RESEARCH ROUND UP

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This newsletter celebrates some of the research activity taking place in the School of Law, Northumbria University, focussing on published outputs, conference papers and other outward facing research related activities. This sixth issue captures outputs from the start of February 2017 to end of May 2017

Publications

Guido Noto La Diega

Article: 'Software patents and the Internet of Things in Europe, the United States, and India'
In (2017) 39(3) *European Intellectual Property Review* 173-184.

Abstract: This article sheds light on the pressing issue of software patents by giving an account of the approaches followed in Europe, the US and India. The occasion of this study is the adoption in 2016 of the final version of the Indian guidelines on the examination of computer-related inventions, which have been surprisingly overlooked in the legal literature. The main idea is that the Internet of Things will lead to a dramatic increase of applications for software patents and if examiners, courts, and legislators are not careful, there is a concrete risk of a surreptitious generalised grant of patents for computer programs as such (in Europe) and for abstract ideas without inventive concept (in the US). The clarity provided by the Indian guidelines, following a lively public debate, can constitute good practice that Europe and the US should take into account. Conversely, the sea of patent software looks very stormy in the US, where, after some reversals of the leading case Alice Corp v CLS Bank International, there seems to be the risk of swelling the ranks of speculative schemers who make it their business to watch the advancing wave of improvement, and gather its foam in the form of patented monopolies. Some good news, however, comes from a dissenting opinion that innovatively suggests bringing free speech into the reasoning on patents.

Tony Storey

Case note: 'Duress by indirect threats'
In (2017) 81(2) *Journal of Criminal Law* 91-94

Abstract: This case note examines the judgment in *R v Brandford (Olivia)* [2016] EWCA Crim 1794; [2017] 4 W.L.R. 17 (CA (Crim Div)) on whether the accused in a criminal trial can rely on the defence of duress when the threats were made to him or her indirectly, i.e. to a third party.

Tony Ward, Gary Edmond, Kristy Martire and **Natalie Wortley**

Article: 'Forensic Science, Scientific Validity and Reliability: Advice from America'
In [2017] (5) *Crim LR* 357-78

Abstract: This article considers the implications for English criminal courts of a major report on forensic science from the President's Council of Advisors on Science and Technology, defining the concept of "validity" and showing how a number of forensic sciences fall short of this standard.

Tim Wilson and others

Report: *Supplementary written evidence* submitted to the House of Commons Justice Committee in connection with their inquiry into the implications of Brexit for the legal system.
With contributions from Francis FitzGibbon QC, Criminal Bar Association, Jonathan Cousins, Criminal Law Solicitors' Association, Maura Butler, Education Department, Law Society of Ireland, and the following members of Northumbria Law School NCECJS members: **Brian Brewis, Chrisje Brants, Sophie Carr, Gemma Davies, Neil Harrison, Adam Jackson, Rebecca Mitchell, Emma Piasecki, Michael PG Smith, Michael Stockdale and Sue Turner**

Abstract: The submission reflects discussions during a NCECJS seminar organised jointly with the CBA and CLSA on 7th February. It explains why the need for international criminal justice co-operation will not change with Brexit. While UK interest in such activity is global, the EU alone has a comprehensive and efficient multi-faceted system capable of providing timely and legally robust mutual assistance. A major challenge after Brexit will be to ensure that new UK/EU criminal justice relationship can be 'future-proofed' so that it can respond to the evolution of cross-border crime. Also at Westminster sufficient time, detailed scrutiny and deliberation will be needed to ensure that UK law is sufficiently well grounded or, alternatively, codified or consolidated for the results of the process envisaged under the Great Repeal Bill to work in a manner that is not damaging for the UK legal system or unduly burdensome for the courts.

Published on the Parliamentary website on 4th March 2017 and accessible at http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Justice/Implications%20of%20Brexit%20for%20the%20justice%20system/written/48462.html

Penny Green and **Tony Ward**

Book chapter: 'Understanding State Crime'
in Alison Liebling, Shadd Maruna and Lesley McAra (eds) *Oxford Handbook of Criminology* (6th edn.) 434-458.

Abstract: In this chapter the authors discuss theoretical issues and research methods in the study of crimes by governments and government agencies, including genocide, war crimes and corruption.

Alistair Rieu-Clarke

Article: 'The Governance Regime of the Mekong River Basin' In (2017) 2(1) *Brill Research Perspectives in International Water Law* 1-84

Abstract: Entry into force of the UN Watercourses Convention in August 2014, and the opening of the UNECE Water Convention to all states in March 2016, are significant milestones in international water law. A comparative analysis of these two global water conventions and the 1995 Mekong Agreement shows that all three instruments are generally compatible. Nonetheless, the international legal principles and processes set forth in the two conventions can render the Mekong Agreement more up to date, robust and practical. Strengthening the Agreement would be timely, given the increasing pressures associated with the rapid hydropower development within the basin and the gradually emerging disputes therein. Because of these fast-moving developments, the monograph strongly recommends that the Mekong states seriously consider joining both conventions in order to buttress and clarify key provisions of the 1995 Mekong Agreement.

Rebecca Mitchell and **Michael Stockdale**

Article: 'The Crime-Fraud Exception to Legal Professional Privilege in the Taxation Context: Comparative Anglo-American Contextualisation and Optimal Reforms' (2017) 1 *British Tax Review* 109 - 132

Abstract: The crime-fraud exception to legal professional privilege is both well established and widespread in common law jurisdictions. The exception generally arises in circumstances where the client consults a lawyer for legal advice in connection with the perpetration of a criminal or fraudulent act before or during the commission of that act. This article analyses the crime-fraud exception to claims of privilege by lawyers in England, and by lawyers and tax practitioners in the US. It considers the significance of the exception in the taxation context, contrasts its limited use in this context in England and Wales compared to the US and discusses the markedly different approach in the English and Welsh First-tier Tribunal (Tax) in relation to information notices when compared to appeals to the tribunal and other judicial proceedings. Following comparative analysis and consideration of the barriers to greater use of the exception in the taxation context in England, proposals are made for a revised approach in English law.

Alistair Rieu-Clarke, Andrew Allan (University of Dundee), and Sarah Hendry (University of Dundee),

Edited collection: entitled *Routledge Handbook on Water Law and Policy* (Routledge, 2017), and provided the Introduction, Conclusion and a Chapter on the 'Treaty Architecture for Transboundary Watercourses'

Abstract: Water plays a key role in addressing the most pressing global challenges of our time, including climate change adaptation, food and energy security, environmental sustainability and the promotion of peace and stability. This comprehensive handbook explores the pivotal place of law and policy in efforts to ensure that water enables positive responses to these challenges and provides a basis for sound governance.

The book, which brings together perspectives from over 35 academics and practitioners, reveals that significant progress has been made in recent decades to strengthen the governance of water resource management at different scales, including helping to address international and sub-national conflicts over transboundary water resources. It demonstrates that ‘effective’ laws and policies are fundamental drivers for the safe, equitable and sustainable utilization of water. However, it is also shown that what might constitute an effective law or policy related to water resources management is still hotly debated. As such, the handbook provides an important and definitive reference text for all studying water governance and management.

Guido Noto La Diega and MM Winkler

Chapter in a book: 'La trascrizione del matrimonio omosessuale celebrato all’estero (The effects of foreign same-sex marriages in private international law)
In *Il riconoscimento degli status familiari acquisiti all’estero*, edited by A. Cagnazzo and F. Preite, Trattato notarile, directed by F. Preite, Milan: Giuffrè 2017.

