Contents

Welcome to the SLSA Annual Conference 2012

As Chair of the Socio-Legal Studies Association, it gives me great pleasure to welcome you to the 22nd annual SLSA Conference at De Montfort University, Leicester. De Montfort University hosted the 2009 annual conference with great success and we are delighted to be back in 2012. With a wide variety of streams, themes, author meets readers sessions and roundtable discussions, this year's conference promises to be equally stimulating. The success of any conference is largely dependent on those who participate. Delegates are coming from around the world which we hope will facilitate comparative discussion and the establishment and strengthening of international socio-legal networks. The SLSA has always believed that the conference should be inclusive and should provide an encouraging forum for early career researchers. Every year, groundbreaking work is presented by first-time delegates. The conference also benefits immeasurably from the continued participation of many leading socio-legal scholars whose support we value greatly.

I would like to extend my thanks on behalf of the Executive Committee to all those involved in the organisation of the conference, particularly Kate Scott, the conference administrator, and the conference organisers, Gavin Dingwall and André Naidoo, for the months of hard work this entails. I also want to thank our sponsors – their generosity enables us to support the socio-legal community in many ways. Finally, I wish to congratulate this year's book and article prize winners, and especially Mavis Maclean, whose outstanding work over many years is being recognised at this conference with the society's inaugural award for contribution to socio-legal scholarship, and who will present this year's plenary lecture. Mavis is without doubt one of the most influential and highly-regarded socio-legal researchers and I am confident that her lecture will be characteristically thought-provoking.

I hope that you find the conference rewarding and look forward to meeting many of you over the next three days.

Professor Rosemary Hunter
Chair of SLSA

Welcome from the Deputy Vice-Chancellor and Dean of Faculty of Business and Law

Dear Colleagues,

As Deputy Vice-Chancellor and Dean of the Faculty of Business and Law, I am delighted to welcome the Socio-Legal Studies Association (SLSA) to De Montfort University, Leicester. It's great to have you back here at DMU following the very successful SLSA conference which was hosted by the Law School in 2009.

The Faculty of Business and Law comprises Leicester De Montfort Law School and Leicester Business School. It has over 6,000 students and is one of the largest of De Montfort University's four faculties. The Law School offers an extensive portfolio of undergraduate, postgraduate and professional legal studies and is committed to achieving high quality in both its teaching and research. It was pleasing to note the School's achievement in the recent Research Assessment Exercise with 65% of its submission ranked as internationally recognised or above.

This conference is located in the impressive new £35 million Hugh Aston Building which includes state-of-the-art lecture theatres, meeting and break-out rooms, a mock law court and an integrated law library. There is also a bespoke postgraduate and professional suite and the latest ICT faculties. Locating the previously dispersed Faculty to the Hugh Aston Building has further strengthened research capacity and enhanced collaboration of scholars across different parts of the Faculty. Given that a key strength of socio-legal research is its interdisciplinarity, I am therefore particularly delighted that De Montfort Law School is hosting the SLSA conference again this year.

I am confident that you will have an excellent time in both the University and the wider City over the next few days and I would like to take this opportunity of wishing you a stimulating and enjoyable conference.

Professor David Wilson
Deputy Vice-Chancellor / Dean of Business and Law

Welcome from the Head of Leicester De Montfort Law School

Dear Colleagues,

I am delighted to welcome the Socio-Legal Studies Association (SLSA) back to De Montfort University, Leicester. The last time SLSA held its conference at DMU was in 2009 in the award winning Queens Building, and I'm delighted to welcome you this time to our iconic new Faculty of Business and Law building.

The School of Law has a number of existing areas of research strengths; for example, medical law, criminal justice, administrative justice, mental health law, commercial law, international human rights, consumer law and sports law. We have also been increasingly interested in reaching out to the wider community, including the wider research communities and networks in the UK and abroad. Hosting this conference for the second time is therefore a great opportunity to forge those connections at every level.

We do therefore hope that you not only enjoy the substantive content of papers in the academic sessions of the conference but also benefit from the networking environment that this Conference offers, which is often so important in building research collaborations and careers.

Sheree Peaple
Head of Leicester De Montfort Law School

Mavis Maclean – Plenary Speaker

Plenary Session kindly sponsored by the Journal of Law and Society

JOURNAL OF
LAW AND SOCIETY

We are delighted that Mavis has kindly accepted our invitation to be the conference plenary speaker for 2012.

Mavis Maclean has carried out Socio Legal research in Oxford since 1974, and is now joint Director of the Oxford Centre for Family Law and Policy. She has acted as the Academic Adviser to the Lord Chancellor's Department since 1997, and served as a panel member on the Bristol Royal Infirmary Inquiry between 1998 and 2001, a major public inquiry into the National Health Service. She is a Senior Research Fellow in the Faculty of Law. In 1993 she was elected President of the Research Committee for the Sociology of Law, International Sociological Association, in 2000 a Trustee of the Law and Society Association, and in 2002 a Fellow of the Royal Society of Arts and the ESRC Research College SHARe. She has served on a number of grant making committees, notably the Children and Family Justice Committee, Nuffield Foundation 1996-, the Research Liaison Group for Children's Services, Department of Health 1996-, and the Joseph Rowntree Foundation Social Policy Committee. She was a member of Lord Chancellor's Legal Aid Advisory Committee 1992-4, and is a Fellow of the IISL, Onati, Spain. She is a member of the editorial board of the Journal of Social Welfare Law and the Family, and of the Management Committees of the Centre for Family Research, Cambridge, and the One Parent Families Association. Her research interests are Family Law and Family Policy, particularly from a comparative perspective.

Mavis' distinguished profile and impact in the field of socio-legal studies is nothing short of inspiring and we are delighted to welcome her to De Montfort University

Gavin Dingwall and André Naidoo
Conference Organisers

Professor David Price – An Appreciation

24 June 1954 – 3 January 2012

Leicester De Montfort Law School was stunned by the news of David's passing in January. David had participated actively in previous SLSA conferences. I asked his friend, Glenys Williams, convenor of the Medical Law Stream to write a few words about David. Gavin Dingwall.

"It was, and is an honour for me, not only to have known Professor David Price, but also to be given this opportunity to say a few personal, but very heartfelt, words about an exceptional man, whom I considered to be a friend as well as a colleague, and for whom I held the utmost respect.

Although I had known David for only a relatively short time in comparison to others who had worked with him over a number of years, the impact he made upon my professional life was nonetheless profound.

Many will know already of his vast achievements and his special contribution to the field of medical law and ethics research, and it is in this capacity he first came to my attention. I read and absorbed every word he had published, in the hope that I would one day meet this person who, by now, had become something of a hero in my eyes.

That opportunity came in an SLSA Conference we both attended a few years ago, when we both presented in the medical law stream. We subsequently met on a number of occasions over the following years, both at Conferences and at other events. Although we never had the opportunity to directly work together, it would have been the highest privilege for me to have had such an opportunity. Despite that, David was a source of personal support, advice and encouragement throughout my career.

It is difficult to comprehend that such an inspirational, kind and considerate man, who took the time, and made the effort, to assist a colleague who was just starting in the field, is no longer with us. I will greatly miss his sound words of advice, his invaluable assistance, and his always smiling countenance. Although the sentiment may well be a truism, the world is a lesser place without his presence in it."

Dr Glenys Williams
Medical Law Stream Convenor

Prize winners – SLSA2012

SLSA Prize For Contributions To The Socio-Legal Community

Mavis Maclean (2011)

HART / SLSA Book Prize

Nicholas Bromley (2011)
Rights Of Passage: Sidewalks And The Regulation Of Public Flow
Routledge / Glasshouse

Didi Herman (2011)
An Unfortunate Coincidence: Jews, Jewishness, And English Law
Oxford University Press

HART / SLSA Prize For Early Career Academics

Prabha Kotiswaran (2011)
Dangerous Sex, Invisible Labour: Sex Work And The Law In India
Princeton University Press

Lisa Vanhala (2011)
Making Rights A Reality? Disability Rights Activists And Legal Mobilization
Cambridge University Press

SLSA Article Prize

Kieron McEvoy
What Did The Lawyers Do During The "War"? Neutrality, Conflict And The Culture Of Quietism (2011)
Modern Law Review 74:350-384

Exhibitors and Sponsors

On behalf of the SLSA we would like to thank our exhibiters and sponsors for their generous contributions towards the conference.

http://eu.wiley.com/WileyCDA/Section/id-351003.html .

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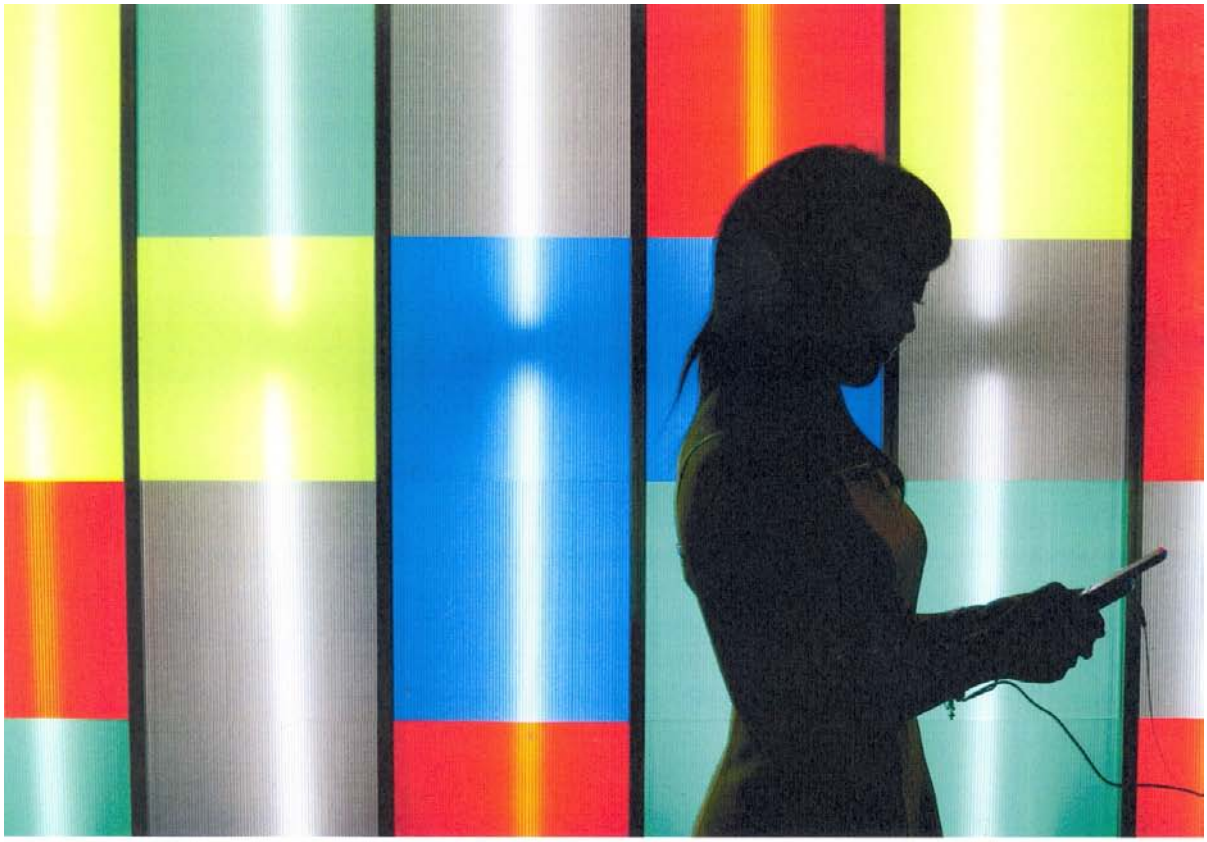

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Subject Streams and Themes

Streams

(AJ)	**Administrative Justice**	Richard Kirkham/Trevor Buck
(BF)	**Banking and Finance Law**	Clare Chambers
(CO)	**Challenging Ownership**	Penny English/Helen Carr/ Sarah Blandy
(CSL)	**Conflict and Security Law**	Fiona de Londras
(CJ)	**Criminal Law & Criminal Justice**	Vanessa Bettinson
(EU)	**European Union**	Ian Kilbey
(FL)	**Family and Children Law and Policy**	Anne Barlow / Liz Trinder
(GSL)	**Gender, Sexuality and Law**	Chris Ashford
(IR)	**Indigenous Rights**	Sarah Sargent
(ITLC)	**Information Technology, Law and Cyberspace**	Mark O'Brien
(IP)	**Intellectual Property**	Jasem Tarawneh
(I)	**Intersectionality**	Charlotte Skeet
(LL)	**Labour Law**	Michael Jefferson
(LLP)	**Lawyers and Legal Professions**	Andy Boon
(LLit)	**Law and Literature**	Julia Shaw
(LE)	**Legal Education**	Tony Bradney / Fiona Cownie
(ML)	**Medical Law and Ethics**	Glenys Williams
(MH)	**Mental Health and Mental Capacity**	Peter Bartlett/Nell Munro
(PPT)	**Policies, Politics and Theories of Financial Market Regulation**	Nicholas Dorn
(RRHR)	**Race Religion and Human Rights**	**-**
(RESD)	**Renewable Energy and Sustainable Development**	Jona Razzaque
(SP)	**Sentencing and Punishment**	Gavin Dingwall**/**Karen Harrison
(SP)	**Shifting Paradigms in Publicly Funded Justice**	James Sandbach
(SL)	**Sports Law**	Ben Livings
(STLS)	**Systems Theories, Law and Society: Critical Perspectives and Novel Applications**	Thomas Webb

Themes

(ACH)	**Arts, Culture And Heritage**	Janet Ulph/ Charlotte Woodhead
(ES)	**Exceptional States: International Economic Law in Times of Crisis and Change**	Celine Tan / Amanda Perry-Kassaris
(LC)	**Legal Consciousness**	Morag McDermont / David Cowan
(LD)	**Law & Democracy**	Antonios Platsas
(RTD)	**Round Table Discussion**	Various

SLSA Annual General Meeting and Executive Committee Meeting

The SLSA AGM will take place in HU0.10 at 1pm on Wednesday, April 4th 2012. The meeting is open to all SLSA members.

The SLSA Executive Committee Meeting will take place in HU3.96 at 2pm on April, Thursday 5th 2012. The SLSA will have a stand in reception.

Registration and General Information

The conference takes place on the first 3 floors of the Hugh Aston building. There are lifts and stairs available at each end of the building. Publishers are exhibiting in the Atrium and this is also where you go to collect your food and refreshments. There are 3 separate drinks stations in the Atrium with tea/coffee etc available all day, not just at specified breaks.

AV Facilities / Computers

All rooms are well equipped. If you wish to present using powerpoint, you only need a memory stick. We have DVD player/Video/Doc Camera all incorporated into the classrooms. The PC log in details are;

Username lecturer

Password lecturer09

Mac Users. We ask that you bring a converter for a VGA. It might also be helpful for us to know when your session takes place in advance so that we can have a technician on hand at the start of your session. We need to know the name of your stream and your session number.

Chairing

Please check the programme for the sessions you are chairing. If you are unable to chair the session you have been allocated, please endeavour to find someone else to take your place during the conference before contacting the organising

committee.

Cloakroom
We will use one of the lecture theatres in the Atrium as our base and cloakroom. It will be manned at all times until close of conference. Delegates are reminded that belongings are left entirely at your own risk.

Computer Suite
We have a separate computer suite situated on the 2nd floor for delegate use only. This is sponsored by Westlaw and we would encourage delegates to make use of this area. Again, it is convenient and very easily accessible via the lift.

Username westlaw

Password westlaw345

Guidance Notes for Delegates Presenting Papers
Delegates are asked to adhere strictly to the timetable and not overrun their allotted time when presenting a paper.

Tuesday Evening
Following the Palgrave Macmillan drinks reception in the Student Campus Centre, delegates will have the opportunity to socialise and dine at one of a number of local restaurants. If you would like to join a group to dine at a particular restaurant, please convene at the entrance to the Campus Centre at 8pm.

Wednesday Evening
An Indian themed dinner will be held at Mansah Restaurant in Leicester. The meal will start at 7.30pm. Transportation details will be provided at registration. Please state at the registration desk whether you require an alternative to a themed meal. Thank you

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Network Connections then View wireless networks. Choose DMU Guest and once connected open the Internet Explorer which will bring up the single sign on screen. Simply insert the username and password.

Scan for available wireless networks and connect to the DMU-Guest SSID then run the web browser and enter the username and password given below to login.

Student Helpers
We have 10 student helpers available to assist you throughout the conference. Please do not hesitate to ask them for help.

Oxford University Press

SLSA Programme

Tuesday 3rd April	
10.00	Registration Opens
12.30 – 14.00	Lunch
14.00 – 15.30	Session 1
15.30 – 16.00	Refreshments (Sponsored by Routledge, Taylor & Francis)
16.00 - 17.30	Session 2
17.30 – 17.45	Refreshments (Sponsored by Routledge, Taylor & Francis)
17.45 - 18.30	SLSA Prizegiving and Plenary Session Mavis Maclean Research And Policy: How Does Our Work Impact On Legal Policy Making? (Plenary Session Sponsored by the Journal of Law and Society) HU0.10
18.30 – 20.00	Palgrave Macmillan Evening Reception Campus Centre
Wednesday 4th April	
08.30	Registration Opens
09.00 – 10.30	Session 3
10.30 – 11.00	Refreshments (Sponsored by Routledge, Taylor & Francis)
11.00 – 12.30	Session 4
12.30 – 14.00	Lunch
13.00 – 14.00	SLSA Annual General Meeting HU 0.10
14.00 - 15.30	Session 5
15.30 - 16.00	Refreshments (Sponsored by Routledge, Taylor & Francis)
16.00 – 17.30	Session 6
19.30 - 22.00	Indian Themed Dinner
Thursday 5h April	
08.30	Registration Opens
09.30 – 11.00	Session 7
11.00 – 11.30	Refreshments (Sponsored by Routledge, Taylor & Francis)
11.30 – 13.00	Session 8
13.00 - 14.00	Lunch and End of Conference
14.00 – 16.00	SLSA Executive Committee Meeting HU 3.96

Parallel Session Summary

Tuesday 3rd April 2012

Hugh Aston Building

Parallel Session 1 — 1.30-3.00pm

No	Session	Room
1.1	**Family Law** **Chair Anne Barlow** **New Modes Of Regulation-Equality Issues In Adult Relationships** **Rosemary Auchmuty** Civil Partnership Dissolution: Expectations and Experiences **Sharon Thompson** Prenuptial Agreements and the Presumption of Free Choice: Issues of Power in Theory and Practice **Belinda Fehlberg and Christine Millward** Post Separation Parenting and Financial Arrangements: Exploring Changes Over Time	1.49
1.2	**Criminal Justice** **Chair Vanessa Bettinson** **Abenaa Owusu-Bempah** Deconstructing Defence Disclosure **Mary Vogel** Plea Bargaining: What Do We Know Of Its Causes And Consequences?	1.51
1.3	**Gender, Sexuality And Law** **Chair Chris Ashford** **Rob Clucas** Legitimate Discrimination: Gay Bishops, The Church Of England, And The Equality Act 2010 **Rhoda Ige** The Same Sex Marriage Bill In Nigeria: A Revisit Of The Cultural Relativist Theory In Human Rights **Tânia Cristina Machado** "Medically Assisted Parents": Discussing The Access Of Same-Sex Couples To Reproductive Technologies	1.50
1.4	**Medical Law** **Chair Glenys Williams**	1.48

	Andrew McGee Intention, Foresight And Ending Life: A Reply To Foster, Herring, Melham And Hope **Jennifer Edwards** Action-The Fulcrum Upon Which Respect For Autonomy Rests **John Lombard** Identifying An Appropriate Definition Of Death **Camilla Barker** "Robert Jay Lifton, The Nazi Doctors: Medical Killing And The Psychology Of Genocide" (A Critical Review)	
1.5	**Race, Religion And Human Rights** **Chair Amanda Akhtar** **Perveen Ali** From Protecting Vulnerability To Promoting Self Sufficiency: The Interplay Between Human Rights Protection And NeoLiberalism In The Iraqi Refugee Resettlement Program **Lieve Gies** Negotiating The Hyphen: Human Rights Culture And What It Means To Young British Muslims	**2.34**
1.6	**Mental Health And Mental Capacity Law** **Chair Nell Munro** **Susan Watson and Jacob Daly** Safeguarding From Harm Or Safeguarding Rights? **Jennifer Brown** A New Model In Irish Mental Health Law? **John Horne** The Upper Tribunal – A Source Of Protection For Detained Patients?	**2.33**
1.7	**European Union** **Chair Ian Kilbey** **Tamara Hervey** Unresolved Tensions: Between Solidarity, Equality And Competition In EU Health Law And Policy **Ronagh McQuigg** The ECJ And Domestic Violence: Magatte Gueye And Valentin Salmeron Sanchez **Constantin Kombos** State Liability After The 20th Year Landmark: The Story So Far	**1.47**
1.8	**Banking And Finance Law** **Chair Clare Chambers-Jones** **Andrew Baker** The Coalition Government Proposals For Reform: The Dawn Of A New Era? Probably Not!	**2.39**

	Ilias Kapsis Reform Of Financial Regulation In UK: Have We Learned The Lessons? **Bruce Wardhaugh** Regulating The Banking Sector: A Case Of Public Goods, Externalities And Pigovian Taxes?	
1.9	**Legal Education** **Chair Tony Bradney and Fiona Cownie** **Kim Everitt And Opi Outhwaite** Crime And Problem Solving **Mercy Emetejife Onoriode** The Introduction Of Clinical Legal Education Into The Nigerian Law School: Prospects And Challenges **Nicola Monaghan And Neal Geach** Reflecting On Four Years Of Teaching Advocacy To Students At The University Of Hertfordshire	**1.82**
1.10	**Intellectual Property** **Chair Jasem Tarawneh** **Debra Wilson** New Zealand's Copyright And File Sharing Legislation: 6 Months Of 'Skynet' **Ozgur Arikan** The Economic Functions of Trade Mark **Anna Rita Popoli** Cookies And Electronic Commerce: A Survey About Actual Knowledge Of The Issues Concerning Privacy	**2.40**
1.11	**Challenging Ownership: Meanings, Space And Identity** **Chair Sarah Blandy** **Leasehold Problems** **Caroline Hunter** Putting New Technologies Into Old Homes-Some Reflections On the (Lack Of) Ability of Law to Keep Up **Ray Savar** A Perspective For Reform Of Commercial Leases In Property Law	**2.37**
1.12	**Round Table Discussion** **Chair Simon Flacks** **Simon Flacks And Andrea Fritsche** The Spectre Of Inter-Disciplinarity: Reflections On Socio-Legal Research	**2.41**
1.13	**Conflict & Security** **Chair Fiona de Londres** **Panel Theme** **Contemporary Challenges In Humanitarian International Law**	**2.31**

	Siobhan Wills The Blurring Of The Protection Of Civilians' Concept With The 'Responsibility To Protect' Concept: The Intervention In Libya 2011 **Anna Marie Brennan** The Rationales For Criminalising Transnational Armed Groups Under International Law For Attacking Civilians **Claire Dwyer** Reconsidering Reintegration; The Role of Former Prisoners in The Process of DDR	
1.14	**Intersectionality** **Chair Charlotte Skeet** **Charlotte Skeet** Au Pairs, Intersectionality, And Gender Equality In The 21st Century **Susan Millns** Legal Mobilisation And Gender In The UK: An Intersectional Approach **Katie Bales** Intersectionality, Asylum And Welfare: Principles And Pragmatics	**2.30**
1.15	**Round Table Discussion** **Duncan French** Exploring The Legal And Criminological Implications Of Climate Change	**2.32**

Parallel Session 2 3.30-5.00pm

No	Session	Room
2.1	**Family Law** **Chair Liz Trinder** **The Family And The State** **Isabel Garrido Gomez** Deficit Of The Legal Family Protection **Helen Stalford** Child Protection And The European Union **Sally Varnham, Tracey Booth And Maxine Evers** Valuing Their Voices: Responsibility And Retention Through Student Participation School Decision Making	**1.49**
2.2	**Criminal Justice** **Chair Vanessa Bettinson** **Stephen Shute** Improving Criminal Justice: The Role Of Inspection **Sam Lewis** Data Collection, Management And Use In The Criminal Justice Sector **Kevin Brown** A Case Study Of Occupational Mission Creep: An Empirical Examination Of The Expanding Role Of The Anti-Social Behaviour Practitioner	**1.51**

2.3	**Gender, Sexuality And Law** **Chair Gary McLachlan** **Thomas K. Hubbard** Age-Of-Consent Law And Gender **Scott Kennedy** Opening The Door To Same Sex Marriage Or An Invitation For Religious And Political Anarchy? A Scottish Perspective **Susan Westwood** Gender, Sexuality And Law: The Added Dimension Of Age	**1.50**
2.4	**Race, Religion and Human Rights** **Chair** **Reem Mohamed** Women Challenging South African Law **Sarah Singer** Exclusion From Refugee Status: Asylum Seekers And Terrorism In The UK	**2.41**
2.5	**Medical Law And Ethics** **Chair Glenys Williams** **Lisa Dickson** The Police, The NHS And The Privacy Of Patients, A Consideration Of Police Use Of S29 Of The Data Protection Act 1998 **Wendy Hesketh** Regulation Of The Medical Profession: Creating Serial Killers And Sex Offenders **Sarah Fulham-McQuillan** The Dominance Of Policy In Medical Negligence Causation: Society's Influence Or An Influence On Society **Natewindo Sawadogo** Exploring Health Care Users- Access To Justice In Burkina Faso: Facts And Thoughts About The Moral Organisation Of Clinical Practice	**1.48**

2.6	**Author Meets Reader Session** **Chair Rosemary Hunter** **HART/SLSA Book Prize Winner** **Didi Herman** An Unfortunate Coincidence: Jews, Jewishness and English Law **Panel Members** Anastasia Vakulenko, Tony Bradney, and Beth Gaze	**2.34**
2.7	**Mental Health And Mental Capacity Law** **Chair George Szmukler** **John Rumbold** Press Reports Of Parasomnias **Ralph Sandland** Sex And The Idiot Girl, 1846-1885 **David Horton** Mental Health Homicide Tragedies: Political Risks And Legal Solutions	**2.33**
2.8	**European Union** **Chair Ian Kilbey** **Nadia Kalogeropoulou** Improving Supplementary Pension Rights For Mobile EU Workers Still On The EU Agenda. Which Is The Way Forward? **Annalisa Mortcelli And Jess Guth** Illegal Immigration: The EU Legal Framework **Jennifer Sigafoos** What's Driving Rates Of Social Policy Preliminary References To The ECJ? Evidence From The United Kingdom And France	**1.47**
2.9	**Banking And Finance Law** **Chair Clare Chambers-Jones** **Tom Hamilton** The Anglo-Germanic Board Architecture Debate: An Historical And Philosophical Comparative Analysis **Axel Palmer** Bribery and Corruption: Just Keep This Between Ourselves	**2.39**
2.10	**Legal Education** **Chair Fiona Cownie** **Lucy Yeatman** Creating An Active Learning Environment In The Lecture Theatre **Fiona Cownie** Exploring Legal Skills	**1.82**
2.11	**Intellectual Property** **Chair Jasem Tarawneh**	**2.40**

	Chris Wadlow Language, Law And Labor In The United States Supreme Court: A Reinterpretation Of International News V Associated Press **Nick Scharf** Life Through A Lens: A 'Lessigan' Model For Understanding Digital Copyright Infringement? **Branislav Hazucha, Hsiao-Chien Liu, And Toshihide Watabe** Attribution Of Liability For Misappropriation Of Tangible And Intangible Things In Japan	
2.12	**Challenging Ownership: Meanings Space And Ownership** **Chair Helen Carr** **Law And The Home** **Sean Thomas** Mortgages, Fixtures, Fittings, And Security Over Personal Property **Lee Crookes** This House Is Worth A Million Pounds To Me But To Them It Means Nothing: Issues Of Home Loss And Compensation In Urban Regeneration	**2.37**
2.13	**Conflict And Security** **Chair Fiona de Londres** **Transitional Justice Post-Arab Spring** **Panellists** **Alia Mossallam And Anicée Van Engeland And Rosemary Byrne**	**2.31**
2.14	**Lawyers And Legal Professions** **Chair** **Michael Blackwell** Select Sets: A Quantitative Study In Diversity And Career Progression At The English Bar **Andy Boon** Disciplinary Procedures Of The Legal Profession In England And Wales	**2.30**

Wednesday 4th April 2012

Parallel Session 3 9.00-10.30am

No	Session	Room
3.1	**Family Law** **Chair Mavis Maclean** **Alternative Family Dispute Resolution** **Anne Barlow And Rosemary Hunter** Mapping Paths To Family Justice-Some Preliminary Findings **Paulette Morris** What Are Mediators Doing Now That 'The MIAMS' Are Here **Jane Mair And Fran Wasoff** All Settled? Private Ordering in Relationship Breakdown	1.49
3.2	**Mental Health Capacity And Criminal Justice (Joint Session)** **Chair Leon McRae** **Ronnie Mackay** Law Commission On Insanity **David Ormerod** Law Commission's Insanity And Automatism Project **Louise Kennefick** Challenges And Changes At The Intersection Of Criminal Law And Mental Health In Ireland	1.51
3.3	**Gender, Sexuality And Law** **Chair Chris Ashford** **Tanya Palmer** Sex And Sexual Violation: Consent, Negotiation And Freedom To Negotiate **Laura Graham** Sex Workers' Rights Are Human Rights: A Critical Exploration Of The Potential Of The Human Rights Act In Relation To Sex Work **Angela Marshall** Inequalities And Legal Redress: Can The Convention On The Elimination Of All Forms Of Discrimination Against Women Help?	1.50
3.4	**Labour Law** **Chair Michael Jefferson** **Oluwakemi Adekile** Compensation For Employment Injuries In Nigeria: Meeting The	1.47

	Challenges Of International Minimum Standards **Michael Doherty** Labour Rights And EU Law: (Re) Drawing The Battle Lines?	
3.5	**Medical Law And Ethics** **Chair Glenys Williams** **Amber Dar** Can Best Interests Justify Child Participation In Medical Research? **Caroline Somers** The Development Of The Best Interests Standard In Respect Of End Of Life Decision Making For Neonates And Young Children **Katharine Wade** Relational Autonomy And Caesarean Section Refusal: Building A Framework For Decision Making In Ireland	**1.48**
3.6	**Spare Session**	**2.82**
3.7	**Intellectual Property** **Chair Jasem Tarawneh** **Daniela Lizarzaburu** Traditional Knowledge, Medicinal Plants And Geographical Indications: Synergies For Sustainable Development **Linglin Wei** Is The Legal Regulation Of Ambush Marketing Well Justified? **Amos Saurombe** Intellectual Property Issues In An Open And Distance Learning (ODI) Context: Current Trends **Emmanuel Kolawole Oke** Balancing Economic Development With Public Health: The EU -India Free Trade Agreement And Trips-Plus Awards	**2.33**
3.8	**Author Meets Reader Session** **Chair Andy Boon** **HART / SLSA Book Prize Winner** **Kieron McEvoy** "What Did The Lawyers Do During The 'War'? Neutrality, Conflict And The Culture Of Quietism" *Modern Law Review* (2011) 74 (3), Pp. 350-384.	**2.31**
3.9	**Legal Consciousness** **Chair Morag McDermont And David Cowan** **Marc Hertogh**	**2.32**

	Analyzing The Legitimacy Of The Dutch Justice System: From Public Confidence To Legal Consciousness **Simon Halliday And Bronwen Morgan** Legal Consciousness And Cultural Theory	
3.10	**Legal Education** **Chair Tony Bradney And Fiona Cownie** **Sharifah Rahma Sekalala** Use Of E Learning As Part Of A Blended Learning Approach Within Undergraduate Teaching: Investigating The Postgraduate Teacher's Experience **Johanna Dennis** Ensuring A Multicultural Educational Experience In Legal Education: Start With The Legal Writing Classroom	**1.82**
3.11	**Challenging Ownership: Meanings Space And Identity** **Chair Penny English** **Law, Place And Ownership** **Dwijen Ragnekar** Re-Making Place: The Social Construction Of Geographical Indications **Oren Ben-Dor** How Is A Place? Contesting The Meaning Of Ownership Or Thinking-Back Ownership Of Meaning?	**2.37**
3.12	**Exceptional States: International Economic Law In Times Of Crisis And Change** **Chair Amanda Perry-Kessaris** **Michelle Everson** Je t'accuse: The Fault Of Law In Economic Crisis **George Meszaros** Contested Reconceptualisations Of State Sovereignty Under Conditions Of Economic Crisis And Change **Tom McInerney** Implications Of The Financial Crisis For Multilateral Treaty Practice **Mary Footer** Using Indicators To Measure Transnational Governance Responses In Light Of The Global Economic Crisis	**2.30**
3.13	**Systems Theories Law And Society** **Chair Thomas Webb** **Reza Banakar** An Empirical Study Of The Relationship Between Law And Community Against The Backdrop Of The London Riots. **Alberto Febbrajo** The Anthropological Roots Of Social Systems Theory **Rachel C. Herron**	**2.41**

	A Social Systems Explanation For The Racial Effect Of The Section 44 Counter-Terror Stop And Search Powers	
3.14	**Author Meets Reader Session** **HART / SLSA Early Career Academic Prize Winner** **Lisa Vanhala** Making Rights A Reality? Disability Rights Activists And Legal Mobilization Discussants: Didi Herman, Rosie Harding	**2.42**

Parallel Session 4 11.00-12.30pm

No	Session	Room
4.1	**Family Law** **Chair Anne Barlow** **Conceptions Of Parenting – Donor Conception, DNA Testing And Family Life** **Carol Smart And Petra Nordqvist** Law And Order: The Case Of Donor Conception **Philip Bremner** Assisted Reproduction: Views On Donor Involvement **Ana Maria Brandao** The Legal Investigation Of Biological Paternity In Portugal: Gendered Roles And Representations	**1.49**
4.2	**Criminal Justice** **Chair Vanessa Bettinson** **Anthea Hucklesby** Pre-Charge Bail: A Legitimate Police Power? **Steven Camiss** Mode Of Trial: A Return To Restricting Trial By Jury?	**1.51**
4.3	**Gender, Sexuality And Law** **Chair Chris Ashford** **Carolynn Gray** The Law As 'Symbolic Other' In The Process Of Transsexual Personhood Achievement **Brian Simpson** The Transsexual Or Transgendered Child: Can A Family Court Get It Right? **Camilla Barker**	**1.50**

	Reasonable Accommodation In US Prisons: New Perspectives On The Question Of Transsexual Discrimination	
4.4	**Labour Law** **Chair Michael Jefferson** **Chioma Kanu Agomo** The Constitution Of The Federal Republic Of Nigeria (Third Alteration) Act, 2010 And The National Industrial Court Of Nigeria: Issues And Challenges **Martin Risak** Mediation And Conciliation In The Labour Law Arena: What's The Difference? **Xin Zhang** Resolving Work Injury Disputes In China: Comparing Urban And Migrant Workers	**1.47**
4.5	**Medical Law And Ethics** **Chair Glenys Williams** **Sarah Fulham-McQuillan** No Donor Is An Island: Law's Role In Supporting Society To Improve Organ Donation **Stephen Wilkinson** Are The HFEA's Policies On Compensating Egg Donors And Egg Sharers Defensible? **Ciara Staunton** The Regulation Of Embryonic Stem Cell Research And The Influence Of Ethics? **Ruth Saunders** Research Biobanks And Consent: Time For A More Participant Driven Model	**1.48**
4.6	**Indigenous Rights And Minority Rights** **Chair Sarah Sargent** **Immigration Issues In Minority And Indigenous Rights** **Olugu Ukpai** Criminalising Female Genital Mutilation Among Adult Immigrant Women: A Violation Of Immigrant Women's Rights Or Protection Of Human Rights? **Johanna Dennis** Mommy, Where Is Home? Imputing Parental Residency For Undocumented Immigrant Children In Holder V Martinez Gutierrez And Holder V Sawyers **Anne Neylon** The Active Citizenship Requirement In Denmark And The UK	**2.82**
4.7	**Mental Health And Mental Capacity Law**	**2.33**

	Chair Charlotte Emmett **Jean McHale** Accessing NHS Patients Records Online: Brave New World Of Patient Choice Or A Poisoned Chalice For Mental Health Care? **Tehseen Noorani, Morag McDermont And Andrew Charlesworth** "Vulnerable Persons"- Capacity To Consent And The Medicalisation Of Research Ethics Committees	
4.8	**Lawyers And Legal Professions** **Chair Andy Boon** **Masood Ahmed** Implied Compulsory Mediation **Katie Farrell** The Triangle Of Misery: The Changing Nature Of Legal Aid Funding And The Impact On Solicitor Morale And Access To Justice In The Asylum Process **Richard Moorhead, Victoria Hinchly, Christine Parker, Soren Holm And David Kershaw** How Can You Measure Professional Legal Ethics?	**2.34**
4.9	**Conflict And Security** **Chair Fiona de Londras** **International Criminal Tribunals** **Rhoda Ige** Women And Human Security: The Case Of MARWOPNET Women **Fiona O' Regan** A Critical Analysis Of The Victim Participation Scheme Of The International Criminal Court And Its Potential To Provide Victims Of Gender Based Violence With Restorative Justice	**2.31**
4.10	**Exceptional States: International Economic Law In Times Of Crisis And Change** **Chair James Harrison** **Donetella Alessandrini** Multilateral Trade In A Time Of Crisis **Ann Stewart** Gender Justice In A Global Market **Errol Meidinger** Exporting Legality To Developing Countries Through Market Relationships: The European FLEGT Program' **Priscilla Schwartz** The Force Of International Economic Law And Africa: A Concept Of Foreign Direct Investment-Oriented Development	**2.30**
4.11	**Banking And Finance**	**2.41**

	Chair Clare Chambers-Jones **Saptarshi Ghosh** Trying Out The Wrong Shoe Size Repeatedly: The Need For A Stronger Lender Of Last Resort Role For The European Central Bank And The Eurozone's Cycle Of Catharis And Denial **Louise Rhodes** How Public And/Or Private Is Northern Rock Bank? The View From 'Multi-Dimensional Publicness' Theory	
4.12	**Law And Democracy** **Chair Antonios Platsas** **Antonios Platsas** The Ideal Of Democratic Law **Sofia Cavandoli** Does International Law Enshrine A Right To Democracy	**2.32**
4.13	**Legal Education** **Chair Fiona Cownie** **Tony Bradney** Timesheets And Appraisals: Neoliberal Politics And Academic Culture **Jessica Guth** The European Higher Education Area And A Liberal Legal Education: Making It Work	**1.82**
4.14	**Author Meets Reader Session** **Chair Penny English** **Antonia Layard** Pedestrian Logic And The Occupy Litigation: A Brief Note On Nick Blomley's 'Rights Of Passage' **HART / SLSA Book Prize Winner** **Nicholas Blomley** Rights Of Passage: Sidewalks And The Regulation Of Public Flow	**2.37**

Parallel Session 5 2-3.30pm

No	Session	Room
5.1	**Family Law** **Chair Liz Trinder** **Seeking Family Justice** **Rosemary Hunter** Fact-Finding Hearings: Too Hot, Too Cold, Or Just Right? **Robert Dingwall** Re-Engineering The Family Justice System - Another Missed Opportunity? **Kathryn O'Sullivan** Death, Divorce And Matrimonial Property Under Irish Law	**1.49**
5.2	**Criminal Justice** **Chair Vanessa Bettinson** **Candida Saunders** 'She's Not Telling The Truth': How False Is A False Allegation? **Yvette Russell** Justice And The Rape Trial: Realistic Aspiration Or Hopeless Oxymoron? **Jill Molloy** Loss Of Control - An Effective Defence For Women Who Kill Their Abusers	**1.51**
5.3	**Gender, Sexuality And Law** **Chair Chris Ashford** **Alex Dymock** Making A Fist Of It? Interrogating The Contemporary Role Of The Obscene Publications Act (1959) In The Governance Of Sexual Perversion **Angela Dwyer** Queerness As Out Of Place: How Police Regulate Young Queer Bodies In Public Spaces **Lucy Stackpool-Moore** HIV Is Not The Whole Story, It Is Part Of Life	**1.50**
5.4	**Policies, Politics And Theories Of Financial Market Regulation** **Chair Nicholas Dorn** **Ioannis Glinavos** Responses To The Eurozone Crisis: The Role Of Ideas In Economic Policy Formation **Ismail Erturk, Karel Williams, Sukhdev Johal, Julie Froud, And Adam Leaver** The Political Failure Of Crisis Management	**1.47**

	Nicholas Dorn Knowing Markets, Would Less Be More?	
5.5	**Legal Consciousness** **Chair Morag McDermont & David Cowan** **Sarah Hirons** Deaf Perspectives On Access To Justice: Utilising A Legal Consciousness Framework **Antonia Layard** Planning And Creative Acts Of Resistance	**1.48**
5.6	**Indigenous Rights And Minority Rights** **Chair Sarah Sargent** **Sarah Sargent** The Republic Of Lakotah And The Adequacy Of Reparation For Treaty Claims After The UN Declaration On The Rights Of Indigenous Peoples **James Roffee** You, Me, Unity And Engaging Australia To Say 'YES' To Constitutional Recognition Of Indigenous Australians: Too Little Too Late? **Radha D'Souza** United Nations Declaration On Rights Of Indigenous People And The Changing Context Of The UN **Elena Knyazeva** The Protection Of Linguistic Rights Of Indigenous Peoples Within The Russian Federation	**2.38**
5.7	**Mental Health And Mental Capacity Law** **Chair Peter Bartlett** **Leon McRae** The Personality Disorder Pathway Implementation Plan: Scope And (Potential) Implications **George Szmukler** Risk Assessment: Numbers, Values And Costs	**2.33**
5.8	**Conflict And Security** **Chair Fiona de Londres** **Imperialism, Colonialism And Conflict (Resolution?)** **Amin Sharifi Isaloo** The Role Of Powers Acting Against Security And Democracy Case Study: Persia (Iran) **Michelle Farrell** Who Are The Barbarians? Understanding Torture Through The Novel **Frederick Cowell** Anti-Imperialist Politics And The ICC: The Context Behind The Saga Of The Omar Al- Bashir Arrest Warrant	**2.31**

5.9	**Lawyers And Legal Professions** **Chair Andy Boon** **Kanstantsin Dzehtsiarou** Seconded Lawyers And Independence Of The European Court Of Human Rights **Penny Darbyshire** Sitting In Judgement: The Working Lives Of Judges-The Story Of The Research Project **Saskia Righarts** Legal Reform Efforts: What About The Role Of Litigants?	**2.34**
5.10	**Sentencing And Punishment** **Chair Gavin Dingwall** **Max Lowenstein** Understanding Riot Denunciation - Critically Comparing Judicial Commentary On State And Offender Blameworthiness **Paul Gavin** Mandatory Sentencing Of Dangerous Offenders **Gary Betts** Reconciling Proportionality With Crime Reduction In Sentencing For Theft: Lessons From An Empirical Investigation	**2.32**
5.11	**Systems Theories, Law And Society** **Chair Thomas Webb** **Julien Broquet** Structural Couplings And Evolution. The Ongoing Definition Of The European Economic Constitution **Jiří Přibáň** Sovereignty And Post-Sovereignty Studies: A Systems Theoretical Critique **Thomas Webb** Contingency, Contestability, And Constitutionalism	**2.41**
5.12	**Art, Culture And Heritage** **Chair Janet Ulph And Charlotte Woodhead** **Lucy Barnes** Localising Graffiti **James Maclean** The House That Jock Built: A Historical And Comparative Analysis Of The Relationship Between Institutional Architecture And Community Self-Understandings **Janet Ulph** Selling Our Heritage? Managing Collections In Museums In A Responsible And Sustainable Manner	**2.42**

5.13	**Exceptional States: International Economic Law In Times Of Crisis And Change** **Chair Celine Tan** **Barnali Choudury** Exceptions Provisions: A Conduit For Human Rights Issues In International Investment Agreements **James Harrison** Human Rights In The International Economic (IEL) Sphere: In Search Of A Transformational Discourse **Aurora Voiculescu** Lost In Transition? Human Rights And International Economic Law In Conversation **James Gallen** Financing Transition And Fragile States: The Role Of Odious Debt	**2.30**
5.14	**Challenging Ownership** **Chair Caroline Hunter** **Issues In Communal Property** **Helen Carr** Older Women's Co-Housing **Sarah Blandy** Individual Ownership And Collective Residential Space: Expectations And Experiences **Alison Clarke** Land Titling And Communal Property	**2.37**

Parallel Session 6 4 - 5.30pm

No	Session	Room
6.1	**Family Law** **Chair Anne Barlow And Liz Trinder** **Shared Parenting And Step-Parenting Issues** **Belinda Fehlberg And Christine Millward** Shared Parenting Time In Australia: Exploring Children's Experiences And Views **Liz Trinder** The Appliance Of Science? Socio-Legal Research And Family Law Policy-Making **Penelope Russell** Parental Responsibility: Step-Parent Perspectives	**1.49**
6.2	**Criminal Justice** **Chair Vanessa Bettinson** **Glenys Williams** Emotion In An Excusatory Neccessity "Defence" **Bruce Wardhaugh** Rethinking The "Controlling Mind": Has Vicarious Liability's Time Come? **Amy Croft** A Bark Worse Than Its Bite? An Examination Of The Law Relating To Dangerous Dogs-Past, Present And Future	**1.51**
6.3	**Gender, Sexuality And Law** **Chair Chris Ashford** **Anna Carline And Clare Gunby** Engendering Justice For Rape Complainants? Barristers' Perspectives On Investigations And The Counsel/Complainant Relationship **Sally Hines** Recognising Or Regulating Diversity? Law, Policy And Gender And Sexual Difference **Catherine Bewley** Speaking Out: Equal Access To Support And Justice For LGBTQ Survivors Of Sexual Violence	**1.50**
6.4	**Labour Law** **Chair Michael Jefferson** **Anne Daguerre** Wasting Away: Social Rights In 21st Century Britain **Liz Oliver** Rising To The Red Tape Challenge **Toni Schofield And Belinda Reeve** Prosecuting And Deterring OHS (Occupational Health & Safety) Offences In Australia: Inspectors, Regulatory Authorities And The New Public	**1.47**

	Management **Rani'u Sani Shatsari** Workers' Freedom Of Association, Collective Bargaining, And Labour Legislation In Nigeria: A Discourse On Legislative Conformity With The Ilo Conventions Nos. 87 And 98	
6.5	**Legal Consciousness: A Stocktake** **Chair Morag McDermont And David Cowan** **Sarah Blandy** Legal Consciousness And 'Common Parts': Residential Owners' Hopes, Experiences And Constitution Of The Law As Restricting / Irrelevant / Enabling, In Dealing With Collective Property Rights **Rosie Harding** Cause To Complain: Dementia, Healthcare Inequalities And Access To Justice **Jackie Gulland** Legal Capability And Legal Consciousness	**1.48**
6.6	**Indigenous Rights And Minority Rights** **Chair Sarah Sargent** **Titia Schippers And Titia Bos** Implementing Indigenous Land Rights In The Context Of International Law And Economic Interests **Al Hanisham Mohd Khalid** Globalising Indigenous And Local Communities Rights In Intellectual Property Rights: Shifting Paradigm In Developing Countries **Dorothee Cambou** Indigenous Rights In The Making: A Case Study Of The Saami People	**2.82**
6.7	**Chair TBC**	**2.40**
6.8	**Mental Health & Mental Capacity Law** **Chair Kathryn Mackay** **Katherine Ludwin & Geraldine Boyle** The Importance Of Social Location In Everyday Decision-Making: Gender, Dementia, And Everyday Decision-Making In Heterosexual Couples **Charlotte Emmett & Marie Poole** Assessing The Capacity Of Dementia Patients To Make Decisions About Where To Live On Discharge From Hospital: Comparing Practice With Legal Standards **Amanda Keeling** Psychiatrist's Conceptions Of Capacity	**2.31**
6.9	**Lawyers And Legal Professions**	**2.34**

	Chair Andy Boon **Alex Roy** Reserving Will Writing And Estate Administration **Maeve Hosier** For Better Or For Worse? Changes In The Regulation Of The Legal Profession In Bailed Out Ireland **Karen Noakes And Laura Holloway** Attitudes To Regulation And Compliance In Legal Services	
6.10	**Sentencing And Punishment** **Chair Gavin Dingwall** **Christine Piper** Physical Restraint Of Minors: Last Resort Or Punishment? **Sue Easton** Should Prisoners Be Allowed To Vote? **Aleksandra Jordanoska** Punishing The White-Collar Offender: The Prison Experience	**2.32**
6.11	**Systems Theories, Law And Society** **Chair Thomas Webb** **Oles Andrichuk** Exclusive Legal Positivism And Legal Autopoiesis: Towards A Theory Of Dialectical Positivism **Richard Nobles** How Law Constructs Time **Gary Wickham** Hobbes, Sovereignty, And The Rule Of Law	**2.41**
6.12	**Art Culture And Heritage** **Chair Janet Ulph And Charlotte Woodhead** **Penny English** Combating The Illicit Trade In Antiquities In Europe: The Need For Reform **Shea Esterling** A Right To The Repatriation Of Cultural Property: An Assessment Of Article 11 Of The United Nations Declaration Of The Rights Of Indigenous People **Andrzej Jakubowski** Human Rights, Cultural Heritage And The Limits Of State Immunity	**2.42**
6.13	**Exceptional States: International Economic Law In Times Of Crisis And Change** **Chair Donatella Alessandrini** **Sam Adelman**	**2.30**

	Norms, The Normal, Extremes, Exceptions And Climate Change **Celine Tan** Aiding Asymmetries: Interrogating The Problematic Relationship Between International Development Financing And International Financial Regulation **Radha D'Souza** Coming A Full Circle? Neo-Liberalism, The 'Land Question' And The Vanishing Imagination Of The Law **Patrick Ng'Ambi** The 2008 Windfall Tax And Its Impact On The Zambia's Investment Climate	
6.14	**Gender, Sexuality And Law** **Chair Alex Dymock** **Rachel Slater** Collective Violence: Securing Refugee Status For Female Refugees **Ronagh McQuigg** Domestic Violence, Feminism And International Human Rights Law **Charlotte Bishop** Not By Law Alone: A Critique Of English Law In Relation To Domestic Violence **Olugu Ukpai** Is The Law Useful In Abolishing The Practice Of Female Genital Cutting (FGC)? Evidence From Nigeria	**1.82**
6.15	**Conflict And Security – Round Table Session** **Chair Fiona de Londres** **Cian Murphy, Sofia Marques Da Silva,** EU Counter-Terrorist Finance In Law & Practice	**2.37**

Thursday 5th April 2012

Parallel Session 7 9.30-11.00am

No	Session	Room
7.1	**Family Law** **Chair Rosemary Hunter** **Legal Approaches To Forced Marriage** **Mavis Maclean** The Limitations Of Legislation In Family Law: The Case Of Forced Marriage **Anicée Van Engeland** Toward Criminalisation Of Forced Marriages In The UK: Is There An Alternative Solution? **Aisha Gill** Critique Of The Ideological Underpinnings Of The Policy Discourse On Forced Marriage In The UK	**1.49**
7.2	**Criminal Justice** **Chair Vanessa Bettinson** **Prosecuting Crimes** **Miranda Horvath And Jacqueline Gray** Multiple Perpetrator Rape In The Courtroom: An Exploratory Investigation **Vanessa Bettinson** Restraining Orders Following An Acquittal: Better Prosecutorial After Care In Domestic Violence Cases?	**1.51**
7.3	**Author Meets Reader Session** **Chair Chris Ashford** **HART / SLSA Prize Winner for Early Career Academic** **Prabha Kotiswaran** Dangerous Sex, Invisible Labour: Sex Work And The Law In India Discussants: Jane Scouler, Teela Sanders, And Anna Carline	**1.50**
7.4	**Law And Literature** **Chair Paul Bernal** **Camilla Barker** 'A Man Is Master Of His Liberty': Understanding Socio-Legal Structures In The Shakespearean Corpus **Noelle Higgins** Law And Literature In Early And Medieval Irish Society	**2.31**
7.5	**Indigenous Rights And Minority Rights** **Chair James Roffee**	**2.82**

	Minority And Indigenous Linguistic / Language Rights And Protection **Tawhida Ahmed** The EU, Diversity And Minority Rights: A Project In Construction? **Eric Jeanpierre** Now Is The Right Moment: Somaliland's Claim For Statehood	
7.6	**Mental Health And Mental Capacity Law** **Chair Amanda Keeling** **Joan Langan** Working With The Deprivation Of Liberty Safeguards - Their Impact Upon Care And Professional Practice **Kris Gledhill** The Filling Of The Bournewood Gap In England And Wales: Coercive Care And The Statutory Mechanisms In England And Wales **Kathryn Mackay** Exploring The Definition Of An Adult At Risk Under The Adult Support And Protection (Scotland) Act 2007	**2.33**
7.7	**Administrative Justice** **Chair Richard Kirkham And Trevor Buck** **Chris Monaghan** Coalition Government, The Spending Cuts And Accountability Under The UK Constitution **Sabine Carl** The Spread Of Prison Ombudsmen As A Product Of Cross -Fertilisation?	**2.39**
7.8	**Information Technology Law And Cyberspace** **Chair Mark O' Brien** **Brian Simpson** Sexting And The Child's Right To Play: The Uncomfortable Use Of Technology To Reconstruct Childhood **Maria Helen Murphy** The European Court Of Human Rights And Electronic Surveillance Cases: Choices Between Legality And Necessity **Anna Farmery** How Advancement In The Digitization Of Our Lives Is Challenging Legal And Ethical Frameworks	**2.38**
7.9	**Sentencing And Punishment** **Chair Gavin Dingwall** **Darren McStravick** Community And Restorative Justice: An Impossible Ideal? **Paul Sparrow** Drug Misusing Offenders And Community Sanctions: Opportunities Presented By A Therapeutic Jurisprudence Framework	**2.32**
7.10	**Systems Theories Law And Society**	**2.41**

	Chair Thomas Webb **Annika Newnham** Accommodating Power Within The Autopoietic Theory Framework **Christine Ocran** The Trokosi Practice In Ghana: A Form Of Law? **Sarah Sargent** Systems Theory And Critical Race Theory: Research Strategies For Transracial Adoption	
7.11	**Art, Culture And Heritage** **Chair Janet Ulph And Charlotte Woodhead** **Alessandro Chechi** Reflections On The Establishment Of An International Court For The Settlement Of Cultural Heritage Disputes **Carolyn Shelbourn** Digging The Dead: Regulation And Research, Some Ethical And Legal Questions **Charlotte Woodhead** Nazi Era Claims For Cultural Objects And Their Place Within Cultural Property/Cultural Heritage Law	**2.42**
7.12	**Shifting Paradigms In Publicly Funded Justice** **Chair James Sandbach** **Hilary Sommerlad** Access To Justice And The Big Society: Rising Need, Individual Responsibilisation And The Commercialisation Of The Voluntary Sector **Catrina Denvir** Access To Justice Online? The Policy, Practice And Pitfalls Of Resolving Civil Justice Problems Using The Internet	**1.47**

Parallel Session 8 11.30-1.00pm

No	Session	Room
8.1	**Family Law** **Chair Anne Barlow** **Families, Inheritance And Violence – International And Definitional Issues** **Rebecca Badejogbin** Attendant Problems Associated With Testamentary Dispositions To Family Members And Dependants In Nigeria **Natalie Ohana-Eavy** The Legal Definition Of Domestic Violence Against Women: Method Of Analysis **Ronagh McQuigg** Domestic Violence And The Inter-American Commission On Human Rights *Jessica Lenahan (Gonzales) V United States*	**1.49**
8.2	**Gender Sexuality And Law** **Parallel Session 3** **Chair Stine Joergensen** **Kirsten Ketscher** The Au Pair Concept: A Systemic Discrimination And Exploitation Of Women? **Mette Hartlev** Au-Pairs – Health Care Needs And Rights **Catherine Jacqueson** Au Pairs, Free Movement And EU Law **Marta Carneiro** Au Pairs In Portugal **Stine Joergensen** Children, Au Pairs And Gender	**1.48**
8.3	**Gender, Sexuality And Law** **Chair Chris Ashford** **Lucy Yeatman** Let Them Drink Cocktails: A Paper To Explore Some Of The Themes Emerging In The World-Wide Campaign For Lesbian, Gay, Bisexual And Transgender Equality. **Gary Mclachlan** The Consequences Of Bad Blood Law For Sexual Minorities: The Flawed Legal Reasons For The Operation Of The Blood Ban Against Men Who Have Sex With Men **Chris Ashford** No Sex Please, We're Homosexuals: The (Homo)Normative And Future Directions In Law Reform	**1.50**
8.4	**Shifting Paradigms In Publicly Funded Justice**	**1.47**

	Chair James Sandbach **James Sandbach** Adviceonomics - Is There Such A Thing? **Bryan Clark** The Place Of Mediation In Civil Justice	
8.5	**Mental Health And Mental Capacity Law** **Chair Ralph Sandland** **Nell Munro** Is Litigation Based Upon The Human Rights Act Helping Improve Standards In Health And Social Care? **Peter Bartlett** Re-Thinking The DOLS: What Are They Actually For?	**2.33**
8.6	**Administrative Justice** **Chair Richard Kirkham And Trevor Buck** **Beth Gaze And Belinda Fehlberg** Is The Australian Social Security Appeals Tribunal 'Coherent, Independent And User Friendly'? Experiences Of Appellants **Marc Hertogh** Why The Ombudsman Does Not Promote Public Trust In Government: Lessons From The Low Countries **Jackie Gulland** The Necessity Of Questioning The Doctor's Certificate: Medical And Other Evidence In Decision Making About Claims For Sickness Benefit In The Early 20th Century	**2.39**
8.7	**Sentencing And Punishment** **Chair Gavin Dingwall** **Vanessa Bettinson And Gavin Dingwall** Do Generic Sentencing Aims Result In Optimised Outcomes In Domestic Violence Cases? **Belinda Reeve** The Role Of The Judiciary In OHS Prosecutions: Institutional Processes And The Production Of Deterrence	**2.32**
8.8	**Law And Literature** **Chair Julia Shaw** **James Roffee** Misconceptions Of 'The' Imperial Airways: Literary Falsehoods Of Colonial Domination **Rob Herian** How Long Do You Intend To Stay? Language Meets Proscription In The Subject In Henry Miller's "Via Dieppe-Newhaven" **Paul Bernal**	**2.30**

