

RESEARCH ROUND UP

ISSUE TWO. APRIL 2016

SCHOOL OF LAW

This newsletter celebrates some of the research activity taking place in the School of Law, Northumbria University, focussing on published outputs and conference papers. This second issue captures outputs from the the second semester of the 2015/2016 academic year up to and including the Easter break.

Publications

Tony Storey

Case Note: "A Dangerous Situation: The Duty of Care in Gross Negligence Manslaughter" (2016) 80(1) *Journal of Criminal Law* 12-16

Abstract:

This case note analyses two Court of Appeal judgments on the "duty of care" element in the offence of Gross Negligence Manslaughter: *R v Bowler* [2015] EWCA Crim 849 and *R v S* [2015] EWCA Crim 558. In both cases the duty of care was said (either explicitly or implicitly) to be based on the fact that the appellants had created dangerous situations, which develops a legal principle introduced by the Court of Appeal in *R v Evans* [2009] EWCA Crim 650, [2009] 1 WLR 1999.

Mohamed Badar

Article: 'The Road to Genocide. The Propaganda Machine of the Self-declared Islamic State (IS)' (2016) *International Criminal Law Review*

Abstract:

In the same manner as the Third Reich, IS uses law, terror and propaganda as 'techniques of governance' that serve to advance their political aims: securing themselves in power, preparing and waging war, and fostering the idea of an Islamic state. IS have successfully used the print and radio media systematically for the dissemination of lethal ideas and for the mobilisation of the population on a grand scale in order to materialise these ideas. When such propaganda is laced with the dolls specialis of the crime of genocide, the severity of the mass action it brings about can be disastrous. This paper analyses the hate propaganda used in the online publications of IS. Evidence will then bring to light the fact that their hate propaganda amounts to direct and public incitement of others to commit genocide and the propagandists could, thus, be prosecuted for this crime at national or international courts.

This article focuses on the crime of direct and public incitement of others to commit genocide in relation to IS and their widespread and systematic propaganda machine. After a brief introduction to the media arm of IS the paper examines the substantive law underpinning the crime of incitement to genocide, drawing reference mainly from the jurisprudence of the International Criminal Tribunal of Rwanda (ICTR), which sets a precedent in clarifying and extending the concept of incitement to genocide. Since the law surrounding the crime is somewhat complex in

relation to its substantive application the paper shall provide a clear view of the law in action. This shall highlight the pivotal role hate propaganda plays in the build up to incitement. Applying this reference tool, this article will then examine and analyse the hate propaganda used throughout Dabiq magazine the online publication at the forefront of IS propaganda, as well as their radio broadcast medium, al-Bay?n. As IS's hate propaganda is permeated with primitive Islamic discourse, our analysis will pay specific attention to key terms such as takfr (excommunication) and kufr (disbelief in Allah) in light of their cultural and linguistic context. The two-tiered ideology to which IS adheres is also explained. Thus, evidence will highlight the fact that their hate propaganda has created a toxic climate which has opened the door to the realisation of incitement to commit genocide as a crime under international law.

Ann Creaby-Attwood and Claire Allely (University of Salford and Gillberg Neuropsychiatry Centre, Sahlgrenska Academy, University of Gothenburg, Gothenburg, Sweden)

Article: 'Sexual Offending and Autism Spectrum Disorders'
(2016) 7(1) *Journal of Intellectual Disabilities and Offending Behaviour* 35-51

Abstract:

Studies have found innate vulnerabilities which potentially may increase the risk of an individual with autism spectrum disorders (ASD) finding themselves involved with the criminal justice system as a result of being charged with a sexual offence. The purpose of this paper is to evaluate the literature which has explored sexual offending in individuals with ASD. A systematic PRISMA review (PRISMA, Preferred Reporting Items for Systematic Reviews and Meta-Analyses) was conducted using internet-based bibliographic databases (PsycINFO, MEDLINE, Psychology and Behavioural Sciences Collection and PsycARTICLES) in order to access studies which investigated to any degree the association between ASD and sexual offending. The findings were that only a small number of case reports (n 1/4 7) on sexual offending in individuals with ASD and a small number of prevalence studies (n 1/4 7) were identified. The implication of this research is that research is urgently required to identify the specific requirements and needs of sexual offenders with ASD in order to inform an appropriate treatment strategy for successful outcomes. To date relatively few studies and reviews have investigated the area of ASD and sexual offending specifically.

