

# RESEARCH ROUND UP

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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 third issue captures outputs from mid-April to end of June 2016*

## Publications

### Clare Sandford-Couch

Article: 'Judging the Judge in Giovanni Boccaccio's Decameron' (2016) *Law, Culture and the Humanities* (published online first  
<http://lch.sagepub.com/content/early/2016/05/24/1743872116650862.abstract>)

#### Abstract:

Taking an interdisciplinary approach the article offers a fresh legal historical understanding of the Fifth Story of the Eighth Day in Giovanni Boccaccio's Decameron. Detailed analysis of the tale reveals much about the realities of the administration of justice in fourteenth century Florence and contemporary expectations of those exercising judicial authority. In making apparent the expectation that judges would look and act in a certain manner, the article suggests that Boccaccio's story can be interpreted as offering an insight into the extent to which public perception of a man's identity as a judge was dependent upon his appearance and attire.

### Chris Ashford and Jennifer Guthrie (eds)

Book: Edited collection: *The Legal Academic's Handbook*, Palgrave Macmillan 2016

#### Synopsis:

With contributions from more than 60 established academics, this handbook offers essential guidance on starting, pursuing, managing and advancing a career in legal academia. Whether you are looking for ways to overcome challenges or to seek out new opportunities, this book provides practical advice through relevant research, personal experience, and anecdotal evidence.

Four fictional academics who want to pursue different career paths in different academic institutions are introduced at the start of the book. Each chapter then delves into a specific topic from the perspective of one of these academics, including: making the transition from legal practice, investigating gender issues, gaining recognition for teaching, building a research profile, and organising a specialist conference.

Besides his editorial role Chris contributed two chapters to this collection: 'Editorial boards/Being an Editor', 222-224; and 'Editing Special Issues', 219-221

## **Conall Mallory**

Article: 'Abolitionists at home and abroad: A right to consular assistance and the death penalty' (2016) 17(1) *Melbourne Journal of International Law*  
[http://law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0007/1964608/171-Mallory-Advance.pdf](http://law.unimelb.edu.au/__data/assets/pdf_file/0007/1964608/171-Mallory-Advance.pdf)

### **Abstract:**

The provision of consular assistance is critical to nationals who face criminal proceedings abroad which may result in the death penalty. In recent years the importance of a detained foreign national accessing consular authorities from their home state has been recognised as both a human right and an individual right in international law. Despite this, the question of whether there is an obligation on the national's home state to provide consular assistance has yet to be answered. This article makes a case for the emergence of such a right to consular assistance in capital cases for nationals of states which have abolished the death penalty. With reference to both the International Covenant on Civil and Political Rights and the European Convention on Human Rights, the article locates this emerging right within a state's positive obligation to protect life. It is recognised that for any such emerging right to be meaningful it must be capable of being enforced. The article therefore addresses the particular challenges of extraterritorially applying a right to consular assistance and proposes the return to a previous, more flexible, understanding of extraterritorial human rights obligations on consular agents.

## **Chris Ashford, Nigel Duncan and Jessica Guth (eds)**

Edited collection: *Perspectives on Legal Education: Contemporary Responses to the Lord Upjohn Lectures*, Routledge 2016

Besides his editorial role Chris contributed two chapters to the collection: 'The Lord Upjohn Lectures and Legal Education' pp 1-7; and 'The Needs of the Legal Profession and the Liberal Law School: (Re)negotiating Boundaries', pp 177-187

## **Tim Wilson**

Chapter: 'Nauki sądowe a system kontrydktoryjny w okresie neoliberalnego eksperymentowania i oszczędności' ('Forensic Science in an Adversarial System during a Period of Neo-Liberal Experimentation and Fiscal Austerity') (translated into Polish) in Mieczysław Goc, Tadeusz Tomaszewski i Remigiusz Lewandowski, (eds) *Kryminalistyka - Jedność Nauki I Praktyki: przegląd zagadnień z zakresu zwalczania przestępczości* (Criminality- the Unity of Science and Practice: a review of the scope of the fight against crime) (Polskie Towarzystwo Kryminalistyczne, Warsaw, 2016) 141-162

### **Abstract:**

This paper (written for Polish readers) analyses a key aspect of the delivery of scientific and clinical expert evidence: management of systemic risks in the application of science within criminal proceedings. It argues that the ability to achieve this objective is not determined solely by the law relating to criminal procedure. A range of organisational, funding and normative questions also have to be resolved by the courts, government and legislature. The argument is developed through two short case studies. The first of these focuses on the closure of the publicly owned Forensic Science Service (FSS) and the emergence of an alternative pluralistic forensic science structure based on private companies and police laboratories. The second case study considers – in more detail - the code of practice and performance standards by which the government and the relevant professional bodies have sought to govern the work of a specific group of expert witnesses,

forensic pathologists. This second study demonstrates how disclosure is an essential element for ensuring compliance with the fair trial principles of Article 6 ECHR.

