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 seventh issue captures outputs from the start of June 2017 to end of September 2017, and includes for the first time our Legal Studies Working Paper Series, which is a recent publishing initiative for senior students and early research career staff. Links to these working papers, which are open access, can be found adjacent to the Research Roundup on our law - research web page.

Publications

Birju Kotcha

Article: 'The ICC's Office of the Prosecutor and the Limits of Performance Indicators' (2017) 15(3) *Journal of International Criminal Justice* 543-565 (https://academic.oup.com/jicj/article-lookup/doi/10.1093/jicj/mqx028)

Abstract: Performance indicators have long been part of the vocabulary of businesses and public administrations. Essentially, they are market-oriented tools occupying a central role in both the management and measurement of organizational performance. The present article assesses, in particular, the performance indicators adopted by the International Criminal Court's (ICC) Office of the Prosecutor (OTP). In so doing, it traces the development of such indicators within the OTP's strategies, and argues that current indicators do not measure the effectiveness of prosecution in terms of outcomes within conflict-affected societies. The article corroborates this argument by explaining how current indicators are inclined to prioritize the economy and efficiency of prosecutions, thus producing a gap in the measurement of effectiveness. The mentioned gap is explained by the OTP's fundamental lack of clarity in precisely identifying the outcomes of prosecutions. In turn, the performance indicators adopted by the OTP may engender perverse effects, further aggravating the lack of clarity concerning outcomes. The article recommends the adoption of principles aimed at improving future performance measurement of the OTP.

Ross Fletcher

Article: ‘Fraudulent food poisoning claims:suggested antidotes’
In (2017) *Travel Law Quarterly* 52-56

Abstract: It is difficult at present to read a newspaper or the internet without encountering a mention of fraudulent claims under Regulation 15 of the Package Travel etc Regulations 1992 for compensation against tour operators on behalf of holidaymakers who purportedly contracted food poisoning. Criminal prosecutions for fraud, and potential defamation proceedings by the holiday resort proprietors lie in wait in response to such behaviour. However, this is cold comfort for the

tour operators, who will themselves feel entitled to compensation for their wasted time and resources. This article considers the tactics, measures, rights, and remedies available to tour operators in order to obtain redress and ideally deter future fraudulent claims.

Mohamed Badar

Article: 'The Self-Declared Islamic State and *Ius ad Bellum* under Islamic International Law', (2017) 1 *The Asian Yearbook of Human Rights and Humanitarian Law* 35-66

Abstract: In terms of international law, the militant group which calls itself the Islamic State (IS) naturally poses questions of illegitimacy in the context of the law of belligerency and international humanitarian law (ius in bello). However, the group claims to operate within a distinct and parallel law, i.e. Islamic (international) law and the support it enjoys stems directly from this claim. A focus on public international law alone would thus provide only an external claim to their illegitimacy, one which they and their many supporters would disregard as meaningless, since it could never be above divine commands. In light of this and in light of the fact that in most Muslim majority states, secularism has never obtained the respect it enjoys in the West, it is thus important to ask the questions of the legitimacy of this group, their actions and their political formations from within the norms of Islamic international law. This study therefore essentially aims to provide answers to questions already raised by many scholars and international organisations: What are the justifications for waging war on which the group relies? Are these justifications valid under Islamic international law? Who can declare jihād and under what conditions? Could their political formation rightfully claim to be a caliphate under Shari'ah? Why have the militants been denied the recognition of their chosen name by the vast majority of Muslims worldwide and have rather been branded with the derogatory acronym Da'esh or named 'the modern day Khārijites'? The answers to these questions are crucial because Da'esh recruitment and rallying narrative relies on depicting their struggle as a just and noble jihād in line with the tenets of Islam. Arguably, this study would also assist any future prosecution of this group. It would help adjudicators in asserting the legitimacy of their judgments, if they were able to prove that such judgments are compatible with the legal and belief systems recognised by the actors at trial.

Laura Graham

Article: 'Governing sex work through crime: creating the context for violence and exploitation' (2017) 81(3) *The Journal of Criminal Law* 201-216

Abstract: This article uses Jonathan Simon's concept of 'governing through crime' as a framework to argue that the state has framed sex work, and its surrounding problems, as issues of crime. There has been a privileging and proliferation of criminal justice responses to sex work in England and Wales, at the expense of more social or welfare based responses, and at the expense of creating safer environments for sex workers to work. Criminal law is used to manage and control sex work, to reinforce other policies, such as immigration and border control, and to appear to be doing something about the 'problem' of sex work without providing rights to sex workers. By framing sex work as an issue of crime, with sex workers being both the perpetrators of crime and the potential victims of exploitative crime, the state is able to legitimise its actions against sex workers, while ignoring the harm done to sex workers by the state

Frances Hamilton

Article: 'The symbolic status of same-sex marriage'
In (2017) 47 *Fam. Law* 851-854

Abstract: When the Civil Partnership Act 2004 ('CPA') was introduced in 2004 this was a major step forwards for same-sex couples. Despite offering near equalisation of rights with married couples, this piece argues that this was insufficient for those same-sex couples who favour same-sex marriage. This remains a current issue for jurisdictions, which have not legalised same-sex marriage, including Northern Ireland and many European states. This piece argues that civil partnership is a useful concept allowing public mind-sets to adjust, en route to the legalisation of same-sex marriage. However, civil partnership remains tarred by the brush of 'separate but equal.' Aside from the rights granted by marriage itself, marriage contains an important symbolical status and is necessary for the recognition of gays as equal citizens.

