Socio-Legal
NEWSLETTER No 64 SLSA
THE NEWSLETTER OF THE SOCIO-LEGAL STUDIES ASSOCIATION SUMMER 2011

SLSA EXECUTIVE COMMITTEE

At the recent meeting of the SLSA Executive, committee members welcomed the new SLSA chair Professor Rosemary Hunter, University of Kent. Professor Anne Barlow, University of Exeter, was elected vice chair at the same meeting.

Following the decision of the AGM on **13 April 2011** to appoint two new Executive Committee members, elections were held and three members were appointed (due to a tie for second place). Congratulations to Sarah Blandy, University of Leeds, Kevin Brown, University of Newcastle, and Jane Scoular, University of Strathclyde. Joanne Hunt, University of Cardiff, has stepped down. We thank her for her work as recruitment secretary over the past two years.

The next meeting of the SLSA Executive will be on **15 September 2011**. If there are any matters that you wish to raise for discussion, contact the chair. If you have any queries about the work of the SLSA Executive, please contact the chair or a committee member (full details on page 2).

SLSA CONFERENCE 2012: CHANGE OF VENUE

The 2012 SLSA annual conference will be held on **3–5 April 2012** at Leicester De Montfort Law School. We had originally planned to hold the conference at Robert Gordon University (RGU), Aberdeen. Subsequent to this decision, however, an industrial dispute has arisen at RGU involving the de-recognition of the University and College Union by university management. The SLSA Executive considered the risk that this dispute might give rise to greylisting of the university and the possibility that, even in the absence of greylisting, some SLSA members might decide not to attend the conference as a result of the dispute. Consequently, it was decided to change the venue for 2012.

We are extremely grateful to Gavin Dingwall, André Naidoo and the team at Leicester De Montfort for so generously offering to take on the running of the conference for 2012. Members who attended the 2009 conference there will recall it as a very well-organised and successful event which we are sure will be repeated next year. We are also very grateful to Sarah Christie and the team at RGU for the work they have put in to date, and we look forward to holding our conference at RGU once the industrial dispute is resolved. The 2013 conference is scheduled to be held at the University of York, and we then hope to travel to RGU in 2014. ***Rosemary Hunter***

The call for themes for 2012 will be announced shortly on the SLSA website and via the weekly e-bulletin.

SLSA MEMBERSHIP FEES

Membership fees are due on **1 July 2011**. The new rates are £40 for full members and £20 for postgraduates and students. Those who are no longer students are reminded that they need to upgrade their membership. If you have not yet updated your standing order, please do so using the standing order form enclosed with this newsletter. If you have any queries about membership, please contact membership secretary Julie McCandless **e** j.m.mccandless@lse.ac.uk.

SLSA treasurer, Linda Mulcahy, reported to the Executive's May meeting that the association needs to budget extremely carefully over the coming months and years in order to build up a healthy financial reserve while maintaining services to members. Rising costs together with increased web and email presence have meant that reserves have rapidly diminished over the past three or four years.

Measures already in place are the increase in membership fees mentioned above (still relatively modest for both levels of membership) and a moratorium on funding for the annual seminar competition. In addition, to save on travel expenses, the Executive agreed to reduce its full meetings from three per year to two (in September and January), with a May meeting for officers only.

NEW SLSA PRIZE FOR CONTRIBUTIONS TO THE SOCIO-LEGAL COMMUNITY

The SLSA Executive is delighted to announce the establishment of a new annual prize for contributions to the socio-legal community. The prize is being funded by a private sponsor. The winner will receive £500 and lifetime membership of the association. **SLSA members are invited to submit nominations for this year's prize**. There are no specific criteria. Nominators should simply state in 100 words why the person they are nominating would be a worthy recipient of the prize.

Nominations should be sent by email to SLSA secretary Amanda Perry-Kessaris **e** a.perry-kessaris@soas.ac.uk. Closing date: **5 September 2011**.

SLSA Seminar Competition 2011

This year's seminar competition winners are Aoife Nolan, Law School, University of Durham, and Sandra Fredman, University of Oxford. Their seminar is entitled 'Economic and social rights in a time of austerity' and will take place on **1 July 2011** at the Faculty of Law, University of Oxford. Details at **w** www.dur.ac.uk/esr.timeofausterity.

Also in this issue . . .

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socio-legal people . . .

JULIA J A SHAW has been appointed Reader in Law at Leicester De Montfort Law School at De Montfort University. She previously held positions at Nantes School of Management in France, Aston Business School at Aston University and Lancaster University Law School.

ANDREAS PHILIPPOPOULOS-MIHALOPOULOS has won the Law Teacher of the Year Award run by the UKCLE and sponsored by Oxford University Press. He was nominated by nine of his students and received a £3000 prize.

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www.slsa.ac.uk

The SLSA website contains comprehensive information about the SLSA and its activities. The news webpage is updated almost daily with socio-legal news, events, publications, vacancies etc. To request the inclusion of an item on the news page and for all other queries about the content of the website, contact Marie Selwood **e** marieselwood@btinternet.com.

Disclaimer

The opinions expressed in articles in the *Socio-Legal Newsletter* are those of the authors and not necessarily those of the SLSA.

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Newsletter sponsorship

The *Socio-Legal Newsletter* is sponsored by a consortium of law schools interested in promoting socio-legal studies in the UK.

If you think that your institution would like to become involved in this initiative, please contact SLSA chair Rosemary Hunter **e** r.c.hunter@kent.ac.uk.

Newsletter sponsors 2010—2013 are: Birkbeck; Cardiff Law School; Centre for Socio-Legal Studies, Oxford; University of Exeter; University of Kent; University of Liverpool; London School of Economics; University of Nottingham; Queen's University Belfast; and University of Westminster.

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SLSA PRIZES

At SLSA Brighton 2011, this year's prizewinners received their awards and took part in meet-the-author sessions. Their session hosts explain why they were chosen.

SLSA–Hart Book and Early Career Prizes

Rosie Hardings' *Regulating Sexuality: Legal Consciousness in Lesbian and Gay Lives* (2010 Routledge) is an insightful account into relatively underexplored areas of legality in lesbian and gay family lives. Mixing theoretical analyses with empirical research, Harding illustrates the myriad ways in which lesbians and gay men resist and manage sexual regulation through their positioning before, with and against the law. Ultimately, however, it is her 'Afterword' which sets this book apart. Here, in a personal account of how she sees legal consciousness as informing her own life, she demonstrates her motivations and unique investment in this important area of socio-legal scholarship. ***Marian Duggan***

Socio-Legal Article Prize

The winner of this year's Article Prize was Antonia Layard for 'Shopping in the public realm: a law of place' (2010) *Journal of Law and Society* 37(3): 412–41. The law of place, and the distinction between place and space is explored in the context of a retail development in Bristol. It deals with something we all have a personal and communal interest in – the public spaces in our cities – and how the mechanisms of the law enable a developer to delineate and amalgamate a previously diverse and multiple cityscape into a single privately owned and uniform place. Drawing on geographers and the growing literature on the concept of place, it explores the idea of public rights of access to the city. In order to enable this access, it suggests the need for a nuanced approach which makes a conceptual and legal separation between the control of space and place and its ownership, disentangling exclusion from the incidents of property. It is this powerful combination of an interdisciplinary academic discussion of the nature of place and the embryonic distinction between private and public ownership together with a detailed and illuminating case study of the social consequences of law which made this article stand out as a winning example of socio-legal scholarship. ***Penny English***

2012 call for nominations

Nominations are open for next year's prizes. The closing date is Monday **3 October 2011**. Publications published in the year up to **30 September 2011** are eligible. Full details can be found on the SLSA website **w** slsa.ac.uk and follow the prizes links.

Journal of Law and Society (Autumn 2011)

Images of welfare in law and society: the British welfare state in comparative perspective – Daniel Wincott

Can the law speak directly to its subjects? The limitation of plain language – Rabeea Assy

The FSA's treating customers fairly (TCF) initiative: what is so good about it and why it may not work – Andromachi Georgosouli

The scholarly process – John P Heinz

Book reviews

An Unfortunate Coincidence: Jews, Jewishness, and English law by Didi Herman – David Fraser

Lawyers in Corporate Decision-Making by Steven Vaughan – Robert Eli Rosen

Fact-Finding without Facts: The uncertain evidentiary foundations of international criminal convictions by N A Combs – Yassin M'Boge and John Jackson

SLSA ONE-DAY EVENTS

It is hoped that additional funds can be raised this year by organising more one-day conferences and workshops. These have always been a key part of the SLSA's work. Past conference topics have included: exploring the 'socio' in socio-legal studies; equality, human rights and good relations; justice, power and law; new ethical challenges in socio-legal research; and socio-legal studies and the humanities.

If you have an idea for a one-day conference, please contact a member of the Executive (see page 2 opposite).

Forthcoming events

The SLSA Executive Committee is organising a half-day seminar in London in mid-September to provide input into the Law Sub-Panel's consultation on its criteria for the REF, particularly the meaning and scope of 'impact'.

