

Critical Legal Conference 2017

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General Stream—Catastrophe

Panel 1

Theory of Legal Interpretation and The Political: the Role of 'Ideological Intelligentsias' in Adjudication.

Jakub Łakomy (Wrocław)

In my paper I will defend the thesis, that 'the political' inevitably determines the interpretation of texts, including legal texts. Each interpreter, and each interpretive community (ideological intelligentsia) occupies a specific place in the structure of social conflicts that constitute 'the political'. I will argue from the perspective of hermeneutic universalism (paninterpretationism), according to which every cognition is relativized to the perspective of the subject, which is to say that all cognition is interpretation, so there is no such thing as knowledge not relativized to any perspective. There is no cognition, which, using the words of Thomas Nagel, provides 'view from nowhere'. Taking this into account, I will reconstruct the vision of theory of legal interpretation defended by Duncan Kennedy and other critics and analyze relations between legal and political realm in 'theory building'. As Duncan Kennedy claims: 'A universalization project takes an interpretation of the interests of some group, less than the whole polity, and argues that it corresponds to the interests or to the ideals of the whole.' In my paper, I will analyze the structure and theoretical background of such universalization projects from the perspective of Kennedy's theory of legal interpretation and outline the role of ideological intelligentsias in such universalization projects.

The paradox of the Kelsenian-isation of Schmitt: Thai-ness in the age of colour-coded politics

Rawin Leelapatana (Bristol)

Since 2006, Thailand has been convulsed by the colour-coded crisis. The royalist-conservative Yellow Shirts and the military generally resort to Thai-ness ideology, which supports a righteous coup leader (Khon Dee) with 'Schmittian' sovereign authority to suppress political instability caused by parliamentary democracy through extra-legal means, to purge politicians of Thaksin Shinawatra's 'Red' faction. Nevertheless, due to global trends of liberalisation and democratisation, the military is politically forced to avoid as far as possible mounting a coup. In response, they choose to rationalise such ideology through Kelsen's legal-technical mechanism—the constitutional court. Given the lack of a strong liberal culture, the court has played a significant role not only in suppressing the 'Red' through the Khon Dee value. This paper seeks to explore the paradox of this endeavour to 'Kelsenian-ise the Schmittian strategy' in contemporary Thai constitutionalism. I primarily argue that this paradigm legally rationalises the absoluteness of Schmittian sovereign authority within the Kelsenian realm of normativity. Yet, in doing so, the Schmittian conservatives have to paradoxically abandon the 'absoluteness' of sovereign authority in the real-world political sense as they are politically forced to respect expected 'legal-rational' standards, including its liberal underpinning.

Baroque Catastrophe Now? Space, Power & Carl Schmitt

Fernando Gómez Herrero

Carl Schmitt (1888-1985) has been a strong point of reference among social scientists and 'humanists' from the Right and the Left in the two-to-three decades, at least in continental

Europe and intellectual circles in the United States, or the North Atlantic. I initially wish to summarize historiographic trajectories, what they find worthy of notice and critical attention in the German thinker who penned influential works such as *The Concept of the Political*, *Political Theology*, *Writings on War and Dictatorship* among others. His original timeframe is first half of the XX century, his most influential, perhaps, by the times of the Weimar Republic. Why the rebirth and persistence?

Schmitt, considered a theoretician in the dangerous vicinity of early Nazism, is exemplary thinker of the conservative restoration informing our contemporaneity. He generated an influential body of esoteric work dealing with power or (geo-) politics, also with history of law, particularly international law. The esoteric nature of his thought has to do with his emphasis on myth and narrative, the predilection for the period and the style of the Baroque, the binary formula of the impending conflict between empires of land and empires of the oceans and the 'Christian' and 'theological' motifs engaging the confrontational axiom of politics ('we' versus 'they'). This presentation will focus on the recent publication titled *Dialogues on Power and Space* (Polity, 2015; original complete Spanish edition of 1962 published by the Instituto de Estudios Políticos, Madrid, translated by Schmitt's daughter, Anima Schmitt de Otero (1931-1983). Less well-known Schmitt's strong Spain connection will have to find its place in the flow of this presentation.

What are we to make of this 'power'? What are we to make of this 'space' by at least one of the acknowledged theoretician of the *lebensraum* (or vital living space)? Could this possibly be meaningful for us today? What are we to make of the form of these 'dialogues'? I use 'Baroque' in the dual sense of common lax sense of the term, confusing and complex, excessively ornate and 'messy,' but also in direct sense to the early times of European absolutism, which was inspirational, foundational period of modernity for Schmitt. I use 'catastrophe' in the conventional sense of 'great destruction,' but also in the theatrical sense of dramatic resolution, imagined, artistic or not, of major forces in superlative conflict by WWII and later.

I will make selective use of the immense biography of Schmitt by Reinhard Mehring, complementing it with significant Spanish-language sources, Iberian and Latin American. I will put Schmitt in the company of figures such as Ortega y Gasset, whose best-seller *Revolt of the Masses* (1930), includes a final section about 'Who Rules the World?', the U.S. liberal tradition, 'the center cannot hold,' almost anticipating the official line represented by Schlesinger during JFK years and beyond. I will refer to conservative American thinkers such as the recently deceased but not yet forgotten Samuel Huntington (of *Clash of Civilizations* fame) and Robert Kagan (of *European Venus and American Mars* fame!), still active as we all transition from the Obama moment to the Age of Trump, or Tony Blair to Theresa May. I will use world-system theorist Immanuel Wallerstein's ominous future projections of catastrophic wars. I will see to the parallels with the 'Fourth Political Theory' of Aleksandr Dugin in contemporary Putin Russia. There are possible connections with Russian science fiction worth mentioning. I will re-read Walter Benjamin *Origin of German Tragic Drama* for Baroque intimations in the immediate vicinity of Schmitt (is there any evidence of any contact between the two, of Schmitt and Ortega?). I will make use of the literature of 'catastrophism' and the (yet another) decline of Europe to try to close down with the two questions: What 'type of catastrophe' (outlet or release or denouement) are we talking about? How warranted is the 'Baroque' label in our messy post-Cold-War moments in the XXI century? And do 'we' (not) go about it?

Panel 2

A Counterfeit Catastrophe: Considerations for Illegal Prescription Drugs produced by 3D-Printing Technology

Tomruk Üstünkaya (University of Sussex)

The paper aims to highlight the legal challenges presented by the production of Counterfeit pharmaceutical medication derived from 3D-printing technology. With the recent approval of the first 3D printed drug Spritam, (prescribed for the treatment of seizures), the primary focus of the paper is to investigate the potential threat of illegal counterfeit prescription drugs produced by the 3D printing process permeating the market and posing a risk to public health.

Matters connected to intellectual property law and regulatory control in existing pharmaceutical practice is investigated. Presented are the serious consequences to public health when regulation and manufacturing processes prove inadequate. With this scenario hypothetically applied to the potential production of counterfeit medicines constructed by the 3D printing process, the paper aims to establish the hazardous threat which ensues. The significance of Trade agreements such as the Anti-Counterfeiting Trade Agreement (ACTA) and international regulatory bodies such as The World Health Organisation (WHO) and the new Medicrime Convention are discussed. Recommendations are put forward in the conclusion for reform.

Improving Legal Framework for Patient Safety in Bangladesh: Application of 'Responsive Regulation Theory'

Sheikh Mohammad Towhidul Karim (Macquarie)

Bangladesh currently lacks a coherent legal and policy framework to promote patient safety in healthcare service, with inadequate mechanisms to enforce standards or provide access to justice for aggrieved patients. There are still no specific laws on patient safety in the country except some indirect scattered laws promoting and protecting rights and safety of patients. In addition, there is a relatively complex regulatory framework in place to resolve the patient safety issues. Existing scattered laws do not effectively coordinate or monitor public health services delivered by health providers. This has contributed to a high incidence of medical malpractice, adverse events and medical errors in the country. In order to address this problem, this paper will scrutinise the existing patient safety framework through the lens of 'responsive regulation theory' (combined approach by government, NGOs and judiciary), with a view to establishing the best mechanism for a sound health care delivery system that protect and promote patients' rights as a universal right to health established under international law. It will also evaluate the potential for public interest litigation to supplement an evolving health governance framework under this theory to improve healthcare outcomes for citizens of Bangladesh.

Sexting, Catastrophe, Law.

Chris Lloyd (Oxford Brookes)

The proposed paper has, at its core, a concern with the failure of current sexual offences legislation to adequately account for the technological developments which are driving the so-called 'time-bomb' of adolescent sexting. Namely, the relevant legislation in England and Wales pays no regard whatsoever to the ubiquitous mobile phone. But with mobile phones driving adolescent sexting to a national (and global) epidemic, these devices must be reckoned with, given that law is an important element within the protection of the vulnerable and the promotion of sexual exploration on the 21st century digital playing field. As foretold by J.G. Ballard: 'Sexual

intercourse can no longer be regarded as a personal and isolated activity, but is seen to be a vector in a public complex involving automobile styling, politics and mass communications.’ As it stands, the paradox of sexting is that a legally competent adolescent can consent to sexual intercourse but they cannot consent to being photographed in a sexual manner. Moreover those who create and share such an image, most likely to occur via a mobile phone, are deemed in the eyes of the law to be a child pornographer, even if their actions are executed with the full consent of the picture’s subject.

The paper seeks to show how Maurizio Ferraris’ seminal work *Where are you? An ontology of the cell phone* – a treatise heavily influenced by the thought of Jacques Derrida – can shed light on the quintessential device of our contemporary world. Ferraris’ work elucidates the mobile phone’s role, its uses, and its philosophical importance within our always connected world. Using his social ontology of ‘weak textualism,’ which offers a correction to Derrida’s famous maxim ‘il n’y a pas de hors-texte,’ Ferraris’ work will be shown to offer an understanding of what the mobile phone does with regards to its users ‘writing’ their social world. This important ontological reflection will then be used to argue that the significance of the mobile phone in the ‘writing’ the modern world must be acknowledged by the legal systems which deem it the case that consensual adolescent sexting is an act of child pornography.

Panel 3

Erasures by the Demos (An)Archive: Meres’ curation of 5 Pointz’ graffiti, Academic Whitewashing and the Visual Artists Rights Act

Jakobus Coetsee (Cornell)

The saga of New York City’s 5Pointz – the 18580.608 sq. meter derelict factory turned global graffiti pilgrimage site, founded by Meres in 2002, and illegally whitewashed overnight by a gentrifying landlord in 2013 – offers a critique of liberalism, targeting the latent authoritarianism in its politics of legal recognition.

On the one hand the features, not the errors, of a liberal democracy’s legal apparatus provided the justification and methodology for the erasure and destruction of the international arts sanctuary. The aesthetic institution rather literally inscribed itself directly upon the exterior of, and emerged in the khóra of, the archive of democracy where the building existed as property. This archive exerted its anarchival force upon phenomena it positioned as unrecognizable: and the uncertainty of the terms for ‘recognized stature’ in the Visual Artists Rights Act give way to the academic archive.

On the other hand, the same politics succeeded in rejecting the preservation of 5 Pointz in the name of recognizing its ethos. One of the most common criticisms of the artists’ self-advocacy before the court was a pre-asserted claim to the ‘truth’ of graffiti’s ‘ephemeral nature,’ by those outside the community. By claiming to recognize the nature of the art at 5 Pointz more effectively than the artists’ community itself did, particular and particularly empowered complexes of the social order were able to authorize its destruction. In the courts’ view the work was thus both too recognizable and too unrecognizable to uphold in the space of the public archive. The demos’ legal process revealed its brute relation of sovereignty.

Paths in the Midst of Collapse: The Role of Academic Freedom in Resisting the Marketisation of Education

Heather McKnight (Sussex)

'Excellence is sacrificed to productivity. Curiosity is exchanged for careerism. Co-existence is substituted for involvement. Community is transformed into the institution... The prestige of the university and its presence at the apex of the educational system ensures a high degree of compliance.' - Benewick, *Democracy for Education*, 1970 This paper looks at how Ernst Bloch's theory of non-contemporaneity can be applied to explore, explain the multi-layered dialectics of oppression involved in the debates around academic freedom, and its relationship with resisting the ongoing marketisation of Higher Education in the UK. It examines the different ways in which academic freedom has been conceptualised in the UK between 1970 and now, both legally, and within the representative bodies for staff and students in the sector, Trade Unions and Students' Unions. It questions how these definitions have helped or hampered the dialogs around slowing and resisting marketisation as a process, as well as the impact that marketisation has had on academic freedom itself through creating a culture of compliance and fear. Finally it looks for 'paths in the midst of collapse' understanding that the mythologies of fear that create cultures of compliance can also be moved beyond. It considers how locating a sense of ethical agency and moving beyond divisive tactics, which separate academic communities into competitive departments, and impose a false student staff divide, can be used to situate a communal culture of academic freedom as a critical utopian horizon.

The Anthropocene Catastrophe

Stream Coordinator: Victoria Brooks and Andreas Philippopoulos-Mihalopoulos (Westminster)

Panel 1

Sovereignty and the Anthropocene

Daniel Matthews (Hong Kong)

This paper examines how the Anthropocene concept challenges both critical and orthodox accounts of sovereignty. I argue that the enduring force of sovereignty – and the dominant ways in which it is critiqued – is, in part, responsible for the failure of anthropogenic climate change to adequately register in both academic and popular discourse. In this sense, I join writers like Andreas Malm, Bruno Latour, Naomi Klein, Rob Nixon and Clive Hamilton in seeking to understand the reasons behind our collective apathy in the face of catastrophe. My argument proposes that it is, primarily, the *aesthetics of sovereignty* that ought to command our attention; that is, the *visual* and *affective* force of sovereignty's organisation of political and legal power. Without understanding and challenging sovereignty's legal and political aesthetics, we will remain tied to a destructive anthropocentric horizon.

Feminist New Materialist Challenges to International Legal Personality

Emily Jones (Essex)

This paper will analyse the ways in which feminist new materialism may provide useful for re-thinking international law. Drawing on feminist legal theory, the paper will begin with a discussion of international legal personality which will be shown to be based on a limited,

gendered and racialised account of subjectivity. International law thus currently privileges those subjects which can fit this (neo)liberal, humanist account of subjectivity, including, not only the sovereign state but also entities such as the global corporation, working to give these entities a greater role and more power in international law. This works at the expense of other entities which do not so easily fit this model of subjectivity, such as the nature-matter. It will therefore be suggested that alternative modes of subjectivity need to be considered in order to ensure that international law can expand beyond its current liberal, humanist limitations.

Thus, this paper will look towards feminist new materialist accounts of subjectivity alongside non-Western jurisprudential models to push beyond international law's limited structural blueprint. Recent moves towards giving legal personality to the environment will be used as examples of the ways in which a model of subjectivity which takes matter seriously can drastically change international law. Consequently, this paper will conclude by calling for a posthuman pushing at the conceptual limits of international legal personality; to work towards greater protection of the environment and multi-species environmental justice.

Beauty, Totality, Violent Law

Lucy Finchett-Maddock (Sussex)

Without entropy there would be no possibility of exchange, and without entropy there would be no art.

(France and He'naut)

This interrogation into beauty, totality and violent law refers to the extent to which ascribed understandings of what is beautiful, shape and manifest all law and legal form. This piece argues that not only does a certain understanding of what is aesthetically pleasing inform the regulation of creativity (such as through copyright, criminal, heritage, property law, etc.) and resultantly what are deemed to be acceptable forms of creativity and art, but that these normative assumptions structure the law itself.

Traditional notions of beauty rely on notions of totality and order, which is the same violent task of law. Seemingly, order is a necessary state for the human mind to process information, but there is a violence to associating order with beauty (Finchett-Maddock, 2012, 209). By relying on an ordered account of beauty, what is acceptable or otherwise, law deliberately disregards and expels anything which is not ordered, as part of its totalising end project.

In accounting for the congenital role of aesthetic form in law and its violent enterprise, a discussion of 'entropy' as both substance and metaphor, highlights the role of order, disorder and symmetry within law and art. Theoretical and philosophical theories of beauty (order, disorder, symmetry) rely on the same principles found within entropy (the measure of disorder within a system). Following Lorand, for any aesthetic theory to be comprehensive, an analysis of negative aesthetic concepts is mandatory: beauty does not have one single opposite (Lorand 1994, p. 399), welcoming the role of randomness, uncertainty, disorder, the past and the future, into law.

The work of outsider artists will be used to demonstrate the import of disordered works of art within the order of aesthetics.

Panel 2

Legal Footprints

Olivia Barr (Melbourne)

If catastrophes involve a sudden turn, at least etymologically, then what does it mean to walk – where each footstep is a sudden turn – in the epoch of the Anthropocene? As with other epochs, we walk with our feet on the ground, but in the Anthropocene, oddly, not only the ground disappears, but often our feet do too. In this experimental piece, which mixes jurisprudential insights with a walking performance (warning: you may be asked to walk barefoot!), I ask: what might it mean to walk in a city where the land is not just land, but a material form of Aboriginal law? And how might public artists and contemporary circus performers focus our legal attention? My basic proposition is that when we walk in a city – at least in an Australian city - we do so as legal subjects of a state-based law, while also walking on land that is another form of law. In other words, each footprint is a legal relation. My aim in this piece is to creatively explore ways of materialising this troubling relation. This may involve getting your feet dirty....

Panel 3

Earth Jurisprudence after the Catastrophe *Nausicaä of the Valley of the Wind*

Thomas Giddens (St Mary's University)

Nausicaä of the Valley of the Wind, Hayao Miyazaki's epic manga, is an eco-fable told on a grand scale. It follows Nausicaä, a peaceful princess thrown into war in a postapocalyptic world where humankind, after ravaging the Earth, was all but destroyed by massive robots known as 'god warriors'. Technology is scarce and has to be mined; civilisation has receded to parochial communities beneath the hierarchies of empires. This world is being gradually consumed by a poisonous forest that supports its own corrupt life of insects and spores. Nausicaä, rare in her sympathies, seeks to understand the forest, discovering communities surviving within it and uncovering the horrifying secret at its conceptual heart: the god warriors were created by humanity to solve the environmental crisis. They judged humanity guilty, in the interests of the planet, and the forest itself is an aeons long cleansing process, removing humanity and leaving a healthy world in its wake. Caught in this deep ecological revival, Nausicaä traverses the squabbles of sovereignty, engaging the role of the land in understandings of justice, and challenging the seemingly petty concerns of state law against a backdrop of a planet spinning in deep time.

Title tbc

Sam Adleman (Warwick)

The rupture of the Earth system in the Anthropocene requires new ethical, philosophical, legal, political and economic approaches commensurate with the scale and urgency of the problem. The nature of the Anthropos throws up profound ontological and epistemological questions that require the abandonment of Holocene conceptions of justice, particularly those of modernity. This paper explores the inadequacies and possibilities of the law in the face of the catastrophic nature of the Anthropocene/ Capitalocene/ Cthuthulucene.

Panel 4

Thinking through catastrophe: A new new materialist jurisprudence?

Jannice Käll (Gothenburg)

There has recently been an increased interest within the field of critical legal theory for object-oriented ontologies (OOOs), the posthuman, and/or speculative realism and new materialisms. The movement towards such theories is also significantly visible in several of the streams at this year's critical legal conference. This paper elaborates and diffracts such matter-oriented theorists in order to visibilize important differences between such theories of relevance for critical legal theory and the potential to think "the catastrophe". As Donna Haraway emphasizes, such difference-making is also an important endeavor of staying with the trouble in a matter-oriented manner. As she argues, it is furthermore also important to critically consider *who* to think *with* when we now aim at re-thinking matter.

Siding with Elizabeth Grosz, the paper also argues that *new* new materialism offers a specific potential in pursuing materialistic critical legal thought, as it encompasses a unique attention to "ontoethics". Such ontoethical understanding of matter is here further argued to offer another way to think about law that traverses, yet stays with the catastrophe.

Law and Affect – Encountering Urban Materialism

Swastee Ranjan (Sussex)

This paper emerges from my ongoing doctoral research which explores and examines the role of law in producing an aesthetic repertoire of a post-colonial city. While there has been scholarly engagement on aesthetic regulations, I am interested in drawing attention to the affective role of urban materiality in the post-colonial spatiolegal context. In this paper, I will explain the material significance of urban objects (such as street lights and billboards) and discuss their legal -affective potentiality in our everyday encounters. Following the recent scholarship of Object-Oriented-Ontology (OOO), I argue that urban objects are central to directing our sensorial perception of everyday life in the city and that they consist of a 'juris-generative potential' which expands our understanding of the spatiolegal. Aesthetic regulation in this sense is not merely the study of disputes regarding the distribution of objects in the city or of laws that regulate such objects, but a compelling reconsideration of the 'object' in relation to the city itself. Illustrating through the material object of streetlight, I will highlight the intersecting relationship between the spatiolegal, affect and urban materialism.

Sublime Metamorphoses and Other Encounters From The Anthropocene: A 'Schizoanalysis'

Maria della Porta Rodiani

Law's binary logic reduces the anthropocene in a linear succession of univocal catastrophic events. Such a constrained representation of the anthropocene tends to collapse in an intellectual inertia that ignores the flows and encounters of ensuing catastrophes. Deleuze and Guattari's material analysis offers the possibility of reinvigorating law's fatalistic attitude towards the anthropocene. In 'schizoanalysis', the anthropocene is an acentric and anarchical assemblage on a 'plane of immanence' where reality is free to unfold. Schizoanalysis has no intention to dominate the ontological nature of catastrophes, but rather to discover the connections of disparate trajectories. By performing a material analysis, a 'schizoanalysis', a biopsy or life sight, of law's account of the anthropocene, I aim to expose the interconnected nature of modern catastrophes

and the paths of mutation occasioned by their encounters. While exposing law's limitations in capturing the volumes of the anthropocene, this essay tests the use of schizoanalysis to produce a perception of the multiplicity of anthropogenic experiences whereby catastrophes become 'lines of flight', sublime metamorphoses of the social field.

Approaching Catastrophes: Exception, Revolution and the Law

Panel 1: Agamben, History and the Exception

'Through a Glass, Darkly': Law, History and the Frontispiece of the Exception

Cosmin Cercel (University of Nottingham)

This paper aims at inquiring the ways in which the state of exception could be reconstructed as a useful paradigm for understanding modern legal history as well as for approaching the status of law in our contemporary societies. In following this line, I intend to organise my argument along three interconnected theses. First, my aim is to revise the criticism levelled against Agamben during the last decade by historians and political theorists by highlighting how the terms of this debate have disregarded the important juridical signification of the paradigms of the camp and the exception. My intention is thus to address a specific erasure of the legal aspects of the Holocaust and the interwar that has become the mark of the historiographical criticism of the exception.

