: the Sewel Convention and legislating for minority language rights in Northern Ireland

Leah Rea

Ulster University, Belfast, United Kingdom

Stream or current topic

Equality and human rights

Abstract

In the UK, the Sewel convention is a constitutional rule established by the implementation of devolution, which outlines the legislative competencies of central and devolved institutions. Successive UK Governments have traditionally interpreted and applied this convention in a manner which has impacted upon the progression of human rights in Northern Ireland, particularly apparent in the absence of progress from successive Executives in legislating for minority language rights.

In October 2022, the Identity and Language Bill concluded the legislative process in the UK Parliament. The Bill focuses on recognition and promotion of linguistic and cultural identity in Northern Ireland, providing for official status of the Irish language. The Bill was a significant moment in the legal history of Irish language recognition in Northern Ireland. It also marked an interesting moment in the region's constitutional history. By bringing forward the Bill, the sitting British Government intervened in matters of devolved competence and enabled legislative protection of minority language rights, and seemingly developed a new approach towards legislative intervention on human rights matters in Northern Ireland.

This paper examines the interpretation and application of the Sewel Convention within minority language rights issues and the shifting approach of the UK Government through critical analysis of the UK Parliament business pertaining to the Irish language during 2018-2022. It posits the UK Government's approach to the Sewel Convention has changed, but due to political navigation, thus raising questions as to its future application, and the prospect of further progress for Irish language rights.

Presentation

In person

946 The Legal Duty to Ban 'Conversion Therapy'

Ilias Trispiotis

University of Leeds, Leeds, United Kingdom

Stream or current topic

Equality and human rights

Abstract

'This paper argues that there is a legal duty under international human rights law to ban all forms of 'conversion therapy'. States are under a positive duty to do so because all forms of 'conversion therapy' fall within the protective scope of the absolute prohibition of torture, inhuman or degrading treatment under international human rights law. Specifically, this paper claims that all forms of 'conversion therapy' amount at least to degrading treatment because they disrespect the equal moral value of LGBTQ+ people. They do so through a distinctive combination of two serious moral wrongs. Firstly, all forms of 'conversion therapy' put LGBTQ+ people at a proved, real risk of grave physical and mental harm. Secondly, all such 'therapies' directly discriminate on the grounds of sexual orientation and gender identity: they typically single out LGBTQ+ people to deny them key freedoms related to sexuality and gender identity. The paper analyses those claims and concludes by looking at the positive state obligations that arise in this context.'

Presentation

In person

25 Years of Constitutional Change: Democracy within/beyond the state

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU309

Stream 25 years of constitutional change - past and future

347 For Wales, see Scotland: Does the Indyref2 reference affect Wales' place in the Union?

Liam Edwards¹, Emyr Lewis²

¹Ulster University, Belfast, United Kingdom. ²Aberystwyth University, Aberystwyth, United Kingdom

Stream or current topic

25 years of constitutional change - past and future

Abstract

Scotland is conventionally thought to have the most extensive scheme of devolution in the UK. With no primary lawmaking powers until 2006,[1] Wales, by contrast, is considered a more limited devolution scheme. But Wales has peculiarities meaning that limits on Scottish powers do not necessarily apply in Wales.

The Scottish government's recent reference asked the Supreme Court to validate a draft Bill empowering the Scottish Government to hold an independence referendum. The argument was two-fold; Does the advisory referendum relate to reserved matters, and (the SNP's case) does Scotland have a right to self-determination.

The Supreme Court rejected both arguments: the draft Bill related to a reserved matter, the Union, and, given Scotland's history, self-determination did not require independence.[2]

By contrast the Welsh Government already has powers to hold "polls for ascertaining views of the public", and promote or improve the well-being of Wales. [3] Furthermore, Wales's history in the Union is different from Scotland's.[4]

With Wales's increasing independence movement, and a Commission to consider Wales's constitutional future,[5] these differences may be more significant than conventional thinking suggests.

[1] Government of Wales Act 2006.

[2] REFERENCE by the Lord Advocate of devolution issues under paragraph 34 of Schedule 6 to the Scotland Act 1998 [2022] UKSC 31.

[3] Government of Wales Act 2006, s60 & s64.

[4] Contrast Act of Union 1707 and Statute of Wales 1284.

[5] The Independent Commission on the Constitutional Future of Wales, 6 December 2022.

Presentation

In person

157 “Where power is, women are not?”: A reappraisal of the Manx Tynwald since 2000.

Peter Edge¹, Alex Powell²

¹Oxford Brookes University, Oxford, United Kingdom. ²Oxford Brookes, Oxford, United Kingdom

Stream or current topic

25 years of constitutional change - past and future

Abstract

In the phrase quoted, Vallance encourages us to contextualise not only the composition of organs of the state, but the shifting dynamics of power between organs of the state. Despite being the first national Parliament to enfranchise women voters in 1881, the Manx Tynwald throughout the twentieth century suffered a serious deficit in women members in the democratically elected, dominant, House of Keys; and even more so in the indirectly elected second chamber, the Legislative Council. Since 2000 however, even in the absence of party political structures used elsewhere in the Atlantic Archipelago to improve the representation of women, the composition of Tynwald has moved much closer to parity between men and women. Drawing on a series of qualitative interviews with women who have been, or have sought to be, members of Tynwald, we explore some of the key features in the journey of this small democracy towards a greater diversity of gender representation. In doing so, we hope to contribute to debates, and support the development of policy, not only in the Isle of Man, but across small democracies with a weak, non-existent, or nascent party system which leave some of the traditional methods of inclusion—such as all women lists within party structures—unavailable to them.

Presentation

Virtual via Microsoft Teams

707 How the UK’s true constitution includes its economic constitution and what this entails

Tom Cornford

University of Essex, Colchester, United Kingdom

Stream or current topic

25 years of constitutional change - past and future

Abstract

We usually think of a constitution as a set of consciously chosen higher-order laws that define a state's – or in some cases, a supranational organisation's - political institutions. Suppose, however, that one were to define a constitution as the set of laws most significant in determining a society's distribution of power. Such a set would comprise the laws that define governmental institutions but also the laws that constitute private power: property law, company law, labour law, the laws governing the creation of money and so forth. This, I shall argue, is the course we should take in seeking to understand and evaluate the UK constitution. Doing so leads to two realisations. Firstly, the distribution of private power is as defining a feature of our society as is the distribution of public power and decisions made by the holders of private power are as likely to act as a constraint on what governmental institutions can do as vice versa. Secondly, if we are to claim that our system possesses certain virtues such as its democratic nature and adherence to the rule of law, we must first be sure that these virtues are exemplified in the private and economic spheres as well as in the public. I shall argue that analysis of the institutions of private power and of their interaction with our governmental institutions demonstrates that our system falls far short of fulfilling the claims traditionally made for it.

Presentation

In person

Exploring Legal Borderlands: Legal mobilisation Part 1: The role of transnational legal systems and networks in strategic litigation.

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU310

Stream Exploring legal borderlands

169 Climate transnational networks in practice: the *Carvalho* case

Mario Pagano

University of Amsterdam, Amsterdam, Netherlands

Stream or current topic

Exploring legal borderlands

Abstract

Despite the narrow standing granted by the CJEU to private applicants in actions for annulment, environmental organisations are still trying to mobilise the EU judiciary in order to push the latter to abandon the so-called Plaumann test. In this regard, one of the most recent lawsuits is represented by the Carvalho case, where ten families have attempted to contest the legality of EU climate law directly before the CJEU. By relying on interviews with lawyers and NGOs members involved in the case, this paper provides an empirical contribution to the study of legal mobilisation in Europe and transnational networks in the climate context. More specifically, qualitative analysis of NGOs' activities has shown that networks membership in climate litigation before the CJEU has been crucial for at least four main reasons, namely for i) selecting plaintiffs; ii) securing funding; iii) elaborating effective legal arguments; iv) developing a communication strategy. Moreover, membership of networks facilitates the adoption of an 'integrated' approach to advocacy, combining legal and non-legal strategies, such as political mobilisation and lobbying. Indeed, this research argues that ENGOs' established networks have guaranteed a more stable representation of national organisations before the EU institutions when lobbying for legislative change.

Presentation

In person

122 Transnational legal mobilisation by trade unions and workers: In/effective litigation strategies as mechanisms of redress

Jack Meakin

University of Leeds, Leeds, United Kingdom

Stream or current topic

Exploring legal borderlands

Abstract

The development of transnational labour law regimes (in the EU, CoE, and ILO) presents a constellation of labour standards, jurisprudence, complaint procedures, and enforcement mechanisms. This paper is concerned with the ways that transnational legal and regulatory systems have been mobilised by trade unions and workers and its effectiveness as a means to redress injustices at work. There is a burgeoning field of scholarship investigating the strategic use of national and supranational courts to resolve industrial disputes and secure fundamental labour rights. This paper contributes to this field by identifying the interdisciplinary opportunity to apply insights from political sociology, legal theory, political economy, and legal mobilisation studies to doctrinal analysis of transnational labour law. Focusing on litigation and the role of courts, this paper will begin by mapping the strategic opportunities and limitations of mobilising transnational labour law norms and mechanisms. I will then apply our interdisciplinary insights to recent case law to identify and analyse the factors that shape the effectiveness of transnational litigation, including: The types of legal arguments (from treaty provisions to rights claims) that have been effective in different trans/national jurisdictions, the nature of pluralism in transnational labour law litigation, the ways that courts have accommodated (or not) the competing interests of workers, employers, and free markets, as well as the critical interaction between multi-level litigation strategies and the political objectives of trade unions.

Presentation

In person

302 Transnational activism in defense of minorities at the time of populism: looking beyond the international level

Lilla Farkas

ELTE TÁTK , Institute of Politics and International Relations, Budapest, Hungary

Stream or current topic

Exploring legal borderlands

Abstract

There is much written about democratic backsliding in Eastern Europe (e.g. Blauburger and Kelemen, 2017) and this paper narrows the focus of existing research, exploring how amid increasing populism transnational advocacy networks counter attacks on minority rights (women, LGBT, and ethnic minorities including the Roma). Turning the limelight on social movement actors below the international level, the paper reverses the general direction of inquiry, focusing on domestic and grassroots NGOs and lawyers and critically assessing their interaction with elite international actors within and across group-specific networks (Nash, 2015).

Populists use legal tools to dismantle the achievements of legal liberalism. Scaling back or dismantling the rights of minority groups is now a matter of mega-politics as populists have dragged it to the center of “core political controversies that define (and often divide) whole polities” (Hirschl, 2008). Pro-active populist legal mobilization “goes beyond the elite circle of lawyers and politicians” (Madsen et al, 2018) and puts legal liberals and minority rights activists on the defense, forcing them to change tactics and strategies.

IOs and INGOs have responded to populist mobilization and minority counter-mobilization variably and unevenly. Their action is robust on symbolic issues that enjoy wide political support in Western states with influence over institutions, but Europe is more “silent about race” (Lentin, 2008). This indicates a potential disconnect and mismatches between international and national/grassroots actors, a phenomena the paper seeks to explore.

Presentation

In person

518 When Luxembourg takes the lead: strategic international judicial dialogue in Europe and the right to legal gender recognition

Audrey Plan

Trinity College, Dublin, Ireland

Stream or current topic

Exploring legal borderlands

Abstract

International Courts interact with each other, especially by referring to each other's rulings, and the consequences of these interactions often assumed to be a progressive and stable convergence of their respective jurisprudence. The European Court of Justice (ECJ) and the European Court of Human Rights (ECtHR), with their overlapping jurisdictions, are engaged in such interactions. However, rather than a stable convergence, their jurisprudence displays both convergence and divergence, with changes through time within different issue-areas. How can we causally explain such a variation?

This article explores these dynamic interactions by conducting a case-study on trans*

rights to legal gender recognition, where the ECJ initially had a more protective case-law than the ECtHR, and the latter converged with the former. Relying on process tracing and triangulation with data from diverse sources, including interviews with current and former ECJ and ECtHR judges, the findings support the theory that the ECJ and the ECtHR engage strategically with each other to safeguard their authority as policymakers within the European judicial and institutional system, using convergence with each other as a legitimacy-enhancing mechanism. The contribution of this paper is two-fold: first, it presents a novel method to empirically and systematically evaluate the degree to which two international courts converge or diverge with each other. Second, it shows that overlaps in the jurisdictions of International Courts, a situation becoming ever more common due to the increased judicialization of International Law, present these courts with both new challenges, and new opportunities to reinforce their authority.

Presentation

In person

Interrogating the Corporation: Future Legal Developments

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU318

Stream Interrogating the corporation

205 Agenda Setting & Policy Barriers for a Business & Human Rights Treaty

[Johanna Hoekstra](#)

University of Edinburgh, Edinburgh, United Kingdom. University of Essex, Colchester, United Kingdom

Stream or current topic

Interrogating the corporation

Abstract

The development of a Business & Human Rights legal framework started to take shape with the publication of the UN Guiding Principles on Business & Human Rights in 2011. Since then, non-financial reporting and human rights due diligence legislation has been implemented over the last decade. At the same time the UN has started to develop a binding Business & Human Rights Treaty (BHR Treaty) (which is currently in its third draft version) and which would also require states to introduce a form of human rights due diligence legislation.

With the developing domestic framework this seems an opportune moment for an eventual binding treaty to receive a significant number of ratifications. However, experience from international commercial law conventions shows that momentum for achieving ratification can be difficult to achieve.

This paper focuses on the eventual ratification of a business & human rights treaty by discussing this through a focus on agenda setting in public policy theories and by considering the experience with the ratification of international

commercial law conventions. This paper first introduces the current legislative framework, then discusses the drafting process of the BHR Treaty, it further examines the role agenda setting plays in the ratification process, it then examines the policy barriers in the ratification of international commercial law conventions and how these could affect the BHR Treaty.

Presentation

In person

836 The information orders of business and human rights

Ciarán O'Kelly, Ciara Hackett

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Interrogating the corporation

Abstract

When the United Nations Guiding Principles on Business and Human Rights were drafted, they promised corporate engagement with human rights, including access to an effective remedy. A decade on and business and human rights practice via human rights due diligence HRDD has done little to eradicate exploitation in the supply chain, and has transparently failed to overcome the various procedural, evidential, financial, and legal barriers to victims seeking effective remedy. Small meaningful victories continue to be celebrated, but to advance the field, a systemic approach is required. This paper seeks to frame the conversation in a more constructive manner.

The turn towards 'macroprudential regulation' after the financial crisis holds lessons for business and human rights as a regulatory phenomenon. Macroprudential regulation addresses questions of who controls information, what kinds of 'knowing' are privileged and ultimately, what knowledge is for. Business and human rights currently faces a similar turn, away from treating firms as rational, discrete actors and towards greater attention to systemic vulnerabilities in the global economic system. New concepts of information governance will require a move away from due diligence and towards treating information as part of a framework for system-level regulatory attention. Ideas of what information is and who it is for must change, as it did, albeit neither perfectly nor to completion, in financial regulation.

Presentation

In person

903 Shareholder protection and statutory derivative actions: Comparative analysis between the UK and Australian models

Lang Thai

University of Lincoln, Lincoln, United Kingdom

Stream or current topic

Interrogating the corporation

Abstract

Statutory derivative action is a lawsuit brought by a shareholder or director on behalf of and in the name of the company to remedy a wrong done to the company where the company is unwilling or unable to do so, for example, derivative action against a company director or the company's board of directors for breaches of their duties. Not all countries in the world have derivative actions. The derivative action procedure has been available in Australia since 2000 under the Corporations Act 2001 and in the UK since 2006 under the Companies Act 2006. In both jurisdictions, a shareholder or minority director needs to apply for leave of the court to commence derivative proceedings, but the nature of the leave application in both the UK and Australia are markedly different. Although, both countries have the good faith criteria, granting leave by the court is, in the UK, dependent on the test of "to promote the success of the company" under s.172 and amongst other things; while in Australia, the test is, and amongst other things "in the best interests of the company". This paper critically compares the Australian and the UK models and explains how the nature of the UK derivative action is more generous in favour of the shareholder applicant in terms of granting leave and awarding costs indemnity, and how the negative implications of Australia's statutory derivative action has driven an increase in the US-style shareholder class actions in recent years.

Presentation

In person

Intellectual Property 2

11:00 - 12:30 Wednesday, 5th April, 2023

Location MU319

Stream Intellectual property

Smita Kheria

478 Automated Copyright Enforcement – Fracturing the Fair Use Doctrine of the IP Law

Phalguni Mahapatra

Department for Promotion of Industry and Internal Trade (DPIIT)-IPR Chair (under the aegis of Ministry of Commerce and Industry, Government of India) at NALSAR University of Law, Hyderabad, India

Stream or current topic

Intellectual property

Abstract

Surging mass infringement over the internet has led to the adoption of a new private ordering in the form of automated copyright enforcement because the conventional enforcement method by online intermediaries was turning out to be inefficient and costly. Digitalization has caused a shift in law enforcement and adjudication powers to private entities, hence, a paradigm change in the system of governance. This system poses a risk to freedom of

expression as in absence of a mechanism to check the amount of work taken in the infringing work would lead to over-blocking. The non-consideration of the fair use doctrine hampers the creator's right to safeguard themselves. The ensuing non-transparency can lead to overprotection and abuse of power through a lack of accountability. Due process also stands affected and exists multiple legal barriers in the path of a transparent algorithmic enforcement process. It can also turn out to be exploitative because of the monetizing element available to the right holder that allows copyright licensing agreements. To address this problem, discussions are happening to resort to text and data mining exceptions to counterpoise issues linked to automated enforcement. As the emerging regulatory framework is obligating online intermediaries to deploy algorithmic monitoring and filtering tools, there is a need to delve into the nuances of this issue. The purpose of this article is to explore the dynamics involving automated systems deployed by online intermediaries and understand the policy solutions to mitigate these challenges.

Presentation

In person

595 The EU right of communication to the public against creativity in the digital world: a conflict at the crossroads?

Zoi Krokida

University of Stirling, Stirling, United Kingdom

Stream or current topic

Intellectual property

Abstract

This article discusses the EU right of communication to the public and its application in the digital word. More specifically, it argues that creativity in the EU Digital Single Market may be restricted because of the overstretched interpretation of the right of communication to the public in the context of linking activities and of the regulatory framework of online platforms. To do so, firstly, I critically examine the requirements set forth by the CJEU in order to justify the unauthorized communication to the public in respect of linking. Secondly, I address the ascription of primary liability rules to online platforms through the act of communication to the public, as set forth in Article 17 of the Digital Copyright Directive. Then, the discussion moves to the implications for creativity, namely for online platforms as spaces that promote creativity, for internet users who access artistic works, and for the creators who are economically engaged with the online platforms.

As a way forward, a return to the doctrine of fair balance is suggested. The use of that doctrine has already been outlined in a bedrock of case law within the copyright context over the years and its aim is to find an equilibrium amongst the conflicting interests of the parties involved in a dispute or at the setting of a legislative tool. In that way, legal certainty and the rule of law would be safeguarded while the equilibrium of the fundamental rights of the parties involved would be ensured.

Presentation

In person

896 The Court of Justice Ruling in Poland and Our Filtered Futures: A Disruptive or Diminished Role for Internet User Fundamental Rights?

Dr Kevin O'Sullivan

Dublin City University, Dublin, Ireland

Stream or current topic

Intellectual property

Abstract

In April 2022, the European Court of Justice delivered its long awaited ruling in the case of Poland answering in the affirmative that Article 17 of the Copyright in the Digital Single Market 2019 mandates the use of upload filters to protect online digital copyright. A critical decision as we move into a future of filtered online services, the ruling confirms – in principle – that algorithmic governance of online copyright enforcement is in line with European fundamental rights.

Reflecting on the Court's existing normative base, it will argue that for key stakeholders, the ruling is difficult to reconcile with the Court's existing norms surrounding the governance of online digital copyright. For online intermediary service providers, it will be argued they have seen a total abrogation of the protections afforded to them by the Court's previous case law without a sufficient and convincing justification.

Having a horizontal impact on internet user fundamental rights it will be argued this compounds the insufficient weight placed by the Court on such rights, in particular when it comes to rights of freedom of expression. Rather than being afforded the disruptive role justified by the Court's existing normative base, it will be argued that the role of such rights has been diminished in the face of algorithmic governance setting a dangerous precedent for all our filtered futures.

Presentation

In person

913 Greening Intellectual Property Rights: A Critical Appraisal

Pratyush Nath Upreti

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Intellectual property

Abstract

This article will reflect upon the recent green initiatives taken by developed and developing countries. In doing so, it draws an analysis of those initiatives with a focus on intellectual property rights (IPRs). Globally there is a commitment to developing a policy and strategies to ensure a sustainable and environmentally friendly economy.

Recent India's arctic policy and the EU Green deal are some examples. The global pandemic has made us realize how society is dependent on innovations and technologies. Therefore, a green and sustainable policy will ensure optimum value with responsibility toward the environment and climate change. Green and sustainable innovation is essential for effective responses to and recovery from COVID-19 and future pandemics. In this background, the first part of this paper will provide a general overview of the IPR-related policy initiatives in different countries, including the EU Green deal. The second part will analyze the policy initiative taken at the international level to promote green intellectual property (IP). The last part will focus on ways in which sustainability could be embedded in the IP system including in IP Chapters in trade agreements.

Key words: sustainability, intellectual property, innovation, trade agreements, COVID-19

Presentation

In person

Lunch and learn with research funders

12:30 - 13:30 Wednesday, 5th April, 2023

Location MU125

Rory O'Connell

Speakers from AHRC, Nuffield Foundation, British Academy and Legal Education Foundation

SLSA annual general meeting

13:00 - 14:00 Wednesday, 5th April, 2023

Location MU011

Family Law and Policy 5

14:00 - 15:30 Wednesday, 5th April, 2023

Location MD007

Stream Family law and policy

320 Assessing the 'Help with Family Mediation' scheme

Rachael Blakey

University of Warwick, Coventry, United Kingdom

Stream or current topic

Family law and policy

Abstract

The availability and accessibility of legal support for private family matters has been decimated by decades of neoliberal reform, most recently demonstrated through cuts to legal aid in 2013. Nonetheless, legal support remains supposedly available for people using mediation via the aptly titled 'Help with Family Mediation' scheme. Under this system, lawyers are paid to advise, as well as draft financial consent orders, so long as their client is eligible for legal aid. Statistics regarding the use of the scheme are released quarterly, though the data has not been scrutinised in recent years.

This paper responds to this research gap by investigating the use of 'Help with Family Mediation' since the cuts to legal aid. Its discussion is based on a quantitative analysis of the most recent statistics, revealing a declining use of the scheme since 2015. Various reasons for this low uptake, such as the lack of incentives for solicitors, will be considered. The paper will also reflect on the recorded outcomes in the dataset. Where a considerable number of cases are listed as failing to reach a settlement, it is questioned whether the scheme is even effective in the first place. The paper will conclude that whilst the idea behind 'Help with Family Mediation' is promising, its benefits have failed to materialise.

Presentation

In person

636 Mediation and International Parental Child Abduction Cases. A qualitative study to examine the role of mediation in international parental child abduction cases from the perspective of the legal and mediation professionals.

Emily Dunne

Maynooth University, Kildare, Ireland

Stream or current topic

Family law and policy

Abstract

This socio legal, qualitative research study focuses on the role of mediation for International parental child abduction cases, from the perspectives of the professionals working in this capacity. The study will involve 15-20 face to face interviews with family mediators and legal professionals familiar with such cases.

The Hague Convention on the Civil Aspects of International Child Abduction primary aim is to protect children from the effects of unlawful removal from their place of habitual residence and to ensure their prompt return. The habitual residence is deemed to be the best place to decide any custody disputes and the European Council and the Brussels IIbis regulations 2005 have set in place regulations for mediation in such cases. The Brussels IIb Recast of 2019

which came into effect on August 2022 aims to further streamline the process and ensuring access to justice and opportunities for good co-operation between Member States.

Family Mediation has long been recognised as a very important step in supporting parents in securing sustainable parental agreements. Legal education programmes place a strong emphasis on advocacy and negotiation which support the inclusion of mediation in such cases. The key stakeholders within the legal and mediation profession recognise this as a positive approach to child abduction conflicts and the desire of all the professionals is to support the parents at this very emotive and challenging time. This study proposes to expand on earlier studies, on where mediation fits into the legal process and how it interacts with litigation today.

Presentation

In person

95 Are we ready for mandatory family mediation?

Mavis Maclean

University of Oxford, Oxford, United Kingdom

Stream or current topic

Family law and policy

Abstract

The search for a solution to resolving the pressure of on our family court has reached the stage of appearing to government to have only answer: the exclusion of lawyers and reliance on mediation. Following LASPO this situation was expected to evolve in this direction, but this has not happened. This paper argues that the division between the support of mediators and that of lawyers is unhelpful, and that easily accessible low cost general advice is needed to answer the frequently asked questions from men and women facing separation " what do most people do? what could I do? what would be best for my family? what is the next step? ie a need for information, advice and support. Is it time to reconsider the return of the Green Form? the recent report from the House of Lords Select Committee on the Children and Families Act 2014 appear to think along these lines. Their findings deserve serious consideration, together with the recent qualitative research report from the Family Justice Observatory, "Separating Families : experience of Separation and Support ". It would be unfortunate for disputes about kinds of intervention were to echo the disputes of the separating parties. What could be achieved during the present economic climate?

Presentation

Virtual via Microsoft Teams

Managing and Protecting People on the Move 1

14:00 - 15:30 Wednesday, 5th April, 2023

Location MD012

Stream Managing and protecting people on the move

Ben Hudson

126 Who is a genuine refugee? The efficacy of a Framework Convention in regulating the refugee definition

Shepherd Mutsvara

The Pedagogical University of Cracow, Kraków, Poland

Stream or current topic

Managing and protecting people on the move

Abstract

The paper draws on a doctrinal premise to address the issue of persons fleeing their country of origin because of economic hardship. It argues for a Framework Convention as a plausible solution to tackle the plight of 'economic refugees' who are arguably a direct result of globalization and the latent effects of economic liberalization. The empirical claim is that economic liberalization has become a serious form of economic persecution which international refugee law should consider when assessing asylum claims. 'Economic refugees' are not only labeled as undeserving, but also not entitled to legal protection as refugees and yet most refugees and asylum seekers hail from countries where economic failure, political instability, poverty, and persecution are indissolubly linked. Considering the predicament of such persons has not been adequately addressed by the Convention Relating to the Status of Refugees of 1951 and its Protocol of 31 January 1967, the paper asks the question 'how should international refugee law consider the situation of persons fleeing their country of origin due to economic hardship?' The question is answered by proposing a Framework Protocol/Convention that has an expanded refugee definition that considers the current realities of economic liberalization. While the Framework Convention has been effective in the regulation of environmental affairs, the paper argues that the same tool is a novel and viable solution in redefining the refugee definition so that it is inclusive and matches the current realities of systemic economic deprivation giving rise to cross-border displacement.

Presentation

In person

217 Responding to climate-related displacement through legal pathways for migration

Kathryn Allinson

University of Bristol, Bristol, United Kingdom

Stream or current topic

Managing and protecting people on the move

Abstract

Under Article 1(A) of the 1951 Refugee Convention, climate-related displacement does not constitute grounds for international protection.¹ The human rights implications of such displacement should ensure the protection of individuals displaced across international borders through subsidiary protection mechanisms.² However, given the growing prevalence of externalisation policies and securitisation of borders, the question of whether individuals would be able to access this protection remains.

In 2018, the Global Compact for Safe, Orderly and Regular Migration (GCM) recognised “the adverse effects of climate change” as co-drivers of human mobility in Objective 2 and sets out, in Objective 5, how States should develop access to legal pathways to respond to climate-related displacement. This paper presents the framework envisaged by the GCM and the form such legal pathways could take, including visa liberalisation, labour mobility agreements, free movement agreements and humanitarian visas. It highlights that all pathways, regardless of form, must be founded upon human rights law and be open to all skill levels to avoid entrenching global inequalities. The paper proposes that access to a range of pathways for communities affected by climate change will contribute to climate adaptation as well as promoting development in the country of origin and destination.

[1] *Horvath v Secretary of State for the Home Department*, 1 AC 489, [2000] UKHL 37.

[2] Jane McAdam, ‘Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement’ (2020) 114 *American Journal of International Law* 708.

Presentation

In person

760 EU Externalisation of Border Control and the Detention of Transit Migrants in Non-EU territories

Iyanuloluwa Kolawole

The Open University, Milton Keynes, United Kingdom

Stream or current topic

Managing and protecting people on the move

Abstract

Since the adoption of the Global Approach to Migration in 2005, the EU has been seeking various means to cooperate with third countries and transit states on the prevention of irregular migration. In 2022, Italy renewed its 2017 Memorandum of Understanding with Libya which empowers the Libyan Coast Guard to intercept migrants on the central Mediterranean routes and return them to Libya’s reception centre. Similarly, the Greece government continues to refer to the 2016 EU-Turkey agreement; to debate Türkiye’s responsibility to carry out border surveillance in the Eastern Mediterranean routes and prevent the movement of migrants to Greece. The 2017 MOU provides for the establishment of reception centres to hold transit migrants pending their return to their country of origin. On the other hand, The EU-Turkey deal envisaged the return of migrants and asylum seekers to Turkey and assumed that Turkey can offer them reception and accommodation. The return of migrants to these states encouraged the arbitrary detention of migrants. This paper explores the externalisation of migration control from a doctrinal perspective and the issues that arise from the MOU and agreements existing between the EU, Greece/Türkiye and Italy/Libya. It presents arguments on the EU’s contribution to the arbitrary detention of transit migrants in Libya and Türkiye. It aims to establish that the practice of pushing back migrants on the Mediterranean routes facilitates the detention of transit migrants some of whom might be eligible for international protection.

Presentation

In person

253 An exploration of humanitarian search and rescue workers' navigation and understanding of the law

Neil Graffin¹, Matthew Howard², Jo Vincett³

¹The Open University, Milton Keynes, United Kingdom. ²University of Kent, Canterbury, United Kingdom. ³Liverpool John Moores University, Liverpool, United Kingdom

Stream or current topic

Managing and protecting people on the move

Abstract

This paper will discuss the full findings of our project 'An exploration of humanitarian search and rescue workers' navigation and understanding of the law'. In the paper, we seek to set out how volunteer perceptions of law and their own understanding of relevant legal obligations can be characterised, given the widespread lack of legal education among the SAR volunteer community. We argue that their understanding of law is attuned to a particular form of legal consciousness that can be characterised as 'before the law' - where particular attention is given to complying and evidencing compliance with the law against a backdrop of state control of SAR work and volunteers, criminalisation, and efforts to render SAR operations inoperative. Our paper also assesses how legal understanding and legal consciousness are shaped by a complex interplay of prior experience, expectations, and the political environments in the jurisdictions in which they are operating, the entanglement of which can lead to additional operational and wellbeing challenges for SAR workers.

This paper will discuss how we have developed a legal education course to help SAR workers develop greater legal awareness and will point to the next steps in the direction of our project to enhance legal education within the volunteer SAR field.

Presentation

In person

Law and Theatre

14:00 - 15:30 Wednesday, 5th April, 2023

Location MD021

Stream Law, literature and the humanities

411 Disrupting Law's Dream: Towards a Theatrical Pedagogy of Law

Barbara Hughes-Moore

Cardiff University, Cardiff, United Kingdom

Stream or current topic

Law, literature and the humanities

Abstract

"All the world's a stage, and all the men and women merely players".

This line, from Shakespeare's *As You Like It*, captures why the study of law and theatre is so appealing. Employing a 'theatrical' lens can reframe legal actors as *dramatis personae* and doctrinal issues as dramatic devices. While laws have authoritative weight even on the dusty pages of a statute book, they come to life when brought into the transformative space of the courtroom. On this stage, as in the theatre, the law becomes a mutable text: its meanings have the potential to metamorphose before our very eyes.

As a branch of law and literature scholarship, 'law and theatre' has undergone a less sustained examination than, for example, law and film or law and media. Building theatre into the way we teach and understand law, though, has the potential to redress the balance. This paper develops a nascent 'theatrical' pedagogy of law, which incorporates legal-literary notions of performance, interpretation and intertextuality. Drawing on theories of semiotics developed by the Prague School, and more recent scholarship by Danish Sheikh and Marett Leiboff, this paper examines the current state of law and theatre scholarship. In doing so, it takes as a case study the collaborative outreach project between Sherman Theatre Cymru (a leading Cardiff-based production house) and the Law and Literature team at Cardiff University, which incorporates Sherman in-house productions into the module and supports and encourages students to draw their own links between theatre and law.

Presentation

In person

575 Evaluating international human rights law as a means of protecting the socio-cultural value of theatre and performance.

Sarah-Jane Coyle

Queen's University, Belfast, United Kingdom

Stream or current topic

Law, literature and the humanities

Abstract

The focus of this research paper is in demonstrating the value of theatre as a cultural art form in contemporary society, and in evaluating international human rights law as a means of protecting it. The study is motivated by

previous research in the fields of theatre studies and international human rights law, which have explored the benefits of theatre in practical contexts and theoretical resistance to socio-economic and cultural rights, respectively. The paper seeks to unite the fields by elucidating the content of a human right to theatre that will elevate theatre's presence in society, by imposing robust legal obligations upon states to protect it. The paper adopts qualitative research methods, reviewing relevant literature on applied theatre, international human rights law, 'cultural rights' and arts funding. Secondary case studies are drawn upon to support the paper's main conclusions, namely: that the socio-cultural value of theatre is such that it merits international protection; that theatre currently forms an intersectional human right in international law; and that the availability and accessibility of theatre are central elements of public policy that require urgent attention. The paper concludes that a standalone right to theatre should be codified in international human rights law and proposes one central option for this: an additional protocol to the International Covenant on Economic, Social and Cultural Rights, for reasons of practicality and legal consistency.

Presentation

In person

596 Signs, Law and Theatre

Markéta Štěpáníková

Masaryk University, Brno, Czech Republic. Janáček Academy of Music and Performing Arts in Brno, Brno, Czech Republic

Stream or current topic

Law, literature and the humanities

Abstract

In this paper, a case study of one particular Czech legal case will be presented to discuss the theoretical connections between law and theatre and their practical consequences, especially the artist's liability for his statement expressed during and by his theatrical performance.

In May 2018, two controversial plays, "The Curse" and "Our Violence and Your Violence", were presented in Brno, Czech Republic. In both plays, the aim was to start a public discussion about the state of society in general and the Catholic church in particular. For that purpose usual means of the contemporary political theatre were used: controversial and shocking symbols and signs.

Cardinal Duka, the representative of the Czech Roman Catholic Church, despite never seeing the plays, sued the theatre because of its „attack on Christianity“. Since he was not successful with his legal claim before the general courts, he turned to the Czech Constitutional court. In October 2022, the Constitutional Court decided that Dukas's rights were not violated.

In November 2022, the theatre Goose on a String premiered a new play, called Vykouření. It is a theatrical reaction to the whole situation including all relevant court decisions. The play itself is a part semiological essay and part documentary theatre. One of the questions asked by the play Vykouření is: can a theatrical sign be a basis of some kind of liability?

This question is also the main focus of this paper.

Presentation

In person

882 Law, History, Activism, and Puppets

Lois Bibbings

University of Bristol, Bristol, United Kingdom

Stream or current topic

Law, literature and the humanities

Abstract

This paper reflects upon ongoing collaborative activist history work which combines law, the arts and humanities, including the museum, archive and heritage sectors, in helping to create/curate a range of outputs alongside academic publications (for example, an exhibition, performance, a musical concert, historical re-enactment and puppet show). In doing so, it focuses on investigating less familiar or 'hidden (legal) histories', with a very definite 'from below' perspective, and an emphasis, amongst other things, on story and people.

Presentation

In person

Sexual offences 5

14:00 - 15:30 Wednesday, 5th April, 2023

Location MD102 Great Hall

Stream Sexual offences and offending

Rosie Cowan

545 A Critical Evaluation of the Admission of Previous Sexual History (PSH) Evidence in Northern Ireland: Prevalence, Impact, Reform and International Comparison.

Chloe Templeton, Anne-Marie McAlinden, Eithne Dowds

Queen's University, Belfast, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

Previous sexual history (PSH) evidence in sexual offence trials has been a longstanding source of debate and legislative reform attempts across the United Kingdom, largely due to rape-myth implications i.e., challenging complainant credibility and inferring consent. A notable recommendation from the Gillen Review, following the landmark Ulster Rugby rape-trial (2018) was the need to prevent this improper PSH cross-examination, however little is known about PSH evidence admission in Northern Ireland (NI), compared to worrying indicators identified in other jurisdictions. This paper draws on an ongoing PhD study which will apply a qualitative, multi-method approach to explore the prevalence and impact of PSH evidence in NI sexual offence trials. Data collection includes a desk-based analysis of 30 rape-trial transcripts to understand prevalence, and 30 one-to-one interviews with legal practitioners (n=15), victim support practitioners (n=5) and victim-survivors (n=10) will explore the perspectives of those who have been involved in the trial process, to understand the impact of PSH admission and discover options for reform. An analysis of current NI law (Article 28 of The Criminal Evidence (NI) Order 1999), as well as international comparisons of PSH law in comparable jurisdictions, will assist in formulating results. This paper will specifically examine the international comparative element of legal and policy frameworks, and critiques, from other jurisdictions, which will guide best practice recommendations for NI. It is anticipated findings from this study will inform recommendations to improve the rape-trial process by securing best evidence to prevent victim re-traumatisation and ensure victims' justice interests are met.

Presentation

In person

123 Anonymity Provisions Around the World: Finding Best Practice for Persons Accused of Serious Sexual Offences

Chloe Hanna

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

This paper draws on the author's ongoing PhD research and focuses on the issue of anonymity for persons accused of serious sexual offences in Northern Ireland. It highlights the recent amendment to the law under the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022, which legislated pre-charge anonymity for persons accused of sexual offences. This amendment gave effect to the earlier recommendations made in the Gillen Report into the Law and Procedures in Serious Sexual Offences in Northern Ireland (2019). The paper argues that much can be learnt from the alternative approaches of other jurisdictions in the international context. Consequently, it discusses the laws of defendant anonymity from a comparative perspective, drawing on jurisdictions including the Republic of Ireland, Isle of Man, New Zealand, and the United States of America. As such, a variety of approaches that are both discretionary and rules-based are explored and approaches which are stricter and more lenient than that in Northern Ireland are illustrated. The paper concludes by suggesting that any future reform in Northern Ireland should draw on the experiences of jurisdictions in the international context when striving for best practice.

Presentation

In person

423 Securing anonymity for sexual offence complainers: a Scottish law reform campaign

Andrew Tickell

Glasgow Caledonian University, Glasgow, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

In Scotland, people who say they have been victims of sexual crime currently have no legal right to anonymity. In contrast with the legislative framework in England, Wales and Northern Ireland – and much of the rest of the common law world – Scottish complainers must rely on press ethics, social media restraint, and rarely-made orders under the Contempt of Court Act to prevent their identities spilling into the public domain. In 2020, the high-profile prosecution of former First Minister Alex Salmond placed extraordinary pressures on this framework, highlighting a lacuna in law and the need for reform.

We launched the Campaign for Complainer Anonymity at Glasgow Caledonian University in September 2020, making the case for new legislation to regulate how broadcasters, newspapers and social media publishers report sexual prosecutions in Scotland. Involving both staff and students, the Campaign combines:

- comparative legal research exploring international reporting restrictions in sexual cases;
- quantitative empirical research surveying public attitudes to complainer anonymity;
- efforts to raise consciousness about this gap in the law; and
- efforts to persuade policy-makers to reform the law, informed by international best practice.

The Scottish Government has now committed to introducing a Bill to enshrine the principle of complainer anonymity in law during 2023. Drawing on comparative research on 20 common law jurisdictions, this paper explores the key policy choices faced by the Scottish Government in legislating for complainer anonymity in the social media age, informed by recent international experience, including the influential #LetHerSpeak campaign in Australia.

Presentation

In person

Criminal law 13

14:00 - 15:30 Wednesday, 5th April, 2023

Location MD106 Minor Hall

Stream Criminal law and criminal justice

Grace Famoriyo

694 Addiction, intoxication and criminal responsibility: assessing the role of prior fault

Anna Goldberg

University of Groningen, Groningen, Netherlands. Vrije Universiteit, Amsterdam, Netherlands

Stream or current topic

Criminal law and criminal justice

Abstract

Across most jurisdictions, substance addiction is not typically accepted as a valid ground for (equivalences of) an insanity plea or a defence of diminished responsibility. Firstly because the specific requirements of those defences may not include the types of impairments that are associated with addiction, or require a near complete absence of such impairments, which is rare in cases of addiction. Secondly, because the prior fault in acquiring and maintaining the addiction functions as a substitute to re-establish liability and/or blocks defences. Consequently, addiction presents a unique challenge to the criminal rules pertaining to mental impairments compared to most other psychiatric disorders.

This research highlights prior fault rules in cases of intoxication in the Netherlands specifically, and critiques the problems that arise in addiction cases. However, there are also several universal lessons to be learned from prior fault frameworks for intoxication, as they focus on prior fault blame at the single time point of becoming voluntarily intoxicated, which is not necessarily applicable to more long-term aetiologies of becoming, remaining or being addicted. Whatever the case, understanding substance addiction in relation to prior fault doctrine or logic is only possible when addressing (1) legal frameworks of prior fault, (2) consequences of addiction to legally relevant capacities, and then (3) assessing the compatibility of the legal framework with these capacities. Moreover, these efforts should be linked to and informed by a better understanding of substance addiction from the neuropsychological perspectives, especially when the exact behavioural consequences of addiction remain highly disputed.

Presentation

In person

7 The Afterlife of the Idols: Overcriminalisation and the Mythic Functions of Criminal Law

David Hayes

The University of Sheffield, Sheffield, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

Despite a growing interest in overcriminalisation and the proper limits of the criminal law, little attention has been paid to where the tendency to over-rely on criminal law as a solution to social problems comes from. Typically, the phenomenon is tied to the usual rogue's gallery of English-speaking late modernity: punitiveness, the preventive turn,

and the turn from social to criminal justice driven by neoliberal political economics. This paper builds upon these expectations by presenting an additional factor: the tendency of law to behave like myth.

We tend to think of myth as mere misinformation or, at best, as a form of literature. However, anthropological research suggests that myth plays a number of essential socio-cultural functions in societies around the world and throughout history. This paper argues that, when myth was abandoned as an acceptable mode of political rationality during the Enlightenment, various public institutions -- including the law -- took those functions on. It explores the impact of three such functions on the nature of the political uses of criminal law: the provision of existential certainty, national identity, and moral centering. Identifying these functions will help to explain phenomena associated with overcriminalisation, and to improve our ability to meaningfully change contemporary political uses of criminal law and justice.

Presentation

In person

39 Harmful Cultural Practices as System Criminality: Enhancing the Response of the Criminal Law

Gift Mkanje

Durham university, Durham, United Kingdom. University of Malawi, Zomba, Malawi

Stream or current topic

Criminal law and criminal justice

Abstract

Internationally, there seems to be a consensus that harmful cultural practices violate the rights of vulnerable groups and that they should be eliminated. The most common response has been to use the criminal law to address these practices. Nevertheless, harmful cultural practices (HCPs) continue to persist, and enforcement remains poor. This explains why the prevailing literature has predominantly denounced the use of criminal sanctions as a strategy against these practices. Criminal law is traditionally grounded in individual culpability and presents challenges in dealing with offences involving groups or communities. My argument is that the current legal response does not adequately reflect and respond to the systematic nature of HCPs with the result that, it does not effectively attribute responsibility and incentivise accountability among all the key players who provide an enabling context for HCPs. Using the practices of sexual cleansing, initiation rites and female genital mutilation in Malawi, Zambia and Kenya this work shall evaluate the conceptual and practical viability of enhancing the legal response by approaching HCPs as system criminality and employing system criminality strategies used in international criminal law and common law to address them.

Presentation

In person

620 Crime and Punishment: The Culture of Over-criminalisation in South Asia

Aditya Thakur, Bavneet Kour

Jawaharlal Nehru University, New Delhi, India

Stream or current topic

Criminal law and criminal justice

Abstract

The proposed research aims at studying the 'culture of over-criminalisation' in South Asia. The phenomenon can be defined as the large-scale disposition to think of legal remedies in terms of primarily criminal law, existing alongside an overemphasis on crime and punishment.

The paper, in its first section, seeks to explore the existence of this culture at three levels - *state*, *society* and *individual*. In case of former, this is reflected in state's response to social issues like beggary; use of penal provisions as a central part of COVID-19 lockdown strategies; and the recent quest for extra-legal punitive measures such as razing houses of alleged offenders, mass surveillance, and deployment of national security legislation for ordinary crimes. At the level of society, the culture manifests itself in terms of increased demands for capital punishment and support for treating juvenile offenders as adults, alongside the fractious debate surrounding extra-judicial killings. In this vein, the emotive nature of criminal law is also examined. The proposed study seeks to locate the causes behind this prevalent culture and examine whether its structural underpinnings reside in the 'weak civil society-strong state' paradigm.

The second section of the paper engages with the deeper questions of *impact* of this culture in South Asian societies, encapsulating - increased incarceration and overcrowding of prisons; engendering a 'police-state' and punitive constitutional culture; and under-investments in alternative justice delivery models. The judicial response to this culture and plausible alternatives, akin to Defund the Police Movement in US, will also be explored.

Presentation

Virtual via Microsoft Teams

Criminal law 5

14:00 - 15:30 Wednesday, 5th April, 2023

Location MD108

Stream Criminal law and criminal justice

Lucy Welsh

28 An Ethical Bicycle for the Human Sentencer's Mind: The x.A.I.c Tool
The Normative Case for Explainable A.I. in Dangerous Offender Hearings

Jainis Patel

Stream or current topic

Criminal law and criminal justice

Abstract

The jeopardy facing a designated dangerous offender ("DO") is at its zenith in sentencing matters. An offender may be subjected to indefinite detention or lifetime supervision. DO determinations are an exercise in risk prediction that currently yields low accuracy rates and miscarriages of justice by keeping offenders in unjustifiably harsh penal conditions. The Senate and two seminal appellate cases, *Ewert* and *SLW*, have respectively found: that the psychometric risk tools used in sentencing yields alarmingly low prediction rates culminating in inferences of racially disparate results towards Indigenous-persons, and (b) the manner in which the JIT model leads to disparities in sentencing given the implicit bias that pervades human decision making in sentencing DOs. Judges are not sufficiently trained to filter bias.

Sentencing is an area amenable to artificial intelligence but is controversial. Critical Race Theorist normatively observe that AI will further exacerbate (racial) bias, while risk scholars conversely consider whether AI can abate bias. This epistemological impasse can be resolved with a theory that bridges a relationship between risk scholars and CRT by specifically focusing the quality and the scope of the AI tool used. This PhD research will query whether a culturally relevant AI tool should be used to augment but not usurp the discretion of a sentencer to enhance the prediction of recidivism and reducing the application of various forms of bias whilst accounting for CRT concerns. This may mitigate bias prior to the passage of sentence by augmenting judicial discretion to assist rendering better decisions on risk.

Presentation

Virtual via Microsoft Teams

87 Suppression of Evidence in the Shadow of a Judge's Work Experience - Empirical Research on the Judiciary of Israel

Jonathan Hasson^{1,2}, Oren Gazal Ayal¹

¹University of Haifa, Haifa, Israel. ²Erasmus University Rotterdam, Rotterdam, Netherlands

Stream or current topic

Criminal law and criminal justice

Abstract

Extra-legal factors can affect not only the verdict or arrest but any judicial decision in exclusionary rule hearings. Despite the importance of interim decisions in protecting human rights, deterring state misconduct, and promoting equality, their study in the literature has been limited. We filled this gap by testing the effect of legal and extra-legal factors on four different case processing outcomes in criminal cases decided in Israeli trial courts from 2006 to 2021 (N=689 cases). Mixed-effects logistic regressions and structural equation models were applied to identify the variables affecting an outcome of exclusion of evidence, breach of rights, acquittal, and scolding of the authorities. We found that judges' gender and occupational experience (both number of years and type of profession) directly

affect case outcomes and how they write legal decisions. First, former public defenders and private criminal defense attorneys are more lenient than former prosecutors, while judges who were both were right in the middle between these groups. Second, former law clerks were more likely to determine that breaches occurred and exclude evidence than former prosecutors, though the direct effect is nonsignificant when certain mediator variables are introduced. Third, female judges tended to be harsher than males. A second study utilizing a dataset of 231 Israeli judicial decisions of a different evidentiary rule (exclusion of confessions) affirmed these results. Our findings are important for research on the judicial selection process considering last century's efforts to diversify the Israeli judiciary.

Presentation

Poster (submissions to poster competition only)

572 The Right of Silence and the Culture of Control

Hannah Quirk

King's College London, London, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

Criminal evidence rules, such as the curtailment of the right of silence, have played a significant and under-examined role in the spread of the 'populist punitive' justice system, detailed in David Garland's *The Culture of Control* (2001). Garland explored how, in both the UK and USA, governments reacted to their limited ability to reduce crime by 'acting out' through aggressive law enforcement measures and harsher sentencing policies, accompanied by strident, punitive rhetoric.

The parallels with the curtailment of the right of silence are striking. This campaign of 'rebalancing' the criminal justice system chimed with other changes that valorised common sense over empirical or theoretical considerations regarding suspects' rights and prosecuting crime. In the face of a continued need of governments to be seen to be tackling crime, subsequent gestures have to be bolder. The effects of such a reactive and apparently ad hoc approach to justice offer lessons that can be applied more widely.

Presentation

In person

469 Impunity for International Crimes in Afghanistan, the failure of complementarity and the need for alternatives

Latifa Jafari

University of Strasbourg, Strasbourg, France

Stream or current topic

Criminal law and criminal justice

Abstract

A scientific analysis as to the prospects of prosecuting the crimes committed in Afghanistan under the complementarity principle because of victims demand of justice, the continuation of crimes in Afghanistan and the pressing issue of peace and reconciliation seems essential. Within the adoption process of the ICC, the principle of complementarity was considered to be an appropriate tool to strike a balance between the protection of the State's sovereignty and the international community's obligation to effectively prevent and end impunity of the most serious crimes. The essential question the paper address is the extent to which the application of the complementarity principle by the ICC and Afghanistan can bring an end to impunity for international crimes committed in the country.

Based on traditional desk research, the paper addresses the following issues, firstly, does the State of Afghanistan preserve its primary duty of prosecuting crimes under the complementarity principle? Whether Afghanistan complies under the willingness and ability rule in conducting genuine national criminal proceedings? Is the Court's approach consistent with the main principles underlying the adoption of the complementarity principle? What are the main impediments to Afghanistan and the ICC in implementing the complementarity principle? last, to what extent are Afghanistan's and the ICC's approaches to complementarity undermined by political considerations such as peace and security and the involvement of a powerful country like the US in the commission of Afghan war crimes?

Presentation

In person

Human rights and war: Remedying the consequences of armed conflict

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU001

Stream Human rights and war

90 Deciding Whether to Remedy War's Wrongs: International Law, Warring States and the Dangling Reparation Obligation in Yemen

[Kristine Beckerle Beckerle](#)

Yale Law School, New Haven, USA

Stream or current topic

Human rights and war

Abstract

International human rights law promises that individuals have legitimate demands for remedy from States when their rights are violated, including that States punish people responsible for international crimes and provide reparation for State violations. This promise remains unfulfilled, particularly for those seeking reparation for wrongs committed by their own State and its allies during war. Most often, States directly responsible for wrongs during conflict negotiate with one another to decide what reparation, if any, will be provided. Reparations tend to be demanded from opponents, not allies, and imposed upon losers, not victors, of war. When warring States fail to provide remedy, bystander States, or States not party to an armed conflict, may step in to ensure or facilitate accountability. Bystander States have repeatedly prioritized punishment of people by States over reparation to people from States in their accountability interventions. During the significantly internationalized, non-international armed conflict in Yemen, activists turned to bystander States at a United Nations human rights institution to demand action on accountability. Extraordinarily, debates in Geneva nudged warring States to respond to, but not remedy, their wrongs in Yemen. For decades, the human rights movement has used a set of imperfect laws and imperfect institutions to center individual rights, including the right to reparation, in global debates between States. As the Yemen case indicates, this has proved both inadequate and crucial in the struggle to make individual demands for remedy from States not only legitimate, but effective.

Presentation

In person

326 Remedy, Derogation and War: Compensating Loss in the Midst of Armed Conflict

Luke Moffett

QUB, Belfast, United Kingdom

Stream or current topic

Human rights and war

Abstract

Compensation has been used for millennia at the end of hostilities to mitigate the harm caused during war. However there is increasing practice to pay compensation to civilians affected by military operations during wartime. While international law recognises a right to reparations for certain egregious violations, the majority of harm caused during armed conflict arises from lawful conduct of hostilities caught under the rubric of 'collateral damage'. For those victimised by such operations, international humanitarian law provides little recourse for redress and international human rights law is limited by its jurisdiction or not recognising a violation of human rights where it does not violate the laws of war during the conduct of hostilities. Despite the limitations of legal avenues, a number of states operate a practice of compensating civilians for losses, not on any legal basis of fault, but in the spirit of solidarity, thereby avoiding any liability. While such endeavours have their motivation in winning local civilians' hearts and minds, the process to which they operate are opaque and do not satisfy basic norms around the right to remedy. This paper explores states' obligations to ensure the right to remedy for civilians caught up in armed conflict, considering both the scope of such an obligation and the use of derogation by states to forestall claims until the end of hostilities.

Presentation

In person

552 Reimagining Guarantees of Non-Recurrence in Transitional Justice: Lessons from Sri Lanka

Nikhil Narayan

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Human rights and war

Abstract

Since World War II, international norms and institutions have proliferated around accountability for past conflict-related human rights violations and grave international crimes. Yet, the real-world deterrent effect of this post-WWII international 'justice cascade' is not readily apparent, as war and the atrocities committed therein perpetuate unabated. What is lacking is a coherent articulation of the scope of post-conflict states' obligation to prevent recurrence of conflict and massive human rights abuses by dismantling the underlying infrastructure for violence. International human rights law and transitional justice recognize in principle a state's duty to undertake measures to guarantee non-recurrence. Yet transitional justice remains largely focused on backward-looking responsibility for past harms. There is a critical gap in understanding the principle and practice of guarantees of non-recurrence as the forward-looking preventive dimension of transitional justice. This gap is particularly acute in South Asia, where countries continue to backslide towards conflict and authoritarianism. Looking at Sri Lanka as a case study for a regional comparative analysis, this paper examines the scope and application of the international obligation to provide guarantees of non-recurrence as a core, but under-scrutinized, pillar of transitional justice. The paper examines how guarantees of non-recurrence are conceptually understood and implemented locally vis-à-vis international norms around other cross-cutting elements of transitional justice, human rights and peacebuilding. Drawing on lessons from Sri Lanka for the transitional justice field, the paper posits a reimagining of how GNRs may be conceptualized and applied to advance a more contextually-appropriate, politically-sensitive, positive peace and transformative justice.

Presentation

In person

750 The Politics of Justice in War: Reparations from and for Iraq

Hannah al-Khafaji

University of Exeter, Exeter, United Kingdom

Stream or current topic

Human rights and war

Abstract

As we mark 20 years since the 2003 invasion of Iraq, justice for Iraqis seems less likely than ever. The international legal system failed to hold the U.S. and U.K. to account; both states have not paid reparative compensation to Iraq for the deaths of thousands of civilians and the complete destruction of state infrastructure caused by the 2003 invasion. Yet, for the invasion of Kuwait in 1991, Iraq paid over \$52.4 billion in reparations – a figure determined by the UN

Compensation Commission (UNCC). This paper asks: why was this the case? And: how does this double standard perpetuate war and injustice today?

This paper begins by comparing the legal justifications for reparations from Iraq and for Iraq, arguing that reparations are justified in both cases. I posit that the failure to implement reparations for the 2003 invasion stemmed from two factors: firstly, the Euro-centric foundations of the international legal system apply a Western conception of morality to the legitimacy of waging war, and secondly, the international legal system has an unfounded faith in the capacity of Western domestic legal systems to act as adequate avenues for justice. I attribute both these issues to the ongoing epistemic entanglement of the international legal system with Western conceptions of law, morality, and justice. Finally, I argue that this double standard in the implementation of reparations legislation perpetuates war, injustice, and global inequalities, by decreasing global respect for the international legal system, and by maintaining existing imbalances in global wealth and power.

Presentation

In person

Environment: Economics

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU021

Stream Environmental law

246 Using Private Law to Achieve a Circular Economy: The Case of Extended Producer Responsibility

Katrien Steenmans

University of Copenhagen, Copenhagen, Denmark

Stream or current topic

Environmental law

Abstract

The current waste and resource crises necessitate a transition towards a sustainable, circular economy, in which resource use is minimised, waste generation is prevented, and any unavoidable wastes are reused, recycled, or recovered. Many mechanisms exist to facilitate such a transition, including Extended Producer Responsibility (EPR). EPR holds producers responsible for the products that they have produced at all their life-cycle stages. In practice, the design and adoption of EPR schemes are primarily focused on financial responsibility for disposal, but the concept should apply from product production and the responsibility can also be expanded to cover physical responsibility, informative responsibility, or liability for damages.

Existing environmental law surrounding and supporting EPR schemes is predominantly public law. Yet, public environmental law is not causing the systemic shifts needed for a circular economy. The purpose of this paper is therefore to explore the intersections between private law and the EPR concept based in environmental law. This includes how private property rights underpin EPR schemes, the right and duties of consumers in relation to EPR

under consumer protection law, and how contractual terms help operationalise EPR schemes. Through such an exploration, this paper also contributes to a wider exploration of the tensions that exist as a result of using a system of laws that currently help underpin a linear economic system to support a transition towards a circular economic system.

Presentation

Virtual via Microsoft Teams

594 The Environmental Regulatory Landscape: Holding Corporations to Account domestically

Eleanor Godwin

University of Liverpool, Liverpool, United Kingdom. Violation Tracker UK/Good Jobs First, Washington DC, USA

Stream or current topic

Environmental law

Abstract

The world is currently at a pivotal environmental precipice; change is needed. This is a change we need to look at from a global, national and local level. Both international and national laws and regulations will play a part in our response to the environmental crisis and how we overcome it. This paper focuses on the national level, giving a systematic examination of punitive regulatory capacities that exist to hold corporations to account for environmental crimes domestically. There are examples of empirical studies which have examined the use of sanctions and prosecutions for environmental crimes (Simpson et al, 2013; Billet and Rousseau, 2014; Lynch, 2017). However, none of these studies specifically isolate the UK regulatory response to corporate environmental crime. By using data provided by Violation Tracker UK, this paper analyses the number of enforcement cases against corporations by the Environment Agency over the last decade, along with looking at how these cases are divided per industry and the size of the average fines. Bringing these aspects of the data together creates a contextual analysis of how environmental regulation has changed over the last 10 years. This paper is broken into three constituent parts (1) examining what the current UK regulatory model is, (2) analysing Environment Agency data from Violation Tracker UK, and lastly (3) using the water industry as a case study of enforcement action by the Environment Agency.

Presentation

In person

610 'Embedding Food Waste Prevention in Retail Supply Chains'

Carrie Bradshaw

University of Leeds, Leeds, United Kingdom

Stream or current topic

Environmental law

Abstract

Eye-watering levels of food waste arise for a variety of reasons, including inter alia the relatively cheap price of food and related power imbalances between retailers and suppliers. However, there is a dearth of scholarship exploring the relationship between the regulation of agri-food supply chains and food waste prevention. This paper responds to this gap through a doctrinal, comparative, and contextual evaluation of the UK's increasingly fragmented regulatory approach. A doctrinal analysis of the Grocery Supply Code of Practice (GSCOP) together with (currently unused) powers under the Agriculture Act 2020 to tackle unfair trading practices (UTPs) identifies and explores the environmental implications of 'deresponsibilising' supermarkets for their role in driving upstream food waste. This analysis also highlights the tensions of a UK-wide insulation of retailers from such responsibility alongside increasingly divergent approaches to food waste in the devolved nations. Through a more comparative analysis, the paper identifies lessons to learn from other regulatory contexts and/or jurisdictions that use so-called 'contractual' methods of control to support the design and implementation of regulations under the 2020 Act. The paper contextualises the above analysis by reference to the considerable research and policy attention to the dangers of concentrated supermarket power in an 'hourglass' supply chain, and assesses the (inherent?) limitations of a regulatory approach couched in competition to address an environmental problem caused partly by the drive for 'cheap food'.

Presentation

In person

816 Ecosystem Based Approach in the Agricultural Sector in Bangladesh: An Evaluation of Legislative and Institutional Responses

Zelina Sultana^{1,2}, Nasrin Akter³

¹PhD Scholar at Anglia Ruskin University, Cambridge, United Kingdom. ²Associate Professor of Law, Jagannath University, Dhaka, Bangladesh. ³Lecturer, Department of Land Management and Law, Jagannath University, Dhaka, Bangladesh

Stream or current topic

Environmental law

Abstract

With the growth of population the importance and demand of agriculture is growing up. An unwritten competition is going on all around the world to produce more crops from less piece of ignoring the ecological impact. This arrogant challenge although yielding more crops but ravaging the ecology in a greater extent. Moreover, excessive use of pesticide, chemical fertilizers etc. produce phosphorous, nitrate and ammonia polluting the soil, air and water hampering the soil nutrients, water, life cycle of birds, fishes and other beneficial organisms depending on soil. Furthermore shifting cultivation, (popularly known jhum) in hilly area, conversion of forest into agricultural land and agricultural pattern, cash crop like tobacco have dangerous impact on ecology. Undoubtedly, agriculture has huge contribution to the atmosphere and in economy, as the economy of Bangladesh is agro-based. So, for strengthening a balance agro-economy and ecology, Bangladesh should focus in producing eco-friendly products in adopting eco-friendly way. Traditionally, the laws and policies of Bangladesh have been centered the primary issues without concerning the ecology. Likely, Bangladesh agricultural laws and policies are focused on agricultural issues rather environmental protection issue. There are some rules and policies but they are neither properly followed by the farmers nor implemented by the concerned authority. Thus, the paper aims to show the shortcomings in our legal arena to maintain agro-ecology focusing on ecosystem approach in Bangladesh. It will also find out the consequences of these weaknesses and suggest developing a comprehensive legal arena for Bangladesh to maintain ecosystem based approach in agriculture.

Presentation

In person

Gender, Sexuality and Law 5

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU125

Stream Gender, sexuality and the law

369 Female Domestic Servants: A Study of Historical Contract Law and Gender

Alice Krzanich

University of Aberdeen, Aberdeen, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

This paper examines an area of historical private law: the contract of domestic service in early nineteenth-century Scotland. During this time, many working-class women toiled in the homes of others, cooking meals, washing clothes, lighting fires and looking after children. They did this under a contract of domestic service, whereby they traded their labour in return for remuneration. This contract was typically oral in nature and contained terms that were implied by Scots common law. This paper will examine the extent to which gender influenced these contractual principles as they applied to female domestic servants, utilising both formal legal sources – such as legal treatises and case law – alongside historical research into women and gender in Scotland. This paper will show that there were some contractual principles that were squarely aimed at female (as opposed to male) servants. Yet gender could also influence legal principles that were seemingly “ungendered” (in the sense they could apply to servants of either gender). For example, litigants might rely on arguments involving gender when making submissions before the courts in an employment dispute, which in turn could influence the outcome and the precedent that resulted. Gender dynamics could also be present in the factual situation that led to litigation occurring. This paper therefore uses gender as a lens through which to examine the development of historical contract law, moving beyond a strictly doctrinal analysis of the law to think about the socio-economic norms that influenced the legal relationship between a domestic servant and her employer.