Abstract: Italy recently passed legislation to recognise the right of same-sex couples to register a civil partnership.

In this context, the Italian Parliament adopted a decree regarding private international law in order to deal with the effects in Italy of same-sex marriages with some element of internationality (e.g. an English woman marrying an Italian woman). The authors criticise the reform, which automatically downgrades all same-sex marriages to civil unions. The reform’s legality appears debatable both from a constitutional and human rights point of view.

Tony Storey

Article: 'Unlawful and Dangerous: A Comparative Analysis of Unlawful Act Manslaughter in English, Australian and Canadian Law'
In (2017) 81(2) *Journal of Criminal Law* 143-160

Abstract: The crime of unlawful act manslaughter (otherwise known as constructive manslaughter) exists in English and Australian common law. It is also an offence contrary to the Canadian *Criminal Code*. In all three jurisdictions the offence shares the same essential elements, including the requirements that the accused commit an act which is both unlawful and dangerous. This

article will explore the case law on unlawful act manslaughter in Australia, Canada and England, focusing on the elements of an unlawful act and dangerousness, in order to identify similarities and differences in the application of the law in the three jurisdictions. Where differences are found, consideration will be given to the question whether English law should be reformulated.

Mohamed Badar and Sara Porro

Book chapter: 'Article 30 – Mens Rea'
In Mark Klamberg (ed.), *The Commentary on the Law of the International Criminal Court*, Torkel Opsahl Academic EPublisher (TOAEP), Brussels, 2017, 314-322, available at https://www.legal-tools.org/doc/aa0e2b/pdf/

Abstract: For the first time in the history of international criminal law, and unlike the Nuremberg and Tokyo Charters and the ICTY and ICTR Statutes, Article 30 of the ICC Statute has provided for a general definition of the mental element triggering the criminal responsibility of individuals for core international crimes. This provision, which is applicable and binding within the jurisdiction of the ICC, has not put an end to the lively debate on *mens rea* that during the last two decades has confronted the jurisprudence of the ICTY and ICTR. Quite the contrary, the negotiations on Article 30 ICC Statute involved actors coming from different legal cultural experiences, who engaged in an effort of comparative law synthesis (on the drafting history of Article 30 ICC Statute see Clark, 2001). Despite the attempt to find a shared grammar, practitioners and scholars still disagree in relation to the exact meaning of the standards of culpability set out in the norm in question. Professor Joachim Vogel notes that the main reason of such confusion 'is that intent and knowledge are defined in Articles 30(2) and (3) ICC Statute under clear influence of the common law principles, but in a manner that is a compromise and therefore not consistent and not without overlaps, and applies to *dolus eventualis* in the German understanding (awareness that a circumstance exists or a consequence will occur in the ordinary course of events)' (Vogel, 2009, margin 95). This commentary examines the contours of Art. 30 in light of the recent jurisprudence of the ICC.

Conferences Papers

Helen Rutherford

'"The Greatest Man in Newcastle". Portraits of the Victorian Coroner for Newcastle upon Tyne'
At at the Law and Society Signature Area conference, Northumbria University on May 12, on the theme: Through a Legal Lens: Images of Crime and Criminals, Law and Lawyers

Abstract: The paper is a case study setting out the steps I took to identify, find, and analyse portraits of the Victorian coroner for Newcastle. The analysis will form part of the biographical approach to the life and work of JT Hoyle that informs my PhD thesis. As a result of my research the Laing Art Gallery have changed the attribution and the dates on the portrait of John Theodore Hoyle in their possession. I have also identified a previously unknown depiction of Hoyle in a painting in the Mansion House.

Aaron Amankwaa (PhD student)

Poster presentation: 'Efficacy of different retention regimes for the United Kingdom National DNA Database'
At the ThermoFisher Scientific, Human Identification Solutions (HIDS) 2017 Conference, Vienna, Austria, 16th – 17th May 2017.

Abstract: This poster illustrated research commenced to assess the efficacy of the different retention regimes enacted for the UK National DNA Database (NDNAD). The study seeks to develop standards to maximise the utility of forensic DNA databases. Forensic DNA Databasing introduces two main privacy concerns: firstly, the phenotypic characteristics of an individual and their biological family can be predicted from the DNA sample; secondly, an individual and their

biological family can be tracked using the stored forensic DNA profile. The European Convention on Human Rights (article 8) stipulates that any interference with the privacy of an individual must be justified or proportionate. For convicted individuals, there is a consensus to store their DNA data due to their high recidivism rate. The retention of “innocent” samples/profiles has been controversial because there is limited data to justify any retention limits. This was the main contention in *S and Marper v the United Kingdom* at the European Court of Human Rights in 2008. This poster detailed statistical analysis of NDNAD match rate data that will be used to determine the impact of the different retention laws on the performance of the NDNAD.

Guido Nota La Diega

'Internet of Things and patent law: towards the IoT patent wars?'
At the III. International Symposium On Intellectual Property Law 2017 – Patent Law - Ankara, 25 May 2016

Abstract: Intellectual property is a key, albeit overlooked, issue when it comes to the Internet of Things (IoT). It is still unclear, for instance, to what extent trade secrets can be used to prevent the user from controlling their own device (the so-called right to hack) and to hinder interoperability. Likewise, it is still to be fully explored to what extent intellectual property (database rights) can be used to prevent data portability. This paper focused on patent law and, namely, on computer-implemented inventions by giving account of the approaches followed in Europe, United States, and India. With the IoT patenting activity being over eight times larger than the general worldwide increase in patenting, research on this field appears critical. The occasion of this study is the adoption in 2016 of the final version of the Indian guidelines on the examination of computer-related inventions, which have been surprisingly overlooked in the legal literature. The main idea is that the Internet of Things will lead to a dramatic increase of applications for software patents and if examiners, courts, and legislators will not be careful, there is the concrete risk of a surreptitious generalised grant of patents for computer programs as such (in Europe) and for abstract ideas (in the United States). The clarity provided by the Indian guidelines, following a lively public debate, can constitute good practices that Europe, the United States, as well as the Republic of Turkey, should take into account. With the increase of IoT patents, it is foreseeable the shift from the smartphone wars to the IoT wars, as evidenced by some recent litigation between Fitbit and Jawbone. The (perhaps cold) war seems impending, due to a number of reasons, such as the complexity of the supply chain, the several domains in which the IoT is divided and the composite nature of the IoT devices.

Helen Rutherford and Jennifer Taylor

'Squaring the circle: exploring the use of reading circles to encourage law students to read'
At the SLSA Conference Newcastle upon Tyne, April 2017

Abstract: Reading is the fundamental foundation of a law degree yet many students seem to avoid exploring beyond the lecture notes and core text. We wanted to encourage independent research, wide reading, active participation and used a new module on the Inquests module to explore reading circles to encourage students to be self-directed learners; to engage on a deeper level and to take a greater responsibility for their own education within the subject matter of the module. The new module was designed in 2014 for an undergraduate law degree programme with the aim of involving much student-chosen reading. The module was designed not to be prescriptive in its content and to enable students to tailor their study, and what they wrote for the final assessment, with regard to their specific interests.

Reading circles have their roots in literature circles, or book groups, that were first described by Daniels in 1994. Literature circles have been renamed by Jane Gee “reading circles” as a way to widen their applicability beyond traditional literature teaching. However, the prefix is not crucial because it is the “circles” element of the method that is important.