Ray Arthur

Article: 'The Criminal Justice and Courts Act 2015 - Secure Colleges and the Legitimation of State Sponsored Violence'
(2016) 79(1) *The Modern Law Review* 102-121

Abstract:

The use of force to restrain young people in custody can cause serious physical injury, profound psychological damage and was found to be a contributory factor in the deaths of two young people who died in custody in 2004. Despite these dangers, in most youth custodial establishments the use of force remains high and has been increasing. This article considers the effectiveness of using violent force to control young people in custody and argues that the deliberate infliction of pain as a form of control of young people in custodial settings is contrary to Dworkin's moral and egalitarian ideals of respect for human dignity, treating citizens with equal concern and respect, and the moral duty not to create an unreasonable risk of harm to others.

Russell Hewitson

Article: 'The new CPD scheme for conveyancers'
(2016) 160 (2) *Solicitors Journal* 25

Abstract:

This article outlines the new continuing professional development (CPD) scheme for solicitors, focusing on the implications for conveyancing solicitors. Notes the areas of competence specified by the Solicitors Regulation Authority, and suggests a range of training activities that will count towards a conveyancer's CPD.

Elaine Campbell

Article: 'Recognising the Social and Economic Value of Transactional Law Clinics: A View from the United Kingdom' (2016) 65 *Journal of Legal Education* 580-596.

Abstract:

Traditionally, law school legal clinics have focused on the provision of free legal assistance to individuals who cannot afford to hire a lawyer. The basic rationale is that pro bono work should enhance access to justice for the most disadvantaged in society. Many clinics thus choose to provide advice solely on issues that affect the underrepresented individual, such as housing, employment, crime, and welfare benefits. In the United States, the last thirty-eight years has seen the development of clinics that assist businesses and entrepreneurs. They are known as transactional law clinics. A significant amount of literature has been published on the rise of transactional law clinics in the U.S.

Transactional law clinics do exist in the United Kingdom. However, their history is unreported. There is very little published data on U.K. transactional clinics. I have first-hand experience of the social and economic benefits-for clients and students-that transactional law clinics can offer. I am disappointed that U.K. transactional law clinics receive scant attention in the literature. It is time for transactional law clinics in the U.K. to enter the legal education literature. This article seeks to take the first steps in that regard.

Russell Hewitson

Article: 'Rain check'
(2016) March *Property in Practice* 26-27

Abstract:

Outlines how Flood re-insurance will work, what properties are eligible and how to advise clients living in flood risk areas.

Peter Breakey

Article: 'Don't put it in writing?'
(2016) 166 (7686) *New Law Journal* 16-17

Abstract:

This article Explores the Solicitors Disciplinary Tribunal decision in case no.11380-2015, Solicitors Regulation Authority v Brough, Chaudhary and Story, on whether former partners of OH Parsons and Partners breached Principle 9 of the Solicitors Regulation Authority Code of Conduct 2011 by exchanging private email with inappropriate and offensive comments. Stresses the need for caution when sending email, even if it is believed to be private correspondence.

Elaine Campbell

Article: 'Exploring Autoethnography as a Method and Methodology in Legal Education Research' (2016) 3 *Asian Journal of Legal Education* 95-105.

Abstract:

Legal education is a new area for autoethnographic research. Indeed, there is a significant lack of autoethnography located in higher education generally. This article explicitly seeks to fill a considerable gap in the literature by fixing the narrative in the law school. Drawing on her own autoethnographic vignettes and reflexive journal entries, the author provides a first-hand account of entering the world of autoethnography. She argues that the hyper-reflexivity at the heart of a narrative approach is valuable and appropriate for legal education research. Yet, she also addresses and explores the challenges of such an approach, including subjectivity, ethics and the politics of discontent.