### **Sue Farran**

Chapter: 'Graffiti artists and guerrilla gardeners: challenging our understandings of Property Law' in Ruth Thomas-Pellicer, Vito De Lucia, Sian Sullivan (eds) *Contributions to Law, Philosophy and Ecology Exploring Re-Embodiments* Routledge 2016

#### **Abstract:**

The chapter in this invited collection focuses on two 'outlaw' activities: guerrilla gardening and graffiti in urban spaces. While acknowledging the legal frameworks in England and Wales which govern these forms of interaction with physical space, attention is also drawn to the porous nature of legal and moral boundaries between approved and condemned manifestations of these two activities and the contested claims which attach to them. Consideration is also given to the relationship of graffiti-ists and gardeners with their sites and the ways in which these embodiments of people with material property forms challenge the foundations of property law and, drawing on the relationships of indigenous people with their environment, invite a reappraisal of how we view the interaction of people, place, and space.

### **Lauren Clayton-Helm and Frances Hamilton**

Article: 'Same-Sex Relationships, Choice of Law and the Continued Recognised Relationship Theory' in (2016) 3(1) *Journal of International and Comparative Law* 1-31

#### **Abstract:**

A clear choice of law rule should be applied to all same-sex relationships in terms of essential validity. Interest analysis allows us to look at the public policy reasons behind why a choice of law rule may be appropriate or inapposite. This technique can lead to unpredictable results. When coupled with depeçage, a delineated splitting of competing policy inculcations, this allows for a more certain rules-based system. Each incapacity to marry should have its own appropriate choice of law rule. This article argues that additional public policy reasons apply to the choice of law appropriate to same-sex relationships. These include citizenship, equality and symbolism, and together require a more extended choice of law rule. It is recommended that a new theory, the continued recognised relationship theory, is suitable for same-sex relationships. This choice of law rule would apply the law where the couple is intending to live, or the law of the country where they have lived, if their relationship has been subsisting for a reasonable period of time. This article advocates that action at the European Union level will lead to more consistent results in this sphere.

### **Sue Farran**

Chapter: 'The challenges to human rights posed by threats to food security' in N.Baird (ed) (2014) 12 *New Zealand Yearbook of International Law* Canterbury University 153-176

#### **Abstract:**

The right to food is a fundamental human right articulated in international, regional and human rights instruments as well as Millennium Development Goals. Food security, however defined, is threatened by a number of different factors including climate change, environmental damage attributable to human or natural events, changes in agriculture to meet development agendas, the consequences of trade agreements and access to unsafe food, loss of biodiversity and lack of access to sufficient food due to poverty. The chapter in this invited collection considers threats to food security in New Zealand's neighbouring Pacific island countries, focussing on issues of climate change, threats to health due to poor diet and changing food habits, and the challenges

posed by intellectual property regimes brought about through trade agreements, which have the potential to undermine traditional food related knowledge and practices.

## **Brian Brewis**

Case Note: 'The Interpretation of s.41 of the Youth Justice and Criminal Evidence Act 1999 and the Impact of R v A (No.2) ([2002] 1 AC 45)' (2016) *Journal of Criminal Law* 80(3) 169-172.

### Abstract:

This case note considers the Court of Appeal judgment in *Armando Andrade v R* [2015] EWCA Crim 1722 which highlights the continuing difficulties concerning the interpretation of s.41 of the Youth Justice and Criminal Evidence Act 1999. Notwithstanding the failure by the defence to make a formal s.41 application to adduce sexual history evidence (as provided for by the Criminal Procedure Rules (Part 22)), the trial judge erred by failing to give adequate consideration to the decision in *R v A (No.2)* [2002] 1 AC 45 in which the House of Lords held that where the exclusion of evidence under a strict interpretation of s. 41 endangers the fairness of the proceedings, the court may be required by s. 3 of the Human Rights Act 1998 to adopt a Convention-friendly interpretation of s. 41 to give effect to the defendant's fair trial rights under Article 6 ECHR.

## Conference Papers

### **Rebecca Moosavian**

'Power/knowledge Dynamics in the Iraq Affair'

At the Law and Society Association Annual Meeting, New Orleans, June 2016

Abstract: This paper draws upon and analyses extensive material from the Iraq Inquiry led by Sir John Chilcot, including transcripts currently in the public domain. It develops themes from the author's earlier research on the Iraq war which argued that governmental production and control of knowledge afforded the Prime Minister a privileged position in relation to Parliament, Cabinet and courtroom challenges. This paper develops that earlier work by identifying and analysing new insights that the material obtained, and indeed produced, by the Chilcot Inquiry reveals about Foucauldian power/knowledge dynamics in the Iraq affair. Such dynamics pervade the Iraq affair. For example, the myriad weaknesses and gaps in governmental knowledge are cited by many Chilcot witnesses as contributing to the failures of the Iraq project. Also of interest is the Iraq Inquiry itself as a forum of truth production. But of particular significance here is the network of records generated by officials in the course of exercising power, the way in which political actors dealt with such practices and the power struggles that accompanied the production and dissemination of such records.