There are also plans for a series of three one-day conferences on: doing empirical research; teaching empirical research; and funding empirical research.

Details of all events will be published on the website and in the weekly e-bulletin when confirmed.

MEET YOUR EXECUTIVE

In a new, occasional series, members of the SLSA Executive Committee will be introducing themselves to newsletter readers starting with new chair, Rosemary Hunter, University of Kent.

As an Australian law student in the 1980s, I received an almost totally 'black-letter' legal education. However, I did take one seminar on 'Law and society', which sparked my interest in socio-legal studies. The lecturer was Richard Ingleby, a graduate of the Oxford Centre for Socio-Legal Studies.

I first ventured into empirical legal research in the early 1990s when I was trying to study anti-discrimination law. The problem was that the Australian legislation prescribed a mandatory conciliation process for all discrimination complaints, which was so 'successful' that only a tiny number of cases ended up in adjudication, leaving very little case law to analyse. This begged the question of what was happening in the 'black box' of conciliation.

I was lucky to meet Alice Leonard, then senior legal officer at the British Equal Opportunities Commission, who had undertaken pioneering empirical studies of the operation of the UK Sex Discrimination Act in industrial tribunals. She both challenged me to find out about the workings of the Australian law, and offered to help me to do so. I applied for my first research grant to obtain funding for Alice to visit Australia to work on the project. We read conciliation files, conducted interviews, and came up with the first analysis of the processes and outcomes of conciliation in sex discrimination cases in Australia. I was hooked!

After almost 20 years of poking my nose into various aspects of the legal system, I remain curious about the effects of alternative dispute resolution processes, and will shortly be starting a new, ESRC-funded project with SLSA vice chair, Anne Barlow, on family dispute resolution. I'm also about to begin teaching a socio-legal research module at the University of Kent that I hope will inspire future scholars. As a member of the SLSA Grants Committee and in attending recent SLSA conferences, I've been impressed by the range and quality of socio-legal work being undertaken by researchers at all levels, which speaks to the ongoing health, strength and growth of our discipline.

Rosemary Hunter

SPECIAL 21ST ANNIVERSARY SESSION

On 12 April 2011 at the University of Sussex, approximately 200 people attended a special plenary entitled 'The past, present and future of socio-legal studies' to hear five keynote speakers and participate in the ensuing discussion. Marie Selwood reports on the gathering.

To celebrate the 21st birthday of the SLSA, a number of keynote speakers were invited to reflect on the history of law and society scholarship in the UK, the directions it has taken since the association was first established and the new directions it might take in the years to come. The session sought to explore the changing boundaries of socio-legal studies and its interface with the humanities and with empirical, doctrinal and critical scholarship. It was chaired by outgoing SLSA vice chair Dave Cowan (University of Bristol) and the speakers were Michael Adler (University of Edinburgh), Paddy Ireland (University of Kent), Caroline Hunter (University of York) Smita Kheria (University of Edinburgh) and Sally Wheeler (Queen's University Belfast).

A comparative view

Mike Adler spoke first, remembering the early days of the Socio-Legal Group and its three conferences: 1987, 1988 and 1989. The SLSA was launched in 1990 at a conference at Bristol University.

He went on to describe some of the differences over time between the development of empirical legal research in the US and socio-legal research in the UK, referring to the work of Jonathan Simon (University of California Berkeley) who has identified fluctuations in US empirical legal research over the years with peaks in the late 1920s (legal realism), late 1960s/early 1970s (law and society movement) and late 1990s/2000s (pluralism). In Britain, following the setting-up of the Centre for Socio-Legal Studies (CSLS) in 1972, researchers began spreading the concept of socio-legal studies throughout universities. But in the 1990s, an ESRC assessment of socio-legal studies found problems and, in 2007, the Nuffield Inquiry described a shortage of capacity. However, the activities of the SLSA and papers in the *Journal of Law and Society* among others seem to indicate that there is a thriving socio-legal community – although the number of papers drawing on empirical research is still small.

Why is the UK so different from the US? Jonathan Simon's work explained US peaks using macro factors (economy, government and technological innovation): historically, there has been plenty of money for research, a lot of which takes place in social science departments where staff have the relevant expertise. In the UK, there has been sustained funding for criminology and criminal justice but not for empirical research on civil law. Empirical legal research has been mainly law-school based where staff are not necessarily skilled in research methods. Mike concluded that, in this case at least, perhaps the UK needs to be more like the US.

A critical view

Paddy Ireland spoke about the socio-legal-studies/critical-legal-studies interface, tracing the origins of both back to the 1960's 'social sciences and law movement'. In the UK, the situating of law departments in the social science faculties of new universities was significant in breaking the link with traditional legal education. Socio-legal studies and critical legal studies became united in challenging the idea of legal autonomy and the tradition of law as an 'independent and autonomous universe'. In the last 40 years, the success of of this challenge has brought about great changes in legal education and research.

He went on to examine the contrasting ways in which socio-legal studies and critical legal studies explore the differences between appearances (ideology) and reality. Socio-legal studies seeks to investigate law's claim to reality (which is not always accurate) while critical legal studies examines law's relation to power (which is not always obvious). He summarised further, saying that to socio-legal studies law is a cause (of social effects) examined via internal critique, whereas to critical legal studies it is an effect (of external causes) examined via external critique. However, both agree that law is not autonomous.

On the question of whether socio-legal studies is about empirical facts and critical legal studies about theory, he said that the answer is yes, to some extent, but with reservations. Critical legal studies claims that theory can reveal the often hidden power behind law while socio-legal studies stresses that theories cannot be static in a context of a changing reality. The two, then, should work in tandem.

For the future, the rise of neoliberalism has resulted in the strengthening of market mechanisms and the withdrawal of the state from certain areas, leaving them to the market, resulting in new forms of legal autonomy. Socio-legal studies should beware of being co-opted into this new state of affairs in which the role of law is simply to facilitate the market.

An empirical view

Caroline Hunter began by asking what we mean by empirical research, referring to the Nuffield Inquiry with its (controversial) references to the aging population of researchers, the lack of capacity and its 'coy' reference to 'study through direct methods'. She contrasted this with an American definition of empirical legal research as 'a model-based approach coupled with a quantitative method'. In reality, the socio-legal community needs to think hard about being a broad church and be critical of and reflective about research methods.

She said that, for the present, there *are* some reasons to be cheerful, for example, the fact that there are an increasing number of publications looking at research methods for law, e.g. the *Oxford Handbook of Empirical Legal Research* (P Cane and H Kritzer (eds) 2010 OUP) with contributions from many UK scholars. She had also looked at SLSA grants projects since 2002 and found that most involved an empirical component (eg qualitative interviews, surveys, analysis of statistical sources) and several were pilots for larger empirical studies. Overall, they featured researchers at all stages of their careers and demonstrate how the SLSA has been keen to support research. This year's prize shortlists also revealed that a number of the authors were using empirical research as a basis for their work.

For the future, the SLSA should continue to encourage research and provide seedcorn funding and support in other ways. Socio-legal scholars need to be critical of their empirical research and methods and take those forward. In conclusion, she noted that the new doctoral training centres could provide an opportunity for empirical research training.

A newcomer's view

Smita Kheria spoke using her own experience as a case study. As a newcomer to socio-legal studies, she faced two challenges: she wanted to do research in an area with a limited amount of socio-legal scholarship and she had no socio-legal experience. Her subject is intellectual property, where interdisciplinary interest has increased but research in a social context is limited. Having trained and practised as a lawyer, she was keen to do empirical legal research, but felt that she lacked knowledge of the methods needed and was concerned about her own capacity and whether she would 'fit' in the socio-legal community.

Her introduction to socio-legal studies was the SLSA postgraduate conference which, followed by the annual conference in the same year, allowed her to meet people with

similar interests. She felt that training in research methods at an earlier stage (undergraduate or masters) would have been advantageous when she was starting out, however, doctoral training initiatives have since been useful.

A view to the future

Sally Wheeler said that her first encounter with socio-legal studies was in 1985 at the CSLS which at that time was trying to create a law and society movement similar to that of the US. In those days, lawyers were not particularly interested in theory and tended to consult social scientist colleagues. Subsequently, in the mid-1990s, the rise of the PhD as an entry-level qualification changed the nature of some, even very traditional, law schools. At that time, partly deriving from critical legal studies and partly from increased interest in some aspects of continental scholarship, there was a rise of theory. There then followed the so-called 'crisis' in empirical studies reported by the Nuffield Inquiry. Sally made two important points for the future:

1. The socio-legal community needs to pull people from other disciplines into socio-legal studies to do research on law.
2. It also needs to maintain a cutting-edge interface with policy, not just describing it but making substantial contributions and criticism of policies and political debates and showing that socio-legal scholars have neither been co-opted nor are in danger of being co-opted into the neo-liberal agenda.