Presentation

In person

784 Unpaid care and domestic work. The ultimate test for the achievement of equal pay

Nina Cozzi

Max Planck Institute for Legal History and Legal Theory, Frankfurt am Main, Germany

Stream or current topic

Gender, sexuality and the law

Abstract

Within the field of gender equality, legal scholars have produced extensive research focusing on the gender pay gap, how to close it and what are the main factors causing it. However, among these factors, one is often overlooked, despite its huge impact on women's wages. Unpaid care and domestic work (UCDW) is one of the main obstacles hindering the full achievement of equal pay, even if it is often excluded by the political agendas worldwide. Firstly this paper wants to provide an in-depth analysis of UCDW by ascertaining its historical and legal meaning and how its perception changes with respect to the social context in which it is analysed. Secondly it wants to explore both the possible advantages and difficulties of recognizing and paying UCDW at the international level. Would this massively improve the attempts to close the gender pay gap? Is it realistic to think that UCDW will be valued and paid in the near future? This article will navigate these scenarios after providing an exhaustive legal and historical framework of the UCDW, with the ultimate purpose of shading light on an issue that deeply affects equal pay, and gender equality as a whole.

Presentation

In person

835 The Home and the World: Social Reproduction and Feminist Constitutionalism

Saptarshi Mandal

Kent Law School, Canterbury, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

Over the last decade, feminist legal scholars in the Global North have increasingly posed motherhood and caregiving as questions of constitutionalism (Suk 2018; Rubio-Marín 2016; Nedelsky 2012). These scholars have helpfully theorised “social reproduction” as the proper subject of constitutionalism whereby the polity assumes responsibility for raising the next generation of citizens. But what does this body of literature talk about when it talks about social reproduction? In concrete terms, the turn to social reproduction has boiled down to arguments in favour of constitutional protection of pregnancy and caregiving responsibilities of parents. This paper argues that this body of scholarship misidentifies the private family as the sole site of social reproduction and risks entrenching gender-stereotypes in envisioning constitutional protections. Using three case studies from India that involved constitutional arguments – one where a mother won workplace accommodation of her caregiving responsibilities; one where female staff of a government-run child development program failed to get recognition as government employees; and one where a group of Muslim women organised a public sit-in to protect against an anti-Muslim and unconstitutional citizenship law – the paper argues that feminist legal scholars must theorise the relationship between constitutionalism and social reproduction by looking at sites of citizen-making both within and outside the home.

Presentation

In person

16 Girlboss Capitalists, "Financial Feminism," and Economic Democracy

Jenny Logan

Birkbeck, London, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

The "financial feminism" movement invites us to fight patriarchy by "believing in the financial equality of women," increasing our financial literacy, and investing according to principles of sustainability and "impact." As author and podcaster Tori Dunlap puts it: "the best way to fight the patriarchy? Get rich!" This paper investigates the financial feminism trend to understand its normative ends - achieving financial equality for women - and evaluate its proposed means: targeted investing and financial literacy. It argues that, due to common ownership of shares in the stock market economy, investing and literacy alone cannot "fight the patriarchy;" rather, a feminist financial praxis requires advocacy and action for economic democracy.

In the U.S., three investment firms control enough publicly traded stocks to annul the impact of activist investors and further increase economic concentration. Market concentration leads to disastrous effects for workers, especially women of color, who bear the brunt of unpaid, low-wage, and precarious labor. Thus growing the wealth of some women through investments, without more, will do nothing to alleviate gendered economic inequalities. Financial equality for women requires, at minimum, economic democracy, pursued through a range of strategies targeted at deconcentrating markets to redistribute power and protect workers. In the U.S. these include, for example, democratizing the central bank; overturning the Noerr-Pennington doctrine; and imposing stricter regulations on tech platforms and monopolists like Amazon and Google. Investing in these strategies as feminists with political capital and disposable income can help transform material conditions for working class women of the world.

Presentation

In person

Social Rights: Destitution

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU201

Stream Social rights, citizenship and the welfare state

Chair: Jed Meers

297 Legal protection against destitution in the UK: towards a right to a subsistence minimum?

Mark Simpson¹, [Gráinne McKeever](#)², Ciara Fitzpatrick²

¹Ulster University, Derry-Londonderry, United Kingdom. ²Ulster University, Belfast, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

In a 2003 Supreme Court judgment, Lord Hoffmann argued that in the absence of a guaranteed minimum standard of living, many other rights are reduced to 'a mockery'. Arguably this was the experience of the 2.4 million UK residents who experienced destitution in 2019. Research by the authors has found no clear basis for a right to protection from destitution in the UK. The common law, social rights treaties and the European Convention on Human Rights can each play a role in identifying a minimum standard of living, but with variable precision, generosity and enforceability – and subject to the sovereign legislature setting its own social floor, including one that may render people destitute. We argue that part of the solution to this failure of rights protection is a specific statutory duty to protect against destitution. This paper is intended to start a conversation on how we might begin to move towards making this vision a reality.

Presentation

In person

247 Punitive Social Security Policies and the Prohibition of Inhumane or Degrading Punishment

[LUKE GRAHAM](#)

Univeristy of Manchester Law School, Manchester, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

Abstract

The prohibition of inhumane or degrading treatment, as contained in Article 3 of the ECHR, has garnered some limited success in challenging government policies linked to destitution both in the United Kingdom and before the

ECtHR. However, Article 3 of the ECHR prohibits not only treatment but rather inhumane or degrading treatment or punishment. In this paper, I argue that framing benefit sanctions through the lens of Article 3 punishment can expand the limits of the applicability of the ECHR in challenging destitution, albeit slightly. In suggesting that some benefit sanctions are cruel or inhumane punishment, and thus incompatible with Article 3 ECHR, this paper seeks to open new avenues for leveraging the ECHR against one of the key causes of destitution. Whilst focused on (some) benefit sanctions, the expansion of Article 3 punishment beyond the penal context as proposed in this paper may be more widely applicable to punitive administrative decisions and policies.

Keywords

Destitution; Benefit Sanctions; Social Security; Article 3 ECHR; Punishment; Inhumane or Degrading Punishment.

Presentation

In person

299 Aspiration, accomplishment or elegy? Temporal orientation in the conceptual history of social citizenship and the welfare state.

Daniel Wincott

Cardiff University, Cardiff, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

Theories of social citizenship/the welfare state invariably adopt some kind of a temporal frame (albeit sometimes only implicitly). They can be future-orientated, make claims about the current state of affairs and/or be backward-looking. This paper analyses how welfare state theories' temporal orientations have changed over time, focusing on the English-British-UK case, set in a broader comparative and theoretical context. Broadly speaking, it finds a shift from a future-orientation, through a critique of the complacency of contemporaneous claims, to a long, elegiac twilight 'after' the welfare state's golden age.

Though these changes are, generally consistent with standard 'golden age' periodisation, digging into the conceptual history adds nuance to the pattern. Dismissing the idea of a universal principle of citizenship, TH Marshall's famous Citizenship and Social Class lecture invoked a future-oriented socially-created 'image of an ideal citizenship against which achievement can be measured and towards which aspiration can be directed'. Equally, Marshall mentioned the welfare state only once in the lecture, to describe a pre-welfare state period when, he suggested, it was impossible for politicians to imagine ambitious social reforms. Research shows the welfare state phrase emerged in English public discourse right at the end of the 1940s. Only a decade later key theorists were already repudiating it as a complacent description of contemporary reality. Use of social citizenship and welfare state concepts exploded from the 1980s. By invoking a better yesterday, this post-golden age usage is often unnecessarily politically debilitating for advocates of social citizenship and the welfare state.

Presentation

In person

723 How is the People's Home faring in the 21st century? Perceptions of Sweden's Welfare State

Orlaith Rice

University College Dublin, Dublin, Ireland

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

This paper will examine current perceptions of Sweden's welfare state, incorporating qualitative data from both focus group interviews and elite interviews conducted in Sweden in 2021 and 2022. The nine-month long period during which the focus groups took place in Sweden witnessed major changes in global affairs with the evolution of the Covid-19 pandemic and the Russian invasion of Ukraine. These events have had unforeseen consequences, such as Sweden's application for NATO membership, that go far beyond national borders and are displacing 'traditional' Swedish values. Several years after the peak of the European migrant crisis, the topics of immigration and integration in Sweden loom large in political and media discourse. Shortly after the conclusion of the focus groups, the right-wing populist Sweden Democrats had their most successful electoral outcome yet in an election focused on crime and immigration policy. Interviews with civil servants, members of non-profit organisations, and the media took place shortly after the new right-wing government was formed. In light of the above, this paper will investigate the current status of Folkhemmet (the People's Home) according to those who experience it. Of relevance to this paper are arguments that the zenith of the Swedish welfare state is long over, owing to increased privatisation, welfare chauvinism and anti-immigrant sentiment, and moves towards the political right. Also evident from the qualitative data is the perception that a long-established social security net can promote individualism and hinder community and family bonds.

Presentation

In person

Children's rights: Children's wellbeing, conflict and post-conflict contexts

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU202

Stream Children's rights

89 Child's Rights Bill in a Post-Conflict Community: An Exploration of Children Welfare in Benue State, Nigeria.

Olakunle Folami¹, Timothy Ihinmoyan²

¹Department of Criminology & Security Studies, Adekunle Ajasin University, Akungba Akoko, Nigeria. ²Department of Business Administration, Adekunle Ajasin University, Akungba Akoko, Nigeria

Stream or current topic

Children's rights

Abstract

In recent times, there are increases in the incidence of child neglect in Benue State, Nigeria. Many children were found on the streets hawking and begging for alms. Lack of parental care were linked with the terrorism, banditry and Boko Haram insurgency. The Child's Rights Act promulgated by the Benue State government has become so ineffective. This study therefore, sets to examine the effects of conflict on surge in child neglect in recent times in Benue State. It investigates government's efforts in child care during terrorist and banditry attacks. The study also examines parental roles in providing and nurturing children in a transitional society such as Benue. Social Disorganization Theory was used to explain the reason why many children were neglected. This study was conducted in two areas with highest cases of child neglect in Benue State, namely: Otukpo, and Markudi. Qualitative method of data collection was used in this study. In-depth interviews were conducted among fifty eight participants which include children, community heads, family heads and welfare officers. This study found that many children were abandoned by their parents as a result of death, disappearance, kidnapping and poverty. It was also found that no tangible programme to address children in the post conflict society available in Benue State. This study concluded that government should provide welfare services and there should be reparations for children of those that killed, disappeared and kidnapped during conflict in Benue State.

Presentation

In person

376 “Love is huge”: Activating social connection for young people who have experienced harm

Nesam McMillan

University of Melbourne, Melbourne, Victoria, Australia

Stream or current topic

Children's rights

Abstract

“Audrey”, who has experienced foster care, is quoted in a recent report on out-of-home care in Australia to underscore that ‘Love is huge. You have to feel loved growing up’ (p18). Yet, that same report discusses the lack of social connection experienced by young people in out-of-home care, as well as the overlap between experiences of out-of-home care and criminalisation. Even though social connection is acknowledged more broadly (for example, in health and medical sciences) as central to wellbeing and life outcomes; social connection and structural support are frequently recognised as missing for children and young people who experience harm, and sometimes later criminalisation.

This paper explores the capacity for social and legal responses to young people who have experienced harm to better enable a sense of community and social connection. It analyses the capacity of existing programs and policies

towards children and young people (largely in Australia) to facilitate social connection. I then explore what new questions and ways of working might emerge by drawing, first, on broader knowledge about creating social connection from other fields and, second, on interdisciplinary literature relating to humanitarianism, structural injustice, ethics and abolition. In this way, this paper seeks to bring together academic research and existing practice to support innovative socio-legal approaches to a current pressing issue.

Presentation

In person

790 Exploring Conflict Legacy as a Children's Rights Issue

Clare Dwyer, Siobhan McAlister, Mary-Louise Corr

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Children's rights

Abstract

Millions of children and young people are impacted by armed conflict globally, with an estimate of 1 in 10, (approximately 246 million) living in areas impacted by conflict. Conflict can have devastating social, political, economic, psychological and health effects on children and young people. This understanding, and the development of an internationally recognised rights framework, has resulted in increased scholarly work including empirical research on the experiences of children and young people in conflict affected societies. These studies, however, focus predominately on describing their needs and access to rights as participants in conflict, victims or witnesses during and immediately following conflict. What is largely absent from the research is a critical examination of the legacy of conflict and the residual and intergenerational impacts on the rights of children 'not of the war' generation. Using Northern Ireland as a case study, this paper argues that conflict legacy should be understood as a children's rights issue, with consideration given to the residual, indirect impact of conflict on the everyday lives of children and young people. Drawing on in-depth qualitative research with almost 200 participants which examined the intergenerational impact of the conflict in Northern Ireland and Border Region in Ireland (McAlister et al, 2021), this paper shines a light on the value of examining conflict legacy through the lens of children's rights.

Presentation

In person

Disruptive Technologies: Reproductive Futures - Socio-legal Questions Raised by Extra-Corporeal Gestation

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU203

Stream Disruptive technologies: reproduction, genetics, and the family

292 AAPT and UTx to “de-gender” gestation – what will this mean for abortion regulation?

Francesca Mesure

Durham University, Durham, United Kingdom

Stream or current topic

Disruptive technologies: reproduction, genetics, and the family

Abstract

It is by virtue of biology that the process of gestation is currently only capable of being carried out by those with physiology assigned female at birth (AFAB). However, novel forms of assisted gestation, such as artificial placentas (AAPT) and uterine transplants (UTx) have the potential to disrupt this notion and gestational labour may no longer be restricted to those AFAB. This is as AAPT could permit gestation sustained by a “machine”, and UTx could permit gestation in those assigned male at birth. This has the potential to “de-gender” the process of gestation.

My research examines the extent to which AAPT and UTx might alter abortion regulation. Current literature explores the impact novel forms of assisted gestation may have on abortion legislation in a regressive manner, detailing potential restrictions to abortion access. By contrast, I suggest that AAPT and UTx could improve abortion regulation through their capacity to “de-gender” gestation.

Abortion law currently reinforces gendered notions of reproduction. Therefore, the ability of AAPT and UTx to “de-gender” gestation will mean some forms of gestation are incompatible with abortion law. I posit that “de-gendered” gestation could assist existing calls for the decriminalisation of abortion. The restrictive attitude towards abortion can be attributed in part to the fact that pregnancy is inherently sexed and has been socially gendered. Therefore, it is necessary to consider that “de-gendering” may lead to less restrictive abortion legislation, or decriminalisation.

Presentation

In person

414 Could Artificial Amnion and Placenta Technology be 'Turned Off'? How Abortion and End of Life Law Could Inform the Legal Process

Lauren McCaughey

Durham University, Durham, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

Artificial amnion and placenta technology (AAPT) is intended to improve mortality rates amongst extremely premature neonates for which current neonatal intensive care is not effective. AAPT has not yet been tested on humans, with prototypes being only in preliminary stages of testing, yet it is inevitable that this technology will become a reality. Much of the academic discourse in this area of research concerns the status of the subject of AAPT; the 'gestateling' (Romanis 2018) and the impact that AAPT could have on access to abortion. An important question that has not yet been considered in its entirety is if it would be possible to 'switch off' the AAPT once the gestateling was inside.

In this paper, I examine this matter from multiple perspectives. If the gestateling was legally comparable to a fetus switching off AAPT could be comparable to an abortion, and we need to consider how abortion law would apply. If a neonate, we need to consider if the current framework for end-of-life law permits the removal of AAPT. Finally, it could be analogous to disputes in gamete ownership in in-vitro fertilisation treatment. A range of scenarios will be considered including where there is conflict including between genetic progenitors, questioning the 'bodily autonomy' argument which underpins abortion law, and where doctors may wish for the treatment of the gestateling to end. As AAPT becomes a reality, research must be broadened to consider the practical implications of such technology.

Presentation

Virtual via Microsoft Teams

391 The artificially gestated entity: Not what is it but where is it?

Victoria Adkins

University of Greenwich, London, United Kingdom. Royal Holloway, University of London, Egham, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

This presentation will focus on a chapter from my PhD centred around the theme "Not what is it but where is it?". For my study I interviewed specific healthcare professionals to seek their views towards partial ectogenesis- the partial gestation of a foetus outside of the human body. This theme draws upon how participants came to define the entity that would be subject to partial artificial gestation. The analysis indicates that whilst there was a lack of consensus amongst the participants as to what the status of the entity should be, all participants were making links to the location of the entity. Location for the purpose of this theme relates both to the entity being outside of the gestator's body and its location within the artificial device in terms of it still remaining in an "in-utero environment".

The theme name asking "where is it" also reflects the participants apparent desire to fit the entity within our current legal and medical models. Even participants who favoured a new or interim definition for the artificially gestated entity were still depending on the legal framework despite such reliance becoming less sustainable.

By examining the varied responses of the participants, this presentation will draw out how existing frameworks feature in how the entity is conceptualised, as well as the ramifications of a lack of consensus amongst these key stakeholders of the technology.

Presentation

In person

DEVELOPING DEMOCRACIES: POPULAR CONSTITUTIONALISM IN TRANSITIONAL DEMOCRACIES

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU207

Stream Constitutionalism in developing democracies

156 FILLING LEGAL GAPS THROUGH JUDICIAL ACTIVISM IN COLOMBIA: THE SITUATION OF INTERSEX PEOPLE'S HUMAN RIGHTS

Yessica Mestre

Andalusian School of Public Health, Granada, Spain. University of Granada, Granada, Spain

Stream or current topic

Constitutionalism in developing democracies

Abstract

Since 1991, the Constitutional Court of Colombia has been the guardian of the supremacy of the Constitution and therefore is empowered to resolve disputes in which fundamental rights are violated. From that time to the present, the judgments of the Court have protected a variety of rights, particularly those of vulnerable population groups that were traditionally excluded from legislative frameworks. The progressive and activist nature of its decisions has led it to be internationally recognized for regulating issues that the legislature has not considered. One of these issues has been the protection of intersex people's bodily autonomy.

Intersex people are people who have genitals, reproductive organs, secondary sex characteristics, hormones and/or chromosomes that fall outside the commonly known binary definitions of either male or female sex. Their lives are often subjected to varying degrees of violence for having bodies that do not correspond to medical and societal expectations of what a male or female body looks like. In this sense, intersex people face multiple forms of human rights violations since childhood that negatively impact different aspects of their lives, particularly in the case of non-consensual medical interventions.

This presentation shows the findings of a legal analysis conducted within the Intersex – New Interdisciplinary Approaches project. The presentation offers an analysis of the development of judicial activism on this issue, explains the scope it had, and the ways in which intersex people in Colombia are still protecting their rights through this constitutional control in the absence of regulatory legislation.

Presentation

In person

128 From litigants to a social movement - Emancipatory Constitutionalism from below?

Annette Mehlhorn

Max Planck Institute for anthropological research, Halle, Germany

Stream or current topic

Constitutionalism in developing democracies

Abstract

In this contribution, I will analyse the consequences of the conjunction of legal possibilities, differentiated levels of legal knowledge and a political agenda, in the context of the so-called Emancipatory Constitutionalism in Bolivia. Thus, I will present a different aspect of the complex relationship of law/the Constitution and social change generally, and the dynamics of change in post-2009 Bolivia more specifically. I subscribe to a research agenda, which emphasizes the need to look at movements “from below” in order to grasp the ongoing potentiality and radicality of the process of transformation based on Bolivia’s 2009 Constitution. However, I further complicate the picture by presenting a case where a movement is not only using and appropriating the law and the constitution but its very existence is crucially facilitated by both the potentialities and the real-life deficiencies of the radical new constitution. The presented case also adds to the debate regarding law, social mobilization, and popular movements as it not only considers how and why movements incorporate litigation in their repertoire of contention to reach their objectives[1] but also emphasizes how the movement and its objectives are articulated through complex dynamics and by differently positioned actors in the context of far-reaching legal opportunities.

Presentation

In person

40 Mass Mobilisations in Indonesia’s Blasphemy Cases

Rafiq A'yun

Melbourne Law School, Melbourne, Australia. Universitas Indonesia, Depok, Indonesia

Stream or current topic

Constitutionalism in developing democracies

Abstract

This paper examines how mass mobilisation influences blasphemy trials in Indonesia, conditioned by the increasing politicisation of religion in power contests. It addresses the question of why blasphemy cases are likely to reach trial if accompanied by public pressures, manifested as religious mobilisations. There are three arguments developed here by reflecting how politicisation of religion is operating in law institutions. First, religio-political elites do contribute to mobilising blasphemy accusations in the context of increasing religious conservatism, as stated by some scholars. However, these mobilisations are made possible by the nature of contemporary Indonesian politics under which religious identities have become a powerful source of political mobilisation in contests over power and material resources. Second, the mobilisations tend to determine the legal process of blasphemy allegations. This is because mobilisations engineered by religio-political elites can reinforce justification to claim the existing narratives on blasphemy allegations as a threat to public order. Third, the pervasiveness of religious identity politics in Indonesia's democratic context has made blasphemy law more instrumental, as it can now provide a clear route to mobilise religious sentiments to gain political support.

Presentation

In person

Health Law and Bioethics: National Health Service & Public Health

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU210

Stream Health law and bioethics

14 Breaking with the past: an innovative deliberative regulatory model to address inequalities in accessing healthcare services

Sabrina Germain¹, Gianluca Veronesi²

¹City Law School, London, United Kingdom. ²University of Bristol, Bristol, United Kingdom

Stream or current topic

Abstract

The pandemic has revealed underlying inequalities and a lack of understanding of vulnerable communities' healthcare needs in England. The ineffective coordination and planning for the delivery of services laid bare barriers for vulnerable groups when accessing the NHS. The complex nature of the organisation and the failure to adequately regulate the distribution of resources through healthcare law partially account for these issues.

The Health and Care Act (2022) has now come into effect dismantling structures established by previous reforms to provide a more integrated care system and a less fragmented organisational structure. This reform hopes to offer an alternative approach for a more responsive system to commission services and a governance arrangement that will allow for a truly integrated system. A central aim of the policy mandate is to deliver joined up care through collaboration between providers by bestowing statutory duties on Integrated Care Systems (ICSs). ICSs are required to plan, coordinate and commission healthcare services. However, the practicalities around the governance and regulation of the allocation process, both central to its agenda to reduce health inequalities, are not sufficiently articulated.

Our analysis proposes to look at previous regulatory models used for the allocation of resources in the NHS to understand why they had been unsuccessful at translating equal access principles into reality. Building on these findings, we will look at an alternative regulatory model based on a deliberative approach to make propositions on how to embed this approach in ICSs and reduce inequalities in accessing healthcare.

Presentation

In person

224 Choosing “home”: Discharge to assess and the Health and Care Act 2022

Jean McHale

University of Birmingham, Birmingham, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

In the early stages of the Coronavirus Pandemic NHS hospitals were instructed to rapidly discharge patients from wards with consequences which in the case of some care homes has been claimed to be catastrophic due to lack of effective testing and isolation. These tragic events also highlight a longer-term issue, namely hospital discharge policies and their relationship with obligations placed on local authorities to assess needs of individuals under the Care Act 2014. Concerns have been expressed for some time regarding the delays in getting patients discharged from hospitals – with them being labelled inappropriately as “bed blockers.” The Health and Care Act 2022 includes new statutory measures concerning discharge to assess to facilitate rapid discharge of patients from hospitals. This can be seen as solution to a major resource problem, but could this ultimately undermine choice and respect for individual wellbeing?

The paper explores the background to the recent controversies concerning hospital discharge decisions and the relationship with the Care Act 2014. It examines the problematic question of facilitating patient choice in the context of debates as to what amounts to “home” in relation to social care. It interrogates the Health and Care Act 2022 discharge provisions and whether these will be an effective integration of health and social care provision going forward or whether there is a real risk of undermining individual autonomy, the Care Act 2014 obligations concerning promotion of well-being and a persons’ choice of their “home”.

Presentation

In person

351 Health without care: Alcohol Minimum Unit Pricing in Scotland and Wales

Simon Jones

Cardiff University, Cardiff, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

Health law has been of particular significance in the exercise of UK devolution, including the abolition of prescription charges and organ donation legislation, making comparative studies particularly valuable. Minimum Unit Pricing legislation in Scotland and Wales operates by setting a minimum price below which alcohol cannot be sold. Econometric modelling demonstrates should sufficiently lower demand among low-income, high-consumption drinkers to achieve population-level decreases in alcohol consumption.

However MUP legislation in both countries creates no additional duties for the healthcare of the group of low-income, high-consumption drinkers MUP targets, nor does it address their historical exclusion from other protection legislation.

Recent publicly-commissioned research in Scotland has indicated that some people on low incomes who struggle with alcohol dependence have cut back on food and utilities in order to afford the substance they are addicted to, whose price has been increased purposefully by the Scottish Government. While the human rights implications are clear, the possibility of adequately including them in MUP political discourse is not.

Analysis of policy documents from both countries shows diverse political motivations for implementation, but all are related to population-level changes, not improvements in quality of life or care for people affected by alcohol use disorder. Individuals affected by alcohol use disorder and living on low incomes, whose unhealthy consumption MUP is explicitly intended to address, are largely absent from the political discourse around MUP and its implementation has brought no additional protections.

Presentation

In person

785 States' obligations to realise the right to health for all in the face of antibiotic resistance

Claire Lougarre¹, Adrian Viens²

¹Ulster University, Belfast, United Kingdom. ²York University, Toronto, Canada

Stream or current topic

Health law and bioethics

Abstract

Whilst the World Health Organization recognises antimicrobial resistance as one of the top 10 global public health threats facing humanity, no research analyses how human rights law should respond to the unique dilemma raised by States' obligations to realise the right to health for all in the face of antibiotic resistance. The questions it raises, nonetheless, are paramount to understanding how international human rights law can adapt to contemporary and complex crises, especially following the COVID-19 pandemic. Indeed, how can States comply with a right that requires they secure the highest level of health possible for all, including through access to essential drugs preventing death and suffering, while restricting their use in the unique context of antibiotics where irresponsible use leads to ineffectiveness of the drug? The silence of international human rights law on this issue, and the fact that key human rights treaties pull States parties in different directions, affects States' ability to understand and comply with the right to health correctly. This paper, therefore, aims at clarifying States' obligations to realise the right to health for all in the face of antimicrobial resistance, in order to assist international organisations when providing guidance to States. The complex role of the right to health in the face of antimicrobial resistance, including antibiotic resistance, presents a unique test case allowing human rights lawyers to identify, weigh, and balance related competing claims under this right.

Presentation

In person

Disability and Law: Disability and Identity in Law and Policy

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU211

Stream Disability, law and social justice in times of uncertainty

141 The influence of the social model of disability and co-production in the Welsh policy making context. The potential for a new political discourse that recognises the important role of human rights.

Deborah Foster

Cardiff University, Cardiff, United Kingdom

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

The Government of Wales not only acknowledged the disproportionately negative impact covid-19 had on disabled people, but it also established an investigation into why this was happening during the pandemic, led by disabled people. The outcome was the 'Locked- Out' report, which detailed breaches in human rights and evidenced the unequal role past failures in social policy played. Its recommendations, formulated exclusively by disabled people, were published by Welsh government in 2021, whose response was to set up a unique Disability Rights Taskforce. Its principal aim has been to bring together policy makers and disabled people with lived experience of public services, to find new ways of tackling old problems. The Taskforce is part of the co-operation agreement between Labour and Plaid Cymru and is co-chaired by the Minister for Social Justice with a representative chosen by the Welsh Government's Disability Equality Forum. This representative is the author of this paper.

Central to the work of the Taskforce is a rights-based approach, facilitated by the commitment of Welsh Labour to work towards incorporating the CRPD into Welsh law. The Taskforce is also committed to the social model of disability and using methods of co-production. At its half-way stage, the purpose of this paper is to reflect on the challenges, achievements, and aspirations of the Taskforce. Reflection will provide an opportunity to evaluate principles and processes that guide its work and to evaluate the role of different actors, the operation of power and politics, and objectives and anticipated outcomes.

Presentation

Virtual via Microsoft Teams

179 Abstract: Access to Justice and Realization of the Rights of People with Epilepsy

Kaijus Ervasti

University of Eastern Finland, Joensuu, Finland

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

There are 60 000 people living with epilepsy in Finland and 50 million people worldwide. People with epilepsy have a lot of problems with realization of legal rights and access to justice. According to the WHO (2022), although the social effects vary from country to country, the stigma and discrimination that surround epilepsy worldwide are often more difficult to overcome than epileptic seizures themselves.

There has been much discussion in the research literature about legal status and legal problems of people with epilepsy. Historically, their treatment has been unjust. For example, prohibition of the right to marry has been common and it remains difficult still in certain countries. Legal problems are encountered in many areas of life such as education, employment and driving. Often these problems intertwine with discrimination; a problem widely experienced by people with epilepsy.

Our research team in at the University of Eastern Finland has established a research project on the rights of people with epilepsy. In the end of year 2022 we conducted a survey of realization of the rights for the people with epilepsy (n=237). This will be followed by focused interviews. According to the preliminary results people with epilepsy have the most problems related to healthcare services and working life. Also experiences of prejudices and discrimination are common in various areas of life. In the spring of 2023, I will analyze the research data and present the results at the SLSA conference.

Presentation

In person

288 "The lived experience of disability in law school - present realities and possible futures" - an interpretative phenomenological analysis of disability and disabled identity - a novel approach to disability socio-legal scholarship.

Elisabeth Griffiths

Northumbria University, Newcastle upon Tyne, United Kingdom

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

Disability is not a marginal issue, although it is often described as such, and as a 'social justice issue' it continues to have a low profile in legal academia (Lawson, 2020, p. 29). Disability can be an ethically difficult and sensitive phenomenon to explore in empirical legal scholarship. This paper presents disability socio-legal studies scholars with an unfamiliar theoretical framework and methodological approach for exploring disability, a phenomenon that is experienced differently by each person who recognises and acknowledges the word disability for themselves.

Phenomenology and Interpretative Phenomenological Analysis (IPA) are unusual and underutilized in legal research, but this paper argues that they present us with an opportunity to understand and appreciate how the topics regulated by law are subjectively lived, experienced, and interpreted by actors in the legal process. Phenomenology is “the philosophical method for studying lived experience...a method for examining pre-reflective, subjective human experience” (Carel, 2016, pp. 2-3). Drawing on a phenomenological study using IPA as the theoretical framework, methodology, and method this paper illustrates how this approach can help us explore and understand the lived experience of disability and disabled identity, disclosure, and the reality of the duty of reasonable adjustments. This paper explores how phenomenology and IPA enabled me to understand what the phenomenon of disability was in the context of the law as experienced by disabled law students and facilitated a deeper understanding of how law and legal concepts function in and for society, arguably offering important ways forward for research in this field.

Presentation

In person

662 Pushing at the boundaries of legal personhood

Flora Renz

University of Kent, Canterbury, United Kingdom

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

Current understandings of legal personhood suggest that law envisages people as comprised of statically patterned bodies and identities that map onto an imaginary ‘ideal’ human form. Even where legal personhood has been granted to non-human entities, such as corporations or rivers, the body of the legal person generally remains an underexplored and undiscussed cypher. As such, laws engagement with bodily patterns that differ from the normative human body is generally more tentative, conditional and superficial. This paper will draw on two examples from English Criminal Law that offer differing ways of engaging with extensions of the human body, namely the so called ‘gender fraud’ cases, and the use of mobility aids by disabled people. This is not intended as advocacy for greater criminalisation measures but, rather, Criminal Law offers a unique site in which law is more frequently forced to reckon with the reality that bodily composition is evolving and often differs from the imaginary human. Drawing on Haraway’s Cyborg Feminism, could we imagine legal personhood as capable of recognising the “potent fusions” and “dangerous possibilities” that come into being when bodies come in contact with non-human objects? Given the contemporary challenges posed to static understandings of human bodies, re-considering the limits of legal personhood in light of emerging and embedded interactions between humans and objects seems a crucial step towards a more accurate and nuanced understanding of legal personality.

Presentation

In person

Mental Health 3

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU218

Stream Mental health and mental disability law

612 Delusional Decision-Making: Lessons from Philosophy

Mollie Cornell

University of Bristol, Bristol, United Kingdom

Stream or current topic

Mental health and mental disability law

Abstract

Patients with delusions present a unique challenge while making capacity assessments and best interest decisions under the Mental Capacity Act. It is no coincidence that the current functional approach to capacity can trace its roots back to a common-law decision dealing with medical decisions made by a patient with long-term schizophrenia (*Re C (Adult: Refusal of Medical Treatment)* [1994] 1 WLR 290).

The philosophical and medical conceptualisation and distinction between odd-beliefs and delusion is a blurred and fraught line that speaks to deeper issues within the sphere of mental disability such as the application of biomedical/social models of disability and the place of lived-experience in our medical values systems. This distinction is crucially important since it is the hinge on which the diagnostic criterion turns, and thus determines when someone may find themselves under the remit of powerful mental health laws. As lawyers, we need to understand and appreciate how this seemingly objective standard actually masks many crucial value judgments.

This paper sets out current work on the question of what delusion actually is, from within the fast-developing field of the philosophy of mental health. It then examines key legal judgments on delusion within the MCA using this lens to show how philosophical assumptions about delusion can profoundly impact the outcome of MCA decisions. There is power in our varied understandings of delusion that needs to be unpacked before the law can be evaluated.

Presentation

In person

65 At the frontiers between penal and psy discourses: unravelling the mentally dis/abled subject in criminal sentencing using critical discourse analysis

Urania Chiu

University of Oxford, Oxford, United Kingdom

Stream or current topic

Mental health and mental disability law

Abstract

In *Discipline and Punish*, Foucault describes the introduction of the 'biography of the criminal' in penal systems as a point where penal and psychiatric discourses meet. In many jurisdictions today, sentencing judges may indeed consider a wide variety of information relating to the offender's past and present, including psychiatric reports and other forms of *psy* knowledge and expertise (Rose 1996). While aspects of criminal law which directly affect mentally disabled offenders (e.g., insanity) have been much discussed in research, less has been said about the role of *psy* in sentencing.

In this paper, I argue that a critical discourse analysis of *psy* in sentencing judgments could provide valuable insights pertaining not only to the law's treatment of mentally disabled offenders but also to socio-cultural values underlying the criminal justice system more generally. Specifically, a methodological framework informed by Critical Disability Studies and Foucauldian theory, focusing on the relationship between language, knowledge-making, and power, would allow us to see beyond law's characterisation of mentally disabled offenders as either 'vulnerable' or 'dangerous' and conceive *psy* discourses as shaping fundamental legal norms and constituting the dis/abled subject. Applying this, I analyse two recent sentencing judgments from Hong Kong, where legal and psychiatric practice has largely followed Anglo-American developments but which has developed its own socio-cultural identity as a Special Administrative Region in China. The findings underscore what Rose calls the 'disciplinisation of psychology' and 'psychologisation' of modern life and highlight the contribution postmodern theories about the self can make to legal research.

Presentation

In person

927 The new meaning of compassion: advance consent and changes of mind at a material time

Magda Furgalska

York University, York, United Kingdom

Stream or current topic

Mental health and mental disability law

Abstract

This paper draws on the notion of "compassion towards thriving" (proposed in recent years by Phil Bielby) and Amartya Sen's understanding of coercion to provide a theoretically driven and empirically grounded argument for invoking advance consent at a material time despite apparent changes of mind. This refers to a situation where a person self-binds to a specific mental health treatment for a particular time, but when relevant circumstances arise, they change their mind and attempt to refuse it. This scenario raises many thorny legal and ethical issues, especially when it involves overriding refusals of a capacities individual in favour of their earlier - and capacitous - wishes. Furthermore, advance consent framed in this way raises the possibility of the treatment being experienced as forced, thus undoing the empowering benefits of self-binding. However, drawing on the empirical data and the proposed theoretical framework, I argue that advance consent may be justifiably responsive to some coercion individuals are willing to accept.

Presentation

In person

Gender, Sexuality and Law 9

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU219

Stream Gender, sexuality and the law

843 Pam & Tommy and the Media: Feminist Critical Discourse Analysis on the Leakage of Intimate Images in the Lee v. Penthouse Case (United States, 1996)

YASMIM YONEKURA

Federal University of Pará, Cametá, Brazil

Stream or current topic

Gender, sexuality and the law

Abstract

This research seeks to analyze excerpts from the case files and its journalistic recontextualizations of two legal processes that took place in the United States of America. The processes were judicially initiated by the couple Pamela Anderson and Tommy Lee in 1996 and 1998, against the leak of their VHS with sexual content (sextape). It became one of the first large-scale viral cases of private image thefts on the internet. Thus, this research was based on the interdisciplinary perspective of Critical-Feminist Discourse Analysis (LAZAR, 2018). The results of the analysis of journalistic recontextualizations and of one of the excerpts from the file suggest that language and gender can serve as an instrument for the material extension of patriarchy through these institutional instances, namely, the media and the judiciary. We also aim to connect the Lee-Anderson intimate exposure with recent events in Brazil, Latin America and other countries in which women and/or other social groups were exposed and socially affected on a negative way, aiming to understand how the use of crimes such as exposure of intimate media and revenge acts become tools to materially and culturally oppress and discriminate certain subjects and what are the roles that the media, the law, and other social entities play on these moments as well as what can be done to fight against it.

Presentation

Virtual via Microsoft Teams

231 The limits of sexual freedom: sexual consent, societal morality, and deviant behaviour

Hoko Horii

VanVollenhoven Institute for Law, Governance, and Society, Leiden, Netherlands

Stream or current topic

Gender, sexuality and the law

Abstract

Sexual freedom is considered one of the fundamental rights, essential for the development of one's personality and autonomy. Yet, when it comes to childhood sexuality, this right seems to become less clear-cut. The Convention of the Right of the Child stipulates children's negative freedom to sexuality (protection from sexual abuse and exploitation), but it remains silent on their positive freedom (their freedom to sexuality that they choose). Against the backdrop of this reservation is the idea that children are not fully developed to make a sensible decision, and are easily manipulated by older persons who have more knowledge and power.

This paper will examine the debates over age of consent laws and legal cases regarding 'child sexual abuse' – including cases where the minor party is seemingly 'consenting'. By doing so this paper illuminates how far their freedom can be granted when it is about what is considered morally wrong. When does law start to intervene with individuals' choice that is considered morally wrong? The key element is the concept of harm. When the minor is 'consenting', there seems to be no harm, but the act is still considered punishable. In such cases, the harm is either identified as collective or established by 'scientific knowledge' (e.g., trauma research). While it is important to consider potential harm, they need to be weighed against the risk of legal moralism. The cases and interviews with legal actors in this paper show the evidence of moralistic tendency to punish 'deviant' behaviour.

Presentation

In person

450 Harmful sexual behaviours in intimate relationships

Amy Newman¹, Connor Leslie², Brontë Rapps¹, Daniel Rogerson³

¹Northumbria University, Newcastle-upon-Tyne, United Kingdom. ²Northumbria University, Newcastle-Upon-Tyne, United Kingdom. ³Northumbria Univeristy, Newcastle-Upon-Tyne, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

Prevalence rates for sexual assault, rape and other harmful sexual behaviours are difficult to estimate, and often solely focus on straight, cis women. Rape myths perpetuate the belief that most rapes are perpetrated by strangers, despite evidence to the contrary. The current study qualitatively examines what participants define rape to be, as well as quantitatively self-reporting the prevalence of experiencing harmful sexual behaviours from a partner. We recruited 551 individuals (205 cis men, 216 cis women, 36 trans men, 32 trans women, 59 non-binary individuals) across a spectrum of sexual orientations (28% straight, 72% LGBTQ+). Results for gender show a significant difference in the prevalence of experiencing HSBs, with post-hoc suggesting this difference is between cis men and cis women: $U = 16904.00$, $p < .001$, with cis women being significantly more at risk. When looking at orientation, again we find a

significant difference in the number of HSB experienced, with post-hocs suggesting that bisexual and queer individuals experienced the most HSB in relationships. Twenty-three percent of the sample said they had been raped by a partner, however, reporting of other forms of sexual violence was also high (e.g., 40% of the sample had engaged in sexual behaviour due to fear of their partner's response if they refused). We conclude that there is clearly a disconnect between participant's internal representations of what rape is and how it is defined more broadly in the literature/legal systems, and that LGBTQ+ individuals appear to be most at risk of experiencing partner sexual violence.

Presentation

In person

Administrative Justice 5

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU301

Stream Administrative justice

333 Adversarialism in the Immigration Tribunal

Susannah Paul

University of the West of Scotland, Paisley, United Kingdom. University of Glasgow, Glasgow, United Kingdom

Stream or current topic

Administrative justice

Abstract

The Immigration Tribunal provides an important independent judicial remedy for applicants who wish to challenge decisions made by the Home Office. In terms of its procedures, the Immigration Tribunal is known for employing an approach which is paradigmatically adversarial (Ryder & Hardy 2019).

Through my PhD research, by combining empirical evidence and socio-legal reflections, I have sought to understand 'adversarialism' in the First Tier Tribunal Immigration and Asylum Chamber and in this paper I present some of the findings. By drawing on qualitative research data collected at the field site: the Immigration Tribunal in Glasgow, I consider adversarialism through examining judicial approaches and noting the role of workgroup dynamics.

This paper appraises the extent to which hearings in the Immigration Tribunal adopt an adversarial hearing format. Through examining judicial approaches, I develop a typology for reflecting on differing judicial interventions: 'a ladder of judicial intervention'. The ladder challenges the binary understanding, often depicted in the literature, and shows that judges adopt a range of context sensitive approaches to hearing. Through examining the existence of and practices of the workgroup (judges, clerks, Home Office representatives and legal representatives) I observed that

examples of cooperation and empathetic engagement also operate to challenge the narrative that the tribunal has a purely adversarial approach.

Ryder, E. and Hardy, S. (2019) *Judicial Leadership: A New Strategic Approach*, Oxford University Press.

Presentation

In person

523 Open Justice - A new way for justice institutions to engage with society

Pablo Hilaire

London School of Economics and Political Science, London, United Kingdom

Stream or current topic

Administrative justice

Abstract

The core purpose of this paper is to review the implementation of a transparency strategy in the Justice System, specifically in the Courts and Tribunals service of the City of Buenos Aires, Argentina. It examines different innovations aimed to regain the trust of citizens towards the Judiciary. The central role played by digitisation to engage with the community and improve the delivery of public service. It also addresses the tension created between open data and the right to privacy and provides a novel example for the handling of judicial data. It is an empirical work focused on the execution of the project and provides grounds for its further study and replication. The innovations covered are inspired by Open Government philosophy and principles of Transparency, Participation, and Collaboration applied to Justice. The initiative gained recognition from diverse multilateral organizations such as the Open Government Partnership and the OECD. The transparency strategy included a profound cultural change from the public servants involved in its execution. This practical work demonstrates the growing need for specific developments in the justice service that have the potential to improve the democratic legitimacy of justice administrations. The case study covered by the paper was presented by the United Nations Development Programme as a model to replicate to enhance access to justice. This empirical work provides ideas for further study by socio-legal researchers and interdisciplinary researchers.

Presentation

In person

656 Lawyers Against the State? The Reform of Japan's Administrative Tribunals

Rieko Kage

University of Tokyo, Tokyo, Japan

Stream or current topic

Administrative justice

Abstract

In 2014, Japan introduced a major reform of its administrative tribunal system. Under the existing system, the same agency, indeed the same official that had made the initial administrative decision, could review its own decision. The reformed system required agencies to assign a different official to review the decision than the one who had made the initial decision, and the review decision was to be further reviewed by a third-party tribunal (Administrative Complaint Review Board, hereafter ACRB), unless requested otherwise by the claimant. One national ACRB and forty-seven new prefectural ACRBs were created to review citizens' appeals against national and prefectural government decisions, respectively.

As in many administrative tribunals in common law systems, ACRB boardmembers are not required to have professional legal backgrounds, and most prefectures appointed both lawyers and non-lawyers to serve on their ACRBs. To what extent did different percentages of lawyers lead to differences in the incidence of ACRB rulings against local governments? And why did prefectures appoint greater or fewer numbers of lawyers to ACRBs in the first place? Drawing on an original dataset of ACRB rulings in Japan between 2017-2021, we find that prefectures with more lawyers on ACRBs tend to rule against prefectural governments more often than those with fewer. We also find that the appointment of lawyers is little affected by governors' partisan orientations or their strength within the prefectural assemblies. Our findings point to the considerable autonomy that lawyers enjoy, despite the limited institutional independence of Japan's administrative tribunals.

Presentation

Virtual via Microsoft Teams

692 Lost in Translation? Interpreters' Evolving Concerns in the Context of Online Hearings

Anna Tsalapatanis

Centre for Socio-Legal Studies, University of Oxford, Oxford, United Kingdom. University College London, London, United Kingdom

Stream or current topic

Administrative justice

Abstract

Interpreters, despite their crucial role in facilitating participation for those unable to communicate in spoken English, have received comparatively little consideration in the research related to online hearings. To help fill this gap, this paper draws on findings from a national survey conducted by the ESRC-funded Supporting Online Justice Project, which received an overwhelming number of responses from interpreters (n=323), accounting for more than half of the total. It delves deeper into the diverse concerns of interpreters with experience of the pandemic-driven move to online hearings, including the abrupt entry into the hearing, the specific issues of being remote to the person they are interpreting for and concerns about how the online hearing space is laid out and managed. They also expressed specific concerns regarding the needs of their clients, including those requiring British Sign Language interpretation, which are also marginal in the research. Exploring this further, this paper engages with research conducted into the experiences of remote interpreters in other jurisdictions, as well as exploring how the development of online hearing platforms and processes can better take into account their crucial role.

Presentation

In person

Empire, Colonialism and Law: Colonialism, Empire and the Politics of Belonging Session 2

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU302

Stream Empire, colonialism and law

213 The Role and Presence of Indigenous Peoples within the Caribbean 1640s-1700s.

Justine Collins

School of Oriental and African Studies, London, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

The presence of various groups of Indigenous Peoples within the Caribbean has received little attention therefore sparse scholarship exists concerning the subject. However, perusal of archives and other sources tell a differing tale, as there were the sporadic appearances of groups and tribes of persons Native to the Caribbean, North, Central, South America and Africa. Records of plantation economies and societies of the Caribbean rarely mention the existence of Indigenous Peoples and their role within colonial cultivation practices and enslavement. Nevertheless, the fact that they were named in treaties, legislations and correspondences meant that they played a significant role and had considerable contributions. This presentation traces and identifies the role played by Indigenous Peoples and Groups within the Atlantic world and ascertains how they were regulated within colonies claimed by the British. Native American tribes such as the 'Pequots' were deported from New England to the Caribbean to labour as the enslaved on the plantations. Sources also showed there was even legislation addressing the presence of 'New England Indians' within the colony of Barbados. In addition, there was also the issues of the Miskito Sambos of the Nicaraguan Coast and Jamaica to some extent and the Black Caribs of St. Vincent and their expulsion by the English to Central America, culminating in the Garifuna peoples there. These sporadic though significant appearances of Indigenous peoples begs the question of their role in plantation economies and how legislation was used to delineate different racial groups and thus initiate race law and theories.

Presentation

In person

432 “The law does not recognise you” - defining communities in (post)colonial Namibia and South Africa

Sonya Cotton

University College Dublin, Dublin, Ireland

Stream or current topic

Empire, colonialism and law

Abstract

Indigenous rights represents one of the few ways in which dispossessed groups in legally pluralistic southern Africa can protect shared land from dispossession by States, extractive industries and/or privatisation. In this regard, international indigenous jurisprudence represents a positive legal avenue for legitimising grassroots movements; contributing to transformative perspectives on the meaning and role of property in post-colonial societies (Davis 2021). However, to avail of these rights, litigating groups must be juridically recognized as a traditional, customary or indigenous community. Drawing on three months of fieldwork in Namibia and South Africa, this paper argues that contemporary juridical and statutory standards for recognizing communities are haunted by Eurocentric and discredited stereotypes of African society. Today, as was the case under colonial/Apartheid administration, defining “community” through the law remains a major tool for spatial engineering; allowing postcolonial States to seem to celebrate cultural plurality while in fact containing and constraining its effects. This is argued with reference to four case studies in South Africa and Namibia, which highlight the strategic (mis)recognition of communities who attempted to use international indigenous rights to protect their ancestral land. This research draws attention to the ways in which the emancipatory potential of indigenous rights is limited by persisting Eurocentric ontologies in postcolonial legal systems. This requires that groups who wish to use the courts understand themselves through a colonial lens or else relinquish their legal standing as a community.

Presentation

In person

530 When Natives Outnumber Settlers: Apartheid in Colonial Algeria, South Africa and Palestine

Sari Arraf

King's College London, London, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

Settler hegemony has commonly been tied with racialized legal configurations that hold native populations in thrall. Nonetheless, little attention has been made to the possible correlation between the demographic superiority of the native population in a certain settler-colony and the vigor of racialized laws applied there. In many settler colonies of the Americas and Oceania, the question was admittedly rendered irrelevant by the dramatic collapse in the native population due to pandemics and wide-scale massacres. There are three settler-colonies, however, where natives did not face the same destiny: Colonial Algeria, South Africa and Palestine.

In these places, settlers were arguably in need of a radical design of the legal system to maintain their superiority over a large native population. In South Africa, legal measures assumed an extreme form that came soon under the infamous label of Apartheid. While this term has been historically linked to the South-African context, it is now increasingly employed with regard to Palestine. Yet, recent debates have been largely confined to either binary historical comparisons or a reliance on a universalized legal definition of apartheid.

My research seeks to disrupt this dualism through historical analysis that places apartheid within the wider dynamics of settler-colonialism. It juxtaposes the example of Colonial Algeria and those of South Africa and Palestine with a view to reconceptualizing apartheid as a racialized legal system, conditioned by the demographic anxieties of minoritarian settler-societies against a backdrop of an uneasy passage from a traditional age of empires into the modern nation-state era.

Presentation

In person

767 Rohingya Refugees and Transitional Justice: Promise and Hope of the Global Order

Tonny Raymond Kirabira¹, [Fiza Lee-Winter](#)²

¹University of Portsmouth, Portsmouth, United Kingdom. ²Ruhr-Universität Bochum, Bochum, Germany

Stream or current topic

Empire, colonialism and law

Abstract

This paper will focus on the nexus between international accountability mechanisms and regional perceptions vis-a-vis the Rohingya refugee crisis. Drawing upon the wider framework of transitional justice, and taking into account regional norms and values, we uncover the importance in adopting differentiated approaches to refugee protection and human rights. Through a discussion on the Westphalian vs. Eastphalian understanding of human rights in general, the chapter makes a case for a regionalized approach to addressing the root causes of the Rohingya crisis and highlights the crucial need for stakeholders to be context sensitive.

Key words: Rohingya, Transitional Justice, Refugee protection, Rules-based order

Presentation

In person

Transformative Justice 4

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU303

Stream Human rights, memory and transformative justice

10 Search and the Disappeared: beyond the legal and forensic hinterlands

Cath Collins

Ulster University, Belfast, Ireland. Universidad Diego Portales, Santiago, Chile

Stream or current topic

Human rights, memory and transformative justice

Abstract

Disappearance and enforced disappearance are among the mass violence phenomena that most clearly create ongoing legacy issues, in the form of a truth deficit and/or the human desire, and state obligation, to search for and restore missing persons or their remains. This paper explores a growing recent trend, in longstanding transitional justice settings, to create nonjudicial or extrajudicial search efforts or mechanisms. Search offices in Latin America, parts of Asia, and parts of Europe (notably the Balkans, but also Northern Ireland) have been created. Each has differing approaches to the relationship between search and prosecution, and a range of mandates and provisions have been adopted regarding anonymity, confidentiality, incentivisation of informants, and the place of non-state forensic expertise and activism. This paper considers the twin axes of state and nonstate, judicial and non or extra-judicial as determinant of how search, identification, and restoration are sociologically, sociolegally, and phenomenologically constructed across settings. It considers the range of political, criminological, and logistical variables that influence the design of such mechanisms and asks whether it is possible to reach any firm conclusion as to the relative merits of the judicial or non-judicial routes.

Presentation

Virtual via Microsoft Teams

300 Meta-Conflicts and The Publicness of Memorialisation: Do Memorials with Low Publicness Replicate or Challenge Communal Divisions in NI?

Micheál Hearty

Transitional Justice Institute, Ulster University, Belfast, United Kingdom

Stream or current topic

Human rights, memory and transformative justice

Abstract

Publicness has been a prominent feature of Northern Ireland/North of Ireland (NI)'s transitional period. The once unimaginable sight of Martin McGuinness and Ian Paisley sharing a laugh as they entered a power-sharing government as well as David Cameron's public apology to the Bloody Sunday families are not only momentous occasions in NI's transition, but also highly public ones. Other significant developments have occurred with less publicity, such as the Independent Commission for the Location of Victims' Remains using 'quiet' transitional justice to enhance its effectiveness. A combination of high and low publicness has also been used to memorialise the conflict. Memorials with relatively low publicness, such as quilts of remembrance and temporary exhibitions, are used in conjunction with more public ones, such as monuments and murals. Without a consensus on how to "deal with the past", memory remains an extremely contentious and relevant issue in NI. A 'meta-conflict' has thus manifested, with the failure to implement adequate legacy mechanisms furthering the prevalence of memory politics in the region. Additionally, memorialisation has primarily been performed by grassroots memory-makers due to a lack of official, State commemoration. Consequently, highly visible memorials tend to replicate rather than challenge communal divisions. But has the same fate befallen sites of memory with relatively low publicness? This paper wishes to examine this question, assessing if low publicness has allowed certain memory-makers to navigate NI's meta-conflict and enable the public remembrance of actors who are missing from their more public counterparts.

Presentation

In person

348 Informed by the Past: The IRA, Informers, and Legacies of Conflict in Northern Ireland

Ron Dudai

Ben Gurion University, Be'er Sheva, Israel

Stream or current topic

Human rights, memory and transformative justice

Abstract

During transitions out of ethno-national conflicts, both analysis and transitional justice policies tend to focus on relations between the communities involved in the conflicts. Yet in many cases conflicts leave also intra-community wounds and tensions, a result of violence, abuses and betrayal occurring within a community. These are often overlooked by actors designing transitional justice interventions, though the legacies of internal tensions can be both highly consequential and hard to resolve.

In this paper, I focus on the effects of informing, a common phenomenon shadowing non-state armed groups. For many in relevant communities, informers – who secretly work for the state security apparatus – represent despicable betrayal, but at the same time actions taken against alleged informers by the armed group in question are also often subject to intense critique from within. My case-study is the legacy of conflict-era informing in Nationalist communities in Northern Ireland. My analysis shows how informers have largely remained "unforgiven" actors in these communities, and the problems this raises for dealing with the past and conflict-transformation. I also examine how actions taken against alleged informers by the IRA during the conflict have been the object of quasi-transitional justice interventions, and assess the prospects for truth-recovery regarding the role of all actors – including British security forces – in the context of proposals for mechanisms to deal with the past in Northern Ireland. The paper continues research carried out for my monograph *Penalty in the Underground: The IRA's Pursuit of Informers* (Oxford University Press 2022).

Presentation

In person

812 Prosecution of civilians for crimes against humanity in Chile: the case of doctors involved in torture

Francisco Bustos

Westfälische Wilhelms-Universität Münster, Münster, Germany. Universidad de Chile, Santiago, Chile

Stream or current topic

Human rights, memory and transformative justice

Abstract

Chile represents a classic case of transitional justice, with multiple international crimes committed by past authoritarian regimes currently being tried in national jurisdictions. These trials, mostly of former agents of the regime, have produced more than 400 concluded cases in Chile (Bustos, 2019). In these processes some civilians have also been convicted, mainly businessmen who took part in the direct commission of crimes (Collins et. al., 2018; Sferrazza and Bustos, 2021). In this context we would like to refer to a recent decision of the Chilean Supreme Court of Justice (January 2023) in the case for the murder of Federico Alvarez Santibáñez for which two doctors (Manfred Jurgensen, as co-perpetrator and Luis Losada, as accessory) were convicted for their participation in interrogations to allow the torture of the victims.

Presentation

In person

Epistemic Injustice: Transitional Justice and Epistemic Injustice

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU305

Stream Epistemic injustices in law

276 What Counts As Transitional Justice Scholarship? Disciplinary Hierarchies in Theory and Practice

Maja Davidovic¹, [Catherine Turner](#)²

¹Cardiff University, Cardiff, United Kingdom. ²Durham University, Durham, United Kingdom

Stream or current topic

Epistemic injustices in law

Abstract

Submitted for THEME B:

Since its emergence as a field of scholarship and practice, transitional justice (TJ) has coalesced around a set of mechanisms to deal with a legacy of violence. The 'pull' towards mechanisms, institutions and structures as a means of delivering justice has led to certain kinds of knowledge being recognized as 'transitional justice research' in the mainstream. Drawing on the theory of 'epistemic positioning' we reveal how hierarchies of academic knowledge and the dominant 'ways of knowing' in and of TJ are created. Through citation analysis, we reveal an emerging canon, a central body of valuable and seemingly 'inevitable' knowledge, of TJ consisting primarily of structure and outcome-oriented inquiries in the disciplines of law, politics and international relations and consolidating a standardized model of how to 'do' transitional justice. We argue that this canonization comes at the expenses of alternative approaches that challenge the core assumptions of the field. Inquiries which prioritize agency or process, and which reimagine what transitional justice could be remain bounded to their disciplines and subfields. We demonstrate how certain anxieties about the survival of the field result in policing of the boundaries of the field, creating hierarchies of 'valuable' knowledge and resisting the 'decolonizing' impulse.

Presentation

In person

434 Knowledge Production, Environmental Harm, and 'Greening' Transitional Justice

[Lauren Dempster](#)¹, Rachel Killeen²

¹Queen's University Belfast, Belfast, United Kingdom. ²University of Sydney, Sydney, Australia

Stream or current topic

Epistemic injustices in law

Abstract

There is a complex relationship between environmental harm and periods of conflict, mass violence, and authoritarianism. This can include, for example, the extraction of natural resources as a means of funding conflict, or the deliberate destruction of habitats relied upon by targeted communities as a strategy of conflict. Yet, this relationship is relatively overlooked and under-theorised in transitional justice scholarship. This paper draws on material being collected for a monograph which will contribute towards addressing this gap (*Green Transitional Justice*, Routledge 2024).

In this paper we argue that the dynamics of knowledge production in transitional justice have contributed to the overlooking of the relationship between violence and environmental destruction. The relationship between knowledge production and transitional justice is discussed, and the effects of these dynamics on transitional justice's ability to recognise and respond to the environmental impacts of conflict, atrocity, and repression are interrogated. The paper

concludes with an exploration of how knowledge production in the field might be re-imagined so that transitional justice can more adequately respond to environmental harm.

Presentation

In person

202 DECOLONIZING REPARATION THROUGH A LINGUISTIC WALK WITH UMA KIWE

Nina Bries Silva

European University Institute, Florence, Italy

Stream or current topic

Epistemic injustices in law

Abstract

A growing critical scholarship has pointed out hegemonic tendencies and Western biases in international law. This article subscribes to this effort while seeking to contribute by investigating how the language of international law reinforces the dominance of Western narratives, (re)producing ignorance about other understandings. By studying the concept of reparation in collaboration with indigenous Nasa communities, this article explores how the international legal language imposes western worldviews and marginalizes indigenous ontologies. A linguistic and semantic analysis of the concept of reparation in both Spanish and Nasa Yuwe, the languages of the Nasa, enables the untangling of those silenced realities and opens the legal category to other ontologies.

The Nasa have been particularly affected by the armed conflict but for them, humans were not the only ones suffering from the conflict. It also affected another living being: Uma Kiwe or Mother Earth. But can Uma Kiwe's suffering can be repaired? In 2019, the Colombian Special Jurisdiction for Peace recognized Uma Kiwe as a victim of the armed conflict with its own right to reparation. Consequently, judges are now questioning what reparations to Uma Kiwe should look like. By calling for reparations, international law risks controlling the narratives and obscuring indigenous realities. For the Nasa the word 'reparation' cannot reflect the disharmony brought upon their Uma Kiwe. In Nasa Yuwe, no word for reparation exists. A linguistic analysis using their own words and semantics helps to understand the Nasa cultural perception of reparation and invites us to rethink the concept.

Presentation

In person

532 The Limitations of Autonomy in Understanding Muslim Women's Veiling and Religious Subjecthood: The Case of The Karnataka Hijab Row

Sumaiyah Kholwadia

University of Birmingham, Birmingham, United Kingdom

Stream or current topic

Epistemic injustices in law

Abstract

In 2021, a college in Karnataka, India prevented Muslim students from entering the premises because their hijabs allegedly violated the dress code. Legal proceedings were brought against the college alleging violations of the students' rights to free speech, privacy and autonomy. The rhetoric of autonomy and choice has long been used to frame discussions on Muslim women's veiling by advocates, opponents and importantly, judges. Given the centrality of autonomy to these decisions, it is important to interrogate the dominant conception of autonomy, which is informed by western, liberal norms denoting the atomistic individual who is independent from the conditions they live in. When applied to veiling, such a conception fails to accurately portray the nuances of Muslim women's multi-layered relation to veiling which should include an appreciation for the role of spirituality. Instead, veiling is reduced to the realm of 'culture' which compels women to behave a certain way. This paper will highlight the limits of framing veiling through an autonomy lens. An exclusive focus on autonomy as an exercise of 'choice' is not the most helpful tool to comprehend religiousness. This paper advocates for an alternative conceptualisation of autonomy and agency, which centres spirituality as a key motivating force in shaping Muslim women's religious subjectivities. Building upon the work of Saba Mahmood, this paper understands Muslim women's autonomy in veiling as situated within morally binding, religious traditions and explores the implications of such an understanding on the case of the Karnataka hijab row in India.

Presentation

In person

Equality and Human Rights Law: Human Rights Penalty: Paradox, Critique, and Future

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU308

Stream Equality and human rights

321 Rethinking human rights penalty

Natasa Mavronicola

University of Birmingham, Birmingham, United Kingdom

Stream or current topic

Equality and human rights

Abstract

[This submission is part of the panel: Human Rights Penalty: Paradox, Critique, And Future. Reference number 115.]

The rationale for the alliance between human rights and the coercive and carceral forces of the State has at least three central dimensions: effectiveness, equal protection and accountability. In particular, the mobilisation of criminal law (enforcement) and punishment is often treated as the most effective means of preventing and redressing human rights violations. The egalitarian dimension of human rights penalty lies chiefly in the idea of redistributing effective protection to marginalised, under-protected persons. Finally, criminal justice and the criminal sanction are often understood as the pinnacle of accountability, or even justice, for serious human rights violations. While retaining a commitment to human rights, this paper unpacks (some of) the ways in which human rights penalty is bad for human rights, taking the rationale for human rights penalty seriously and identifying how human rights penalty ultimately fails to uphold and even undermines the principles that it has been promoted as fulfilling. On this basis, it contemplates pathways for human rights actors to rethink the obligations to which penalty is attached in more meaningfully protective and egalitarian terms.

Presentation

In person

117 Toward a non-penal approach to violence against women: anti-carceral feminist work in Ecuador and the UK

Silvana Tapia Tapia

University of Birmingham, Birmingham, United Kingdom

Stream or current topic

Equality and human rights

Abstract

[This submission is part of the panel: Human Rights Penalty: Paradox, Critique, And Future to the SLSA conference 2023. Reference number 115.]

