RESEARCH ROUND UP

ISSUE ONE. JANUARY 2016 SCHOOL OF LAW

This newsletter celebrates some of the research activity taking place in the School of Law, Northumbria University, focussing on published outputs and conference papers. This first issue captures outputs from the first semester of the 2015/16 academic year.

Publications

Elaine Campbell and Victoria Gleason

Article: 'Cultivating 21st century law graduates creativity in the curriculum'
(2015) Journal of Commonwealth Law and Legal Education (Autumn)

Abstract:
Based on our experience of implementing two creative projects within a legal clinic setting, we explore the concept of creativity and the theoretical and market justifications for incorporating it within law curriculums. Today's graduates are entering a highly competitive job market and law curriculums need to evolve to ensure they cultivate the skills and attributes employers want. A 21st century law graduate needs more than just a working knowledge of the law and fostering students' creativity could help develop a range of non-academic skills. However, significantly, our projects suggest that students need to be encouraged to develop their creative potential. As academics we therefore have an important role to play in facilitating creativity and in producing modern, work-ready graduates. This paper should be of interest to anyone engaged in the teaching of law but also to any academics in other disciplines who are exploring ways of unleashing their students' creative potential.

Rebecca Mitchell

Article: 'Comparative standards of legal advice privilege for tax advisers and optimal reform proposals for English law'
(2015) 19 The International Journal of Evidence & Proof 246-269

Abstract:
The widely accepted rationale for legal advice privilege between client and lawyer applies equally to tax advisers giving their clients fiscal legal advice. This article undertakes a comprehensive comparative analysis of standards of legal advice privilege for tax advisers in the United States, New Zealand and Australia. It then reviews the current limited tax advisers' privilege found in Sched. 36 to the Finance Act 2008. Based on evaluation of these comparative models, optimal proposals are made for a tax advisers' privilege in English law.

Victoria Murray and Elaine Campbell

Article: 'Mind the Gap: Clinic and the Access to Justice Dilemma'
(2015) II (3) International Journal of Legal and Social Studies

Abstract:
In recent years, access to justice has deteriorated due to the global recession. In particular, in England and Wales substantial cuts to both civil and criminal legal aid provision were imposed as part of a series of austerity measures. This reduction in state funding has had devastating effects. This article examines whether there is an obligation on clinical legal education to fill the gap where there is inadequate legal service provision. Two clinicians will respectively argue whether law students, particularly through the medium of law clinics, should fill the void.

Dominic O'Brien and Sue Farran

Article: 'A new dawn for human rights in Fiji? Learning from comparative lessons'
(2015) 2(2) Journal of International and Comparative Law 227–257

Abstract:
New beginnings offer new opportunities but also present new challenges. The restoration of democracy in Fiji in 2014 was accompanied by a new and far reaching Constitution, which, among other things, promises much in the context of social, economic and cultural rights. These rights, which have sometimes been described as soft or "third generation" rights, give rise to resource demands, and in developing and least developed countries, governments may struggle to deliver on promises, or if they seek to do so may encounter certain difficulties. In this article we look across the globe at comparative examples of how different countries have met their international and national obligations to give effect to the right to health and healthcare, especially for children, and use this comparative exercise to consider the options open to Fiji in considering how to fulfil the expectations raised by an ambitious new Constitution.

Rebecca Moosavian

Article: 'A Just Balance or Just Imbalance? The Role of Metaphor in Misuse of Private Information'
(2015) Journal of Media Law (Special edition December 2015)

Abstract:
The article undertakes analysis of misuse of private information (MPI) caselaw informed by deconstruction and wider literary and critical theory. It specifically considers the operation of the 'balance' metaphor in MPI caselaw: What rhetorical effects might it foster, and how? What insights can the balance metaphor in MPI caselaw reveal about the nature of legal discourse more generally? The article starts by providing an account of select theorists who explore the subtle but vital role that metaphor plays in non-literary texts. Though metaphors have traditionally been viewed as poetic or literary devices, deconstruction indicates that they often exert a hidden influence in the texts of other disciplines such as philosophy and law, with inevitable implications for claims based on truth, objectivity and reason. This account ultimately highlights the fundamental - but often overlooked - role of metaphor in legal discourse. Following this discussion, the article proceeds to investigate the key 'balance' metaphor in misuse of private information judgments. It identifies and analyses two distinct ways in which the balance metaphor subtly benefits and supports judicial reasoning in these judgments. First, it creates an impression of certainty by drawing on connotations of the quantifiable and calculable. Second, it fosters the moral appeal of a decision by alluding to notions of justice and equilibrium. In doing so, the balance metaphor marginalises the non-rational, inexpressible, even mysterious, aspects of judicial rights balancing.

Michael Stockdale

Case note: 'Court of Appeal: Revised Guidance on Good Character Directions R v Hunter, Saruwu, Johnstone, Walker and Londsdale [2015] EWCA Crim 631'
[2015] 79 Journal of Criminal Law 317.

Abstract:
This case note concerns the Court of Appeal's decision in R. v Hunter, Saruwu, Johnstone, Walker and Londsdale. This important decision clarifies the nature of those circumstances in which the accused is entitled to a good character direction and those in which the court possesses discretion to give such a direction/a modified direction.

Tony Storey

Case note: 'Houseguests, Trespassers and the Use of Reasonable Force in Ejectment'
(2015) 79 Journal of Criminal Law

Abstract:
This case note provides commentary on the Court of Appeal judgment in *R v Day* [2015] EWCA Crim 1646, in which the court held that the common law defence of "ejectment" was available to those in lawful occupation of property, such as houseguests, as well as those with proprietary rights in the property.