Mohamed Badar and Noelle Higgins

Article: 'Discussion Interrupted: The Destruction and Protection of Cultural Property under International Law and Islamic Law - the Case of *Prosecutor* v*. Al Mahdi*' 17 (2017) *International Criminal Law Review* 486-516

Abstract: *Al Mahdi* was the first case before the International Criminal Court (ICC), which focused on the destruction of cultural property, and indeed, the first case before an international criminal tribunal which had the destruction of cultural property as the sole charge against a jihadist. This case note first addresses the international legal framework on the protection of cultural property in Section 2. Section 3 then assesses the concept of *hisbah* and its operation, including the reasons why the *Hisbah* in Mali destroyed cultural property. The next section considers the facts of *the Al Mahdi* case. Section 5 highlights the shortfalls in the Trial Chamber's consideration of the rationales for the protection and destruction of cultural property, before the note concludes in Section 6.

Tony Storey

Textbook: *Unlocking Criminal Law,* 6th Edition (2017), Routledge

Abstract: The 6th edition of Unlocking Criminal Law has been extensively updated in light of important case law developments since the 5th edition in 2015. In particular, the new edition includes discussion of the Supreme Court judgments in Golds on diminished responsibility, Jogee on secondary liability, and Taylor on aggravated vehicle taking. The new edition also explains and analyses numerous Court of Appeal cases including Bala & Bala-Tonglele and Suski on conspiracy, Collins on self-defence; Gurpinar & Kojo-Smith on loss of control, F & E on constructive manslaughter, and Ali on consent in the Sexual Offences Act 2003.

Nicola Wake

Article: 'Human Trafficking and Modern Day Slavery: When Victims Kill' [2017] 9 *Crim. L.R.* 558-677

Abstract: The Modern Slavery Act 2015 s.45 provides a defence for individuals compelled to commit a criminal offence because of slavery and/or exploitation. Many offences, including murder, are excluded from the ambit of this defence. In cases where s.45 does not apply, reliance must be placed on duress and necessity, prosecutorial discretion, and the power to stay a prosecution. These approaches are heavily circumscribed in murder cases where duress and necessity are inapplicable, the fact that there has been a killing tends towards prosecution and the power to stay is invoked in exceptional circumstances. The introduction of s.45 and the approaches to be adopted where the defence does not apply provides an opportunity to consider afresh whether a (partial) defence to murder based upon compulsion ought to be available. A review of domestic law suggests that failure to provide a (partial) defence is based on policy and possibly confusion

regarding the excusatory nature of duress. This article advances a bespoke partial defence for slavery/human trafficking victims who kill based upon compulsion, which would sit cogently alongside the Modern Slavery Act 2015 s.45.

Mohamed Elewa Badar; Masaki Nagata and Tiphanie Tueni

Article: 'The Radical Application of the Islamist Concept of *Takfir*' (2017) 31 *Arab Law Quarterly* 134-162

Abstract: The ideology and actions of certain militant groups in the Middle East are often condemned as a perversion of Islamic precepts. In order to achieve a theologically ideal society, these groups espouse *takfirism*, a minority ideology that endorses violence, and in particular advocates the killing of other Muslims who are declared to be unbelievers. These groups justify their words and deeds with direct quotations from the Qur'an and the *Sunna*, which are the sources of Islamic law (Shari'a), as well as by citing historical precedents such as the Khawarij movement and Ibn Taymiyya's *fatawa*. This article aims to analyse how these groups (and in some cases state actors) defend their actions in legal terms and how mainstream Islamic scholars respond to what they consider to be doctrinal deviations.

Helen Rutherford and Clare Sandford-Couch

Magazine Article: 'The West Walls Murder'
In Your Family History Magazine in June, 2017, Issue 182, 34-35

Abstract: In 1863, a Newcastle labourer was hanged for the murder of a local tailor's wife. What does the crime – and its punishment – say about society in the north-east at this time?"
The article discusses how we approached our research and gives research tips for readers of the magazine (which is a monthly popular history/family history publication).

Tony Ward

Article: 'Improperly Obtained Evidence and the Epistemic Conception of the Trial' (2017) 81(4) *J Crim L* 328-338.

Abstract: This article criticises H. L. Ho's argument that the exclusion of improperly obtained evidence can best be understood in terms of a "political' rather than "epistemic' conception of the criminal trial. It argues that an epistemic conception of the trial, as an institution primarily concerned with arriving at accurate verdicts on the part of an independent and impartial factfinder, is an important element of the rule of law. The court also has a duty to uphold other elements of the rule of law. The rule of law should be seen as concerned with upholding moral and political rights, including those of victims as well as defendants. The "vindication principle', requiring decisions on exclusion of evidence to take account of both these sets of rights, is defended as being consistent with this understanding of the rule of law and with the epistemic conception of the trial.

Tony Storey

Case notes: Drug-Free Zone (2017) 81 *J. Crim. L.* 258 - 261. This case note examines the case of R v Kay [2017] EWCA Crim 647 in which the Court of Appeal confirmed that voluntary intoxication is not relevant in cases of diminished responsibility

And

'Rational' Reconstruction: Diminished Responsibility and Substantially Impaired Ability to Form a Rational Judgment (2017) 81 *J. Crim. L* 247 - 251.