This paper presents emerging findings from ongoing empirical work consisting of in-depth interviews with anti-carceral and feminist activists, practitioners and organisers, to understand their response to human rights penalty. The latter is understood as the increasing drive, in international human rights law, to demand the activation of the state penal apparatus as a response to human rights violations. The preliminary findings reveal patterns across the experiences of activism and advocacy in the Global North (United Kingdom) and the Global South (Ecuador). In Ecuador, a strategic and even subversive use of human rights language is observable, while in the UK, counter-hegemonic actors are less inclined to appeal to human rights. The author reflects on whether a “human rights from below” may be possible, and what the role of abolition feminism is, when rights-based language allows people who are dispossessed by the carceral system (inside and outside the prison walls), to organise and recognise themselves as a community.

Presentation

In person

164 Human rights-driven penal desires

Mattia Pinto

University of York, York, United Kingdom

Stream or current topic

Equality and human rights

Abstract

[This submission is part of the panel: Human Rights Penalty: Paradox, Critique, And Future to the SLSA conference 2023. Reference number 115.]

Why, among all the possible legal and non-legal tools, have human rights activists embraced penal action as the proper—if not preferred—method to protect and promote human rights? This paper develops a theory to explain why the fight for human rights is waged through penalty. To do so, it engages with theoretical accounts of moralism offered in the work of Friedrich Nietzsche's and Wendy Brown's and punishment understood through Émile Durkheim and Nietzsche, among others. I argue that dominant human rights discourses express their sense of moral outrage at serious abuses in the form of a Nietzschean *ressentiment*. This *ressentiment*, in turn, relies on punishment because it has the power to release the accumulated emotional tension and produce a feeling of justice achieved. In this way, dominant human rights discourses make the confirmation of human rights norms dependent on penalty—but also, I would argue, the inequality, prejudice and violence that penalty inevitably entails. Human rights discourses do try to minimise penal excesses, but the practice of penalty, made a moral obligation, ultimately represents forces that outrun their moderation.

Presentation

In person

25 Years of Constitutional Change: Judiciary, constitutional reform, Judicialisation

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU309

Stream 25 years of constitutional change - past and future

17 Eternity clauses in francophone African countries: "much ado about nothing".

Abdou Khadre DIOP

Université Virtuelle du Senegal, Dakar, Senegal

Stream or current topic

Constitutionalism in developing democracies

Abstract

This proposal reflects on the relevance of eternity clauses through a case study of francophone African countries. The constitutions of all francophone African countries include provisions that declare certain fundamental characteristics of the state, of human rights commitments, and/or of executive term limits, immutable. Such clauses may be read as indicators of what constitutional designers have considered being "the public good of constitutionalism." However, beyond the promise of the so-called "eternity clauses," these countries appear to be characterised by a high level of constitutional instability due to the frequency of constitutional changes and coups. In this regard, this proposal intends to critically examine the concept of unamendability, which is touted as a legal tool designed to entrench constitutional values and principles, in light of the practical realities of such countries. From this perspective, the analysis will focus on the scope of eternity clauses in the countries under study in order to shed light on how they are formulated and the areas in which they are expressed. It then confronts the concept of unamendability with the practical realities to identify the different ways political leaders seek to subvert or circumvent eternity clauses. We will then discuss the role of the judiciary in upholding these clauses through an analysis of its competence or incompetence to deal with constitutional amendments and an analysis of case laws where courts have had to interpret the eternity clauses

Presentation

In person

671 Inter-judicial coordination as a constitutionalizing mechanism

Gemma Lligadas Gonzalez

ESADE Law School, Barcelona, Spain. University of Oxford, Oxford, United Kingdom

Stream or current topic

25 years of constitutional change - past and future

Abstract

The increasingly global nature of domestic policy-making, together with the expansion of international legal fragmentation provides governments with more opportunities to over-expand their margin of discretion and avoid judicial review (Koskeniemi & Leino, 2002; Koskeniemi, 2007), which challenges national court's transformative potential as law-enforcers and counterweight of the government (Teat & Vallinder, 1995; Stone Sweet, 2000; Shapiro & Stone Sweet, 2002; Galnoor, 2004; Miller, 2004; Hirschl, 2006; Roberts, 2007). Because of this unbalance of power, the basic tenets of modern constitutional states are eroded (Peters, 2017; Benvenisti, & Downs, 2017). My work explores the nascent literature on national courts' potential to improve this situation by coordinating in order to protect fundamental (and human) rights, hence upholding the rule of law both at the national and the international level (Reinisch, 2000; Benvenisti, & Downs, 2017; Sandholtz, 2021).

In this sense, this paper advances the conceptualization and theorization of inter-judicial coordination (in the fields of counter-terrorism policies and environmental protection) beyond the polysemous notion of judicial dialogue (Golub,

1996; Ansuategui Roig, 2016; Tzanakopoulos, 2016; Lobba & Mariniello, 2017; Jimenez, 2018). Furthermore, this paper assesses inter-judicial coordination's ability to address the constitutional deficits born from international fragmentation by turning constitutional values into the cornerstone of the global legal system, provided they coordinate on the bases of, not only international law, but also constitutional law. Thus, inter-judicial coordination implies an institutional coordination among courts, as well as a material coordination among constitutional and international legal orders, which can ultimately advance the constitutionalizing of the global order.

Presentation

Virtual via Microsoft Teams

704 The Indonesian Constitutional Court and Constitutional Change by Constitutional Interpretation

Luthfi Widagdo Eddyono

Indonesian Constitutional Court, Jakarta, Indonesia

Stream or current topic

25 years of constitutional change - past and future

Abstract

Many experts see that the the Indonesian Constitutional Court has created changes to the Constitution through its decisions. Based on Article 24C Paragraph (1) of the 1945 Constitution, the Constitutional Court has four authorities: Conduct a judicial review of laws against the 1945 Constitution; Settle disputes concerning authority among state institutions, the authority of which is granted by the 1945 Constitution; Decide upon the dissolution of a political party; Settle disputes concerning the results of a general election. In addition, the Constitutional Court has one constitutional obligation as outlined in Article 7B, Paragraphs (1) to (5) and Article 24C Paragraph (2) of the 1945 Constitution, whereby the Constitutional Court is required to decide on the People's Representative Council's opinion that the President or Vice President has committed a violation of law or a disgraceful act, or that they do not meet the requirement as President or Vice President as intended in the 1945 Constitution. Several decisions are pretty controversial, giving an interpretation of the norms in the Constitution that might change the Constitution. This paper will search and analyze several decisions to understand how the Indonesian Constitutional Court made informal change of 1945 Constitution. Moreover, this paper will describes reaction of other branches when the Indonesian Constitutional Court made constitutional change by constitutional interpretation.

Presentation

In person

Exploring Legal Borderlands: Legal Mobilisation Part 2: Strategic litigation in

the labour law and industrial relations context

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU310

Stream Exploring legal borderlands

188 Strategic *Equality Act* litigation: The role of recognition in labour organising

Manoj Dias-Abey

University of Bristol, Bristol, United Kingdom

Stream or current topic

Exploring legal borderlands

Abstract

British trade unions engaged in organising workplaces with significant numbers of migrant and racialised workers regularly bring anti-discrimination claims on behalf of their members. These unions do not see *Equality Act* litigation as a substitute for its principal aim of organising workers, but rather as an important tactic in aid of this goal. How should we understand the role that this strategic litigation plays in agglomerating interests and developing mutual solidarity and collective consciousness? The theoretical framework preferred by industrial relations scholars who study the dynamics of migrant worker organising is intersectionality, which I have argued elsewhere is inadequate (Dias-Abey, 2022). Instead, this paper considers whether the notion of 'recognition', which is a mainstay of political theory, offers better possibilities (Taylor, 1992; Honneth, 1995; Gunn and Wilding, 2021). The basic idea invoked by these thinkers is that we are constituted and enabled by mutual recognition, whether by state institution or through inter-subjective relations. If misrecognition explains why migrant and racialised workers might remain immune to union overtures, encouraging mutual recognition could provide a praxis for labour activism in diverse workplaces. Along these lines, we can ask whether *Equality Act* litigation helps develop mutual recognition. Whilst it is fairly clear that successful litigation can contribute to mutual recognition from state institutions, the more vexed question is whether litigation can also promote mutual recognition in horizontal worker-worker relations. Here, this paper argues, the role of labour organisers, who must translate judicial processes to the workplace, is crucial.

Presentation

In person

193 Strategic litigation as collective action

Venera Protopapa

University of Verona, Verona, Italy

Stream or current topic

Exploring legal borderlands

Abstract

Starting in December 2019 Italian trade unions have promoted several claims on the rights of platform food delivery workers that can qualify as strategic litigation, meaning they pursue objectives that go beyond the outcome of the single claim and are integrated within broader union action. These claims include a collective complaint on discrimination, a series of complaints on health and safety and the right to appoint a health and safety representative, an individual complaint on deactivation, two collective complaints on anti-trade union action, and finally a class action against a so-called 'pirate' collective agreement.

The presentation draws on empirical research to show how the strategy was incrementally developed and managed by unions, highlighting its collective nature and relevant frames. In acknowledging that litigation has been part of a broader agenda of trade union action, the presentation investigates its objectives and the way actors assess its outcomes.

Like every form of collective action, strategic litigation raises the issue of how decisions are made. Therefore, the presentation explores the dynamics of decision-making within unions, as well as the relationship between unions and platform workers that were personally involved or generally affected by union action. Additionally, strategic litigation raises further questions that appear, at least on the surface, to be specific to this form of union action: the relationship between the union and lawyers. In this regard, the presentation dedicates a special focus to how lawyers and unions have collaborated in the implementation of the strategy.

Presentation

In person

170 Litigating workers' rights in the platform economy – an emerging union strategy?

Silvia Rainone

ETUI, Brussels, Belgium. KU Leuven, Leuven, Belgium

Stream or current topic

Exploring legal borderlands

Abstract

Labour rights are currently experiencing multiple challenges, many of which are related to the progressive platformisation of the labour market. Often (mis)classified as self-employed, in the absence of adequate union representation and clear normative protections, more and more platform workers address their quests for protection to the judiciary.

The courts are thus at a crossroads of instances, the definition of which has the potential to affect normative frameworks in which the future of labour will unfold. In this developing stream of jurisprudence, what role does the

strategic mobilisation of the trade unions play? And, to what extent is their involvement part of a more systematic and organic action to represent the demands of vulnerable platform workers?

Dealing with these questions will help bring to light the impact of trade union movements in contributing to the definition of innovative legal solutions with which to overcome the current legal and enforcement gaps preventing platform workers to effectively exercise labour rights.

The paper will consider case law in various states and map the judicial pronouncements, looking at the nature of the legal complain (i.e. the reclassification of the employment relationship as subordinate, the identification of anti-union behaviour or the discriminatory effect of the algorithm), as well as at the role of trade unions in initiating or supporting the dispute. The paper will then propose a reflection on the potentially innovative contribution of union-driven strategic litigation to address the vulnerabilities to which platform workers are exposed.

Presentation

In person

522 Criminal trial of climate activists as strategic litigation

Marie Desaulles

University of Neuchâtel, Neuchâtel, Switzerland

Stream or current topic

Exploring legal borderlands

Abstract

Legal activism is increasingly mobilised to advocate for climate mitigation measures, one of mode of action is to use strategic climate litigation. Strategic litigations have been classified in a variety of fashion. This paper follows Harrow and Rawlings classification, which is based on whether the legal action is initiated actively (proactive litigation) or imposed through criminal prosecution (reactive litigation).

As the literature on climate change litigation and social movement studies mostly focused on cases brought to the court proactively, the paper wants to fill a gap in the literature by focusing on reactive litigation. Since 2018, the climate movement frequently organised mass protests and/or direct actions. This led to a repetitive occurrence of arrests and prosecutions, which in turn created a situation where activists used their trials strategically in a reactive manner.

With a socio-legal approach, the paper will aim to consider criminal trials of climate activists as reactive litigation. As an illustration, the Swiss context with both proactive and reactive case will illustrate the pertinence conceptualisation. The proposed conceptualisation tries to systematise strategic choices taken by activists and lawyers at each step of the criminal procedure (pre-arrest, post-arrest, during the trial), as well as interplays between all actors involved. The concept of reactive litigation aims to recognise that criminal trial becomes strategic arena where non-state actors will mobilise a set of legal and non-legal tactics all along the legal proceedings as a reaction to their prosecution.

Presentation

In person

Interrogating the Corporation: Discourses

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU318

Stream Interrogating the corporation

498 The Corporate Responsibility to Respect Human Rights: the role of language and judgement in constructing obligations.

Ciara Hackett

QUB, Belfast, United Kingdom

Stream or current topic

Interrogating the corporation

Abstract

The United Nations Guiding Principles in Business and Human Rights (UNGPs) identify a corporate responsibility to respect human rights. This is characterised by due diligence and interlinked with broader duties to remedy corporate human rights impacts.

This paper identifies three contradictions within Pillar II, the corporate responsibility to respect human rights. Analysing 'organ of society', sphere of influence, and the spectrum of responsibility through law and moral philosophy provides insight into how practice-based solutions may be problematic. Pillar II characterises corporate obligation as procedural political moral responsibility. This impacts on the pillar's validity, and consequently, victims' right to access remedy.

Presentation

In person

502 The Corporate Responsibility to Respect Human Rights: Big Formula, the WHO Code, and the United Nations Guiding Principles

Clare Patton

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Interrogating the corporation

Abstract

The aim of this paper is to identify the gaps between the marketing practices and the marketing policies belonging to the largest commercial milk formula (CMF) companies. Five companies are identified as owning the majority of global CMF sales: these are Nestlé, Danone, Reckitt Benckiser, Abbott Laboratories, and Royal FrieslandCampina (hereafter referred to as the 'big five'). This paper argues that the CMF marketing practices of the big five are in breach of the International Code of Marketing of Breast-milk Substitutes and interfere with the human rights of mothers/caregivers and children. Further, the CMF marketing policies of the big five are little more than highly effective CSR instruments. CSR is used by businesses to demonstrate ethical practices to key stakeholders, such as customers or investors. For CMF companies, concerns over unethical marketing practices mean that it is important to demonstrate pathways toward more ethical and responsible marketing practices. This paper identifies two ethical indexes that claim to encourage more responsible and ethical behaviour by CMF companies but are used purely as CSR tools. This article will demonstrate that these indexes are being used as CSR initiatives for the CMF industry to promote 'responsible' marketing while deflecting attention from the recognised 'human rights issue' of 'misleading, aggressive and inappropriate' CMF marketing.

Presentation

In person

24 The Challenges of Implementing Effective Tax Regime in Nigeria and its Implications for Corporate Social Responsibility

Victor Ediagbonya¹, Comfort Tioluwani²

¹University of Brighton, Brighton, United Kingdom. ²University of Essex, Colchester, United Kingdom

Stream or current topic

Interrogating the corporation

Abstract

This paper examines the challenges of implementing an effective tax regime in Nigeria and its implications for Corporate Social Responsibility (CSR). It seeks to address whether corporations that purport to engage in CSR tend to engage in tax avoidance. For years, corporations have used various methods to avoid tax despite efforts by governments; corporations have managed consistently to manoeuvre around regulations and discover new loopholes to exploit the system, particularly in countries with challenging institutional contexts. This paper argues that it is imperative for corporations to do it right and not use CSR to avoid paying the correct amount of taxes. This paper argues for accurate CSR reporting concerning the amount spent and the nature of projects embarked on with funds to prevent using CSR projects to pad expenses to pay lower taxes.

In light of the above, this paper argues that CSR goals in Nigeria are not organised but disjointed; there is the need to have an organised national CSR goal which sets out annual areas of priority needs in terms of the developmental

plan. The government must consult with relevant stakeholders to agree on organised CSR projects as part of the national development plan, which should align with the government's overall national goal. Consequently, the paper argues that corporations will be required to key into one of these organised CSR goals rather than embark on a free ride by engaging in activities in the name of CSR that have little or no meaning to the country's national development.

Presentation

In person

867 The General Meeting in the 21st Century

Michele Corgatelli

University of Bologna, Bologna, Italy

Stream or current topic

Interrogating the corporation

Abstract

One of the core features of corporate law is that the shareholders of joint stock companies meet at least annually to take decisions together, including that of electing directors. In the 21st century, various factors are exerting a transformative influence on the relevance and efficiency of the general meeting as it has historically developed. Technology forces us to re-evaluate the opportunity to convene tens of thousands of shareholders on site. Dialogues between institutional investors and directors that take place “behind closed doors” reduce the need to resort on the exercise of formal voting rights as the only way to express investors’ voice, and given the number of meetings they have to attend, institutional investors are often relying on proxy advisors to receive recommendations on how to vote their shares. Moreover, the coexistence of different types of shareholders (pension funds, index funds, hedge funds, vocal “gadflies”, environmental activists, and retail investors) is progressively turning general meetings into arenas for horizontal conflicts among members rather than forums devoted to the pursuit of a unitary purpose. This paper is thus interested in analysing how general meetings have substantially changed throughout history while still remaining structurally centred around the same form of collective decision-making process mandated by law, namely the yearly vote with a majority rule. In particular, it aims at assessing whether the aforementioned changes are strengthening the relevance of general meetings or rather contributing to their decline, making them outdated, symbolic and costly formalities.

Presentation

In person

Intellectual Property 3

14:00 - 15:30 Wednesday, 5th April, 2023

Location MU319
Stream Intellectual property
Jasem Tarawneh

759 IS THE TRIPS COVID 19 WAIVER A MERE RE-ECHO OF THE POWERS OF WTO MEMBER STATES?

Dr. EZINNE IGBOKWE

Nottingham Trent University, Nottingham, United Kingdom

Stream or current topic

Intellectual property

Abstract

IS THE TRIPS COVID 19 WAIVER A MERE RE-ECHO OF THE POWERS OF WTO MEMBER STATES?

The recent Covid-19 pandemic reawakened public opinion to the glaring disparity in access to essential medicines worldwide. Besides Covid-19, therapeutic biological products (biologics), such as mRNA vaccines, monoclonal antibodies, and chimeric antigen receptor T (CAR-T) cells, have become the gold standard, if not the only treatment for a growing number of illnesses. One of the key enablers of limited and inequitable access to Covid 19 vaccines and other medicines in developing economies is pharmaceutical patents under the TRIPS Agreement of the WTO that introduced trade barriers to pharmaceutical products.

Remarkably, in June 2022 the 12th Ministerial Conference (MC12) of the Council of TRIPS adopted a Decision. This Decision is believed to help Low-income countries (LICs) to scale up COVID 19 vaccines and other treatments. Essentially, this Decision echoed the powers of the Members of the WTO to use compulsory licenses under Article 31 and other flexibilities in the TRIPS Agreement. This paper appraises the Decision and also argues that despite the laudable efforts of the Council of TRIPS, the Decision may not offer a workable solution towards the scale up of Covid 19 vaccines where most LICs lack Covid 19 local pharmaceutical manufacturing capacity. The Decision does not resolve the inherent challenges of the TRIPS Compulsory licensing mechanism that undermine the effective exploitation of the mechanism.

Presentation

In person

426 Revisiting the ayahuasca vine (*Banisteriopsis caapi*) plant patent controversy

Jocelyn Bosse

King's College London, London, United Kingdom

Stream or current topic

Intellectual property

Abstract

This paper revisits the controversy over a U.S. plant patent for a new variety of ayahuasca vine (*Banisteriopsis caapi*) named 'DA VINE'. The ayahuasca vine is an essential ingredient in the ayahuasca brew or *yagé*, a hallucinogenic drink that is prepared according to traditional techniques and is used in sacred healing ceremonies in the Amazon rainforest region. In the 1990s, some Indigenous groups and environmental activists became aware of the 'DA VINE' plant patent and labelled it as another instance of "biopiracy": the use of intellectual property rights to exploit and appropriate traditional knowledge and biological resources from Indigenous communities and the Global South. This paper contends that, although widely discussed in the socio-legal literature, much of the criticism of the U.S. Patent and Trademark Office (USPTO) decision to uphold the ayahuasca plant patent has been misguided.

Drawing on USPTO documents recently obtained through freedom of information requests and doctrinal analysis of the *Plant Patent Act of 1930*, this paper shows that the existing literature has overlooked the *sui generis* nature of U.S. plant patents and conflated them with other types of patents. In doing so, the paper argues that the literature has misrepresented the true points of conflict between the patentability requirements for plants and the rights of Indigenous peoples. Using the ayahuasca case study, the paper offers important critical analysis the *Plant Patent Act of 1930* in light of the ongoing movements for decolonisation and the principles of the *Convention on Biological Diversity 1992*.

Presentation

In person

55 Legal and Social Dynamics of Biopiracy: A Social Network Analysis Perspective

Elnur Karimov

Kyushu University, Fukuoka, Japan

Stream or current topic

Intellectual property

Abstract

Traditional and indigenous communities have been facing the risk of the biopiracy of traditional knowledge (TK) and genetic resources (GR). Biopiracy as the appropriation of TK and GR without proper consent and/or compensation is often accompanied by unauthorized patenting of the TK and GR, or the inventions developed thereupon. To date, the legal protection against biopiracy in different states has provided TCs with certain defensive intellectual property or *sui generis* rights. However, such legal solutions have seemingly remained incomplete to prevent cases of biopiracy and urged provider communities to reactively chase bio pirates. Besides, intellectual property or *sui generis* schemes do not reflect the social dynamics of the dissemination of GR and TK. To address the "missing piece of the puzzle" in the regulation, this paper focuses on the flow of TK and GR from provider communities to users via social network analysis (SNA). It believes that an empirically supported SNA theory erected upon high-profile cases can help prevent future cases of biopiracy through actor-oriented regulations in each state. SNA of 20 high-profile cases of biopiracy from different states helps to find a correlation between the node accused of biopiracy and the central nodes of SNA. The theory can be used in the regulations of each country by analyzing the datasets of the

dissemination of TK and/or GR and regulating the central nodes that are likely to commit biopiracy. The paper aims to open a new area of debate by applying SNA to GR and TK.

Presentation

In person

715 Patenting (In) the Human Body: The 'No (Tangible) Property Rights in the Body' Principle & Patents Considered

Aisling McMahon, [Opeyemi Kolawole](#)

Maynooth University, Maynooth, Ireland

Stream or current topic

Intellectual property

Abstract

The 'no property in the body' principle - i.e., that the living human body and its constituent parts cannot be subject to tangible property rights - is a long-standing principle within medical jurisprudence. Although this principle is contested, and limited exceptions arise, it remains largely entrenched. Key justifications for it, include, risks that propertisation may facilitate the objectification, commodification, and/or exploitation of the human body. Yet, despite a breadth of literature considering tangible property rights and the body, limited work examines intangible property rights and the body from this perspective. Taking patents as a case study, this paper aims to start a conversation around filling this gap.

In Europe, the human body is not patentable, however, patents are available over isolated elements of the body. Individuals from whom biospecimens are derived generally do not hold patents over these isolated specimens, however, third parties who modify such biospecimens, or develop technologies using these, can hold such rights. Moreover, advances in biotechnologies have led to an increasing recognition of patentable 'technologies' which derive from, or resemble closely, elements of our bodies. Alongside this, medical devices which may be implanted within - and thus, become part of the body - are patentable. Focusing on these, and related examples, the paper argues that key justifications of the 'no (tangible) property in the body' principle also pertain to - and in many instances are heightened- in the patent context. Thus, a much deeper conversation on such issues is needed both within and outside patent law.

Presentation

In person

Family Law and Policy 6

15:45 - 17:15 Wednesday, 5th April, 2023

Location MD007

Stream Family law and policy

754 Anti-Conversion Laws India: A tool for controlling the narrative of Family Struture.

Preeti Badola

National Law University Jodhpur, Jodhpur, India

Stream or current topic

Family law and policy

Abstract

It is not a hidden fact the State is 'gendered', particularly patriarchal in its approach. Different feminist schools have highlighted the same. The paper will draw upon the understanding of the Socialist feminism method where they argue that the State is using the family structure to control the narratives of development and rights-based jurisprudence. The theory will be engaged while analysing the group of laws implemented by different States of India regulating inter-faith marriages. Indian courts have given developed jurisprudence when it comes to the right to marriage. On different occasions, the Courts have reiterated the right to choose your partner as the fundamental right. At this point when States are implementing special laws to regulate marriages where one of the parties is converting hints towards fear of States losing control over the family structure. The arguments used in defence of these laws are old rhetoric of women's vulnerability and the need to protect them, among others. The paper argues that these laws are not only infringing the well-established Indian jurisprudence and different provisions of the Constitution of India but also go against basic international human rights. Also, over paternalistic nature of the laws is taking away the right to privacy and self-autonomy from women. The paper further argues that this is an attempt by the States to keep the realisation of these fundamental rights outside the purview of family structure.

Presentation

Virtual via Microsoft Teams

219 Rights of Women in Recognized and Unrecognized Polygyny in India and South Africa: A Distributional Analysis of the Law

Anjali Rawat

Faculty of Law, Oxford University, Oxford, United Kingdom

Stream or current topic

Family law and policy

Abstract

This paper examines the disparity in the legal status and rights of women in the context of polygyny in India and South Africa. Polygyny is seen as structurally unequal but is legally recognized for some groups due to religious or cultural accommodation, for instance Muslims in India and Black Africans in South Africa, but not others. It is important to investigate and challenge the stronghold of legal, religious, and customary patriarchy which perpetuates discrimination against women in the family. Without equality in the family, gender equality in the society would remain an unrealised ideal. Women in the context of polygyny are separate and unequal. Women in legally recognized polygyny face a paradox as they stand to benefit from the legal recognition of their marriages and the consequent rights and protections despite the several equality harms of polygamy. By contrast, women in unrecognised polygyny find themselves in a bind where they lose the legal protection, status, and economic safety of being a lawful wife. This exacerbates the inequality by their invisibility and lack of recourse to courts. Thus, the inequality and oppression of both women in recognised polygyny is made invisible by the operation of the law, which fails to consider the historical and socio-cultural context in which polygyny exists. This paper undertakes a distributional analysis of the current legal and interpretive frameworks governing polygyny in India and South Africa. The analysis, grounded in feminist jurisprudence, exposes the inequalities between women in the context of polygyny based on their differing identities.

Presentation

In person

359 The Changing Law of Parent-Child Relationships

Akshat Agarwal

Yale Law School, New Haven, USA

Stream or current topic

Family law and policy

Abstract

LGBT+ claims to parental recognition and the proliferation of assisted reproductive technologies (ART) have globally challenged family laws on parent-child relationships, which have traditionally focused on marriage and biological reproduction. While these transformations in family law are ongoing, courts in several jurisdictions have had to deal with questions of parental recognition and responsibility in the context of both ART and LGBT+ families. Courts have utilized approaches ranging from emphasizing equality and liberty claims of parents based on principles of intent and function to recognizing parent-child relationships to secure children's best interests. What remains unclear is the precise work these approaches do in parental recognition and their mutual interaction. Do they diverge from one another, or do they significantly overlap?

Moreover, is one approach normatively preferable over the other in responding to the realities of family formation? I analyze the law on parental recognition in the context of ART and LGBT+ family formation in the United States, England & Wales, South Africa, and in the jurisprudence of the European Court of Human Rights to understand the implications of these approaches. I argue that basing parent-child relationships in equality and liberty claims by recognizing intent and function as grounding parental interests may be normatively preferable to best interests due to the latter's insufficient attention to the dignitary claims of the individuals involved in family formation. Instead, best interests may better serve as a rule of procedure in resolving specific disputes between recognized parents.

Presentation

In person

Managing and Protecting People on the Move 2

15:45 - 17:15 Wednesday, 5th April, 2023

Location MD012

Stream Managing and protecting people on the move
Ben Hudson

222 Migration and Criminal Exploitation of Children: A Case of Trafficking Gangs in Southern, Nigeria

Kayode OLORUNSOLA¹, OLUTOLA ARIBGBOLA²

¹Adekunle Ajasin University, Akungba Akoko, Nigeria. ²Prof Akinseye George SAN & Partners, Abuja FCT, Nigeria

Stream or current topic

Managing and protecting people on the move

Abstract

Conflict in the Northeast, Nigeria has created forced migration of children to other parts of the country. The prolong conflict has led to trafficking of some children to the southern region such as Port Harcourt, Benin, Enugu, Owerri Ibadan, Akure, Lagos and others. Their aim is economic exploitation. This study therefore, focuses on gangs and how they operate within the country. The study examines social condition that encourages the formation of gangs to engage in trafficking of children. It also, examines methods of operation adopted by the gangs to traffic children from the North to the South. It investigates available security mechanism to protect children affected by conflict in the Northeast. Anomie Theory by Robert K. Merton was employed in this study. Most gangs strive to achieve culturally recognised goals. Access to goals is blocked to entire groups of people or individual. The result is a deviant behaviour characterized by rebellion, retreat, ritualism, and innovation. This study was carried out in Southwest, Nigeria. Out of six states, three states were randomly selected in Southwest such as Lagos, Oyo and Ondo. One hundred and twenty-five (125) participants were selected among nongovernmental organisations (30), child labourers (80) and security agents (15). The study found that terrorist attacks in the Northern Nigeria reinforced incidence of child migration. It was also found that most suppliers were native speakers, relatives and refugee camp workers. This study concluded that effective child labour law must be promulgated to stop internal child migration by gangs in Nigeria.

Presentation

In person

382 Moving Beyond Fragmented Approaches to Human Trafficking? Uganda as a Case Study

Gillian Kane, Siobhán Mullally

University of Galway, Galway, Ireland

Stream or current topic

Managing and protecting people on the move

Abstract

Since the Palermo Protocol was adopted in 2000, the international anti-trafficking framework has evolved significantly, particularly within international human rights law. Today, there is a broad normative framework of protection and prevention that is capable of addressing trafficking in diverse contexts. Yet, responses often remain fragmented; they can be a peripheral consideration even in key contexts where trafficking risk factors are present, such as refugee and internal displacement settings. Fragmentation can also allow a criminal justice focused response to dominate, at the expense of attention to the protections found in other frameworks, such as human rights and humanitarian law. Recently, some steps have been taken to move beyond these siloed approaches. This is evident in the work of, among others, UN Special Procedures mandate holders, UNHCR, and the Global Protection Cluster. Yet, these steps have not been widespread, and have yet to significantly impact global, regional, and domestic approaches to human trafficking.

Against this backdrop, this paper explores responses to human trafficking in Uganda. It assesses the extent to which Uganda's approach remains fragmented, through the lens of four key areas where anti-trafficking responses should play a central role: (1) labour externalisation and labour migration (2) asylum and internal displacement (3) climate change, and (4) the pursuit of accountability in a post-conflict society. The analysis - rooted in an international migration law framework - demonstrates the protection implications of a fragmented approach to trafficking, ultimately making the case for taking further steps towards a more holistic approach, in Uganda and elsewhere.

Presentation

In person

577 Protecting Victims of Trafficking: A Due Diligence Response to Detention and Deportation

Adedayo Akingbade

The Manchester Metropolitan University, Manchester, United Kingdom

Stream or current topic

Managing and protecting people on the move

Abstract

In 2005, the United Nations Office on Drugs and Crime in its background paper – 'An Introduction to Human Trafficking: Vulnerability, Impact and Action' – assessed that many states equate 'trafficking' with 'illegal migration' or 'smuggling of aliens' or movement of asylum-seekers, even though these are different – albeit often overlapping – phenomena. It is within this overall conceptualisation that human trafficking has been at the sharp end of migration policies, in countries of origin and destination. Detention and deportation are securitisation of migration policies that have been expanded, particularly among states within the European Union. They have been used as instruments for controlling irregular migrants which include victims of trafficking, in the form of border exclusion and inclusion. As such, scholars have argued that detention and deportation are means of regulating irregular migrants' mobility within

and beyond the territorial limit of states. They have been categorised as instruments that securitise irregular migrants by establishing the desirability of their exclusion from the physical space of the state.

This paper examines what type of response a potential use of due diligence can offer in countering the harmful state behaviour of the detention and deportation of victims. It uses the experiences of victims taken along the Nigeria/Europe route to exemplify how detention and deportation policies are harmful to victims. The paper argues that, as a flexible reasonableness standard, due diligence offers a specialised response that can be used to redefine the current detention and deportation standard to reduce the application of securitisation measures to victims.

Presentation

In person

574 Intensifying crimmigration against nationals: being excluded during the COVID-19 pandemic

Puangrat Patomsirirak

Queen Mary University of London, London, United Kingdom

Stream or current topic

Managing and protecting people on the move

Abstract

Typically, the prosecution of a migration crime is something that sovereign states adopt against aliens, particularly those who migrate irregularly (Stumpf, 2006). The study argues, in addition to the foreign immigrants, some states' increasing resorts to criminalisation of immigration control as the anti-COVID-19 pandemic measures expand to oppose their nationals returning from abroad, excluding abruptly the right of nationals to return. The study examines the situations of Thailand and Australia during the COVID-19 pandemic. Both states acted in a similar manner in shifting their border controls by applying the travel restrictions and implementing the additional immigration policies to protect their internal public health from the importation of the COVID-19 infection of outsiders. A policy analysis reveals the various types of extraterritorial immigration control employed by Thailand, the return quota of Thais abroad, and the certificate of entry certifying repeatedly the Thai status prior to travelling back to Thailand. In terms of Australia, the return of Australians from India was prohibited by the Australian government. Using the empirical facts, it appears that many Thai returnees with their Thai passports who arrived in Thailand without those documents were prosecuted as illegal returning citizens in light of the 1979 Immigration Act of Thailand. Similarly, Australians arriving in their country of nationality would be imprisoned by Australia for breaking Australia's anti-pandemic rules. The immigration penalties of those two states could all add up to the substantiation of additional crimmigration imposed during the COVID-19 crisis against the return of each of their nationals.

Presentation

In person

Art, popular culture and gaming

15:45 - 17:15 Wednesday, 5th April, 2023

Location MD021

Stream Law, literature and the humanities

664 The Subversion of Norms of Ownership, Value, and Law in Mithu Sen's Artistic Practice

Katyayani Sinha

Jindal Global Law School, O.P. Jindal Global University, Sonipat, India

Stream or current topic

Law, literature and the humanities

Abstract

I hope to present the oeuvre of the contemporary Indian artist Mithu Sen's artistic and socio-legal engagements with contracts, materiality, and provenance in her work. These 'contracts' are declarations, terms, and instructional details on stamp paper in the format of 'affidavits' next to her art; 'by-products' of her work. First, I will engage with Mithu's commitment towards tactile, and strenuous work hours as an anti-capitalist project confronting the globalization of art. Second, I will discuss Mithu's work as a challenge against legal and linguistic hegemony through a politics of myth-making. With a plethora of unique clauses addressed to spectators and potential buyers, Mithu disrupts the very terms of ownership an artist has with their own work, and its consequent impact on the rights and duties of the buyer. Creating a sense of indebtedness in the exchange of her art, Mithu subverts the transaction through co-ownership, responsible involvement, and mutuality, defiant of standard market prices. Her practice subverts the colonial inheritance of linear 'detriment and benefit' which affirm 'fair and valuable' consideration in contracts, but instead, revisits the sensibility around will theory, and relational theory of contracts. Finally, Mithu's disruption of provenance, by obfuscating the 'true' year of completed production of her work, presents her art as a continuum, confusing the art market's rules of chronological valuation. Mithu's work therefore offers a post-colonial feminist counter-narrative to the normative standards of art law, through affective introductions of playfulness, humour, and vulnerability in her aesthetic politics.

Presentation

In person

730 Feminism, Law and Art: Reimag(in)ing Desmond Manderson's *Danse Macabre*

Sophie Doherty

The Open University, Belfast, United Kingdom

Stream or current topic

Law, literature and the humanities

Abstract

Desmond Manderson's, *Danse Macabre: Temporalities of Law in the Visual Arts* (2019) is undoubtedly a 'tour de force' (Schroeder 2020) in the field of jurisprudence, and a leading text in the field of Law and Art, however, critical reflections on the book have noted that *Danse Macabre* has an overall focus on "great art" (Del Mar 2020). In focusing on "great art", Manderson also devotes a majority of the book to men's art, and therefore, to an extent, reproduces issues of exclusion. One such exclusion is in the invisibility of women's art.

The lack of engagement with women's art in *Danse Macabre* is noted in previous reviews with Crawley (2020) highlighting that the readings within *Danse Macabre* are mainly concerned with 'male art historians and legal theorists.' These points have been acknowledged and discussed by Manderson in his response to critics (2020), with Manderson commenting that '[t]he question of how a feminist reading of the law-art dialectic might provide different insights is an entirely open one.'

The purpose of this paper is to take up the question posed by Manderson. This paper will firstly discuss why/if it is important to highlight the observation of women's exclusion from the book. Secondly, the paper will explore if, or to what extent, a feminist reading of central works within the book would offer a different insight than developed within *Danse Macabre*. Lastly, the paper proposes artwork that could be used to explore concepts within the book, offering preliminary comments on these.

Presentation

In person

323 *Scurry* towards justice! Dispute resolution, posthuman justice, and immersive pedagogy in tabletop roleplaying games

Rosie Fox, James Greenwood-Reeves

University of Leeds, Leeds, United Kingdom

Stream or current topic

Law, literature and the humanities

Abstract

Tabletop roleplaying games, such as *Dungeons and Dragons*, *Call of Cthulhu*, and *Pathfinder*, provide limitless opportunities to explore fantasy worlds and hypothetical scenarios. Players must often find means of resolving disputes based largely on human(-oid)-oriented justice systems, written into the gameplay rules or the in-world narratives of such games. Conversely, in *Scurry*, players take on animal personas in a posthuman world. The simple game rules, and the in-world narrative, do not stipulate a comprehensive justice system. Should disputes arise in a posthuman society, how then are they to be resolved?

We argue that *Scurry* provides a unique opportunity to explore possibilities such as non-human law, to imagine and test new processes and systems of justice, and in turn to critique and parody structures and received understandings of human justice in the real world. The game invites players to think of fresh conceptions of justice, community, and restoration, when faced with conflict and dispute. Through a simulation of scenarios and complex problems, it requires us to think how resolution might be achieved in a world populated by numerous creatures of different capabilities and perspectives. Drawing on pre-existing work of animal justice by Tan (2018) and the educational value of roleplaying games such as *Dungeons and Dragons* (Krebs, 2014; Skenazy, 2018), we posit that *Scurry* has much to offer as both a forum for exploring these themes, and a potential site for pedagogical innovation: a playful and immersive means through which to learn about normativity, conflict, and justice.

Presentation

In person

909 A Character Study of Anthony Bridgerton: The Viscount's Regency Era Rejection of Exclusive Parenthood

Dayna Mathew

University of Cincinnati College of Law, Cincinnati, USA

Stream or current topic

Law, literature and the humanities

Abstract

The ton is always abuzz with the latest gossip regarding the incomparable Bridgerton family, and this author would be amiss to refrain from sorting the veritable from the not. That being said, it is true: the Bridgerton series consists of eight regency-era romance novels revolving around the titular family, with one for each sibling. While all their stories deserve merit, this author's paper shall reflect on the Viscount's specifically. For, Lord Bridgerton, with his position as a member of the peerage, with his relentless dedication to his family, and of course, with his enticing pursuit of a Lady Bridgerton, serves as a consummate figure for analysis, especially with his repudiation of certain gender roles expected of him.

In this paper, this author will: summarize Anthony's story and detail how he became a viscount, and subsequently, head of his family; foreground Anthony's rights and responsibilities with respect to these roles in both the social and legal context of the Regency period; cite to examples in *The Viscount Who Loved Me* to evince Anthony's rejection of the societal norms associated with his roles, specifically his denial of exclusive parenthood and his substantiation of more fluid family dynamics; and finally, analyze Lord Bridgerton's actions as methods of consciousness-raising and promote the concept of fluid family dynamics as a whole. For, *The Viscount Who Loved Me* and the notion of subverting society's expectations is a love match, indeed.

Lady Whistledown's Society Papers, 9 January 2023

Presentation

Virtual via Microsoft Teams

Banking and Finance: Corporate finance opportunities

15:45 - 17:15 Wednesday, 5th April, 2023

Location MD026

Stream Banking and finance

145 Women's Banking Desks- a strategy to enhancing access to credit for Ghana's Women-led small and medium enterprises (WSMEs)?

Priscilla Vitoh

University of Warwick, Coventry, United Kingdom

Stream or current topic

Banking and finance

Abstract

Through support from International Finance Corporation (IFC) and World Bank, the Bank of Ghana (BOG) launched the "sustainable banking principles" to promote "socially responsible stewardship." Sustainable Banking principles (SBPs), an inclusive neo-capitalist initiative, involves Banks incorporating environmental, social and governance (ESG) considerations into activities that form their daily banking operations. Mandated to implement the SBPs, some Ghanaian commercial banks have created 'women's desks'- specialised business departments that cater to the Banking needs of WSMEs. This paper triangulates the institutional narratives that frame SBPs and specialised women's banking desks in Ghana as a tool for improving WSMEs' access to credit.

This paper presents findings from empirical data from Ghana collected using qualitative semi-structured interviews and quantitative surveys. Through a socio-legal inquiry that draws on feminist political economy and African feminist debate, the paper triangulates the discussions on women's desks by first looking at the arguments surrounding the advantages of SBPs and similar inclusive neo-capitalist initiatives for economic "empowerment." Second, it critically evaluates how Ghanaian commercial banks present the inclusion of women's desks as part of their corporate social responsibility. Thirdly, it investigates whether the services provided to WSMEs by these specialised desks differ from mainstream banking services and improve WSMEs' access to credit. The findings show that the women's desks have successfully implemented programmes like bookkeeping training and business retreats geared at assisting WSMEs to grow. Nevertheless, they do not significantly alter the Banks' credit regulations to make it easier for WSMEs to access credit.

Presentation

In person

209 Governing Shareholder Engagement to Promote Corporate Sustainability: Demanding from Old Dogs New Tricks?

Rafael Savva

Lancaster University, Lancaster, United Kingdom

Stream or current topic

Banking and finance

Abstract

Operating in the shadow of institutional shareholders' duties, the rules enacted in transposition of the SRD II and in response to the Law Commission's recommendations alongside the 2020 Stewardship Code bring about the regulation of their engagement with investee companies. Together with regulation adopted to regularise sustainable finance, this 'regulation for shareholder stewardship' is aimed at ensuring institutional shareholders' engagement will be informed by matters relevant to corporate sustainability and be used to mainstream decision-making conducive to it. This paper focuses on the normative imperative about shareholder engagement radiating from the law relevant to its regulation following the foregoing developments, since there is reason to believe the law may impress on institutional shareholders that they should engage regularly to this end only in specific circumstances. The paper opines the law gives scope for shareholder engagement to be periodic and promotive of corporate sustainability. Yet the only sign of it encouraging this standard resides with the application of the foregoing regulation in discharge of the expectations policymakers endeavour to set on institutional shareholders through them. The expectations chime how action signalled by the pursuit of creating shareholder value can indirectly uphold investee companies' longevity and social welfare. Yet contemplating engagement to be undertaken in the vigour of it offers a proxy for indorsing corporate sustainability mainly when it can evidently create the said value. The appeal of finding such a 'business case' for assenting to corporate sustainability is intuitive, but it can prove being at odds with its multifaceted prognostications.

Presentation

In person

568 The Dramatic Story of the Equity Crowdfunding Sector in China and Regulatory Lessons

panpan sun

the university of warwick, coventry, United Kingdom

Stream or current topic

Banking and finance

Abstract

With the deep integration of the Internet and the financial industry, various innovative digital financial products have emerged in the market. Among them, the emergence of Equity Crowdfunding (ECF), a new experimental equity financing instrument, greatly enriched the investment tools and financing channels in the Chinese market, bringing a boon to SMEs' financing and helping to achieve inclusive, grassroots financing. However, the initial surge of popularity of ECF concealed numerous hidden risks that later became apparent. Once highly touted, ECF quickly faded into obscurity after a decade of existence in China, leaving behind only court trials for its related illegal activities.

After a systematic analysis of the development history, regulatory process, and market risk cases, I find that ECF, like the Covid policy, is manipulated by the Chinese bureaucratic political system. The history of ECF in China can even be summarised as a decade of battle between regulators and crowdfunding platforms. More specifically, the ECF sector has ebbed and flowed under different waves of regulatory ignorance, hesitation, support, and strangulation, accompanied by different coping strategies to survive. Of course, the story ended with regulators successfully killing off and eliminating the ECF industry. However, studying its development process, clarifying risk events, exploring the logic behind regulatory policies, drawing lessons, and deepening them in the financial regulatory system is conducive to understanding the real difficulties faced by SMEs in raising equity finance. It is also of practical significance in exploring and improving experimental equity financing markets.

Presentation

Poster (submissions to poster competition only)

564 Consumer protection in the regulation of loan-based crowdfunding platforms in the UK

Chen Yang

University of Kent, Canterbury, United Kingdom

Stream or current topic

Banking and finance

Abstract

Loan-based crowdfunding has grown quickly in the UK in the aftermath of the 2008 financial crisis providing an alternative opportunity for individuals to access debt financing. As financial consumers, lenders of loan-based crowdfunding are more vulnerable than retail investors who make investments in traditional financial products. This is because loan-based crowdfunding lenders have to rely on the platform to pursue debt repayments, but the risk of borrowers' default is taken by lenders themselves as a result of the platform's not participating in loan agreements. That raises a question of what regulation is fit to protect them from the harm caused by the moral hazard of platforms. This study clarifies emerging risks for loan-based crowdfunding consumers in the UK and rethinks what fairness for lenders is. Then, a more interventional regulation approach is suggested including intervening in information transparency in the pre-contractual stage, enhancing remedies for consumers in the post-contractual stage, and supervising platforms' wind-down arrangements.

Presentation

In person

Graphic Justice 1

15:45 - 17:15 Wednesday, 5th April, 2023

Location MD102 Great Hall

Stream Graphic justice: law, comics and related visual media

940 Urban Noir: Closure, Trauma and Victimhood in 'A Walk Through Hell'

Angus Nurse

Nottingham Trent University, Nottingham, United Kingdom

Stream or current topic

Graphic justice: law, comics and related visual media

Abstract

Contemporary perspectives on victimology acknowledge that within crime and criminal justice study there are multiple perspectives on who is a 'victim' of crime. Comics have long engaged with these issues as well as the relative impotence of traditional law enforcement to deal with serious crime problems, hence the prevalence of vigilante crime fighters and super teams as a staple of graphic justice narratives.

In 'A Walk Through Hell' Garth Ennis engages with issues of trauma, victimhood and lack of closure for law enforcement officers within justice systems that arguably fail to consider the impact of crime on investigators. Despite the 'success' of catching and punishing criminals, law enforcement arguably represents a treadmill where the constant nature of crime and criminal justice becomes a self-perpetuating system. In A Walk Through Hell, two FBI agents following two missing agents are confronted with the consequences of an investigation into a serial child abductor and its effect on them both past and present including a 'cop culture' that is arguably equally damaging and leaves those dealing with crime ill-equipped to adequately deal with what they witness on a daily basis. A Walk Through Hell highlights how the immersive nature of comics and their ability to bend time and space so that the medium can serve as a means of dealing with events that occur unexpectedly, outside of normative conceptions on crime and may require time to absorb and understand the enduring nature of trauma inherent to serious and shocking crimes.

Presentation

In person

93 Animation as a means to connect legal and forensic standards with real-life stories

Ellie Smith, [Melanie Klinkner](#)

Bournemouth University, Poole, United Kingdom

Stream or current topic

Graphic justice: law, comics and related visual media

Abstract

The Bournemouth Protocol on Mass Grave Protection and Investigation produced universally applicable standard, enabling the conduct of robust and effective mass grave investigation and identification efforts. While the target audience for the Protocol was the legal and scientific/forensic community engaged by the mass grave itself, the ultimate intended beneficiaries were the families and survivor communities. But how can a legally robust, scientifically rigorous and practicably precise output like a Protocol still connect with the voices and experiences of families, survivors and witnesses?

Through the production of a short, animated film that shows the process of mass grave protection and investigation from the perspective of victims' families we have sought to give voice to the experiences of family members of the missing, and to humanise the statistical, judicial and forensic facets of mass grave recovery.

This presentation reflects on our step-by-step decision making in creating a non-verbal animation that captured (1) the overwhelming need of friends and families to know the fate and whereabouts of loved ones; (2) their experiences of engagement with the forensic investigative process and (3) the significance to them of having mortal remains returned for dignified commemoration. At the same time, we wanted the film to be (4) universally relevant and applicable to multiple mass grave locations and contexts, thereby reaching audiences who are directly affected by mass grave exhumations around the world.

Presentation

Virtual via Microsoft Teams

622 Reproductive Rights as Socio-Economic Rights in Nepal: using legal design to improve access to justice

Emily Allbon¹, Sabrina Germain¹, Mara Malagodi²

¹City Law School, London, United Kingdom. ²University of Warwick, Coventry, United Kingdom

Stream or current topic

Graphic justice: law, comics and related visual media

Abstract

Nepal is one of the leading jurisdictions in Asia with regard to the constitutionalisation of reproductive rights (the constitutional and legal framework encompassing the issues of abortion, contraception, maternal health, surrogacy, sterilisation and in certain cases a right to education). The new and expansive interpretation of these rights is presented in a series of leading Supreme Court Judicial decisions including the ground-breaking Lakshmi Dhikta and Prakash Mani Sharma. While Nepal features an impressive array of socio-economic rights, their implementation remains uneven and often ineffective – especially for poor and historically marginalised groups, and in the remote areas of the country. The paper details our search for creative and practical solutions to increasing access to justice, using legal design to empower marginalised groups in the hopes of fostering a better implementation of socio-economic reproductive rights.

Since 2019, in collaboration with practitioners (members of the judiciary and lawyers) and activists from the third sector in Nepal, we have used socio-legal methods to drive our empirical work. With our combined expertise, we have turned to legal design for the facilitation of workshops to gather qualitative data on the challenges faced by vulnerable groups through the elaboration of personas and journey maps, and to construct our theoretical framework for the analysis of this non-traditional jurisdiction. This interdisciplinary approach was also used for the production of concrete visual outputs to disseminate our theoretical and practical findings. We worked with a Nepali illustrator/comic artist, generating an output in the form of illustrated, case explainers and personas.

Presentation

In person

Organised crime

15:45 - 17:15 Wednesday, 5th April, 2023

Location MD106 Minor Hall

Stream Organised crime

100 Cross Border Crime and Organised Conspiracy Practices along Nigeria / Benin Borders

Olakunle Folami¹, Omoniyi Omojowo², Olalekan Falowo¹

¹Adekunle Ajasin University,, Akungba Akoko, Nigeria. ²Open University Of Nigeria, Akure, Nigeria

Stream or current topic

Organised crime

Abstract

Economic Community of West African States (ECOWAS) protocol coupled with globalization allow free movement of goods and people across West Africa borders. The free movement has some limitations such as entry and exist clearance, custom control, and bilateral security arrangement. Border community inhabitants and security agents involved in cross border criminal activities with impunity. This study therefore, seeks to know why limitations on freedom of movement of goods and people across borders are ineffective despite the extant laws among members of ECOWAS. Also, it investigates economic indices which promote cross border crimes. This paper argues that cultural relations as well as economic dynamics encourage cross border crime between Nigeria and Benin Republic. This study used Anomie and Social Structure Theory propounded by Robert. K Merton to explain reasons why cross border crimes increase despite improvement in the Benin Republic economy. This study was carried out in two purposive selected locations: Nigeria (Idi-Iroko); and Benin (Igolo). Qualitative method of data collection was used in this study. Data was collected from eighty participants: Immigration (6); Custom(6); Police (6); Military (6); and inhabitants (56). This study found that both legal and illegal borders exist simultaneously along Nigeria and Benin Borders. It was also found that security agents used civilians as undercover to collect bribe. The security agents used civilians as fronts in transportation of goods such as petroleum products, timbers, bitumen, human, arms and ammunition. This study concludes that apart from economy, cultural and historical connections contribute substantially to cross border crimes.

Presentation

In person

578 Securitization of transnational corruption: Legal and Policy Problems

Nedim Hovic

NYU School of Law, New York, USA

Stream or current topic

Organised crime

Abstract

Recent trends towards the securitization of corruption, meaning regulation of corruption not only as a policy or a legal matter but as a national security matter have been fully expressed in the aftermath of the Russian aggression to Ukraine. As a part of the legal measures that have been adopted in order to respond to the aggression, the freezing of assets of the oligarchs with close ties to the Putin's regime represents more than just an extension of the previous sanctions based on human rights violations. It is also an attempt to prevent the rise of strategic corruption.

This recognition of corruption as a tool for influencing foreign governments brings important legal consequences. The position of corrupt criminal acts within domestic criminal law and transnational law becomes elevated in a similar way that terrorism has been elevated in the first decade of the 21st century. Analyzing this development, Mitsilegas (2020) found that its main features are the turn from past to future, from criminal to administrative law and the centrality of the role of the private sector in enforcement. In this paper, I argue that the primary effects of the expansion of preventive justice in the domain of corruption will be similar. I explain why I anticipate that rule of law challenges will emerge and also why the possibilities of a judicial resolution of these issues will remain limited. My paper adds to the growing debate on the legal consequences of lawfare and securitization.

Presentation

Virtual via Microsoft Teams

Criminal law 6

15:45 - 17:15 Wednesday, 5th April, 2023

Location MD108

Stream Criminal law and criminal justice

Chloe Wilson

158 Medically Supervised Injection Facilities in Northern Ireland: Insights from South of the Border

Sarah Bryan O'Sullivan¹, Marcus Gatto²

¹Open University, Milton Keynes, United Kingdom. ²Griffith College, Dublin, Ireland

Stream or current topic

Criminal law and criminal justice

Abstract

Support for the establishment of a medically supervised injection facility (MSIF) in Belfast has begun to gain traction in recent times. Debate and consideration of this issue has increased in the past year, particularly after it was reported in July 2022 that 34 people had died in Belfast from drug overdoses since the beginning of that year.

Similar considerations and debates took place in Ireland some years ago, ultimately resulting in the enactment of the Misuse of Drugs (Supervised Injecting Facilities) Act 2017. The Act led to a successful tender process by a Dublin-based homeless charity to operate the first Irish MSIF. However, the opening of this facility has since been forestalled by a contentious planning application, subsequent appeal to An Bord Pleanála, and, most recently, a successful judicial review taken by a national school situated next to the proposed site. Thus, the experience in Ireland to-date demonstrates that even when supported by political commitment, policy and law, the establishment of MSIFs can still face practical challenges.

This paper seeks to build upon previous work to examine the substance of the burgeoning and contentious debate surrounding the opening of such a facility, evoking common elements of that debate with the Irish experience, as well as broader considerations that might militate for steps to be taken in a more permissive direction. In doing so, we offer insights that may be drawn on when considering the potential development of a MSIF in Northern Ireland, based in the Irish experience.

Presentation

In person

475 Release from Life Imprisonment in Japan: Theory and Practice

Saori Toda

University of Nottingham, Nottingham, United Kingdom. Hitotsubashi University, Tokyo, Japan

Stream or current topic

Criminal law and criminal justice

Abstract

The abolition of the death penalty worldwide has brought issues regarding release from life imprisonment to the forefront of academic and general public interest. In Japan, a retentionist country, whether a life sentence without the possibility of parole should be introduced as an alternative penalty to capital punishment has been vigorously debated in both the academic and political spheres, while life sentences in general have been relatively under-researched. However, the practice of release from life imprisonment has changed drastically in the shade of this overall indifference. The dramatic decrease in recent decades in the number of released life-sentenced prisoners and the exponentially lengthening time before getting released have undermined the rehabilitation and reintegration of life-sentenced prisoners. Life-sentenced prisoners who could have expected to be released after 15 years in prison in the 1970s and 80s have the little possibility for release even after serving 30 years in prison. The meaning of a life sentence in practice has significantly changed. This situation calls for the identification of factors that led to this dramatic change of practice and reconsideration of the meaning of a life sentence and release from prison. The paper will explore factors shaping the practice change by analyzing the historical development of the release system for life-sentenced prisoners and reflect on the meaning of a life sentence and conditional release by engaging within academic discussions in Japan.

Presentation

In person

617 Asylum interviews and human trafficking decision making – a conflict of interest or a useful connection?

Chloe Wilson

The University of Lincoln, Lincoln, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

This paper identifies issues with the link between two Home Office departments, in the investigation and processing of human trafficking claims: the Single Competent Authority (SCA) and the UK Visa and Immigrations (UKVI) Asylum Service. The primary concern surrounds the use of asylum interview transcripts as a basis for human trafficking decision making in England and Wales.

The connection between these departments is problematic because of their conflicting aims. The Asylum Service considers applications from refugees for protection and/or citizenship, undertaking interviews to assist in their investigations. An SCA decision maker is required to consider a human trafficking victim claim through the use of secondary resources, a first-hand investigation is not conducted. The SCA utilise information collected by NGOs, emergency services and, crucially, asylum decision makers. The transcripts from asylum interviews are made available to SCA decision makers; these are often the primary source of information in a human trafficking claim.

This research, based on survey data, considers the views of practitioners who have worked with or have had direct access to victims of human trafficking. The responses highlight a clear lack of trust in the SCA, particularly in relation to decision makers motive and bias, concluding that there is a conflict of interest between the SCA and the Asylum Service concerning case outcomes. This research suggests that the SCA should conduct in-house interviews, to correctly investigate a human trafficking claim. This would help to ensure that potential victims are adequately supported and acknowledged by the Criminal Justice System.

Presentation

In person

844 The case for abolition: Family Contact and Incentives and Earned Privileges in English and Welsh Prisons

Marie Hutton

University of Sheffield, Sheffield, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

The Incentives and Earned Privileges scheme (IEP), introduced into English and Welsh prisons in 1995, represented an ideological shift as aspects of prison life (such as frequency of visits) became 'key earnable privileges', enjoyment

of which depended on a prisoners' IEP level (basic, standard, or enhanced). The European Court of Human Rights and the domestic courts in England and Wales have legitimised the IEP system, demonstrating ongoing deference to prison authorities. This paper argues that while the IEP system clearly benefits prisons establishments as a mechanism of controlling prisoners' behaviour, in practice, the IEP system exacerbated the pains of imprisonment. Rather than fostering the Article 8 ECHR right to respect for private and family life of prisoners' and their families, the IEP system fundamentally undermines it. In this paper, I argue there are three grounds that taken collectively hasten the call for the abolition of linking levels of family contact to the IEP system. Firstly, the inherent contradiction within the policy between positioning family contact in prisons as a right under Article 8 ECHR and its function as a privilege to be earned, an incentive for good behaviour, a reward for complying with the regime and, most tellingly, a mechanism of punishment for not. Secondly, the failure to adequately take account of the rights of non-imprisoned family and friends in the IEP policy and thirdly, the potential for discriminatory practices to influence IEP levels on the grounds of race and disability in particular.

Presentation

In person

Human rights and war: The war in Ukraine

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU001

Stream Human rights and war

70 Use and abuse of self-determination: An analysis of Russia's annexation of eastern Ukraine under the remedial secession doctrine

Andrea Maria Pelliconi

City Law School, University of London, London, United Kingdom

Stream or current topic

Human rights and war

Abstract

The rationale utilised by Russia to justify the invasion of Ukraine and the following annexation of eastern territories suggests that the country is resorting to the doctrine of humanitarian intervention in support of Russian nationals allegedly subject to attempted genocide. This paper investigates the situation of eastern Ukraine under the lens of the so-called remedial secession doctrine, the controversial theory according to which a people could be entitled to the right to unilateral separation from the parent state, either to form a new state or to join another one, under certain conditions, to remedy a situation of widespread human rights violations. The paper argues that the aversion to remedial secession is premised on an outdated, colonial approach to state borders which favours territorial integrity over the right to self-determination, stability of the status quo over ending atrocities and human rights violations. Then, the paper suggests that the international community should instead accept the remedial succession doctrine and agree on the specific, high threshold for such right. This, in turn, would make it easier to show when doctrines

such as that of 'humanitarian intervention' are abused. The paper concludes that based on the criteria for remedial secession as identified by the minoritarian scholarship that supports such doctrine, a right to unilaterally secede and join Russia did not arise in the context of eastern Ukraine.

Presentation

Poster (submissions to poster competition only)

232 Energy Security and Human Rights: Lessons from the Russia-Ukraine Armed Conflict

Ashish Saraswat^{1,2}, Dr. Garima Tiwari¹

¹School of Law, Bennett University, Greater Noida, India. ²Vivekananda School of Law and Legal Studies, New Delhi, India

Stream or current topic

Human rights and war

Abstract

The Russia-Ukraine war has shaken up the international politics, market, and global economy. While the conclusion of this war is still unknown, it is certain that it has caused a significant impact on the right to access of energy for civilians stuck within and outside the conflict zone. The situation is particularly difficult in Europe, which is at the center of the turmoil in the energy market. Emerging economies like India have also called for the international community to respond collectively to this emerging humanitarian crisis. Electricity-generating infrastructure is an essential infrastructure and of general military importance which makes it a usual target for destruction based on "military necessity". Consequently, interruption of energy services endangers the survival and basic human rights of the vulnerable and unarmed civilian population and severely disrupts the use of civilian properties. In this background, the paper explores energy security as a central yardstick for human development and growth in general, and specifically in the context of Russia-Ukraine armed conflict by investigating the role that energy plays in the fulfilment of fundamental human needs. The paper elucidates on the growing dimension of access to energy as a human right, and its contours during the time of armed conflict through the lens of international humanitarian law, human rights law, and state practice. Highlighting the challenges and lessons, it attempts to provide recommendations to ameliorate the situation.

Presentation

In person

744 Re-Qualifying Neutrality? Neutral Arms Transfers and the Russian Invasion of Ukraine

Pearce Clancy

Irish Centre for Human Rights, Galway, Ireland

Stream or current topic

Human rights and war

Abstract

Since the beginning of the Russian invasion of Ukraine in February 2022, numerous Western states have supplied Ukraine with arms, munitions, and war material, in ostensible breach of their obligations as neutral states. States have failed to provide any legal explanation for such transfers, leaving the task to scholars and commentators to provide legal argumentation as to the compatibility of arms transfers to victims of aggression with neutral duties. Broadly, these arguments fall under three primary headings: (i) that there is an exception to the neutral duty not to supply arms to belligerents in situations where the receiving state is a victim of aggression; (ii) that neutral arms transfers are justified as either the lawful exercise of the collective right of self-defence or as collective countermeasures; and (iii) that there is a duty to support Ukraine, including through the provision of arms. This paper analyses and seeks to evaluate these arguments in favour of 'qualified neutrality' and assess which of the proposed grounds, if any, are the most compelling.

Presentation

In person

344 Bridging the Gap between Genocide and Aggression: The Case of the Forcible Transfer of Children

Dimitrios A. Kourtis

School of Continuing Education, Hellenic Police Academy, Veroia, Greece

Stream or current topic

Human rights and war

Abstract

The discussion about establishing an aggression court in the case of Ukraine offers a unique opportunity to reconsider the fundamental elements of aggression and its relationship with the crime of genocide. The present contribution seeks to uncover the forgotten history of Article II(e) of the Genocide Convention and bring to light fundamental policy considerations that informed its adoption. By retelling the story of the Greek children forcibly removed during the Greek civil war and making use of archival sources that have not been considered before, the proposed paper will endeavour to re-establish the link between genocide and aggression and explain how the transfer of children as an egregious violation of individual and collective human rights can bridge the gaps between the two distinct legal regimes.

My hypothesis is that the forcible transfer of children could help us reconceptualise the legal interests underlying both penal norms. Moreover, it can remedy the rigidity in the construction of genocidal mens rea and humanise the state-centric definition of aggression. Finally, the proposed contribution seeks to reintegrate both crimes in their historical arrière-plan and present a unified paradigm in which both prohibitions secure the transgenerational right of a human community to decide its fate free of existential threats and domination. The contribution, of course, challenges the orthodox interpretation of the crime of aggression, e.g., the exhaustive nature of the aggressive acts codified by the Rome Statute. Similarly, it questions the wisdom of equating genocidal intent with an intent to commit mass murder.