Ray Arthur

Article: 'Troubling times for young people and families with troubles – responding to truancy, rioting and families struggling with adversity'
(2015) 24(3) Social & Legal Studies 443-464.

Abstract:
In the aftermath of the riots of August 2011 in London and other parts of England, the UK Prime Minister, David Cameron, suggested that parents of children who regularly truant need to be confronted and challenged and has proposed penalising parents of truanting children by cutting their benefits. This article considers whether withholding benefits from families is an effective means of tackling antisocial behaviour or does this plan represent an ideological view of welfare recipients as being irresponsible and a commitment to the penalization of the socially excluded? This article will consider whether the August 2011 riots created the environment for justifying cuts in public spending by shifting responsibility for crime and crime control from the criminal justice system onto vulnerable young people and low-income families.

Gita Gill

Article: 'Environmental justice in India: the national green tribunal and expert members'
(2015) Transnational Environmental Law 1-31

Abstract:
This article argues that the involvement of technical experts in decision making promotes better environmental results while simultaneously recognizing the uncertainty in science. India's record as a progressive jurisdiction in environmental matters through its proactive judiciary is internationally recognized. The neoteric National Green Tribunal of India (NGT) – officially described as a 'specialised body equipped with necessary expertise to handle environmental disputes involving multi-disciplinary issues' – is a forum which offers greater plurality for environmental justice. The NGT, in exercising wide powers, is staffed by judicial and technical expert members who decide

cases in an open forum. The experts are ‘central’, rather than ‘marginal’, to the NGT’s decision-making process.

This article draws on political science theoretical insights developed by Lorna Schrefler and Peter Haas to analyze the role of scientific experts as decision makers within the NGT. Unprecedented interview access provides data that grants an insight into the internal decision-making processes of the five benches of the NGT. Reported cases, supported by additional comments of bench members, illustrate the wider policy impact of scientific knowledge and its contribution to the NGT’s decision-making process.

Sue Farran

Paper in edited conference collection: 'Customs, laws and traditions: bright lines or grey areas' in A. Albarian and O. Moreteau (eds) *Droit Compare et ... Comparative Law and ..: Actes de la conference annuelle de Juris Diversitas,* Presses Universitaires d'Aix-Marseilles, 2015, 65-74

Abstract:
Focusing on the central topic of land, this paper explores the interaction between custom and introduced law in the Pacific island country of Vanuatu which has a plural legal system as a result of a mixed but not blended historical past, in which it is today possible to make internal comparisons between different forms of customary land tenure, which may only be comprehensible if the lawyer is prepared to adopt the techniques of the anthropologist and others, or at least to appreciate that legal positivism is unlikely to provide the answers. New laws passed in 2013 have tried to strengthen the role of custom in the management of land held under customary forms of tenure. This paper considers the challenges a national law faces in trying to bring a degree of uniformity to heterogeneous customary laws.

Joanne Clough & Gillian W Shorter

Article: ‘Evaluating the effectiveness of problem based learning as a method of engaging year one law students’ (2015) 49(3) The Law Teacher 227

Abstract:
The focus of this paper is a critical assessment of the effectiveness of a problem-based learning exercise introduced to increase student engagement within a year one, core law degree module at Northumbria University.

Problem-based learning as a teaching method was developed by medical schools in the US and Canada in the 1960s and 1970s and has steadily grown in popularity, particularly within law schools. Presenting students with a reality-based problem, and requiring students to resolve that problem in teams, should mean that students find an increased motivation to learn. This paper explores the rationale behind the use of problem-based learning as a means of engaging students and will outline how the project was designed and implemented in the curriculum. Although both students and lecturers verbally reported an improvement in confidence and an increase in engagement, formal student perceptions were obtained through the use of an evaluation questionnaire. The paper details a full breakdown of the survey, which covers not only issues relating to student engagement but also student perceptions of group work and skills acquired.

Rhona Smith with M. Borge-Macleod and C. Bakke-Fischenshou

Book chapter: 'Capacity Building Approach for Human Rights Education in China: Nordic Experiences and Perspectives' in DD. Chen and T. Chen (eds) *International Engagement in China's Human Rights,* Routledge, 2015 10-30

Abstract:
If human rights education is a success in China, then one in five of the world's population will be cognisant with their entitlement in terms of international human rights. However, in China, like most other countries, human rights education is not yet a reality although substantial progress has been made towards this objective. This paper focuses on the activities of Nordic academic institutions to establish, increase and then enhance the capacity of Chinese academics and practitioners in this respect. In these endeavours, there is evidence of measurable success. This paper will begin by tracing the evolution of human rights education at the international level through to the present World Programme of Human Rights Education and the UN Declaration on Human Rights Education and Training. Contemporaneously, the growing public recognition of human rights education by the Chinese government will be mapped. This is the context which informs much of the work of the Nordic institutions in China. Although the field is highly politicized, by linking human rights to the more technical aspects of capacity building and teaching methodology, as well as linking up with global (and not purely "Western") movements in Human Rights Education, progress is being made. The theory and practicalities of this capacity building approach will thus be explained before a more detailed exposition of the specificities of realising such an approach within China. Challenges and achievements will be considered with hitherto unpublished empirical data presented to substantiate the progress made. At each stage of the paper, relevant Chinese and English language literature will be referenced. The paper concludes with some comments on lessons for future human rights capacity building activities in China and beyond.