	Privacy….And The Phantom Tollbooth	
8.9	**Criminal Justice** **Chair Amy Croft** **Yvonne Daly** Exclusion And Equity: The Bother Of Balance **Fabian Zhilla** The Nexus Of Albanian Organised Crime And Italian Mafia **Lucy Stackpool Moore** The Intention May Not Be Cruel And Inhumane, But The Impact May Be: Stigma And The Proposed HIV Legislation In Malawi	**2.41**
8.10	**Renewable Energy** **Chair Jona Razzaque** **Engobo Emeseh** Sustainable Partnerships For Renewable Energy Projects In The Developing World: Re-Evaluating The Common But Differentiated Responsibilities Principle In A Changing World **Jo Goodie** Making And Mobilising The Legal Personae Of The Climate Change Litigant	**2.31**
8.11	**Sports Law** **Chair Ben Livings** **Jamie Fletcher** Is Anything Fair About UEFA's Fair Play Regulations? **Jamie Grace** Violence, Masculinity And Playful Deviance: The Dark Secret Of Offences Against The Person Within The Backspaces Of Amateur Men's Rugby Union **Seàn O' Conaill** Football Administration And The Law: Is Football Above The Law?	**2.42**

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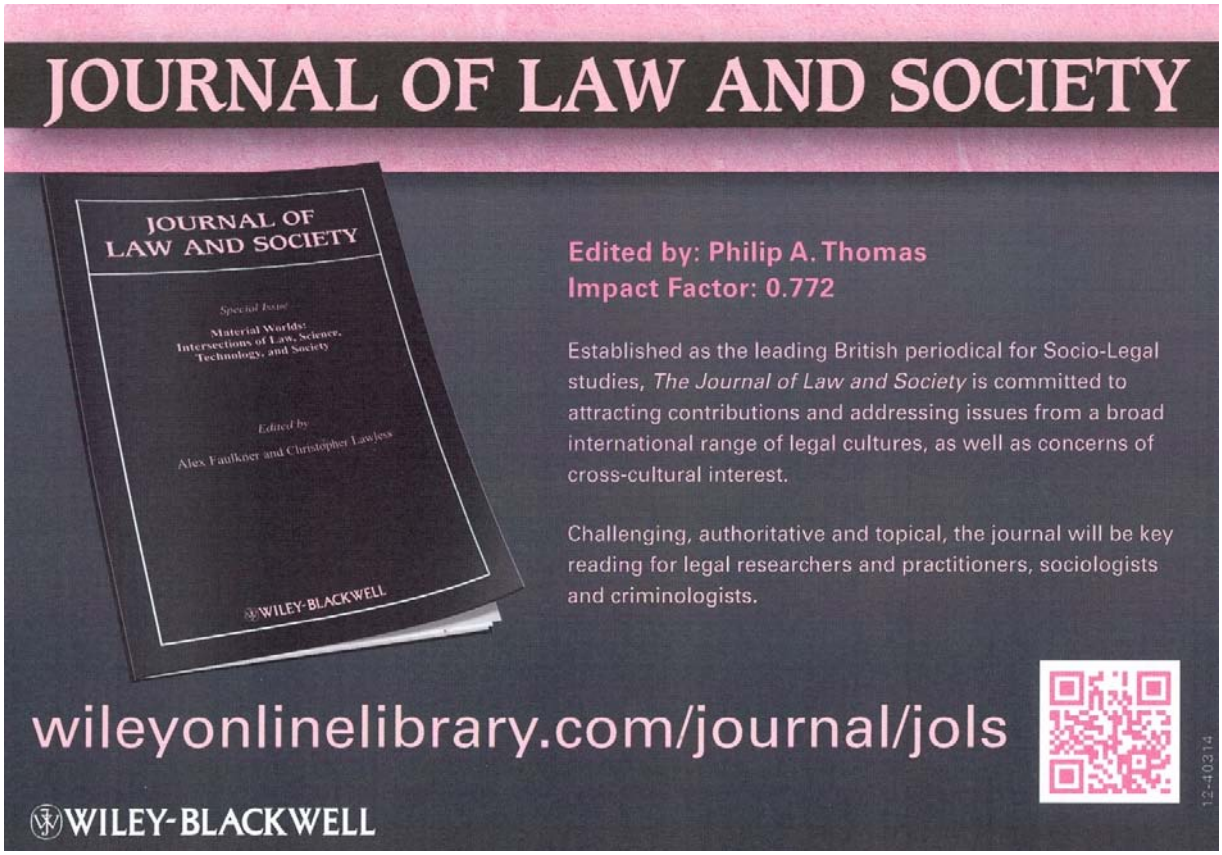

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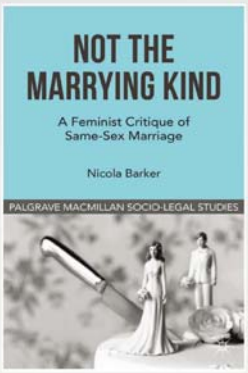

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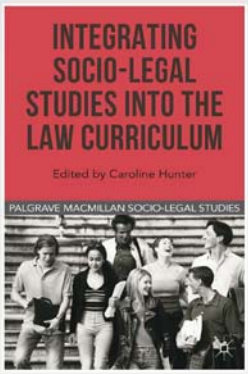

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Misconceptions of 'the' Imperial Airways: Literary Falsehoods of Colonial Domination	James Roffee	Monash University Melbourne	james.roffee@monash.edu	8.8	2.30
Law And Literature In Early And Medieval Irish Society	Noelle Higgins	Dublin City University	noelle.higgins@dcu.ie	7.4	2.31

Privacy...and the Phantom Tollbooth	Paul Bernal	UEA Law School	paul.bernal@uea.ac.uk	8.8	2.30
How Long Do You Intend to Stay? Language Meets Proscription in the Subject in Henry Miller's "Via Dieppe-Newhaven"	Rob Herian	Birkbeck College	r.herian@bbk.ac.uk	8.8	2.30
Legal Education	**Tony Bradney and Fiona Cownie / Keele**				
Time Sheets and Appraisals: Neo-Liberal Politics and Academic Culture	Anthony Bradney	Keele University	a.bradney@law.keele.ac.uk	4.13	1.82
Exploring Legal Skills	Fiona Cownie	Keele University	f.cownie@law.keele.ac.uk	2.10	1.82
The European Higher Education Area and a Liberal Legal Education:Making It Work	Jessica Guth	Bradford	j.guth@bradford.ac.uk	4.13	1.82
Ensuring a Multicultural Educational Experience in Legal Education: Start With the Legal Writing Classroom	Johanna Dennis	Southern University Law Center, LA, USA	jdennis@sulc.edu	3.10	1.82
Crime and Problem Solving	Kim Everett and Opi Outhwaite	University of Greenwich	K.Everett@greenwich.ac.uk O.M.Outhwaite@greenwich.ac.uk	1.9	1.82
Creating an Active Learning Environment in the Lecture Theatre	Lucy Yeatman	University of Greenwich	l.b.yeatman@gre.ac.uk	2.10	1.82
The Introduction of Clinical Legal Education into the Nigerian Law School: Prospects and Challenges	Mercy Emetejife Onoriode	Nigerian Law School, Abuja Nigeria	jilonoriode@yahoo.com	1.9	1.82
Reflecting on four years of teaching advocacy to students at the University of Hertfordshire	Nicola Monaghan and Neal Geach	University of Hertfordshire	n.monaghan@herts.ac.uk and n.geach@herts.ac.uk	1.9	1.82
Use of E Learning As Part of a Blended Learning Approach Within Undergraduate Teaching: Investigating the Postgraduate Teacher's Experience	Sharifah Rahma Sekalala	University of Warwick	Sharifah.Sekalala@warwick.ac.uk	3.10	1.82
Lawyers and Legal Professions	**Andy Boon / Westminster**				
Reserving Will Writing and Estate Administration	Alex Roy	Legal Services Board	Alex.Roy@legalservicesboard.org.uk	6.9	2.34
Disciplinary Procedures Of The Legal Profession In England And Wales	Andy Boon	Westminster University	a.boon@westminster.ac.uk	2.14	2.30
Seconded Lawyers and Independence of the European Court of Human Rights	Kanstantsin Dzehtsiarou	Surrey	k.dzehtsiarou@surrey.ac.uk	5.9	2.34
Attitudes To Regulation And Compliance In Legal Services:What Motivates Legal Services Firms To Comply With Regulation?	Karen Nokes and Laura Holloway	Solicitors Regulation Authority	laura.holloway@sra.org.uk	6.9	2.34

The Triangle of Misery: the Changing Nature of Legal Aid Funding and the Impact on Solicitor Morale and Access to Justice in the Asylum Process	Katie Farrell	University of Glasgow	c.farrell.1@research.gla.ac.uk	4.8	2.34
For Better or For Worse? Changes in the Regulation of the Legal Profession in Bailed Out Ireland	Maeve Hosier	NUI Galway	maeve.hosier@nuig.ie	6.9	2.34
Implied Compulsory Mediation	Masood Ahmed	Birmingham City University	masood.ahmed@bcu.ac.uk	4.8	2.34
Select Sets: A Quantitative Study in Diversity and Career Progression at the English Bar	Michael Blackwell	London School of Economics and Political Science	m.c.blackwell@lse.ac.uk	2.14	2.30
Sitting In Judgement: The Working Lives of Judges – The Story Of The Research Project	Penny Darbyshire	Kingston	P.Darbyshire@kingston.ac.uk	5.9	2.34
How Can You Measure Professional Legal Ethics?	Richard Moorhead,Victoria Hinchly, Christine Parker, Soren Holm And David Kershaw	Cardiff University	MoorheadR@cardiff.ac.uk	4.8	2.34
Legal Reform Efforts: What About the Role of Litigants?	Saskia Righarts	University of Otago, New Zealand	saskia.righarts@otago.ac.nz	5.9	2.34
Medical Law and Ethics	**Glenys Williams / Aberystwyth**				
Can 'Best Interests' Justify Child Participation in Medical Research	Amber Dar	University of Manchester	ambar.dar@manchester.ac.uk	3.5	1.48
Intention, Foresight and Ending Life: A Reply to Foster, Herring, Melham and Hope	Andrew McGee	QUT, Australia	a.mcgee@qut.edu.au	1.4	1.48
"Robert Jay Lifton, The Nazi Doctors: Medical Killing And The Psychology Of Genocide" (A Critical Review)	Camilla Barker		camillabarker1@gmail.com	1.4	1.48
The Development of the Best Interests Standard in Respect of End of Life Decision Making for Neonates and Young Children	Caroline Somers		csomers1@eircom.net	3.5	1.48
Should Ethics Matter? The Regulation of Embryonic Stem Cell Research and the Influence of Ethics	Ciara Staunton	NUI Galway	ciara.staunton@gmail.com	4.5	1.48
Action-The Fulcrum Upon Which Respect for Autonomy Rests	Jennifer Edwards	Aberyswyth university	jje07@aber.ac.uk	1.4	1.48
Identifying an Appropriate Definition of Death	John Lombard	University College Cork	john.c.lombard@gmail.com	1.4	1.48
Relational Autonomy and Caesarean Section Refusal: Building a Framework for Decision-Making in Ireland	Katherine Wade	University College Cork	110221760@umail.ucc.ie	3.5	1.48

The Police, the NHS and the Privacy of Patients, A Consideration of Police Use of s29 of the Data Protection Act 1998	Lisa Dickson	University of Kent	L.M.Dickson@kent.ac.uk	2.5	1.48
Exploring Health Care Services Users - Access to Justice in Burkina Faso: Facts and Thoughts about the Moral Organisation of Clinical Practice	Natewinde Sawadogo	University of Nottingham	natewinde.sawadogo@yahoo.fr	2.5	1.48
Research Biobanks and Consent: Time for a More Participant Driven Model	Ruth Saunders	QMUL	r.saunders@qmul.ac.uk	4.5	1.48
No Donor is an Island: Law's Role in Supporting Society to Improve Organ Donation	Sarah Fulham-McQuillan	Trinity College Dublin	fulhamms@tcd.ie	4.5	1.48
The Dominance of Policy in Medical Negligence Causation: Society's Influence or an Influence on Society	Sarah Fulham-McQuillan	Trinity College Dublin	fulhamms@tcd.ie	2.5	1.48
Are the HFEA's Policies on Compensating Egg Donors and Egg Sharers Defensible?	Stephen Wilkinson	Keele University	s.wilkinson@peak.keele.ac.uk	4.5	1.48
Regulation of the Medical Profession: Creating Serial Killers and Sex Offenders	Wendy Hesketh	University of Ulster	wendyhesketh@blueyonder.co.uk	2.5	1.48
Mental Health and Mental Capacity	**Peter Bartlett & Nell Munro / Nottingham**				
Psychiatrist's Conceptions Of Capacity	Amanda Keeling	Nottingham	llxak31@nottingham.ac.uk	6.8	2.31
Assessing the Capacity of Dementia Patients to Make Decisions About Where to Live on Discharge from Hospital: Comparing Practice with Legal Standards	Charlotte Emmett & Marie Poole	Northumbria	charlotte.emmett@nortumbria.ac.uk	6.8	2.31
Mental Health Homicide Tragedies: Political Risks and Legal Solutions	David Horton	Manchester	david.horton-2@postgrad.manchester.ac.uk	2.7	2.33
Law Commission's Insanity And Automatism Project	David Ormerod	Law Commission	David.ormerod@lawcommission.gsi.gov.uk	3.2	1.51
Risk Assessment: Numbers, Values and Costs	George Szmukler	KCL	george.szmukler@kcl.ac.uk	5.7	2.33
Accessing NHS Patients Records Online: Brave New World of Patient Choice or a Poisoned Chalice for Mental Health Care?	Jean McHale	Birmingham City University	j.v.mchale@bham.ac.uk	4.7	2.33
A New Model in Irish Mental Health Law?	Jennifer Brown	Dublin City University	jennifer.brown3@mail.dcu.ie	1.6	2.33
Working With the Deprivation of Liberty Safeguards - Their Impact Upon Care and Professional Practice	Joan Langan	Bristol University	j.langan@bristol.ac.uk	7.6	2.33
The Upper Tribunal – A Source Of Protection For Detained Patients?	John Horne	Northumbria	john.horne@northumbria.ac.uk	1.6	2.33
Press Reports of Parasomnias	John Rumbold	Keele University	j.rumbold@ilpj.keele.ac.uk	2.7	2.33

The Importance of Social Location in Everyday Decision Making: Gender, Dementia, and Everyday Decision Making in Heterosexual Couples	Katherine Ludwin and Geraldine Boyle	University of Bradford	k.ludwin@bradford.ac.uk	6.8	2.31
Exploring the Definition of an Adult at Risk under the Adult Support and Protection (Scotland) Act 2007	Katherine Mackay	Stirling	k.j.mackay@stir.ac.uk	7.6	2.33
The Filling of the Bournewood Gap in England and Wales: Coercive Care and the Statutory Mechanisms in England and Wales	Kris Gledhill		krisgledhill@aol.co.uk	7.6	2.33
The Personality Disorder Pathway Implementation Plan: Scope and (Potential) Implications	Leon McRae	Birmingham City University	l.mcrae@bham.ac.uk	5.7	2.33
Challenges and Changes at the Intersection of Criminal Law and Mental Health in Ireland	Louise Kennefick	National University of Ireland Maynooth	Louise.Kennefick@nuim.ie	3.2	1.51
Is Litigation Based Upon The Human Rights Act Helping Improve Standards in Health And Social Care?	Nell Munro	Nottingham	nell.munro@nottingham.ac.uk	8.5	2.33
Re-Thinking the DOLS: What are they actually for?	Peter Bartlett	Nottingham	peter.bartlett@nottingham.ac.uk	8.5	2.33
Sex and the Idiot Girl, 1846-1885	Ralph Sandland	Nottingham	ralph.sandland@nottingham.ac.uk	2.7	2.33
Insanity Defences in Great Britain	Ronnie Mackay	DMU	rdm@dmu.ac.uk	3.2	1.51
Safeguarding from Harm or Safeguarding Rights?	Susan Watson and Jacob Daly	Kingston University	susan.watson@kingston.ac.uk	1.6	2.33
"Vulnerable Persons"-Capacity to Consent and the Medicalisation of Research Ethics Committees	Tehseen Noorani and Morag McDermont and Andrew Charlesworth	Bristol University	morag.mcdermont@bristol.ac.uk	4.7	2.33
Policies, Politics and Theories of Financial Market Regulation	**Nicholas Dorn / Erasmus University Rotterdam**				
Responses to the Eurozone Crisis: The role of ideas in economic policy formation	Ioannis Glinavos	Reading University	i.glinavos@reading.ac.uk	5.4	1.47
The Poliitical Failure of Crisis Management	Ismail Erturk, Karel Williams, Sukhdev Johal, Julie Froud		ismail.erturk@mbs.ac.uk	5.4	1.47
Knowing Markets, Would Less Be More?	Nicholas Dorn	Erasmus School of Law, Rotterdam	dorn@law.eur.nl	5.4	1.47
Race, Religion and Human Rights					

Negotiating the Hyphen: Human Rights Culture and What it Means to Young British Muslims	Lieve Gies	University of Leicester	lg149@le.ac.uk	1.5	2.34
From Protecting Vulnerability to Promoting Self Sufficiency: The Interplay between Human Rights Protection and Neoliberalism in the Iraqi Refugee Resettlement Program	Perveen Ali	London School of Economics and Political Science	p.r.ali@lse.ac.uk	1.5	2.34
Women Challenging South African Law	Reem Mohamed	SOAS, University of London	reemwael@gmail.com	2.4	2.41
Exclusion From Regugee Status; Asylum Seekers And Terrorism In The UK	Sarah Singer	Queen Mary University, London	s.r.singer@qmul.ac.uk	2.4	2.41
Renewable Energy	**Jona Razzaque**				
Sustainable Partnerships for Renewable Energy Projects in the Developing World: Re-evaluating the Common but Differentiated Responsibilities Principle in a Changing World	Engobo Emeseh	Aberyswyth University	ege@aber.ac.uk	8.10	2.31
Making and Mobilising the Legal Personae of the Climate Change Litigant	Jo Goodie & Barbara Evers	University of Murdoch	J.Goodie@murdoch.edu.au	8.10	2.31
Sentencing and Punishment	**Gavin Dingwall / DMU**				
Punishing the White-Collar Offender: the Prison Experience	Aleksandra Jordanoska	University of London	a.jordanoska@qmul.ac.uk	6.10	2.32
The Role Of The Judiciary In OHS Prosecutions: Institutional Processes And The Production Of Deterrence	Belinda Reeve	University of Sydney	bhreeve@uni.sydney.edu.au	8.7	2.32
Physical Restraint of Minors: Last Resort or Punishment?	Christine Piper	Brunel University	christine.piper@brunel.ac.uk	6.10	2.32
Community and Restorative Justice: An Impossible Ideal?	Darren McStravick	Dublin City University	darren.mcstravick2@mail.dcu.ie	7.9	2.32
Reconciling Proportionality with Crime Reduction in Sentencing for Theft: Lessons from an Empirical Investigation	Gary Betts	Coventry University	g.betts@coventry.ac.uk	5.10	2.32
Understanding Riot Denunciation - Critically Comparing Judicial Commentary on State and Offender Blameworthiness	Max Lowenstein	Bournemouth University	mlowenstein@bournemouth.ac.uk	5.10	2.32
Mandatory Sentencing of Dangerous Offenders	Paul Gavin	KCL	paul.p.gavin@kcl.ac.uk	5.10	2.32
Drug Misusing Offenders and Community Sanctions: Opportunities Presented by a Therapeutic Jurisprudence Framework	Paul Sparrow	University of Wolverhampton	paull.sparrow@wlv.ac.uk	7.9	2.32
Should Prisoners Be Allowed To Vote?	Susan Easton	Brunel University	s.easton@brunel.ac.uk	6.10	2.32

Do Generic Sentencing Aims Result in Optimised Outcomes in Domestic Violence Cases?	Vanessa Bettinson and Gavin Dingwall	De Montfort University	vbettinson@dmu.ac.uk	8.7	2.32
Shifting Paradigms in Publicly Funded Justice	**James Sandbach / Citizens Advice**				
The Place of Mediation in Civil Justice	Bryan Clark	Strathclyde University	bryan.clark@strath.ac.uk	8.4	1.47
Access to Justice Online? The Policy, Practice and Pitfalls of Resolving Civil Justice Problems Using the Internet	Catrina Denvir	LSRC	catrina.denvir.10@ucl.ac.uk	7.12	1.47
Access to Justice and the Big Society: Rising Need, Individual Responsibilisation and the Commercialisation of the Voluntary Sector	Hilary Sommerlad	University of Leicester	hilary.sommerlad@le.ac.uk	7.12	1.47
Adviceonomics - Is There Such a Thing?	James Sandbach	CAB	James.Sandbach@citizensadvice.org.uk	8.4	1.47
Sports Law	**Ben Livings /Sunderland**				
Is Anything Fair About UEFA's Fair Play Regulations?	Jamie Fletcher	University of Surrey	Jamie.Fletcher@surrey.ac.uk	8.11	2.42
Violence, Masculinity and Playful Deviance: The 'Dark Secret' of Offences Against the Person Within The Backspaces of Amateur Men's Rugby Union	Jamie Grace, Sarah Pemberton, Sam King,. Helen Clarke	University of Derby	j.grace@derby.ac.uk	8.11	2.42
Football Administration and the Law; Is Football Above The Law?	Sean O' Conaill	University College Cork	s.oconaill@ucc.ie	8.11	2.42
Systems Theories, Law and Society: Critical Perspectives and Novel Applications	**Thomas Webb / Lancaster**				
The Anthropological Roots of Social Systems Theory	Alberto Febbrajo	University of Macerata, Italy	febbrajo@unimc.it	3.13	2.41
Accommodating Power within the Autopoietic Theory Framework	Annika Newnham	University of Portsmouth	Annika.newnham@port.ac.uk	7.10	2.41
The Trokosi Practice in Ghana: A Form of Law?	Christine Ocran	University of East London	c.ocran@uel.ac.uk	7.10	2.41
Hobbes, Sovereignty and the Rule of Law	Gary Wickham	Murdoch University	G.Wickham@murdoch.edu.au	6.11	2.41
Sovereignty and Post Sovereignty Studies: A Systems Theorectical Critique	Jiri Priban	Cardiff University	Priban@cardiff.ac.uk	5.11	2.41
Structual Couplings and Evolution. The Ongoing Definition of the European Economic Constitution	Julien Broquet	Universite de Picardie Jules Verne, Criisea, France	julien.broquet@u-picardie.fr	5.11	2.41

Exclusive Legal Positivism and Legal Autopoiesis: Towards a Theory of Dialectical Positivism	Oles Andrichuk	University of East Anglia	O.Andriychuk@uea.ac.uk	6.11	2.41
A Social Systems Explanation for the Racial Effect of the Section 44 Counter-Terror Stop and Search Powers	Rachel Herron	Durham University	r.c.herron@durham.ac.uk	3.13	2.41
An Empirical Study of the Relationship Between Law and Community Against the Backdrop of the London Riots	Reza Banaker	Westminster University	R.Banakar@westminster.ac.uk	3.13	2.41
How Law Constructs Time	Richard Nobles	Queen Mary, University of London	r.nobles@qmul.ac.uk	6.11	2.41
Systems Theory and Critical Race Theory: Research Strategies for Transracial Adoption	Sarah Sargent	University of Buckingham	sarah.sargent@buckingham.ac.uk	7.10	2.41
Contingency, Contestability and Constitutionalism	Thomas Webb	Lancaster University	t.webb@lancaster.ac.uk	5.11	2.41
ROUND TABLE DISCUSSIONS					
Round Table Discussion	**Simon Flacks / Vienna**				
The Spectre of Interdisciplinarity: Reflections on Socio-Legal Research	Simon Flacks and Andrea Fritsche	University of Vienna	simon.flacks@univie.ac.at	1.12	2.41
Round Table Discussion	**Duncan French / Sheffield University**				
Exploring the Legal and Criminological Implications of Climate Change	Duncan French	Lincoln University	dfrench@lincoln.ac.uk	1.15	2.32
Round Table Discussion	**ESRC Panel Research Funding**				
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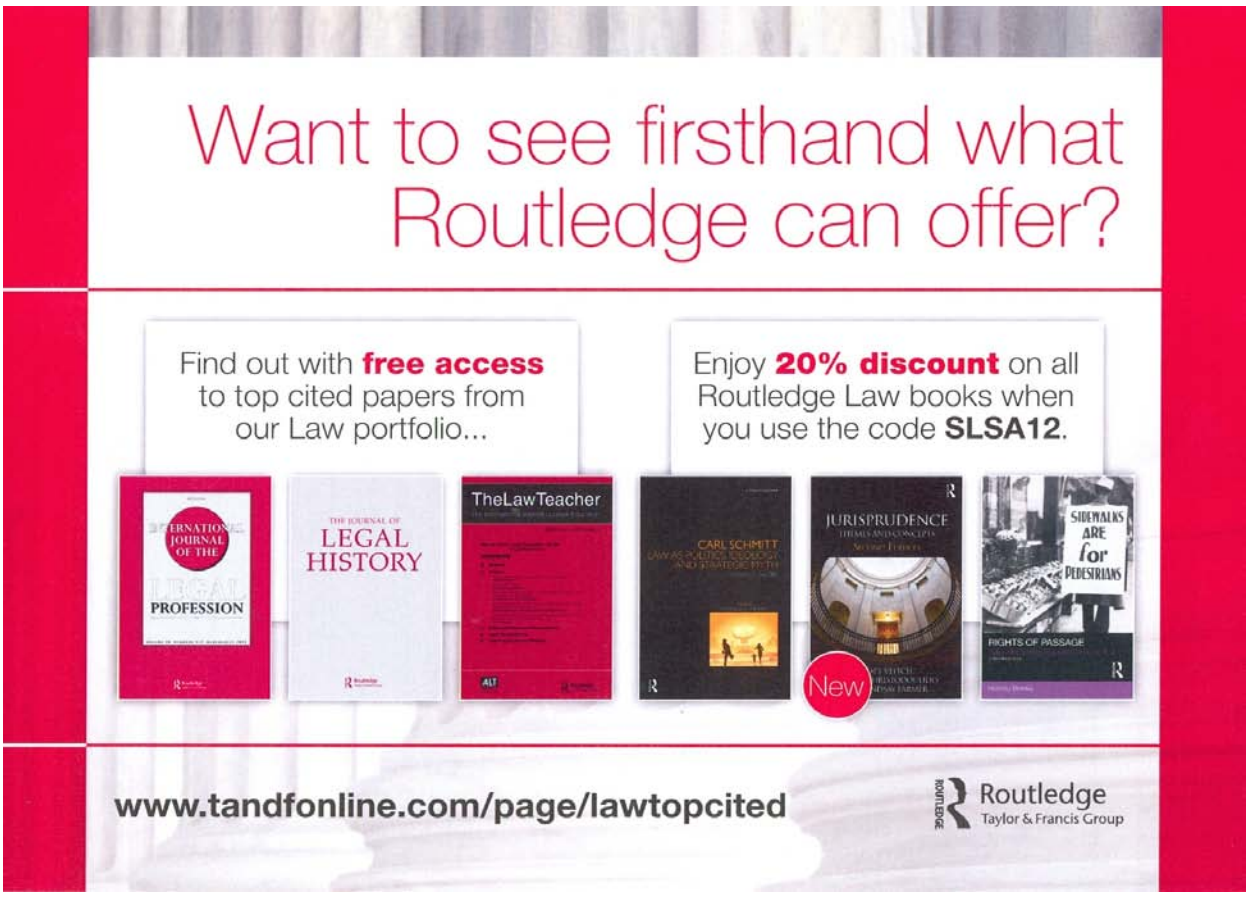
THEMES			-		
Art, Culture and Heritage	**Janet Ulph / Leicester & Charlotte Woodhead / Warwick**				
Reflections on the Establishment of an International Court for the Settlement of Cultural Heritage Disputes	Alessandro Chechi	Geneva	alessandro.checi@unige.ch	7.11	2.42
Human Rights, Cultural Heritage and the Limits of State Immunity	Andrzej Jakubowski	Warsaw University	andrzej.jakubowski@eui.eu	6.12	2.42

Digging the Dead: Regulation and Research, Some Ethical and Legal Questions	Carolyn Shelbourn	Sheffield	c.shelbourn@sheffield.ac.uk	7.11	2.42
Nazi Era Claims for Cultural Objects And Their Place Within Cultural Property/Cultural Heritage Law	Charlotte Woodhead	Warwick	c.c.woodhead@warwick.ac.uk	7.11	2.42
The House that Jock Built: A historical and comparative analysis of the relationship between institutional architecture and community self-understandings	James MacLean	Southampton	j.maclean@soton.ac.uk	5.12	2.42
Selling Our Heritage? Managing Collections In Museums in a Responsible and sustainable Manner	Janet Ulph	University of Leicester	ju13@leicester.ac.uk	5.12	2.42
Localising Graffiti	Lucy Barnes	Kingston	L.Barnes@kingston.ac.uk	5.12	2.42
Combating The Illicit Trade in Antiquities in Europe: The Need for Reform	Penny English	Anglia Ruskin University	penny.english@anglia.ac.uk	6.12	2.42
A Right to the Repatriation of Cultural Property: An Assessment of Article 11 of the United Nations Declaration of the Rights of Indigenous People	Shea Esterling	Aberystwith	see@aber.ac.uk	6.12	2.42
Exceptional States: International Economic Law in Times of Crisis and Change	**Celine Tan / Warwick & Amanda Perry-Kessaris / SOAS University of London**				
Gender Justice in a Global Market	Ann Stewart	University of Warwick	a.stewart@warwick.ac.uk	4.10	2.30
Lost in Transition? Human Rights and International Economic Law in Conversation	Aurora Voiculescu	Westminster University	a.voiculescu@westminster.ac.uk	5.13	2.30
Exceptions Provisions - A Conduit for Human Rights Issues in International Investment Agreements	Barnali Choudhury	Queen Mary University	b.choudhury@qmul.ac.uk	5.13	2.30
Aiding Asymmetries: Interrogating the Problematic Relationship Between International Development Financing and International Financial Regulation	Celine Tan	University of Warwick	celine.tan@warwick.ac.uk	6.13	2.30
Multilateral Trade in a Time of Crisis	Donetella Alessandrini	Kent	d.alessandrini@kent.ac.uk[1]	4.10	2.30
Exporting Legality to Developing Countries through Market Relationships: The European FLEGT Program	Errol Meidinger	State University, Buffalo, New York	eemeid@acsu.buffalo.edu	4.10	2.30
Contested Reconceptualisations of State Sovereignty Under Conditions of Economic Crisis and Change	George Meszaros	University of Warwick	G.A.Meszaros@warwick.ac.uk	3.12	2.30
Financing Transition and Fragile States: The Role of Odious Debt	James Gallen	Dublin Institute of Technology		5.13	2.30
Human Rights in the International Economic (IEL) Sphere: In Search of A Transformational Discourse	James Harrison	University of Warwick	j.harrison.3@warwick.ac.uk	5.13	2.30

Using Indicators to Measure Transnational Governance Responses in Light of the Global Economic Crisis	Mary Footer	University of Nottingham	mary.footer@nottingham.ac.uk	3.12	2.30
Je t'accuse: The Fault of Law in Economic Crisis	Michelle Everson	Birkbeck College	m.everson@bbk.ac.uk	3.12	2.30
The Force of International Economic Law and Africa: A Concept of Foreign Direct Investment-Oriented Development	Priscilla Schwartz	University of Leicester	priscilla.schwartz@le.ac.uk	4.10	2.30
Coming A Full Circle? Neo-Liberalism, The 'Land Question' And The Vanishing Imagination Of The Law	Radha D'Souza	University of Westminster		6.13	2.30
Norms, The Normal, Extremes, Exceptions and Climate Change	Sam Adelman	University of Warwick		6.13	2.30
The 2008 Windfall Tax and Its Impact on the Zambia's Investment Climate	Sangwani Patrick Ng'ambi	Cornell University	spn26@cornell.edu	6.13	2.30
Implications of the Financial Crisis for Multilateral Treaty Practice	Thomas McInerney	IDLO, International Development Law Organisation	?	3.12	2.30
Legal Consciousness: A Stocktake	**Morag McDermont & David Cowan / Bristol**				
Planning and Creative Acts of Resistance	Antonia Layard	Cardiff University	LayardA@cardiff.ac.uk	5.5	1.48
Legal Capability and Legal Consciousness	Jackie Gulland	University of Stirling	jackie.gulland@stir.ac.uk	6.5	1.48
Analyzing the Legitimacy of the Dutch Justice System: From Public Confidence to Legal Consciousness	Marc Hertogh	University of Groningen, The Netherlands	m.l.m.Hertogh@rug.nl	3.9	2.32
Cause to Complain: Dementia, Healthcare Inequalities and Access to Justice	Rosie Harding, Elizabeth Peel	Keele University	r.harding@law.keele.ac.uk	6.5	1.48
Legal Consciousness and 'Common Parts': Residential Owners' Hopes, Experiences and Constitution of the Law as Restricting / Irrelevant / Enabling, in Dealing with Collective Property Rights	Sarah Blandy	Leeds University	s.blandy@leeds.ac.uk	6.5	1.48
Deaf Perspectives on Access to Justice: Utilising A Legal Consciousness Framework	Sarah Hirons	Bristol University	sarah.hirons@bristol.ac.uk	5.5	1.48
Legal Consciousness and Cultural Theory	Simon Halliday and Bronwen Morgan	York	simon.halliday@york.ac.uk	3.9	2.32
Law & Democracy	**Antonios Platsas / Derby**				
The Ideal Of Democratic Law	Antonios Platsas	Derby	a.platsas@derby.ac.uk	4.12	2.32
Does International Law Enshrine A Right To Democracy	Sofia Cavandoli	Aberwystwyth University	sfc.aber.ac.uk	4.12	2.32
AUTHOR MEETS READER SESSION					

Author Meets Reader Session HART/SLSA Book Prize Winner					
Chair Rosemary Hunter An Unfortunate Coincidence: Jews, Jewishness And English Law Panel Members Anastasia Vakulenko, Tony Bradney and Beth Gaze	Didi Herman	Kent	D.Herman@kent.ac.uk	2.6	2.34
Chair Penny English Antonia Layard Pedestrian Logic And The Occupy Litigation: A Brief Note On Nick Blomley's 'Rights Of Passage' Nicholas Blomley Rights Of Passage: Sidewalks And The Regulation of Public Flow	Nicholas Bromley	Simon Fraser University, Canada	blomley@sfu.ca	4.14	2.37
Author Meets Reader Session HART / SLSA Book Prize Winner					
Chair Andy Boon "What Did the Lawyers Do During the 'War'? Neutrality, Conflict and the Culture of Quietism" Modern Law Review (2011) 74 (3), pp. 350-384.	Kieron McEvoy	QUB	k.mcevoy@qub.ac.uk	3.8	2.31
Author Meets Reader Session HART / SLSA Prize For Early Career Academics					
Chair Chris Ashford Dangerous Sex, Invisible Labour: Sex Work And The Law in India Discussants: Jane Scouler, Teela Sanders, Anna Carline	Prabha Kotiswaran	SOAS, University of London	pk5@soas.ac.uk	7.3	1.50
Making Rights A Reality? Disability Rights Activists and Legal Mobilization Discussants: Didi Herman, Rosie Harding	Lisa Vanhala	UCL	vanhala@ucl.ac.uk	3.14	2.42

Routledge, Taylor and Francis



Abstract Details

(alphabetical by surname)

Adekile, Oluwakemi * HU 1.47 **LabL / 3.4**

Compensation For Employment Injuries In Nigeria: Meeting The Challenges Of International Minimum Standards

Employment Injuries Compensation Law is one of the aspects of social security law recognised by the international Labour Organization through its various conventions and instruments. In most societies the standards set by the international legal order have formed the subject matter of implementation in order to protect the interest of workers, hitherto exposed to the vicissitudes of an inadequate common law regime. In Nigeria, statutory regulation of employment injuries has been in place for almost sixty decades but unfortunately, while legislation purported to introduce a regime of compensation different from the common law, it had been ineffective in meeting the challenges of workers. In 2011, the Federal Government of Nigeria intruded a new law, 'Employment Injuries Compensation Law 2010' which establishes a regime of social insurance for employment injuries. This paper examines the key provisions of the law in the light of the international minimum standards for compensation for employment injuries in order to highlight the challenges that the country may face in the actualization of the objectives of the law.

Agomo, Chioma Kanu * HU 1.47 **LabL / 4.4**

The Constitution Of The Federal Republic Of Nigeria (Third Alteration) Act, 2010 And The National Industrial Court Of Nigeria: Issues And Challenges

The National Industrial Court of Nigeria is the only specialist labour court in Nigeria. It was originally charged with responsibility for hearing collective labour disputes and interpreting collective agreements only. Individual or rights disputes were heard by the regular courts up to the Supreme Court. Indeed, the National Industrial Court was regarded as an inferior court under the Constitution of the Federal Republic of Nigeria. The position changed somewhat in 2006 with the passage of the National Industrial Court Act, 2006. However, the argument over its status and jurisdiction remained. The position changed dramatically in March 2011 with passage of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010. The Act transferred to the National Industrial Court, exclusive jurisdiction for all labour disputes - individual and collective, as well as other related matters. This fundamental shift is bound to have far reaching implications for the development of labour and industrial relations law in Nigeria. This paper seeks to share this unique this development in Nigerian labour Law, highlighting among others, the impact of international labour standards on the development of national labour standards. It is also intended to generate discussions on the desirability or otherwise of concentrating such enormous powers on one institution.

Ahmed, Masood * HU 2.34 **LLP / 4.8**

Implied Compulsory Mediation

The requirement that parties to a civil dispute consider and, more significantly, engage in a settlement process has never been as important as it is in the current climate of austerity. The huge financial burdens on the courts to manage civil cases and the need to introduce much needed reforms to the issue of costs in civil litigation has further reinforced the central role which alternative dispute resolution processes play in the English civil justice system.

In his thorough and comprehensive review of costs in civil litigation, Jackson LJ noted the benefits of mediation[1] as a valuable and effective alternative dispute resolution process in resolving civil disputes:

"…the most important form of ADR…is mediation. The reason for the emphasis upon mediation is two fold. First, properly conducted mediation enables many (but certainly not

all) civil disputes to be resolved at less cost and greater satisfaction to the parties than litigation. Secondly, many disputing parties are not aware of the full benefits to be gained from mediation and may, therefore, dismiss this option too readily."[2]

In its contribution to the Jackson review, the Centre for Effective Dispute Resolution alluded to the need to introduce compulsory mediation and was of the view that mediation should be incorporated into the case management timetable and went as far as to suggest that:

"A degree of oversight and if need be compulsion may even be needed to be exercised over procedural judges in terms of implementing such a policy."[3]

However, despite Jackson LJ's endorsement of mediation, he expressly rejected the idea of compelling parties to engage in mediation or incorporating it into case management. Rather, Jackson LJ reiterated the orthodox position in English civil justice: mediation is not and should not be compulsory. His Lordship proceeded to provide guidance as to the steps a court should take when dealing with the issue of settlement through mediation and said:

"What the court can and should do…is (a) encourage mediation and point out its considerable benefits; (b) to direct the parties to meet and/or to discuss mediation; (c) to require an explanation from the party which declines to mediate…(d) to penalise in costs parties which have unreasonably refused to mediate."[4]

This paper challenges the notion that mediation is not compulsory within the English civil justice system and seeks to argue that despite the express rejection of the concept of court compelled mediation, judicial attitudes, government policy, recent empirical research, and the structure of the civil procedure rules indicate that the powers of the courts and judicial attitudes towards alternative dispute resolution processes (in particular mediation) have the inevitable consequence of compelling parties to engage in alternative dispute resolution processes. This compulsion is largely driven by existing court powers which allow it to punish a party in costs for failing to participate in settlement processes.

Part I of this paper will consider the concept of mediation, its development and its continued acceptance by the courts and the government as being the most favoured ADR process for civil and commercial matters.[5] Part II seeks to critically analyse judicial and extra-judicial statements on whether the courts can and should compel parties to engage in alternative dispute resolution processes in order to reach a settlement. In this regard, particular attention will be given to mediation as this is the most commonly used ADR process. Part III of this paper will contend that the continuing evolution of judicial attitudes in endorsing mediation as a necessary and fundamental pillar of English civil justice system together with the court's powers under the civil procedure rules has resulted in what the author terms 'Implied Compulsory Mediation'. The author will seek to argue that, despite the official position that mediation is not and should not be made compulsory, Implied Compulsory Mediation exists and will continue to form part of the civil justice landscape. In Part IV the author will rely upon the findings from empirical research which appears to suggest that legal advisors perceive the increasingly robust judicial encouragement of mediation and the threat of costs penalties as strong reasons for participating in mediation.

[1] The Centre for Effective Dispute Resolution has defined mediation as "Mediation is a flexible process conducted confidentially in which a neutral person actively assists parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle and the terms of resolution." (http://www.cedr.com/?location=/news/archive/20041101.htm). It should be noted that the previous CEDR definition of mediation included reference to mediation being voluntary. However, this was removed from the revised definition because of the increasing requirement that parties engage in mediation. It is interesting to note the definition given by The Code of Practice for Mediation in Scotland which maintains emphasises the voluntary nature of mediation: "A process in which disputing parties seek to build agreement and/or improve understanding with the assistance of a trained mediator acting as an impartial third party. Mediation is voluntary and aims to offer the disputing parties the opportunity to be fully heard, to hear each other's perspectives and to decide how to resolve their dispute themselves."

[2] Lord Justice Jackson, *Review of Civil Litigation Costs Final Report*, published January 14, 2010 (the Review) Chapter 36 page 355.
[3] Lord Justice Jackson, *Review of Civil Litigation Costs Final Report*, Chapter 36 page 356.
[4] Lord Justice Jackson, *Review of Civil Litigation Costs Final Report*, Chapter 36 page 361. See also the Practice Direction to the Pre-action Protocols 8.1 which recognises what ADR is not compulsory in England: "Although ADR

is not compulsory, the parties should consider whether some form of ADR procedure might enable them to settle the matter without starting proceedings."

[5] Mediation is also accepted as an effective method of dispute resolution in many countries and some jurisdictions have promulgated statutory laws which provide the parties with the power to submit their disputes to mediation. For example, it is interesting to note that Mongolia has both voluntary and compulsory mediation and it has three domestic mediation providers which facilitate and provide mediation services which include The Association of Mongolian Advocates; The Mongolian National Arbitration Court; and The Legal Assistance Centre – see S. Tseveenjav, 'Mediation in Mongolia' 2011, 77 (1) Arbitration. Also, in its attempts to promote the settlement of disputes through ADR, Ghana has recently enacted the Alternative Dispute Resolution Act 2010 (Act 798) which, *inter alia*, places mediation within a statutory framework and thereby provides disputing parties with the opportunity to submit their dispute to a mediator (section 63(1)). See further http://mariancrc.org/wp-content/uploads/2011/09/Alternative-Dispute-Resolution-Act-2010-Act-798.pdf.

Ahmed, Tawhida * HU2.82 **IR / 7.5**

The EU, Diversity And Minority Rights: A Project In Construction?

This paper analyses the "diversity policy" of the EU, with a focus on the rights of minorities. It argues that despite the context of the current global backlash against multiculturalism, EU law offers increasing opportunities for the protection of minority rights and the flourishing of diversity. Many of the relevant examples of these opportunities come in legally binding form, although the trend of soft law promotion of cultural diversity also continues to flourish. Examples include: the 2009 reference in the TEU to the EU being founded on, *inter alia*, the rights of persons belonging to minorities; the entry into legally binding form of Article 22 of the EU Charter which prohibits discrimination against persons on grounds of their membership of a national minority group; primary law and case law which affect regional territorial regimes and political participation rights; the relationship between the EU and religious groups; as well as EU support for an intercultural dialogue.

The paper offers some arguments for these developments, particularly as they can be seen to reflect a shift in EU policy towards its regional and minority populations, and seeks to explore what these developments mean for the future of diversity in the EU.

Ali, Perveen R * HU 2.34 **RRHR / 1.5**

From Protecting Vulnerability To Promoting Self-Sufficiency: The Interplay Between Human Rights Protection And Neoliberalism In The Iraqi Refugee Resettlement Program

Following the 2003 war in Iraq, the UN High Commissioner for Refugees and donor states developed a programme to resettle more than 100,000 Iraqi refugees from host states in the Middle East where they lived in legal uncertainty, to Europe, Australia, and the Americas where they could obtain permanent residence. The resettlement programme was envisioned as form of human rights protection for refugees deemed to be the most vulnerable and in need. An ideology of vulnerability undergirded the regulatory framework for selecting who from amongst the 2 million Iraqi refugees in the region would be selected for resettlement. However, resettlement states increasingly began to use the programme to filter out those refugees considered too vulnerable and potentially the most burdensome to the state. These refugees were deemed to have insufficient "integration potential" and were unable to become "self-sufficient". This paper explores the interplay between these ideologies – protecting the rights of the most vulnerable in the UNHCR resettlement programme and the emerging neoliberal discourse of self-sufficiency in state policies on resettlement. It theorises that the tensions that resulted both re-produced the neoliberal state and made refugee bodies hyper-visible and invisible to the law. Further, in the problematisation of the refugee, the normalised citizen emerged as the ideal political subject. These tensions, however, also may have opened possibilities for these ideologies to be contested by both UNHCR and refugees themselves in the promotion of strengthened refugee protection.

Andrichuk, Oles * HU2.41 **STLS / 6.11**

Exclusive Legal Positivism And Legal Autopoiesis: Towards A Theory Of Dialectical Positivism

This paper puts forward a theory of dialectical positivism. The dialectical part of the theory is developed along the lines of social systems theory – legal autopoiesis. Its positivist part is based on the premises of exclusive legal positivism. My objective is to justify the main premises of exclusive legal positivism using autopoiesis as a method. More specifically, the paper addresses the following problems: the definition of the law as a system of social norms and its interaction with other social systems (among others, morality, economics and politics); a critical assessment of non-positivist theories of law and inclusive legal positivism; the application of dialectical positivism to the issues of legal interpretation and argumentation in hard cases. Its main epistemological argument is based on the notion of ideal law, which is dialectically connected to material law. Unlike in non-positivist theories, the ideal dimension of law that is endorsed in this paper is not considered as law's moral incarnation. The paper explains why every norm (be it legal, moral or of any other nature) always has an ideal dimension, which shifts the notion of ideality from norm's content to that of its structure.

Amos, Saurombe * HU2.33 **IP / 3.7**

Intellectual Property Issues In An Open And Distance Learning (ODL) Context: Current Trends

The branch of law known as 'intellectual property' includes copyright law, patent law, trademarks, designs and related areas. The rights associated with intellectual property are of paramount importance to those who are involved in the development, exploitation and use of computer hardware and software. These rights also extend to protect those involved in producing and developing of information technology in general. Legal remedies are available against those who unfairly seek to take advantage of the efforts and investments of others. However the law strikes a balance between the competing interests and rights given by intellectual property law and those who may infringe on intellectual property rights on acceptable grounds for example institutions of higher learning who seek not to profit from such activities. Thus, the rights given by intellectual property law are not absolute.

The question arises as to whether ODL will result in more cases of intellectual property infringement. Evidence shows that due to the technological development and the phenomenal rise of the internet, it has become very easy to infringe on intellectual property rights (Bainbridge 2010). This paper puts into perspective the position, responsibilities and obligations of professionals who deal with intellectual property rights in their daily endeavors. Students and Lecturers are most vulnerable in this area of intellectual property infringement.

The objective of this study was to establish the extent to which ODL may result in intellectual property infringement. There is need to prevent this from happening. Thus the purpose of this study is to bridge the gap between intellectual property protection and its fair use by others so that effective legal arrangements can be made governing the use and exploitation of these rights, dealing robustly with misuse and abuse while also providing an equitable framework within which the various persons and organisations involved can operate fairly and effectively

Arikan, Ozgur * HU2.33 **IP / 1.1**

The Economic Functions Of Trade Mark

This paper will try to examine the economic nature of a trade mark in order to understand to what extent trade mark rights that protect the economic functions, consisting of quality indicating and brand image identifying, should be granted.

A trade mark gives consumers a legal guarantee that all products bearing it originated under the control of an undertaking which is in a position to control the quality of the products. A trade mark also gives consumers an economic guarantee that the quality of all trademarked products is likely to be consistent with each other as they are under the control

of one undertaking. The quality guarantee offered by a trade mark has two main economic benefits. First, it reduces the consumer search costs by enhancing consumer purchasing decisions. Second, it creates incentives for trade mark owners to invest resources in developing the marketing power of the trade mark based on the assurance of the consistent and desirable quality.

A trade mark also enables its owner to create a brand image through advertising and other marketing techniques. Consumers may associate the brand image created by the owner with a certain attitude or a lifestyle and therefore wants to purchase the products. The establishment of a special relationship between the brand image of the trade mark and consumers of that brand image plays an important role for trade mark owners to develop consumer loyalty and in turn gain greater profits due to the increase of sales owing to the repeated purchases and in many cases a higher sale price. However, brand image of a trade mark is designed to satisfy psychological and social needs of consumers. Thus, it is not very clear whether created brand image of a trade mark are economically beneficial for consumers.

Ashford, Chris * HU1.50 **GSL / 8.3**

No Sex Please, We're Homosexuals: The (Homo)normative and Future Directions in Law Reform

Recent legal reform in English law has dramatically changed the legal status of the homosexual. Once a social and legal pariah, the contemporary queer finds themselves apparently benefitting from unprecedented legal rights. Duggan has previously noted that this new (homo)normative discourse is a type of politics and theory 'that does not contest dominant heteronormative assumptions and institutions, but upholds and sustains them, whilst promising the possibility of a demobilized gay constituency and a privatized, depolitized gay culture anchored in domesticity and consumption'.

These legal developments were crucial in shifting the (homo)sexual narrative beyond one of promiscuity and deviant sex. Strongheart (1997: 80) commented that 'it is absolutely astounding how many uninformed Heterosexuals think that all lesbians, Gays and Bisexuals do is engage in gratuitous sex without bothering to court or commit'. This was an important and purposeful re-positioning of identity through the bestowing of legal rights.

In a bid to respond to the concerns of Strongheart and those of a similar mind, together with recalibrating the LGB discourse to take account of views of the right-of-centre, there has been a legal re-balancing that rejects the very notion of the 'gratuitous sex' Stongheart dismisses. Gratuitous sex becomes 'Othered', and cast beyond the emergent (homo)normative legal discourse. Whilst we cannot separate the erotic (Weeks et al 2001:132) from the identity of the homosexual, that is in part what the law has sought to do, shifting sex from the 'public' to the 'private' sphere.

Today, competing discourses seek to define a singular normative identity that favours domesticity and 'good' sex over raw erotic desire. This paper will explore that queer legal theoretical landscape.

Auchmuty, Rosemary * HU1.49 **FL / 1.1**

Civil Partnership Dissolution: Expectations And Experiences

The UK's Civil Partnership Act 2004 granted similar rights to same-sex couples who registered their civil partnership (CP) to those enjoyed by heterosexual couples in marriage. Over 40,000 CPs had been registered by the end of 2010 and over 1,000 dissolved. The research is the first to examine the experience of CP dissolution, focusing on what the parties understood at the time of registering their CP to be the legal and financial consequences of registration and dissolution, and how far this was borne out in practice. It will also attempt to explain why, though more men than women register CPs, more women than men dissolve them. My hypothesis was that many same-sex couples register a CP without understanding the legal and financial consequences or contemplating the possibility of dissolution. This paper will present my findings, based on interviews with people who

have dissolved their CPs.

Badejogbin, Rebecca * HU1.49 **FL / 8.1**
Attendant Problems Associated With Testamentary Dispositions To Family Members And Dependants In Nigeria

The practice of testamentary dispositions prevalent in Nigeria is no doubt an amalgam of the received English Law, local enactments, judicial interpretations and the various customary laws which include native law and custom and in some cases, Islamic law applicable in the various ethnic groups that make up the polity.

There are some attendant problems associated with the position of family members and dependants to inheritance. First is the problem of unfettered freedom of testamentary disposition of the testator by which he may exclude family members and dependants; second is the extent to which these customs, though proffering solutions, also come falling short of the repugnancy test of not entirely being consistent with the concept of equity, natural justice and good albeit the ground breaking Supreme Court judgment with respect to the rights of the female child to inheritance. It is apparent that a lot still needs to be done to attain the goal of ensuring a corresponding compliance of the customary laws. Additionally is the extent of the implementation of the suggestions made by the Nigerian Law Reform Commission as a remedy to making adequate provisions for family members and dependants.

This paper therefore seeks to discuss the concepts of testamentary dispositions to family members and dependants under Nigerian law. It will take a cursory look at the various provisions of the laws in the country that regulates testamentary dispositions with relation to family members and dependants, the conformity if any with the recommendations of the Nigerian Law Reform Commission, and will dwell on the adequacy the dispositions permitted by the statutes and customary laws; identify the attendant problems posed by the statutes and customary laws and conclude by proffering solutions to the problems.

Baker, Andrew * HU 2.39 **BF / 1.8**
The Coalition Government Proposals For Reform: The Dawn Of A New Era? – Probably Not!

Far from it being the dawn of a new era, the new regulatory reforms offer no more than, the old system failed, so lets see if a new one will work. It is arguable that the proposed reforms are as much driven by political considerations as they are a real attempt to address the very real need that the UK financial services sector requires a strong regulatory structure while maintaining the competitiveness of the UK as a global financial sector.

It is contended that the reforms as announced by the coalition government, do not really offer a new and improved structure of bank and regulatory reform than the pre crisis structure did. Since the crisis, and the realisation that the FSA's light touch system of regulation prevented the UK from being insulated against the very worst of the contagion spreading from the sub-prime and associated products fraud, the FSA has announced its enhanced supervisory regime to deal with a future Northern Rock scenario. Are the new reforms really doing anything more than this, but with a more complicated structure of three regulators? The Chancellor has repeatedly criticised the tri-partite regulatory regime, but are the new proposals truly different.

This paper will aim to analyse whether the new proposed structure is needed or would an enhanced FSA, armed with hindsight and the provisions of the Banking Act 2009, have been a better option, or is there a possibility of another way?

Bales, Katie * HU 2.30 **I / 1.14**
'Intersectionality, Asylum And Welfare: Principles And Pragmatics'

Recent NGO studies [1] on the reality of the current welfare system for asylum seekers in the UK recount stories of poverty, prejudice and inadequacy. Asylum applicants are not only discriminated against in their exclusion from the national welfare framework but also experience the detrimental and compounded effects of multiple grounds of discrimination. The diverse multi-national backgrounds and unique experiences that drive individuals to seek asylum are not recognised in the provision and administration of welfare support or, indeed, in the existing discrimination laws. Consequently the human rights of asylum applicants are frequently infringed and many applicants report feelings of increased isolation and the erosion of dignity.

This paper will begin by outlining the unique position of asylum applicants through a hypothetical case study which will consider some of the reasons behind an individual's claim for asylum. The case study will continue to be used in outlining the treatment of applicants upon reaching the UK and the impact this treatment can have both personally and in terms of rights. Through this perspective I will consider intersectionality and discuss its place within welfare as a progressive component for the enjoyment of rights.

[1] R Williams and M Kaye, *At the end of the line: Restoring the integrity of the UK's asylum system* (2010) and Refugee-Action, *The Destitution Trap: Research into destitution among refused asylum seekers in the UK* (2006) and S Reynolds, *Your inflexible friend: The cost of living without cash* (2010)

Banakar, Reza * HU 2.41 **STLS / 3.13**

Law, Community and Justice

An empirical study of the relationship between law and community against the backdrop of the London riots.

Barker, Camilla * HU 1.50 **GSL / 4.3**

Reasonable Accommodation" In US Prisons: New Perspectives On The Question Of Transsexual Discrimination

Decades of legal scholarship has failed to identify and challenge systematic discrimination against the transsexual population in prisons across the United States of America. Every year, hundreds of prisoners are subjected to violence, rape and additional punitive sanctions owing to their transsexual status. These practices clearly fall under the ambit of cruel and unusual punishment as prohibited by the Eighth Amendment to the US Constitution yet are relegated to the pits of legislative irrelevance by those who persistently claim that there is no legal basis for reform. In this article, relevant issues of transsexualism are explored as a foundation for original legal arguments which for the first time articulate the prevention of such violent discrimination in the language of a solid legal duty. The duty of states to provide "reasonable accommodation" is expounded in current US legislation and case law and arguably provides the most firm basis for future challenges to state discrimination practices. This analysis will in turn develop grounds for further reform which can be implemented in other jurisdictions and as such can contribute to the betterment of conditions for transsexual prisoners the world over.

Barker, Camilla, * HU2.31 **LawL / 7.4**

'A Man Is Master Of His Liberty': Understanding Socio-Legal Structures In The Shakespearean Corpus

The extent to which individuals truly can master their liberty is a question which infiltrates the entire Shakespearean corpus. It is through a series of fraught socio-legal conflicts that Shakespeare's audiences are treated to the comedies and tragedies of Europe's transition into early-modernity. Socio-legal structures fuel these plots and the characters present challenges to the ways in which the reader thinks about law and legal process. In reality is law just the will of whoever has the most power? Does equality only exist for those born into the highest social substratum? Is the rule of law really as universal as it seems? Using four of Shakespeare's most admired plays, this article seeks to shed light on these questions. Part One examines marriage, class conflict and legal participation in *The Comedy of Errors*. Part Two looks at the native-alien division and legal obligation in *The Merchant of Venice*.

Part Three assesses the nature of empire and the security of prescribed knowledge in *Cymbeline*. Finally, Part Four probes wider issues of social control and subordination in *The Tempest*.

Keywords: Socio-legal relationships, Shakespeare, legal theory

Barker, Camilla * HU1.48 **ML / 1.4**

"Robert Jay Lifton, The Nazi Doctors: Medical Killing And The Psychology Of Genocide" (A Critical Review)

The notion of complicity in the Holocaust is one which has fascinated scholars for decades. The Holocaust required all sections of society to contribute, directly or indirectly, to the systematic destruction of certain groups in German society. A key section of those involved in the 'annihilation' were the German physicians. From local general-practitioners to the country's top surgeons, medical experts were of paramount importance to the facilitation of mass murder and torture. Robert Jay Lifton, a leading American Holocaust scholar, has produced a dense literature relating to this group of actors. Lifton's 1986 book, "The Nazi Doctors: Medical Killing and the Psychology of Genocide" gives important insights into the psychology behind medical participation, experimentation and research in the concentration camps and hospitals across Europe. For decades, Lifton's work has escaped significant academic criticism and as such, substantial components of the debate relating to medical law and ethics have been ignored. He alleges, for example, that the role of doctors was central to the mass murders of the Holocaust yet evidence shows that the first death camp at Chelmno operated gas chambers and conducted mass killings without any input from medical professions. This paper fills an important void which presently exists in Holocaust scholarship. Lifton's theories on professional participation in the Holocaust are critically assessed in light of current research and evidence.