Presentation

Virtual via Microsoft Teams

Environment: International environmental law

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU021

Stream Environmental law

268 Potential Risks of Violation of Article 6 of the ECHR in connection with the Integration of Mediation into the Judicial System

Viktoriia Hamaiunova

Newcastle University, Newcastle Upon Tyne, United Kingdom

Stream or current topic

Civil justice systems and ADR

Abstract

Implementation of mediation into the judicial system entails redefining justice criteria in the legal realm because less formal consideration of the case during mediation procedure inevitably has bearing upon the formation of legal and court culture as well as the conception of justice. However, the text of the ECHR, as well as the current jurisprudence, does not contain either a direct recognition of the possibility of exercising the right to a fair trial through the mediation procedure or a direct indication that justice must be administered exclusively by courts. The Convention appears to be silent on this issue, in the absence of a clear-cut answer, we must shed some light on the nature of the right to a fair trial in modern realities. One such gap is in the relative lack of insight into the criteria for disputes that are unjustifiably resolved through mediation and cases that are not suitable for a court decision. There has not yet been any application to the ECtHR regarding the violation of the right to a fair trial in connection with participation in a mediation procedure. However, there is a national practice of several countries-participants of the ECHR in this regard. In the Helsinki Court of Appeal, one of the parties in the case claimed that the confirmed mediation agreement was invalid because the other party used manipulations during the mediation procedure.

Presentation

In person

266 Is International Environmental Law International?: Studying Our Community of Practice

Tejas Rao

C-EENRG; Bennett Institute for Public Policy; Department of Land Economy, University of Cambridge, Cambridge, United Kingdom

Stream or current topic

Environmental law

Abstract

In a New World Order, Anne-Marie Slaughter argued the need to pull back the veil on international negotiations and re-examine our assumption of States as unitary actors in the international law-making process. In years past, the academic community has advanced this thesis, studying in greater detail both theoretically and empirically, the role of networks and network actors, particularly in shaping multilevel governance. For existential risks such as climate change, and the web of international legal instruments thereto, Conferences of the Parties (CoPs) have occupied a significant touchpoint for State actors to take stock of and update the agenda for the years to come. Alongside these formalized structures, the international environmental order has seen the emergence and embedding of informal networks in these CoP processes, working around the year and the intervening gap between CoPs to advance responses to the challenge & exert influence on where the agenda goes next. The role of international lawyers, participating from both within and/or outside of the academy, has become increasingly evident. Despite this, owing to conflicting value-sets and belief systems, they are frequently excluded from studies about networks and communities of practice. Moreover, the composition and background of this specific community of practice has hitherto been left unexamined. Given the influence international lawyers have on the agreed language of international environmental agreements, this paper will examine this community of practice. Relying on observations and work from the UNFCCC CoP26 and the UNFCCC CoP27, suggest tentative conclusions, open questions, and a methodological path forward.

Presentation

In person

589 Splintering or spatialising? Spatially just approaches to environmental law

Amanda Byer

University College Dublin, Dublin, Ireland

Stream or current topic

Environmental law

Abstract

This article argues that the global framing of environmental problems has the potential to cause spatial injustice, whereby geographical nuances and disparities are dismissed in favour of universal narratives that ultimately exacerbate climate change, pollution and biodiversity loss. This is because the law is a colonial inheritance, rooted in singular narratives about the environment developed during the colonial project. While environmental law looks to science to undergird its legitimacy, conservation and ecology were developed to support colonial conceptualisations of nature. In order to consolidate control over nature, pluralistic values were eliminated. Rejecting treatment of the environment as a monolithic space under the law requires a reclaiming of these pluralistic values important for democratic and sustainable approaches to the environment. Localisation of environmental law may therefore be important for recognising alternative understandings of the environment, as global problems manifest locally. The retreat from universalisms may thus herald the recognition of local rather than nationalistic interests, and the

crystallisation of regional rather than universal norms. This may be crucial for a true paradigmatic shift within environmental law, whether effected through the human right to the environment, procedural environmental rights, rights of nature or earth jurisprudence.

Presentation

In person

668 Environmental liability: An Instrument for Protecting the Environment and People. Study for a Future Amendment

Cristina Aragão Seia

Universidade Lusíada. CEJEA, Porto, Portugal

Stream or current topic

Environmental law

Abstract

The environmental issue translates an intergenerational nature. The realization of the scarcity and finiteness of natural resources, compromising the existence of present generations and the natural heritage of future generations, associated with the occurrence of several environmental catastrophes, has led to the awareness of the need and urgency of environmental protection. This must be, in our days, one of the greatest concerns of humanity, aware that it cannot survive without it. The great challenge of this century is therefore to figure out how we can achieve development, combat climate change, conserve wildlife, and protect our common resources, in global terms, while maintaining a balance between the environment and social and economic considerations. Environmental liability, as conceived by the European Union and the Member States, is one of the preferred instruments for protecting the environment and ensuring sustainable development. It is a new approach to the environment as an injured party, allowing the repair of pure ecological damage, and also ensuring its prevention. Given the particular characteristics of environmental damage, namely the fact that the environment is a collective good and has no geographical limits, environmental liability must focus on a cross-cutting and transnational approach. The aim of this paper is to make a critical analysis of the Portuguese and European regime and to suggest aspects in which it can be improved in a future revision.

Presentation

In person

834 Exploring the increasing complexities of international environmental law-making: the case of the Kunming – Montreal Global Biodiversity Framework

Elsa Tsioumani

University of Trento, Trento, Italy

Stream or current topic

Abstract

Threatening the planet's life-support systems, biodiversity loss is part of the "triple planetary challenge," alongside climate change and pollution. The main international framework guiding legal and policy action to reverse this trend is the UN Convention on Biological Diversity (CBD). Adopted in 1992, the CBD is viewed in the literature as a reflection of the North/South divide. Based on equity- and development-related considerations, biodiversity-rich countries of the Global South identified themselves as owners of genetic resources and pushed for fair and equitable sharing of the benefits arising from their utilization. This contribution will explore how these dynamics are evolving, focusing on the adoption of the Kunming-Montreal Global Biodiversity Framework (GBF) and related decisions of the Conference of the Parties in December 2022. Following a brief overview of the outcomes and the process that led to their adoption, it will discuss three case studies to highlight the emergence of new actors and the influence of diverse forces that cut across national boundaries and traditional alliances: the decision to establish a process to ensure benefit-sharing from the use of digital sequence information on genetic resources; the sections and target of the GBF focusing on the rights of Indigenous Peoples in biodiversity governance; and decisions on emerging biotechnologies including synthetic biology. Analysis of these case studies in a historical context aims to highlight the multilevel complexity of actors and interests involved in the development of global biodiversity law and question its fairness and effectiveness amidst increased calls for its decolonization.

Presentation

In person

Gender, Sexuality and Law 6

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU125

Stream Gender, sexuality and the law

601 The Trajectory of LGBT Asylum Claims before the CJEU: Sexualisation, Stereotyping and Disbelief

Sarah Craig

Ulster University, School of Law, Belfast, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

The levels of protection currently afforded to LGBTI persons significantly vary on the global scale and constrain individuals from living freely and openly. Those seeking asylum are not only forced to flee persecution from their country of origin, but are faced with a legal regime which further attempts to deem those worthy of status. The refugee regime is marked by the stark reality that it is both inclusionary and exclusionary, one in which asylum claims based on sexual orientation are still trying to find their rightful place.

The nexus, therefore, between finding that place of refuge within the EU and having refugee status recognized is one of small margins. While great strides have been made at the EU level, LGBT asylum applicants continue to face ongoing struggles regarding consistent and effective determinations of status at first instance during the credibility assessment phase.

The most recent CJEU case of *F* highlights the ongoing struggle which LGBT persons face regarding consistent and effective determinations of status. The judgment is a significant and welcomed decision insofar as prohibiting projective personality tests on the basis of a psychologist's expert report. However, the case raises important concerns that stereotyped notions of sexuality continue to underpin the evidentiary process at the national level. This purpose of this paper will therefore be two-fold; evaluating recent CJEU jurisprudence inclusive of *F* and, furthermore, contending that sexual orientation based claims continue to be adjudicated by predisposed sexualised and stereotyped notions, whereby the claimant is disbelieved from the outset.

Presentation

In person

653 Deconstructing stereotypes: the operation of space and affect in LGBTQ+ asylum law

Catherine Jaquiss

Manchester Metropolitan University, Manchester, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

This paper proposes that 'space' and 'affect' theories offer an enlightening perspective on the ways in which LGBTQ+ refugee claims are litigated and adjudicated in the UK.

Leading socio-legal scholarship suggests that LGBTQ+ asylum claims are misinterpreted because they do not fit with stereotypical expectations of LGBTQ+ refugees. I propose that this problem can be understood through space and affect theories, which lend themselves to a multi-dimensional conception of the LGBTQ+ refugee experience and of those who litigate and adjudicate their claims.

In the asylum system, state machinery, power structures, colonial legacies, legal landscapes and numerous other spatial intricacies are constantly conversing and mutually transformative. Space theory enables us to interrogate what is hidden from view when the impression of an objective asylum system is prioritised; and the impact this has on LGBTQ+ refugees in particular.

Affect may be understood as the intensities, forces or reactions which are exchanged between people in response to each other and their environments. Affect may be recognised, for example, as emotion, feeling, or sense of identity of purpose. Affect theory thus exposes the ill-judged preconception that law operates in a vacuum, and enables one way of thinking critically about the ways in which actors in the asylum system interact with one another, and why.

This paper proposes that attention to space and affect discourages the uncritical adoption of harmful, stereotyped rhetoric in relation to LGBTQ+ refugees; and that such attention may lead to a more purposeful and deliberate receptiveness of LGBTQ+ refugee narrative.

Presentation

In person

329 Discrimination Under The New Plan for Asylum: The Case of Sexual and Gender Minorities

Alex Powell¹, [Raawiyah Rifath](#)²

¹Oxford Brookes University, Oxford, United Kingdom. ²University of Exeter, Exeter, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

The United Kingdom's new asylum model, in particular, the Nationality and Borders Act 2022 (NBA 2022) and the Rwanda agreement, represents the potential to fundamentally change the operation of UK asylum law. This paper argues that the UK's new asylum model has particularly concerning impacts on sexual and gender minority (SGM) asylum claimants. In doing this, we chart the changes made by the model and explore how they impact SGM claimants.

First, this paper begins with an analysis of the new Nationality and Borders Act 2022 and the UK's agreement with Rwanda. It will be highlighted that this new model ignores the needs and experiences of SGMs.

Second, this paper moves to examining how this new asylum model disproportionately affects SGMs. It will do so by presenting how this model creates a situation of vulnerability for this particular group. This manufactured vulnerability is ultimately ignored. Additionally, it will be demonstrated that the new asylum model's two-tier groupings system discriminates between groups of people that are seeking safety simply because of their mode of entry. The paper illustrates how the two-tier grouping is especially detrimental for SGMs due to their particular experiences.

Lastly, it will be shown that this new asylum model creates a catch-22 effect because it does not allow for safe applications for protection thereby forcing people to seek safety via deceitful methods which they are criminalised for. The paper calls for the UK to urgently consider the implications of the NAB for SGM claimants.

Presentation

In person

756 "We call it gay": Language Interpretation, Gender/Sexuality, and Refugees Protection

Azar Masoumi

Carleton University, Ottawa, Canada

Stream or current topic

Gender, sexuality and the law

Abstract

This paper examines the trials and tribulations of translation for Sexual Orientation and Gender Identity and Expression (SOGIE) refugees in a context fraught with sexual imperialism, employment precarity, and global homophobia and transphobia. Access to refugee protection requires successful communication between refugee claimants and those who adjudicate their claims. For claimants who are not fluent in the official language(s) of their host countries, language interpretation is the only means of communicating experiences of persecution. In other words, language interpretation is critical to refugees' ability to communicate their cases and access safety.

Interpreting for SOGIE refugees, however, is far more complex than it may first appear, requiring linguistic proficiency, sexual knowledge, cultural mediation, and interpersonal sensitivity. The significance of these requirements is heightened by a context involving geopolitically unequal sexual epistemologies, inadequate professional training and support, and pervasive homophobia and transphobia. This paper draws on interviews with refugee language interpreters in Canada to explore the linguistic politics of refugee protection for SOGIE refugees. I will consider how interpreters translate refugees' stories of desire and persecution and note the costs and implications of persistent disregard for the interpretation process in SOGIE refugee protection frameworks.

Presentation

In person

Social rights: Boundaries of the welfare state

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU201

Stream Social rights, citizenship and the welfare state

Jackie Gulland

458 Emergency Exit: The Life-Saving Potential of Direct Public Financial Assistance to Survivors of Intimate Partner Violence

Nyamagaga Gondwe

University of Wisconsin Law School, Madison, Wisconsin, USA

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

Leaving an abusive partner can be a life-saving intervention for a survivor of intimate partner violence (IPV). As survivors attempt to leave, they face a heightened risk of physical violence. One study claims that 75% of women who are killed by an intimate partner are killed as they attempt to leave or after they have left. This means that when a person decides to leave an abusive relationship, it is urgent that they can quickly access whatever tools they need to establish a safe distance from their abuser.

This project examines the role of the Earned Income Tax Credit (EITC) and Temporary Assistance for Needy Families (TANF) as financial assistance interventions for people navigating survivor resources. The structure of these programs may not promote the kind of urgency that is necessary to help an IPV survivor make a clean, safe exit in the initial stages of leaving their partner.

In a prior work, I argued that when public financial assistance programs like the EITC fail to acknowledge uncompensated care work, they amplify women's vulnerability. Here, I argue that when unpaid care labor is disregarded as an eligible form of labor for financial assistance programs, that failure at the policy design level becomes a negative mitigating factor in whether—and for how long—a survivor can sustain a safe distance from an abusive partner.

Presentation

In person

120 State Support and Compensation as a Socio-Economic Right: Justifications and Limitations of the Welfarist Role of State in Assisting Victims in the Aftermath of Violent Crime

Liam O'Driscoll

Dublin City University, Dublin, Ireland

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

The Criminal Injuries Compensation Scheme was established in Britain in 1964. A similar scheme was established in Northern Ireland in 1968 and the Republic of Ireland in 1974. Each of these schemes allow victims of violent crime to apply for compensation from the state in respect of injuries sustained in the commission of a violent criminal act. This paper asks the question what justifications are there for the state operating a criminal injuries compensation scheme?

In order to investigate this question, this paper will view criminal injuries compensation as an emanation of the welfare state, and therefore, a socio-economic right. It will be demonstrated that such a conception is problematic for victims of violent crime and the operation of these schemes as victims' entitlements are inherently limited to 'an equitable share in public resources'. Since their establishment, these schemes have received limited public funding and exclude the majority of violent crime victims as a consequence of their restrictive eligibility criteria.

Whilst various EU and international human rights instruments grant victims' rights in relation to state support and compensation, when viewed through a welfarist and socio-economic rights lens, the limitations of these rights

become stark as public funding for the practical realisation of victims' rights is limited. This paper will seek to explore the consequences of this limitation in the specific context of criminal injuries compensation and the role of the state in the context of assisting victims of crime.

Presentation

In person

457 Contracts for Collaboration in a Privatised Welfare State: Lessons from Formal and Informal Relational Contracting Practice in the Social Sector

Felix-Anselm van Lier

University of Oxford, Oxford, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

Following years of austerity, the British welfare state is again under significant strain, facing recession and a cost-of-living crisis. With public services still marked by chronic underfunding and fragmentation, the growing and increasingly complex needs of the population are unlikely to be adequately met.

The UK has sought to respond via public-private partnerships, aiming to improve services through contracting mechanisms. However, conventional transactional, bilateral contractual interaction between government and individual service providers neglects the need to align multilateral ecosystems of service delivery to support holistic service provision.

Contracting orthodoxy overlooks emerging approaches which aspire to public service coordination, such as relational contracting. Private sector contracting practice has shown how relational contracts can foster partnership working, incorporating features designed to generate alignment and build trust (e.g. Frydinger et al. 2019). While there is emerging conceptual research on how relational contracts might operate in complex public-private settings (Gibson 2022), empirical evidence on how formal relational contracting operates in practice in such contexts is scarce.

This paper takes a first step to fill this gap, by exploring how a relational outcomes contract has been applied in a housing support service in England. This in-depth, longitudinal study highlights how the interplay of formal and informal relational contracting features has supported party alignment and multi-stakeholder collaboration, while also raising questions over lines of accountability and the proper limits on flexibility. In doing so, the paper sketches

potential avenues for a new contracting practice which might help mitigate some of the challenges of public service provision.

Presentation

In person

733 Visual Artists, Social Citizenship and the Artists' Resale Right

Anthony O'Dwyer

Queens University Belfast, Belfast, Ireland

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

In considering whether visual artists are adequately supported by the state and whether an Artists' Resale Right (ARR) derived income security benefit might benefit visual artists, this paper evaluates empirical research on the socio-economic status of the creative classes with a specific focus on visual artists. This serves to highlight the often extremely precarious position of visual artists and the extent to which they experience social exclusion. Having established the financial benefits that an ARR derived, income security benefit is capable of providing for visual artists, the paper outlines and evaluates two socially orientated ARR rubrics; namely that of Germany and Norway. The paper is divided into four main sections. Section one focuses on the progressive realisation of social rights within the EU over the past 60 years and in doing so grounds the argument for a socially orientated Artists Resale Right(ARR) under the current EU ARR Directive. Having established a legal basis for reform the paper progresses to consider the related issues of welfare, need and poverty. It is proposed that within the construct of the free-market, the exclusion that social citizenship seeks to alleviate is dependent upon the welfare state. In this context the competing forces of welfare and poverty are explored before considering 'need' and its function as a determinant of state welfarism. Given the current debates surrounding a universal basic income for the creative classes, the paper represents a timely reflection upon over 60 years of social citizenship.

Presentation

In person

Children's rights: Education, sexuality and reproductive rights

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU202

Stream Children's rights

215 Children's School-based Sexuality Education: Children's Rights vs Parental Rights

Rachel Heah

Lancaster University, Lancaster, United Kingdom

Stream or current topic

Children's rights

Abstract

Parents are generally regarded as having the right to determine their children's education, and to direct such education in accordance with their own religious and philosophical convictions. However, it will be argued here that leaving the responsibility for providing sexuality education to parents alone is insufficient to safeguard children's right to access such education, because there are many reasons that parents do not, or may not be able to, provide appropriate sexuality education to their children. For example, research shows that many parents find it awkward and embarrassing to broach the subject with their children, or do not have the necessary knowledge, while others do not feel that it is appropriate or necessary to provide children with any sexuality education.

Since September 2021, Relationships and Sex Education (RSE) has been mandatory in English schools. However, parents have a right to withdraw their children from these lessons. The option to withdraw is provided supposedly out of respect for the parental right outlined above, but again, constitutes a way in which parents can interfere with, or obstruct their children's access to sexuality education. This paper will critically examine whether parental rights are indeed undermined if the right to withdraw was abolished. It also considers whether children's right to access sexuality education should trump the parental right to direct their children's education.

Presentation

In person

304 Eliminating Gender Stereotyping and School Exclusion of Pregnant School Girls: The Case for Adolescent Participation in the Development of Comprehensive Sexuality Education Curriculum.

Gift Sotonye-Frank

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Children's rights

Abstract

Article 10(c) of the Convention on the Elimination of Discrimination Against Women (CEDAW) 1979 mandates States Parties to undertake the 'revision of textbooks and school programs and the adaptation of teaching methods to eliminate gender stereotyping in education. The CEDAW Committee has stressed that this obligation requires States Parties to institute 'mandatory, age-appropriate curricula, at all levels of education, on comprehensive sexuality education' (CSE). Against the CEDAW provision, this paper argues that the views of adolescents, and in particular Adolescent Pregnant School Girls (APSGs), are critical in the development of a CSE targeted at eliminating the gender stereotypes that underlie the exclusion of adolescent girls when they fall pregnant. This paper will do so by not only highlighting the importance of adolescent participation in the development of CSE under international human rights law but will focus on how adolescent participation can be optimized, using Laura Lundy's model of participation. Lundy proposed a new model of participation for conceptualizing Article 12 of the Children's Convention which requires the consideration of the implications of four separate but interrelated elements namely: Space; Voice; Audience; and Influence. These four elements are examined in the context of ensuring adequate and age-appropriate adolescent participation in the development and delivery of CSE curriculum that will help eliminate the stereotypes that are at the heart of the exclusion of APSGs.

Presentation

In person

826 Missing Links: a case for informing children in compulsory education about laws that apply to them.

Malvika Unnithan

Northumbria University, Newcastle upon Tyne, United Kingdom

Stream or current topic

Children's rights

Abstract

This paper examines the importance of providing better legal education to young children using a case study conducted in North-East England that explores the role of school education in informing children on the age of criminal responsibility (ACR). ACR is the minimum age at which a person is held criminally responsible and in England and Wales it is set at ten. Despite numerous calls for this to be raised, the government has continued to maintain its position that children know right from wrong and can take legal responsibility for their actions due to the provision of compulsory education. To evaluate this, a novel study exploring the extent to which compulsory education prepares children between the age of 7-14 for this legal responsibility was conducted. It was found that although, concepts of right and wrong, and social/moral responsibility were discussed in schools, children were not specifically taught about how these concepts apply to them as per the law. Moreover, provisions within the basic curriculum on children's rights and other arbitrary age limits, raise questions on the appropriateness and effectiveness of the government's justification for the ACR, when little effort has been made to provide children with relevant, practical information about it. This paper highlights the crucial role that education can play in developing children's legal consciousness and argues that in order to hold them legally responsible in an age-appropriate and fair manner, it is imperative to empower them with knowledge of laws relevant to them.

Presentation

In person

Socio-Legal Jurisprudence 3

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU203

Stream Socio-legal jurisprudence

82 The path between judicialisation and coherent social protection systems: A socio-legal analysis of South Africa's integrated social assistance grants

Irene Among

Ruhr University, Bochum, Germany. Erasmus University, Rotterdam, Netherlands

Stream or current topic

Socio-legal jurisprudence

Abstract

Social protection uses a mix of instruments (contributory social insurance, tax-financed social assistance, and labour market policies) to protect people from adverse lifecycle contingencies and reduce poverty. These objectives are optimally attainable through coherent systems – where contradictions within and between social protection instruments and neighbouring policies are minimised, and synergies are enhanced. South Africa's social protection system is structured in three pillars - statutory funds, voluntary funds and social assistance. The latter is comprised of eight grants and three other schemes. However, the programmes are dispersed across different departments - without a shared objective and policy-lead, a reflection of incoherence. Nevertheless, pockets of coherence exist - notably, eight social assistance grants are integrated under a single Social Assistance Act, Social Security Agency Act, Social Security Agency responsible for administration and one department responsible for policy. This demonstrates integration – one of the highest forms of policy coherence. This article examines the hypothesis that "judicialisation of policy-making (reliance on courts for public policy making) leads to social protection systems coherence." The study uses socio-legal methods, drawing on causal process tracing of the pathways between judicialisation and coherence of the grants. A content analysis of relevant laws, cases, articles and reports is used. Guided by systems and actor-network theory, the study reveals an interplay between elites, civil society, applicants, bureaucrats, legislators and courts – playing incremental roles towards integrating the social assistance grants. The study suggests that judicialisation may yield pockets of coherence but not the coherence of the entire social protection system.

Presentation

In person

630 The Partnership Problem: The *In*-effectiveness of Independent Schools' Public Benefit

Matilda Clough

University of Liverpool, Liverpool, United Kingdom

Stream or current topic

Socio-legal jurisprudence

Abstract

Approximately 50% of fee-paying independent schools hold legal charitable status. As such, they must provide 'public benefit'. Arguably, this legal requirement has the potential to decrease privilege and inequality – by extending who can attend these schools (through fee-assistance) and sharing their plentiful facilities (through partnerships with state schools). Although most academic discussion has previously focused on fee assistance as the most common way of meeting the legal requirement, this paper fills the gap on discussion of independent schools' partnerships with state schools. Using socio-legal analysis, this paper will assess two 'problems' with these partnerships.

Problem one considers the variance in partnership provision across the sector. This is as the legal requirement of public benefit is incredibly limited (as these schools can decide upon their own provision of public benefit), and that this school-chosen arrangement of public benefit is wholly unchecked by the Charity Commission. Previous reports suggest that due to this, some schools provide a thorough system of partnerships, with others merely allowing state schools to attend their football games.

Problem two speaks to the fundamental issues with partnerships. Even when individual partnerships are deemed 'effective' (perhaps through directly funding the state school, or allowing a large amount of facilities sharing), questions can be asked about whether they truly 'benefit' the 'public'. This paper will utilise sociological literature to discuss how these partnerships are ineffective: the communities they intend to benefit remain largely unchanged. As such, these elite schools are allowed to continue to reproduce privilege and inequality in society.

Presentation

In person

772 Economic and Social Rights and Liberal Democracy: Moving Beyond the Symbiotic Relationship

Andrew Munro

Liverpool John Moores University, Liverpool, United Kingdom

Stream or current topic

Socio-legal jurisprudence

Abstract

Dominant approaches to human rights law, especially where economic and social rights are concerned, have not been effective. In light of the overlapping crises facing the world today in the form of environmental damage, geopolitical instability, pandemics, and the like, there may be ample opportunity to rethink the theoretical justifications for human rights and their expression in law.

Failing to ground human rights law theoretically risks abandoning its rhetoric to those who may seek to use it for other purposes. Liberal conceptions of human rights have long been accused of providing cover for the inequities of capitalism, especially the 'neoliberal' capitalism of the past four decades. Today rights seem at risk of being engulfed in geopolitics and confined to use as a stick with which to beat unfriendly nation-states.

There are several aspects of human rights law that should be re-examined. Human rights have long been posited alongside democracy, with which it supposedly enjoys a symbiotic relationship. There are several problems with this: first, it abstracts liberal conceptions of democracy from its economic counterpart, capitalism. Second, it contributes to the bifurcation of human rights into civil and political rights on the one hand and economic and social rights on the other. Finally, relies upon insufficiently elaborated theories of the State, of social change, of history, and of social power.

This paper will elaborate on these problematic aspects of human rights law, especially where theories of State power are concerned, seeking to challenge the symbiotic relationship between democracy and human rights.

Presentation

In person

DEVELOPING DEMOCRACIES: JUDICIAL INDEPENDENCE IN THE GLOBAL SOUTH

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU207

Stream Constitutionalism in developing democracies

799 The Constitutional Court of Colombia: Enforcing human rights in a country in armed conflict

Adelaida Ibarra

University of York, York, United Kingdom

Stream or current topic

Constitutionalism in developing democracies

Abstract

In Colombia, the 1991 constitution introduced a long list of human rights most of them recognized as fundamental rights and protected by "tutela action", an expeditious mechanism that allows citizens to demand compliance with these rights before a constitutional judge. The Constitutional Court, the highest authority of the constitutional jurisdiction, has played a significant role not only in the defense of the constitution but also in the expansion of the scope of fundamental rights through its interpretation. Its rulings on the recognition of unions of LGBTIQ people and the decriminalization of abortion have led it to be branded as an activist court. It has also played an important role in demanding from the state the enforcement of the Peace Agreement and the protection of the rights of demobilized guerrillas. The Court has managed to maintain its independence even under pressure from the executive branch as in 2009 when it did not approve the constitutional reform that allowed the third consecutive presidential term of then-President Uribe. This paper addresses the question of what factors promote judicial independence in Colombia and how the Constitutional Court faces the factors that could undermine its power. This qualitative research is based on the analysis of specialized literature, Court judgments, reports and official communications of the Constitutional Court and the Presidency of the Republic. Among the main risks the Constitutional Court has faced are threats, false accusations and interception of telephone calls against its members and proposals to unify the high courts with its consequent disappearance.

Presentation

In person

862 Contested concessions: The courts, Chinese capital, and the government in Ethiopia

Miriam Driessen

University at Buffalo, Buffalo, NY, USA

Stream or current topic

Constitutionalism in developing democracies

Abstract

Since their entry into Ethiopia as contractors in the 1990s and as investors in the 2000s, Chinese enterprises have been brought to court by local plaintiffs, from employees, suppliers, and subcontractors to residents along project sites, landlords, and even banks and government organs. This has enabled the Ethiopian judiciary across all levels of jurisdiction, from the lower courts to the Federal Supreme Court in Addis Ababa, to discipline Chinese capital and reign in its excesses. The sheer number of cases brought to court has boosted judicial confidence and strengthened judicial independence. It has allowed judges to address not only the structural inequalities intrinsic to Ethiopia's partnership with China, but also the federal administration's stance towards foreign enterprises and their operations in Ethiopia; one that judges often described as weak. Some accused the executive branches of government of dancing to the tunes of foreign firms, and, by doing so, tolerating malpractices and reinforcing economic and political inequalities. Drawing on interviews with litigants and legal professionals and the analysis of case files and court judgements, this paper uses the role of law and litigation in Ethiopian-Chinese interactions as a lens to gain insight into the leverage of Ethiopia's state courts to hold powerful multinational corporations accountable, while criticizing the government that invited them for making concessions to sovereignty.

Presentation

In person

563 A Socio-Judicial Approach to Resolving Judicial Dilemmas in Promoting Stable Constitutionalism in Africa (This paper is an extract from section two of this author's twelve-chaptered dissertation titled "The Role of the Nigerian Judiciary in a Democracy: A Judges Dilemma." Submitted to the University of Nevada, Reno. May 2021.)

Ari Tobi-Aiyemo

A.T.Socio-Judicial Consulting, Oneonta, USA

Stream or current topic

Constitutionalism in developing democracies

Abstract

Over the years, the courts in most developing democracies in Africa have struggled for judicial independence amidst their countries' checkered democratic histories. Most of these African democracies, like Nigeria, look up to advanced North American democracies like the U.S.A. in resolving the challenges to constitutionalism in their countries. There are assumptions/arguments that only advanced democracies can achieve stable constitutionalism. However, that is not always the case. This author believes that key factors like the rule of law, judicial independence, and judicial interpretation determine stable constitutionalism. Therefore, despite the unstable democracies in some African countries, their courts strive to ensure justice, especially amidst threats to judges' personal and judicial independence. Accordingly, the court's approach to interpreting the Constitution/the law in countries like Nigeria, South Africa, and Kenya persistently defends justice in the public's best interests, despite obstacles from anti-democratic powers and intimidations from the ruling governments/authorities.

Nevertheless, the courts' resilience often fluctuates and stifles the rule of law. Hence judges encounter judicial dilemmas in their roles to uphold justice in society. Therefore, this presentation will propose this author's socio-judicial theory to promote and sustain constitutionalism for democratic development. Specifically, it will discuss the following issues:

1. The concept of constitutionalism in Africa/Nigeria
2. The courts' role in ensuring stable constitutionalism and judicial independence in Nigerian courts
3. The factors that determine constitutionalism in Africa
4. Judicial dilemmas/challenges in promoting, sustaining, and defending constitutionalism and judicial independence in Africa
5. The Socio-Judicial Approach/theory of justice.

Presentation

In person

Legal Education 5

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU208

Stream Legal education

439 'We're not in Kansas anymore': identifying our 'New Normal' in Legal Education

Catherine Shephard¹, Vicky Martin¹, Martin Regan², Norah Burns², Michael Vincent², Paulina Wilson²

¹Manchester Law School, Manchester Metropolitan University, Manchester, United Kingdom. ²School of Law, Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Legal education

Abstract

The aim of this paper is to identify and begin to articulate clearly our 'New Normal' in legal education, and to acknowledge the specific challenges and opportunities this is bringing into our classrooms. The Covid-19 pandemic and ensuing lockdowns affected human behaviour. Higher Education experienced unprecedented change. As we approach the end of the first subsequent academic year without restrictions, this paper will refer to the existing literature to frame this as a wicked problem requiring urgent debate in our legal education community. The paper will set out for discussion the authors' observations of how behaviour in our community has changed in response to the pandemic and other environmental factors. This will include references to student behaviour (including engagement, confidence, identity, wellbeing and mental health), institutional and governmental responses (including technology, human resources, assessment and grade inflation), internationalisation (of law schools), globalisation (of the legal profession), and the effects of the cost-of-living crisis. Delegates will be offered the opportunity to record their own observations of behavioural change, to begin to build a body of evidence to inform our community's understanding of our 'New Normal'. Building on their paper presented earlier this academic year, which identified as 'Covid Keepers' some innovations in legal education which emerged during the pandemic, this paper will create the opportunity for further research: to begin an informed and timely debate on what is now required to support the continued delivery of excellence in legal education in our newly articulated 'New Normal'.

Presentation

In person

474 Transnational Legal Education Partnerships: A Case Study

Kat Langley, James Scott

University of Sunderland, Sunderland, United Kingdom

Stream or current topic

Legal education

Abstract

The University of Sunderland offers many business, tourism, and law programmes to many trans-national partners, including DEI College, Thessaloniki, Greece; this includes an LLB Law provision. This paper aims to critically evaluate the success of those programmes in Law via the Greek case study. Using the case study, this paper evaluates the impact of a transnational degree on the route to legal qualification in Greece, and whether there could be a broader impact on the value of the LLB programme. Undoubtedly, the introduction of the SQE has huge ramifications across the legal education sector in England and Wales, but will this change be reflected in the recruitment, practices, and delivery of international programmes? Specifically, this paper considers the impact of forming these international partnerships from a staff, student, and a business perspectives. This paper reflects on some of the common difficulties of establishing institutional partnerships and maps the blueprint to achieving a community of best practices. Further, we explore the pedagogical impact on students of being assessed at distance, the impact on academics of assessing unknown students, and the resulting effects for legal education more widely.

Presentation

In person

Health Law and Bioethics: Intersex Embodiment

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU210

Stream Health law and bioethics

Round table debate: Intersex Embodiment: New Horizons for Law and Intersex

71 Intersex Embodiment: New Horizons for Law and Intersex

Mitchell Travis¹, Fae Garland², Mireia Garces-De-Marcilla-Muste³, Eleanor Drover⁴, Yessica Mestre Martinez⁵, Edmund Horowicz⁶

¹University of Leeds, Leeds, United Kingdom. ²University of Manchester, Manchester, United Kingdom. ³LSE, London, United Kingdom. ⁴University of Durham, Newcastle, United Kingdom. ⁵Junta de Andalucía, Andalucía, Spain.

⁶University of Liverpool, Liverpool, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

This roundtable discusses the recent book *Intersex Embodiment: Legal Frameworks Beyond Identity and Disorder* by Fae Garland and Mitchell Travis. As an intervention into the space, the book promises to

"reveal the factors that motivate and influence the way in which policy makers and legislators approach the area of intersex rights.... [R]eflect on the limitations of law as the primary vehicle in challenging healthcare's framing of intersex as a 'disorder' in need of fixing... [and] offer a more holistic account of intersex justice which is underpinned by psychosocial support and bodily integrity."

This roundtable asks what comes after this intervention. Specifically, it considers issues of translation from theory to practice. What is sacrificed in the shift from the conceptual to the pragmatic – and how can we better involve medical professionals in these discussions? Secondly, and relatedly, we will discuss potential implementations of law (and regulation), ideas for future reform and the potential barriers to this. Thirdly, we will discuss the need for co-production and how to ensure ongoing research in this area is ethical and community driven (against a backdrop where in the UK in particular, the 'community' is a fractured space). Finally, we discuss and reflect upon the challenges raised by our own research and our connections to it.

Presentation

In person

Disability and Law: Disability Rights on the Ground

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU211

Stream Disability, law and social justice in times of uncertainty

86 PERCEIVED DISABILITY DISCRIMINATION AND THE DEFICIENT EQUALITY ACT: INTERPRETIVE AND LEGISLATIVE REMEDIES

Michael Connolly

University of Portsmouth, Portsmouth, United Kingdom

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

The Equality Act 2010 was intended to extend to cover perceived discrimination, such as dismissing a turbaned Sikh barista under pressure from customers mistaking him for a Muslim. Such mistakes are rooted in stereotyping, fear,

and prejudice. Disability discrimination is particularly prone to these attitudes, but the Act's inadequate drafting renders perceived disability discrimination claims exceptionally difficult. This paper suggests some innovative interpretive solutions, but ultimately recommends statutory reform.

Presentation

In person

503 Exploring the extent to which the right against discrimination is currently being enjoyed by Persons Living with Disabilities in Nigeria

Oluwatemilurun Adenipekun

Lead City University, Ibadan, Nigeria

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

To be a disabled Nigerian is a lonely, scary, and isolated place. There is never a place for you anywhere. Not in the infrastructure, nor in social settings and increasingly not in society. This article explores the extent to which the right against discrimination is currently enjoyed by persons living with disabilities (PLWD) in Nigeria using an analysis of the Discrimination Against Persons with Disabilities (Prohibition) Act which was passed by the Nigerian National Assembly in 2018. It argues that every reasonable person, without an iota of doubt, is fully aware that we unfortunately live in a world filled with disparities and inequalities. Emanating from this are a "special" group of people; persons living with some form of disabilities. The law is an instrument that has consistently lent its arm to protect PLWD in a bid to ensuring disabled people are protected from all forms of exploitation, violence, and abuse. This paper would adopt an intersectional approach, connecting the increased risk of discrimination experienced by persons living with disabilities in Nigeria to the broader notions of political commitment and legal framework. It concludes by offering recommendations to reduce the gap caused by discriminatory barriers and improve the realization of the United Nations Convention on the Rights of Persons with Disabilities (CPRD) by enabling disabled people to live independently in the Nigerian community.

Presentation

In person

614 Disability Law in India: Policy and Practice with Reference to Women with Visual Disabilities

Dr. BR Alamelu

Associate Professor, Department of English, Indraprastha College for Women, University of Delhi, New Delhi, India

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

India is one of the first few countries to have signed and ratified the United Nations Convention on the Rights of Persons with Disabilities, 2006 (UNCRPD 2006). The member states who became party to the Convention were required to review their domestic laws and bring them at par with the provisions of the convention. India enacted a new legislation titled the 'Rights of Persons with Disabilities Act 2016' (RPwD Act 2016) as per mandate. So, The new legislation, while incorporating the substantive provisions from the UNCRPD 2006, also drew heavily from the then legislation on disability titled Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act, 1995 which stood repealed thereafter. the RPwD Act 2016 came with a twofold obligation: to carry out the welfare provisions borrowed from the legislation which it effectively repealed, and to oversee the implementation of new entitlements with a rights-based approach drawn from the UNCRPD 2006 whose spirit it is intended to reflect.

My paper would attempt to make an objective assessment of the implementation of RPwD Act 2016 with focus on the provisions related to Women with Visual Disabilities (WwVD). looking at various policy decisions notified by the government of India from time to time and examine their actual implementation on the ground by corroborating them with the evidence gathered from the WwVD beneficiaries. Methodologically, then, the analysis in my paper would be drawn from a review of policy documents and an empirical data collection — scheduled interviews with the eligible women

Presentation

In person

646 The impact of judicial models of disability on the emergence of justice

Rebecca Jiggins

University of Leeds, Leeds, United Kingdom. Just Reasonable, Plymouth, United Kingdom

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

This paper considers the impact of differing conceptions of disability on judicial decision making in Equality Act 2010 case law and proposes an emergent model as the most appropriate for considering complaints of disability discrimination. It draws on my PhD research, analysing case law to inform critical rewriting of appeal judgments (cf feminist judgments projects).

While the duty to make reasonable adjustments arises from a social model of disability, placing responsibility on those with the power to remove disabling barriers, to do so to avoid discrimination, the medical model of the statutory definition of a disabled person is shown to inappropriately dominate judicial reasoning where issues of reasonableness (S20EqA) or proportionality (S15 & S19 EqA) are considered. The UNCRPD conceives of disability as relational, which is inadequately reflected in the more static and restrictive conception of disability found in UK case law.

An emergent model of disability is proposed, drawing on new materialist theoretical frameworks, where disability emerges in the relations between bodies/minds with impairments or atypical functioning, and the affective, social, and

physical worlds. Re-reading case law through an emergent model of disability provides an alternative approach to judicial decision making, through acknowledging multi-faceted experiences of disability that resists essentialist, restrictive approaches that impede disability justice. The paper concludes with considerations for drafting pleadings and issues in disability discrimination cases, that explicitly invite an emergent approach to disability and discrimination.

Presentation

In person

Mental Health 4

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU218

Stream Mental health and mental disability law

688 A case study of what led to socio-economic rights affirming legislation for people with mental disorders in Wales - The Mental Health (Wales) Measure Act 2010

Afiya France

University of Bristol Law School, Bristol, United Kingdom

Stream or current topic

Mental health and mental disability law

Abstract

This paper explores the circumstances precipitating the Mental Health (Wales) Measure Act 2010 ("Measure"), to understand what combination of social forces in Wales worked together to enable its enactment. Measure, in substance, broadly aligns with the 2007 Convention on the Rights of Persons with Disabilities ("CRPD"), in emphasising the importance of both civil and political and socio-economic rights. It seeks to grant people with mental disorders ("PWMD") a right to early, multidisciplinary mental health services, with a view towards promoting recovery, and avoiding the necessary use of compulsory powers. Measure is unique in its prioritization of positive socioeconomic rights, where typical mental health legislation is more concerned with balancing between coercive, reactive responses to mental illness and protecting negative civil and political rights. Measure's protection of positive rights of PWMD has been acknowledged in a recent evidence hearing conducted by the Joint Select Committee appointed to consider proposed government reform of the UK Mental Health Act 1983

Given the current global state of crisis in provision of mental health services, where PWMD worldwide suffer significant disadvantage due to inadequate provision of mental health treatment and services, there is a pressing need for state legislative approaches that emphasize the organizing and resourcing of adequate, multidisciplinary mental health services. Utilizing a social constructionist epistemology and a qualitative case study research design,

this paper aims to shed light on what factors and prevailing conditions can promote the development of socio-economic human rights oriented mental disability law reform, like Measure, in domestic laws.

Presentation

Virtual via Microsoft Teams

797 Beyond the Mental Health Bill: rethinking adolescent mental health law in England

Martha Scanlon

University of Bristol, Bristol, United Kingdom

Stream or current topic

Mental health and mental disability law

Abstract

A new Mental Health Bill that will reform the Mental Health Act 1983 is currently going through parliamentary scrutiny. This Bill seeks to implement some of the recommendations of the 2018 Independent Review of the Mental Health Act 1983 (the Independent Review) through a number of proposals that are aimed at increasing choice and protecting patients' autonomy. The Independent Review identified particular legal challenges concerning mental health treatment for children and young people, not just due to their age and vulnerability, but also in relation to their decision-making ability (Department of Health and Social Care 2018: 173). Unfortunately, the Bill does not adequately address these legal challenges. This is a missed opportunity not only to clarify an extremely complex area of law, but also to provide additional safeguards where there have been significant concerns about standards of care. Using empirical data collected from twelve in depth semi-structured interviews with health and social care practitioners working in child and adolescent inpatient services in England, this paper will discuss and critique the proposals of the Independent Review and the Bill. Applying a vulnerability theory lens, I will argue that a much broader reconsideration of the law and policy in this area is needed to address the current flaws in the system.

Presentation

In person

96 CRPD paradigm shifts and practicalities: lessons from Scotland

Jill Stavert, Colin McKay

Edinburgh Napier University, Edinburgh, United Kingdom

Stream or current topic

Mental health and mental disability law

Abstract

Implementing the Convention on the Rights of Persons with Disabilities (CRPD) in the context of people with mental and intellectual disabilities requires addressing certain fundamental issues. These include a reconceptualised approach to equality and non-discrimination in rights enjoyment, the Committee on the Rights of Persons with Disabilities' call for abolition of laws allowing for non-consensual psychiatric treatment and guardianship, and giving meaningful effect to economic, social and cultural rights. For those states which are also parties to the European Convention on Human Rights (ECHR), it also involves endeavouring to reconcile the different approaches to rights enjoyment in the ECHR and CRPD.

In Scotland, an independent review of mental health and capacity law (the Scott Review) has spent the last three years considering these challenges. It published its final report in September 2022, with over 200 recommendations. The report proposes a new model for mental health and capacity law, centred on key concepts of Human Rights Enablement, Supported Decision Making and Autonomous Decision Making.

This paper will discuss the recommendations, the challenges to full implementation, and their relevance to other jurisdictions.

Presentation

In person

Civil Justice Panel 5

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU219

Stream Civil justice systems and ADR

13 Judicial Justice & Alternative-Transformative Justice in Divorce Disputes Involving Violence

[Dafna Lavi](#)

The Academic College of Law and Science, Hod Hasharon, Israel

Stream or current topic

Civil justice systems and ADR

Abstract

The paper deals with the interface between the transformative mediation process from the school of Bush & Folger and the phenomenon of divorce disputes involving violence. It examines the criticism of the judicial process in handling such disputes, through the lens of the judicial justice this process creates. The paper asserts that there are substantive failures in judicial justice, such as the lack of ability to empower the women survivors of domestic

violence, which explain the immanent limitation of the judicial process from constituting the ideal solution for the survivors and also give rise to the critical narratives voiced against the judicial system in its handling of such disputes.

As an alternative, and through the presentation and mapping of the characteristics of alternative transformative justice that transformative mediation provides, the paper proposes transformative mediation as a preferable solution for such disputes, both on the personal, individual level and in the sphere of the general society and its values.

The central theme of the paper is that basic characteristics and perceptions of transformative mediation, including the focus on 'empowerment' and 'recognition', can be expected to make a significant contribution not only for the survivors of domestic violence themselves, but also for changing and advancing a different legal, societal and cultural discourse with respect to this painful phenomenon.

Transformative mediation has a message. If only we would listen.

Keywords: judicial justice, transformative mediation, judicial system, alternative justice, divorce disputes involving violence.

Presentation

Virtual via Microsoft Teams

627 A Quantitative Investigation into the Operation of the Irish Legal Aid Board Family Dispute Resolution Services

Gordon Rumley

University College Cork, Cork, Ireland

Stream or current topic

Civil justice systems and ADR

Abstract

For almost three decades, the Irish Family Law Courts have been described as 'a system in crisis'. While Ireland operates a no-fault based approach to relationship breakdown, the manner in which the governing legislation has been drafted results in proceedings that are largely adversarial. Reform measures with the aim of restructuring the system to one which encourages individual autonomy over adversarialism have been mooted in recent decades. In particular, much effort has been placed on establishing mediation as the predominant dispute resolution method in civil disputes. These attempts have not however had the desired impact on the uptake of mediation.

In this context, the current study aims to contribute to this field by virtue of exploring two methods of addressing relationship breakdown which are provided by the Irish Legal Aid Board (LAB), these being court-based litigation and mediation. To fulfil this objective, the study will undertake a case (Phase 1) and interview-based (Phase 2) assessment of the client journey from first consultation to the resolution of their dispute. While this study is ongoing, Phase 1 is now complete. As such, this paper presents the findings of a quantitative assessment exploring two

methods (court-based litigation and mediation) of addressing relationship breakdown which are provided by the LAB in order to achieve a separation or divorce. To that end, the focus of this paper will be on the preliminary insights obtained from a quantitative analysis of case management systems that pertain to clients of the LAB and Family Mediation Service (FMS).

Presentation

In person

201 Unlocking Resources for Reform of India's Legal Aid and Court Systems

Varsha Aithala

National Law School of India University, Bangalore, India

Stream or current topic

Civil justice systems and ADR

Abstract

The paper presents a novel interrogation of the Indian welfare state through a socio-legal study of access to civil legal aid and courts. I use primary data derived from a unique unmet legal needs survey that I conducted on a randomly selected sample population of one Indian state to derive insights into, what the World Justice Project report (2021) explains as 'how legal problems materialize, who they impact and how they can be resolved equitably and efficiently'. This covered litigants as well as individuals who otherwise do not seek legal recourse, their experiences with and expectations of the justice system (Pleasence, Balmer and Denvir, 2017), which has, until now, not been recorded as rigorously in the country.

The survey data establishes the gap between the need for legal aid and access to courts, and its provision in India. Applying basic statistical analysis on publicly available budgetary data for the administration of justice, I show that India's investment of public resources in courts and legal aid has yielded diminishing returns over time. There is an urgent need for viable alternatives for resourcing the needs of the Indian legal system. Drawing on the new public finance model, I argue that given the socioeconomic and political realities, the Indian State should evolve a funding model based on a mix of public and private sources for sustainable financing of the various strands of access to justice. This study therefore makes an original contribution to data, scholarship and public policy thinking on the subject.

Presentation

In person

Labour Law 1

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU301

Stream Labour law and society

607 The use of digital technologies at work: towards inclusive workplaces?

Alysia Blackham

University of Melbourne, Melbourne, Australia

Stream or current topic

Labour law and society

Abstract

Digital technologies have great potential to increase the inclusivity of workplaces. The growth in tools that enable meaningful remote work, and reduce the physical demands of work, can particularly support workers with health needs, caring responsibilities and who are older in age to participate in the workplace. However, the potential of digital technologies may be undermined by prevailing stereotypes and assumptions, which limit how employers use and envisage such technologies.

Drawing on a case study of age equality at work, and building on a multi-year mixed-methods empirical study of the implementation and enforcement of age discrimination law, this paper considers the potential and limits of digital technologies to advance workplace equality and inclusivity. In the context of age equality, it considers how age-based stereotypes - which cast older workers as technologically illiterate and unable to adapt to new technologies - may limit older workers' access to training and development opportunities, making new technologies a barrier to inclusivity, rather than enablers of inclusivity. This paper considers legal and regulatory interventions that could counter these trends, to better realise the radical potential of digital technologies to advance equality at work.

Presentation

In person

271 Testing the Employment Status of Online Pornography: Adult Content Creators as Workers

Rebecca Rose Nocella

University of Reading, Reading, United Kingdom

Stream or current topic

Labour law and society

Abstract

Pornography is a huge industry worth \$ 97 billion globally and in which adult content creators work in precarious conditions, associated with the fact that their work is both sex work proper and an instance of the gig

economy. Although currently they operate as if they are self-employed individuals running their own business through porn platforms, in this presentation, I argue that they should be classified as workers.

This paper assesses adult content creators' employment status under UK labour law. My investigation relies on a triangular methodological approach based on a doctrinal analysis of case law and legislation related to the determination of employment status and online ethnographic observations. An evaluation of the terms of use of a selected sample of porn platforms is triangulated through 8 semi-structured interviews. While adult content creators classify themselves as self-employed, my research highlights that they operate under the control of porn platforms. My aim is to suggest ways to empower adult content creators at work by securing them labour law rights connected to worker status.

My argument is built around the indicators of employment status developed by courts. The control, the economic reality, the integration, the multiple factor and the mutuality of obligation tests show that platforms have employer like power as they firmly integrate adult content creators into their business for which porn services are essential for running. Adult content creators therefore should be empowered through rights associated with worker status to avoid being exploited at the hands of porn platforms.

Presentation

In person

602 State and EU-induced precarity among posted workers. A sociolegal inquiry.

Marta Lasek-Markey

Trinity College Dublin, Dublin, Ireland

Stream or current topic

Labour law and society

Abstract

This paper examines EU posted workers' experience of precarity to which they are predisposed due to insufficient legal protection by the Posted Workers Directive 96/71/EC and its enforcement framework. Its findings are supported by empirical data obtained from 29 qualitative interviews with posted workers and knowledge experts. The paper seeks to evaluate the 2014-2018 reform of the Posted Workers Directive with a view to assessing the extent to which it has addressed the posted workers' precarity.

In EU law, there is no uniform definition of precarious work. Therefore, the paper begins by formulating a five-element definition of precarity, which is a version of the Rodgers and Rodgers definition (1989), as modified under the influence of Kalleberg's research (2018). This is followed by an evaluation of the evolving EU framework which seeks to assess the extent to which the 2014-2018 reform has addressed posted workers' precarity.

The definition of precarity employed in this paper comprises several objective elements, such as low employment law protection and social security coverage. This is, however, supplemented by a subjective element based on the workers' own perception of their posting. This subjective element may only be fully assessed through the lens of a sociolegal inquiry. Therefore, findings in this paper are supported by data stemming from 29 in-depth interviews. It is argued that effective enforcement of the EU framework, including active engagement of the national authorities, trade unions and employers, is a key factor to safeguard the protection of posted workers' rights.

Presentation

In person

Empire, Colonialism and Law: Colonialism in the Indian Sub-continent

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU302

Stream Empire, colonialism and law

23 Generative temporality in a colonial debt economy (1830-1898): Indigo 'blues' time and the origins of modern finance

Dania Thomas

University of Glasgow, Glasgow, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

Modern finance scholarship on temporality is dominated by conceptual Eurocentric and Anglo-American origin stories, abstracted from centuries of sustained peasant confrontations with the contingent violence of debt enforcement. Insights from Subaltern Studies, the Black Radical Tradition, and Abolitionist literature motivate this reassessment of these origin myths.

In 19th century Bengal, the case study here was a forced, extractive, plantation-debt economy dominated by English planters and zamindari landlords. The period 1830 -1860 was bookended by laws that incarcerated indigo peasant cultivators for mainly debt defaults. These 'slave laws' kept bodies attached to the soil, across generations and subject to the linear prefigured futures of debt-time when debts were paid. Violent enforcement guaranteed significant returns to capital by erasing the precarity between obligations incurred in the past and returns to investment in the future. However, across India, peasant resistance culminated in the Indigo Mutiny in 1859. This evanescent collective subjectivity transgressed debt time and negotiated contingency (avoidance of violence and often death) in a distinctive, generative temporality - indigo blues time. Incarceration failed and the 'malleability' in the valuation of commitments and obligations that followed, forced losses on investors. The Union Bank that held indigo debt claims went bankrupt in 1848. To restore investor confidence, the sovereign had to step in and back debt claims. Formal colonization followed in 1858. The carceral law was replaced by the Indian Contract Act, of 1872. This paper concludes by revealing that indigo blues time continues to reverberate as the uncertainty that defines modern finance.

Presentation

In person

371 Loyalty, Liberty, and the Law: Analysing the Juxtaposition of Nation and Citizen in the Indian Sedition Law

Ayesha Pattnaik

Centre for Socio-Legal Studies, University of Oxford, Oxford, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

My paper examines the Indian sedition law laid out in Section 124(A) of the Indian Penal Code (IPC) which criminalises expression of disaffection towards the government. I compare the colonial and contemporary implementation of the law, to understand why a law used to regulate dissent against the colonial empire was considered important for the postcolonial Indian state. My presentation will discuss how this colonial law has simultaneously been critical in building a binding national identity, while also enabling nationalism to be used as a political instrument that can subversively monitor and discipline citizens. Rather than taking a legal approach to examine whether the sedition law is inimical to democracy, this socio-legal analysis studies the media and political discourse around sedition cases to evoke an underlying pattern of the use of the law across time and political regimes. It reveals how the law has been used in contemporary India to weave a narrative of the nation-state and national interests, often pitted against human rights and individual liberties. My paper challenges assertions that the use of the sedition law is a perpetuation of colonial forms of governance, as the sedition law is not just used for stifling moments of dissent. It is critical in manufacturing narratives of nationalism that strengthen the power of post-colonial Indian state. This research is not only relevant given the continuous use of the law in contemporary India, but it also allows us to critically analyse the making of the post-colonial nation and its citizens/subjects.

Presentation

In person

581 Nuances of Colonial Judiciary in India: A Case of High Court at Hyderabad

Neredimalli Annavaram

Department of Sociology, University of Hyderabad, India, Hyderabad, India

Stream or current topic

Empire, colonialism and law

Abstract

The Indian subcontinent was a long-time segment of the British Empire: first as a trading partner, and then as a colony under the Crown's direct rule. Consequently, all aspects of governance in the subcontinent underwent a radical change by the time the British withdrew their rule. The proposed paper is intended to deal with one important aspect of that change, i.e., the inception and operationalisation of new judicial administration, with particular reference to the princely state of Hyderabad. The proposed paper has a threefold objective: to construct a general history of colonial Judiciary in India, drawing from the studies in history, law, anthropology, ethnographic and biographical narratives; to tell the story of the inception of High Court in the princely state of Hyderabad, which will be

based on my current research involving the archival and field interactions; and to examine the socio-legal changes and continuities in judicial administration.

Hypothetically, I wish to argue that, unlike the political rule and economic control, the judicial import has unique resilience to sustain continuity amidst political outcry for change, and to persist for change amidst popular calls for continuity. The paper would make an attempt to outline the areas of change and the aspects of continuity, with emphasis on the forces and principles that guide these underlying processes. My findings, and the analysis drawn from thereon, are gathered largely from my current research on Hyderabad High Court.

Presentation

In person

Empire Colonialism: Empire, Gender and the Ethic of Care

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU303

Stream Empire, colonialism and law

881 PhD Chapter: Postcolonial Resistance to U.K. Bureaucracy: Centring Migrant Women as they navigate 'NRPF'

Sophia Taha

Keele University, Stoke-on-Trent, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

This interdisciplinary project uses postcolonial feminist critiques and a particular case study of women who have 'No Recourse to Public Funds' (NRPF) in the U.K. to explore how the state interacts with migrant women. This project gathers rich data to centre migrant women's voices and explore how their identities are constructed by the state and how they resist and reclaim (Krishnadas, 2007) their multi-layered positions and identities. The project combines postcolonial legal methodology (Roy, 2008, p. 319) with empirical research in local partner agency Staffordshire North and Stoke-on-Trent Citizens Advice (SNSCA) to address the research aims. I am a volunteer and research assistant within SNSCA. The empirical part of this PhD gathers data using a combination of qualitative research methods including participant action research, narrative interviews with migrant women as well as semi-structured interviews with staff at SNSCA. 'NRPF' is part of processes policing migrant women's bodies, which I situate within a postcolonial critical framework to argue that the State 'others' these women, using bureaucratic systems, to keep them subjects of oppression in a form of ongoing modern-day colonialism. The research explores multi-layered power structures using critical analysis provided from postcolonial feminist approaches. Exploring everyday bureaucracy helps demonstrate how exclusion of subjects like migrants or 'non-citizens' works to contest an image of

a congruent state (Mandelbaum, 2016, p. 188). By labeling migrant women with immigration statuses that include NRPF, the U.K. creates discourses where these women are not worthy of basic state assistance.

Presentation

In person

693 Constitutional Theory in the Irish Free State: Prof. Mary Donovan-O'Sullivan

Donal Coffey

National University of Ireland, Maynooth, Maynooth, Ireland

Stream or current topic

Empire, colonialism and law

Abstract

This paper considers the development of constitutional theory within Irish universities after in the period surrounding Partition and the establishment of the new Irish Free State. The paper is particularly concerned with the case of one of the first female Professors in the National University of Ireland: Prof. Mary Donovan-O'Sullivan who lectured in University College Galway. The paper will consider her theory of the constitutional development of the Free State in relation to Partition, the relation with the Imperial metropole, female suffrage, and the possibility for a federal government on the island of Ireland

Presentation

In person

Epistemic Injustice: Temporality, Spatiality and Epistemic Injustice

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU305

Stream Epistemic injustices in law

203 The struggle to speak and be heard in court: Contemporary judicial approaches to the cases of workers in South Africa's winelands

Bhavna Ramji

Institute for Poverty, Land and Agrarian Studies, University of the Western Cape, Cape Town, South Africa. Cheadle Thompson & Haysom Inc, Johannesburg, South Africa

Stream or current topic

Epistemic injustices in law

Abstract

(Theme B) This paper explores the conflicting expectations (visions) of two sets of actors as they engaged in labour litigation under the extended labour dispensation in South Africa: A Labour Court judge and the rural worker litigants. The research is based on the author's own observations in court, the judgments and interviews with the workers. The paper presents a chronological account of court's findings, interweaving the worker's commentary years after the cases were decided, many of which made the particular judge unpopular in some political circles. I will then make three points: First, I will explain the non-linguistic elements of the labour litigation process (including those involving the workers' representatives) which render cases conducted in plain language incomprehensible to the workers. Second, there are insurmountable repressive capabilities in an ostensibly progressive labour relations framework when it is imposed a priori on a particular sector of the workforce. Third, I argue that the judicial approach to the worker litigants contained in these judgments reflects neither an attitude for or against the workers, but rather a commitment to a system of 'orderly dispute resolution', which can be weaponised by a collective (whether a worker or employer collective), but which can never produce the type of labour justice envisioned by Cape rural workers engaging in litigation. I conclude by exploring alternative approaches to achieving justice for the workers concerned.

Presentation

In person

377 Beyond Participation: Gauging Testimonial Injustice(s) in the Inter-American Court of Human Rights practice on Remedies for Indigenous Peoples

Bruno Pegorari

UNSW Law and Justice, Sydney, Australia

Stream or current topic

Epistemic injustices in law

Abstract

Over the past two decades, the Inter-American Court of Human Rights stood out among other human rights bodies for its innovative jurisprudence on Indigenous people's rights. The Court's jurisprudential singularity in those cases is due to two key features of its adjudicative style. First, a victim-centred approach to legal interpretation. Second, a needs-based approach to remedies-setting. Through these features, the Court claims to put victims at centre stage in its judicial practice. I read this claim as a normative promise for which the Court must be held accountable. Advancing the 'most protective' interpretation and accounting for Indigenous groups' true needs in remedies-design imply a serious engagement with and a deep understanding of Indigenous alterities, which can only be accomplished through genuine epistemic exchange. Setting interpretation aside, I seek to gauge whether the Court engages Indigenous epistemologies when seeking to fulfil its normative promise to deliver adequate remedies based on these groups' needs. I argue that assessing needs in remedies design requires not merely the inclusion/participation of but also (and most importantly) the proper attribution of credibility to indigenous actors in both the remedies stage of legal proceedings and the content of remedies themselves. To do so, I draw upon the testimonial dimension of Fricker's

(2007) Epistemic Injustice theory and insights from (legal) anthropology. The Court can only deliver ideal remedial measures (and therefore fulfil its conventional promises) if it treats Indigenous victims and witnesses as knowers and experts about their own lives.

Presentation

Virtual via Microsoft Teams

476 Spatio-legalities of silence: Queer legal geographies of voice and voicelessness in international LGBTQ rights law

Kay Lalor

Manchester Metropolitan University, Manchester, United Kingdom

Stream or current topic

Epistemic injustices in law

Abstract

Theme B

This paper maps dynamics through which queer individuals and groups are rendered visible but voiceless within polarised international binaries of LGBTQ rights. In conditions where states' geopolitical identities and political positioning are signalled by simplistic narratives of gay friendliness or homophobia, queer lives are simultaneously centralised and misunderstood. There is a significant epistemological component to this queer voicelessness: is not simply a matter of representation but instead a question of how polarisations of law and space render particular lives unknowable even as they are drawn into international debates on the scope of LGBTQ rights.

Drawing upon recent developments in feminist legal geographies, the paper develops the concept of a "queer legal geography" that seeks to challenge the assumptions that underpin understandings of the relationship between law and space. It argues that it is necessary to attend to the co-constitutive nature of law and space while also accounting for the effects of gendered, classed, racialised and sexual differences within law and exploring how these differences are normalised. The paper applies this approach to questions of the spatio-legalities of queer silencing across national borders, national identity and LGBTQ rights. In particular, it explores the technicalities of how diplomatic and legal language of international LGBTQ rights operate to unevenly constitute subjectivities within disparate but connected spatio-legal arenas. These subjectivities align with political polarisations, but misalign with queer embodied experience, maintaining techniques of exclusion and silencing by rendering communities visible but incomprehensible to dominant LGBTQ rights regimes.