Sue Farran

Article: Gender, equality and Pacific Island countries with particular focus on domestic violence. (2015) 1 *Journal of South Pacific Law* A1-A23 available online <http://www.usp.ac.fj/index.php?id=19562> (published January 2016)

Abstract:

This article draws on research funded by the European Commission looking at Gender equality in the Pacific region from an ethnographic case-study perspective. Convention reports and most recently the reports and recommendations that flow from the Universal Periodic Review process highlight the persistent problem of gender inequality in the region, focussing in particular on the high rate of domestic violence, the low numbers of women in parliament and institutionalised patriarchal structures which frustrate well-intentioned national policies and aid-funded initiatives. This paper provides a broad overview of a region in which gender equality is controversial and contested.

Marc Stuhldreier (PhD student)

Article: 'The Trans-Pacific Partnership Agreement and its Threats to the Affordability of Medical Products in Developing Countries' (2016) 19 *Trinity College Law Review* *
online at: http://heinonline.org/HOL/Page?handle=hein.journals/trinclr19&div=11&start_page=175&collection=journals&set_as_cursor=0&men_tab=srchresults

Abstract:

This article examines the potential threats that the Trans-Pacific Partnership (TPP) agreement creates for the affordability of essential medical products in developing countries. Three main concerns about the treaty, respecting pharmaceutical patents, have been identified as: (a) increased data exclusivity provisions, (b) an increased scope of patentable subject matter with the possibility of creating 'evergreening' patents, and (c) an increased term for pharmaceutical patents. A further obstacle to public healthcare can be found in an investment protection clause which is capable of creating a liability for sovereign states for public policy decisions that are purportedly damaging to private, foreign investments. This article recognises that the main threat of those TPP provisions is the creation of increased monopoly positions for pharmaceutical companies that will drive up the prices of medical products. While the TPP agreement is applicable only to participating states, the aim of this article is to examine how far specific threats to other developing countries can be derived from the TPP. In this regard, it is recognised that the TPP is a platform agreement designed for other countries to join. Developing countries might be pressured into acceding in order to remain part of regional and international trade. Additionally, the TPP agreement might

become a model for future trade agreements, extending those provisions to other parts of the world.

* This article was awarded the A & L Goodbody Prize for the best Intellectual Property Law article in the journal

Victoria Murray

Chapter: 'Developing Clinic' in Chris Ashford and Jessica Guth (eds) *The Legal Academic's Handbook*, Palgrave Macmillan 2016, pp 81-83

Abstract:

This short chapter provides a brief overview of how to develop a law clinic within law schools, including tips on what factors to consider when establishing clinical activities and challenges which can be encountered.

Conference Papers

Conall Mallory

"Civis Romanus Sum" and the Legal Protection of Nationals Abroad'

At The Younger Comparativists Committee of the American Society of Comparative Law, fifth annual conference, New Orleans, Louisiana 18th – 19th March.

Abstract:

The modern day protection offered to the citizen abroad is of a more subtle manner and much less intrusive than before, yet it is arguably more necessary than ever. The effects of globalization, specifically cross-border tourist travel and mass emigration, have generated renewed calls for clarity of the extent to which citizens will receive protection from their home state when outside its territorial borders. This paper explores this legal relationship between a citizen and state through a comparative analysis of the extraterritorial protections offered to nationals of Britain, Canada and the United States of America. Ultimately this paper seeks to identify, with consideration of the law and practice of three states, what premium citizenship holds when the national is abroad. From this it will be evaluated why each state respectively positions citizenship at the relevant level it does, and how the protection of nationals abroad builds into a wider narrative of the state-citizen relationship.