This paper explained the method; how we implemented the method within a law module, our early observations and reflections and how we intend to adapt the approach within the module.

Gita Gill

‘Land Grab, Corporate Mining and Environmental Harm in India: Contradictory Legal Responses’
At the Transnational and International Environmental Crime: Synergies, Priorities and Challenges Conference, jointly organised by the United Nations Environment Programme and Lincoln Law School, Lincoln University,15th February 2017

Abstract: Land acquisition (eminent domain) is a contentious issue in India. The state has developed a range of policies to facilitate land acquisition for rapid economic growth. Mineral extractive industry is one sector where foreign mining companies and their Indian subsidiaries are encouraged to operate by relaxing the regulatory policies to promote investment and ease of business. This has led to forceful eviction, lack of compensation and loss of cultural identity of local communities (mainly tribal people) being the most severely affected by land deals and environmental harm. State intervention aims to change the overarching legal framework by downgrading participatory democracy protecting affected peoples through legislative amendments and political interference. There is conflicting legislative activity reflecting competing interests. The Scheduled Tribes and Other Traditional Forest Dwellers Act 2006, the Forest Conservation Act 1980 recognise and promote participatory decision making by tribal communities and environmental protection. On the other hand the controversial Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (second amendment bill 2015) awaiting parliamentary approval, promotes an economic growth agenda that expunges the participatory power of tribal communities living in the affected areas.

The paper examines the tension between the increasing political emphasis on economic growth and the protection of human rights, social equity and the environment is reflected in both the legislation and its questionable application. However, this application introduces the proactive judiciary seeking to ensure the implementation of protective legislation. Court activity is illustrated through the examination of mining cases such as Vedanta and POSCO.

Shahrzad Fouladvand and **Tony Ward**

'Evidential Issues in Human Trafficking Prosecutions'
At the CECJS conference on Human Trafficking and Modern Day Slavery 29 March.

Abstract: Discusses the problems of proof in human trafficking cases and the issues they raise for the law of evidence.

Jaclyn Paterson

‘The Administrative Efficiency of the Supreme Court; an empirical examination'
At the SLSA conference, Newcastle University, April 2017

Abstract: The Supreme Court occupies a unique constitutional position in the United Kingdom, acting as a hub between sub-national, national and international judicial and governmental bodies. The court needs to be able to regularly and effectively communicate with other institutions; otherwise it will not be in a position to operate efficiently. In practical terms, this means the active management of its caseload and ensuring that the judges produce comprehensive and accessible judgments, to ease lower court interpretation, minimise error and assist in the overall administration of justice. This paper presents original empirical research conducted for the presenter’s doctorate that examines the efficiency of the UK top court in the transitional period from the Appellate Committee of the House of Lords to the UK Supreme Court, namely 2007-2011. The empirical data reviewed covers certain efficiency measures of the court, such as average hearing length, average length of time before delivering judgment and average judgment length as between the two courts. The paper also reviews the judgment style adopted by each court, including the volume of single judgments, numbers of concurring and dissenting opinions, panel sizes and voting splits. The paper aims to highlight the significant differences found in the judgment style and administrative efficiency of the Supreme Court as compared to the House of Lords and to use these findings to make suggestions as to how the court may improve its administrative efficiency going forward and ultimately the administration of justice.

Tony Ward

'Corruption and Human Trafficking: A State Crime Perspective'
At the Round Table ‘Tackling Corruption related to Human Trafficking: A Case Study of Albania’, 19th April, RUSI, London.

Abstract: This considers to what extent corruption related to HT in Albania amounts to criminal activity by state agencies rather than by individuals. It also points out how little is known (rather than assumed) about the links between corruption and trafficking, not only in Albania but more generally.

Tim Wilson

'Brexit in context: trying to understand the potential range of future relationships with the EU and their consequences'
At the NCECJS seminar ‘Human Trafficking and Modern Day Slavery: The Potential Impact of Brexit’ held on 29th March 2017 at Northumbria University

Abstract: The presentation reviewed how the Brexit vote had resulted in considerable uncertainty over the future of UK/EU international criminal justice cooperation including coordinated action against modern slavery. The paper analysed the UK Government’s White Paper *The United Kingdom’s exit from and new partnership with the European Union* (January 2017) in comparison with the more detailed and reflective views expressed by the House of Commons Justice Committee’s report *Implications of Brexit for the legal system* (March 2017).

Tony Ward and **Natalie Wortley**

'A Critical Gap: Addressing the Reliability of Forensic Science Evidence’,
At the Criminal Bar Association conference, London 20th May.

Abstract: This draws on the Crim LR article mentioned in this issue of Round Up, above, but focusses on how expert evidence of questionable validity can be controlled by measures short of exclusion.

Michelle Robson and Kristina Swift

'Montgomery: The unanswered questions in relation to Causation'
At the SLSA conference, Newcastle University, April 2017

Abstract: The paper explored the potential different causation conundrum following the Montgomery (Montgomery v Lanarkshire Health Board [2015] UKSC 11) decision to include the scope and application of Chester v Afshar outside the narrow confines of truly elective surgery and whether respect for autonomy should be the ‘golden ticket’ to dispense with traditional causation requirements.

Sylvanus Barnabus (PhD student)

'Definition of Indigenous Peoples in International Law and International Child Rights Law: The Case Study of Abuja, Nigeria'
At the SLSA conference, Newcastle University, April 2017

Abstract: The main purpose of this paper is to highlight the problem of defining indigenous peoples (IPs) in international law. The other objective is to challenge the West-centric description of IPs in

existing international instruments which presents them as victims. This combination of doctrinal enquiry and case study research reviews relevant international instruments. The debates about the definition of IPs in the existing body of literature are critically examined. Through the theoretical lens of post-colonialism, the conception of IPs under international law will be deconstructed. The case study of Abuja peoples of Nigeria will be used to demonstrate the need for a more expansive definition of IPs under international law. There is no universally agreed definition of IPs as the international community has not agreed to any. However, a critical examination of international instruments presents a picture of those regarded as IPs. The main contribution of this paper to knowledge lies in making analogical analysis between the old ways in which children were defined and presented as future beings or citizens in waiting, thereby creating a binary between children and adults in contrast to the present *UN Convention on the Rights of the Child*, which essentially departs from this approach by presenting children as independent bearers of rights like their adult counter-parts. The argument will be advanced that international law on IPs' rights can glean from the evolution of international child rights law.

James Gray

'J G Ballard: A phenomenology of the absence of law'
At the SLSA conference, Newcastle University, April 2017

Abstract: Metaphors are often drawn from the built environment in the discussion of law but what about the experience of law or of the ordering of society? In the work of the architect Christopher Alexander for example, we find a career long attempt (through the development of pattern language and his monumental *The Nature of Order*) to uncover the elements that contribute to a meaningful sense of place and of "wholeness" in architectural and product design. In the work of the English novelist and short story writer JG Ballard, we find treatments of the built environment that gave rise to the adjective 'ballardian': "*resembling or suggestive of the conditions described in Ballard's novels and stories, especially dystopian modernity, bleak man-made landscapes, and the psychological effects of technological, social or environmental development.* Rather than a rich sense of place and of wholeness, the buildings and urban spaces that feature in Ballard's work are frequently associated with or are the causes of fear, isolation, violence and the development of psychopathologies. This paper considers the relevance of Ballard's work to law and literature in developing a phenomenological account of the experience of order and its absence.