The Q&A session

Some of the comments made in the Q&A discussion included:

- the necessity of making sure socio-legal research is first-rate;
- the enrichment that social scientists can bring to legal research and how they can help challenge the idea of legal autonomy;
- the need for including empirical legal studies in the undergraduate curriculum;
- the effects of cuts, e.g. on student fees, length of courses;
- how universities can escape from government-based agendas;
- understanding the neoliberal agenda and taking it seriously;
- the fact that the current financial and political environment is not supportive of socio-legal studies;
- socio-legal scholars need to move into new areas, for example finance and corporate law.

A TRIBUTE TO SALLY WHEELER

At the SLSA AGM in April 2011, Sally Wheeler stepped down – for the second time – as chair of the SLSA after serving most recently for nine years in that role. To record our appreciation of her tireless work for the association and for the field of socio-legal studies more generally, we asked the participants in the conference plenary session on 'The past present and future of socio-legal studies' to reflect on Sally's contributions over the years.

Dave Cowan – outgoing SLSA vice chair, School of Law, University of Bristol

Sally and I worked together as chair and vice chair of the SLSA from 2002 until the spring of 2011, with a gap of a couple of years or so in my case.

So much work goes on behind the scenes, that it is difficult to overemphasise the contribution that Sally has made to the running of the SLSA during her time as chair – be that sourcing web software and developers for the increasingly important website; organising the disorganised (me); visiting potential annual conference venues; through to the tricky, substantive issues which arise spontaneously.

It has been her dedication to the job, sheer force of personality and charisma which are always on show. She has piloted the association through several important initiatives, for example, expanding the grants scheme (the SLSA now seems to be one of the few organisations which still has such a scheme for socio-legal work), introducing the seminar competition and developing the website.

She has always (whether as chair or not) been fantastically supportive of early career scholars, both at Belfast and in the community more generally, and the SLSA's postgraduate conference has flourished during her time as chair: it is now oversubscribed year-on-year.

What stands out to me personally, though, is that, throughout our lengthy period together on the SLSA, there has never been a time when Sally has not made me laugh out loud. She is the best of friends and the best of colleagues. I will miss working closely with her.

Celia Wells – RAE 2008 Law Sub-Panel chair, School of Law, University of Bristol

It is pretty difficult to describe or sum up any friendship in words. I have been thinking about this, ideas and memories come into my head, but can I capture them, can I do justice (whatever that would really mean) to someone as differently special as Sally? Yes, I can remember when I first heard her name spoken: it was in a *Journal of Law and Society* meeting in the mid-1980s when a member of the editorial board said 'Sally Wheeler writes very well.' Indeed, she does.

I don't remember when I eventually met the person to whom this praise was applied but I do recall many significant times and places when I have experienced Sally's warmth, sense of humour, honesty, support, sheer (though never intimidating) intelligence: Women Law Professors Network meetings, Women in Legal Education workshops, Law and Society Association conferences, and, from 2001 onwards, at numerous meetings of the RAE law panel (2001 and 2008). There is a wisdom running through everything that Sally does, from knowing when to push a meeting along, to ensuring that there is a sufficient supply of decent coffee, to realising that a job has to be done properly even if that means working late in to the night in a sub-luxurious hotel, ready for another long meeting the following day.

Kind, caring and thoughtful, that is how I think of Sally.

Paddy Ireland – company law scholar, Kent Law School

Sally and I go back a long time and have, over the years, developed a rather unlikely friendship. I say 'unlikely' because, despite a common interest in corporations, our intellectual positions and sensibilities are often different. It helps that Sally is good company and that we share a passion for football (and that half my family, like Sally, are Aston Villa die-hards). Most important of all, however, I find her work interesting and informative. Sally is serious both about her vocation and about the world, and has produced a substantial body of highly scholarly, rigorously analytical work. In the corporate context, the highlight, for me at least, is her book, *Corporations and the Third Way* (2002 Hart Publishing), a brave and ambitious attempt to create, using Aristotelian ideas of virtue, a new ethical underpinning for corporate activities and a reformed corporate culture which embodies ideas of responsibility and

citizenship. As usual, I didn't entirely agree with her, but I found the journey she took me on thought-provoking and enriching. More recently, her excellent work on women on boards has inspired a number of my postgraduate students.

In making important scholarly contributions, Sally is not, of course, alone. Many others have done likewise, though not necessarily to the same degree or in as many different fields. Where Sally is exceptional is in the contribution she has made to the development of the infrastructure of our profession. In short, Sally makes things happen and in the last 20 or so years she has played a leading role in ensuring the continuing vitality of the legal academy. She has demonstrated a rare ability to bring people together, organising events and, indeed, organisations, encompassing people from different disciplines, with different orientations, and, perhaps most important of all, from different generations. I have lost count of the number of seminars and workshops I have attended where Sally has introduced me to people I might otherwise never have met and to ideas I might otherwise never have encountered. The importance of the energy and commitment she has brought to this crucial aspect of maintaining a flourishing legal academy cannot be underestimated. Sally has practised the good citizenship that she demands of corporations. She has been a great servant to our profession; long may she continue to be so. We could do with more like her.

Caroline Hunter – SLSA Executive Committee member 2005–2011, York Law School

As some of you may have noticed, Sally often ducks the limelight of public events, so I want to take this opportunity to highlight the unseen work that she has put in as chair of the SLSA for the last nine years. For six of those, I have been a member of the SLSA Executive having the pleasure to work alongside her.

For those last six years, we have been operating in increasingly uncertain and pressurised times. What has struck me is the time and effort that she has been willing to spend on our organisation. It is often commented that managing academics is like herding cats. Thus, it can be imagined that chairing an executive made up almost entirely of academics is not the easiest of jobs. To keep us on track Sally has spent hours of her time on unglamorous jobs, such as sorting out the SLSA online systems, visiting potential sites for the annual conference and generally ensuring that the rest of us have completed the tasks which are necessary to keep an association like the SLSA going. She has shown a particular commitment to events such as the postgraduate conference which are essential for ensuring that the next generation of scholars emerges. It is this unseen work, unrewarded in terms of status (it certainly doesn't get the four-star REF articles written), which is so important to associations and so easily overlooked.

This willingness to muck in and do the dirty work has for me characterised Sally's time as chair. It has ensured that the SLSA has been able to sustain itself and continues as a strong and vibrant organisation. It will be sorely missed by us – although perhaps less so by Sally!

Smita Kheria – Law School, University of Edinburgh

I am extremely grateful for this opportunity to acknowledge the invaluable guidance and support I have received from Sally over the past number of years. After a slightly turbulent start to my PhD programme I had even contemplated discontinuing my doctoral studies. Sally came on board and steadied the ship. She was very considerate, kind and understanding; her reassurance was crucial in my decision to continue.

Sally saw potential in my ideas and research questions and always encouraged me to be open-minded in my methodological approaches to them. She also introduced me to the world of socio-legal studies and helped me make the transition from being very, perhaps only, legally minded to being socio-legally minded.

Throughout my doctoral research (and after), Sally has been extremely generous with her time and advice. Despite her busy schedule, she always found time to discuss my plans, address queries and allay my fears and anxieties. Every time I doubted my capacity to carry out research or questioned my understanding, she gave me constructive comments, helped me to achieve a positive outlook on the difficulties, recommended appropriate training to undertake, and guided me on resources to consider reading. Sally was also very encouraging when I was considering pursuing a career in academia and has since found time to give me valuable advice on coping with its demands.

Sally's unstinting support, encouragement and guidance is appreciated more than she may know.

Michael Adler – founding member of the SLSA and emeritus professor of socio-legal studies, School of Social and Political Science, University of Edinburgh

I have often thought that funerals and obituaries were very inappropriate settings for eulogies because the person who is being spoken or written about isn't around to hear or read the nice things that are said about them. Because Sally is still very much around, I am really pleased to have this opportunity to write something about her.

If I were asked to draw up a person specification for the post of chair of the SLSA, I think I would put the following attributes at the top of my list:

1 The person should, by all manner of means, seek to promote the views and interests of the socio-legal community in dealings with those responsible for undergraduate education, postgraduate training and funded research in the UK.
2 The person should be prepared to work really hard, along with others, to achieve these aims and be taken seriously by

. . . AND TO DAVE COWAN

Dave Cowan has been an active member of the SLSA for over 10 years, including several years as vice chair, and has had a direct impact on scholarship and leadership in the field. He was a member of the Executive Committee from 1998–2004, and served as its vice chair twice from 2002–2004 and again from 2008–11. His influence on, and services to, the socio-legal community can also be gleaned from the fact that he has served on two of its most important journals. He has been a member of the board of *Social and Legal Studies* since 2000 and is currently one of its editors. He also serves as a member of the advisory board of the *Journal of Law and Society*. Dave will be known to many of our readers as a leading housing law specialist and public law specialist.

In addition to his many academic books and articles, he has used his experience in the provision of pro bono advice and representation as a member of Arden Chambers.

Those of us who served with Dave on the Executive Committee will remember his commitment to the association, compassion and cheeky sense of humour.