Jill Alexander and Carol Boothby

'Future-proofing law clinic – aligning the law clinic curriculum /experience with employer expectations to enhance employability'

At the Association of Law Teachers Conference 'Promoting Collaboration', Northumbria University, Newcastle, 22 March

Abstract:

This presentation discussed an ongoing research project run by the authors involving focus groups comprising current students, alumni, employers as well as Law staff where we will consider how clinic is perceived by those groups and whether students are clearly articulating the opportunities and perhaps limitations of clinic when applying for graduate employment. The aim of the research project is to assist students in identifying the relevant skills from clinic that will best prepare them for their future as lawyers.

Elizabeth Tiarks

'Translating Restorative Justice theory into practice: implications for young offenders'
At the Socio-Legal Studies Association Annual Conference, Lancaster, 5-7 April

Abstract:

There are a number of areas of dispute within Restorative Justice theory. One of these is whether Restorative Justice should promote certain restorative outcomes, such as reparation or rehabilitation (“outcome-focused”); or whether the process is more important and participants should be empowered to decide between themselves on the outcome for a particular case (“process-focused”). This paper will examine the trade-offs made between outcome-focused and process-focused ideals within restorative justice practice, looking in particular at the implications for vulnerable, young offenders involved in Restorative Justice conferences. This will involve exploring issues such as the balance of power and role of professionals in conferences; and the impact of young offenders contributing to, and having some level of ownership over outcomes. This will draw on a small scale study of Restorative Justice youth conferencing in Northern Ireland, which involved interviews with young offenders, victims and conference co-ordinators. It will also involve reference to secondary empirical research concerning young offenders in Restorative Justice conferences in Northern Ireland. It will be argued that, on the one hand, there is much to recommend the empowerment of Restorative Justice conference participants to make their own decisions, with as few external constraints as possible, i.e. practice weighted towards the process-focused account of Restorative Justice. However, the issues highlighted by an examination of Restorative Justice practice demonstrate significant problems which would need to be addressed, which affect in particular vulnerable participants such as young offenders.

Caroline Gibby and HJ MacFaul (Open University)

“You say it best when you say nothing at all ...” Overstreet and Schlitz (1988): Virtue ethics and learning how to become a Good lawyer'

At the Association of Law Teachers Conference 'Promoting Collaboration', Northumbria University, Newcastle, 22 March ALT

Abstract:

In broad terms, virtue ethics suggests that decision-making is not about doing your duty or doing what is best, but rather what you think a virtuous person would do in your situation. It emphasises the character and morality of an individual and how they use these factors in their actions. In focusing on the development of these characteristics as the tools for decision-making it does not provide specific and defined guidance as to what to do so it is clear that virtue ethics does not dictate or expect a specific conclusion. The individual has the power to act in any way, which their morality and character determines. This paper considers how virtue ethics can apply to a learning environment, which focuses in teaching students about the way of practice and clearly addresses professional ethics and conduct – where outcomes are designated by formal codes and rules.

The use of the firm meeting provides an authentic insight into practice; it seeks to encourage students to become effective professionals – developing autonomy and decision-making skills. Here students engage in an authentic learning environment where they are required to consider not only the law, but also to apply practical and intellectual virtues such as judgement, reflection and prudence, amongst others. This “self flourishing” which is crucial in development of professional confidence and competence is an important feature of virtue ethics. As a result, developing these virtues students are able to deal with the unpredictable, which is an essential part of the role of the lawyer.

Lee McConnell

'Delimiting a Binding Business and Human Rights Treaty'

At the International Law Association Spring conference, Lancaster University, 9th April

Abstract:

This paper responds to the recent shift in dialogue back to hard law standards in the domain of business and human rights, examining the feasibility of a binding business and human rights treaty. Putting aside the merits or demerits of such a regime, the paper focuses on two key challenges to its practical realisation. First, it will contemplate the identification of appropriate duty-bearers under a binding treaty regime. In doing so, it will discuss the allocation of responsibility among multiple international whose activities may give rise to the same adverse human rights impacts. This is an area of significant scholarly debate which demands further development.