Abstract: This case note examines the cases of R v Conroy [2017] EWCA Crim 81 and R v Squelch [2017] EWCA Crim 204, in which the Court of Appeal dealt with a number of questions, principally the meaning of the words 'rational' and 'substantially' in s.2(1) of the Homicide Act 1957, as amended. Other issues considered in the judgments included whether an Autistic Spectrum Disorder and a paranoid personality disorder, respectively, qualified as a 'recognised medical condition' for the purposes of s.2(1) of the of the 1957 Act.

Russell Hewitson

Book: *Conveyancing Handbook* 24th edition edited by: Frances Silverman Consultant Editors: Russell Hewitson And Anne Rodell (The Law Society, 2017)

Summary: The Law Society's *Conveyancing Handbook* presents the latest guidance on good practice in residential conveyancing and is a crucial resource for answering queries arising from day-to-day transactions. It is revised annually by a team of experts, directed by an editorial board and edited by Frances Silverman.

Natalie Wortley

Book Chapter: 'The Criminal Justice System of England and Wales', in Puri, B. and Treasaden, I. (eds) *Forensic Psychiatry: Fundamentals and Criminal Practice* (CRC Press, 2017) 429-434.

Summary: This contribution explains the fundamental principles and procedures underpinning the Criminal Justice System in England and Wales.

Conferences

Claire Bessant and **Rebecca Mitchell**

'Redesigning Distance Learning: Challenges and Opportunities'
At the SLSA conference Newcastle University

Abstract: The past decade has seen the development of many technological innovations which can positively enhance distance learning delivery, coupled with a growth in pedagogical literature and expertise in the area. Programmes designed prior to this period may have been more heavily reliance on an instructionist approach to delivery (Paliwala, 2001), through for example workbooks produced primarily with hard copy consumption in mind. More limited use may have been made of collaborative tools, such as Discussion Boards, and then with little in the way of scaffolding, which reduced their efficacy (Salmon, 2003; McNamara and Burton, 2010).
This paper explored the experiences of distance learning programme designers at Northumbria Law School and the drivers for redesigning the way in which postgraduate legal education is delivered. These included: the stark contrast between subsequent modules and the more cognitivist and constructionist approach to delivery (Paliwala, 2001) of the first compulsory module (involving the students in group work, including collaborative use of Discussion Boards, and peer

review); the opportunity to find ways to reduce reported feelings of isolation and encourage collegiality and contact between students and with tutors (Bernard et al 2000) and; the opportunity to take advantage of and integrate more modern learning technology, bringing the programmes up to date.

The redesign process was informed by a review of relevant literature, consideration of colleagues varied experiences with distance learning delivery and canvassing student views of proposed changes.

The paper went on to consider the revised delivery model now being implemented in the Law School, which makes far greater use of technology and a variety of materials, to reflect different teaching approaches (Moule 2007; Ally, 2008). These include interactive on-line materials and synchronous and asynchronous collaborative tools. Although an improved delivery model has been designed and implemented, it is recognised that the model operates within "real world" constraints and that further development work is needed to realise its full potential.

Laura Graham

'The Home Affairs Select Committee Inquiry on Prostitution: Is the time ripe for a Human Rights based approach to sex work?'
At the LSA Annual Conference, June 20 - 23, 2017, Mexico City

Abstract: On 15th June 2016, the House of Commons Home Affairs Select Committee on Prostitution published a report recommending, inter alia, that the laws surrounding brothel keeping and soliciting in England and Wales ought to be reformed. This report is the latest step in a decade-long public re-examination of sex work in England and Wales (Home Office, 2004, 2006, 2008; All Party Parliamentary Group on Prostitution and the Global Sex Trade, 2014), but these recommendations mark a significant deviation from the more punitive approach favoured by the preceding publications. This report, although not fully committed to any one legal approach to sex work, appears to favour a more harm-reduction based response, providing echoes of international discourses around human rights and sex work. That is, a range of United Nations bodies, including the General Assembly and UN Women, have published reports and policies supporting decriminalisation of sex work to uphold sex workers' human rights. Amnesty International has also openly supported the decriminalisation of sex work.

This paper explored the Select Committee report, and how its recommended reforms could be implemented to make the law more human rights compliant, particularly drawing on European Convention on Human Rights jurisprudence. This paper also explored the use of human rights, and particularly legal human rights instruments, in the debates around sex work, arguing that they are both a useful and limited tool to promote sex workers' safety and agency.

Attendance at this conference was assisted by an SLS Small Grants of £1290

Helen Rutherford

'United in Matrimony; United in Acrimony; United in Death; United in Condemnation…or not. Dis-union in the jury room. *Regina v John William Anderson*: Newcastle Winter Assizes 1875**.'**
At The 'Union and Disunion in the Nineteenth Century' PUNCS (Plymouth Nineteenth Century Studies) Conference 22 and 23 June 2017

Abstract: In August 1875 in a room in Mitford Street, Scotswood, Newcastle upon Tyne, John William Anderson stabbed his wife Elizabeth to death following an argument. The pair had married in 1866 but their marital union was unhappy and characterised by drunkenness and violence, although on the day of the fatal incident the pair had seemed to be on good terms following a social gathering at a neighbour's house. Immediately after the crime, Anderson walked to the nearest police station and confessed. The trial took place at the Winter Assizes before Mr Justice Denman on 1 December 1875.

The paper took a micro-historical approach to consider the nineteenth century interpretation of the law relating to murder and manslaughter in the context of the trial and examined the conduct of the judge and the jury in deciding whether the killing amounted to the greater crime of murder or the lesser crime of manslaughter.