Charlotte Emmett and John Gration

Article: 'Care home placement and human rights'
(2016) 66 (642) Br J Gen Pract 15 -15 (letter).

Abstract:
In their editorial examining the pros and cons of different places of living for older people, Bally and Jung considered who enters residential and nursing (care) homes and how care in these settings might be improved. Research cited drew attention to factors that have a bearing on quality of life and respecting people's wishes. GPs should be able to identify those who may benefit from a care home, but should consider the person's cognitive abilities, perceptions, and preferences. They noted the importance of advance care planning, integrated care models, and individualised care. We feel that some of these matters should also be considered from a legal and human rights perspective, as care home placements will often have a profound and enduring impact on older people's liberty, security, and family life — which are fundamental human rights.

Carol Boothby and Cath Sylvester

Article: 'Getting the fish to see the water: an investigation into students' perceptions of learning writing skills in academic modules and in a final year real client legal clinic module'
(2015) The Law Teacher (online) qhttp://www.tandfonline.com/eprint/iqPFPxdCAMWACR82Ke4f/full

Abstract:
In 2010 Tonya Kowalski described the problems faced by students entering clinic for the first time as a one step backward, two step forward phenomenon. Students appeared initially unable to transfer skills and knowledge learned in earlier academic and other settings to clinic but once they were immersed in clinic their skills development improved rapidly. Clinic is often presented as a

“bridge to practice” and delivered as the capstone to more traditional elements of an undergraduate degree. However, even with an integrated approach like that at Northumbria Law School, a seamless transition to the skills required for clinic is challenging and gives rise to a constant review of how best to prepare students. Our research focused on legal writing and used focus groups to find out how students participating in the year four clinic at Northumbria University perceived and adapted their previous experiences of writing for use in the clinical context. It identifies strategies which should be considered for integration into non-clinical modules and in the clinical module itself to facilitate this transition from academic orientated writing to practice orientated writing.

Jonathan Bainbridge and Clare Sandford-Couch

Article: 'Educating towards ethical lawyers: a progress report.'
(2015) 49(3) The Law Teacher 336-352

Abstract:
In 2010 in a conference paper on legal education and ethics, we addressed the proposition that exempting degrees offer a unique opportunity to inculcate students with the importance of ethical considerations throughout their legal education, incorporating such considerations in an integrated academic and vocational context. The paper included a detailed analysis of the practicalities of incorporating professional legal ethics into the undergraduate exempting law degree at Northumbria University. Since 2010, there has been relatively little written from a UK perspective on incorporating teaching of legal ethics at the undergraduate stage. Here we review our progress made towards achieving that goal. The article reveals that the results have been limited; we explore the reasons for this, and consider what alternative course(s) might have been followed. As such, our experiences may offer guidance for those intending to engage with the Legal Education and Training Review (LETR) recommendations to incorporate some consideration of ethics into legal education.

Rhona Smith

Collection of conference papers: ‘Older Children and Individual Communications – legal capacity, family ties and conflicting priorities’ in F.Niang and F Bernard (eds) *Promotion et defense des droits de l’enfant : Enjeux theoriques, practiques et philosophiques*, Global Studies Institute, Geneva, 2015, 85-91

Abstract:
This short invited contribution considers some of the implications of the entry into force of the Optional Protocol to the UN Convention on the Rights of the Child on communications. It discusses some issues concerning capacity for older children as well as noting possible tensions in children on the age of adulthood engaging with this.

Tony Storey

Comment: 'Non-fatal Offences and Law Reform'
(2015) 11(1) A-Level Law Review 24–25

Abstract:
In November 2014, the Law Commission (LC) published a Scoping Consultation Paper entitled ‘Reform of Offences Against the Person’ (Consultation Paper No 217). It is described as being only ‘a first step’ towards potential reform of this area of criminal law. The LC intend to publish a ‘scoping report’ in the spring or summer of 2015, once responses to the Scoping Consultation Paper have been analysed. The LC suggests that any future reform should have three main aims:

(1) The creation of a ‘structured hierarchy of offences’; (2) The modernisation and simplification of the language by which these offences are defined; (3) Tackling the ‘complex and controversial issues’ surrounding disease transmission. This article will consider the first two of those.

Mohamed Badar and Rod Rastan

Book Chapter: ‘Article 11 Jurisdiction Ratione Temporis’ in Otto Triffterer and Kai Ambos (eds.) *Commentary on the Rome Statute of the International Criminal Court: Observers’ Notes, Article by Article* 3rd edn. Munich, C.H. Beck 2015

Abstract:
This is a commentary on Article 11 of the Rome Statute of the International Criminal Court (Jurisdiction ratione temporis). The temporal parameters of the Court’s jurisdiction are restricted to crimes committed after its entry into force, which occurred on 1 July 2002. However, in terms of crimes that pre-date the Statute’s entry into force, but whose occurrence continues past 1 July 2002, the authors draw a fine line between two different categories of ‘continuing crimes’: (a) conduct where the actus reus is partly completed in the past, the effects of which continue to this day; (b) and conduct that constitutes an ongoing course of criminal activity, all of whose material elements continue to occur on a daily basis. The authors also examined the notion of ‘continuing crimes’ under human rights instruments particularly enforced or involuntary disappearances of persons as a serious violation of human rights and as a crime against humanity under the Rome Statute. Setting aside, the question of continuing crimes, the authors noted that international courts and tribunals have accepted the admission of evidence which pre-dates the applicable temporal jurisdiction for contextual purpose.