From this point on, I intend to offer a close reading of Agamben's synoptic analysis of the legal instantiations of the state of exception. My aim is to emphasize pace Agamben the essentially modern character of the state of exception and to propose a different genealogy that could perhaps complement its historical insight. Accordingly, rather than searching for the putative arché of the exception in the Roman rituals of Saturnalia or the depths of Indo-European rites of solstice, my inquiry points towards a nonetheless important history of the practice of the state of exception and state of siege. Indeed, what I intend to reveal at this juncture is that the legal concept and praxis of exception have followed closely the history of the modern state, acting either as a counterbalance to revolutionary movements and as a necessary legal double of the diffuse militarism specific to the modern Nation-state.

While my position is critical of the historical content of the paradigm proposed by Agamben, and is primarily directed against its theological and eschatological overtones, it does not dismiss the formal dimension of the argument he advances. As such, the state of exception, offers a valuable focus on the status of law one that is inherently marked by assertions of unbridled sovereign force and constant transgressions of the existing legal order. This important perspective brought by Agamben is far more than a mere historical intuition; rather it takes the form of a particular reading of history that I intend to conceptualise under the logic of the frontispiece. My aim is thus to recuperate the state of exception to a tradition of historical materialism in the analysis of law. Even if idiosyncratic, Agamben's theoretical project is important by enabling one to think and to represent, just as a frontispiece, law's history of connivance with violence and disorder. True, this is just a first step that historians of law need to further develop in embarking upon critical legal histories. But the frontispiece of the exception is a useful intellectual device that not only documents law's various forms of destitution, but also operates a conceptual clarification in

so far as it reflects on the philosophical structure that has rendered law's self-effacement possible.

Beyond The Exception: Law, Revolution and the Coming Community

Tormod Otter Johansen (University of Gothenburg)

The topic of 'revolutionary jurisprudence', law in relation to revolution or (with Giorgio Agamben) the coming community is an underdeveloped field of legal research. The question of law in relation to the overcoming of capitalism and modern state apparatuses is also acutely relevant in an era where the end of capitalism itself seems ever more likely. What would law beyond capitalism mean? What jurisprudence is necessary to grasp such revolutionary change? This chapter will argue that the radical notions of playing with law, form-of-life and the coming community as the 'aufhebung' of the apparatuses of the contemporary world through making them inoperative can inform a new theorisation of law through and beyond revolution. These notions developed by Agamben will be read against the thinking on law and revolution in Marxist and communist thought.

Marx, Lenin and Evgeny Pashukanis can easily be seen as quite naive concerning the abolishment of law as a sub-problem in relation to realisation of post-capitalist communist society. On the other hand Agamben could equally be seen as all too radical, metaphysical and poetic on the same issue. I will however argue that bringing these two strands together promises a great opportunity for the development of a revolutionary jurisprudence. It might be that Agamben's extreme radicality on the question of law and its overcoming can help us actually think through the meaning of law in relation to a process of what Walter Benjamin called the 'real' state of exception.

'The reign of Law' and the 'state of exception' according to Giorgio Agamben. A commentary on using the ancients

Paulina Swiecicka (Jagiellonian University)

'Popolo di Pekino, la legge e' questa?' - 'People of Beijing, that is the law!' These are the first words of the opera 'Turandot' by Giacomo Puccini. 'La legge' - in Greek 'nomos' - 'law' understood as 'a custom' or 'a statute' - seems to be one of the oldest words in the world, of great importance, on which humanity has deliberated for ages, since the appearance of the positive law enacted by the political authority and since this authority was able to change discretionally such law or to introduce the exceptions.

In particular, the problems of political authority and the rights and obligations of citizens were a major concern in the thought of the leading Greek Sophists of the late 5th and early 4th centuries BC. They distinguished between nature and convention, and placed laws in the latter category (e.g. Pl. Prt. 337c-d). Law generally was thought to be a human invention arrived at by consensus (a custom) or by an order (a statute, a decree) for the purpose of restricting natural freedoms for the sake of expediency and self-interest, what could, however, open a question of discretion (e.g. Herod. Hist., 7.104; comp. Pl. Grg. 483b-d; Pl. Plt. 339a). However, this view of law as arbitrary and coercive was not conducive to social stability and thus was amended by Plato, Aristotle and other philosophers, who asserted that 'nomos' was, or at least could be, based upon a process of reasoning. By means of this reasoning immutable standards of moral conduct could be discovered and then expressed in specific laws (e.g. Pl. Ep. 7, 354e). In fact, this dichotomy between the negative and positive views of law has been never actually resolved.

Pindar (6th / 5th century BC) was the first one who wrote about 'nomos basileus' in his famous passage on 'nomos as a king' (Frg. 169a Maehler, 1-8). The conceptual apparatus of Pindar and the object of his interest belonged to the sphere of pre-sophistic reflection on the essence of things, of the pre-principle of the world – 'arche' and the eternal, immutable law governing the world, and thus determining the fate and human actions. As mentioned above, there were the Sophists who introduced the antithesis: 'nomos' – 'physis' - for the Sophists this was in fact a variant of the ancient opposition: true - false (Pl. Ptg. 337c; Diels-Kranz 87 fr. A, B). 'Nomoi' as rules resulting from human culture and setting a certain pattern of behavior might only become a false, illusory convention covering the proper essence of things, the truth, which came only from the nature. Since then the opposition of truth and the verisimilitude has been a leit-motif in philosophy.

To this particular concept: 'nomos basileus' – because, as it was said above, not only Pindar used this syntagma to describe his thoughts about law - appealed Giorgio Agamben in his famous work *Homo sacer: il potere sovrano e la vita nuda*, 1995, trans. *Homo sacer. Sovereign Power and Bare Life* (part. I, par. 2).

The paper will examine the understanding and use of the idea of law as the sovereign rule of law - *nomos basileus* and – as the opposite concept – a discretion of sovereign - by the ancient authors and modern philosophers of political sciences, such as Carl Schmitt, Michel Foucault, and in particular Giorgio Agamben. Agamben used the term 'nomos basileus' in a certain way, in order to describe 'the paradox of sovereignty' namely 'a justification of violence and justice': 'the sovereign *nomos* is the principle that, joining law and violence, threatens them with indistinction' (*Homo sacer*, p. 25). The ancient Greeks employed this term in a different way - 'nomos basileus' meant for them 'law as a sovereign'. However, the questions asked by the ancients and by modern philosophers such as Agamben are the same: does law need any keepers to keep it according to the way of keeping the law - but: Who are the law's keepers - the legislature or the lawyers in their discretion to decide which part of the law could be overturned and under what conditions? What is law? And who or what is external to law? What does mean his 'state of exception'.

Panel 2: Normalisation of the exception: the complicity of law

Is Law dependent on crisis & catastrophe?

Nico Buitendag (Kyoto University)

It is often said that law is in crisis. Some employ law during times of crisis – economic, humanitarian, and ecological. Others situate the crisis within the domain of law, calling it a discipline in crisis. It is however argued in this presentation that crisis, when read as the moment of decision, entails that law, as a social system, is merely confronted by its environment to make a decision, a distinction that ultimately changes its internal structure, and in turn again effects its environment. Thus catastrophes are points at which law conceptualizes and effects social change. If Gramsci is correct in stating that crises are not events, but constantly present, then catastrophes are indeed the fuel that law needs for its (r)evolution, thus upholding the state of exception. Can it be claimed, despite the noble and humanitarian narratives espoused by some lawyers, that law is hypocritical, at best complicit in catastrophe, at worst dependent on it? The paper will, by employing the detached gaze of Luhmann, ask if it is possible to assess law's relationship with catastrophe and crisis, as well as the theory and philosophy regarding it, from the position of a second-order observation.

On Exception, Fiction and the Performativity of Law

Gian Giacomo Fusco (University of Kent)

Three days after the terrorist attacks of 9/11, George W. Bush declared a state of national emergency. After this declaration, the US introduced radical legal instruments, such as the USA PATRIOT ACT (2001), the establishment of a new military commission process, and the designation of prisoners of war as 'enemy combatants'. This radical transformation posed legally since 2001 and ongoing ever since, has placed the US in a perpetual state of war, without an actual war. Confronted with this renewed legal and political context, an impressive legal, political and theoretical debate has been generated, and the question of the state of exception has been put back on the agenda of legal (among else) scholarship. Nevertheless, despite the multiple contributions, and the varied elaboration of models of emergency powers, the nature, scope and meaning of the state of exception remains an open question.

In this paper, I will undertake a different conceptual path in order to gain a better comprehension of the state of exception. Starting from some suggestions provided by Carl Schmitt, Giorgio Agamben and Yan Thomas, I will analyse what has been defined as 'fictional state of exception'. In this paper, it will be advanced a critical account of a still current and globalized emergency, through the concept of 'immunisation', and through the paradigm of the performativity of law. In analysing this issues I will suggest that the process of 'normalisation' of the exception – and its codification – into a general doctrine of the state of emergency, made of the exception a 'fictional' element of law, ultimately dependent on a subjective (that is to say dependent by the will of a specific agent) decisional act. The normalization and regulation of emergency provision – the fictional state of exception – legal systems seek to ensure, using Agamben's terminology, an anchorage with the outside; the possibility of the transgression of legality in the form of an action in an anomic context. From this point of view, the exception is structured as a specific form of immune reaction for the protection of the entire system, bringing with it all the risks entailed in the process of immunisation.

Dictatorship and Devil's Pact: states of exception

Hannah Franzki (Bremen University)

Since the aftermath of World War II, International Criminal Law (ICL) has played a central role in demarcating the historical events that consequently came to integrate what could be called 'humanity's catalogue of catastrophic violence'. The proposed paper seeks to critically engage with ICL's work of demarcating, classifying and temporalizing manifestations of violence. It does so by contrasting the notions of violence, law and history operating in trials in response to state-backed violence with the work of Walter Benjamin, in particular his philosophy of history and his critique of law.

This confrontation will be carried out through the juxtaposition of two stories, both of which try to make sense of the disappearance of the body of Argentine sugar worker Jorge Weisz. The first one is the legal narrative of 'forced disappearance' according to which the violence experience by Weisz is the violence resulting from the suspension of law during the last dictatorship (1976-1983). The second story is the legend of the 'familiar' that has roamed the sugar plantations in northwestern Argentine for over 100 years. The paper proposes to read the legend of the familiar as a condensed account of the violence that is proper to what (with Benjamin's eighth thesis) can be called the permanent state of exception under the capitalist rule of law.

The Exception of the Norm: Nazi Law as the 'Paradigm of everyday life'

Simon Lavis (Open University)

In *Remnants of Auschwitz*, Giorgio Agamben wrote: 'Auschwitz is precisely the place in which the state of exception coincides perfectly with the rule and the extreme situation becomes the very paradigm of everyday life' (2002, 113). In historiography and jurisprudence, by contrast, Auschwitz often continues to be the place where the exception remains the exception and the 'extreme situation' of the Holocaust, precisely because of its central status within the Third Reich, is the very thing that alienates Nazi Germany from the Rechtsstaat and the rule of law.

In Agamben's paradigm of the camps, then, is the Holocaust lawful ('law-full') or the negation of law? To understand the move from law in the 'ordinary' Nazi state to law as genocide we need to confront the juxtaposition of the Auschwitz aporia with the legal normal: the historical and philosophical fact that a line can be drawn both between 'our' law (modern, liberal, rule of law) and Nazi law; and law in the German Rechtsstaat and in the Nazi Holocaust.

By focusing deliberations about the state of exception on the aporia of Auschwitz we risk reinforcing the natural law claim of Kristen Rundle and others that the Holocaust exists outside of the 'normal' law system as a manifestation of lawlessness - a site of 'non-law' - which asserts a point of rupture between Nazi law and modern, liberal legality. While returning to Agamben's paradigm case of the state of exception, this chapter will shift the focus from the law (or non-law) of the death camp to Ernst Fraenkel's normative state within the Third Reich, in order to reinterpret Nazi Germany as a paradigm of the coincidence of the norm and the exception which can be used to place the state of exception firmly within the sphere of the legal norm.

Panel 3: Schmitt: Race, God and the Exception

Race in the Friend/Enemy Distinction

Leila Brannstrom (Lund University)

Anti-Semitic statements occur frequently in Carl Schmitt's Nazi-era writings and it is by now also clear that Schmitt expressed anti-Semitism, in words and deeds, before as well as after the Nazi-period. How we should understand the role of anti-Semitism in his oeuvre is, however, not equally clear. In the recently published *Oxford Handbook of Carl Schmitt* the historian Raphael Gross argues that Schmitt's work is afflicted, throughout, with 'structural antisemitism' and that Schmitt's adverse attitude toward Jews, Jewry and what he labeled 'the Jewish' (das Jüdische) should play a role in how we read and understand his work as a whole - including his Weimar-period and post-war texts. Gross also highlights that so far scant attention has been paid to the influence of anti-Semitism on Schmitt's work. Taking the cue from Gross, this paper analyzes Schmitt's concept of the political from an ethnoracial point of view and also discusses whether and, if so, how an ethnoracially informed understanding of Schmitt's concept of the political might be helpful in apprehending the specificity of right-wing populist rhetoric in contemporary Europe.

Law / Wilderness / Chaos

Andrew Mark Bennett (Freie Universität Berlin)

This paper demolishes Carl Schmitt's legal-political theory and then subversively reconstructs it on a scaffolding of Jewish legal-political theory. The result is a novel understanding of the state of exception through the concept of 'wilderness.' As described in the paper, the wilderness exists as a space and time that lies between sovereign space and the anarchic chaos of the state of

nature. Sovereign space is governed by the legal order of a supreme authority that is both freely accepted by the People and coerced upon them. Anarchic chaos is a space without authority, with neither coercion nor acceptance, governed at best by 'the law of the jungle' (see Mackie 1978). Wilderness is a space of legal-political ordering, disordering, and reordering. Wilderness is the space of the state of exception, of military occupation, of revolution, and of borders. It is a space in which sovereign states die and are born. Dyzenhaus (2006) asserted that, to answer Schmitt's challenge, we must banish the exception from legal order. This theory does precisely that. He who decides on the exception is not Sovereign. He has instead overthrown the sovereign state and cast the People out into the wilderness.

Constituent Power: Derrida reading Schmitt

Jacques de ville (University of Western Cape)

Schmitt gave the theory of constituent power a vigorous reinterpretation in *Dictatorship* (1921) and in *Constitutional Theory* (1928) by merging Sieyès's thinking on constituent power with his own analyses of sovereignty and the concept of the political. In *Constitutional Theory* Schmitt furthermore explores the implications of constituent power for the modern liberal-democratic constitutional state. Constituent power is for him tied to the essence of the constitution, or what Schmitt refers to as the positive concept of the constitution (*der positive Verfassungsbegriff*). The constitution in this sense involves a decision about the nature and form of political existence. This decision is a conscious one, 'which the political unity, through the bearer of constituent power, reaches for itself and gives to itself' (*Constitutional Theory* 75-6). In this paper a close analysis will be undertaken of Schmitt's texts on constituent power. Such an analysis shows that the *demos* appears in the first place as a formless and groundless force. At stake here is not a presence, a substance, an identity or ontology, but rather a certain 'hauntology' on the model of a dualist conception of God. The God at stake here consists of both a God of salvation and a creator-God, in a state of permanent war with each other. The fiction of the sovereignty of God (and of the people) can only appear as the result of a certain repression of weakness, of a force of self-destruction. The 'subject' of constituent power is likewise secondary, preceded by a self-destructive force, a *demos* without *kratos* and which does not simply return to itself.

Panel 4: Agamben in the Middle East

Agamben in the Middle East: The Arab Uprisings

Simon Mabon (Lancaster University)

In recent years, the Middle East has become a site of contested politics, where the internal logic of sovereignty has been challenged in a range of different arenas and amidst a number of different forms. This panel seeks to engage with a range of these issues by applying the ideas of Giorgio Agamben, in particular the state of exception and bare life to trace how structural factors have led to the emergence of sites of contestation and the increasing brutality and violence of the security state. We explore how the 'catastrophe' emerges in a range of different ways and contexts, resulting in a number of violent ruptures and disruption within the fabric of society. It uses Agamben as a means of conceptualising social change by teasing out how latent structures have informed such violence, either by facilitating revolution or as a means of control. The panel explores the different types of structures – both formal and informal – which comprise the sovereign state – and ultimately relations between regimes and societies – and argue that it is the interaction of these structures and consequences thereof, which shape the nature of the political.

This paper applies the ideas of Giorgio Agamben to explore the Arab Uprisings across the Middle East. It argues that we can use Agamben's ideas of the state of exception to understand the construction of formal and informal structures to regulate life and to create security situations that limit the possibility of action. Within this context, a range of individuals have their political life stripped from them, entering into the realm of bare life. Yet in a number of states, protests began, which saw people attempting to escape from bare life. In a number of instances, authoritarian rulers were overthrown, yet in a greater number, regimes were able to maintain control by manipulating such structures. In it, I argue that Agamben's approach helps us to understand the conditions that created bare life, which also led to the Arab Uprisings. By considering the interaction of formal and informal structures, I argue that it is possible to understand the trajectory of the protest movements, but by considering the strength of structures, we are able to ascertain why some succeeded whilst others failed.

Agamben in the Middle East: Iraq and Syria

Ana Kuramasamy (Lancaster University)

Over the past decade, the border region of Iraq and Syria have been shaped by violence, migration and environmental degradation, which has resulted in a zone of indistinction, both outside and inside the political systems of both countries. In recent years this region has experienced the expansion of Da'ish, a refugee crisis resulting in over 11 million people being displaced from their homes and increasing pressure on environmental security. Within this zone many of the inhabitants have had their political life stripped from them, moving from bios to zoe. I argue that the structures within this region have emerged as a direct result of the state of exception that ruled in Iraq and Syria until 2003 and 2011 respectively. Whilst the state of exception is now gone, the zone of indistinction remains, stemming from the violence, migration and environmental degradation, resulting in a new, intractable form of bare life. To do this, I consider the structural factors in both states that marginalized people, formally and informally, which ultimately created the zones of indistinction that we witness today.

Agamben in the Middle East: Egypt

Lucia Ardovini (Lancaster University)

This paper applied Agamben's understanding of 'the State of Exception' to the investigation of the causes of the stagnant state of 'bare life' within the Egyptian post-2011 context. Since the toppling of Hosni Mubarak in early February 2011, Egypt has endured a period of political uncertainty, characterised by the number - and nature - of different regimes. While the uprisings could be read as the population's attempt to escape 'bare life', the return of the Deep State embodied by the Al Sisi's regime seem to indicate the opposite –rather, a State of Exception has descended upon the country once again. Agamben's theory is used to track the implications that the recurring declaration of States of Emergency had on Egypt, in particular the decrease and sometimes complete suspension of constitutional rights and the endless breaches of human rights that have come to characterise the political environment in the country, therefore leading to what seems to be an unescapable condition of 'bare life'.

Agamben in the Middle East: Palestine

Adel Ruished (Lancaster University)

This paper argues that the Palestinian community in East Jerusalem has suffered from state of exception policies that resulted in the production and perpetuation of Bare life. In the 1993 Oslo peace agreement Israeli and Palestinian negotiators agreed to postpone the decision on the political future of East Jerusalem city to a later stage. This provided opportunity for Israeli municipal and local authorities to continue imposing state of exception policy on the city's Palestinian community. In addition, the Palestinian Authority (PA) not only excluded, stigmatized and punished those who dealt with Israeli municipal and local authorities, but exploited them to enforce control. Moreover, the PA focused its political, economic and cultural activities outside East Jerusalem City. This caused the city to lose its political significance and economic importance and subjected it under legal duality. Accordingly, the Palestinian population of the city became marginalized and excluded from variety of PA state services and benefits, such as housing projects, employability and investment. This paper explores the strategies employed by the PA as a means of marginalizing the Palestinian population of East Jerusalem. It does this by employing the work of Giorgio Agamben and Hannah Arendt to trace the PA created conditions of bare life across Jerusalem post 1993.

Panel 5: A Continuum of Exceptions: the Authoritarian Turn in Eastern Europe and Turkey

Law, Security, and Right-wing Populism in 'post-revolutionary' Eastern Europe

Saygun gökarıksel (Boğaziçi University)

Eastern Europe recently has drawn much attention to understand the dynamics of right-wing authoritarian populism in the so-called 'post-revolutionary' age of human rights, rule of law, and neoliberal globalization. In critical commentaries, right-wing populism has been typically seen as a pathology or anomaly, with which political liberalism fails to 'cope,' because of populism's alleged reliance on irrational demagoguery and emotional appeals that supposedly escape the liberal legal rationality. These commentaries often call for more elaborate security measures to protect constitutional democracy against 'dangerous' populist formations. Taking issue with this view, my paper argues that liberalism is not just a failed response, but is an essential part of the 'problem' of right-wing authoritarian populism. Based on my research in Poland, I will discuss how the legal-political, 'post-revolutionary' and 'postsocialist' space of security, in which right-wing groups currently operate and which they extend or transform, has been largely constructed by the liberal legal, historical, European regulations, norms, and doctrines such as, 'militant democracy.' My paper will specifically focus on the Polish lustration law, which combines an international and national transitional justice discourse with an expansive security mechanism in order to reckon with the communist past and effect a change in the material-ideological constitution of the 'postsocialist' state. Initiated in 1997 and gradually monopolized by right-wing populist groups in the 2000s, the lustration law, functioning well beyond its formal-institutional domain, has come to symbolically and sociopolitically mediate the violent contradictions of neoliberal democratization. In analyzing the social history of this legal process, my paper will contribute to the ongoing discussions on law, security, and right-wing populism in our so-called 'postrevolutionary' age.

The Juridical, (post-)'communism' and the Political: a Polish Perspective

Rafał Mańko (University of Amsterdam)

During the so-called 'communist' period (more correctly described as 'actually existing socialism' or 'real socialism') in Central and Eastern Europe a paradoxical relationship obtained between the Juridical and the Political. On the one hand, the Juridical was completely overdetermined by the Political; on the other hand, this relationship - although officially declared - was at the same time disavowed by the legal community. Therefore, textbooks of legal theory would openly proclaim the Marxist principles, whereby law is but a superstructural phenomenon, determined by the socio-economic base. But, at the same time, the Political was repressed from everyday legal discourse of judges and dogmaticians (save for the brief Stalinist period of oversaturation with the Political), painting a picture of the Juridical as a 'technical' sphere. In a sense, Stalin's remarks from Marxism and Linguistics became perversely applicable to the law. After the 1989 transformation, this conception of the 'technicality' of law, and its separation from the Political, continued. And this despite its deeply political transformation, both of public and private law. This situation - where the Political was repressed from the Juridical - continued for over 25 years. A most paradoxical product of this era of 'postcommunism' was the Constitutional Court: a deeply political body endowed with legal organs; its most controversial political decisions were, nevertheless, masked as purely legal ones, even if in a highly unpersuasive manner. The repressed Political, however, returned in the form of the constitutional crisis: a moment of breakdown of the Rule of Law ideology, sustained for and by the gaze of the Western Other. Clearly, the relationship between the Political and Juridical are now at the crossroads. Time will show whether the 'postcommunist' symptoms will be overcome, or will continue to determine, for better or for worse, the uneasy relationship of law and politics in Poland.