Keywords: Holocaust, Nazi doctors, medical ethics, law and the Holocaust

Barlow, Anne And Hunter, Rosemary * HU 1.49 **FL / 3.1**

Mapping Paths To Family Justice – Some Preliminary Findings

The legacy of the failed divorce reform contained in the Family Law Act 1996 has been an increased use of alternative dispute resolution in family law issues and of mediation in particular. However, since the initial pilot studies led by Gwynn Davis and Janet Walker, there has been no research in England and Wales on the experience of using mediation. It is widely accepted that the family justice system is in crisis and that escalating demands on family courts and legal aid resources cannot be met. In this context, the push towards alternative dispute resolution and mediation in particular as a preferred means of resolving family disputes out of court is evident in the Family Justice Review and current legal aid reforms. Mediation is, however, strongly challenged by two alternative forms of out-of-court family dispute resolution: the traditional negotiation between the parties' solicitors, which appears to be the default option for most parties; and the relative newcomer of collaborative law, in which the parties and their solicitors work together to reach a resolution against a background commitment by all participants not to resort to court proceedings.

This paper will report on the preliminary findings of a nationally representative survey which explored the perceived relative merits of these alternatives by those who have divorced or separated since 1996. This is the first phase of an ESRC-funded research project which seeks to provide an evidence base to inform future decisions by policy-makers, funders, practitioners and disputing couples. It will focus on

1. how widely each process is actually used and how embedded it has become in the public mind as a means of resolving family disputes;

2. how positive or negative people's experiences of the different processes are reported as being.

Bartlett, Peter * HU2.33 **MH / 8.5**

Re-Thinking The DOLS: What Are They Actually For?

The DOLS safeguards introduced to the Mental Capacity Act 2005 in 2007 have been roundly criticised by practitioners and academics alike. This paper argues that we need to go back to the drawing board and figure out when safeguards are actually appropriate. It argues that 'deprivation of liberty' is not an appropriate threshold, both because it leads to counterintuitive results under Article 5 of the ECHR and because it diverts attention from the much more sensible question of when intensity of care is sufficiently intrusive that some sort of independent involvement is appropriate.

Ben-Dor, Oren * HU 2.37 **CO / 3.11**

How Is A Place? Contesting The Meaning Of Ownership Or Thinking-Back Ownership Of Meaning?

In reading Martin Heidegger's later philosophy, Edmund Jabes, Carl Jung and Lao Tzu, this paper argues that the very disagreement about ownership today might well be conditioned by, indeed maturely imprisoned within, the very historical unfolding of the metaphysical western philosophical tradition that forgot ownership that involves attentive-letting relationship that temporally, spatially materially and linguistically awes being owned by nature. The dawn of the philosophical tradition with Plato and Aristotle radically changed the manner human view themselves and their finitude and crucially, conditioned their relationship to what Spinoza called naturing nature (*natura naturans*). Wrestling with finitude within this tradition gave rise to controlling metaphysics and technical relations to nature in a manner that has manifested through successive epochs of what Heidegger called 'humanism', but which retained anxiety, a Real belonging origin which has been forgotten. Within the various epochs of humanism(s) both the very notion of truthfulness and the relationship to language that characterises the establishment of both truth and its overcoming begins with the ontological ownership of nature by human worldhood. In turn, moving beginnings are seen as intra-worldly relationship. Viewing beginning of owness in the human world gave rise to historical consciousness which commerced with establishing and debunking ownership of origin - transcendences that generate both exclusionary ownership and myths of ownership that steers beginning of political owness, territoriality and seemingly emancipating antagonisms. The very rapture that constitutes critical purchase for politics has been conditioned by the ownership that begins with possibilities encapsulated in being-in-the-world.

The 'I own', the very way in which ownership and disagreement of ownership is being conceived is argued to be dependent on the notion of truth understood in the metaphysical tradition as *Richtigkeit*, or 'correctness' in which the human subject steers the true as oppose to the false. The notion of 'false' comes from the Latin word *falsum* which itself comes from the word *fallere*, or 'to bring down'. The notion of truth for a subject, a subject that owns spaces and things to the exclusion of all other subjects, becomes interlinked with steering power and powerlessness by both those who dominate and oppress and, controversially those who steer thinking that engages in critique but who still subscribe to steering correctness. The overcoming of this steering constitutes the longing for u-topia itself imprisoned as mature forgetfulness of steering ownership by world hood. Correctness is contrasted with the pre-Socratic notion of *a-lethia*, dis-closure or unconcealment that connotes a call-response waying (*Tao)* relationship in which mortals poetically dwell in places in a way that retains an owning movement that endures because being owned by ontology of place and not *visa versa*.

In contemplating the notion of place, beginning and belonging this paper explores the legal and political significance of the relationship between ownership that involves attentive-letting the owning mystery of nature hold sway, mystery the forgetfulness of which constitutes the collective unconscious that haunts the philosophical metaphysical tradition and its notion of owning mind and self. The paper distinguishes, but also relates, ecological thinking the essencing of which is guardianship of the home – the *oikos* of the *logos* from ownership which is based on economic thinking which *oikos-nomos* or 'house management' which

involves metaphysical and technological thinking of a steering subject's and which is conditioned by phenomenological experience of life. In looking at two examples, Australian Aborigines and the Kogi people of Columbia the paper traces notion of ownership as emplaced in time, space, materiality that has not traversed the western metaphysical tradition and in which the *nomos* has never become oikonomic but rather sustained rootedness in the essencing of ecology. Not longing for critique or utopia but pointing to a song that is meaningful before the denotation of meaning, the paper senses a re-turn to an authoritative unmediated living of uncanny emplaced beginning by which the whole notion of ownership in the west has always been fatefully owned by that which is yet to come.

Bernal, Paul * HU 2.30 **LLit / 8.8**
Privacy... And The Phantom Tollbooth

Norman Juster's the Phantom Tollbooth is a classic of American children's literature for many reasons. One aspect that is rarely noticed is that in it there is a passage that sets out brilliantly the problems that can arise as a result of the gathering and use of private data – and the risks associated with current developments in Social Networking (e.g. Facebook) and search engines (e.g. Google).

As the author was writing in 1961, he did not have the benefit of knowing the internet – but he did understand how our information can be used against us, even when we have 'nothing to hide'. Current tendencies on the internet might make what Juster describes as the tactics of demons into something real.

The Phantom Tollbooth's protagonist, Milo, is on a mission to rescue the princesses Rhyme and Reason from the Castle in the Air, to return peace and prosperity to the land. Attempting to stop them are the demons from the Mountains of Ignorance. One of those demons, the 'Senses Taker', gets Milo and his companions to provide their personal details – from where and when they were born to their shoe, shirt, collar and hat sizes.

The Senses Taker uses that information to create an illusion perfectly suited to the individual, to distract, confuse and delay them, stopping them from doing anything meaningful or effective. The Senses Taker's processes - gather all the data it can, use it to conceptualise how each individual might be seduced into doing something to the benefit of the Senses Taker (rather than to the benefit of the individual) – closely resembles what most privacy-invasive profile-based systems do.

The paper concludes with a look at how it might be possible to give Rhyme and Reason a chance to rule the Internet once more.

Bettinson, Vanessa * HU 1.51 **CJ / 7.2**
Restraining Orders Following An Acquittal: Better Prosecutorial After Care In Domestic Violence Cases?

In September 2009 the new provisions of the Domestic Violence Crime and Victims Act 2004 amended the Protection from Harassment Act 1997 increasing the opportunities for the prosecution to apply for restraining orders. Such restraining orders were no longer restricted in cases that involved offences under the Protection from Harassment Act 1997, now they can be applied for where the offender is convicted of any offence. In addition section 5A was created, allowing a court to make a restraining order following an acquittal for any offence. This paper seeks to examine the use of these provisions by the prosecuting authorities in light of the Home Office's call to End Violence Against Women Action Plan www.homeoffice.gov.uk/publications/crime/call-end-violence-women-girls/vawg-action-plan?view=Binary which states as it's guiding principle 'to take action to reduce the risk to women and girls who are victims of these crimes and ensure that perpetrators are brought to justice.' In achieving this guiding principle the Plan aims to increase the confidence of victims in the criminal justice system thereby encouraging victims to access it. This is to be achieved by improving the effectiveness of the criminal justice system's response to victims. In addition the desire is to ensure that legislative powers are understood and effective.

This paper will consider the prosecution's response to crimes of domestic violence. In doing so, it will reflect upon the factors that influence the prosecution's decision to prosecute as outlined in the Crown Prosecution Service's Policy and Guidance on Domestic Violence. Finally it will ask whether section 5A restraining orders can assist the government aim of increasing victim confidence in the criminal justice system, leading to more effective justice outcomes.

Bettinson, Vanessa & Dingwall, Gavin * HU 2.32 **SP / 8.7**
Do Generic Sentencing Aims Result In Optimised Outcomes In Domestic Violence Cases?

There is an enduring legacy of trivialisation and ineffectiveness at various stages in the criminal justice process when it comes to responding to domestic violence. The government's current stance on criminal justice responses to offences that cause violence against women and girls is contained in the Home Office's call to End Violence Against Women Action Plan www.homeoffice.gov.uk/publications/crime/call-end-violence-women-girls/vawg-action-plan?view=Binary. A principle of the Action Plan is to improve the justice outcomes in respect of these offences and reduce the number of recidivist offenders by providing effective rehabilitation programmes.

One area of contention that is vital in addressing improved justice outcomes for domestic violence offending is sentencing. Sentencers in England and Wales are bound by law to have regard to a number of aims: the punishment of offenders; deterrence; public protection; rehabilitation; and reparation (s.142(1) Criminal Justice Act 2003). Whilst commentators have criticised the framework on the basis that it is contradictory and engenders inconsistency, it will be argued that granting sentencers discretion to balance the prescribed aims maximises the potential for a successful justice outcomes in individual cases. Such maximisation may lead to improved confidence by victims to access the criminal justice system.

Betts, Gary * HU2.32 **SP / 5.10**
Reconciling Proportionality With Crime Reduction In Sentencing For Theft: Lessons From An Empirical Investigation

Whilst adopting various consequentialist aims, the Criminal Justice Act 2003 retains a place for proportionality in its sentencing framework. In short, the Act's approach to sentencing is in terms of both proportionality and crime reduction. The Act offers no primary sentencing aim, or hierarchy into which these purposes are to be ranked. Prior to this, the Criminal Justice Act 1991 aligned itself with proportionality by referring to 'commensurability' and the need for offence seriousness to determine sentence. Other than for serious crimes of a violent or sexual nature from which the public need protecting, the 1991 Act did not require the courts to consider crime reduction aims.

That being so this paper will discuss the findings of a recent empirical investigation into the practice of sentencing in theft cases. When sentencing under the 1991 Act, the study found evidence of the courts adopting, in part, a crime reduction model, despite the lack of any corresponding statutory obligation. On occasion, the resultant sentence could also be described as representing a proportionate response. In other words, there was perhaps some attempt by the courts to reconcile the two sentencing philosophies; to impose a sentence which was proportionate *and* offered crime reduction benefits, a practice which might align itself more closely to the 2003 Act's framework. On the other hand, whilst the courts occasionally utilised crime reduction aims within the confines of proportionality, there were occasions where the courts seemed to make little or no attempt to pass a proportionate sentence, despite the statutory framework at the time. Instead, the courts' desire to prevent crime seemingly eclipsed any proportionality constraints, ultimately leading to an apparently disproportionate sentence. One possible conclusion to draw from this is the 2003 Act might not offer such a noticeable departure from previous sentencing practice as it initially appeared.

Bewley, Catherine * HU 1.50 **GSL / 6.3**

Speaking Out: Equal Access To Support And Justice For LGBTQ Survivors Of Sexual Violence

Sexual abuse and violence are experienced by people of all ages, identities and lifestyles but the rate of reporting to the police by lesbians, gay men, bisexual, trans and queer (LGBTQ) identified people is very low and there are few specific, independent support services available. Based on direct work with LGBTQ people who've experienced sexual violence, this presentation will look at the individual, community and wider context that prevents people from speaking out, getting support and accessing criminal justice on an equal basis.

The presentation will also cover when, where and how LGBTQ people are experiencing sexual violence and whether this experience fits with a policy context that focuses on women and girls. It will also discuss some of the specific reasons that prevent people speaking out about their experiences, including the long-term effects of inequality, poverty and exclusion, and what can/should be happening to change this. From national policy to local funding to change within mainstream agencies to a proactive stance from LGBTQ communities themselves, the presentation will argue that there is much to do.

Bishop, Charlotte * HU 1.82 **GSL / 6.14**

Not By Law Alone: A Critique Of English Law In Relation To 'Domestic Violence'

Until recently, violence against wives was both legal and socially acceptable. Despite recent reforms to 'domestic violence' legislation, this type of abuse remains prevalent and is still not being appropriately dealt with by the various state agencies.

This paper will contribute to the 'Gender, Law and Sexuality' stream of the conference by providing a theoretical critique of domestic violence legislation, aiming to demonstrate that the law has been constructed in a way that excludes many of the concerns of women. The paper will challenge the supposed neutrality and objectivity of law by highlighting its inconsistency and masculine nature, consider how the human is defined and whether women really are excluded from the term as some feminist theorists claim, and if there can be held to be a boundary between 'self' and 'other' as in the case of the formal legal subject. The law's reliance on the liberal public/private divide has been used to justify its refusal to intervene in 'private' matters. In this way, the issues affecting women are excluded from the scope of much legislation, and by refusing to intervene in private matters, the law has actually refused to intervene in the majority of issues that pertain to women alone.

The paper will then go on to highlight the inadequacies of domestic violence legislation in practice, drawing on recent empirical studies which demonstrate a failure on the part of the police to intervene and on the part of legal practitioners, the judiciary and the Crown Prosecution Service to deal appropriately and effectively with the issue. By using the theoretical critique to inform the critique of the law in practice, the paper will argue that legal reform alone cannot succeed in bringing an end to domestic violence.

1 a term whose appropriateness will be challenged in the course of the paper

Blackwell, Michael * HU 2.30 **LLP / 2.14**

Select Sets: A Quantitative Study In Diversity And Career Progression At The English Bar

This paper considers how career progression at the English Bar is influenced by gender and educational background. This is important not least since it contributes to the lack of gender and educational diversity among the senior English judiciary, who are mostly drawn from the Bar. This paper first identifies certain barristers' chambers (the "select sets") in which there is a particular public interest – these are (i) the 98 chambers[1] from which the 300 High Court judges appointed since 1979 practised before becoming judges; and (ii) the 92 chambers

from which members of the Attorney General's Panel[2] between 2001 and 2011 have practised. In total (due to a large overlap) there are 130 select sets.

The present membership of the select sets is then analysed, using information from the *Bar Directory*, to consider how diverse these sets are with regards to gender and educational background. It is then considered how these diversity characteristics vary according to the area of law in which these sets specialise and how these diversity characteristics vary within sets, according to the length of call of members.

Women are hugely under-represented among more experienced barristers – for example only 25% of barristers presently in select sets with over 10 years' call are women, compared to 40% of barristers with less than 10 years call. The two possible explanations for this are that (i) this is a result of historical issues and so a "trickle-up" effect will eventually rectify this; or (ii) there is a "bottleneck" that disproportionately impedes women's progression, so even if there were equal numbers of men and women among the junior members of the select sets this would not, given time, result in gender equality among more senior members of the select sets. The changing gender composition of 20 select sets between 1980 and 2011 is analysed, using an event history model, to test the extent to which each of these theories accounts for the present lack of gender diversity among senior members of the select sets.

Finally, as an alternative measure of career progression, this paper examines the changing composition of the Attorney General's panel between 2001 and 2011. It considers how gender and educational background are associated with progression from the C to B panel and the B to A panel.

[1]Barristers are self-employed, but work in "chambers" or "sets" with other barristers.
[2] These are the panels from which junior counsel representing the Crown are generally instructed from.

Blandy, Sarah * HU 2.37 **CO / 5.14**

Individual Ownership And Collective Residential Space: Expectations And Experiences

This paper is based on a study of eight different multi-owned residential sites each incorporating common parts, conducted through observation, interviews with residents and analysis of legal documents. Following legal consciousness precepts, a 'law-first' approach was avoided in the qualitative phases of research, with respondents raising law-related issues themselves rather than being prompted by the interviewer.

The focus of the paper is on residents' expectations on moving in, and their actual experiences of living in housing which includes both ownership of the home and rights and responsibilities for collective space, such as means of access, gardens, other facilities and the exterior of buildings. I argue that these expectations are formed by the liberal individual model of ownership, or in conscious opposition to that model. The eight sites included three which might be described as 'intentional communities', three others were conventional multi-owned sites such as blocks of flats; and the remaining two were common hold developments.

Some residents' experiences conflicted sharply with their initial expectations; for all residents, their experiences of living in multi-owned housing developed and changed over time. Analysis of this process offers fresh insights in conceptualising property as an ongoing, active process. It also has implications for the legal frameworks for this increasingly common type of housing.

Boon, Andy * HU2.30 **LLP / 2.14**

Disciplinary Procedures Of The Legal Profession In England And Wales

This paper reviews empirical research into the disciplinary processes of the legal profession in England and Wales funded by the Nuffield Foundation. The project aimed to examine a

year of disciplinary tribunal data for both barristers and solicitors in order to refine a methodology for analysing such cases. Interviews with key players in the disciplinary process explore how and why lawyers are disciplined by their profession

Bradney, Tony * HU 1.82 **LE / 4.13**

Time Sheets And Appraisals: Neo-Liberal Politics And Academic Culture

There is a now well-established literature that argues that university law schools have fallen under the thrall of a neo-liberal agenda that manages academics in such a way as to see that their performance is maximised in the pursuit of centrally set university targets. In doing so academic culture mimics the commercialised legal profession that is a feature of the twenty-first century. Time sheets and appraisal systems are illustrative of this phenomenon. This paper will argue that, whilst there is clear evidence of neo-liberal pressures on academic culture, analysis of the way in which matters such as time-sheets and appraisals are managed in both the academy and the legal profession suggest a more nuanced conclusion about the degree to which the neo-liberal agenda controls the academy.

Brandão, Ana Maria * HU 1.49 **FL / 4.1**

The Legal Investigation Of Biological Paternity In Portugal: Gendered Roles And Representations

Almost all European societies today support legal efforts to establish parentage in cases in which the paternity of children born out of wedlock is not established. Countries such as Denmark, Germany, Island, Norway, Sweden and Portugal set off compulsory inquiries of paternity when the birth certificate of a child does not show the identity of the father. Other European countries simply give the court the power to investigate paternity in the course of other civil proceedings regarding the child. In this context, courts frequently ask for DNA paternity testes. Such effort is usually part of public policies to ensure that children are cared for not only financially, but also regarding education, upbringing and psychological development. Feminist studies have shown that state institutions, when actively engaging in civil action for identifying the father tend to reveal patriarchal gender relations grounded on the evaluation of the mothers' sexual activity and fidelity and of the fathers' income and employment status. This paper explores the ways in which the legal investigation of paternity of children born out of wedlock reveal cultural models that reinforce the naturalisation of differences between mothers and fathers, with significant effects on the social construction of parental roles and on expectations of family organisation and female sexual behaviour. Drawing on interviews with women and men who have undergone DNA tests ordered by courts in Portugal in the course of legal proceedings to determine the biological father of children born out of wedlock, we analyse how women and men assess the intervention of the legal system in this domain. It is argued that women and men reconfigure their private rights in such ways that tend to reproduce and at the same time challenge the prevailing patriarchal structures.

Broquet, Julien * HU 2.41 **STLS / 5.11**

Structural Couplings And Evolution. The Ongoing Definition Of The European Economic Constitution

In the field of European Studies, Modern Systems Theory has known a vivifying debate on the europeanization of autonomous social systems, and on what one could call the europeanization of structural couplings[1]. Constitution as Luhmann's typical example of structural coupling has been at the core of theoretical reflections on the nature and future of Europe as a specific form of inter-systemic co-evolution[2]. This occurred in parallel to more general reflections on the very nature of constitutions and on the evolution of such forms of couplings, under the label of 'societal constitutionalism'[3]

Following this line of reasoning, the current proposal aims at questioning the nature of inter-systemic relations and of structural coupling, by focusing on the emergence and structuration of such relations. In order to do so, we propose to deal with the recent evolutions in the European economic constitution. This reflection will lead us to discuss

Teubner's recent systemic account on economic constitutions[4] and to defend the claim that such couplings are best described and analyzed as tripartite forms of intersystemic relations. We will advance that in the course of the definition of a specific economic constitution for Europe, one can not oversee the *polycontexturality* of modern society, and the importance of numerous functional and organizational systems.

1 See Albert, M. (2002) 'Governance and democracy in European systems: on systems theory and European integration'. *Review of International Studies*, Vol. 28, No. 02, pp. 293-309.
2 E.g. Kjaer, P.F. (2010) 'Constitutionalizing Governing and Governance in Europe'. *Comparative Sociology*, Vol. 9, No. 1, pp. 86-119.
3 E.g. Teubner, G. and Fischer-Lescano, A. (2004) 'Regime-collisions: the vain search for legal unity in the fragmentation of global law'. *Michigan Journal of International Law*, Vol. 25, No. 4, 2004, pp. 999-1046.
4 Teubner, G. (2011) 'A Constitutional Moment? The Logics of 'Hitting the bottom''. In Kjaer, P.F., Teubner, G. and Febbrajo, A. (eds.) *The Financial Crisis in Constitutional Perspective. The dark Side of Functional Differentiation* (Portland: Hart Publishing).

Brown, Jennifer * HU2.33 **MH / 1.6**
A New Model In Irish Mental Health Law?

The aim and operation of mental health legislation has more or less remained the same over time. This aim is to strike a. The medical model posits that clinical judgment is the sole arbiter of whether a patient is or is not involuntarily detained. It has been suggested that the medical model was employed in Ireland in the Mental Treatment balance between upholding the rights of persons suffering from a mental illness and protecting society from dangerous people. The operation of mental health legislation depends on the skill and expertise of mental health professionals. However, mental health legislation may be underpinned by different models. Two models dominate: the medical model and the legal modelActs 1945-1961. In this legislation the medical model is reflected in the limited oversight of the exercise of clinical expertise. There was no independent review of a clinician's decision to detain or treat a patient against his or her will. The legal model recognises that the exercise of clinical judgment may be flawed and the rights of patients may be breached. The legal model provides safeguards to protect a patient's rights. It has been suggested that the legal model is employed in Ireland in the Mental Health Act 2001 as reflected in the automatic independent review of a patient's detention and the safeguards in relation to medical treatment and procedures. This paper assesses the old and current mental health legislation and case law to determine whether the legal model has replaced the medical model. An analysis of the sociological, cultural and legal aspects of mental health and illness is provided to determine when, why and how the law has changed.

Bremner, Philip * HU 1.49 **FL / 4.1**
Assisted Reproduction: Views On Donor Involvement

Third-party assisted conception, which affects a significant number of adults and children in the UK,[1] has received considerable media attention in recent years. Recent television documentaries have highlighted how important it can be for donor-conceived children to establish contact with their biological parents.[2] Since 2005 prospective parents and donors have been confronted by the possibility that children over the age of 18 will be able to trace their genetic origins.[3] Despite this, assisted reproduction is essentially viewed as a medical treatment involving a donor or surrogate with whom there is no personal relationship and who is expected to relinquish all parental rights in relation to the child. This cultural paradigm has been challenged to an extent, particularly within the gay and lesbian community, by people who chose to involve the biological parent in the child's life to some degree.[4]

This paper discusses the findings of a small-scale research project which investigates the views of parents who have had children using assisted reproduction technology in relation to donor involvement. The study adopted a mixed methods approach, combining an online questionnaire completed by 20 participants with follow-up in-depth interviews involving 9 of the participants, most of whom are married heterosexual individuals. In some ways the results of the study are unsurprising. They suggest that these users of assisted reproduction technology would like more information about (and potentially access to) their donors but they would not want to go as far as having significant donor involvement. However, there

was a definite suggestion that options such as co-parenting might be attractive to same-sex couples. This finding in itself is interesting and suggests that further research should be conducted in this area.

[1] The Human Fertilisation and Embryology Authority estimate that 2,000 children per year in the UK are born as a result of gamete donation, which includes both sperm and egg donation. See <http://www.hfea.gov.uk/donor-conception-births.html> accessed 10 January 2012.
[2] See for example Donor Mum: The Children I've Never Met <http://www.bbc.co.uk/programmes/b0146g40> accessed 10 January 2012 and broadcast on BBC 1 on 30 August 2011.
[3] Human Fertilisation and Embryology Authority (Disclosure of Donor Information) Regulations 2004.
[4] For one high profile example see Charlie Condou, 'The Three of Us' *The Guardian* <http://www.guardian.co.uk/lifeandstyle/series/the-three-of-us> accessed 10 January 2012. See also the recent case of *T v T* [2010] EWCA Civ 1366.

Brennan, Anna Marie * HU 2.31 **CS / 1.13**

The Rationales For Criminalising Transnational Armed Groups Under International Law For Attacking Civilians

A great deal of the international legal debate on transnational armed groups has focused on their ideology and organisation rather than the underlying policy questions of why and whether violent attacks by transnational armed groups upon the civilian population should be internationally criminalised. A transnational armed group can be described as a non-state armed actor which conducts armed attacks beyond the territorial borders of a state in order to cause fear, death, serious bodily injury and property damage, to a person, group or general population, in order to force a government or international organisation to perform or refrain from performing a particular act. Examples of transnational armed groups include At-Tawhid and Al-Jihad – Beit Al-Maqdis which operate in the Gaza Strip and fire missiles such as rockets and mortars into densely populated areas in Israel on a regular basis.

It is important to examine whether attacks by transnational armed groups should be treated separately from existing international crimes such as genocide, crimes against humanity and war crimes where the acts of transnational armed groups overlap different categories of international crime. The basis for holding transnational armed groups criminally accountable under International Law is that their attacks upon the civilian population undermine individual human rights, international peace and security and the State and the political system. This paper will consider each of these policy rationales in order to determine whether an accountability mechanism should be developed under International Law to prosecute members of transnational armed groups.

Brown, Kevin * HU 1.51 **CLCJ / 2.2**

A Case Study Of Occupational Mission Creep: An Empirical Examination Of The Expanding Role Of The Anti-Social Behaviour Practitioner

Specialist anti-social behaviour teams are now relatively common within larger social housing providers. Many were established during the heyday of the anti-social behaviour agenda under Blair's New Labour Government. This means that some of these teams have now been in existence for over a decade. This paper examines the changing role of these teams over the years through an empirical analysis involving semi-structured in-depth interviews with team members. The interviews were conducted over two time frames, 2007 and 2011. Results show that rather than withering with the passing of New Labour these teams have engaged in a form of successful mission creep and look set to survive the 'age of austerity'. The factors which have influenced this process and the implications of it are explored.

Byrne, Rosemary & Engeland, Anicée Van & Mossallam, Alia * HU 2.31 **CS 2.13**

Transitional Justice in Post Arab Spring

Decades of human rights violations which culminated with clashes between the people and the government in Egypt, Tunisia and Libya need to be addressed via transitional justice.

Strategies adapted to the specific context of those countries are to be found to bring societal stability and long lasting peace through a phase of transitional justice.
However, the transition to ensure that justice is done might prove difficult: in Egypt, the current interim power, the Army, has violated human rights for decades; In Tunisia, the struggle for power between Islamists and secularists is intense; and in Libya, violations committed by both sides during the civil war have to be addressed.
The challenges in terms of transitional justice are different for each country: Egyptians seek to address decades of abuse. The current strategy opted for is to have local courts trying Mubarak. This approach does not rule out further work at the society's level. Tunisia works on devising strategies to address violations during the Ben Ali regime but Islamists are not keen on any form of transitional justice that would not include their approach to Islamic values. The ICC's involvement in Libya means that the local population could work on some local and traditional methods of justice for other perpetrators.
The aim of the panel is to look at several questions that arise when speaking of transitional justice in the post Arab Spring. A first panelist will look at the challenges post Arab spring states fact in terms of transitional justice. A second panelist will look at the pressing question of the strategies states should adopt to ensure that transitional justice happens. The third panelist will address the seemingly prominent future role of Islam in transitional justice, since the major institutional reforms are now poised to include Islamic and Islamic law.

Cambou, Dorothee, * HU2.82 **IR / 6.6**
Indigenous Rights In The Making: A Case Study Of The Saami People

The development of a new paradigm aimed at promoting indigenous right to self-determination has been recently developed at the international stage. It supports their collective rights to land and natural resources as well as their right to autonomy or self-government. This paradigm is today echoed by the Saami People who claims their right to self-determination as well as control over their land and natural resources. The abundance of natural/gas resources in the Arctic has created some challenges and opportunities to some of the region's indigenous people- the Saami. The desire by certain nations to explore the Arctic's resources has put the future of the region's peoples at stake. This has called into question sustainable policies which will guarantee the protection of Indigenous Peoples' livelihoods and the promotion of their interests within the governance of the Arctic. This intrusion could also have far reaching human rights implications.

The aim of this paper is to evaluate the State-Saami relations with regards to land and natural resources governance. The paper also interrogates the last decades legal development on Saami' rights, from the implementation of the Finnmark Act to the adoption of a Draft Nordic Saami Convention, in consonance with the United Nations Declaration of Indigenous Peoples Rights (UNDRIP).

Camiss, Steven * HU 1.51 **CLCJ / 4.2**
Mode Of Trial: A Return To Restricting Trial By Jury?

Due to the financial crisis and the deficit reduction programme, we are living in a time of austerity. All government departments are expected to make their contribution to balancing the books; the Home Office and Ministry of Justice included. Those who hoped that this could lead to a radical approach to sentencing and custody have had their hopes dashed, as the Justice Secretary's early announcements on penal reform were repressed by the Prime Minister, so as to avoid the wrath of the tabloids. Indeed, given that austerity means little more than the continued retreat of the welfare state, and the promotion of neo-liberal economic policies, we can expect the strong arm of government (policing and penal policy) to be left to deal with the resulting social casualties. Therefore, the savings to be made will not result from a frontal assault on the prison population and the promotion of alternatives to custody (long since dropped from policy vocabulary) but will have to be made elsewhere.

The choice as to mode of trial and the procedure adopted for this process has long been subject to reform with an eye on saving money. So, while the growth of summary jurisdiction in England and Wales could be theorised as part of the relentless growth of crime control

ideology, it can equally be conceived as part of the growth of managerialism in criminal justice. Given this context, this paper asks if, despite the refusal to implement the reforms in the Criminal Justice Act 2003 that relate to mode of trial, the Coalition Government will turn to reforming mode of trial, and the inevitable restrictions to trial by jury that result, as a means of saving money? Furthermore, if they do, what will be the likely effects?

Carl, Sabine * HU 2.39 **AJ / 7.7**

The Spread Of Prison Ombudsmen As A Product Of 'Cross-Fertilization?'

The spread of the ombudsman idea around the world has been well documented (Caiden 1983, Gregory & Giddings 2000). Although this 'ombudsmania' (Rowat 1968) also included the proliferation of specialty ombudsmen, the prison sector was left rather untouched. Since the idea of special prison ombudsman emerged in 1966 (Gellhorn 1966, Fitzharris 1973), they have slowly multiplied in North-America and the Commonwealth - only successfully crossing into the civil law world in 2007. Despite this long time period, there currently exist only seven prison ombuds institutions around the world. This paper argues that the slow proliferation process is due to uncontrolled acts of 'cross-fertilization' as suggested by the legal transplant theory (Leyland 2002, Whitman 2003, Graziadei 2006). A comparative analysis of prison ombudsmen around the world proves that the latter have frequently been introduced during periods of high pressure on the hosting prison systems, while political mechanisms outside the local prison systems such as the Council of Europe's repeated suggestion to introduce special ombudsman for specific groups in need of protection (1985, 2005) has yielded no results. This paper points out the drawbacks of 'cross-fertilization' which are due to the method of subconscious and sometimes hasty decision making based on incomplete knowledge. This will be elucidated using the introductory history of the German (Northrhine - Westphalian) prison ombudsman. The paper concludes emphasizing the importance that institutions such as the UN, EU or JUSTICE as well as academia provide easily accessible best-practice benchmarks in situations where 'cross-fertilization' becomes a possibility.

Carline, Anna & Gunby, Clare * HU 1.50 **GSL / 6.3**

Engendering Justice For Rape Complainants? Barristers' Perspectives On Investigations And The Counsel/Complainant Relationship

Despite the changes to the offence of rape introduced by the Sexual Offences Act 2003, concerns still remain with regards to the low conviction rate. Whilst the Stern Review lamented the oft quoted figure of 6%, noting that 58% of those cases which reach trial result in a conviction, the attrition rate for rape is nevertheless exceptionally high and, arguably, justice for rape victims remains difficult to achieve. Drawing upon data gathered during a qualitative research project undertaken with Barristers in the North West of England, this paper will provide insights into the opinion of counsel with regards to issues pertaining to achieving justice in rape cases. Whilst barristers were not overly supportive of the relevant reforms introduced by the Sexual Offences Act 2003, they were not, however, in favour of further reform in relation to the substance of the rape offence, nor the introduction of further jury directions. Indeed, any further over complication of the trial was considered to be inauspicious as it was felt that the law should be as clear and concise as possible. In contrast, when contemplating suggestions for reform, barristers tended to focus on the more procedural aspects of criminal justice system, such as case management and the trial process. This paper will provide a critical examination of such perspectives, concentrating in particular on the issues of investigating rape allegations and the relationship between the complainant and prosecuting counsel.

Carneiro, Marta * HU1.48 **GSL / 8.2**

Au Pairs In Portugal

So far, the *au pair* program has not received much attention in Portugal. There is no legislation on it and the Council of Europe's 1969 Agreement on "Au Pair" Placement has not been ratified; as such, *au pair* is not accounted for as a category *per se* and thus no

official information exists. It is therefore interesting to investigate what factors might explain why this type of program is apparently inexistent in Portugal, in contrast to its rising popularity in several other European countries. In this regard, a double-sided perspective is adopted to analyze the current situation. Taking both the viewpoint of the potential *au pair* and of the potential host family, the paper seeks to describe which type of migration trajectories are most common among those migrating to Portugal and how they integrate in the national labor market but also whether and to what extent childcare and household work (activities performed by the person placed *au pair*) are commonly externalized by Portuguese families.

Cavandoli, Sophia * HU 2.32 **LD / 4.12**

Does International Law Enshrine A 'Right To Democracy'?

In 1992 Thomas Franck wrote an article which put forward the idea that a right to democratic governance was emerging in international law.[1] This article proved a starting point for an epic debate on the Idea of democracy as an emerging right in international law. Many were inspired by Franck's thought provoking piece, and as a result, a wealth of literature and research emerged that dealt with the so-called democratic entitlement, supporting the idea that democracy today plays a crucial role in the international legal order.

Indeed, democracy has played an influential part in international law since the end of the Cold War. The end of the communist regime of the Soviet Union and the democratization of Eastern Europe, Latin America and parts of Africa were hailed by Fukuyama as the "international victory of democracy."[2] These events were perceived by many as a pivotal moment in the history of international law. More recently, political developments in North Africa and the Middle East have further emphasised the importance and hunger for democracy and have led to the belief that it is "the only route to ensure peace and prosperity in the region."

These developments are welcomed as a benefit to the international system in the long term, however, an unquestionable acceptance of the existence of democratic principles as part of international law creates numerous difficulties; the most obvious being the lack of definition of what democracy actually means.

This papers addressees the definitional issues surrounding the word "democracy" in the context of international law and examines whether Franck's idea of a democratic entitlement has borne fruit 20 years on.

[1] Franck T, *The Emerging Right to Democratic Governance,* 86 American Journal of International Law, (1992), p.46;
[2] Fukuyama, F, *The End of History and the Last Man,* Hamilton Publishers, London 1992

Clarke, Alison * HU 2.37 **CO / 5.14**

Land Titling And Communal Property

Modern land registration and land titling systems do not easily accommodate communal land rights. Land registration and other forms of land titling can fulfil a number of different functions and can be introduced for a number of different reasons, but most systems are designed primarily to record individual ownership of land. Whilst this does not necessarily preclude the recording of more complex land rights as well, there are difficulties in principle and in practice in doing this. This paper looks at these difficulties in the context of the comparatively recent and on-going spread of land titling programmes in developing countries. These programmes are largely driven by international aid agencies seeking to increase the spread of secure land rights (usually taken to mean something approximating to freehold ownership) and stimulate land markets, and by the demands of international investors. There is no lack of good intentions behind many of these programmes. Nevertheless, typically they have resulted in increased threats to the security of the rights of indigenous peoples occupying their land under customary laws, and worsened the position of women and vulnerable groups whose rights in and access to land and its resources are mediated through traditional title holders. Is this because of some fundamental incompatibility between communal and customary land rights on the one hand, and private

land ownership on the other, or is it simply a question of designing better land titling systems?

Clark, Bryan * HU1.47 **SPPFJ / 8.4**
The Place Of Mediation In Civil Justice

In recent times, across many jurisdictions spanning both the common law and civil law world, mediation has shifted from the margins into the centre of mainstream civil disputing practices. This institutionalisation of the process has occurred by dint of various means including in-court and court-annexed mediation programmes, compulsory referral of litigants to mediation, cost-sanctions penalising parties for unreasonable refusals to mediate, public funding imperatives and professional rules compelling lawyers to discuss mediation with their clients and opposing counsel. Such measures can be seen to have given rise to a significant increase in the (seemingly successful) use of mediation and *prima facie* garnered benefits for the state and litigants alike in terms, for example, of savings in costs and time. Nonetheless commentators have attacked the supplanting of formal civil justice with private settlement mechanisms such as mediation on a number of grounds. Such bases include the notion that mediation is antithetical to the role of the court to deliver formal justice; the linked idea that mediation exacerbates power imbalances between disputants; and the argument that mediation and private settlement may lead to the loss of the development of the law through judicial precedent. By drawing on evidence from a number of jurisdictions and different dispute contexts in which the process has evolved, and by drawing a line between rhetoric and practice regarding both mediation and formal civil justice procedures, this paper considers the veracity of the criticism levied at institutionalised mediation. Finally, the paper briefly tackles the issue of how mediation in its traditional, grass roots personae, may require tweaking to comport better with the prerogatives of formal civil justice.

Clucas, Rob * HU 1.50 **GSL / 1.3**
Legitimate Discrimination: Gay Bishops, The Church Of England, And The Equality Act 2010

The recent Equality Act 2010 aims to protect important categories of person that are often marginalised within our society. However, Schedule 9 paragraph 2 of the Act sets out exemptions from anti-discrimination provisions and the circumstances in which these are permissible 'for the purposes of an organised religion'. The effect of this paragraph is to permit discrimination against certain types of person and relationship when a religious body employs, trains or promotes people. The exemptions from non-discrimination provisions grant privileges to religious communities, namely to regulate their organisations, in a manner which would be regarded as unjustifiably discriminatory in secular society, arguably on grounds which ought not to be countenanced by any society that values inclusion.

An illustration of the problem of conflict between the protected characteristics of sexual orientation and civil partnership, *and* religion or belief, is provided by recent Church of England guidance on the appointment of divorced and bishops, which was written in the shadow of the Equality Act. Candidates for the episcopate who are known to be gay face a number of hurdles to appointment: being in a civil partnership, having ever had a sexual relationship outside marriage, and ever having expressed repentance for same-sex sexual activity are factors that are relevant to whether 'the appointment of the candidate would cause division and disunity within the diocese in question, the Church of England and the wider Anglican Communion.'

In this paper, I expose the hidden oppression of gay people who may be civil partnered and employed by the Church of England and the contribution that current legislation makes to their plight – and the failure of the Act to recognise, let alone address, the problems caused by the intersections of particular protected characteristics recognised by the Act.

Cowell, Frederick * HU 2.31 **CS / 5.8**

Anti-Imperialist Politics And The ICC: The Context Behind The Saga Of The Omar Al-Bashir Arrest Warrant

In 2009 when the International Criminal Court (ICC) issued an arrest warrant for Omar al-Bashir, the President of Sudan, for war crimes and crimes against humanity in Darfur, the action was condemned by the Sudanese ambassador to the UN as being a "tool of imperialism." Other politicians in Africa have made comments in a similar vein; Rwandan President Paul Kagame has condemned the ICC as being created to perpetuate "colonialism, slavery and imperialism" and the African Union's assembly has issued a declaration of non-cooperation with the ICC's arrest warrant.

Anti- imperialist critiques have been on the margins of discourse about the ICC, and where they have been discussed it has been in the context of legal debates about jurisdiction, but as the ICC fasces increasing problems with the enforcement of its arrest warrants and political relevance, after the al- Bashir case, it is important to assess the nature of this line of critique. Genealogically the ICC derives its juridical authority from imperialist legal traditions but, as this paper argues, this historical legacy does not necessarily compromise the operational efficacy or desirability of the ICC as an institution, yet it is important to understand why these conclusions are drawn. This paper analyses the theoretical basis for the 'ICC as imperialism' thesis, with reference to the al-Bashir case, by deconstructing the thesis into four discrete arguments. This will then be used to analyse the immediate future of the ICC in the context of its growing membership, new chief prosecutor and likely indictments arising from the Arab Spring and Ivory Coast.

Cownie, Fiona * HU1.82 **LE / 2.10**

Exploring Legal Skills

Despite the recent proliferation of Legal skills textbooks, there is little knowledge of the state of legal skills teaching in UK law schools. This paper will report on a project I am currently undertaking to find out about legal skills teaching and publishing. In the paper, I discuss definitions of legal skills, theoretical issues relating to skills education and the perspective of legal skills authors.

Croft, Amy * HU 1.51 **CLCJ / 6.2**

A Bark Worse Than It's Bite? An Examination Of The Law Relating To Dangerous Dogs - Past, Present And Future

With an area which is constantly given mass media attention, any change in the law relating to dangerous dogs will undoubtedly provoke heated public debate. As, under the current law, any breed of dog can be found to be dangerously out of control, any change in the law is likely to cause strong feeling amongst thousands of dog owners and anyone who has been, or fears being, the victim of a dog attack. The paper seeks to examine the current legislation on dangerous dogs and highlight the problems which have been caused by its application. The paper will then go on to explore the content and possible ramifications of the two proposed Bills which are currently before Parliament. It will be argued that the current Bills do not go far enough to address the problem of dangerous dogs and their regulation, as the measures contained in the Bills are mainly reactive with little thought to any proactive measures, to try and reduce the need for prosecution of these categories of offence. The paper will conclude by suggesting possible measures which could be considered by Parliament for inclusion in any future legislation to try and limit the number of dog attacks.

Crookes, Lee * HU 2.37 **CO / 2.12**
"This House Is Worth A Million Pounds To Me, But To Them It Means Nothing." Issues Of Home Loss And Compensation In Urban Regeneration

Drawing on ethnographic work from the author's doctoral research on the Labour government's Housing Market Renewal programme, this paper examines issues related to compulsory purchase, home loss and the current arrangements for financial compensation. It begins by noting the efforts made in public inquiries to suppress considerations of home from the proceedings. It then follows this through to examine some of the impacts of home loss for householders. With reference to Radin's (1982) theory of property and personhood and Merill's (1986) notion of the householder's 'subjective premium', the paper then assesses the adequacy of current compensation arrangements, suggesting that the formal recognition of intangible losses, inherent in statutory Home Loss Payments, offers potential for further scholarship and reform. Without such changes, low-income households will continue to subsidise the costs of urban redevelopment by not being properly compensated for their losses.

Daguerre, Anne * HU 1.47 **LabL / 6.4**
Wasting Away: Social Rights In 21st Century Britain

Since the 1980s, british policymakers have increasingly espoused a punitive model of welfare characterised by the reliance on in work benefits, us style, in order to subsidize low wages. The labour government (1997-2010) took active labour market policies to a new level; access to social benefits became conditional on the ability to participate in paid employment, with the exception of the most severely incapacitated. This workfare consensus, by casting a permanent shadow on the moral character of the unemployed, sets them apart from the british citizenry. The erosion of social rights represents a long term trend that has been accentuated by the coalition government plans, especially with the controversial welfare reform bill and the get britain back to work plan.

Based on the analysis of the legislative documents and current parliamentary debates, especially the reform of the employment and support allowance in the current welfare reform bill, the article seeks to assess whether current government plans are akin to the 1996 watershed in us social policy with the transformation of aid to families with dependent children (afdc) into temporary assistance for needy families (tanf).

Daly, Yvonne Marie * HU 2.41 **CLCJ / 8.9**
Exclusion And Equity: The Bother Of Balance

In the investigation of criminal offending, through search, arrest, detention, questioning, forensic sampling and so on, important rights of suspects, and others, are sometimes breached by police. This inescapable fact requires criminal justice systems to adopt rules on the admissibility at subsequent trial of any evidence obtained in investigative breach of suspect rights. Such rules range from those that require automatic exclusion where rights have been breached (e.g. Ireland) to those that favour admission in almost all cases unless limited exceptional circumstances are in existence (e.g. England and Wales), with tests based on the balancing of interests falling somewhere in between.

This paper seeks to examine the concept of "balance" in the context of exclusionary rules and, more particularly, to look at the "seriousness of the offence" as a factor within the balancing approach. To illustrate these issues, the paper will primarily explore New Zealand's proportionality-balancing test. This replaced an earlier rather strict exclusionary approach and it applies to evidence obtained in breach of the New Zealand Bill of Rights Act 1990. Recent cases, in particular *R v Hamed* [2011] NZSC 101 (2 September 2011), have highlighted the arguably inequitable position whereby improperly obtained evidence will be excluded where the charges against the accused are not particularly serious, but admitted where the charges are more serious.

This paper will explore the desirability or manageability of the concept of “balance” in the context of rules on improperly obtained evidence generally, with specific reference to the New Zealand rule and an eye to proposals for reform of the strict approach currently adopted in Ireland.

Dar, Amber * HU 1.48 **ML / 3.5**
Can “Best Interests” Justify Child Participation In Medical Research?

Medical research on children is necessary to achieve progress in paediatric medicine. This paper will look at how the best interests test has been extended from its traditional role in medical treatment cases to cases of child participation in medical research. The Medicines For Human Use (Clinical Trials) Regulations 2004 has triggered recent criticism and general dissatisfaction regarding the issues of informed consent and the appropriate risk/benefit analysis in medical research involving children. The ultimate struggle is to achieve an appropriate balance between facilitating sound research and protecting research participants. But is there sufficient justification for extending application of the best interests test into the realm of research? I find that application of the best interests test in matters of research is flawed because it focuses too narrowly on the interests of the individual patient rather than viewing that individual as being within a wider network of relationships. I propose that a more relational approach would be suitable and should be adopted to regulate research with child participants. If we look to the values of care theory and acknowledge a more relational approach to best interests, the aims of treatment can be reconciled with the aims of research in that the “benefit” extends beyond the particular individual in both cases – medical research benefits both the individual child and future children and medical treatment benefits the individual child and the benefit extends to those relevant others connected to the child, namely those who are in caring relationships with the child.

Darbyshire, Penny * HU 2.34 **LLP / 5.9**
Sitting In Judgement: The Working Lives of Judges – The Story Of The Research Project

This is an account of the research reported in a new book, SITTING IN JUDGMENT - THE WORKING LIVES OF JUDGES (Hart Publishing, 2011). This was a wide and deep observational project on the working lives of judges at every level of the English legal system, from district judges to the UK Supreme Court, in all six circuits and in family, civil and criminal courts. The project's aims were to find out what judges were like and what they did. The method used was work-shadowing 40 core-sample judges and interviewing a further 37. The project took over seven years and the author was allowed unlimited access to information. She sat next to the judges on the bench, travelled on circuit with High Court judges and was permitted to observe and report on the deliberations of appellate judges. The result provides an unparalleled insight. In this paper, Penny Darbyshire gives an account of the research, using this unique method, and outlines her main findings on the judges' working personalities, their approach and attitudes to work, court users and their working environment.

Dennis, Johanna * HU 1.82 **LE / 3.10**
Ensuring A Multicultural Educational Experience In Legal Education: Start With The Legal Writing Classroom

Legal educators have an obligation to educate the future generation of lawyers in a multicultural way by creating a learning environment in which the issues faced by minority communities are criticized, evaluated and challenged.

This article discusses the two-fold nature of multicultural education (educating on multicultural topics and educating multicultural students). By examining eight different law schools, the author discusses current efforts in the law school which positively impact the educational experience, some of the shortfalls in these efforts, the need for first-year integration of multicultural topics, the five goals that when sought and achieved can help to

create the necessary transformation towards multicultural education, and how an educator in the legal academy can ensure that her students receive a well-rounded multicultural educational experience. Legal writing professors are uniquely situated to teach their students how to write within a social justice context and across multiple disciplines. Through the lens of a minority legal writing professor, the article addresses creating a multicultural educational experience in a legal writing classroom where students are instructed in multidisciplinary predictive and persuasive writing.

The article discusses student-centered teaching and assessment, as well as how a legal writing professor can select problems and exercises as backbones for writing exercises with the end goals of developing a multicultural curriculum and exposing students to academic and legal writing in multiple disciplines. The article concludes by making recommendations for how all legal educators can impact the pipeline to the legal profession by enhancing the law school experience through multicultural education.

Dennis, Johanna K.P. * HU 2.82 **IR / 4.6**

Mommy, Where Is Home? Imputing Parental Residency For Undocumented Immigrant Children In *Holder V. Martinez Gutierrez* And *Holder V. Sawyers*

Carlos was among the many undocumented children in the United States. A native and citizen of Mexico, he entered the U.S. illegally when he was five years old. Two years later, his father was granted legal permanent resident (LPR) status, but Carlos did not get LPR status until he was 19 years old. Two years after receiving LPR status, Carlos was arrested for smuggling, placed into removal proceedings, and faced deportation back to Mexico. Unfortunately for Carlos, he did not satisfy the requirements to obtain Cancellation of Removal -- a common form of discretionary relief available in removal proceedings.

For LPR Cancellation applicants, the applicant must have five years of residence as an LPR, have seven years' physical presence after admission to any status, and not have been convicted of an Aggravated Felony.

When Carlos applied for Cancellation, he was faced with the problem that although he had been physically present in the U.S. and living with his parents for 16 of his 21 years, he had not had LPR status for five years, nor had he accrued seven years of presence post-admission.

The government argued that the time requirements for Cancellation must be met using only the applicant's residence and admission. Carlos argued that as an unemancipated minor living with his parents, his father's dates of admission and grant of LPR status should be imputed to him, which would render him eligible for Cancellation. Along with a case involving similar issues, Carlos' case is now pending in the U.S. Supreme Court.

This presentation discusses whether the parent's time in residence and date of admission should be imputed to an unemancipated minor; the two cases pending before the Supreme Court addressing this issue; and the policy implications and impact of the government and applicants' positions on undocumented children.

Denvir, Catrina * HU 1.47 **SPPFJ / 7.12**

Access To Justice Online? The Policy, Practice And Pitfalls Of Resolving Civil Justice Problems Using The Internet

Over the last two decades Government policy in England and Wales has pursued an agenda of e-enabling public sector services. Whilst it has been claimed that technology has been slow to infiltrate the area of public legal services, recently announced legal aid reforms suggest a larger role for technology in the near future. Legislation designed to bring these legal aid reforms into effect (the Legal Aid, Sentencing and Punishment of Offenders Bill) not only preserves a role for technology in the delivery of legal aid, it also implies a potentially greater role for technology as a self-help tool for those ineligible for publicly funded assistance. Exploring the history of legal aid policy as it relates to internet technology, this

paper discusses some of the issues that arise from individuals' use of the internet for civil justice problems drawing on data from wave 1 of the Civil and Social Justice Panel Survey. It notes that such issues may ultimately compromise the extent to which savings can be made in the legal aid reform process, as well as challenging the assumption that when it comes to the pursuit of justice, e-access alone is a sufficient resource.

Dickson, Lisa * HU 1.48 **ML / 2.5**
The Police, The NHS And The Privacy Of Patients
A Consideration Of Police Use Of S29 Of The Data Protection Act 1998

Though there has been much recent academic, media and public concern about both NHS and police handling of data confidentiality and privacy issues, there has been surprisingly little attention paid to the area where the practices of both bodies most obviously intersect. This area is NHS disclosure of patients' confidential information, without patient consent, to the police under s29 of the Data Protection Act 1998. However, with SLSA funding I have been able to conduct research into this disclosure practice over the last twelve months, and present the most significant findings of my study here.

My ambition in the paper stops short of that for the full, funded research. That research aims to publish electronically a comprehensive national overview of NHS policy and practice, as none presently exists. Instead I present here the analysis of data on policy and implementation that I have received from local NHS organisations, collected together for the first time following Freedom of Information requests to all NHS Primary and Acute trusts. This information has not been made available across the NHS itself, for in the absence of a national NHS policy governing the deliberation of access to third parties, and in the absence of any national NHS overview of the practice, s29 disclosure has been delivered piecemeal, by diverse NHS organisation adopting quite different strategies in meeting their statutory obligations, often with little awareness of practice elsewhere. Reporting back, the paper picks out the considerable legal and policy implications of the information received.

Dingwall, Robert * HU1.49 **FL / 5.1**
Re-Engineering The Family Justice System – Another Missed Opportunity?

This paper reviews the current reforms from an organizational perspective and questions how well the system is designed to serve the needs of users for efficient, effective, equitable and humane decisions. It adopts a re-engineering approach to explore what such a system might look like. In particular, it questions the idea that all family matters should be dealt with through the same set of institutions, that the law should be freighted with a great deal of moral baggage in the cause of promoting particular relationship choices, and that children's interests should necessarily and in all circumstances be paramount. Rather than continuing to patch up and tinker with the existing institutions, reformers should be looking to separate child protection and divorce into organizations focussed on their different user requirements, to develop simple administrative processes for lowering the cost of mass, uncontested divorce and cohabitation breakdown, and more specialized dispute management processes for the small minority of cases that are highly contentious or involve significant legal issues.

Doherty, Michael * HU 1.47 **LLaw / 3.4**
Labour Rights And EU Law: (Re)Drawing The Battle Lines?

Since its establishment there has always been a tension in European Union (EU) law and policy between the objectives of achieving a free internal market for goods, services, capital and workers whilst also protecting the main features of the so-called 'European social model'. EU regulation, therefore, has had to balance the need for free and open markets with the requirements of adequate social protection; laws and policies have tried to promote free trade but at the same time respect workers' rights and trade union freedoms. At the same time, EU regulators, when formulating and implementing laws, must bear in mind that enacted measures will interact with different Member State traditions, histories and cultures.

Following the rejection of the European Constitution in 2005, a period of considerable European soul-searching, many Member State referenda and court challenges and a seemingly interminable debate on institutional reform, the Treaty of Lisbon finally came into effect on December 1st 2009.

This paper assesses the current state of play as regards EU regulation of collective labour rights in the context of the new constitutional structure of the Union. The paper will assess the impact of the main provisions of the EU treaties dealing with labour rights (including the Charter of Fundamental Rights, which now has binding legal status) and assesses the extent to which the revised treaties protect the interests of collective labour. The paper will also examine recent implications at Member State level of key Court of Justice decisions touching on the area of collective labour rights.

Finally, the paper will draw out some general implications for the national industrial relations systems of Member States of recent legal and constitutional changes and the likely impact of these on support for future European integration.

D'Souza, Radha * HU2.38 **IR / 5.6**

United Nations Declaration On Rights Of Indigenous Peoples And The Changing Context Of The UN

Socio-legal studies typically emphasises the importance of context and argues that the social dynamics of class, capitalism, state, race, gender, environment and such interact with law in mutually constitutive ways. When it comes to international law, however, society and context become problematic. More recently, neo-liberal transformation of International Organisations and States, understood under the general rubric of 'globalisation', have brought law reforms and institutional changes to the centre stage in a wide-range of sectors and institutions domestically and internationally. These changes taken together transform the international regime for states, economies and peoples, and constitute the most comprehensive regime change since the UN system was established. While a lot of attention has been devoted to theories of globalisation and international political economy from global justice perspectives, there is comparatively little attention paid to the UN system and its role, especially its law making role, in the post-World War II political economy. This shortcoming means the study of international law is often normative or delinked from institutional developments. This is comparable to socio-legal studies of law without theories of state, or criminal law without the institutions of the policing. The wider aim for this paper is to examine how critical contextual approaches in socio-legal studies might be extended to international law making. At the concrete level, the paper seeks to evaluate the process of drafting the Declaration of Rights of Indigenous Peoples (DRIPS) against the backdrop of neoliberal regime-change within the UN. The paper seeks to highlight how by shifting the work of drafting DRIPs to different institutional centres within the UN, the International Organisations were able to transform the status of indigenous people from being *nations* demanding self-determination to *stakeholders* in a global economy. The paper locates the drafting, adoption and implementation of DRIP against the context of the wider transformations within the UN system to emphasise the necessity for a more theoretically nuanced and contextual understanding of international law on social issues such as DRIP.

Dymock, Alex * HU1.50 **GSL / 5.3**

Making A Fist Of It? : Interrogating The Contemporary Role Of The Obscene Publications Act (1959) In The Governance Of Sexual Perversion

In *R v. Peacock* (January 2012) a jury returned a not-guilty verdict in a case in which the test of obscenity was raised by the Crown to determine whether the defendant had sold and distributed pornographic DVDs of homosexual acts that, according to the Obscene Publications Act (1959), tended to "deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it". The case was a landmark in two ways: firstly, it was the first in over a decade in which the defendant challenged the Crown Prosecution Service's assertion that the DVDs distributed were obscene; secondly, the material declared obscene covered specific sexual acts that are in themselves legal to practice: fisting and urination (to the face/body of another

person). The third category of image thought to be obscene, acts of BDSM in which blood is drawn or the skin is broken, remains a major grey area in criminal law in terms of a person's ability to consent to harm.

This paper constitutes first a detailed examination of the trial, and second, makes an argument that particular perverse consensual sexual desires simply remain ethically incomprehensible to criminal law, even if contemporary discourses of medicine, law and ideas about what constitutes 'sexual health' are carefully applied and the acts are declared not harmful. While the obscenity test is still mobilized in criminal law as the barometer of public morality where sexuality is concerned, I ask whether the OPA still has a relevant role to play in the governance of sexual perversion in England & Wales in light of this verdict.