Dave and Sally were a great team. We are very pleased they will continue to be involved in the annual SLSA postgraduate conference.

universities, the ESRC, the RAE and REF, the legal profession and the government.

3 The person should be a scholar of real distinction whose work embodies the socio-legal paradigm and commands the respect not only of the socio-legal community but also of other academics in law and the social sciences.

It is clear to me that Sally can, without any shadow of doubt, tick all three boxes and that the SLSA has been exceptionally fortunate in having had her as chair for two very long stints – from 1995–1999 and again from 2002–2011 – that is, 13 of its 21 years.

As chair, Sally has consistently promoted the views and interests of the socio-legal community. She has been a force for good on the ESRC Research Grants Board, on the Law Panel of the RAE in 2001 and 2008, as editor of the *Northern Ireland Law Quarterly*, and as a member of numerous chair committees throughout the UK. At the same time, she has been extremely productive, producing a string of important publications, taking socio-legal research into new and unfamiliar territory. Her scholarship is literally at the cutting edge.

Sally is a natural at multi-tasking. She is also quintessentially a 'yes person' – her response to any reasonable request is invariably 'yes, I can' rather than 'no, I can't'. Her energy and commitment are quite remarkable. She doesn't seem to think twice about jumping on a plane from Belfast to just about anywhere. I have often wondered whether to think of her as a sprinter, in the mould of Usain Bolt, or as a marathon runner, in the mould of Paula Radcliffe, but have decided that she is really both. She started out at high speed, completing her DPhil at Oxford in two-and-a-half years, and has maintained her momentum since then, having held a succession of lectureships and chairs before ending up at QUB seven years ago.

Although she has always, and for good reason, been in great demand, she is still the same Sally – completely unaffected by her own success. Thank you, Sally, for your unselfish and unstinting efforts on behalf of SLSA – the association would not be in the good shape that it is in today if it weren't for you.

Social & Legal Studies 20(2)

Governing (through) rights: statistics as technologies of governmentality – Bal Sokhi-Bulley

Spatio-therapeutics: drug treatment courts and urban space – Dawn Moore, Lisa Freeman and Marian Krawczyk

Disability discrimination by association: a case of the double yes? – Ann Stewart, Catherine Hoskyns and Silvia Niccolai

A brighter and nicer new life: security as pacification – Mark Neocleous

Debate and dialogue: Constitutionalising polycontextuality: a debate with Gunther Teubner

Review essay: The province of jurisprudence demolished – David Campbell

Social & Legal Studies 20(3)

Foucault's critical (yet ambivalent) affirmation: three figures of rights – Ben Golder

Labelling the 'victims' of sex trafficking: exploring the borderland between rhetoric and reality – Mary Bosworth and Carolyn Hoyle

Law reform, lesbian parenting, and the reflective claim – Robert Leckey

Challenging the heteronormativity of marriage: the role of judicial interpretation and authority – Paul Johnson

Getting the bingo hall back again?: Gender, gambling law reform, and regeneration debates in a district council licensing board – Kate Bedford

Review essay: The murmur of being and the chatter of law – Johan van der Walt

CONFERENCE THEMES

For the second time, the conference was organised in a themes-and-streams format which proved exceedingly successful again and will be continued next year.

Challenging ownership: space, time and identity

Following on from a similar theme last year, Sarah Blandy (Leeds), Helen Carr (Kent) and Penny English (Anglia Ruskin) convened a theme to explore challenges to ownership in the sense of conflicts over ownership and contested meanings of ownership. To that end, we sought contributions addressing any context in which the law seeks to define, regulate, limit or conceptualise the ownership of tangible or intangible property. We had an excellent response and a full complement of papers in all sessions. The result was that the discussions developed their own momentum, as many of the themes cross-cut between papers and sessions despite the breadth of subject matter. The sessions began and ended with housing and, in between, ranged from patents and carbon trading to collective rights in land, from abstract theoretical papers to detailed ethnographic studies.

We were particularly pleased to incorporate the author-meets-reader session with the Article Prize winner, Antonia Layard. Her article resonated closely with many of the ideas explored in the papers as it examined the lived realities of property, illustrating the fluidity and mutable contested nature of the meanings ascribed to it.

The theme proved very rich and stimulating and we hope to explore it further at SLSA 2012. ***Penny English***

Socio-legal approaches to international economic law: text, context, subtext

This theme built on the success of the Bristol 2010 theme: 'International economic law: justice and development'. International economic activities – trade, investment, finance, technical assistance – have positive, negative, variable and unknown impacts upon every level of social life – actions and interactions, regimes and rationalities. They are also conducted and regulated by an ever-widening tangle of public, private and third-sector actors. As we begin to notice that international economic law is part of ever more diverse and complex spheres of social life, so we must seek approaches to law that are sufficiently flexible yet robust to accommodate it.

Papers explored what it means to take a socio-legal approach – in thinking and in practice – to international economic law. Every legal thinker and practitioner adopts an 'approach' to law. These vary on three interrelated dimensions. First, what is the substantive focus of the thinking and practice? Is it legal text (rules), context (real-life causes and effects) and/or its subtext (moral meaning). Socio-legal thinking and practice will always go beyond the text of the law, but the precise balance of context and/or subtext will vary. Second, how is the thinking and practice undertaken? That is, analytically, which concepts and relationships are the building blocks of the approach in question? And, empirically, what types of facts and methods are collected and deployed? Again, socio-legal thinking and practice will tend to go beyond the analytical and empirical confines of jurisprudence and legal method, but the precise tools chosen will vary. Third, why is the thinking and practice undertaken? That is, normatively, what values and interests are at the heart of the thinking and practice? Once again, socio-legal thinking and practice is almost certainly bound to look outside law for inspiration and to a range of sources.

In addition to identifying the what, how and why of their own socio-legal thinking and practice, contributors explained who should care – that is, what unique insights are unlocked when we adopt a socio-legal approach. ***Amanda Perry-Kessaris***

Systems complexity and autopoiesis: critical perspectives and applications

This theme sought to bring together a range of legal theorists and provided a forum to discuss novel uses of systems methodology. For UK legal systems theorists, this represented a rare opportunity to discuss their work domestically.

Richard Nobles and David Schiff offered a riposte to Brian Tamanaha's critique of their use of Luhmann. Andreas Philippopoulos-Mihalopoulos transported Luhmann to new critical spaces at 'the limits of self-referentiality', while Stephen Riley considered the novel application of autopoiesis to questions of human dignity and transcendence. Using *Star Trek*'s Borg as an analogy, Neil Lyons examined how legal systems assimilate information and achieve normative closure despite societal noise. Proof that systems-thinking has application to pressing socio-legal issues was evidenced in the papers by Cedric Gilson (on assisted dying), Annika Newnham ('law's circular chains of communication' and the misuse of shared residence orders) and Carlos Herrera-Martin (how law converts political, media and societal conflicts into legal questions). Jen Hendry critiqued the method of comparative legal studies by way of autopoietic systems theory and Tom Webb compared the differing outlooks of complex-adaptive and autopoietic systems approaches. It was clear from the papers and discussions that there is no consensus on the meaning of either the legacy of Luhmann, or that of 'systems theory' itself.

I am grateful to the 2011 organisers and theme contributors who made the theme and conference so successful. ***Tom Webb***

Criminalising commerce

This theme comprised five panels exploring diverse aspects of the criminalisation of corporate misconduct from reform to compliance. The first two centred on comparative aspects of corporate harm and spanned cartel criminalisation, death at work, technology and regulation, finance, bribery and accounting. A linking theme for the papers in these panels was the concept of ambiguity and the way the criminalisation process (or its lack) is shaped by economic and political interests as well as the challenge posed by political legitimacy. The second two panels focused on cartel criminalisation exploring legal and regulatory challenges across Australia, the UK and the US. Papers canvassed justifications for criminalising cartel conduct from critical perspectives. A common theme was the extent to which criminalisation must be viewed as a political and social project as much as an economic or legal reform. The final panel focused on the challenges of compliance, exploring the hurdles to be found in researching this aspect of corporate misconduct as well as empirical research on the effectiveness of law enforcement. Papers spanned the methodologies of researching illegal conduct; the disconnect between the intention of law and the day-to-day worldview of business found in breach of the law; the challenges of finding evidence; and the comparative deterrent effect of naming of offenders and criminal sanctions. Theme organisers were Caron Beaton Wells, Fiona Haines and Janette Nankivell (University of Melbourne), Christine Parker (Monash University) and David Round (University of South Australia). The theme was supported by an Australian Research Council grant. ***Christine Parker and Fiona Haines***

Auditors, advocates, and experts: monitoring, negotiating, and (re)creating rights

This theme brought together an international group of scholars conducting ethnographically informed research on the monitoring and/or safeguarding of rights, broadly construed. It explored the techniques and strategies practitioners employ in their engagements with rights categories and asked what other domains of knowledge and experience (technical, ethical, cultural and affective) become salient through rights monitoring. An important hypothesis was that 'monitoring' is rarely straightforward but also serves to reshape or produce rights. Thus, the panel considered the imagined and/or expected impact of practitioners on the negotiation and recreation of rights regimes. This theme was organised into two panels of six presenters; each panel had a discussant who commented on papers and time for open conversation. The first panel, 'Defining subjects/objects of rights', dealt with questions of access: how practitioners identify the actual or imagined subjects for whom particular rights are intended. The discussion highlighted a tension between the moral and ethical elements of constructing subjects of rights versus the instrumental, pragmatic dimensions of techniques (legal and otherwise) for delimiting access. The second panel, 'Rights and governance', explored the interrelationship between rights framework and forms of institutional, local, national and international governance. In the discussion, the political dimensions of rights monitoring were addressed as well as the power relationships embedded in rights frameworks. The papers and conversations generated by the theme valuably highlighted how ethnographically informed scholarship can contribute to understanding how rights are safeguarded, allocated, negotiated and remade through everyday practice. ***Heath Cabot***

SLSA GRANTS: REPORT AND PROJECT SUMMARIES

Lieve Gies, grantholder from the 2010 round, reports on her findings while this year's four new projects outline their aims and objectives.