Rhona Smith and Guimei Bai

Article: 'Higher Education in Human Rights within China—A Ten-year Review of the Peking University Model’
(2015) 2 Asian Journal of Legal Education 81-99

Abstract:
Human rights education has been a cornerstone of the international human rights system for many years. Further impetus has been added with the UN Decade for human rights education (1995–2004) and now the ongoing World Programme for Human Rights Education. Realising human rights education will mean people everywhere understand their rights and freedoms and those in authority understand their duties to protect, respect and fulfil human rights responsibilities accepted by governments. Securing human rights education at the tertiary/higher/university level is a key component of this as university graduates often progress to higher level influential careers. This article examines the contribution made towards the goals of human rights education by the first master level human rights programme in China: the programme is offered at Peking University under the auspices of the Research Centre for Human Rights and Humanitarian Law in cooperation with the Swedish Raoul Wallenberg Institute of Human Rights and Humanitarian Law. Empirical data from the initial ten years of the program has been analysed to determine the impact the programme had and has on the life and careers of graduates. The evidence suggests a real, albeit modest, contribution to human rights education within China and beyond, with human rights being omnipresent in societal interactions of graduates and even influencing some careers and work decisions. Greater influence can be anticipated as the graduates progress further in their chosen careers. It is argued that the Peking University model demonstrates the potential for relatively swift and effective cultural change: an evolving system of embedded human rights education which respects the conditions within the Chinese education system.

Conall Mallory and Stuart Wallace

Article: 'The 'deterrent argument' and the responsibility to protect'
(2015) 19(8) The International Journal of Human Rights, 1213-1226.

Abstract:
States have presented a range of arguments against the expansion of human rights law into the extra-territorial military sphere. This article focuses on one argument in particular - the 'deterrent argument'. This is the idea that if states are expected to uphold human rights obligations during extra-territorial military operations, it will deter them from contributing troops to United Nations (UN) peace support missions, which would naturally include those sanctioned under the responsibility to protect (R2P) doctrine. This article considers how the European Court of Human Rights' jurisprudence could actually apply to such military operations in practice and whether states should logically be deterred from participating in such missions. We argue that the involvement of the UN and the types of missions undertaken under R2P should not deter states from participation, but rather that UN involvement neutralises or mitigates many of the negative issues states fear in this area, reducing the likelihood of human rights liability for states.

Adam Jackson and Tony Storey

Article: 'Reforming Offences Against the Person: In Defence of ‘Moderate’ Constructivism'
(2015) 79 Journal of Criminal Law 437-447

Abstract:
Whilst the criminal law typically favours the principle of correspondence between actus reus and mens rea, the current law governing offences against the person takes an approach which may be more accurately defined as "moderate' constructivism. This approach is based on consideration of both the defendant's mens rea and the degree of harm caused by the defendant's actions. The recent Law Commission Scoping Consultation Paper Reform of Offences against the Person appears to prefer reform based on a move towards the principle of correspondence. This article discusses the theoretical rationale for both the adoption of the correspondence principle and the retention of a moderate constructivist approach in the context of offences against the person. Consideration is given to the fairness of attributing liability to a defendant for the unforeseen consequences of her actions and whether such an approach can be justified by the change in D's normative position based on her decision to use violence. Consideration is also given to the concept of fair labelling and to potential lacunae that may be created as a result of a move towards a set of offences based on the correspondence principle.

Julian C. Hughes, Marie Poole, Stephen J. Louw, Helen Greener, **Charlotte Emmett**

Article: 'Residence Capacity its Nature and Assessment'
(2015) 21(5) British Journal of Psych Advances 307-312

Abstract:
This article discusses the importance of residence capacity – an individual’s mental capacity to decide where they should live – and suggests how it should be assessed. People with dementia or intellectual disabilities, as well as those with other mental disorders, are sometimes required to make this decision. Assessments of capacity must be conducted with considerable care, given the implications for the individual and for their human rights. The assessment must be objective and functional: the assessor must be able specifically to demonstrate a lack of decision-making ability. Yet assessments of capacity still require evaluative decisions to be made. We suggest some basic information that should be conveyed to the person faced by the prospect of a change of residence where there is a doubt about capacity.

Mohamed Badar and S Porro

Book Chapter: 'Rethinking the Mental Elements in the Jurisprudence of the ICC' in C. Stahn (ed.) *The Law and Practice of the International Criminal Court,* Oxford: Oxford University Press, Oxford, 2015, 649-668

Abstract:
For the first time in the history of international criminal law Article 30 of the Rome Statute of the International Criminal Court (ICC Statute) has set out a definition of the mental element normally triggering criminal responsibility for core international crimes. This norm, which is applicable and binding within the jurisdiction of the ICC, prescribes in its paragraph (1) that: 1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.
Although at first glance this formulation could appear to refer to two different and cumulative types of mental element ('intent and knowledge'), one belonging to the aspect of will and the other to the sphere of cognition, it is now widely accepted that the text is meant to point to volition and awareness as both being necessary components of the (one) mental element of intent. In their contribution the authors examined the following controversial issues:
- The (quest for) balance between intent, specificity, and proportionality;
- The default rule of Article 30 ICC Statute: A groundbreaking step in the history of ICL or the source of irresolvable interpretative uncertainties?;
- The requirement of awareness that the result 'will occur in the ordinary course of events'; its (complex) relation with the area of conscious risk-taking;
- The quest for liability for more serious consequences?
- The requirement of 'awareness that a circumstance exists'; the doctrine of willful blindness;
- The (controversial) meaning of the opening clause 'Unless otherwise provided';
- Intent, attack against civilians, and collateral damage