### **Chris Ashford** and Kevin Brown

'Same-Sex Male Social 'dating' Networks: Identity Formation and protection: A Preliminary Examination

At the Law and Society Association Annual Meeting, New Orleans, June 2016

Social networking continues to grow, and has been particularly popularised as a tool in the context of same-sex male encounters. Apps such as Grindr, Scruff, Hornet, Jack'd, Recon, Growlr, and Gaydar deploy location-based mobile services in order to facilitate dating and more causal encounters. This paper reports on a preliminary qualitative research project exploring the ways in which men are performing identity in the context of this technological landscape. Through a socio-

legal analysis, the project seeks to understand the ways in which individuals endeavour (in so far as they do) to protect these online identities.

This paper draws upon a small project funded by the British and Irish Law Education and Technology Association which was undertaken by the authors in 2014 and early 2015 examining through a series of UK-based small group interviews, the attitudes of men who have sex with men to the use of social dating and encounter networks. It specifically examines attitudes to identity formation and protection.

Initial findings provide an important context for ongoing policy and law-making responses to issues of online safety and protection. This was a preliminary study that is to form the starting point for a larger study for which funding is currently being sought.

## **Joanne Clough**

'Why carry a knife? An analysis of the effect of deterrence in the decision to carry a blade'  
At the SLSA conference at University of Lancaster on Wednesday 6th April 2016

**Abstract:** Possession of a bladed article in public is an offence which initially carried a financial penalty but is now considered so serious that it attracts up to four years imprisonment. This significant increase in sentence was to deter potential offenders as the incidence of knife crime reached "epidemic proportions" (Squires, 2009). To be effective, such a deterrent sentence requires certainty, celerity and severity (McGuire, 2004). The offender must be aware of the sentence awaiting them and thereafter, rational choice theory suggests the potential offender must choose not to commit the crime by calculating that the cost of harsh punishment outweighs the gain of committing the crime (Kennedy, 2009).

Much research has been undertaken in relation to young offenders, who are predominantly motivated to carry knives out of fear or fashion (Lemos, 2004); these motivators are unlikely to be outweighed by the threat of imprisonment. The current deterrent sentencing guidelines are aimed at dealing with adult offenders yet little research has been undertaken to understand the motivations of this group. Given that an adult may be less likely to be influenced by social norms (Neugarten, Moore & Lowe, 1965) and more likely to exercise rational thought (Wood et al., 2005), this raises questions as to what drives an adult offender to carry a blade and whether the threat of imprisonment features in the decision making process.

This paper outlined the rationale, methodology and initial conclusions of a UK wide qualitative research project which aims to produce a theory of motivation for the offence of possession of a bladed article in order to determine whether a strict deterrent sentencing policy is an effective means of reducing knife carrying amongst adult offenders.

## **Sylvanus Barnabus** (PhD student)

'Legal Pluralism and the Rights of Indigenous Peoples in a Post-colonial State - A Case Study of the Land Rights of Abuja Peoples of Nigeria'  
At the Law Forum, Newcastle University, 14 June

**Abstract:** Legal pluralists have demonstrated that the transnational legal landscape is characterised by legal heterogeneity as societies are made up of multiple and over-lapping social fields. Legal pluralism implies that there are varieties of law everywhere: local, customary, religious, State, regional, transnational, and international laws of various configurations. This heterogeneity does not in reality mean equality of impact within a legal system of all forms of law. Therefore, the dominance or superiority of State law in situations of legal pluralism may sometimes have negative implications on the rights of indigenous peoples.

The main purpose of this paper is to demonstrate through the case study of the land rights of Abuja peoples of Nigeria that the superiority of State law over other forms of law raises the academic and jurisprudential issues about the relationship between State law and other forms of law like customary law and international law. It would be demonstrated that the history and success

of State-building efforts which dates back to mediaeval Western Europe through to the present, accounts for the monopolisation of law by States.

Like States elsewhere, post-colonial African State law tends to dominate customary law and sometimes international law on the basis of the doctrine of sovereignty and domestic constitutional provisions in such States. It is argued that the circumstances in which the Abuja peoples of Nigeria find themselves in terms of their land rights have their origins in the State-building efforts that began in medieval Western Europe which was subsequently imported into Africa through colonialism.

### **Nathalie Wortley and Alistair MacDonald QC**

'The Role of the Advocate'

At The Future for Fitness to Plead in the Criminal Courts, Centre for Evidence and Criminal Justice Studies, Northumbria University, 29th June 2016

Abstract: This paper discusses the procedure in s.4A(2)(b) of the Criminal Justice (Insanity) Act 1964 for appointing an advocate following a finding that a criminal defendant is unfit to plead. In *R v Norman*, the Court of Appeal emphasised that the judge should appoint "the right person for this difficult task", such as "counsel experienced in mental health issues", as the responsibility placed on the person appointed is "quite different" to that placed on an advocate who can take instructions from a client. The paper explores the conflict between the s.4A(2)(b) procedure and international human rights instruments, and highlights the confusion surrounding the professional and ethical duties of the court-appointed advocate.