Gita Gill

'The National Green Tribunal, India: Decision- Making Recognising Scientific Expertise and Uncertainty'
At the Environmental Adjudication in the 21st Century 2017 Symposium, organized by the International Forum for Environment Judges, the Environment Court of New Zealand, University of Otago, and the Royal Society of New Zealand, 11-12 April 2017 (Auckland) (Plenary Speaker)

Abstract: The presentation focused on the role of scientific experts and their expertise within the National Green Tribunal (NGT) India where they act as decision-makers in environmental disputes. Experts are 'central' not 'marginal', to the NGT's normative structure. The NGT's efforts to reach decisions by centralising scientific experts (an epistemic community) as full court members, within the decision-making process thereby promotes a collective, symbiotic, inter-disciplinary bench that seeks to harmonise legal norms with scientific knowledge. The robust application of environmental principles, particularly a 'strong precautionary principle', has promoted a response that tackles serious threats to human health or the environment. The decisions, through expansive rationale and innovative judgments, extend beyond the 'courtroom door' thereby having external social and economic implications.

By offering ecological, technological and scientific resource knowledge, NGT experts either formulate policies or assist states with the implementation of these policies, thereby adopting both a problem-solving and policy-creation approach. The interdisciplinary bench through expansive interpretation of both statute law and Article 21 of the Indian Constitution produces a fascinating case study of how a developing nation seeks to resolve its environmental issues through a 'judicial lens'.

John Bates

'"Patient knows best" and the "paradigm" patient: the tensions of relative blame in a clinical context'
At the Socio-Legal Studies Association Annual Conference, University of Newcastle, 6 April 2017

Abstract: In *Montgomery v Lanarkshire Heath Board* [2015] UKSC 11, Lord Reed and Lord Kerr considered that 'patients are now widely regarded as persons holding rights, rather than as the passive recipients of the care of the medical profession. They are also widely treated as consumers exercising choices' The Royal College of Surgeons described Montgomery as a 'resolute move away from the more paternalistic traditional model of consent and towards a patient-centred perspective.'

In ordinary negligence claims, a defendant may raise the partial defence of contributory negligence: if the court is satisfied on a balance of probabilities, that the claimant has been blameworthy relative to the defendant's conduct, the fault has contributed to the harm sustained and that it would be just and equitable to reduce damages, then damages may be reduced. Yet contributory negligence has rarely been successful in clinical negligence claims. Why is this? The pre-Montgomery paternalistic approach to the scope of the healthcare practitioner's duty of care and the patient's reliance on this led to a weighting of 'relative fault' towards the practitioner. Is this now changing? In *Zeb v Frimley Health NHS Foundation Trust* [2016] EWHC 134 arguments were heard about a patient's failure to continue with a previous course of treatment and failure to give an accurate history to a treating practitioner.

How far does the greater public understanding of the consequences of healthcare and lifestyle choices shape the expectations of the 'paradigm' claimant? To what extent can pre- and in-treatment 'lifestyle' choices, including exercise, diet and substance abuse, be considered to be causally potent blameworthy conduct leading to a reduction in damages? How do other jurisdictions approach this issue? This presentation aims to explore some of these topical issues.

Jonathan Nash

'The development and regulation of psychedelic medicines'
At theSLSA Annual Conference, Newcastle University, 6 April 2017

Abstract: My paper looked at the recent psychedelic research into psychiatric and physical illnesses, including Alzheimer's, PTSD, severe depression, chronic pain, epilepsy, MS, cancer and end-of-life anxiety in terminal cancer patients. I look at the research difficulties caused by current international drug scheduling and the patent system and why presently only academia is willing or able to commit to these innovative and controversial areas of research.

John Bates

'ODR, Fixed Costs and Personal Injury Claims Process reform: A Perfect Storm for Access to Justice?
At the Socio-Legal Studies Association Annual Conference, University of Newcastle, 7 April 2017

Abstract: In January 2017 there were three significant developments presenting real challenges for access to justice for those injured as a result of negligence.

First, the Lord Chief Justice and the Master of the Rolls issued a joint statement endorsing the Final Report of Lord Justice Briggs' Civil Courts Structure Review, which they described as ensuring 'that the overall system for civil justice is improved for its users in a coherent as well as comprehensive manner.' Chapter 6 of the Report recommended the introduction of an Online Court, eventually to be made compulsory for cases within its jurisdiction, and with a fixed recoverable costs model.

On the same day, the Ministry of Justice closed its consultation on 'Reforming the Soft Tissue ('Whiplash') Claims Process' which included controversial proposals to remove the right of injured people to claim damages for some types of pain, suffering and loss of amenity, the introduction of a fixed tariff for damages for other injuries and an increase in the scope of the small claims track. The Government's stated aim was to implement the reforms as soon as possible.

Finally, Lord Justice Jackson commenced his review of fixed recoverable costs as an extension of his previous Review of Civil Litigation Costs, commissioned by the Lord Chief Justice and the Master of the Rolls. In an earlier speech, Lord Justice Jackson had proposed an extension of fixed recoverable costs to claims with a value of up to £250,000.

How will this concatenation of reforms impact on access to justice in personal injury and clinical negligence claims, where individuals face well-resourced tortfeasors, in what has been described as a 'paradigm instance of litigation in which the parties are in an asymmetric relationship'? This presentation aims to explore some of these topical issues.

Adam Ramshaw

'Proportionality Have You Met Proportionality? A Consideration of Proportionality within the Context of Possession Proceedings'
At the Housing Law Research Network Symposium on 23 March 2017 in Malmo, Sweden

Abstract: It is now accepted in English law that art.8 of the European Convention on Human Rights requires the proportionality of any possession order to be considered before someone may be dispossessed of their home. However, the courts have struggled to annunciate the precise nature of proportionality in possession proceedings. Rather than applying a structured version of proportionality, as has been done by English courts in other areas, the courts have instead simply asked whether eviction is 'a proportionate means of achieving a legitimate aim'. This conceptualisation of proportionality is deficient for three reasons. Firstly, it creates a hierarchy of rights with little importance attached to art.8 which is overshadowed by the unencumbered rights of the freeholder. Secondly, it does not provide the penetrating analysis which is required by art.8 and the European Court. Thirdly, this unstructured approach to proportionality skews proceedings in favour of the State due to the high bar created for tenants seeking to prove an order disproportionate. As a result of this art.8 is now dealt with on a summary basis by county courts with few apparent benefits for tenants.

The interests which rest at the core of art.8, the importance of the home to the individual and society, have been undermined by an unprincipled version of proportionality. This paper proposes adoption of Robert Alexy's proportionality analysis which provides an argumentative structure for rightsholders and the courts. This structured approach to proportionality is applied to a cross section of domestic case law to demonstrate its workability over the unstructured proportionality utilised by the courts to date. Proportionality conceived in this sense gives force to art.8 thereby creating a robust defence where a person's home is at risk.

Jonathan Nash

'New Research into the Use of Psychedelics to treat entrenched PTSD - the Legal and Policy Implications'
At the 2017 EMDR Association UK and Ireland Annual Conference in London on 24.03.17 (for PTSD therapy practitioners).

Abstract: Psychedelic research into psychiatric disorders is slowly re-emerging after a near 40-year morass. I touch on psychedelic research history, its near-complete prohibition from the early 1970s and recent rebirth. I then focus on a current US trial on MDMA-assisted psychotherapy for treatment-resistant PTSD which is reporting an 80% 'success' rate in 3 sessions and which could be prescribed by 2021 in both the US and Europe. I briefly look at other current psychedelic trials before looking at the legal and policy implications of this novel research including the need for ethical and regulatory approval, drug classification and big pharma (dis)interest.