Dwyer, Angela * HU1.50 **GSL / 5.3**
Queerness As Out Of Place: How Police Regulate Young Queer Bodies In Public Spaces

Using interview data on LGBT young peoples' policing experiences, the paper argues policing practices work to discursively situate public visibilities of sexual and gender diversity or 'queerness' as out of place. Police actions recounted by LGBT young people suggest that public space is informally regulated by police as a heterosexual, heterogendered space, and displays of embodied queerness breached these boundaries. A certain kind of visuality (Mason 2000) appears to be at work in conjunction with a certain type of bodily pedagogy: where the visible performance of queerness is embodied in ways that police may come to know. Aligning with Mason (2000), Moran and Skeggs (2003), and others, this paper suggests that, like violence is itself a bodily spectacle from which onlookers come to know things (Moran and Skeggs 2003), policing works to subtly situate public visibilities of 'queerness' in ways that are visible and therefore made knowable to the public. While policing interactions with LGBT young people were far removed from hate violence perpetrated by police against LGBT people in the past, police actions nonetheless served to make it known to the public that LGBT bodies were out of place in public spaces.

Dwyer, Clare * HU2.31 **CS / 1.13**
Reconsidering Reintegration: The Role Of Former Prisoners In The Process Of DDR

The international community has been preoccupied with the disarmament, demobilisation and reintegration of former combatants for quite a few years and there now exists a vast amount of literature that supports the arguments that DDR is vital for the success of peace building missions. However, the 'traditional' measures which are put in place only broadly consider former combatants returning from the 'field' and there is little evidence of practice where distinct measures are put in place for the 'returning' former prisoner - the *'former combatant/ former prisoner'* (FC/FP). Moreover, there is also a disconnect within the literature which suggests that the reintegration of former combatants is often explored through conflict transformation/transitional justice discourses whilst the reintegration of the former combatants who have also served a prison sentence is viewed primarily through criminological discourses. This can lead to serious difficulties and obstacles for the (FC/FP), particularly in relation to psychosocial and economic reintegration. Informed by the lack of discussion on the FC/FP in the DDR literature and the apparent disconnect in dealing with FC/FP in the conflict transformation and criminological discourses, this paper will analyse the particular limitations of traditional DDR processes. Using Northern Ireland as a case study, it will explore the notion of expanding the 'R' phase, proposing that additional attention needs to be given to both the specific needs of the former combatant/former prisoner and the role they can play in the overall peace building and re-integrative process.

Dzehtsiarou, Kanstantsin * HU2.34 **LLP / 5.9**
Seconded Lawyers And Independence Of The European Court Of Human Rights

The European Court of Human Rights (hereinafter, the ECtHR or the Court) suffers from a docket crisis. There are more than 150000 pending applications and it is likely that the

backlog will continue to grow. The recent amendments introduced by the Protocol 14 (entered into force on 1 June 2010) were intended to expedite the procedure in the ECtHR; this would reduce the number of applications awaiting resolution. However at this stage it is almost certain that the long delayed entrance of Protocol 14 into force is insufficient to solve this issue. The mounting number of applications and the long time of proceedings at the ECtHR are damaging the Court's legitimacy.

There are various solutions suggested to minimise the Court's backlog including introduction of court fees, new admissibility criteria or even abandoning the right to individual petition altogether. One of such proposals which is already at the implementation stage by the Court is the idea to increase the number of the lawyers of the Court's registry seconded (funded and selected) by the Contracting Parties.

The present paper considers if increasing number of the seconded lawyers can indeed negatively affect the independence of the ECtHR. The paper first discusses how the independence of the judiciary can be ensured and maintained; and what implications the judicial independence can have on the legitimacy of its judgments. The second part of the paper explores the role of the ECtHR's registry on the modus operandi of the Court. This part of the paper will also shed light on how the seconded lawyers are selected and funded. The third part of the paper analyses how the very fact of accepting seconded lawyers can influence the independence of the ECtHR and hence the legitimacy of its judgments.

Edwards, Jennifer * HU 1.48 **ML / 1.4**

Action - The Fulcrum Upon Which Respect For Autonomy Rests

This presentation aims to explore why the courts, in cases which concern assisted dying, respect the autonomous choices of certain patients but not others. It appears, based on the cases of *Re C*, *Re T* and *Airedale NHS Trust v. Bland*, that requests for omissions of treatment or 'passive' assistance are often granted, implying that the need to respect the requestor's autonomy outweighs the otherwise inalienable importance of protecting his life. Where active assistance is requested however, as it was in the case of *Dianne Pretty*, the courts, in denying such assistance, appear to value the patient's life more highly than they do the protection of his autonomy. Though there are numerous potential reasons for this difference in approach, this presentation will question the following two:

1) It is the manner in which the death is caused which influences the courts' differing approach to 'active' and 'passive' cases. Active assistance in dying is seen as murder, and while it is possible for one to choose to take one's own life, it is neither legal nor moral to ask another to take one's life.

2) Life is a primary, non-derivative good and is therefore intrinsically more valuable than autonomy, which is a secondary or facilitative good. Therefore, where an action is seen to precipitate death, as is the case where 'active' assistance is requested, the value of the patient's life is taken to outweigh the need to protect his autonomous choice to die.

It will be concluded that, by respecting the choice of a person seeking an omission of treatment and denying it to one who seeks active assistance, the courts perpetuate a dangerous double standard concerning respect for autonomous choices.

Emmett, Charlotte * HU2.31 **MH / 6.8**

AssessingThe Capacity Of Dementia Patients To Make Decisions About Where To Live On Discharge From Hospital: Comparing Practice With Legal Standards

Acute admissions to general medical wards in hospitals include many people with dementia. At the point of discharge from hospital, assessments are often carried out to determine whether such patients have the capacity to decide where they should live when they leave hospital. Decisions to return older patients with dementia home, when they possess fluctuating or declining mental functioning, are particularly troubling for professionals.

Evaluative decisions required in this type of capacity assessment are often complex and the anticipated risks associated with returning patients home are unpredictable. Yet such capacity assessments are made on a daily basis in hospitals by a variety of health and social care professionals. The outcome of such assessments are of profound importance for both the assessor and the patient concerned as they may lead to a person being deprived of their human rights and liberties and can expose professionals to legal liability. As such, capacity assessments must comply with legal and ethical standards and be justifiable in law.

This paper comments on how assessments of residence capacity are actually performed on general hospital wards in England and Wales in respect of older people with dementia and how such assessments compare with legal standards for the assessment of capacity set out in the Mental Capacity Act 2005. Our findings are grounded in ethnographic ward-based observations and qualitative interviews conducted in three hospital wards, in two hospitals (acute and rehabilitation), within two NHS healthcare trusts in the North of England over a period of nine months from June 2008 to June 2009. We also draw from broader conceptions of capacity found in domestic and international legal, medical, ethical and social science literature.

Our findings suggest that whilst professionals profess to be familiar with broad legal standards governing the assessment of capacity under the MCA, these standards are not routinely applied in practice in general hospital settings when assessing capacity to decide place of residence on discharge. We discuss whether the criteria set out in the MCA and the guidance in its *Code of Practice* is sufficient when assessing residence capacity given the particular ambiguities and complexities of this capacity. We conclude by suggesting that more specific legal standards are required when assessing capacity in this particular context.

Dorn, Nicholas * HU 1.47 **PPT / 5.4**
'Knowing Markets, Would Less Be More?'

Dorn Abstract: Regulators attempt to understand financial markets and their risks in terms of categories of knowledge and datasets that are defined and produced by the markets. However, regulators cannot adequately interpret or utilise such knowledge, for reasons including their social distance from the sites of knowledge production, the diversity of financial firms' proprietary risk models, firms' abilities to game the rules thus rendering the 'metrics' meaningless, and several backfiring aspects of global regulatory networking and reform. Calls for yet more information about trading, posed in terms of the merits of transparency, result in information swamping of regulators. Meanwhile, whilst policy makers tinker with regulatory structures ('architecture'), political reaction to the crisis de-legitimises public regulation as a project. Yet there is one positive aspect of the reforms – enhancing powers for 'resolution' of financial firms in ways that impact upon investors whilst minimising wider destabilisation – upon which the regulatory information requirement can and should be refocused. To protect the public interest, legal transparency is required, trading transparency is not. This paper introduces these issues by drawing on critical work on transparency and markets. The paper builds on a paper forthcoming in Economy and Society.

Easton, Susan * HU2.32 **SP / 6.10**
Should Prisoners Be Allowed To Vote?

It is now seven years since *Hirst v UK* in which the European Court of Human Rights ruled that the UK's denial of the vote to sentenced prisoners breached Article 3 of Protocol No. 1 of the European Convention. Since then we have had two consultation papers, a General Election and several cases challenging the voting ban but the law has yet to be changed. This paper will consider the reasons for this delay, why both Labour and Coalition governments have been reluctant to extend the vote to sentenced prisoners, whether felon disenfranchisement is justifiable, and possible future developments.

Emeseh, Engobo * HU2.31 **RE / 8.10**

Sustainable Partnerships For Renewable Energy Projects In The Developing World: Re-Evaluating The Common But Differentiated Responsibilities Principle In A Changing World

One of the key debates arising from the rapid economic and industrial growth in some "developing" countries (e.g. China, India, Brazil and South Africa) is the equitable allocation of responsibilities for combating climate change in a binding post- Kyoto legal framework. The general discourse has understandably focused on the allocation of responsibilities as between the "developed" and these "developing countries". The increasing pressure on these states to take on more responsibility for tackling climate change was evident from the discussions and documents emanating from the 2009 Copenhagen, the 2010 Cancun and 2011 Durban Climate Change Conferences. This paper explores the implications this has for our understanding of the common but differentiated responsibility (CBDR) principle which underlie the current international law and policy framework for combating climate change.

However, unlike the conventional debate which has understandably focused on the allocation of responsibilities between the "developed and developing countries", the main emphasis of this paper is on issues of equity between the "developing countries". The key question it engages with is whether equal eligibility and access to "benefits" under the international regime for support and assistance in mitigation and adaption strategies can be justified not only in light of the increased economic and technological capacities in some of these emerging economies but also against the background of the regulatory and institutional capacity to access these benefits? This paper explores this issue within the context of renewable energy projects and the capacity of some developing countries to secure sustainable partnerships for the development of projects on renewable energy technologies when compared with other "developing" countries. It takes as its starting point, the experience under the current Kyoto Protocol Clean Development Mechanism with vastly unequal proportion of projects registered from different countries and regions. The paper will argue that without addressing issues of equity between developing countries, the situation may emerge where partnerships for renewable energy projects for climate change mitigation in some countries may essentially be quite minimal or encompass essentially the agricultural sector and the attendant sustainability issues this raises. More therefore needs to be done at both the international level and by countries themselves to ensure a more equitable access to partnerships for renewable energy technologies?

Erturk, Ismail & Froud, Julie & Johal, Sukhdev & Law, John & Leaver, Adam & Moran, Mick & Williams, Karel (CRESC) * HU 1.47 **PPT / 5.4**

The Political Failure Of Crisis Management

This paper adds a new argument for making a smaller, simpler financial sector into a central policy objective. In previous work, looking back at the origins of the 2008 crisis, we argued in our book After the Great Complacence that bricolage in the financial markets undermines the possibility of effective constraining external regulation of the financial sector. Now, looking sideways at the ongoing eurozone crisis, we argue that, because of interconnected bank balance sheets and rehypothecation, existing technologies are prone to disastrous collapse which cannot easily be managed by econocrats or politicians. The argument is developed by exploring a sectoral analogy from aviation and the problems encountered by the British in early development of civil jet aircraft. Specifically we focus on the deep stall of a BAC 1-11 prototype in a 1963 test flight when turbulence from initial failure prevented control and recovery by the pilot. The paper will be presented by Adam Leaver. It is based on a CRESC working paper available at cresc.ac.uk

Everett, Kim and Outhwaite, Opi * HU 1.82 **LE / 1.9**

Crime And Problem-Solving

Students new to the study of law often experience difficulties in developing problem-solving skills, working from primary sources and making the transition from school to university to become autonomous learners. In response to these needs we designed an innovative 15

credit (12 week course), taught predominantly through two-hour workshops using a modified problem-based learning approach. Linking also to a desire to increase student engagement it was decided that these skills would be taught through the vehicle of two topics of criminal law, a subject which is not taught at level 1 at Greenwich. The two areas chosen were protection from harassment and criminal damage.

Two theories underpinned the design of this course. The first is that students learn through *doing* rather than being passive recipients of information. The second is that teaching works best when it is seen by students to relate directly to their assessment.[1] This paper discusses how these theories are reflected in this new course.

All learning is structured around a long criminal scenario which also forms the basis of the two pieces of assessment. In the two-hour weekly workshops students, using primary sources only, work on specific tasks which have been carefully designed to help them build up, week by week, the knowledge and skills necessary to complete the assessments. Through a cycle of discussion, practice and feedback students both construct the knowledge necessary and develop problem-solving skills. Because the scenario is used as the key learning device and also forms the basis of the assessment, the link for the student between what is happening in class and the end goal (the assessment) is explicit. In other words, since students see the teaching activities as directly related to their assessment they have a clear incentive to engage with the course.

Farmery, Anna * HU2.38 **ITLC / 7.8**

How Advancement In The Digitization Of Our Lives Is Challenging Legal And Ethical Frameworks

This paper reports on the first phase of a research project considering the legal and ethical challenges facing society, in relation to 3D printing. It will look at both the issues surrounding the production of items such as replacement kidneys or the creation of real objects taken from a digital photo, as well as the conceptual difficulties facing society and the lawmakers. It will ask the question, whether the legal framework is ready to address such innovation and consider the role of law in creating an ethical balance for society.

The paper will explore the issues and consider how to develop a legal framework to protect society from exploitation, whilst creating opportunity for societal benefit.

Farrell, Katie * HU 2.34 **LLP / 4.8**

The Triangle Of Misery: The Changing Nature Of Legal Aid Funding And The Impact On Solicitor Morale And Access To Justice In The Asylum Process

This paper will draw on findings from a doctoral research study into aspects of legal representation and decision-making in the asylum process in Scotland in order to explore the difficulties faced by asylum solicitors when trying to secure legal aid funding for their work; and the implications of this for practitioner moral and access to justice in the asylum process.

Changes to the nature of publicly funded legal work have impacted on the Legal Aid sector of the legal profession in Scotland as well as in England and Wales in recent times. Such changes have resulted in asylum lawyers often finding themselves locked in a 'constant fight' with the (Scottish) Legal Aid Board in order to secure payment for their work. This led to participants in this study feeling undervalued, frustrated and at times as though their professional competence was being called into question. At the same time, many in the study expressed concern about the disparity between the volume of work required to fully prepare an asylum appeal case and the level of work that the Scottish Legal Aid Board are willing to fund. This, in turn, raises important questions about the impact of legal aid funding not only on the quality of service delivery within the asylum law sector, but also in relation to

access to justice for asylum applicants who find themselves subject to the asylum process in Scotland.

Farrell, Michelle * HU 2.31 **CS / 5.8**
Who Are The Barbarians? Understanding Torture Through The Novel

In *Waiting for the Barbarians,* J M Coetzee plays on the indistinctiveness between civilisation and barbarianism and between being inside and outside of civilisation, geographically and conceptually. His novel provides an illuminating context from which to explore 'the precariousness'[1] of human life and the construction of the 'other'. This paper employs *Waiting for the Barbarians* as a foil for considering human rights violations, particularly the use of torture, in the context of counter-terrorism. The paper argues that *Waiting for the Barbarians* offers the freedom to reflect on conceptions of national security without the restraints of the highly emotive language of terrorism.

Although the historical and geographical setting of the novel is unspecified, it is clearly situated in a colonial context. Since Coetzee is both South African and considered a postcolonial writer, the novel has unsurprisingly often been interpreted as a representation of apartheid South Africa. Coetzee, however, denies this interpretation: 'There is nothing about blackness or whiteness in *Waiting for the Barbarians*. The Magistrate and the girl could as well be Russian and Kirghiz, or Han and Mongol, or Turk and Arab, or Arab and Berber'.[2] The novel has also been interpreted, therefore, as translating to the universal, and it has been read allegorically with respect to the use of torture in the aftermath of September 11 within the context of the 'war on terror'.

Coetzee's consideration of the act of torture in the novel provides an illuminating counterpart to contemporary fictitious depictions of torture as embodied, for example, in the 'ticking bomb' scenario. By situating the actions of the security services, the Third Bureau, 'in a twilight of legal illegality',[3] the novel suggests the paradigmatic state of exception; the Empire operates outside of the law but, at the same time, its actions have the force of law. Furthermore, the novel represents torture as the quintessential act of exception. The barbarian is simultaneously and paradoxically excluded from and included in the legal order by being subjected to the non-application of the law through torture. In Giorgio Agamben's words, the barbarian is reduced to 'bare life'. The novel's protagonist, the Magistrate, searches in vain to discover the meaning of torture and the reasons for the Empire's use of torture against the barbarians. It is not until he is subjected to torture that he realises torture signifies nothing other than the Empire's ability to render life bare and to inscribe the meaning of humanity upon the excluded body.

[1] Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (Verso, London 2004).
[2] Richard Begam and J.M. Coetzee, 'An Interview with J.M. Coetzee' (1992) 33 Contemporary Literature 419, 424.
[3] J.M. Coetzee, 'Into the Dark Chamber: The Novelist and South Africa' *The New York Times* (12 January 1986) 13.

Febbrajo, Alberto * HU 2.41 **STLS / 3.13**
The Anthropological Roots Of Social Systems Theory

The purpose of this contribution is the discussion of the thesis that the application of an autopoietic approach to the analysis of social systems requires not only the use of sophisticated conceptual tools but also their constant control through a combination of critical and reflexive attitudes which are not only normatively but also cognitively defined. These tools have to be in particular reconsidered in order to discover the anthropological roots of the different models of system rationality; the relativity of the distinction between closure and openness of the system; the flexibility of the borders of the system; the inevitable inter-systemic connections which are presupposed by the flow of communication filtered by various instruments of structural couplings; the changing content of the identity of social systems and the evolution of their programmes and structures.

Besides an internal autopoiesis we can thus speak of an external one, based on instruments of structural couplings which, for the legal system, are mainly constitution, democracy and the market.

Fehlberg, Belinda & Millward, Christine
*** HU 1.49** **FL / 1.1**
Post-Separation Parenting And Financial Arrangements: Exploring Changes Over Time

This paper presents findings from a three year qualitative Australian project which aimed to identify and explore the long-term financial impacts of shared parenting by examining the interaction between shared care arrangements and financial (child support, property and partner maintenance) settlements following family law changes aimed at encouraging shared care. The study included interviews with 60 recently separated Victorian parents once a year over three years (2009-2011) about their post-separation parenting and financial arrangements.

We found that two-thirds of parenting arrangements remained unchanged over our study, with traditional arrangements being least likely to change. Time-sharing was most likely to decrease (with a drift toward more time with the mother) although some parents described an increase in time-sharing. Property arrangements did not change when parenting changed but were not strongly linked to level of parenting time in the first place. Child support payments were more likely to change over time but were less responsive to parenting changes than we had expected. When time-sharing decreased, primary parents (usually mothers) and their children were more likely to be financially disadvantaged if child support payments were not increased and the original property settlement had not favoured the 'final' primary parent.

Fehlberg, Belinda * HU 1.49 **FL / 6.1**
Shared Parenting Time In Australia: Exploring Children's Experiences And Views

This paper draws on interviews with 22 children conducted as part of a larger study during which 60 parents were interviewed once a year over three years (2009-2011) about their post-separation parenting and financial arrangements, to explore any changes to these over time. The main aim of this part of the project was to examine children's own descriptions and views of their parenting arrangements, with a particular focus on children currently or previously in shared time parenting arrangements, including their input into their parenting arrangements and any changes to those arrangements.

Half of the children described changes to their parenting arrangements over time (in most cases from shared time to primary care, but in some cases toward greater sharing of time) and most of these children said they had input into their parenting arrangements. Children who spoke positively about shared time described close relationships with cooperative parents who lived within close proximity and who were flexible about changing or swapping days. Children who spoke negatively about shared time identified the distance between their parents' homes and/or parental conflict as key issues. Key factors prompting change were conflict with step-parents or step-siblings, distance between homes, wanting one home base and wanting to spend more time with one parent.

Fletcher, Jamie * HU2.42 **SL / 8.11**
Is Anything Fair About UEFA's Fair Play Regulations?

In 2012 UEFA intended to begin implementation of its Financial Fair Play Regulations which outline certain financial conditions teams must abide by in order to compete within European soccer competitions. This paper will criticise these regulations from three interlinked methodological angles.

Firstly, through a comparative analysis of sporting governance between the English Premier League and American Football League it will be shown how the new regulations seem at odds with both systems of sporting governance. Governance of sport in the United Kingdom and the United States is not merely based off of different understandings of justice but is arguably based off of opposite conceptions. In the United States, while government is operated on an individualistic basis, sport is controlled by egalitarian laws which search for the equality of competitors within the league. In the United Kingdom alternatively, the Premier League is dominated by a form of cowboy capitalism that holds central the idea of justice as the capacity to spend money. The New UEFA regulations, however, are based in a stagnant theory which promotes all of the bad elements of both systems with none of the positives.

Secondly, it will be shown that the new regulations are out of touch with both systems because they are philosophically misguided. At the centre of the regulations is the notion of 'fairness', however UEFA's conception of the word struggles to find its place within the classic Rawls and Nozick debate. While UEFA are aiming for a higher level of fairness within football what they are actually achieving is permanent disparity. Neither Rawls or Nozick could support UEFA's conception of fairness.

Fulham-McQuillan, Sarah * HU 1.48 **ML / 2.5**

The Dominance Of Policy In Medical Negligence Causation; Society's Influence Or An Influence On Society?

The competing relationship between patient rights and legal causation principles is particularly important in light of the increasing number of medical negligence cases before the courts with difficult evidentiary issues. This paper argues that courts are being forced to protect patient rights, yet are necessarily disregarding fundamental legal principles and the need for consistent jurisprudence. Causation principles are being diluted, most notably with the dominance of policy considerations over factual cause analysis where there are factual evidentiary difficulties.

This paper suggests that policy considerations have overstepped their function within causal determinations, and questions whether extensive reliance on policy is necessary for the benefit of individual rights, or whether such reliance is instead simply reflecting the current state of society through medical negligence decisions.

In examining the policy considerations affecting medical negligence litigation, it is evident that there are two potential types of policy; "pro-state" and "pro-patient". Increasingly inevitable in alleged medical negligence, particularly in relation to Hospital Acquired Infections, policy considerations may include the reputation of hospitals/doctors/HSE, expense in enforcing and supervising corrective policies, and the possibility of opening the floodgates to such claims. And on the other hand, injustice to patients.

In examining the jurisprudence to date where policy and 'common sense' principles are invoked to temper the harsh application of the "but for" test, it is evident that policy has been, in the main, "pro-patient". Yet, even this has produced inconsistent and uncertain jurisprudence. It is questioned whether it is an advantage or disadvantage to society to permit such reliance on policy in light of the increasing presence of "pro-state" policy factors. A conclusion is reached, therefore, on the validity and desirability of policy encroaching on factual causal determinations.

Fulham-McQuillan, Sarah * HU 1.48 **ML / 4.5**

No Donor Is An Island; Law's Role In Supporting Society To Improve Organ Donation

Organs for human transplantation are in short supply, both in Ireland and internationally. National legislation governing human tissue usually provides for methods to procure organs, and assigns responsibility to identifiable agencies.[1] Ireland however, has no such legislation.[2]

This paper puts forward a proposal which seeks to encourage greater organ donation from

society, whilst remaining within an existing public policy framework. It examines the role of law in governing so-called “self-regarding” behaviours, namely organ donating. In so doing, the paper explores the competing rights of society and the individual donor. A conclusion is reached which seeks to strike this balance, whilst simultaneously increasing organ donation.

Prior to the final proposal, a draconian response to organ shortages is examined, whereby the viability of government salvaging of organs from cadavers without prior consent is investigated in light of existing public health measures. These include mandatory post-mortem examinations as part of criminal investigations and legislation surrounding communicable diseases.

It is suggested that financial reward should be permitted for unrelated living donation, alongside the current system of altruistic living and deceased organ donation. This could be legislated for by government but operated through a national health body. The existence of property rights inhering in organs of living individuals are considered. Moreover, the futility in relying on altruism alone to remedy this public health concern is demonstrated (based on organ donation statistics to date), and a comparison is made with non-pecuniary and indirect financial benefits which are currently accepted in other jurisdictions and EU secondary legislation. In addition, the proposal inherently increases living kidney donation - an increasingly important aspect of organ donation evidenced by statistics for 2011 and the training of more renal transplant surgeons in keyhole technologies this year.

[1] See in England for example, Schedule 2 Human Tissue Act 2004 that provides for a Human Tissue Authority to regulate the activities involving human tissue.
[2] Indeed this lack of legislation, if not in place before 2012, may be in breach of a recent EU Directive; see Directive 2010/45/EU of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for transplantation [2010] OJ L207/14 (Safety of Organs Directive). Article 31(1), which provides that the final date for transposition is 27 August 2012.

Gavin, Paul * HU 2.32 **SP / 5.10**

Mandatory Sentencing Of Dangerous Offenders

This paper addresses the mandatory sentencing provision for "dangerous offenders" contained in the 2003 Criminal Justice Act, and argues that they were both misguided and unsuccessful in an attempt to reduce crime in England and Wales.

This paper will be divided in to four sections. To begin the discussion I will deal with the concept of dangerousness and examine at the provisions of the Criminal Justice Act (2003) which deal with dangerous offenders. The terms “dangerous offenders” and “dangerousness” will be defined in both the context of the 2003 Act and in terms of the criminological research which has been carried out in this area.

The second section will examine the provisions of the 2003 Act which sets out the mandatory framework for the sentencing of dangerous offenders. I will also examine some of the legislation preceding the 2003 Act as well as the reforms which were introduced in the Criminal Justice and Immigration Act (2008).

The third section of this paper will examine the arguments put forward which support (Floud and Young 1981; Walker 1982) and reject (Bottoms 1977) a sentencing policy based on the concept of dangerousness. In this section I will also examine the morality and legality of such a sentencing policy. From a moral standpoint there is debate as to whether such a policy is morally right, while from a legal standpoint, I will determine whether the use of dangerousness in sentencing is compatible with human rights law by referring to the European Convention on Human Rights

Finally I will provide an analysis of the arguments put forward over the course of this paper. I will examine the concept of dangerousness and the policy of preventive sentencing from a rights based perspective (Van Zyl Smith and Ashworth: 2004) as well as from a criminological perspective (Ashworth: 2004, Garland: 2001). I will also examine crime statistics from both the Home Office and the Ministry of Justice which relate to a sentencing policy based on dangerousness. Conclusions will then be drawn from this analysis.

Gaze, Beth & Fehlberg, Belinda * HU 2.39 **AJ / 8.6**

Is The Australian Social Security Appeals Tribunal 'Coherent, Independent And User-Friendly'? Experiences Of Appellants

This paper reports the results of a research project on the experiences of people appealing to the Social Security Appeals Tribunal in Australia. Although Australia's reformed administrative justice system dates from the 1980s, there has been relatively little research into the extent to which its merits review tribunals are 'for users,' to use the Leggatt Review's phrase.

The project critically examines Australia's social security appeal processes to assess the extent to which the SSAT can be said to be coherent, independent and user-friendly. The SSAT's statutory objectives provide that 'In carrying out its functions under the Act, the SSAT must pursue the objective of providing a mechanism of review that is *fair, just, economical, informal and quick*.' (*Social Security (Administration) Act 1999 (Cth)* s.141). The paper explores from the user's perspective how the tribunal negotiates its way through these apparently conflicting requirements. In Australia, representation in the SSAT is rare, and appeals are heard ex parte without the agency (Centrelink) being present. This paper focuses on three key issues: the diversity of tribunal users, their level of satisfaction with the SSAT process, and what they felt they had to gain from engaging in that process.

In concluding, we consider the extent to which these results can be compared with similar data on tribunal experiences in the UK, given the differences in scope and process of social security reviews.

Garrido Gömez, M.ª Isabel * HU 1.49 **FL / 2.1**

Deficit Of The Legal Family Protection

In the relationship between the State and the family, there are several postures regarding what the action of the State should be. Esping-Andersen describes some of the deficits in detail: the liberal one, in which the family is considered a natural institution, is that which corrects the free market, and it is not the object of a social policy in the strong sense of the term. Women are classified as housewives and mothers as cultural patrons. In liberal societies several directions can be discerned within this regime: a) that which tends to remove the obstacles which, in the social policy, discriminate individuals by virtue of their family *status,* reducing the increased rates to axiological indifference and neutral solution; and b) that which uses the integration strategy, whose aim is to ensure that both parents can and ought to work, and socially guarantees the rights to care for young children.

Another deficit is in the model social-democrat, in which the principal aspects are equality and the Social Security system. As a result of the postulates of the Welfare State during the post-war period, the British conception of Beveridge and its universal social rights has spread. The model, just like the conservative model, is very bureaucratic, but there is no State subordination. The State´s responsibility for resolving social problems is above that of individuals and families, and the welfare of the children is considered to be the most important aspect.

The conservative model defends the traditional concept of the family and its social function. It is based on group corporatism and the Christian social doctrine, and claims that this type of policy is necessary in the post-industrial society and must be regulated by the principles of solidarity and common interest. The State acts subordinately, and Social Security develops in the ambit of self-government.

Ghosh, Saptashi * HU 2.41 **BF / 4.11**

Trying Out the Wrong Shoe Size Repeatedly: The Need for a Stronger Lender of Last Resort (LOLR) Role for the European Central Bank and the Eurozone's Cycle of Catharsis and Denial

While the Greece bail-out talks have been dragging on and Greek government has to fight a domestic political battle at home, continued violence and protests on the streets, a harsh package of cuts, economic hardship at home and German reluctance to ease the austerity pressure, the European Central Bank's role in failing to support Eurozone governments through direct lending or through a stimulus package like the Bank of England or the Federal Reserve is an issue that needs to be highlighted. My conference presentation proposes to examine the larger legal, regulatory and central banking issues as regards the absence of a stronger Lender of Last Resort (LOLR) Role of the ECB. While some of the big boys in the Eurozone like Germany and France think they can build some firewalls around their banks that are exposed to the weaker sovereigns before Greece calls default, the markets are not that sure yet. A Franco-German plan mooted in 2011 that a EFSF would be created and over-leveraged, so that it can operate beyond its notional ceiling of €440bn, failed because the US, Bric and Canada refused to pump any money into it. However, it seems that the EFSF will now have to be heavily dependant on the capital markets to raise funds if it has to come anywhere near the 1 trillion euro target that was announced initially. In such case, the ECB will have no options but to lend money to an already over-leveraged EFSF. EFSF bonds may then be used as collateral by the Eurozone banks to borrow more money from the ECB. An ECB legal opinion issued in March 2011 made clear that the European Stability Mechanism – a permanent fund expected to replace the temporary EFSF from 2013 – would not be allowed to access its liquidity because of the ban on monetary financing in the Eurozone. The bigger question here, in this context, is, whether, in the absence of a strong LOLR policy, maintaining existing credit lines would also mean that the banks must continue to hold their present portfolios of Greek, Italian, Spanish and Portuguese sovereign debt? Given that Europe's banks are undercapitalised to the tune of more than €500bn and the global economic slowdown is more prolonged than earlier thought of, it might well be the case that the ECB may be required to cut interest rates, and return to a policy of unlimited long-term funding to governments in the form of stimulus as the US Federal Reserve did in 2008 under TARP. In such case, governments can also approach the ECB directly to help recapitalise their banking systems instead of being pushed onto the brink by Franco-German policies. This presentation argues that a strong LOLR policy of the ECB will go beyond the short term to provide struggling Eurozone governments with a common backstop to their banking system, not just for cross-border banks but for all domestic systemically important financial institutions like the Spanish cajas. While the Eurozone's political leaders go on deciding what to do about Greece, maybe it is time for them to also try out the right-sized pair of shoes and formulate a more long-term credible strategy for the future of the Eurozone instead of trying to impress the markets every second week.

Gies, Lieve * HU 2.34 **RRHR / 1.5**

Negotiating The Hyphen: Human Rights Culture And What It Means To Young British Muslims

The UK's Human Rights Act aims to disseminate human rights values to ordinary citizens and foster a human rights culture. While research suggests that such a culture has yet to materialise, there are also indications that people broadly support the values underpinning the Human Rights Act. However, in a multicultural society it would be wrong to assume that different groups will interpret human rights in a uniform way. Instead, there are likely to be several coexisting human rights cultures which are shaped by a variety of normative frameworks. Adopting a legal-pluralist perspective, this study sets out to explore how Muslim adolescents experience human rights. The emphasis which contemporary western political discourse places on the conflict between human rights and Islam has made young Muslims more acutely aware of their hyphenated identity, demanding that they negotiate what are seen as fundamentally incompatible normative influences. This study invited Muslim students from a school in Birmingham to participate in a group deliberation about human rights issues. The discussion was based around vignettes foregrounding potential clashes

between human rights and competing interests. Participants broadly speaking used two main strategies in exploring such tensions: a first strategy was to effectively diffuse the conflict by arguing that human rights form part of the same normative spectrum as supposedly competing values. A second strategy was to acknowledge the state of conflict whilst simultaneously arriving at the pluralist assessment that clashing norms have their own legitimate spheres of influence.

Gill, Aisha * HU 1.49 **FL / 7.1**

Critique Of The Ideological Underpinnings Of The Policy Discourse On Forced Marriage In The UK

The proposed paper critiques both the Labour Government and the current Coalition Government's conceptualisation of forced marriage (FM) as a cultural problem imported by immigrants. Contrasting the traditions and values of minority communities with the purported liberalism of mainstream British society, has given rise to policy initiatives focusing on victims' right to exit and the tightening of immigration controls, rather on the possibility of finding solutions within minority communities. The gendered nature of the problem, and its connections to other forms of violence against women in both mainstream society and minority communities, has been largely ignored. This paper also assesses the recent hyper-visibility in British media and policy discourses of certain forms of violence against black and minority ethnic (BME) women and examines proposed criminalisation proposals related to forced marriage in England and Wales

Gledhill, Kris * HU 2.33 **MH / 7.6**

The Filling Of The Bournewood Gap In England And Wales: Coercive Care And The Statutory Mechanisms In England And Wales

The identification of the "Bournewood Gap" – that the common law concept of necessity did not provide adequate protection against the risk of arbitrary detention and hence breached Article 5(1)(e) of the European Convention on Human Rights – meant that the legal framework for the use of coercion against people without capacity had to develop. There were three obvious responses to this finding: (i) extend the Mental Health Act 1983 so that it covered people such as HL, the patient involved in the case; (ii) allow the common law to develop to meet the problems, as the common law could do under the Human Rights Act 1998; (iii) introduce a new legislative framework.

The UK Parliament chose the third option, by amending the Mental Capacity Act 2005 to introduce Deprivation of Liberty Safeguards for people without capacity and with mental health needs that were met outside a setting of the sort that was typically covered by the Mental Health Act 1983. It did this at the same time as the Mental Health Act 1983 was amended significantly. During the course of this process of amendment, there were arguments put forward for incorporating tests of capacity into the 1983 Act: they were ultimately rejected by the government majority in the legislature.

Developing at the moment is a significant body of case law as to the relationship between the Deprivation of Liberty Safeguards and the Mental Health Act 1983; this has included the identification of gaps which mean that the common law has had to develop to provide an Article 5-compliant regime in any event. (And this common law development took place in the time between the HL v UK judgment and the introduction of the DoLS provisions, which was several years.)

The paper provides an analysis of these developments in England and Wales and asks the question whether the UK legislature chose the most problematic approach in its attempt to fill the Bournewood Gap and has thereby done a disservice to vulnerable people with complex needs in terms of the regulation of the provision of care in a setting that amounts to a loss of liberty.

Glinavos, Ioannis * HU 1.47 **PPT / 5.4**

Responses To The Eurozone Crisis: The Role Of Ideas In Economic Policy Formation

Glinavos Abstract: The Eurozone crisis has created a dynamic policy environment characterised by the inability of current institutional frameworks to deal with the consequences of systemic shocks. Within such an environment, ideas have increased influence on policy outcomes. Where do these ideas come from however? The paper suggests that in times of crisis, ideas on law reform come from organised communities of experts (epistemic communities). These communities can be national or international and serve to provide a bridge between experts and policy makers. The paper presents a theoretical framework that uses the notion of epistemic communities as agents of legal change. The historical example analysed is that of central bank independence. This theoretical construct is then applied to the current European crisis in seeking to identify the provenance and dissemination of key ideas affecting policy formation, such as proposals for constitutionally embedded fiscal rules (for example a schuldenbremse — debt break). Through this analysis, the paper offers an explanation for the perseverance of pro-market ideology despite the shock inflicted by the financial crisis.

Goodie, Jo & Evers, Barbara * HU 2.31 **RE / 8.10**

Making And Mobilising The Legal Personae Of The Climate Change Litigant

There has been a burgeoning body of climate change litigation in Australia and other common law jurisdictions over the last decade. Through this litigation environmentally concerned citizens have played a significant role in shaping the basis upon which questions central to legal decision making and action are framed in the face of the imminent threat of climate change.

This paper examines the basis upon which the legal personae, capacity and powers of these environmentally concerned litigants is formed and mobilised around the particular legal problems presented by climate change. We draw on a developing body of historical and sociological work on personae, which investigates how individuals come to acquire the distinctive attributes and statuses peculiar to certain personae. It is an approach which assumes that any form of personae is a product of historical circumstance and may emerge and disappear within specific contexts. Here, we examine the environmental and political understanding that frame the environmental advocate's legal authority, as well as identifying practical objects and limits of that authority. Our goal is to ascertain whether the legal capacity and attributes of the environmentally concerned citizen have shifted as the scientific identification and evaluation of environmental risk in the face of climate change have taken on greater significance, while simultaneously becoming less certain.

Grace, Jamie * HU2.42 **SL / 8.11**

Violence, Masculinity And 'Playful Deviance': The 'Dark Secret' Of Offences Against The Person Within The 'Backspaces' Of Amateur Men's Rugby Union

The criminal law doctrines relevant to offences against the person (highlighted in *R v Barnes* [2004] EWCA Crim 3246) challenge the realities of violent offending instances and patterns in amateur men's rugby union. This violence is 'secreted' along the lines of Goffman's 'strategic', 'insider' and 'dark' secrets – and take place in the 'backspaces' of the sport. Amateur adult male participants in the sport of rugby union are violent, 'playful deviants'.

Firstly, it is argued that there is violent behaviour in men's amateur rugby union that constitutes violent offending in the eyes of the criminal law, and that rugby union as a sport 'secretes' far more of this offending than might be realised or openly acknowledged. Violent offending in men's rugby union, it is suggested, constitutes a form of violent behaviour that is 'low risk' for a player-participant to indulge in.

Secondly, it is argued that players engaged in rugby union matches are motivated to act violently toward other players to enhance self-perceptions of their masculinity – indeed that the sport of rugby union institutionalises this.

Thirdly, it is argued that 'mixed' legitimised and non-legitimised violence is then a post modern feature of masculinity – in that post modern masculinity is sometimes expressed and constructed through legitimate *and* illegitimate violence contemporaneously deployed. This has repercussions when asking men to think more self-perceptively about violence when they engage in 'violent' sports.

Fourthly, it is argued that the criminal law remains on the outer periphery of the perception of those player-participants who are violent, though these same individuals will attempt to minimise the seriousness of the risks and potential repercussions of their violent actions.

An empirical research project, designed to test these four hypotheses, is currently being undertaken (according to a grounded methodology) at the University of Derby.

Graham, Laura * HU 1.50 **GSL / 3.3**

Sex Workers' Rights Are Human Rights: A Critical Exploration Of The Potential Of The Human Rights Act In Relation To Sex Work

The language of rights is ubiquitous in debates about sex work and how the law should respond to it. Since the 1970s, sex workers have been organising for recognition of their status as workers and the labour rights that come along with this. Moreover, human rights arguments have been made from a number of different positions in the sex work debate – assertions have been made, on the one hand, that prostitution is, inherently, a violation of human dignity and an infringement of the right to freedom from inhuman and degrading treatment; and on the other, that it is the law as it stands in the UK that infringes the human rights, particularly the right to privacy, of sex workers and their clients.

Yet, despite the pervasiveness of rights discourse, there has been little research into how the Human Rights Act (HRA), a significant human rights tool in the UK, could be utilised in relation to sex work. This paper will provide a critical analysis of the potential impact of a HRA challenge to the current law relating to sex work, and how it sits alongside calls for legalisation or decriminalisation of sex work. It will examine the potential for a claim under Articles 8 and 11 ECHR, and the internal limitations therein, and also the potential counter claims by anti-prostitution campaigners. It will ultimately argue that the HRA could be a useful tool but that the competitive and indeterminate nature of ECHR rights and the practical constraints of the HRA limit its possible impact on this controversial issue.

Gray, Carolynn * HU1.50 **GSL / 4.3**

The Law As 'Symbolic Other' In The Process Of Transsexual Personhood Achievement

In her 1995 book entitled *The Imaginary Domain* Drucilla Cornell posits that the process of becoming a person in law is a psychic project which relies upon recognition being given by the 'Other'. It is through this recognition by the 'Other' that an individual obtains value and meaning in themselves as individuated beings. Cornell claims that"[i]n psychoanalytic terms such value [of a person], in the most primordial sense of even achieving a sense of oneself as a self, is always bestowed by the 'Other'. For Cornell the 'Other' does not need to be an actual person but rather she claims that "we can begin to think of a legal system as a Symbolic 'Other'; a system that does not merely recognise, but constitutes and confirms who is to be valued, who is to matter"[1]. This paper explores Cornell's concept of the Symbolic 'Other' as it applies to law in the process of transsexual legal recognition and ultimate achievement of personhood, in Cornellian terms, for such individuals. In so doing it focuses on two things: firstly the impact that the Gender Recognition Act 2004 has had on transsexuals' ability to determine their legal sex and by doing so questions the way in which law as a Symbolic Other places limitations on who qualifies as male or female in the UK. Secondly, the paper explores the consequences of this for those individuals seeking to determine their sexed identity in UK law.

[1] D Cornell, *The Imaginary Domain* (Routledge, London, 1995); 42.

Gulland, Jackie * HU 2.39 **AJ / 8.6**

The Necessity Of Questioning The Doctor's Certificate'*: Medical And Other Evidence In Decision Making About Claims For Sickness Benefit In The Early 20th Century

Sickness and incapacity benefits are based on rights. Regulations specify who qualifies for the benefits and claimants have rights of appeal if they are refused. Claimants must meet two types of condition in order to qualify for benefits: tests of their '(in)capacity' for work' and tests related either to national insurance contributions or to means-testing. Both types of test have changed many times but it is the first of these which concerns this paper. All sickness and incapacity benefits require that the claimant is assessed as 'incapable of work' or is limited in their capability of work in some way. Despite the implied objective nature of these assessments, it is clear that the concept is a social construction. Decisions on benefits eligibility are usually made by administrators but the evidence to support these decisions takes a variety of forms, crucially including medical evidence from claimants' doctors or other medical assessors. The history of sickness benefits shows a high level of mistrust of GPs in this process, with frequent attempts by policy makers to find better and more 'objective' methods of assessment. Meanwhile claimants' challenges to negative decisions rely on emphasizing the value of the GP's evidence and a concern to consider 'real world' knowledge. Legal decision makers, dealing with appeals, are constrained by the legislation which may discount this real world knowledge but appear to value medical evidence more highly than administrative decision makers. As assessments for Employment and Support Allowance are hotly debated in the media, this paper turns to an earlier period of history to consider the weight given to medical and other evidence in the earliest sickness benefit scheme, based on appeals to the Insurance Commissioners between 1911 and 1920.

*Schuster, C. (1914) *National Health Insurance. Report of the Departmental Committee on Sickness Benefit Claims under the National Insurance Act*. Cd. 7687, p8.

Guth, Jessica * HU1.82 **LE / 4.13**

The European Higher Education Area And A Liberal Legal Education: Making It Work

This paper considers the notion of a liberal legal education in the context of internationalisation of Higher Education and in particular the framework of the European Higher Education Area (EHEA) set by the Bologna Process. It argues that although what little press the EHEA gets in the UK tends to be negative or at least critical, the framework can be used to help us consider what we want law degrees in the UK to be, what shape we want them to take and what benefits we want students to take from them. The paper introduces the Bologna Process and EHEA in the context of legal education in England Wales. It considers the Legal Education and Training Review (LETR) and the extent to which that has engaged with the EHEA. The paper then sets out the author's conceptualisation of a liberal legal education before concluding that the EHEA presents an opportunity to argue strongly for law degrees which equip students for their life ahead, not simply a life in the professions.

Hamilton, Tom * HU 2.39 **BF / 2.9**

The Anglo-Germanic Board Architecture Debate: An Historical And Philosophical Comparative Analysis

The European Public Limited-Liability Company, or *Societas Europaea* (SE), embodies an awkward compromise in the harmonisation of corporate governance within the European Union. In providing companies with a choice between the unitary board favoured by English law and the two-tier board favoured by German law, the European corporate form reflects the ongoing debate between proponents of each form of board architecture. This paper argues that the existing debate, conducted in black-letter terms, is not merely artificial but has grown stale, stifled by neglect of conceptual analysis. This paper argues that the unresolved tension between the competing forms is a result, not merely of divergent legal traditions but, of major historical and philosophical differences.

The paper begins by examining the current state of the Anglo-German board architecture debate. It then briefly considers the historical development of the architectures before analysing them in terms of historically influential, and competing, philosophical traditions of utilitarianism and German idealism. Historically significant insights of these philosophies are then fashioned into exegetical tools and used to expose critical conceptual divergence between the architectures in three principle areas: the conception of the individual, corporate objective and market ideology. Utilitarian and Kantian insights reveal divergent conceptions of the individual, these are then traced into structural differences in the board architectures and labour relations practices. Different conceptions of the 'corporate objective' are revealed through a conceptual analysis of their development; structural differences are examined in light thereof. Structural differences are examined in the context of the different market ideologies found in England and Germany.

The paper concludes by briefly outlining the implications of this conceptual divergence for the European harmonisation project and proposes new ways forward in both the legislative scheme and academic debate.

Hartlev, Mette * HU 1.48 **GSL / 8.2**

Au-Pairs – Health Care Needs And Rights

According to WHO, health should be understood in a very broad sense not only encompassing absence of sickness but as a "…state of complete physical, mental and social well-being". Au-pairs have health care needs like all other individuals. However, the special legal status and actual situation of au-pairs raises special issues and concerns with regard to health care needs and rights. Access to health is a basic human right which applies to all. However, it is necessary both to identify and discuss the special health care concerns of au-pairs and address which specific health entitlements that may be derived from the legal framework to meet these needs.

Hazucha, Branislav & Liu, Hsiao-Chien & Watabe, Toshihide
*** HU2.4** **IP / 2.11**

Attribution Of Liability For Misappropriation Of Tangible And Intangible Things In Japan *To Change The Law Or To Change The Minds*

To explore the factors affecting individuals' decisions on judging misappropriations of tangible and intangible objects, we asked a random sample of 246 residents (from 20 to 60 years old) living in the fifth largest town in Japan to respond to four short vignettes describing individual acts of misappropriations: (a) stealing a bicycle; (b) copying a DVD; (c) plagiarizing a song; and (d) manufacturing shoes with a design similar to the design of branded luxurious products. The experimentally varied vignettes included considerations of the wrongdoing's circumstances (*e.g.*, the actor's mental state and the fame of copyrighted work or protected design) and consequences (*e.g.*, the harm caused to a right-holder or consumers, the benefit gained by a wrongdoer, and the causal link between the act of wrongdoing and gained benefit).

The findings of this empirical study show that the individuals clearly judge many uses of intangible things as wrongdoings, although their judgment can considerably differ in many regards with the current law in Japan. In comparison between responses to different vignettes with same variables, we also find two significant differences in treating same or similar uses of different objects and different uses of same or similar objects. First, misappropriation of tangible things is treated more severely than misappropriation of intangible objects. Second, copying of entire copyrighted works is judged more severely than commercial activities where copyright infringement can occur accidentally or as a result of independent creation.

Keywords: copyright, design, intellectual property, property, attribution of liability, fairness, legal consciousness, survey research

Herian, Rob * HU2.30 **LawL / 8.8**

"How Long Do You Intend To Stay?": Language Meets Proscription In The Subject In Henry Miller's "Via Dieppe-Newhaven"

This paper uses Henry Miller's account, "Via Dieppe-Newhaven", concerning the Parisian-based author's barred attempt to visit London in order to satisfy a desire "to hear English spoken twenty-four hours of the day", as a means of exploring the intersection of language and proscription in the psychic space of the subject. Like Miller, individuals often go in search of that illusive yet desired *thing* in order that they may be sated, or, at best, experience temporary relief from difficulty and hardship. But are such journeys forever condemned to fail and if so why? Within a psychosocial framework, and following Lacan's conception of the unconscious structured like a language, this paper will first examine the relationship language has with *desire* and its architect *lack*, in order to understand why the quest, the *bon voyage* as Miller refers to it, is undertaken by the subject and if it can ever succeed. Secondly, and maintaining the centrality of language to/as the journey, consideration will be given to proscription and its corollaries: the many bumps, barriers, obstacles and hurdles, for example misunderstanding and rationalisation, which constitute the subject's 'road' and serve to disrupt, deform, frustrate or ultimately terminate the journey. Methodologically this paper incorporates psychosocial and other (post)structuralist theory, including elements from translation studies, to evoke, assess and render problematic the *trans*itory ontology inherent to the subject.

Herron, Rachel * HU 2.41 **STLS / 3.13**

A Social Systems Explanation For The Racial Effect Of The Section 44 Counter-Terror Stop And Search Powers

In 2010, the European Court of Human Rights endorsed long-standing claims regarding the potentially discriminatory effect of the suspicion less stop and search powers within s.44 Terrorism Act 2000.[1] Using the s.44 powers as an example of possible unexpected and undesirable outcomes arising from the operation of the legal system, this paper proposes a social systems explanation for such deleterious effects. Focusing on three specific communicative barriers, apparent between the law-making and policing subsystems, this paper firstly demonstrates how both subsystems attributed demands for the powers, along with the expertise necessary for such assertions, to the other so that passage of the powers was effectively promoted on the basis of a largely unscrutinised, presumptive need. This paper then explores subsystem expectations regarding the deployment of the powers, including the policing subsystem's interpretation of the legislature's intention to provide operational flexibility as affording the police complete discretion; and the different understandings regarding whether the powers should be deployed within everyday policing or only exceptionally. Finally, this paper evaluates subsystem expectations regarding the intelligence-led basis for authorisation and use of the powers which reveal that while the law-making subsystem anticipated the existence of particularised intelligence police use was reliant upon generalised assessments of the terrorist threat.

The communicative barriers between the law-making and policing subsystems concerning s.44 suggest that the lack of external constraints on operational behaviour risks being understood by the police as freeing them from any such strictures with the consequent effect that statutory powers are deployed without adherence to the safeguards on which the legislature premised their drafting. In the case of s.44 such inter-subsystem misunderstandings may have contributed to their racially disproportionate deployment and consequent role in alienating minority communities from police counter-terrorism efforts.

1Teubner, G. (2011) 'A Constitutional Moment? The Logics of 'Hitting the bottom''. In Kjaer, P.F., Teubner, G. and Febbrajo, A. (eds.) *The Financial Crisis in Constitutional Perspective. The dark Side of Functional Differentiation* (Portland: Hart Publishing).

Hertogh, Marc * HU 2.39 **AJ / 8.6**

Why The Ombudsman Does Not Promote Public Trust In Government: Lessons From The Low Countries

Most public sector ombudsmen in Europe claim that their work contributes to bridging the gap between citizens and government because the ombudsman's intervention will ultimately strengthen or restore citizen's confidence in government and public administration. However, empirical research provides little support for this assumption. Based on empirical studies from Belgium and the Netherlands, this paper will offer two explanations for this phenomenon. First, it will be argued that the ombudsman fails to promote public trust in government because administrative law is based on three 'mythical images' of the average complainant, which may be referred to as the 'self-reliant citizen', the 'self-centered citizen' and the 'calculating citizen'. Yet, these images do not correspond with the image of most complainants in practice. Empirical research suggests that most complainants are not self-reliant at all, many citizens are not only interested in individual remedies but also aim for policy changes, and most complainants are not only interested in the outcome but also care about the transparency and the fairness of an ombudsman procedure. As a result of this mismatch between the 'law in the books' and the 'law in action', many people who participate in an ombudsman procedure feel alienated from administrative law and government. The second reason why the ombudsman does not promote public trust in government is related to the social profile of complainants. Although the ombudsman aims to reach all types of citizens, empirical research indicates that the average complainant has a specific profile. Most complainants are highly educated, white-collared, politically interested men, but the ombudsman is less successful in reaching socially disadvantaged people who are cynical about government and the justice system. Building on these findings from the low countries, the paper ends with several suggestions for future comparative research.

Hervey, Tamara * HU 1.47 **EU / 1.7**

Unresolved Tensions: Between Solidarity, Equality And Competition In EU Health Law And Policy

Developments such as the European Commission's White Paper "Together for Health" 2008-2013, the patients' rights Directive 2011/24/EU, and the 'relocation' of competence for law and policy on pharmaceuticals and medical devices from DG Markt to DG SANCO, following the Treaty of Lisbon, along with FP7 support for research in health settings and the alignment of welfare systems through the 'open method of coordination' under Europe 2020 suggest that the EU now has its own emergent "EU health law and policy".

This paper considers three interconnected themes of the EU's health law and policy: solidarity, equality and competition. It does so through exploring the impact of EU free movement and competition law for national health care systems, alongside 'soft law', regulatory 'steering' through funding and other policy impacts. The internal market focus of EU law, in particular on free movement of patients, but also in competition law areas, reframes health law within a 'consumerist' frame – patients are no longer patients, but are consumers of services; medical professionals and health care systems are no longer caring for patients, but are provider services to those consumers. This paper will discuss the systemic effects of the inherent 'consumerism' of EU law and policy, and its effects on solidarity, and equality in access to health. It will also explore the tensions between competition and free movement law and other initiatives of the EU, such as the "Health for all" and health inequalities agendas; the use of benchmarking methods to improve weaker Member States in specific health areas, such as the example of cancer guidelines.

Hesketh, Wendy * HU1.48 **ML / 2.5**

Regulation Of The Medical Profession: Creating Serial Killers And Sex Offenders

History demonstrates that opportunity (a steady supply of victims, coupled with a lack of scrutiny) creates serial offenders. The medical professional role offers such opportunity in abundance, unparalleled elsewhere. Unsurprisingly, the most prolific serial killers and sex

offenders in the UK have been doctors and nurses. Despite this, medical professionals are not policed by the police. Instead, the GMC is criticised when a doctor commits a crime. But are the General Medical and Nursing and Midwifery Councils really supposed to be responsible for *crimes*?

When the professional governing bodies are expected to regulate their members in all areas – not just professional misconduct due to poor attitude or incompetence through ill health, addiction or lack or training – but also their criminal activities, the consequences have so far been catastrophic. Nurses, Beverley Allitt, Ben Geen and Colin Norris and "the world's worst serial killer" GP, Harold Shipman, have all been convicted of murdering several patients; and nurse Paul Cobb and doctors, Peter Green and Timothy Healy (to name but a few), have sexually assaulted numerous patients, suggesting poor detection.

However, the profession itself usually carries out the initial investigation of medico-crime, causing normal forensic investigation techniques to be abandoned, contaminating voluminous similar fact, "peer-reviewed" evidence which cannot realistically be disputed by the defence at trial.

So regulation of the medical profession which is expected to police (prevent,detect and initially investigate) medico-crime is clearly not working: it is either creating actual serial offenders to the extent of Shipman's activities; or is wrongly framing innocent people, leading to serious miscarriages of justice. This paper demonstrates this and argues that the police should be responsible for crimes committed by health professionals, and that regulation should only be expected to target professional competency.

Higgins, Noelle * HU 2.31 **LLit / 7.4**

Law And Literature In Early And Medieval Irish Society

This paper analyses the representations of law in Early and Medieval Irish literature. It provides a background to the native Irish legal system and to Irish language literature and highlights the interconnectivity of the two. Prior to the adoption of common law in Ireland, a native legal system, known as Brehon law, applied throughout the land. This legal system dated from Celtic times and was passed down orally from generation to generation. It was written down for the first time in the seventh century and survived until the seventeenth century when it was finally replaced by common law. While only a few Brehon law texts have survived, various aspects of the legal system are dealt with in native Irish writings, including myths, sagas and poetry. Judges in the Brehon law system were often also poets and poetic art was studied in law schools as an aid to the learning of law, and indeed poetic utterances were seen as an invocation of divine judgement. The paper analyses the ways in which the legal system is portrayed in the literature and the importance of poetry in the training of legal professionals.

The paper also emphasises how literature provides us with valuable records of a long deceased legal system. While no official records of judicial decisions made during the Brehon law period exist, anecdotes relating to a number of famous and important cases are found in native Irish literature. The most famous of these is the 6th century copyright case pertaining to St. Colmcille. Advisory opinions are also found in some law tracts, e.g. the 14th century poem regarding the 'ownership' of River Shannon.

The paper concludes with a discussion of how satire was used as a means of law enforcement in Early and Medieval Irish society.

Hines, Sally * HU 1.50 **GSL / 6.3**

Recognising Or Regulating Diversity? Law, Policy And Gender And Sexual Difference

The last decade has witnessed a raft of UK law and policy pertaining to gendered and sexual diversity. This paper will focus on two pieces of recent legislation – the Civil Partnership Act (CPA, UK, 2004) and the Gender Recognition Act (GRA, UK, 2004). The paper seeks to unpack legal and policy understandings of sex, gender and sexuality as they are positioned within law and to explore the ways in which legal discourse speaks to the

intersections of these social categories. The paper will point to the ways in which legislation problematically fuses 'gender' and 'sexuality' and, consequently, fails to account for the nuanced formations and subjectivities of sexuality and gender as they are 'lived out' in intimate settings and relationalities. In conclusion the paper will suggest that while the CPA and the GRA were guided by a need to further account for gender and sexual multiplicity, new regulatory practices emerging from processes of recognition may limit expressions of gendered and sexual diversity, and thus hamper routes to equality.

Biography
Sally Hines is Director of the Centre for Interdisciplinary Gender Studies and Senior Lecturer in Sociology and Social Policy at the University of Leeds. Her books include *Transforming Gender: Transgender Practices of Identity, Intimacy and Care* (2007, (Policy Press) and *Gender Diversity, Recognition and Citizenship: Towards a Politics of Difference* (Palgrave, 2011). Edited collections include (with T. Sanger) *Transgender Identities:Towards a Social Analysis of Gender Diversity,* (Routledge, 2010) and (with Y. Taylor and M. Casey *Theorizing Intersectionality and Sexu*ality (Palgrave, 2010). She has published articles in a range of journals including *Sociology, the Journal of Gender Studies, Critical Social Policy,* and *Contemporary Politics.* Sally's current work explores debates around theorisations, politics and practices of recognition.