### **Sue Farran**

'Periodic review of human rights: does one size fit all in the Pacific?'

At the *Iuris Diversitas* annual conference 'Unity and diversity', Louisiana State University, Baton Rouge, 2 June

Abstract:

The process of the periodic review of human rights which is currently in its second cycle has been deemed to be a considerable success in a number of developing countries where international treaty compliance is often weak and reporting obligations frequently observed tardily. This is as true of Pacific island states as elsewhere. One of the consequences of periodic review has been a spate of national legislation dealing with domestic violence, motivated by negative observations by external agencies and facilitated by the work of the Regional Rights Resources team, a human rights advocacy organisation supported by donor funding. The consequence has been legislation that looks remarkably similar, which draws on international models and which may imply a homogeneity of problems and solutions. This paper explores this assumption drawing on field work looking at the social and cultural factors which shape and inform various manifestations of violence in the Pacific, and challenges the extent to which the ideology of universalism in human rights can be effectively achieved through legislation alone.

### **Tracy Kirk (PhD student)**

'Should adolescent children have their own distinct set of rights, which recognises their increased autonomy but protects those who lack sufficient capacity?'

At NE Law Forum, Newcastle University, 14 June.

Abstract: Adolescents are arguably a problematic group within society. They are increasingly seen as too young to have rights equal to those granted to adults; under welfare and paternalistic

grounds, however, they are expected to fulfil their nominated role within society; namely to be criminally responsible, do as their parents say and prepare themselves for entry into adulthood. Outlining my thesis, this paper briefly highlights the children's rights theories, which underpin my research. Thereafter, the paper will briefly discuss my analysis of competence and capacity and how they contribute towards my argument that adolescent's should have an increasing right of autonomy and 'self determination' as they approach adulthood.

Finally, the paper will briefly comment on my projected research destination; examining the competing rights and responsibilities, which adolescent's face while also mentioning the competing rights of parent's and young people to have a 'family life', under Article 8 of the ECHR.

### **Tribe Mkwebu (PhD student)**

'Explicating the Zimbabwean clinic through grounded theory: the Straussian version'

At the Faculty of Business and Law Doctoral conference, Northumbria University, June 29-30

Abstract: A doctoral research project that aims at unpacking a certain phenomenon poses a great challenge to qualitative data analysis because it must identify and integrate categories of meaning from the data collected with the theory generated. In identifying factors that have been influential in the establishment and sustainability of clinical programmes in Zimbabwe, the researcher explores the utilisation of Strauss and Corbin (1990; 1998)'s version of grounded theory as a data analysis tool through the use of devices such as open coding, axial coding and selective coding. In analysing data collected from Zimbabwe through semi-structure interviews, the Straussian version of grounded theory produced an information base that was structured by categories and was used in the subsequent search for patterns in the data and integration of these patterns into a systematic, theoretically embedded explanation of the clinical activity in Zimbabwe. Codes describing the content of the interview transcript segments were subjected to further analysis which enabled the researcher to create a brain storm map. The map became a representation of a tree with outward branches of thought growing from chunks of labels and codes into useful concepts that the researcher used to build theory around those factors that have been influential in the creation and sustainability of clinical legal education in Zimbabwe. This paper therefore posits that it was through a single, unified and systematic process of data analysis that a framework for the interpretation of research findings was created and consequently leading to the result of doctoral study – the generation of theory that answered the research question.

### **Victoria Gleason**

'A proposed mixed methods study of social enterprise legal structures in the North East of England – The Opportunities and Challenges'

At the Faculty of Business and Law Doctoral Conference, Northumbria University, June 29-30

Abstract: Social enterprise describes the purpose of a business, not its legal structure. Social enterprise is defined by the UK Government as "a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners" (Department for Business Innovation & Skills). Having made the decision to become a social enterprise, it is necessary though to choose a legal structure. In the UK there is, perhaps confusingly, a plethora of legal structures available and the Community Interest Company has seen over 12,000 registrations since its introduction in 2005. Whilst clearly an emerging area of economic importance, comparatively little legal research appears to have been done in this field. There is an opportunity to explore both the existing literature and to carry out data collection in the form of a mixed methods study. What is informing choice of social enterprise legal structure in the North East, do social enterprise managers feel they had enough guidance to make an informed decision and what impact does choice of legal structure have on their operations? This paper will outline the basis of

a study proposed as part of a Professional Doctorate in Law. It will also explore the opportunities and challenges anticipated by the researcher.

### **Marc Stuhldreier (PhD student)**

'Corporate Social Responsibility and the Right to Health in the Pharmaceutical Industry'  
At UNN-NBS + PolyU SPEED Conference 2016, titled 'Globalisation and Digitalisation: Opportunities and Challenges', 8th June 2016, Newcastle Business School

Abstract: This paper gives an introduction to my current doctoral research on the duty to rescue, which aims to establish the applicability of this duty in civil law systems to private corporations. This research focuses mainly on the pharmaceutical industry and the special capabilities of its members to aid people suffering from severe diseases by providing affordable medications. As in many civil law systems the duty to rescue is a legal obligation applying to everyone, such a duty qualifies to apply to corporate businesses as well, at least due to the obligations owed by the persons in the leadership of said businesses. This area of my research arises from the criticism of the international patent regime which gives pharmaceutical companies monopolistic positions in the market and is therefore capacity to infringe the human right to health. Scrutinising solutions for this problem, I deem it important not only to look at the issue from a strict legal perspective but further to take corporate social responsibility into consideration.