The second challenge concerns the scope and content of any obligations directly addressing non-State actors. The responsibility of States to respect, protect and fulfil existing human rights standards is delineated by a spatial dimension: that of its jurisdiction. The notion of jurisdiction in international human rights law has classically been treated as primarily territorial in nature. Since business actors do not possess permanent sovereignty or territorial control in the same manner as a State, or even a non-State armed group, some other factor will be required in order to determine the limits of corporate human rights responsibility. In providing a thorough examination of these challenges, the paper aims to advance the burgeoning dialogue on the topic of direct non-State actor regulation, and contribute positively to the debate surrounding the development of international law in this field.

Clare Sandford-Couch

'Visualising Law': Encouraging Collaborations between Law and Art

At the Association of Law Teacher's conference, Northumbria University, Newcastle, 22 March

Abstract:

In 2015 I ran a competition open to all students in the Law School at Northumbria University, based around the theme of 'Visualising the Law'. The competition developed out of a belief that art can – and should - be used within legal education to encourage students to explore and express their knowledge and understanding of concepts relating to law or justice. This paper outlines the rationale for the competition and its development, including reasons for deciding upon a competition which required students to produce an image either totally without words, or minimal text only, and a second competition, for entries along the lines of a graphic novel or comic strip. The winning entries will be discussed, together with a narrative provided by one of the students. The winning entries to the competition are put forward as evidence that law students can engage with images to explain their knowledge and understanding of a case or point of law or a legal concept that they regarded as important. The paper argues that collaborations between legal education and art are worth exploring; encouraging engagement with visual images can improve or enhance students' perception of the law and how legal systems work, offering a different perspective for understanding/exploring the interrelationship of law with culture and society.

Angela Macfarlane

'When using surveillance to monitor an employee's internet usage in the workplace, has the employer's interference of an employee's Article 8 right to respect for private life and correspondence become so unfettered that the legitimacy of it is disregarded?'

At the Socio-Legal Studies Association Annual Conference, Lancaster, 5-7 April

Abstract:

Internet and email communications are hugely important tools that we now use as second nature when communicating with colleagues and friends and family, both in work and outside of work. The advances in technology and the widespread use of smart phones and portable devices can blur the boundaries between work and personal life. Any expectation of privacy when communications relate to personal and sensitive information whilst at work is perhaps misplaced if you consider the judgment by the European Court of Human Rights (ECHR) in the case of *Barbulescu v Romania* No. 61496/08 on 12 January 2016. In this case, the ECHR held that whilst Article 8 of the Convention, the right to respect for private life and correspondence, is engaged in the workplace it was not violated by the employer in this case because it found that its monitoring of the employee's emails was sufficiently limited in scope and proportionate. The fact that the employer had made available the personal and sensitive content of the communications, which referred to sexual health problems, to the employee's work colleagues who then discussed it publicly did not seem to trouble the court when balancing the need to protect his private life and the right of the employer to regulate its business. This paper will examine the judgment in the case and explore how the Court's interpret the justification of an infringement of the employee's Article 8 rights.

Victoria Gleason

'Leaping into the blogosphere: promoting collaboration in legal teaching through blogs.'
At the Association of Law Teacher's conference, Northumbria University, Newcastle, 22 March

Abstract:

A 21st century law graduate needs much more than just a working knowledge of the law. Law firms and other employers want commercially aware graduates who understand ways of developing business and the internet and social media play an increasingly important role in this. Employers may now require graduates to have their own 'digital footprint' which may mean setting up a LinkedIn profile, starting their own blog or website or joining Twitter. As such things are not usually honed in traditional law degrees it is up to law schools to consider ways in which students can be given the opportunity to develop these skills. Incorporating social media within teaching is one ways of doing so and may also have a wider pedagogic value. Using a project implemented within the Student Law Office (SLO) at Northumbria University as a case study the opportunities and challenges of using social media as a teaching tool in legal education are explored.