John Bates

'How far is the law of tort ready to adapt to driverless cars?'
At the Third Winchester Conference on Trust, Risk, Information and the Law, University of Winchester, 27 April 2017

Abstract: In its July 2016 Consultation Paper, 'Pathway to Driverless Cars: Proposals to support advanced driver assistance systems and automated vehicle technologies', the United Kingdom's Department for Transport concluded:
'We are not currently proposing any significant change in our rules on liability in road traffic accidents to reflect the introduction of automated cars. We still think a fault based approach combined with existing product liability law, rather than a new strict liability regime, is the best approach for our legal system. We think that the existing common law on negligence should largely be able to adapt to this new technology'

What impact will the evolution of driverless cars have on the application of existing common law principles of negligence of a human actor where harm is caused in a road traffic accident? Should a driver be liable for an omission to engage (or disengage) onboard automotive assistance? What standard of care is expected of a driver stepping in to take control? How far are perceptions of trust and risk relevant to a transitional phase with a mix of autonomous and non-autonomous traffic? What new risks are created by autonomous vehicles, such as reliance on third party services (such as mapping), interoperability failures with other systems (such as highway control), faults in data collection and sharing (such as telemetrics and onboard records of driver autonomy) and of cyber-security comprises (including hacked systems).

The common law of negligence is predicated on the piecemeal development of principles and their application incrementally through case law and decisions of appellate courts. That is a naturally time-consuming process, and recent reform proposals may remove many road traffic accident claims from the litigation process. Is the civil justice system equipped effectively to deal with driverless vehicles?

This presentation explored some of these issues.

Francis FitzGibbon QC, the Chair of the Criminal Bar Association and **Tim Wilson**
'Brexit and the 'hidden wiring' of the criminal justice system'
At the NCECJS seminar, 6th February 2017, University of Northumbria

Abstract: This presentation covered two topics. First: an alternative reading (by changing the sequence of issues/material etc.) of UK Government policy outlined in *The United Kingdom's exit from and new partnership with the European Union* (Cm 9417, January 2017). Second: a discussion of the issues covered in an oral evidence given by Francis FitzGibbon QC and Professor Wilson with Michael Gray, the Chair of the Criminal Law Solicitors' Association, as part of the House of Commons Justice Committee's inquiry into the implications of Brexit for the legal system.

Angela Macfarlane and Michelle Robson

'An interactive model for delivery of a distance learning LLM programme using the eXe learning tool - our journey'
At the SLSA Conference, Newcastle University, 5-7 April 2017

Abstract:This paper explored our journey from old style delivery to a modern, technology based online delivery. The trials and tribulations, the significant development of our information technology skills, the lessons learned and initial student feedback from several cohorts using the new delivery model, including one cohort who had optional access to both types of delivery.

Guido Nota La Diega

'Queer dating apps and user-generated content'
At the 1st CIRQUE Conference "What's new in queer studies?", L'Aquila, Italy, 31 March-2 April 2017

Abstract: The subject of this empirical research is the attitude of queer people towards user-generated content (UGC) in dating mobile apps and the approach taken by these apps towards such content. A phenomenon which is common to most online transactions is that users do not

read the Terms of Service, privacy policies, etc. (collectively, the ‘legals’) and therefore they have not clear their rights and obligations in their relation with the provider of the service, often an online platform which detain most of the bargaining power. No research has studied whether and how this phenomenon applies also to queer dating apps such as Grindr and Planet Romeo. Moreover, a focus on UGC in this context is still missing. This study aims to critically assess the awareness of queer users of their contractual rights and obligations while using dating apps, as well analysing how the ‘legals’ are actually applied. The paper also assesses if the photos policies of queer apps put in place discriminatory practices (e.g. fat-shaming). The study of the implementation of the ‘legals’ as to the UGC covers pictures, videos, and text on Grindr and Planet Romeo in the UK and Italy.

Aaron Amankwaa (PhD student)

'The UK National DNA Database: Implementation of the Protection of Freedoms Act 2012'
At the Northumbria University Postgraduate Research Society Seminar, Northumbria University, Newcastle Upon Tyne, 28th April 2017

Abstract: This paper examined eight reports published after the implementation of the Protection of Freedoms Act 2012 (PoFA) by the National DNA Database (NDNAD) Strategy Board (3), the Ethics Group (2) and the Office of the Biometrics Commissioner (OBC) (3). The aim of the review was to identify the benefits, challenges, risks and emerging issues associated with the PoFA regime. Overall, most of the reports highlight a significant improvement in the performance of the NDNAD, with a current match rate of 63.3%. Further, the new regime has significantly strengthened the genetic privacy protection of UK citizens. The OBC reports detail implementation challenges ranging from technical, legal and procedural issues to sufficient understanding of the requirements of PoFA by police forces. The risks highlighted in the reports include the deletion of some “retainable” profiles, potentially leading to crimes going undetected. Another risk is the illegal retention of some innocent profiles, which may lead to privacy issues and challenges in court. In conclusion, the PoFA regime appears to be working well, however, a critical research is needed to evaluate its overall efficacy compared to other retention systems.

Carole McCartney and **Natalie Wortley**

'Under the Covers: Covert Policing and Intimate Sexual Relationships'
At the SLSA conference, Newcastle University, April 2017

Abstract: The operations of undercover police in England and Wales during the 1980s and 1990s in particular, are now subject to an official inquiry. Reports of police committing crimes and taking on the identities of dead children have been controversial, but so too the engagement of officers in intimate (sexual) relations while undercover. This raises difficult moral and ethical questions, but we argue, also questions of the legality of such behaviour. In spite of the inclusion of a definition of ‘consent’ in the Sexual Offences Act 2003, the courts in England and Wales are still regularly required to deal with questions of interpretation, as might be expected when there are diverse social understandings of the parameters of ‘unlawful’ sexual conduct. In this paper, we look at a possible legal approach to sexual relationships that have been undertaken by police officers while undercover. Could sexual intercourse while undercover be considered rape? In order to answer this question, we examine the 2003 Act and the preceding 1956 Sexual Offences Act, which was in force during much of the time of the undercover relationships that are now under scrutiny. We consider recent interpretations of the legal definition of consent and deliberate whether undercover police could be liable for rape, on the basis that the consent of their partners was vitiated by their deceit whilst undercover. We conclude that developments surrounding consent and deception make it possible to charge undercover officers with sexual offences.

Helen Rutherford and Clare Sandford-Couch

Presented papers as part of a panel

At the 'Lives, Trials and Executions' conference at Liverpool John Moores University on 24th May. The three papers addressed legal historical research into the crime, trial and execution of George Vass in 1863.

Helen's paper, '"Vass, give over; you are killing the woman' " – multiple perspectives on the murder of Margaret Doherty' focused on the number of formerly unconnected lives converging in a criminal trial. The Vass case offers an opportunity to explore what is known of the lives of several of the most significant dramatis personae, including the judge, the victim and the accused, and so to shed light on aspects of a legal case rarely – if ever- explored, and to gain a better understanding of the human perspective.

Addressing how the experience of judicial space is different for each actor within a trial, Clare's paper, *'*An anxious hush pervaded the vast assembly crowded within the limits of the hall' - the trial of George Vass as a visual and spatial experience, drew on historical accounts and images, together with contemporary exploration of relevant locations within the city, to demonstrate that locality and context are important to gain a better understanding of the people, places and legal contexts which come together in a trial.