### **Nicola Wake and Nathalie Wortley**

'Anglo-Australian Perspectives on Loss of Control and Extreme Provocation'  
At the Faculty Research and Doctoral conference Northumbria University, Newcastle on 29-30 June

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

### **Neil Harrison**

'The similarities, differences and influencing factors on the European Union's, the European Commission's and the English Courts' approach to procurement cases. In particular an examination of innovation, sustainability, social value and environmental considerations.'  
At the Doctoral and Faculty Conference, Faculty of Business and Law, 29 June- 1 July.

Abstract: My broad area of research is the impact of innovation, sustainability, social value and environmental considerations in the procurement process. In this paper I will examine the differences and/or similarities in judicial approach to procurement law related cases and decisions between the English and European Courts, including the European Court of Justice and the General Court, including whether there are any differences and/or similarities in approach between the English Courts, and any decisions and policies of the European Commission, including infraction proceedings. I will examine the English Courts' approach to referral of cases to the European Courts and whether there are any patterns in such referrals. I will also examine the relevant influencing factors on the Courts' and the Commission's decisions. Once I have



commented on the overall position I will consider the relevant Courts' and the Commission's approach in two specific areas in the procurement process. The first is innovation. Smart growth, research and innovation are arguably at the centre of the Europe 2020 strategy for growth with public procurement seen as a tool to achieve this strategy. The second area is sustainability, social value and environmental considerations.

**Sophie Carr** (Prof Doc student) **Emma Piasecki** and **Tim Wilson**

'Forensic science in the criminal justice system: a view through the analytical lens of critical trust'  
At the Doctoral and Faculty Conference, Faculty of Business and Law, 29 June- 1 July.

Abstract: The broadened potential application of forensic science, 'establishing provenance and authenticity and giving assurance in areas such as environmental protection, food and drink, pharmaceuticals and consumer products', as set out in the Chief Scientific Officers 2015 Report, is admirable. However, assumptions have been made in relation to the ability of forensic science to deliver in respect of its traditional application, the field of criminal justice. Against a background of miscarriages of justice based heavily upon expert forensic evidence such evidence is analysed via the concept of critical trust. The question is asked, is critical trust in the use of forensic evidence in the criminal justice system well placed? Consideration is given to the developments of standards across the forensic science spectrum driven by the Forensic Science Regulator, alongside the legal procedural changes driven by the recommendations of the Law Commission. Whilst it can be seen that the very welcome developments have the potential to ensure that the factors which previously inhibited progress or generated perverse consequences are being overcome so that forensic science delivers in practice what justice requires, significant gaps and areas of risk remain. Such risks, including fragmentation of scientific work without oversight, credibility of the providers, personal ethics and integrity of individuals within the organisation, provision of timely and understandable information, appropriate application of tests for admissibility and presentation and testing of the evidence in an appropriate manner capable of being understood by the jury. The paper will comment that critical trust in this context is well placed provided the individual parties play their part and comply with the obligations upon them to ensure that the evidence upon which makes its way into the criminal justice process is methodologically robust, focuses upon legally pertinent issues and can be communicated intelligibly to those who may rely upon it.

**Marc Stuhldreier** (PhD student)

'To what extent is the risk to health created by patent rights on medical products under international law linked to sustainable development of developing countries?'

At the Annual International Symposium on Development Studies, from 13-16 June 2016, organised by the Athens Institute for Education and Research (ATINER), in Athens

Abstract: This paper examines how the international patent regime introduced through the TRIPS agreement influences the accessibility of medical products and thereby the sustainable development of developing countries. The issue becomes especially relevant as the harmonisation process of patent rights on medical products was completed in January 2016, ending special provisions for less developed countries, and bringing into effect the enforcement of a strict application of the TRIPS agreement in all Member States of the World Trade Organisation. This paper recognises that poor health affects the working capacity of individuals which impacts on the whole economy of a country. Inadequate treatment of communicable diseases can result in further dissemination of these illnesses, worsening the already detrimental situation. As a substantial change of the international patent regime cannot be expected to happen in the near future, it is important to consider a wide range of approaches for finding a solution to this dilemma.