In particular, the paper analysed the case, via the newspaper reports and the evidence in Anderson's Home Office file, to establish the respective roles of the judge and jury. It outlined my progress in exploring the contemporary reporting of the case and the local reactions to the crime and the verdict. It also examined the decision made in this capital case and considered whether there was a miscarriage of justice.

The legal process was examined in its historical context and the paper illuminated the conduct of the parties and what this reveals about the law in relation to homicide in the nineteenth century and in the North East of England in particular.

Chrisje Brants and Katrien Klep (Leiden University)

'Memorialising the Holocaust. Remembrance and Denial in the Jewish quarter of Amsterdam (Sponsored by the European Criminology Group on Atrocity Crimes and Transitional Justice (ECACTJ))'

At the Eurocrim 17th Annual Conference of the European Society of Criminology, Cardiff University, 14th September 2017

Abstract: After catastrophic events, memorialisation is part of coming to terms with the past and rebuilding the future, and as such is a form of transitional justice. In Western Europe, we tend to study such processes in parts of the world far removed from our own, forgetting that the major genocide of the 20th Century, took place in our own cities, and that a process of transitional justice was ongoing there for many years after the war. The Jewish quarter in the centre of Amsterdam has many monuments, buildings and museums connected to the history of the Jews of Amsterdam, the majority of whom died in the death camps of the Shoa. The memory landscape of the Jewish quarter is dynamic, a reflection of a culture of remembrance and denial of the Second World War since 1945 in which events and people were remembered, but others forgotten. What can the urban landscape of Amsterdam tell us about this culture and its relationship to social and political events during and after the war? What/who are remembered and what/who forgotten, by whom, and why? How has that changed over time?

Gemma Davies and **Adam Jackson**

'How the distinctive elements of national legal systems interface with cross-border cooperation and boundary-less science/technology and economics'
At Eurocrim2017, 17th Annual Conference of the European Society of Criminology, Cardiff University, 14th September 2017

Abstract: This presentation will analyse two critically important issues about EU and also hopefully post- Brexit international criminal justice cooperation that will need to be considered by decision makers during the New Parliament: 1. The strengths and successes of EU cooperation measures (e.g. ECRIS for criminal records and Prüm for forensic bioinformation) compared with alternative multi-lateral (e.g. Interpol) and bi-lateral options. 2. How EU legislative measures respect differences in national criminal legal systems re law and police and prosecution culture, and the role of scientific or technological experts in the production of evidence.

Chrisje Brants

'Fundamental rights and fair trial considerations when responding to the criminal use of the Dark Web'

At Eurocrim2017, 17th Annual Conference of the European Society of Criminology, Cardiff University, 14th September 2017

Abstract: This paper looked at potential problems if common standards of fundamental rights and fair trial were to be affected by Brexit – e.g. through a withdrawal from ECHR, although no longer being required to implement harmonizing EU legislation or subject to the jurisdiction of the European Courts could have the same effect. Even if Brexit negotiations leave judicial and police cooperation intact (Eurojust/Europol), collaboration between police forces on the ground and cross border use of evidence to obtain convictions requires mutual knowledge of, trust in and recognition of differing criminal justice systems and laws and the evidence they (can) produce. This is the point of much European jurisprudence and of harmonisation efforts by the EU. With regard to the dark web we may expect problems in this area concerning the limits of the freedom of expression, differing substantive laws (e.g. pornography, terrorism) and (consequently) different boundaries to the use of intrusive police powers.

Tim Wilson

'Enabling agencies and agents within international criminal cooperation processes to manage changes in the underpinning science and technology'
At Eurocrim2017, 17th Annual Conference of the European Society of Criminology, Cardiff University, 14th September 2017

Abstract: This presentation drew on lessons from successful DNA international cooperation that depended on the introduction of scientific and technological standards to underpin (a) initially information sharing and (b) later the reliability in legal proceedings of evidence obtained in other jurisdictions. It will also consider the implications - in a field often dominated by EU-US cooperation – of the UK's diminished influence post-Brexit and the additional risks relating to the future introduction of scientific standards that might stem from the policies of the Trump Administration

And at the same conference:

'Implications of Brexit for criminal justice relationships with the EU: the political consideration of custodial issues'

Abstract: The UK General Election has increased uncertainty about Brexit. In the case of criminal justice cooperation, however, Parliament might hold the Government closer than could have been expected before the Election to recommendations by several select committees. The House of Commons Justice Committee in particular argued that criminal justice cooperation should not be the subject of tactical bargaining or cherry picking, and accepted that the price of continued future cooperation would include both compliance with EU data protection law and a relationship between UK courts and CJEU. The nature of the relationships underpinning such future cooperation will still depend on complex and lengthy negotiations about, for example, the precise nature of a diminished UK influence in Eurojust and Europol and how UK 'third state' status might be reconciled with the EAW transposition legislation in some member states. There are also some aspects of possible future relationships that UK politicians have not yet considered in detail when discussing cooperation options. This presentation will examine one such issue: the extent to which the UK will accept an increasingly autonomous role for the courts - domestic and CJEU plus ECtHR – in setting minimum prison conditions that might conflict with British penal politics.

Helen Rutherford and Clare Sandford-Couch

'"Deep mystery surrounds the trial of Archibald Bolam": a micro historical study of a most peculiar case.
At Leeds Beckett University Criminal Heritage: Crime, Fiction, and History 5th September 2017

Abstract: Connections may be drawn between ‘microhistory’ - which takes a specific focus on a place, person or event to illustrate or explore larger themes - and its possible antecedents in nineteenth-century compilations of crimes, trials and other ‘strange-but-true stories’. These factors make it an appropriate methodology for addressing the case of Archibald Bolam.