The final paper, 'The blackguardism of the town was indeed fully represented': A study of the execution of George Vass, was presented by Patrick Low, a PhD student at the University of Sunderland. As well as being the final public execution in Newcastle, George Vass' hanging was unique in both its location and presentation. The paper examined the multiple contributing factors that led to its novel staging and its reception by the North East crowd.

Tim Wilson

'International information exchange as the 'hidden wiring' of criminal justice and the implications of Brexit'
At the SLSA Conference, Newcastle University on 5th April 2017

Abstract: This presentation examined the discussion of international criminal justice cooperation at an oral evidence session held on 10th January 2017 by the House of Commons Justice Committee. Professor Wilson reflected on his participation as a member of a three person professional and academic panel that was crossed-examined by MPs on that occasion. He concluded with general observations and discussion about how academics can become involved in working with Parliament and issues to consider when preparing to give oral evidence at Westminster.

Carole McCartney

'Maximising Forensic DNA Utility: Ethical, Social and Legislative Challenges'
At the HIDS Annual Conference, Vienna, 16 May 2017

Abstract: Since the emergence of forensic DNA profiling and the corollary creation of DNA databases, efforts to maximise the efficiency and utility of DNA technology have intensified. Such efforts are expedient given the imperative that expenditure on DNA should be cost-effective and the benefits demonstrable. To this end, regimes governing forensic DNA have often been adjusted to better target those from whom DNA will prove most 'profitable', and to expand the uses of retained DNA. Yet the European Court of Human Rights in 2008 clearly articulated the need for a 'balance' between police powers to retain the DNA of citizens, and privacy concerns, human rights and public interest. The Court left unsaid what this balance should be, leaving such calibrations to domestic legislators. The Court was likewise silent on whether there ought to be limitations on the uses of retained DNA. In delivering a unanimous but terse ruling, the Court left States wide discretion, and while scientific and technological advances continue to attract the eye of ethicists and sociologists, (particularly around developments such as phenotyping and familial searching), the governance and legal regimes of DNA databases garner far less critical attention. In some instances, a 'balance' originally struck may have been destabilised by subsequent legal reforms, or changes in practice, and regimes are in need of re-calibration. Thus forensic DNA databases continue to raise questions of legitimacy and acceptability, particularly when accounting for ongoing efforts to maximise DNA efficiency and utility.

Ray Arthur

'R v JTB [2009] UKHL 20: A children's rights approach'
At the Socio-Legal Studies Association Annual Conference, School of Law, University of Newcastle, April 2017

Abstract: *R v JTB* concerned a 12 year old boy who was convicted of offences of causing or inciting a child aged under 13 to engage in sexual activity contrary to section 13(1) of the Sexual Offences Act 2003. The appellant admitted the activity but said that he had not thought that what he was doing was wrong, as such the appellant sought to advance the defence of *doli incapax*. The trial judge, the Court of Appeal and the House of Lords ruled that this defence was not open to him as it had been abolished by section 34 Crime and Disorder Act 1998. Lord Phillips in the leading House of Lords judgment stated that section 34 represented Parliament's intention to abolish both the presumption and the defence, even though the section simply says that the presumption is abolished. The consequence of this judgment is that the law in England and Wales assumes all children are sufficiently mature at 10 years of age to accept criminal responsibility for their behaviour. All of the judgments in this case were delivered without any discussion of the need to recognise that children may have not yet fully developed the capacity to be mentally culpable for their behaviour or the relevance of children's rights in this regard.

In this paper I will present my re-written dissenting judgment, which argues that *R v JTB* raises profound questions about childhood, sexuality and the scope of courts' powers to convict children aged under 14 years who do not understand the wrongfulness of the criminal acts they have been charged with. This dissenting judgment adopts a child's right approach which contains a clear foregrounding of the child defendant's experiences and an invitation to empathise with the child's developmental immaturity, inherent vulnerability and his cognitive limitations. The child's experience of vulnerability and powerlessness is embedded throughout and frames the judgment. The re-written judgment concludes that Parliament must have legislated in conformity with children's rights as enshrined in the UNCRC, common law principles, principles of justice and fundamental (substantive and procedural) rights. Accordingly, if a decision is made to prosecute a child for a criminal offence, the prosecutor and the court ought to be alive to the possibility that the child might not, for one reason or another, understand the criminal nature of their behaviour

Aaron Amankwaa (PhD student)

Poster presentation: 'Forensic DNA Databasing: Retention Regimes and Efficacy'
At the Socio-Legal Studies Association (SLSA) 2017 Conference, Newcastle University, Newcastle Upon Tyne, 5th – 7th April 2017.

Abstract: This poster detailed research commenced to assess the efficacy of the different retention regimes governing the England and Wales National DNA Database (NDNAD). The aim of the research is to develop retention standards for the protection of public and private interests. A statistical analysis of the output metric of the database (match rate) will be carried out to determine the value of DNA retention for different retention categories and retention lengths set by the law under each retention regime. Additionally, users and managers of the database will be surveyed to determine their effectiveness rating of the different retention models. The original contribution of this research will include the development of standards for DNA data retention, provision of retention reforms to maximise the utility of DNA databases and resource for developing standards for DNA databases and other forensic biometric databases worldwide.

Rosie Hodson (PhD Student)

'Order and Chaos: Exploring symbolic interaction within a BDSM community'
At 'Talking Bodies' Chester University, 19th-22nd April 2017

Abstract: Research into BDSM sexualities is an emerging discipline within the social sciences, having previously been confined to psychomedical studies of deviance and the trappings of moral argument. An emerging acceptance of these subcultures in both academia and society has led to the first ethnographic accounts of these communities in recent years, and this paper presents one of the first of these studies to have been conducted within the UK.

Using fifteen ethnographic interviews alongside autoethnography, this paper investigates the symbolism imbued within a single co-located community and the purposes these meanings hold within both individual lives and identities, and how these identities manifest within, and are shaped by, social interaction. Themes of meaning-making, consent, identity formation and power are explored, revealing the ways in which BDSM play both responds to and reflects the chaos inherent in the everyday lives of these participants. Furthermore, the methodological positionality of the researcher is considered from an emic perspective, exploring how the subjectivity and identity of the researcher can enhance the research process.

Mohamed Badar

'A Preliminary Reflection on the Work of the United Nations International Law Commission and Its Failure to Codify Crimes against the Environment in Time of Peace'
At the International Conference on Transitional and International Environmental Crime: Synergies, Priorities and Challenges' Lincoln Law School, University of Lincoln, 15 February 2017

Abstract: The International Law Commission was established by the General Assembly, in 1947, to undertake the mandate of the Assembly, under article 13 (1) (a) of the Charter of the United Nations to 'initiate studies and make recommendations for the purpose of ... encouraging the progressive development of international law and its codification'. When it comes to the question of crimes against the environment the Commission has arguably failed in fulfilling this mandate and continues to do so while drafting an international convention on crimes against humanity. In its preoccupation with political consensus and the question of what is lex lata it has set aside its mandate de lege ferenda and thus circumscribed crimes against the environment to the very limited context of war crimes. The question of such crimes committed outside this limited framework, which was once put aside for when the 'time would be right', has now completely left the discussion. On the other hand, speculations surrounding the new policy of the ICC prosecutor only bring false hope in this regard.