Caroline Gibby

'Vulnerable clients: learning in the Student Law Office'
At the Socio-Legal Studies Association Annual Conference, Lancaster, 5-7 April

Abstract:

In this paper I consider the role of the Student Law Office firm meeting as a method of enabling students to gain and develop understandings of the needs of vulnerable clients. As a new Student law Office tutor I am involved in preparing activities which are used to support the promotion of professional practices, using 121s within individual students but also within the larger firm environment. I explore the use of different activities which can be carried out in developing student's awareness of the needs of vulnerable clients within practice. Using this collaborative form of learning students are able to share and contribute to others' appreciation and understanding of the law, practice issues and professional conduct requirements in order to act in the best interests of clients. It is hoped that this paper will offer opportunity for sharing of ideas and approaches, which might be relevant to developing materials which can support simulated client activities, PBL and other teaching and learning opportunities.

Elizabeth Tiarks

'Whose notion of justice does sentencing serve?'

At the Howard League for Penal Reform Conference at Oxford University, 16-18 March

Abstract:

Current sentencing practice is ambiguous in terms of whose notion of justice is served in any instance of sentencing. This is partly due to the operation of s.142 Criminal Justice Act 2003, which sets out five contradictory purposes of sentencing, with no hierarchy as to when sentencers should prefer one purpose over another. This leads to sentencers being in a position where they must either second guess what the government intends at a given time; or they must rely on and implement their own understanding of justice.

Restorative Justice provides a promising way of removing the ambiguity over whose notion of justice sentences serve. Restorative Justice is here conceived of as a process of sentencing which allows stakeholders of an offence (victim, offender and community) to mediate between their different ideas of justice and come to a mutual agreement as to the outcome (or sentence). This means that the outcome should best represent a mediated version of the notions of justice held by those most affected by the offence.

The role of the state in this process will also be briefly outlined. Instead of the judiciary verifying restorative justice outcomes for proportionality and consistency with other outcomes (as happens in Northern Ireland, for example), it will be argued that the state should adopt a more administrative role, as suggested by Roche (2003). This should involve assessing the fairness of the process rather than the outcome, having particular regard to potential power imbalances during deliberation.

Marc Stuhldreier (PhD student)

'The Trans-Pacific Partnership Agreement and its threat to the affordability of medical products in developing countries'

At the 'Trinity College Law Students Colloquium', Dublin, 20 February

Abstract:

This paper examines the potential threats that the Trans-Pacific Partnership (TPP) agreement creates for the affordability of essential medical products in developing countries. In the current position, several issues have been highlighted regarding the impact of the TPP agreement's intellectual property section on the accessibility of medical products in countries that are parties to the treaty. Three main concerns about the treaty, respecting pharmaceutical patents, have been identified as: (a) increased data exclusivity provisions, (b) an increased scope of patentable subject matter with the possibility of creating 'evergreening' patents, and (c) an increased term for pharmaceutical patents. A further obstacle to public healthcare can be found in an investment protection clause which is capable of creating a liability for sovereign states for public policy decisions that are purportedly damaging to private, foreign investments. Claims under this protection clause are to be heard by arbitral tribunals, commonly consisting of private lawyers with an affiliation to the industry. Without an independent review by a national court, and as matters of public policy are directly challenged, those protection clauses are capable of undermining democratic principles.

This paper recognises that the main threat of those TPP provisions is the creation of increased monopoly positions for pharmaceutical companies with all the associated jeopardies. It is considered that the monopoly position will drive up the prices of medical products, resulting in a reduced availability of cheaper generic drugs. This will increase public health care costs, probably to a level which developing countries are not capable of meeting.

While the TPP agreement is applicable only to participating states, the aim of this paper is to examine in how far specific threats to other developing countries can be derived from the TPP. In

this regard, it is recognised that the TPP is a platform agreement designed for other countries to join. Developing countries might be pressured into acceding in order to remain part of regional and international trade. Additionally, the TPP agreement might become a model for future trade agreements, extending those provisions to other parts of the world. Further, it can be seen that India has a potential interest in joining the TPP. This might become another obstacle to the availability of cheap medical products in developing countries, as India currently is one of the world's main sources of generic medicines.