Turkey's Leading state of emergency: round-the-clock curfews

Ceylan Begüm Yıldız (Birkbeck University)

Since its foundation in 1923, exceptions have been the norm in Turkey. However, exceptional measures have been changing form, and structure, according to the political context of its time. From the Law for Maintenance of Order (*Takrîr-i Sükûn Kânunu*) of 1925 to the State of Emergency Law, enforced in 1983, classical forms of emergency laws have been utilised. However, in the following years, Turkey pioneered novel ways of conceptualising diverse forms of states of exception. For instance, the counter-terror law established in 1991 took on a global scale, a decade before the war on terror rhetoric of 9/11. And, since August 2015, Turkey invented yet another form of the state of exception; the round-the-clock curfews which, I propose, shed a light upon a forthcoming domain of the state of exception.

The curfews and military operations were based on the Provincial Administration Law (Law no: 5442) which resulted a divide over its legitimacy. European Commission for Democracy Through Law, known as the Venice Commission, issued a detailed report on the legal framework of the curfews. The Commission concluded that '...the curfews imposed since August 2015 have not based on the constitutional and legislative framework which specifically governs the use of exceptional measures in Turkey, including curfew'.

The Turkish context offers a clear exposition of the legal arrangements surrounding the state of exception, whilst at the same time highlighting its altering character intertwined with the changing political contexts. What novel forms of states of exception might this new political atmosphere of post-truth and raising authoritarianism yield? Through discussing the curfews as a new form of state of exception, this paper aims to lay out the transition between different forms

of exceptional measures, and on the other, it aims to contribute to the discussion regarding the future global context of the state of exception.

Panel 6: Exception, Capitalism and Neo-liberalism

Stream Organisers: Cosmin Cercel, Gian Giacomo Fusco & Simon Lavis

On Majorities: the 'lesser of two evils' and the Alternative to Bourgeois Parliamentarism

Dimitrios Kivotidis (University of the West of England)

To approach the coming catastrophes one need not engage in speculation; one needs to study and learn from those past and present 'catastrophic' processes. The processes -and not only the outcomes- of the Greek and British referendums, of the US elections and the French elections are evidence of the functioning of the bourgeois ideologue of 'there is no alternative', and more specifically of its central aspect, i.e. the principle of the 'lesser of two evils'. They are also evidence of the resilience of bourgeois parliamentary democracy and its capacity to still disorient the popular movement and ensure the reproduction of the capitalist regime of power, property and productive relations, in light of the dialectical tension between the internationalisation of capitalist production and the national composition of capital. This paper argues that recent electoral processes, both referendums and general elections, have to be seen in a process of exhausting the working-class and popular struggle through parliamentary means in order to prevent the canalisation of struggle into other forms (strikes, organisation in trade unions, general strike) which would threaten the reproduction of the regime. Therefore, the critique of bourgeois parliamentarism cannot be reduced to a celebration of plebiscites as prefiguring of an institutional framework where direct democracy permanently supplements its representative counterpart. Rather, democracy and dictatorship have to be assessed in a dialectical manner. This poses the need to revisit Lenin as a political thinker and the Marxist concept of dictatorship as a unity of political form and socio-economic content, in order to think alternatives to bourgeois parliamentarism. Moving beyond parliamentary illusions is essential for any emancipatory politics, especially now that the 'lesser of two evils' principle seems to function at all levels. In this context this paper revisits the institution of workers' councils as the revolutionary alternative to bourgeois parliamentarism, and examines the reasons why emancipatory process has to be anticapitalist, in the face of increasing proletarianisation, pauperisation and capital accumulation.

In the Wake of Catastrophe: Formulating Deviationist Positions on Sanctity & Exclusion

Alan Cunningham (University of Manchester)

Philosopher Slavoj Žižek has continually spoken or written of four possible antagonisms potentially preventing the 'indefinite reproduction of capitalism', these four being: 'the looming threat of ecological catastrophe; the inappropriateness of private property for so-called intellectual property; the socio-ethical implications of new techno-scientific developments, especially in biogenetics; and last, but not least, new forms of social apartheid – new walls and slums.'

The last of these catastrophes – new forms of social apartheid – is arguably already here, especially in the context of availability of and access to housing. Equally arguable is that it is a problematic doctrinal default within legal thinking that supports and encourages this new social

apartheid. Specifically, the dominant ideological position of property as being primarily a right to exclude others supplements this current catastrophic state. This is not mere speculation. Concerning property, for example, Merrill has written: ‘the right to exclude others is more than just ‘one of the most essential’ constituents of property – it is the sine qua non.’ With exclusion being the foundational concept of the property right, is it any wonder that the housing market approaches a catastrophic state?

Why is it that it is the right to exclude is the dominant principle in conceptualising property? Arguably, it is because the right to exclude others protects another dominant – and arguably more difficult to criticise – ideological position, that of the notion of the sacred; specifically the sacred body in and amongst sacred space. Utilising the deviationist doctrine developed by Roberto Unger, however, one can make an argument for tackling these ideological positions that have led to this catastrophic state (or at the very least one can develop a position from which to better understand them, from which more realistic reformist attitudes can emerge). Specifically, the process of internal deviationist development, whereby ideological positions are supplemented and counterbalanced by their opposite counterprinciple, might assist in reconceptualising sanctity, exclusion and the property rights they support. In this way catastrophe might be avoided, or at the very least the worst effects of catastrophe in the area of access to housing mitigated against.

Failure of Democracy in disaster management – meta legal praxis in l’aquila

Gianmaria Valent (University of Padova)

This research deals with a case of democracy failure, extending the concept of ‘State of exception’ from the high issues involving international politics and the status of Human Being to the governance of cities and territories. The case study concerns the city of L’Aquila after the earthquake of April 6, 2009. The paper examines how a natural disaster has led to the suspension of the democratic guarantees, evidencing operations of authoritarian governance and highlighting two distinctive features. First, the state authorities used the emergency as an opportunity for economic transformation, applying a standardized neoliberal recipe without consider the peculiarities of people and territory. Second, this recipe has been applied using a set of tools such as broad exceptions to the current laws, conferment of all decision-making powers to a single subject and systematic exclusion of citizens and local government levels. The research combines G.I.S. analysis, the study of decision-making process and the consequences in the short, medium and long term on citizens and territory.

Finally, the whole situation is explained through the new concept of Meta-legal Praxis, that combines the theories of the State of Exception and Permanent Derogation to highlight the infiltration of state authoritarianism in the local governance.

Blockchain Technology in law and Finance

Stream Coordinator: Immaculate Motsi-Omoiide (Warwick)

Panel 1

Disrupting and Reordering the Ecological Legal Order of Forest Trade and Governance: Evaluating Cryptocurrencies Potential Role

Feja Lesniewska (SOAS)

Forest governance is beset by multiple challenges including corruption, over exploitation and climate change. Community based forest management globally could reverse the unrelenting forest destruction and degradation where forest dependent peoples and indigenous peoples have secure tenure rights. Yet these communities are often the most disenfranchised groups with little or no access to capital markets. Enabling communities to benefit from the forest products commodity value chain locally, nationally and/or transnationally directly through peer-to-peer trade could transform both the social and environmental landscape and contribute to climate change mitigation. Doing so could also decentralise forest management disrupting existing business models that see only a few multinational enterprises and state agencies, monopolizing the forest industrial sectors.

This paper examines the potential opportunities to reconfigure the ecological legal ordering whereby communities and indigenous peoples reclaim control over forest resources to contribute sustainable, equitable and just management through the use of cryptocurrencies. The paper, based on initial research of community pilot projects using blockchain and smart contracts in Ghana and Indonesia, explores the legal and practical challenges communities could face in using cryptocurrencies to reclaim control over forest resources within statutory legal regimes. It concludes by identifying limitations, and the potential for current dominant actors to re/appropriate control under cryptocurrency centric forest governance models

Blockchain for (no) good

Robert Herian (Open University)

Over the course of the last decade blockchain has moved through a number of different phases both in terms of its development within technological ecosystems, as well as in terms of its wider social effects. Perhaps the most significant shift of all is the relatively recent uncoupling of blockchain from cryptocurrencies and peer-to-peer finance and a singular role in what is widely perceived to be the 'disruption' of legacy financial institutions. This has led to blockchain 2.0, a brave new world in which it is increasingly heralded (arguably in deliberate contrast to the world of finance) as, amongst other things, 'benevolent', 'non neo-colonial', and 'ethical'. In short, a force for good.

The aim of this paper will be to critically examine the mantra of 'blockchain for good'. As an early comment on the subject this paper will not propose a definitive conclusion, but instead offer a few different thoughts and perspectives drawn from political, economic, psychological, philosophical and legal sources. Key questions that will be addressed include the validity of claims that blockchain can either facilitate the good or is in itself a good. Further, what is it that the growing number of groups and consortia rallying under the notion of blockchain for good want to demonstrate or achieve? Blockchain for good might be a mantra presently driving the imagination, one that ultimately politicizes blockchain along Aristotelian lines. But how much truth is there in such claims? How good can blockchain really be?

Overview of Blockchain Technology – Drivers, Disruption and the Re-Invention of Trust

Luke Sully (Gcoin)

The paper will explore the market drivers of this new technology and how it impacts across 3 major use cases; financial markets, the legal industry and fiat currencies. Within these contexts, we break down and discuss consensus and trust and how those concepts have been altered/disrupted by the technology. More specifically, we focus on how cryptography is the key enabler for the redistribution of trust in traditional business network models. Questions addressed in the paper include; How does technology disrupt?; What is the disruption process and who are the actors that seek disruption? Thereafter the differences between public and permissioned blockchains, the role of consensus and how blockchain has irrevocably changed traditional models of trust will each be addressed in turn.

Catastrophe and Alterity

Stream Organisers: Sam Kirwan and Tara Mulqueen

Panel 1: Sustaining Alterity

Membership, Consumption, and Alternatives to Neoliberalism: Lessons from Bingo

Kate Bedford

The membership form is understood by scholars from diverse traditions to be of value in building alternative, more-than-capitalist ways of collective being. The member-citizen is typically counter-posed to the consumer in these literatures. Rather than assuming that the member is indeed distinct from the alienated, passive, disloyal, usually feminised consumer, or seeking to ground alternative politics in a reformulated consumer identity, in this paper I explore the ways that membership is activated in non-commercial and commercial spaces. Specifically, I examine how membership rules (state-based and otherwise) shape a key social and economic practice dominated by older working class women: bingo. Bingo can be a site for profit-making, and for self-organised mutual aid. It has provided an alternative to neoliberal visions of gambling as about casinos, or charitable lotteries, for generations. Drawing on fieldwork and interviews across England and Wales, and a review of membership in gambling law and policy, I critically examine the role of the member (and its imagined Other, the consumer) in our accounts of political economy. I argue that although the refusal of club membership practices to yield to state membership rules has been key to sustaining mutual aid traditions, the valorization of the membership form as a manifestation of collective life has gendered and racialized limits. Moreover, I explore the potential opened up by ‘regulars’ (a distinct category of members) within commercial halls, seeking to make the often cantankerous commercial bingo player central to a broader, critical discussion of the potential for marketised leisure to sustain collective life.

Critical encounters with legal knowledge: popular legal education in times of austerity

Lisa Wintersteiger

The problem of legal exclusion caused by lack of knowledge and awareness of legal rules and systems is pressing in jurisdictions around the world. The breadth and depth of the challenge to bridge the gap to enable citizens to seek redress via the courts or to be able to bargain effectively in the shadow of the law in times of austerity threatens the practice of law as it is currently understood. This paper situates justice reform plans that arise in the wake of the retrenchment of legal aid within a historical framework to consider how legal knowledge and public legal education has been deployed as a constitutive function of the state. The impetus of the paper is to think about how legal knowledge shapes legal relations and hierarchies and to move beyond the confines of traditional sites of legal judgement and practice. In doing so the paper aims to rethink the work of popular educational practices and their potential for fostering critical encounters with law.

Tracing the origins of relational ontology, relationality between carers and calling for an 'inclined' law

Sara Paiola

This paper will expound and expand on my interest and research on relational ontology as a critique of the individualistic ontology of Western thought. During the last two years I have adopted two main methodologies to understand relational ontology. One has been that since January 2016 I have been doing a course at the Tavistock and Portman NHS clinic called 'Infant and Young Child observation'. In this course I observe a baby for one hour a week from when he was three weeks old until he will turn two years old. My interest in this course is to understand the development of a human being from the inception of his/her life and the formations of relationships to the people around the infant and the objects in the world and to attempt to understand maternal/primary carer subjectivity to give me some tools to read/understand relational ontology. The second tool has been to collaborate with two artists to 'enact' a web of relationships between carers/mothers to support carers in the role of being a carer to a vulnerable infant or elderly person or a disable person. The paper is inspired by Cavarero's latest work *Inclinations. A Critique of Rectitude*. I will argue that the law could try to adopt an less rigid approach by 'inclining' itself to the needs of singular individuals. It will centre on maternal subjectivity and will discuss the vulnerability of the mother or the primary carer caring for an infant. In this presentation I will include some images of the work that I have done recently with Berlin-based feminist artist Alex Martinis Roe, specifically around the support mothers and carers need. The images (see one image below) will show a workshop I lead in Berlin last May using a thread which I call the 'thread of relationality between mothers and carers'

Panel 2: Community and Politics

Althusser vs. Badiou: What can a catastrophe change apart from scars, traumas and losses?

Ozan Kamiloglu

If we accept the interpellative power of human rights discourses or systems, according to which our bodies are under the constant threat of harm and the international human rights law tries to stop the past catastrophes to repeat, future ones to come about, to what extent one can be

distanced from it? Can one close her/his eyes to a catastrophe, and its bodily signs, individual traumas, or is it possible to divert the force of a catastrophe in order to fight against interpellative power of others?

This paper thinks about what it means to be alternative, or the possibility of being alternative in the humanitarian age through two distinct philosophers: Louise Althusser and his student Alain Badiou. It will present different readings of Althusser's concept of interpellation, or more precisely mis/dis/counter interpellation from, Judith Butler, Jacques Bidet, and Michel Pecheux, and thus possibility of alterity in the context of human rights, in the age of future/past catastrophes. This will encounter with the Alain Badiou's concept of event and fidelity. The paper aims to investigate these questions with examples of war and immigration in Turkey and Greece, and to think about possibilities of mis/dis/counter interpellation from a catastrophe by another one, via Althusser and Badiou. This will inevitably bring the question: what are the conditions of alterity?

Democracy in Catastrophic Times – Identity Politics vs. Politics of the People

Ari Hirvonen & Susanna Lindroos-Hovinheimo (Helsinki)

Political populism and its rhetoric of national identity has put politics under nationalist pressure. The European Union and those Member States run by liberal democrats are backsliding on their commitment to respect human dignity, freedom and equality in their reactions to the flow of refugees fleeing war, terror and human rights violations to Europe. It seems that nationalist populists and universalistic liberal democrats turn out to consider the people in increasingly similar ways. Politics becomes identity politics and the people becomes a unity with a shared substance or essence. Against such a view, we propose to discuss the possibilities of another kind of politics, that is, politics based on alterity.

Democracy is what Jean-Luc Nancy calls 'a space without return to the identical'. Accordingly, community is the sharing of something that is not really shared, hence sharing the lack of a common substance or identity. For Jacques Rancière, on the other hand, demos is a dividing and disrupting force in a community of sharing the given sensible. The purpose of this paper is to bring Nancy's and Rancière's conceptions together in order to present the people as exposed not only to the absence of any national or cosmopolitan identity but to the absence of itself.

The Futural, 'the People' and Rights in Populist Politics

Kathryn McNeilly (Queen's Belfast)

The contemporary political context has been defined by various accusations of 'catastrophe'. A particular stimulant for such has been the apparently ever-increasing occurrence of populist politics. This paper considers one element of such politics; the under-theorised relationship between populism and rights. I assert that a relationship can be observed between the ideas of futurity, 'the people' and rights in populist activity. Thinking this relationship through drawing from the work of Ernesto Laclau and Chantal Mouffe, I advance that rights discourse can be engaged in more or less radical ways in populism. To demonstrate this, two contrasting approaches to the relationship between the futural, 'the people' and rights in populism are considered; 'futurity as nostalgia' and 'futurity attentive to alterity'. While in the former, detectable in much right-wing populist activity, rights are engaged to consolidate an exclusive conception of 'us', and 'them' as an enemy threatening 'our' existence, the latter involves a use of rights which may facilitate an inclusive, agonistic left-wing populism. This approach of 'futurity

attentive to alterity' reflects some elements of existing left-wing populism, but also holds potential to add to such to capitalise on the possibilities that populism offers contemporary leftist and radical politics.

Panel 3: Space and Alterity

A threefold spatial catastrophe of the city - a judicial cartography of the Izidora urban conflict in Brazil

Julia Ávila Franzoni & Anna Carolina Murata Galeb

Who can decide what is a catastrophe? Throughout a threefold judicial tale, this paper aims to analyze the role of law and the Judiciary power on the production of an urban 'catastrophe'. The case of study is the urban occupation of Izidora in Brazil, one of the biggest territorial conflict in Latin America, which is suffering from an imminent eviction threat. More specifically, five different judicial decisions from the eviction legal case will be studied and compared to map the connection between legal arguments, different meanings of catastrophe and comprehensions of space. Catastrophe is told in three times: the urban occupation as a catastrophic reason for a neoliberal urban governmentality, the urban eviction as a catastrophe-to-be for the 30,000 people living there, and the judiciary that facing the catastrophe seems to be caught between being the storm or the angel of history. In which one of this perspective, the conceptualization of urban space plays a major role in the decision regarding the protection of private property, human rights guarantee, and the execution of the eviction. As a result, the paper discusses how serious is the judicial statement of urban space as a mechanism that changes and creates social and spatial relations.

Governing the ruins of neoliberalism: Spaces of catastrophe and the utopia of inhabitation

Chris Butler (Griffith)

In *Robinson in Ruins*, the third of Patrick Keiller's trilogy of fictionalised documentaries concerning the wanderings and speculations of an unseen protagonist, the narrator informs us that Robinson had been reading Karl Polanyi's *The Great Transformation*, which 'locates the origin of twentieth century catastrophe in the development of market society in England'. Polanyi identifies how the self-regulating market is not a natural emergent social form, but was the product of the active interventions of the state. For Robinson (and for Keiller), the contradictions between displacement and dwelling generated by *laissez faire* can be revealed and challenged by an exploration of the relationships between landscape, space and politics. In this paper I will pursue a similar theme through an investigation of some of the contemporary forms of ruination wrought by the neoliberal state's role in the governance of urban space, including the implementation of regimes of spatial austerity, the facilitation of new forms of enclosure and the strengthening of modes of authoritarian domination. These characteristics of neoliberal spatial administration haunt one of Henri Lefebvre's melancholy final essays, in which he laments the dissolution of the utopian promise of the urban that he once dramatised through his thesis of the 'urban revolution'. If, as Susan Buck-Morss claims, the modern city has always been simultaneously positioned between the extremes of 'dreamworld and catastrophe', it is appropriate to ask to what extent the neoliberal city may be vulnerable to its own 'space of catastrophe', or as Lefebvre describes it, 'the limits where this space explodes'. I will explore some of the possibilities for turning the actually existing catastrophe of neoliberalism on itself, through the generation of a politics of urban inhabitation.

Saving an Island of Socialism from an encroaching capitalist sea? An ideology critique of market reforms to the English NHS

David Ian Benbow

The NHS was the product of class compromise in the immediate post-war era. It can be viewed as what Erik Olin Wright described as a symbiotic transformation (as opposed to a ruptural or interstitial transformation), an institutional form of social empowerment that benefits the dominant class. It ensured healthy workers for capitalists and dampened societal antagonisms. However, it also evinces a logic contrary to that of capitalism, as it is primarily based on need, rather than profit. The NHS has been regarded as an island of socialism, although it does not satisfy some socialist criteria. The non-commercial logic of the NHS has been undermined in recent decades by legal reforms which have marketized and privatised the NHS. The NHS is currently being defunded and the position of private companies is being enhanced. Such reforms threaten patient needs. However public support for the NHS endures and successive governments in the neo-liberal era have claimed to support the founding principles of the NHS, despite implementing reforms which have undermined them. Consequently, a gap exists between ideals and lived realities which can be exploited to contest legal changes.

Panel 4: Community and Hope

Community of Peace of San José de Apartadó: from a neutrality against violence to an alternative community

Nadia Tapia Navarro

In 1997, in the midst of violence against civilians in Colombia, instead of fleeing, a group of 500 peasants in the town of San José de Apartadó, in Urabá, decided to declare themselves a 'Community of Peace'. Two main 'pillars' in the Community's twenty years of existence can be identified, its preponderance shifting through time. First, the principle of distinction and the idea of neutrality – both taken directly from the language of international humanitarian law – as a form of protection against violence coming from different actors in the conflict. Second, the idea of the Community as an alternative to neoliberal ways of living and exploiting land. While at the beginning, the first of these 'pillars' was the backbone of their existence, through time, the second has gradually become more prevalent specially because the logic of violence against civilians in Colombia has forcefully removed peasants from rich territories that have later been used for monoculture. With the recent signature of a peace agreement between the government and the FARC, this last aspect becomes crucial to the survival of the Community

Winstanley's Law of Freedom: Community in Catastrophe in the Seventeenth Century

David Thomas (Birkbeck)

In Gerrard Winstanley's time, when it seemed that 'the old world ... is running up like parchment in the fire' and all the certainties were overturned, he and the other Diggers set up communities where they ate and cultivated the earth together in a project for the creation of a new society. Circumstances did not favour them, and they met their own catastrophic failure. But out of that came a body of work on the kind of state that might still be built, with a sustained consideration of the law, what its faults were and what might replace it, a 'law of common preservation, peace

and freedom'. With assistance from Foucault and Rancière, this paper considers that work and how far it still speaks to us now

Despairing Hope, Rebellions and Human Rights in Times of Uncertainty

Shaimaa Abdelkarim

Destruction is usually dismissed as a disaster but there are instances that resonate against that. For Blanchot, the witnessing of the Other is the disaster that interrupts the Self, as with all the privileges, the subject's power becomes provisional. Though for Derrida, that disaster becomes the responsibility of the Self to the Other, as a responsibility that never ends on an always-to-come justice path. While critiquing Derrida, Gillian Rose introduces a third side to selfhood and othering: the aporia. The aporia, as the missing identities that have been renounced and rejected, is the gap that disrupts the totalities, hegemonic pluralistic power structures. To engage with this aporia is to expose oneself in a self-relation. This paper engages with the identity of the rebel that is limited by the oscillation in literature between being a destructive illegal force that needs to be pacified within the UDHR preamble and a constructive legitimate force within legality. But it also denounces that oscillation by focusing on the aporia, where the rebels expose themselves to resistance, as acts of denouncing power to new forms of power only through exposing their vulnerability. These acts, through their plurality from massive scale revolutions that fill Tahrir square to Nubians singing in the middle of the streets of Egypt asking to return to their lands, remind us that the rebel lives outside of that oscillation.