**Marcus Lee** (PhD student)

'Sustainable Development Governance of the Energy Sector in Malaysia'

At the Faculty of Business and Law, Doctoral and Faculty conference, Northumbria University, Newcastle 29-30 June

Abstract: This paper presentation will discuss sustainable development governance of the energy sector in Malaysia. It will open with an examination on what is meant by the term 'sustainable development' and in order to have a better understanding of this term, to also consider what is meant by the term 'sustainability'. The applicability of 'sustainable development' in the Malaysian sector, whether as a concept or as a legal principle, will further involve a consideration of whether it appears a balance has been struck between economic and social development while ensuring that any development does not impinge on environmental sustainability. However, the presentation's primary focus will be on the legal and policy initiatives the Malaysian government has taken to promote renewable energy as an energy source as well as energy efficiency in the country. These two aspects are highlighted as Malaysia's strategy to tackle sustainable development issues in Malaysia's 11th Plan, which is the Malaysian government's national plan for Malaysia. A discussion about what Malaysia's shortcomings may be with its sustainable development initiatives will take place. Could it be that international environmental legal principles have been insufficiently translated into national initiatives? Have legislation and policies has fallen short on accountability? Have Malaysian energy law and policies struggled to integrate economic, social and environmental needs in a balanced manner to reflect sustainable development? The final aspect of discussion focusses on why the theory of reflexive governance will be relevant in improving Malaysia's sustainable development governance of the energy sector. The application of reflexive governance, a theory that the governance process can be the object of shaping strategies, would give more structure to Malaysia's sporadic attempts at sustainable development.

**Tracy Kirk** (PhD student)

Poster: 'Should adolescents have their own distinct set of rights, which recognises their increasing autonomy?'

At Faculty of Business and Law Doctoral and Faculty Conference, Northumbria University, June 29-30

Abstract: This poster highlights the areas of jurisprudence, which underpin my research, including the nature of rights and competing children's rights theories and shows the realities and practicalities of paternalism and liberalism, which are important in order to appreciate the extreme balancing act the research must consider. It also outlines my analysis of competence and capacity and how they contribute to the overall argument that adolescent's should have an increasing right of autonomy and 'self determination' as they approach adulthood and the increasing range of responsibilities bestowed on young people, at a period in their lives when the autonomous exercise of rights are still constrained. Despite the rhetoric about children's rights since the ratification of the UN Convention on the Rights of the Child, advocacy is required to help young people who may seek to enact their rights in both the private and public spheres. This is shown by highlighting both the rights and the responsibilities of young people in a range of areas, including criminal law, education, employment, tort and health allowing greater appreciation of the different, multi-disciplinary approaches to the rights and responsibilities of adolescents.

## **Gemma Davies, Adam Jackson and Emma Piasecki**

'The future of advocacy training in respect of expert evidence. No more 'laissez-faire'?'  
At the International Advocacy Teaching Conference at Nottingham Trent University on Friday 24 June

Abstract: In its 2010 Report, Expert Evidence in Criminal Proceedings, the Law Commission noted that courts adopted a "laissez-faire" approach to the admissibility of expert evidence and it was assumed that the reliability of an expert's opinion was effectively challenged by cross-examination, the adduction of contrary expert evidence and directions to the jury. The Commission doubted this assumption and identified a number of miscarriages of justice where the manner in which expert evidence was admitted and tested demanded further consideration.

In its response, the government failed to tackle this issue, declined to introduce the recommended statutory reliability test and instead changes were made to Part 33 CPR.

This paper considered the current training provided to undergraduate and postgraduate law students, pupils, practitioners and the judiciary in respect of expert evidence and discussed:

- Preliminary findings of a national empirical study on the impact of the rule changes on current practice \*
- a cross-disciplinary Symposium contributed to by key agencies involved in the criminal justice system including the Bar, the Inns, the Advocacy Training Council, expert witnesses and academics
- research in other jurisdictions concerning the ability of lawyers and the judiciary to properly test and assess expert evidence and sought to identify approaches to training intended to improve the ability of lawyers and judges to effectively assess and challenge expert evidence in the future.

## **Rebecca Mitchell**

'Comparative standards of the crime-fraud exception to legal professional privilege in the taxation context in England and the United States and proposals for a revised template in English law'  
At the Faculty of Business and Law Faculty and Doctoral Conference, Newcastle 29 June - 1 July

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

## **Sarah Morse**

'Models of sustainable clinic'  
At the Eleventh Public and Private Justice Conference 2016: Dispute Resolution in Modern Societies (Challenges in Clinical Legal education- Sustainability of Clinical Programs), Dubrovnik, 26th-27th May 2016

Abstract: In a changing political, legal and social climate it is appropriate to consider how different models of clinical legal education can best serve the needs of the various stakeholders involved. This presentation explored two models of clinic adopted at Northumbria University. The first was

our Street Law and Street Law in Schools projects and the second model involves working in partnership with The Personal Support Unit (PSU) at Newcastle Law Courts. Both projects have the potential to offer a diverse opportunity for students to engage in experiential learning as well as making a valuable contribution to the community. This presentation will consider:

- The sustainability of these models taking into account funding and resources;
- The potential benefits and limitations for:
  - o The student;
  - o Academic staff; and
  - o The University.
- The implications of offering such projects on an extra or intra curricula basis.