Presentation

In person

914 Finding legal time, and reproducing law, otherwise

Ruth Fletcher

Queen Mary University of London, London, United Kingdom

Stream or current topic

Epistemic injustices in law

Abstract

This paper proposes 'finding legal time' as a new method for tracing, contesting and possibly changing the reproduction of legal knowledge. Drawing from research which recognizes the everyday timetabling of life's reproduction as a site of struggle (e.g. Elias and Rai, Enright, Grabham, Campf, Kotiswaran, Keenan, Ring) I am interested in what legal forms of time have to tell us about the social reproduction of legal worlds. What might we learn about reproducing law otherwise if we pay attention to the legal composition of everyday time limits? Against the backdrop of Ireland's recent legalisation of abortion, the paper begins by reading critiques of gestational time limits in light of scholarship on the mattering of legal time, and showing how time limits typically matter, in such critiques, as process, compromise, or barrier. But in order to understand about how we might reproduce time limits otherwise, and free reproductive labour, we need an epistemological method of observing how legal limits are substantively composed. I turn to research with 'found objects' at the interface of law, art and design (Akpang, The Otolith Group, Perry-Kessaris, Parfitt) to think through a method of doing so, and end up with questions about how to approach a piece of legal knowledge as an object that reproduces with 'found' kinds of time. What materials are used to count legal time? What norms of timeliness are generated by law? What felt temporalities support legal arrangements? 'Finding legal time' could contribute to reproducing other legal worlds.

Presentation

In person

Equality and Human Rights Law: Human Rights at the Global and European Levels

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU308

Stream Equality and human rights

129 Competing conceptions of human rights: From rhetoric to rights provision

Nicole Busby, Diana Camps

University of Glasgow, Glasgow, United Kingdom

Stream or current topic

Equality and human rights

Abstract

Current approaches to human rights across the UK could be said to be characterised by divergence, with the UK Government pursuing regressive reform of the Human Rights Act 1998 while the devolved administrations within Scotland and Wales are engaged in progressive plans to incorporate a range of international treaties into domestic law. Against this backdrop, this paper explores how different and sometimes competing conceptions of human rights intersect with legal provision. We narrow our focus to Scotland and its development of a new Human Rights Incorporation Bill, which will incorporate a range of social, economic and cultural rights into Scots law. The Convention on the Rights of the Child is being incorporated through a parallel process.

Combining expertise from law and critical sociolinguistics, we adopt an interdisciplinary approach to examine how human rights are interpreted by different stakeholders, e.g. policymakers, civil society, duty bearers and rights holders. We show how debates in Scotland provide a stark contrast to the discursive dynamics within Westminster by sharing insights from our analysis of parliamentary debates related to the Human Rights Act 1998 and the UK Government's proposed reforms. The data show which discourses of human rights are foregrounded in these debates and the types of knowledge (re)produced, contested and debunked. This paper illustrates how a better understanding of competing conceptions of human rights can help address expectations of various stakeholders about how law and policy can be best mobilised to deliver socially just outcomes.

Presentation

In person

713 The Windrush scandal: have lessons really been learnt?

Olayinka Lewis¹, Anna Steiner², Catherine Evans³

¹University of Essex, Colchester, United Kingdom. ²King's College, London, United Kingdom. ³London South Bank University, London, United Kingdom

Stream or current topic

Equality and human rights

Abstract

In 2018 the UK government finally accepted that it had wrongly detained, deported and denied legal rights to Commonwealth citizens from the Caribbean, Africa, and Southern Asia in what is now known as the 'Windrush scandal.' A reparatory government scheme, including compensation, was set up to right the wrongs committed. The reparatory scheme has been extensively criticised in repeated independent reviews and there is a serious lack of access to justice.

The Windrush Justice Clinic (WJC) was set up in response to the Windrush scandal. It is a collaborative partnership between three universities, Community Law Centres and Community organisations. The WJC strives to help victims of the Windrush scandal receive the compensation they deserve.

In 2022, the WJC carried out research into unmet need for legal advice for people making claims under the Windrush Compensation Scheme (WCS). The research found that the process is too complex for claimants to claim compensation without legal advice, there are few sources of free accessible advice, and it is likely that there is significant unmet need. The paper will explore WCS in the context of the hostile environment, the WJC research findings and examine the compensation scheme through the lens of transitional justice reparations.

Presentation

In person

853 Resisting Inequality: The Fight Against Deductions from Pensions

David Barrett, James Kolaczowski

University of Exeter, Exeter, United Kingdom

Stream or current topic

Equality and human rights

Abstract

This paper explores the inequality produced by state deduction and the tactics utilised by pensioners to counter this deduction. State deduction is a where a deduction is made from private pensions when a pensioner reaches state retirement age. The paper focuses on state deduction from Midland Bank pensions where the amount deducted depends on the number of years worked for Midland Bank (later HSBC) and has no relation to the salary of a pensioner while they were at work. Thus, while the deduction will be the same regardless of whether someone earned the minimum wage or a six figure salary, the impact of state deduction will vary significantly. The paper will present the results of a survey and interviews with Midland Bank pensioners that explores the unequal impacts of state deduction and the tactics that the Midland Clawback Campaign have utilised in an attempt to challenge state deduction.

Presentation

In person

891 Righting Wrongs: How the failure to protect migrant women within the UK's Domestic Abuse Act (2021) is inconsistent with the UK's existing human rights obligations

Severyna Magill

Sheffield Hallam University, Sheffield, United Kingdom

Stream or current topic

Equality and human rights

Abstract

No Recourse to Public Funds perpetuates the vulnerability, disadvantage, and inequality abused migrant women experience. Analysing how the principles of respect, protect and fulfil have been recognised by human rights courts/committees as integral to achieving equality and eliminating discrimination this paper will make the legal and moral claim that migrant women must be included within the UK's Domestic Abuse Act.

Migrant women are likely to be more vulnerable to abuse and face more barriers in seeking support from/reporting abuse. Disproportionate levels of poverty, language barriers, cultural constraints, and racism all negatively affect minoritised/migrant women. Twenty per cent of minoritised women have No Recourse to Public Funds (NRPF) which further compounds their vulnerability.

Access to both emergency shelter and social housing is dependent on access to either personal resources or public funds; if women have neither, and if their right to remain in the UK is dependent on their relationship with their perpetrator they face the triple threat of destitution, detention, and deportation when fleeing abuse, thus perpetuating their vulnerability and inequality.

In 2021 the Domestic Abuse Act came into force in the UK but the legislation fails to fully comply with the Istanbul Convention by not giving protection to migrant women. This paper will convincingly argue that this is both a failure to comply with the UK's existing treaty law commitments and the Human Rights Act and how the inclusion of migrant women will result in a more robust engagement with human rights.

Presentation

In person

Comedy Controversies 2

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU309

Stream Comedy controversies - humour and free speech

289 Laughing at Censorship

Laura Little

Temple University School of Law, Philadelphia, PA, USA

Stream or current topic

Comedy controversies - humour and free speech

Abstract

Laughing at Censorship

Laura E. Little, James G. Schmidt Professor of Law, Temple University School of Law

Comedians know from experience, and research supports the proposition that an audience will laugh when observing a censored statement (whether <bleeped> or otherwise obscured) –at least when the audience has been primed by the context or overt cues to interpret the statement as comedic. Among peoples who condemn censorship as the enemy of the right of free expression, one might ask: how can censorship be funny?

This presentation canvasses various forms of censorship humor in print, film, television, music, and internet entertainment. The talk will probe condemnation of censorship—observing that individuals, law, and society benefit from line drawing—even for free expression. Through the lens of interdisciplinary humor studies and free expression doctrine, the presentation explores the notion that censorship comedy might be a “tell” that exposes this truth.

Many censorship jokes simply ridicule the censor. Others are more nuanced, suggesting that censorship humor provides unique emotional rewards ranging from a spark emitted from the benign danger underlying a censored joke and the fun of imagining what naughty message was <bleeped>--to the comfort of mapping the line between the proper and improper. Audience laughter at censorship humor often appears to derive primarily from pleasure. Yet it might also include anxiety, fear, or anger. That complexity, however, does not mitigate the possibility that humans may appreciate the censorship's ability to separate “right” from “wrong.”

Presentation

In person

186 The Last Temptation of Censorship: Religion and Comedy in the Legal Battle Involving a Christmas Special Feature in Brazil

Joao Capelotti

Tomasetti Jr & Xavier Leonardo Sociedade de Advogados, Curitiba, Brazil

Stream or current topic

Comedy controversies - humour and free speech

Abstract

A couple of weeks before Christmas in 2019, Porta dos Fundos [Backdoor], one of Brazil's most prominent comedy groups, released on Netflix a special feature, as usual in the last few years. That film, however, brought up bigger controversies than the average, for suggesting Jesus was actually a homosexual who was considering the possibility of abandoning his sacred mission. A catholic association filed a lawsuit against the streaming service, seeking to have it removed from the platform. Although denied by the district court, the injunction was granted by the Court of Appeals for the State of Rio de Janeiro, but once again reversed by the Supreme Court. The paper analyzes the reasoning of both parties and the three court opinions, and draws some parallels between this concrete case and the censorship imposed by Chilean government to Martin Scorsese's film "The Last Temptation of Christ", which also provoked controversy in the late 1980's. It is discussed the relationship between religion and the law in two countries

- Brazil and Chile - in which the Catholic Church has played a pivotal role in shaping society's (and courts') perspectives on issues regarding morality and freedom of speech.

Presentation

Virtual via Microsoft Teams

Exploring Legal Borderlands: Exploring Borderlands of Socio-Legal Language and Interpretation

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU310

Stream Exploring legal borderlands

863 Are intercept interpreters neutral translation machines or powerful language service providers? Results from a study within the legal borderlands of the secret surveillance of communication

Franziska Hohl Zürcher

University of Neuchâtel, Neuchâtel, Switzerland

Stream or current topic

Exploring legal borderlands

Abstract

Secret communication surveillance is an important investigative measure in cases of organised crime such as drug and human trafficking. If the monitored communication is in a foreign language, intercept interpreters are closely involved in the police investigation. They translate the foreign-language conversations from mobile phones or bugged rooms into the official language of the proceedings and record them in form of written translations. These written translations are the basis for further decisions by the police and may be used as evidence in court.

The translation process inevitably involves selection and interpretation work. However, legal regulations require that the police closely guide the intercept interpreters in their work and have the lead in the selection and interpretation of information. Due to the lack of language skills of the police, the question arises as to how these formal requirements are implemented in practice. Our interdisciplinary study sheds light on the daily interaction between police and intercept interpreters and is based on 24 qualitative interviews with police officers and intercept interpreters as well as on an observational study. All data were collected in Switzerland. We show, on the one hand, that police sometimes grant intercept interpreters a great deal of discretionary power. On the other hand, our analyses indicate that oral communication is an important strategy to overcome the tension between legal rules and the need for informal practices. Furthermore, mutual trust determines the relation between police and intercept interpreters and consequently the role of intercept interpreters in this specific legal borderland.

Presentation

In person

355 How does media coverage influence the effective exercise of the legal right to protest? A mixed methods analysis of media coverage of U.K. Extinction Rebellion protests from 2018-2021.

Suzanne Dixon

UEA, Norwich, United Kingdom

Stream or current topic

Exploring legal borderlands

Abstract

Extinction Rebellion protests use civil disobedience to attract public attention to the issue of climate change. These protests simultaneously engage international human rights protection and infringe domestic criminal law. However, mainstream media coverage overwhelmingly frames them as disruptive or criminal rather than exercises of human rights. Despite ongoing public support for the climate change cause, these protests prompted expansion of criminal law control of protest in the Police, Crime, Sentencing and Courts Act 2022.

My PhD project is a large-scale (N=2573) study of MSM coverage of Extinction Rebellion protests (2018-2021), investigating how reporting might affect exercise of protest rights. Previous research has identified a media tendency to delegitimise protest. What is underexplored is the legal aspect. Central to this study is an investigation of how the borderland of legal protection/control of protest may be influenced by non-legal, normative control, through media discourse which acts as a liminality to the contraction of protective space.

Dominant media discourse has the following characteristics which may influence the exercise of protest rights. It largely excludes human rights framing and often wrongly miscasts the borders of human rights protection and domestic criminal law as aligned, thus affecting public understanding of rights. It regularly frames protesters as extremists and their protests unacceptable. It criticises police for failing to stop the protests – which is re-enforced by police discourse and actions such as the illegal London-wide ban on XR protest. It re-enforces state discourse calling for greater police/sentencing powers to control protest, thus facilitating their introduction.

Presentation

In person

226 Settlement Stories of Transnational Corporate Bribery: A Comparative Perspective

Melody Bozinova

University of Neuchâtel, Centre for Criminological Research, Neuchâtel, Switzerland

Stream or current topic

Exploring legal borderlands

Abstract

This article employs a narrative criminology and comparative approach to the understudied field of criminal law enforcement against transnational corporate bribery. Anti-bribery enforcement against multinational companies is increasingly carried out through non-trial resolutions called settlements. These settlements are becoming the main sites of knowledge production and judicial communication about transnational corporate bribery. In this article, I explore settlement-embedded narratives in two jurisdictions Switzerland and England and Wales with the objective to identify and discuss how transnational corporate bribery is storied to fit the needs of law enforcement. Relying on a narrative and comparative analysis of settlements, this article examines similarities and differences in portrayals of bribery in transnational business, the corporate perpetrators, and the responses of the prosecutorial authority. Through these lenses, the present contribution draws attention to the communicative practices of settlements and questions whether these legal mechanisms lead to converging understandings and representations of transnational corporate bribery and anti-bribery enforcement.

Presentation

In person

506 Let's start with the rat: animating the socio-legal studies agenda from the borders

Helen Carr¹, Ed Kirton-Darling²

¹University of Southampton, Southampton, United Kingdom. ²University of Bristol, Bristol, United Kingdom

Stream or current topic

Exploring legal borderlands

Abstract

In this paper, first presented at the Onati International Institute for the Sociology of Law, we suggest that the rat, a creature at the borderlands of social science research despite its centrality in urban life, has been ignored, despite its capacity to illuminate and re-animate urban oriented socio-legal scholarship. We agree with Jarzebowska 2021 that, instead of sensationalizing the presence of rats in the city, 'alternative stories would frame them as problematic yet ordinary examples of urban fauna, thriving as a consequence of our behaviour as a society'. The rat for us, because of its association with abandonment and neglect provides a powerful counterbalance to the overwhelming association of the urban with progress. We also note that the rat can undermine a city's status in an era of competitive city space.

Drawing on a number of sources and disciplines, including history, contemporary literature and online footage, we suggest that putting the rat at the centre not only reasserts public health as a key academic and policy concern but also helps highlight contemporary inequalities, the practices of neo-liberal governance, regulatory failure and enables the socio-legal to integrate productively urban ecology.

Presentation

In person

Legal professions 3: Progressive Lawyers

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU318

Stream Lawyers and legal professions

378 Revisiting the concept of the radical lawyer

Linda Mulcahy, Marie Burton

Centre for Socio-Legal Studies, Oxford, United Kingdom

Stream or current topic

Lawyers and legal professions

Abstract

Proposed panel on Progressive Lawyers (Mulcahy, Burton and Kinghan)

Paper Three: Revisiting the concept of the radical lawyer

Linda Mulcahy and Marie Burton

Despite a substantial literature on the sociology of the professions, relatively little work has been undertaken in a UK context on lawyers who work outside of private practice. More particularly discussion about the extent to which 'radical' lawyers can be distinguished from other types of 'progressive' lawyers such as cause lawyers. 'resistance' lawyers, or those undertaking pro bono work have been largely absent. Drawing on a four year, AHRC funded study of the law centres movement, it will consider whether 'radical lawyering' is a meaningful concept. More particularly, it will draw on an analysis of archives, the annual reports of law centres and interviews with law centre staff to identify the factors which differentiate lawyers who work outside of the private practice commercial model. These include the types of people, opponents, cases and causes they work with; the structure and organization of their practice; the strategies adopted to promote change; their relationship with client and community; and proximity to the state and the established profession. While recognizing that the concept of radical lawyering is frequently contingent on time and place, this paper seeks to add nuance to existing debate about these issues.

Presentation

In person

381 Women in Law Centres: the Early Years

Marie Burton, Linda Mulcahy

Centre for Socio-Legal Studies, Oxford University, Oxford, United Kingdom

Stream or current topic

Lawyers and legal professions

Abstract

Emerging in deprived communities during the 1970s, Law Centres radically changed the face of the legal profession and legal practice. This paper will focus on the role that women played in shaping the movement: their influence over the type of work of Law Centres did and the nature of Law Centres' legal and community practice. Currently, the literature on the history of Law Centres focuses on a small group of significant men (see for example, Zander, 1978; Smith, 1997; Subhedar, 2018; Bowcott, 2020). This paper will add to the existing literature by telling the story from a different perspective. Drawing on life story interviews and Law Centre annual reports, this paper will explore the contribution made by the women involved in the early years of the Law Centres movement. We will consider how non-hierarchical collective structures affected women. Women without legal qualifications often found a route to greater personal and professional development, that would not otherwise have been available. At the same time, the disruption to traditional gendered power dynamics may have been less extensive than claimed. In addition, the paper will examine the areas given priority by early Law Centres and their initial failure to recognise the issues facing women as societal problems. It will discuss the reasons behind this lack of recognition and how this changed as the 1970s progressed. It will explain how feminists working within Law Centres and across external feminist networks tackled systemic problems experienced by women such as domestic violence and rape.

Presentation

Virtual via Microsoft Teams

413 How legal aid regimes influence the development of the legal profession: a comparison of immigration practice in Scotland and England & Wales

Jo Wilding

University of Sussex, Brighton, United Kingdom

Stream or current topic

Lawyers and legal professions

Abstract

Scotland has a separate legal system from England and Wales (E&W), including a distinct legal aid structure. Yet immigration and asylum law are reserved to the Westminster government, meaning that both the law and the Tribunal appeal procedures apply across the whole UK. The immigration and asylum field therefore offers a rare (perhaps unique) opportunity to directly compare the operation and effects of two different legal aid systems in relation to precisely the same legal rules and procedures, and how they affect the legal profession.

The Scottish system allows any practising solicitor to register for immigration legal work, while those in E&W must obtain additional accreditations and then bid for a category-specific contract in tendering rounds every 3-5 years. Despite these significant entry barriers in E&W, fewer concerns about quality were expressed in relation to legal aid solicitors in Scotland. This appears partly attributable to the freer market entry, which facilitates the emergence of new specialist firms out of existing ones, as experienced lawyers set up their own businesses (rather than becoming equity partners in their old firms) and train new solicitors in a similar way of working. It is also driven by a fee regime which, despite shortcomings, incentivises face-to-face time with clients, compared with that in E&W which discourages direct interaction with clients.

In this presentation, I use empirical evidence from my comparative studies to reflect on the ways in which a legal aid regime influences the development and direction of the legal profession.

Presentation

In person

422 Panel on Progressive Lawyers (Mulcahy, Burton and Kinghan) Paper Two: Progressive lawyers as a movement for change

Jacqueline Kinghan

University of Glasgow, Glasgow, United Kingdom

Stream or current topic

Lawyers and legal professions

Abstract

This paper will present a theoretical framework for understanding lawyers as a progressive social movement in the UK. Drawing upon ethnographic fieldwork, it identifies lawyers working to achieve change across five different practice sites (Barrister-Campaigners, Legal Aid Lawyers, Law Centre Lawyers, Charity / NGO Lawyers and Law School Clinic Lawyers) and decades of time (1968-2018). It will present close narrative analysis of the stories that lawyers tell to interrogate how they collectively construct and negotiate their identity as progressive lawyers and how they describe the tools they use to achieve social change. The paper argues that collective identity matters not only to the casework strategies that lawyers pursue; but to how they perceive of ethical tensions in their work. Relying upon Mario Diani's conception of a networked social movement, it finds that there is a long history of lawyers in the UK reaching widely across their networks to collaboratively resolve access to justice issues. These network ties have been strengthened in recent years as a result of collective action in response to changes brought about by LASPO 2012 and wider systemic pressures in the justice system. In view of emergent movement lawyering trends in the UK, the paper aims to present a more in depth understanding of how progressive lawyers perceive their own values, their professional lives, their relationship to one another and with the state itself in the current landscape.

Presentation

In person

Intellectual Property 4

15:45 - 17:15 Wednesday, 5th April, 2023

Location MU319

Stream Intellectual property

Smita Kheria

591 The Quest for Fairness in the Music Streaming Era: An Analysis of Stakeholder Perspectives

Desmond Agyekumhene

University of Edinburgh, Edinburgh, United Kingdom

Stream or current topic

Intellectual property

Abstract

The music streaming era has brought new challenges for the music industry, particularly in terms of fairness for various stakeholders. The Digital, Culture, Media & Sport Select committee recently conducted an inquiry into the economics of music streaming, examining the economic impact on artists, labels, and the sustainability of the industry. In July 2021, the committee's report called for a 'complete reset' of music streaming to fairly reward performers and creators and made a number of recommendations for reform, but there has been little progress since. One of the contentious issues in the context of the inquiry is 'what is fair' in relation to the benefits or advantages that accrue from copyright for different stakeholders in the industry. This paper focuses on how music industry stakeholders understand and interpret 'fairness'. It analyses the inquiry's evidence along with an original qualitative dataset comprising semi-structured interviews to explore how artists, labels, and streaming services perceive fairness in the music streaming era. The paper begins by examining how artists view fairness in terms of the compensation received for their work through streaming services. It then looks at how labels view fairness in terms of their ability to monetize their catalogues through streaming. It finally explores how streaming services view fairness in terms of their ability to remain competitive while providing a fair return on investment for investors. The goal is to understand stakeholders' perceptions of fairness and evaluate the industry's ability to foster innovation and growth while ensuring fair treatment for all parties.

Presentation

Virtual via Microsoft Teams

92 Music copyright law in the streaming era: a case study of the #fixstreaming and #brokenrecord social media campaigns in relation to

the 2020 Digital, Culture, Media & Sport Select Committee inquiry and copyright law reform

Ann Luk

University of Leicester, Leicester, United Kingdom

Stream or current topic

Intellectual property

Abstract

Streaming has contributed significantly to the music industry's recovery from the digital piracy crisis. However, the rise of digital service providers, such as Spotify and YouTube, causes concern regarding the devaluation of music and economic sustainability for artists. These debates became prevalent in the UK during the coronavirus pandemic due to the #fixstreaming and #brokenrecord campaigns. This led to a Select Committee on the Economics of Music Streaming, and the proposal of a (failed) Bill on Equitable Remuneration. This project uses content analysis methods into the twitter campaigns, public newspapers and the DCMS committee inquiry to investigate the role of and relationship between digital activism and select committees on copyright law reform, against the backdrop of relevant EU law changes.

Preliminary findings reveal that the campaigns had significant influence on the DCMS Committee, referenced several times in their report. Surprisingly little reference is made to changes in EU law and policy by either the newspaper coverage, the DCMS Committee, or the twitter campaigns. Music organisations continue to play a significant role in calls for change, as does reliance on specific legal solutions, such as mandating equitable remuneration or user centric systems. Main issues going forward from an IP perspective, highlighted by the music streaming campaigns, include: What is the relationship between intellectual property, competition, and contract law (particularly in terms of how ownership rights for creators can be fairly protected)? To what extent can/should intellectual property law respond to the challenging relationship between creativity and market value?

Presentation

Virtual via Microsoft Teams

854 AN ANALYSIS OF THE APPROACHES TO, AND INTERNATIONAL SOLUTIONS FOR ORPHAN WORKS AND THEIR APPLICABILITY TO UK CULTURAL HERITAGE INSTITUTIONS

Naomi Korn

University of Edinburgh, Edinburgh, United Kingdom

Stream or current topic

Intellectual property

Abstract

Orphan works - works that are in copyright but where the rights holders are unknown or cannot be traced - are a global, unsolved problem representing billions of items. Orphan works are particularly problematic for cultural heritage

organisations (CHIs), the custodians of much orphan works material and want to make them available online. Challenges for CHIs can include the balancing of legal compliance versus organisational objectives, often resulting in laborious and time resource efforts in trying to locate rights holders.

Current orphan works legislative and licensing solutions can be divided into those where the rights are cleared with a third party before use; 'ex-ante', such as orphan works licensing schemes, Extended Collective Licensing (ECL) and Out of Commerce solutions, and those where any ensuing risks are managed by the user after use; 'ex-post' which include Statutory Exceptions and Fair Use.

Following the UK's departure from the EU, UK CHIs are no longer able to benefit from the EU Orphan Works Exception which provided a limited but helpful solution for the online publication of certain orphan works. Whilst the UK's Orphan Works Licensing Scheme (OWLS) still remains in place, it has widely been criticised.

Using a cross disciplinary approach by drawing on examples from the digital humanities, this paper will describe and analyse the OWLS as a possible solution for orphan works by UK CHIs. It will also discuss the range of international solutions for orphan works which are available and critically analyse their viability to UK CHIs.

Presentation

In person

762 Exclusivity by courtesy: comparing modern and historical practices in the absence of copyright

Nika Abkowicz-Bieńko

University of Glasgow, Glasgow, United Kingdom

Stream or current topic

Intellectual property

Abstract

This paper compares two types of an exclusive 'right' of publication operating in the absence of copyright enforcement. The historical practice of 'courtesy copyright' within 18th century Irish publishing and 19th century American publishing is compared with the 'translate until licensed' practice in modern online translation communities.

Courtesy copyright was the principle of non-competition between publishers resulting in an 'official' publication within the new market, with the possibility of remuneration for the original author or publisher. Translate until licensed is a principle under which unauthorised translations are removed from circulation upon an authorised translation being licensed. Both practices involve an unauthorised publication, an element of non-competition, a certain level of respect paid to the interests of the original author or publisher, and community enforcement of norms. The historical practice arose in the absence of copyright protection, while the modern practice operates in the context of unenforced copyright infringement.

This paper argues a similarity between these forms of non-copyright protections offered by publishing communities and posits an inadequacy in the protections both envisaged and provided by the copyright system in this area.

This forms the first study directly comparing courtesy copyright with the translate until licensed practice. Examination of the practice of online unauthorised translation is mostly situated outside the legal field, with only a cursory overview of the copyright implications. Existing literature addresses the two practices entirely independently; there is also a lack of literature comparing the practices of courtesy copyright in the Irish and American publishing spheres.

Presentation

In person

Plenary: Reflections on 25 years of devolution

17:30 - 19:00 Wednesday, 5th April, 2023

Location MU011

Gráinne McKeever

The SLSA conference could not have a more appropriate host city than Derry-Londonderry in the year that marks the 25th anniversary of the Good Friday Agreement and the passage of the legislation establishing devolved Assemblies and Parliaments in Scotland, Wales and Northern Ireland. Our panel, representing different disciplines, parts of the UK and areas of research expertise, will share their thoughts on the significance of and future for legislative devolution, kicking off what we are sure will be a stimulating conversation.

Panel: Professor Brice Dickson, Dr Anwen Elias, Professor Michael Keating, Professor Nicola McEwen

Plenary overflow

17:30 - 19:00 Wednesday, 5th April, 2023

Location MU114

The plenary discussion, 'Reflections on 25 years of devolution', will take place in MU011. This is a lecture theatre with a capacity of 360. In the event that this capacity is exceeded, additional delegates will be able to watch the live stream of the plenary in MU125.

Family Law and Policy 7

09:30 - 11:00 Thursday, 6th April, 2023

Location MD007

Stream Family law and policy

183 Private Law Responses to the Common Law Marriage Myth

Sam Bannister

University of Nottingham, Nottingham, United Kingdom

Stream or current topic

Family law and policy

Abstract

The 'common law marriage myth' is a well-established phenomenon. About half of the British public believe that simply cohabiting together as a couple entitles them to rights equal to married couples. Belief in the myth may lead to significant harm if it means individuals do not take steps to protect themselves or are, due to their erroneous beliefs, more likely to make decisions within the relationship which damages their own economic prospects. There may be a particular risk where the more economically powerful partner has kept their knowledge of the true position secret, allowing their less economically powerful partner to detrimentally rely on their mistaken belief.

This paper questions whether there might be opportunities for judicial development of the law applying to cohabiting couples. Although there has been significant research into the nature of the common law marriage myth, there has been little work done on how the myth could impact litigation, particularly when claiming a remedy at the end of a cohabiting relationship. This paper therefore asks whether private law doctrines may consider belief in the myth a relevant part of a claim at the end of a cohabiting relationship, on the basis this erroneous belief has induced the claimant to change their behaviour. This paper will focus particularly on two claims: first, under proprietary estoppel and second, under unjust enrichment, with the aim of considering how litigation (and negotiations prior to litigation) could utilise the myth rather than treating it as merely part of the background facts.

Presentation

In person

553 Mothering and Military Fathering after Divorce: Structural Barriers to Parenting Practices

Donna Crowe-Urbaniak

University of Edinburgh Law School, Edinburgh, United Kingdom

Stream or current topic

Family law and policy

Abstract

There is considerable research evidencing the positive effects of non-resident father involvement after divorce,[1] with such involvement shown to be mediated by a number of factors.[2] However, it is the context in which the divorce takes place which makes available post-divorce choices regarding child arrangements, child maintenance, and the economic opportunities available to the resident and non-resident parent.[3]

Whilst for some fathers, divorce can present an opportunity to become more involved in their children's lives,[4] the extent to which military fathers are able to adopt such practices is mediated by military demands. The military's "greedy" institutional culture requires significant commitment, limiting serving members' participation in other roles, e.g. fatherhood.[5]

Whilst research has examined the impact of military service on father involvement during marriage,[6] there has been no research examining military fathering post-divorce. Understanding the contextual factors which encourage or deter father involvement after separation has implications for substantive law and practice, specifically, in designing policies appropriate for the realities of post-divorce family life.

Drawing on the findings of empirical research with divorced civilian women previously married to serving (male) members of the British Army, this paper outlines the particular ideological and institutional processes which operate in the military context and which function to constrain the 'performance' of mothering and (military) fathering following separation to the detriment of father involvement, and which - if we accept the positive effects of such involvement - has the potential for worse outcomes for military ex-wives and their children.

Presentation

In person

689 Uncovering private family law: what can the administrative data tell us about children's participation?

Linda Cusworth¹, Claire Hargreaves¹, Bachar Alrouh¹, Laura Cowley², Karen Broadhurst¹

¹Lancaster University, Lancaster, United Kingdom. ²Swansea University, Swansea, United Kingdom

Stream or current topic

Family law and policy

Abstract

National and international legislation sets the context for a family justice system where child engagement and participation are the default, both to inform decision-making and uphold children's rights. While international research highlights the importance of children's involvement, there is limited data and research on the ways in which children participate in private law proceedings in England.

This paper, based on research by the Family Justice Data Partnership – a collaboration between Lancaster and Swansea Universities and the SAIL Databank – considers what the administrative data collected by the Children and Family Court Advisory Service (Cafcass) in England tells us about children's participation in private law proceedings. It examines the proportion of cases started in 2019/20 where the court requested a section 7 report on matters relating to the welfare of the child (either from Cafcass or the local authority), a section 37 report to investigate whether care proceedings should be issued, and/or a rule 16.4 appointment of a children's guardian, within 12 months of the case start date.

Almost half (48%) of cases had one or more of these indicators that depending on their age and understanding, children will have been directly consulted about their wishes and feelings by a family court advisor, local authority social worker, or a guardian. We will reflect on the findings, highlighting the limitations of the data, recent

improvements in the collection of data by Cafcass around children's participation, and the implications for children, their families and the family justice system.

Presentation

In person

Managing and Protecting People on the Move 3

09:30 - 11:00 Thursday, 6th April, 2023

Location MD012

Stream Managing and protecting people on the move

Ben Hudson

685 A Hub that can never be a Home: 'Crimmigration' in Hong Kong

Surabhi Chopra

Chinese University of Hong Kong, Hong Kong, Hong Kong

Stream or current topic

Managing and protecting people on the move

Abstract

This paper examines the concept of "crimmigration" (Stumpf 2006) - the intertwining of criminal and immigration regulation and penalties - in relation to Hong Kong.

While a part of the PRC, Hong Kong has considerable regional autonomy over designing and implementing immigration law and policy. It also has a relatively liberal visa regime, incentivised by its status as an international financial centre. However, even as Hong Kong's immigration regime enables elite migrants - 'expatriates' - to work and settle in the region, it creates precarious conditions for low-income migrants.

The paper examines law, policy, and practice on human trafficking, asylum, and immigration detention, and traces how current governance frameworks tend to reject claims of harm by migrants and increase the likelihood of detention for certain categories of migrants, while making immigration detention more prison-like. The paper then reflects on how scales of residency materialize within a regime ostensibly designed to foster rapid, easy movement of non-citizens.

Presentation

In person

681 Communitising the state: refugee resettlement in an inner-London borough

Bo Bottomley

UEA, Norwich, United Kingdom

Stream or current topic

Managing and protecting people on the move

Abstract

Since 2017, the UK government has promoted the 'community sponsorship' model of refugee resettlement, inviting citizens and charities to form groups that welcome and settle refugees into their local area, via material and social support. Through sponsorship, the government appears to recruit communities into performing resettlement as an alternative to the asylum pathways it seeks to suppress. This marks a novel transformation in how refugee law operates, becoming an intrinsically social and localised process.

This paper presents findings from my ongoing PhD fieldwork, comprising interviews with community sponsorship groups, NGOs, resettled refugees, and local government actors within an inner-London borough. It considers three dimensions of community sponsorship. First, what does it mean for communities to pursue resettlement in a legal and political climate that is hostile to refugees? Second, what does 'settlement' entail for refugee families under austerity, in an urban environment shaped by gentrification, government cuts, and growing wealth inequality? And third, how are these factors navigated by community groups doing resettlement work?

Addressing these questions, I analyse the ways in which communities integrate with, and against, the governmental apparatus when undertaking resettlement. I show that a humanitarian model of sponsored resettlement, predicated on communities "seeing the good that they do", often occludes the reality of refugees' lives from consideration, replicating the state's racialisation and problematisation of refugees. But I propose that it is *through* their involvement in resettlement that communities seek to critique top-down governance of refugees, and counter it with localised logics of solidarity and care

Presentation

In person

789 Discovering the Canadian legal system : asylum seekers access to justice in Montreal.

Karine Bates

University of Montreal, Department of Anthropology, Montreal, Canada

Stream or current topic

Managing and protecting people on the move

Abstract

How do asylum seekers perceive the Canadian legal system at their arrival in the country and how does it influence their relationship with their lawyers and other judicial representatives?

Researches have shown that one of the recurrent factor limiting access to justice is the legal jargon, often little known by claimants (O'Barr 2019; Kälin 2017; Mertz 2017). Therefore, lawyers have to become a 'translator' of the legal language as well as the tutor responsible to transform life stories in 'coherent' rational legal narrative (Bates 2006). In the context of asylum seekers, if lawyers can build a case meeting the narrative requirements of the Canadian legal system, access to justice for their claimants drastically increase, especially because it will be easier to establish the credibility of their claimants (Griffiths 2012; Smith-Khan 2019).

Ethnographic fieldwork in legal aid clinic for refugees and asylum seekers in Montreal demonstrates that lawyers find that this legal process is underscored by the previous experiences of their claimants with legal order outside Canada. Their trajectories have forged their own understandings of the concept of 'rule of law'. Hence, this paper will explore various ways in which asylum seekers perceive the Canadian legal system in order to better understand their narrative of justice and how it impacts their interactions with lawyers and the members of the Immigration and Refugee Board of Canada while they attempt to demonstrate that they are credible witness.

Presentation

Virtual via Microsoft Teams

724 Research methods and refugees: the need for reflexive feminist ethics.

Amanda Gray Meral

Queens University Belfast, Belfast, United Kingdom

Stream or current topic

Managing and protecting people on the move

Abstract

Research with refugees presents unique ethical and methodological challenges 'because of unequal power relations, legal precarity, poverty, violence, politicized research contexts and the policy relevance of the research in question' (Müller-Funk, L., 2020). Yet inadequate attention is given to these considerations leading to a 'paucity of good social science, rooted in a lack of rigorous conceptualisation and research design, weak methods and a general failure to address the ethical problems of researching vulnerable communities' (Jacobsen, K. and Landau, L., 2003). It also reflects under investment in methodological debate within socio-legal studies meaning, unlike other social science disciplines, 'in-depth reflections on the what, why, and how of our research in the field of law and society remain relatively rare' (Mulcahy, L., and Cahill-O'Callaghan 2022).

This paper considers how scholars can find legal and ethical ways to understand better how refugees experience law and how regulations impact their life experience. Listening and addressing our own positionality through a reflexive feminist approach, I will argue, is vital to understanding the nuances of refugees' own experiences of law and the

injustices they face, including human rights violations (Deutsch, N., 2004; Lokot, M., 2022). Such an approach begins with the ethical review process, engaging the researcher to consider the impacts of research practices on refugee participants, society, and social justice outcomes (Harding, R., 2021). It seeks to 'bring elided voices into the fold' (Whittingdale, E., 2021) allowing for a refugee-centred approach (Müller-Funk, L., 2020).

Presentation

In person

Art, Culture and Heritage: Cultural Rights

09:30 - 11:00 Thursday, 6th April, 2023

Location MD021

Stream Art, culture and heritage

Sophie Vigneron

559 The Festive Faithful: Cultural Rights of Pakistan's Religious Minorities

Sahar Ahmed

Sutherland School of Law, University College Dublin, Dublin, Ireland

Stream or current topic

Art, culture and heritage

Abstract

This paper focuses on festivals of religious minorities in Pakistan, and how the Pakistani state's curtailment of congregation in order to celebrate these festivals directly infringes their right to enjoy their culture. The paper argues that if 'culture' is defined as a set of shared meanings, norms, and practices that form a comprehensive world view which unites a group and contributes to their shared identity, and we accept that shared religion and belief is an integral element of 'culture', then by limiting these groups' celebrations, the Pakistani state is not only curbing their right to freedom of religion and expression, but effectively depriving them of their culture.

The paper considers three festivals celebrated by Ahmadis, Hindus, and Sikhs, and argues that congregating has a special significance for the continued cultural expression of marginalised groups. Ahmadis have been explicitly forbidden from celebrating Jalsa Salana since 1983; The celebration of Holi receives no state protection for Hindus to celebrate in public despite its popularisation (and appropriation) by young non-Hindu Pakistanis; we compare these to the Pakistani state's recent, active role in facilitating Baisakhi due to its geo-political significance in Pakistan-India relations.

Through these examples, this paper argues that in order to truly understand the impact that the freedom (or lack thereof) to celebrate communal religious festivals has on minority religious communities in Pakistan, it is imperative to

examine these from a cultural rights paradigm instead of a religious freedom one, which inherently favours individual rights over the rights of groups.

Presentation

In person

774 Heritage destruction, development projects, and cultural rights

Amy Strecker

UCD Sutherland School of Law, Dublin, Ireland

Stream or current topic

Art, culture and heritage

Abstract

The destruction of cultural heritage has been a recurring focus of attention for scholars and heritage practitioners in times of conflict and transition. This paper deals instead with the destruction of cultural heritage in peacetime, a destruction that often goes under the radar, involving heritage that is not in the spotlight and which may fall through the cracks of the existing legal framework, particularly in so-called sacrifice zones. This gap has partially been addressed through advocating human rights-based approaches to heritage, since human rights offer one of the only ways in which a sovereign decision can be challenged in an international court. However, human rights approaches throw up substantive and procedural obstacles due to, among other things, the individual conceptualisation of rights versus the collective nature of heritage and landscape; the lack of identifiable victims or palpable injury; and the diverging ways in which culture is interpreted between indigenous and non-indigenous communities. This chapter explores the difficulties with, and avenues open to, accessing justice for heritage destruction in peacetime. With reference to specific cases in Ireland and internationally, it discusses the procedural rights of participation in the planning process, cultural heritage impact assessment, and issues of standing for applicants challenging land-use decisions based on cultural heritage concerns. In examining cases of heritage destruction that may not be intentional, but rather the side effect of large-scale infrastructural development or resource extraction, I also engage with the difficult questions of intentionality, legitimacy, and the inseparable links between people and their cultural environment.

Presentation

In person

567 Desettling Fixation

Emily Behzadi

California Western School of Law, San Diego, USA

Stream or current topic

Art, culture and heritage

Abstract

Due to its ephemeral nature, intangible cultural heritage has faced an enduring problem – misappropriation. Intangible heritage of indigenous groups has particularly been vulnerable to illicit and uncompensated commodification. Intangible heritage is often of great social, psychological, and political importance for indigenous communities. The current national and international legal regimes have failed to protect indigenous communities from the misappropriation of their intangible heritage. This Article will delve into how Euro-centric copyright systems have failed, and often encouraged, the unauthorized uses of indigenous intangible heritage in derivative subject matter. This Article explores how settler colonialism in copyright law has entrenched an unequal hierarchy among communities seeking copyright protection. Through the process of desettling, copyright law may serve as a remedial measure for improper appropriation of intangible heritage. Through a comparative analysis of the fixation requirement in other countries, this Article proposes the termination of the “fixation” requirement in American copyright doctrine. Through the elimination of the fixation requirement, communities may more effectively be able to protect intangible cultural heritage from commodification and misappropriation.

Presentation

Virtual via Microsoft Teams

472 Unveiling UNESCO's expansionist policy: From Baghdad to the Blue Helmets for Culture

Raghavi Viswanath, Jessica Wiseman

European University Institute, Florence, Italy

Stream or current topic

Art, culture and heritage

Abstract

In the last two decades, UNESCO has come under fire for failing to prevent high profile episodes of heritage destruction. From a legal perspective, these critiques are unfair, given that UNESCO was never intended to be an interventionist body. Over the last twenty years, however, UNESCO has been actively and discreetly been engaging in a drastic reshaping of its mandate. This extensive reformulation has its origins in the early 2000s, when the looting of the Baghdad Museum and the destruction of the Bamiyan Buddhas presented opportunities for UNESCO to steer heritage responses into the statist realm of collective security and consolidate its own interventionist powers.

The tangible fruits of this concerted effort are beginning to transform heritage law landscape in a fundamental way, not least by conferring UNESCO with the power to unilaterally authorize military interventions abroad, a power previously reserved for the UN Security Council. Strikingly, these developments have received very little scholarly attention.

In this paper, we query these silences by highlighting what particular member-States and heritage experts may gain from UNESCO's rise up the ranks in the collective security realm. Using discourse analysis, we historicize UNESCO's expansionist campaign and unveil how it departs from UNESCO's own goals to promote diverse cultural heritages. We show that - far from a neutral endeavor - this project has been driven by a select group of heritage experts (military and academic) sponsored by key member-States, eager to solidify their diplomatic capital via the proxy of heritage.

Presentation

In person

IT Law: Regulation and justice in the use of digital technology

09:30 - 11:00 Thursday, 6th April, 2023

Location MD026

Stream IT law and cyberspace

12 Incomplete copyright – A way to tackle selective enforcement and non-contextual algorithmic takedowns? A case study through the lens of Internet Memes.

Brian Leung

Queen Mary University of London, London, United Kingdom

Stream or current topic

IT law and cyberspace

Abstract

We live in an information and technology age with new forms of social and legal space. Particularly, society communicate using internet memes. In turn, internet memes are forging new and exciting subcultures. It is in this backdrop that politicians started to speak to their constituents using internet memes, in hope to strike a chord with their voters. A prominent example is former US President Donald Trump – he regularly shares internet memes to converse with the world.

However, this use of internet memes highlights an issue: Rights-holders can selectively enforce their right to silence discussions when a particular viral meme has evolved to carry messages that contradicts to their socio-political belief. The implication of taken-down memes is far reaching, especially when memes are one of the most prevalent ways for society to communicate. This concern is amplified when democratically elected leaders are stopped from using memes to express political views on social media. This defies public interest and threatens our fundamental right to freedom of expression.

In response, incomplete copyright may respond to such challenges holistically and reflect the core function of legislations. Before internet memes, there were politically sensitive or harmful defamatory speeches, and society deals with them specifically. Just as how media laws govern the way our media communicates with the public,

instead of misusing copyright, a more principled way to suppress these 'wrong' memes is to resort to refined laws of defamation, or laws of public order. Incomplete application of copyright may ensure copyright laws are not misused.

Presentation

In person

284 Law and Data Justice: A critical approach towards the regulation of biometric technologies

Birgit Schippers

University of Strathclyde, Glasgow, United Kingdom

Stream or current topic

IT law and cyberspace

Abstract

This paper examines the problematic of biometric technologies, specifically facial recognition technology (FRT), through the conceptual framework of data justice. What propels this focus is a concern over FRT's impact on justice, fundamental rights and rule of law principles, and an attending urgency to develop regulatory frameworks that advance justice projects.

Data justice research comprises conceptual and empirical analyses, which offer critical methodological reference points for the study of datafied societies and scholarly alignment with political activism. What conjoins the diverse approaches labouring under the term 'data justice' is their attention to the origins and global contexts of contemporary data regimes, and their critique of unequal power relations produced by datafication processes. Building on this scholarship, the paper asks: what can data justice contribute to an understanding of FRT and the injustices it generates? How can data justice engender transformations in the legal regulation of FRT? What is law's contribution to data justice projects.

The paper contends that data justice offers rich conceptual and methodological tools to elucidate the injustices generated by FRT, expanding the analytical frame beyond the purview of law. Such analytical gain should connect more closely with debates on the regulation of FRT: there is a real need to interrogate how the critical impetus of data justice approaches can engender transformations in law and the legal regulation of FRT, and examine law's contribution to the data justice project. Developing such cross-fertilisation of law and data justice is the aim of this paper.

Presentation

In person

876 Cybercrime Policy Holding Landlords Criminally responsible for the acts of Yahoo tenants in Nigeria: Cyber investigation and eradication taken too far

Felix Eboibi¹, Ebi Robert²

¹Faculty of Law, Niger Delta University, Yenagoa, Nigeria. ²Faculty of Law, Niger Delta University LL.M Candidate,, Yenagoa, Nigeria

Stream or current topic

IT law and cyberspace

Abstract

Considering the proliferation of internet fraud in Nigeria and its global involvement by some Nigerians, recently, cybercrime investigators in Nigeria reinforced a cybercrime policy holding landlords criminally responsible for the acts of yahoo tenants arguably without any reservation or limitation. This paper question's the said policy as an attempt taken too far concerning cybercrime investigation and eradication, especially when viewed against legal constraints. It seeks to answer thus: What is the legality of the policy? To what extent can a Nigerian landlord be held responsible for the acts of an internet fraudster(yahoo tenant)? While criminal responsibility for the actions of yahoo tenants is not transferable, landlords housing yahoo tenants can be criminally liable where there is knowledge of the commission of cybercrime on their premises. However, landlords can take possible legal steps to minimize the possibility of unwarranted cyber investigation and invasion of their privacy.

Presentation

Virtual via Microsoft Teams

810 AI-as-a-Service for Hate Speech Detection: Navigating Legal Responsibilities in the UK

Margarita Amaxopoulou

Queen Mary University of London, London, United Kingdom

Stream or current topic

IT law and cyberspace

Abstract

Major AI breakthroughs are happening in the field of hate speech detection. Industry-led initiatives push for solutions that can be widely used in the market (e.g. Hack Harassment Initiative by Intel). Meta proudly proclaims that 97% of the hateful posts removed from their platform are proactively identified and effectively removed through their AI systems. In the light of forthcoming online safety legislation in the UK, a plethora of online communication platforms will seek to acquire access to such specialised AI tools to comply with their obligations under the law and preserve a safe and inclusive environment. The arrangement under which companies will get access to relevant AI has been termed 'AI as a Service' (AlaaS), an offering of cloud computing, where pre-trained machine learning models are provided to business customers on a subscription basis. However, content moderation of public communications is a very sensitive area, as harms threatening both individual rights and societal values may emerge. Who is to blame in the case of harms arising from the use of such AI models for hate speech detection on online communication platforms? This is a complex question, as the function and outcomes of AlaaS are jointly determined by the AI provider's engineering processes and the inputs provided by the business customer. This paper navigates legal obligations for AlaaS providers and customers towards each other as well as towards harmed users, exploring the application of contract and tort law and their interaction with human rights and online safety legislation.

Presentation

In person

Graphic Justice 2

09:30 - 11:00 Thursday, 6th April, 2023

Location MD102 Great Hall

Stream Graphic justice: law, comics and related visual media

417 Copyright Fusion and Amalgamation of Works

Harry Houlden

Manchester Metropolitan University, Manchester, United Kingdom

Stream or current topic

Graphic justice: law, comics and related visual media

Abstract

This paper offers an analysis into the extent multiple works concerning the same material can be fused into one singular or overriding copyright. This research considers how works belonging to identical and contrasting subject matter to be considered as one individual work as opposed to several individual copyrights. This concept is applied to creations such as the panels / pages in graphic novels, television scripts, videogames and other media that can potentially form one concurrent right. In illustration of this, this paper argues that concepts such as a series of books are not distinct copyrights but are indistinguishable from mere chapters in a singular literary work. In addition to this, consideration is given to the possibility that related copyrights may provide evidential support for one another in cases where the idea/ expression dichotomy or substantiality may be in question.

This approach is designed to operate within the theoretical framework of the Copyright, Designs and Patents Act 1988 [CDPA], while also providing works that have escaped protection due to the requirement of subject matter with a suitable safeguard against infringement. Treating works in isolation such as a book and its sequel or text and an accompanying comic panel leads to the possibility of diminished rights under UK intellectual property law, owing to the requirement of substantiality. As such the fusion of works could remedy the laws outstanding issues with subject matter and the over categorisation of works.

Presentation

Virtual via Microsoft Teams

Criminal law 14

09:30 - 11:00 Thursday, 6th April, 2023

Location MD106 Minor Hall

Stream Criminal law and criminal justice

Lucy Welsh

63 The role of 'well-being' in special measures decision-making

Samantha Fairclough

University of Birmingham, Birmingham, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

Special measures provide adaptations for vulnerable individuals when testifying in criminal trials in the form of screens, live link, pre-recorded evidence, and communication assistance. This paper draws on qualitative interviews with 25 criminal barristers, practising in Crown Court trials across England and Wales, that explore special measures decision-making. It examines the role that the well-being of vulnerable witnesses and defendants plays in their decisions about whether to apply for special measures. The data reveal a distinct lack of convergence in the approaches taken, with some advocates deeming it an entirely irrelevant factor, others seeing it as very important, and – more typically – a view settling somewhere in between these extremities. Interestingly, individual barristers were often inconsistent about the significance of a vulnerable person's well-being depending upon whether that individual is a witness or is the accused. This paper explores some of the issues bound up in these responses, including the common perception that protecting the well-being of a vulnerable person in the trial and securing the most valuable evidence from them for presentation of their case are often in conflict.

Presentation

In person

291 Terrorist minds: Mental states and risk in terrorism prosecutions

Kajsa Dinesson

The University of Edinburgh, Edinburgh, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

Mind-set material is a category of evidence that has come to feature centrally in terrorism prosecutions, being used to prove the defendant's 'terrorist mind-set'. In this paper, I draw on my mixed-methods thesis research featuring interviews, doctrinal, and documentary research on terrorism offences in practice to explore, understand, and contextualize the role and centrality of this under-researched evidential category.

Mind-set material is found to be a broad category including online search histories and the possession of propaganda material. It is frequently relied upon at trial and at sentencing as evidence of a particularly risky and dangerous mental state. It fills gaps where defendants' conduct does not itself suffice to prove the required terrorist intention, and it helps provide a full picture of offenders' dangerousness and level of risk. I link these findings to a theoretical discussion of the role of mental states in criminalisation, highlighting the importance of context in the inference of culpable mental states.

I posit that in terrorism cases there is lacking guidance for court's inferences from context to mental states and the assigning of meaning to mental states as 'risky' and 'terrorist'. With important political implicit content of criminalisation left unsaid by the legislator, the courts - unable and unwilling to engage in substantial meaningful clarification - have been left to develop tests for risky terrorist minds. Although well intentioned, I will show that the emergence and centrality of mind-set material is symptomatic of tensions between preventative terrorism offences and fundamental principles of criminal law.

Presentation

Virtual via Microsoft Teams

Criminal law 7

09:30 - 11:00 Thursday, 6th April, 2023

Location MD108

Stream Criminal law and criminal justice

Emma Milne

420 Mindful Approaches to Prison Reform

Marianne Doherty

Ulster University, Belfast, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

The UK government recognises the prevalence of poor mental health among prisoners, and a need to improve available treatment. Paradoxically, the allocation of resources remains focused on building more prisons than on funding existing mental health support systems. In failing to address mental health concerns, the impact of prison

conditions, and the need for additional professional support, the government has ensured that prisoners are inadequately equipped to cope. This has resulted in the dual failure of the government in its duty of care- to prisoners, and to the wider public.

This paper draws from the author's research-informed approach to establishing a prison-university partnership between the University of Leicester and HMP Leicester. Their doctoral research examined the pedagogical approach of the Inside- Out Prison Exchange Programme, and its perceived influence on prison-based students. It revealed the multiple and varied benefits of experiential pedagogy in prison and its ability to support the mental health of prisoners.

Here it is argued that due to the failure of the government to address mental health in prison, greater emphasis should be placed on creating and maintaining social bonds with the community and maintaining the wellbeing of prisoners. This paper presents the view that this can be achieved by integrating the practice of mindfulness into prison education and other modes of purposeful activity. It is asserted that there needs to be a shift in focus to the protection and preservation of mental health in the broader context of prison reform.

Key words: Prison; education; mindfulness

Presentation

In person

139 Dying in semi-penal institutions: how do staff experience working with people at risk of suicide in Approved Premises?

Colette Barry¹, Jake Phillips², Juliette Mullin³, Lorraine Gelsthorpe³, Nicola Padfield³

¹Ulster University, Derry, United Kingdom. ²Sheffield Hallam University, Sheffield, United Kingdom. ³University of Cambridge, Cambridge, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

Approved Premises (or, probation hostels) are 'semi-penal institutions' which support peoples' integration following a period in prison custody, manage their risk to others and themselves as well as enforce licence conditions and act in cases of non-compliance. In England and Wales, APs are reserved for people leaving prison, often following a relatively long custodial sentence. People residing in APs are likely to present with several risk factors associated with higher levels of suicide. APs are also subject to similar levels of accountability as prisons when it comes to deaths with the PPO investigating all AP deaths. In spite of this, very little research has sought to understand how this manifests in the lives of people living and working in APs. This paper presents data that were generated through qualitative semi-structured interviews (n=27) with people who work in APs. We will consider the implications of working in a semi-penal institution in relation to the ways in which risks of suicide are assessed and managed, the impact of such work on staff and how staff experience post-death investigations. We suggest that APs occupy a liminal space in the criminal justice system which, in turn, presents challenges for both staff and residents. Our findings will shed light on the wider system of accountability and oversight which covers custodial deaths and has implications for criminal justice practice in prisons and probation, as well as the wider community provision of mental health services for people transitioning from custody to the community.

Presentation

In person

334 Effects of Digital Exclusion in Prisons: Improving Rehabilitation and Reoffending Outcomes in UK Prisons

Grace Gladys Famoriyo

Anglia Ruskin University, Cambridge, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

The rapid movement towards digitization of societal services, such as state benefits, housing, education, banking, health, etc., has been shown to cause significant problems for newly released prisoners. However, the absence of digital skills training in prisons means soon-to-be-released prisoners are inadequately prepared for the digital world. This makes ex-prisoners more vulnerable to reoffending. The application of The Prison Act 1952, s 40 means that prisoners fall into the digitally excluded category of the population. Existing studies have shown that the absence of Information and Communications Technologies (ICT) and the internet in prisons limit their attainment levels and breadth of learning opportunities. While many studies have shown education to be a powerful proponent in reducing reoffending, many learning methods in prisons are outdated. In addition, digital exclusion creates further complications from an employability perspective. Consequently, prisoners tend to be inadequately prepared for employment and lack the skills/work experience that potential employers require. Therefore, this paper examines the potential significance of digital exclusion on prisoners in the UK. Throughout this paper, the term digital exclusion will refer to when people have unequal capability and/or access to using ICT. The paper is mainly based on the analysis of secondary data and extant laws and policies. However, it finds that digital exclusion limits prisoner rehabilitation. Finally, this paper suggests that prisoners should be provided with ITC training and digital literacy skills to keep up to date with the advancing digital world and to improve rehabilitation, reoffending and employment outcomes.

Presentation

In person

182 Journeys Through the Darskscapes: Exploring the Spatial and Performative Dimensions of Racial Profiling

Danardo Jones

University of Windsor, Faculty of Law, Windsor, Canada

Stream or current topic

Criminal law and criminal justice

Abstract

The paper will bring together works in Black geography and critical race theory to investigate racial profiling's spatial and performative dimensions. It argues that spatial analyses force engagement with what I have termed darkscapes: the spatio-legal phenomenon that makes racial profiling real - real in its material consequences. Darkscapes are

produced through and by white spatial imaginaries to enforce white ontological security. Put another way, darkscapes exist in white imaginations of space, where racializing and ideational content is inscribed on and made real in the world, including the experiences and lives of Black people. These imaginaries are materialized (socio-politically, historically, and economically), embodied and naturalized in the social and physical formation of space, which burdens Black people with the necessity of performing and making real white spatial imaginaries.

The topological concept of darkscape helps us make sense of the performative dimension of racial profiling. Put another way, darkscapes are topologies of oppression on which racial profiling is performed, reinforced, and (re)imagined. Black people know they will be perceived as Black – and, by association, they will be understood as different, dangerous, untrustworthy, violent, and inferior. They must, therefore, organize their daily lives to minimize the dangerous and demoralizing effects of these negative judgments. Race becomes a key determinant in deciding what car to drive, store to patronize, street to walk, restaurant to dine at, and courthouse to practice law. No decision, no movement, no thought, no matter how seemingly benign, is beyond scrutiny.

Presentation

Virtual via Microsoft Teams

Property, People, Power and Place 4

09:30 - 11:00 Thursday, 6th April, 2023

Location MD122

Stream Property, people, power and place

683 Balancing clashing rights and interests in art law: a tangible property perspective

Giulia Dore

University of Trento, Trento, Italy

Stream or current topic

Property, people, power and place

Abstract

The law outlines and regulates works of art in many ways, in their material and immaterial dimensions, implying a complex combination of different legal disciplines that include intellectual property, cultural heritage protection, tangible property and criminal law. More often observed from the standpoint of copyright, the rights connected to artistic works are less discussed from the angle of *ius in rem*. Although the demand for a fair balance of interests is by

now a major principle, hardly the discussion had extended to examine thoroughly the specific dynamics of physical property. Exemplary are alteration and destruction of artworks, where the prerogatives of the artist to prevent detrimental interventions in the intangible work (i.e., moral rights claims) may clash with the property rights of who owns the physical object or the building or land where the artistic works is created or installed, but also with the interests of specific communities or the public at large. In most cases, the law does not clearly set the rules to resolve such clashes, causing uncertainty and inefficiency at many levels. This paper fits in this terse legal framework to focus on some archetypal scenarios, especially related to architectural works and graffiti, where the conflict is exacerbated and features a swerving coexistence of public and private interests. Adopting a comparative and historical methodology looking at the Italian, UK and US jurisdictions, with their idiosyncrasies and parallels, from the explicit viewpoint of tangible property, it discusses some directions to offset the rights and interests at play.

Presentation

In person

717 Contesting the property paradigm amid ‘radical’ constitutional change in the UK

Mark Jordan

University of Southampton, Southampton, United Kingdom

Stream or current topic

Property, people, power and place

Abstract

This paper examines the tension between ‘radical’ constitutional change in the form of political devolution, and property stability in a UK context. The article adopts a property from a ‘bottom up’ approach to analyse these developments which takes seriously the interests of those on the margins of the property system. In particular, AJ van der Walt’s property in the margins theoretical framework is adopted and adapted for this purpose. In that framework, van der Walt’s outlined how property systems frequently operate to resist democratically sanctioned and constitutionally mandated change and transformation through the functioning of the property paradigm, which refers to a set of doctrinal, rhetorical and logical assumptions and beliefs about the relative value and power of discrete property interests in the law and in society. This framework is particularly suitable for this study because of the tension between ‘radical’ constitutional change in the form political devolution, which has generated extensive reforms of housing law, and legal stability in the field of property law within the UK. Building on van der Walt’s work, this paper takes as a case study eviction, which represents the property owners apex right, and considers how qualifications to that right have been contested and expanded post-1998, with particular focus on how Living Rent have contested recent reforms in Scotland.

Presentation

In person

Human rights and war: Victims and victimhood

09:30 - 11:00 Thursday, 6th April, 2023

Location MU001

Stream Human rights and war

81 Beyond Innocence and Guilt: Constructing Victimhood in Times of War

Cheryl Lawther

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Human rights and war

Abstract

'Good', 'bad', 'worthy', 'unworthy', 'real', 'innocent', 'guilty'. These terms have all been used to describe victims of human rights abuses in situations of war and conflict. They fail to capture the messy reality of human rights abuses, the complexity of victimhood and almost invariably map on to contested understandings of who is to 'blame' for violence. Drawing upon a range of literature including transitional justice, law, victimology and criminology, this paper is part of a broader research project which seeks to make a step-change in the understanding of the construction and politicisation of victimhood post-conflict. Moving 'beyond innocence and guilt', this paper aims to demonstrate how the construction, reproduction and contestation of victimhood is determined by larger questions of identity and national imagination, voice, agency, blame, silence, denial and heroes and hierarchies of victimhood. The paper uses Northern Ireland as a case study and a wealth of empirical data generated from semi-structured interviews with victims and survivors of the Northern Ireland conflict. The conclusions of this paper are of relevance to a range of jurisdictions in the midst of, or, transitioning from a period of war and human rights abuses.

Presentation

In person

313 Social Movements in Colombian Transitional Justice: Resisting, Reshaping, or Reproducing the "Ideal Victim" of Conflict-Related Sexual Violence.

Daniela Suarez Vargas

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Human rights and war

Abstract

Social movements have emerged as democratising actors of transitional justice, contributing to its bottom-up framing (Gready & Robins, 2017); they have challenged the universalistic narratives of victimhood prevailing in the legalism of transitional justice, often backed by humanitarian agencies, academia, NGOs, and international organisations (Madlingozi, 2010; Jones & Bernath, 2018). Social movements have placed in the spotlight the realities and needs of those who have experienced the conflict firsthand, but who do not usually fit into the traditional notions of legitimate victims (Rudling, 2019). In the case of Colombia, with the implementation of the 2016 Peace Agreement, there has been greater engagement of social movements with the new transitional justice mechanisms (Gomez Morales, 2018); particularly when it comes to putting the issue of conflict-related sexual violence at the centre of the agenda of the transitional process (Céspedes, 2018). For truth, justice, and reparation mechanisms to publicly acknowledge their experiences of victimization, LGBTQ, indigenous and Afro-descendant women, and female ex-combatant movements have pushed for a change in the traditional narrative of the 'ideal victim' of conflict-related sexual violence (understood as the peaceful, civilian woman and girl who lacks agency) (Zulver, 2022; Bueno-Hansen, 2018). This paper addresses how these social movements extend, reconstruct, or resist the notion of the "ideal victim" of sexual violence. This paper highlights how victimhood is a political tool in Colombia used by social movements, which can either grant legitimacy to their claims or contribute to their efforts to spoil peace processes that they may deem untrustworthy.

Presentation

In person

877 Transitional justice in non-transitions: The case of Kashmir's protracted colonial conflict.

Arbaz Muzaffer

University of Birmingham, Birmingham, United Kingdom

Stream or current topic

Human rights and war

Abstract

Focusing on Kashmir, this paper examines the application of transitional justice to the contexts of non-transitions and deeply conflicted societies and explores how such engagements might fit within the discourse of transitional justice. I further try to address how these contexts can be utilized to update the discourse of transitional justice, which to date has been heavily influenced by liberal transitions (from repressive regimes to peaceful democracies), and how the needs of victims in a violent protracted conflict can be addressed through transitional justice measures where the current political climate is hostile to justice processes.