Muslim pupils' perceptions of human rights and the Human Rights Act 1998

Lieve Gies, Department of Media and Communication, University of Leicester, £600

The fieldwork for this project was conducted in a maintained secondary community school where the large majority of pupils are from a Pakistani or Bangladeshi background. Twenty-six sixth-form students participated in the research. The aim of the research was to examine pupils' perceptions of general human rights principles and the Human Rights Act 1998 (HRA) in particular. Participants were divided into three groups. Following a brief group activity to flesh out basic human rights values, participants were asked to complete a written questionnaire. This was followed by the principal research activity, a group deliberation. At the end, participants were invited to submit written feedback.

A literature review confirmed that childhood and adolescence are crucial in the individual development of rights awareness, but existing research also revealed potentially significant differences in terms of gender, nationality and religion. Previous research has found that while Muslim adolescents' general support for rights is comparable to that of their non-Muslim peers, they tend to make different evaluations of rights vignettes which directly engage their group identity, for example, the freedom to set up faith schools.

Participants all said that they were aware of the existence of the HRA prior to taking part. While a majority indicated that the Act was a topic which was talked about at home, at school and in their community, participants also said that they obtained most of their information about the Act from media sources. There was general agreement that everyone in society deserves human rights protection and that it is important to have a law to protect human rights. Opinion became more divided when the

discussion moved on to consider more concrete rights scenarios, such as the question of whether people who commit a terrible crime should be entitled to rights protection. Participants made very little distinction between international human rights and the HRA. They criticised news media for showing only human rights violations and for carrying insufficient information about human rights standards. The groups suggested that rights implementation is inflected by culture: rights were associated with Western societies and perceived as encompassing norms which do not necessarily apply in other cultures.

While most participants believed that torture is wrong in principle, opinion was divided as to whether it was justified to torture someone who is suspected of serious crime, including terrorism. There was also a degree of confusion between torture as a form of punishment and as a method for gathering evidence and intelligence.

There was overwhelming support for a woman's right to adopt religious dress and participants strongly disapproved of any kind of legal restrictions on veiling. The groups agreed that a woman should be free to dress as she wishes without interference from her family, her community or the state. It was acknowledged that some Muslim women may be pressured to dress in a particular way, but such pressures were described as cultural rather than religious.

The groups discussed the cartoons of the Prophet Mohammed published in a Danish newspaper in 2006. The cartoons were described as 'wrong', 'very painful' and 'an abuse'. Participants struggled with the question of how such situations should be handled. A few suggested that those responsible for the cartoons should have been punished while others advocated the use of dialogue to raise awareness and foster a better understanding of Islam. There was wide support for the idea that freedom of expression had its boundaries and should be used responsibly by the media.

While participants lacked specific knowledge of the HRA, their views were largely supportive of human rights principles. They were keen to stress that culture has a major impact on how rights are implemented and perceived. Frequent reference was made to group identity, however, overall, participants' evaluation of rights vignettes was based on general considerations of legality, fairness and evenhandedness.

From the New Deal to localism: local law in practice

Antonia Layard, University of Cardiff, and Matthew Humphries, Kingston University, £1726

This research will investigate the legal regulation of area-based initiatives for economic development by comparing an established £52.9m EC1 New Deal for Communities project in the London Borough of Islington with new Coalition government legal interventions to promote prosperity in the London Borough of Islington and City of Westminster. The broad objective is to compare the legal implementation of the New Deal with the new principle of localism, implemented by a proposed general power of competence for all local authorities (in the 2010 Localism Bill) aiming to regulate (or deregulate) communities 'from the ground up, not the top down'. The project will review legal and geographical scholarship on urban regeneration, the New Deal scheme and evaluations of EC1 New Deal, and the introduction and implementation of the 2010 Localism Bill. It will do this by conducting interviews with key personnel, examining how law is used within these spatially delineated areas to promote economic development and to shape locally distinctive places within. Specifically, we will investigate the shift from funding to deregulation in both EC1 New Deal and Islington and Westminster councils to find out what this reveals about the relationship between autonomy and connection at the local level.

Writing wills/dealing with intestacy: gay and lesbian perspectives

Daniel Monk, Birkbeck, University of London, £718

Through in-depth interviews with solicitors, this research aims to generate data about the practices and experiences of will-writing and intestacy in the lesbian and gay (LG) community. It is hoped that the data will contribute to legal debates about intestacy and sociological debates about alternative kinship.

To date, legal literature about inheritance has been relatively silent on sexuality, as has sociological literature about sexuality on inheritance. In attempting to develop a conversation across these disciplines, this project aims to answer the following questions. How have will-writing practices in the LG community changed over 25 years? What have been the impacts of the shifting nature of HIV/AIDS and the Civil Partnership Act 2004? Do will-writing practices reflect the practices of intimate citizenship described and theorised by critical and queer scholarship? Is it possible to speak of will-writing as a form of political/personal activism and/or a performance of kinship? Does the relationship between alternative kinship patterns and practices offer insights into intestacy reform debates premised on changes in social lifestyles and values? Can the experiences of a minority group offer an insight into the aims of intestacy rules generally? Is it possible for intestacy rules to address kinships beyond both the biological and the conjugal couple (regardless of sexual orientation or marital status)? And what are the consequences of not doing so?

The central principle underlying this field is that of testamentary freedom. Locating this grounded research within a theoretical framework that engages critically with practices of freedom, this project endeavours to explore the pleasures and perils of testamentary freedom from the perspective of a community which still has a complex and ambivalent relationship with law.

The NHS and s 29 of the Data Protection Act 1998

Lisa Dickson, University of Kent, £1280

Though there has been much recent media, academic and public concern about NHS and police handling of data confidentiality and privacy issues, it is striking that there has been little investigation of the area where the practices of both bodies most obviously intersect; that is, in NHS disclosure to police of confidential patient-identifiable information without patient consent under s 29 of the Data Protection Act 1998. Despite the statutory framework, there is no national NHS policy governing the deliberation of access to third parties, and no overview exists of the practices of either police forces in making requests or of NHS bodies in determining disclosure. Calls for such an overview have been made only sporadically, and come almost entirely from Caldicott guardians, who are the individual health professionals or administrators charged with ensuring confidentiality protocols within local NHS organisations.

My research aims to provide the required national overview of this key area of NHS policy and practice, drawing together and publishing information that is presently held in different forms by local NHS organisations themselves. Following a first phase of data collection through Freedom of Information requests to all NHS Primary, Foundation and Acute trusts, the second, funded phase is the analysis and dissemination of the data thus gathered. This phase is of particular importance in light of public interest in the issues concerned and requires the collation of the data received and its publication as public-access web content, mapping the information in a geographical format. In this way the accessibility of data dissemination hopes to match the scope of interest and the potential impact of the project, for the public, academics, media and professional bodies alike.

Pre-charge police bail: an investigation of its use and effectiveness in the police investigation process

Anthea Hucklesby, Centre for Criminal Justice Studies, University of Leeds, £1544

Pre-charge bail (s 47(3) of the Police and Criminal Evidence Act 1984) is bail while police carry out further inquiries before a charging decision is made. It is an important and coercive police power which has recently received media and political attention highlighting how little is known about its use. While it can be argued that pre-charge bail is necessary and desirable for both the police and suspects, such suspects are innocent and the evidence against them has been judged not sufficient to charge them. This raises considerable concerns about the legitimacy of this type of bail – concerns which are heightened if further investigations do not take place, if bail is used as a form of punishment or as a monitoring or surveillance device, and if suspects are not subsequently charged. How pre-charge bail is used could potentially have a negative impact on suspects', victims' and the public's views of the legitimacy of the police. This research is the first to focus on the use of pre-charge bail. It will use a mixed-method approach (observations, analysis of quantitative data, interviews and questionnaires). Its aim is to examine the use of s. 47(3) bail in one police force, specifically:

- to explore the categories of suspects bailed before charge;
- to examine the circumstances in which pre-charge bail is used and the justifications for its use;
- to explore any patterns in the use of pre-charge bail;
- to investigate the impact of the use of pre-charge bail on the management of custody suites; and
- to explore investigating officers' views of pre-charge bail, its use and management.