## Other

**Lucinda Hudson** and **Hilary Davidson** have been part of a research group whose findings were presented and discussed at a policy seminar on 'New Migrants in the North East Work Force' 27 June 2016 at Northumbria University.

The programme of research was carried out between 2013 and 2016 at Northumbria and Nottingham Trent Universities, in partnership with the Regional Refugee Forum North East and the International Organisation of Sunderland (ICOS) and addressed the following questions:

- In what ways do migrants, or groups of migrants, occupy a distinct position in the NE workforce?
- What are their experiences of access to employment and experiences within the workplace?
- What are the main causal factors influencing migrants' position, including the significance of transnational links/migrations?
- How do new migrants respond to employment difficulties?
- Since 2013 more than 400 migrants across the region completed questionnaires, followed by in-depth interviews with 40 migrants and 10 key stakeholders across the region, including migrant organisations, statutory and voluntary sector service providers, a chamber of commerce and a trade union.

**Russell Hewitson** has been appointed as a Centre Fellow at the Cambridge Centre for Property Law. The Centre is part of the University of Cambridge and exists to further research and scholarship in the general field of the law of real property – land law, landlord and tenant law, aspects of trusts law and related matters connected with real property such as planning and environmental regulation. The Centre runs academic conferences and works with Governmental and Non-Governmental agencies on both the policy and technical detail of the law relating to property. The Centre also provides an umbrella and focus for Ph.D students within the Department of Land Economy and the University whose work falls within the general area of property law.

**Emmanuel Guinchard** provided an analysis piece for Lexis PSL Updates on the decision of the Court of Justice of the European Union (CJEU) in *Rodolfo Meroni v Recoletos Ltd.* in which the English High Court order to freeze assets was upheld, but the question arose as to whether the order was enforceable in other EU Member States? See <http://www.lexisnexis.com/uk/lexispsl/disputeresolution/document/412012/5JY7-P581-DYW7-W1NM-00000-00/Public-policy-considerations-where-a-freezing-order-affects-third-parties>

**Sue Farran** gave a presentation to the Small Jurisdictions Research Group at Oxford Brooke's University on 27 April on the topic 'Women's rights to land in the Pacific island Republic of Vanuatu' drawing on in-country research undertaken in August 2015, funded by a Society of Legal Scholars research grant.

**Russell Hewitson** was invited to speak at the UCAS 2016 Conference for International Teachers and Advisors. Russell co-presented a session on 'Getting into Law' with Dr Ruth Lamont of the School of Law, University of Manchester on 10 June

**Anna Butler, Ann Ferguson** convened a round table discussion on the theme 'Should Lady Justice wear Gucci? A sneak Preview of the fabulous world of fashion law' at the Faculty of Business and Law Doctoral and Faculty Conference 29 June-1 July.

Abstract: despite questionable labour practices, wasteful business models, and overtly sexist and racist policies, the \$1.5 trillion international fashion industry confidently strides the catwalk of popular imagination. The aim of this roundtable discussion was to critically examine the content and form of the emerging discipline of fashion law, including obvious topics such as intellectual property (IP) but also the fashion industry's business practices, corporate landscape, and cultural and social phenomena. Regarding IP, the roundtable also considered the power of branding, focusing on whether current law allows big businesses too great a monopoly and thereby inhibits fair competition, and how the fashion industry seeks to deal with counterfeit goods and whether such legal measures are effective in the digital age. The roundtable discussion also focussed on some of the main criticisms of the industry such as outsourcing and poor labour conditions, the "fast fashion" business model, and the positive and negative consequences of "fashion trends". Themes prompting discussion included corporate citizenship among international fashion companies, focusing on methods of production, logistics and supply chains, the labour market, host communities, and key stakeholders. Further, the roundtable critically examined the power of the fashion industry in politics and society, and the industry's contributions to addressing global inequality and related problems through raising public awareness of social issues, committing to sustainability, and nourishing new economic opportunities. Finally, the roundtable explored the future of fashion law and future possible avenues of research.

**Sue Farran** gave an invited paper at colloquium entitled "Integration and International Dispute Resolution in Small States", 19 & 20 May 20 in London, hosted by The British Institute of International and Comparative Law, the Open University, and the Centre for Small States, Queen Mary University, London, together with Wilmer Cutler Pickering Hale & Dorr LLP at the premises of Wilmer Hale in Park Lane. Her paper was on 'The Intellectual property consequences of commercial relations with small states - a view from the Pacific' in a session on Commercial Relations with Small States. The event was attended by speakers from Barbados, Liechtenstein, Tonga, Iceland, Trinidad and Tobago and the Commonwealth Secretariat as well as lawyers from various firms and chambers in London, New York and Washington.

**Russell Hewitson** organised and hosted a seminar at Northumbria Law School on 13 June, on the Law Commission's proposals for Updating the Land Registration Act 2002. Topics for discussion by the Law Commissioner included the priority rules, rectification and indemnity, protecting third party interests by Notice and Restriction, adverse possession and Schedule 6 and owner's powers under ss.23 and 24 Land Registration Act 2002.