On 7th December 1838, Bolam was found unconscious, alongside a dead body, in a burning room at the Savings Bank, Newcastle upon Tyne. Bolam claimed he had been attacked by an intruder, yet the room showed no evidence of a struggle. Bolam’s story was doubted and he was tried for Wilful Murder in Spring of 1839. Bolam’s arrest and trial captured the public imagination; pamphlets were published, and wild speculation in the press led to the editor of a London newspaper being imprisoned and newspaper publishers fined the huge sum of £10,000. Bolam’s case was included as a precedent in legal manuals addressing the role of circumstantial evidence and contempt of court and the highly unusual circumstances in which a trial may be postponed.

Our paper draws on contemporary newspaper accounts and images to explore this peculiar case, which could be mistaken for high Victorian crime fiction.

Laura Clayton-Helm

‘Married but not Recognised: The Impact Choice of Law Rules and Crossing State Borders Might Have on a Marriage’
At the North-East Postgraduate Conference, Northumbria University, Newcastle, 30 June

Abstract: Across England and Wales, the EU and the US, marriage is an important institution that many couples choose to enter into. It is therefore, important that people are able to understand whether their marriage is valid and will be considered as such in the country they live in. While for many this may appear straightforward, this may not be the case when there is an international aspect to the marriage. When entering into a marriage, there are certain rules that must be complied with, and where there is more than one country involved in the marriage it must be determined which law applies. It is this determination that this paper will focus on.
At present, there are various choice of law rules that might be used to determine the applicable law and no way of knowing which will be applied. This paper will briefly set out how I have analysed the law on this area in my thesis in a bid to establish the choice of law rules that should be utilised, to provide couples with certainty surrounding their marital status. Such certainty is important for many reasons, however this paper, focuses on the need due to the legal consequences attached to the status.

In analysing the choice of law rules and the appropriate reform, a form of depecage based interest analysis is promulgated, which, alongside a new and original choice of law rule, will be discussed in this paper. This reform not only encapsulates the traditional incapacities discussed within the essential validity of marriage, but also states that same-sex should be considered an incapacity and provided with a choice of law rule. The paper will then briefly touch upon the thesis’ examination of how the law could be reformed across the EU and the US to ensure that the certainty gained for couples extends beyond the borders of England.

Natalie Wortley

‘Unfitness to Plead: Guidance for the Court-Appointed Advocate
At the XXXVth International Congress on Law and Mental Health, 9-14th of July, 2017, Faculty of Law, Charles University, Prague

Abstract: In England and Wales, once a defendant has been found unfit to plead, the court must appoint an advocate to put the case for the defence at the ensuing ‘trial of the facts’ (s.4A(2) Criminal Procedure (Insanity) Act 1964). The judge must appoint *“the right person for this difficult task”,* as the responsibility placed on the advocate is said to be “*quite different”* to that involved in representing a fit accused *(R v Norman* [2008] EWCA Crim 1810). The advocate is not bound to follow an unfit accused’s instructions but must act in the accused’s best interests. An unfit accused

will not usually testify in their own defence, and may or may not be present in court during the proceedings.

This paper considers the lack of guidance as to the scope and ambit of the role of the court-appointed advocate in unfitness to plead cases. Some of the procedural and practical dilemmas that arise for such advocates will be discussed, and the paper will explore the ways in which their legal and ethical duties are shaped by the criminal justice system's binary approach to capacity issues. The Law Commission's proposals for the court-appointed advocate system will also be considered.

Helen Rutherford and. Clare Sandford-Couch

"I regard that sentence as my death": Archibald Bolam and
the Savings Bank Murder, 1838
At the Digital Panopticon project conference. 13-15 September 2017, St George's Hall, Liverpool. This was a conference to launch the website that is the culmination of a huge project funded by the Arts and Humanities Research Council. A collaboration between the Universities of Liverpool, Oxford, Sheffield, Sussex and Tasmania, it is published by the Digital Humanities Institute.
- https://www.digitalpanopticon.org/

Abstract: On 7th December 1838, in the early hours of the morning, a fire was discovered in the Savings Bank in Newcastle upon Tyne. Once the fire was brought under control, the firemen entering the building were horrified to discover the dead body of a man so disfigured as to render him unrecognizable (later identified as Joseph Millie, a clerk at the bank). In another corner was Archibald Bolam, the bank's actuary, alive but with his throat cut.

An intensive investigation led to Bolam being charged with the wilful murder of Millie. After a trial that cost the County £4000, Bolam was found guilty of manslaughter. Sentenced to penal servitude for life, Bolam was to be one of 230 convicts transported to New South Wales on the convict ship *Woodbridge* on 10 October 1839. Bolam protested his innocence until the day he died, in Sydney, on 25th December 1862.

This paper will take a micro-historical approach to examine the Bolam case. Drawing on contemporary newspaper reports and pamphlets, and legal analysis of the case, it aims to present a three-dimensional picture of the events leading up to the trial, the trial itself and the aftermath.

Our paper was about a case that appears in the Digital Panopticon database - more by accident than design because it has(of course) a London-centric focus.