Note: *Information about the next round of grants will be published on the SLSA website and via the weekly e-bulletin in the autumn.*

MSc socio-legal studies at Bristol School of Law: the students' view

Interdisciplinarity is not something that is easy to teach, but the MSc in socio-legal studies at Bristol University does exactly that in a highly stimulating and dynamic way. One year ago, a small group of graduates came to Bristol because they had an interest in law and society. With the knowledge and confidence gained during the year, it is safe to say that, regardless of whether we go on to a life in academia, all of us have learnt a great deal about the value of creativity, robustness and reflexivity in our work.

The course consists of six main units. Social and legal theory and advanced socio-legal methods were taught by various members of the law school staff, depending on their specialism. Exploring systems theory and Foucault were covered by academics actively applying such frameworks in their work. This was both valuable and stimulating, giving us a real appreciation of the necessity of having a strong theoretical basis underpinning everything from our choice of methods to framing a research question. At the same time, seminars and lectures in qualitative methods, quantitative methods and philosophy of social science equipped us with new perspectives and techniques, both theoretical and methodological, to approach our research. The option to choose a sixth unit from almost any across the entire Faculty of Social Sciences and Law also offered a welcome opportunity for students to tailor the course to their own interests.

For those of us who are lawyers by training, the first term was a major step out of our comfort zones, where we were challenged by the unfamiliar and sometimes perplexing discourses of sociology, politics and philosophy. The non-lawyers among us also found themselves in uncharted territory, learning the ropes of social and legal theory and legal research methods. The mixed backgrounds of the people on the course also made for some interesting discussion. Those who started academic life in sociology departments were quick to pick up on the lack of explicit methodology in many of the socio-legal research texts we studied. The ex-lawyers on the other hand were often more preoccupied with debating theoretical arguments. And as for ethics . . .

As well as being encouraged to think in greater depth about the value of theory, this course also set out to equip us with the practical skills necessary for embarking upon a career in research. We were encouraged to present on a variety of topics ranging from potential research ideas to practical quantitative data manipulation in SPSS, and were given clear and supportive feedback by both staff and peers alike. Staff openly shared bids, both successful and unsuccessful, and candidly discussed with us the often messy reality of research. Perhaps the most important aspect of the course is that, within this vibrant research culture, we were both challenged and supported in building up the confidence to find and develop our own perspectives, equipping us with the knowledge, confidence and skills to embark on our own careers within the highly stimulating field of socio-legal studies.

Jessica Hambly and Sarah Hirons, MSc students

There are still places available for October 2011. More details and an application form can be found at: **w** *www.bris.ac.uk/law/pgdegrees/taughtdegrees/msc-socio-legal-studies.html.*

Courses

LLMs at Newcastle Law School

Newcastle Law School is pleased to announce three new LLM programmes in international business law, environmental regulation and sustainable development, and international legal studies for September 2011. The new programmes aim to provide specialised expertise and knowledge in the respective fields of study with a combination of compulsory and optional, short and long modules. Some of the attractive new modules include: legal and regulatory aspects of money laundering and financial crime; international commercial arbitration; international sale of goods; international law of credit and security; legal and regulatory aspects of banking supervision; biodiversity and natural resources; science, climate change and environmental justice; international criminal law; and contemporary problems of international law and international dispute settlement. Applications are welcomed from candidates with non-legal degrees. The law school is also pleased to announce a number of international scholarships.

For more information please send an email to **e** newcastle.law-school@ncl.ac.uk ***Elena Katselli***

LLMs at Reading

The University of Reading Law School is introducing three new LLM programmes from September 2011: international commercial law; international corporate finance; and international financial regulation. These programmes are provided by the Law School in conjunction with the ICMA Centre of Henley Business School, established with funding from the International Capital Market Association. Students can take some core and optional modules both at the Law School and ICMA providing them with an invaluable opportunity to acquire a unique legal and financial perspective of commercial and corporate law issues. For further information please see: **w** www.reading.ac.uk/law/pg-taught/law-pgt-courses.aspx.

Peculiar institution: America's death penalty in an age of abolition

Since 2002, the School of Criminal Justice and the Hindelang Criminal Justice Research Center at the State University of New York at Albany have hosted the annual Michael J Hindelang lecture in memory of the criminologist who died at the height of a brilliant academic career in 1982, aged 36. The series aims to disseminate the work of prominent criminologists and criminal justice scholars to academics, practitioners and the general public. This year's lecture was delivered by David Garland, professor of sociology and Arthur T Vanderbilt professor of law at New York University. Professor Garland spoke on his latest book, *Peculiar Institution: America's death penalty in an age of abolition* (2010 Harvard/Belknap Press) which was shortlisted for this year's Socio-Legal Book Prize.

Professor Garland's lecture attracted a large and diverse audience. He offered an explanatory account of the unusual persistence of capital punishment in the USA through a historical and internationally comparative exploration of the forms and functions of the death penalty. Its present persistence in the US, he suggested, is due in large part to the distinctively federated structure of American politics. This structure permits direct democratic influence over the appointment not only of sentencing policymakers, but also of 'sentencers' – judges and governors – themselves, and thereby ensures their sensitivity to public opinion regarding capital punishment. Conversely, this federated structure also prevents the comprehensive abolition of the death penalty by the national government as has occurred in other countries. Commenting on its reintroduction since the 1970s, Garland noted the distinctive forms of late twentieth and early twenty-first century capital punishment in the United States: controversial, cumbersome and circumscribed to the point of total inefficacy for either retribution or deterrence by the decisions of the Supreme Court.

Professor Garland's remarks were followed by responses from panellists: James Acker and David Bayley of the School of Criminal Justice, and Vincent Bonventre of Albany Law School. In a series of stimulating exchanges, which included thought-provoking questions from the audience, participants debated the meaning of Professor Garland's arguments for the likely future of the death penalty in the USA, the relevance of his comments for other penal trends, such as mass incarceration, and a number of methodological points. Responses from the panellists and a rejoinder from Professor Garland will be published in a future issue of the *Criminal Law Bulletin* and a video of the event is available at **w** www.albany.edu/scj.

The event was also the occasion of the announcement of the donation by Professor David Baldus of his collected papers to the National Death Penalty Archive, housed at the university, an unparalleled collection which includes, among other things, execution records compiled by M Watt Espy, the papers of Hugo Adam Bedau and data collected by the Capital Jury Project. Professor Baldus was the author of 'the Baldus Study' which provided the basis of the defence in *McCleskey* v *Kemp* 481 US 279 (1987) in which it was alleged that systemic racial biases in the administration of capital jurisprudence rendered the sentence unsound. His generous contribution will add tremendously to this already rich resource.

Giza Lopes and Andrew Davies

The role of courts in a democracy

On 11 February 2011 the Foundation for Law, Justice and Society, in association with the Centre for Socio-Legal Studies, Oxford, brought together leading figures from the worlds of politics, law and academia to debate 'The role of courts in a democracy' before a large and appreciative audience at Magdalen College, Oxford.

The debate sought to assess the growing trend towards the 'judicialisation of politics', in which judges are increasingly implicated in settling policy disputes.

The legal commentator Joshua Rozenberg chaired a panel comprising the former Home Secretary Charles Clarke, Lord Justice Jacob of the Court of Appeal, and Professor Richard Bellamy of University College London (UCL), each of whom presented a different view of the appropriate relationship between the government and the judiciary.

Charles Clarke opened his remarks by welcoming the debate as an opportunity to bring about dialogue between the different actors involved in forming and interpreting the law, and went on to emphasise his support for the European Court of Human Rights (ECtHR) and the Human Rights Act. Recalling his submission to the Lords Select Committee on Constitutional Affairs, he critiqued the adverse effect of the principle of separation of powers and called for more interaction between the government and the judiciary, specifically when seeking guidance as to whether legislation concerning control orders would be ruled legal by the ECtHR.

Other such recent examples of contentious legislation, including prisoners' voting rights, were cited by Lord Justice Jacob in his opening statement, in which he asserted that politicians had deliberately avoided taking decisions on certain politically sensitive issues, thus inevitably bringing judges into the process of interpreting law and influencing the public policymaking process.

Professor Bellamy followed these remarks by arguing that the rise of human rights legislation in recent years is a particularly complicated matter in this regard, providing a set of values rather than processes for judges to follow, and thereby threatening to undermine the rule of law by allowing judges undue discretion.

A cross-examining panel was invited to interrogate these opening position statements, led by the Hon Mr Justice Philip Sales, who brought his experience of representing the government in some of the most significant public law cases of recent years. Alongside him were Professor Daniel Kelemen from Rutgers University, who provided expert insight on the role of the ECtHR, and former MP and professor of government at UCL Tony Wright, who voiced his optimism at refining the best possible balance of powers through an ongoing iterative process involving public deliberation and debate.