Benjamin Fondane and existential resistance

Georgiana Maria Grigore

Benjamin Fondane's idea insists that existential thought expresses the experience of the living, feeling, sensing and passionate individual, who searches within herself and outside herself, with or against the self-evident, for the very possibilities of living. This goes beyond the possibilities reason brings, which cannot accept what does not comply with the law of non-contradiction. Each time an exceptional experience promotes a reality that transcends the laws we have known so far, our first reaction is to verify the experience instead of the validity of the laws. In this sense, Fondane rejects any system that favours an idea over the individual. His critique was against the laws that protected and allowed Nazism but would have been addressed to any other similar totalitarianism and authoritarianism. Therefore, we will argue that Fondane's thought can be extrapolated to the current socio-political situation of a manufactured catastrophe of austerity, inequality, and violence.

Against a rational philosophy which explains, justifies and counsels to obey and resign to what it is, existential philosophy counsels rebellion and insubordination. In this sense, against a neoliberal system which values every government choice, social initiative, law, culture, education, innovation or love in terms of economic profitability, we will propose, following Fondane, to not conform, and we will hypothesise a solution lying in an ethics based on Foucault's notion of 'care of the self' and Badiou's defense of love.'

Panel 5: Resistance and Institutional Spaces

Elite and Precarious? Neoliberal Reforms, Fragmented Solidarities and Resistance among Professional (Legal) Workers

Agnieszka Doll & Ania Zbyszewska

Our paper draws on the case studies of British academics and Polish law attorneys to examine resistance to growing precariousness among knowledge-based ‘elite’ workers. Both these groups have in recent years experienced increasing, albeit uneven, erosion in work conditions, which can be attributed, in part, to the interplay between structural changes associated with the reforms of higher education in the United Kingdom and liberalization of the legal profession in Poland, and the parallel rise of academic and professional capitalism. Although these developments reflect similar tendencies in the broader labour markets, we show how increasing competition within both these groups combined with their (simultaneously internalized and externally imposed) categorization as intellectual elites or professionals who are independent, yet motivated by vocational ethos or a sense of public duty and responsibility, have tended to both contribute to the overall growth of insecurity, along with erosion and polarization of working conditions within these sectors, and to fragment solidarity between workers and undermine their ability to resist neoliberal precariousness. We highlight a number of recent responses, proposals and resistance campaigns mounted by each group, critically evaluating whether, and to what extent, they carry the potential to effectively challenge the downward trend in work conditions or how they can be used in shaping new alternative strategies for rebuilding solidarity and overcoming fragmentation among these ‘elite’ workers in the quest for change.

Praise for willful women: Getting through it and resisting the academy

Araby Smyth and Jess Linz

The increasingly neoliberal university is a horrible place for everyone, but it is especially awful for women. It was not built to cultivate or support us. Rather than lean into the competitiveness circulating around us, we invert it. Continually trying to measure up in neoliberalism and patriarchy is exhausting; we need a network of willful women who praise each other for their willfulness. We explore women’s friendship among graduate students at the University of Kentucky (USA) and share some of our collaborative projects: among them, the [feminist invoice](#) and mental maps. Our friendships support courage in the face of microaggressions, precarity, the pressures and elusiveness of heterosexual relationship/family, and no promise of a job. Using the work of Sara Ahmed, Walter Benjamin, Lauren Berlant, and others we consider how friendship does support work that not only gets women through the academy, but fosters resistance. Together, we demand more of our colleagues and the institutions where we work. We’re trying new ways of ‘being’ by busting holes through the walls placed in front of us when we can’t find windows or doors. Our collaborations lead to new responses to social situations, new legibilities, and new frameworks for relating.

Student Resistance Between and Beyond: How the Charitable Status of Students’ Unions is Relocating Student Activism

Heather McKnight

Abstract: Despite being seen popularly as hotbeds of left wing resistance, there are a number of important considerations for Students’ Unions that restrict their ability to campaign or dedicate resources to political issues. Under the Education Act 1994 Students Unions must abide by

Charity Law. Recent guidance issued to Students' Unions in April 2016 highlights the complexity of being political while holding charitable status, alongside risk adverse guidelines. They are able to campaign politically only on issues which affect 'students as students', this essentially imposes the 'no politics' clause that has been long abandoned by the National Union of Students in 1969, at a local level at what is seen as a time of crisis for the education sector. This paper looks at how the student movement is moving beyond these limitations, from 'Pop up Unions' and 'Alternative Students' Unions' happening on campus outside of funded SU activity, to a variety of 'Free University' spaces run with university staff and Trade Unions. We are also seeing national movements seeking alternative funding streams such as the National Campaign Against Fees and Cuts that run their own highly politicised workshops and conferences. It will look at activity and actions at the margins and edges of the institution of the Students' Union on campus, and how these resist the depoliticising legislation that charitable status has imposed.

Catastrophe in Migration Management: 'Crisis', Rights and Struggle

Stream Organisers: Anna Gumucio Ramberg and Bal Sokhi-Bulley

Panel 1: Struggle, Disobedience and Hegemony

On Freedom and Asylum: the Production of Migrant Ungovernability

Martina Tazzioli (Swansea)

What is putatively called a 'Mediterranean refugee crisis' has been characterised by a deep rearrangements and reshaping not only of migration policies and border enforcement measures. However, together with that, in this presentation I suggest that the 'crisis' has also highlighted the nexus, enacted by migrants, between claim to asylum and freedom of choice. The presentation focuses on the 'unbearable' character of migrant struggles to EU member states consists in posit freedom (of movement and choice) and asylum as non-oppositional terms. Refusing the spatial traps of the Relocation Scheme and of the Dublin Regulation - in particular through collective refusals of giving fingerprints -, migrants undermine the image of asylum seekers as subjects who cannot but accept protection at any condition, enacting practices of spatial disobedience. In the second part, and building on ethnographic research conducted between Italy, France and Greece, the presentation will focus on what I call migrants' ungovernability, meaning by that the production of partial ungovernability as a political technology for containing migration. I will explain to what extent the production of partial ungovernability is a way for appropriating and capturing migrants' spatial disobediences.

Everyday Encounters and the Borders of Europe: Examining Negotiations of European Border Performances in Practice

Nina Perkowski (Hamburg)

In recent years, humanitarianism, human rights, and security have become increasingly entangled in European border governance. A key example of this is the border agency Frontex, which has gradually come to present itself and its work in humanitarian and human rights terms, while simultaneously maintaining a security focus. Following its self-representation as a rescuer at sea, promoter of fundamental rights, and protector of European citizens from migratory threats, 'more Frontex' has become an almost automatic policy 'solution' to a variety of proclaimed

'crises' in European borderlands. Yet, processes of bordering are not (only) made in Warsaw and Brussels, but also in everyday interactions, contestations and negotiations wherever borders are enacted. As such, they are shaped in the encounters of a variety of actors, including guest officers with different nationalities and trainings, Frontex staff, national border guards, activists, NGOs, international organisations, locals, far-right groups mobilising to 'protect' European borders, and of course border-crossers themselves. While Frontex presents itself as promoting a common 'European border guard culture', this paper will outline a new research project that starts from the finding that the agency cannot be understood as a unitary actor, and that discrepancies and rifts in its self-representation become apparent where bordering takes place. The project will seek to expand on this insight by examining how bordering is negotiated and contested in practice by a whole variety of actors, and which role the discursive formations of humanitarianism, human rights, and security – and ultimately the idea of Europe itself – play in this process.

Bordering Families: Analysing the Crafting of Hegemonic Biographies of Migrant Family Life

Alexandra Koenig (Birkbeck)

Whereas humanitarian warfare against migrants takes on new excessive facets on the Mediterranean and beyond, it seems important to also keep track of bordering practices from within. This paper will analyse bordering practices through human rights, based on decisions invoking Article 8 ECHR (Right to Private and Family Life) in struggles around humanitarian leave to remain in Austria. Michel Foucault's notions of governmentality and biopower will serve as anchors to develop an analytical lens to unpack what I term as 'hegemonic biographies'. I will argue that hegemonic biographies are powerful scripts authoring migrant family life trajectories. In asking what plots are available for migrant family lives and how these are authored, I complement the notions of power over life of the body and populations with a more intermediate scale highlighting the life of families as privileged objects or figures of knowledge. Invoking the notion of hegemonic biographies will support me in underpinning my claim about the violence of what Jacques Derrida coined as the 'performative force' of law. This way I hope to contribute to the discussion about the role of family and kinship as neuralgic pivots in migration management.

Panel 2: Containment, (In)Security and the Clinic

Dispatches from the Fugue: A Politics of Passage, Contagion, and (Shipping) Containerization

Colin Eubank (Johns Hopkins)

'It was only a matter of time until someone put the two together, refugees and shipping containers' – so reads the opening line from an article praising the 'container camp' as a budding logistic solution to the 'crises' of migration and refuge arriving on the shores of Europe. Salvation, many believe, is found by exchanging blue-tarp shelters for intermodal shipping containers outfitted with biometric scanners, curfews, and guarded entrances. The appeal of this solution, we are told, is self-evident. But for whom?

The paper takes this trendy proliferation of the shipping container as securitized humanitarian 'solution' to rethink a politics emerging from the 'problem' of the refugee. I propose a genealogy of the aesthetic and discursive relations between the refugee/shipping container, to probe the

racialized and biopolitical grammars implicated in its deployment. The container articulates as much as it counters the contagious problem statelessness poses to the national order of things. But such a gambit, I argue, undoes itself. Drawn from hospitable interactions with the container as an unlikely site for passage, the very contagious thoughts and feelings found by way of the refugee articulate the crises of logistics and management – crises ultimately endemic to liberalism itself, in its most humanitarian and genocidal forms.

Crisis and the Clinic: the Holistic Approach to Migration Management in the EU, Governmentality and Foucault's Ethics

Rachael Dickson Hillyard (Queens, Belfast)

The Agenda for European Migration of May 2015 outlined the Union's programme to manage the migrant crisis. Four areas of migration policy are combined to create a holistic approach. Further commitments are made to 'rights-based' solutions in a 'spirit of solidarity'. Holistic is typically translated as taking into account the whole. But medically speaking, the whole considered extends beyond the physical to incorporate mental, emotional and social factors associated with illness. It has become closely associated with patient-centred care, linked to ideas of empowerment and emancipation.

The paper re-reads the EU's attempt at holistic crisis management using Foucault's ideas of governmentality and power, to show governance can be understood as a type of treatment. I propose understanding crisis as a symptom of a deeper condition affecting the EU; a chronic disconnect on solidarity.

Fundamentals of the EU's governance of the migrant crisis as treatment are outlined. I present three critiques, firstly that no cure is offered through the Agenda. Secondly, the Union's approach produces a particular power relationship between the EU as the clinician and migrant as the patient being treated. This relationship does not empower nor emancipate the migrant but results in the denial of their rights. Thirdly, ethics are central to medical treatment so if the EU is to offer a model for rights-based migration management, it must address its foundational values.

Security Lexicon: Furthering in Insecurity Doxa

Richa Kumar (University of Kent, Brussels)

This paper is located within the proliferating array of border technologies in the European Union (EU) and the public-private collaboration therein. It probes into the everyday routines of security professionals of companies, EU institutions, research institutes, border agencies and lobbying consultancies, and maps the specific vocabulary of 'security' emerging in and through the public-private collaboration which is mobilized for 'talking' and 'marketing' security. Methodologically, it draws upon data gathered through document analysis of job and project descriptions, calls for tender, online forums; participant observation at border security conferences; and in-depth interviews with over 60 security professionals. This security lexicon is a technologized and sanitized constellation of terms, tropes and phrases founded on the tenets of technological determinism like neutrality, efficiency and progress and of (in)security continuum whereby the distinction between internal and external security, inside and outside and migrant and terrorist converge. The security lexicon is mobilized by the security professionals to assert their authority and expertise to frame the migrant threat and, simultaneously offer technological solutions provided by them which results in the depoliticization and technologization of the figure of the migrant and misrecognizing the fatal consequences of migrant deaths as saving lives.

Panel 3: Rights, Migration Management and Medea

Catastrophes in Doctrine Formation, or When Logics Betray Good Intentions

Christina Oelgemoller, Loughborough University

In 2016 the international community decided to embark on a process of negotiations, which is to result in a Global Compact for Refugees and one for Migrants in 2018. This is potentially good news if the recent rhetoric on rights, development and vulnerability is to be believed. However, looking a little closer at public statements, circulated documents and notes from meetings, the Global Compact could also end up being a catastrophe. Between the 1980s and 2000s a select group of governments of the Global North engaged in doctrine formation on international migration which resulted in what is normalized as Migration Management today. It seems the Global Compact builds on Migration Management and consolidates knowledge made on the migration-development nexus in international fora since 2004. The language of the Global Compact moves away from an obsession with security and illegality and introduces much more clearly a Human Rights based framing. This paper asks, why, then might the Global Compact end up being a catastrophe? I will argue that the underlying logic with which international migration is approached has not changed; instead the Global Compact balances discursively what had remained an unfinished project by adding more substance to Migration Management. Thus potentially extending the normative violence through an argument of resilience and rights language.

International Law as a Cause of and Response to Crisis: the Case of the 'Refugee Crisis' and the Extraterritorial Obligation of Non-Refoulement in Human Rights Law

Ralph Wilde (University College London)

The term 'crisis' has been invoked in the context of the migrant movements to and within Europe since 2015. A typical response from international lawyers has been to implore states to implement fully their relevant legal obligations, including in international human rights law. At the same time, others were drawing the opposite conclusion, suggesting that legal rules, for example the free-movement norms within the EU Schengen zone and the EU Dublin Regulation on first country of asylum, were more part of the problem than the solution. These responses epitomize the dual way international law can be and is invoked in relation to crisis: as part of the solution and as part of the problem. The present paper explores this duality by considering the so-called 'migration crisis' and the debates around the validity of one area of international law relevant to it: the non-refoulement obligation as it applies extraterritorially, situated within a broader consideration of all the other relevant areas of international law. It will argue that the common view of the law, as epitomized by the two approaches above, is mistaken. This view overlooks how areas of international law play a constitutive role in some of the structural causes of the situation, and how the law fails to enable, and, indeed, helps conceal and even obstructs, some of the humane means of resistance.

The Common European Asylum System – is there a Place for Medea?

Sari Tollenaar (Maastricht)

This paper aims to contribute to existing critique on regimes of refugee law in a European context, by using the allegory of the ancient Greek tragedy 'Medea'. The research is based on

cultural historic literature, social science and legal material. Ancient Greek mythology - central to Europe's cultural history - does not affirm the social order, but rather 'countenances its contradictions and explores the possibility that conflicts may be neither resolved nor mediated.' Taking an interdisciplinary approach by using the allegory of Medea to reflect on today's legal frameworks helps to understand the cultural context and our personal, political and legal understanding of the challenges that the European Union faces regarding people seeking refuge. Reflecting on this allegory provides the reader with a fresh perspective on the interpretation of society and the position of 'aliens' therein. Multiple concepts are discussed in this reflection, such as the creation of 'identity' within law (individual and collective), and 'sovereignty' to which refugees may pose either a threat or a promise – depending on how their identity is formulated and whether law has acknowledged their agency.

Rights Recognition, Integration, and Pakistani Migration in the Basque Country

Patara McKeen (International Institute for the Sociology of Law, Onati)

My research investigates rights recognition, integration, and Pakistani migration in the Basque Country (*Euskadi*). What must be understood is that the Basque Country is a truly unique locale; livened by its passionate communities, linked together through a rich and vibrant history, that, in turn, encapsulates an extraordinary way of life. Yet, decades of political strife, violence, and ensuing period of globalization have altered its social makeup. Herein, I seek to understand how Pakistani migrant conceptualize integration by analyzing specific conditions which foster inclusion (language, labour and family). Therefore, I investigate the meaning behind 'rights recognition' in the Basque Country which creates both 'encompassing' and 'exclusionary' forms of citizenship. Starting in Oñati, I analyze how a small town with a strong connection to Basque national identity articulates its own integration policy. Using in-depth interviews, questionnaires, and surveys, I target community members, local organizations, and other relevant actors to understand Pakistani migrants in their new locale. What I find is that the divide that separates identity and citizenship is often associated with rights. However, the extent of understanding identity and the political implications of citizenship are differentiated by what rights mean to either Pakistani migrants or the Basque people.

Complacent Normalities of the Catastrophic: Interrogating Hegemonic and Imperial Presents

Stream Coordinators: Jayan Nayar and Raza Saeed

Panel 1

Enlightened no longer: the catastrophic present and the end(s) of law

Peter Fitzpatrick (Birkbeck)

The impossibility of constituting occidental modernity 'in itself', in its ultimate completeness, has been ostensibly overcome through a negative universal reference in which identity is assumed in the negation of both 'the rest of the world' and of the abnormal within. Catastrophe is intrinsic, rather than exceptional, to this precarious modernity. Such a normality of the catastrophic becomes ever more evident as the political life of an occidental modernity itself becomes more diffuse as well as more constricted and uncertain in its relational efficacy. Thence, the law endowed by an occidental imperium, by positivist and sovereign 'sources', becomes likewise

constricted and uncertain. That law then, being like all law founded in relation, faces an indicative ending. Yet this attenuation of imperium heightens law's purposive end as autonomously relational. Thus enabled, law can more readily resist such an imperium, even as that same law remains implicate with it.

Unsubmerging Anti-Colonial Resistant Perspectives

Abdul Paliwala (Warwick)

The submerging of the imperial/colonial catastrophe was a result of dominant Northern perspectives which orientalised and othered the South. The Southern 'oriental' voice was misrepresented, discriminated against, undermined and often ignored through patronizing and pejorative representations. If catastrophe is historically deeply rooted in the imperial/colonial past for most of the peoples of the world and especially of the global South, how is it witnessed then and now? This paper interrogates the manner in which the submerging of Southern histories and perspectives within Northern explanatory frameworks is being challenged by scholarship from the perspective of the global South and asks questions as to how to assess this scholarship in relation to law.

Should everyone writing about the South be included or only resistant de/anticolonial perspectives? What are Southern perspectives? Should they be restricted to the voice of the intellectual or the professionals or that of the people? If the latter, how can the voice of the people be communicated?

'Catastrophe' and its Deceptions: No, (Black) Lives Don't Matter

Jayan Nayar (Warwick)

We are familiar with the various, periodic, ascriptions of the category 'catastrophe' to the actualities, or anticipated potentialities, of the world. These may relate to either events which are understood to rupture the 'normal' or to structural conditions that are seen to be perversions against some perceived possible 'ideal'. From such identification of the 'catastrophic' then are we moved to consider the aberrations *to* normality and its resolutions, or differently, to interrogate the perversions *of* the 'normal' that might be returned to the paths of redemption. In this respect, catastrophe presumes and suggests a *normal-ideal-otherwise* to the catastrophic present/future. It is this 'normality' of the imagination of catastrophe that interests me here.

Instead of understanding catastrophe as a descriptive category either of some disastrous aberration from normality or the disastrous normalisation of some aberration or perversion, I argue that that the notion of catastrophe operates as a discursive category of deception and normalisation: to re-present and reaffirm the world invented by colonial-modern philosophies of asserted 'humanity', and of 'our' place in relation to the world. This it does in two ways. Firstly, the notion of catastrophe consoles the present with its promise of a deceitful other-normality, of a normal-ideal-otherwise. Secondly, through this deception is presented a universe of imagination intrinsically perfectable – the possibility of the suggested normal-ideal-otherwise – which thereby serves to deflect and disable any imagination of what might be reaffirmed as dangerously, *anti-colonial* against normalised presents. I illustrate these arguments by reference to the misguided idea that Black Lives Matter.

Panel 2

Relations of Aid, Catastrophically

Jutta Loreensen (Penn State)

Lately, I have been thinking a lot about a photograph that once startled me and that still eludes me: two hands cupped around a man's head, pressing down his hair to reveal a line of smooth skin, almost like a passage. Shot from on high, it is a disorienting composition. No faces are visible, but I know whom I have in front of me: A., an asylum applicant from Afghanistan, currently living in Austria, and my mother. They are documenting A's injuries in preparation for his refugee status determination; a few hours later, the owner of the local photo store has no time to make the prints, or so he tells them.

There is a difficult-to-name, quietly catastrophic intimacy in this picture; one that is conventionally understood by way of a moralist-humanitarian vocabulary of 'helping,' 'volunteering' and being a 'Gut-Mensch' (a do-gooder), on the one hand, and suffering abject victimhood, on the other. And it is indeed difficult to theorize relations of protection and assistance across borders in ways that do not immediately conjure the worst excesses of the civilizational humanitarian-colonialist impetus of European Empire. However, are we not missing an opportunity to think novel subject-assemblages of profound social and political import into existence? In my paper, I follow Maurizio Albahari's interrogation of the 'military-humanitarian nexus,' asking what other forms of relationality are possible in 'the gray area between military and humanitarian, patrol and salvation, detention and hospitality, rights and their infringement?' (*Crimes of Peace*, 12). I thus try to read the above-mentioned photograph as the untapped im/potentiality of political proximity.

Fear of Catastrophe and the Catastrophic Normality of Fear

Raza Saeed (Warwick)

We perceive catastrophes as fearsome events. Catastrophes as a vision into the unknown lies both within and beyond the horizon of what we know, constructed by the former but with a promise to bring in that which cannot be anticipated. The potential for imminent destruction inherent within catastrophic occurrences compels us to prepare for, pre-empt and repel that which promises to disrupt our present. It is not just a threat of destruction of the physical and the material that surrounds us, but also a threat of disturbance to our normality, a rupture within the regularity which governs and orders our lives

And we may think of this fear of catastrophe as constructive – in pre-empting that which can afflict us, there is also a sense of agency which creates avenues of resistance. But the laws, borders, structures and policies that we create to prepare ourselves against imminent destruction does two things: it normalises the fear of catastrophe and, rather than excluding it, perpetuates it and embeds it within the system; and second, on the other side of the divide, it renders the catastrophic normality of fear invisible. The paper looks at this engagement between catastrophe, fear and normality and argues that it is the latter – the catastrophic normality of fear – that dominates the lives of numerous outside the borders of geographical, racial and epistemological core. The 'miniaturised' catastrophes that become normalised as everyday occurrences for the many cease to be considered events and become statistics. It becomes a normality for those who are afflicted by the 'diseases of despair' or whose lives become 'solitary, poor, nasty, brutish and short'. And this catastrophic normality of fear is neither equal, nor does it serve as the preamble for a society of peace and security as they were promised.