Horne, John * HU 2.33 **MH / 1.6**
The Upper Tribunal – A Source Of Protection For Detained Patients?

On the 3rd November 2008 not only did the First-tier Tribunal (Health, Education and Social Care Chamber) come into existence, but also the Upper Tribunal (Administrative Appeals Chamber). Since then there have been approximately thirty Upper Tribunal cases involving patients detained under the Mental Health Act 1983. Within this presentation, John Horne, a Teaching Fellow at Northumbria University and a p/t First-tier Tribunal Judge, will reflect on the contribution (if any) made by the Upper Tribunal over the last three years towards the provision of judicial safeguards against inappropriate continued detention. He will be speaking in a personal capacity and not on behalf of H.M. Courts and Tribunals Service.

Horton, David * HU2.33 **MH / 2.7**
Mental Health Homicide Tragedies: Political Risks And Legal Solutions

The mental health homicide cases of Christopher Clunis and Michael Stone generated a marked degree of legal and political discourse about how to remove or reduce the risk of such tragedies ever happening again. The seeds of the Mental Health (Patients in the Community) Act 1995 and the Mental Health Act 2007 are largely considered to have been germinated by these very cases. I explore the surrounding legal and political problem spaces that these cases generated using two interconnected lines of enquiry.

Firstly, I briefly explore how increasing conflict between mental health decision makers and those affected by those decision has developed since the Clunis and Stone cases. Secondly, I utilise Niklas Luhmann's concept of risk in order to understand this conflict, arguing that conflicts about mental health homicide risks were transmuted into political risks by the communicative political code *power/non- power*; political risks place the onus on politicians to provide solutions to conflicts that improve the chances of re-election. I maintain, however, that the aforementioned conflict is not fixed and that those engaged in such conflicts feature of both sides of the conflict. In short, those that make decisions about psychiatrically dangerous patients are also affected by those very decisions.

I argue that the fluidity of this distinction prevents the forging of a political solution which is facilitative of political re-election, leading to a transferral of political risks to the legal system in the form of legislation. I conclude the paper with some comments about the implications of juridifying political risks in this way. More specifically, I utilise Luhmann's theory of social systems to argue that the aforementioned legislation, which germinated out of a highly politicised cases of Clunis and Stone, is incapable of achieving political objectives due to legal autopoiesis.

Horvath, Miranda & Gray, Jacqueline * HU1.51 **CLCJ / 7.2**
Multiple Perpetrator Rape In The Courtroom: An Exploratory Investigation

Criminal justice system responses to rape are multiple and connected by intricate feedback loops. This complexity is particularly evident during a trial, and is likely to be heightened if the case for rape cases involving multiple perpetrators (Lees, 2002). It is likely that such cases may pose additional challenges, for research and practice, compared to those involving single perpetrators. Multiple Perpetrator Rape (MPR) has been receiving increasing research attention in recent years, but this has mainly focused on describing the offence and beginning to understand offender motivations and victim experiences (e.g. Franklin, 2004; Horvath & Kelly, 2009; Ullman, 1999; Woodhams, Cooke, Harkins & Da Silva, 2012) This study reported here focuses on understanding how already complicated processes for prosecuting rape are adapted or not for MPR cases. A sample of MPR cases that were prosecuted in England and Wales between 2006 and 2011 were identified from publicly available records including Proquest, West law and Lexus library. They were analysed using content analysis in order to identify variation in the offences the accused were charged with, the sentences given and a range of other features of the cases. The preliminary findings will be presented. Discussion will focus on the implications of the findings for police and prosecutors dealing with these offences and also the potential impact upon complainants in such cases.

Hosier, Maeve * HU2.34 **LLP / 6.9**
For Better Or For Worse? Changes In The Regulation Of The Legal Profession In Bailed Out Ireland

In accordance with the terms of the loan which was obtained in November 2010 from the IMF and the EU (The Troika) The Irish Government committed to significant reform of the legal services market, and the Legal Services Regulation Bill (LSRB) 2011 which was published in October 2011 seeks to meet the state's obligations in that regard. The regulation of the legal profession in Ireland is about to be radically altered, if the LSRB is enacted in its current form. It provides for the establishment of a Legal Services Regulatory Authority with responsibility for the regulation of both solicitors and barristers. It will establish the Office of Legal Costs Adjudicator which will endeavour to bring greater transparency to the area of legal costs. A new Legal Practitioners Disciplinary Tribunal will also be established to oversee the operation of an independent system for the investigation of complaints relating to professional misconduct.

The publication of the LSRB set the scene for a battle royale between both the Bar Council of Ireland and The Law Society of Ireland on the one hand and the Minister for Justice, Mr Alan Shatter on the other. This paper describes the existing framework which governs the regulation of the legal profession in Ireland, explores the key provisions of the LSRB and assesses their potential impact upon the present regulatory structure. It also describes how the LSRB will replace the present self-regulatory framework with a system of governmental co-regulation. The paper argues that the provisions of the LSRB will help to prevent the re-emergence of a triad involving property developers, financial institutions and lawyers which was a prime mover in the inflation and subsequent collapse of the Irish property bubble.

Hubbard, Thomas K. * HU 1.50 **GSL / 2.3**
Age of Consent, Law and Gender

This paper presents an historical overview of US legislation on age of consent and the sexual protection of minors, showing that such laws were in their origin designed to regulate the sexual independence of teenage girls (Schlossman & Wallach 1978, Odem 1995). Only since the late 1970s have they been extended to "protect" boys, as an accidental by product of adopting gender-neutral language into all legal codes, which occurred at the same time as a series of well-publicized, but later debunked allegations of organized homosexual abuse of young boys (Cocca 2004). In contrast to the UK and EU (Waites 2005), such matters of

criminal law in the US are governed by state legislatures, which made little use of expert testimony or sound social science in arriving at specific ages of consent or “age span” exceptions (Cocca). The result is much higher effective legal barriers to adolescent sexual self-determination in most of the US (where children enjoy few rights before 18) than in most EU states (where children have clear sexual rights after 14 or 15: Graupner 2004). The type of “age span” provisions common in US law have recently been ruled a violation of human rights by the European Court (Graupner 2010).

I will interrogate the historical, social, economic, and political factors that have resulted in these grossly differing constructions of “childhood” and “sexuality.” I will also call attention to the negative developmental effects that excessive moral/legal regulation and surveillance of adolescent sexuality has on teenage boys, especially those with gay or bi-sexual interests. Numerous studies (Rind 1998, 2010; Savin-Williams 1998) establish that delay of boys’ first sexual experience until after 18 correlates with sexual maladjustment and dysfunction. The same studies also suggest that gay or bi-sexual boys often prefer encounters with males who are older and more experienced and do not later rate such experiences negatively unless they were coercive. Rind’s forthcoming analysis of the Kinsey data suggests the same may be true for heterosexual males’ encounters with older females, in contrast to females, who rate most teen sexual experiences negatively, regardless of their partner’s age. If teenage boys and girls experience precocious sexuality differently, policy makers should begin to consider restoring some form of gender differentiation into the legal regulation of minors’ sexuality.

Hucklesby, Anthea * HU 1.51 **CLCJ / 4.2**

Pre-Charge Bail: A Legitimate Police Power?

Considerable research has been undertaken on a range of police powers which has highlighted a variety of issues most notably relating to gaps between law and practice, geographic variations and their disproportionate use for certain categories of suspects. The research has also demonstrated how the police are able to mould their powers to fit with their working rules and assumptions. Pre-charge bail – bail whilst the police carry out further inquiries before a charging decision is made - is an important and coercive police power which has remained largely hidden until a recent legal ruling (Hookway) brought it into the legal, political and media spotlight and subsequently required emergency legislation to be enacted to ensure it continue to exist.

It can be argued that pre-charge bail is necessary and desirable for both the police and suspects as it enables suspects to be released whilst investigations continue beyond the detention time limits set by the Police and Criminal Evidence Act 1984. However, it raises significant concerns emanating from its use in the early stages of police investigations and its capacity to impact negatively upon suspects’, victims and the public’s views of the legitimacy of the police and the criminal justice process as a whole. The research discussed in this paper is the first empirical work focusing on the use of pre-charge bail which was partly funded by an SLSA small grant. The paper draws on both quantitative and qualitative data to explore how pre-charge bail is used and to examine police views of pre-charge bail. The implications of the findings for the future of pre-charge bail and potential alternatives are explored.

Hunter, Caroline * HU2.37 **CU / 1.11**

Putting New Technologies Into Old Homes – Some Reflections On The (Lack Of) Ability Of Law To Keep Up

The English Housing Survey shows us that some 8.8 million (38 per cent) of the 22.3 million dwellings in England in 2009 were built before 1945, 4.8 million (21 per cent) before 1919 (EHS Stock Report 2009). There is therefore a large amount of old stock, much of which is does not conform to modern day standards, particularly in relation to energy efficiency. Thus the survey also found that in 2009 there were still 3.3 million dwellings in the lowest Energy Efficiency (SAP) Rating Bands F and G. Nonetheless there is a large policy effort by government to improve SAP ratings of properties. Many properties held on long leases will

have leases that were drafted some decades ago. Indeed even relatively new leases may be based on precedents which are not new, and reliant on old cases when terms come to be interpreted. This paper will examine how the law confronts the problems of fitting new technology into existing premises. Drawing on experiences from the Leasehold Valuation Tribunal it will examine the examples of fitting solar panels to roofs and new upvc windows, to ask whether the technologies of law and those of modernising housing are mismatched.

Hunter, Rosemary * HU 1.49 **FL / 5.1**
Fact-Finding Hearings: Too Hot, Too Cold, Or Just Right?

In private law residence and contact cases in which allegations of domestic violence are made, the President's Practice Direction: Residence and Contact Orders: Domestic Violence and Harm 2008/9 mandates a fact-finding hearing to determine the veracity of the allegations. The results of the fact-finding hearing are then taken into account in determining whether the child's welfare requires any restrictions on contact with the allegedly violent parent. At last year's SLSA Conference, Mavis Maclean and I debated the pros and cons of fact-finding hearings, based on theoretical arguments, case law, and some limited empirical evidence on the conduct and outcomes of such hearings. Subsequently, Adrienne Barnett and I, on behalf of the Domestic Abuse Committee of the Family Justice Council, have conducted a national survey to gather the views of judicial officers, lawyers and Cafcass officers on the extent to which and the ways in which the President's Practice Direction is being implemented. The survey investigated changes over time in the incidence of fact-finding hearings, the process of and decisions made in these hearings, the consequences of the findings for the ultimate outcome of the case, potential regional differences, and differences in perceptions/responses between the groups completing the survey. This paper will present key findings from the survey and consider their implications for the ongoing debate on the value of fact-finding hearings and the most effective means of responding to allegations of domestic abuse in private law residence and contact cases.

Ige, Rhoda Asikia * HU 2.31 **CS / 4.9**
Women And Human Security: The Case Of MARWOPNET Women

In Africa, women have always had gendered consciousness, and have also been active participants in the political administration of many societies. The advent of colonialism altered the political participation of many African women in the different societies; also the modern state continued the legacy of colonialism by ensuring that women have limited access to power and politics. However, the events of the 1980s and 1990s elicited a re-awakening amongst African women for the need to salvage the continent from the erstwhile male dominant rule which has offered little progress and development; this is most evident in states which have prosecute wars.

Human Security according to the UNDP Report means safety for people from both violent and non-violent threats. It is a condition or state of being characterised by freedom from pervasive threats to people's rights, their safety or even their lives. Human Security has seven distinct dimensions which are: economic, food, health, environmental, personal, community and political.

In this paper, I intend to examine human security from the threats of violence; and to chronicle the activities of West African Women who brokered peace between the war lords in Liberia, Sierra-Leone and Guinea and ensured a resolution of the conflicts within the Manor River Basin, by this intervention by the MARWOPNET Women the seven distinct dimensions of human security was promoted.

Ige, Rhoda Asikia * HU 1.50 **GSL / 1.3**
The Same Sex Marriage Bill In Nigeria: A Revisit Of The Cultural Relativist Theory In Human Rights

The Same Sex Marriage Bill was recently passed by the Nigerian Senate, though not yet law, having not been passed by the House of Representatives nor signed into Law by the

Nigerian President has elicited a number of reactions from the Human Rights Community, the United Kingdom, Canada and the United States of America. The Bill prohibited the formation of neither a Same Sex Marriage nor its witness thereof.

The Senate President David Mark has stoutly defended the Bill arguing that same sex marriage is alien and contrary to African customs and way of life. The passage of the Bill has questioned Nigeria's stand on human rights ethos in the 21st century; while, this development seems to surprise human rights activists and scholars.

This paper argues that the Bill falls within the Jurisprudence of Africanists on the concept of rights, which is the cultural relativist theory on human rights; thus, the paper revisits the cultural relativist theory on human rights and its application to the institution of marriage in Nigeria; it examines the impact of the same sex marriage bill on human rights and its violation of constitutional rights of would be parties to the same sex marriage.

Isaloo, Amin Sharifi * HU 2.31 **CS / 5.8**

Conflict and Religion: The Role of Powers Acting Against Security and Democracy Case Study: Persia (Iran)

With a specific focus on religion and policies in Persia, this paper examines the role that powers play in causing national and international conflicts. It indicates how internal and external forces/powers have used religion, especially 'Shia' religion as a tool to approach their own interests and targets. Arguing that acting against democracy is acting against peace and security it explores how powers' policies slowed down progress of democracy in Persia. On the one hand, the case study outlines how internal powers, such as some religious leaders and clergies, use Islamic resources such as Quran (the Islamic holy book) and historical events to manipulate people. On the other hand, it addresses how external powers, such as the United States and the United Kingdom, have used directly and indirectly religion and religious leaders to implement and exercise their own policies, which built a considerable barrier against democracy and development in Persia in last decades. At the end, this paper investigate that; first, both internal and external powers play obviously and considerably negative roles, in favour of their own interests, in peace keeping process. Second, their (powers) policies and acts increase clearly national and international tensions and threat seriously the national security and also our common security in the world. To decrease conflicts and to reduce the influence of the internal and external powers, this paper recommends and recognises two solutions; 'reforming of international institutions and policies' and 'establishing of new national and international organisations'.

Jacqueson, Catherine * HU 1.48 **GSL / 8.2**

Au Pairs, Free Movement And EU Law

Strictly speaking there is no such legal concept as that of "au-pair" in EU law. Nevertheless EU law can regulate the situation of persons placed as au-pairs within the EU. This is especially the case in respect of au-pair persons who are EU citizens. The protection of the rights of Union citizens, hereunder the right of residence and the right of equal treatment, is indeed the domain of EU law.

Yet au-pairs are not easily categorized within the categories with which EU law still operates. Should EU au-pairs be considered as students, workers, or non-economically active EU citizens? Is this categorization at all still relevant? What are its consequences for the rights enjoyed by those persons?

The object of my contribution is to map the areas where EU law can be relevant in respect of au-pair – essentially in a free movement and an immigration context - and to discuss their categorization in EU law and its consequences.

Jeanpierre, Eric * HU 2.82 **IR / 7.5**
Now Is The Right Moment: Somaliland's Claim For Statehood

In 2011, Somaliland celebrated the twentieth anniversary of its unilateral declaration of independence from Somalia. Though often considered to be the only part of Somalia to be peaceful and have a fully functioning government, the secessionist North-Western region of Somalia has failed to gain full international state recognition. This paper will focus on a number of legal arguments, based both on historical and current events, that will demonstrate that the moment has now arrived for Somaliland to acquire statehood. Specific events relating to Somalia's post-colonial creation as a state will substantiate the argument that Somaliland cannot just be considered an ordinary secessionist state. In addition, the recent independence of South Sudan, Kosovo's unilateral claim for statehood, as well as the 'Arab spring' will provide evidence that the people's right to self-determination has become prevalent under current international law.

Joergensen, Stine * HU1.48 **GSL / 8.2**
Children, Au Pairs And Gender

In my presentation I will focus on the children around the au-pair programme. There are often several children involved in an au-pair situation. Originally the au-pairs themselves were young girls under age. The 1969 European Agreement on “au pair” placement therefore contains a special focus on these young women’s need to legal protection. Very often the au-pairs themselves also have children. Last but not least au pairs are caring for smaller children in the host family. The rights of these children are in my opinion under exposed. A child perspective on the au-pair programme therefore offers yet another starting point for discussion and critique of the au pair construction.

Jordanoska, Aleksandra * HU2.32 **SP / 6.10**
Punishing The White-Collar Offender: The Prison Experience

Growing body of literature has addressed the issues of prison life, prison adaptation and the effects from imprisonment. However, the overwhelming majority of this research concerns common offenders whereas the experiences of white-collar offenders in prison and their adjustment to prison life have remained broadly unexamined.

Through an exploratory study, this paper sheds light on how convicted white-collar offenders experience prison life. The qualitative data was gathered through individual semi-structured interviews conducted in 2010 with a sample of convicted male white-collar offenders serving their sentences in a British open (D) category prison.

Drawing from the offenders’ narratives, the paper elaborates on the ways in which adaptation to prison and its effects differ for white-collar offenders. Specifically, the view that white-collar offenders experience more severe prison adjustment problems due to their essentially non-deviant backgrounds and higher social status than common offenders is challenged. The findings reveal that the offenders were highly involved in the prison social life, participating in both work and leisure activities. The paper analyses the possible reasons for such adaptation referring to white-collar offenders’ higher capability of exercising control over their environment, especially in the circumstances and mode of governance in open category prisons.

The paper further argues that white-collar offenders are more detrimentally affected by the secondary consequences of the prison sentence and the processing through the criminal justice system in general**.** This concerns the finding that the social and occupational status deterioration, the prohibitions from future senior business roles, and the destructive impact of the imprisonment upon their family were emphasised as the hardest experiences from the sentence. These collateral effects are discussed in detail.

The paper concludes with an analysis of the implication of these findings for current

penological debates on the effects of imprisonment, as well as with some suggestions for future empirical research.

Kalogeropoulou, Nadia * HU 1.47 **CLCJ / 2.8**
Improving Supplementary Pension Rights For Mobile EU Workers'- Still On The EU Agenda. Which Is The Way Forward?

The issue of safeguarding occupational pension rights for EU workers who take up employment in different Member States has been discussed for over twenty years. Despite some attempts to adopt legislative measures, an adequate legal framework is not yet in place, undermining both the right to free movement of workers and their level of social protection.

Addressing this matter is still of concern towards ensuring adequate, safe and sustainable pensions (a main EU concern amplified by the economic and financial crisis) and achieving the goals of the Europe 2020 strategy.

This paper highlights the social and market integration aspects of this issue and how it links with the EU goals and objectives, and, focusing on available old and new governance 'tools', discusses three ways in which progress towards safeguarding supplementary pension rights has been and can be further achieved: hard law, soft law and the role of the Court of Justice.

Kapsis, Ilias * HU 2.39 **BF / 1.8**
Reform Of Financial Regulation In The UK: Have We Learned The Lessons?

This paper will be looking at the reforms of financial regulation, currently underway in UK. According to the coalition government, the old 'tripartite' system of financial regulation under which the Treasury, the Bank of England and the FSA were collectively responsible for financial stability was dysfunctional and ineffective. It was also lacking the ability to handle macro-prudential regulation.

To address these deficiencies the coalition government proposed a new regulatory architecture in the following form:

a. Establishing within the Bank of England a macro-prudential regulator, the Financial Policy Committee (FPC) to monitor and respond to systemic risks. The bank therefore is given the main responsibility for financial stability will, as the FPC.
b. Transferring responsibility for prudential regulation to a focused new regulator, the Prudential Regulation Authority (PRA), established as a subsidiary of the Bank of England;
c. Creating a focused new conduct of business regulator, the Financial Conduct Authority (FCA), to ensure that business across financial services and markets is conducted in a way that advances the interests of all users and participants.

The new architecture emphasises the significance of macro-prudential regulation by creating a new authority with exclusive mandate to monitor and response to systemic risk seeking in this way to correct a major weakness of the old system.

Also the new structure by locating FPC and PRA within the bank of England places the latter in the centre of financial regulation. According to the government, the complementary functions of the FPC and PRA and the Bank's special responsibilities as a lender of last resort will allow for coordinated efforts to assessing risks and offer more effective responses to crises thus enhancing stability.

The paper is looking at the advantages and disadvantages of the new architecture in light of the current developments in the financial industry and will seek answers to the crucial question whether UK regulators and policymakers have learned their lessons from the 2007 financial crisis and the impact from new the crisis currently unfolding involving the sovereign debt.

Keeling, Amanda * HU 2.31 **MH / 6.8**
Psychiatrist's Conceptions Of Capacity

Article 12(2) of the UN Convention on the Rights of People with Disabilities (CRPD) states that "*State Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life"*. How this will be interpreted and implemented is not yet clear, but certainly even the most moderate scholarly interpretations thus far suggest a necessary shift in capacity law from a functional test of cogitative ability to a universal legal status where all individuals have capacity, regardless of cogitative functioning. This would appear to require removal of functional tests and decisions make on the grounds of best interests and the development instead of 'supported decision making' in all cases.

The law in England and Wales under the Mental Capacity Act 2005 has such a functional test, and this does not seem immediately compatible with the Convention text. However, just as important as legal change is the attitudes of those who must use such laws on a day to day basis; how embedded are their conceptions and attitudes around capacity, and how open to change will they be? This presentation will discuss the background legal issues, and the methodology for a pilot study of interviews with psychiatrists to determine their views about capacity and cognitive functioning, and their response to a change such as that proposed by the CRPD.

Kennedy, Scott * HU 1.50 **GSL / 2.3**
Opening The Door To Same Sex Marriage Or An Invitation For Religious And Political Anarchy? A Scottish Perspective

Legal recognition of same-sex couples has been an omnipresent issue for many years. In 2001, the Netherlands became the first European state to legally recognise same-sex marriage. Since then, countries such as Spain, Portugal, Sweden and Belgium have all followed this example by legalising same-sex marriage. In terms of the United Kingdom, the first formal legal recognition which was granted to same-sex couples was provided by the Civil Partnership Act 2004 which allowed same-sex couples to enter into a legally recognised relationship which mirrored civil marriage.

The recent case of Schalk v Austria has provided further important developments in relation to whether the ability to enter into a same-sex marriage as a human right. Although the litigants lost their case, the Judges who heard the case were divided in their opinion as to whether or not same-sex marriage should be considered a human right; with the final decision being a majority of 1 with a 4/3 split in favour of the current interpretation remaining. One victory for same-sex couples was that during this case, the Court held that society had now moved to a point that for the purposes of the European Convention Human Rights, the term 'family' should now be interpreted to consider same-sex couples.

The recent consultation document in Scotland provides validity and relevancy for this paper, which will address whether the decision in Schalk is likely to have an impact on the possible legalisation of same sex marriage in Scotland. The intention for the paper is to analyse the arguments of religious bodies in Scotland and those of the members at Holyrood in relation to the decisions given in Schalk.

Given that the consultation period in Scotland has recently ended, this topic will be a prominent socio-legal issue in Scotland in the forthcoming months which provides further relevancy for a paper such as this.

Kennefick, Louise * HU 1.51 **MH /CLCJ / 3.2**
Challenges And Changes At The Intersection Of Criminal Law And Mental Health In Ireland

The intersection of criminal law and mental health is the subject of review in the Irish jurisdiction once again. The Government is currently re-examining the primary legislation relating to the law of insanity, fitness to be tried and diminished responsibility,

notwithstanding that it was implemented as recent as 2006 via the *Criminal Law (Insanity) Act*. This also comes at a time when the insanity defence is to form the subject of a Consultation Paper by the Law Commission of England and Wales due for publication in early 2012.

The re-evaluation of the law in Ireland is in response to critical reports and controversial case law which have highlighted issues pertaining to the current position. Most notably, the judgment in *B.G. v. Judge Murphy* (2011) has found fitness to plead procedures under s.4 of the 2006 Act to be unconstitutional. Furthermore, The *Criminal Law (Insanity) Act 2010*, which amends the 2006 Act by allowing enforceable conditions to be applied to conditional discharge, was implemented in response to the case of *J.B. v. Mental Health (Criminal Law) Review Board & Ors* (2008).

This paper considers those challenges that have arisen following the implementation of the 2006 Act, whether the Act should be amended, and if so, how. In addition, the paper discusses briefly the impact of the proposed reforms in England and Wales (publication of CP dependent).

The content of this paper forms part of the early stages of an empirical analysis of the insanity defence and fitness to be tried in Ireland as supported by a Government of Ireland New Ideas Award in the Humanities and Social Sciences.

Ketscher, Kirsten * HU 1.48 **GSL / 8.2**

The Au Pair Concept: A Systemic Discrimination And Exploitation Of Women?

The purpose of this presentation is to analyse the au pair concept from the starting point of the council of Europe (Strasbourg agreement 24.XI.1969) that “persons placed as “au pairs” belong neither to the student category nor the worker category”. Hereby a rights depriving category is constructed. What are the legal grounds for such a construction? The concept is furthermore based on an idea of “family status” and the motive for au pairs are supposed to be to “improve linguistic knowledge and as well as their general culture” “in exchange for services”. What are the legal and factual grounds for this in today’s European practice? Questionable demands form the basis for the au pair concept e.g. Age demands, marital status (unmarried, never married, not divorced, not living with a partner), no minor children allowed, pregnancy not tolerated, no/or limited social security, two week’s notice, no holiday rights etc. etc. The au pair concept will be confronted with legal demands from various common European conventions: The women’s convention (CEDAW), European Convention of Human Rights, The European Charter of Fundamental Rights etc. illustrated by examples from Nordic and European practice.

Khalid, Al Hanisham Mohd * HU2.82 **IR / 6.6**

Globalising Indigenous And Local Communities Rights In Intellectual Property Rights; Shifting Paradigm In Developing Countries

The protection of traditional knowledge (TK) has spawn lively debates in international arena and the questions of TK should be protected by intellectual property rights (IPs) has become issues which has been prolonged since early 70’s. Currently work on protection of TK has developed slowly, and some small output has come forth, in form of concrete and binding law. Furthermore, the proposed mechanisms and regime seem unable to sustain with sophisticated concerns aroused by TKs holders which is culturally rich especially from developing countries.

The emergence of indigenous and local communities (ILCs) ownership and their interest in intellectual property rights claimed with regards to their TK, and protection of TK which has span across the continuum raging from traditional healing knowledge (alternative medicine), artistic expression (folklore) and sustainable biodiversity management. Sketching from critical cultures and legal theory, will enable to illustrate the problems facing the inclusion of TK come across with tautness that characterise IPs as a sum total. Detailing from ILCs cases around the world on how TK has emerged as discrete within intellectual property

rights law. By using these cases as an example, this paper will focus emerging legal issue in promoting legal framework for TK in developing countries.

Keywords: Intellectual Property Rights, Ownerships, Legal Theory, Indigenous Peoples, Local Communities.

Kolawole, Oke Emmanuel * HU 2.33 **IP / 3.7**

Balancing Economic Development With Public Health: The EU-India Free Trade Agreement And Trips-Plus Awards

Speculations are high that the EU-India Free Trade Agreement (when it is concluded) will engender a regime of increased levels of patent protection for pharmaceutical products beyond the requirements of the Agreement on Trade Related Aspects of Intellectual Property (TRIPS Agreement). These regime, typically called TRIPS-Plus requirements, cover issues like extension of the term of patent protection for pharmaceuticals and provision of data exclusivity for clinical test data submitted to regulatory authorities.

The growth of the local pharmaceutical industry in India was spurred by the removal of patent protection for pharmaceuticals in 1970. Though patent protection for pharmaceuticals was re-introduced in 2005, several flexibilities permitted under the TRIPS Agreement were incorporated into the patent law. The fear is that the implementation of the EU-India Free Trade Agreement will endanger the local pharmaceutical industry in India and have an adverse impact on the production of generic drugs.

However, the implementation of the EU-India Free Trade Agreement can have a positive impact on the growth and development of the Indian economy especially in terms of market access to the European Union. This is also coming at a time when pharmaceutical companies in India are beginning to shift the focus of their research to diseases that affect patients in developed countries and there is also a noticeable growth in the export of pharmaceutical products from India to developed countries. Thus, the implementation of the EU-India Free Trade Agreement is likely to enhance the access of Indian pharmaceutical companies to markets in the European Union and other developed countries.

Is it time for India to implement TRIPS-Plus standards? Will this be compatible with the current level of economic and technological development in India?

Kombos, Constantinos * HU 1.47 **EU / 1.7**

State Liability After The 20th Year Landmark: The Story So Far

In the aftermath of the 20th anniversary of the Court of Justice's *Francovich* ruling, the focus is set on the development and evolution (or lack of it) of the case law. The 35 decisions by the CJEU illustrate the inherent problems of the *Brasserie/Factortame* redefinition of the conditions for State liability, especially the "sufficiently serious breach" requirement. The national courts tend to show a justifiable lack of understanding as to the preceding criterion and an even greater restraint in terms of applying the *Köbler* rationale. The impact of the CJEU jurisprudence on national principles of liability for state organs is assessed, thus revealing an asymmetrical variance of impact. That hypothesis is confirmed by the assessment of more than 40 decisions by 10 national legal systems. Therefore, the claim by the CJEU about State liability being "inherent in the treaties" and derived from national legal orders is further questioned, but at the same time the main objective of enhancing effectiveness has been attained and the principle has acquired an autonomous status as a fundamental general principle of EU law. The mechanics of the application of State liability tend to be founded on the idea of judicial dialogue and cooperation that varies in intensity and that allows room for divergence as long as the main aim of effectiveness is not prejudiced.

Knyazeva, Elena * HU2.38 **IR / 5.6**

The Protection Of Linguistic Rights Of Indigenous Peoples Within The Russian Federation

The Russian Federation is one of the most multinational and heterogeneous countries in the world. There are 40 officially recognized indigenous peoples, each with its own language. The last National Census in 2002 demonstrated that there are 244,000 indigenous persons in remote areas in the North, Siberia and Far East parts of Russia. The languages spoken by indigenous peoples belong to several language families that have no known genetic relations, and none of them is related to Russian in any way.

Almost all indigenous languages of the Russian Federation are listed as endangered by UNESCO. The situation can be defined as critical and requiring expeditious measures to revive and develop the majority of the indigenous languages; however, there is no adequate legislative framework for the indigenous language protection in the Russian federal laws. This linguistic exclusion and a lack of recognition have led to discrimination in different spheres of society.

The Constitution and federal laws, however, also contain provisions which restrict the recognition of indigenous peoples and their linguistic rights. Legislation relating to indigenous peoples lacks mechanisms necessary for effective implementation and protection. In the education arena, detailed norms for implementing the right to receive instruction on or through minority languages provided for in Article 9 of the Law on the Languages of the Peoples of the Russian Federation and Article 6 of the Federal Law on Education have still not been developed. There are no rules establishing numerical thresholds for the introduction of this kind of instruction and existing schools attended by indigenous students do not have a legal basis in federal law. This does not provide sufficient guarantees for persons belonging to indigenous peoples to enjoy the right to mother tongue education provided by international law.

In the presentation I will discuss Russia's compliance with its international human rights obligations regarding linguistic rights of the indigenous peoples in order to argue for affirmative policy reforms.

Langan, Joan * HU 2.33 **MH / 7.6**

Working With The Deprivation Of Liberty Safeguards – Their Impact Upon Care And Professional Practice

The Deprivation of Liberty Safeguards (DOLS) in England and Wales are complex and bureaucratic and establishing what constitutes deprivation of liberty is proving to be highly contentious.

This presentation is based upon a study[1] examining DOLS' impact on human rights and professional decision-making in situations of ethical complexity. The qualitative arm of the study comprises In-depth interviews with everyone involved in the care or treatment of 16 individuals subject to a DOLS authorization. This typically includes relatives, DOLS assessors, care home or ward staff and Independent Mental Capacity Advocates. If a person subject to a DOLS authorization has capacity to consent to participate in the research, they are also interviewed.

This presentation will discuss emerging findings from interviews with professionals and relatives (n= 23) concerning 5 cases[2]. In particular it will discuss views about whether DOLS are having a beneficial impact in protecting rights and promoting good quality care for people who lack capacity. It will also provide an analysis of the factors DOLS assessors take into account when deciding to authorise a DOLS application.

[1] Funded by the National Institute for Health Research School for Social Care Research
[2] The number may have increased by the time of the conference. Each additional person yields between 4-6 interviews Funded by the National Institute for Health Research School for Social Care Research

[3] The number may have increased by the time of the conference. Each additional person yields between 4-6 interviews

Lewis, Sam * HU 1.51 **CLCJ / 2.2**
Data Collection, Management And Use In The Criminal Justice Sector

A report by the Audit Commission (2007:3) noted that whilst much time and money is spent on the collection of data by criminal justice practitioners and organisations, doubts remain about the quality of those data. The report also noted that partnership working often necessitates data sharing (2007: 11). This paper explores the conceptual and practical obstacles to improving data quality and data sharing practices in the public sector, using the criminal justice sector as a site of analysis. It will be suggested that since the 1980s much data collection has been driven by the production of performance indicators (Smith 1990) which has resulted in a 'tick-box, bean counting culture' (House of Commons Select Committee 2011:para.83) focusing on processes rather than outcomes. Data quality issues will be discussed, drawing on recent research into the use of anti-social behaviour (ASB) interventions with young people that involved the collection of data from a wide range of organisations delivering prevention, ASB and youth justice services (Crawford, Lewis and Traynor: forthcoming). The research also highlighted the practical and legal barriers to data sharing, which will be discussed. Finally, the paper will consider the prospects for improved data quality and data sharing practices in light of recent policy, practice and legal developments.

Lizarzaburu, Daniela * HU2.33 **IP / 3.7**
Traditional Knowledge, Medicinal Plants And Geographical Indications: Synergies For Sustainable Development

Traditional knowledge applied to the cultivation and processing of medicinal plants is a common practice in many countries with high biodiversity and ancestral heritage and is also important source of the modern pharmaceutical industry. However, the market of medicinal plants presents many difficulties along with great prospects. One problem is the reduce number of formalization for the emerging market (big black market) as well as concerns about the impact that increasing consumption of certain plant species may have in biotic areas where they are grown. On the other hand, the great potential of medicinal plants as a tool for social and economic development in certain communities begins to be taken into account. In this task, traditional knowledge has played a crucial role since it has allowed the community to adapt to local culture and transmit it for generations to provide an alternative effective and low cost medicine to its residents. Nevertheless, the relationship between geographical indications and the market of medicinal plants is less clear, although it could be a useful tool to promote the conservation of cultural heritage and open the doors of a fairer and more effective marketing of medicinal plants. This article seeks to highlight the synergy between traditional knowledge, medicinal plants and geographical indications addressing the issue of the effectiveness of existing regulations on this subject that leads to the sustainable development of indigenous and local communities and its biodiversity.

Lombard, John * HU1.48 **ML / 1.4**
Identifying An Appropriate Definition Of Death

Medical technology has advanced to the point where biological indicators of death are no longer the ultimate sign of death. This is demonstrated by transplant surgery where the patient's heartbeat may be stopped intentionally. The consequence of such developments is that the definition of death has had to reflect medical advances. It has been suggested that as a result of death becoming increasingly medicalised this signals the first move towards "the need for legal intervention in this area." [1] However, the identification of an appropriate definition of death is not a straightforward task due to the cultural concerns surrounding the different definitions. Proposed alternatives to the traditional cardiopulmonary standard are based on brain function and include brain death and brain stem death. These brain based definitions raise complex issues such as personal identity and the role of consciousness in identifying life. It is notable that for a definition which raises such fundamental issues the

United States and the United Kingdom have adopted different definitions of death and have taken different approaches to regulating the definition.

The aim of this paper is to examine the reasons for the differing definitions between the US and the UK. In order to achieve this, this paper will discuss the manner in which the definition of death developed and will examine the key reports from each jurisdiction such as the 1968 Harvard Medical School Committee Report[2] and the report by the working group of the Royal College of Physicians.[3] The arguments contained in these reports serve to clarify the logic behind the position each jurisdiction has adopted and also demonstrates the impact social or cultural differences may have on the law.

[1] P. Hanafin, *Last Rights: Death, Dying and the Law in Ireland* (Cork: Cork University Press, 1997) 7.
[2] Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death, "A Definition of Irreversible Coma: Report of the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death" (1968) 205(6) Journal of the American Medical Association 337.
[3]Working Group of Royal College of Physicians "Criteria for the diagnosis of brain stem death" (1995) 29 Journal of the Royal College of Physicians of London 381.

Lowenstein, Max * HU2.32 **SP / 5.10**

Understanding Riot Denunciation – Critically Comparing Judicial Commentary On State And Offender Blameworthiness

Judicial denunciation at the sentence summation stage appears to have some importance to the relationship between the Judiciary, the State and the Public. However, there is no coherent academic agreement yet as to what judicial denunciation means. Gathering qualitative data offers a valuable opportunity to develop our understanding of this important research area. Denunciation includes both the public condemnation of someone or something and the action of informing against someone, (Oxford Dictionaries, 2011). This paper focuses on the former definition, which of course can be contested. This paper seeks to present qualitative data on judicial denunciation based upon the commonly repeated judicial commentary provided in response to the nationwide rioting last year (Kvale, 2007). In 2011, rejecting all but 3 of 10 sentence challenges arising out of August's widespread civil disorder, the senior judiciary summarised their public condemnation of the riots last year as 'utterly shocking and wholly inexcusable' (Press Association, 2011). Firstly, the academic literature regarding the meaning of denunciation is explored through sentencing principle, policy and social theory. This includes the aggravating and mitigating factors specific to the offence of rioting as provided by the (Sentencing Council, 2011). Secondly, the commonly repeated judicial commentary when riot offenders were denounced last year has been gathered and critically compared for similarity. How judges have assigned blame for rioting on offenders through judicial denunciation is important because it develops our understanding of the State and Public relationship from the independent judicial perspective. Thirdly, it is anticipated that the conclusions provided will prompt a lively and interesting debate session afterwards regarding the meaning of riot denunciation and how it may relate to State and Offender blameworthiness.

Ludwin, Katherine & Boyle, Geraldine * HU 2.31 **MH / 6.8**

The Importance Of Social Location In Everyday Decision - Making: Gender, Dementia, And Everyday Decision-Making In Heterosexual Couples

This paper is based on ethnographic data generated for an ESRC-funded study (Dr. Geraldine Boyle and Dr. Lorna Warren) exploring the social process of everyday decision-making by people with dementia and their spouses. Although the Mental Capacity Act (2005) assumes a normative subject who is not marked by social location (e.g. gender, ethnicity, class), emergent findings from the study suggest that such markers significantly influence or else impact on the experiences of those whose rights the Act seeks to protect. It appeared that the degree to which partners with dementia were included in decision-making was *as* or *more* likely to relate to social location than to severity of dementia, with social class and gender reading as especially salient markers. This paper explores some of the ways in which decision-making in the context of heterosexual couples when one partner has dementia was influenced by gender. When existing authority or power relationships in couples - which in the sample were most often based on traditional gender arrangements -

were maintained after the onset of dementia, decision-making and daily life appeared to be less clearly strained. However, in some cases traditional marital and gender roles were challenged as a result of the dementia (e.g. when wives with dementia could no longer maintain their usual household responsibilities), and this sometimes unfolded as a source of tension in relationships within couples. Drawing on existing literature, the paper also explores the possible implications of these findings for same-sex couples where one partner has dementia, considering the extent to which and the ways in which findings might be similar or different in the context of same-sex partnership.

Machado, Tânia Cristina * HU 1.50 **GSL / 1.3**

Medically Assisted Parents: Discussing The Access Of Same-Sex Couples To Reproductive Technologies

Regarding the development and enforcement of European policies in the fields of science and technology, Portugal distances itself from EU countries such as Denmark, Netherlands, Finland, Great Britain, Russia, Ireland, Spain, Belgium, Sweden, Romania, Iceland, Norway or, even, Poland, concerning the parameters that regulate the application and use of assisted reproductive technologies.

In Portugal, the socially legitimate and legally regulated conditions to access new reproductive technologies converge with dominant representations of family, motherhood, fatherhood and sexuality, underlying which one finds a set of conceptual associations (i) between marriage and parenting, (ii) consanguinity and parenting, and (iii) (hetero)sexuality and procreation. According to the Portuguese law ruling the access and application of reproductive technologies, same-sex couples are prevented from requiring medical-technological care in order to have a child, although one of the requisites to access medically assisted reproduction is to be married, or to live in cohabitation for at least two years, and despite the fact that civil same-sex marriage has been legalized in 2010. Through the analysis of the normative documentation produced by medical agencies, as well as other legal documents, this paper highlights the juridical ambiguity concerning the definition of the "ideal couple" regarding parenting: on one hand, there is an ideal-type of a legitimate, better couple to whom reproductive and parental rights are granted whereas others are seen as inferior, less legitimate couples, who are not entitled to parental or reproductive rights. In this context, the "professional ethics" holds a particular importance since it can be used as a means to sustain a conservative approach anchored on patriarchal and heterosexist ideologies therefore ensuring the reproduction of dominant (hetero)sexual norms and values.

Mackay, Katherine * HU 2.33 **MH / 7.6**

Exploring The Definition Of An Adult At Risk Under The Adult Support And Protection (Scotland) Act 2007

Scotland is the first country in the UK to create legislative powers for 'adults at risk'. This is a Scottish legal term; elsewhere in the UK the terms used are 'safeguarding adults', 'vulnerable adults' or 'adult protection'. The definition of adults at risk is found in Section 3 of the statute:-

a) are unable to safeguard their own well- being, property, rights or other interests,

b) are at risk of harm, and

c) because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.

This broad definition captures a much wider group of adults than definitions under mental capacity and mental health legislation. Additionally the code of practice does not prescribe who is an adult at risk; stressing that each person experiences harm in different ways. On the one hand, the definition can be seen as giving practitioners more discretion in who to work with under this statute. On the other, it might be seen as giving too much un-prescribed

power to professionals to interfere in the lives of adults. This presentation draws upon the findings of a qualitative research project which explored assessment and intervention under the statute. Focussing on the definition, the presenter will firstly highlight the challenges of determining what *more vulnerable* and *unable to safeguard might* mean in practice by presenting two types situations that arose with older people: violence by sons towards mothers and self- neglect by older people with alcohol addiction. Secondly a visual tool, currently under development, that aims to capture all factors taken into account by practitioners, will be shared.

Mackay, Ronnie * HU 1.51 **MH / 3.2**

Insanity Defences in Great Britain

As we await the Law Commission's Consultation Paper on the Insanity Defence it seems timely to consider the different insanity defences in Great Britain. It is sometimes forgotten that the M'Naghten Rules apply only to England and Wales and that there are three other defences which apply in Great Britain. This paper will briefly consider the insanity defences in Scotland, Northern Ireland and in the Channel Island of Jersey as well as giving an indication of how the special verdict is currently operating in England and Wales.

Maclean, Mavis * HU 1.49 **FL / 7.1**

The Limitations Of Legislation In Family Law: The Case Of Forced Marriage

As part of ongoing research into the legislative process (see Making Family Law, Maclean and Kurczewski, 2011,Hart,) this paper focuses on the limitations of legislation in dealing with the problem of a minority group practice which falls outside the range of behaviour acceptable to the majority. The Forced Marriage (Civil Protection) Act 2007 followed pressure from concerned groups and a private member's bill, and finally received government support. But when the author carried out an evaluation of the Act with MoJ, we found limited impact. There is now government interest in further legislation to criminalise the practice. This paper raised concerns about the impact this could have.

Mair, Jane & Wasoff, Fran * HU 1.49 **FL / 3.1**

All Settled? Private Ordering in Relationship Breakdown

Within the context of the breakdown of adult family relationships, in many jurisdictions, the objective of reaching private agreement has been promoted as a means of lessening conflict, encouraging settlements which accommodate and reflect the diversity of families and the needs of individuals and contributing to the reduction of pressure on the civil court system and associated public funding. Scots family law offers a setting which is particularly conducive to such private ordering by providing a statutory framework based on clearly defined principles and limited judicial discretion and recognising, as legally binding, registered written agreements known as Minutes of Agreement. This context, combined with changes in family law practice, has resulted in a significant rise in the number of individuals who choose to conclude a Minute of Agreement to regulate the consequences of the breakdown of their relationship as opposed to pursuing judicial action.

We are undertaking research to explore the use of such agreements, the detailed nature of their content, and the experiences of the parties involved: further considering how well the broader objectives of the statutory framework of family law are observed in private ordering, and how much private ordering *is* carried out 'in the shadow of the law'. How do agreements made within the context of different types of adult relationships, marriage, civil partnership and cohabitation, compare? How much do agreements reflect existing statutory provision for judicial resolution of family disputes? To what extent can it be inferred that they are made in the 'shadow of the law'? What do agreements tell us about parties' access to legal advice?

Marshall, Angela * HU 1.50 **GSL / 3.3**

Inequalities And Legal Redress: Can The Convention On The Elimination Of All Forms Of Discrimination Against Women Help?

This paper considers the report of the UK Women's Budget Group on the coalition government's current budget cuts. It finds that women will be financially worse hit than men, and that the poorest and most vulnerable women will feel the cuts most acutely. How can these inequalities be challenged? Can the Gender Equality Duty (of the Equality Act 2006) be utilised to question the impact of the budget via judicial review? Or would use of the Optional Protocol to CEDAW (The Convention on the Elimination of Discrimination Against Women) be a more comprehensive and radical approach? CEDAW brings into play the norms and standards of international human rights, and should provide a more far-reaching analysis of the economic plight of women. This paper considers the potential of such a challenge and assesses whether it might re-invigorate the equality debate.

McGee, Andrew * HU 1.48 **ML / 1.4**

Intention, Foresight And Ending Life: A Reply To Foster, Herring, Melham And Hope

In this paper I examine the recent arguments by Charles Foster, Jonathan Herring, Karen Melham and Tony Hope against the utility of the doctrine of double effect. One basis on which they reject the utility of the doctrine is their claim that it is notoriously difficult to apply what they identify as its 'core' component, namely, the distinction between intention and foresight. It is this contention that is the primarily focus of my article. I argue against this claim that the intention/foresight distinction remains a fundamental part of the law in those jurisdictions where intention remains an element of the offence of murder and that, accordingly, it is essential to resolve the putative difficulties of applying the intention/foresight distinction so as to ensure the integrity of the law of murder. I argue that the main reasons advanced for the claim that the intention/foresight distinction is difficult to apply are ultimately unsustainable, and that the distinction is not as difficult to apply as the authors suggest.

McLachlan, Gary * HU 1.50 **GSL / 8.3**

The Consequences Of Bad Blood Law For Sexual Minorities:
The Flawed Legal Reasons For The Operation Of The Blood Ban Against Men Who Have Sex With Men

The original blood ban and the recent changes which leave a restriction in place focus on the sexual behaviour of MSM rather than their identity as gay men – as such we propose to show that the foundation of this law rests in the wrong place.

The problem is set for us in several areas; there are the effects of the blood ban upon those persons restricted by law and how this affects their identity; and the effects of the restrictions upon those persons not restricted by law and how that affects their perception. The legal problem here is that neither human rights or common law systems have found a legal action that can be used against the restriction. The Social Contract is one possible route, but we prefer a more consequentialist approach than one which relies upon a common goal or good.

Using the thinking of Hannah Arendt to inform method we examine the foundation of the original restriction. Finding the flaws in the common law and human rights systems that fails to identify or address our own concept of foundation allows us to redress the balance of assumptions and use current medical science, other legal examples and analytical evidence from other studies to examine the consequences of any change in policy.

While we are addressing a consequence that was an unknown to the framers of law prior to the identification and diagnosis of HIV we can see how a constructed restriction could have been framed to catch the behavioural transmission vector rather than the entirety of MSM, thus avoiding the problems with identity. We can also demonstrate a better message within

this construction which would avoid the perceptual errors introduced by the restriction in those who are not affected by the restriction.

The outcome is that both the restricted and unrestricted groups are equally valued by the framers of a new policy. In this way we give the strongest support to the Arendtian concept of plurality; one which achieves a more equal and deliberative result in practice.

1 Here in after MSM

McRae, Leon * HU 2.33 **MH / 5.7**

The Personality Disorder Pathway Implementation Plan: Scope and (Potential) Implications

Public protection from the minority of persons with personality disorder, who show violent, sexual or other high-risk behaviours, is increasingly expected from healthcare professionals. The policy of the previous administration was to pilot secure services for offenders with Dangerous Severe Personality Disorder (DSPD) in addition to other mental health services located in the criminal justice and psychiatric systems. With the planned closure of DSPD pilots, the Coalition Government now seeks to improve the pathway of therapeutic interventions in prisons and NHS hospitals. In its document, *Consultation on the Offender Personality Disorder Pathway Implementation Plan*, notable emphasis is placed upon early identification; increasing the number of places treatment available in prison; and the introduction of aftercare, or Psychologically Informed Planned Environments (PIPEs), in prisons and the community. Little is known about both the suitability of these new (seamless) care pathways for improving community safety or whether they will suffer the same problems that previously hindered the DSPD pilots. This paper offers critical commentary of the Implementation Plan; it draws on the empirical findings of a project concerning offenders with personality disorder with experience of treatment both in prisons and secure (NHS) hospitals. The results protend significant therapeutic and ethico-legal problems should the current proposals be implemented.

McQuigg, Ronagh * HU 1.47 **EU / 1.7**

The ECJ And Domestic Violence: *Magatte Gueye And Valentin Salmeron Sanchez*

On September 15, 2011, the European Court of Justice issued its judgment in the joined cases of *Magatte Gueye and Valentin Salmeron Sanchez.*[2] These cases concerned the interpretation of the Council Framework Decision on the standing of victims in criminal proceedings.[3] At issue in the cases were provisions of the Spanish Criminal Code which make it mandatory in all instances of domestic violence for the courts to impose a prohibition on the offender from approaching or communicating with the victim, regardless of the victim's own wishes. The Spanish national court applied to the ECJ for a preliminary ruling as to the compatibility of the relevant provisions of Spanish law with the Council Framework Decision. The Spanish court was of the view that it may well be necessary to impose such injunctions in certain cases in order to ensure the protection of the victim, even against the victim's wishes. However, it was doubtful as to whether the fact that there was no scope whatsoever for the victim's wishes to be taken into consideration was compatible with the provisions of the Framework Decision.

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McQuigg, Ronagh * HU1.49 **FL / 8.1**

Domestic Violence And The Inter-American Commission On Human Rights: *Jessica Lenahan (Gonzales) V United States*

On 21 July 2011 the Inter-American Commission on Human Rights issued its much awaited decision in the case of *Jessica Lenahan (Gonzales) v United States.*[1] In a landmark judgment the Commission found the United States to be in violation of the American Declaration of the Rights and Duties of Man 1948 due to the failure of the state to protect a victim of domestic violence and her children. This paper will seek to analyse the *Lenahan* decision and its significance for the United States. The decision is particularly noteworthy given the strong opposition of the United States Supreme Court to the placing of positive duties on the state to protect individuals from the criminal acts of other individuals, as demonstrated by the decision of the Supreme Court in *De Shaney v Winnebago County Department of Social Services.* The case law of the European Court of Human Rights on the issue of domestic violence had a substantial influence on the Commission's reasoning in *Lenahan*, and this influence will be examined in the paper.

At a broader level, the decision in *Lenahan* gives further weight to the principle that the failure of a state to provide sufficient protection to victims of domestic violence constitutes a clear violation of human rights standards. In analysing the importance of this decision it must be remembered that until relatively recently domestic violence was not viewed as being a human rights issue. The fact that the United States, the most powerful nation in the world, has now been held to be in violation of human rights standards for its failure to protect a victim of domestic violence and her children is testimony to the remarkable way in which human rights law has evolved in relation to violence against women in the home.

[1] Case 12.626, Report No. 80/11 (2011).

McQuigg, Ronagh * HU 1.82 **GSL / 6.14**

Domestic Violence, Feminism and International Human Rights Law

Domestic violence has always been present in society, however it is only relatively recently that it has become an issue of public concern. Historically, the political theory of liberalism and its analysis of the public and private spheres contributed towards the creation of a culture whereby violence against women in the home was viewed as a private matter and not as an issue which should prompt legal intervention. The legacy of this cultural norm still remains, as even now it is widely recognised that the responses of laws and legal systems fail to provide sufficient protection to victims of domestic violence.

This paper will discuss the manner in which this culture of non-intervention was reflected in the approach of international human rights law to domestic violence. Rights were developed in such a manner as to create a public/private divide, whereby human rights law was upheld in the public sphere where the state was involved, but was not applied in the private sphere. This dichotomy tended to operate in a gendered manner, for example, domestic violence did not come within the ambit of the traditional interpretation of human rights law. However, the public/private dichotomy is being gradually eroded. For example, although the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not make any explicit reference to domestic violence, it has nevertheless been interpreted in such a way as to cover this issue. This paper will analyse the jurisprudence of the Committee on the Elimination of Discrimination against Women under the Optional Protocol to CEDAW in the area of domestic violence, and will examine the positive duties which states now have under international human rights law as regards this issue. It will also discuss the difficulties that remain, such as problems surrounding implementation and enforcement.

McHale, Jean * HU 2.33 **MH / 4.7**

Accessing NHS Patients Records Online: Brave New World Of Patient Choice Or A Poisoned Chalice For Mental Health Care?

In December 2011 the NHS Futures Forum chaired by Professor Steve Field a practicing GP and former chair of the Council of the Royal College of General Practitioners which is advising the Coalition Government on the proposed NHS reforms recommended that NHS health care records should be available to patients free online so that they can view and indeed correct them. The published proposals received support from the Government Health Minister Lord Howe. Such recommendations may be seen as the inevitable next step in a series of measures over the last two decades to facilitate patients' control of their own health information. From the Access to Health Records Act 1990 and the Data Protection Acts 1984 and 1988 we have come a long way from the days in which clinicians opposed patients having any access at all to their health care records. Autonomy apparently rules- or does it? This paper explores the implications of the Futures Forums recommendations for the privacy and confidentiality of patient information in mental health care an area where traditionally such privacy and confidentiality is regarded as being of critical importance. Without respect for informational privacy there have long been concerns as to the prospect of stigma and discrimination for those with mental illness or disability. The paper questions whether these proposals will enhance patient autonomy or pose considerable challenges and risks for patients, family and public alike and indeed may prove a step too far.

McStravick, Darren * HU 2.32 **SP / 7.9**

Community And Restorative Justice: An Impossible Ideal?

The problems with defining the term ''community'' and its role within the paradigm of restorative justice literature are commonplace. It can be an ontological area, a stakeholder and an extension of both offender and victim. It has also been put forward as the preferred outcome of a restorative event, an icon, wherein the 'community' is healed through social relationship building due to the enhancement of feelings of safety and security. Conversely, it has been said to represent a buttressing of the power and formality of State processes through the domination of community schemes[1], as well as promising ''free and un-coerced collective association'' whilst in reality shoring up limits, fortifying a given identity and relying on exclusion to secure preservation .[2]

My proposed paper will examine the definition of, and role played by ''community'' in adult reparation schemes within the jurisdiction of the Republic of Ireland, and how that compares with restorative models within the indigenous structures of circle sentencing in Australia and New Zealand, the Canadian Conditional Sentencing Programme, the United States Vermont Reparative Boards and Youth Offender Panels within the criminal justice system of England and Wales. I will discuss the representative nature, importance and legitimacy of the gate - keeping role played by community volunteers within these models and concerns over power imbalances and rights protection. This will include an evaluation of the balance between individual rights and 'secondary punishment' and group rights and 'secondary victimisation'. Thus, I will examine whether the Offender Reparation model in Ireland, with its practice of State professionals 'representing' the community as a victim, has achieved the correct balance or could benefit from wider volunteer participation and oversight.

[1] Cohen, S. (1985) *Visions of Social Control*. Cambridge: Polity Press
[2] Pavlich, G (2001) 'The Force of Community' in H. Strang and J. Braithwaite (eds) *Restorative Justice and Civil Society.* Melbourne : Cambridge University Press

Millns, Susan * HU 2.30 **I / 1.14**

Legal Mobilisation And Gender In The UK: An Intersectional Approach

This paper analyses women's contemporary use of rights to mobilize and pursue claims for gender equality and gender justice in the United Kingdom. While the legal literature on women's rights in the UK tends to focus on case law analysis and legal reform, literature from political science looks at women's mobilization in the context of political struggles for

equality. This paper employs an interdisciplinary perspective drawing from both law and politics, and examines women's social mobilization around rights claims investigating which women use rights (eg individuals, elites, NGOs) and how they use rights (eg. as lobbying tools, court based challenges, shields, swords or political mobilizers). The paper employs two case studies by way of example: the first study looks at the right to bodily integrity, sexual violence and domestic abuse against women; the second examines women as refugees and asylum seekers. Each of the case studies situates women's mobilization around rights emanating from national sources, EU law, the ECHR, as well as international human rights instruments.

Mohamed, Reem * HU 2.41 **RRHR / 2.4**
Women Challenging South African Law

A decade before the millennium, South Africa, the last standing country with institutionalized racial segregation was embarking upon a new social and political era that would officially ban discrimination based on any grounds including sex, race, religion and sexual orientation. South African women and women's organizations took a major part in the movement towards "equality." This paper will first explore the nature of women's participation in the national movement. It will then analyze their contribution to the political transition process, especially concerning the writing of the constitution. It will be argued that women's NGOs have done a great job in advocacy work and as a watchdog on the application of the gender equality clause in the constitution. This is through their involvement in the drafting of the constitution and monitoring the application of law to ensure that gender equality is realized. The paper will therefore look at advocacy work done by NGOs, including some historical instances of national campaigns organized by women's organizations to create and apply certain laws. Cases sponsored by NGOs before the constitutional court, with the aim of reforming laws that are applied in a gender discriminatory way will be reviewed as well. The paper is part of a bigger project looking at the role of NGOs in mediating between women and the law, pinpointing points of strength and weakness.

Molloy, Jill * HU 1.51 **CLCJ / 5.2**
Loss Of Control – An Effective Defence For Women Who Kill Their Abusers?

The defence of provocation, and in particular the requirement that there be a 'sudden and temporary loss of self-control'[1] resulting from 'things said or done,'[2] has been a continuous obstacle in domestic violence cases. The operational problems facing such cases have had a disproportionate and negative impact on women. This is illustrated by the machinations performed by the courts in interpreting 'sudden' to include cases where there was a period of delay or 'cooling off,' which has become commonly known as the 'slow burn reaction;'[3] and cases where the loss of self-control was as a result of a desire to escape the abuse rather than as a result of something specifically said or done.