The authors concluded that the regulation of the mental elements in the ICC Statute appears to be consistent with a narrow interpretation of the international humanitarian law cardinal principles of distinction and of proportionality. However, the exclusion of dolus eventualis from the realm of Article 30 ICC Statute raises some questions. What should the ICC do with those actors who did not want to kill the people they forcibly deported, but knew there was such a risk? What should the ICC do with their claim that they did not want to kill, but merely threaten the victims to leave their municipality? If it cannot be proven that the accused either intended to cause the death of the victims or knew that death was almost inevitable, there can be no liability for dolus directus of the first degree or dolus directus of the second degree. In such cases, and according to the very strict interpretation of dolus by recent decisions and judgments rendered by the ICC, there can be no liability and the perpetrators should be acquitted.

Miranda Forsyth and **Sue Farran**

Book: *Weaving Intellectual Property Policy in Small Island Developing States*
Intersentia, Cambridge, September 2015

Abstract:
This book considers the challenges of creating appropriate intellectual property frameworks in developing economies. It focuses on the small island states of the Pacific region to explore and illustrate the many dilemmas, drawing together considerations of policy, theories of development and law, and empirical studies to suggest solutions and possible strategies.

Rhona Smith

Book: *Textbook on International Human Rights* 7th ed, OUP, Oxford, December 2015

Abstract:
This book provides clear and broad coverage of the primary systems of human rights protection and the key substantive rights. It is written with newcomers in mind and the book's concise and direct approach enables students with no legal background to develop a good understanding. This book serves as an effective starting point for future research, with references to further reading, key cases, and web links at the end of each chapter. It is accompanied by an Online Resource Centre which contains links to the full cases referenced at the end of each chapter as well as a list of annotated web links to aid further study.

Chris Ashford

Book chapter: 'The Needs of the Legal Profession and the Liberal Law School: (Re)negotiating Boundaries' in **Chris Ashford,** Nigel Duncan, and Jessica Guth (eds) *Perspectives on Legal Education: Contemporary Responses to the Lord Upjohn Lectures*, Routledge, Abingdon (November 2015), 2016, 177-187

Abstract:
WhenSir Frederick Lawton died in 2001, one obituary described him as a ‘no-nonsense judge’. As Chair of the 1977 Criminal Law Revision Committee he proposed a series of radical reforms relating to the law of sexual offences. He was also a strong voice of the right, criticising sociologists as “compassionate fools” and advocating “short, sharp, shocks” for criminals. When he delivered in the 1980 Lord Upjohn Lecture at the London School of Economics, he was a Lord Justice of Appeal and Chairman of the Advisory Committee on Legal Education, and he drew and combined what might be regarded as a right of centre political perspective with his radical traditions.

In 1980, Lawton noted the transformation in legal education that had occurred since his own legal education experience, which had consisted of twenty months of legal study and lacked any practical training. Lawton’s criticisms of legal education and education more broadly remain familiar. Lawton criticised some A-levels as being worth less than others, arguing that Geography and Music were of lesser value to a law student, and less rigorous than French and Latin. He bemoaned the lack of adequate written and oral skills, the lack of focus on foreign languages, and criticised academia as out of touch with the profession.

At the heart of Lawton’s critique was an assumption that the Law School was at the service of the legal profession, and this view has remained at odds with that of Liberal Law School proponents. Extensive academic literature has been generated by each side of this debate, but this chapter seeks to explore the fluctuating and nebulous boundaries that have been and continue to be (re)negotiated between the two sides. The chapter will argue that the traditional stage of negotiation is being outpaced by a changing regulatory and economic context which may circumvent these traditional boundary (re)negotiations.

Claire Bessant

Article: 'The application of Directive 95/46/EC and the Data Protection Act 1998 when an individual posts photographs of other individuals online'
(2015) 6(2) European Journal of Law and Technology

Abstract:
It has long been the tradition in the United Kingdom for parents to take photographs at school events. Such photographs often capture images of several children. When parental photographs

were stored in family albums this was not perceived to be a problem. However, with the internet increasingly being used to share photographs, questions have been raised about whether schools should restrict parental photography or impose conditions upon online dissemination of such photographs, in order to protect children's personal data.

Unfortunately, as the UK data protection regulator (the Information Commissioner) recognised in 2010 it is not entirely clear how data protection legislation applies to individuals who are posting third party personal information online. The first issue that this article seeks to explore, therefore, is how European and domestic regulators have interpreted relevant data protection legislation. It considers the extent to which parents who share photographs of third parties online may be caught by the obligations such legislation imposes.

The European Commission have acknowledged that, with the development of new technologies, current European Union data protection legislation may no longer afford effective protection to individuals' personal information. This article, therefore, also explores the potential impact of the proposed data protection regulation both for individuals sharing third party information online, and for individuals whose information is shared.

Adam Jackson

Case Note:
'Foreign criminal convictions and character directions'. A case comment on the decision of the Court of Appeal (Criminal Division) in R. v Benjamin (Mark Edward) [2015] EWCA Crim 1377 (CA (Crim Div)).
(2015) 79(6) Journal of Criminal Law. Crim 388-390

Abstract:
The case concerned the relevance of a foreign criminal conviction (from the criminal court in Nice, France), proven by a certificate of conviction and the impact of that conviction on the right of the defendant to a "good character" direction. Consideration is given to the nature of good character directions in the context of foreign criminal convictions and the mechanism by which such conviction information is shared.