Nicola Wake and **Sarah Lambert**

'Victims of Human Trafficking who kill: Part I' and
At the International Academy of Law and Mental Health, Prague, July 2017

Abstract: Section 45 of the Modern Slavery Act 2015 provides a defence for individuals compelled to commit a criminal offence as a consequence of slavery and/or exploitation. Many offences, including murder, are excluded from the ambit of this defence. This paper briefly outlines the offences of slavery and human trafficking before providing an overview of the S.45 Modern Slavery Act 2015 defence for victims of modern day slavery. Scenarios derived from victim testimonies in the U.S. Department of State Trafficking in Persons report are utilised to illustrate the implications of the new law to victims who commit offences to which s.45 does not apply.
In cases where s.45 does not apply, reliance is placed on duress and necessity, prosecutorial discretion, and the power to stay a prosecution. These approaches are heavily circumscribed in murder cases where duress and necessity are inapplicable, the serious nature of the offence tends towards prosecution and the power to stay is invoked in exceptional circumstances. The introduction of s.45 and the approaches to be adopted where the defence does not apply provides an opportunity to consider afresh whether a (partial) defence to murder based upon compulsion ought to be available. The speakers advocate that a partial defence ought to be made available.

And ‘Victims of Human Trafficking who kill: Part II’ at the same conference.

Abstract: This paper explores other potential (partial) defences that may be available to some victims of human trafficking who kill, such as, self-defence, loss of control and diminished responsibility. Scenarios derived from victim testimonies in the U.S. Department of State Trafficking in Persons report are utilised to illustrate are utilised to illustrate the potential applicability of these defences, in addition to exploring limitations on the use of these defences.

It is suggested that the potential availability of (partial) defences in specified cases supports the view of the speakers that a more general partial defence for individuals compelled to commit a criminal offence because of slavery and/or exploitation ought to be available. This paper advances a bespoke partial defence for slavery/human trafficking victims who kill based upon compulsion, which would sit cogently alongside s.45 of the Modern Slavery Act 2015.

Helen Rutherford

‘The body as evidence/true crime/crime and clues: “An awful spectacle presented itself”: the strange case of Archibald Bolam’
At Captivating Criminality 4. Crime Fiction: Detection, Public and Private, Past and Present
Bath Spa University 29th June – 1st July 2017

Abstract: In the early hours of December 7 1838, a fire was discovered in the premises of the Savings Bank in the Royal Arcade, Newcastle upon Tyne. After the fire had been extinguished, “an awful spectacle presented itself”: in the main room of the Bank lay the body of a clerk, Joseph Millie - beaten beyond recognition, his pockets filled with coal and paper.

In the corner of the same room, the Bank’s actuary, Archibald Bolam, sat propped against the wall with cuts to his throat and his clothing slashed. Bolam was alive and rallied with medical assistance. He explained that he had been set upon by a man with a blackened face wielding a poker but could remember nothing further until he was roused by the smell of burning.
The crime was investigated by the police and a number of clues pointed to a different version of events, which led to Bolam’s arrest.

Following a three-day inquest, the coroner’s jury returned a verdict of wilful murder against Bolam and he was sent for trial. Six months later, in a trial that gripped the nation, Bolam was found guilty of manslaughter.

The Bolam case is an ideal subject for a micro-historical examination. Contemporary newspaper accounts, letters and pamphlets allow us to examine the forensic evidence presented at Bolam’s trial and in particular to consider the body as evidence and the importance of the medical testimony. The paper will suggest that the truth is sometimes stranger than fiction.

Sue Farran

‘Regulating the environment in plural legal states: a view from the Pacific’

At the Law and Environment in Small States conference at the Centre for Small States at Queen Mary University London, on September 5 & 6, 2017.

Abstract: Pacific island states, like many other small developing states have plural legal systems and an important source of law is custom and customary law. Many of these states are also highly vulnerable to environmental degradation and the adverse consequences of climate change. Indeed small island states were vocal in lobbying for and securing the Paris Agreement. Internationally also, it is increasingly being recognised that traditional and local ways of managing the environment offers valuable insights and models which should be strengthened. This paper considers the challenges of integrating plural legal systems into recent environmental legislation, taking a comparative approach across the region and beyond.

Gita Gill presented a keynote paper

'Courting Justice in the Anthropocene'
At the Environmental Law and Small States Conference Queen Mary University, London, 5th September 2017

Abstract: The Anthropocene epochal has placed the Earth system processes in crisis resulting in the planet becoming increasingly dangerous, unpredictable, unstable and incompatible with human existence. There is compelling evidence to indicate that the human-induced ecological disaster is altering the planet at an alarming rate. Modification of carbon, nitrogen and phosphorus cycles, rates of sea-level rise, climate change, species invasions and accelerated rates of extinction have tipped the planet from Holocene to Anthropocene. SIDS are particularly vulnerable to these happenings and changes. In this context, the role of a specialised, responsive and transformative judiciary is critical. There is an imperative need to recognise, develop and interpret environmental laws and norms in a manner that moves, albeit slowly, from an anthropocentric to an eco-centric approach. Judicial intervention is particularly important in jurisdictions where the ineffectiveness of both political leadership and administrative authorities have resulted in the depletion and mismanagement of natural resources that in turn have exacerbated social and economic inequalities. The tripartite checks and balances, so beloved to western common law constitutionalism continue to experience limited success particularly in ex-colonial states and via post-colonial experiences.

India's green judiciary, notably the National Green Tribunal (NGT), is an example of the transitional move through substantive and procedural creativity in the current socio-ecological crisis. The juristic and scientific interventions through interpretation of constitutional environmental rights alongside participatory and access rights provide responses and offer some redress resulting in an incremental move towards an ecological nature based policy orientated approach. The Indian judiciary is considered as a best practice example having responded to environmental challenges in innovative ways.