A wide-ranging and lively debate ensued, encompassing issues such as the appropriate forum for any dialogue between political and judicial actors, the dangers of perverse effects, and ways to overcome the complexity and protracted nature of the process of framing legislation.

Questions were then taken from the audience before proceedings were brought to a close. The debate formed the public counterpart to a two-day academic workshop featuring political scientists and legal experts who presented their work on a range of related issues, from the rise of Euro-legalism and the role of international courts, to judicial reform in Eastern Europe and the recourse of civil society actors to the European courts.

A report of the debate and workshop is now available to download from: **w** www.fljs.org/RoleofCourts, and a video of the debate can be viewed at: **w** www.fljs.org/debatevideo.

Phil Dines

REPRESENTATION IN CARE PROCEEDINGS

Judith Masson, University of Bristol, summarises the findings of a recent ESRC-funded study exploring the problems and strategies of lawyers representing parents in care proceedings.

Care proceedings are always in the news – either with allegations that local authorities remove children without reason, or else that they fail to identify abuse and intervene. There has also been much concern that closed family courts operate 'secret justice'. This is a very emotive issue, as the media coverage and decisions by politicians in the wake of the death of Baby Peter Connelly demonstrated. Recently published research by Pearce, Masson and Bader (2011) provides evidence about what care proceedings are really like – and the contribution lawyers for parents make to the operation of the legal process.

This ESRC-funded project aimed to explore the problems and strategies of lawyers representing parents in care proceedings, particularly how lawyers met the needs of clients and the demands of courts within the pressures of the legal aid fixed-fee structure. There is a substantial body of research on the practices of family lawyers in private law cases (Davis 1988; Davis et al 1994; Sarat and Felstiner 1995; Eekelaar et al 2000; Mather et al 2001), but comparatively little on those who do public law children work (Masson and Winn Oakley 1999). Research on care proceedings has examined the legal process (Hunt et al 1999; Brophy et al 2005; Masson et al 2008), largely relying on court records, and provided only a limited picture of the contribution parents' lawyers make to the operation of the process. Recognition of this gap, knowledge developed during a quantitative study, and the limitations of the quantitative approach led Julia Pearce to plan this ethnographic study of parents' representation.

Research into legal process based on court records necessarily excludes any account of the process through which decisions were achieved, except where the file contains a record of a substantive hearing; practices where cases are uncontested remain hidden. The *Care Profiling Study* (Masson et al 2008) indicated that contested cases are a minority and suggested that these were very variable in the matters disputed and in their intensity and length. This is an important issue in the use of the courts and the provision of legal services. The interactions between lawyers and clients, why opposition to proposals is abandoned, and how settlements are reached are key to understanding legal representation and the lawyers' contribution to delivering procedural justice.

The Parents' Representation Project used case studies to explore the practice of representation and supplemented these with further observations and interviews. Undertaking case studies in this sensitive area, where the courts are not open to the public and communication of information about cases is generally forbidden, requires substantial preparation – approval from HM Court Service and the president of the Family Division to satisfy the requirements of the Family Proceedings Rules and establishing good research relationships with the numerous organisations and individuals involved in these cases (the judiciary, legal practitioners, Cafcass and local authorities). Cases involve numerous hearings and last on average more than a year so substantial resources are required for each case study, limiting the number which could be included to 16.

The researchers drew up criteria for the case studies using their quantitative research data to establish key case and parent characteristics. Through the assistance of court staff, they were able to identify cases which fitted these criteria early in the court process and then to approach lawyers and their clients for consent for inclusion in the study. None of the lawyers refused although the need to obtain further consents where the official solicitor became involved precluded observations on occasion and one client refused to allow the researchers to be present at one hearing. Observation took the form of shadowing the parent's lawyer, following them from meetings with clients to discussions with the other lawyers, back and forth, and into court, making detailed field notes. Overall, the researchers observed 109 hearings and the associated pre- and post-court discussions. Fourteen of the 16 cases were observed throughout. In one case, the chosen representative withdrew, when a DNA test established his client was not the father and legal aid was withdrawn, and another was still not finished at the end of the study.

The field notes and transcriptions of over 60 interviews with solicitors, barristers, magistrates' legal advisers and judges provided a wealth of data for the analysis. This data is now available in the UK Data Archive (RES062-23-1163) for further research.

Findings

The findings from the study give a very different impression of the operation of care proceedings from that in the existing literature – law reports, legal or practice guides and policy documents. Rather than providing an example of strong judicial case management, as guidance demands, care proceedings are characterised by frequent and substantial lawyer negotiation. In effect, cases are largely managed by the co-operative efforts of the lawyers agreeing how and when they should progress. Most judges whose work was observed readily approved draft directions prepared by the parties' lawyers with little further question. They made decisions on interlocutory matters only where the lawyers were unable to agree, possibly because of the obduracy of their client (local authority, parent or occasionally children's guardian) or because uncertainty of law or evidence made them unwilling to accept proposals from the other parties.

Lawyers negotiated with each other and also with their own clients, seeking to help them understand what they needed to do to avoid a care order or a placement outside the family, and sometimes encouraging them not to contest the local authority's case. Although some clients were pressed to accept an inevitable outcome without a contested final hearing, there was a general willingness amongst the lawyers (including those acting for the local authority) and the judges to allow parents to contest, even where their case was hopeless.

Judges did not perceive themselves as powerful or having the ability to control proceedings. Rather they felt they knew too little about the specific cases before them or, possibly, care proceedings generally to manage their cases. They trusted the advocates who appeared before them and were dependent on them to direct the proceedings. There was one exception to this in the four areas where the research took place. One county court judge managed his cases, conducting directions hearings as 'round table discussions with a point at the end'. In this area discussion and agreements between lawyers about the handling of issues were likely to be overridden by the judge.

Through the practices observed and the views expressed in interviews, the researchers identified a strong shared ethos held by the professionals working in care proceedings. Echoing repeated statements in the Law Reports, practitioners noted the 'draconian' nature of the court's powers in care proceedings and, as a corollary, an absolute right of parents to contest at a fair trial. There was a general belief that children were best brought up by their parents and considerable scepticism about the ability of the local authority to provide good care, views which appeared not to be informed by knowledge of the research relating to child neglect or local authority care.

Despite shared beliefs and a general emphasis on negotiated process, there were substantial differences in the way parents

were represented because of the approaches, business styles and caseloads of their solicitors. Whilst there were clients who obtained a very personal service from a lawyer conducting every hearing, others had a changing cast of solicitors and barristers throughout their case. Solicitors' preferences for (or against) conducting their own advocacy, their heavy caseloads and the way the numerous hearings were scheduled as well as the demands of the case shaped clients' representation.

The introduction of fixed fees shortly before the study began meant that the lawyers took considerable financial risks doing this work from which the 'time and line' system of remuneration had previously shielded them. Although some had considered withdrawing from this work, both job satisfaction and the adverse economic climate in 2008–2009 kept then engaged in it. Those interviewed near the start of the study seemed to hope that they could continue to make a profit with their current ways of working; those interviewed towards the end had adopted strategies, taking more cases, making more use of paralegals or barristers and considering more closely how they managed their time. Of these, increased workloads appeared to have the most impact on representation with busier solicitors being less familiar with their cases and clients and less available to conduct their own advocacy.

There is far more to representing parents in care proceedings than just following instructions. The findings of this research have already informed the Family Justice Review and the work of the president of the Family Division on improving case management in care proceedings. They should also inform the study and understanding of care proceedings, the operation of the family courts, legal representation and the value of socio-legal research more generally.

Julia Pearce designed and directed the project until her retirement in June 2010. Judith Masson took over responsibility for the project, working with Julia Pearce and Kay Bader on analysis, writing the report and dissemination. A copy of the report and summary is available free to download at **w** www.bristol.ac.uk/law/research/researchpublications. Further papers from the project are available on the ESRC Society Today website **w** www.esrc.ac.uk/my-esrc/Grants/RES-062-23-1163/read.

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The newsletter needs your contributions

News and feature articles are always needed for the newsletter, plus information about books, journals and events. The next deadline is **24 October 2011**. Contact the editor Marie Selwood **e** marieselwood@btinternet.com or **t** 01227 770189.

- **COURTS AND THE MAKING OF PUBLIC POLICY**
  14 July 2011: Oxford

A Foundation for Law, Justice and Society workshop. Further information and registration at **w** www.fljs.org/Courts.

- **THE RELEVANCE OF AFRICAN LEGAL THEORY TO CONTEMPORARY PROBLEMS**
  15–20 August 2011: Frankfurt, Germany

Due to take place at the World Congress of Philosopy of Law and Social Philosophy, this workshop will discuss the potential contributions from African legal theoretical or philosophical scholarship to the concerns of today. For more information, visit **w** www.ivr2011.org or contact Dr Oche Onazi **e** o.onazi@dundee.ac.uk.