Kashmir's conflict is a prime example of a violent protracted conflict where the potentiality of transitional justice application can certainly be explored. Although, in the past, several solutions such as plebiscite or Northern-Ireland style 'Good Friday Agreement' were proposed but they could never materialise and thus failed.

This paper intends to aid in settling the questions on the methodological weaknesses in transitional justice literature as pointed out by scholars and will thus contribute to the transitional justice discourse. Furthermore, the need for transitional justice in non-transitions has risen considerably because of the diminishing distinction between war and peace. This has resulted in the application of transitional justice mechanisms to the settings of non-transitions and politically unstable situations. This paper tries to offer an original "how-explanation" on how far the term 'transition' can be stretched and which mechanisms can fit best to such conflicts where there is no visible transition, such as Kashmir.

Presentation

In person

609 Participation fatigue in transitional justice: a critical exploration of victims' experiences in post-conflict Guatemala

Gretel Mejía Bonifazi

Human Rights Centre, Ghent University, Ghent, Belgium

Stream or current topic

Human rights and war

Abstract

Victims of the Guatemalan internal armed conflict (1960-1996) have participated in various spaces to seek redress for the human rights violations they endured. These spaces not only involve formal initiatives such as truth commissions, criminal trials, and reparations programs but also encompass local-level initiatives emerging from communities and civil society organizations. However, despite decades of wide-reaching participation, most victims have not achieved their most pressing demands and they still endure the structural causes of the conflict. The lack of State response after decades of participation makes victims feel tired and dissatisfied, and in many cases, discourages them from continuing to participate due to perceptions of injustice and experiences of re-victimization.

Drawing on qualitative findings from field research in a community in the Maya Ixil region, the paper examines the concept of participation fatigue in transitional by focusing on three specific aspects: 1) the complex conditions under which participation fatigue unfolds; 2) the multiple roles of the state and civil society actors; and, 3) the diverging outcomes of fatigue on victims' participatory trajectories. By exploring these topics, this paper aims to open a critical discussion and contribute to key debates on the topic of victim participation in transitional justice, with a particular focus on contexts deemed as 'traditional examples' of justice efforts but with an increasing deterioration of democratic spaces and growing threats to sustainable peace and human rights.

Presentation

In person

Gender, Sexuality and Law 7

09:30 - 11:00 Thursday, 6th April, 2023

Location MU125

Stream Gender, sexuality and the law

400 De-centering the law: listening to voices and stories within English sexual violence support services

Ellie Whittingdale

Stream or current topic

Gender, sexuality and the law

Abstract

This paper draws upon 67, in-depth qualitative interviews with people working within English sexual violence support services. These spaces, which often emerge from grassroots beginnings, are betwixt and between being legal or extra-legal in character, with voices, stories and histories that have long been occluded from feminist legal and socio-legal knowledge. This paper begins by recognising that feminist legal and socio-legal research has a rich history of interrogating how sexual violence is understood and talked about in explicitly legal spaces, such as courtrooms, where legal processes and discourses operate as a violent and exclusionary technology. Taking Carol Smart's call to 'de-centre law', this paper goes on to consider how sexual violence is talked about and understood within English sexual violence support services. By attending to voices within sexual violence support services, this paper is rooted in a desire to resist looking solely for law when exploring which discourses are powerful in how sexual abuse is understood and talked about. It then complicates the idea that legal discourses, processes, and actors exist in a neat binary against alternative discourses, processes, and ways of understanding sexual abuse. It does so to explore how legal discourses often permeate and are entangled with the ways sexual abuse is talked about and understood in English sexual violence support services.

Presentation

In person

512 Learning Lessons Before It's Too Late?: Statutory Reviews in Domestic Abuse Related Suicide

Sarah Dangar¹, Vanessa E. Munro², [Lotte Young Andrade](#)²

¹Ahimsa, Plymouth, United Kingdom. ²Warwick Law School, University of Warwick, Coventry, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

Distinct from a criminal justice investigation, which focusses on the responsibility and punishment of perpetrators, Domestic Homicide Reviews (implemented in England and Wales in 2011), involve a contextual exploration of the circumstances surrounding a death, with a view to learning lessons that can improve future safeguarding and service provision. Growing concerns about the links between domestic abuse and suicidality led the Home Office to extend statutory guidance and create a duty to commission DHRs into any death that "has or appears to have" resulted from domestic abuse. While previous research indicates that the links between domestic abuse and suicidality are significant (Munro & Aitken, 2018), there remains a lack of evidence regarding the mediators and moderators that impact upon risk. In this context, the expansion of the remit of DHRs to include cases of suicide has been welcomed.

In this paper, we present findings from the first systematic analysis undertaken in England and Wales of completed suicide DHRs. Funded by the Home Office, the research combines detailed coding of DHRs with a series of semi-structured interviews with key stakeholders to learn lessons both from the content of reviews [e.g. patterns in relation to demographics, types of abuse, vulnerabilities / needs, disclosures to and engagement with services, etc] as well as their process. These learnings, we argue, must be prioritised in reforms currently underway to improve the DHR

process in England and Wales, and should help to inform the upcoming design and implementation of a parallel process for domestic homicides in Scotland.

Presentation

In person

615 Survivor Narratives as Counter-Histories of Law: Speaking To, About and Against Legal Responses to Sexual Violence

Tanya Serisier

Birkbeck College, London, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

It is impossible to tell an accurate history of the laws around sexual violence and their application over the last century without considering the testimony of survivors. Survivors and feminists have insisted that accounts of the lived experience of sexual violence, and of its consolidation and amplification by the law be taken seriously as evidence of legal failings and of the need for legal change. They have counter-posed the evidence of these lived experiences to the myths and cautionary tales that the law tells itself about false allegations and hysterical or vengeful women. In short, feminists and survivors have argued that the law is incapable of producing a true and authoritative account of sexual violence, either in individual cases or as a social and legal subject.

In this paper, I offer a counter-history of rape law, through survivor engagements with it by tracing both the continuities and the shifts in the descriptions and depictions of the law, survivor engagement with it, and their interpretation of it. I consider first person accounts of rape published between 1979 and 2021 to explore the inter-jurisdictional and complex history of speaking within, to and about the law, that these accounts reveal.

Presentation

In person

88 From Force to Consent: Shifting the Narrative on Rape in Europe

Ashley Perry

University of Galway, Galway, Ireland

Stream or current topic

Gender, sexuality and the law

Abstract

Legal realism suggests that law does not act within a vacuum. More concisely, this school of thought suggests that it is not law and society. Rather, its law in society. This research will put this theory to the test, within the context of sexual violence, by examining law and practice in Ireland and Finland. It is important to study Ireland as it prescribes to a progressive approach to the legal definition of rape, where rape is defined as sex without consent, which supports the evolving legal feminist theory on sexual violence, its victims, and trauma responses. However, the socio-cultural landscape of Ireland is complex with a historical-tendency to discriminate against victims of such violence and, generally, women, sexuality, and their association. This analysis will be contrasted with an examination of Finland, where a necessary attribute for a crime to be considered rape is the use of force or the threat of force. Whilst the definition of rape in Finland is contentious amongst feminist literature, the socio-cultural landscape drastically differs from that of Ireland, which is its notable efforts to promote gender equality in many aspects of its society. This research will be conducted through a mixed-methods approach by utilizing ethnography, qualitative configurations of complaint to prosecution ratios and the prosecution to conviction ratios, and semi-structured interviews with key stakeholders within the criminal justice process within each country. This aims to prove whether law and/in society can eliminate or create barriers to accessing justice for victims of sexual violence.

Presentation

Poster (submissions to poster competition only)

Social rights: Rights

09:30 - 11:00 Thursday, 6th April, 2023

Location MU201

Stream Social rights, citizenship and the welfare state

Jed Meers

708 Foundations of the Right to Food

Donald Buglass

University of West of Scotland, Glasgow, United Kingdom. University of Glasgow, Glasgow, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

Critical theory understands social rights as protecting areas of need against the market allocation of resources. This is coherent when social rights entail the distribution of decommodified goods and services. Yet, the relationship between social rights and the market has come under increasing strain in recent years of austerity. In this paper, the nature of this relation is explored via a consideration of the right to food. I will argue that the right to food withdraws recognition and skews justice, because of two forms of conceptualising the right that take the distribution of food as their point of departure and limit. When focusing on redistributive demands, the two conceptions of rights fail to account for the significant organisation of production that is required for the right to food to be realised. By bracketing production, both international law and constitutional social rights operate on an availability assumption. The reading offered here suggests an understanding of the social right to food that takes questions of production and distribution in conjunction. This involves a qualified endorsement of a critical theory of social rights, endorsing the value of

solidarity but qualifying the way it informs social rights discourse. In concluding, I offer some reflections on what this understanding means for the critical account, offering a defence of this position but with the *predistributive* foundations now part of how we conceptualise social rights.

Presentation

In person

710 The right to housing in India and South Africa: rights-holders as protagonists in rights interpretation

Rishika Sahgal

University of Sheffield, Sheffield, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

The right to housing is enshrined under s 26 of the South African Constitution and has been recognised through judicial interpretation of the right to life under the Indian Constitution. Courts are recognised to play an important role in interpreting these rights, but there is debate about the kinds of obligations courts can place on the state – to provide adequate housing in the here and now, or to take reasonable measures to progressively realise the right.

My paper offers a way to meet some of the competence and legitimacy concerns raised when courts interpret the right to housing, by shifting focus onto rights-holders as interpreters of their own rights. In the context of evictions, rights-holders have procedural rights to a notice, hearing and meaningful engagement prior to an eviction. I imagine these processes as providing them a means to define what is adequate housing for their lives and their contexts. I then indicate how that interpretation ought to feed into the reasoning of courts. I thereby carve out a valuable role for rights-holders in interpreting the right to housing, and simultaneously fashion a role for courts to interpret and enforce procedural and substantive elements of the right. I envisage the iterative development of the content of the right to housing. Firstly, the substantive content of the right ought to be developed through participative processes by rights-holders. Secondly, courts ought to check that these processes have taken place, and thereafter that the outcome of these processes meets substantive normative constitutional commitments.

Presentation

In person

198 Work as a right, a resource and a crime

Maayan Niezna

University of Oxford, Oxford, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

Work is a key for livelihood, a source of dignity and development, it is also a relationship of inequality leading to coercion and exploitation. This paper considers the dual understanding of work, between a site of livelihood and dignity and a site of coercion and exploitation, comparing the legal framing of work as a right under human rights law giving rise to negative and positive obligations, and as a crime under immigration law.

Assessing work as a right, the paper considers the elements of the right to gain a living by work and the right to free choice of employment as key elements of the right to work, and how they are applied to migrant workers. It also considers an understanding of work as a resource or duty owed by the state to its citizens, the connections between work, welfare and citizenship, and related arguments excluding migrants from the right to work.

Next, considering work as a crime, the paper focuses on the offence of illegal working under the UK's Immigration Act 2016 as an offence that might result in both imprisonment and confiscation of wages as proceeds of crime. It considers the legal and political context of the offence of illegal working and reactions to its introduction, and discusses moral, legal and practical objections to such an offence. Last, the paper compares the understanding of work as a crime reflected in the Immigration Act to the understanding of work as a right under human rights law.

Presentation

In person

453 Universalism in minimum income protection in the Netherlands

Barbara Brink

University of Groningen, Groningen, Netherlands

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

Recently, Dutch government scientific advisory bodies have explored the possibilities of universal solutions to the current problems faced by the welfare state in providing social protection, especially when it comes to minimum living standards. Instead of seeking solutions for specific groups, solutions with broad coverage are proposed. Consider schemes for workers, with no distinction between employees and the self-employed. This is not in line with the dominant trend of individualism.

In the past year, this trend has also been visible in proposals for new legislation within social security and related parliamentary debates. This paper will examine whether these are unique cases, or whether this interest in universalist solutions can be more broadly recognised in recent changes to social protection schemes. The paper examines proposed changes to minimum protection schemes in the Netherlands over the last five years. To this end, it analyses the rhetoric used to advocate changes to these schemes by examining parliamentary debates on social protection legislation, the explanatory memorandum and the legislation itself.

Presentation

In person

Children's rights: Realising Article 31 rights

09:30 - 11:00 Thursday, 6th April, 2023

Location MU202

Stream Children's rights

408 The Right of the Child to Participate in Cultural Life and the Arts

Louise Forde

Brunel University London, London, United Kingdom

Stream or current topic

Children's rights

Abstract

Alongside guaranteeing children's rights to play, rest and leisure, Article 31 of the UN Convention on the Rights of the Child explicitly provides that children have a right to participate freely in cultural life and the arts. Under Article 31(2), States Parties have specific obligations to respect and promote children's participation rights in this area, and to encourage provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity. While children's right to play under Article 31 has received increased attention in recent times (Lott, 2022), the children's rights in relation to their participation in the arts have received more limited attention thus far. This is notwithstanding the fact that several of the UNCRC Committee's General Comments emphasise the importance of the creative arts for the promotion of children's rights, and for children's development.

This paper presents ongoing work to conceptualise and develop children's rights to participation in the creative arts and cultural life under Article 31 UNCRC. It aims to set out the different dimensions and aspects of this right, to consider its inter-relationship with other children's rights provisions under the UNCRC, and to explore the nature of State obligations in the implementation of children's right to participate fully in cultural and artistic life. Drawing on ongoing research, the paper will also consider the application of children's Article 31 rights to participate in creative arts with children in contact with the youth justice system.

Presentation

In person

644 Children 'will seek out opportunities [to play] in the most unfavourable environments': A Framework for Implementing the Right to Play

Naomi Lott

University of Oxford, Oxford, United Kingdom

Stream or current topic

Children's rights

Abstract

The Committee on the Rights of the Child acknowledges that children's urge to play is compelling, even 'in the most unfavourable environments' (GC 17). Yet, the obligations placed on States to realise and implement the right to play show that such a situation is not sufficient. Rather, States have a variety of multifaceted obligations that must met in order to ensure that the right to play is fully realised (Lott 2020). Following doctrinal, empirical, and archival research, and interdisciplinary literature analysis, into the nature and content of the right to play, a framework for realising the right to play emerged that is able to encompass many of these obligations. This framework includes three core components: time, space, and acceptance. This paper develops each aspect of this framework, and discusses how such a framework relates to, and fits within, the children's rights rubric. Discussions with those involved in play advocacy suggests that such a framework will be beneficial for supporting greater implementation of the child's right to play in practice, as well as deeper understanding of the content of the right.

Presentation

In person

727 Children's Rights and Sport: A Rights Based Approach

Ursula Kilkelly^{1,2}, Jonathan Todres³

¹University College Cork, Cork, Ireland. ²Leiden University, Leiden, Netherlands. ³Georgia State University, Atlanta, USA

Stream or current topic

Children's rights

Abstract

Sport is an important part of childhood ranging from general physical activity to individual or team sport either during or after school. For some, this is a fleeting past-time, for others, sport is a life-long passion. While some children have limited experience of competitive sport, others engage in elite sport, excelling for club or country, through to adulthood.

Participation in sport has many benefits from a children's rights point of view. At the most fundamental level, sport helps to advance a child's right to health and development and furthers their right to education and to rest and leisure. Whether a solitary or team pursuit, sport aids the development of a child's physical, emotional and mental development and it has the potential to enable the development of a child's talents, educating them about their rights.

Participation in sport can also presents risks to a child's rights, however, including exposure to harm and exploitation. Decision-making by sports bodies can ignore the primacy of the child's best interests while failing to involve children themselves in decisions that affect them.

Taking account of these opportunities and challenges, this paper will explore a holistic, children's rights approach to sport, addressing national policy, the governance of sport, as well as issues that affect children's experience of sport on a day to day basis. It considers in particular how to amplify the child's voice in sport to enable their rights to be better protected.

Presentation

In person

470 Looking for environmental rights within children's rights from 2000 to 2022

Fiona MacDonald

The Open University, Milton Keynes, United Kingdom

Stream or current topic

Children's rights

Abstract

The UN Committee on the Rights of the Child have increasingly focused on and drawn attention to environmental issues and to climate change as a children's rights issue despite there being only two convention articles with references to environmental health and none to climate change. They are currently working through the consultation process towards creating a General Comment No.26 on 'Children's Rights and the Environment with a Special Focus on Climate Change'.

This focus aligns with the UN's global issues that describes 'climate change is the defining issue of our time and now is the defining moment to do something about it' (UN Global Issues) and declaration in July 2022 from the UN General Council that 'access to clean and healthy environment a universal human right' (UN Web News 2022).

This project investigates how the Committee has construed environmental issues as a children's rights issue prior to the forthcoming GC, by analysing the Concluding Observation (CO) reports of the Committee. At the 2022 conference the results from analysing a sample of 52 state parties was presented, this paper updates that research with the results from using content analysis on all of the CO reports (over 450) for the time period of 2000 to mid 2022. It shows the changes over time, the aspects of environmental concerns raised, and in addition how these concerns have been framed to come within clusters and specific rights.

Presentation

In person

Socio-Legal Jurisprudence 4

09:30 - 11:00 Thursday, 6th April, 2023

Location MU203

Stream Socio-legal jurisprudence

628 The metaphor of artefact in legal philosophy

Bartosz Biskup

Jagiellonian University, Krakow, Poland. Jagiellonian Center for Law, Language and Philosophy, Kraków, Poland

Stream or current topic

Law, literature and the humanities

Abstract

This research analyses the concept of an artefact as it is used in legal-philosophical inquiries. The references to legal artifactuality are ubiquitous; however, even after a brief literature review, one can detect serious conceptual confusion. On the one hand, in some contexts, the concept of an artefact implies that law is socially constructed, not something eternal and natural. On the other hand, in different contexts, the use of 'artifact' seems to presuppose some ontologically robust views from the specific field as the philosophy of technical artefacts.

By hypothesis, the concept of artefact has two related but not synonymous meanings: the artefact as a term defined in contrast to the natural kind terms and the artefact as a term denoting an object created intentionally by an author(s) to serve some purpose. As Burazin and Crowe noticed, although the very claim that law is an artefact is not new, it has been so far undertheorized – in the sense of lack of ontological and other philosophical consequences of that claim (Burazin 2016; Crowe 2014). However, most of the earlier legal-philosophical papers (such as Leiter 2011 or Schauer 2012) referring to artefacts associated them with the lack of features of the natural kind. When the framework of law as an artefact developed, this contrast with the natural kind became less relevant, and claims about the law (or a legal system) understood as a kind of artefact became popular. By hypothesis, the ambiguity may result from a conceptual shift.

Presentation

In person

243 On Personal and Impersonal Authority: A Contribution Towards an Understanding of Authority as a Historical Social Practice

Philipp Kender

University of Kent, Canterbury, United Kingdom

Stream or current topic

Law, literature and the humanities

Abstract

This paper is part of my ongoing work on a concept of authority as a historical social practice. The starting point of my discussion will be a series of academic commentaries written between the mid-1950s and the mid-1970s on a supposed decline of authority in modern societies. The perhaps most prominent contributors to this literature are Hannah Arendt, the political philosopher Theodor Eschenburg, the psychoanalyst Alexander Mitscherlich, and the joint authors of the first report to the Trilateral Commission: Michel Crozier, Samuel Huntington, and Joji Watanuki. I will show that in these works, authority tends to be understood either in an ahistorical-functional manner as voluntary subordination, or finds itself reduced to one or another of the meanings of *auctoritas* in Roman private and public law. Drawing on historico-linguistic scholarship, I argue that *auctoritas*, beyond its various legal significations, can be understood as a social practice whose main functions are those of validating the behaviour of its subjects and offering binding advice. My main proposition is that if authority is thus understood as a historical social practice with origins in Roman antiquity, we can say that instead of disappearing tout court, authority has merely changed its form in the second half of the twentieth century. An interpersonal modality of practicing authority was increasingly displaced by impersonal practices of authority centred around the capitalist market and the data produced by its pricing mechanism. This final part of my argument will engage the 1930s work on authority in modernity produced by Frankfurt School-affiliates.

Presentation

In person

171 Terracentrism and the Issue(s) for Multiplanetary Thought

Craig Jones

University of Strathclyde, Glasgow, United Kingdom

Stream or current topic

Socio-legal jurisprudence

Abstract

The past decade has seen a proliferation of private companies becoming involved in the 'New Space Economy' (NSE). The growth of the NSE and its attendant private interests has seen an accompanying rise in the extractivist discourses of Outer Space and its (perceived) uses. Whilst companies are presently involved through the supply of (reusable) rockets, satellites, communications arrays, and simulants to name a few, future proposed endeavours focus on extraterrestrial extraction. This eventual goal has seen numerous asteroid mining companies set up over the past decade and several notable legal frameworks established. With the debate(s) stirred through these proposed frameworks, recent years have seen much discussion and contestation over how – and if – Outer Space and the 'resources' therein should be governed.

However, debates on extraterrestrial thought/governance are always already constrained through their adoption and application of terracentric onto-epistemological frameworks. Specifically, much of the discussion to-date has (re)imagined proposed engagements with the Outer Space environ in ways that negate, contradict, or side-line the particular materialities present beyond Earth. That is, contemporary debates on extraterrestrial governance are grounded in conceptual and experiential frameworks that have been developed through living with and upon the Earth and its attendant geophysical properties (e.g. one-g, one atmosphere of pressure, the presence of a magnetosphere, etc). This paper subsequently seeks to open a site of deliberation wherein we may begin to consider and account for terracentric positionings *vis-à-vis* multiplanetary jurisprudence and ask what legal structures and justice beyond the Earth may look like.

Presentation

In person

DEVELOPING DEMOCRACIES: POLITICS OF CONSTITUTIONAL CHANGE AND CONTINUITY

09:30 - 11:00 Thursday, 6th April, 2023

Location MU207

Stream Constitutionalism in developing democracies

301 Odious Constitutions and Democratic Jubilee

Brian Highsmith

Princeton University, Princeton, NJ, USA

Stream or current topic

Constitutionalism in developing democracies

Abstract

In international public law, “odious debt” refers to fiscal obligations that have been imposed on a current population without their consent and for the benefit of an authoritarian regime. Under the legal theory, such intergenerational obligations cannot legitimately bind a democratic people: the doctrine provides a mechanism for discharging those debts even where the underlying agreement forecloses the possibility of restructure. This article considers whether certain constitutional structures might also be understood as odious under a parallel doctrinal framework. I conceptualize “odious constitutions” as those that are (by nature of their structure) unrepresentative, unresponsive, and unamendable. I develop this concept through several case studies: the disenfranchising “Redeemer” state constitutions that followed the end of Reconstruction in the American South; the post-1969 Rhodesian constitution that constitutionalized white minority rule during the regime’s short existence; the Myanmar constitution that granted the incumbent military junta an institutional veto over constitutional change; and Pinochet’s 1980 constitution that is now being rewritten by the Chilean people. Engaging with political theory as well as historical experience, I consider the possibility of democratic jubilee from odious constitutions. Applying this new adapted framework, I suggest that sustained popular majorities legitimately retain the right to act directly—as by formally unauthorized plebiscite—to amend odious constitutional provisions that are preventing democratization.

Presentation

In person

714 Old islands, new politics: Constitutional change and a land-grab in Antigua and Barbuda.

Joseph Gascoigne

University of York, York, United Kingdom

Stream or current topic

Constitutionalism in developing democracies

Abstract

In contrast to many postcolonial developing states, the Anglophone Caribbean has been characterised by a history of political stability. This has been predicated on a deeply embedded culture of constitutionalism and robust constitutional settlements devised through decolonisation in the mid-1900s. However, this facade can obscure a reality in which Caribbean constitutions are not as robust or reliable as assumed. In Antigua and Barbuda, the 1981 Constitution has recently been put at the centre of an unprecedented political and moral argument about the ownership and control of land in the underdeveloped sister-island of Barbuda. On the one hand, many Barbudans argue that the island belongs to the people and that a centuries long practice of communal land use should continue. On the other hand, the Antiguan government asserts that the island is the property of the Crown and that the government can legitimately lease, sell, and use land on Barbuda as they choose. This argument came to international attention after hurricane Irma devastated Barbuda in 2017 and has been heard in numerous courts, most recently the Privy Council in 2022. In that time the government has sought to amend or to undermine the constitution by secondary legislation, attempts that some call a land-grab and a violation of constitutional rights. This case shows how seemingly robust constitutions can be vulnerable to abuse by powerful governments. It shines a light on the ways constitutions and laws intersect with culture and tradition and how this interaction can have detrimental consequences for the most vulnerable.

Presentation

Virtual via Microsoft Teams

463 Indonesia's Unfolding Illiberal Constitution

Saru Arifin

University of Pecs, Pecs, Hungary

Stream or current topic

Constitutionalism in developing democracies

Abstract

Recent Indonesian constitutional practices are growing more and more illiberal. It was influenced in some ways by the government in power, which tried to use the constitutional story and the support of the legislature to reach the agreed-upon goal of development. For example, the 2020 Omnibus Law was passed, a Constitutional Court judge was recalled by Parliament, and the "Perppu Cipta Kerja," or Government Regulation in Lieu of Law on Job Creation, was just issued. All of these "constitutional practices" contradict the liberal spirit of the 1945 constitution, which was effectively changed away from the authoritarian constitution's lengthy run in 1998 as a result of the reformation movement (*gerakan reformasi*). This article will look at how and by how much the Indonesian constitution is becoming illiberal over time. According to this article, the majority parliament's backing for the administration is fostering the rise of a new "totalitarian ruler" who interprets the constitution subjectively in order to achieve a predetermined development goal. The centralized power will make it easy to deal with anything that might get in the way of the government's plans. This paper found that non-governmental alliances play a crucial role in preventing the

government and parliament from violating the constitution. In addition to their role, the Constitutional Court's independence must be safeguarded.

Presentation

In person

Legal Education 6

09:30 - 11:00 Thursday, 6th April, 2023

Location MU208

Stream Legal education

62 Rethinking welcome week: building the foundations of our students' learning community

Kathy Griffiths

Cardiff University, Cardiff, United Kingdom

Stream or current topic

Legal education

Abstract

A student's first few weeks at university is a challenging time. They must navigate a new learning environment with a new set of expectations at the same time as meeting lots of new people and adjusting to what can be a substantial change in their personal lives. As such, any welcome week (or induction) activities are important because they are our opportunity to welcome our new students, help them adjust to university life and a new way of learning and begin building a sense of learning community. This paper reflects on my experiences of leading on welcome week events for new law students to offer insights as to what I have found to be the most important aspects of a successful welcome week.

Presentation

In person

263 You gotta eat your Spinach Baby: Why teaching Legal Skills matters more than following the latest pedagogical trends

Dr Abi Pearson

Keele University, Newcastle Under Lyme, United Kingdom

Stream or current topic

Legal education

Abstract

As an early career law lecturer, I have often felt as though I have been engaged in a similar fight with both students and colleagues about the importance of teaching and learning legal skills. A specialized course run before the start of substantive content in the first year, leading to the siloing of knowledge after the initial euphoria of a high mark gained has worn off, suggestions of gamification, which lead similarly to the sense that 'legal skills' are something nebulous to be played with and put down when the novelty wears off, rather than being the tools of the trade for academic and vocational lawyers alike. The move toward democratization and decolonization focus on legal skills is presented as a bastion of legal orthodoxy. However, until students can find, read, analyze, critique, decode and quote case law and other legal literature, they will not be able to see its shortcomings for themselves and will remain reliant on us, sages on the stages to show them its flaws, fundamentally undermining the current pedagogic focus. Acres of literature tells us that lawyers are made rather than born, that we had to acquire the skills of reading a case, separating the obiter from the ratio, and doing battle with jurisprudence and verbose journal articles; so why are we pretending otherwise? We've all gotta eat our spinach sometime, better to do it in the support and company of peers and mentors, little and often, rather than all at once.

Presentation

Virtual via Microsoft Teams

149 ENVIRONMENTAL CONSIDERATIONS IN COMPETITION LAW or IS COMPETITION LAW A BARRIER TO CLIMATE ACTION?

Hanna Stakheeva

Bohazici University, Istanbul, Turkey

Stream or current topic

Legal education

Abstract

Environment has become an interdisciplinary matter. The area of my research may serve as a good example of this, as it is on interplay between competition law and environmental protection.

Measures taken by the companies with the aim of protecting the environment may have anticompetitive effects. It is difficult to follow the environmentally friendly practices/ "environmental agreements" without affecting the degree of competition in the market. This is where the discussion arises – how to achieve the balance between the environmental protection and competition policy, or how to make sure that competition law does not prevent/discourage the environmentally friendly initiatives.

The most common examples where firms may wish to collaborate to make business more environmentally friendly are: agreements to reduce car emissions, agreements to increase the collection of plastic waste, agreements encouraging reduction of plastic/package usage, collaboration developing recycling systems, etc. However, firms are aware that "collaboration" may be risky and considered as competition law violation under certain conditions. Hence, they would rather avoid collaborating and not pursue those initiatives, also when it comes to important for the environment and sustainability projects, than face interaction with competition authorities (or even simply consider the

potential competition law risks). “As a result, important initiatives that could help combat climate change are stifled or still-born.”

It is argued that environmental factors should be taken into account in competition law and in the process of assessing the legality of the “environmental agreements”...

Presentation

In person

Health Law and Bioethics: Consent & Capacity

09:30 - 11:00 Thursday, 6th April, 2023

Location MU210

Stream Health law and bioethics

8 “This is paternalistic medicine at its absolute extreme”: The Problems of Sodium Valproate and Pregnancy Prevention, and Informed Consent.

[Rachel Arkell](#)

University of Kent, Canterbury, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

Sodium Valproate is a highly effective and potentially lifesaving medication, used primarily in the treatment of epilepsy and bipolar disorder. Yet in 2018, the UK implemented a Pregnancy Prevention Programme (PPP) for any woman or girl of childbearing potential in receipt of it, as a solution to the continued controversy associated with the teratogenic risk if taken during pregnancy. This highly restrictive form of drug regulation removes sodium valproate as a first-line treatment option for this cohort of patients and enforces compulsory contraception (long-acting methods only), backed by regular pregnancy testing, if no other alternative medications are tolerated, to ensure that pregnancy exposure is kept to a minimum. A range of healthcare professionals (HCPs), including Consultant Neurologists, are consequently made responsible for ensuring their patients meet the mandatory conditions of the PPP.

Through the use of semi-structured interviews, this research explores how Consultant Neurologists interpret and navigate this exception to general legal standards of consent to treatment and patient choice. It explores how HCPs negotiate certainty, uncertainty, risk and fear, and how they balance complex ethical concerns for the woman's health, her autonomy and any (potential) pregnancy intentions. This research further speaks to practicalities of enforcing this type of drug regulation for patients living with chronic conditions, which last a lifetime – such as epilepsy.

This paper shares early findings from interview data of 20 Consultant Neurologists, offering reflection on preliminary themes of Risk, Responsibility and Gendered Health Inequality.

Presentation

In person

110 CONSENT FOR BIOMEDICAL RESEARCH: SUGGESTIONS FROM SOUTH AFRICA

Larisse Prinsen

University of the Free State, Bloemfontein, South Africa

Stream or current topic

Health law and bioethics

Abstract

Biomedical research is the broad area of science which looks at ways to prevent and treat disease, illness and death. Some examples of biomedical research include stem cell therapy and research, CRISPR-Cas 9, genome editing, extra-corporeal gestation/ ectogenesis (ExCG), in vitro gametogenesis (IVG) and direct-to-consumer-genetic-testing (DTCGT). Biomedical research uses biotechnological techniques which require experimentation, development and evaluation in order to discover new medicines, treatments and therapies.

It is in the novelty of these medicines, treatments and therapies that we find regulatory difficulties. These difficulties may, in some instances, be based on the blurring of the lines between medicine and science and as such, the regulatory rules and guidelines applicable to one of these fields alone, may not be sufficient. For example, the required consent in a medical setting, normally informed consent, may not be appropriate in a scientific one where broad consent is favoured.

This presentation will argue that the regulation of biomedical research, with specific regard to consent, cannot be sufficient or satisfactory when seen from the perspective of only medicine or only science. Working from this premise, this presentation will further suggest a possible approach to consent with reference to South African legal instruments.

Presentation

In person

442 Capacity and Minors: Determining the capacity of a minor and their participation in the medical decision-making process.

Karen Joan Sutton

Griffith College, Dublin, Ireland

Stream or current topic

Health law and bioethics

Abstract

Historically physicians decided what was best for their patients; however, a paradigm change in the latter half of the 20th century has seen the rejection of a paternalistic approach in healthcare, with patient autonomy now coming to the fore. Due to this shift, healthcare practitioners have a legal, ethical and professional obligation to obtain a patient's consent prior to any healthcare treatment or procedure taking place. However, the provision of consent is dependent on capacity, as consent devoid of decision-making capacity is not legally valid. Consequently, certain patients, such as minors, are deemed to lack capacity as they cannot give consent. Notwithstanding the level of maturity a minor may achieve before reaching the age of majority, minors must demonstrate their legal capacity to make decisions regarding medical treatment. While some jurisdictions allow minors (mature minors) the same status as adults in terms of legal capacity, this in itself leads to a number of issues (for example, the protection versus participation debate), particularly in respect of representing a minor and their best interests. It is evident from the literature that decision-making capacity for minors raises a myriad of both ethical and legal challenges. The current position internationally regarding minors and capacity raises a number of questions regarding the exclusion of minors from the decision-making process, the benefits and gains of introducing appropriate guidelines in order to recognise a minor's capacity to consent, formalising the representation of minors best interests and confirming appropriate levels of participation.

Presentation

Virtual via Microsoft Teams

230 Body Image Disorders and Capacity

John Rumbold

Nottingham Law School, Nottingham Trent University, Nottingham, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

Case law on anorexia nervosa indicates that the courts will hold that the anorectic may lack the capacity to validly refuse treatment because they are no longer able to rationally weigh up the consequences of refusing calories. This approach has been criticized on the ground of infringing autonomy. This effect on decision making ability may partly relate to altered body image in anorexia nervosa. This paper will examine whether or not altered body image does affect medical decision making ability, and the implications for consent to treatment in other conditions where body image is affected. These include body dysmorphic disorder, bodily integrity identity disorder, and gender dysphoria. There are issues of autonomy, liberty, authenticity and paternalism.

Presentation

In person

Disability and Law: Disability in Times of Crisis

09:30 - 11:00 Thursday, 6th April, 2023

Location MU211

Stream Disability, law and social justice in times of uncertainty

181 The rights and well-being of older people in Finland during the COVID-19 pandemic

Mervi Issakainen, Anna Mäki-Petäjä-Leinonen, Kaijus Ervasti

UEF Law School, Joensuu, Finland

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

Restrictions on activities and meeting other people in response to the COVID-19 pandemic have had a negative impact on the lives of many older people, including increased loneliness and a decline in physical and mental well-being, as well as problems with access to social and health care services. Instead of focusing on the vulnerability of the ageing population, many studies emphasize the resilience of older people in the face of adversities or the social consequences of ageism during the pandemic. Based on previous stories (n=324) of legal issues of older people in Finland, it seems that also their opportunities for maintaining their well-being during the health crisis has in many ways been limited. Some have experienced problems with access to services (e.g., challenges with digital services) or housing-related challenges, such as bans on visits in care facilities, which severely restricted contact with loved ones. In this presentation, we will discuss the preliminary findings from our ongoing study in which we apply co-research with older adults to gain a deeper understanding of the experiences of older people living in Finland regarding their well-being and realization of their rights during this period. The study is a part of a project (WELGO) that aims to develop sustainable solutions for safeguarding well-being in future health crises, building on the experience of managing the COVID-19 pandemic.

Presentation

In person

489 The role of English mental health law and policy in addressing the unmet mental health and psychosocial support (MHPSS) needs of conflict-affected refugee and asylum-seeking women

Patricia Blardony Miranda

Centre for Health, Law, and Society, University of Bristol Law School, Bristol, United Kingdom

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

Refugee and asylum-seeking women have significant unmet mental health and psychosocial support (MHPSS) needs across all stages of their forced displacement, migration, and resettlement journeys. It is critical to assess how widespread human rights violations and harm caused by the English mental health system, enabled by interrelated laws and policy (both health and non-health), have worsened existing conflict-related trauma, enabled new forms of integration and post-integration challenges, and created unmet health requirements amidst the Covid-19 pandemic. The primary conceptual and methodological framework is the Lancet-O'Neill Report on the Legal Determinants of Health, which is comprised of human rights and global health frameworks, governing institutions, fair and evidence-based interventions, and legal capacities.

This research finds that legally sanctioned coercive practices (e.g., involuntary admission, seclusion, use of force, and other forms of restraint) that continue to be used in mental health services in England violate international human rights law, including the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) and other UN human rights covenants and conventions. Thus, the law alone will be insufficient to address unmet MHPSS needs related to conflict. The law may also create or contribute to ongoing MHPSS needs by being an additional source of post-conflict trauma. This research concludes that while legal reforms are key, it is necessary to look beyond the law to address the factors that contribute to MHPSS needs, as well as recasting MHPSS as a fundamental requirement that the state must sufficiently resource and provide.

Presentation

In person

580 Disability in the Irish International Protection System (Direct Provision)

Keelin Barry

Irish Centre for Human Rights, University of Galway, Galway, Ireland

Stream or current topic

Disability, law and social justice in times of uncertainty

Abstract

This paper will discuss the Irish International Protection system known as the Direct Provision system. It will highlight the invisibility of persons with disabilities who are seeking asylum in Ireland and the lack of disability awareness across the system and Irish asylum processes overall. The specific challenges facing child and adult asylum seekers with disabilities living in Direct Provision will be detailed, including those with less visible or invisible disabilities. In addition, the Direct Provision system itself will be discussed in the context of barriers and challenges it presents and

perpetuates for persons with disabilities, who are often living in unsuitable situations in Direct Provision for protracted multiple-year periods while waiting for a decision to be made.

Ireland transposed the EU Recast Reception Conditions Directive (2013) to Irish legislation in 2018, which stipulates the requirement for a vulnerability assessment tool to be implemented for certain groups deemed as 'vulnerable', of which persons with disabilities are one such 'vulnerable' group. The development and status to date of this vulnerability assessment tool in Direct Provision will be discussed. Ireland ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2018. This paper will discuss Direct Provision in the context of the CRPD, which will be argued not to be compliant with the CRPD Convention.

Presentation

In person

Law and Emotion 4

09:30 - 11:00 Thursday, 6th April, 2023

Location MU218

Stream Law and emotion

251 Honour and Chivalry: Investigating the ingredients of Anti-Terror Laws in India

Anjali Mathur

Jawaharlal Nehru University, Delhi, India

Stream or current topic

Law and emotion

Abstract

The Anti- Terror Laws in India have a long and turbulent history corresponding to the dynamic and unstable political landscape of the country. Shouldering the legacy of the colonial systems of prosecution, such laws have continued to be a constant feature of the Indian corpus of law, being utilized to combat scenarios of extra-ordinary nature, ranging from war and insurgency to the phenomenon of global terror in the 21st century.

A major development in the recent times has been the rise of the right-wing political forces globally, that have successfully become a part of the ruling governments across several nation-states. They have actively challenged the conventional wisdom when it comes to the constitutional values and principles that such nations have held dear over decades proposing, instead, an alternative system or interpretation to the same that they find in conformity to their 'puritanical' notions. The case of India has been no different.

What has emerged as a new normal in the Indian nation-state is a rise in the cases registered under Anti-Terror Laws. With a hyper-masculinist government in power, the quest to fight terror has metamorphosed from an endeavor to ensure security of the citizens to a mission to uphold the 'marred prestige' of the country. The aim of this paper is to understand how the notions of honour and chivalry, harboured by the current government are contributing to the formulation and implementation of Anti-Terror Laws in India.

Presentation

In person

633 The ability to evolve societies' views on humane refugee policy will always remain limited by the ongoing impact of propaganda with emotional leverage.

Josie Laidman

Magrath Sheldrick LLP, London, United Kingdom. Free Movement, London, United Kingdom

Stream or current topic

Law and emotion

Abstract

Western democracies are increasingly caught between their liberal ethos and their ability to effectively and securely control their borders. The threats migrants bring about in states are underwritten by securitisation, and whilst terrorism (and the like) can arguably be seen to heighten fear and mistrust in this decade, the perception of the uninvited 'other' affecting security strategies can be traced back throughout history, prevalent in ancient histories, satires, and tragedies dating back over two thousand years. These sources suggest that helping others provokes conflict but also that it is the risk involved in this task that gives a state a better claim to moral high ground. During WWII, the growing fear of subversives and radical aliens resulted in reinforced legislation against such individuals. This continued during relatively peaceful periods that followed, with the rise of 'red scare' propaganda. It is these conflicting intentions within society, driven by the fundamentality of human rights law in the twenty-first century that has caused the refugee policies that are now evident.

The impact of propaganda with emotional leverage is rife throughout history and continues to match policies and voting patterns today, even with potentially greater appeal to the human rights of the refugee. This paper looks at the impact of these stories, ingrained in our histories, and whether there will ever not be a story on the positives of stopping the uninvited others through wall building, deportation or preventing small boat crossings, conflicting with stories of the humanity of the refugee.

Presentation

In person

455 Keep on walking: Assessing danger through movement

Connor Leslie, Alejandro Anguera De La Rosa, Amy McCerery, Brontë Rapps, Amy Newman, Kristofor McCarty

Northumbria University, Newcastle-Upon-Tyne, United Kingdom

Stream or current topic

Law and emotion

Abstract

Historically, men have frequently engaged in physical conflict with each other, and it is theorised we have developed cognitive mechanisms to assess danger from a variety of cues. We used motion capture techniques to record the walks of men when walking naturally, and when walking with the aim to threaten an opponent across four studies, two of which involved the men using weapons. By using motion capture technology, we can ensure anthropometric or other visual features (e.g. build, race, clothing) are not on display, it is simply the walks shown to participants.

We asked participants to rate how dominant each walker was, and whether they would cross the road to avoid the walker as a proxy for behavioural change. We found that despite physical build not being on display, walkers rated as higher in dominance were stronger and larger than those rated less dominant, and these were the men more likely to be avoided in a dark street. Preliminary biomechanical analyses suggest a specific, pendulum-like movement between the mid-hip and the mid-back strongly increased perceptions of dominance and found that participants could tell the difference between a natural, everyday walk, and a threatening walk.

More research is needed in this arena with the aim of assisting law enforcement and security personnel to recognise threatening behaviour at an early stage with the aim of preventing violence.

Presentation

In person

262 Mindfully Embodied Understandings of Law - Lessons from Polyvagal Theory

Mary O'Rawe

Ulster University, Belfast, United Kingdom

Stream or current topic

Law and emotion

Abstract

Law, essentially, advocates a cognitive behavioural approach to regulating human transactions. It decouples brain, body and feeling states to privilege reason. Law's underlying assumptions, however, correlate poorly with consilience findings arising from scientific inquiry in, for example, neuroscience, interpersonal neurobiology, physics and biopsychosocialneuroimmunology. Empirical evidence, regarding the nature of materiality, mind and what it is to be human, increasingly, validates ancient wisdom traditions conceiving of life as energetic ecological connectedness, with huge untapped potential in somatic, mindful awareness. In failing to understand how humans show up, physiologically, as emotional, embodied, emergent relational beings, law cements dysfunctionality, distorting

autonomic, adaptive processes which could be more fully harnessed for resilience, co-regulation, and the creation of safety. Cartesian dualism, which over-privileges 'thinking like a lawyer,' misses the significance of somatic contemplative awareness. Legal reasoning has merit to the extent a dispassionate, logical, rational approach to human relations fulsomely addresses difficulties and creates conditions for safety and connection. However, insufficiently recognised preconceptions about the way the world works, and law's place within it, prevents much-needed holistic engagement with entangled ecological needs and challenges. It is untenable that law view itself as a triumph of cerebral endeavour. Its impact on the interconnected bodies, minds and spirits of all involved calls for more somatic and mindful reflection regarding what we are attempting with law and how. This paper uses the portal of Polyvagal Theory to explore the new science of safety, and considers how it might be of immense utility in reconfiguring our understandings of law.

Presentation

In person

Gender, Sexuality and Law 10 (Roundtable): Alternative legal histories of women and institutionalism

09:30 - 11:00 Thursday, 6th April, 2023

Location MU219

Stream Gender, sexuality and the law

Administrative Justice 6

09:30 - 11:00 Thursday, 6th April, 2023

Location MU301

Stream Administrative justice

363 Facilitating Access to Justice through Hypertextualising the Statute Books

Tin San Leon QIU

The University of Edinburgh, Edinburgh, United Kingdom

Stream or current topic

Administrative justice

Abstract

Legal systems underwent textualisation, transitioning from “law as speech” to “law as text”. Similarly, the hypertextualisation of legal rules is now making its way to the world. This paper explores how using hypertexts in legislative drafting could facilitate accessible justice, an essential aspect of the rule of law. As seen in the Renton Report, legislative drafting manuals, drafters’ speeches and other working documents of the drafting offices, the principle of accessible justice is one of the most significant considerations in drafting processes and decision-making.

This paper reviews the literature from an interdisciplinary perspective and argues that hypertext could communicate a large volume of complex legal information more intelligibly and reader-oriented. To put theory to work, I will use a sample of legislation redrafted in hypertexts as an example of what hypertextualised legislation could look like. The sample aims to show that (1) legislative hypertexts pave the way for various user-oriented legislation design patterns through empowering visualisation and standardised drafting, and (2) these design patterns are difficult, if not impossible, to implement without using hypertext. This paper concludes that legislative drafters are more likely to produce structured, intelligible, smart, and easy-to-use legislation with more advanced drafting tools, particularly hypertexts and markdown language associated with hypertexts. The goal of accessible justice would therefore be better served.

Presentation

In person

555 THE UTILIZATION OF ARTIFICIAL INTELLIGENCE IN THE LEGISLATIVE FRAMEWORK OF UK JUSTICE SYSTEM

Aysel Musayeva

Azerbaijan State University of Economics, Baku, Azerbaijan

Stream or current topic

Administrative justice

Abstract

Artificial intelligence has begun to pervade every part of our personal and professional life in recent years, yet many of us are unaware of it. People live in a big data environment, and more and more societal choices are being made by computers utilizing algorithms created from that data, whether in healthcare, education, business, or consumption. The UK Criminal and Home Affairs Committee has focused its study on how modern technologies are employed in the justice system. Algorithms are being utilized to increase crime detection, assist in the classification of inmates' security, streamline border entry clearance processes, and provide fresh insights that feed into the whole criminal justice pipeline. This study is based on the belief that, when applied appropriately, artificial intelligence (AI) can enhance people's lives by increasing efficiency, and productivity, and finding answers to frequently complicated issues. While admitting the numerous advantages, the system was taken aback by the spread of Artificial Intelligence technologies that may be exploited without sufficient control, notably by police forces throughout the country. Although facial recognition is the most well-known of these new technologies, there are many others now in use, with more being created all the time. AI technologies have major ramifications for a person's human rights and civil liberties when used in the court system.

Keywords: *Artificial intelligence, UK, justice, committee, new technologies*

Presentation

Virtual via Microsoft Teams

936 'GAMING THE ALGORITHM' AS A DEFENCE TO PUBLIC LAW TRANSPARENCY OBLIGATIONS

Alexandra Sinclair

London School of Economics and Political Science, London, United Kingdom

Stream or current topic

Administrative justice

Abstract

The British state is in the midst of what it describes as a 'digital transformation of government'.^[1] Algorithms are increasingly deployed by UK government agencies and public authorities to assist in areas such as visa processing,^[2] and fraud detection^[3]. Use of these technologies is resulting in two distinct transparency deficits. Firstly, the very nature of algorithmic decision-making systems means they are invisible to people. Members of the disabled community investigated for benefit fraud have no idea an algorithm flagged up their case for review.^[4] Secondly, even where it is known that an algorithm played a role, the UK government frequently refuses disclosure of any information about its operation.^[5] For example, the Home Office has disclosed only three of the eight features used by its sham marriage visa algorithm on the basis that disclosure will prejudice the operation of the algorithm through enabling the public to 'game' it.^[6]

This article looks at the extent to which algorithms can be gamed if their key features are disclosed. It then examines the doctrine of transparency under administrative law and the extent to which it might require disclosure of features used by automated systems.

[1] Government Digital Service, Government Transformations Strategy (policy paper, 9 February 2017).

[2] Joe Tomlinson and Jack Maxwell, Experiments in Automating Immigration Systems (Bristol University Press 2021).

[3] UNCHR 'Report of the Special rapporteur on extreme poverty and human rights' (11 October 2019) UN Doc A/74/48037.

[4] https://www.theguardian.com/society/2021/nov/21/dwp-urged-to-reveal-algorithm-that-targets-disabled-for-benefit?CMP=Share_iOSApp_Other

[5] <https://www.foxglove.org.uk/2020/06/22/update-papers-filed-for-judicial-review-of-the-home-offices-visa-algorithm/>

[6] <https://freemovement.org.uk/home-office-refuses-to-disclose-inner-workings-of-sham-marriage-algorithm/>

Presentation

In person

275 Public Perception of Police in Crime Prevention and Control in Lagos State, Nigeria.

Olutola Aribigbola

Prof.Yemi Akinseye George SAN & Partners, Abuja, FCT

Stream or current topic

Administrative justice

Abstract

This Paper focuses on police brutality in the South West, Nigeria. Constitutionally, police is responsible for crime prevention and control, but their performance of these responsibilities has been shrewd in repression and human rights abuses. Many citizens have become objects of abuses in the hands of the Nigeria Police Force. Many people were detained without trail, many people were killed and maimed. Police often demand bribes and kickbacks from offenders, this making their performance in crime prevention and control ineffective. This study used Robert K. Merton's Anomie and Social Structure Theory to explain why police failed in its responsibilities towards crime prevention and control. Qualitative method of data collection was used in this study to collect data from respondents selected through purposive sampling technique. In-depth interviews were collected among fifty-two respondents in Lagos State, Nigeria: Community members (32); and police ranks and files (20). This study found that members of public do not regard police in crime prevention and control. They refer other crime control agencies to the police such as Civil Defence Corps, Traditional figures, Peace Corps and others. It was also found that lack of accountability, corruption, poor welfare, and centralization of policy contribute largely to police in effectiveness in crime prevention and control. This paper therefore, concluded that public perception of police can only be improved if challenges identified with the activities of the police in crime prevention and control are dealt with meticulousness.

Presentation

In person

Empire, Colonialism and Law: Empire and International Law Session 2

09:30 - 11:00 Thursday, 6th April, 2023

Location MU302

Stream Empire, colonialism and law

319 The future for developing countries at the WTO: Self-designation under the spotlight

Kristie Thomas

Aston University, Birmingham, United Kingdom

Stream or current topic

International economic law in context

Abstract

This paper focuses on the designation of developing countries within the World Trade Organization (WTO) and its implications. The majority of WTO members (around two-thirds) are classified as developing countries. However, the WTO does not provide a definition of developing country within any of its legal texts, relying instead on self-designation.

Once WTO members are accepted as developing countries, then a large number of special and differential treatment (SDT) provisions offer developmental assistance. Nevertheless, despite some scholars counting nearly 150 separate SDT provisions, again these lack clear legal content and value. However, the heterogeneity of developing country WTO members makes it hard to identify exactly what development issues future negotiations should focus on and as the WTO legal framework requires consensus for agreements to be adopted, it is clear that there is an increasing awareness that developing country members of the WTO feel let down.

A clearer rationale for the designation of developing country members and the consequent eligibility for SDT would be of huge significance for the future of the WTO. Using the WTO as a case study international organization will also allow for wider solutions to be proposed that could be adopted by a range of bodies and institutions. This paper aims to conclude with a proposal for reform in how developing countries may be defined by the WTO in future.

Presentation

In person

821 Postcolonial Theory and International Law

Amanda Kramer

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

Postcolonial and decolonial scholars have a long and rich history of providing an understanding of the multitude of ways in which imperialism and colonialism have been foundational to the formation, development, and continued operation of international law and institutions. Analysing international law from a postcolonial theoretical perspective is integral for challenging dominant discourses emanating from the Global North that erase the history of colonialism from the development of international law and ignore the coloniality embedded within its current operations. This presentation intends to build upon the important work of these scholars by utilising postcolonial and decolonial theory to further deconstruct international law and institutions. More specifically, it will provide reflections drawn from a current manuscript in development that attempts to elucidate some of the specific ways in which coloniality is embedded in areas of international law covering the economy, military, and human rights, as well as how people have used these areas of law as spaces for resistance. Further, I will unpack some of the ways in which these systems intersect and have been designed to interact with each other serve to further entrench coloniality within their operations.

Presentation

In person

International Economic Law in Context

09:30 - 11:00 Thursday, 6th April, 2023

Location MU303

Stream International economic law in context

488 Global challenge on plastic pollution: To what extent is trade an effective instrument of plastic pollution control?

Temple Damiani

Teesside University, Middlesbrough, United Kingdom

Stream or current topic

International economic law in context

Abstract

The ongoing global initiatives on plastic pollution by the UN Intergovernmental Negotiating Committee on Plastic Pollution and WTO Plastics Dialogue respectively represent drastic efforts aimed at climate conservation. This paper raises the fears that the success of this seemingly laudable UN initiative may be inhibited by the same perennial factors, which previously militated against similar environmental instruments, such as the Copenhagen/Cancun Accords, Kyoto Protocol, and Paris Agreement. This paper argues that rather than initiating a new multilateral treaty on plastic pollution, the WTO trade policy framework offers an effective instrument to achieve a more functional and productive plastic pollution control. The study seeks to provide a fresh perspective and strategy in utilizing the existing trade framework to harmonize international plastics intervention. The paper suggests and concludes that owing to the effectiveness of WTO and the proliferation of other Free Trade Agreements, trade policy can be deployed towards achieving holistic and effective regulation and policy on plastics.

Presentation

Virtual via Microsoft Teams

648 An Overview of WTO's Environmental Protection Framework in Oil and Gas Trade

Mercy Alaofin

Teesside University, Middlesbrough, Nigeria

Stream or current topic

International economic law in context

Abstract

In recent times and more fervently, the world has become more awake to environmental issues and its impact on trade and the planet, especially plant and animal life. These environmental issues include air, land and water pollution, waste management, ecosystem management, maintenance of biodiversity, the management of natural resources, wildlife, endangered species and climate change. But more particularly, this research focuses on the environmental threats and impacts of the exploration, transportation, and production of fossil fuels (oil and gas) which are high pollutants.

The connectivity between trade and environment is undeniable as trade can only thrive in a safe environment. According to the European Environment Agency, the energy sector contributes over 70% of the world's pollution with many communities especially in the developing nations facing serious health and economic hazards resulting from environmental degradations caused by the activities of oil exploration and production multinationals. Currently, the WTO rules including the GATT does not consider the energy sector as distinct, the general rules of trade are applied to trade in energy commodities such as oil and gas. This research paper seeks to explore the current state of the WTO's environmental policy for oil and gas trade, the shortcomings, and reasons for the limited development in this area, and lastly give recommendations for ways that the WTO can develop a framework to set up a specific and robust system of environmental justice to demand accountability for environmental degradation caused by member states involved in oil and gas exploration and production.

Presentation

In person

Exploring Legal Borderlands: Exploring Borderlands of Life, Death and Evolution

09:30 - 11:00 Thursday, 6th April, 2023

Location MU305

Stream Exploring legal borderlands

907 “The borderline between cosmetics and drugs, of course, rests upon the claims which are made”: composing cosmetics in Canada with law, gender, and time (1949-1952)

Lara Tessaro

University of Kent, Canterbury, United Kingdom

Stream or current topic

Exploring legal borderlands

Abstract

In April 1949, Canada proclaimed into force a statutory provision that made cosmetics a sub-class of drugs. However, some Department of National Health and Welfare officials disagreed with this legislative decision, most notably Robert Curran, the Department's legal advisor. Wanting to draw a hard line between cosmetics and drugs, Curran argued that these products were distinguished not by their ingredients, but rather by the different claims made about them by manufacturers and marketers. Over the next three years, through administrative and enforcement practices rather than formal regulations, National Health officials performed an ever-firmer line between these substances, deploying the device of product claims on labels and in advertisements to divide cosmetics from drugs.

To explore this shifting borderline, this paper considers three sites using archival methods and other primary sources. First, U.S. case law on false and misleading claims drew distinctions between products with "temporary" versus "permanent" effects, in disputes regarding deodorants and dandruff shampoos. Second, under the Canadian Excise Tax Act, a product for which therapeutic claims were made could nonetheless be a cosmetic, as shown in an appeal to the Tariff Board regarding Chap Stick, a lip balm marketed to men. A final site examines how National Health officials struggled with outlandish claims made for estrogenic breast creams.

In examining these events, this paper apprehends product claims not merely as textual or visual representations but as a techno-legal device used to perform ontological separations. Moreover, the boundaries produced by these claim-making practices were frequently gendered.

Presentation

Virtual via Microsoft Teams

737 Defining the use of alcohol and other drugs in the Finnish law drafting regarding the rights of social and health care customers

Veera Kankainen¹, Anu Katainen¹, Katariina Warpenius², Lotta Hautamäki¹, Josefin Westermarck¹

¹University of Helsinki, Helsinki, Finland. ²Finnish Institute for Health and Welfare, Helsinki, Finland

Stream or current topic

Exploring legal borderlands

Abstract

This study explores the law drafting as a borderland in which legal concepts, policy goals, and different agencies become re-opened, redefined and reproduced. As an empirical case, the study analyses how the use of alcohol and/or other drugs (AOD) is defined in the law drafting process reforming the act on the rights of the social and health care customers in Finland. Previous research has addressed that AOD use is stigmatized across societies and even social and health care service staff often have negative attitudes towards customers who use AOD. However, less is studied how law drafting as discursive practice reproduces the ideas regarding AOD use. As its data, the study uses the draft on the government proposal (2018) on the rights of the social and health care customers in Finland and

stakeholder comments on the draft. The methodological framework is Carol Bacchi's critical discourse analytical tool "What is the problem represented to be?" (WPR). Bachhi suggests that legislation does not objectively intervene society but participates in the reproduction the ideas of the societal 'problems'. The study concludes that the Finnish reform defines AOD use through three discourses: One reproduces the idea of people using AOD having multiple problems and needing special services. Another defines them as risk customers needing to be socially controlled. The third discourse put emphasis on the rights of people in social and health care or in general, also when they are intoxicated or otherwise perceived to use AOD.

Presentation

In person

839 The 'unofficial' clerk in the official role: Embraced and condemned in everyday practices of lower courts

Anushka

Indian Institute of Management Calcutta, Kolkata, India

Stream or current topic

Exploring legal borderlands

Abstract

With its detailed laws and procedures, the judiciary may be perceived as the ultimate arbiter of what is 'formal' and, thereby, 'legal' as differentiated from the 'informal' or 'custom.' The ethnographic insights from lower courts of the state of Bihar suggest that informality remains a constitutive element in its everyday operations. Instead of a mere reliance on established rules and procedures, actors utilize a set of practices embedded in local settings, often beyond what is expounded in official documents. Entrusting the unofficial staff with significant day-to-day operations is one of the compelling evidences of the existence of informality within judicial institutions. Such staffs are locally known as 'nazayaj' (literally, illegitimate) or 'shadow' of court staff. They are delegated a share of the tasks supposed to be performed by the official court staff; however, the district court administration does not recognize these employees officially. The findings of the study reveal that they are not just a cog in the machine of court; they work with an agency between the court's authority and clients' issues and their solutions. They have considerable discretion in determining when, how, and whom to provide services. What someone is called, what they have the authority to accomplish, and what they are capable of if they are properly approached are highly unpredictable in lower courts. While underscoring the blurring of the distinction between formal and informal structures in everyday judicial processes, this paper makes an important contribution to the literature on informality within formal institutions.

Presentation

In person

445 The evolutionary normative autonomy of digital platforms

Ioana Bratu

Open University, Milton Keynes, United Kingdom

Stream or current topic

Exploring legal borderlands

Abstract

This paper explores the digital platform as an autopoietic, increasingly autonomous system that strives to become normative and self-referential.

I am showing that we are at an inflexion point, where the three options going forward are the following: (i) re-conceptualizing the notion of legal ordering, by departing from the territoriality standard; (ii) deepening and extending the notion of territoriality to the Internet, so that it conforms to our current understanding of legal normativity – this might entail a 'closed' internet, where nation-states will have to erect borders in cyberspace, built on the notion of a physical border; or (iii) maintaining the *status quo*, namely the power vacuum in which platforms increasingly tend to regulate themselves.

In the paper, I focus on the third option. The evolution of such a digital normative system is contrasted against the evolution of legal orders (domestic, international, EU), by employing Niklas Luhmann's approach. Luhmann's theory of autonomy and autopoiesis in legal systems is inspired by Maturana and Varela's biological models. I am applying Luhmann's understanding of these models to the normativity of the digital platform.

Therefore, I am arguing that by analysing how legal orders have developed to be autonomous and self-referential, one can predict the evolution of the digital platform's normativity in the absence of efficient regulation, as described at i) and ii) above. Lastly, I raise the question of how such a digital normative system might cooperate or come into conflict with established legal orders.

Presentation

Virtual via Microsoft Teams

Equality and Human Rights Law: Civil and Political Rights Issues

09:30 - 11:00 Thursday, 6th April, 2023

Location MU308

Stream Equality and human rights

191 State responses to protest and public disorder in times of crisis: a case study on citizenry rights

Noel McGuirk

Lancaster University, Lancaster, United Kingdom

Stream or current topic

Equality and human rights

Abstract

Citizenry use of protests to vent their discontent with the state often highlights a contentious rights boundary between the state and its citizens. The right to protest is considered as being one of the fundamental democratic rights afforded to citizens in any modern democratic state. However, in recent times there have been burgeoning array of protests that have prompted varying responses from the state. For example, the protestors at the Capitol Building in the US, the protests by Insulate Britain, BLM and violence against women as well as the protests on abortion rights in the US and protests on access to abortion services in the UK, all raise significant issues on the relationship between the state and its citizens.

The primary aim of this paper is to explore the nature of the relationship between citizen and state in the midst of a period of crisis. The argument explored in this paper is that times of crisis create opportunities for governments to harness these circumstances to achieve their political agenda. Often this agenda is related to limiting rights in favour of heightened executive power commonly resulting in a dilution of citizen rights. This sometimes has a significant impact on minorities in a way that can create and foster inequality in society. This argument is demonstrated by considering a range of examples involving emergencies and crisis as the impetus for significant constitutional change.

Presentation

In person

905 Hate Speech and Internalisation of International Human Rights: A Case Study of the Social Movement Against Racism and Anti-hate Speech Law in Japan

Ayako Hatano

University of Oxford, Oxford, United Kingdom

Stream or current topic

Equality and human rights

Abstract

Hate speech is a menace to democratic values, social stability, and peace. As part of a worrying global phenomenon, hate speech and racism against ethnic minorities have seen a severe rise in Japan, which has drawn domestic and international criticism. Responding to the recommendations of the UN human rights treaty bodies, Japan enacted its first anti-hate speech law in 2016. With its extremely narrow definition of hate speech and no punishment against hate speech for striking a balance with the protection of free speech under the Constitution, the law has been severely criticized as 'teethless'. However, this weak law becomes somewhat effective including ripple effects on anti-racism local movements and stricter regulations in municipalities. To resolve the puzzle, this study examines how international human rights law and norms are internalised in the development and implementation process of anti-hate legislation in the interaction of multiple stakeholders in both domestic and international fora. This study highlights the role of strategic litigations which contributes to the development of the first anti-hate speech law in Japan, as a vehicle to connect global and local standards. Based on both theoretical and empirical analysis of interviews with various actors, government officials, lawyers, and activists, this study describes the dynamic process of internalisation of international law comprising multiple stakeholders. This case study will help understand the transformative impact of global human rights, particularly international human rights instruments as 'soft law', on local actors and the feedback mechanisms through which local movements influence global human rights institutions.