Carol Boothby

Article: 'Pigs are not fattened by being weighed' - so why assess clinic- and can we defend our methods?
(2016) 23(1) International Journal of Clinical Legal Education, 137-155

Abstract;
For those clinics that assess their students, there can be a panoply of issues to consider. The nature of clinic means that the experience of students is non- standardised, not least in terms of workload. Is it appropriate to assess such an experience? How can clinical teachers be sure that their assessment methods are valid and reliable?

Conference Papers

Elaine Campbell

'Should I share my journal entry with you? An ethical dilemma faced by an experiential educator'
At the British Autoethnography Conference, Aberdeen, 30-31 October 2015

Abstract:
On the morning of Monday 27th October 2014 I walked into my office, took my coat off, sat down at my desk and wrote 407 words in my journal. My pen worked quickly. The words flowed. I wrote how I felt about my students, the legal work I was overseeing, and the committed intensity (Ellis, 2011) of academic life. I closed the journal, and got on with the rest of my day.
Should I share those words with you? My paper draws out these tensions in an attempt to reach a conclusion. This will culminate in a decision, live at the end of the paper, to share the entry with the audience or to keep the journal closed.

Rhona Smith

' UN Special procedures: System puppets or user's saviours?'
At 'The Global Challenge of Human Rights Integration-Towards a Users' Perspective', Ghent 9-11 December 2015.

Abstract:
UN Special Procedures have been termed the 'crown jewel' in the UN system, 'the essential cornerstone of United Nations efforts to promote and protect human rights' and 'the public face of the UN human rights system'. They certainly occupy a unique position. Appointed by the UN Human Rights Council, each mandate reports annually to the Council and/or the General Assembly. The terms of the mandate may dictate the actual work undertaken, or leave it open to the appointee.. The mandates to which they are appointed are not dependent on treaties for their authority, but rather derive from the UN Charter. Unsurprisingly, a range of users can and do engage with the special procedures but questions still arise as to whether they are system puppets or some (or all) of their users' saviours? To determine which, the system of special procedures will first be outlined and key literature identified, analysing the reality of their autonomy. A broader discussion of engagement of special procedures with different users demonstrates the support available to the UN and beyond through these mechanisms.

Clare Sandford-Couch

'Law as a Subject: assessing the impact on year 1 undergraduate law students of studying – or not studying - Law at A Level'
At the Society of Legal Scholars annual conference September 2015 (University of York)

Abstract:
Each academic year, many lecturers ask the new first year whether students have studied Law at A Level, and are often aware that those students with no experience of Law at A Level may perceive themselves as being at a disadvantage. The paper outlines a qualitative research project at Northumbria University which aims to explore, amongst other questions about law students and A Level Law, whether that is in fact the case.
The paper sets out the aims of the project and the parameters of the research before analysing the results. As well as addressing what percentage of students now enter the undergraduate law degree at Northumbria having taken Law as a subject at A Level, it also attempts to assess how those students with A Level Law perform in year one assessments, as against overall year average for the cohort. The paper also explores possible benefits which may develop from this research and how having access to this sort of data may be used to improve the student experience.

Victoria Murray

'Law Clinics and the Legal Services Deficit – Filling the Gap'
At the Law Christmas Conference: December 10 2015, Northumbria University

Abstract:
This paper argued that social justice must be repositioned at the forefront of clinical activities. It evaluated the position of social justice within the clinical activity, the compelling case for re-evaluating how clinic supports social justice and how we can create a stronger framework for advancing social justice.

Nicola Wake and Natalie Wortley
'Primary victims and predominant aggressors; the inadequacy of extreme provocation and loss of control'
At Queen MaryUniversity of London Fighting Femicide conference, London , November 2015

Abstract:
The paper focused upon a comparison between the loss of control defence and the extreme provocation defence in NSW. The analysis focused upon the mutual aims within both jurisdictions to increase the availability of the respective partial defence to the primary victim in intimate partner relationships, in addition to preventing the availability of the partial defence to the predominant aggressor in femicide cases. The FVDRC defines the primary victim as an individual who experiences 'ongoing coercive and controlling behaviour from their intimate partner'. The predominant aggressor is the principal aggressor who exhibits 'a pattern of violence to exercise coercive control'. The paper highlights the extent to which ideologically constructed narratives around 'typical responses' to provocative conduct continue to disadvantage women. conference
The paper focused upon a comparison between the loss of control defence and the extreme provocation defence in NSW. The analysis focused upon the mutual aims within both jurisdictions to increase the availability of the respective partial defence to the primary victim in intimate partner relationships, in addition to preventing the availability of the partial defence to the predominant aggressor in femicide cases. The FVDRC defines the primary victim as an individual who experiences 'ongoing coercive and controlling behaviour from their intimate partner'. The predominant aggressor is the principal aggressor who exhibits 'a pattern of violence to exercise coercive control'. The paper highlights the extent to which ideologically constructed narratives around 'typical responses' to provocative conduct continue to disadvantage women.