**Mohamed Badar**, on the invitation by the Office of the Prosecutor of the International Criminal Court, addressed the Court's staff on 27 May, on aspects relevant to his current research. The Office of the Prosecutor's Lecture Series features distinguished professors, publicists and

practitioners in the fields of international criminal law, international humanitarian law, international human rights, representing the principal legal systems and regions of the world. These lectures form an integral component of the staff training within the Office of the Prosecutor.

**Chris Ashford** gave a Research Event Presentation on the topic 'What are journal editors looking for?' at The Effective Dissemination of Research Findings, LERN, IALS, London, June 2016

**Sue Farran** gave an invited paper at a Symposium on the theme of 'Teaching Land Sustainability' at Sussex University on 30 June. Her paper entitled 'The use and control of urban spaces and the legal challenges posed by contemporary interaction between people and spaces, especially the vertical and horizontal surfaces of the urban landscape' drew on previously published work on various forms of community engagement with land, guerrilla gardening and graffiti artists as well as some of the more recent issues raised by park runs and 'pop up' events, and highlighted the potential legal dilemmas of community utilisation of space for leisure and other 'non-commercial' purposes.

**Chris Ashford**, gave a research seminar on 'The Militant Homosexual: Historic Reflections and Future Directions in the Regulation of (Sex)uality' at Edinburgh University and at Oxford Brooke's University in March 2016. The seminars drew on the observation made in 2013, during the passing of the Marriage (Same Sex Couples) Act, by lead opponent Sir Gerald Howarth MP, that there was an aggressive homosexual movement and agenda behind the legislation. He argued that this was the movement of militant homosexuals and identified the international campaigner Peter Tatchell and the academic, Professor Chris Ashford, as the voices of this movement.

In this seminar, Professor Ashford considered the future agenda for law and gay rights. Drawing on legal theory, the lecture addressed debates and tensions in relation to themes such as monogamy, non-commercial relationship issues and public gay discourse. He also discussed the public production of legal homosexuality and the construction of legal geographies in response to law and homosexuality.

**Mohamed Badar** gave presentations on 'The Road to Genocide. The Propaganda Machine of the Self-Declared Islamic State (IS): Is History Repeating Itself?' at the Institute for International Peace and Security Law, University of Cologne, Germany, 24 May 2016; at Middlesex School of Law's Doctoral Seminar, London, 23 May 2016; at a workshop titled 'Muslim Responses to Hate Speech and the Dynamics of Sectarian Conflict in the UK' organised by Durham University, Arizona State University and Alertist, Durham, on 16 May 2016; at Maynooth University Department of Law, National University of Ireland, Maynooth, Ireland, 21 April 2016.

**Abstract:** This series of presentations focused on the crime of direct and public incitement of others to commit genocide in relation to the Self-Declared Islamic State (IS) and their widespread and systematic propaganda machine. After a brief introduction to the media arm of IS, the presentation 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 aim of the presentation was to provide a clear view of the law in action, highlighting the pivotal role hate propaganda plays in the build up to incitement. Applying this reference tool, this presentation then examined and analysed the hate propaganda used throughout Dabiq, the online publication at the forefront of IS propaganda, as well as their radio broadcast medium, al-Bayan. As IS's hate propaganda is permeated with primitive Islamic discourse, the analysis paid specific attention to key terms such as takfir (excommunication) and kufr (disbelief in Allah) in light of their cultural and linguistic context. The two-tiered ideology to which IS adheres was also explained. Thus, evidence highlights 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.

**Mohamed Badar** also gave a lecture on 'Joint Criminal Enterprise v. Co-perpetration and the Control over the Crime Theory', to PG students at Maynooth University Department of Law, National University of Ireland, Maynooth, Ireland, 20 April 2016

Abstract: The emerging jurisprudence of the International Criminal Court (ICC) combines two German theories of liability namely 'co-perpetration' with 'perpetration by means' (indirect perpetration) to form the novel mode of liability 'indirect co-perpetration' or 'co-perpetration by means' and assigned it to senior political leaders in the African continent. In my presentation, I deal with two methodological questions:

(1) how the law under the Rome Statute of the International Criminal Court has to be 'found; (2) whether such an intuitive judicial approach adopted by the Court will render the role of 'general principles of law' recognised by the major legal systems of the world obsolete. The presentation then focuses on Article 21 of the ICC Statute which sets out the applicable law of the Court and analyses how general principles fit into the hierarchy of sources set out in this provision. In addition, the presentation provides an analysis of the methodology of the Court in identifying general principles in the early jurisprudence of the ICC. The presentation concludes with some thoughts on how general principles can be better exploited to ensure the dynamic development of international criminal law at the ICC going forward.

*The next issue of Research Round Up will come out in October to capture activity over the summer and early Autumn. A call will be made in September. If you have a 2016 publication, conference paper or public appearance to celebrate please email: [sue.farran@northumbria.ac.uk](mailto:sue.farran@northumbria.ac.uk) providing full details and a short abstract/synopsis. If you are a co-author/conference paper presenter, please liaise with your co-author/presenter.*