Following two Law Commission Reports,[4] the defence of provocation has been abolished[5] and a new partial defence of loss of control[4] has been enacted, incorporating some, but not all, of the Law Commission proposals.[6] This paper will consider the legislative measures of this new defence in light of the original Law Commission proposals.[7] It will focus on two aspects of the new defence: the retention of 'loss of self-control'[8] and the incorporation of new 'fear' trigger.[9] These two aspects have been included with the objective of making the defence readily available in domestic violence cases. This paper will, first, explore whether the preservation of the 'loss of self-control' requirement will continue to create problems for domestic violence victims; and, second, assess whether having a 'fear' trigger concomitant with a 'loss of self-control' will operate as a restriction on its availability, by restricting it to a specific category of responses which will not necessarily reflect the reactions found in domestic violence cases. Furthermore, by utilising existing case law, the paper will seek to illustrate that the objective of widening the availability of the defence in domestic violence cases is unlikely to be fully achieved.

[1] *Duffy* [1949] 1 All ER 932n
[2] s.3 Homicide Act 1957
[3] *R v Ahluwalia* (1993) 96 Cr. App. R 133
[4] Law Commission, *Partial Defences to Murder* (2004), Law Com. No. 290 and Law Commission, *Murder, Manslaughter and Infanticide* (2006), Law Com. No. 304
[5] s.56 Coroners and Justice Act 2009
[6] s.54 Coroners and Justice Act 2009
[7] *Ibid*
[8] *Ibid*
[9] *Ibid*
[10] s.55(3) Coroners and Justice Act 2009

Monaghan, Chris * HU2.39 **AJ / 7.7**

Coalition Government, The Spending Cuts And Accountability Under The UK Constitution

The current recession has seen the Coalition Government make fundamental cuts in terms of benefits, schools, etc. Whilst spending cuts are regarded as necessary many, the areas chosen, the scale and the policies introduced to implement these cuts are controversial. The executive through the peculiarly British constitutional system enjoys a majority in the House of Commons and is guaranteed to have legislative agenda approved. It is acknowledgement that separation of power and the need for effective checks and balances is a ground well trodden, but that does not necessarily preclude a fresh look at the accountability of the Coalition Government in 2012. It will be questioned how effective the House of Lords has been in acting a check to the Coalitions reforms. Alongside the House of Lords the role of the judiciary will be addressed as part of the effectiveness of the British constitutional system to hold the executive to account. The role these two unelected organs of the British state will be reviewed as whether they are a suitable method to moderate governmental policy. This paper will conclude by looking at the efficacy and effectiveness of constitutional accountability in the British system.

Monaghan, Nicola & Geach, Neal * HU 1.82 **LE /1.9**

Reflecting On Four Years Of Teaching Advocacy To Students At The University Of Hertfordshire

This paper considers the value of a structured approach to teaching advocacy to pre-vocational stage students based upon our experiences over the past four years at the University of Hertfordshire. Consideration will be given to the role of advocacy training as part of clinical legal education, and its importance in the development of professional legal skills at the academic stage of training. Furthermore, this paper will highlight the correlation, if not a causative relationship, between the studying of advocacy and higher academic performance. It is submitted that partaking in all forms of advocacy activities, both mooting and mock trials, enhances the ability to question, and break down problem scenarios, whilst constructing legal arguments; students also benefit from gaining a deeper understanding of legal issues, better research skills and an enhanced evaluative abilities.

This paper challenges the 'old school' notion that advocacy training should be restricted to the vocational stage of legal training. It is submitted that the teaching of advocacy at the pre-vocational stage offers a genuine link between the academic community and professional lawyers in the development of legal education. Advocacy training at the pre-vocational stage is something that both academics and professionals can develop together to ensure that future law graduates are ready for practice. There are clear benefits to beginning the development of these professional skills at an early opportunity, and this paper argues that this is a preferable approach to leaving such training to the vocational stage. The contentions made in this paper are supported by student feedback, and leading practitioners and judges who have participated in such activities at the University of Hertfordshire.

Moorhead, Richard & Hinchly, Victoria & Parker, Christine & Holm, Soren and

Kershaw, David
*** HU 2.34** **LLP / 4.8**
(How) Can You Measure Professional Legal Ethics?

This paper will discuss work conducted for the Legal Services Board on 'Benchmarking Legal Ethics'. The project reviews the literature on the empirical evaluation of professional ethics, particularly in law, and examines and develops feasible approaches that could contribute to legal services regulation in England and Wales.

Morris, Paulette * HU1.49 **FL / 3.1**
What Are Mediators Doing Now That 'The MIAMS' Are Here?

On the 6th April 2011, a matter of days after the interim report of the Family Justice Review was published, Practice direction 3A came into force. This was a joint direction by Her Majesty's Court Service and the Ministry of Justice for the Family Mediation Council. It carried the grand title of Pre- Application Protocol for Mediation Information and Assessment (MIAM).

The basic thrust of this direction was that all individuals considering the option of making an application for a court order in family proceedings, were expected (at the very least), to have attended a MIAM with a mediator before any application to the court was made.

Such meetings are not a new phenomenon as mediators have been conducting them for many years and until the introduction of the term MIAM, these pre-mediation meetings were known within mediation services as 'the intake/assessment' meeting and colloquially referred to as 'Intake'.

The intake/assessment meeting aka MIAM has three clearly defined stages which are:-

i. Gathering and giving information

ii. Assessing suitability

iii. Deciding the way forward

This paper will focus on the stage concerned with "assessing suitability" in three ways. First it will look at this stage generally, secondly specific focus will be given to screening for domestic violence and finally it will contextualise this stage within the intake/assessment (MIAM). To achieve this it will draw on data that, whilst collected prior to the introduction of the protocol, accurately reflects current family mediation practice.

Morticelli, Annalisa & Guth, Jess * HU 1.47 **EU / 2.8**
Illegal Immigration: The EU Legal Framework

This paper reports on the first phase of a project considering the law and policy in relation to illegal immigration in the EU with a specific focus on two countries: Italy and the UK. This paper aims to fully understand the EU perspective in legislating in this area and considers how EU involvement in this field can further our understanding of effective economic, social and political integration across the EU as well as highlighting tensions in EU law and policy.

The project will then considers the national implementation of EU law and policy as well as national law and policy in this area in 2 Member States. The countries chosen represent countries with different legal systems and different approaches to regulating immigration and therefore the study provides an opportunity for in-depth understanding of illegal immigration and legal and policy responses to it.

Munro, Nell * HU 2.33 **MH / 8.5**

Is Litigation Based Upon The Human Rights Act Helping Improve Standards In Health And Social Care?

Two recent decisions in the Supreme Court have highlighted the uses to which the Human Rights Act can be put when challenging poor care received by disabled people. In R (on the application of McDonald) (Appellant) v Royal Borough of Kensington and Chelsea (Respondent) a majority of the court held that a local authority was not in breach of Art 8, the right to respect for private and family life, when it assessed a disabled woman as needing assistance to use the toilet at night but met this need by supplying incontinence pads despite the fact she was fully continent. In Rabone and another v Pennine Care NHS Foundation Trust the court unanimously held that a healthcare provider which knew of a real and immediate risk of suicide in a voluntary patient and failed to take appropriate action to prevent her death had failed in its operative duty under Art. 2: the right to life.

In both cases interventions were made by non-governmental organisations keen to highlight the implications of the decision for a wider group of affected people. Taken individually both cases highlight strengths and limitations of the Human Rights Act as a vehicle for challenging poor care practices. This paper will go further and ask if we can draw wider conclusions from these cases about the possibility of adverse consequences arising when we use litigation to improve the protection of human rights for disabled people, and whether more needs to be done to use other mechanisms for human rights protection to drive up standards.

Murphy, Maria Helen * HU2.38 **ITCL / 7.8**

The European Court Of Human Rights (ECtHR) And Electronic Surveillance Cases: Choices Between Legality And Necessity

Surveillance technologies continue to pose a threat to the Article 8 ECHR right to a private life. As an external body with a duty to ensure the observance of Convention rights, the ECtHR plays a key protective role, insulated from the domestic pressures exerted on both national legislators and judges. This is particularly important in the surveillance context, where secrecy is closely guarded, and appeals to the national interest and the expertise of the Executive are powerful.

The relationship between the ECtHR and domestic legislative bodies is the core of this paper. Article 8 permits interference with the right to a private life where it is "in accordance with the law" and "necessary in a democratic society." Notably, the Court has tended to assess the Convention compatibility of domestic surveillance practices under the legality rather than the necessity test. The Court has laid out detailed, almost legislative, safeguards that surveillance law must contain to satisfy a highly qualitative legality requirement.[1] The appeal of the seemingly rigid, procedural character of the requirements can be explained by the particular problems of sensitivity the control of surveillance presents to the Court. As national legislatures wish to avoid censure from Europe, they often look to Convention case-law for guidance. This paper argues that focus on accountability and foreseeability, rather than the more substantive issues at the heart of the necessity requirement risks encouraging national parliaments to create laws that tick boxes without considering the proportionality of government actions. Notably, in some recent cases, the Court has experimented with an approach that combines the legality and necessity tests and the significance of this development is assessed.

[1] Surveillance legislation must include: "[1]the nature of the offences which may give rise to an interception order; [2] a definition of the categories of people liable to have their telephones tapped; [3] a limit on the duration of telephone tapping; [4] the procedure to be followed for examining, using and storing the data obtained; [5] the precautions to be taken when communicating the data to other parties; and [6] the circumstances in which recordings may or must be erased or the tapes destroyed." *Weber and Saravia v Germany* [2006] ECHR 1173, 95. Extensive legality safeguards were originally described in *Huvig v France* [1990]12 EHRR 528, 32 and *Kruslin v France* [1990] 12 EHRR 547.

Newnham, Annika * HU 2.41 **STLS / 7.10**
Accommodating Power Within The Autopoietic Theory Framework

This paper is more an invitation to discussion than a presentation of a definitive account. It explores ways to explain power within the framework of autopoietic theory and is borne initially out of mine and others' analyses of family law interactions between legal personnel, policy-makers, other professionals and parents. The description of society as a heterarchy of closed subsystems (with power as a medium confined predominantly to politics) can feel difficult to reconcile with the observation that law's structural coupling with politics and its association with state exercise of force continue to shape understandings of the legal system as powerful, aid law's enslavement of other subsystems, and limit individuals' choices in a way that perhaps entrenches the perception of law's power into something akin to a self-fulfilling prophecy. At the same time, power in our functionally differentiated society, with its recent proliferation of communication, appears more diffuse, diverse, even obfuscated, and usually difficult to plot into one-way relationships. Although it is not claimed that one universal explanation or meta-narrative of power can be found, it is suggested that a consideration of perceptions of power and their impact on communicative choices can be important.

Neylon, Anne * HU2.82 **IR / 4.6**
The Active Citizenship Requirement In Denmark And The UK

The Danish Integration Act came in to force in 1999, making it one of the first countries in Europe to introduce such a piece of legislation. Since that time, the Danish approach to integration has increasingly focused on ensuring that the identity of the state is preserved by requiring immigrants and refugees to reach a very high standard off language competence in comparison to other EU countries as well as a requirement to demonstrate knowledge of Denmark through testing. A more recent requirement that has been introduced is that of an active citizenship requirement, which is passed through either engaging in voluntary work or passing an active citizenship exam. In this paper, I will compare the implementation of the active citizenship requirement with a similar requirement, set out in the UK's Borders Citizenship and Immigration Act 2009. The UK provision ultimately never came in to force. In this paper, I will consider how such a similar provision was received so differently in the two jurisdictions. In the paper, I will take account of how media representation and the political discussions surrounding the issue impacted on the manner in which the provision was presented and debated. Finally I will interpret the subsequent backlash against the active citizenship provision in Denmark in light of overall shifts in perception of integration regulation in Europe.

Ng'ambi, Sangwani Patrick * HU2.30 **ES / 6.13**
The 2008 Windfall Tax And Its Impact On The Zambia's Investment Climate

Over the past decade, the Republic of Zambia has seen an increase in the flow of foreign direct investment (FDI). A large quantity of this FDI has gone into the copper mining industry which the Zambian economy is heavily dependent on. The prices of copper increased radically, which prompted the Zambian government to reconsider the preferential tax regime that foreign mining companies enjoyed. The government reconsidered its preferential tax regime to ensure that Zambia benefited from this change in circumstances.

The tax regime was originally implemented to encourage the inflow of capital, which in turn would revive an industry that had been crippled by previously low copper prices. The concession agreements between the Government of Zambia and the mining companies included stabilisation clauses. Stabilisation clauses essentially constitute a promise on the part of the host government not to amend its laws in a way that adversely effects the economic rights contained within that particular concession agreement. In other words, even if the Government amended its national laws, those new laws would not apply to the aforementioned concession agreements. This paper firstly aims to examine stabilisation clauses in concession agreements and their legal effect on a host State's power to amend

its laws unilaterally. I shall also be looking at how the Zambian government's abrogation of its contractual obligations impacted on her reputation as a favourable investment climate. Of interest is how Zambia managed to attract FDI despite the windfall tax and the impending Global Financial Crisis

Nobles, Richard * HU2.41 **STLS / 6.11**
How Law Constructs Time

Einstein made it clear why we need to orientate ourselves towards time: 'The only reason for time is so that everything doesn't happen at once.' But, such orientation does not mean that only one understanding of time operates within society. This paper will discuss some of the roles played by time within the legal system, how law travels through time, and the mode of time's construction within law, namely law's observations on its own temporality.

Nokes, Karen & Holloway, Laura * HU2.34 **LLP / 6.9**
Attitudes To Regulation And Compliance In Legal Services
What Motivates Legal Services Firms To Comply With Regulation?

Outcomes-focused regulation (OFR) marks a new approach for the Solicitors Regulation Authority; we want to support firms in delivering good outcomes for consumers. As well as detecting and investigating where good outcomes for consumers and the public interest are not being achieved, we want OFR to support the majority of firms who want to comply with the regulatory requirements and consumer outcomes. Our Supervision directorate is at the forefront of this approach, having regulatory oversight of firms and individuals authorised and regulated by the SRA. To make sure that our approach to supervision is effective and proportionate, we wanted to understand what helps and motivates individuals and firms to comply with the regulatory requirements.

We gathered data on 200 legal services firms' attitudes towards compliance with regulation, and explored what shapes these attitudes. Analysis of this data has informed our approach to regulating firms, through better understanding of how to motivate firms to comply with regulation and to disincentivise non-compliance.

To measure the compliance behaviour and attitudes of the firms we regulate, we used questions developed from the Table of Eleven, a recognised compliance metric developed by the Dutch Ministry of Justice. It identifies eleven factors that influence compliance behaviour, from spontaneous factors such as knowledge of the rules and the costs/benefits of compliance, through to enforcement factors such as risk of inspection and risk of sanction. We have investigated which of these factors have weak or strong influences on legal services firms' attitudes towards compliance with regulation, and looked at the implications of this for the way we supervise those we regulate.

Noorani, Tehseen & McDermont, Morag, & Charlesworth, Andrew
*** HU 2.33** **MH / 4.7**
' "Vulnerable Persons", Capacity To Consent And The Medicalization Of Research Ethics Committees'

This presentation raises a series of questions at the interface of medical expertise, social scientific research and processes of ethical review, by drawing upon the authors' personal experiences of applying for ethical approval in academic research.

We suggest that a medical model of vulnerability and 'illness' dominates research ethics committee (REC) decision-making. Our presentation explores how this alters the nature of research projects within the social sciences that seek to involve participants who are then viewed under a medicalising gaze. We ask what kinds of research projects are prevented or misrecognised because of the dominance of medical expertise. Finally, does deference to a medical model encourage REC members to limit their understanding of their own spheres of expertise?

At the same time, a 'medicalisation critique' can over-simplistically depict RECs as spaces with the potential for collaborative thinking between applicant and committee members that are being transformed, affectively and discursively, into adversarial spaces dominated by medical expertise. We will trouble this critique by reflecting upon the meaning of authority, and introducing the alternative authority of the 'expert-by-experience' in mental healthcare. In this way, we hope to offer openings for how we think about the problematic relations between medical expertise and ethical social scientific research.

Ocran, Christine, * HU2.41 **SLTS / 7.10**
The Trokosi Practice In Ghana: A Form Of Law?

This paper evaluates the *trokosi* system, a traditional custom which evolved in the 17th century and is practised by the Ewes, an ethnic group of people in the Volta Region of Ghana. *Trokosi* involves women and girl-children, some as young as four, being given away to serve fetish priests at shrines as pacification for crimes committed by a member of their family. In some cases the priests "marry" all the women and girls and have sexual relations with them soon after maturity. *Trokosi* became more visible in the 1990s when an abolitionist movement began leading efforts to eradicate the practice. In 1998, the Ghanaian government enacted a law abolishing the practice of "customary servitude", aimed at dealing with *trokosi*.

The aim of the paper is to explore some of the multi-dimensional socio-legal issues raised by the *trokosi* practice. In particular, it considers the dichotomy between the perceptions of those internal and those external to the custom. For outsiders, the practice is considered a "harmful" traditional practice. It provokes arguments of serious denial of women and children's rights including sexual exploitation, slavery, gender violence and discrimination. For insiders, the paper seeks to expose *trokosi* as an intricate cultural and religious practice, as well as a form of social control and criminal justice system. Emphasis is placed on *trokosi's* operation as a legal system and the contention made that it is used by those within the practising community in their everyday lives to ensure justice and retribution for crimes committed within their society. In this context, the paper questions whether *trokosi* can adequately be considered a form of "soft law" and seeks to establish its place within the hierarchy of Ghana's legal pluralistic society. It concludes that *trokosi* is an effective form of law, which has real meaning in the lives of its practitioners.

Ohana-Eavry, Natalie * HU 1.49 **FL / 8.1**
The Legal Definition Of Domestic Violence Against Women: Method Of Analysis

Naming is a powerful social act, able to create or cover objects, subjects and social phenomena. Legal names, and more narrowly, legal definitions of social phenomena, are foundational elements of legal policies, legislation and judgments. They're formalized, powerful and authoritative social names.

Defining legally a social phenomenon isn't a single act but a process that exists as long as the social phenomenon is recognized. A definition goes through ruptures, thresholds, shifts and discontinuities throughout its path. I argue that by researching the legal definition of a social phenomenon from the point of its creation throughout its existence, one's able to both identify patterns of exclusion and to analyze critically the response to the examined phenomenon.

I'm researching the legal definition of domestic violence against women in the UK and Israel. In this paper I would like to propose a method of analysis for the research. The method consists of four analytical tools with which legal texts that reveal the legal definition of domestic violence will be examined. They are: **forms of classification**: which acts of classification were imposed on the social phenomenon in the process of defining it legally?

Forms of continuity: to which existing concepts was the legal name related to and limited by? The **standpoint/s** by which the legal definition is reached and the influence of **relations between the legal system and other discourses** on the definitional path.

I'll focus on the significance of each tool separately and as a whole and explain in which way this method is designed to answer the dual purpose of the research: identifying patterns of exclusion in the legal system and reviewing critically the legal response to victims of domestic violence.

Oliver, Liz * HU 1.47 **LabL / 6.4**

Rising To The Red Tape Challenge: Considering The Proposed Changes To Employment Law And The Evidence On Which They Are Based

A fundamental review of employment law was launched by the government in May 2010. A number of reforms have been debated as part of this process. Key proposals include lengthening the qualifying period for an unfair dismissal claim and the introduction of fees for lodging tribunal claims amongst others. There is no doubt that these are likely to have a major impact on the nature of employment law within the UK, but as yet there is not a clear indication of the likely impact of various reforms and proposals in combination. A number of commentators have started to analyse aspects of these changes. This work has raised questions about the continued relevance of key theoretical concepts that have played an important role in reforming and developing employment law in recent decades. Hepple (2011) for example, in response to changes in the area of equality, has suggested that it is necessary to revisit debates on reflexive regulation and perhaps to question its continued relevance within the new landscape. This paper will seek to draw together existing commentary on the anticipated impact of the changes. Another area, ripe for exploration is that of the evidence base upon which changes to employment law have been proposed. Analysis of Employment Tribunal statistics by the IDS, for example, has cast doubt on the assumption that vexatious claims are the cause of increased case load and pressure within the tribunal system, the findings of this analysis suggest a far more complex picture involving a range of different factors (IDS, 2011). This paper will draw together existing analysis and scrutiny of the evidence underpinning the assumptions that appear to be driving regulatory reform in this area. Finally the paper will begin to set out the findings of a qualitative analysis of the online 'comment thread' associated with the Government's consultation on employment law reform through its 'Red Tape Challenge Website' this analysis will gauge the nature and prevalence of comments made and will inform future scrutiny of how this form of consultation has contributed to concrete legal and policy proposals.

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Onoriode, Mercy Emetejife * HU 1.82 **LE / 1.9**

The Introduction Of Clinical Legal Education Into The Nigerian Law School: Prospects And Challenges

The Nigerian Law School (NLS) was established by the then new Independent Government of Nigeria following the enactment of the Legal Education Act 1962. The Council of Legal Education (Council) is a federal institution responsible for the training of aspirants to the Nigerian bar and this function is carried out by the NLS. The implementation of the recommendations of the Unsworth Committee towards the establishment of a system of legal education for Nigeria gave birth to the Council.

From inception, the method of training aspirants for the bar for more than four decades was the traditional methods of lecturing in classes, taking tutorials in groups after classes and placement of students to court and law office for a period of time prior to taking the bar final examination. This method of training became most unsuitable for the legal profession as there were complaints from stakeholders particularly the judiciary as to the quality of legal education given to legal practitioners trained at the NLS. The need to achieve quality training to equip the aspirants to the bar for the challenges of the legal profession and the need to embrace the global best practices of educational training of students for all works of life informed the overhaul of legal education in Nigeria.

The increasing importance of a change in curriculum for training of aspirants to the bar led to the Council introducing a new curriculum for the first time in the 2008/2009 academic set of the NLS. Basically, the new curriculum is student centred rather than teacher centred with emphasis on practical and skills acquisition through interactive learning process. Interestingly, the new curriculum has run for more than three years now with five academic sets trained through it.

In the light of the above, this paper is focused on the appraisal of the clinical legal education and whether its introduction has impacted positively on legal practitioners trained with it. Further, the challenges in the implementation and the factors responsible for such challenges are examined.

Ormerod, David * HU 1.51 **MH / 3.2**
The Law Commission's Insanity And Automatism Project

The Law Commission will shortly be publishing a consultation paper on the law relating to the defences of automatism and insanity. This paper will discuss the reform process so far.

Ó' Conaill, Seán * HU 2.42 **SP / 8.11**
Football Administration And The Law; Is Football Above The Law?

The administration of football and its relationship with the legal system has enjoyed a difficult past and continues to pose certain challenges for the various stakeholders and members of the football family. Of particular interest is the manner in which the governing bodies very often seek to exclude the formal legal process.

This paper seeks to examine the relationship and practical implications of the UEFA Club Licensing Process and how it has been implemented in various jurisdictions. UEFA Club Licensing and the various financial fair play rules have added another transnational layer to the complex issue of football administration requiring clubs to fulfil a set list of sporting and legal criteria before they are allowed compete in nation and European competition.

Examination of case law from the Republic of Ireland, the United Kingdom and other international decisions demonstrates the increasing role being placed upon the avoidance of recourse to the national legal systems. Juxtaposed with this development is the increasingly legalistic and formal internal processes and adjudication within the Football Authorities themselves. Such internal processes and adjudication methods do however have very serious real world implications for the football clubs/bodies concerned and very often the end result of which can result in contact with the national legal system (notable examples include football rules versus legal rules vis a vis in insolvency procedures.)

This paper will examine why football in particular (as the foremost global game) has been allowed to develop such a system and essentially ask the question; "Is football above the law"

* This proposed paper would delivered in my private capacity as an academic and not as a member of the FAI.

O' Regan, Fiona * HU2.31 **CS / 4.9**
A Critical Analysis Of The Victim Participation Scheme Of The International Criminal Court And Its Potential To Provide Victims Of Gender Based Violence With Restorative Justice

This paper will focus on the most important developments relating to victim participation in the International Criminal Court (ICC), with a specific emphasis on their impact on victims of gender based violence (GBV), in particular, how they meet the goals of restorative justice, including inclusion, enhanced respect and facilitation of reconciliation and healing through the legal process.

I will begin by referring to the traditionally marginal role occupied by victims in international criminal proceedings, focusing on the treatment of victims in the ad-hoc tribunals, where victims could only participate as witnesses and outreach efforts were for a long time inadequate, resulting in feelings of isolation from the process amongst affected communities. Following this, the Rome Statute's revolutionary victim participation initiative and commitment to gender justice will be described, illustrating that on paper at least, the ICC is dedicated to both the furtherance of victim's rights and the prosecution of GBV crimes.

The main discussion will revolve around the ICC case law relating to victim participation. I will discuss the approach taken by the Court to participation rights, including the right to present and challenge evidence, anonymity and participation in the investigation and the likely impact of such interpretations for GBV victims. In addition, practical obstacles will also be highlighted, such as the difficulties surrounding information dissemination and legal representation. However, a crucial focus will be on the Court's attitude to the investigation and prosecution of GBV and how this effects participation of GBV victims. The *Lubanga* case, where GBV crimes were controversially not prosecuted, will be a key component of this aspect of the discussion. Finally, taking each of these elements (interpretation of participation rights, practical challenges and attitude to GBV) I will offer some assessment of the Court's likelihood in securing the goals of restorative justice for GBV victims.

O' Sullivan, Kathryn * HU1.49 **FL / 5.1**

Death, Divorce And Matrimonial Property Under Irish Law

One the principal problems with Irish matrimonial property law is that there is no coherency in the way in which a marital relationship affects property. As a result, a veritable patchwork of matrimonial property regimes co-exist under Irish law and no single approach prevails in all circumstances: while a marriage subsists, separation of property applies;[1] where a marriage ends in death, a communitarian-like approach based on fixed rules is adopted under the Succession Act 1965; while, under the Family Law Acts 1995 and 1996, where a marriage ends on divorce, a regime based on judicial discretion and equitable redistribution is applied. The result, unsurprisingly, is a deeply inconsistent matrimonial property law regime.

This presentation will tackle the difficulties inherent in such a confused system, with a particular focus on the contrasting regimes applied on death and divorce. First, it will explain the historical context, social, political and legal, in which the law governing the distribution of assets on death and divorce has developed. Second, it will analyse the social goals which the respective legislative enactments seek to achieve and, on this basis, it will then assess whether the contrasting schemes governing the division of matrimonial property can be justified. Finally, it will question whether reform may be necessary to ameliorate the difficulties inherent in the Irish approach to matrimonial property division on death and divorce. To this end, the presentation will focus special attention on the potential inherent in adopting a regime founded on fixed rules in the context of divorce.

[1] Albeit somewhat modified by the Family Home Protection Act 1976.

Owusu-Bempah, Abenaa * HU 1.51 **CLCJ / 1.2**
Deconstructing Defence Disclosure

The Criminal Procedure and Investigations Act 1996 imposed for the first time in the history of English criminal procedure a general duty on the defence to disclose the details of their case prior to trial. Failure to comply is penalised at trial through provisions allowing adverse comment to be made and adverse inferences of guilt to be drawn. The defendant may also be penalised if his disclosure is late or inconsistent. These requirements to cooperate form part of an increasing trend in criminal procedure aimed at securing the participation of the defendant in order to increase efficiency and fact finding. This has been furthered by the case management provisions of the Criminal Procedure Rules and a judicial disdain for ambush defences. However, whilst the purpose of defence disclosure is efficient fact finding, it raises significant issues of principle. Defence disclosure obligations have changed the role of the defence as participants in the criminal process. They are now expected to participate constructively, with English criminal procedure shifting further away from an adversarial style contest towards a participatory model of justice. The defendant's ability to take a passive role and the ability of the defence as a party to put the prosecution to proof have been undermined. As a result, fairness guarantees such as the presumption of innocence and the burden of proof have been weakened. This paper presents an important opportunity to examine the significant implications of defence disclosure which are often overlooked in pursuit of its apparent benefits.

Palmer, Axel * HU2.39 **BF / 2.9**
Bribery And Corruption: Just Keep This Between Ourselves

This paper will look at the issue of bribery and corruption by considering the issue of the bribe itself. In the last year, the coalition government has published guidance on the implementation of Bribery Act 2010, which was passed in the dying days of the previous Labour government.

The Bribery Act was intended to remedy the deficiencies in previous legislation and bring the United Kingdom (UK) into step with other nations, thus complying with its international obligations to United Nations the Organisation for Economic Co-operation and Development. It also looked across the Atlantic to the United States which had the Foreign Corrupt Practices Act (FCPA) since 1977. That the UK was late on the scene was demonstrated by bribery of foreign public officials only becoming a crime in 2001. The legacy provided to the incoming coalition government was a new offence applicable to 'commercial organisation' of 'failure of commercial organisations to prevent bribery'.

This offence makes commercial organisations responsible for bribery by persons associated with it. However, the Act also gave a defence if the organisation had 'adequate procedures'. The difficulty faced, particularly by commercial organisations, is what exactly is a bribe? And the relevance is that the Bribery Act goes further than FCPA by not allowing 'facilitation' payments. Thus, the UK approach has created a new 'gold standard' for anti bribery laws.

This paper looks at the bribe itself, since it is the key feature. Variously described as 'grease payments, bungs, backhanders, facilitation payments or tips' these are payments which are intentionally designed to achieve 'improper performance' of a function or activity and there is no exemption for merely 'doing in Rome what the Romans do'.

Palmer, Tanya * HU 1.50 **GSL / 3.3**
Sex And Sexual Violation: Consent, Negotiation And Freedom To Negotiate

This paper presents the key findings of a doctoral thesis which explored how the boundary between sex and sexual violation might be represented within the criminal law. The Sexual Offences Act 2003 is used as a starting point from which to critique consent as a standard for distinguishing sex from sexual violation. Two of the key issues with consent are the unilateral nature of the initiation-consent dynamic, and the all-or-nothing nature of consent vs non-consent / capacity to consent vs lack of capacity. Michelle Anderson's negotiation

standard, as further developed by Sharon Cowan, is explored as a possible alternative to consent.

These initial findings are refined and developed through analysis of telephone interviews which were carried out with 19 self-selecting individuals and 2 caseworkers from a charity supporting street-based sex workers, and focus groups with police officers and domestic violence support workers. Analysis of the empirical data in tandem with an exploration of relevant theoretical literature (drawing especially on the work of Drucilla Cornell, Nicola Lacey and Sharon Cowan) led to the conclusion that the context within which the negotiation of a sexual encounter takes place is more important than the content of the negotiation itself. In doing so I also drew on Liz Kelly's concept of 'spaces for action'.

This paper ends by setting out what a 'freedom to negotiate' standard might look like, what its implications might be for sexual offences law – particularly in cases that have traditionally proved difficult to bring within the ambit of the criminal law such as sexual violation occurring within abusive relationships – and the details that remain to be clarified in order to incorporate a 'freedom to negotiate' standard into sexual offences law.

Piper, Christine * HU2.32 **SP / 6.10**
Physical Restraint Of Minors: Last Resort Or Punishment?

For some time there has been concern about welfare and rights issues arising from the use of physical restraint techniques to deal with troubled or troublesome young people in local authority or prison service secure accommodation. The deaths in 2004 of Gareth Myatt, who lost consciousness whilst being restrained, and Adam Rickwood, who was found hanging in his cell after he had been restrained, provided a public impetus to reform. Since then a series of reviews and reports have led to changes in codes of practice but the Children's Commissioner last year expressed continuing concern about the use of pain compliant techniques in young offender institutions and secure training centres. A recent report by the Howard League (2011) also noted that some young offenders had been 'assaulted rather than restrained'. This paper will, therefore, review progress and assess the extent to which current practice is still 'tantamount to institutional child abuse' (Goldson 2006).

Platsas, Antonios * HU 2.32 **LD / 4.12**
The Ideal Of Democratic Law

The Ideal of Democratic Law stands supreme in the modern discipline of law. Our laws, our ethos, our values and our beliefs are all children of democratic ideal which stands over and above many of our legal systems and legal traditions. The steady march of democracy continues all over the world. Democracy resists, persists and prevails. Law echoes the developments in the field of democracy. It listens to democracy. The forces of pluralism and liberalism crystallised through the eternal truths of natural law as well as through the mechanics of legal positivism define our ever-expanding modern democratic legal ethos. Unified is our perception of democracy. Ecumenical is our call for a democracy that spans across the world. Antropocentric is our understanding of democracy. A unified, ecunemical, anthropocentric perception of democratic law is one that stands then at the very core of modern legal analysis. Cognisant of the fact that freedom in law cannot exist without democracy, it is the intention of this contribution to establish that freedom in law comes hand in hand with democratic law and that democratic law is the offspring of freedom. Proceeding with the analysis and exemplification of the ideal of democratic law, the contribution asks whether the ideal to reach democratic law is in realistic terms an end in itself or a process in itself. The paper concludes as it started: law in its ideal form gives full recognition to the democratic ideal and all that this represents.

Popoli, Anna Rita * HU2.40 **IP / 1.1**

Cookies And Electronic Commerce: A Survey About Actual Knowledge Of The Issues Concerning Privacy

This paper discusses the issues concerning cookies and privacy and electronic commerce. After analysing the european and national legislation about protection of privacy and distance selling and electronic commerce, the attention is focused on consumers actual knowledge of cookies. The second part of the paper is a survey realized in 2010 in two high schools of Modena. The survey uncovers that the knowledge about cookies and related issues is superficial. The paper concludes that there are many instruments to protect consumers' privacy while they are surfing on or buying in the Internet. However there is the need to improve the effective knowledge of the so-called cyber consumers about cookies and issues concerning privacy.

Přibáň, Jiři * HU 2.41 **STLS / 5.11**

Sovereignty And Post-Sovereignty Studies: A Systems Theoretical Critique

The paper focuses on the proliferation of the sovereignty discourse and the normative expectations of some major and typical theories of sovereign and post-sovereign politics and law. It analyses sovereignty's semantic value for modern politics and law. Drawing on the autopoietic social systems theory, the final part considers sovereignty as part of the self-referential semantics of both the legal and political system. The author argues that the concept of sovereignty cannot be discarded as useless if politicians, lawyers, constitutional judges and the general public continue using it in their social communication. However, it cannot be understood as a fiction signifying the total unity of society ultimately governed and controlled by one power centre and its laws. This fiction needs to be replaced by a theory in which the concept of sovereignty is self-limiting and self-referring to the globalized systems of politics and law.

Ragnekar, Dwijen * HU2.37 **CO / 3.11**

Re-Making Place: The Social Construction Of Geographical Indications

Geographical indications (GIs) are a recent entrant into the global pantheon of intellectual property rights (IPRs), having been introduced in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).[1] GIs stand out as a remarkable accomplishment of introducing a place-based imagery into a global intellectual property treaty. Though recent, GIs have rapidly grown in significance and controversy. Of interest, for me at least, are disputes like the one between Ethiopia and Starbucks over the 'ownership' of place-names, such as Sidamo, Yirgacheffe, and Harar – all coffee growing provinces of Ethiopia. Invoking a David-versus-Goliath trope was the legal battle between the Italian Consortium of Parma Ham producers and UK supermarket chain, Asda, owned by the world's largest retailer, Walmart, that saw the former claim intellectual property infringement and win at the European Court of Justice. There are struggles like those associated with Basmati, a long-grain aromatic rice grown in the Himalayan foothills in India and Pakistan, that witnessed patent and trademark challenges in a number of jurisdictions, global petitions and demonstrations, and vast mobilisation of farmers; thus, reminding us of ethical and aesthetic values associated with GIs.

There are many remarkable features to GIs that contrast with other IPRs. To begin, the construction of GIs in most – though, not all – jurisdictions makes them akin to what Carol Rose (1998), in a different context, has characterised as 'limited common property': "property held as commons amongst the member of a group, but exclusively vis-à-vis the outside world". Further, GIs offer the possibilities for intellectual property protection of long established cultural repertoires and could be useful in sectors like handicrafts, agriculture, and cottage and food-processing industries. Place-name protection through GIs, the argument goes, could enable differentiation in globally-traded commodities like rice, tea and coffee with a view towards restoring equity in global supply chains. In essence, suggesting an emancipatory potential to GIs. Noting some of these possibilities, at TRIPS a growing constellation of WTO member countries from the Global South canvas for stronger

protection. A position that is broadly in contrast to a usual South-North contestation at TRIPS.

The paper opens the canvas on GIs in two particular ways. First, is to conceptualise GIs as 'conventions of place' based on insights from the literatures on social movements and cultural geography. While appreciating GIs as part of a 'defence of place' project, the paper also critiques this idea by interrogating the social construction of place. Second, is its proposition to focus on the 'juridical' moments that punctuate the acquisition and revision of GIs to explore how local social relations of power bear constantly on the social construction of GIs; thus, explicating a 'politics in place'.

Anthropologists have noted how social norms and cultural conventions are mutually constitutive of the stabilisation of particular repertoires as *art de la localité*: "[E]very location acquired, maintained and enlargened … its own cultural repertoire: its own norms and criteria that together established the local notion of 'good farming'" (van der Ploeg, 1992). The enduring connectedness of peoples to places is reflected in the particular ways in which goods become culturally emblematic of place and peoples located therein. Taking this forward, the paper frames GIs as a juridical reification of place-based stabilisation of cultural repertoires: a 'convention of place'.

This allows me to situate the paper with and be informed by a wider set of literatures. Of significance are contributions that speak of the vitality of place – a defence of place as a project that seeks to contest the erasure of place in globalspeak and those mindful of a 'global sense of place' by probing a subaltern cosmopolitanism. It is possible to read 'struggles for place' in the global agrifood system mediated by the deployment of a portfolio of global legal vehicles for local aspirations. For instance, the dominant dynamic of global agrifood is its flexible mode of production that is premised on delocalised and placeless products. Seeking to resist these dynamics are a range of socially generated appellations, such as fair trade, organic, and local – labels that might be analytically categorised as 'marks indicating conditions of origin' which speak to a diverse set of aspirations and moral economies (Aylwin and Coombe, 2010; Coombe, 2005). Locating GIs in these literatures allows the paper to pursue a number of insights. Illustratively, one of the objectives is to characterise the acquisition of a GI as a 'struggle for place' and implicate this in social movement's resistances to 'erasure of place'. To explain, the specifications that are co-constitutive of a GI present opportunities to retrieve history and script locally stabilised cultural norms to negate (or at least, limit) the erasure of place.

Conceptualising GIs as 'conventions of place' should not make us fall prey to either normalising or idealising GIs and associated struggles for place. The literatures on social movements and cultural geography are mindful that place is contested and borders are porous. As GIs involve a retrieval of a past, anthropological insights of how the past as a scarce resource is mobilised (e.g. Appadurai, 1981) are instructive. Equally, the social construction of standards speaks of a complicity of power and call for us to be mindful of a 'politics in place'. Illustratively, techniques and materials travel and get locally assimilated, while peoples and practices are themselves mobile; thus, attention on how particular 'conventions of place' sediment and get juridically reified.

[1] TRIPS defines GIs in Article 22.1 as "… indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin". Antecedents to GIs are found in social conventions in trade and commerce, such as guilds, and closely related forms of intellectual property like 'indications of source' and 'appellations of origin'.

Reeve, Belinda (presenting author): McCallum, Ron & Schofield, Toni
*** HU 2.32** **SP / 8.7**

The Role Of The Judiciary In OHS Prosecutions: Institutional Processes And The Production Of Deterrence

This paper presents findings from an Australian Research Council funded project examining the deterrent impact of occupational health and safety prosecutions in Australia. It focuses on one aspect of this research, involving qualitative interviews with judicial officers based in

two Australian states and located at different points in the court hierarchy. The paper explores judges' understanding how prosecution operates to deter OHS offenders, the judicial role in producing deterrence and preventing serious workplace injuries and deaths. The judicial officers who participated in the study thought that OHS prosecution had some specific deterrent impact, but were more sceptical about the general deterrent effects of such prosecutions. Further, participants reported that the judiciary's influence over sentencing outcomes was constrained by the role of other institutional actors in the prosecution and sentencing process, for example OHS regulators and the media. The judicial role (requiring judges to remain impartial and detached from other actors in the criminal justice system) also restricted judges' ability to ensure that OHS prosecutions had a deterrent outcome. However we argue that judges do play an important role in preventing workplace deaths and injuries, especially given the constitutive or communicative effects of prosecution. By convicting and sentencing OHS offenders, the judiciary gives voice to and legitimates community sentiment that these offenders' behaviour is morally reprehensible. As such, the judiciary is a key component in institutional processes that construct employers as bearing primary responsibility for the prevention of workplace deaths and injuries.

Rhodes, Louise * HU2.41 **BF / 4.11**

How Public And/Or Private Is Northern Rock Bank?: The View From 'Multi-Dimensional Publicness' Theory

Northern Rock bank was fully nationalised in February 2008. Subsequently in November 2011 Northern Rock plc (the 'good' bank) was sold to Virgin Money. In the run up to the bank's initial nationalisation the Labour Administration stated that this measure was in the public interest, as it offered the best value for the tax-payer in comparison to any of the solutions tendered by the private sector. The government urged that the bank would be run on a commercial basis at 'arms length' from government and the bank was exempted from public information requests under the *Freedom of Information Act 2000*.The bank's primary business still lies with the traditionally private residential mortgage market.

Taking as an alternative to, but not as a replacement of any possible legal answer to my query, I explore the question from the perspective of 'Multi- dimensional publicness' theory. This theory stems from the work of several public management scholars in America, namely the work of Professor Barry Bozeman. Essentially, his theory on 'multi-dimensional publicness' takes the view that all organisations are public because political authority affects some of the behaviour and processes of all organisations. The term 'multi-dimensional' is used as the theory takes the position that 'publicness' is not a discrete quality but a multi-dimensional property. An organisation is public to the extent that it exerts or is constrained by political authority and private to the extent that it exerts or is constrained by economic authority (Bozeman, 1987). This paper explores the theory in the context of Northern Rock and comes to a conclusion on the status of the bank while under temporary public ownership.

Righarts, Saskia * HU2.34 **LLP / 5.9**

Legal Reform Efforts: What About The Role Of Litigants?

New Zealand, like other adversarial jurisdictions (e.g., England, USA, Australia, Canada) has experienced increasing costs and delays for those involved in litigation. While it is widely acknowledged there are obstacles for individuals attempting to achieve justice in the court system, developing concrete reform proposals has proved much more difficult. I argue that a more applied human behaviour perspective is needed before we can fully understand the problems in the court system and their consequences. As such, I am researching how New Zealanders interact with the court system; with particular focus on what factors lead people to law (or away) and what the psychological and physical outcomes of litigation are.

I sent out a four page survey to 10,000 individuals randomly selected the New Zealand Electoral roll (1856 returned) and then conducted 100 in-depth follow-up interviews with selected respondents. The survey results indicated that the respondents thought they would get a fair hearing, but that cases take too long and are too costly. In the follow-up interviews,

these themes emerged alongside the reports that litigation is stressful and that it can (for some) cause significant psychological distress.

When addressing what changes need to be made in our system (and other adversarial jurisdictions), we need to think beyond purely doctrinal changes (such as changes to the rules of evidence) to changes that will also improve the outcomes for individuals who use the court system. In this respect, future research must attempt to better understand how individuals fare in the court system and identify the points in time, processes and relationships that can lead to negative mental health outcomes.

Risak, Martin * HU 1.47 **LLaw / 4.4**
Mediation And Conciliation In The Labour Arena: What's The Difference?

Third-party interventions to resolve individual and collective conflicts in the labour arena that do not result in a binding ruling (arbitration) are often referred to as mediation and conciliation – two notions that are sometimes used interchangeably but also as a labelling of two distinct processes. Conciliation has a long tradition in many European countries involving either the Social Partners or government agencies. Mediation however seems to be a more recent addition to the options of Alternative Dispute Resolution (ADR) which has been "imported" from the US. Though the features of both processes resemble each other very much, service-providers like ACAS in the UK or the Federal Social Authority in Austria often distinguish between these two forms of ADR. Users are left confused as they can hardly distinguish between mediation and conciliation and do not know what process to choose. In the literature (e.g. Alexander N. (2001), *Bond Law Review*: Vol. 13: Iss. 2, Article 5) this confusion of terminology and notions is seen as one of the reasons why mediation though very much favoured by the European Union, is not used as frequently in the labour arena as one might expect.

The paper will elaborate the distinctions between conciliation and mediation in different employment jurisdictions (US, UK, Germany and Austria). It then examines more closely the conciliation and mediation-scheme established with the Austrian Federal Social Authority that deals with cases of discrimination of employees with disabilities. One of the significant features of this program is the overwhelming popularity of conciliation and the refusal of the parties to make use of the free mediation services offered as an alternative. The paper will report on the results on a qualitative study based on interviews with conciliators employed by the Authority that tries to find out reasons why parties and there representatives prefer this form of ADR.

Roffee, James * HU 2.38 **IR / 5.6**
You Me Unity And Engaging Australia To Say 'YES' To Constitutional Recognition Of Indigenous Australians: Too Little Too Late?

This paper provides an account of Australia's continued struggled with the recognition of Aboriginal and Torres Strait Islander peoples. For many years, the failure to recognise the peoples indigenous to Australia has caused concern. The National Apology by the Prime Minister Kevin Rudd in 2008 was seen as a watershed in the treatment of indigenous Australians. Prime Minster Julia Gillard has shown her intention to honour the government's election promise and hold a referendum by 2013 on the issue. An expert Panel was appointed in December 2010, and delivered its report Recognising Aboriginal and Torres Strait Islander peoples in the Constitution to the Prime Minister on 19 January 2012. This paper argues there is still a great deal the Panel can do to continue to increase the profile of the 'national conversation' in order to guarantee successful recognition by 2013. Conclusions are drawn, that argue that the relatively low media profile of the panel, the minimal public engagement, and the sensitive nature of the subject have so far failed to secure a YES to recognition in the referendum.

Roffee, James * HU 2.30 **LawL / 8.8**
Misconceptions Of 'The' Imperial Airways: Literary Falsehoods Of Colonial Domination

This paper considers the place of Imperial Airways within the social, cultural and historical period within which it operated (1924-1939). Primary sources have been used to understand the company and its domestic and international operations. This paper argues that recent interest in, and romanticisation of, the centenary of flight and depression of the 1920s and 1930s, has produced a number of literary pieces containing erroneous information and creating a false picture of the forerunner of the current British Airways plc. The paper argues that Imperial Airways has been elevated with embedded attributes to occupy a position as a bastion of the British Colonial Empire that it does not deserve. Instead, the airline should be seen for what it was: a pioneer of the early passenger aviation age.

This research has used legal instruments, committee reports and debates to reassess claims made by multiple authors concerning the position of Imperial Airways to spread and maintain the Empire. These claims are refuted and the author argues that whilst Imperial Airways was an important for British interests overseas, the emphasis placed on its position is oversold and not supported when the airline is assessed against the identified social, cultural and historical period.

Roy, Alex * HU 2.34 **LLP / 6.9**
Reserving Will Writing And Estate Administration

In September 2010 the LSB started a programme of work to consider whether the current regulation of will writing delivered adequate protection of the public and consumer interest. Subsequently the review was extended to include probate and estate administration. To support this decision the LSB has commissioned a range of research exploring consumer experiences, business structures as well as carrying out mystery shopping to test the quality of wills being produced across the market. The research compared the performance of the regulated solicitor market and the unregulated will-writer market from a consumer and technical quality standpoint. The evidence highlighted a number of failings in the market, not least in the quality of the wills themselves, where one in five wills failed a quality assessment.

This paper analyses the evidence produced for problems in this area of the market and concludes on the likely regulatory response. By drawing on the range of potential regulatory solutions, the paper also considers the wider lessons for the training and regulation of lawyers.

Rumbold, John * HU 2.33 **MH / 2.7**
Press Reports Of Parasomnias

Press reports of trials where a parasomnia has been the basis for the defence that were reported in the media between 1994 and 2011 were analysed. There were 41 trials in total. Numbers were low but showed a trend of slowly increasing, with an effect apparent from high profile trials. The offences charged were almost all homicide, sexual offences and drink driving. Only one defendant was found not guilty by reason of insanity, showing that juries are inclined to acquit where they believe the sleepwalking defence. I followed up on the newspaper reports with the expert witnesses in some cases. I was apparent that misreporting of the expert evidence was common, with 2 notable examples where it was completely misrepresented. Overall, a small majority of the accused were acquitted. Several of those convicted changed the basis of their plea when the sleepwalking defence was not supported by the expert witnesses. However, one defendant was acquitted in spite of expert evidence that he did not offend during sexsomnia. In conclusion, newspaper reports give a misleading impression of the sleepwalking defence which has an effect on political and possibly public opinion.

Russell, Penelope * HU 1.49 **FL / 6.1**
Parental Responsibility: A Study Of Step-Parents' Perspectives

This paper reports the initial findings of a small-scale ongoing empirical project and considers the implications of the data for the future development of the law.

Using qualitative data from semi-structured interviews with both resident and non-resident step-parents, this paper seeks to explore understandings of parenting and parental responsibility. It locates the expressed views within the scholarly debate about the nature of parenthood and contrasts them with emerging judicial conceptions of parental responsibility.

Despite the availability of step-parent parental responsibility agreements and orders since 2006, statistics from the Ministry of Justice reveal that take-up has been very low. Based on interview data, this paper argues that this may be a consequence of a mismatch between the current formulation of parental responsibility and step-parent identities.

The paper concludes by discussing statutory reform that would enable the perspectives of all step-parents to be formally recognised within the law. This could include the creation of a new legal concept that would grant to step-parents the functional value of parental responsibility, separate from the status of parenthood.

Russell, Yvette * HU 1.51 **CLCJ / 5.2**
Justice And The Rape Trial: Realistic Aspiration Or Hopeless Oxymoron?

Rape is a crime disproportionately committed against women. It is estimated that only around 15% of rape victims will ever report this crime to the police. Only 6% of reported rapes will result in a conviction.[5] In England and Wales, the Sexual Offences Act 2003 instigated major reform of both the actus reus and mens rea components of rape with virtually no corresponding increase in conviction rates. This paper investigates the conundrum this reality has presented for feminist-led law reformers. It interrogates the gap between the practice of the law and the aspiration of justice with reference to the work of feminist philosophers who draw upon post-modern thinking. The paper focuses on the legal space of the rape trial and excavates the discursive tools of production and maintenance that shape legal 'justice' but often militate against resolutions which satisfy rape complainants. The discussion implicates key questions of sexual difference and how appropriate theorising of such difference, in the context of the rape trial, might alter the way we look at concepts like legal and social equality. In addressing these issues, and drawing together themes from prior feminist work, it seeks to address following the question: what should women who are raped be entitled to aspire to in the name of justice?

S. Walby and J. Allen, 'Domestic Violence, Sexual Assault and Stalking: Findings from the British Crime Survey' Home Office (London) Home Office Research Study 276
Liz Kelly, Jo Lovett and Linda Regan, 'A gap or a chasm? Attrition in reported rape cases' Home Office Research, Development and Statistics Directorate (London) Home Office Research Study 293

Sandbach, James * HU 1.47 **SPPFJ / 8.4**
Adviceonomics – Is There Such A Thing?

This paper looks at methodologies pertaining to the behavioural economics of advice seeking, provision and outcomes. Various have been made over the past two years to quantify the benefits of advice (Jones 2009, Sandbach 2010), or extrapolate on the costs and consequences of it's absence (Cookson 2011). Such attempts often come up against research problems of identifying counterfactual evidence or removing "dead-weight" results from outcome samples. And deeper questions are raised about the purpose of formal advice projects and services, including legal aid. This drifts into public policy debates about the

power of “nudging” and techniques of influencing decision-making environments and perceptions of options. As ever the problems are around method and measurement – are the different ways in which advice interventions are evaluated fit for purpose? Is a scientific or coherent methodological approach to this problem even possible? Even in senior levels of Government the absence of evidence-based trialling of social policy interventions is lamented.[1] The task is a difficult one, but as political agendas are re-orientating all public services towards payment by result and social impact bond models, this paper argues that it is necessary to address issues around the “economies of advice” and move beyond a paradigm that weighs the values of advice provision only in terms of access to particular legal redress channels.

Refs: Cookson: Unintended Consequences: the cost of the Government’s Legal Aid Reforms (2011)
Jones: Outcomes of a longitudinal study of citizens advice clients in Wales (Bangor 2009)
Sandbach: Towards a business case for legal aid (CAB 2010)

[1] Guardian, Jan 10th 2012, “Cabinet secretary calls for social policy 'kitemark' to highlight quality initiatives”

Sandland, Ralph * HU2.33 **MH / 2.7**
Sex And The Idiot Girl, 1846-1885

According to Michel Foucault, it was the emergence, in the 19th century, of ‘instinct’ as an explanatory and organising concept which, in replacing a focus on illness with one on ‘abnormality’, constituted the base for the massive extension of psychiatric power in the 20th century. Foucault also argues that the concept of instinct was developed in the context of education, specifically, the education of ‘idiot’ or ‘imbecile’ children. He suggests that ‘Through the practical problems raised by the idiot child you can see psychiatry becoming something infinitely more general and dangerous than the power that controls and corrects madness: it is becoming power over the abnormal, the power to define, control, and correct what is abnormal’. However, as I argue, the education of idiot children, which was not attempted until the latter quarter or so of the 19th century, was in fact preceded by the use of ‘instinct’ in a series of rape cases, beginning around the middle of the 19th century. In England at least, it is this line of cases which constitutes the earliest recognition by law of the explanatory purchase of instinct. Moreover, whilst the education of idiot children revolved around an opposition between the ‘normal’ and the ‘under-developed’, the cases heard by the criminal courts revolved around an opposition between male and female; one which ties the female to the instinctive at a fundamental level. I will argue that Foucault’s failure to address the gendered nature of the discourse around instinct renders his account of the development of psychiatry problematic.

Sargent, Sarah * HU2.38 **IR / 5.6**
The Republic Of Lakotah And The Adequacy Of Reparation For Treaty Claims After The UN Declaration On The Rights Of Indigenous Peoples

The Republic of Lakotah (ROL) is an unrecognized state, having twice sent notifications to the United States government of its sovereign existence separate from the United States, in 2007 and 2010. In so doing, ROL argues that the United States is in breach of the Fort Laramie Treaty of 1868. ROL argues that these breaches render the treaty void under international law, and that the parties should return to their pre-treaty positions. That the United States has breached the treaty is uncontroverted. A 1980 United States Supreme Court decision awarded monetary damages for the treaty breach. But the monetary award has been rejected and indigenous groups and communities, including the ROL continue to argue that the correct remedy is to return land to them. Provisions in the UN Declaration on the Rights of Indigenous Peoples make return of land or provision of alternate equivalent land a preferred option, ahead of monetary damages. This paper explores the claims for land raised by the ROL, and the adequacy of international law to respond to these claims. The UNDRIP is soft law, but increasing domestic implementation and court decisions support the provisions that land return should be the first option in reparation and monetary damages the last and least satisfactory option.

Sargent, Sarah * HU2.41 **STLS / 7.10**

Systems Theory and Critical Race Theory: Research Strategies for Transracial Adoption

This paper explores the combined use of autopoiesis theory and critical race theory in an examination of transracial adoption policy in the United States and England. It is based on a recently published article in the *Denning Law Journal*.[1] Transracial adoption is a complex topic that touches on many issues and many systems. A greater understanding of the dynamics of policy positions and changes in both countries is achieved through the combined use of these theories as a platform for examination. Critical race theory is widely used in American legal research, but has only begun to be applied in the UK.

The paper will look at the research strategy of using these theories together. Firstly, it will discuss why these two theories were chosen, rather than using one or the other in a singular application. It will then examine the advantages and challenges of using a combined theoretical approach-- where the two theories complement each other, and what limitations as well as advantages there might be in using a combined rather than single theory approach.

[1] Sarah Sargent, 'Trapped in Legal Discourse: Transracial Adoption in the United States and England' (2011) 23 *The Denning Law Journal* 131.

Saunders, Candida * HU 1.51 **CLCJ / 5.2**

She's Not Telling The Truth: How False Is A False Allegation?

There is a longstanding debate surrounding the prevalence of false allegations of rape. While research and commentary generally claims that false allegations of rape are rare or at least no more common than false allegations of other offences, front-line criminal justice professionals reportedly maintain that false allegations are a common occurrence. Prevalence, however, is contingent upon definition. If the various protagonists' definitions of the 'false allegation' do not coincide, it is virtually inevitable that their estimates will diverge.

Drawing on original empirical data from research interviews conducted by the author with police and Crown Prosecutors experienced in the investigation and prosecution of rape cases, this paper explores the following important but much neglected question: When criminal justice professionals tell us that false allegations of rape are common, what precisely are they talking about? What 'counts' as a false allegation?

Saunders, Ruth * HU 1.48 **ML / 4.5**

Research Biobanks And Consent: Time For A More Participant - Driven Model?

Personal genomics start-ups, such as 23andMe, offer multi-array genetic testing services for a wide range of common diseases, traits and ancestry, direct to members of the public for a fee as low as $99. As well as selling its testing service, 23andMe has created an online platform designed to facilitate genetic research. The growth in bioinformatics and the increasing availability of affordable genetic sequencing technology has led to the creation of genetic databases or 'bio banks' worldwide, containing the biological samples and data of thousands of participants, and designed to research the complex link between genes and diseases. 23andMe has sought to utilise this growing trend by creating its own innovative research model. Customers are invited to share their purchased data with researchers and upload their medical and lifestyle data.

Multi-disciplinary literature to date has focussed on the legal and ethical issues raised by the testing aspects of 23andMe's service whereas relatively little attention has been paid to its research model, in particular the identity constructions that underpin it. A discourse analysis of the policies and practices of 23andMe reveals conflicting identity notions. Firstly 23andMe refers to the 'customer' who takes part in research. Secondly the customer is re-identified as the 'human subject', the object of research protections under the Common Rule in the US.

Finally, in its research publications 23andMe refers to the customer who takes part in research as a 'participant'.

The aim of the presentation will be to dismiss these identity constructions. A comparison of the policies and practices of 23andMe with the renowned UK Bio bank project is offered to demonstrate that it fails both practical and theoretical constructions of the participant. It has been suggested that the identity construction of the customer who takes part in 23andMe's research embodies the 'enterprising self' whereas the UK Bio bank facilitates the 'altruistic self'. It will be argued respectively that this oversimplifies the complexity of the identities that purposefully make up 23andMe's research population. Instead a more useful approach would be to determine a basic shared identity. It will be suggested that, despite the diversity of 23andMe's research population, each customer who takes part is both self-governing and social. This finding will be used to conclude, contrary to the current stream of recommendations from academics and policymakers alike, that 23andMe is already subject to sufficient and effective research governance.