Presentation

In person

547 The Enforcement of the Rights to Referendum: Non-discrimination and Equality of Minorities in Southeast Asia

Khanh-Linh Ta

University of Bristol, Bristol, United Kingdom

Stream or current topic

Equality and human rights

Abstract

The birth of the 'International Bill of Human Rights' brought forward a forum where referendum can be studied through a right-base lens. Defined as the political right of the people to directly express their will on important issues of their country, the right to referendum is a human right recognized in international binding texts at the core of democratic government based on the consent of the people. Yet, upon the resurgence of autocratization and populism, the referendum phenomenon is put into question at its risk of imposing the tyranny majority on minorities. Against this background, developing countries within Southeast Asia have brought forward counter-majoritarian safeguards to reconcile citizens' aims with the values to which modern democracies aspire in the referendum. Taking examples from the Socialist Republic of Vietnam, this paper offers insight into the enforcement of the right to referendum in an authoritarian and communist regime while highlighting the mechanism where non-discrimination policies are applied in order to ensure the effective exercise of the right to referendum. In doing so, it attempts to provide not only an overview of the enforcement of political rights in Southeast Asia but also evaluate the role of non-discrimination right in addressing the welfare and ensuring the involvement of minorities in public decision-makings.

Key words: *Referendum; Human right; Non-discrimination; Minorities' rights; Southeast Asia*

Presentation

In person

505 A Human Right to Financial Inclusion and Sustainability: The Nigerian perspective

Dr Igbo Dabor

Nottingham Trent University, Nottingham, United Kingdom

Stream or current topic

Equality and human rights

Abstract

The World Bank defines financial inclusion as the means where individuals and businesses have access to useful and affordable financial products and services that meet their needs – transactions, payments, savings, credit,

delivered responsibly. Financial inclusion is a critical element in the growth of any country, Nigeria included. It is part of the United Nations 2030 SDG Goals. It involves having access to adequate financial products and services needed by weaker economic sectors of society and low-income groups at an affordable cost fairly and transparently by mainstream institutional players.

However, a recent report suggests that “globally, 1.7 billion adults are excluded from the formal financial systems...” Individuals from developing economies such as Nigeria, are mostly financially excluded. In Nigeria, the average monthly cost of living is N137,430 (\$381.75). A fifth of this income is spent on rent, food, transportation, and the remaining on running the household.

One reason many Nigerians live below the poverty line is that they do not have access to the formal financial services that have become fundamental to our economic systems namely credit, savings, and payment of services. Although Financial Inclusion is becoming an established global agenda, it only exists as a policy goal in Nigeria. This paper aims to make the argument that instead of merely existing as a policy goal, Nigeria could recognise financial inclusion as a fundamental human right. It argues that such an expansion is based on the significance of this right in advancing individual autonomy and satisfying other well-established human rights.

Presentation

In person

25 Years of Constitutional Change: Borders

09:30 - 11:00 Thursday, 6th April, 2023

Location MU309

Stream 25 years of constitutional change - past and future

310 'Border Country': Health Law in a Devolved UK - Perspectives from Wales

John Harrington¹, Abbie-Rose Hampton²

¹Cardiff University, Cardiff, United Kingdom. ²KCL, London, United Kingdom

Stream or current topic

25 years of constitutional change - past and future

Abstract

Drawing on work in critical border studies, this paper argues that struggles over the content and scope of health law have contributed to the production of 'Wales' as a sub-state entity within the UK. Our discussion is contextualized with reference to constitutional developments and the politics of devolution. We identify three relevant types of border. First, the *border between* Wales and England, made evident by the differing measures taken during the Covid-19 pandemic, but also divergent rules on the availability of NHS care treatment, and on mobility to access this. Second, the *border without*, defining the tangled relation between Wales, the UK and the wider world. On the one hand, the Abortion Act 1967 applies uncontroversially in Wales, as in the rest of Great Britain. On the other Cardiff administrations have sought to temper Westminster-determined rules limiting the ability of immigrants and asylum seekers to use the NHS. Third, the *border within*, refers to the role of health law in recognizing differences within Wales itself, as evidenced in policies to address the needs of Welsh-speaking patients across the whole territory, rather than solely in linguistic enclaves. In conclusion, we evoke Raymond Williams's work on cultural theory and his fictional writing in arguing that Wales (and by extension other devolved territories) is well characterized as 'border country': produced by health law rules regarding the crossing of the frontier, but also exhibiting political and institutional agency in creating, modifying, and indeed resisting these rules.

Presentation

In person

427 Eroding a colonial constitutional legacy: The corrosive effect of the National Security Law on Hong Kong's once respected legal traditions and processes.

Jane Richards

University of Leeds, Leeds, United Kingdom

Stream or current topic

25 years of constitutional change - past and future

Abstract

The introduction of Hong Kong's National Security Law (NSL) in July 2020 saw the overnight replacement of a constitutional semi-democracy with a semi-authoritarian regime. The sweeping changes in civil and political rights protections, criminal law, and the rule of law, has given rise to multiple prosecutions both under the NSL, and through the revival of colonial-era criminal laws. There has yet to be any analysis of the way that the NSL intersects with Hong Kong's common law traditions, and the way that the legal framework has changed. Taking both a doctrinal and empirical approach, in this paper, I argue that the uncertainty, lack of transparency, and reversal of common law presumptions, has eroded Hong Kong's rule of law, which previously upheld common law and democratic rights in Hong Kong. Adopting a socio-legal lens of analysis, I show how the NSL has been institutionalised through its infiltration of bureaucracy and institutions of state, including in universities and schools. I draw out the way that freedom of speech, a free media, and academic freedoms have been dismantled, to result in both censorship by the state, and censorship of self. I conclude to show how the introduction of the NSL has implications both for common law constitutional rights in Hong Kong, by its purported extraterritorial application, and through the expansion of Chinese Communist global governance.

Presentation

In person

592 The state of the social union: 25 years of devolution and the UK welfare state

Mark Simpson

Ulster University, Derry-Londonderry, United Kingdom

Stream or current topic

25 years of constitutional change - past and future

Abstract

The establishment in 1998 and 1999 of devolved legislatures for Scotland, Northern Ireland and Wales that were to a large extent 'social policy parliaments' (Birrell) has inevitably had consequences for the UK as a welfare state. Although it is possible to overstate the extent to which a single, unitary welfare state existed prior to 1998, legislative devolution provided an opportunity for differences of ideology or perceived need in the different UK countries to find expression to a greater extent than previously. Unionist narratives continue to emphasise the benefits of the social union, including the recent report of the Gordon Brown-led Commission on the UK's future, but the character of that social union has unquestionably changed and will continue to change. Taking social security as a case study of these processes, this paper draws on two waves of fieldwork (2014-15 and 2020) with elite policymakers at their heart. Combining their insights with an interrogation of TH Marshall's citizenship theory, it assesses the extent of, and reasons for, both divergence and continued parity in social protection across the UK's constituent countries in the devolution era.

Presentation

In person

720 How Can Customary Law Reach the System of Statutory Law? ---The case of China

Chuxi Zhang, Chuxi Zhang

the University of Manchester, Manchester, United Kingdom

Stream or current topic

Civil justice systems and ADR

Abstract

Customary law in China exists as an informal source of law. This makes its application in court quite challenging. Though, it serves an essential function of filling legal vacuums in existing laws and can provide judges with foundational grounds when reaching their decisions. It becomes expedient to explore appropriate ways for customary law to reach the system of statutory law and courts. The aim is to ensure that, as a source of law, it is more certain, accessible, and comprehensible.

The research re-examines the current system of statutory law in China. Empirical work conducted in Qinghai province (located in the northwest of China) reveals that there is less prospect that customary law gains formal recognition at the state level, for example through legislative intervention. However, at the local level, customary law can exert a positive and real influence on the regulatory norms of respective provinces and counties and, as such, contribute to the development of formal statutory law. This is particularly warranted as the characteristics of customary law are often rooted in real-life experiences and personal relationships of local populations. In addition, customary law would still need to rely on protection from scientific legislation in order to guarantee its' rationality to be absorbed appropriately by the system of formal statutory laws.

Presentation

In person

Exploring Legal Borderlands Session: Exploring Borderlands of Socio-Legal Space and Geography

09:30 - 11:00 Thursday, 6th April, 2023

Location MU310

Stream Exploring legal borderlands

401 The Concept of New Space

Gulnur Erol

University of Brighton, Brighton, United Kingdom

Stream or current topic

Exploring legal borderlands

Abstract

The development of the private sector in outer space industry has started outpacing the State sector, leading to the concept of 'New Space'. The aim of this presentation is to examine sociologically and legally this concept and to assess whether the regulations in international law to control commercial and scientific activities in outer space are enough. According to the current regulations in international law, the private sector needs State support to operate in outer space due to the responsibility of States on 'the activities of non-governmental entities' in Outer Space. Although States still dominate outer space activities, they are eager to cooperate with businesses because of their ability to simplify their design and to create low-cost and high-performance products without the bureaucratic hurdles unlike governments. However, this prospective outpacing of States by the Private Sector causes people to query if there are sufficient legal rules to protect the common heritage of humanity such as preventing the prospect of owning a planet by some businesspeople like Elon Musk, among other things. Overall, in a changing and globalising world, the rules of law can adapt to the new order if only consulting with social sciences.

Presentation

In person

859 Spatio-legal borderlands: a legal geography approach to the creation of distinct legal spaces through the evictions of “informal” migrant camps in Calais

Isabella Leroy

Vrije Universiteit Amsterdam, Amsterdam, Netherlands

Stream or current topic

Exploring legal borderlands

Abstract

This abstract understands legal borderlands both figuratively and more literally. Migrant camps in the EU have often been approached from the lens of the “state of exception”, stating that they are spaces of exception, lawlessness or “legal void”. Migration law scholars focus closely on the administrative status of migrants, but this does not fully explain why migrant camps also impact nationals of the host country, or why people migrants with different administrative statuses face the same restrictions when encamped.

Rather than examining law from an aspatial perspective, this research stresses the necessity to take the space of the migrant camp as the starting point. Using a legal geography approach, it examines to what extent migrant camps in the EU are distinct legal spaces. It examines the regulation of evictions of migrants living in “informal” settlements in Calais (France). Using an empirical legal studies framework, the different types of legal data related to evictions in Calais are collected and analysed systematically, including laws of different quality (legislation, regulations, formal and informal laws).

Beyond the law’s purview to create discrete categories, (migrant) bodies in the informal camps of Calais are regulated indirectly through the regulation of space. Law engages in this spatial governmentality inter alia by reinforcing and/or weakening the material boundaries of the camp by defining the “inside” and “outside” of the camp – thus, the camp itself embodies the legal borderland.

Presentation

In person

531 Law and Politics in the Human Rights City

Alice Trotter

Centre for Applied Human Rights, University of York, York, United Kingdom

Stream or current topic

Exploring legal borderlands

Abstract

This paper considers a growing movement of cities in the UK, Europe, the United States and further afield that are declaring some form of human rights-based identity. This concept is used to refer to cities that have 'become', for example, a Human Rights City, a City of Sanctuary, or a Shelter City.

The paper reports the findings of a continuing doctoral study that combines doctrinal and empirical research to study two case studies –York and Edinburgh – each of which have declared a rights-based identity. Like others in the movement, these cities have drawn on norms of international human rights and humanitarian law to distinguish the ambitions, policies, and practices of their local civic and civil society. However, questions remain over the legal life of these social practices. Where some argue that, akin to city action in the climate change agenda, these rights-based initiatives may be read as the beginnings of non-state actor hood for cities, for others the Human Rights City is a political exercise in which the law does not take a prominent role.

Data gathered from a series of key informant and walking interviews in the two case studies is thus discussed, with the paper moving to suggest that the human rights-based identities for cities exist in something of a grey area: a social practice that, in certain circumstances, may take on a legal nature. This, the paper concludes, raises questions about formal and informal law, about what can be considered as law and as non-law.

Presentation

In person

163 Pluralistic Reconciliation or Relative Politicization: Emerging Energy Security under Quantizing Geoeconomics in International Economic Law

Xinyue Li

Durham University, Durham, United Kingdom

Stream or current topic

International economic law in context

Abstract

The emerging energy security amid the clean energy transition in the geoeconomic order has brought challenges in international economic law, including the insufficient jurisprudence of energy security disputes in the World Trade Organization (WTO) and the irreconciliation between security protection and economic liberalization. This study combines case analysis with critical international legal study by applying the established, multidisciplinary theoretical framework of "quantizing geoeconomics" to elucidate that the resurgence of security protection and deference to national autonomy in a geoeconomic order is a plausible approach toward pluralistic reconciliation between national security and economic liberalization. It examines the problematic WTO jurisprudence of trade-restrictive measures on the grounds of energy security and attributes the bifurcated practice to the conventional perception of the balance between competing interests of international economic law under neoliberalism. It argues for the open-realism, quantum-based, and diverse-sympathetic theoretical framework of quantizing geoeconomics to promote an inclusive, modest platform for interaction, negotiation, and coordination on security-economic issues. It further proposes the normative payoffs and practical implications of quantizing geoeconomics in reconciling what appears irreconcilable in classical scholarship, ontology, and the perception of international economic law. This study marks the first response to the main criticism leveled against quantizing geoeconomics, that it fails to offer any immediate, feasible solutions for dispute settlement and institutional reform for security-economic issues. It further urges collective endeavors to

transcend the limitations of quantizing something and to engage in future research using interdisciplinary approaches to expand the outreach of international economic law and international law in general.

Presentation

In person

Legal professions 4: Lawyers

09:30 - 11:00 Thursday, 6th April, 2023

Location MU318

Stream Lawyers and legal professions

240 Salesmen, Entrepreneurs and Leveraged Ethics: an Empirical Study of the Institutional Logics, Identities and Ethics of Leveraged Finance Lawyers

Trevor Clark

University of Leeds, School of Law, Leeds, United Kingdom

Stream or current topic

Lawyers and legal professions

Abstract

Existing scholarship explores whether misconduct by corporate lawyers may be influenced by their personal characteristics ('bad apples') and/or their firm (a 'bad barrel'). My empirical work explores whether the characteristics of the market sector in which they practice – the 'rotten orchard' – such as work type, client type, market practices, organisational relationships and/or forces of disruption and continuity might influence their ethical decision-making. I have chosen to explore these questions through an empirical study of lawyers practicing in the European private equity and leveraged finance market. I zoom in on the material practices of their market, the identities they assume and the narratives they employ to identify the core institutional logics of their practice area. One group of lawyers, the Salesmen, those that act for the arranging banks on the financings of large European cross-border leveraged buyouts (LBOs), tends to adopt a timorous and supine stance in negotiations, selling their opponents' position to their clients. In contrast, the lawyers facing them in LBO transactions, the Entrepreneurs, who act for major private equity firms, tend to assume an aggressive, exploitative and entrepreneurial identity. The data suggests that both groups of lawyers regularly prioritise pragmatic goals over their own integrity, independence, the interests of their clients, their professional craft and the reputation of the profession. The data raises important questions as to both the influence and observance in corporate legal practice of regulatory codes of conduct and professional and ethical norms.

Presentation

In person

492 Evaluating the Next Generation of Law Firm: The Australian Perspective

Chantal McNaught

Bond University, Gold Coast, Australia. LEAP Legal Software, Auckland, New Zealand

Stream or current topic

Lawyers and legal professions

Abstract

As Australian law firms embrace incorporation, the partnership model has become a relic of the past. There are now more new law firms choosing the incorporation model over any of the traditional law firm structures. The growing cohort of legal practices undergoing incorporation are far from the usual suspects of top-tier, global law firms. Instead, the majority of these Incorporated Legal Practices (ILPs) are sole practitioner or micro-firms, with a preference to suburbia.

There are two unique traits of Australian ILPs; non-lawyers can become directors and shareholders of the law firm, and Legal Practitioner Directors must ensure the ILP has “appropriate management systems” in place. This difference between ILPs and traditional models produces a set of circumstances for sole practitioner and micro-firms which did not exist when traditional models were the norm. A scientific and repeatable methodology to evaluate an ILPs’ effectiveness to address the appropriate management systems requirement is of practical concern. This has implications for regulators, legal practice reform, and consumer rights.

In light of ILPs’ growth eclipsing traditional models, the question posed in this paper is how socio-legal methodologies can be embraced to measure the effectiveness of small Australian ILPs in addressing their appropriate management systems requirements.

Presentation

In person

873 Defence lawyers as key players in ensuring access to justice for criminal defendants in the Netherlands: lessons learned from the Covid pandemic

Anna Pivaty, Marieke Dubelaar, Maria Bruquetas

Radboud University, Nijmegen, Netherlands

Stream or current topic

Lawyers and legal professions

Abstract

This paper examines the impact of changes introduced during the Covid pandemic (most notably remote proceedings) on the professional role of Dutch criminal defence lawyers. Findings are derived from interviews with 39 criminal justice professionals conducted in 2021 as part of a larger study on the impact of the Covid pandemic on the Dutch justice system, followed by 11 interviews with lawyers conducted specifically for this research.

Relying on socio-legal literature distinguishing the 'legal' and 'social' dimensions of the defence lawyer's role (Pivaty, 2019) and the two dominant lawyering styles –'lawyer-centred' versus 'client-centred' – we argue that digitalization during the pandemic has significantly constrained the practical application of lawyers' social role and the exercise of 'client-centred' lawyering. The time available to deal with clients' social needs was reduced because lawyers were tasked with facilitating clients' participation in digital proceedings. The social dimension of lawyering is also less effective at a distance, as emotional support is hindered by constraints to communication. Lawyers were required to travel longer distances to visit detained clients, who were no longer brought to court. Digital measures during the pandemic required increased paperwork, and consequently time spent in communication with clients was scaled down. Furthermore, lawyers have developed categories of cases suitable for physical hearings with greater lawyer-client contact, or for digital hearings with limited lawyer-client interaction. Thus, in practice not all clients equally benefitted from a 'client-centred' approach. These findings are relevant for any future reforms introducing digital/remote proceedings in criminal justice and beyond.

Presentation

In person

736 'From social citizenship and democratic lawyering to market citizenship: reflections on a process of de-professionalisation and de-humanisation'

Hilary Sommerlad

University of Leeds, Leeds, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

This presentation combines analysis of macro- and meso-level structures with data from a series of qualitative studies of legal aid practice in England and Wales, conducted from the mid 1990s through to the current day, to consider the progressive colonisation of the welfare field. It will discuss how the concept of universal recognition and solidarity, generated by the incorporation of the mass of working people into the Keynesian economy, stimulated the emergence of the activist professional dedicated to democratising law and building an autonomous model of rights. The data will be used to illustrate the practices this project generated, and to consider how its reformism and framing by legal discourse and rules placed constraints on the activism of lawyers and NFP caseworkers.

This historically grounded presentation will then discuss the neo-liberal assault on this project, reflecting on how 'the economisation of the social' has underpinned the deployment of managerialist and discursive techniques to re-make professionals' subjectivities and transform their interactions with clients. Following Sassen, I argue that those now

living in poverty represent 'surplus populations', deemed devoid of value, who have been effectively expelled from full citizenship. Research just conducted will be used to show how in recent years a number of factors have accentuated the conditions which create this, including austerity, compounded by the current economic climate, and Covid, reinforcing what one lawyer described as a "systematic, ideological attack to remove people's rights and curtail access to justice by making it as difficult as possible to be represented".

Presentation

In person

Family Law and Policy 8

11:30 - 13:00 Thursday, 6th April, 2023

Location MD007

Stream Family law and policy

776 Contributions vs consequences: addressing post-divorce financial disparity

Lucy Crompton

University of Warwick, Coventry, United Kingdom

Stream or current topic

Family law and policy

Abstract

Post-*White* [2000] UKHL 54, the law of financial remedies on divorce has continued to favour financial contributions. This paper argues that an important mechanism in this process is the lower courts' consistent elision of spousal contributions with the consequences of those contributions.

The principles of non-discrimination and equality from *White* are applied only when evaluating breadwinner and traditional homemaker contributions as equal. This paper examines the courts' refusal to apply equality and non-discrimination in assessing the unequal post-divorce consequences of 'different but equal' contributions, with a focus on disparity of earning capacity. A breadwinning contribution will tend to lead to large earning power whereas a homemaking contribution will limit earning capacity.

In *Miller* [2006] UKHL 24, the House of Lords attempted to turn the focus from contributions to consequences, weighing post-divorce disparity in earning capacity more heavily in the balance through the compensation principle, with Lady Hale setting an 'equal start on the road to independent living' as the overall aim. This important distinction fell on deaf ears. The lower courts kept the focus on the inherent equality of the contributions themselves, with any career sacrifice by a homemaker being treated as a normal part of her contribution.

The paper examines how the lower courts' refusal to shift focus from contributions to consequences means that, although judges performatively proclaim different types of contribution to be equal, they fail to unravel the interdependent partnership of equals fairly to share its post-divorce financial consequences.

Presentation

Virtual via Microsoft Teams

398 Protecting Marriage 'seriously but not literally': Immigration and marriage in Ireland

Maebh Harding

University College Dublin, Dublin, Ireland

Stream or current topic

Family law and policy

Abstract

Irish constitutional protection of marriage and the paradigmatic marital family under Article 41 is framed as universalist. Irish case law proudly proclaims that the rights of the marital family are rights enjoyed regardless of nationality and citizenship.[1] However, the lived-in reality for immigrants to Ireland is very different. The inalienable and universal rights of the family unit are not universal in their realisation but depend on context.

Ireland has increasingly policed eligibility and entry to marriage in Ireland for foreign citizens. In this sphere, Irish law treats marriage as societal filter, holding foreign citizens to higher standards of family life and subjecting their relationships to greater levels of scrutiny. The paradigm marital family is once again used as a conservative totem, invoked to maintain existing social structures.

This paper will explore how Article 41 protection is realised in relation to rights of immigrant marital families, the policing of entry to marriage and in granting legal recognition to foreign marriages.

[1] E.g. *Northants CC v ABF* [1982] ILRM 164 & *TM v AM v An Bord Uchtala* [1989] IR 656.

Presentation

In person

249 The Secret Mathematics of Irish Divorce Law

Deirdre McGowan

Technological University Dublin, Dublin, Ireland

Stream or current topic

Family law and policy

Abstract

Article 34.1 of the Irish Constitution provides that court proceedings must be heard in public. This central principle of a democratic society ensures that justice is both done and seen to be done. Exceptions may be made in special and limited cases prescribed by law. All family law is subject to an in camera rule which limits attendance at, and reporting of, cases. This has been the subject of significant criticism and some relaxation of the rule has allowed for greater reporting of cases. Written judgments in divorce cases are generally published, with redaction to protect the parties' privacy, on the Courts Service website. The names of cases are initialised and specific identifying information removed. However, recently the nature of redaction and anonymisation has changed. Parties are increasingly named 'X', 'Y', 'A' or 'B' and a number of recent so called 'big money' cases have had asset valuations redacted making it impossible to gauge how wealth has been divided. At least one Court of Appeal divorce judgment has been the subject of a removal order after publication. This paper reviews these recent developments and their implications for transparency and certainty in an already opaque and discretion-heavy area of law.

Presentation

In person

196 Reforming Family Law: Lessons from the Married Women's Association

Sharon Thompson

Cardiff University, Cardiff, United Kingdom

Stream or current topic

Family law and policy

Abstract

This paper will explore some ideas for reform of family law, inspired by the historical campaigns of the Married Women's Association (MWA). The Association was established in 1938, and worked to promote legal equal partnership in marriage throughout the twentieth century by reforming family law.

The organisation had some success, reforming the law on maintenance and housekeeping savings, as well as influencing the passage of the Matrimonial Proceedings and Property Act 1970. However, the MWA never succeeded in its ultimate ambition – the equal sharing of property during marriage.

This paper draws upon research from my book *Quiet Revolutionaries* (Hart 2022) to explore the lessons learned about family law reform from the MWA's story, as well as whether there is scope to revise and update the MWA's ideas, which include co-ownership of specific assets during marriage, and a right for spouses to know about one another's financial affairs. As Lady Hale has put it, 'perhaps someone should dust off the Association's Bill', and in this paper, I will explore this potential.

Presentation

In person

Managing and Protecting People on the Move 4

11:30 - 13:00 Thursday, 6th April, 2023

Location MD012

Stream Managing and protecting people on the move

Ben Hudson

221 Fifty Years On: The Lasting Legacy of the 1971 Immigration Act

Amanda Whitfield

Durham University, Durham, United Kingdom

Stream or current topic

Managing and protecting people on the move

Abstract

More than fifty years since it was first introduced, the 1971 Immigration Act continues to underpin the UK's contemporary asylum and immigration regimes. The Immigration Rules introduced in this Act are still in place today: updated at the introduction of every new Immigration Act and amended many times in between, these Rules now cover all aspects of UK immigration and asylum provision. Not only was the 1971 Act the first piece of legislation to provide a definition of an 'illegal entrant', but this Act also conferred unprecedented discretionary powers on the Home Secretary which are still enjoyed today.

Following on from the racially discriminatory 1962 and 1968 Commonwealth Immigrants Acts, the 'patriality' clause in the 1971 Act - designed to ensure access to the UK for citizens of Australia, Canada and New Zealand while denying access to the rest of the Commonwealth - was ultimately the end of Commonwealth immigration and the Windrush generation. Related to this, the passing of the 1971 Act took place in conjunction with Britain's accession to the European Economic Community (EEC, later to become the EU). In effect, with the enactment of the 1971 Immigration Act, the UK had 'chosen' Europe over the Commonwealth, a decision which would have consequences for years to come.

This paper examines the lasting legacy of the 1971 Immigration Act, in particular, how it continues to influence the current hostile environment legislation and the UK's asylum and immigration regimes.

Presentation

In person

166 Assessing the benefits and limitations of a government-managed approach to low-wage labour migration in South Korea and Thailand

Arwen Joyce

University of Leicester, Leicester, United Kingdom

Stream or current topic

Managing and protecting people on the move

Abstract

Since the 1970s, temporary labour migration has been the preferred way to fill low-wage labour shortages in Asia's advanced economies (Salt 1989). Restrictive, tied-visa regimes construct a separate and unequal class of workers in a host country. Some comparative studies of these regimes in Asia have been undertaken (Park 2017; Ford 2019; Kaur 2010) but they remain under-theorised.

This paper builds on earlier work (Joyce 2022) to examine the low-wage labour migration regimes in South Korea and Thailand, which implemented government-managed reforms in 2004 and 2017, respectively. Government-managed low-wage labour migration regimes manage recruitment, permit workers to change jobs under certain conditions, and only exclude workers from protective labour laws on non-discriminatory grounds. Government-managed regimes are not a panacea, but predicted outcomes for workers in such regimes include reduced recruitment costs, increased bargaining power, and higher wages than similarly situated workers in neoliberal employer-managed regimes. Nevertheless, some categories of workers, such as migrant seafarers and those employed in the agricultural sector, remain under-protected. The paper argues that to bring their low-wage labour migration regimes into compliance with international labour rights standards, South Korea and Thailand must undertake further reforms and investment to protect low-wage migrant workers.

The empirical data for the analysis were gathered from studies published by academics, advocacy groups, and government agencies. In addition, I conducted interviews with migrant worker advocates, academics and policymakers in South Korea in 2019 and plan to conduct interviews with similar stakeholders in Thailand in early 2023.

Presentation

In person

Art, Culture and Heritage: International framework and transitional justice

11:30 - 13:00 Thursday, 6th April, 2023

Location MD021

Stream Art, culture and heritage

Andreas Giorgallis

61 Memory Continuity in the Portuguese Cityscape: The Case of Padrão dos Descobrimentos

Mirosław Michał Sadowski^{1,2,3}, André Carmo^{4,3}, Rui Maia Rego^{5,3}

¹McGill University, Montreal, Canada. ²Institute of Legal Sciences, Polish Academy of Sciences (INP PAN), Warsaw, Poland. ³Centre for Global Studies, Universidade Aberta, Lisbon, Portugal. ⁴University of Évora, Évora, Portugal. ⁵University of Lisbon, Lisbon, Portugal

Stream or current topic

Art, culture and heritage

Abstract

Portugal, was subject to one of the world's longest dictatorships in the 20th century. Among others, the previous regime's legacy continues within the contemporary Portuguese cityscape. The purpose of this paper is to analyse a particularly influential case of memory continuity in Portugal: that of Padrão dos Descobrimentos, or Lisbon's Monument of Discoveries.

The article is divided into three parts: theoretical, conceptual and practical. In the first section, the authors introduce the framework which will be used throughout the paper, explaining the notions of collective memory and the cityscape, showing how the two intersect through various memory carriers, such as cultural heritage.

In the second part of the paper, the authors look into the question of traumatic memories that affect collective memory, using Paul Ricoeur's and Hannah Arendt's philosophical thought on forgiveness in the field of politics as a basis of an analytical approach to be used in the third part of the paper, the case study.

Although not a classified monument, Padrão dos Descobrimentos is located in a Special Protection Zone and, in 2019, was visited by 300,000 people, 90% of which were foreign tourists. A recent act of vandalism against it reignited a deeper cleavage around the uses of history and memory, the Portuguese colonial past, and the role of monuments as instruments for the reproduction of nationalism. In this sense, through the proposed analytical framework, its critical reading becomes relevant, both for what it revealed and, above all, for what remains hidden.

Presentation

In person

663 The Sustainable Development Goals and the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property: breathing new life in an ageing instrument

Sophie Vigneron

Kent Law School, Canterbury, United Kingdom

Stream or current topic

Art, culture and heritage

Abstract

Today, cultural heritage is viewed as an enabler and driver of sustainable development rather than an impediment to economic growth. Yet, it is only mentioned in one of the seventeen Sustainable Development Goals defined by the United Nations, namely SDG 11 'Sustainable Cities and Communities' that includes target 11.4 that aims to 'strengthen efforts to protect and safeguard the world's cultural and natural heritage.' In addition, the focus of most studies and reports on the implementation of target 11.4 only consider the 1972 Convention on world heritage and the 2003 Convention on Intangible Heritage. The 1970 Convention is barely discussed even though it has been in force for 50 years and ratified by 143 states.

However, the recent focus on peace and security by different institutions within the United Nations highlights the relevance of this Convention for meeting SDG 16 'Peace and Security'. The presentation will analyse how the focus on SDG 16 rather than SDG 11 is breathing a new life into the 1970 Convention. It will analyse how targets and indicators for SD are an incentives to improve its implementation for both public and private institutions.

Yet, it will conclude with a word of caution as the emphasis on the fight against terrorism, on the measurement of legislative and administrative frameworks, considers cultural property only as objects to be preserved in museums rather than objects of cultural importance for local communities.

Presentation

Virtual via Microsoft Teams

670 Application of international law norms for the protection of culture in situations of belligerent occupation: case study of olive farming in the occupied Palestinian territory

Anisha Patel

Europa-Universität Viadrina, Frankfurt-Oder, Germany

Stream or current topic

Art, culture and heritage

Abstract

The concept of what 'culture' entails has been evolving over time. An expanded understanding of culture is focused on people and the intangible elements that give meaning or significance to the tangible. Simultaneously there has been an evolution in the international law norms for the protection of culture. While culture is now expected to not just focus on built elements but to focus on people and is understood as a process in and of itself, the core characteristic of international law is still makes it a framework shaped by States parties and their actions. This dichotomy becomes especially visible in situations of armed conflict such as belligerent occupation, which temporarily replaces the sovereign giving effective control of the territory to the occupying forces. The balance of the temporary-ness of sovereignty in times of occupation with the function of restoring 'public order and safety' is already a complex process and the addition of cultural protection add further to the challenge.

The research aims to analyse the relationship between the international law norms applicable to belligerent occupations and the protection of culture. It will do so by first identifying the applicable norms of international law in the protection of culture in times of occupation. It will then proceed to evaluate these norms through a case example of the cultural practice of olive farming in the occupied Palestinian territory in an attempt to identify the core advantages and gaps.

Presentation

In person

Banking and Finance: Evidence for reforms in banking law

11:30 - 13:00 Thursday, 6th April, 2023

Location MD026

Stream Banking and finance

372 The end of the 'too-big-to-fail' bank problem in EU: a myth or a (soon to be) reality?

Ilias Kapsis

University of Bradford, Bradford, United Kingdom

Stream or current topic

Banking and finance

Abstract

EU has declared on several occasions recently that it edges closer to resolving the too-big-to-fail (TBTf) bank problem. A key cause of optimism has been the July 2022 report by SRB that all major EU banks will be resolvable by the end of 2023. EU also counts on the effectiveness of its crisis management and resolution regime and other post-crisis EU reforms including the creation of the Banking Union and of the single rulebook.

The purpose of this paper is to critically review the EU progress to-date towards the achievement of its goal to end the TBTf problem.

The paper argues that although the EU reforms are in the right direction whether TBTf banks will cease as a problem, will depend on the coincidence of several factors such as the ability of SSM and SRM to move expeditiously in the case of an emerging crisis, the feasibility and credibility of resolution planning, the existence of adequate resolution funding as well as the effective co-operation and co-ordination between SRB and other EU institutions as well as between SRB the national resolution authorities. Such a coincidence may be difficult to occur due to the existence of several weaknesses in the current regulatory and supervisory framework related to the above areas. The paper will identify these weaknesses and will propose ideas for addressing them. The paper argues that before these weaknesses are addressed, EU may not be in position to end the TBTf problem.

Presentation

Virtual via Microsoft Teams

461 Insolvency Resolution of Indian Banks and Need for Special Insolvency Framework

Neeti Shikha¹, Urvashi Shahi²

¹University of Bradford, Bradford, United Kingdom. ²Indian School of Public Policy, New Delhi, India

Stream or current topic

Banking and finance

Abstract

In India, the business rescue regime for financial and non-financial entities had been marred with multiple fragmented legislations and absence of a systematic procedure for rehabilitation and resolution from distress. Not only this issue has been highlighted by various government committees¹ but it was also the reason for reconceptualization of legal framework for corporate resolution, in the form of introduction of the Insolvency and Bankruptcy Code in 2016.

The Code promises to be a major overhaul for the rescue of corporate persons, partnership firms and individuals. However, it is limited in its scope and is applicable primarily to non-financial firms. Financial Service Providers ("FSPs") have been deliberately excluded from its purview, subject to the provisions of Section 227. This section empowers the Central Government to notify such FSPs that may be subjected to the Code, in consultation with sectoral regulators.

In consonance with the international standards, a separate legislative framework, in the form of the Financial Resolution and Deposit insurance Bill, 2017 was introduced in the Indian Parliament. The objective of the FRDI Bill was to overcome the regulatory vacuum that exists in regard to the bankruptcy of financial firms. The Bill was withdrawn post the recommendation of the Joint Committee on the Financial Resolution and Deposit Insurance Bill, 2017 primarily due to the controversial bail-in clause, amongst other reasons. However, it was suggested decided later by the Government to reintroduce the Bill. This paper discusses what should be the consideration of the government while it reconsiders the same.

Presentation

In person

261 Central Banks and Climate Change: Mission Impossible?

Jay Cullen

Edge Hill University, Ormskirk, United Kingdom. University of Oslo, Oslo, Norway

Stream or current topic

Banking and finance

Abstract

There is growing presumption that central banks have a significant role to play in addressing environmental challenges, especially climate change. This article explains, on the basis of both theoretical and empirical evidence, that attempting to use existing central bank powers to tackle climate change will fail. From a positivist perspective at least, and contrary to the claims made in the literature, the tools that central banks possess - specifically monetary policy, capital regulation and climate-related stress-testing - are insufficient to make any meaningful contribution to emissions reductions and prevent global heating. This is because almost all of the proposals made by academics, regulators and legislators to expand the central bank toolkit in these domains suffer from deep conceptual and practical drawbacks. These critical weaknesses render the policy prescriptions that flow from them essentially useless; this would likely be the case even if central banks were to obviate their mandates more explicitly and attempt to use such tools to directly address climate change. Perhaps more importantly, such policies might be actively harmful in that they will distract from other proposals which might be regarded as more beneficial to tackling global carbon emissions. In so doing, they waste valuable political and economic capital that might be usefully deployed in tackling climate change. The obstacles to using these tools are not political, or legal; they are inherent in their operation.

Presentation

In person

Sexual offences 6

11:30 - 13:00 Thursday, 6th April, 2023

Location MD102 Great Hall

Elizabeth Agnew

18 What are the cultural, societal and legal factors that have led to the normalisation of rape in Lesotho?

Anna Lester

Sheffield Hallam University, Sheffield, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

What are the cultural, societal and legal factors that have led to the normalisation of rape in Lesotho?

The prevalence of rape in South Africa is commonly known to be one of the worst in the world. Within the Kingdom of Lesotho, a small country at its centre, there has been some suggestion of higher levels of rape culpability. Whilst there has been research around sexual violence in South Africa, there has been very little conducted on this topic for Lesotho, leading to a lack of understanding. Lesotho maintains a patriarchal society and there has been evidence of cultural practices aiding in the prevalence of rape, such as bride prices and enforced sexual violence against young girls in schools.

This paper utilises feminist viewpoints and thematic coding to broaden the perspective of the existing literature and categorise the different themes surrounding this issue. Additionally, ecological maps have been utilised as a theoretical framework in which secondary data has been collected to evidence the cultural and societal that aid in making rape prevalence so high.

Overall, these findings discuss various cultural and societal factors that have led to the prevalence of rape in Lesotho society. This paper provides recommendations for future support for rape victims living in a patriarchal society in Lesotho, the inclusion of human rights education and identifies the opportunity for future empirical research on this issue.

Presentation

In person

83 Between voices and silence: Indigenous women and sexual offences by men among the Arhuaco People

Luisa Castaneda-Quintana

McGill University, Montreal, Canada

Stream or current topic

Sexual offences and offending

Abstract

The field of legal anthropology has widely debated Indigenous Peoples' justice practices. However, Indigenous Peoples' legal perspective on sexual offenses remains understudied. In this respect, this article approaches the spiritual and political dimensions of the Arhuaco People's justice system to examine its procedures and sanctions. Our examination takes white-mestizo society's influences. We want to make sense of how the Arhuaco People administer justice in cases where male community members are allegedly responsible for committing sexual crimes against women. It highlights the challenges that come with charges of this type, including a lack of Arhuaco women's trust in authorities, because of their disregard for victims' testimonies and the difficulty they face in 'verifying' the integrity of the victim's claims. During fieldwork in the Arhuaco territory, the authors employ methodologies drawn from the procedural paradigm-legal conscience studies as an interpretive framework to understand how Arhuaco women conceive legal phenomena. As a result, this study offers insights into Arhuaco women's perceptions of justice, explicitly concerning sexual abuse cases. As we show, Arhuaco women's perceptions are the product of their political positions, cultural origin, and lineage, as they must constantly navigate 'inter-legality practices' to claim 'justice' for sexual offenses.

Presentation

In person

274 Measuring Criminal Justice in China from A Gender Perspective: An Anatomy of Sentencing and Punishment under Article 236 of the Criminal Law

Jue Jiang

School of Law, SOAS, University of London, London, United Kingdom

Stream or current topic

Sexual offences and offending

Abstract

This research looks into similar cases of four categories sentenced under Article 236 of the Criminal Law in China, which are rape (where the victims are adults), marital rape, rape (where the victims are girls under 14), sexual assault and rape (committed by people with responsibility of care towards girls between 14 and 16). The research takes an approach of first, analysing cases that provoked wide public debates over perceived injustice in sentencing; and then, searching similar cases in the database of China Judgments Online for a qualitative analysis of judgments, in particular, the reasoning provided by the judges in justifying the verdicts. Drawing upon the key attributes found in the case study and qualitative analysis of judgments that triggered the challenges over justice in sentencing and punishment, this research argues that the Chinese law regarding rape and the discretionary power in judiciary in these cases embody a paternalistic and patriarchal vision of criminal justice deliberately maintained in an authoritarian regime.

Presentation

In person

919 Sentencing for sexual offences in a lenient sentencing system: the discrepancy between the normative framework and judicial practice

Mojca M. Plesnicar^{1,2}, Lora Briški^{1,2}

¹Institute of Criminology at the Faculty of Law Ljubljana, Ljubljana, Slovenia. ²University of Ljubljana, Ljubljana, Slovenia

Stream or current topic

Sexual offences and offending

Abstract

With this paper we aim to start unwrapping the relationship between normative and practical sentencing in the cases of sexual offences. Punishment in these cases is under even more thorough scrutiny than punishment for other types of crimes, and the circumstances to be weighted are possibly more delicate than anywhere else.

Our study explores sentencing for sexual offences through a quantitative and qualitative analysis of selected Slovenian criminal case files in the period from 2016 to 2021 for four sexual criminal offences: rape, sexual assault, sexual abuse, and sexual assault of a child.

The results point to a significant gap between the statutory sentencing framework and the sentences passed in practice, where the latter are significantly milder than the statutorily set frames. With the exception of the offence of rape, suspended sentences account for the majority of sanctions, and even in cases where prison sentences are imposed, they rarely ever exceed the bottom third of the sentencing range. While potentially worrisome, this is, however, much in line with sentencing scholars' recurrent advocacy for lenient punishment. In fact, Slovenia has been a prime example of how a lenient sentencing policy is possible and advantageous.

Looking at the reasons given in these cases, we try to understand the court's reasoning for such sentences and situate them in the broader framework of both contemporary sentencing on the one hand and processing sexual offences on the other hand.

Presentation

In person

Criminal law 8

11:30 - 13:00 Thursday, 6th April, 2023

Location MD108

Stream Criminal law and criminal justice

Tracey Elliot

811 *R v Titford and Lloyd-Jones*: obesity and the criminalisation of parents

Tracey Elliott

University of Leicester, Leicester, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

The case of *R v Tifford and Lloyd Jones*, to be heard at Mold Crown Court in January 2023, represents the first prosecution of parents for gross negligence manslaughter arising from a failure to provide for a minor child's dietary and health needs by allowing them to become obese. I will be conducting an observational study of this trial and any subsequent hearings. This paper will examine these proceedings and key issues which arise at the trial, considering what wider conclusions may be drawn from this case about the extent to which the criminal law may and should be used to prosecute the parents of morbidly abuse children

Presentation

In person

823 The plight of stateless refugees: An analysis of the theoretical and legal framework for the protection of stateless refugees.

Valeria Caroli

University of Leeds, Leeds, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

The past decade has seen an increase in forced migration and displacement events. These phenomena arise from a wide range of causes, and they may create situations where people on the move are disproportionately subjected to abuse, which may give rise to different international crimes. This is the case for stateless refugees, a minority group of forcibly displaced people who simultaneously experience statelessness and forced displacement. This paper explores the existing theoretical and legal protection framework for stateless refugees under international law. This paper accounts for the central theoretical debates surrounding the protection of stateless refugees and uncovers the gaps in the existing literature, such as the lack of a set definition of the term and applicable theories of forced migration. Furthermore, it explores the current legal framework for their protection under international law, particularly international refugee law, statelessness law and international human rights law. Understanding the shortfalls in the academic research on stateless refugees and the interplays between their concurrent status under international law will help explain why stateless refugees have become increasingly vulnerable to abuse and international crimes. This paper sets out to show that the current framework for the protection of stateless persons and refugees is not sufficient to protect stateless refugees. Moreover, it suggests that international criminal law might offer a valid alternative to offer redress for the crimes committed against this category of forcibly displaced people.

Presentation

In person

848 Irish Rule of Law International Mwai Wosinthika ('A Chance for Change'). Pre-trial child diversion programme, Malawi.

Anne-Marie Blaney¹, Margret Mwale²

¹Irish Rule of Law, Dublin, Ireland. ²Irish Rule of Law, Lilongwe, Malawi

Stream or current topic

Criminal law and criminal justice

Abstract

Abstract

Irish Rule of Law International (IRLI) is an international non-government organisation working to strengthen access to justice. This paper highlights a shift towards child diversion within one ongoing programme, focused on unrepresented accused children in conflict with the law in the criminal justice system in Malawi.

The systemic problems within the criminal justice system in Malawi have led to suspects spending lengthy periods of time in custody, without being formally charged and often beyond lawful time limits. In addition, victims of crime often must wait years for justice and a resolution to their cases.

The paper describes an approach using baseline survey results to measure understanding of the concept of diversion. The legal framework and procedures for handling children in conflict with the law, the role of child justice courts and child diversion, are examined. The programme framework from arrest to sentence is highlighted paying attention to the impact of cell visits, to monitor the number of children in detention. When the decision is taken to charge or divert, the innovative "Mwai Wosinthika" offers pre-trial child diversion. This paper describes the challenges, format, collaborative steps and follow-up results, showing sustainable positive change. The paper offers insights as to the relevance of data management and performance measures, theatre for change, training and collaboration, when delivering the child diversion programme. This innovative work has resulted in 169 boys and 69 girls graduating from the programme since its initiation in Malawi.

Presentation

In person

535 The Crime of Aggression on the Shelf: Whither International Criminal Justice for Victims

Ovo Imoedemhe

University of Bradford, Bradford, United Kingdom

Stream or current topic

Criminal law and criminal justice

Abstract

The establishment of the Nuremberg/Tokyo International Military Tribunals (IMTs) in the aftermath of World War II, marked the evolution of the crime of aggression. The critical need for a deviation from the state-centric model of international law was highlighted during the Nuremberg trials, when it noted that 'crimes against international law are committed by men, not by abstract state entities, and only by punishing individuals who commit such crimes, can the provisions of international law be enforced'. The General Assembly Resolution 3314 of 1974 bolsters the point of the pre-existence of the crime of aggression. However, since establishing the crime in the 1940s and 1970s, and apart from the prosecution of war criminals by the IMTs, no individual has been held accountable for the crime.

Consequently, justice has not been served to thousands of victims of the crime of aggression. Critically, the crime of aggression can be committed against the state as well as against individuals. However, from South-Ossetia, Abkhazia, Georgia, and to Ukraine, the crime of aggression seems nominal, flourishing only on the shelf. This paper examines the crime of aggression in the context of the Russian/Ukrainian war. It is argued that although investigation for war crimes and crimes against humanity are underway by the International Criminal Court, investigation for the crime of aggression is imperative. It is proposed that beyond adopting the crime, the international community has a responsibility towards victims of the crime of aggression.

Presentation

In person

Human rights and war: Business and human rights in armed conflict

11:30 - 13:00 Thursday, 6th April, 2023

Location MU001

Stream Human rights and war

606 Corporate human rights due diligence in conflict and post-conflict situations: towards a responsible exit

Laura Inigo-Alvarez

Nova University Lisbon, Lisbon, Portugal

Stream or current topic

Human rights and war

Abstract

Doing business in conflict-affected areas poses complex legal, ethical, and operational challenges. In this regard, business activities could be linked to armed conflict scenarios in different ways, either directly, providing financial, logistical, military, or any other type of support to the parties to the conflict; or indirectly, influencing the actors involved or the conflict dynamics. As indicated by the UN Working Group on Business and Human Rights, "businesses are not neutral actors; their presence is not without impact". Consequently, there are important factors that need to be taken into consideration when doing business in regions affected by armed conflicts.

Against this backdrop, the UN Guiding Principles on Business and Human Rights (UNGPs) indicated that states should ensure that business enterprises operating in conflict-affected areas are not involved in human rights abuses. One of the key measures recommended by the UNGPs relies on the implementation of human rights due diligence processes (HRDD) in order to help businesses "identify, prevent and mitigate the human rights-related risks of their activities and business relationships". Within HRDD processes, business might also weigh the decision to suspend or terminate their activities and operations in such regions and will need to evaluate how to do it in a responsible way. Taking into consideration the conflict scenarios in Syria and Ukraine, this paper aims to analyse what heightened

HRDD means and what elements need to be considered by businesses when deciding about leaving or staying in a conflict-affected area.

Presentation

In person

67 Economic and Social Rights in Post-conflict Settings: Re-envisioning the Role of Regional Human Rights Bodies

Felix E Torres

University of Birmingham, Birmingham, United Kingdom

Stream or current topic

Human rights and war

Abstract

Addressing economic and social rights (ESR) violations in post-conflict societies has become a hot topic in transitional justice scholarship at least since Louise Arbour's influential 2006 speech at the University of New York. However, the field appears to be stuck at an impasse regarding how to deal with the legacy of ESR violations and related post-conflict concerns. While addressing this legacy is seen as an important goal, there are skeptical voices questioning transitional justice's ability to fulfill it given the poor track record of compliance with less ambitious objectives, such as the protection of a handful of civil and political rights. This paper will argue that the approach taken by transitional justice advocates towards regional human rights bodies has contributed to this impasse. This stream of scholarship tends to overstate the protection of civil and political rights after episodes of widespread violence through the award of reparations, welcoming the adoption of far-reaching remedies with direct impact on the ESR of beneficiaries by some of these bodies. However, it has ignored the contribution of these bodies regarding the development of frameworks to directly enforce victim's ESR in a workable way after widespread violence. The paper shows that the prevailing approach is deeply flawed and will advocate for the direct enforceability of ESR by the judicial and semi-judicial bodies of the European, African and Inter-American human rights systems. This alternative, however, may come into direct collision with some of transitional justice's most entrenched lines of reasoning and most cherished concepts.

Presentation

In person

536 Conflict Land Markets: Who Wins, Who Loses and Who is Accountable

Paul Prettitore

Queen's University Belfast, Belfast, United Kingdom. World Bank, Vienna, Austria

Stream or current topic

Human rights and war

Abstract

Land is an essential element of many human rights, and a source of identity, culture, livelihoods, security, and political and economic participation. The ways in which land rights are defined, managed and protected – basic functions of land governance – have far-reaching social and economic effects. Land and inclusion are inextricably linked, and land administration is effectively an exercise in determining who is included or excluded.

Conflict creates multiple dimensions of risk to land rights. Governance breakdowns in conflict are characterized by inadequate policy and legal frameworks; weak, fragmented, and captured institutions; mismanagement of state land; and loss of trust in the state and its institutions. Conflict also undermines accountability, providing opportunities for land grabbing, elite capture and corruption. Conflict can increase the economic and social importance of land, making protection and exercise of land rights all the more important.

The result is the construction of 'conflict land markets'. These markets tend to have particularly negative impacts on land rights of vulnerable persons. Understanding the channels by which risk is distributed among vulnerable groups is necessary to develop effective measures to protect rights and ensure access to justice. The proposed paper aims to i) develop the concept of 'conflict land markets'; ii) construct templates to assess distribution of risk to land rights of vulnerable persons by such markets; and iii) provide an overview of the effectiveness of land rights-based interventions in conflict settings in protecting vulnerable persons.

Presentation

In person

924 Business Human Right and Conflict: Defining the “H” in HHRDD

Anita Ramasastry

University of Washington, Seattle, USA

Stream or current topic

Human rights and war

Abstract

With ongoing conflicts in many parts of the world – from Yemen to Ukraine to Myanmar – the role of business in relation to armed conflict is once again being examined. Businesses, in their decisions to enter, exit or remain in conflict-affected settings, are often implicated in serious human rights abuses. This brings us back to the role of the UN Guiding Principles, as well as international humanitarian and criminal law. The concept of height human rights due diligence (HHRDD) was proposed by the UN Working Group on Business and Human Rights, as a tool to address business responsibility in conflict settings. But the contours of such due diligence and how it can incorporate atrocity prevention and conflict sensitivity is still an amorphous context.

This paper examines the concept of HHRDD and what analytical and theoretical frameworks can be drawn upon to create robust frameworks that incorporate IHL, ICL atrocity prevention and conflict sensitivity. It also examines the current guidance and toolkits that are being quickly developed to address current conflicts, to assess their coherence, value as well as the limits of their utility. For example, for local businesses who cannot exit a market, the current concept of HHRDD may have limited applicability. The paper will also explore the debate over essential services, and how this concept should be factored into due diligence analysis.

Presentation

In person

Gender, Sexuality and Law 8

11:30 - 13:00 Thursday, 6th April, 2023

Location MU125

Stream Gender, sexuality and the law

418 Queerness in the Indian Judicial Imaginary: Who Is Left Behind?

Mini Saxena

SOAS University of London, London, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

On 6 September 2018, the Indian Supreme Court read down S. 377 of the Indian Penal Code (which criminalizes voluntary “carnal intercourse against the order of nature with any man, woman or animal”) so as to decriminalize consensual same-sex acts. This paper examines the three Indian cases that have challenged the Constitutionality of S. 377. I critically analyse the judicial record to understand whether the judgments envisage the entire Indian queer population, or only a particular section of queer subjectivities and kinship forms, leaving out many others. I examine the judges’ strategic use of the right to privacy in a context where much of the impact of S. 377 occurs in public places, and privacy is afforded only to those with privilege, while other queer subjectivities continue to be policed, coerced, and medicalised. I contend that instead of relying on privacy to guarantee the rights of queer people, queerness must be constructed as a public identity, to counter public morality. I also examine the arguments centred around same-sex love (and not any other kind of intimacy), and the colonial sex-negative tone of the judgments. Therefore, although the 2018 judgment was reported as a giant step forward for the Indian queer community, I argue that the judicial imaginary merely envisaged a privileged queer elite rather than those who are actually adversely impacted. Finally, looking to the future, I assert that privacy must be constructed as a much more substantive right, and the judicial vision of queerness must be significantly expanded.

Presentation

In person

264 Thinking Inside the Box; perceptions of crossing the legal gender binary

Jess Randall

University of Liverpool, Liverpool, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

The notion of crossing the legal gender binary has become a prominent theme in my research into the until death statutory declaration requirement currently expected under the Gender Recognition Act 2004. In this paper I will look at the ways in which the perceived “crossing” of the legal binary gender has manifested in case law, the drafting of the GRA and the subsequent amendments and consultations on the act. I will also speculate the extent to which a trans applicant can be perceived to have successfully crossed the gender binary. I will also discuss why this perception of crossing is problematic because it can act to delegitimise an individuals self-declared gender and also exclude those with any form of fluidity to their gender. I conclude that this notion of crossing continues to underwrite a great deal of the laws approach to gender recognition, and this should not be the case.

Presentation

In person

Social rights: Food rights, methods and access to justice

11:30 - 13:00 Thursday, 6th April, 2023

Location MU201

Stream Social rights, citizenship and the welfare state

Jackie Gulland

792 Expanding social supermarket and food bank provision in Causeway Coast and Glens Council area – experts by experience and food aid managers’ perspectives

Sinead Furey¹, Beth Bell², Louise Scullion³, Jenni Archer⁴

¹Ulster University, Coleraine, United Kingdom. ²Research Consultant, Belfast, United Kingdom. ³Causeway Coast & Glens Borough Council, Coleraine, United Kingdom. ⁴Causeway Coast and Glens Borough Council, Coleraine, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

Background: Food insecurity is the inability to afford/access food in sufficient quantities in a socially acceptable way or the anxiety of being unable to do so. Interventions seek to reduce its prevalence and move away from the emergency response to a more sustainable approach by addressing the root causes of poverty rather than simply provide food. Method: Qualitative research involved in-depth interviews with social supermarket (SSM)/food bank clients (n=10) and managers (n=4) and one focus group with seven statutory/voluntary sector stakeholders. Findings: Many people who need help aren't accessing food aid. The common causal factor for presenting for food aid is reduced income. Security of food donations is not problematic but operating costs are more concerning, with energy prices most cited as a pressing issue. Running costs and funding received are supplemented by substantial volunteer hours. Recipients welcomed how food parcels freed-up money to afford other living essentials – notably energy/fuel, and debt repayments, while sociableness and wraparound support were recognised to be at least as important as food aid. Education was considered key to breaking the cycle of poverty while early intervention and giving people responsibility for their own outcomes were upheld as important prerequisites of any successful intervention. Participants agreed that the system is broken and the underlying causes must be eradicated, with balance being struck between taking away the stigma without institutionalising the need. Implications: This research is informing the Council's co-design process with stakeholders about how best to expand the SSM model.

Presentation

In person

53 'You need confidence, self-motivation and trust': using trauma-informed appreciative inquiry to understand lived experience of accessing welfare services in Greater Manchester

Hollie Louise Walsh

University of Lincoln, Lincoln, United Kingdom

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

This paper will focus on the use of trauma-informed appreciative inquiry in research interviews to provide a safe and autonomy-enhancing space for participants to share the skills, capabilities and resources they believe people need to access welfare services and support.

Appreciative inquiry is a strengths-based "study of what gives life to human systems when they function at their best...and is based on the assumption that questions and dialogue about strengths, successes, values, hopes and dreams are themselves transformational" (Whitney and Trosten-Bloom, 2010, p1).

The use of this method is timely; the approach has been informed by the current Manchester City Council 2019 – 2025 Strategy for "all practitioners working in Manchester to be trauma-informed" and "for Manchester to be part of a network of trauma-informed cities". This is nestled within the researchers' 10-year career in the Voluntary, Community and Social Enterprise (VCSE) sector delivering and managing social mobility and community engagement projects to help people live happier, healthier and more fulfilled lives.

The interviews are undertaken as part of PhD in Politics, drawing on Fineman's feminist legal theory of vulnerability and Tronto's ethics of care to question the relationship between citizens and welfare state.

Situated at cross-roads between a decade of austerity, COVID-19 and the cost of the living crisis, this paper will seek to illuminate our understanding of the complex and nuanced ways in which citizens navigate and interact with welfare services, where the narratives of “hard to reach” and “easy to ignore” intersect.

Presentation

In person

379 "You got out of me something I didn't know I had" - Exploring the experiences of people with dementia of their access to justice with art based methods

Katri Gadd

University of Eastern Finland, Joensuu, Finland

Stream or current topic

Social rights, citizenship and the welfare state

Abstract

Art-based research (ABR) can be seen to be in the intersection of art and science. Despite being often perceived as opposite to each other both, science, and art attempt to discover, illustrate and represent (human) life. ABR has gained increased popularity within qualitative research. It has been applied in various disciplines to express human experience, yet its potential in socio-legal research is not extensively explored thus far.

In this presentation, I reflect our process of using art-based research methods to produce knowledge about experiences of people with (early stage) dementia on their access to justice. In addition to being revitalizing experience for the participants, ABR methods open roads to highly sensitive topics merging from the lives of the participants, such as the fear of losing oneself and not being treated with fairness and dignity. Short written monologues illuminated those fears, but also individual coping mechanisms in the times of uncertainty. Moreover, pieces of art, for example in our case photographs taken by the participants, functioned as gentle reminders or anchors for individuals, whose perception of time might have changed or whose concentration might have become limited. With a few examples of our preliminary results, I demonstrate topics such as spatio-temporal shrinkage affecting the access to justice.

Presentation

In person

Children's rights: The human rights system, monitoring bodies and children's rights protection

11:30 - 13:00 Thursday, 6th April, 2023

Location MU202

Stream Children's rights

701 The Child as Stakeholder of the Pharmaceutical Industry- do children have the right to have medicines developed for their unmet medical needs

Rhian Thomas-Turner

Noah's Ark Children's Hospital for Wales, Cardiff, United Kingdom. Swansea Univesity, Swansea, United Kingdom

Stream or current topic

Children's rights

Abstract

There have been legislative attempts in both Europe and the USA to encourage the pharmaceutical industry to develop medicines for the paediatric population. Children are not a homogeneous group and are split into smaller sub-categories for the purposes of drug development making it more difficult for the pharmaceutical industry to realise a return on their investment. Whilst there has been some progress, this progress is primarily in areas where the paediatric need meets the adult need.

The Better Business Act in the UK is an attempt to amend s172 of the Companies Act to ensure that the interests of stakeholders are advanced alongside that of shareholders, requiring companies to consider the wider impact of their actions on society. The Act advances calls from other sources, including the World Economic Forum, for 'stakeholder' capitalism to replace the current economic model. This paper considers whether the United Nations Convention on the Rights of the Child and its relevant General Comments, Article 15(1)(b) of the International Covenant on Economic, Social and Cultural Rights and its corresponding General Comment and the call from the UN Human Rights Council in 2014 for a binding international treaty on the actions of transnational corporations and other business enterprises with respect to human rights can create an environment where a child's right to health and right to life, survival and development includes the right to be considered as a stakeholder of pharmaceutical industry, requiring it to consider the impact of strategic decisions on the paediatric population.

Presentation

In person

447 The disabled child's right to legal capacity

Nayia Christodoulou

University of Galway, Galway, Ireland

Stream or current topic

Abstract

The denial of disabled persons' legal capacity is prohibited under Article 12 CRPD. This provision introduced a paradigm shift from substitute to supported decision-making model. However, it remains unclear whether and how this provision applies to disabled children. Admittedly, children with disabilities are in a particularly vulnerable situation compared to children without disabilities, as extra protection needs to be provided for their rights to be fully implemented. This presentation seeks to examine how disabled children's legal capacity can be recognized as an effort to provide robust protection of their rights and, especially, their participation rights in the decision-making process.

Upon analysing the relationship between Articles 7 CRPD on disabled children, and Articles 3 and 12 of the CRC, it will be argued that the latter provisions do not enable the disabled child to effectively participate in the decision-making process. Furthermore, the relationship between Articles 7 CRPD and 12 CRPD on legal capacity will be explored to shed light on the interpretative challenges arising. Importantly, provided that the disabled child enjoys the same set of rights as all children, it will be questioned whether the CRPD, as opposed to the CRC, can allow for the recognition of a legal capacity right for disabled children. To this end, it will be discussed whether the CRPD is merely an equality Treaty, and it will be argued that its transformation into a Treaty which provides reformed but substantive rights for disabled children allows for claiming a legal capacity right.

Presentation

In person

Disruptive Technologies: Jurisdictional Approaches to Reproductive and Genetic Biotechnologies - Regulation and Rights Discourse

11:30 - 13:00 Thursday, 6th April, 2023

Location MU203

Stream Disruptive technologies: reproduction, genetics, and the family

900 A human right to access genetic information? Presenting the case for a disclosure-as-default framework in the United Kingdom

Róise Connolly

The Open University, Milton Keynes, United Kingdom

Stream or current topic

Disruptive technologies: reproduction, genetics, and the family

Abstract

Access to diagnostic technology is necessary for personal autonomy, and an essential aspect of the right to private and family life under Article 8 of the ECHR. Predictive genetic diagnostic testing can provide a gateway to earlier, more effective – and in some cases preventative – treatments for the leading causes of premature morbidity and mortality. In the United Kingdom, the responsibility for disclosure of actionable information gained from genetic testing results to ‘at-risk relatives’ rests with the patient who first receives the genetic test (‘the proband’). If the proband refuses to share actionable information, this can raise ethical – and legal – dilemmas for healthcare professionals.

In this paper, I will present an analysis of the debates surrounding non-consensual disclosure to at-risk relatives and an argument for overriding doctor-patient confidentiality to warn relatives of their genetic predisposition to a particular disease. I identify disclosure to at-risk relatives as a practical route to accessing diagnostic technology, because such a disclosure alerts a person (and their physician) to undergo genetic testing. I argue that without disclosure and access to diagnostic technology, patients miss the opportunity to benefit from preventive or early treatment, jeopardising survivability. The current disclosure framework prioritises confidentiality, whereas, a disclosure-as-default framework would better protect the Article 8 rights of all patients (including ‘future’ patients). I argue that this regulatory change is necessary to improve access to diagnostic technology, to allow meaningful choices about treatment to be made, and to respect the Article 8 rights of all patients.