A Crisis of Rationality: International economic law after Globalisation (Roundtable)

Stream Coordinators: Enrique Prieto-Rios (Rosario, Bogota), Maria Angélica Prada, Mariana Diaz-Chalela, Rene Urueña (Los Andes, Bogota), Tomaso Ferrando (Warwick)

In times of crisis, law is often presented as an instrument of rationality to get out of the swamp, a pathway back into certainty. The International Economic Law field – IEL - (specifically WTO Law and International Investment Law) has been considered as a standard to be adopted in moments of economic meltdown, a secure and tested mechanism to promote economic stability within developed countries and foster economic development among less developed ones. However, some criticisms highlight that the IEL rationality is one of permanent crisis rather than of a reaction to a moment of hardship and forced choice.

Looking at the history of IEL interventions, it appears to operate under the assumption that economies need to embrace globalisation in order to prevent catastrophe, a kind of shock doctrine in which there needs to be a response before the worst happens. Nevertheless, today's world seems to be turning back on globalisation. More often than not, we are seeing calls for rejecting international trade, foreign investment and economic interdependencies. The turn back on globalisation knows no political affiliation and seems to come from all sides of the spectrum. Issues of accountability, governance, protection of natural resources, and distributive justice jeopardise the rationality behind the IEL field.

It is no longer a question of whether the lack of economic integration can lead to catastrophe and more a question of whether there was a catastrophe to begin with. The purpose of this panel is to critically explore the rationality of International Economic Law, and how it is reflected in today's world. Some of the topics expected to be discussed within this panel include: effects of the International Investment Law System in terms of access/plunder of natural resources, governance/governmentality and economic distributive justice among others.

Title TBC

René Urueña (Universidad de los Andes, Bogota)

Latin America and the New International Economic Order: towards a transnational constituent power

Marian Diaz Chalela (Rosario, Bogota)

Governmentality and the International Investment Law System

Enrique Prieto-Rios (Rosario, Bogota)

Critical Legal Studies and Political Economy

Stream Organisers: Iain Frame

Panel 1: The international and the state: trademarks, human rights, and trusts

Trade Mark Law and the Financialised Corporation

Andrew Griffiths (Newcastle)

This paper will seek to understand and critically evaluate the relationship between trade mark law (the legal platform for branding) and the evolution of major business actors in the era of market globalisation and financialised capitalism. It will develop the argument that branding has made two key contributions in this respect. The first (supply-side), contribution is branding's facilitation of the relocation and disaggregation of production, associated with the rise of such practices as outsourcing, sub-contracting, offshoring and franchising, and characterised by such terms as the 'weightless corporation' (Naomi Klein) and the 'fissured workplace' (David Weil). The second (demand-side) contribution is its facilitation of the rise of consumerism associated, with such trends as conspicuous consumption, 'VALs marketing' and the relentless pursuit of novelty. The paper will consider how trade mark law has increased the organisational flexibility that business actors can achieve through artificial legal structures based on companies by enabling them to separate the activity of demand-attraction (and demand-retention) from the activity of supply-provision and to develop each activity separately so as to maximise their profits. The paper will consider how these contributions can best be challenged and addressed.

Global health finance, cost-effectiveness and human rights

Meg Davis (New York University)

As funding for global health, especially HIV/AIDS, steadily shrinks, the political landscape has grown more contentious. Multilateral and bilateral donors, including the UK, have committed to cost efficiency, and increasingly press national health programs to shift spending to proven cost-effective interventions. The growing use of this and other metrics represent an effort to move health aid from the realm of the political into the realm of economics, in a context of increasing marketization of global health (Adams 2016). But metrics used in development obscure complex political realities (Davis 2007, Davis Kingsbury and Merry 2012, Davis 2015, Fioramonti 2014, Gruskin and Ferguson 2009, Jerven 2013, Merry Davis and Kingsbury 2015, Satterthwaite and Rosga 2008). The costing tools used to estimate HIV resource needs are grounded in overly optimistic mathematical disease models that do not quantify on-the-ground realities such as corruption, criminalization, stigma, weak health systems and more that impede access to HIV programmes (Atré 2017, Davis 2016, O'Neil 2016). How do international human rights standards on the right to health and on the extraterritorial obligations of donor states align with cost-effectiveness standards - or do these two paradigms speak past each other? Analysis of costing tools used in HIV resource allocation will explore the market-driven assumptions behind them, analyzing what is left uncounted.

The Precarization of Real Property Law and the Evisceration of Equity

Nick Piška (Kent)

Discussion and critique of the financial crash of 2007-2008 has mainly focused on the US property-financial system nexus, the securitisation of subprime mortgages, which in turn has led to the repossession of properties across the US. Despite a review of the mortgage market in the UK and some discussion, including some official reviews, of the regulation of the financial markets, UK private law has for the most part avoided critical analysis of its role not only in the

financial crash but also what Isabell Lorey calls the ‘governmental precarization’ of everyday life (I. Lorey, *State of Insecurity*, Verso, 2015). This paper takes the Supreme Court decision in *Scott v Southern Pacific Mortgages Ltd* [2014] UKSC 52 and Court of Appeal in *Mortgage Express v Lambert* [2016] EWCA Civ 55 as a starting point through which to analyse the role of private law in the precarization of ‘home’. In those cases home owners who were struggling financially, mainly of whom were on benefits, were convinced to raise finance by way of a (now regulated) sale-and-leaseback scheme. When the mortgage payments were not made, the bank sought repossession. It was held that the bank’s security took priority over any equitable rights of the home ‘owners’. This paper analyses the extent to which equity has been ejected from real property, leading to the primacy of security of land dealings over security of belonging. In doing so, I will consider *Scott* and *Lambert* not as cases arising from one or two individual fraudsters but from political-economic transformations in private law itself.

Panel 2: The past and the future, money and algorithms

Confessions of Capitalism: The Catastrophe of Algorithmic Governmentality and the Practice of Law

Adam Harkens (Queen's University, Belfast)

Algorithms are currently something of a buzz topic, given their ever-increasing relevance in almost every sector of socio-political life. However their effect on the practice of law, and specifically the construction of legal knowledge, has largely been neglected by research. According to Morison and Leith (1992), the best legal point during litigation is often the ‘one that works’; that gets the job done persuasively and efficiently, because courts require ‘truth within given times’. Within these parameters, there is seemingly no better ‘confessor’ than an algorithm. Through algorithmic governmentality (Rouvroy, 2012), correlations are interpreted within big data sets, thereby producing an ‘immediately operational’ knowledge deriving from the embodiment of humans in the ‘onlife’ world (Hildebrandt, 2015). Not only does this hold persuasive power - in that algorithms are often viewed publicly as objectively ‘crunching numbers’, rather than for their ability to construct a ‘staged’ reality (Boltanski, 2011) – but algorithms are also judged upon the efficiency and economic fluidity they allow, as the legal system is subsumed into the logics of both computation and neoliberal capitalism. This paper will discuss the contemporary legal practices and developing trends that employ algorithms for economic purposes, before setting out the prospects and difficulties for critique.

‘Affording assistance to the mercantile world’ and the Bank Charter Act of 1844

Iain Frame (Kent)

Should we constrain those with the power to create and control money? If such constraints are necessary, how should they be designed? And how strictly should they be enforced? These were some of the questions animating the discussions around the Bank Charter Act of 1844, a piece of legislation which tied the creation of Bank of England notes to flows of gold into and out of the country, but was suspended by the government during financial crises on three separate occasions between 1844 and 1866. And they remain important questions today. Many scholars, for example, argue

for a ‘credible commitment mechanism’ to limit the discretion of those who create money. Others, by contrast, argue that ‘legal elasticity’ – the ability to suspend or relax legal

commitments – is essential to maintain financial stability. Indeed, the work of Katherina Pistor, a leading scholar on legal elasticity, introduces the so-called law-finance paradox to explain our simultaneous support for both credible commitments and legal elasticity. The law-finance paradox tells us that concurrent attempts to enforce legal commitments regardless of changed circumstances will leave those responsible for honouring these commitments unable to do so unless the commitments are relaxed/suspended. Yet the suspension/relaxation of the commitment undermines the credibility of such commitments in the first place.

The paradox indicates the impossibility of simultaneously upholding credible commitments and legal elasticity. A choice must be made between one or the other. In order to evaluate the choice underpinning the Act of 1844 and the consequences which followed from it, this paper will recast the paradox in terms of a broader conflict between freedom and security, using scholarship from the realist and critical traditions to do so.

Eating, Meat Catastrophe

Stream Organisers: Sam Kirwan and Tara Mulqueen

Panel 1: Veganism, solidarity, and the unruly body

Performing solidarity between lifestyle and liberation: The queer veganism of the Israeli Anarchists Against the Wall

Grietje Baars (City, University of London)

Veganism is often decried as a bourgeois lifestyle choice of little emancipatory significance. Yet, for some activists, their veganism deeply informs their political choices and actions. In particular, vegananarchism functions as a life-philosophy which prescribes the activists' relationships with the world: environment, economy and society. Vegananarchism's premise is the eradication of 'domination' of the human species over animals, human exploitation of the environment and human domination over other human animals, including economic class- and racially motivated exploitation. Vegananarchism demands far reaching alterations in one's lifestyle, which not only includes abandoning the use of animal products, but also the reconfiguration of relationships with other humans so as to ensure non-domination and exploitation including in the smallest everyday interactions (Dominick 1995). Moreover, in addition to performing this alternative lifestyle, vegananarchists engage in leaderless resistance against dominance and exploitation in various forms in society. For example, the vegananarchist members of the loosely organized collective 'Anarchists Against the Wall' engage in sustained direct action against the Israeli occupation (domination and exploitation) of Palestine. Much of this activism has consisted in building relationships of solidarity with Palestinian communities in the West Bank and engaging in weekly demonstrations around the Israeli-constructed Wall in the West Bank. Veganism – which in its political rather than religious form is often seen as a Western, 'first world' lifestyle, is not a common concept among Palestinian communities in the West Bank. Yet, Palestinian and Israeli activists over many years, and despite many obstacles, have – employing Freirian communicative methodologies - built productive and emancipatory relationships of solidarity where each has adjusted to, and accommodated the other's vision and performance including in the most practical everyday sense.

This paper, which builds on the author's six years' work with Palestinian (solidarity) activism including three years in the West Bank, forms part of a series of articles. This, the first, examines basis of vegan anarchist intersectional struggle in theory, and – through interviews - activists' performance of their alternative lifestyle(s) and life philosophy in their encounter with the Palestinian communities - who, while at once form part of the vegan anarchist performance's social audience, also conduct their counterperformance of Palestinian visions of liberation. The broader question posed in this article series is, whether, in the dialectic between lifestyle and liberation, true solidarity and social change can emerge.

The Embodied Politics of Justice in Han Kang's 'The Vegetarian': The Laws of Carnivore Domination and the Fulfillment of Desire as Plant Life

Matilda Arvidsson (Gothenburg)

In her widely acclaimed novel 'The Vegetarian' Han Kang introduces us to a protagonist who overnight transforms her carnivorous life into a vegan one. The awakening from a dream in which she experience a bloodbath of meat and meat eating moves her over the course of the novel's narrative from, in the first part, turning vegan to, in the second part of the novel, experience erotic desire and consummation as part of a conflated animal/plant life and finally, in the third part of the novel, to experience photosynthesis embodied as life fulfilled and the death from animal and carnivorous life.

This paper takes Kang's novel as its starting point and asks about the laws of human animality – of carnivore, inter- and intraspecies masculine domination (Gaard 2017) – and what it implies to leave a carnivorous life behind as a human animal (Adams, 2015). While veganism is commonly understood as a dietary choice – often a part of a 'green turn' for the Western urban hipster – Kang's novel reveals the multi-faceted layers of a non-carnivore life as questioning masculine, interspecies forms of domination. What we eat – the veganism in Kang's novel – becomes an ontological question, one of self-metamorphosis (Stanescu 2012, 39). Kang emphasizes veganism as a reminder of our (in)ability of deciding over our own bodies and lives – in particular our female bodies and female lives. While resisting the laws of carnivore domination by transforming one's life through veganism (implying not only dietary rules, but also a commitment to the eradication of domination both intra- and interspecies) may be translated into an embodied politics of justice, how are we to conceive of our own animality as other-than-plant life?

The 'Meaning Centred' Anorexic Body: A Feminist Response to Control and Misogyny

Cynthia Umezulike (Birkbeck)

The female body is well acknowledged as a feminist issue, especially as the body transitions from a physical organism into a concept. Shared interests of body feminists over the years have become broadened to explore body image and selfstarvation outside confined disciplines generating critical dialogues on the conception of the feminine body as a cultural and political model. In traditional societies were the female bodies are considered possessions or assets to the men. The body then becomes objectified; weight loss or weight gain remains adapted to the self-serving interests and control of the male gender.

Redefining the body anatomy through control became a symbolic selfaccomplishment. It becomes gradually apparent that the body cannot be controlled and directed in ways unconsented

by the host. The increasing number of individuals who adapt to this slender, thin and willowy aesthetics stimulates a broadened understanding and interpretation through in-depth analysis. A study conducted at the Cornell Medical College, New York, on eating disturbance in Eastern and Western societies detected a cultural pattern of food starvation as a tool for ‘negotiating the transition, disconnection, and oppression that they uniformly endure.’ Katzman and Lee share the perspective that sole focus on body image and starvation will only bypass the superior acknowledgement surrounding the conceptualised structure of the anorexic body. There is no true portrait representative of the meaning-centred anorexic body experience. To secure an ideal portrait in the understanding of selfstarvation will identify a confined intersection between extended frames in disciplines amongst other factors, which recognises a person’s consistent attempt to defend and affirm personal control. A broader individualised intersection of their values and immediate choices are conceptually analysed within societal contexts. These cross sections of multifactorial experiences or occurrences vary from isolated food restriction, distinctive weight calculation, and desperation to stay within a controlled scale size. The meaning-centred ideals transcend cultural metaphors directly manifested through self-starvation. These experiences reflect the free will, values and choices of the individual in restraining the body without undue influence or coercion. The quest for body perfection becomes symbolic with actions of staying in control. According to Izzy, ‘eating has come to represent much more than simply food. Their emotions, fears and sense of identity are wrapped up in food/weight’. It is not a mere strategic uncontrolled expression reoccurring intermittently. Appropriate representations will require believing in the attitude of worth and integrity a person accepts and in many ways the body is a temple, a place of self-worship and service. Voluntary starvation enables conscious gratification and satisfaction in the feeling of hunger, an achievement equated to making a critical statement reinforcing the underlying connotation to food refusal. The resistance of the normalised body weight, therefore, becomes a mantle of self-conservancy and protection. In that sense, there is an overwhelming empowerment in having that type of control and expressing autonomy with no inhibitions.

The Law of Self-Eating: The Consumption of Human Milk, Placenta, and Stool *Mathilde Cohen, (Connecticut) (SKYPE)*

Are humans becoming cannibals all over again? Judging by the growing popularity of consuming human milk, placenta, and stool for health it may appear to be the case. Athletes and cancer patients are finding that human milk hastens their recovery. New mothers eat their placenta to ward off postpartum depression and increase breast-milk supply. Fecal transplantation has been heralded as the new cure to treat recurrent *C. difficile* colitis and multiple other ailments. Of course, this is not new: since antiquity at least, there has been a long history of pharmacological and ritual therapies using drugs derived from the human body—including hair, nails, teeth, milk, blood, semen and female fluids, saliva, and bones.

Legal systems are at a loss when it comes to regulating these practices. Should milk, placenta, and stool be conceptualized as foods, drugs, or body parts? These substances have long been thought of as more or less vile waste products, explaining why they typically lack any legal definition of status. What happens when they suddenly turn into valuable commodities that are the object of research and trade? Based on a comparison between the United States and French law, this paper will discuss the legal challenges raised by these resurgent practices. Does it make a difference whether humans are eating their own bodily parts (or fluids) or that of other humans? I plan to argue that self-eating is particularly disquieting to some because it profoundly alters how we have defined human bodies’ boundaries in terms of inside and outside and what must exit the body and what should (or at least can) enter it.

Panel 2: Innovation, Sustainability, and Food Justice

Consumption, Authenticity, and Adventure: Tourism and Eating Meat

Sabrina Tremblay-Huet, (Sherbrooke, Québec)

Today, consumption equals living the dream life: this includes consumption of places. Tourism, with its exponential growth, has the potential to lead to numerous types of catastrophes. Consumption habits (and then, exhibition, mainly through social media) of one's identity as being adventurous, and as living authentic travel experiences, are highly valued socially (as the popular use of the acronym YOLO suggests). This often times includes eating meat traditionally not eaten at home. Consuming insects such as scorpions, monkeys, whale, and the like are seen as truly authentic and adventurous, let alone that host communities will not contemporaneously take part in such eating habits. These 'brave' eating experiences contribute to the valued masculine characteristics of the modern traveler that are celebrated, and consequently looks down upon other types of travelers, seen as more fearful. The intersections of power over another to feel power within oneself and in front of others are numerous: masculine over feminine, human over non-human animal. An analysis adding to the mix racialization as another implicit determinant of the exoticism of experiences of domination holds the potential of numerous linkages with the vegan stream of ecofeminism. This intersectional analysis seeks to sort out the place of law in the consumption of animals in tourism contexts (environmental law, cultural rights, etc.), and its normative force to tourists in contrast to social norms.

Influencing food choices through taxation: a food justice perspective

Josiane Rioux Collin

What we choose to eat directly impacts our health as well as the environment we live in. As one of the key considerations influencing food purchases is price, economic instruments such as taxes have become increasingly popular to influence behaviour and shape consumer choices without necessarily resorting to restrictions or other forms of traditional 'command and control' regulation. For example, several governments have introduced taxes on sugar-sweetened beverages in an attempt to reduce their consumption. In a similar vein, some countries have implemented 'fat taxes' to reduce consumption of saturated meat, and animal advocates urge governments to introduce a tax on animal products to reduce consumption and to cover the health and environmental costs resulting from animal-based diets.

I will discuss how food choices impact our environment and how taxes can be used to promote a sustainable food system by requiring private decision-makers to internalize the costs of their choices. I will offer some examples of how taxation is being used to encourage a shift to healthier and more sustainable food choices, but also provide a critique of this tool through the lens of environmental justice.

Eating meat-free outside the market economy - can there be food without property control?

Merima Bruncevic & Jannice Käll (Gothenburg)

A number of inventions have emerged during the recent decades of the so-called knowledge-economy in terms of eating. These new technologies include everything from managing the sensation of ice-cream through manufactured air-bubbles in the cream to 'golden rice'. What

connects these innovations is that they can be controlled through intellectual property rights such as patents and ‘seed-wrap contracts’. This implies that technologies that are included in, and even make up, food may be controlled as property. The implications of such control mechanisms have been criticised from various perspectives, e.g. in terms of global justice and the effects such innovations have on the production and access to food in the Global South. As discussed by Vandana Shiva, a form of biotechnological control over the Earth has not only lead to new types of weeds, monocultures and food - it has also had more dire consequences such as an increase in suicide rates amongst desperate farmers. Furthermore, the control over seeds was also raised within an EU context recently where a hard battle was fought against the increase in registration of seeds, which in turn would be forcing augmenting costs on small-scale seed farmers.

In this paper, we ask whether there is a way to eat meat-free in the future without inducing more property rights on seeds in order to ‘sustain innovation’ in food (or rather: *phood*). Following the new materialist thinkers Donna Haraway and Rosi Braidotti, we emphasise in this paper that a way to produce justice in terms of eating is to think tentacularly, in more radically sustainable ways. The specific question of property rights control over eating is here therefore raised in relation to the very material consequences ‘intellectual’ property as a construct has on food. We suggest that biopolitical aspects of such rights must be taken into account. The paper also elaborates on the possibility of bridging the divide between ‘intellectual’ and ‘natural’ commons as an affirmative response to the extensive control over food production on a global scale.

Panel 3: Feminist Readings of Food and Human-Animal Relations

An Ecofeminist Perspective on New Food Technologies

Angela Lee (Ottawa)

New food technologies are touted by some to be an indispensable part of the toolkit when it comes to feeding a growing population, especially when factoring in the growing appetite for animal products. To this end, technologies like genetically engineered (GE) animals and *in vitro* meat are currently in various stages of research and development, with proponents claiming a myriad of justificatory benefits. However, it is important to consider not only the technical attributes and promissory possibilities of these technologies, but also the worldviews that are being imported in turn, as well as the unanticipated social and environmental consequences that could result. In addition to critiquing dominant paradigms, an ecofeminist perspective offers a different way of thinking about new food technologies, with the aim of exposing inherent biases, rejecting a view of institutions like science and law as being objective, and advancing methods and rationales for a more explicitly ethical form of decision-making. Alternative and marginalized perspectives are especially valuable in this context, because careful reflection on the range of concerns implicated by new food technologies is necessary in order to better evaluate whether or not they can contribute to the building of a more sustainable and just food system for all.

(Bio)logical and Natural: The Legal Personhood of Non-Human Animals in a Posthuman World Order

Fredrika Gustafsson, (Gothenburg)

We are not born alone, we do not die alone and we do not live in isolation. We are what we eat. We are the bacteria in our bodies; we are our pets and our social media accounts. The article raises the issue of human hegemony and the feasibility of legal personhood for animals. By means of a feminist posthuman approach, it aims to challenge the status quo and proposes a new

figure of thought towards the concept of property and the relationship between human and non-human animals, but also raises a critique against the autonomous individual and the white supremacist male. The question is explored with a material comprehension of animal rights in multiple spaces, which allows a closer study of the animal as a resource for human indulgence and amusement. By studying how anthropocentrism and capitalism affects intra-active relations on Instagram, the author questions her own behaviour in a context where animals appear as (possibly) objectified digital trademarks. Internet phenomenon Grumpy Cat will act as the 'almost human'-example of how the human concept on animals in the digital society can play a part in how we treat animals, especially within the filthy meat industry of today.