This paper mainly analysed the history of the discussions at the International Law Commission (ILC) and during the Rome Conference on the establishment of the International Criminal Court which led to the status quo and unveil the proposals by the Special Rapporteur, the many and varied arguments raised by the members of the ILC and the comments of governments with a view to crystallising the appropriate formulation of a crime against the environment which would not be as restrictive and at the same time take into consideration some of the legitimate concerns expressed during these discussion.

Guido Noto La Diega

'Intelligent online behavioural advertising'
At the 4th Winchester Conference on Trust, Risk, Information & the Law, 3 May 2017, the University of Winchester

Abstract: In recent years, facilitated by the growth of artificial intelligence (e.g. machine learning and predictive analytics), cloud computing, and big data, new tracking and profiling techniques have been developed. They have enabled the rise of online behavioural advertising (OBA), that is the provision of advertisements, which are tailored to the tastes and habits of the user who actually views them. The role of artificial intelligence in fundamental from at least two points of view. Firstly, it enables better tailored and less intrusive advertisements. Secondly, and this is the main suggestion of this paper, it enables companies serving OBA in the position to put in place bespoken compliance mechanisms based on the knowledge of the users' profiles. In simple terms, for certain users (e.g. tech-savvy and well-educated) agile seamless tools will be sufficient (e.g. no cookie notice). However, a more cautious approach (more information provided in an interactive

and straightforward way) could be necessary for more vulnerable categories of users. The structure of this paper is as follows. The starting point is the comparison between the Data Protection Directive and the General Data Protection Regulation, with a focus on direct marketing, but touching also on profiling and algorithmic decision-making. It is then dealt with the non-judicial remedies if a user wanted to complain about the unauthorised use of their data for OBA purposes. The use case is a qualitative experiment on the use of sexuality data in Italy. Then, the paper focuses on the relation between artificial intelligence and OBA. The conclusion presents a pragmatic proposal which aims to empower the users, yet striking a balance between their interests and rights and those of the businesses (ad networks, publishers, advertisers, etc.)

Tim Wilson

'Post Brexit criminal justice cooperation: participation in a comprehensive EU system or UK selection from a menu of options?'

At a seminar on ‘Cooperación judicial penal con el Reino Unido (Criminal Justice Cooperation with United Kingdom)’, organized by the University of Castilla-La Mancha and the Spanish Network of European Criminal Law (ReDPE), with the support of the Section of Civil and Criminal Proceedings Law of The Royal Academy of Jurisprudence and Legislation and in collaboration with the Institute of European Law of the University of Valladolid. The seminar was held at The Royal Academy of Jurisprudence and Legislation, Madrid on 24th May 2017

Abstract: This presentation reflected on current uncertainties (e.g. the impending UK General Election and Mrs May’s Delphic character) and range of issues (both contextual and legal) that could frustrate or even prevent criminal justice cooperation after Brexit. In particular the focus was on the European Arrest Warrant and information sharing, but also on the importance of cooperation remaining underpinned by human rights, the relationship between British courts and CJEU, forensic science research collaboration and the need for the UK to continue to contribute to EU investment in improving the functioning of criminal justice in less wealthy EU member states.

Rosie Hodson (PhD student)

Poster Presentation: 'The New Porn Wars: A Multiplayer Combat'
At the Socio-Legal Studies Association, Newcastle University, 5th-7th April 2017

Abstract: Debates around pornography in the UK have been prominent since the 1950s, stemming from the work of Lord Devlin and trials of morality and disgust. The 1980s saw a resurgence of these debates within the feminist sex wars, prompting an outpouring of concern, anxiety and fear regarding misogyny and sexual violence. In recent years, the UK government has begun to enforce an increasing number of regulations regarding pornography, including the Audiovisual Media Services Regulations (2014) and the Digital Economy Bill (2016-17), which has reignited the panic surrounding pornography, alongside social concerns regarding censorship, technology, children and young people and wider issues of sex, gender and sexuality. This poster explored the academic and legal-political spheres involved in the debates, and the key players involved within this combat and suggested possible ways forward, aiming to make the debates productive, socially relevant and informed.

Chris Ashford

'The UK Poppers ‘Ban’ and the Psychoactive Substances Act 2016: New Legal Frontiers in the Homonormative Imagination'
At the SLSA annual conference, Newcastle University, April 2017

Abstract: In 2016, the UK Government passed the Psychoactive Substances Act, designed to address a growing moral panic surrounding the use of so-called ‘legal highs.’ In attempting to ban controversial drugs such as Spice, the Government found themselves in the midst of a debate about defining ‘psychoactive substances’ and determining the parameters of the new law. These ‘legal high’ drugs contain one or more chemicals that provide similar effects to illegal drugs.

Whilst drugs such as coffee were quickly and expressly excluded from the ambit of the law, 'poppers' - a popular drug amongst many gay men and queers – remained within the scope of the law, prompting, for the first time in over a decade, a national campaign and Parliamentary debates about contemporary gay men's sex lives.

At a time when the focus of debate around queer sex lives has been on so-called 'chemsex', the time given to debating the use of poppers in 2016 seems all the more quaint (McCall, Adams, Mason and Willis, 2005). Yet, poppers have a long history within queer culture, and have similarly been a source of debate and controversy, particularly in the 1980s amidst the policy response to HIV/AIDS (Altman, 1986: 33; Coxon, 1996: 101; Lauritsen and Wilson, 1986; Young, 1994)

At a time when UK law has been framed within homonormative discourse (Ashford 2011), this moment might be considered a re-imagining of the legal consciousness in which – for a brief moment – the law explores queer lives beyond the normative (see more generally: Duggan 2003; Harding 2011) .

This paper seeks to explore this moment in recent legal history and what it might mean for the ways that queer lives are and might be seen and understood.

Claire Bessant

'Family Privacy in the internet age: Family photographs as a case study'
At the Privacy Law Scholars Europe conference, Tilburg University as part of the 'Tilting Perspectives: Regulating a Connected World', 17-19 May 2017

Abstract: In the modern internet age significant challenges are posed to the privacy of families and individuals. Online sharing of family photographs poses particular challenges, most notably for the children who are often the subject of those photos. Although parental use of social media to share photographs of their children online (known as 'sharenting') has attracted much media comment there has been little academic discussion of the legal ramifications of sharenting. A recent article by Steinberg (2016) provides the first analysis of the impact of sharenting on children's privacy, considering the potential legal solutions in American law. This paper further developed the discussion started by Steinberg. In 2016 media reports suggested that an eighteen year old Austrian girl had brought a claim against her parents for violating her privacy by posting embarrassing childhood photos on Facebook. Whilst the story has since been denounced as untrue, it is not inconceivable that a child might bring such a claim against their parents. Part one of this paper considered how such a claim by a child against her parents for unauthorised online disclosure of images of her childhood might be decided before the English courts. As recognised, in this paper, however, such a claim raises many difficult questions, not least, how might the courts answer a parent's argument that in the twenty first century a child cannot reasonably expect not to have their photographs displayed on social media. In part two of this paper recognition was given to the fact that some commentators have questioned whether the state should ever intervene in such a family dispute between a child and their parent(s). The discussion is thus set in the context of a wider examination of the notion of family privacy. Ultimately, in exploring the tensions between parental rights and children's rights that lie at the heart of the sharenting scenario, this paper highlights a need to reconsider notions of family privacy and their influence upon the legal regimes which protect private and personal information.