Christopher Simmonds

'A Photo Speaks a Thousand Words: Using Visual and Participatory Methods to Promote Collaboration in the Classroom'

At the Association of Law Teacher's conference, Northumbria University, Newcastle, 22 March

Abstract:

The session explored the use of visual media as a means of engaging students within the classroom. In particular, it demonstrated how visual media could be used to help students to explore the spaces within which they learn most effectively in order to begin to identify how teaching sessions could be delivered in innovative and interesting ways that maximise the student's ability to learn.

Adam Ramshaw (PhD Student)

'Unintended Consequences: Protocol 12 and Horizontal Effect'

At the Socio-Legal Studies Association Annual Conference, Lancaster, 5-7 April

Abstract: The paper considers the potential effects of the UK ratifying Protocol 12 of the European Convention on Human Rights. In lieu of the UK's ratification, the Protocol has entered into force and now may be pleaded against ratifying States in the European Court of Human Rights. This paper argues that, if the UK were to ratify Protocol 12, this would have a significant impact upon the application of human rights within the domestic courts. This argument rests on the premise that the current approach to the Human Rights Act 1998 amounts to a breach of Protocol 12 due to the prerequisite that a public authority must be involved in the proceedings before the Act (and therefore the Convention rights) are triggered.

Kevin Kerrigan and Natalie Wortley

'Effective participation of vulnerable defendants and unfitness to plead'

At the Joined up Justice Conference, Intermediaries for Justice, Stoke, March

Abstract:

A defendant who is unfit to plead will face a 'trial of the facts', which seeks to determine whether they did the act or made the omission charged as the offence. Mens rea is not currently considered at this hearing and the proceedings are not regarded as criminal. However, the outcome for a defendant may be significant as, if they are found to have done the relevant act or made the omission, the judge may be able to make a hospital order (potentially with a restriction order), among other disposals.

An unfit defendant will have an advocate appointed for them by the court. This advocate does not represent the defendant, who will not usually give evidence and may not even be in court during the proceedings. This approach to unfitness treats mental capacity as a binary concept and fails to recognise that an unfit defendant may be able to make some decisions about their case, perhaps with appropriate support. The current law deprives an unfit defendant of his criminal due process rights, which is problematic and arguably unsustainable in light of the United Nations Convention

on the Rights of Persons with Disabilities. This presentation was part of a conference “conversation” to ascertain whether there might be a role for intermediaries in assisting an unfit defendant to make certain decisions and/or to give evidence. Intermediaries in attendance agreed that there could be a valid role for intermediaries at the trial of the facts. They felt that depriving an unfit defendant of the right to this assistance is difficult to justify, particularly given the Law Commission’s reform proposals in this area.

Elisabeth Griffiths

'Only Relatively Equal? – The unintended consequence of the Equality Act 2010'
At the Socio-Legal Studies Association Annual Conference, Lancaster, 5-7 April

Abstract:

The aim of the Equality Act 2010 ('the Act') is equal treatment, bringing all 'protected characteristics' together into one piece of legislation, all separate 'silos' but in theory equal before the law. In recent years tensions have emerged within the case law. Some protected characteristics may have an impact on one's ability to do a particular job at particular times, such as disability, and are subject to special rules. Others, such as sexual orientation and religion, should have no impact and ought therefore to be ignored by an employer. As demonstrated by religious and disability discrimination cases, the Act can lead to tensions and informal 'emerging hierarchies'. This paper explores equality and informal hierarchies and suggests the tensions and in(equalities) are an unintended consequence of the Act.

Alexander Maine (PhD student)

Poster: 'Same-Sex Marriage and the Homonormative/Homoradical Legal Identity'
At the Socio-Legal Studies Association Annual Conference, Lancaster, 5-7 April

Abstract:

Since the advent of the Marriage (Same-Sex Couples) Act 2013, many have viewed the fight for equality as over and won. However, due to the unequal wording of the legislation, and the exclusionary manner of marital law, many queer theorists and LGBTQ activists argue that this is not the case. The legislation is said to construct two identities: the homonormative, and the homoradical. Otherwise known as the included, 'respectable' gay identity, and the excluded, 'slutty' queer. This research will then re-examine Rubin's (1984) charmed circle and push it into the new same-sex marriage context.