Eating stories: the subjectivating effect of words and food

Riccardo Baldissone

Food and identity know of no more lapidary link than the famous (or, in its time, infamous) sentence '*Der Mensch ist, was er ißt,*' man [sic] is what he eats. When the German philosopher Ludwig Feuerbach wrote it in 1850, this simple equation shocked its readers with its direct and unequivocal materialism. Yet, such a statement not only would have gone unnoticed in Classical times, but it was also actually claimed in the twelfth century by the Benedictine abbot William of St Thierry with regard to the host, in his impeccably orthodox religious treatises. I will attempt to show that if we humans are what we eat, we are no less what we (can) tell each other about eating. To this purpose, I will sketch a genealogy of eating references in Western literary texts, and I will show how literature could narrate cooking, eating and feeding practices without having to subordinate them to any overarching principle, frame or scope. By doing so, literature resonated with and amplified, as it were, the pleasure of eating, thus also helping us to survive the catastrophe that we call modernities.

Environment, Law, Resistance

Stream Coordinators: Andreas Kotsakis and Vito De Lucia

Panel 1: Forms of Environmental Justice

Does Environmental Law sustain an Unsustainable Capitalist Society?

Asa Agren

Legal regulations are often regarded as important and effective instruments to protect the environment. At the same time as the environmental legal field has progressed, the global threat to the environment has intensified. Even though most countries now are trying to regulate emissions and other threats to the environment our world is facing more and more severe environmental problems. A rather radical way to look at it is the following; the environmental regulations give acceptance for an unsustainable lifestyle. People falsely believe that the government is taking care of the environment and consequently they keep up with their unsustainable lifestyle without bad conscience. The environmental issues are in principle threatening the whole capitalist system, but the environmental courts can on the contrary be seen as 'greenwashing' institutes, instruments to maintain the existing economic power structure. When we are giving the courts the power to restrict the system we do not take into account that the courts are also part of this system. Can the courts restrict and be a part of the same system? How

effective are the legal instruments? Can they change the structures of the economic system? Here Marx' idea about base and superstructure is a relevant starting point.

Environmental Justice and the Form of Environmental Law

Hrvoje Santek

'Thou art a scholar, speak to it', says Marcellus in Shakespeare's Hamlet. Wouldn't this be a nice task for today's environmental legal studies? In my research project, I want to listen to Marcellus. Drawing on a Marxian Derrida, I try to make sense of environmental justice (EJ) as a deconstruction of and within environmental law (EL). My idea is to make visible the form of EL, which I suppose in the legal objectivity of nature. Considering form rather than content, EL appears not solely as the sum of legal norms 'protecting' the 'environment', but foremost as a legal reproduction of the society/nature difference. It appears in its limits.

'Greening' trade law or human rights law thus seems to have become the ultimate horizon of progressive EL. Thinking about EL as being haunted by EJ could be a restart, though. For an

EJ to come, the concept of EJ would need to be demarcated from both its origin, that is to say it is mostly under-theorized understandings within social movements, and its widespread liberal readings of neo-Kantian or neo-Aristotelian type within academia. At law schools, substantial notions of EL would need to be overcome by an intervening socio-structural reflection.

Water pollution in India: Unpacking the Multifarious Roles of the Judiciary

Lovleen Bhullar

Water pollution in India represents a catastrophe. The enactment of laws by the legislature, and their implementation (or poor/ non- implementation) by the executive, has failed to prevent, control or remedy water pollution, and to address its frequency, adverse impacts, victims and perpetrators. Members of the public have turned to the judiciary for recourse, often alleging violation of rights – to environment, health, sanitation and water, which have been read into the constitutional right to life. This paper locates the call for critical environmental law in the context of the juridical response in India and the facilitative environment provided by procedural and substantive innovations. It first adopts a comparative approach to examine law's response to the catastrophe – at the domestic and international levels. Then it reflects on the manner in which the juridical response in India may actually contribute to intensification, rather than prevention, control or remediation, of the catastrophe.

Panel 2: Legal and Illegal Resistance

Illegitimate green lawfare? The Australian government's selective defence of the rule of law with regard to environmental protest

Cristy Clark

In November 2014, the Tasmanian government passed the Workplaces [Protection against Protesters] Bill – known locally as the 'Anti-Protest Bill' – creating criminal penalties for any protest disrupting business activities. In passing the bill, the government stated it was specifically seeking to protect 'industries targeted by radical environmentalists'. In 2016, similar bills were passed in New South Wales and proposed in Western Australia.

In August 2015, the Australian government moved to restrict the capacity of environmental groups to challenge major developments under Commonwealth law in direct response to a successful appeal against the approval of a controversial coal mine. The government argued this litigation was part of an illegitimate coordinated strategy amongst environmental groups to use ‘green lawfare’ to ‘disrupt and delay key projects and infrastructure’ and increase investor risk.

This paper will argue that these bills represent a broader pattern under which industry is framed as uncontestedly legitimate, while all forms of environmental protection are delegitimized. The transparent manipulation of legislation underscores the way law is used to reinforce and justify the primacy of industry. It concludes by asking: is there any justification for attempting to work within the legal system to defend the environment, or is more radical action demanded?

The wolves are not what they seem

Gustav Stenseke

Last decades the wolves in Sweden has grown in numbers and their presence has produced a lot of infected debates and conflicts. The main aversion is not towards the physical wolves. Rather it consists of disappointment with the wolf management, which by some is perceived as an urban attack upon a traditional rural lifestyle. In this context, the physical wolves becomes rather powerless actants in larger wolf-bodies consisting of mainly human conflicts.

In the legal discourse, however, the wolves are defined as juridical and ecological entities. This reduces the wolf conflicts into technical and managerial issues, solved with legal and ecological tools. Thus it veils the rhizomes of political natures underlying the etiquette ‘Wolf’.

Inspired by Deleuze, post-humanism and legal pluralism I map legal relations of wolf-bodies as processes of becoming between actants in a co-produced landscape. This makes it possible to return to the question of the physical wolf but with different tools. Instead of a legal dogmatic discussion around internal coherence, it allows a search for spaces, relations or issues in the landscapes with potential for negotiations that can affect the situation of the physical wolves.

Lawyering from Below: Knowledge Production in Movements for Environmental Justice

Irina Ceric

Taking the mass arrests of demonstrators during the 2014 TransMountain pipeline expansion protest just outside of Vancouver, Canada as its starting point, this paper situates mass mobilizations as moments in which interventions about (il)legality, (un)constitutionality, (human) rights and civil liberties become the dominant framework for framing, critiquing or even valorizing expressions of opposition and the state’s response to protest. Beyond a bifurcation of substantive environmental justice claims and procedural denunciations of the criminalization and regulation of dissent, law becomes the site through which thwarted political contestations are vindicated, whether through acquittals in criminal cases or convictions for contempt of court in the case of injunctions. Accordingly, mass mobilizations which engage different forms of law provide an opportunity for radical lawyers to work *with* movements to catalyze knowledge production about the criminalization of dissent in two keys ways. First, by naming the contradictions of both state-led and public-private legal responses to environmental and Indigenous solidarity organizing, movement knowledges effectively trace the operation of law as a mediator between capital and state. Secondly, movement reflections on the limits and

possibilities of rights claims demonstrate that the seemingly extraordinary measures deployed against street protest reveal the specificity of political expression while simultaneously belying the exceptionality of protest policing.

Panel 3: Ideas of Critical Environmental Law

Towards a Theory of Just Resilience

Margherita Pieraccini

Resilience has become a keyword in the era of global environmental change in both academic and policy circles. Resilience denotes the ability of complex systems to adapt to change, moving away from stable equilibrium whilst avoiding being completely functionally restructured. Adaptive management has been singled out as the most appropriate regulatory strategy to build the resilience of social-ecological systems. This is because adaptive management pushes for dynamic resource management policies that incorporate experimentation, structured learning, monitoring and feedback mechanisms due to an acknowledgement of the uncertainty inherent in social-ecological systems. Adaptive management has been married with the co-management literature to emphasise that learning and adaptation is a shared enterprise requiring the collaboration of a number of actors. This points to the importance of participation in adaptive decision-making. However, the democratic potential of adaptive co-management remains under-explored in much of the literature. Besides, resilience scholars have not been very preoccupied with power relations and distribution of costs and benefits of resilience interventions.

It is only recently that a number of scholars, primarily from the field of political ecology, have critically considered the question of ‘resilience for whom and by whom?’ attempting to include in their analyses a consideration of power relations and agency and politicising resilience. This paper provides a contribution to this critical strand of resilience literature, answering the ‘resilience for whom and by whom’ question by drawing on political theories of justice (from Young and Fraser to Dryzek). The paper makes a first attempt at sketching what a theory of ‘just resilience’ would look like, exploring procedural and distributive justice concerns in resilience and adaptive management. In doing so, it also reflects on the challenges of operationalising just resilience in regulatory interventions. Therefore, this paper brings novel insights to the law and resilience literature and resilience literature more in general.

The Failed Promise of UNCLOS's Provisions on Marine Life Conservation: A Critical Environmental Law Approach

Pierre Cloutier de Repentigny

States’ attempts to limit biodiversity’s decline through national and international environmental laws seldom attain their goal. If we wish to avoid mass extinction, and if we are serious in our desire to stop the decline of marine life, we must rethink the Law of the Sea. This paper offers a first step on this reflective legal journey through a critical environmental law, mainly Green Legal Theory, approach to the deconstruction of the fisheries provisions of the United Nations Convention on the Law of the Sea (UNCLOS), the framework convention governing the oceans who once offered some promise regarding the conservation of marine life. Specifically, the paper uncovers the pervasive liberal biases of the UNCLOS regime. Firstly, the paper analyses three core concepts of the regime that favour economic (over)exploitation of marine life to the detriment of conservation and other interests: ‘maximum sustainable yield’, ‘optimum utilization of the living resources’, and ‘freedom to fish’. Secondly, the paper expounds that the very

characterisation of marine life as 'living resources' contributes to our inability to see ourselves as an interconnected part of the marine environment and thus to protect it. These arguments are explored through three Canadian examples: the collapsed cod fishery, the declining sockeye salmon fishery, and northern indigenous fisheries.

Critical Environmental Law: Theory, Method, Practice or Resistance?

Vito De Lucia

Nomads in Search of Freedom

Andreas Kotsakis, (Oxford Brookes)

The thought and practice of environmental law must be separated, before they are reconnected. Otherwise, environmental law scholarship faces a catastrophe of its own making. Environmental law thinking demands multidisciplinary. It demands openness to other fields of knowledge, other regimes of practices, and crucially other discourses and voices, beyond the dominant rational triumvirate of law, science and economic. The practice of environmental law demands an engagement with resistance. It demands openness to the transnational social and political movements that have emerged around the world and their causes of change and emancipation, beyond the dominant conception of environmental law as the legal arm of the ecological movement. The paper articulates a Guattarian framework for taking on these epistemological and political tasks. This framework makes use of two main concepts: transversality and nomadicism. Transversality is understood as the latent coefficient of openness and affective potential of a given group or institution, which can be discovered and enhanced. Nomadic groups are groups whose organisation is immanent to the relations composing them, and not imposed by transcendent, charismatic or other forms of command. They escape hierarchical structures and pursue causes and lines of flight that often escape their immanent construction. The idea of critical environmental law that emerges is one that takes on Barry Commoner's first law of ecology that 'everything is connected to everything else' as an epistemological, ontological and political goal.

Panel 4: Alternative Approaches to Environmental Law

Strategy, Means and Ends of Legal Regime on Environment Protection

Aurora Tarun

Existing environmental laws and regulations revolving around anthropocentric ideologies appear inadequate to the adaptive and resilience capacity of natural resources. The present work examines the implications of existing regulatory framework evolved out of traditional command and control, integrated pollution prevention and control approach and other alternatives. Pros and cons of conventional static and fragmented decision making process and its alternative available in the form of adaptive management have been elaborated. Thus, likelihood for integrating element of resilience in the system to restore and sustain equilibrium has been explored. Sustainability of natural resources necessitates development of governance mechanism in proportion to unforeseen complexities and uncertainties of the socio-eco system. Therefore, now-a-days, emphasis is being given on resilient approaches in view of natural adaptive capabilities of the environmental resources and from the ability of the social system to respond to an environmental problem by seeking to restore the system. The present study ventures to analyze the substantive and procedural aspects of legal regime to advocate the case for adoption

of resilience based approach. It also uncovers the critical need for inbuilt safety mechanism against the probability of misuse of delegated authority.

Theoretical consideration on Biopiracy related to Traditional Medicine: A Human Right Approach for Indigenous Communities in India

Zubair Ahmed Khan

Bio-piracy refers to the process through which the rights of indigenous cultures to these resources and knowledge are erased and replaced by monopoly rights. Though, there is no accepted definition of bio-piracy. The issue of IPRs is thus getting closely related to the issue of bio-piracy and intellectual piracy of western style IPR regimes. The lack of legal protection of our biological and cultural heritage has made the indigenous communities of the third world vulnerable to bio-piracy.

The critical legal issue is whether the existing patent regimes are biased in favor of large Trans-national corporations with interests cutting across pharmaceuticals and agri-chemicals. The pharmaceutical industry places a great deal of importance on biodiversity, because natural resources are critical for the discovery and development of new drugs. Natural resources have valuable potential as sources for new chemical substances and active ingredients. The usurpation of indigenous innovation by western corporations robs intellectual contributions of another country and worth creating intellectual poverty. Patents based on bio-piracy divert biological resources away from local communities to global markets creating scarcity and resource poverty. Indigenous and traditional communities have had no practical opportunity to participate in the development of national or international intellectual property systems. Whether the definitions of discovery, invention, improvement, and protection need to encompass a broader understanding than are currently held under patent law in order to appropriately protect the Indigenous Peoples?

The CBD process has not fully involved indigenous peoples or local communities. Faced with both 'bio-piracy' and a rapid loss of knowledge and culture, indigenous and farmers' organizations are calling for broader protection that incorporates the many aspects of traditional knowledge systems, such as bio-genetic resources, territories, culture and customary law. India has succeeded in protecting traditional knowledge through Traditional Knowledge Digital Library, which is a unique repository of India's traditional medical wisdom. It bridges the linguistic gap between traditional knowledge expressed in languages. It acts as a powerful weapon in the country's fight against erroneous patents, sometimes referred to as 'biopiracy'.

There are concerns that this knowledge is being used and patented by third parties without the prior informed consent of Traditional Knowledge holders and that few, if any, of the derived benefits are shared with the communities in which this knowledge originated and exists. There are related challenges in relation misuse and blatant misappropriation of Traditional Knowledge where legislation and national policy is not sufficient.

Pharmaceutical bio-prospecting has been sharply criticized for what has become known as 'biopiracy' in which large international pharmaceutical corporations make use of local indigenous or traditional knowledge, without acknowledging that it is indigenous intellectual property. Thus, profits have accrued solely to the pharmaceutical companies and indigenous peoples received little or nothing in return.

The Catastrophe Within: Moving Beyond Empathy Inhibition to Cultivate a More Livable World

Ron Milland, Independent Scholar

Whether one considers efforts of remediating socioeconomic injustice, speciesism, or broader aspects of environmental exploitation, advocates and activists often encounter a similar obstacle when attempting to engage the public at large. Labelling this obstacle as a mainstream lack of empathy with the ‘other’ is, perhaps, an oversimplification, but not an inaccurate description. Finding ways around or through this obstacle has proven daunting, and some have speculated that the sort of measures that are truly needed would prove virtually impossible to fully implement. As evolutionary biologist Marc Bekoff states – with regard to our capacity to empathize with other species – “if you really want to know how animals live, think, and feel from their point of view, then you need to join them in their world”.

Perhaps humans can never truly know the world from the precise perspectives of dogs or bats, or the innumerable other species with which we share this planet. But there are ways in which the environmental narrative can be modified or reconstituted so that embodied cognition (as Alexa Weik von Mossner describes in *Affective Ecologies*) results in new iterations of trans-species empathy. This paper will compare these narratives of catastrophe – as rendered externally and within the human mind – and examine how they may either inhibit empathy or facilitate it. A number of other scholars will be cited, including Donna Haraway, who – in *Staying with the Trouble* – calls for a “nonarrogant collaboration with all those in the muddle”. Furthermore, the implications of this mainly ecocritical analysis will be considered across disciplinary boundaries, as social and economic justice advocates may find applicable tools therein – proving that disparate movements through and beyond catastrophe may hold less in the way of divergent perspectives and more in the way of common ground.

The Global Condition: Displacement, Dispossession and Death

Stream Convenor: Mark Harris

Panel 1: The Global Condition

Possession as a mode of dispossession

Mark Harris (University of British Columbia)

In 2017 there are widespread celebrations of the decade since the Universal Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly of the United Nations. The ratification of UNDRIP has led to somewhat premature celebration of it as embodying principles of self-determination that might provide hope for Indigenous peoples in their dealings with the State and Transnational Corporations. This paper argues that certain principles such as Free Prior Informed Consent embodied in the UNDRIP that are acknowledged now at both the international and domestic level actually serve to confirm diminution and erasure of Indigenous sovereignty. Drawing from the recent work by Pasternak and Dafnos on the manner in which Indigenous threats to the flow of global capital are suborned and neutralised I would argue that FPIC and the very concept of consultation are but the latest manifestation of strategies to confirm the structure of settler-colonialism. Following from this I

argue (borrowing from Nichols) that the very conferral of a form of possession or the acknowledgement of rights to land in Indigenous peoples necessarily requires the simultaneous moment of dispossession.

Turning Sideways: Intimate Critique and the Regeneration of Tradition

Johnny Mack (University of British Columbia)

One of the central problems encountered by indigenous people as they draw on their traditions to build contemporary political and legal imaginaries is the necessity of developing indigenous forms of criticism that draw on the resources embedded in their history and daily experience. I think of this mode as intimate critique: attempting to build a new society by checking its impulses from within, through an internal dialogical process of critical-historical reflection on our contemporary moment. In developing such a model of critique, my hope is to develop a constructive practice of criticism that will have the corollary effect of indigenizing the institutions responsible for administering a distinctly Nuu-chah-nulth political and legal imaginary. I further hope that as we reconstitute community life in light of this intimate critical ethos, we can organically develop a more robust Nuu-chah-nulth foundation from which to consider the set of problems we face as indigenous peoples within a settler state.

Silvina Alonso-Grosso (Birkbeck)

This paper discusses the urbanization process in Argentina during the last military dictatorship. Between 1976 and 1983 the Dictatorship Government developed many spatial interventions of enormous impact for the City of Buenos Aires through the Code for the Urban Plan of 1977. The Code was a set of norms carried out to regulate the use of the land and the conditions for its transformation and conservation. Related to the economic policies and State terror being carried out by the Dictatorship, the aimed of the Code was to redesign the City of Buenos Aires to turn into a residential place for the wealthy and upper classes. In this paper, I am going to inquire on the construction of one of the most emblematic urban interventions. The Urban Highway Network Plan, which brought with it a series of demolitions in protected areas, such as urban and architectural heritage, as well as the expropriation and demolition of thousands of homes and the expulsion and later relocation of low-income families in other areas of the Province. Based on the analysis of the Urban Highway Network, two issues will be discussed: the notion of an omnipotent dictatorial government through urban design, and the catastrophic effects those interventions played in the life of the lower classes who inhabit the city.

'New War' as Sacrifice: The Drug War and The Imperial Violence of International Law

Kojo Koram (Essex)

The late twentieth century saw the rise of a recovered moral universalism in international law, predicated on a post-colonial, humanitarian vision of legal ordering. Paralleling this development was a shift in the mode of war at the international level, from the symmetrical warfare between rival nations and/or empires towards what has been termed in scholarship as the 'new wars', conflicts that escape previous theoretical models of war by being indeterminate, abstracted and with no defined point of conclusion, suggested a synthesis between policing, security and warfare. This paper reads the post-war establishment of international laws prohibiting drugs as a key marker in these twin histories. By reviewing how both humanism of a moral universalism and

legalistic absoluteness of 'new war' informed the production of a full scale, global War on Drugs at the end of the twentieth century, I will explore the extent to which the asymmetrical violence of drug war could be understood as functioning as what I have termed, following Girard and others, sacrificial. This idea of the 'sacrificial' stresses the productive relationship between the persisting violence of law in the age of 'new war' and the persisting imperial structuring of the post-war international legal order that forgoes the formal division of European colonialism for a totalising conception of a universal humanity. An appreciation of this dynamic within both international law on drugs, as an instantiation, and international law more widely can advance understandings of the relation between legal violence and cohesion of international legal order in the contemporary moment in which international law promises the end of 'the scourge of war'. This paper will suggest that the placing of the War on Drugs within the context of these wider transformations of international law betrays that despite law's promise to contain global violence through the formation of the UN and the post-war legal framework, war would not disappear but rather shift in mode to 'sacrificial'. Furthermore, such an exploration of how the nexus of international law and empire continue to operate in post-colonial world expand the possibilities for the re-reading of other contemporary global conflicts described under the rubric of 'new war', particularly the War on Terror.

Panel 2: The Global Condition

The Colonial Logic of Grenfell

Nadine El-Enany (Birkbeck)

The Grenfell fire of 14 June 2016, of which the majority of victims were racialised as non-white, epitomises the persistence of a colonial social order predicated on racial hierarchy in Britain. Britain's geography is marked by spaces of colonial control and exclusion in which resources are withheld from people living in conditions of spatial and temporal precarity. Understanding the colonial logic of the Grenfell Tower atrocity demands a historical and contextualised analysis. Many of the Grenfell residents and their ancestors suffered the dispossessing effects of European colonialism. They lived and fled not only the lasting material consequences of colonisation, but also the economic decline caused by global trade and debt arrangements that ensure the continued impoverishment and dependency of Southern economies on those of the North. This paper draws on the work of Sherene Razack and Ruth Wilson Gilmore to argue that race and its ongoing colonial configurations in Britain overdetermined what brought the Grenfell victims to the dangerous heights of the high-rise tower and ultimately to their violent and premature deaths.

A Border in Every Street: Understanding Britain's 'Hostile Environment' in the Wake of Grenfell

Sarah Keenan (Birkbeck)

In the faces of the Grenfell dead and missing we can see that an internal border was in operation in Kensington, London's richest borough. While the racialisation of the victims of the Grenfell atrocity was not a direct result of the 2014 and 2016 Immigration Acts, it is consistent with the 'hostile environment' that the British government has been intentionally creating for irregular migrants by restricting their access to essential services including housing. Examining the hostile environment produced by the internal borders of the 2014 and 2016 Immigration Acts helps us to make sense of the means through which law produces racist landscapes in which material spatial boundaries exist for particular subjects and not others. Beginning with a brief discussion of how legal geography, critical race theory and critical disability studies assist in understanding

the relationship between law, space and the human subject, I put forward the concept of ‘taking space with you’ as a way to understand the racist British landscape in which we live today.