Elaine Campbell

"Colleague? Mentor? Friend? An autoethnographic explanation of how student engagement through experiential education enables a different narrative of good teacherhood"
At 'Negotiating Recent Reform in Higher Education: the Question of "Student Engagement"', Newcastle, 25th Sept 2015

Abstract:
Autoethnography is a research method which uses the researcher's personal experience as data to describe, analyse and understand cultural experience (Ellis & Bochner, 2000; Spry, 2001; Adams, Holman Jones & Ellis, 2015). It begins with a personal story (Walls, 2008) and allows for active self-reflection as a lens through which relational and emotional life (Adams, Holman Jones & Ellis, 2015) can be interpreted.

This paper draws on autoethnographic vignettes and reflexive journal entries in order to provide an account of the ways in which experiential education engages students in a richer and emotionally deeper manner. The story is located in the Student Law Office at Northumbria University, where law students are tasked with providing free legal advice to members of the public under the supervision of solicitors who are also senior lecturers. Here, the term "teacher" does not

satisfactorily describe the role of the clinical supervisor. Instead, “colleague”, “mentor” and “friend” are all words that accord more readily with the relational reciprocity inherent in working towards the common goal of advising a client.

In this paper, I use autoethnography to unpack my role as a supervisor in the Student Law Office and explore my belief that experiential teaching allows students to be engaged on a different – academically and emotionally – level. Through this, I aim to contribute to the discussion on the nature of good “teacherhood” and encourage researchers to consider different ways of thinking about student engagement.

Rebecca Moosavion

'Power/Knowledge Dynamics in the Iraq Affair**'**
At the Iraq: Legal-Political Legacies conference, January 2016, Northumbria University

Abstract:
This paper draws upon and analyses material from the Chilcot Report, including transcripts currently in the public domain. It develops themes from my earlier research on the Iraq affair by investigating crucial power/knowledge dynamics in the Iraq affair and its aftermath. Who speaks authoritatively? What is the basis of such authority? In what way might it engender power? Previous research revealed that these issues were operative in prime ministerial power vis-a-vis Cabinet and Parliament, and in legal challenges to prerogative power. This paper investigates their continuing relevance in light of the background wrangling, the contentious ‘maxwellisation’ process and resulting delays to the Chilcot Inquiry

David McGrogan and Conall Mallory

'A Distillation: The Iraq War and its Aftermath'
At the Iraq: Legal-Political Legacies conference, January 2016, Northumbria University

Abstract:
The invasion of Iraq and its aftermath were indisputably of seismic political significance - whether in the UK or in the international sphere. However, efforts to ascribe the event with the quality of a paradigm-shift in terms of law are doomed to failure; the consequences have been too complex and diffuse.

Nonetheless, politically seismic events cannot but have effects on the development of the law. And the invasion’s extremely toxic political legacy has clearly affected the nature of legal developments since. This paper identifies two examples of this in international law. The first of these is the death of the so-called “pre-emptive” strike doctrine in the jus ad bellum, which, while it did not pertain directly to the use of force in Iraq, was a significant casualty of the invasion due to its guilt-by-association with the now-defunct Bush Doctrine. The second of these is the expansion of the extraterritorial application of human rights law by the European Court of Human Rights. This expansion, or perhaps more appropriately the clarification of past restrictions, was as much a political response to the invasion as a logical redefinition of the Court’s jurisprudence on its own jurisdiction.

The Iraq episode teaches us that political and legal developments are often inextricably linked, and that the tenor of public debate - whether domestically or internationally - can strongly influence the manner in which the law changes. While it is easy for those engaged in the academic study of the law to focus primarily on the legal system and its complexity, the consequences of the Iraq debacle remind us that the system exists in an environment of politics, and that it can therefore be shaped by individuals.

Kevin Kerrigan and Natalie Wortley

'Unfitness to plead – the fall (and rise?) of mens rea'
At the Society of Legal Scholars Annual Conference, York, September 2015

Abstract:
When a person is found unfit to plead, the court will usually hold a 'trial of the facts' (s.4A(2) Criminal Procedure (Insanity) Act 1964). The leading case of R v Antoine [2000] 1 AC 340 established that the mental element of an offence is not relevant at the 'trial of the facts', so that the Crown only has to prove the conduct associated with the offence. This has been subject to extensive academic and professional criticism, including by the Law Commission.

In the recent case of R v Wells [2015] EWCA Crim 2, the Court of Appeal applied the Antoine approach but noted the Law Commission's critique and recognised that the current rules generate a number of problems. The Court emphasised the flexibility in the current law and intriguingly suggested that further protections for the accused could be devised so long as the Crown is not required to prove all the ingredients of the offence.

Our paper highlighted the limitations of the current law and discussed whether a coherent and fair process is feasible given a flexible approach to Antoine or whether, as suggested by the Law Commission and others, a new statutory regime is required which brings back consideration of mens rea.

Clare Sandford-Couch

'A collaboration of law and art: images of justice in late medieval northern Italy'
At the Law, Literature and the Humanities Association of Australasia Conference 2015 (Sydney, University of Technology)

Abstract:
The paper suggests that certain images commissioned and produced in the towns and cities of northern Italy in the late medieval period can be read as expressions of cultural anxieties concerning the role of judges in contemporary society, and explores how some of these images were complicit in constructing and promulgating exemplars for those exercising judicial authority.

The paper takes a multidisciplinary approach, drawing on evidence from aspects of visual and material culture, particularly art, to explore the role of images in shaping society's expectations of those in charge of administering justice in the towns and cities of late medieval northern Italy. The paper suggests that not only can images be revealing of public perceptions and/or expectations of those in charge of administering justice in the towns and cities of northern Italy in the late medieval period, they may have had more active involvement, in creating, propagandising for, and reinforcing particular role models for judges.