Presentation

In person

513 Savior siblings: legal framework and ethical debate in the UK and France

Héloïse Michelon

Université Catholique de Lille, Lille, France

Stream or current topic

Disruptive technologies: reproduction, genetics, and the family

Abstract

This presentation discusses the ethical basis regarding the regulation of “savior sibling” selection in the UK and in France. “Savior sibling” is a term used to describe a child conceived to be compatible for tissue and organ donation for an elder sibling. Even if parents can try to conceive such a child naturally, preimplantation genetic diagnosis (PGD) and tissue typing (HLA typing) can be used to select an embryo that is both healthy and a genetic match for the older child. However, the moral question of embryo selection is still highly debated and the access to those techniques is strictly regulated. Different legal and moral reasons yield different regulations. By discussing Christine Overall’s rereading of the Kantian categorical imperative, this paper aims to address the concept of human dignity in those debates. Kant considers that we cannot treat human beings as means without overlooking their specific value, their dignity. Nonetheless, he specifies that although the categorical imperative forbids to treat persons solely as a means, a balance is possible between some instrumentalization and the respect for their dignity. Overall, however, objects to the selection of savior siblings, by arguing that they are illegitimately made into a means. Given that ethical committees and medical institutions in France and in the UK also had to face the instrumentalization argument, this

paper debates firstly how Overall draws from the Kantian imperative to settle this modern dilemma, and secondly reveals the underlying moral assumptions used to justify and limit access to the procedure.

Presentation

In person

640 ROPA in the UK and China

Jinshuo Liu

Newcastle University, Newcastle, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

ROPA (reception of oocytes from partners) is one of the Assisted Reproductive Technologies (ARTs) that lesbian couples share in vitro fertilisation. One of them provides eggs (genetic mother) and the other mother receives the embryos and does childbirth (gestational mother), with donated sperm.

ROPA meets the needs of lesbian couples to have their biological children. However, this technology challenges the law in the UK and China. First, the three parties' legal parenthood is in dispute. According to UK law, it is undoubtedly that the gestational mother does childbirth and therefore is the legal mother. Nevertheless, who is the second legal parent is in controversy. Compared to the UK, Chinese legal disputes about ROPA are more tricky as there is no legislation about same-sex couples' marriage and surrogacy is prohibited. It means that the resulting children can only have one legal mother and the gestational mother is likely to be accused of being an illegal surrogate.

By examining the legal cases and legislation about ROPA in the two jurisdictions, this study aims to show that current law brings potential risks to all parties: genetic mother, gestational mother, sperm donor and the resulting children. As a result, this study argues that the current law has fallen behind the development of ARTs, and thus suggests that UK law should make amendments and China should introduce specific legislation about ARTs.

Presentation

In person

DEVELOPING DEMOCRACIES: ABUSIVE CONSTITUTIONALISM

11:30 - 13:00 Thursday, 6th April, 2023

Location MU207

Stream Constitutionalism in developing democracies

702 Limitless or Limited Constitutionalism: Can Ghana's Constitutions Basic Structure accommodate competing values?

Solomon Faakye

University of Cape Coast, Cape Coast, Ghana. University of Leicester, Leicester, United Kingdom

Stream or current topic

Constitutionalism in developing democracies

Abstract

The 1992 Constitution of the Republic of Ghana grants broad powers to the Supreme Court- the Apex Court, which include powers to interpret and enforce the Constitution. The enforcement powers extend to include powers to strike down legislation found to be inconsistent to, or in contravention with it. These powers, enable the Court to interfere with the performance of constitutional functions of other arms of government in so far as it finds those actions as unconstitutional. Thus, in the recent case of *Ezuame Mannan v Attorney General* [2022] DLSC11685, for example, the Court in a 5-4 decision struck down the Narcotics Control Commission Act, 2020 (Act 1019) passed by parliament on grounds that the enactment did not follow the constitutionally prescribed procedure for law-making. The Ghanaian Court in arriving at its decision, strenuously sought to explain and to some extent reconcile deep seated constitutional values notably constitutionalism, separation of powers, and the political question doctrine all of which had in previous decisions received judicial pronouncement.

While some clarity was achieved, difficult contradictions emerged. Critical among which is whether all other constitutional values under the 1992 Constitution of Ghana pales into insignificance once a so-called overarching doctrine of constitutionalism is invoked. An answer to this question requires a rigorous engagement of the content and limits of constitutionalism as has evolved in Ghanaian Constitutional jurisprudence. In this work, I seek to propose a roadmap for harmonious construction of the Ghanaian constitution in the face of seemingly contradictory values.

Presentation

In person

490 How decolonisation is abused to undermine democracy: the case of Indonesia's new criminal code

Ratu Durotun Nafisah

Centre for Asian Legal Studies, Faculty of Law, National University of Singapore, Singapore, Singapore

Stream or current topic

Constitutionalism in developing democracies

Abstract

The Indonesian government passed the new criminal code replacing the rule dating from the Dutch colonial era. Decolonial rhetoric has been used to justify the punishment for ideological, moral, and political acts under the new code that undermine civil liberties. This paper addresses how decolonial studies are abused for undemocratic ends in the Indonesian context. The government borrowed the concept of decolonisation to dismantle the structure of colonialism but did so by changing the substance to fit the illiberal agenda. It would hamper democracy not only in a liberal sense but also its minimum core of free and fair elections. I argue that Indonesia's reliance on the family state concept as national identity has facilitated the abuse. Historically, the struggle for decolonisation in Indonesia was shaped by anti-Western ideologies. It inspired the traditional Javanese village 'family' model, where the state is viewed as a guardian that always protects citizens and maintains social cohesion. The familial understanding of the state coexists with Indonesia's legal culture of positivism, enabling cultural exceptionalism prone to abuse. Indonesia's post-Suharto democratisation has not shifted such an approach. It remains powerful among Indonesia's legal academia and influences policy-making. The Indonesian case demonstrates how the production of legal knowledge in the post-colonial state has been using Indigenous culture as a pretext for undemocratic practice. The paper stresses the need for decolonial and post-colonial scholarship to carefully consider its potential abuse in the challenging contexts of the Global South.

Presentation

In person

661 Democratic Backlash and Abusive Judicial Review – the Case of the Hungarian Constitutional Court

Tamas Gyorfí¹, Peter Solyom²

¹University of Aberdeen, Aberdeen, United Kingdom. ²University of Debrecen, Debrecen, Hungary

Stream or current topic

Constitutionalism in developing democracies

Abstract

Hybrid political regimes preserve the façade of constitutional democracy but systematically weaken the institutions of checks and balances, including constitutional courts. In some cases, these institutions actively contribute to the dismantling of constitutional democracies and engage in what Dixon and Landau call abusive judicial review.

It is well documented that the Hungarian government has limited the powers of the Constitutional Court to weaken the institution. However, this limited freedom is still compatible with a range of judicial strategies and the question of whether the Court has simply been tamed or its activity constitutes abusive judicial review can be answered only by the fine-tuned analysis of judicial behaviour.

Our paper analyses the voting patterns of the judges of the Constitutional Court between 2005 and 2017. Our empirical research confirms the general perception that the judges appointed by the new FIDESZ government have/had a very different role-perception than the previous judges and are much more deferential to the government. Our presentation spells out the attributes of this new role-perception in more detail and also addresses the question of whether this new role model is motivated by a genuine belief in judicial restraint or political bias.

We will conclude that today, the Constitutional Court acts primarily not as a watchdog that controls the government but rather as an ally that helps the government to articulate the meaning of the Fundamental Law in light of their mutually shared values.

Presentation

In person

Legal Education 7

11:30 - 13:00 Thursday, 6th April, 2023

Location MU208

Stream Legal education

211 Legal Education in Nigeria: An Analysis of Qualification to Practice as a Legal Practitioner in Nigeria

Salisu Gumel

Jigawa State Polytechnic, Dutse, Nigeria. Commission on Legal Pluralism, LEIDEN, Netherlands. Union of African Muslim Scholars, Bamako, Mali. Nigerian Bar Association, Abuja, Nigeria

Stream or current topic

Legal education

Abstract

Like many other secular states with large Muslim communities, Nigeria operates common law and sharia law simultaneously thereby employs legal pluralism to cater for her multi-faith needs, for effectivity of the law and substantial justice delivery. The two legal systems differ radically in principles, theories, and practices, and each requires unique skills and knowledge. However, the legal education required to qualify as a legal practitioner in Nigeria is any law degree of any legal system and the successful completion of the legal practice training in the Nigerian Law School offered by the Council of Legal Education. Once qualified and called to the bar, lawyers can practice common law and sharia law, regardless of whether they are learned enough in both. *Nemo dat quod non habet!* This Latin phrase entails that a legal practitioner will not have the capacity to handle matters of a particular legal system which he himself is ignorant of. The laymen clients who are being represented by lawyers ignorant of the legal system that governs their matters will be the victims of any unnecessary negative consequences thereof. If the purpose of legal education is to advance justice as instructed by James Madison, there is the need to provide effective regulation of the required legal education for qualification as a legal practitioner. This paper examines the extant laws governing legal education in Nigeria relative to legal practice and justice delivery .

Keywords: legal pluralism, sharia law, common law, legal education, Council for Legal Education, Nigerian Law School, legal practitioner.

Presentation

In person

Health Law and Bioethics: General

11:30 - 13:00 Thursday, 6th April, 2023

Location MU210

Stream Health law and bioethics

175 The Infant Life (Preservation) Act: A case for reforming the law on foetal death due to third party recklessness

Katherine Butcher

University of Bristol, Bristol, United Kingdom. Hull-York Medical School, York, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

The conundrum of how to regulate a foetus who is stillborn due to third party recklessness has perplexed both Parliament and the judiciary. Under the Infant Life (Preservation) Act 1929, the mens rea of intention must be proved by the prosecution for a defendant to be found guilty of child destruction. Where it cannot be proved, a stillbirth is categorised as a bodily injury to the mother which is argued to misrepresent the loss experienced by grieving families.

The domestic legal framework struggles to meet the challenges of both sides of the debate, reflecting a fundamental difficulty in recognising a foetus as a distinct entity in the law without restricting a woman's reproductive autonomy. A proposal for law reform must enshrine a woman's reproductive choice whilst being compatible within the existing legal framework.

This article asks what the perspective of the grieving mother can bring to the discussion in terms of helping the criminal law navigate the complexity of pregnancy, the unique experience of stillbirth bereavement and the specific harm of foetal loss.

Both practical and academic challenges have been identified, relating to the infrequency by which the Infant Life (Preservation) Act is successfully charged and how the existing framework is incompatible with a family's lived experience. Considering these limitations, this article considers whether a law reform based upon the violation of a woman's bodily boundaries without her consent provides a more effective and practical solution to prosecute those who procure a stillbirth via reckless acts.

Presentation

Poster (submissions to poster competition only)

593 Agency in pregnancy and childbirth: the role of medical authority in international human rights standards

Fleur van Leeuwen¹, Lucia Berro Pizzarossa²

¹Department of Political Science and International Relations, Boğaziçi University, Istanbul, Turkey. ²O'Neill Institute for National and Global Health Law, Georgetown University, Washington, DC, USA

Stream or current topic

Health law and bioethics

Abstract

Ehrenreich famously observed that '(t)ogether, law and medicine operate to enforce coercive gender norms on women.' She referred to the notion that legal systems too often unquestioningly accept medical testimony and perspectives. In doing so, law adds legal force to the errors imbedded in medical 'truths'. Set against the background of feminist critiques of medical knowledge and practice, the medicalisation of pregnancy and childbirth, and the androcentric nature of international human rights law, the study detailed in this paper investigates the role of medical authority in the formulation of reproductive rights and human rights in childbirth, and the accompanying human rights obligations for states parties. The study consists of a detailed content analysis of all the concluding observations, views, and general comments of the UN Human Rights Committee, the UN Committee on Economic, Social and Cultural Rights, and the UN Committee on the Elimination of All Forms of Discrimination Against Women from their first sessions to July 2022. The authors find that the standards set by the treaty monitoring bodies continue to (re)inforce what Bader-Ginsburg has dubbed a 'medically approved autonomy idea' which places medical professionals in a 'gate-keeping' role: medical personnel hold significant influence in determining what medical treatment is accepted during pregnancy and birth. The findings in this paper add to feminist inquiries of reproductive rights and human rights in childbirth, theories of knowledge production in international legal proceedings, and to literature on gender sensitivity of the UN treaty monitoring bodies.

Presentation

In person

590 Making Sense of Advance Directives in Asia

Daisy Cheung¹, Michael Dunn²

¹University of Hong Kong, Hong Kong, Hong Kong. ²National University of Singapore, Singapore, Singapore

Stream or current topic

Health law and bioethics

Abstract

This presentation, building upon an edited collection on the law and practice of end-of-life advance directives (AD) in 16 Asian jurisdictions, will begin with an examination of different aspects of the law and practice of ADs in these jurisdictions, identifying similarities and trends. With this summary of the various connections between these jurisdictions, we offer broader reflections on two key features common to Asian jurisdictions, the role of religion and the role of the family. In relation to the role of religion, we explore the significance of the sanctity of life principle, which is shared among many of these Asian jurisdictions, but which has a varied impact on the regulation and implementation of ADs in these jurisdictions. Similarly, the experiences in these jurisdictions challenge the essentialist, one-dimensional way in which the role of the family in medical decision-making in Asia is often depicted in the literature. Although the role of the family is recognised as being highly influential in almost all of the jurisdictions covered in the collection, we argue that the nature of, and justification for, this influence is much more nuanced and complex than is typically recognised. Finally, we conclude with a critical examination of this emerging picture of ADs

in Asia, arguing that these insights suggest that distinctive patterns of “generative accommodation” are observable as a way of aligning international consensus with localised traditions and expectations in a more nuanced account of the meeting ground between the East and the West.

Presentation

Virtual via Microsoft Teams

178 Everyday healthcare regulation: British newspapers and Complementary and Alternative Medicine (CAM)

Michael Ashworth

University of Kent, Canterbury, United Kingdom

Stream or current topic

Health law and bioethics

Abstract

This paper interrogates the controversial field of complementary and alternative medicine (CAM), focussing in particular on the implication of the British press in its regulation. It builds upon a 'decentred' understanding of regulation; a socio-legal approach which moves beyond formal regulation and regulators, and instead foregrounds diverse social actors and their attempts to alter behaviour across a given domain. In so doing, it draws on the governmentality scholarship of Michel Foucault, seeing the news media as part of a loose governmental assemblage, through which the self-regulating capacities of prospective CAM users are incited. Focussing on *The Times* as a case-study, it examines the regulatory techniques through which the newspaper drew (and redrew) lines separating the safe from the risky, the efficacious from the sham and the legitimate from the illegitimate. As such, it provides a conceptual contribution, highlighting an everyday form of healthcare regulation that may, in fact, be just as significant in potentially influencing behaviour as the more traditional, formal kinds of regulation typically studied in medical law scholarship.

Presentation

In person

Law and Emotion 5

11:30 - 13:00 Thursday, 6th April, 2023

Location MU218

Stream Law and emotion

101 “And how do you think X feels about that outcome?” Emotion as a pedagogical tool in contract law

Renata Grossi

University of Technology Sydney, Sydney, Australia

Stream or current topic

Law and emotion

Abstract

It is a common view that teaching the core legal subjects leaves little room for asking questions about the relationship between the doctrines we teach in those subjects and the structures in which they operate. It is left to electives to pursue a critical education while the core subjects cram doctrine and beat the broken drum of the IRAC method, or some such.

When faced with a 'full' curriculum in Contract Law I began to ask students at the end of a problem-solving exercise to reflect on how each of the parties would feel about the 'solution to the problem'. What resulted were conversations that went to the 'heart' of the role of law and its relationship to justice.

Traditional jurisprudence tells us that emotion is the opposite of reason and the enemy of serious intellectual debate. Thus, in most law schools students are urged to leave their emotions out of a legal argument. My project is to challenge this position and to invite emotion in as a pedagogical tool that allows students to ask questions of contract law and its relationship with other social structures and thus to help work towards a rigorous critical education.

Presentation

In person

146 Tort and torture: Linking legal logics on psychological harm

Ergun Cakal

University of Copenhagen, Copenhagen, Denmark

Stream or current topic

Law and emotion

Abstract

The law has long devalued psychological harm. This article comparatively canvasses how this devaluation has featured in the common law of tort and the international human rights law on torture. It offers a juxtaposed reading of these paradigmatic entry-points – thematically drawing together the parallel limiting, control or threshold devices serving the devaluation. These relate to: the loose and confused use of terminology; primacy and necessity of physical harm as a precondition for recognition; temporal, spatial, and relational proximity; gestures to triviality (the fear of floodgates, and the figure of fortitude) and sociality (needing to accord with public perception, socio-cultural attitudes, community standards); and, the fraught relationship between law and science. These are presented as the linked logics through which legal recognition of psychological harm is resisted in both tort and torture.

Presentation

866 What do law students think about judicial empathy?

Katarzyna Bulska, Aleksandra Król

Jagiellonian University, Cracow, Poland

Stream or current topic

Law and emotion

Abstract

The topic of empathy and the law has become increasingly popular in the last few decades. More and more people bring attention to the fact that the use of empathy among law professional, including judges, should be discussed. Empathy, as a multidimensional concept, touches upon the topics of emotions, emotional management, perspective taking and behaviour towards others.

Law students have also been included in the discussion about the empathetic abilities. Their empathy levels have even been measured during one of the studies (Williams, Sifris & Lynch, 2016). We wanted to take a different route in our research, though. Instead of assessing the levels of empathy among law students, we enquired about their view of judicial empathy through an online study. Law school is not only the period of their lives when many of them start forming opinions about how the practice of law should look like – they also come in contact with the practical side of working in the law field through internships at courts or law firms. Therefore, data collected from them can provide a valuable insight on their stance on the topic of judicial empathy and judicial work, that can later be explored in other research.

Presentation

In person

625 The meaning of ‘home’: Student anti-social behavior in Belfast’s ‘Holylands’, cognitive dissonance theory and the transformative power of law

Louise Rhodes

Queen's University, Belfast, United Kingdom

Stream or current topic

Law and emotion

Abstract

The problem of student anti-social behaviour in the 'Holylands' area of Belfast is continuously being quelled, but is far from being resolved. The tensions between long-standing residents in the area and the ephemeral student population beg questions around how both demographics conceptualise and emotive the idea of 'home' and how this motivates or demotivates anti-social and prosocial behaviours amongst both cohorts. It is further contended that initiatives from key stakeholders, namely, private landlords, the Police Service of Northern Ireland, and Belfast City Council lack impact because they are largely reactive as opposed to empathic of student anti-social behavior. Thus, this paper has two key objectives:

1. To consider cognitive dissonance theory and how this can be used as a conceptual tool to frame our understanding of student anti-social behaviour in the area. It is hypothesized that there is a perceivable disconnect between students' cognition of 'home' in terms of their 'origin' or 'familial' home, and that pertaining to their 'student' or 'term-time home'.
2. To discuss if, and how, the laws and policies orbiting this area can help inculcate a shape shift in 'student home' values so as to narrow any gaps between student cognition of their term-time, 'student home' and longer term 'familial home' positively transforming any dissonance that may arise in the form of anti-social behaviour. This conceptual viewpoint adds to the discussion on the transformative power of law in generating 'prosocial-home' values and behaviours in neighbourhoods that have succumb to studentification and associated anti-social behaviour.

Presentation

In person

Gender, Sexuality and Law 11

11:30 - 13:00 Thursday, 6th April, 2023

Location MU219

Stream Gender, sexuality and the law

282 Through the Eyes of the Dungeon Monitor: Observations of Dungeon and Play Space Etiquette, Rules and Safeguarding.

Tahlia-Rose Virdee

University of Reading, Reading, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

This paper explores the overt and covert in-community safeguarding measures that the BDSM and Kink communities employ to ensure that their dungeon and play spaces are safe and respectful environments, focused on exploration and pleasure. This exploration will be juxtaposed against recent legal proceedings concerning licencing of BDSM, Kink and Fetish events in England and Wales.

This research was originally conducted as part of my PhD thesis titled 'Beaten into the Margins: The Governance and Knowability of BDSM and Kink Sexualities in England and Wales'. The thesis which informed this paper sets out a pluralist approach to investigating the social and legal factors which contribute to the erasure, caricature and misrepresentation of BDSM and Kink Sexualities. The principal aim of this research is to produce a prescriptive framework and policy advice to redress misrepresentation of BDSM and Kink-related activities, informed by Feminist and Queer theories, as well as facets of Foucauldian governance theories.

In contribution to the broader aims of the aforementioned thesis project, the findings of this paper provide a novel observational insight into the organisation and overseeing of BDSM and Kink orientated events and spaces from the perspective of a dungeon monitor. This paper is the second in a series of papers indicating some starting points for considerations to consult when deducing desirability and feasibility of the development of a Kink-inclusive Queer jurisprudence, and the evidence-based deconstruction of sexual and intimate marginalisation in England and Wales.

Presentation

In person

260 The Human Rights Implications of using Civil Injunctions and Criminal Behaviour Orders Against Sex Workers

Laura Graham

Northumbria University, Newcastle-upon-Tyne, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

Although not created specifically for use against sex workers, civil instruments such as Criminal Behaviour Orders (CBO) and injunctions under the Anti-Social Behaviour, Crime and Policing Act 2014, are often used by police to spatially manage sex work and sex workers out of particular areas. Police are empowered by these orders to prohibit or require a range of behaviours for sex workers including, inter alia: exclusion from areas; prohibition on communication with particular people; prohibition from carrying condoms. As such, sex workers are displaced, peer networks are broken up, and sex workers' risk management strategies are jeopardised.

Police are on the front line in the state's regulation and facilitation of sex work, meaning that police interactions with sex workers are key to a human rights approach to sex work. Police, as public authorities under the Human Rights Act 1998 (HRA), must act compatibly with the European Convention on Human Rights (ECHR). This paper will consider the human rights implications of the police's use of civil instruments against sex workers in England and Wales.

Using the HRA, this paper considers first whether given the significant consequences of these orders, and their lack of due process, they could breach sex workers' right to a fair trial under Article 6 of the ECHR. The paper then considers any potential violations under Article 8 right to private and family life caused by specific terms in the orders, and why police need more robust consideration of necessity and proportionality when using these instruments.

Presentation

In person

341 Why won't they listen? A critical discourse analysis of policy makers' responses to criticism since the implementation of the sex purchase ban in Northern Ireland.

Zach Leggett

University of Sunderland, Sunderland, United Kingdom

Stream or current topic

Gender, sexuality and the law

Abstract

In 2015, Northern Ireland implemented a law which criminalised the purchase of sex. The provisions in the Human Trafficking and Exploitation (Criminal Justice Support for Victims) Act (Northern Ireland) 2015 were championed by the DUP's Lord Morrow and introduced a model of regulation similar to that of Sweden's "Nordic model". In implementing the legislation, policy makers claimed that the criminalisation of the purchase of sex would reduce the demand for paid sex and prevent what they described as the inherently harmful nature of prostitution. At the time of implementation, the legislation was opposed by sex work activists and academics who cited examples of the model's failures in Sweden and other jurisdictions where sex purchase bans had been introduced. Instead, opponents were dismissed as being anti-DUP, biased or being part of the 'pimp lobby' and on the side of traffickers. Since the introduction of the legislation, further research has suggested that the impact of the legislation has had a minimal effect on reducing demand for commercial sex, has resulted in only a handful of convictions and by driving sex work further underground, it has caused adverse effects on sex workers' safety. These criticisms have been largely ignored by policy makers and the policy continues to be implemented in Northern Ireland. This paper uses a critical discourse analysis to explore the motives behind policy makers in Northern Ireland in maintaining the sex purchase ban in Northern Ireland despite evidence suggesting the increased harms it has created for sex workers.

Presentation

In person

711 Sex workers' professional experiences in the interplay of structure and agency

Ivana Radačić¹, Marija Antić¹, Mirjana Adamović²

¹Institute of Social Sciences Ivo Pilar, Zagreb, Croatia. ²Institute for Social Sciences Zagreb, Zagreb, Croatia

Stream or current topic

Gender, sexuality and the law

Abstract

While sex work is a multidimensional phenomenon, in feminist theory it has largely been discussed within dichotomous categories of work v. violence- While previously literature which associated prostitution with violence

prevailed, recent research has focused more on its work dimension. Most of the recent empirical studies have challenged the dichotomous thinking around agency/victimhood.

Drawing on the recent feminist literature on sex work, in this paper we provide an analysis of sex workers' professional experiences in Croatia, against the background of the criminalised context and gendered socio-economic realities. As a part of the project Regulation of Prostitution in Croatia, we conducted 10 interviews with sex workers from the two largest cities in Croatia. For the purposes of this paper, we analysed motivations for entry, self-perception of sex work; organisation and professional strategies to enhance security and autonomy; strategies to cope with criminalisation and stigmatisation.

Our preliminary findings show that motivation and self-perception in interplay with socio-economic structures has a significant impact on their everyday experiences of doing sex work and that protective and coping strategies vary significantly depending on the prostitution sites they engage in, as well as their gender. Those participants whose motivation for entry was not purely economic but included interest in sex (which was true for all men), and who had positive understanding of sex work, tended to work in more elite settings and earn more money, exercised more autonomy and had less problems with criminalisation and stigmatisation.

Presentation

In person

Labour Law 2

11:30 - 13:00 Thursday, 6th April, 2023

Location MU301

Stream Labour law and society

666 "Vicarious Liability of Employers – Implications for Small Businesses"

Louise Murphy

Munster Technological University, Cork, Ireland

Stream or current topic

Labour law and society

Abstract

Vicarious liability is a common law rule according to which employers can be held strictly liable for the wrongdoings of others provided the wrongdoing occurs in the course of their employment. As noted by the UK Supreme Court in recent years, vicarious liability is a doctrine which had grown up during very different social economic conditions, and has needed to respond to developments in business and modern workplace practices, e.g. the increasingly common use of independent contractors (outsourcing) in the modern economy. This provides a useful example of how the law may be described as a social, historical and evolutionary phenomenon.

There is a need for empirical evidence about the impact of law and regulation to help keep pace in rapidly changing and expanding contexts. By combining doctrinal analysis with a socio-legal approach, it is intended to provide a broader perspective on the evolution of the law on vicarious liability and its impact on employers in rapidly changing contexts and risk profiles. A socio-legal approach allows more scope to consider how the law actually functions in the modern business context.

One of the aims of this research is to enhance understanding of the basis upon which this form of strict liability is imposed, and to critique it. It also aims to raise awareness about the types of measures employers develop to avoid and/or respond to strict liability issues they meet on a daily basis.

Presentation

Virtual via Microsoft Teams

800 Effective Protection of Rights of Stone Quarry Workers' in Sylhet, Bangladesh: An Empirical Study

Zelina Sultana

PhD Scholar at Anglia Ruskin University, Cambridge, United Kingdom. Associate Professor, Department of Law, Jagannath University, Dhaka, Bangladesh

Stream or current topic

Labour law and society

Abstract

Stone quarry industries are one of the most profitable industries in Bangladesh. People of different area rather Sylhet want to invest money in stone quarry business. The main reason is, it's easy and cheap production. The other reasons are raw materials are naturally collected stone from different rivers, cheap labour cost, minimal investment etc. Thousands of workers are engaged in the small scale or large scale stone quarry industries and remained in vulnerable conditions. They deprive from enjoying human rights as workers and also died in the quarry field. They did not get any compensation from the owners or other injury facilities. Thus, the purpose of this study is to examine the effectiveness of protection of the rights of stone quarry workers of Sylhet, Bangladesh with the analyse of extant laws and policies and international obligations. To fulfill this objective we will adopt a mixed methodology such as: a semi-structured interview, observation and a policy analysis methodology. Thus, the paper rely both on primary and secondary data. However, it finds that the stone quarry workers treated as informal workers and lead a vulnerable life, who are prone to poverty, receive discriminatory wages. Situation becomes worst for muting quarry workers union for their effective protection of rights. On the basis of findings we suggest that they should be recognised by the State legislation as formal workers for effective protection of their rights.

Presentation

In person

Empire colonialism and law

11:30 - 13:00 Thursday, 6th April, 2023

Location MU302

Stream Empire, colonialism and law

899 International law and tech-based humanitarian assistance: is the cure worse than the ailment?

Esra Oney, Can Turgut

York University, Toronto, Canada

Stream or current topic

Empire, colonialism and law

Abstract

The ever-expanding use of international legal instruments dealing with the prevention of harm on a mass scale, i.e., food security and environmental/climate change, signals changes in managing the normative and policy-based grounds of human insecurities. These changes are accompanied by new forms of governance, technology, and global norm-making, especially through the partnerships of states, supra-national organizations, and corporations. In this article, we propose that these dynamics of international law can be best explained with particular attention to the theoretical nexus between neoliberalism and techcoloniality. Taking postcolonial science and technology studies and Third World Approaches to International Law as our theoretical departure point, we argue that the concepts of harm, food, and environmental security, as defined within the conventional international legal agenda, serve to solidify already existing power discrepancies between the global North and South. Enhanced by contemporary technologies, data mining, and analysis regarding the delivery of public and humanitarian services through tech and data monopolies, we are witnessing today new forms of harm and insecurities posed not only to individuals but also to communities themselves, causing knowledge predation and erasure of locally envisioned futurities. We will take this line of argumentation then to ask: what it takes to co-create an infrastructure of responsibility and accountability through meaningful inclusion and participation of intended recipients of technologies and data in the design and implementation of humanitarian technologies to realize the right to food as a human right and right to adequate food beyond the aggregate exercise of feeding the global poor.

Presentation

Virtual via Microsoft Teams

130 Resistance at the WTO: (De)coloniality in the Making?

Swati Gola

University of Exeter, Exeter, United Kingdom

Stream or current topic

Empire, colonialism and law

Abstract

The calls for WTO reforms are not new. However, the calls have been mounting in the recent years following the deadlock at the Doha Development Agenda negotiations and concluding trade agreements as well as the inoperativeness/ inoperability of the dispute settlement system due to the US refusal to appoint any new WTO Appellate Body members. There are further calls for clarifying understanding of development issues, new approaches to special and differential treatment, transparency and monitoring trade rules. Reforms at the WTO are crucial to reinstate the confidence of the members in the rule-based trading system. Examining the matrix of coloniality still operative at the WTO as seen during the conclusion of the Agreement on Fisheries Subsidies, this paper proposes that instead of piecemeal solutions, a holistic approach embedded in the decolonial approaches is imperative for any meaningful reforms with long lasting solutions. It recommends that concerted efforts are made to dismantle the matrix of coloniality operating at three concurrent and interconnected levels in international economic law. From resistance during the negotiations for a more equitable outcome for poorer nations to epistemic justice calling for inclusion of customary and indigenous legal principles in application and interpretation of trade agreements to revisiting and redefining the very project of development that has disconnected communities from their environment. Only when the international trade rules are embedded in decolonial values can we look to resolve the ongoing conflict between trade and environment and move towards truly sustainable development.

Presentation

In person

773 Landscape or Lawscape: Examining Energy Law in the Anthropocene

Sinéad Mercier

University College Dublin, Dublin, Ireland

Stream or current topic

Empire, colonialism and law

Abstract

As Europe undergoes a polycrisis of energy prices, biodiversity collapse and climate change, fossil fuel companies have hit record emissions (and profits) with no signs of abating. Fossil-fuel based energy production and consumption accounts for 70 per cent of emissions, and is a primary cause of environmental and social harm. Yet, despite proliferating legislative interventions to enclose the problem, emissions and sea levels keep rising.

Today the concept of 'energy' is analogous to money, a commercial product in a free market subject to 'light-touch' regulation. However, this concept is historically and temporally distinct. Aligned with the technological and capital achievements of the Victorian era, concepts of 'energy' legitimated a political rationality that justified unequal labour relations, colonial extractivism and imperialism. Contest and struggle have continued to shape the concept of energy, its way of seeing and attendant infrastructures of consumption and production. This paper seeks to explore the

parallel problems of proliferating fossil fuel energy use and climate legislation by conducting a genealogy of energy in the Irish context.

This research incorporates a law and geography approach through the prism of Nicole Graham's 'Landscape', which highlights how law follows the Cartesian eye to rewrite the land in the language of a private property regime. In examining conflicts over land values, use and appropriation, "energy" can be placed in historical and political context. From these contextual, emplaced narratives, we can build an energy epistemology that is 'landscaped', not 'Landscape' and so gives due credence to 'othered' ways of seeing.

Presentation

In person

Transformative Justice 5

11:30 - 13:00 Thursday, 6th April, 2023

Location MU303

Stream Human rights, memory and transformative justice

444 Peace Agreements as Lawfare: The Battle for Transition in Post-Conflict Societies

Gene Carolan

Technological University Dublin, Dublin, Ireland

Stream or current topic

Human rights, memory and transformative justice

Abstract

Peace agreements do not entirely resolve conflict: rather, they contain existing conflict dynamics within a re-negotiated constitutional framework. In doing so, peace agreements trigger legal discourses that constrain the parties' range of acceptable behaviour and direct them to pursue their interests through reformed political institutions that institutionalize non-violence. Ideally, over time, the parties become socialized to the discourses embedded in the agreement, which guide the peace process when the original agreement is no longer instructive.

The negotiation, interpretation, and implementation of these discourses represents the continuation of conflict by another means, however. Parties can use ambiguity or symbolism in an agreement to advance conflicting interpretations of nation, state, or identity. Conditions and omissions become defences for unanticipated behaviour that results from a particular institutional arrangement. In some cases, the peace agreement even becomes a means to isolate or assimilate separatist elements, a legal instrument capable of achieving a military objective: an instrument of lawfare.

This paper examines the institutional arrangements that resulted from peace agreements in Sudan, the Philippines, and Sierra Leone. Drawing on my doctoral research, the paper charts the impact that legal discourses had on the short-term management of violence; the long-term 'constitutionalization' of the peace process; and the redistribution

or consolidation of power by parties to a conflict in each case. This paper's contribution thus lies in mapping the institutional arrangements that stem from particular prescriptions of law, and considering how such provisions could be designed with transformation, rather than transition, in mind.

Presentation

In person

779 Learning From the Civil Society Actors in Turkey: Using Transitional Justice in an Ongoing Conflict

Nisan ALICI

Nottingham Trent University, Nottingham, United Kingdom. University of Cambridge, Cambridge, United Kingdom.
Trinity College Dublin, Belfast, United Kingdom

Stream or current topic

Human rights, memory and transformative justice

Abstract

This article explores the civil society actors' role in using transitional justice regarding Turkey's Kurdish conflict in the absence of a peace process and in an increasingly authoritarian context. Turkey has never developed an official transitional justice framework to deal with past crimes. The article uniquely positions Turkey's Kurdish conflict within transitional justice literature and connects it to the ongoing debates about expanding transitional justice to so-called "non-transition" cases. It argues that civil society actors in Turkey still hold a solid potential to implement transitional justice mechanisms even in the absence of political willingness. Engaging more widely with established literature and praxis in the field would empower them to advance their goals. It argues that the transitional justice field, in return, can benefit from incorporating more grassroots voices by better understanding how processes can work during, or are limited by, ongoing conflicts.

Presentation

In person

885 Minor Judges and the Magdalene Laundries: An Omission From Official Irish Histories of Institutional Abuse.

Máiréad Enright

University of Birmingham, Birmingham, United Kingdom

Stream or current topic

Human rights, memory and transformative justice

Abstract

This paper reconsiders representations of the Irish judiciary, and the wider legal profession, in Irish state reports on 'historical' human rights abuses. State investigations, inquiries and redress schemes are often judge-led. Judges may represent a certain objectivity or critical distance, fitting them for difficult moral work. State reports often discuss past judges as an anonymised collective. Sometimes, named judges also appear in reports as reformers; stewards on the path to better law in the present. No state report addresses how the legal profession and the judiciary enabled the legalisation of mass institutional abuse. This paper responds to these omissions. It examines District and Circuit Court judges' roles in sending women to Magdalene laundries in twentieth century Ireland. It focuses, in particular, on the first cohort of judges appointed by the Irish Free State; those chosen to play a founding role in the new state legal system after Independence. It shows how they made orders sending women to laundries, overrode women's and families' attempts at resistance, and legitimised state reliance on laundries as private sites of containment. This paper argues that in honouring the judiciary, state reports avoid essential questions of legal institutional complicity with and responsibility for harm.

Presentation

In person

192 The Importance of Inter-age Relations in Post-Conflict Anti-Violence against Women and Girls Activism

Kate Mukungu

Independent Scholar, Gateshead, United Kingdom

Stream or current topic

Human rights, memory and transformative justice

Abstract

This doctoral research into anti-VAWG (Violence against Women and Girls) activism relations in post-conflict societies is informed by life history interviews with twenty women activists in Namibia and Northern Ireland. The study examines how activists navigate through deep ethnic and ethnonational post-conflict division to come together to campaign towards feminist conceptions of justice. Findings reveal the importance of relations among and between feminist activists of different ages on two distinct levels. Firstly, inter-age relations impact activism in the here-and-now as activists of different ages develop in solidarity with each other and learn from different situated knowledges and experiences. This solidarity can bridge division and foster relational agency to strengthen contemporary activism practices. Secondly, in activist groups and networks that sustain over time, cross age relations can help transmit knowledge about complex, gendered legacies of conflict. Conflict-related VAWG is politicised and historicised in ways that can remain contentious post-conflict. Transmitting such knowledge is vital to enable younger activists make sense of oppressive aspects of post-conflict political culture and resolve to collectively resist them. However, some activists with lived experience of conflict are reluctant to campaign publicly about intra-group VAWG perpetrated by conflict actors, despite having privately intervened in support of violated women. Concern about damaging relations among anti-VAWG activists makes them reluctant to highlight this under-acknowledged and contentious issue. Insight into these activists' perspectives deepens our understanding of slowness in activism addressing the harms of the past, which can be discordant with the pace of transitional justice and political processes.

Presentation

In person

Epistemic Injustice: Agency and Autonomy

11:30 - 13:00 Thursday, 6th April, 2023

Location MU305

Stream Epistemic injustices in law

509 Involvement of civil society in Finnish law drafting - a marginalised player in knowledge production?

Noora Alasuutari, Kati Rantala, Inka Järvikangas

University of Helsinki, Helsinki, Finland

Stream or current topic

Epistemic injustices in law

Abstract

Many international and national guidelines for law drafting emphasize inclusive stakeholder participation in order to gain a balanced set of viewpoints of those affected. This paper studies stakeholder participation in the knowledge production of law drafting in Finland. Stakeholders may include public authorities, labour market organisations, professional and civil society organisations, individual people or companies. We examine how two popular approaches to engage stakeholders, working groups and written statements, incorporate civil society actors (organisations and individuals) into the knowledge production: who gets to be involved, and what types of legislative proposals mobilize civil society actors to participate.

Working groups are effective platforms for stakeholders to participate in law drafting and for public officials to gather knowledge from them. The data on 147 working groups and their participants reveal whose expertise is especially valued in law drafting. Our other dataset includes written statements (n=16000), a procedure that allows any interested stakeholders to participate in the knowledge production. We examine both of these datasets in relation to policy areas (e.g. finance and taxation, social and health, environment).

Compared to other stakeholders, the share of civil society organisations is low, and the position of those that participate is highly established. The share of research and individual people is marginal. In both engagement approaches, labour market organizations have an extremely influential position. The results highlight the existence of severe structural impediments in the knowledge production for law drafting, leading to injustices and the overrepresentation of the viewpoints of established players.

Presentation

In person

641 Women's transformative justice and epistemic change. An analysis of practices of circles of women in Poland.

Lidia M. Rodak

University of Silesia, Katowice, Poland

Stream or current topic

Epistemic injustices in law

Abstract

The women's practices described in this presentation can be considered instances of transformative/healing justice as a response to the crisis of (legal) authority. Drawing on ethnographic research on the Circle of Women (CW) in Poland, i.e. self-organized groups of women that interact on regular basis (Rodak, 2020), I describe women's healing practices in the CW taking place without the mediation of the commonly known socio-legal instances and propose a reconstruction of women's epistemology and axiology that justify their perceptions and choices, in order to confront it with the dominant epistemological legal model. In particular, women, expressing their harm and difficult stories, go through the transformative process of "confession, recognition, realization" to found agency expressed in the words: "I will not do this to myself anymore" manifesting self-care, and not revenge (the essence of criminal justice).

Women process harm of on their own, turned inwards, seeking their own voice based on acts of creativity, ceremonies or rituals often created by them, or insights into dreams taken as inner guidance and a supportive community of women in the CW.

The emerging epistemic perspective is linked to the construction of a picture of reality in which the human being, as a 'relational self', remains part of the natural world, (not exclusively singled out adopting a dominant attitude), is immersed in the cyclical rhythm of life (not linear) and is guided by an inner voice (externalized by work with healing dolls or dreams) independent from the dominant Western social trends.

(Grant: NCN, 2019/33/B/HS5/02863).

Presentation

In person

686 The multidimensional agency of silent agents in lawmaking

Kati Rantala, Tomi Lehtimäki

University of Helsinki, Helsinki, Finland

Stream or current topic

Epistemic injustices in law

Abstract

Despite a normative emphasis on the inclusive participation of all those concerned in lawmaking, many are excluded from being heard and thus from contributing to its knowledge base. We call them silent agents, and in this theoretical paper, we seek explanations to their silence by analyzing their agency. We start with the concepts of the power of agency and agentic power by Colin Campbell (2009). Our analysis focuses on a) the nature of silent agents' *power of agency* of as the subjects or targets of lawmaking, b) factors affecting their *agentic power* as potential stakeholders, and c) the relationship between these two aspects of agency in the context of lawmaking. As a linking concept we introduce *dormant agentic power*. What also matter in the process are *recognition and representation*. With these analytic tools, we look at limitations arising from various living conditions and more structural factors that restrict the agency and agentic power of silent agents. For example, paternalist or controlling laws may not regard the affected ones as legitimate stakeholders to begin with. Also the different aspects of the agency of silent agents are neglected by typical consultation procedures, which in turn restrict their opportunities to practice agentic power. This paper highlights the importance of understanding this multi-layered silence of silent agents in order to design consultation practices where the perspectives of silent agents are incorporated in the knowledge-base, when being affected, resulting in laws that are meaningful to them and do not result in unintentional harm to them.

Presentation

In person

Equality and Human Rights Law: Human Rights at the Global and European Levels

11:30 - 13:00 Thursday, 6th April, 2023

Location MU308

Stream Equality and human rights

197 Is the Global Human Rights Sanctions an Emerging Institutionalized Human Rights Enforcement Mechanism

Yifan Jia

King's College London, London, United Kingdom

Stream or current topic

Equality and human rights

Abstract

The weakness of the enforcement mechanisms of international human rights law is a long-standing issue. Although there is certain progress, inter alia, UN human rights treaty bodies, ICC and the European Court of Human rights,

there are still large numbers of the world's population under no effective human rights protection mechanism, and many perpetrators enjoy impunity under the shield of their state boundaries.

Human rights sanctions existed for a long time, and in recent years, there is a development in this regard, named global human rights sanctions. Global human rights sanctions, also known as Magnitsky sanctions, was first established in the US in 2016, and have now been adopted by 34 countries, including the UK and EU. The sanctions regime empowers the government to impose travel bans, asset freezes, and transaction restrictions on foreign individuals and entities that commit serious human rights abuses, such as torture, extrajudicial killings and genocide. As a transnational regime, Magnitsky sanctions do not require state consent, and are backed by physical force, thus making it possible to enforce international human rights law regardless of state boundaries.

My paper aims to discuss whether these newly developed sanctions could be seen as countermeasures in the Articles on Responsibility of States for Internationally Wrongful Acts, to provide sanctioned state legal consequences for violations of international human rights obligations. I will also discuss whether it is shaping a customary international law in which third states can take the responsibility of protecting human rights in other states.

Presentation

In person

305 The UN Universal Periodic Review as an Evolving Process: Examining the Path of Development

Kathryn McNeilly

Queen's University Belfast, Belfast, United Kingdom

Stream or current topic

Equality and human rights

Abstract

Following its establishment as a flagship mechanism of the United Nations (UN) Human Rights Council in 2006, the Universal Periodic Review (UPR) has now completed three full cycles. Much scholarship has investigated this unique and innovative human rights monitoring mechanism. This paper contributes to the existing scholarly landscape by drawing attention to one central aspect of the UPR: its identity as 'an evolving process'. In its opening years, the UPR has evolved in important ways, both procedurally and operationally. Scope exists to consider more of this evolution and, through this, to offer an additional route for human rights lawyers to apprehend the process. The paper will do so by considering two concepts that underpin the UPR and have been central to socio-legal understandings of legal processes and time: cyclicity and linearity. Given its overarching function to undertake a periodic review of all UN Member States, cyclicity is fundamental to the mechanism. However, the UPR also encompasses elements of linearity. In other words, activity that is not bound by a clear start and end point as cycles are but, instead, is ongoing on a path or as an arrow across cycles. The evolution of the UPR can be understood as a part of the mechanism's linear activity. Examining a continuous path of procedural and operational development offers one way to more clearly examine the UPR's evolution, to apprehend themes that have characterised this evolution across cycles, and to understand its status as a process that stands to evolve further.

Presentation

In person

757 Allegation Picking and the European Court of Human Rights as a Strategic Actor

Alan Greene

Birmingham Law School, Birmingham, United Kingdom

Stream or current topic

Equality and human rights

Abstract

When a case reaches the European Court of Human Rights (ECtHR; the Court) it is often the case that violations of multiple articles of the Convention are alleged. However, this does not necessarily entail that the Court will pronounce upon each and every one of these allegations. Instead, the Court will often adjudicate upon one alleged violation and, having settled this issue, state that it is unnecessary to examine the complaints under the other articles. This raises the question: how does the European Court of Human Rights decide which allegation to adjudicate upon?

This project aims to discover the extent of this 'allegation picking' by the Court, the factors that affect allegation selection, and the consequences this allegation picking has on the Court's jurisprudence and its institutional legitimacy. Is allegation picking ad hoc and utilised on a random basis, or is there a pattern to it? Is it simply a necessary means through which the Court can manage its scarce resources, or is there a latent judicial strategy in operation with allegation picking acting as a judicial avoidance technique or, conversely, an agenda setting technique?

This paper will outline a research agenda and the methodologies required to investigate the phenomenon of allegation picking. It will define the concept of allegation picking, demonstrating the extent of allegation picking in the ECtHR's jurisprudence, and unpacking the ramifications that allegation picking may have for understanding the ECtHR as a strategic actor.

Presentation

In person

916 Disability human rights standards before the European Court of Human Rights – false convergence and methodologically-driven divergence?

Janos Fiala-Butora

University of Galway, Galway, Ireland

Stream or current topic

Equality and human rights

Abstract

The adoption of the UN Convention on the Rights of Persons with Disabilities (CRPD) and the interpretative work of the UN CRPD Committee has profoundly transformed international human rights standards on disability rights. It has

gained prominence also in the case-law of the European Court of Human Rights (ECtHR) in cases concerning persons with disabilities. However, the CRPD's acceptance has not been universal. The European Court has endorsed it in many cases but has also adopted conclusions conflicting with the CRPD Committee in several others.

This paper analyses the reason for this divergence and argues that its causes lie deeper than the two international bodies' different understanding of disability rights or the differences in the substantive standards of the instruments they are interpreting. They are also determined by the different interpretative methodologies of the two tribunals. I will demonstrate through examples on the right to vote, legal capacity, inclusive education, and involuntary treatment, how the European Court's jurisprudential approach almost inevitably leads to results harming persons with disabilities in some areas, while it affects to a lesser extent other rights, which are subject to a different structure.

To achieve harmony with the CRPD and to provide a higher level of protection to the rights of persons with disabilities, the European Court would need to change not its understanding of disability, but its jurisprudential approach in general. The paper proposes such a change, from which not only persons with disabilities but many others could benefit as well.

Presentation

In person

25 Years of Constitutional Change: UK constitution

11:30 - 13:00 Thursday, 6th April, 2023

Location MU309

Stream 25 years of constitutional change - past and future

214 There and Back (to Dicey) Again? Parliamentary Sovereignty Under Scotland's Devolution Settlement

Pravar Petkar

University of Edinburgh, Edinburgh, United Kingdom

Stream or current topic

25 years of constitutional change - past and future

Abstract

Constitutional change in the United Kingdom is often analysed in terms of parliamentary sovereignty. This paper advances two claims about how parliamentary sovereignty should be understood in relation to Scotland's devolution settlement.

First, Scottish devolution in 1998 marked a turn in the road for the UK constitution away from the Diceyan understanding of parliamentary sovereignty. Dicey's view rests on a vision of the UK constitution as unitary and sees democratic power as centralised in the UK Parliament. The Scottish Parliament's democratic credentials and the protection for devolution in the Scotland Act 2016 instead demonstrate a territorially plural constitution where democratic power is exercised through both representative and direct means.

Second, however, the present and future appears to turn back towards the Diceyan understanding that devolution is supposed to have left behind. Three of the UK Supreme Court's recent decisions on the boundaries of devolved legislative competence in *Continuity Bill*, *UNCRC Incorporation Reference* and *Scottish Independence Referendum Reference* are based on reasoning with a distinctly Diceyan flavour. These judgments in various ways reassert the unitary nature of the UK constitution, sideline the Scottish Parliament's democratic credentials, limit potential restrictions on the UK Parliament's legislative powers and privilege representative over direct democracy without extensively evaluating their respective merits. This tilts the constitutional balance in favour of UK-level and against sub-state institutions to the detriment of devolved autonomy and subsidiarity, and as a result, to the detriment of the legitimacy of the devolution settlement as a whole.

Presentation

In person

167 Breaking the chain of misunderstanding: three things we should not tell students about delegated legislation

Stephanie Pywell

The Open University, Milton Keynes, United Kingdom

Stream or current topic

25 years of constitutional change - past and future

Abstract

Most Law students leave university having some awareness of the existence of delegated legislation, but little idea of its significance or scope, despite the fact that it is by far the most common kind of UK-wide legislation. More importantly, they might learn some 'facts' that careful study of parliamentary papers shows to be incorrect.

This paper outlines the two sources of the delegated power to make legislation, and describes how the legislation should properly be classified. It then considers the purposes for which delegated legislation should be used.

The paper examines the procedures under which delegated legislation can be scrutinised by Parliament, and shows how judicial control over the law-making power may be severely limited. Given that these 'checks and balances' are less effective than is generally realised, it is unsurprising that there are instances where the power has, at least arguably, been misused.

By increasing academic awareness of some facts about delegated legislation that are not widely known outside Parliament, the paper aims to ensure that current and future generations of students are better informed about this major source of law.

Presentation

In person

925 The Shock of the New: Northern Ireland's Governance Order after Brexit

Colin Murray

Newcastle Law School, Newcastle, United Kingdom

Stream or current topic

25 years of constitutional change - past and future

Abstract

Brexit's impact on the existing fissures in the UK's "territorial" constitution, and in particular on the divide between Great Britain and Northern Ireland, has produced much anguished political commentary about the "constitutional integrity" of the UK. The Withdrawal Agreement's Protocol, informed by the Belfast/Good Friday Agreement 1998, places Northern Ireland in a state of deep alignment with EU law across many areas of law, generating binding international commitments which cannot be wished away or satisfied by some narrow response focused on border technology. This paper examines how these commitments have exposed the range of constitutional arrangements which apply to Northern Ireland's place within the UK. It also addresses how the 1998 Agreement generates challenges for enacting UK-wide human rights reform on the model of the British Bill of Rights Bill. The combination of these developments challenges the extent to which the UK can still be said to be a unitary state, and highlights how parliamentary sovereignty has been used to transform the UK's territorial constitution into a space of overlapping governance orders. Such departures from the Westphalian ideal of statehood remain unusual and require good will to operate, and the years ahead will determine whether Northern Ireland's post-Brexit governance arrangements are workable in the context of such a contested polity.

Presentation

In person

Exploring Legal Borderlands: Exploring Borderlands of Socio-Legal Regulation and Institutions

11:30 - 13:00 Thursday, 6th April, 2023

Location MU310

Stream Exploring legal borderlands

709 Critiquing Civil/Criminal Hybrid Orders

Jen Hendry^{1,2}, Andrea Fraser³

¹University of Leeds, Leeds, United Kingdom. ²Max Planck Institute for Legal History & Legal Theory, Frankfurt, Germany. ³JUSTICE, Edinburgh/London, United Kingdom

Stream or current topic

Exploring legal borderlands

Abstract

Civil/criminal hybrid orders are legal orders obtained via a civil or executive process that seek to regulate an individual's conduct via negative or positive conditions, and which may lead to criminal consequences if breached. Whereas in the past these hybrid procedures featured in the context of terrorism financing and the civil recovery of property arising from serious and organised crime, in 2023 it is more common to see this hybrid form used to address undesirable activity and anti-social behaviour.

In spite of limited evidence as to the success of preventive hybrid orders, such procedures feature more and more frequently, and in all manner of recent legislation. Their legislative appeal is twofold: first, by virtue of being purportedly civil in nature, hybrid orders bypass the elevated procedural safeguards and standard of proof that normally accompany the criminal law. Second, populist rhetoric emphasising public safety and security provides plausible justification, despite due process and human rights concerns.

Since summer 2022, JUSTICE has run a Working Party (WP) focusing on Hybrid Orders. Its approach is tripartite, considering *inter alia* the effectiveness of hybrid orders at achieving policy aims, the legal processes and training required for their fair and consistent implementation, and the impact on individuals and communities, especially those who are marginalised and/or stigmatised. In this presentation, we (Fraser, JUSTICE lawyer and WP rapporteur; Hendry, WP sub-group 1 Chair) aim to produce a critical and policy-oriented perspective on hybrid orders that highlights the grey areas within this otherwise unchallenged practice.

Presentation

In person

529 'We can only guess' – Uncertainty Becomes the Rule for Foreign-Palestinian Families

Jamal Abu Eisheh

University of Exeter, Exeter, United Kingdom

Stream or current topic

Exploring legal borderlands

Abstract

This paper explores the production of uncertainty and non-formal regulations in Israel/Palestine. Specifically, it looks at the question of family reunification and residency in families where one spouse is a foreign national and the other a Palestinian resident of the 1967 occupied territories, and the way in which written and unwritten (including informal and non-legal) rules regulate the process. The paper argues that the uncertainty produced within this regulatory grey area is calculated and designed to construct a mechanism of control riddled with patterns of uncertainty,

unpredictability, and unintelligibility. It ultimately serves to discourage individuals and families from applying for family reunification.

The process of producing this uncertainty is twofold: on the one hand, there are few legal texts and precedents that regulate the family reunification process, and on the other hand there is an abundance of changing and unwritten rules that inform decision-making in the process. As such, the paper draws on data collected as part of current PhD research, including auto-ethnography to examine the role and practices of Israeli state institutions in the production of such unwritten rules.

The paper shows how the deliberate construction of this grey area forms a publicly available yet 'unofficial' knowledge that impacts the behaviour of mixed Palestinian-foreign families. This knowledge is constituted of elements such as rumours, expectations, and informed guesses. It also discusses how the concerned families navigate this knowledge and challenge the existing power dynamics in unexpected ways.

Presentation

In person

611 The Dog Days are Over? Framing Responsive Regulation of UK Rescues.

Sarah Singh, Marie Fox

University of Liverpool, Liverpool, United Kingdom

Stream or current topic

Exploring legal borderlands

Abstract

Media reports have highlighted how national animal rescues are 'drowning in animals' as the cost-of-living crisis bites and animals are abandoned in unprecedented numbers (Guardian, 17 November 2022). Covid-19 and the subsequent cost-of-living crisis have increased pressures on an unregulated and already vulnerable sector, ill-equipped to cope with this influx of dogs. This paper addresses legal responses to this crisis.

While calls for better governance predate this crisis, the absence of regulation has exacerbated the dual impact of the pandemic and on-going economic situation. Thus, no comprehensive register of rescues exists, while charities/not-for-profit organisations vary hugely in size, working practices, standards of governance etc. Consequently, those forced to surrender much loved family pets, or wishing to adopt a dog, have scant guidance on distinguishing reputable from disreputable rescues (some may be fronts for puppy farming/dog trafficking).

Different approaches to regulation of this issue have been mooted across the devolved administrations of the UK. For socio-legal scholars this affords an opportunity to analyse borders between hard and soft regulatory mechanisms and whether lessons are transferable across jurisdictional boundaries. Locating governance of dog rescue as a case study in responsive regulation in the post-pandemic era, we examine the pros and cons of statutory intervention and assess how far regulation can promote the shared interests of dogs and humans across the relevant geo-political and legal boundaries. Methodologically the paper draws on surveys undertaken by our partners on this project (Battersea & The Kennel Club) and is informed by interviews with key stakeholders.

Presentation

In person

125 The Journal for Law and Society as a mirror of socio-legal trends and relations/hips?

Naomi Creutzfeldt¹, Jen Hendry², Christian Boulanger³

¹University of Kent, Canterbury, United Kingdom. ²University of Leeds, Leeds, United Kingdom. ³Max Planck Institut, Frankfurt, Germany

Stream or current topic

Exploring legal borderlands

Abstract

How useful are citation analysis tools to explore the development of socio-legal studies? In this paper we empirically trace the evolution of topics and trends in the Journal of Law & Society (JLS) since its inception. Our starting point was a research project on 'socio-legal trajectories', in which we set out to understand the development of the field. Using well established methods (interviews and surveys), we explored individuals' trajectories throughout their careers in socio-legal studies. While this set of narratives is rich and illuminating, it does not however provide us with tangible and measurable information about knowledge production within the field. To fill this gap, we employed bibliometric methods; specifically, we used these methods to explore knowledge production in the field. Our starting point was the JLS, one of the first socio-legal journals in the UK: between 1974 and the present day, we have identified thematic trends and authorship, demographics, and citation clusters. We conclude by discussing how the use of computational methods can add to our hermeneutical approaches in the research on socio-legal trends.

Presentation

In person

Interrogating the Corporation: Directors and Shareholders

11:30 - 13:00 Thursday, 6th April, 2023

Location MU318

Stream Interrogating the corporation

698 Inside-out: directors' ("human rights") duty of care applied to corporate groups

Bonheur Minzoto

University of Manchester, Manchester, United Kingdom

Stream or current topic

Interrogating the corporation

Abstract

This paper inquires whether, in satisfying their duty of care, directors ought to have in contemplation human rights issues of other companies in the group in their respective assignments, cognisance of legal and regulatory obligations imposed on the parent company.

“Corporate groups and human rights” is a matter of current active concern. In England, the development has centred mostly on judicial rulings. The UK Supreme Court has confirmed in successive decisions that a parent company can owe a duty of care to third parties and be liable for its subsidiary’s torts (*Vedanta v Lungowe*; *Okpabi v Shell*). In France, the development is centred on statutory reforms, imposing obligations on parent companies to oversee the human rights compliance of their subsidiaries. These can be termed the “parent company proxy regulation”.

The expectations of corporate directors follow an “inside-out” strategy, asking how to advance corporate purpose and sustainability in groups of companies using existing corporate law mechanisms. Seen in this light, how should the duty of care apply in the context of “parent company proxy regulation”, and what obstacles might a claim against directors for breach of this duty face? The aim is to assess whether the English and French duty of care can help us enhance the practical understanding of corporate groups’ accountability concerning human rights.

Presentation

In person

496 The theory of the firm and Ireland’s restriction of company directors’ regime

Aoife McPartland

University College Dublin, Dublin, Ireland

Stream or current topic

Interrogating the corporation

Abstract

Section 819 of the Companies Act 2014 restricts directors of insolvent companies from acting as directors again, for a fixed five-year period, unless they can establish that they acted honestly and responsibly, and it would not be just and equitable to impose a restriction order on them. Latterly, directors must also prove that they cooperated with the liquidator to resist a restriction order. Restriction is seen as a less severe punishment on irresponsible directors than disqualification.

In corporate governance discourse, the company is referred to as the firm. Debate surrounds what the proper purpose of a firm is or should be. As a measure within company law, Ireland's restriction of company directors' regime can be illustrative of the view of the purpose of the firm within the community.

In corporate governance debate, there are two main theories of the firm, namely the contractarian and entity theories. The contractarian theory of the firm most closely aligns with a shareholder wealth maximisation purpose of firms. The entity theory of the firm aligns most closely with the stakeholder theory of the firm.

This presentation will look at features of these theories of the firm within corporate governance debates and consider these features as they correspond to Ireland's restriction of company directors' regime. The conclusion reached is that Ireland's restriction of company directors' regime does not cogently reflect these theories of the firm within Irish society.

Presentation

In person

Intellectual Property 5

11:30 - 13:00 Thursday, 6th April, 2023

Location MU319

Stream Intellectual property

Jasem Tarawneh

726 Intellectual Property Rights Protection in the Era of Space Technology: Applicability of National and International Laws — Lessons for Nigeria

Nkem Itanyi

Queen's University Belfast, Belfast, United Kingdom. University of Nigeria, Enugu, Nigeria

Stream or current topic

Intellectual property

Abstract

The possibilities that technology holds for our world are limitless. From mind-boggling inventions to the internet of things, cyber-Space, and now, Space technologies, the world is yet to witness the peak of technological development. Notably, at every development stage of technology, intellectual property (IP) has played an indispensable role. IP rights, especially patents, spur innovation and technology diffusion. It provides a reassurance

that encourages firms to undertake research and development (R&D) in technology, recoup costs associated with such research and aid in international technology transfer. Space technology is one of the most technical areas of technology, and outer Space activities are the fruits of intellectual creations. However, it is only recently that IP protections in relation to Space activities have raised wider national and international attention. Space technology activities are exponentially moving from state-owned to private and commercial activities. The implication is that participants from the private sector would seek ingenious ways to ensure that R&D investments are recouped in the future and, pending when such investment is recouped, their research is not unduly exploited. These protections are offered under IP rights. This paper analyses the applicability of IP rights to Space technology. It discusses national and international laws, including the International Trademark Association (INTA) IP in Space Report 2022, that have harmonised IP rights into Space law. It gives an in-depth analysis of the issues arising from the application of IP rights to Space activities. It offers a possible approach to applying IP law to Space law.

Presentation

In person

225 The assessment of legal documents on the violation of intellectual property rights in the context of the Karabakh region of Azerbaijan during the occupation.

Nargiz Hajiyeva

Azerbaijan State University of Economics (UNEC), Baku, Azerbaijan

Stream or current topic

Intellectual property

Abstract

The chosen paper incorporates a legal assessment of the infringement of intellectual property and property rights, including import and export operations and natural resources exploitation from the standpoint of international law in Azerbaijan's Karabakh and adjacent regions during the occupation. The 30-year-old Karabakh war between Armenia and Azerbaijan has traditionally dominated international politics. This question has not been researched at the legal level inside academia due to a lack of attention paid to the growing issue of property and intellectual property rights in occupied Karabakh. During the occupation, the products and goods produced in Azerbaijani regions - Karabakh and its seven neighboring districts - were restricted to Armenian territory. There were no safeguards in place to enforce intellectual property rights in the formerly occupied territories, and Azerbaijan is currently taking real steps to increase IPR enforcement in those territories. The study provides a legal perspective on Armenia's use of property and resource seizures during the occupation of these territories, as well as an analysis of the property and intellectual property rights abuses in Karabakh and its surrounding districts. The Oxford Manual, legal documents on the Israel-Palestine conflict, national laws on the occupied territories of Georgia and Ukraine, UN resolutions, WIPO documents, Geneva and Hague Conventions, and other international legal documents and decrees are used in the study to provide legal basis for the issue and identify shortcomings and arguments.

Keywords: intellectual property, illegal exploitation, illicit export and import, legal documents review, Karabakh, Azerbaijan, Armenia.

Presentation

In person