The Right to Adequate Housing? Reflections on an Avoidable Tragedy

Nigel de Noronha (Warwick)

The Grenfell Tower tragedy has thrown a spotlight on housing inequalities in the UK and the need to develop effective policies to ensure that people have the right to a decent, safe home. This paper explores the history of policies that have sought to address the recurring housing crises. It shows how state investment in construction, rent regulation and security of tenure contributed to better standards for many though exclusions on the basis of race and migrant status have continued to deny access to adequate housing for others. The commitment to a property-owning democracy, first articulated by the Conservative government in the 1950s and supported strongly in the 1980s led to the transformation of housing as a right to housing as an asset. The reduction in social housing and growth of a poorly regulated and insecure private rented sector in the last thirty years has increasingly restricted access to adequate housing. Reduced access to adequate housing has been combined with toxic narratives about the undeserving poor that have demonised social housing estates, those dependent on benefits and immigrants. This has enabled the justification of ‘regeneration’, which has been and continues to be used to facilitate displacement and gentrification.

The Governmentality of Catastrophe: from biopower to ontopower

Stream Coordinator: Jacopo Martire

Panel 1

Transnational corporations as instruments of governmentality

- *Enrique Prieto-Ríos (Universidad del Rosario, Colombia)*
- *Miguel Rábago Dorbecker (Universidad de los Andes, Colombia)*
- *Mariana Diaz Chalela (Universidad del Rosario, Colombia)*

In his 1978-1979 lectures Foucault presented the idea of governmentality as a the ensemble of institutions and procedures that allow a specific form of power to be exercised ‘which has as its target population, as its principal form of knowledge political economy, and as its essential technical means apparatuses of security.’ (Foucault, 1991, p. 102). This idea of governmentality is especially relevant in today’s economic agenda, where non-state actors play an important role in the regulation of the market and of the state. The purpose of this paper is to analyze how transnational corporations act as instruments of governmentality within the scope of international economic law. This paper intends to draw on the discussion of whether transnational corporations are subjects of international law as well as de debate around the field of International Economic Law acting as a system of international law.

The concept of governmentality in Foucault is tied to the history of how the government of the self became the government of others, giving birth to the art of government. Our intention is to tell that story within the international economic law field and through the role of transnational corporations. There are three main ways in which our story is told: the shift from the national

corporation to the transnational corporation, from the set of individual economic laws to the system of international economic law, and from an Eurocentric view of the system to a global perspective.

The catastrophe of law? Nudges, algorithmic governmentality, and ontopower

Jacopo Martire (Stirling University, UK)

Michel Foucault, in his course 'The Birth of Biopolitics' claimed that law and liberalism are two fundamentally incompatible systems based on a divergent vision of the subject: the homo juridicus of law is opposed to the homo oeconomicus of the market, to the logic of rights is opposed the logic of interest. The meteoric (yet hotly contested and far from effective) rise of nudging techniques seems a break from this dichotomy and offers a glimpse of the regulatory environment to come. Do nudges represent the bellwether of a paradigm shift in our regulatory environment where the classical reactive model of 'command and control' is progressively abandoned in favour of a new pro-active model of algorithmic governmentality? How and to what extent these two mechanisms overlap and diverge? The present paper attempts to analyse this regulatory passage against the backdrop of the movement between the normalizing regime of biopower and the preemptive regime of ontopower: : are we witnessing the catastrophe of law – its slowly yet ultimate demise – as we know it?

International Law's Catastrophic spaces

Panel 1

Legal Status for Climate Refugees: An International Law Concern

Moushita Dutta

The impact of climate change on people, societies, their livelihoods and the ecosystem has been extreme and far-reaching. With human induced environmental changes affecting populations worldwide, climate change has been responsible for displacing millions of people around the world from their native homes to migrate to new places. Such forced global migration which is expected to rise in the coming decades as an adaptation strategy to climate change has failed to receive adequate recognition and protection in the realm of international law. The formulation and implementation of a well-defined legally binding protection and re-building programme for such climate refugees needs to be prioritised at both regional and international levels. The existing legal instrument of the 1951 Refugee Convention pledges no provision to such environmental migrants fleeing natural disasters. However, the Paris Agreement concluded at COP21 (Conference of Parties) explicitly emphasised upon the need for its Parties to secure human rights, right to health, decent livelihood and food security for different communities of people aggrieved by the adverse consequences of climate change expressly including the term 'migrants'. Amidst several challenges, while those displaced and forced to relocate by climate change still lack a concrete legal status, international policy relating to such climate refugees needs reform to protect their survival and interests.

Children of Empire: International Law, the Development Discourse, and Economic and Military Intervention

Tim Lindgren

Since its emergence, international law has been shaped and buttressed by a civilising narrative exported from and on the behalf of the Global North to the Global South. In the middle of the twentieth century, this narrative was seemingly dismantled; however, its foundation was remodelled into a western-centric (but supposedly universal) 'narrative of development' that now underpins the legal international discourse. Such development discourse promotes and globalises a not-so-universal model of development bent on endless economic growth and liberal governmentality which maintains and increases Northern/urban dominance over the South/rural. This paper examines how the development discourse buttresses international law, and assesses how it has produced legal prerogatives and justifications for economic and military intervention under neo-colonial interests. It argues that these legal prerogatives enable the intensification of controlling and ordering of 'civilisational crises' to peripheral spaces as a necessary measure of maintaining a Northern 'imperial mode of living' under increasing political, social, economic, and ecological strain. In conclusion, this paper argues that the international jurisprudence must be epistemologically dislodged from the development discourse, not under a naïve belief in legal redemption, but so that pockets of legal structures with emancipatory and decolonial potential can emerge.

The Politics of International law of conflict management: A critical legal theoretical analysis

Humayra Mishu

Recently international border disputes have been flaring up all over the world, roughly one-quarter of the world's borders are unstable, and two-thirds of maritime borders are yet to be settled which is considered as catastrophic. Territorial disputes are salient factors for international peace and security. States need a framework of law to guide their conduct so that they can get along peacefully with each other and ensure international peace and security. International law endeavours to provide that framework. This paper explores the management of border disputes on the India-Bangladesh frontier, looking at specific aspects of land border disputes. The specific theoretical approach used is taken from Koskenniemi (2005,2011), who has argued that international legal theories tend to universalise conflicts which are better understood as specific problems that arise in specific historical and political contexts, and that it is the politics of a dispute rather than the legal dimensions as law which shape both the process and the possibilities of their resolution. Drawing on a critical legal theory approach the paper asks how effective the available means for conflict resolution have been and will analyse why the ongoing border disputes between India and Bangladesh have proved so intractable.

Panel 2

Interrogating Offshore Spaces

Emma Patchett

Despite Australia's international obligations it has developed a punitive system in which refugees and asylum seekers are detained on the islands of Manus and Nauru. The practice of retrospective legislation has allowed successive governments to challenge the temporal foundations of protection obligations, generating a very particular space of extra-territorial

securitization which enables the state to construct a 'limbo' offshore through an absolved externality of responsibility. This form of pre-emption creates a temporal distortion in which border controls manifest a form of 'abyssal thinking' (Santos 2007), in which colonial spatial strategies continue to shape the national spatial imaginary. The singularity of Australia's use of offshore detention creates an effective case study for an exploration of the way in which border controls not only operate beyond the territorial, but moreover legitimate a form of temporal distortion in which the national spatial imaginary can be expressed through distinctively retrospective and unconstrained temporal narratives of extraterritorial jurisdiction. This distorted temporal scale will be theorised through the literary jurisprudence of Alexis Wright's *The Swan Book* (2013) as a counter-epistemology of space, exposing the precarious and fraudulent spatio-temporal cartography implicated through Australia's immigration and asylum regime.

From Cairo to Jerusalem: International Law's Expert Enclaves

Mai Taha

Mr. R. M. Graves's career in the British Empire traversed across the Near East, starting from his first post at the Levant Consular Service in 1903, moving to Constantinople, then Salonica, then Uskub, then Alexandria and Cairo where he was the Director of the Egyptian Labour Office. He reached Palestine by 1942 to also become the Director of the Labour Department. By 1947, he was appointed as the Chairman of the Jerusalem Municipal Commission, effectively becoming the last British mayor of Jerusalem, before moving to Tangier with the creation of the State of Israel. Graves, to put it simply, was a 'Near East expert'. This paper addresses how international law and institutions crafted expert spaces or enclaves, for people like Graves, in the governance of Near East territories in the first half of the twentieth century. Using Mr. Graves's eclectic itineraries as signposts, I interrogate how international law marked certain cities in the Near East as expert enclaves. I focus on Graves's move from Cairo to Jerusalem, which coincidentally marked the transition from the League and Mandate era to the era of the newly-created United Nations. In Cairo, Graves was the colonial labour expert of the Near East, working smoothly under the direction of the Colonial Office, the League and the ILO. In his later years in Jerusalem, and as mayor of this contested city, he became yet another expert of municipal affairs. Graves who in his own words was 'neither a Zionist nor an anti-Semite' managed the city across national lines in the wake of the UN Partition Plan, and as the empire was withdrawing right before Jerusalem itself became a site of a catastrophe – right before the Nakba.

Panel 3: The Politics of Catastrophe: Failed Utopias in International and Human Rights Law

The 'politics of catastrophe' in IL and IHRL is constructed against two related claims. First- that the 'utopias' of IL/IHRL are in jeopardy or have failed; and second- that the only way to respond to catastrophe is through the resurrection of, and reinvestment in, these failed utopias. This stream examines how IL/IHRL are implicated in producing the violence and exclusions that give rise to a sense of catastrophe and overwhelming despair. The histories of colonial/racial/sexual exploitation and exclusion, and a politics of belonging/non-belonging that have constituted these projects have been obscured by the chimera of utopia.

Catastrophe is not presented as a spectacular event, something to be opposed or as being produced by bad men, bad policies or bad religions, but as part of the warp and woof of international legal projects. Some of the questions we seek to address include: what are the

hierarchies and asymmetries that inform the utopian vision of IL/IHRL? How does IL/IHL write the history of catastrophe? Is violence inherent to/justified by IL/IHRL? If so, why do critical legal scholars continue to reinvest in these projects as redemptive moral pursuits?

International Law as Violence: The Catastrophic Other

Vanja Hamzić (SOAS)

The Redemptive Turn In Critical Human Rights Scholarship: A Catastrophic and Nihilistic Move

Ratna Kapur (Queen Mary University of London)

Slavery and Colonialism and Reparations: The Complimentary Catastrophe's of Slow Violence and Human rights/Humanitarian Emergencies

Vasuki Nesiah (New York University)

Human Shielding and Bombing Under the Justification of International Law

Nicola Perugini

The International Political Economy of Catastrophe

Panel 1: Neoliberal Catastrophes

Citizen Welfare or Consumer Welfare: A Critical Political Economy Approach to Competition Law

Firat Cengiz

This paper looks critically at European competition law following a critical political economy approach. In so doing the paper aims contribute to the burgeoning debates on the objectives of competition law and the potential contribution of competition law to equality with novel insights from critical political economy. In the first part, the paper discusses the objectives of competition law. In the light of critical political economy, competition law appears as a legal institution primarily designed to provide protection against the crisis tendencies of neoliberal market economy. This finding provides much clarity as to what the official objective of competition rules, namely the protection of 'consumer welfare', actually means. This finding also results in the questioning of the legitimacy of competition law and authorities: in other words, whether crisis aversion alone provides competition law sufficient legitimacy to justify the privileged position of competition rules in the European economic constitution and the extensive powers of competition authorities or whether competition law should protect other public goods such as equality? Although there has been a vibrant discussion of competition law-equality relationship post 2008 financial and economic crisis, this discussion centers on the exchange relationship between producers and consumers in the market place avoiding a discussion of the position of workers in the production process. As a result, following a critical political economy approach, the second part of the paper discusses how workers could be brought within the remit of competition law if equality is to be an objective of competition rules.

Capital and Catastrophe: Laws and economic laws in the context of the Greek crisis

Dimitrios Kivotidis

Does the word catastrophe refer to a natural disaster or to a deliberate destruction? Perhaps catastrophe is not the most accurate term to describe socio-economic processes, which are neither natural nor man-made; they are rather dialectical processes permeated by the central and historical element of class struggle. However, in the Greek language ‘catastrophe’ (καταστροφή) is the term used for the ‘destruction’ of capital necessitated by capitalist crises of overaccumulation, i.e. by the laws of motion of the capitalist mode of production. This paper begins by discussing the nature of these laws (e.g. law of accumulation of capital, compulsion for capitalist competition, law of uneven development). Are they natural laws, man-made laws, or rather social laws shaping and being shaped by class struggle? It continues by investigating the relation of these laws to juridical laws. It does so, in particular, by looking at how catastrophe/destruction of capital takes place in accordance with EU legal and political documents (on the justification of growth and competitiveness), as well as how public law concepts (such as necessity and general interest) function in order to integrate ‘destructive’ legislation into the Greek legal order. Catastrophe of capital is what is at stake in the rising antitheses which were intensified by the capitalist crisis globally, and in Greece in particular. This paper focuses on the form of this catastrophe as depreciation of labour, as it appears in the labour reforms of the Greek crisis legislation and as it is shaped by the capitalist law of uneven and combined development. A comparative analysis of the labour reforms in Greece, Italy, France and Britain sheds light on the relationship between the laws of motion of capitalism and the legislation introduced in the aftermath of the capitalist crisis.

The Institutionalisation of Catastrophe: The Construction of Crises and the Role of Law

Ben Farrand (Warwick)

This paper seeks to explore the way that catastrophes are framed, communicated and ultimately legislated, shaped by ideas, interests and institutional frameworks permitting such responses. Using the theoretical framework of discursive institutionalism, this paper demonstrates that the ability to successfully establish a perception of the existence of a ‘catastrophe’ requiring legal intervention is dependent upon an actor’s ability to exercise power in, over, and through ideas. By being able to present a particular phenomenon as a ‘catastrophe’, institutional actors are then able to provide ‘solutions’ that may in turn result in a generalised understanding of a crisis of the existing order. This may facilitate legislative responses that may not ordinarily be possible, crystallising certain policy responses as legally binding obligations, while restricting other policy responses that are framed as being outside the range of legitimate options. Using the case study of the institutionalised understanding of ‘Brexit’ as a catastrophic event for the EU, this paper seeks to demonstrate that this focusing event has facilitated discourses concerning the crisis of the European integration project necessitating a legal response codifying ‘multi-speed Europe’ as the new normal for market integration.

Panel 2: Catastrophes of Racial Capitalism

Race-Making as (Legal) Praxis: Law, Race and Imperialism in the Haitian Revolution

Robert Knox (Liverpool)

The Haitian Revolution has become an increasingly important touchstone in a number of modern debates: particularly those about the intersection of liberalism, ‘human rights’ and racism; capitalism and racism and – perhaps most importantly – the prospect of anti-racist revolutionary movements. This paper attempts to engagement with the specifically legal elements of the Haitian revolutionary process through the prism of the Marxist tradition.

In particular – drawing on Pashukanis’ commodity-form theory – it examines how law mediated the close relationship between racialisation, slavery and the extension of French colonialism to the Island. It then tracks the way in which the Haitian revolutionary process was able to invoke racialised legal categories in order to challenge French domination: particularly in the form of the revolutionary constitution. In so doing, it examines how Haitian revolutionaries attempted to use legal forms in order to refashion ‘blackness’ as a political category that might challenge the status quo.

The paper therefore attempts to track the complex relationship between capitalism, racialisation, state formation and international law. In so doing, it will draw on Marxist legal theory, state theory and Marxist theories of race and racism.

Modern Methods of Measurement & Racial Violence

Brenna Bhandar, SOAS

The development of methods to conceptualize and measure value has a long and varied past. The turn to statistical forms of knowledge upon which the valuation of life is based shares a conceptual logic with the surveying and commodification of land, a nexus evident in the thought of William Petty. Petty’s *Political Anatomy of Ireland* is a prime example of a form of knowledge produced to grapple with relations of ownership, labour and production in the colony. Both land and human life were commoditized, and their valued rendered within racial and colonial regimes of power.

The co-eval development of forms of measurement of value in property and labour can be traced through two very different conjunctures. One is the creation of registries for both land title and life insurance, which erupted in different colonial sites in the year 1858. Evident in the writings and actions of two key protagonists in the creation of registries in the mid-19th century (land title in the case of Richard Robert Torrens, and in the case of Elizur Wright, life insurance), we see a turn to abstract, statistical forms of knowledge to record and secure the value of human life and property.

The second conjuncture is encapsulated in two paintings by J.M.W. Turner, depicting shipwrecks: *Slavers Throwing Overboard the Dead and Dying – Typhoon coming on* (1840) and *A Disaster at Sea* (1835). The first painting represented the infamous case of the *Zong*, where in 1781, 140 slaves were thrown overboard to their death, exposing how insurance contracts were used to protect the financial interests of slave owners, and the status of slaves as mere financial interests. In the second (and earlier painting), Turner represents the shipwreck of the *Ambpitrte* of 1833, where Captain John Hunter refused the help of French shoremen leading to the death of 133 people, nearly all of whom were white women convicts destined for New South Wales. This, second shipwreck, which occurred three days prior to the *Slavery Abolition Act* would receive

assent in the UK Parliament, was dealt with legally through an Admiralty court. Both shipwrecks expose the complexities of the propertisation of human life in different forms of unfree labour, and the ways in which modern forms of measurement and their legal representation work to conceal forms of violence premised on the subordination of racial and gendered subjects.

Panel 3: Commodification, Exploitation, Reproduction

Exploitation in UK Based Sex Work: Towards a Marxist Feminist Theory and Politics

Katie Cruz (Bristol)

The concept of exploitation remains deeply contested in academic, activist and policy debates about sex work. This paper outlines a Marxist feminist theory of exploitation in sex work, focusing on UK strip clubs, managed brothels, and independent settings, including on and off street. First, I briefly outline how exploitation in sex work has been defined in law, contrasting this with three dominant definitions found in liberal, postmodern empiricist and poststructuralist scholarship. Second, I outline the class processes involved in sexual labour relations and the place of exploitation and 'self-exploitation' therein. Third, I focus on the implications of the fact that Marxism is a critique of political economy for understanding the class processes and exploitation involved in sex work. So, while we must start with the organization of material life (another way of saying this is to start with social re/production) and struggles over the appropriation of our surplus labour, we must reject reductive readings of Marxism that would suggest that these are merely economic processes that 'determine' all other spheres of life, including the law. The Marxist traditions that inspire us demonstrate that capitalism fragments spheres of life - so economic from the political, the public from the private etc - and that these processes and relations are in fact interconnected. I'll therefore specify some of the connections between class, gender, 'race' and legal relations and conclude that this analysis allows for a dynamic understanding of the processes, relations, and interests involved in the sale of sexual services for wages or cash that has so far been missed by much sex work scholarship.

Piracy and the Rise of Capitalism

Tor Krever (Warwick)

The proposed paper explores the ideological origins of piracy in international legal thought. The figure of the pirate is today the epitome of enmity in international law: *hostis humani generis*. Where and when did this figure first emerge? Against transhistorical accounts which project the pirate backwards in an unbroken arc from the present to antiquity, the paper locates its origins in the emerging capitalist world economy of the long 16th century. The pirate as a figure of universal enmity, the paper argues, emerged first as a figure of religious enmity rooted in the inter-imperial Habsburg-Ottoman rivalry of the 16th-century Mediterranean and the threat posed by Islamic depredations to a universalising Christianity. That figure of religious enmity, the paper suggests, was exported to the Atlantic by an Iberian empire which saw in Protestant depredations the same threat to Habsburg efforts to extend a universal Christian commonwealth to the New World. With the development of an early capitalist economy and the growing coincidence of imperial interests and trade, the nature of the enmity attaching to the pirate began to change. One of the first theorisations of this new enmity, the paper suggests, is found in the work of Grotius, who renders the pirate not as a religious enemy, but an enemy of commerce and free trade. It is this new secular figure of enmity, the paper concludes, that is produced and reproduced in

modern legal thought, the pirate now not an enemy of a universal Christendom but a universal enemy of capitalism.

Water conflicts and commodities

Mia Tamarin

The threat of future ‘water wars’ has long been occupying scholars and practitioners of international politics and law. The hegemonic concept of ‘water crisis’ that highlights that water is a finite good, rendering violent conflict over water imminent, has become common feature since the late twentieth century. A bulk of the literature focuses explicitly on the links between water scarcity, security threats, and armed conflicts. Water has never been found, however, to be a cause of international wars and scholars highlight rather that trans-boundary water relations are characterised with agreements. The ‘water war’ discourse thus simultaneously saw the development of a ‘water peace’ discourse.

Why are water conflicts so pervasive and how do the discourses persist in spite of contradictory evidence? This paper reviews literature on water conflicts, with the intention to understand the underlining logic with which scholars analyse water management. It argues that despite the apparent polarity of the war and peace discourses there exists a common conceptualisation of water - as a commodity - between them. It is this common logic of water commodification that sustains the discourses of its potential conflict and exacerbates the perceived threat of it. Furthermore, they share the feature of facilitating further capital accumulation, which is here suggested to be intertwined with a liberal ideology.

Is There a Post-catastrophe (Roundtable)

Critical of the perceived ‘achievement’ of liberal (Western, Northern) democracy, following colonisation, imperialism or widespread state violence, this roundtable engages critical perspectives on transition, transformative justice and change from theoretically informed, international perspectives and case studies. From community social mobilisation in Colombia, to constitutionalism as transition in Kosovo and East Timor, to decolonisation and theories of radical liberation from South Africa, to structural violence, social transformation in Ukraine, and discussion of radical heterodoxy as a foundational re-imagining of change, this roundtable embraces thinking that is catastrophic to traditional paradigms and frameworks.

Chair: Anastasia Tataryn

Unpacking the concept of constitutional transitions

Alicia Pastor y Camarasa, (University of Louvain)

Drafting a new constitution symbolically marks the writing of a new chapter in the history of post- conflict societies. Recently, a paradigm shift has been observed in constitution-making processes moving from the legal fiction of the unconstrained constituent power to their increased internationalisation as it has been observed in South Sudan, Kosovo or Timor Leste. Constitutional transitions are commonly defined as a process where ‘a constitutional order has been abandoned and a new one is about to emerge’.¹ This definition is however unsatisfactory when it comes to fully grasp the concept of constitutional transitions. Are there different forms

of constitutional transitions? What distinguishes a constitutional transition characterised by a formal process such as a constituent assembly with more tacit invisible forms of legal transformation of fundamental norms? This paper aims to sketch the contours of the concept of constitutional transitions drawing on seminal concepts developed by Boaventura de Sousa Santos such as the concept abyssal line to shed light on a blurring concept with a post-colonial perspective. .