Several artworks are analysed to establish that images could be used to shape contemporary legal practice, by offering moral instruction in visual form to those exercising judicial authority, and articulating impartiality and anti-corruption norms. In doing so, the paper seeks to demonstrate that exploring such interfaces between law and art can help to enhance our understanding of the complex relationship between law and society in fourteenth century northern Italy.

Natalie Wortley

'Undercover policing: lies, sex and criminal liability'
At London, Annual Covert Policing Conference, London' December 2015

Abstract:
In November 2015, the Metropolitan Police apologised for the "totally unacceptable behaviour" of officers who had intimate sexual relationships with women while working undercover from the mid-1980s to 2010. The CPS had earlier decided not to prosecute any of the officers for offences,

including rape. The paper focussed on whether this decision was correct in light of recent jurisprudence concerning the meaning of consent in the context of the Sexual Offences Act 2003.
One officer has explained that sex was used by undercover police as “a tool” to maintain their cover and obtain intelligence. We argue that this constituted deception as to the purpose of sexual intercourse, rendering the apparent consent of the officers’ sexual partners invalid. Alternatively, consent was negated because the officers’ deceptions removed the women’s freedom to choose

Elaine Campbell

'5 things I learned during Academic Writing Month'
At the Law School Christmas Conference, 10th Dec 2015.

Abstract:
November is Academic Writing Month. This month long write-a-thon brings together academics from around the world. Each person makes a public pledge to write – they state their goals and the strategies they will employ to achieve those goals. This year, a small (but hardy) bunch of Northumbria University academics supported each other through Academic Writing Month. This paper (a) reflects on lessons learned from that process and (b) looks to the future and makes suggestions for our faculty to take ownership of writing projects of this nature.

Sue Farran

'"Customising" the resolution of land disputes in Vanuatu: Pluralism or hybridity?'
At Commission on Legal Pluralism biannual conference on the theme 'Normative interfaces of globalisation and high-tech capitalism: legal pluralism and the neo-liberal turn', Mumbai, India 14-16 December 2015.

Abstract:
In most of the Pacific region land rights are determined by plural legal systems reflecting the interaction of indigenous customary laws and introduced formal laws influence by the colonial past of these islands a closely mirroring the metropolitan models of colonial powers. This has resulted in, at a minimum, dualist systems based on very different understandings of land
It should not be thought however that this dualism exists in some kind of harmonious parallel. The two frequently collide. Land held under customary tenure may be leased, there may be movement away from communalism towards more individualism, oral evidence regarding land rights may be recorded, customary rights may be registered or court resolutions recorded in such a way as to amount to an irrefutable record of entitlement.
This interface between customary land tenure and introduced land tenure creates a number of problems and one country where this has been experienced acutely is the Pacific island state of Vanuatu. The paper looks at the problem, recent steps taken to address the problems and the new hybridities that this apparent solution to plural land systems engenders.

Ray Arthur

'Protecting the right to childhood of children in conflict with the law'
At The Age of Criminal Responsibility Conference – 23rd Sept 2015, organised by the Centre for Criminal Justice and Evidence Studies, Northumbria University Institute of Criminology and the University of Sydney, Newcastle

Abstract:
In this paper I argue that children have a right to respect for their evolving capacities and that respecting this right would re-direct the criminal justice system towards a normative framework better equipped to accommodate the realities of childhood; one which contains a clear

foregrounding of the child's experiences and the reality of daily life and in which the child's experience of vulnerability and powerlessness is embedded throughout. If such a children's rights approach were applied to young people in conflict with the law it would ensure that young people who are not sufficiently mature and competent to understand the process of a trial in a criminal court, including the youth court, could not be held criminally culpable for their behaviour. Criminal liability could only be imposed after an assessment of the mental capacity, competence and maturity of each child.

Sue Farran

'Learning from Chagos, Lessons for Pitcairn?'
At an invited Roundtable event, Queen Mary University of London One Day Conference 'Fifty Years of the British Indian Ocean Territory' 12 November 2015

Abstract:
While not an exact 'mirror reflection' Chagos and Pitcairn share a number of similarities. Both are small isolated collections of islands over which UK exercises sovereignty; they are prime areas for marine protection areas, in the case of BIOT this is established, in the case of Pitcairn proposed; the motivations behind these MPAs are not those of the islanders, who, in the case of Chagossians have been removed but might return, while in the case of Pitcairn the islanders remain but in reducing and ageing numbers, but reflect wider agendas informed by international and bi-lateral treaties, the lobbying of influential public charities and NGOs, and appeals to 'world habitat', the 'global commons' and the 'responsibilities of mankind'. The legal governance of Pitcairn has been considered as a possible model for a re-inhabited Chagos, while the implementation and regulation of the BIOT MPA provides a model for that proposed for Pitcairn.

Drawing on the experience of BIOT this paper considers the legal similarities and differences between these two island groups and speculates on future legal frameworks that might be utilised for Pitcairn and, drawing on the Chagos experience, the consequences of these should the British government carry out its proposal to establish a Marine Protected Area around these Pacific Islands.

The next issue of Research Round Up will come out in April. A call will be made in March. If you have a 2016 publication or conference paper to celebrate please email: sue.farran@northumbria.ac.uk providing full details and a short abstract/synopsis. If you are a co-author/conference paper presenter, please liaise with your co-author/presenter.