Other

Michael Stockdale

Delivered a lecture at the Central Criminal Court Bar Mess, London, as part of the Old Bailey Lecture series, on the topic of 'Expert Evidence' on 1 March.

Abstract: Expert evidence is a very topical subject given the recent changes to the Criminal Procedure Rules and the Criminal Practice Direction that have introduced into our rules of criminal procedure many of the recommendations made by the Law Commission in its 2011 report on expert evidence in criminal cases. This presentation explored recent developments in the law relating to the admissibility and scope of expert evidence in criminal proceedings with an emphasis on how such evidence can be tested and challenged even by those with little first-hand experience of the expert's field.

Nicola Wake

Gave a Guest lecture on 'Responding to the NZ Law Commission: A New Partial Defence (for primary victims)?' at De Montfort University in January

Abstract: Her lecture considered some of the questions raised in the recent New Zealand Law Commission Issues Paper, Victims of family violence who commit homicide (NZ Law Com, IP No 39, 2015). In particular, it is argued that limiting the parameters of the review to victims of family violence has the potential to exclude vulnerable offenders who find themselves in family-violence-type situations, but for the familial link. Accordingly, a new partial defence, designed to be of general application, is advanced.

Mohamed Badar

Gave a Guest Lecture: 'The Road to Genocide. The Propaganda Machine of the Self-Declared Islamic State (IS): Is History Repeating Itself?' to PG students at Brunel Law School, Brunel University, London, 1 March

And presented a paper on: 'The Road to Genocide. The Propaganda Machine of the Self-Declared Islamic State (IS): Is History Repeating Itself?' to members of Newcastle Forum for Human Rights & Social Justice, Newcastle Law School, Newcastle University, 10 February.

Caroline Gibby

Ran a workshop session: 'Introducing Ethical practices within Student law Office: the function of the firm meeting' at the 8th Annual Teaching Legal Ethics workshop sessions at City University, on 4th March

Abstract: This workshop considered the role of the firm meeting as a method of encouraging students to think about the use of ethical practices when participating in activities prepared for and during firm meetings.

As a new Student law Office tutor I am involved in preparing activities which are used to support the promotion of ethical understanding and practices through 121s within individual tutees but also within the larger firm environment. I explore the use of different activities which can be carried out to support the development of ethical awareness / and practices for students, in their preparation for meetings and the within the meeting itself.

Nicola Wake and Natalie Wortley

Co-convened a Law Commission Panel Session on 'Vulnerable Suspects and Defendants: New projects for reform' at the SLSA Conference, Lancaster, April 5-7.

The focus was that the law on self-defence ought to be reconsidered in light of the poor codification of the law in 2008 (Criminal Justice and Immigration Act), and confusion created by the householder defence inserted in 2013 (Crime and Courts Act 2013, and Collins [2016]).

Nicola Wake and Natalie Wortley

Co-convened and chaired a stream on 'Vulnerable Suspects and Defendants' at the SLSA Conference, Lancaster, the focus of which was the identification of vulnerable suspects and defendants and the mechanisms and processes that are present (or absent) for supporting and assisting such individuals throughout the criminal justice process.

Michael Devine

Sat as a volunteer judge/arbitrator for the Willem C Vis (VIS) International Commercial Law Arbitration Moot sponsored in part by the Chartered Institute of Arbitrators and hosted by the University of Vienna Faculty of Law in March. Approximately 300 different law schools participate in this moot.

Nicola Wake

Chaired a workshop on theme 'Setting the interdisciplinary research agenda in terms of fear responses and criminal responsibility' as part of a one-day conference focussed on setting the interdisciplinary research agenda in terms of fear responses and criminal responsibility through an assessment of developments in neuroscience. The session was part of an AHRC funded project: the Sense of agency and responsibility: integrating legal and neurocognitive accounts, held at the British Academy in March.