Savar, Ray * HU2.37 **CO / 1.11**

A Perspective For Reform Of Commercial Leases In Property Law

This paper explores the underpinning fundamental issue in compulsion for Reform of Commercial Property Leases. This paper identifies and explains the causes of the landlord and tenant disputes mainly as the result of unregulated poorly drafted commercial leases. It distinguishes the need with justification for reform through legislative intervention. A number of futile attempts by means of voluntary Codes, advent of Law Society Business Lease, Land Registry Prescribed Clauses, Regulatory Reform of part of 1954 Act, British Property Federation Lease and various other institutional references have aimed at reform without much success.

After considering the historical cataclysm and disputes caused by the current structure and terms of leases relying on ancient Acts and directorates, this paper questions whether those directions consisting of old Acts, Regulations and Rulings conform to modern living and contemporary commercial environment. It explores the on-going contentious environment that commercial lease generate leading to presenting risks to both landlords and tenants, in particular to landlords and tenants who are speakers of other languages and do not fully understand the legal content of leases in the context of future risks, eventualities and ambiguities contained therein. This paper explores commonly held desire by ethnic minority business owners to have the key terms of commercial leases translated into other main languages in England.

The reasoning of the issue will be relying upon the historical background of current leases performance and how they cause contentious issues between the landlords and tenants in entering current lease agreements. A comparable established model of precedent reform achieved through legislative intervention by another developed country (Australia) with legal constitution and laws of close parallel to English Law already exists. The paper ascertains the benefits to landlords and tenants, major developments and progress in property law in specific commercial leases in Australia as a role model.

Sawadogo, Natewinde * HU 1.48 **ML / 2.5**

Exploring Health Care Services Users' Access To Justice In Burkina Faso: Facts And Thoughts About The Moral Organisation Of Clinical Practice

This paper explores the factors which influence health care services users' access to justice in Burkina Faso. Burkina Faso is a francophone West African country. Most of its population is rural and poor. Its health sector has been liberalised since the 1990s. In 2010, during field work in Ouagadougou, I was surprised by the discrepancy between the public complaints about healthcare professionals, expressed in local newspapers and various reports, and the structure of the legal cases implicating health professionals, made available by the census of the Tribunal of Ouagadougou. The first specific aim of the paper is to describe the nature of this discrepancy. Then I will analyse some institutional aspects which shed light on health

care users' low uptake of legal services. The data for this analysis includes literature on the political history of the country, court's census on cases involving health professionals at the Tribunal of Ouagadougou, inspections, various reports and articles from newspapers on clinical practice, and interviews. It is argued that the problem of access to justice regarding health care is political. There is not a necessary continuity between knowledge and justice; professions when left alone, cannot regulate themselves to advance the public interest. The difficulty in Burkina Faso, like in most African countries, is that the State is weak. As a result, the norms (formal and informal) which are currently governing clinical practice in this country are dominated by health professionals. This is reinforced by the low differentiation of the structure of the market for health care services and the cultural values of health care services' users.

Scharf, Nick * HU2.4 **IP / 2.11**
Life Through A Lens: A 'Lessigan' Model For Understanding Digital Copyright Infringement?

Consumption habits regarding digital content continue to demonstrate the persistence copyright infringement. This indicates an important disjunct between the existence (and operation) of copyright and its influence, and furthermore necessitates a significant legal re-evaluation of user behaviour that seemingly appears 'lawless' or illegal. Although copyright law operates as a link between the user and content, it is a small part of a larger and more diverse (informal) regulatory structure. In the digital environment, there are many other considerable 'forces' in operation and in competition beyond copyright law which must necessarily reflect factors appreciable to users and the digital environment in which they operate. This paper will seek to explain these in order build an accurate portrayal of the digital environment as it affects the behaviour of users. Central to understanding Internet regulation and in this context, regulation of user conduct is *Code* by Lawrence Lessigan. Although his work is not specifically written in the context of copyright law, it is nonetheless applicable because it deals with a number of other key regulatory mechanisms from the perspective of 'what' (or 'who') is regulated. Using this as a basis, a new 'Lessigan' approach to the issue can be formulated. Such a model has merit because it addresses influential issues beyond copyright law with regard to the behaviour and thus consumption practices of users. Crucially, the interrelated modalities of 'law', 'norms', the 'market' and digital 'architecture' operate to varying degrees of subjective influence over the user which will be detailed and explained. This will have a dual outcome; it will thus provide a valuable approach for understanding the behaviour of users in the digital environment, and may also constitute a 'lens' through which the shortcomings of the content industries' various responses to continuing digital copyright infringement can be viewed and understood.

Schippers, Titia & Bos, Titia * HU 2.82 **IR / 6.6**
Implementing Indigenous Land Rights In The Context Of (Inter)National Law And Economic Interests

The traditional land rights of indigenous communities are under increased pressure due to intensified trade in land rights for agricultural investments or extraction of natural and mineral resources. Since their rights are often not recognised by the state, the negotiating position of indigenous people regarding investors who want to acquire land for operations is weak. The strengthening and formalization of land rights systems, promotion of corporate social responsibility and adequate community consultations are supporting the protection of land-insecure communities against negative impacts of investors' operations. However, the effect of these measures to protect local communities against negative impact of land use by investors varies.

The case of the indigenous community of Gambang, the Philippines, shows that despite traditional land rights are recognised, implementation of these (inter)national rights may conflict with national economic and political interests. The mining company Royalco requested permission from the local community to start operations in the area of the Gambang. The consultation process and the negotiations of Royalco with the local

indigenous community are subject to a political arena in which the government at local and national level is a decisive actor with its own diverse and conflicting interests. The community of Gambang has been proven to exert influence on the implementation of their rights despite conflicting interests and inadequate law.

On the basis of the experiences of this Philippine indigenous community I will argue in this paper that an effective organisation of the opposition against investments and use of legal instruments in combination with social action may lead to some success in implementing formal land rights.

Schofield, Toni, & Reeve, Belinda * HU 1.47 **LabL / 6.4**
Prosecuting And Deterring OHS Offences In Australia: Inspectors, Regulatory Authorities And The New Public Management

This paper reports on research undertaken in 2010 to examine how prosecution of OHS offences is conducted within regulatory agencies in two of Australia's most populous States – NSW and Victoria. It adopts a framework in which prosecution is understood as a multi-institutional process in which regulatory authorities and inspectorates are a key component. The paper focuses on the inspectorate, in particular, in-depth interview-based accounts of public officials employed to undertake prosecutions of serious injuries and fatalities. The paper presents an analysis of the findings in the context of a discussion of the New Public Management and neo-liberal regimes of governance within the Australian public sector, and their operation within OHS regulatory authorities. It does so in the context of the current Commonwealth Government initiative to "harmonise" OHS legislation and enforcement across all State and Territory jurisdictions.

A key question raised by the paper is the relationship between prosecution and deterrence in OHS. How does prosecution by inspectorates contribute to deterrence of serious injuries and fatalities in workplaces? What are the barriers to and opportunities for deterrence faced by inspectorates in OHS regulatory agencies?

The study is part of an Australian Research Council funded project to investigate how prosecution and deterrence in relation to OHS offences work within the Australian context.

Sekalala, Sharifah Rahma * HU1.82 **LE / 3.10**
Use Of E-Learning As Part Of A 'Blended Learning' Approach Within Undergraduate Teaching: Investigating The Postgraduate Teacher's Experience

The paper aims to develop our understanding of the *postgraduate student teacher's experience* in higher education. Its' findings are derived from a small grant from IATL in the University of Warwick which aimed at understanding of 'technology enhanced learning' amongst postgraduate teachers in the University of Warwick as part of a blended learning approach.

This project used action research through the use technology enhanced learning in 8 tort seminars. It relied on the community enquiry model (Garrison and Anderson 2003) which emphases the use of technology in a wider sense than merely to deliver knowledge. Through the process, I kept a self-reflective diary. I also carried out interviews with 20 postgraduate teachers and gave periodic questionnaires for the student on the impact of these technologies.

The paper argues that postgraduate teachers are increasingly constrained by a lack of ownership. Harlan and Plangger (2004) In the law school, this may be largely due to seminars based around problems. Using blended learning in which they use the content of the convener in conjunction with innovative ways of delivery and creating discussion around it may be a good way for postgraduate teachers not only to own their content but also to engage better with their undergraduate students.

The research not only showed benefits in action learning in which students were engaged in deep meaningful learning but also enabled students to gain a familiarity with technology and develop skills such as information handling, independent learning, critical thinking, reflective innovation, time management amidst different and often competing social networking options, interpersonal negotiation, creativity and enterprise and they will need ICT skills to support all these.

Shatsari, Rabi'u Sani * HU1.47 **LabL / 6.4**

Workers' Freedom Of Association, Collective Bargaining And Labour Legislation In Nigeria: A Discourse On Legislative Conformity With The ILO Conventions Nos. 87 And 98

Since its creation in 1919, The International Labour Organization (ILO) has adopted a number Conventions pertaining to international labour standards. The right of workers to form trade unions and the right of the trade unions formed to freely operate without any external interference are some of the subjects on which the ILO has adopted some international labour standards. *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)* and *Right to Organise and Collective Bargaining Convention, 1949 (No. 98)* are the two key ILO instruments setting out the international basic principles relating to workers' freedom of association and the effective recognition of the right to collective bargaining. These two instruments have been. As a ratifying country, Nigeria has committed herself to applying the ILO's freedom association and collective bargaining standards in her national law and practice. This paper is aimed at taking a comprehensive legal approach to the national application of the principles enshrined in the two Conventions mentioned above. It examines the extent to which Nigerian labour legislation and practice conform to her obligations arising from Conventions Nos. 87 and 98. The paper argues that the Nigerian legislative provisions relating to issues such as: formation and membership of trade union; autonomy of trade unions; industrial action; and collective bargaining are not in full conformity with the relevant ILO standards. The paper attributes Nigeria's deviation from some of the international labour standards on workers' freedom of association and collective bargaining to the long history of Military Rule which the country experienced in the past. The paper recommends that those aspects of the country's labour legislation that are in conflict with Convention Nos. 87 and 98 should be amended so that conformity with international standards can be achieved.

Shute, Stephen * HU1.51 **CLCJ / 2.2**

Improving Criminal Justice: The Role Of Inspection

This paper examines the role that inspection might have in driving up quality in criminal justice systems and in protecting human rights. It critically analyses the development of various regimes of criminal justice inspection, the concerns that prompted their introduction and the difficulty they have in delivering their goals while maintaining their independence. The paper asks fundamental questions about the nature and purpose of inspection. It also examines the evidence base for it: are there, in other words, good grounds for believing that criminal justice inspection is capable of delivering demonstrable improvements in the delivery of justice and in the protection of human rights? In discussing these issues, the paper draws comparisons between inspection in the context of criminal justice and inspection of other public services such as education and health.

Sigafoos, Jennifer * HU 1.47 **EU / 2.8**

What's Driving Rates Of Social Policy Preliminary References To The ECJ? Evidence From The United Kingdom And France

The Court of Justice for the European Communities (ECJ) has been a key driver in the increasing Europeanisation of social policy. Decisions of the Court have eroded the territorial boundaries of the welfare states in the EU. However, the ECJ does not set its own agenda, but instead reacts to the preliminary references that are sent by the national courts of the Member States. Preliminary references are unevenly distributed across the Member States

of the EU. This creates differing access to justice for European citizens in the Member States, and has implications for the direction of the Court's jurisprudence.

This paper presents qualitative case studies of the UK and France that explore factors affecting rates of social policy preliminary references in the two Member States. The study focuses on the period from 1996-2009. The UK had a high rate of preliminary references for social policy, and France had a low rate. What accounts for this difference? Analysis of documentary evidence and 25 expert interviews with lawyers and legal experts in the UK, France, and affiliated with the Commission and the ECJ, help to explain differing usage of the preliminary reference process. Themes emerge related to policy, structural factors and the agency of actors in the UK and France. In the UK important policy themes are the free movement of persons and the 'Right to Reside' test for UK benefits. Legal aid and the actions of legal NGOs help individuals access the Court and drive test case strategies. In France, a high degree of dualisation of the welfare state creates an insider/outsider dynamic that does not foster preliminary references. Resistance of courts and a lack of comparable actors to drive preliminary references contribute to a lower rate of references.

Keywords: ECJ, social policy, preliminary references, UK, France, free movement of persons, legal aid, courts

Simpson, Brian * HU 1.50 **GSL / 4.3**

The Transexual Or Transgendered Child: Can A Family Court Get It Right?

In Australia a Family Court order is required where a child seeks gender reassignment treatment. This has given rise to a body of judicial decisions in relation to the transsexual or transgendered child that have canvassed the role of parents, the capacity of children and ultimately the authority of the court to apply the best interests of the child principle to determine the matter.

What is of interest is the lack of critical commentary from within the legal academy in relation to this area of family law. It seems to have been assumed that the courts have the capacity to work out what constitutes the best interests of the child in such matters and that this is simply a matter of evidence. In one of the most recent decisions (Re Bernadette [2010] FamCA 94) the Family Court constructed the possible explanations of transsexualism as a contest between biological causes and mental illness. The Court also recognised the difficulty in permitting parents alone to make decisions about treatment when the medical profession did not agree on cause or treatment. Ultimately the Courts take the view that each case is different and must be determined in relation to its own facts, yet there appears to have been little analysis of the detailed evidence thus provided in the court decisions to gain some insight into understanding how the transsexual child interacts with the judicial process.

Outside the legal academy Jeffreys is particularly critical of the approach of the Family Court in cases involving transsexual children, identifying it as a form of 'judicial child abuse'. This paper proposes to analyse some recent decisions on transsexual children to assess what they may tell us about how the transsexual child is constructed by the courts, and the extent to which a court is capable of properly assessing the child's best interests.

Simpson, Brian * HU2.38 **ITLC / 7.8**

Sexting And The Child's Right To Play: The Uncomfortable Use Of Technology To Reconstruct Childhood

In recent years law enforcement agencies in many countries have applied child pornography laws to 'sexting' involving the sending by young people of nude images of themselves by mobile phone or other social media. Arguments against the use of those laws include the claim that they have been designed to protect children not from themselves but from paedophiles and other online pests. The criminalisation of sexting by young people has also raised the concern that the penalties imposed can be draconian and out of proportion to the offence. In some jurisdictions young people can even be registered as sex offenders for sending nude images of themselves to others. The criticism of the application of such laws

thus rests on the view that those laws are about protecting children and not punishing them in this manner.

But this idea that child pornography laws are about the protection of children is highly problematic. Such laws protect a particular view of childhood and the prosecution of children in sexting cases makes sense for as long as the view of the child upon which these laws rest remains with us. The argument of this paper is that what we observe in the case of sexting is a tension between two different ideas about the meaning of childhood. What troubles many in the case of sexting is that children may now possess the technological means to actively participate in the construction of childhood in ways which are uncomfortable for adults who adhere to romantic notions of the innocent child. The paper then asks whether the child's right to play online provides a legal mechanism to support this use of the technology.

Singer, Sarah * HU2.41 **RRHR / 2.4**
Exclusion From Refugee Status: Asylum Seekers And Terrorism In The UK

Recent legal and political discourse on terrorism within the United Nations (UN) has presented refugee status as a means by which terrorists can seek entry to a country to perpetrate terrorist acts, or evade prosecution for their crimes. For example, UN Security Council Resolution 1373 of 2001 urges states to 'ensure ... that refugee status is not abused by the perpetrators, organisers or facilitators of terrorist acts'. The drive to deny the benefits of refugee status to suspected terrorists has led to a radical reinterpretation of the exclusion clause of the 1951 UN Refugee Convention, both at national and international levels, so as to bring terrorism within the ambit of this provision. An asylum-seeker will now be excluded from refugee status if he or she has committed or prepared for an act of 'terrorism', or has encouraged or induced someone else to do so. However, 'terrorism' is not a legal label, but an undefined political term: there is at present no internationally agreed definition of 'terrorism', nor an internationally agreed list of 'terrorist organisations'. The discretion inherent in the undefined nature of the term 'terrorism' therefore leaves the Refugee Convention's exclusion clause open to abuse by Member States seeking to exclude genuine asylum seekers from refugee status. In this presentation/paper it will be argued that, in light of the serious consequences of exclusion from refugee status, there is a need for a principled approach to the application of the Refugee Convention's exclusion clause which is not served by the undefined political term 'terrorism'. Furthermore, since fleeing persecution for political opinion is an archetypal reason for seeking asylum, injecting subjective political notions of 'terrorism' into refugee exclusion has the potential to undermine the very foundations of the international refugee protection framework.

Skeet, Charlotte * HU2.3 **I / 1.14**
Au Pairs, Intersectionality, And Gender Equality In The 21St Century

This paper locates an analysis on the 'Au Pair' as an intersectional legal category in the context of human and civil rights and discourse on gender equality in the 21st Century. In this way it addresses the question of whether au pairs form an exception to the norm or whether the construction of the Au Pair category reinforces normative discourses in relation to women's equality.

The first section of the paper maps the legal position of the au pair in the UK, and includes a discussion of recent changes in regulation of the au pair experience. The second section draws on empirical research which examines the actual experience of au pairs in the UK and considers the fluidity of this category for women seeking migration opportunities. Finally the paper analyses the promotion of gender norms through the Au Pair category and considers how these contribute to wider discourses on legal equality in the UK and Europe.

Slater, Rachel * HU 1.82 **GSL / 6.14**
Collective Violence: Securing Refugee Status For Female Refugees

Article 1(2) of the Geneva Convention Relating to the Status of Refugees, in principle, provides a neutral definition of refugee. In practice, female refugees face considerable hurdles when establishing refugee status. The paper argues that restrictive interpretations of the persecution criterion and the Convention reasons for persecution of 'membership in a particular social group' and 'political opinion' create unnecessary hurdles for female refugees. In particular, the continued adherence to a public/private binary, in which private violence is excluded from the international sphere, results in an uphill battle for women to establish presence and agency in the public sphere before refugee status can be awarded.

The paper seeks to move refugee law away from the private/public binary, which renders actions by, and violence against, women in the private sphere *prima facie* unpolitical. It is suggested instead that the notion of collective violence (defined as violence in conformity with prevailing societal norms) underpins international refugee law in such cases. Collective violence, as a form of illegitimate violence indicative of a broken bond between citizen and state, comes well within the scope of article 1(2) and demonstrates that such instances of violence against women are already included under international refugee law.

The paper will present the concept of collective violence against the backdrop of gender persecution, examining in particular cases concerning Female Genital Mutilation, domestic violence and attempted honour killings in which issues of private violence, political opinion and membership of particular social group were raised. It will demonstrate how viewing such cases through the lens of collective violence will have a transformative effect on our understanding of violence against women as grounds for refugee status.

Smart, Carol & Nordqvist, Petra * HU1.49 **FL / 4.1**

Law And Order: The Case Of Donor Conception

Speaking in the case of ML & AR v RW & SW [2011] EWHC 2455 (Fam) which was about a conflict between lesbian mothers and a sperm donor father and his partner, Mr Justice Hedley opined:

This case provides a vivid illustration of just how wrong these arrangements can go. There are perhaps two particular issues that this case raises. The first is the need for precise agreement as to the roles that each is to play before any attempt is made to achieve a pregnancy; and secondly, this case, like others that I have been involved with, is bedevilled by a lack of a sufficient vocabulary to explain the true nature of the relationships.

While Hedley's wish for order might be understandable, in this paper we shall argue that it is misguided and is based on a misunderstanding not only of contemporary forms of relationality but also of the normal chaos of family law (Dewar). Our argument will be based on a recent ESRC funded empirical study of donor conception in which we have interviewed 25 lesbian couples and 25 heterosexual couples who have all experienced donor conception (sperm, egg or embryo) and 30 grandparents of donor conceived children. We will outline some of the complexities of these situations, stressing in particular the unforeseeable outcomes and unintended consequences of complex routes into parenting. In particular we shall focus on how circumstances change not only people's desires in relation to parenting, but how the course of relationships is unpredictable and fluid.

Carol Smart is Professor of Sociology and Co-Director of the Morgan Centre at the University of Manchester. She is author of *Personal Life* (Polity, 2007) and various articles on family life, childhood, divorce and lone motherhood. With Dr Petra Nordqvist she is currently working on an ESRC project on donor conception entitled Relative Strangers.

Petra Nordqvist is Co-Applicant and RA on this project and is the author of several papers on lesbian motherhood and donor conception including 'Choreographies of sperm donations: Dilemmas of intimacy in lesbian couple donor conception', *Social Science and Medicine,* 2011, 73(11): 1661-1688; 'Dealing with sperm: comparing lesbians' clinical and non-clinical donor conception processes. *Sociology of Health and Illness*, 2011, 33(1): 114-129; and ''Out of sight, out of mind' Family resemblances in lesbian donor conception', *Sociology*, 2010, 44(6): 1128-1144.

Somers, Caroline * HU 1.48 **ML / 3.5**

The Development Of The Best Interests Standard In Respect Of End-Of-Life Decision-Making For Neonates And Young Children

This paper critically evaluates the development of the best interests standard in respect of end-of-life decision-making [ELDM] for neonates and young children in England and Wales.

An ongoing difficulty with the standard is its general lack of substantive content. It will be argued that for over a decade, from its adoption in 1981, the standard was dominated by the doctrine of medical futility; belying the presence of a second powerful professional discourse influencing the development of the law in this area. Beside the legal profession, with its judicially created standards, norms and values, stands the medical profession. The conceptual framework governing the medical approach to neonatal EDLM flows from a different historical and theoretical channel. The tension inherent in this relationship will be explored.

The move towards an expansive best interests standard, taking in aspects of the child's life beyond medical condition and prognosis, would not begin in earnest for fifteen years. This paper will examine the relative success of the judiciary in moving away from the medical model of best interests, culminating in the radical independence asserted by the court *Re MB* (2006).

Finally, the paper will critically evaluate the component parts of the best interests standard in this context. Particular attention will be paid to the ongoing use of 'intolerability' as a touchstone for the quality of life assessment; continued use of the doctrine of substituted judgment; and the efficacy of the 'balance sheet' approach to the balancing exercise required by the standard.

Sommerlad, Hilary * HU1.47 **SPPFJ / 7.12**

Access To Justice And The Big Society: Rising Need, Individual Responsibilisation And The Commercialisation Of The Voluntary Sector

The combination of rising unemployment and sweeping changes to welfare services (such as the introduction of universal credit and changes to a range of entitlements), has enhanced both the need for individual access to justice and public interest in challenges to government decision making. But despite proclaiming that 'Government strongly believes that access to justice is a hallmark of a civil society', cuts of £350million p/a in Legal Aid have been announced, producing a 92% drop in the sector's legal aid income (MOJ 2010).

Government justification for this evisceration of publicly funded legal services draws heavily on Philip Blond's evocation of 'the associative society'. In *Red Tory* the cure for Britain's 'atomised' and 'broken' society rests on the twin strategies of liberating those currently 'trapped in welfare', and shifting the burden of dispensing social services onto the 'third sector'. Integral to this *'new can-do and should-do attitude where Britons once again feel in control of their lives'* (Cameron: Hugo Young memorial lecture, November 2010) is the reconfiguration of the third sector as social enterprise. As a result, access to justice will be restricted to the most indigent, whose needs will be largely met by a commercialised sector staffed by generalists, many of them volunteers.

The paper draws on data from a small scale study of the sector to discuss the implications of this policy for agencies, focusing particularly on the pressures towards further commercialization and abandonment of mission.

Sparrow, Paul * HU 2.32 **SP / 7.9**

Drug Misusing Offenders And Community Sanctions: Opportunities Presented By A Therapeutic Jurisprudence Framework

Drug misusing offenders pose a number of challenges for the criminal courts. Particularly at the heavier end of addiction drug users regularly exhibit a significant increase in their criminality and this, combined with a chaotic lifestyle and an inclination toward relapse, make them especially vulnerable to breaching the terms and conditions of community based penalties. At the same time there is little evidence to support the rehabilitative efficacy of imposing prison sentences on such offenders.

Traditionally both courts and the Probation Service have attempted to respond to drug users in breach of community orders in a measured way; often by imposing a fine and then, crucially, allowing the order to continue. More recently however, the probation service has been subjected to a noticeable erosion in the autonomy its officers' and the criminal courts have experienced a significant curtailment of their discretionary powers. The net result of these developments has been to make the breach court an increasingly precarious place for the drug dependent offender.

This paper argues that the punitive drift, observable for drug users initially in the 1998 Crime and Disorder Act and then latterly in the 2003 Criminal Justice Act, is counterproductive and unlikely to bring about either long term abstinence or a reduction in criminality. Drawing on the principles of therapeutic jurisprudence the paper suggests that marshalling the therapeutic influence of the court has the potential to offer a more effective model for engaging drug users in treatment. It concludes that both the Drug Treatment and Testing Order and more recently the Drug Rehabilitation Requirement, in concentrating on enforcement at the expense of treatment, has not only misunderstood the nature of addiction but also overlooked the importance of the court setting as a prime site for promoting therapeutic engagement.

Stackpool-Moore, Lucy * HU2.41 **CLCJ / 8.9**

The Intention May Not Be Cruel And Inhumane But The Impact May Be: Stigma And The Proposed HIV Legislation In Malawi

Background: The law can have both positive and negative implications for the national response to HIV in Malawi. HIV prevalence appears to have stabilised around 12% in Malawi according to the NAC, the number of new infections has stayed about the same since 2006 and access to antiretroviral drugs (ARVs) has increased according to UNAIDS, and there is a general perception that HIV-related stigma has decreased in recent years. A Special Law Commission on HIV was appointed in 2006 to develop a legislative framework for the national HIV response. Following national consultations, a Report and draft HIV Bill was published December 2008 which contains some contested provisions. To date it has not yet been enacted.

Methods: Participatory Action Research was undertaken during 2010/11. The study draws on legal analysis, interviews with 10 of the Commissioners, and responses from 58 key informants including a diverse representation of people living with HIV (PLHIV) from each region of Malawi. The Law Commissioners identified controversial issues in the draft HIV Bill. Opinions on these were then recorded from PLHIV (including an equal distribution of men and women), Men who have Sex with Men (MSM), sex workers, and policy makers from key health, legal and civic stakeholder groups in the country.

Results: Three dominant 'thorny' issues emerged: proposed mandatory testing for some groups, the criminalisation of HIV transmission, and disclosure of HIV-status by a healthcare provider. Even though the Law Commissioners had a disparate understanding of HIV-related stigma, all expressed a desire that the proposed HIV legislation would address stigma and discrimination in the country, and hoped the law would reduce new HIV infections, promote HIV testing and support PLHIV.

Although PLHIV have a strong sense of justice but they do not often look to the formal legal system to obtain justice when they have been wronged. Gender remains a challenge and

women experience HIV-related stigma to a more intense degree than men. Respondents expressed concern that women may have less access then men to legal redress through a formal legal system.

The Commissioners and respondents expressed concern that enforcing the law would be challenging and could perpetuate unequal access to justice in Malawi. Clear distinctions are apparent between the role of the formal legal system (in towns and cities) compared to the traditional legal system (in rural villages). Law enforcement is challenging in a context where prisons are over-crowded, police enforcement of laws can be inconsistent, and access to justice in the formal legal **Conclusions/ Recommendations**: The proposed HIV Bill in Malawi straddles a tension between intention and impact—the desire to enact a law to protect human rights and strengthen the national response to HIV; while potentially taking away those rights from certain groups, fuelling HIV-related stigma and undermining the national response. For the law to effectively support the national HIV response, it should strengthen human rights provisions for all (particularly those most vulnerable to HIV) while also engaging effectively with traditional leaders and customary legal processes.

The paper will also review the results in light of overarching conceptualisations of criminal law in terms of stigma, social control and delineating social boundaries. System can be determined by wealth.

Stackpool-Moore, Lucy * HU1.50 **GSL / 5.3**

HIV Is Not The Whole Story, It Is Part Of Life

Background: For the estimated 900,000 people who are living with HIV in Malawi according to the NAC, stigma and discrimination pose a real threat to the realization of the human right to health. Living with HIV today is different for everyone--life is multi-dimensional, and all individuals will find themselves in different situations where they have relative positions of visibility and/or engagement and/or power. Yet HIV-related stigma remains a significant challenge in the Malawian national response to HIV.

"We must continue our efforts to deploy antiretroviral treatment to those affected, and we should not be complacent about fighting stigma" (President Bingu wa Mutharika, 2011)

Methods: Between October 2010 and March 2011, forty-two qualitative life story interviews were recorded as part of a participatory action research project that supported *The People Living with HIV (PLHIV) Stigma Index* research in Malawi. Peer-interviews were conducted in each region, drawing on an equal number of men and women, and including some men who have sex with men (MSM), sex workers and former prisoners, with the exclusionary criteria that all participants were people living with or closely affected by HIV. The participants represented all income levels, ranging from subsistence farmer to national celebrity.

The research explored processes of documenting human rights, the extent to which HIV-related stigma creates barriers for realising human rights, and the role of the law as a mechanism for tackling stigma.

Results: HIV has different meanings in everyone's life, ranging along a spectrum from very positive to very negative. PLHIV express a good understanding of stigma in terms of lived examples but find it difficult to articulate the concept.

Challenges of addressing stigma include internalised stigma and self-esteem, ongoing incidents of discrimination, and knowledge of and access to laws that could protect PLHIV (such as the Constitution). The formal legal system as well as traditional system is limited in its ability to respond to HIV-related stigma and broader issues of justice. The strengths and limitations of the law in the response to HIV are highlighted by a limited consciousness of legal processes in the everyday life of PLHIV. Access to justice is unequal, and women experience stigma to a greater degree than men in Malawi with less opportunity to seek legal or other redress.

Conclusions/ Recommendations: Initiatives to address HIV-related stigma may have been mis-directed in the past by focusing almost exclusively on a person's HIV status—the life stories illuminate much more complicated, passionate and nuanced lives in terms of highs and lows of living with HIV.

"People that are HIV positive like me, I have the right to do anything…to be employed, to seek medical care at a hospital, or to own a site at the market, or any other right—it exists, like it applies to any other person." (Life Story Participant, 2011)

Efforts to address HIV-related stigma should focus on love, compassion and wider issues relevant in someone's life and the multiple dimensions of their identity beyond the HIV positive diagnosis. A jurisprudence founded on generosity may contain the strongest foundation for an inclusive and non-stigmatising legislative platform to support national responses to HIV.

Stalford, Helen * HU1.49 **FL / 2.1**

Child Protection And The European Union

Child protection issues have grabbed and sustained the EU's attention to a much greater extent than other aspects of children's rights; there has been significant EU investment in research, legal and policy measures aimed at exposing and addressing some of the most serious violations of children's rights. In fact, the proliferation of EU measures in the field of child protection stands in stark contrast to the EU's traditional reluctance to engage with children's rights more generally. This paper will consider the basis and remit of the EU's role in this regard. It will critically assess the coherence and utility of the EU child protection agenda and, specifically, the extent to which EU intervention complements, overlaps with or, indeed, undermines child protection efforts at the international or national level. The paper will conclude with some thoughts on the impact of the EU's child protection agenda both in safeguarding children's welfare on the ground, and in terms of how it influences our view of the capacity of the EU to uphold and promote children's rights more broadly.

Staunton, Ciara * HU 1.48 **ML / 4.5**

Should Ethics Matter? The Regulation Of Embryonic Stem Cell Research And The Influence Of Ethics

Attempts to regulate embryonic stem cell research have traditionally resulted in divisive debates over the moral status of the embryo. This controversy has waged since the beginning of the abortion debate, with no resolution in sight. With the abortion debate highlighting that ethics has failed to provide a conclusive answer as to the status of the embryo, it must be questioned whether ethics should influence policy makers in regulating stem cell research.

This paper will examine the role that ethics should play in regulating embryonic stem cell research. It will discuss the difference between morals and the law and the influence, if any, moral principles should have on policy makers when drafting stem cell research legislation. It will argue that rather than attempt to resolve the ethical debate, policy makers should confine themselves to achieving a consensus on the permitted boundaries of the research within their particular jurisdiction. This paper will argue that while a consensus is unlikely to be reached, the process of democratic deliberation, which focuses on mutual respect, reasoning and common grounds as the starting point for debate, will help attain a regulatory system which is accepted by all. To achieve this end, comparisons will be drawn between the US, the UK and Ireland. Finally this paper will conclude that while ethics may be important in the formation of the debate, policy makers should engage all stakeholders to ensure an adequate resolution of the legal debate rather than a resolution of the moral debate.

Szmukler, George * HU 2.33 **MH / 5.7**
Risk Assessment: Numbers, Values and Costs

Why has 'risk assessment' assumed such salience in mental health care in the UK and some other countries? The frequency of serious violent incidents perpetrated by people with a mental illness is an insufficient explanation. Current accounts of 'risk perception' also appear inadequate. I will argue that understandings of mental illness and of the role of those charged with their care (or control or surveillance) play a key role. The common rationale for post-incident inquiries - learning lessons from discovering what went wrong - lends support to this idea, while at same time contributing to a flawed conception of what such inquiries can offer.

At the same time understandings of probability and prediction are very poor. Unfortunately this applies to professionals as well as lay persons. Unrealistic expectations for risk assessment and management carry a variety of significant 'costs' to those with a mental illness, to mental health professionals and to services. Especially important are changes in professional practice and accountabilities that are significantly divorced from traditional practice, implications for 'trust' in patient-clinician relationships and the organisations in which they work, and practices that often breach the principle of 'justice' (or 'fairness') and heighten discrimination against people with mental illness.

How then should clinicians act in the midst of such a tangled web of irreconcilable pressures?

Thomas, Sean * HU2.37 **CO / 2.12**
Mortgages, Fixtures, Fittings, And Security Over Personal Property

The majority of purchases of family homes are financed by means of a loan, secured by means of a legal mortgage over the property (a 'mortgage'). The mortgage instrument provides security for the lender in the event of a borrower's default in repaying the debt, by enabling the lender to enter in to possession of the property as a precursor to selling the property. If the property realises a value greater than the remaining mortgage debt, then the lender is entitled by means of the equity of redemption to the difference. If the property realises a value lower than the remaining mortgage debt, then the borrower remains in debt to the lender, to the tune of the difference between the value realised and the debt.

The HSBC mortgage agreement provides that the mortgagor (the borrower) is not entitled to remove any fixtures or fittings, and if they do so then they must replace the fixture or fitting with a something of at least equivalent value. Furthermore, the mortgage agreement provides that if there is a default and the mortgagee (the lender) is entitled to go into possession of the property in order to realise its security, then it is entitled to all personal property (i.e. goods) on the property, in addition to the real property (i.e. the house).

The question raised is simple: to what extent can a mortgage agreement for the purposes of purchasing a family home extend to cover personal property? To elements to this general question can be identified: (1) whilst the mortgage will cover fixtures on the basis that they are attached to the house itself and thus become part of the house, why should removable personal property, i.e. the fittings, be covered by a mortgage agreement the purpose of which is merely to secure the financing of the purchase of the real property (i.e. the house); and (2) why should the mortgage cover personal property that is neither permanently attached to the property (fixtures) nor temporarily attached (fittings), but is purely incidental to the property?

It is suggested that mortgagees should not be permitted to enhance the value of their security by extending the mortgage instrument to cover movable personal property. If this were allowed, then mortgagees will in effect be benefiting from the creation of an unregistered security interest which neither fits within the scheme of land registration, nor fits within the current existing structure of consensual security interests under English law.

Thompson, Sharon * HU 1.49 **FL / 1.1**

Prenuptial Agreements And The Presumption Of Free Choice: Issues Of Power In Theory And Practice

In *Radmacher v Granatino*, the Supreme Court held that the value of a fairly negotiated prenuptial agreement should not be overlooked, and attributed decisive weight to the enforcement of these agreements. Lord Phillips, who provided the majority judgment, said; 'The reason why the court should give weight to a nuptial agreement is that there should be respect for individual autonomy' (para. 78)

This also means respecting the fact that parties might want to control their property and finances in a way that is different to the discretionary ancillary relief provision made by the court pursuant to the Matrimonial Causes Act 1973.

In spite of this, it is submitted that there cannot truly be respect for individual autonomy without first ensuring that both parties have exercised such autonomy. Empirical research from New York on attorneys' views and experiences of prenuptial agreements indicates a significant disparity of bargaining power among many couples entering these agreements. This issue must be fully explored, particularly if Parliament decides to legislate on the enforcement of prenuptial agreements in England and Wales.

As such, this paper will attempt to set out how the law can accommodate power imbalances in theory and practice. Firstly, the responses of interviewees from my doctoral study will be used to illustrate the approach of the courts and specific attorneys in New York when addressing inequality of bargaining power in practice. Secondly, a socio-legal perspective will be adopted to assess whether existing contractual doctrines could potentially recognise issues of power in the context of prenuptial agreements.

Trinder, Liz * HU 1.49 **FL / 6.1**

The Appliance Of Science? Socio-Legal Research And Family Law Policy-Making

The relationship between research evidence and policy-making is often considered to be tenuous, particularly in highly politicised policy areas where politics and ideology are seen as predominant (Monaghan 2011). At best, research is seen as playing an enlightenment or general awareness-raising role rather than an instrumental role in guiding specific policy choices (Reiss 1979). However, drawing on a Nuffield Foundation study of policy-making in relation to child contact and shared parenting, I argue that the relationship between evidence and policy is more complex and that socio-legal research can and does have an instrumental impact. Focusing on recent policy-making in relation to shared parenting I explore some of the factors that might make research evidence more or less influential within the policy process.

Ukpai, Olugu * HU 1.82 **GSL / 6.14**

Is The Law Useful In Abolishing The Practice Of Female Genital Cutting (FGC)? Evidence From Nigeria

Immigrant women face criminal charges in most European countries for carrying out FGC 'even if the victim is an adult who 'consented' to have it done' without similar charges for carrying out cosmetic genital surgery such as vaginal tightening or lifting, reduction of labia that are performed by the so called "civilized women" that are also performed for non-therapeutic reasons. Most of the women targeted are poor, Black, and unimpowered migrants. Since it is claimed that Black women experience various forms of oppression, first, the article contends that the punishment of adult immigrant women who choose to carry out FGC on their bodies violates their constitutional rights to control their bodies as fundamental to women's dignity. Second, the punishment violates their constitutional rights to equal protection and privacy regarding their sexual rights and choices. Third, I aver that the punishment violates the equal protection clause because it stems from and perpetuates Black women subordination. Forth, a critique of the liberal negative conception of privacy rooted in freedom from government constraints. The paper concludes that much has not

been done to change the “structural causatives” of FGC among immigrant women, a similar fate they suffered in Africa and other countries where it is being practised. Women’s insecure position in society needs to be changed before fundamental rejection of FGC can be achieved. The paper avers that the EU ideals of human rights that advocated “zero tolerance” and punishes immigrant women has failed to address “structural causative” factors that will empower immigrant women to take independent decisions of their body just like their EU women counterparts (rather than regulating it). The paper concludes by asserting that unless the EU consider a more grass roots approach to empower and respect immigrant women practitioners by directly seeking their opinions, immigrant communities will remain marginalized and discriminated.

Ukpai, Olugu * HU 2.82 **IR / 4.6**

Criminalizing Female Genital Mutilation (FGM) Among Adult Immigrant Women: A Violation Of Immigrant Women’s Rights Or Protection Of Human Rights?

Is punishing adult immigrant women who decide to undergo FGM a violation of immigrant women’s rights or protection of human rights? The paper suggests that the interaction of law and body produces inequality and differential treatment in regulating the bodies of minority and Western women. Immigrant women face criminal charges in most Western countries for carrying out FGM ‘even if the victim is an adult who ‘consented’ to have it done’ but without similar charges for carrying out cosmetic genital surgeries such as vaginal tightening or lifting, reduction of labia that are performed also performed for non-therapeutic reasons by some Western women. Most of the women targeted are poor, Black immigrant women. Since it is claimed that minority immigrant communities experience various forms of oppression, the paper contends that the punishment of adult immigrant women who choose to carry out FGM on their bodies does not only violate the concept of multiculturalism and their constitutional rights to control their bodies as fundamental to women’s dignity, but also violates their constitutional rights to equal protection and privacy regarding their sexual rights and choices. The punishment also undermines the equal protection clause because it stems from and perpetuates Black and minority groups’ subordination. The paper concludes that multiculturalism as being advocated by various Western immigration policies is misleading and a double standard. It has failed to respect minority women’s rights to control their bodies just like their Western counterparts and implement the concept of multiculturalism to the core, thereby confusing immigrants since they have frequently promoted the claim that the preservation of culture entails the maintenance of every last one of its elements.

Van Engeland, Anicée * HU1.49 **FL / 7.1**

Toward Criminalisation Of Forced Marriages In The UK: Is There An Alternative Solution?

There is currently a debate about a possible criminalisation of forced marriages in the UK. This shift of approach is interesting as the team led by Lord Lester that worked on the 2007 Act did not wish to include criminalization; yet it seems that the Act has reached its limits in terms of efficiency.

France has recently opted for the criminalization of cultural and traditional practices by prohibiting the wearing of the *burqa*. It operates against the specific backdrop of *laïcité*, so Islam is problematized in terms of religion being expelled from the public sphere. The UK has a radically different political and legal context. Yet, the two countries share similar obstacles when it comes to multi-culturalism and integration; this is why they have both decided to use law to regulate cultural practices, often in the name of security or immigration control.

The question is to know whether criminalisation is the right answer to the phenomenon of forced marriages. The 2007 Act addresses victims who are empowered enough to take the first step towards the authorities. The reality in the field is often different as victims are not empowered, and fear social death or honour killing if they challenge a forced marriage. There are other solutions, between the current Act and criminalisation, which will drive such marriages underground (Islamic marriages non-declared to the State) or abroad. France and

the United Kingdom should seek to work bottom-up to understand the root causes of forced marriages and defeat them at home rather than in courts. Muslims cannot be taken hostage between their communities and the State, with each time having their freedom of choice being denied. The author of the paper has worked on these alternative strategies and will present them at SLSA.

Varnham, Sally & Booth, Tracey & Evers, Maxine
*** HU 1.49** **FL / 2.1**
Valueing Their Voices: Responsibility And Retention Through Student Participation In School Decision Making

Learning about democracy and citizenship when I was at school was a bit like reading a holiday brochure in a prison. Unless you were about to be let out or escape, it was quite frustrating and seemed pointless … To be effectively educated for democracy means being able to be a democratic citizen. It means … knowing how to do democracy not just knowing about it.

The place of children's voices in Australian schools has been the subject of debate for several decades and never more than now. This presentation considers the implementation of participatory and restorative practices in New South Wales schools. It discusses their effectiveness and impact on school communities and how this may be measured. The research project, the subject of the presentation, looks at student participation in school decision-making, and in the process of conflict resolution, as two specific areas where the concepts which underlie citizenship and democracy may be implemented within the school community.

Citizenship and democracy are about relationships, participation in decision making, rights and responsibility. In Australia and New Zealand, and comparative jurisdictions, the debate concerning the teaching of citizenship in schools has traditionally been centred on the extent to which civics education should be included in the school curriculum. In recent years the debate has widened to a more holistic view of citizenship or democracy in schools, from the restrictive approach of classroom learning only, to embrace teaching by practice and example within the school structure. Schools have a unique opportunity to both teach democratic principles and values, and model them in their practices and procedures. Arguably, the model presented by a school provides a crucial template for the value system which students live by for the rest of their lives.

The research employs a qualitative case study design in a selected cohort of schools in New South Wales in Australia. The data is gathered by means of semi-structured interviews of school personnel, students and parents; and observation of participatory and conflict resolution practices in the schools. The aim is to identify the understanding and perceptions of these practices and their effect on the school communities. Ultimately it will lead to an understanding of the concept of pupil democracy, how it may be embraced within the governance and management of Australian schools, and its value in terms of student engagement and retention in education and the development of future citizens.

Vogel, Mary * HU 1.51 **CJ / 1.2**
Plea Bargaining: What Do We Know Of Its Causes And Consequences?

As England moves to accept that leniency should be granted when pleas of guilty are entered, the practice this sets in place remains highly controversial. While some insist that plea bargaining does not occur in England and Wales, the granting of leniency now increasingly well established has at least much in common with the practice of plea bargaining in the United States. In this paper we explore some highlights of what is known and what remains in question with regard to this much debated procedure.

This analyzes key strands of the voluminous body of research on plea bargaining that has been produced since the 1960s. It is argued that, despite a vast amount of research done on the subject, much about its causes and consequences remains unresolved. Yet

policymakers and judges, despite a welter of inconclusive and contradictory findings, appear nonetheless committed to proceeding as if research support for prevailing wisdom is clear and strong. Even among scholars, reduction in the number of studies of plea bargaining since the 1980s appears to stem, in part, from the belief that most key questions have been answered.

On some issues, such as the tendency of plea bargaining to coerce false convictions – a tendency historically disputed by the US Supreme Court – evidence is compelling and consensus robust. On other questions, such as whether plea bargaining breaches rights, generates sentencing disparities across socio-economic groups, is justified by a 'compelling' state interest in administrative efficiency or necessitated as a response to crowding, controversy persists. Even on the most basic issue of whether bargaining produces sentencing concessions in the form of leniency in return for a defendant's self-incrimination, the findings are mixed, though historically hints of some trends may be evident.

Wade, Katherine * HU 1.48 **ML / 3.5**

Relational Autonomy And Caesarean Section Refusal: Building A Framework For Decision-Making In Ireland

This paper argues that a relational approach to autonomy has an important role to play in the context of caesarean section refusal in Ireland. The paper begins by outlining the importance of autonomy and examines the development of the liberal theory of autonomy, with reference to English cases involving caesarean section refusal. It then moves on to argue that this individualistic approach is difficult to apply in the case of caesarean section refusal in Ireland, as the woman's right to autonomy and the right to life of the unborn are both afforded constitutional protection and must be balanced against each other. The right to life of the unborn sets Ireland apart from other jurisdictions and means that the liberal approach to autonomy, which was evident in the English cases, is more difficult to apply. The paper proceeds to discuss the theory and development of relational autonomy. This theory recognises that people are interrelated and that they take their relationships with others into account when making decisions. A pregnant woman is an example of a person who is interconnected and whose treatment decisions affect others, including her foetus. A relational approach allows for the rights and interests of others, such as the foetus, to be taken into account in the context of medical decision-making. This is done through a process of "mutual persuasion" whereby professionals and patients use dialogue, reflection and persuasion to reach medical decisions. It is argued that through this process, the woman's autonomy is protected in a more robust way than it would be if an individualistic theory of autonomy were applied. Attempts are made to ensure that her choice is based on her values and goals. At the same time, such an approach allows for the rights of others, such as the unborn, to be taken into account. For these reasons, the paper concludes that relational autonomy is an appropriate framework for decision-making regarding caesarean section refusal in the Irish context.

Wadlow, Christopher * HU2.4 **IP / 2.11**

Language, Law And Labor In The United States Supreme Court: A Reinterpretation Of International News V Associated Press

For many commentators on trade mark and unfair competition law, the decision of the US Supreme Court in *International News Service v Associated Press* (1918) remains high authority for the proposition that it is legally actionable to engage in unfair competition by "misappropriating" the fruits of a competitor's efforts. In Biblical terms, one must not reap where one has not sown.

In response to the conventional interpretation, this paper will argue that *International News* bears a very different aspect if examined from other legal perspectives, some of which are triggered or invoked by particular words or themes in the leading judgment of Justice Pitney, specifically the language of fairness, property, equity, misappropriation, and competition.

More generally, no interpretation of *International News* would be complete without paying some attention to the political and economic climate in which the decision was delivered, including the Court's implacable opposition to organised labour, and its use of "America's distinctive contribution in the application of law to industrial strife", the labor injunction.

Finally, the perspectives from which *International News* has been interpreted have varied with time and place. We are no longer preoccupied with such antiquities as the labor injunction, or the prima-facie tort theory which underpinned it. Our preoccupations have changed, and one of the changes has been the rediscovery of restitution for unjust enrichment as a third branch of the law of obligations, alongside tort and contract, with a consequent realignment of what we think we understand by "misappropriation". At a more general intellectual level postmodernism, and specifically the phenomenon of "appropriation art", has given the root-word an intellectual currency which it lacked when only property theorists (and government accountants) talked of "appropriation", and "misappropriation" was a term of art for equity lawyers to apply to the defalcations of unscrupulous trustees.

Wardhaugh, Bruce * HU2.39 **BF / 1.8**

Regulating The Banking Sector: A Case Of Public Goods, Externalities And Pigovian Taxes?

Confidence in the market and its corollary, market stability, are public goods. Likewise, lack of confidence in the market and market instability are functionally identical to externalities. This connection has not been well noticed in discussion of market regulation, particularly in recent discussion of regulating the banking sector. Pollution and environmental regulation are illustrative analogues.

We begin this paper by demonstrating that market confidence and stability are public goods, and their opposites act as externalities. We examine three classical responses to the provision of public goods and regulation of externalities. These are: (a) the provision of a public good through taxation, (b) *Pigovian taxes/subsidies, and (c) Coasian bargaining to establish an optimal outcome.*

We then argue: (1) the best approach to banking regulation is through (b). Capital requirements serve as a tax, i.e. a financial disincentive to engage in unwanted behaviour. (2) Thus viewed, the Vickers Report's proposals are an attempt to establish an appropriate Pigovian response to externalities caused by financial crises. (3) Likewise, the differences in the UK's and EU's approach to capital requirements can be seen as a dispute over the appropriate tax rate. (5) Given the concentration of the banking sector to (and the consequence of failure of the banking system within) the UK a higher tax rate is an appropriate response. Pollution is the analogue: the more fragile the eco-system, the greater the Pigovian response to (possible) pollution should be.

We conclude with two suggestions for extensions of our argument. First, the notion of differences in the fragility financial systems (and the need for differing levels of Pigovian taxes) has significant implications for financial regulation at the trans-national level. Second, the notion of market confidence as a public good has implications for regulation of other markets, particularly in the areas of consumer protection and antitrust.

Wardhaugh, Bruce * HU1.51 **CLCJ / 6.2**

Rethinking The "Controlling Mind": Has Vicarious Liability's Time Come?

The recent *Corporate Manslaughter and Corporate Homicide Act* 2007 and *Bribery Act* 2010 suggest legislative cognizance that traditional doctrine of corporate criminal liability (the *Tesco* rule of "controlling mind and will") is ill-founded. This paper argues that not only is this realisation correct, but also that English criminal law must replace the traditional doctrine with an alternative foundation for corporate criminal liability.

The paper begins by considering the origins of the traditional doctrine. This doctrine arose from a historical mistake, transforming anthropomorphic observations in civil cases—and in particular, remarks about evidential burden—into a rule of corporate criminal liability, ill-

suited for its purpose. The measured retreat from this doctrine by the House of Lords and Privy Council (and courts abroad) provides evidence of the unsuitability of the traditional doctrine. The second part of the paper shows that since the origin of corporate criminal activity lies in a misalignment of interests within the corporation (of employee/ manager/ owners), the *Tesco* rule sets a double standard for prosecution. Its effect is to set the threshold for prosecuting a smaller organisation much lower than that for a larger organisation. Thus, the rule is open to criticism on the grounds of disparate treatment of potential defendants.

The third part of the paper suggests reform by proposing a rule of corporate liability based on vicarious liability. An effect of a vicarious liability rule would be to encourage a realignment of interests within the corporation. Thus, such a rule can be normatively justified on the basis of (i) equal treatment of defendants, (ii) utilitarian considerations of efficiency in the deterrence of corporate misbehaviour, and (iii) on considerations of imposing upon corporate entities a duty of adequate supervision of employee. This latter point thus addresses the agency problem which gives rise to this sort of criminal activity.

Watson, Susan & Daly, Jacob * HU 2.33 **MH / 1.6**
Safeguarding From Harm Or Safeguarding Rights?

How far should the law encroach on the rights of vulnerable adults to engage in a sexual relationship? This difficult and sensitive area raises issues of risk, human rights and criminal liability. How should the State, as a safe-guarder of the vulnerable, respond to vulnerable adults who want to live as full a life as possible but who may be at risk as a result of decisions they make.

It would be fair to say that some confusion has arisen in the law relating to capacity to consent to sexual relations. Whatever approach is adopted, the lower level threshold test which requires only capacity to understand the act and its reasonably foreseeable consequences, as favoured in the civil court (X *City Council v MB, NB and MAB (by his litigation friend the Official Solicitor)* [2006] EWHC 168 (Fam), or, the higher threshold test which is act, person and situation specific and approved by the criminal court (*R v C* [2009] UKHL 42) questions remain. Neither approach fully addresses further important questions such as how will intervention to stop sexual activity affect an individual on an emotional and psychological level and how should an adult be cared for if they begin a sexual relationship with someone who causes them emotional distress or physical harm. This presentation will address the issue of safeguarding a vulnerable adult from risks of a sexual relationship, exploitative or not, and will consider:

1. Practical implications for the State in relation to any duties and responsibilities owed to vulnerable adults
2. Ways in which the State responds to enable and promote one of the most basic rights of a human being to engage in sexual relations but yet recognises the risk to vulnerable people from exploitation and abuse.

Webb, Thomas E. * HU 2.41 **STLS / 5.11**
Contingency, Contestability, And Constitutionalism

In this paper I use complexity theory, a systems theory, to critique three models of constitutionalism (as offered by Allan, Loughlin, and Walker). I specifically draw on two features of complexity theory thinking's critical approach which are contingency and contestability. These features relate to complexity theory's perception of reality as comprising many competing and incomplete accounts of reality in the form of models of understanding (models for making sense of the world, such as theories). The idea of contingency relates to how we must be careful about the claims we make about the validity of our knowledge. Contestability suggests that, in recognising the limits to our understanding brought about by contingency, we should be open to dialogue and engagement with rival theories through the agnostics of the network.

The paper shows both the incompleteness of each model of constitutionalism, as well as its validity, suggesting that public lawyers should be more open to inter-theory dialogue in order to improve their own models through discourse with rivals.

[1] See Albert, M. (2002) 'Governance and democracy in European systems: on systems theory and European integration'. *Review of International Studies*, Vol. 28, No. 02, pp. 293-309.

Wei, Lingling * HU2.33 **IP / 3.7**

Is The Legal Regulation Of Ambush Marketing Well Justified?

Goodwill and publicity are the valuable assets for mega sporting event, which attract companies to invest in sponsorship. Ambush marketing occurs when official sponsors are faced with competing 'unauthorised' attempts to cash in on the goodwill publicity value of the event, thus allegedly undermining the commercial function of sponsorship. It has concerned owners of mega sporting events such as International Olympic Committee (IOC) since the first reported 'ambush marketing' incident at the 1984 Los Angeles Olympics where Fuji Photo Film USA was the official 35mm film of the Games, and Kodak countered by paying considerably less to sponsor the US track and field trials and ABC's broadcast of the Games.

The activities of would-be ambush marketers have been regulated increasingly tightly through special type of IP legislation, beginning with the Sydney Olympics (2000) and now extending beyond the Olympic movement (for example, 2010 FIFA World Cup). Ambush marketing is also increasingly restricted through contractual negotiations between event owners, host countries, local organisers, broadcasters and athletes. The presumption is that the legal regulation of ambush marketing is a necessary condition for the events' sponsorship mechanism. Despite the potentially large impact of the regulation, financially and on fundamental freedoms, this presumption goes unexamined. This article attempts to lay down a theoretical and empirical groundwork to test whether the existing regulation has a sound base for justification.

Westwood, Susan * HU1.50 **GSL / 2.3**

Gender, Sexuality And Law: The Added Dimension Of Age

Scholars of gender, sexuality and law emphasise the unique and specific ways in which gender and sexual identity are experienced, across a range of other aspects of identity. However one feature of identity that is as yet under-addressed is that of age. Age is such a significant element of identity that it has been suggested it should be thought of as a dimension of identity through and against which all other areas of identity can be understood. Age classification in law and society is pervasive and profoundly influential not least of all in its taken-for-grantedness, and the way(s) in which early and middle adult are privileged in law, and the very young and the very old are marginalised. Yet discourse about gender, sexuality and law fails to take into account this crucial dimension. Rights discourse fails to address how rights may take on different significance at different ages of life. Sexual orientation anti-discrimination discourse focuses on discrimination at school, work, and in the social settings of early and middle adulthood, obscuring the experiences of discrimination in later life. Family recognition discourse focuses on partnership and parenthood recognition but not 'family of choice' care networks which may take on greater significance in later life. Health and social care policy is predicated upon heterosexist notions of family which obfuscate the presence, and needs, of gay, lesbian and bisexual carers and service users. The provision of care to the very old complicates the public/private boundary and implicates the space between carer and cared for in terms of gender and sexuality inequalities and the impact of dependency upon resistance. Through exploring these areas, this paper will show how age is a crucial dimension of gender, sexuality and law discourse, which merits far greater scholastic attention.

Wickham, Gary * HU 2.41 **STLS / 6.11**

Hobbes, Sovereignty, And The Rule Of Law

Hobbes's account of sovereignty, which draws on his Epicurean anthropology and his Epicurean political philosophy, sets out the steps whereby the rule of a strong authority, the sovereign, can discipline the wills of subjects by properly balancing their passions in order to achieve a lasting civil peace. As Schmitt and many other commentators have noted, Hobbes's sovereignty is therefore based on the capacity to make a decision, it does not entail norms. This paper, drawing on a some recent work by Martin Krygier, explores the possibility that the only coherent understanding of rule of law consistent with Hobbes's notion of sovereignty is one in which law is part of a system of rule in which politics can be restrained by law but ultimately trumps law.

Williams, Glenys * HU 1.51 **CLCJ / 6.2**
Emotion In An Excusatory Necessity "Defence"

In the UK (essentially since the case of *R v Dudley & Stephens* back in 1884), there has been significant resistance to the necessity defence in its original form, and indeed, the only sphere in which it has properly succeeded is in the medical arena to, for example, justify imposing treatment or detaining incompetent patients, without consent.

Clearly a concept of necessity as an excuse - rather than a justification – is needed, and in the UK, this has been provided by developing the defence of duress to include what is known as "duress of circumstances" which, unlike necessity, operates as an excuse. This paper will argue that the courts have taken the wrong path by implementing a necessity defence as a form of duress, in view of the numerous distinguishing factors between them. A better option would be to concede that in the dire circumstances where a situation of necessity would arise, emotion could and should be taken into account in providing an excusatory necessity defence. This is not a new idea; fear and anger are already accepted as grounds to successfully plead loss of control, both under the new provisions in the Coroners and Justice Act 2009, and in the previous law on provocation. In addition, compassion is the key factor in deciding whether or not to prosecute for aiding and abetting a suicide under the DPP's 2010 *Policy for Prosecutors in Respect of Cases of Encouraging and Assisting Suicide.*

Very little has been written on the impact of emotion from a legal perspective (although see, for example, Kahan & Nussbaum, Uniacke and Horder) but an examination of the psychological, psychoanalytic, neuro-scientific and criminological perceptions of emotion will provide a basis for this argument.