Sue Farran

'The eighteenth century case of John Hudson'
At the SLSA conference, University of Newcastle, April 2017

Abstract: This case was one of a number included in the Children's Rights Judgment Project co-ordinated by Helen Stalford and Kathryn Hollingsworth, and culminating in a forthcoming publication of a monograph, Stalford, Hollingsworth and Gilmore (eds) *Rewriting Children's Rights Judgments* (Hart, 2017). This conference paper in the children's rights stream reflected on the challenges of re-writing this case (the earliest in the collection), from a children's rights perspective at a time when children, yet alone their rights, were barely considered, particularly children like John Hudson, an eight year old London orphan, who had been 'sometime a chimney sweep' and who was transported in the First Fleet to Australia.

Guido Nota La Diega

'Security v ethics in autonomous robots'
At the QuBit Conference, Prague, 4-6 April 2017

Abstract: With the increasingly common deployment of cloud computing and “smart” devices, cybersecurity becomes a primary concern, because: 1. Cloud robots are exposed to hacking and other third-party cyber-interventions; 2. As shown by the so-called swarm robotics and in light of the Internet of Things, machines are not isolated, they interact with humans and with other machines, therefore the overall level of security of the system depends on the weakest link. The British Standards Institute has recently issued its guidelines on how to design, manufacture and manage robots in an ethical way. The “ethics by design” sounds promising, but it raises some concerns. For instance, who decides what is ethic? Ethics can be contrary to the law; how could such a contrast be solved? Could the implementation of ethics in machine act as a total disclaimer of human liability? Artificial intelligence technologies such as machine learning seem to promise a better implementation of ethics by design measures, inasmuch as the machine could learn from its own errors. However, how can one be sure that, with machines becoming entirely autonomous, they will not be able to reprogram themselves, thus circumventing the original will of the developer, manufacturer, etc.?

Other

Alistair Rieu-Clarke was invited to a workshop organised by the European Commission Joint Research Centre entitled 'No Water No Fairness – Is Valuing of Ecosystems the Right Path to Alleviating Poverty', in Ispra, Italy 9-10 February 2017. The workshop brought together experts from a range of disciplines in order to help steer EC policy on the topic, and identify future priorities for EC Horizon 2020 calls

Claire Bessant acted as a discussant in the Privacy Law Scholars Europe stream in relation to a paper entitled ‘Constructing Child Specific Privacy Impact Assessments', at the Privacy Law Scholars Europe conference, Tilburg University as part of the ‘Tilting Perspectives: Regulating a Connected World’ conference 17-19 May 2017

Alistair Rieu-Clarke was a keynote speaker at the 'Water at Risk' Symposium, Helsinki, Finland, 22 March 2017. His presentation considered how the global water conventions can enhance water security. During the visit to Finland, Alistair also gave a talk to staff and students at the University of Eastern Finland in Joensuu, entitled: A legal perspective on transboundary hydropower developments – the case of the Xayaburi project on the Mekong River'.

Tim Wilson was an invited panel (chaired by Joshua Rozenberg) speaker at ‘Human Rights after Brexit’, organised by Brunel University (in collaboration with the 'Britain in Europe' think tank) and held at the British Academy, London SW1 on 23rd February 2017. He spoke about the European Arrest Warrant and how it and other EU cooperation measures were frequently misrepresented in the centre-right press (‘Polish bi-cycle thefts’ etc.). He also commented on specific problems with both the legislation and policy guidance on UK Migration law and the chaos that this would be capable of creating after a rapid Brexit implementation, as well the general complexity and scale of the changes in UK law and policy implementation that would be required as a result of the UK leaving the EU.

Alistair Rieu-Clarke was invited to ETH-Zürich, Switzerland, 19 April 2017 to deliver a lecture on the legal and institutional aspects of transboundary water management.

Sylvanus Barnabus (PhD student) made a presentation on his doctoral research at the postgraduate workshop of the British Association of Comparative Law, held on 22-23 March 2017, at the Institute of Law, Jersey. His thesis is entitled: Land Rights of Indigenous Peoples in

International Law – A Case Study of the Abuja Peoples of Nigeria with a Comparative Analysis with Kenya. This workshop focussed on the comparative aspects of his thesis.
Abstract: This PhD research examines the land rights of indigenous peoples (IPs) under international law. It uses the case study of the land rights of Abuja peoples of Nigeria as a vehicle to illustrate the need for a viable relationship between State law and other forms of law such as IPs' customary law on the one hand, and State law and international law on the other hand in a post-colonial Nigeria. The research involves a comparative analysis of the relationship between State law and customary law in Nigeria and Kenya as well as the relationship between State law and international law in Nigeria and Kenya. The choice of Nigeria and Kenya as comparators is primarily because the case study in this research is located in Nigeria and the familiarity of the researcher with the Nigerian legal system. The choice of Kenya is primarily because Kenya has recently embarked on law reforms in relation to the interaction between its legal system and international law as well as IPs' customary land law. In addition, both Kenya and Nigeria are common law States. Hence, these States are apt for a comparative study. The research objective is to demonstrate how one State has responded to the legal challenges that most common law African States are usually presented with in the context of the relationship between State law and other forms of law, and how the other State should respond to similar legal challenges within its domestic legal system.

Alistair Rieu-Clarke was a discussant at the University of Strathclyde, Centre for Environmental Law and Governance, Postgraduate Colloquium, 4 May 2017, Glasgow. The colloquium was also attended by **Marcus Lee** (PhD Student) and **Laure-Elise Mayard** (PhD Student).

Guido Nota La Diega presented a paper entitled 'Atheists v Singularitarians. Artificial Intelligence and the Law' at the Bond Dickinson Innovation Week, Newcastle upon Tyne – 24 March 2017
After presenting a taxonomy of artificial intelligence, this focused on: AI and intellectual property: machine-generated works, machine-implemented inventions, the clash between trade secrets and limitations to software rights; AI and data protection: algorithmic decision making and repurposing; AI and torts: pimp my product liability; AI and consumer protection, two pragmatic proposals: "awareness by design" and bespoke compliance for online behavioural advertisers; the future of lawyers.

Alistair Rieu-Clarke was invited by the School of Law, University College Cork to a workshop focused on research impact, on 24 May 2017. Alistair presented a case study on his work related to the entry into force of the UN Watercourses Convention.

Law and Society Signature Group held a one-day conference on Friday 12th May, under the title 'Through a Legal Lens: Images of Crime and Criminals, Law and Lawyers' which featured a number of papers investigating interdisciplinary perspectives on themes around images of crime and criminals, law and lawyers with research presented from a number of disciplines including law, history and visual culture. Professor Linda Mulcahy of LSE presented a revisionist history of the mugshot, looking at attitudes to legal authority in late C19th/early C20th photographs of convicts. Professor Les Moran of Birkbeck, University of London, presented research into judicial carte de visite. Further papers included the work of PhD students from the Universities of Roehampton and Sunderland. Presenters from Northumbria were **Helen Rutherford** (see above), **Rebecca Moosavian** who presented her on-going research into the conflict between the Article 8 privacy right and the Article 10 right to free expression, **Clare Sandford-Couch,** whose paper explored waxworks, effigies and the law, and Jean Brown, Director of the Northumbria University Art Collection, who presented a paper, addressing the legalities of authenticity and contemporary art, and what happens when artists disclaim their own work.

The Centre for Evidence and Criminal Justice Studies held a one day conference on 29 March on the theme of Human Trafficking and Modern Day Slavery: The Potential Impact of Brexit. Speakers included academics from Northumbria University (see above),/ local practitioners and visiting speakers from the universities of Sheffield and Sussex.