Charlotte Emmett and **Carole Burrell**

'The Rights and Wrongs of Deprivation of Liberty'
At in Prague at the XXXVth International Congress on Law and Mental Health (July 2017):

Abstract: The Deprivation of Liberty Safeguards (DoLS) were introduced in England and Wales for very good reasons. But it is generally accepted, by a Select Committee of the House of Lords for instance, that they are not working very well. They are regarded as overly bureaucratic. In 2016, it is anticipated that the Law Commission will publish its report on how Deprivation of Liberty should be handled, which is likely to lead to a reform of the Law. But the concerns about the DoLS have raised deeper questions about the relationship between the Law and clinical practice. Are there areas of practice where proper concern about human rights should be subordinate to the requirements for good clinical care? Or is this anathema to the whole human and disability rights agendas? We shall reflect on the developments in connection with the DoLS in order to raise this question using a case vignette concerning end-of-life care for people with dementia.

Our answer to the question will be speculative, but perhaps also provocative.

Tony Ward

'Religion, Repression and Resistance in the South',
At the European Group for the Study of Deviance and Social Control, Mytilini, Greece, 2 September.

Abstract: This paper discusses the data relevant to religion from an ESRC-funded research project 'State Crime and Resistance: A Comparative Study of Civil Society'. In Colombia, Kenya, Tunisia,

Turkey and Myanmar, three religions made significant contributions to civil society's resistance to, or support for, state violence: namely Christianity, Islam and Buddhism. All three religions play a dual role. On one hand they support, and give motivating force to, humane values that support human rights. On the other, they afford visions of a purified, stable, pious society which can be a justification for repression. The role of Buddhist organisations in fermenting the genocidal violence unfolding in Myanmar is one tragic example of the latter pattern.

Tony Ward with Shahrzad Fouladvand, University of Sussex

'Evidential Dilemmas in Human Trafficking Prosecutions'
At the SLS conference, Dublin, 6 September

Abstract: A number of international legal instruments and cases dealing with human trafficking support the idea that victims of serious crimes have procedural rights in the trials of those who allegedly victimised them. This paper explores some of the tensions between victims' rights and the rights of defendants, particularly in the areas of video-recorded evidence, character evidence, sexual history

Tina McKee, Rachel Nir, University of Central Lancs; Tamara Hervey, James Cairns, University of Sheffield; **Elisabeth Griffiths, Jill Alexander,** University of Northumbria
'The Fairness Project: equipping students to maximise employability'
At the Society of Legal Scholars Conference in Dublin in September 2017

And

At the Higher Education Authority Annual Conference at Manchester University in July 2017

Abstract: The Fairness Project is a collaborative project across three Universities equipping students to maximise their employability through understanding and responding to inequality and unfair diversity barriers in the legal profession and inspiring them to create a fairer legal profession for the future.

Mohamed Badar

'The Prohibition of the Use of Force and the Crime of Aggression from the Viewpoint of Islamic Law'

At the 19th Salzburg Law School on International Criminal Law, Humanitarian Law and Human Rights Law, Salzburg, 1-2 August 2017

Abstract: This presentation was based on Badar's recent publication titled 'The Self-Declared Islamic State and *Ius ad Bellum* under Islamic International Law', (2017) 1 *The Asian Yearbook of Human Rights and Humanitarian Law* 35-66

And at the same conference

'The Borderline of Incitement to Genocide and Hate Speech in the Context of IS Propaganda'

Abstract: This presentation was based on Badar's recent publication titled 'The Road to Genocide. The Propaganda Machine of the Self-declared Islamic State (IS) (2016) 16 (3) *International Criminal Law Review* 361-411

Carole McCartney

'Maximising Forensic DNA Utility: Ethical, Social and Legislative Challenges**.'**
At the International Assoc of Forensic Science Triennial Conference, 21-25th August, Toronto.

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.

Jill Alexander

'Clinical Legal Education' Pecha Kucha
At the International Journal of Clinical Legal Education Conference at Northumbria University on July 2017

Abstract: This research project will conceptualise clinical legal education beyond its pedagogical positioning to put it into the employability discourse and see what perceptions exist among educators, employers, students and staff about the potential impact of CLE on employability and through that process illuminate where perceptions interact, diverge and overlap.
According to Susskind, we can anticipate "greater changes in law over the next two decades than we have seen in the last two centuries" (Susskind, 2013). As the legal environment changes, how far is the law clinic providing what employers are looking for?

Daniel Fenwick

Poster: 'Incremental global acceptance of assisted dying: two models apparent?'
At the SLS 2017, 108th Annual Conference hosted by University College Dublin.

Abstract: It may now fairly be said that 'assisted dying' laws are finally becoming established in North America due to certain very recent developments - the enactment of legislation and regulations governing access to forms of 'euthanasia' 'assisted suicide' or 'assisted dying' in significant new jurisdictions, including Canada and Colombia. The familiar normative arguments for such developments are that there are fundamental moral rights to autonomy, and/or to avoid experiencing intolerable suffering. But the most recent legal developments, which permit those with terminal illnesses to take their own lives ('assisted dying'), do not appear to satisfy either right. The question is therefore - what is the value of these legal developments? The answer to this question has particular urgency in those jurisdictions, such as Canada and Colombia, in which these rights have received constitutional recognition and whose laws will thus be scrutinised for compliance

with such constitutional rights by national courts. An assessment of the value of these new laws on 'assisted dying' is also crucial for those jurisdictions, such as England & Wales, in which courts must consider legal challenges to the criminalisation of assisted suicide based on such rights. One such challenge will arise in 2017, and may prompt legislative change. The core value of 'assisted dying' is examined not solely in terms of the value of autonomy, but also in terms of dignity as foundational values of human rights. Having adopted such a conception of these values, they will then be used to critique laws on 'assisted dying', focusing on the laws in Canada and Colombia.