- **THE LANGUAGE OF LAW: CLASSICAL PERSPECTIVES**
  15–20 August 2011: Frankfurt am Main

Also at the World Congress of Philosopy of Law and Social Philosophy, the aim of this workshop is to bring together scholars working on linguistic aspects of (ancient and contemporary) law from different backgrounds and facilitate the exchange of ideas. See **w** www.ivr2011.org

- **EUROPEAN CONSORTIUM FOR POLITICAL RESEARCH GENERAL CONFERENCE**
  25–27 August 2011: University of Iceland in Reykjavik

For details visit **w** www.ecprnet.eu.

- **SOCIETY OF LEGAL SCHOLARS ANNUAL CONFERENCE**
  5–8 September: University of Cambridge

The theme of this year's conference is 'Law in politics, politics in law'. For full details, visit **w** www.legalscholars.ac.uk.

- **ROYAL INSTITUTE OF CHARTERED SURVEYORS' LEGAL RESEARCH SYMPOSIUM**
  12–13 September 2011: University of Salford, Manchester

As in previous years, the symposium will take place as part of the annual interdisciplinary RICS 'COBRA' research conference. Further information about the symposium is available from Paul Chynoweth **e** p.chynoweth@salford.ac.uk.

- **HUMAN RIGHTS BEYOND THE LAW: POLITICS, PRACTICES, PERFORMANCES OF PROTEST**
  15–17 September 2011: Jindal Global Law School, Delhi, India

Workshop organised by the Collaborative Research Programme on Law, Postcoloniality and Culture. For more information, see **w** www.protestworkshop.jgu.edu.in.

- **TRANSITIONAL JUSTICE AND RESTORATIVE JUSTICE: POTENTIAL, PITFALLS AND FUTURE**
  16 September 2011: Durham University

Hosted by Durham and Nottingham law schools and Durham Global Security Institute, this one-day conference will focus on issues of transitional justice, restorative justice and criminal justice in the broad context of post-conflict transitions. **w** www.dur.ac.uk/law/events

- **THE EU, INTERNATIONAL ORGANISATIONS AND CRISIS MANAGEMENT IN THE AFTERMATH OF RECENT REVOLUTIONS IN NORTH AFRICA AND THE MIDDLE EAST: CALL**
  16 September 2011: Liverpool John Moores University

The conference aims to promote greater understanding of the events which have taken place in North Africa, especially Libya, and in the Middle East. Email abstracts to Gary Wilson **e** g.wilson@ljmu.ac.uk or Carlo Panara **e** c.panara@ljmu.ac.uk. Deadline: **30 June 2011**.

- **INTERSECTIONS OF LAW AND CULTURE: HUMAN RIGHTS**
  23–25 September 2011: Lugano, Switzerland

Second international cross-disciplinary conference hosted by the Department of Comparative Literary and Cultural Studies, Franklin College, Switzerland. **w** www.fc.edu.

- **INTERCULTURAL AWARENESS IN LEGAL LANGUAGE**
  11–13 November 2011: Fluminense Federal University, Brazil

Focusing on the contribution of legal semiotics to the different ways of thinking the 'legal' in a world's cultural diversity. **w** www.springer.com/law/journal/11196?detailsPage=societies

READ ALL ABOUT IT

Here, we highlight the latest socio-legal publications. Because of space constraints, priority is given to SLSA members. If you would like your publication included in a future issue, contact e marieselwood@btinternet.com.

Books

Governance through Development: Poverty reduction strategies, international law and the disciplining of third world states (2011) Celine Tan, Routledge-Cavendish 268pp £75

This book locates the Poverty Reduction Strategy Paper (PRSP) framework within the broader context of international law and global governance, exploring its impact on third-world state engagement with the global political economy and the international regulatory norms and institutions which support it. The framework is the primary mechanism through which official development financing is channelled to low-income developing countries. The author argues that the PRSP framework establishes a new regulatory regime that builds upon the disciplinary project of structural adjustment by embedding neoliberal economic conditionalities within a regime of domestic governance and public policy reform.

Caring for Children after Parental Separation: Would legislation for shared parenting time help children? (2011) Belinda Fehlberg, Bruce Smyth with Mavis Maclean and Ceridwen Roberts, Family Policy Briefing Paper 7, Department of Social Policy and Intervention/University of Oxford/Nuffield Foundation 16pp £5

This paper summarises recent Australian evidence evaluating the move towards a legal presumption for shared parenting time in that jurisdiction and suggests that there are questions to be addressed about safety in conflicted cases and the welfare of children under five even in amicable settings under such arrangements.

Law and Religion (2011) Russell Sandberg, Cambridge University Press 234pp £19.99

The inspiration behind the book is the increase in legislation, litigation and public concern surrounding law and religion. The chapters explore the extent to which English law accommodates religious difference in the 21st century, exploring the effects and significance of recent changes such as the Human Rights Act 1998, the Racial and Religious Hatred Act 2006 and the Equality Act 2010. The book addresses three sets of questions. What has been the effect of the new laws and have they furthered the protection afforded to religious individuals and groups? What has been the significance of the new laws and how do they interact with older laws concerning religion? What effect has this had upon the study of law and religion and to what extent can it now be said that law and religion exists as an academic sub-discipline akin to family law or sports law?

International Human Rights Law and Domestic Violence: The effectiveness of international human rights law (2011) Ronagh J A McQuigg, Routledge-Cavendish 178pp £75

This book examines the effectiveness of international human rights law through the case study of domestic violence. Domestic violence is an issue that affects vast numbers of women throughout all nations of the world, but because it takes place between private individuals it does not come within the ambit of the traditional interpretation of human rights law. The author questions whether international human rights law can only be effective in a 'traditional' case of human rights abuse or whether it can rise to the challenge of being used in relation to issues such as domestic violence in the UK. It considers recent case law from the European Court of Human Rights and examines whether the UK courts could use the Human Rights Act 1998 to assist victims of domestic violence.

Prisoners' Rights: Principles and practice (2011) Susan Easton, Routledge 304pp £24.99

This monograph considers the advantages and problems of a rights-based approach to imprisonment. Discussion of the practice of imprisonment in the UK, the United States and the Netherlands is included. As well as analysing prison conditions and procedures and contact with the outside world, the book also discusses topical issues including prisoners' right to vote.

Law and Ecology: New environmental foundations (2011) Andreas Philippopoulos-Mihalopoulos (ed) Routledge 256pp £75

This book contains a series of theoretical and applied perspectives on the connection between law and ecology which together offer a radical and socially responsive foundation for environmental law. While its legal corpus grows daily, environmental law has not enjoyed the kind of jurisprudential underpinning generally found in other branches of law. This book does that. Addressing current debates, it redefines the way environmental law is perceived, theorised and applied and constitutes a radical challenge to the traditionally human-centred frameworks and concerns of legal theory.

Evidence versus Politics (2011) Mark Monaghan, Policy Press 200pp £65

The initial enthusiasm for the evidence-based policy agenda has recently been replaced with increasing scepticism. Critics point out that 'policy-based evidence' characterises the relationship more accurately. Analysing the role and nature of evidence in the context of UK drug policy and drawing on a range of theories of the policy process and research utilisation, this book pursues an alternative route for conceptualising the evidence and policy connection, which moves beyond zero-sum statements of evidence-based policy and policy-based evidence. It is aimed at students and researchers in public policy and criminology. A 20 per cent discount is available on Policy Press books ordered online.

Journals: calls for papers

feminists@law is a new, peer-reviewed, online, open-access journal of feminist legal scholarship. It aims to publish critical, interdisciplinary, theoretically engaged scholarship that extends feminist debates and analyses relating to law and justice (broadly conceived). There will be two issues per year, each built incrementally (articles being posted as soon as they are ready for publication). Registration enables submission of articles for consideration, receipt of email updates and expressions of interest to act as a reviewer for the journal. **w** http://journals.kent.ac.uk/index.php/feministsatlaw/index.

Transnational Environmental Law will be launched by Cambridge University Press in spring 2012. This peer-reviewed journal will study environmental law and governance beyond the state. Please send submissions to **e** thijs.etty@ivm.vu.nl or **e** v.heyvaert@lse.ac.uk. More details and author guidance can be found at **w** http://journals.cambridge.org/TEL.

The call is now open for a ***Comparative Education Review*** special issue on 'Access to higher education: "fairness" in comparative perspective', guest editors Anna Zimdars **e** anna.zimdars@kcl.ac.uk and Daniel Sabbagh **e** sabbagh@ceri-sciences-po.org. Deadline: **1 December 2011.** For more information, contact either the guest editors or the regular editors **e** cer@psu.edu.

The ***Zambia Social Science Journal*** is a scholarly, open access, peer-reviewed, interdisciplinary, bi-annual and fully refereed journal published under the auspices of the Institute for Public Policy Research in Zambia. As a forum for argument, debate, review, reflection and discussion, it is informed by the results of relevant and rigorous research. The journal accepts papers in the social sciences and development at large but encourages submissions dealing with African issues. Papers for consideration should be sent to: **e** ZSSJ@zamnet.zm.

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