Wilkinson, Stephen * HU 1.48 **ML / 4.5**
Are The HFEA's Policies On Compensating Egg Donors And Egg Sharers Defensible?

This paper asks whether the HFEA's new policies on compensating egg donors and egg sharers are defensible, paying particular heed to the ethical arguments, concepts, and principles deployed in support of them.[1] The paper proceeds by briefly outlining both the 'old' and the 'new' HFEA policies (those before and after 19th October 2011) before describing and explaining the main arguments underpinning these, most of which are based on one of the following.

(1) The fact egg sharers are exposed to less additional harm and/or risk than egg donors.
(2) Concerns about valid consent and inducements where money is involved.
(3) The idea that egg sharers' attitudes to egg sharing are liable to be morally preferable to those of egg 'sellers'.
(4) The welfare of the child.

The paper subjects these arguments to critical scrutiny and finds them all to be flawed (to differing extents).

Its primary conclusion is that treating egg sharing more generously than egg donation (which is what both the 'old' and 'new' HFEA policy do) is inconsistent and unjustified. In order to render the HFEA's policies consistent we would need either to limit more strictly the benefits

in kind available to egg sharers, or to take a more permissive approach to monetary compensation for egg donors.

Its secondary conclusion is that the latter is the preferable option. Egg donors could, provided that suitable regulatory controls were in place, be compensated more generously without this being ethically problematic, and taking a more generous approach to paid egg donation could reduce shortages. Furthermore, since egg sharing is in some respects more problematic than other forms of egg donation, there is something to be said for encouraging a move away from sharing to donation (paid or otherwise).

[1] Egg sharing is defined by the HFEA as follows: "where a woman receiving IVF treatment donates some of her eggs, for either treatment or research, at the same time as undergoing treatment herself. In return, the clinic can offer a significant reduction in the cost of her treatment". Source: HFEA Papers for the Meeting on 19th October 2011, p.6.

Wills, Siobhán * HU2.31 **CS / 1.13**

The Blurring Of The 'Protection Of Civilians' Concept With The 'Responsibility To Protect' Concept: The Intervention In Libya 2011

Resolution 1973 on Libya, adopted on 17 March, authorized Member States 'to take all necessary measures… to protect civilians and civilian populated areas under threat of attack.' The resolution makes no reference to the 'responsibility to protect' concept (R2P) and the relevant paragraphs are couched in terms that much more closely reflect the UN's 'Protection of Civilians' concept (POC) than R2P. However Ban Ki Moon described resolution 1973 as an "historic" affirmation of the global community's responsibility to protect people from their own government's violence.

POC is aimed primarily at improving compliance with international humanitarian law and at enabling peacekeepers already deployed in a conflict zone to be able to respond to attacks against civilians by parties to the conflict. For the past decade peacekeepers have routinely been authorized under Chapter VII to protect civilians from imminent attack.

R2P posits that where a State is unable or unwilling to protect its population from serious harm involving large scale loss of life that State's sovereign immunity from interference in its domestic affairs yields to the international community's responsibility to protect, if necessary (and as a last resort) by military intervention.

The blurring of the POC and R2P concepts, risks undermining the impartial nature of the POC concept and may make it more difficult for peacekeepers to carry out the protection functions for which POC was developed. Security Council members such as Russia and China, already wary of the potential use of R2P to carry out regime change, may now also become wary of giving peacekeepers a POC mandate.

The use of POC to give assistance to opposition forces, as occurred in the Libya in 2011, is problematic because opposition fighters are not civilians and hence may lawfully be targeted in an armed conflict. Under international humanitarian law, and POC, civilians are due protection regardless of which party they belong to, and thus supporters of Gaddafi, and people living in towns resisting the TNC rebel forces, were equally entitled to the protection mandated by resolution 1973.

Similar problems arose in the context of controversial actions by the French mission Licorne in the Côte d'Ivoire in April 2011.

Wilson, Debra * HU 2.4 **IP / 1.10**

New Zealand's Copyright And File Sharing Legislation: 6 Months Of 'Skynet'

Commonly referred to as 'Skynet', New Zealand's Copyright (Infringing File Sharing) Amendment Act came into force on 1 September 2011. It inserts sections 122A-U into the Copyright Act, and according to s122B is 'a special regime for taking enforcement action

against people who infringe copyright through file sharing.' The law is effectively a 3 strikes notice regime. After the third warning, an infringer faces either a financial penalty or a potential suspension of internet access. This is the second attempt at such legislation, after the first was withdrawn in 2009 following international protest.

This paper considers the first six months of the operation of the law, and asks whether the provisions are succeeding as 'a fair and effective regime for enforcement of copyright.' "Effectiveness" can be judged by the clear lack of support for this Bill from both the public and Internet Service Providers, and arguably also by the copyright holders themselves, through the marked lack of enthusiasm to utilise the notice regime. The obvious loopholes to the law will also be considered. "Fairness" can be judged through the concerns raised about liability of businesses for employee actions. Interesting arguments as to whether access to the internet is a fundamental human right, and whether there is a 'New Zealand' defence to file sharing will also be covered.

The UK also recently enacted a similar law, the Digital Economy Act. At the time of writing (December 2011) it is thought that if a judicial review application by two ISPs is not successful, the first notices will be issued under this Act in mid-2012. The New Zealand experience with a similar style of law may provide valuable insight into how the UK Act might operate in practice.

Yeatman, Lucy * HU 1.50 **GSL / 8.3**

Let Them Drink Cocktails: A Paper To Explore Some Of The Themes Emerging In The World-Wide Campaign For Lesbian, Gay, Bisexual And Transgender Equality

Over the past three years significant progress has been made towards the recognition of the rights of lesbian gay and bisexual people to equal treatment and freedom. Most notably, the European Court of Human Rights recognised that unmarried gay couples can constitute a family for the purposes of Article 8 [1], the Delhi High Court held that criminalizing consenting sex between two men was violation of India's Constitution[2], the Supreme Court comprehensively dismissed the so-called "discretion test" in lesbian, gay and bisexual asylum claims[3] and in November 2011 the United Nations published its first report on human rights and sexual orientation[4].

Yet despite this, over 80 countries, including the majority of the Commonwealth criminalise consensual same-sex relations. Furthermore, attempts are being made in some countries to extend criminal sanctions, creating offence that go beyond sexual acts in themselves and criminalise identifying as gay. The Anti-Homosexuality Bill in Uganda has attracted world-wide press coverage and the governments of England and the USA have threatened to place restrictions on development aid if the legislation is passed. The African press has been quick to accuse them of cultural imperialism and neo colonialism, with homosexuality described as a western disease.

As the battle lines are drawn around the well worn themes of universal human rights versus culture and morality this paper will draw on recent anthropological research into African sexualities to explore the ways in which charges of cultural imperialism can be challenged and the ways in which arguments for a world-wide universal recognition of the rights of sexual minorities can be advanced beyond the simplistic dichotomies of gay/straight, moral/deviant, liberal/homophobic.

[1] Schalk and Kopf v Austria[2010] ECHR 30141
[2] Naz Foundation v Gov of NCT of Delhi WP(C) No 7455/2001
[3] HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31
[4] Report of the United Nations High Commissioner for Human Rights A/HRC/19/41 November 2011

Yeatman, Lucy * HU 1.82 **LE / 2.10**

Creating An Active Learning Environment In The Lecture Theatre

It is now over 40 years since Donald Bligh first wrote "What's the Use of Lectures" in which he published research findings indicating that students could learn as much from reading a

book as from attending a lecture. The intervening years have seen a growing number of studies showing that students learn by doing and "active-learning" has become the mantra of all teaching and learning specialists. Yet the lecture remains the mainstay of the university teaching week.

In 2007 we started an action research project on the Family Law course at the University of Greenwich, to explore whether students could be introduced to a topic through reading, and then learn in more active and participatory ways in the lecture. Over the past four years we have surveyed the students and adjusted the teaching in response to their feedback. Perhaps the most surprising aspect of the project was the discovery that the students regarded being asked to read about half a chapter of a text book once a week as "extra reading" that placed an intolerable burden on their time, leaving them unable to study for other courses. This was a level of reading that most lecturers simply assumed that students were doing as a minimum. Although we cannot say conclusively that the project has been a success, in that Family Law exam results have not consistently improved during the project, the majority of students have stated that they believe they learned more using this approach.

This paper will discuss the strengths and weaknesses of the project. It will also look at how the Family Law experience has influenced teaching across the LLB and in particular, how we have focussed on encouraging first year students to actively engage in lectures and improve their confidence and fluency when reading academic material.

Zhang, Xin * HU 1.47 **LabL / 4.4**

Resolving Work Injury Disputes In China: Comparing Migrant And Urban Workers

In China, there is a significant difference in dispute resolution between migrant and urban workers. The paper takes the disputes of work injury compensation as the example, examining how and why migrant and urban workers perceive and process problems regarding to work injuries differently.

The paper tries to address the inequality in dispute resolution through interpreting workers' disputing behaviours from three major theoretical perspectives. There are three hypotheses in correspondence: firstly, migrant and urban workers behave differently in resolving work injury disputes because the current dual legal framework in China. Secondly, the difference is due to the dual labour market, especially the internal labour market in this country. Thirdly, migrant and urban workers take different strategies as a result of the different legal consciousness and legal cultures residing in the two kinds of populations. The theoretical framework connects the topic of labour law and dispute resolution to a richer socio-legal context, including the issues of social security system, the labour market, the legal institution and the legal culture.

The paper test the three theoretical perspectives based on the case study in Dongguan. The data was obtained from the fieldwork in Dongguan in 2008. Nearly 200 workers have participated in the questionnaire survey and in-depth qualitative interview. Besides, several judges in the labour court, officials from the labour bureau of the local government, staffs of the non governmental labour service center and human resources mangers of firms have been interviewed. The paper demonstrates that the equality is rooted in a widely social inequality between migrant and urban workers in the Chinese society.

Zhilla, Fabian * HU 2.41 **CLCJ / 8.9**

The Nexus Of Albanian Organised Crime And Italian Mafia

This paper analysis the interplay between Albanian organised crime groups and Italian Mafia for the period 1985-2011. It probes the dynamics of their relationship since the late communist period. Our research shows that patterns of their nexus have not been constant and that they have been influenced by political and economical context. We show that their relationship has passed through three main stages:

First, the formal stage (1985-1989); during the late communism, only state had the power to negotiate with the international organised crime such as the Italian Mafia, and their relationship appeared to be as among two legitimate entities.

Second, the tutorial stage (1990-1997); with the collapse of communism, the informal market flourished and this opened significant opportunities for the Italian Mafia to exploit the Albanian territory for illegal activities. In this period, they entered in touch with local organised crime groups and businessmen and acted as their tutors.

Third, the partnership stage (2002-2011); after 1997 many Albanian organised crime groups 'emigrated' in the European Union where they established strong links with the indigenous Mafia in South Italy. In 2010, various Italian Mafia groups return to Albania to launder their proceeds of crimes by setting up 'ghost' companies together with the Albanian organised crime groups there.

My study draws on prior research and new field work. The cornerstone of the empirical study was a series of expert interviews to seek the views of prosecutors of series organised crime, investigative journalists, judges and solicitors (advocates).

Themes

Adelman, Sam * HU2.30 **ES / 6.13**

Norms, The Normal, Extremes, Exceptions And Climate Change

As global warming unfolds, 'extreme' weather events will become normal. There will be more floods, droughts, hurricanes, cyclones and typhoons of greater intensity and duration. The exceptional will become unexceptional and there will be greater anarchy and anomie arising from our collective failure to construct a legal and normative architecture commensurate to the scale, dimensions and urgency of the problem posed by climate change. At the international level we have witnessed repeated failures at Copenhagen, Cancun and Durban, carbon markets are fiascos and national legislation is limited and half-hearted. There is no international framework relating to environmental refugees and human rights offers limited answers. Fully cognisant of the implications, it seems that law is failing even as we provoke the real state of emergency that Walter Benjamin called for in *Critique of violence*.

The paper analyses global cognitive dissonance by examining global warming at the intersection of a series of intertwined crises: the global economic crisis and the collapse of neoliberalism, food sovereignty and energy security. This paper examines the role, possibilities and limits of law as a means of addressing and regulating global warming. It discusses the role of states and markets in light of the 2008 credit crunch and the ensuing global economic crisis, whether these were facilitated by too much or too little regulation, and the efficacy of using law as a means of encouraging the cultural and behavioural changes needed to reduce greenhouse gas emissions. It asks why the scientific consensus on global warming is regularly trumped by narrow, partial and short-term expressions of sovereign prerogative, and ponders the relationship between risk and rationality.

Alessandrini, Donatella * HU2.30 **ES / 4.10**

Multilateral Trade In A Time Of Crisis

The decline of world trade has attracted a lot of attention in the past three years. After an initial recovery in 2010 due primarily to rising import and exports in emerging and developing economies, the WTO has recently revised downwards the prospects of world trade. Warning that 'we have now moved from a financial to a growth crisis' and that 'multilateralism is a precarious position', Deputy Director-General Ruhwabiza calls upon WTO Members to successfully conclude the Doha Round and extend the remit of the WTO to Non-Tariff Barriers (NTBs) and measures strengthening trade's regulatory environment (including competition policy and investment rules).[1] This paper draws on the inequality explanation of the crisis, which has provided an important lens trough which to examine the relationship between the so called financial and real spheres of the economy, to complicate such assumptions. It argues that the present situation requires not only regulating the international financial system but, more importantly, redressing the unequal and unsustainable international economic system of production and distribution to which the former is linked. The paper then considers how a challenge to the trading order might come from emerging economies' decision to reorient their savings away from northern countries and towards investment in the domestic sphere. Indeed, the demand for greater flexibility from WTO rules is likely to increase should countries decide to pursue industrial policies so to stimulate internal demand. The WTO can either hold on to the narrative of free trade v. protectionism and continue to uphold the normative case for uniform trade liberalisation; or it can recognise that states and markets are always in dynamic interaction (embodying different combinations of liberalisation and intervention at different times) and support the case for greater flexibility, thereby re-opening the intellectual trade debate.

Barnes, Lucy * HU 2.42 **ACH / 5.12**

Localising' Graffiti

This paper investigates how graffiti's origin as an offence against property has been broadened through anti-social behaviour legislation and policy as an offence against the 'community'. This blur between 'property' and 'community' has created the impetus for, and rationalised, local intervention into graffiti practices. These interventions have varied from community assumption of responsibility (e.g. via 'adopt-a-wall' projects), to 'community payback' for graffitists. However, whilst intervention against graffiti seems to have intensified, graffiti has also become a commodity which has featured within local authority tourism strategies. This paper investigates this ambivalence between blight and commodity, and questions the role of localism in mediating and modulating this ambivalence.

Blandy, Sarah * HU 1.48 **LC / 6.5**

Legal Consciousness And 'Common Parts': Residential Owners' Hopes, Experiences And Constitution Of The Law As Restricting / Irrelevant / Enabling, In Dealing With Collective Property Rights

This paper is based on a study of eight different multi-owned residential sites which include common parts. It was conducted through observation, interviews with residents and analysis of legal documents; a 'law-first' approach was avoided in the qualitative phases of research, with respondents raising law-related issues themselves rather than being prompted by the interviewer. In its focus on property relations within multi-owned housing sites, this study responds to the call for legal consciousness research to be situated within particular socio-legal phenomena. Each site is treated as a 'semi-autonomous social field', simultaneously making and enforcing its own rules while being subject to rules, decisions and other forces from the larger world which surrounds it.

The presentation will set out the methods used to obtain and analyse a wealth of qualitative data about residents' understanding of specific legal frameworks, and of how law can be used, in relation to their homes. Previous research into the use of social norms and law in settling disputes between neighbours has highlighted a wide variety in attitudes to formal legal rules, ranging from strict adherence to complete ignorance. This study tried to capture how subjective experiences produce legality, the effects of law and other forms of normative ordering and the relationship between them. Some residents struggled with the complex legal frameworks which establish property relations in housing sites, some attempted to use the Leasehold Valuation Tribunal to resolve disputes with freeholders and property management companies. Ewick and Silbey's seminal work on legal consciousness found use of three non-exclusive symbolic constructs used to make sense of and constitute the social world, which they termed 'before the law', with the law' and 'against the law'. In relation to this study, residents' hopes and experiences of the law might more accurately be categorized as restricting, irrelevant and/or enabling.

Chechi, Alessandro * HU 2.42 **STLS / 7.11**

Reflections On The Establishment Of An International Court For The Settlement Of Cultural Heritage Disputes

International practice in the past forty years has shown the proliferation of a great variety of art-related disputes. Regrettably, the international law concerning cultural heritage lacks a dedicated dispute settlement system. As a result, controversies are to be settled through negotiation or, if this fails or is not available, through traditional mechanisms such as mediation, arbitration and litigation before domestic tribunals or international courts. However, this *ad hoc* fashion of dealing with art disputes entails various consequences, including the adoption of inconsistent decisions and the fragmentary development of the law.

It has been regularly argued that these problems could be avoided with the establishment of a new international court with an exclusive jurisdiction over cultural heritage disputes. This study will question whether the creation of a new specialized court – or, alternatively, the

amendment of the mandate of one of the existing international courts – is needed and feasible. In order to do so, this research will evaluate this proposal by drawing a parallel with the dispute settlement systems of other fields of international law. In particular, it will focus on the fields of environment, investment and human rights. It is argued that this course of action will permit to assess the advantages and disadvantages of the proposal under consideration and to verify whether a dedicated international court could take in the interests involved in cultural heritage cases and whether it could provide for effectiveness and coherence. Effectiveness is sought to ensure that the specificities of cultural heritage are taken into account; coherence is necessary to prevent that the same or similar matters are addressed differently.

Choudhury, Barnali * HU 2.30 **ES / 5.13**

Exceptions Provisions - A Conduit For Human Rights Issues In International Investment Agreements

Should states' foreign investment obligations trump their human rights obligations even during an economic crisis? Many international investment tribunals have suggested, through their interpretations of international investment agreements (IIAs), that the answer to that question is a resounding "yes". After all, an economic crisis is a time in which foreign investors may need the protections of an IIA the most.

Yet, some tribunals are slowly beginning to recognize that states must be accorded some degree of latitude from their IIA obligations, particularly to protect their citizens' human rights. Most recently, several tribunals have found that a state can rely on an exception provision in its IIA – a provision allowing derogation from its IIA obligations – to protect its citizens during a financial crisis.

Exception provisions are, however, generally not worded to allow for protection of human rights. Instead, they generally aver to protection of "essential security interests" or "maintenance of public order". Nevertheless, two tribunals have observed that the social hardships of Argentina's financial crisis could constitute a situation where the maintenance of public order and the protection of the essential security interests were at stake.

Relying on the tribunals' dicta in the Argentine financial crisis cases, I argue that exception provisions in IIAs can be used to introduce human rights issues into foreign investment disputes even when the provisions are silent on references to human rights. For example, the emerging notion of "human security" suggests that references to "security" in treaties should not be limited to threats to physical territory but should also include threats to human rights or human development.

Encapsulating human rights measures within exceptions provisions thus provides a conduit by which social issues can be considered in the otherwise economic-oriented domain of international investment law. More importantly, it permits greater state sovereign control and allows for policy flexibility which can be vital to protecting citizens' human rights during an economic crisis in which they are most vulnerable.

D'Souza, Radha * HU 2.30 **ES / 6.13**

Coming A Full Circle? Neo-Liberalism, The 'Land Question' And The Vanishing Imagination Of The Law

Historically, the 'Land Question' as it was commonly referred to, was the central issue in modernisation in whatever form: capitalism in Western Europe, or socialist construction, or nation building in newly independent states. After the formation of the UN system the 'Land Question' remained primarily a matter for states. Since the neoliberal transformations of International Economic Organisations (IEOs), the 'Land Question' has taken centre-stage in international development law and policy. It appears in a number of avatars: food security and 'land grabs', poverty and land rights, involuntary displacement and right to resettlement, rights of indigenous peoples and traditional land tenure, property regimes and Good Governance, infrastructure projects and land acquisition, and land markets and corporate

social responsibilities being the most prominent ones. At the heart of the 'Land Question' are two issues: the social fall-out from global land markets and global agribusiness. The two issues, this paper argues, are two sides of the same coin. The significance of the return of the 'Land Question' on a global scale in the context of neoliberal transformations cannot be understated. Critical scholarship continues to be trapped in 'impact analysis' i.e. the social fallout from global land markets and agribusiness. Whereas the challenge for scholarship and action is to confront squarely what is at stake: the possibility of the reproduction of the conditions for life itself.

Historically, the remedies for people affected by commodification of land turned invariably on compensation. IEOs draw on comparable legal principles to address the social, cultural, and political fall-out from land-markets and agribusiness. The World Bank for example has developed guidelines for Rehabilitation &Resettlement that inform its lending policies. This paper asks if these remedies are possible at all. As more and more aspects of the social infrastructure for production: land, natural resources, labour, society, knowledge etc, become commodified, i.e. become tradable as commodities in global markets, the compensability of wrongs through money and, rehabilitation and resettlement becomes problematic. The paper argues that the imagination of the law has vanished leaving wrongs without effective remedies. Without remedies for wrongs, law cannot sustain the reproduction of social relations and the social system. The critique of international development law on the 'Land Question' impels us, therefore, to call into question the very philosophical foundations and limits of liberal legal theory and its application on global scales.

English, Penny * HU 2.42 **ACH / 6.12**

Combating The Illicit Trade In Antiquities In Europe: The Need For Reform

Illicit trade in antiquities, and the extent to which this problematic trade both is, and should be, subject to legal regulation has been fiercely debated in both academic and non academic fora in recent years. As location of both source nations for antiquities and leading international art markets, Europe is the setting for significant illicit trade in antiquities. Although perhaps seen as peripheral to the core activities of the European Union, the commitment to respect the culture, history and traditions of the member states (Preamble to the Treaty on European Union) and to safeguard the cultural heritage of European significance (Article 167 Treaty on the Functioning of the European Union) represents an acknowledgment that heritage cannot be viewed as wholly outside the remit of EU activity. EU legislation which aims to reconcile the competing aims of the free movement of goods within the single market with the need for member states to preserve their national heritage is considered to be ineffective. Therefore, at the end of November 2011, in response to a growing concern about the illegal trade, the European Commission launched a public consultation on ways to facilitate the return of unlawfully removed national treasures.

This paper seeks to evaluate the current law, and the ways in which this could be strengthened.

Esterling, Shea * HU 2.42 **ACH / 6.12**

Working Paper Title: A Right To The Repatriation Of Cultural Property: An Assessment Of Article 11 Of The United Nations Declaration On The Rights Of Indigenous Peoples

The 1970 UNESCO Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property [UNESCO Convention] and the Institute for the Unification of Private Law Convention on Stolen or Illegally Exported Cultural Objects [UNIDROIT Convention] serve as the principal legal instruments that control the international framework for the protection and return of cultural property. However, this regime is subject to the norms of international law including the principle of non-retroactivity. Aside from leaving the most famous requests by successor states in the broader repatriation debate without a claim such as Greece's requests for the return of the Elgin or Parthenon Marbles from the British Museum , this principle of international law also creates an insurmountable

obstacle to the less often discussed but equally as significant and increasing requests by Indigenous Peoples for the return of their cultural property at the international level, as the vast bulk left their possession long before the UNESCO and UNIDROIT Conventions came into effect; respectively 1972 and 1998.

With the reality of this shortcoming in mind, Indigenous Peoples have turned to other avenues such as human rights to help secure the return of their cultural property. Hearing these voices, over the past thirty years the international community has sought to draft and include such a right as part of a broader effort to increase the rights and protections of Indigenous Peoples under international law. Recently, the fruit of these efforts has been borne in the United Nations Declaration on the Rights of Indigenous Peoples [UNDRIP]. Specifically, Article 11(2) provides that: "States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs."

This presentation will assess this human right through the lens of the international regime for the protection of cultural property paying particular attention to the UNESCO and UNIDROIT Conventions, the theories of cultural nationalism and cultural internationalism as well as the very concept of cultural property and its associated values. Time allowing, this presentation will also assess this right through the lens of the international human rights framework. Ultimately, it is hoped that this preliminary investigation into Article 11 of UNDRIP will serve as the basis for a much needed academic commentary.

Everson, Michelle * HU 2.30 **ES / 3.12**
Je t'accuse: The Fault Of Law In Economic Crisis

It is a commonplace that the discipline of economics has contributed to current economic crisis: at the very least, the failure to alert governments and general public to impending collapse has cast a shadow on the discipline as a whole; at the worst, sections of economic methodology are charged with fatally inflating debt risk, such that collapse was the inevitable result. But, what of the role of law within this constellation? Certainly, much ink has been consumed detailing legal shortcomings within regulatory regimes, specifically those governing financial services. Yet, a full accounting has yet to be made of the broader fault which might also be attributed to the normative premises and methodologies of a modern, increasingly post-national law. This contribution seeks to begin this accounting, investigating, in legal theory particular, the processes by which law has transformed itself into a 'legal technology' within its contemporary positivist quest for legitimacy; or has become a locus of power, which has similarly undermined the sphere of 'the political' within which social and economic stability can be defined and achieved. The story of legal failure is necessarily nuanced: modern law is not a hegemon with its own social agenda. Yet, at each level of their operation – constitutional, regulatory and private – modern legal rationalities have privileged the putative universalisms of 'objective' and 'scientific' thought, failing to understand that law can still only draw its legitimacy from its core procedural function of the constitution of the political. Law has overreached itself in seeking to constitute European Monetary Union. It has compromised itself within global regimes of risk regulation. It has similarly denuded the political by redefining the citizen as *homo economicus*. Contemporary post-national law must urgently reassess its normative and methodological character if it is to become a part of the solution to rather than be seen as a part of the problem of economic crisis.

Flacks, Simon & Fritsche, Andrea * HU 2.41 **RTD / 1.12**
The Spectre Of Inderdisciplinarity: Reflections On Socio-Legal Research At A Human Rights College In Vienna

These presentations, delivered with the intention of sparking discussion on the 'inderdiscplinary' within socio-legal studies, will consider the challenges inherent in undertaking research at an 'interdiscplinary human rights college' in Vienna, Austria.

Comprised of 13 students of varying nationalities, and from the disciplines of law, sociology, development studies and psychology, the college, according to the call for applications, is founded on a ‘‘human rights-based approach and is focused on ‘empowering’ vulnerable groups. The faculty of the college is composed of professors, and assistants, from each of the stated disciplines.

Two of the students, with backgrounds in law and sociology, but undertaking socio-legal research, will discuss the tensions and challenges that have ensued. Discord around conceptions of human rights, the power differential between disciplines, and a lack of cohesion and definition concerning ‘interdiscplinary research’ will be among the topics discussed. The intent is not to criticise what has been an intriguing and ambitious project, but to discuss, and hopefully better understand, the requirements for, and challenges to, interdiscplinarity within socio-legal studies and human rights research in general. The presentations will consider how the capacity of both the faculty and the students, and the relationship between discipline and identity, have proved to be enabling and/or restricting in respect of individual theses. The challenges of communicating across disciplines will also be addressed.

We will also discuss methodological challenges in engaging in interdisciplinary research, particularly when students are supervised by professors from different disciplines and with different methodological lenses. Both PhD students and supervisors are encouraged to share their experiences and theoretical perspectives.

French, Duncan * HU2.32 **RTD / 1.15**
Exploring The Legal And Criminological Implications Of Climate Change

This seminar - timed to coincide with the publication of an edited collection on the issue - explores the pressing legal and criminological issues presented by climate change. The editors and a number of the contributing authors will present synopses of their work and will invite comments and discussion about these issues from the floor to begin a process of interdisciplinary dialogue, which was always the intention behind the collection.

Footer, Mary * HU 2.30 **ES / 3.12**
Using Indicators To Measure Transnational Governance Responses In Light Of The Global Economic Crisis

Increasingly the international economic order is being populated by a variety of indicators designed to rank laws and regulations, institutions and the performance of governments in our global society. Whether it is composite governance indicators emanating from the institutional realm of the UN, the World Bank Group or the OECD, which are used to measure everything from human population growth to foreign direct investment (FDI), or governance indicators produced by international non-profit organisations such as Transparency International or Global Integrity, which are designed to root out corruption, or commercial country risk indexes, ranging from the Economist Intelligent Unit to credit rating agencies like Moody’s Investor Services, Standard & Poor’s and Fitch, all have the potential to exercise an important form of power in the field of transnational economic governance.

This paper contends that so far the legal and political discourse has paid scant attention to the ways in which a variety of quantitative indicators are used to measure government, institutional and private sector performance, either singly or in combination, and no consideration has been given as to how they may influence the course of transnational governance. Taking the example of the credit rating agencies and their assessment of sovereign indebtedness in the global economic crisis, it will be argued that an appraisal of the transformative effect of these governance indicators is long overdue. We need to know what effect the sovereign rating methodology **of such agencies has on national fiscal and budget planning. And more importantly what impact these** transnational governance indicators may have on public policy decisions that affect the lives of millions of ordinary people.

Gallen, James * HU2.30 **ES / 5.13**

Financing Transition And Fragile States: The Role Of Odious Debt

The widespread transitions described as the “Arab Spring” occur in the context of global economic recession and uncertainty. Public demands in these countries, and in nations who remain within the bottom billion, remain intense and diverse: elections, institutional reform, new constitutional frameworks, economic development and dealing with a past legacy of gross violations of human rights all feature as challenges for transitional societies and States within the bottom billion. Despite the substantive diversity of these demands, common characteristics include their expense, the relative scarcity of available finance and the immensely challenging economic circumstances of transitional societies.

This paper examines the potential for fragile states and transitional societies to cancel sovereign debt owed by previous governments that committed gross violations of human rights through the proposal of “odious debt”. First, the presentation considers the concept of odious debt as a proposal operating to alleviate the financial and economic difficulties facing transitional societies through an *equitable* intervention to contracts in circumstances of transition between regimes. Second, the presentation argues that the practice of transitional justice can provide content for the term “odious”, hitherto left ambiguous by the existing literature and proposals on this topic. In addition, the presentation engages with the suitability of transitional justice mechanisms for investigating or publicising the repudiation of “odious debt” within a given society. Third, the presentation identifies the implications of this proposal for different creditors to transitional societies, in particular sovereign creditors, international financial institutions acting as creditors and private or corporate creditors. The paper concludes by arguing for the necessity of the odious debt concept in current global economic circumstances and as a principled foundation of international financial assistance to transitional societies and fragile states.

Gulland, Jackie * HU 1.48 **LC / 6.5**

Legal Capability And Legal Consciousness

Legal capability is the new buzz-word in addressing the problem of people’s failure to deal effectively with their ‘legal’ problems (eg see http://www.lawforlife.org.uk/). It has been defined as ‘the abilities that a person needs to deal effectively with law-related issues. These capabilities fall into three areas: knowledge, skills and attitudes’ (Jones 2009, p1). Research on legal capability and associated research on access to justice has highlighted very clearly the structural inequalities which are strongly associated with people’s experience of ‘legal’ problems and their propensity to take action about them (eg Balmer et al 2010). Such research has also emphasised the, perhaps obvious, fact that people in different social groups experience different kinds of legal problems and have access to different kinds of resources to deal with them. The concept of legal capability is valuable from a policy perspective, since it aims to identify barriers and, therefore solutions, to an apparently intractable problem. Proposed solutions to people’s lack of legal capability are therefore based on information, advice and education, solutions which are not cheap but are probably possible given the political will.

However the legal capability movement seems to give less weight to the insights from the legal consciousness literature which identifies much more complex questions of power, inequality and culture, which are less easily addressed by information and education.

Silbey (2005) is concerned that legal consciousness research in the US has ‘become domesticated within policy projects,’ p359. I would argue that legal consciousness has barely touched policy projects in the UK. This paper asks whether raising the profile of legal consciousness in the legal capability debate would lead only to the problem that Silbey identifies or whether aspects of it can be salvaged to enable the concept to keep its critical edge.

Balmer, N., Buck, A., Patel, A., Denvir, C. and Pleasence, P. (2010), *Knowledge, Capability and the Experience of Rights Problems*, London, Public Legal Education Network
Jones, M. (2009), *Legal Capability: discussion paper*, London, PLENET/Advice Services Alliance.
Silbey, S. (2005), 'After Legal Consciousness', *Annual Review of Law and Social Science*, 1, 323-368.

Halliday, Simon & Morgan, Bronwen * HU2.32 **LC / 3.9**
Legal Consciousness And Cultural Theory

In *The Commonplace of Law* Ewick and Silbey offer us 3 societal narratives of legality – (1) 'before the law', (2) 'against the law' and (3) 'with the law'. This celebrated typology of Ewick and Silbey has recently been supplemented by Fritzvold (2009). He suggests that an 'under the law' legal consciousness narrative should be added to the typology in order to capture a perception of law as 'an active agent of injustice'. In combination, then, we have 4 legal consciousness narratives. It is our suggestion in this paper that these 4 narratives can be subsumed within a wider analytical framework deriving from cultural anthropology – the grid-group cultural theory of Mary Douglas. The 4 cultural biases of cultural theory (hierarchist / fatalistic / individualistic / egalitarian) map nicely, we suggest, onto the 4 legal consciousness narrative described above:

Fatalism / Against the Law	Hierarchism / Before the Law
Individualism / With the Law	Egalitarianism / Under the Law

The application of GGCT to legal consciousness enriches its study, we suggest. It helps us see better the relation between Ewick and Silbey's account of 'against the law', and Fritzvold's account of 'under the law'. The association of fatalism with the 'against the law' narrative reminds us that this narrative is richer in Ewick and Silbey's account than its title 'against the law' suggests with its association notion of individual resistance. There is greater scope within a fatalistic account of legality for the acknowledgement of reluctant surrender to the power of law, as well acts of 'modest resistance', as Fritzvold puts it. In other words, the contrast between fatalism and egalitarianism helps capture the difference between a sense of disempowered resistance and a sense of empowered resistance. Whereas under fatalism, there is ultimately a reluctant surrender to the power of law, under egalitarianism, there is a wholesale rejection of, and assault upon law.

Harding, Rosie & Peel, Elizabeth * HU 1.48 **LC / 6.5**
Cause To Complain: Dementia, Healthcare Inequalities And Access To Justice

People with dementia and those who care for them are some of the most vulnerable, disadvantaged and powerless people in our society. This paper draws on empirical findings from the British Academy funded 'Duties to Care' project which explored the experiences of familial carers of people with dementia. The paper draws on qualitative data about complaints and failures of care from a mixed method questionnaire (181 respondents), four focus groups (15 participants) and 11 in-depth interviews with informal carers of people with dementia. We use these data to highlight experiences of inequality and the limitations of

access to justice for carers of people with dementia. Conceptually, this project draws on many of the insights and perspectives that have characterised legal consciousness studies. The empirical focus of the paper is the everyday experiences of carers when accessing health and social care services from professionals in those sectors. A large proportion of the project respondents said that they had experienced health and social care inequalities or events that gave them 'cause to complain', yet many either did not complain, or did complain but never reached a suitable resolution in their complaint. In this paper we will demonstrate how a legal consciousness analysis can help to explain these failures in access to justice for this vulnerable group. We argue that empirical socio-legal research has been made richer by legal consciousness, but will also highlight some of the limitations of legal consciousness in understanding these empirical findings about informal carers' experiences of the regulation of health and social care.

Harrison, James * HU2.30 **ES / 5.13**

"Human Rights In The International Economic (IEL) Sphere: In Search Of A Transformational Discourse"

This paper will argue that the *legal* discourse of human rights in the IEL sphere has been dominated by non-transformational arguments focused around the coherence/unity of the international legal system as a whole. It has therefore added very little to the important *substantive* debates where human rights discourse has the potential to play an important role; For instance, how countries should respond to issues of financial crisis and their duties to foreign investors versus their obligations to their own populations; how international trade law obligations should be devised/interpreted to take into account States' responses to crises in food security. The case of *Suez and Vivendi v Argentina* will be presented as an example of legalistic non-transformational human rights discourse in the international economic sphere.

But the paper will argue that a human rights perspective *potentially* offers an important perspective on how IEL rules and values can be 'transformed', particularly so as to provide appropriate protections for the most vulnerable and disadvantaged whose human rights are most likely to be violated in times of crisis. This will only happen to the extent that the vocabulary of human of human rights *law* is meaningfully connected to the events which human rights purport to describe. Koskenniemi puts it thus:

For the politicians, every situation [is] new, exceptional, crisis. The lawyer's task [is] to link it to what had happened previously, a case, a precedent, tell it as part of a history. The point of the law [is] to detach the particular from its particularity by linking it with narratives in which it receive[s] a generalizable meaning, and the politician [can] see what to do with it.[1]

The paper will conclude with some ideas for how transformational human rights 'narratives' can be created in the IEL sphere.

[1] Martti Koskenniemi, 'International Law in Europe: Between Tradition and Renewal', *European Journal of International Law* Vol. 16 no.1 (2005).

Hertogh, Marc * HU2.32 **LC / 3.9**

Analyzing The Legitimacy Of The Dutch Justice System: From Public Confidence To Legal Consciousness

In recent years, there has been an explosion of public opinion surveys dealing with the legitimacy of the justice system in many European countries. Most of these studies rely on a survey question asking about trust or confidence in legal institutions and legal authorities. Here, the principal focus is: How much do people support the justice system? Based on a review of the Dutch survey literature from the past decade, it will be argued that although studies like these generate important data about law and society, this conventional approach paints a distorted picture of the (perceived) legitimacy of the justice system. Therefore, this paper will suggest an alternative frame of analysis. Rather than focusing exclusively on

'public confidence', this paper focuses on 'legal consciousness': What are survey respondents trying to tell us about the role of the justice system in their everyday lives? Based on traditional public confidence figures, it appears that there is still solid support for the justice system in the Netherlands and there are no serious indications for legitimacy erosion. However, when we shift our focus from *what* to *how* people think about law, the survey evidence reveals quite a different picture. The legitimacy of the justice system is no longer self-evident, but has become structurally contested. Unlike the dominant image of the 1990s, contemporary Dutch legal culture is no longer characterized by 'solid support', but by 'sullen toleration' of the justice system. Based on these results, it will be concluded that the conventional way of employing survey evidence to 'measure' the legitimacy of the justice system needs adjustment. Building on a critical analysis of the legal consciousness literature, future studies should not only focus on 'How much do people support the justice system', but they should also look at 'How do people understand the justice system'.

Hirons, Sarah * HU 1.48 **LC / 5.5**

Deaf Perspectives On Access To Justice: Utilising A Legal Consciousness Framework

Research into Deaf participation in the UK legal system has revealed that signing Deaf persons lack equality with their hearing peers in terms of access to justice and citizenship (Emery, 2006). In order to facilitate equality of access to justice, a fundamental paradigm shift in the way 'deafness' is conceptualised by policy makers and service practitioners is crucial, placing the insights from Deaf community members at the heart of such research. An important first step in this process is identifying how Deaf persons experience the law; for in order to understand the differential use of legal advice and the legal system between Deaf and hearing people, it is first necessary to reveal what taken-for-granted assumptions about law Deaf people hold, thus developing our understanding of the place law holds in the lives of Deaf persons.

This paper explores different conceptions of law held by Deaf persons; how it is engaged with, played with, challenged and resisted, and unpicks some of the factors at play in the inherent power struggles that result from legal interactions. One of the key aims of this paper is to challenge the reductionist perspective that Deaf people are vulnerable people to whom the law 'happens'. The data gathered serves as a counter-narrative challenge to the hegemonic portrayal of Deaf persons as powerless and agentless within the context of legal interactions. Analysis is conducted through Ewick and Silbey's (1998) socio-legal triptych of persons seeing themselves as being 'before', 'with' or 'against' the law, whilst other key concepts from legal-consciousness literature, such as Cowan's (2004) concept of 'dignity', are applied to reveal and explore the cultural disconnect that occurs when Deaf persons interact with the hearing world of law.

Jakubowski, Andrzej * HU 2.42 **ACH / 6.12**

Human Rights, Cultural Heritage And The Limits Of State Immunity

The claims of war victims seeking redress from museums and other cultural institutions owned by states responsible for war crimes and other severe human rights violations have recently stirred the international community. The victims of Nazi war crimes, following the decisions of Italian and Greek courts granting them compensation from the Federal Republic of Germany, claimed the seizure of German cultural property situated abroad. Whose rights should prevail: the human rights of war and terror victims to fair compensation or collective rights of human communities to protect the integrity and enjoyment of their cultural patrimony?

The paper discusses such an axiological conflict on the grounds of public international law and human rights regimes. Recalling the ICJ's pending decision as to the limits of state immunity in cases of severe human rights violations (Germany v. Italy), it explores the existing regime of international law on immunity of states and their cultural property. Firstly, it investigates the issue of jurisdictional immunity of states in respect of responsibility for the acts committed against human dignity and/or in violation of *jus cogens*. Secondly, it deals

with international legal rules governing the immunity of property forming part of the cultural heritage of a state. Thirdly, the paper discusses the legality and the ethics of constraint measures undertaken against German cultural property in Italy, namely Villa Vigoni (Como), the German-Italian centre for cultural exchange and co-operation. It recalls that the protection and enjoyment of cultural heritage are currently perceived as important components of the promotion and protection of all human rights, including collective cultural rights. Finally, the paper advocates that any measures in respect of cultural property, also those driven by legitimate claims of the victims of severe human rights violations, shall take into account the possible implications of such actions on cultural rights of the communities concerned.

Layard, Antonia * HU 1.48 **LC / 5.5**
Planning & Creative Acts Of Resistance

This paper draws on interviews with residents and other actors in a neighbourhood in Stokes Croft in Bristol to consider the range of creative interventions used to promote bottom-up regeneration of the neighbourhood. It is situated within a growing appreciation of a political ideology of localism (implemented in part through the 2011 Localism Act), while noting the continuing significance of land use regulation at the national scale.

The empirical data this paper draws on reveals that some of the tactics and strategies of resistance to commercial repeat players employed within the neighbourhood are explicitly legal, as in the litigation in *Bibb v Bristol CC* (2011). Other actors, meanwhile, engage fairly conventionally with the planning process through petitions and lobbying, for example in a dispute over a Costa coffee development. Still others, however, including arguably the 'cultural gatekeepers' in the neighbourhood, ignore planning rules to redevelop sites as landowners or neighbours see fit undertaking creative acts of resistance.

These sources are considered through the lenses of legal consciousness, particularly as developed by Ewick and Silbey, Engel and Ehrlich, to determine how a deliberate emphasis on creativity, the arts and sustainability are being used to challenge conventional planning approaches to the neighbourhood. The paper focuses on the concept of hegemony, and counter-hegenomies, of legality, drawing particularly on the work of Scott and Weiss to consider how creative acts of resistance can create temporary and spatial openings in established legal practices.

The paper concludes by asking whether these creative and ostensibly non-legal interventions produce new understandings of and for planning law and practice. It asks whether such developments might ultimately challenge more established 'developer-led' tactics in planning law and whether 'the letter of the law' (and strategies 'inside the law') in Lobel's words, still matter.

MacLean, James * HU 2.42 **ACH / 5.12**
Institutional Architecture And Understandings Of Community

'Institutional architecture, whether judicial, parliamentary or ecclesiastical, is interesting for theorists as well as for architects because it combines and embodies two constitutive elements of architectural reality: on the one hand, institutional architecture has an instrumental use, as a place for the public gathering or housing of a particular type of historic and living community, a place where its adjudicative, legislative or priestly functions may be performed; on the other hand, institutional buildings have symbolic value, as visual representations of a particular factual reality. But we can only properly discuss the architecture and design of institutional buildings in the light of what takes place within them; that is, in light of the shape, activity and relationships of the different communities these various buildings house. In this sense, a building must be functional: its internal space must be defined, enclosed and arranged to express the relationships of the participants to one another and to facilitate their movements and functions. But what is the nature of the relation between the design and use of architectural space and the essential character of those relationships and functions? Does the design and use of architectural space within public

institutional buildings reflect a particular self-understanding and structuring of community that is replicated across institutions? Or is the relationship mutually constitutive, not merely reflective but also determinative? Using three related case studies, this paper explores the intriguing relationship between the design and use of architectural space within public institutional buildings and self-understandings of community as the prolegomenon to a wider investigation into the relation between architecture and community'.

McInerney, Thomas * HU 2.30 **ES / 3.12**
Implications Of The Financial Crisis For Multilateral Treaty Practice

It seems increasingly clear that the financial and economic crises now threatening to engulf the world will augur not just adjustments to the dominant Anglo-American model of finance capital but instead wholesale reconsideration of that model. While it remains unclear what that new model will be, the likelihood of its emergence is growing and the consequences for society are potentially significant. One overlooked aspect of this process of reconsidering these core issues pertains to its collateral effects and implications for areas outside of the fields of finance and banking regulation. This paper considers the implications of the crisis for regulatory concerns indirectly related to the sector at the heart of the crisis, namely multilateral agreements on matters pertaining to global public goods or humanitarian concerns. Unlike topics considered core to international economic law, such as trade, investment, or financial services regulation, the multilateral treaties pertaining to these other concerns—labor, environment, public health, human rights, arms control, transnational crime—have attributes that lead to different considerations in terms of state support and compliance. Employing the theory of international law compliance advanced by Guzman (2010), these treaties rely almost exclusively on reputation and to a much more limited degree on reciprocity or retaliation. This paper seeks to consider the impacts of the crisis on such multilateral treaties across three dimensions: substantive, formal, and financial. On the substantive level, the willingness of states to support rigorous regulatory standards in such areas may be affected as a result of more pressing priorities. On the formal level, the performance of multilateral institutions and states to address the crisis, raises important questions about the effectiveness of global governance systems. On the financial level, the huge drain of cash on governments to meet various costs of the crisis threaten to disrupt support for multilateral treaties in these areas. Due to time and space limitations, this paper will not be able to explore the implications in each field in depth but will seek to generate some preliminary conclusions that can stimulate discussion and debate.

Meidinger, Errol
No abstract

Meszaros, George * HU 2.30 **ES / 3.12**
Contested Reconceptualisations Of State Sovereignty Under Conditions Of Economic Crisis And Change

Despite increasingly contested and multiple readings of sovereignty, legal and political commentators still feel compelled to return to it as a fundamental category of analysis. Much of this analysis concerns the philosophical and empirical terms of sovereignty's ideal and real distribution within various institutional forms (parliamentary, judicial, European, supra-national organisations, etc). It also concerns its relationship to legal frameworks of action (human rights, international and environmental law, etc). Surprisingly, however, until recently systematic legal or conceptual debate on the economic constraints of sovereignty has been lacking. This paper argues that the global financial crisis of 2008 highlights the alarming fragility of sovereignty under conditions of crisis economics, as well as the importance and difficulty of theorising such events. Like martial law, it appears that state sovereignty (such as it exists) can be ceded with astounding speed, ease and little in the way of accountability in response to imperatives of maintaining "market confidence". To illustrate the problem, this paper discusses recent developments from the United Kingdom, Ireland, Spain, Greece, Iceland, the EU and US. Although each case has its peculiarities, in all instances the role of the state is being redefined - often at break-neck speed. Nowhere is that more evident than in the current EU debt crisis, a notable feature of which is the hierarchically imposed nature of most of the solutions proposed. In response to and against this sombre background,

however, other more popular versions of sovereignty are emerging, most notably extra-parliamentary/extra institutional forms. Although at present they appear largely inchoate (ranging from legalised protest to direct action), they do, nonetheless, offer a significant perspective or pole from which to analyse more formalised discussions about the character sovereignty in general and the fragility, legitimacy and accountability of state sovereignty under conditions of economic crisis in particular. Once again, this paper discusses recent examples from the EU, Iceland, Spain and Greece.

Platsas, * Antonios * HU 2.32 **LD / 4.12**
The Ideal Of Democratic Law

The Ideal of Democratic Law stands supreme in the modern discipline of law. Our laws, our ethos, our values and our beliefs are all children of democratic ideal which stands over and above many of our legal systems and legal traditions. The steady march of democracy continues all over the world. Democracy resists, persists and prevails. Law echoes the developments in the field of democracy. It listens to democracy. The forces of pluralism and liberalism crystallised through the eternal truths of natural law as well as through the mechanics of legal positivism define our ever-expanding modern democratic legal ethos. Unified is our perception of democracy. Ecumenical is our call for a democracy that spans across the world. Antropocentric is our understanding of democracy. A unified, ecunemical, anthropocentric perception of democratic law is one that stands then at the very core of modern legal analysis. Cognisant of the fact that freedom in law cannot exist without democracy, it is the intention of this contribution to establish that freedom in law comes hand in hand with democratic law and that democratic law is the offspring of freedom. Proceeding with the analysis and exemplification of the ideal of democratic law, the contribution asks whether the ideal to reach democratic law is in realistic terms an end in itself or a process in itself. The paper concludes as it started: law in its ideal form gives full recognition to the democratic ideal and all that this represents.

Schwartz, Priscilla * HU2.30 **ES / 4.10**
The Force Of International Economic Law And Africa: A Concept Of 'Foreign Direct Investment-Oriented Development

The paper examines the viability of applying foreign direct investment (FDI) as a development tool for LDC African States. It uses theoretical descriptions and conceptual analysis of theories of '*development*' and '*capital*', to establish FDI as forms of capital, capitalisation and growth processes that shape the concept of '*FDI-oriented development'* (FDI-OD). It then employs critical legal analysis of relevant multilateral economic agreements and institutional practice to illustrate an embedded FDI-OD approach toward Africa. We argue that a vital feature of the FDI-OD concept within IEL framework (distinguished from the theory), is the element of power in ownership of capital (and the means of production) that must be accorded international legal protection albeit for an uncertain 'object of development'. We aim, at this time of crises and change, to inform a new orientation in African governments towards FDI, urging them to pursue own economic interests through more legal than political strategies.

Key words
Developing countries, international economic law, international investment law, foreign direct investment, development theory, capital theory, multilateral economic institutions, African development, economic development, FDI-oriented development

Shelbourn, Carolyn * HU 2.42 **ACH / 7.11**
Digging The Dead: Regulation And Research, Some Ethical And Legal Questions

The question of the repatriation of human remains from museum collections is one which has been given considerable academic attention in recent years. Much less attention has been given to the legal controls over the excavation of these remains. These are a valuable research resource for archaeologists, contributing to a greater understanding of human evolution, the way our ancestors lived, their health and diet, and the development of funerary

rites and rituals, but it is extremely unlikely that the dead, or those who buried them, expected that these remains would be exhumed, and even less likely that they might be subjected to scientific investigation. The conflict between the desire of archaeologists to gain knowledge and the human desire to respect the dead, gives rise to both ethical and legal questions. The current law is a confused, and sometime conflicting, mixture of secular law, and church law, differs in England and Wales and in Scotland and is arguably not fit for the purpose of regulating burial archaeology.

Burial archaeology thus raises a number of ethical and legal questions, including:

- What constitutes good reason to disturb human remains?
- Should ancient human remains be treated differently to modern human remains?
- Should the same rules apply to Christian, non-Christian, and pre-Christian remains?
- Should the excavation of 'ancient' human remains be subjected to the same legal regime as the exhumation of more modern burials?
- How long should archaeologists be allowed to retain remains for investigation and what should happen to hose remains after examination has been completed?

This paper will examine the current law in this area and make suggestions for a new regulatory framework for burial archaeology.

Stewart, Ann * HU 2.30 **ES / 4.10**

Gender Justice In A Global Market

Recognition of women's human rights has long since been a focus for international activism This rights framework emerged against the backdrop of the profound economic, social and political changes associated with the collapse of the Soviet system and the triumph of neoliberal economic development, which has resulted in the contemporary forms of globalisation of the 21st century.

The subsequent importation of rights into development discourse provided a powerful new 'tool' for gender activists because of the normative centrality of equality and non-discrimination to the concept of rights. Equally, the engagement of human rights activists with those who work with the effects of economic and social processes has enriched the jurisprudence of rights.

However, the guarded optimism of the 1990s has been replaced in the 21st century with a growing realisation that feminism has lost its emancipatory edge. Rights may have addressed some deficits in recognition but they have not delivered a more equal world or significant benefits to women.

This paper considers the implications for feminist legal analysis of the rapidly changing relations of production and social reproduction worldwide associated with the development of global consumer based market economies. It concentrates on the contemporary challenges for feminist analysis in a period of relatively uncontained global crisis. What is needed is a 'structural turn' in feminist analysis, which is not reductionist, but which places it more firmly within political economy.

The recent revival of interest in the work of Karl Polanyi and, in particular, in the feminist rewriting of his approach provides a key point of reference. The paper assesses the extent to which such an approach can be put to work to address some contemporary issues relating to women's involvement in global markets and the related depletion in socially reproductive capital. More broadly, it also explores the extent to which it can operate to re align feminism with global gender justice.

Tan, Celine * HU2.30 **ES / 6.13**

Aiding Asymmetries: Interrogating The Problematic Relationship Between International Development Financing And International Financial Regulation

International public finance and international financial institutions have regained prominence in wake of the global financial crisis. The conscription of international public finance to crisis resolution and management in recurrent sovereign debt crises has highlighted the centrality of international public finance and its institutions to global economic regulation. In particular, the financial crisis has underscored the fundamental role of international public finance in managing the negative externalities caused by failures of international economic law and governance.

This paper interrogates the problematic relationship between international public finance and international economic law, in particular their shared responsibility for the distribution of international economic resources. It investigates the role played by international financial aid in mitigating the distributive dislocations resulting from international law's allocation of the risks and benefits of a globalized economy and examines how utilisation of aid finance in this manner has influenced the regulatory trajectories of international economic law.

The paper argues that the premise of international aid as a philanthropic exercise rather than as a mechanism for restitution and/or redistribution can stymie efforts to reform international economic law. This disembeds the policies and practices of international public finance from the conduct of international economic relations and inserts both recipients and financiers into relationships of power, significantly affecting their international economic engagements.

Drawing on the example of sovereign debt relief and international financial regulation, this paper argues that the deployment of development finance as a response to the regulatory crises of the global financial system has had an adverse effect on regulatory change, especially on efforts to reorient international financial law towards a more progressive social and economic agenda. It demonstrates how current practices of financial aid not only fail to address the systemic failings of the international financial system, they serve to sustain, if not entrench, existing asymmetries in international economic law, thereby exacerbating its negative distributive outcomes.

Ulph, Janet * HU 2.42 **ACH / 5.12**

Selling Our Heritage? Managing Collections In Museums In A Responsible And Sustainable Manner

Any process of deaccessioning and disposal must address two different policy concerns: the need to protect cultural objects for the benefit of existing members of the public and future generations and the need to support the sustainability of museums by allowing them sufficient flexibility in the management of their collections.

Museums, archives, libraries and other similar institutions exist to benefit the public. They are subject to ethical as well as legal constraints as a consequence. This paper involves a discussion of the legal and ethical guidance which should be put in place to assist museums and similar institutions in making decisions in relation to the transfer or sale of objects in their collections.

This paper will provide an analysis of the pattern of disposals from museum collections in the UK in recent years. Existing guidelines will be considered and possible future changes will be discussed. For example, if museum trustees wish to dispose of an object, are they legally obliged to try to sell the object for the best price to anyone, such as a private collector? Or are they able to transfer the object to another museum without receiving payment, but where the object continues to be available to the public? Do ethical considerations dictate that other museums should have the opportunity of first refusal? Should museums engage in a series of "due diligence" steps, such as taking advice not only in relation to the object itself but also in relation to the market? To what extent should museums take account of the associations between the object and its creator, the family of

the donor, and the circumstances under which an object was acquired? These and other questions relating to deaccessioning and disposal deserve further debate.

Voiculescu, Aurora * HU2.30 **ES / 5.13**
'Lost in Transition'? Human Rights and International Economic Law in Conversation

The fragmentation of international law and the problems that come with it are by now a commonplace in the field. This is a consequence, to a certain extent, of the variety, technicality and complexity of the issues covered, resulting in specialised and compartmentalised normative and regulatory fields. The points of contact and conflict between various domains of international law are already the subject of various interdisciplinary approaches. In this context, the connectivity between the international economic law (IEL) domain and the international human rights law (IHRL) deserves particular attention. One could say that the two have at least one common point, in that they advance a certain claim or aspiration to normative universality. Also, related to this claim, both discourses profess an active engagement with human fulfilment and development at individual as well as at global scale. One would therefore hope that the present multi-faceted global crisis would be a good opportunity for the two to enter dialogue and seek to complement each other.

The present article aims to examine the points of encounter between IEL and IHRL in the context of the contemporary global crisis that challenges international economics and human rights in complex ways. Dictionaries tell us that the word 'crisis' (from Greek *krisis*) refers to an event that is likely to lead to an unstable and dangerous situation. Sometimes, it denotes the unstable and dangerous situation itself. Crisis is also seen as an imperative process of transformation, whereby the old system cannot be maintained any longer. It therefore entails a period of transition. In this sense, we all know that we are in a crisis, but *are* we in transition? What role, if any, do the IEL and IHRL play in the process of addressing this crisis? If there is an established conversation between the two, what are the lines of their dialogue? Is there a process of transition towards a more sustainable polity and do human rights have any significant contribution to it? This article examines the signs of such a transition, by looking in particular at the signals emerging from the confluence of HR discourse and the IEL institutions.

Woodhead, Charlotte * HU2.42 **ACH / 7.11**
Nazi Era Claims For Cultural Objects And Their Place Within Cultural Property/Cultural Heritage Law

The UK's Spoliation Advisory Panel was established in 2000 to deal with claims against public collections for cultural objects of which their original owners were dispossessed during the Nazi Era.

This paper analyses the position that the work of this Panel occupies in the emerging fields of Cultural Property Law or Cultural Heritage Law. Various issues of definition will arise in this discussion, particularly when determining whether one is dealing with the treatment of tangible objects or the intangible attributes of these tangible, yet culturally important objects.

Is the cultural nature of the object in reality an irrelevance when dealing with such claims? Claimants are frequently able to identify cultural objects in museums more easily than other more mundane possessions that might have been seized at the same time because they are recognisable as unique cultural works. This factor may therefore explain why there is still the potential for claims for such objects. Is the issue therefore one relating to claims to property rather than to *cultural* property? However, do these objects have a symbolic importance to the claimants because of the values associated with art and other cultural objects? Have the objects, because of their tainted Nazi Era history acquired intangible facets differentiating them from other cultural objects?

This paper will address these questions and will analyse the purpose of the remedies provided by the Panel to determine whether these Nazi Era claims are principally about righting the wrongs of the past and returning property to its 'rightful owner' or whether they

form part of the wider issue of cultural heritage repatriation and restitution. It will critically evaluate whether there is any benefit in considering them as cultural heritage properly so-called and ensuring that principles relating to the protection and preservation of cultural heritage are addressed in decisions by the Panel.

End