* This poster won the Best Poster Prize

Sue Farran

'Finding the commons in common law'
At the Australasia Law of Property Conference, Curtin Law School, Perth, September 26-29
Thematically entitled 'Beyond Sole Ownership'

Abstract: while the idea of the global commons or the Creative Commons is becoming familiar locating 'the commons' in common law is a challenge. Recognising the contemporary interogation of exclusive property rights this paper considered whether there was space at the margins of four spheres of relevant law: common property in existing legal rules and institutions; expansive interpretations of the 'global commons'; discourse about social capital and public goods; and the intersections between human rights and property rights, to locate and develop the concept of 'property in the commons'.

Northumbria Law School Working Paper Series

Hannah Newhall 'Balancing Individual Needs with Public Interest: An Investigation into the Extent to Which Depressive Illness Can Provide Evidence for Diminished Responsibilities'
Northumbria Legal Studies Working Paper No. 2017/01

**Romana Bruderer-Schwab ' ** Reframing the Claim in BPAS through a Human Rights Lens: A Thought Experiment'
Northumbria Legal Studies Working Paper No. 2017/02

Other

Birju Kotcha had his article **'**The ICC's Office of the Prosecutor and the Linits of Performance Indicators ' (2017) Journal of International Criminal Justice
cited at the ECCC (Extraordinary Chambers of the Courts of Cambodia) on August 11 2017, available here https://www.eccc.gov.kh/en/document/court/combined-decision-impact-budgetary-situation-cases-003-004-and-0042-and-related-submi (see footnote 59!). The article cited can be found at the following link:
https://academic.oup.com/jicj/article/4061089/The-ICC-s-Office-of-the-Prosecutor-and-the-Limits

Kayliegh Richardson and **Laura Coapes** won the prize for best poster presentation at the *7th World Congress on Family Law and Children'* poster presentation at the *7th World Congress on Family Law and Children's Rights* which took place in Dublin.

Northumbria Law School hosted a very successful North-east Post Graduate Research Law Forum Conference on Friday 30th June. This is the fifth year this collaborative venture between Northumbria University and Newcastle University has been held, with the venue alternating each year. The organising committee of PGR students: **Rachel Dunn, Alexander Maine, Tracy Kirk**

(Northumbria) and Andrew Beetham, Yuki Motoyoshi, Richard Poole (Newcastle) did an excellent job and the conference attracted over 30 post-graduate presenters from the Universities of Leeds, Canterbury Christchurch, York, Glasgow, Manchester, Birmingham City, Sunderland as well as Northumbria and Newcastle. Opening and closing keynote talks were delivered by Professor Kathryn Hollingsworth (Newcastle) and Professor Elaine Hall (Northumbria).

Prizes had generously been donated by Hart Publishing, Edward Elgar Publishers and Cambridge Scholars Publishing. Sixteen members of academic staff from both universities judged posters, presentations and Pecha Kucha and provided feedback. These were won by **Lauren Clayton-Helm** (Best Paper); **Rosie Hodsdon** (Best Pecha Kucha) and **Marc Stuhldreier** (Best Poster). Next year the event goes up the road to our 'neighbours-in-law' Newcastle University.

The paper given by **Helen Rutherford** and Clare Sandford-Couch at the Lives Trials and Executions conference in Liverpool in May was very favourably discussed in the conference report published in the on-line journal (2017) 7(1) *Law, Crime and History* http://www.lawcrimehistory.org/journal/vol.7%20issue1%202017/Rhiannon%20Pickin%20Lives%20Trials%20and%20Executions%20conference%20report%20-.pdf

Claire Bessant had a piece published in *The Conversation* on 20 September 2017, 'Too much information? More than 80% of children have an online presence by the age of two'.
This short piece considered the prevalence of sharenting and considered whether the new Data Protection Bill might provide a partial answer to the problem raised by the sharenting phenomenon - how to appropriately balance the rights of parents and children.

Natalie Wortley and Helen Quirk edited a special edition of the (2017) 81(4) Journal of Criminal Law and co-authored the editorial: 'Criminal Law and the Society of Legal Scholars' (2017) 81(4) J Crim L 278-281 which discusses the impact academics and academic research can have on reform of the criminal law.

Northumbria University hosted a Summer Academy event specifically exploring topical global issues in international criminal justice and their impact on peace and security. The Summer Academy was co-ordinated by **Mohamed Badar**, **Sue Farran** and Tanya Wyatt, included presentations by senior judges and eminent scholars from around the world. It was held as part of ongoing work by the University's Environmental and Global Justice Research Cluster, in partnership with Northumbria Law School, the Department of Social Sciences and the Northumbria Centre for Evidence and Criminal Justice. Reflecting on the event, Professor John Wilson, Pro Vice-Chancellor for Northumbria Law School said: "The sessions were of extremely high quality, generating discussion at strategic level between participants of global significance. What was particularly impressive was the collegiate nature of the event. This encouraged the postgraduate and undergraduate students who attended to take a full part in the proceedings via questions and comments, and enabled them to develop a real rapport with the distinguished judicial and academic speakers".
For more information about the 2017 Summer Academy see www.northumbria.ac.uk/summeracademy