The Binary of Left and Right: Imagining a politics separate from the Root

Jonjo Brady (Kent)

When we situate Left and Right within their wider historical context, two distinct but interrelated inquiries become somewhat evident. Firstly, it could be argued that, due to the lack of any fixed or essential qualifications marking Left or Right, this single-axis spectrum is in many ways arbitrary and, therefore, redundant. Perhaps this particular set of vernacular is not the most representative of the political views expressed across the last three centuries. Perhaps this binary dualistic notion of Left and Right limits our capacity for lateral thinking, versatile problem solving and the understanding of more fluid forms of politics. The second question leads from the former – why do we continue to maintain this binary distinction if it can be argued that it is ultimately unhelpful?

This paper examines these enquires with the assistance of Deleuze and Guattari's image of thought depicted within *A Thousand Plateaus* – who we can use to aptly contextualise politics through this Left/Right dichotomy is a philosophical throwback from Modernity. It will also contain a critique of John Milbank's Radical Orthodoxy – who's work explores many of the same criticisms of Modernity. Ultimately, we will advocate for a form of Radical Heterodoxy (conceptualised with the aid of the Rhizome) – a sharp divergence from orthodox opinions and a movement for change that is entirely separate from the root. For it is not simply a matter of moving beyond this spectrum or ridding ourselves of the label of Left and Right, but a far deeper and more radical project must take place in order for us to emancipate ourselves from binaries altogether. Perhaps then we will be liberated enough to finally create the innovative, quirky and lateral forms of politics we deserve.

Transition, Decolonisation, Catastrophe: reflections on black consciousness as a jurisprudence of liberation

Joel M Modiri (Pretoria)

This paper revisits the central distinction between 'democratisation' and 'decolonisation' as distinct modes of post-conflict social reconstitution and transition in the context of the 'recurring history' of settler-colonialism in South Africa. Whereas democratisation takes the achievement of a Western-style liberal democracy and the egalitarian integration of the indigenous colonized population into the white settler polity as its telos, decolonisation insists on the annulment of the white settler-colonial state and the reconstitution of a new legal and political order that is reflective of the history, culture and experience of the indigenous peoples. Dominant paradigms of transitional justice in South Africa and elsewhere in the Global South have largely adhered to a path of democratisation which centers on liberal legalism, reconciliation without justice and neoliberal economic policies. In this paper, I suggest that this preference for democratisation and implicit aversion to decolonisation is a consequence not only of the hegemony of liberalism but also of the 'non-catastrophic' nature of democratisation – which also accounts for why liberal-democratic forms of social change often result in limited emancipation and produce a certain stasis and inertia in historical asymmetries of power (In South Africa, this is evidenced by the

exoneration of perpetrators and beneficiaries of historical injustice, the maintenance of socio-economic inequalities, the protection of vested interests and the intensification of racialised social disharmony). Working from a critical notion of ‘catastrophe’ which denotes the overturning of a dominant order or governing episteme, I aim to read Black Consciousness – as developed by its chief prophet-theoretician, Steve Biko – as a theory of liberation and decolonisation that assumes ‘catastrophe’ as the condition for any transition that could ethically and politically confront and undo the historical, material and symbolic violence of colonial racism. The paper thus poses the question of what the possibility conditions are for forms of social change which, rather than perpetuating the political, economic and cultural effects of the ‘old’ colonial order, could produce genuine and sustainable liberation and decolonisation. For this, an excursion into the archive of the Black Radical Tradition will be necessary.

Social Uprising, Social Movement, Social Change: in search of difference

Anastasia Tataryn, University of Liverpool

Using Ukraine’s Revolution of Dignity as a starting point, I delve into thinking of the meaning of change and transformation following uprising and ongoing violence (both outright war and state, structural violence). This is theorised through engaging with literature on transformative justice and critical peace building, as well as critiques of investment law, international law and globalisation. The presentation and reflections are guided by images and photographs, instead of text.

Israel-Palestine, Sovereignty and Legal Decisionism

Panel 1: Deconstructing the Politics of Territory and Citizenship

Normalizing Settler Colonialism: The Israeli ‘Occupation’ Ruse

Rimona Afana, Transitional Justice Institute

What is the rapport between military occupation and settler colonialism in Israel/Palestine? Although occupations in international law are extraordinary, temporary and conservationist, the Israeli occupation of Palestinians appears permanent and transformative, erasing/disabling native communities. The occupation, my study suggests, is an inevitable offshoot of colonialism, meant to block resistance and normalize subjugation. This case diverges from classic settler colonialism in logic, yet in implementation it features practices emblematic of settler colonial projects elsewhere. To elicit nuances around the colonialism/occupation nexus, during fieldwork I engaged grassroots practitioners; contributors are founders, current and former directors of, and senior activists in some of the leading human rights and dialogue organizations in Israel/Palestine. Interviews evidenced the failure of the ‘occupation’ lingo to capture everyday colonial realities and delineated diverse interpretations for the interface between the Israeli occupation and idiosyncrasies of the Zionist colonial enterprise behind it. Their insights also unveiled the handicap of civil society to meaningfully combat colonial criminality while stuck in the minimalist, misleading paradigm of occupation. Here a chasm between the ‘48 and ‘67 frameworks emerges in civic praxis. My presentation first dissects theoretically the colonialism/occupation nexus, mainly tracking its implications within international law, settler colonial studies and critical criminology, then deepens the analysis through interview data.

Extraterritorial jurisdiction as annexation: A short film and an even shorter discussion

Alice Panepinto (Queen's University, Belfast)

In the context of settler-colonialism, controlling the legal domain contributes to the control over land and life in furthering specific political aims. This is apparent in the extraterritorial jurisdiction of the Israeli Supreme Court in High Court of Justice formation in providing judicial oversight in cases pitting Palestinian rights and Israeli interests against each other in localities east of the Green Line (Palestinian public and private land, and especially in Area C). While the issue of fairness and conflict of interests is the most apparent cause for concern in these cases, there is a second, less apparent but more sinister question to address: what are the possible repercussions of unimpeded Israeli jurisdiction over Palestinian land? And how does this practice connect to – and circumvent – more controversial attempts to conquer land by employing the use of force more openly? Specifically, this discussion will investigate how the consistent application of extraterritorial jurisdiction may facilitate Israeli annexation of Palestinian land. In my presentation I will introduce a short video about the emblematic Al Khan al Ahmar school and village demolition case, and discuss some of the empirically-driven and theoretically-situated evidence of extraterritorial jurisdiction as a tool of annexation.

Decolonial Solidarity in Palestine-Israel: The Case of Anarchists Against the Wall

Teodora Todorova (Warwick)

The past decade has seen a resurgence of critical scholarship utilising settler colonialism as the most appropriate theoretical framework to describe the geopolitical structures of Palestine-Israel. Building on this line of thought this paper examines the discourses and embodied decolonial solidarity activism of Anarchists Against the Wall (AATW), a collective of Israelis active in the Palestinian-led struggle against the Separation Wall in the West Bank. The paper examines the challenges facing AATW in their endeavour to translate decolonial solidarity into the socio-political decolonisation of Palestine-Israel. AATW's praxis demonstrates a remarkable level of reflexivity on key issues pertaining to privilege, solidarity, and decoloniality; something that is often absent from other critical Israeli accounts. The paper concludes that the decolonial praxis of AATW testifies to the possibility to articulate new alliances between the Palestinian struggle for decolonisation and decolonial Israeli activists, in the process expanding the field of decolonial struggle in Palestine-Israel.

Panel 2: Deconstructing Territory, Security, Population

The Writing on the Wall: Gaza and the need to rethink the international law of occupation

Aeyal Gross, (Tel-Aviv University / SOAS, University of London)

This paper will look at the case of Gaza as one that illustrates the urgent need to rethink the international law of occupation, shifting from a 'merely factual' approach to a normative one, and from a binary sovereignty /occupation division to a functional approach to occupation. It will suggest that by looking at specific violations of the law of occupation, international law take a 'merely factual' approach to occupation, one that regards the fact of occupation as given, and suggests a shift to a normative approach. In a way, one may read this suggestion as one that calls for a distinction, parallel to one familiar in the laws of war between *jus ad bellum* and *jus in bello*, between *jus ad occupation* and *jus in occupation*.

The normative approach considers that occupation that violates the basic principles of the law of occupation (i.e. the occupation does not confer sovereignty upon the occupant, must be managed as a form of trust for the benefit of the local population, and is temporary), is illegal. The functional approach which complements it is suggested as an alternative to the binary debates on whether occupation exists or not: e.g. is Gaza still occupied, when did the occupation of Iraq end, etc, and suggests that traditional models of occupation requiring 'boots on the ground' (a requirement reiterated recently by the European Court of Human Rights) or assuming an 'all or nothing' control, fail to take into account political and technological changes.

This paper will focus, drawing on my new book (Aeyal Gross, *The Writing on the Wall: Rethinking the International Law of Occupation*, CUP, 2017) on how the normative and the functional approach are complementary, and both are needed to form the *jus ad occupation* which is today lacking.

Trial by execution: a genealogy of violent banality in Israel-Palestine

Moriel Ram, (University College London)

My talk explores how Israel constructs political violence against Palestinians as a banal recurrence that legitimizes exceptions to the law. I will mainly focus on the spatial and temporal linkages between the modalities of institutional violence which Israel employs against Palestinians within its 1948 borders and in the occupied West Bank since 1967 and examine how they better our understanding of the ways in which states construe exceptional acts of violence as banal acts of recurring violence. I will analyze how this banality has been constructed, deployed and disrupted by focusing on three interrelated themes. First, the historical trajectory of the forms of violence that Israel has used since the 1950s, as exemplified in cases such as the Kafr Qasim massacre, the Qibya incident, the trial and conviction of Elor Azaria and the demolition of the 'unrecognized' Bedouin village Umm al-Hiran. Second, the discursive routinization of this violence as a banal recurrence that construes 'illicit' exceptions to the 'legitimate' application of institutional violence. Third, the varied array of visual technologies that disrupt these modes of violence.

The Discipline of Palestinian Identity

Alia Al Ghussain, Center for Refugee Solidarity in Malmö, Sweden

Rights bestowed upon Palestinians by the Israeli state are dependent upon assessments as to an individual's 'Palestinian-ness'. Without their own state to issue identity documents, Palestinians hold vastly different documents: Israeli passports, Jerusalem IDs, West Bank IDs, Gaza IDs, foreign passports – or in fact no documents at all. They therefore not only accorded different rights but are subjected to differential disciplinary measures and regimes by the Israeli state. Charting the various ways in which the Israeli state metes out governance – and exercises power – on the bodies of Palestinians depending upon their form of identification, this paper examines the role of legal definitions of Palestinian-ness in the policing of Palestinian identity and movement. How are different distributions of Palestinian-ness enforced, punished and inscribed? Through what methods of discipline? What are the effect of these definitions on Palestinian self-identity? Drawing upon empirical work with an Arab rights organisation in historical Palestine, this paper examines the Israeli state's legal definition(s) of a Palestinian, the ways in which this is enforced on different 'categories' of Palestinians, and the relationship this creates between state and (non)citizens.

Law & Aesthetics: *après la catastrophe, le déluge*

Stream Coordinator: Julia J.A. Shaw

Panel 1

Regulating psychoactive substances - aesthetics or evidence?

Ollie Bartlett

In 1961 the international community declared, through the Single Convention on Narcotic Drugs, that ‘addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind’, and pledged themselves to a ‘duty to prevent and combat this evil’. 56 years later, Canada is about to become the first country to legalise trade in cannabis, a move which legally and aesthetically challenges the global prohibition regime for psychoactive substances which has remained unchanged and virtually uncontested for over half a century. This paper examines why a single approach to the regulation of a single type of product has enjoyed such remarkably stable longevity, despite the almost complete absence of any evidence to suggest that prohibition as a policy tool, and of prohibition of psychoactive substances in particular, has any significant effect in combatting addiction.

It is suggested that the answer lies: firstly in the way in which the risks posed by psychoactive substances were categorised and conceptualised and censured according to the prevailing public sentiments of the time on morality, vice, and behaviour; secondly in the way in which ‘illegal drugs’ and ‘addicts’ were therefore demonised, imagineered to lie at the heart of various ills within society, and metaphorised as an ‘enemy’ with whom there must be ‘war’; and thirdly in the way in which this frame of dogma, imagery and metaphor has been successfully maintained by those in authority to feed and sustain a mainly criminological approach to psychoactive substance policy (to serve other, hidden, purposes) in the face of mounting empirical public health evidence. The purpose of this paper is therefore firstly to critique the way in which aesthetics, rather than evidence, have dominated and controlled the regulation of psychoactive substances for decades - and secondly to illustrate how some, governments included, are pushing back aesthetics and control, in the name of evidence and public health.

Aesthetic Dimensions of Electric Punishment: From *Medicina Catholica* to *Frankenstein* and the Electric Handcuff

Connor O’Callaghan

Cultural fixations with electrical control from ancient times to contemporary society pivot on the principle of attraction from a distance. This paper contends that upon deeper investigation, the tension between input and output helps to explain the relationship of electricity to both healing and punishment – the common denominator being the notion that electricity has historically governed public and moral conduct, but principally through aesthetic modes. Falling in line with Paul Gilmore’s assertion in his *Aesthetic Materialism* that the ‘aesthetic challenges our notions of materiality, even as it constitutes itself in materiality’, this paper aims to examine the aesthetic organization of electrical technologies as they are applied to corporeal punishment. Specifically, electrical devices as tools of ‘self-defence’ (whether the Taser or the electrical handcuff) both hold and release the administrator of the shock from the shock itself, and it is this tension that signifies a more subliminal function in ‘criminological discourse’ that blurs distinctions of innocence and guilt, thereby re-imagining the discursive parameters that concern the efficiency of electrical punishment. Forgotten narratives concerning the ‘Godliness’ and purity of electricity as a natural feature of life still subconsciously inform and somehow bind body proximity/closeness to a concurrent separation and current-of-exchange *at distance*.

Poetic corruptions

Kristina Hultegård

Thirty years before Slavoj Žižek declared the fundamental concept of Western political theory to be false friends, masking their origins, the Austrian writer and poet Ingeborg Bachmann stated 'One has to corrupt the current events of one's time, one should not be corrupted by the phrases by which these current events intrude. A writer must wipe out these phrases'. Had she lived, she would have advocated a turn to literature, poetry, also in these times. According to Bachmann we can corrupt these phrases, our false friends, through which the catastrophe intrudes, through poetry. Through the works of Bachmann on 'Literature as Utopia', accompanied by one of her greatest admirers, the French feminist writer Hélène Cixous and her works on 'Écriture féminine', this paper explores the resisting, corrupting, preventing and transforming force of poetry.

The Catastrophic Imaginary and Post Human Justice

Robert Diab

From 9/11 onward, the imagination of the west has been seized by the prospect of catastrophic terror. For many years after 9/11, a belief had become widespread in political discourse and popular culture that further attacks would soon occur on a similar scale, possibly involving weapons of mass destruction. With the eclipse of al Qaida by the Islamic State, the catastrophic imaginary has continued to evolve. The common fear now relates to lone-wolf terrorism involving smaller scale attacks than 9/11 but more frequent, more random and dispersed in their possible location, and more threatening to a greater expanse of the developed world.

This paper endeavours to examine the role of the catastrophic imaginary around terrorism as a principal driver of a deeper shift in western nations from a sense of justice grounded in Kantian deontological ethics and the centrality of human rights to a post-human idea of justice marked by the lack of a foundation in a metaphysical concept such as the human. The paper draws on the post-foundational concepts of politics and justice in the work of Rorty and Derrida to frame a discussion of forms of post-human justice that inform the rise of populist fascism in Europe and the United States. It argues that the politics of terror and security are only some of the many factors contributing to a larger impasse on the left in efforts to formulate a shared conception of justice.

Panel 2

Wikimedia commons and art in public spaces

Merima Bruncevic

On 4th of April 2016 the Swedish Supreme Court (*Högsta Domstolen*) delivered a verdict on a case concerning copyright infringement of three works placed in public spaces. As a precedent, it was not just a national ruling on a copyright matter, it also involved an application of the exception stated in art 5.3 h. in the EU directive *Infosoc* (exception to the use of works in public space). The case involved the claimant, the Swedish collecting society for visual artists *Bildupphovsrätt i Sverige*, (BUS) and the respondent, *Wikimedia Sweden*, a sub organisation to the global Wikimedia, part of the overall non-profit foundation that oversees Wikipedia. Wikimedia hosted and ran a Swedish database that was free of charge and open to the public, *offentligkonst.se* (Offentlig konst [swe] means 'public art'). The database provided maps, descriptions and images of artworks in public

spaces such as e.g. landmarks, sculptures and monuments. The publication on *offentligkonst.se* of three specific artworks by artists that are BUS members was disputed by BUS. BUS argued that these publications constituted copyright infringement and that activities like these require copyright holder's permission and clearance, which had not been sought. The Swedish Supreme Court concurred and the Wikimedia website was subsequently taken down.

This paper discusses how the ruling of the Swedish Supreme Court in this decision directly affects the constitution of the urban commons and the idea of e.g. 'inhabitation-as-play' as Marta Iljadica refers to it. Avoiding traditional readings on the production of urban commons (through e.g. H. Lefebvre, D. Harvey, etc.) this paper instead advances a reading of the artwork as hyperobject (Morton) that is entangled with the lawscape (Philippopoulos-Mihalopoulos). The paper also connects copyright law, the notion of the hyperobject and the idea of lawscape to so-called 'transmedia storytelling' or 'transmedia narrative' as made popular by e.g. Pokémon Go.

Law, Lens, Resist

Emma Patchett

Seeking an aesthetics of resistance in Third Cinema, this paper will aim to destabilise the spatial order maintained through and by the law. Recognising the increasing importance of visual refractions of the law, this project aims to reveal the ways in which the cinematic depiction of legal iconography transforms its material relationality through filmic representations of justice, rendering justice both visible, fetishized as a symbol of justice and yet simultaneously emptied out, as a 'trace'. This paper employs the work of Gilles Deleuze (1986) on cinema in order to think through the unique spatio-temporal capacities of the film and engage with the possibility of turning towards a deconstruction of the spatial order. Combining Deleuze's focus on the film image with a critical analysis of the unique spatio-temporal composition of justice on screen evokes the political promise of chance, difference, and change. For Deleuze, it is in film—with its disruption of linear temporality, post-abysal critique and spatial aesthetics – which creates the conditions for an environment in which 'we can no longer see, feel, or think in the same way'.

Kosovel's [post-]catastrophic smirks?

Kristina Cufar

1920s,
a poet,
somewhere in the recently 'decolonialized' periphery of Europe:

'Why are you upset
on account of a sunset?
To hell with the world!
Nationalism is a lie.
The League of Nations a lie.' (Srečko Kosovel)

His opus unfolds an experience of present, past and future. The latter, never experienced, captured with striking precision: the catastrophe – tormented meadows, burning structures, dissolving bodies... then the catharsis – the red dawn, revolution, reordering... A century later, the repressive mythologies of security and control invite another catastrophe; no dawn, red or otherwise, seems to shine on the collective horizon(s). Enslaved by the great liberating concepts of Western political theory – seeing through, but not beyond them – are 'we' sinking into a catastrophe without an inversion, without a post- ?

‘And yet bright is my Laughter.
And bitter, bitter, my laughter.
Strange is this constellation.’ (Srečko Kosovel)

A leap must be taken to assimilate such laughter. If joy rests on nothing (Emil Cioran), it might just flourish in the barren landscape of the perpetual catastrophe, thus patiently eroding the liminal bodies constructed by the incantation formulas of democracy, freedom and humanity. My paper will explore this possibility drawing inspiration from Srečko Kosovel’s poetic opus.

Speculative fiction and resistance

Ruth Kelly

Dominant cultures of human rights focus on rescuing so-called victims from specific abuses, masking underlying conditions that prevent their autonomous participation in a society that is imagined to be cohesive. Non-hegemonic cultural forms may have the power to inspire new human rights cultures that better respond to the nature of current and future catastrophes. Despite their patriarchal, imperialistic and racist histories, women throughout the centuries have turned to speculative/science and utopian fiction to imagine subversive possibilities. Speculative fiction can be a tool for generating strategies and playing out possible responses to catastrophes. The anthology *Octavia’s Brood* (2015) includes speculative fiction written by activists and closely connected to their activist practice. In the three stories I discuss, the characters take risks, are punished and yet have hope in the face of an uncertain future. I explore how the stories can be seen as part of an aesthetic of resistance and the importance of aesthetic forms – notably origin stories and myths – within the stories themselves.

James Scott argues that traditional vernacular texts, like folktales, jokes and songs allow oppressed groups to articulate hidden transcripts in public. Women in particular have used such genres, and modern, hybrid forms, to articulate subversive possibilities, often by retelling existing tales. Just as folktales have been retold by many storytellers, science fiction includes a rich vein of retold stories, or fan fiction. The three activist/writers I discuss draw heavily on the work of Octavia Butler and Ursula Le Guin. I reflect on the value and limitations of storytelling workshops as an intervention; do such arts-based practices need to have aesthetic value or originality – is it important that the stories are ‘good’ – or are ‘bad’ stories as useful for generating strategy – is it more important to ask what the stories are good for?

Legal Globalisation & Decolonial Turn: Power & Encryption

Panel 1

Is human rights discourse a tool that help to avoid catastrophe for subaltern actors or is another factor that contribute to its development?

Matias P. Volonterio

Legal pluralism, resistance and the colonial turn

Maggie O'Brien

Panel 2

Tracing the Colonial in the Post-Colonial Law: The Cases of Hong Kong and Macau

Mirosław Sadowski

Once a colony ceases to be a colony, it may become self-governing on paper, but the empire will not simply go away. It leaves traces in almost all aspects of life: in the shape of economy and infrastructure, in the language spoken, even in the way people think. However, while most of these may fade away in the course of time, it is extremely difficult to change the law. The purpose of this paper is to analyse how much is left of the colonial in the post-colonial law in two China's Special Administrative Regions: Hong Kong and Macau. The author first briefly introduces the history of the two cities, showing how they were shaped by the colonial powers. Then he ventures to trace the colonial elements in their two legal systems, which on the one hand are similar (both based on the Basic Declarations between China and a former colonial power), and on the other different, one stemming from common law, another from civil law system, nonetheless verily taking from the two universal legal frameworks which originated in Europe. Ultimately he ponders whether China's current influence on the SARs legal systems is similar to that of a 'classic' colonial power.

Encrypting -Gender: Positioning Women in Colombia's Internal Armed Conflict

Lina Cespedes Baez

The Uncanny and the International Investment Law System Discourse: A Tale of Encryption

Enrique Prieto-Rios

Listening to/for Catastrophe

Panel 1

The Sound of Silence in Legal Performance

Sean Mulcahy (Warwick)

'The array of competing stories drives the listener to the edge of language and of consciousness, to the moment of silence where transformation and invention can take place' (White 1985). At the turn of this century in the finale of a collection of essays on law and literature, Balkin and Levinson (1999) reconceptualised law as a performing art. Whilst scholars have explored the relation between music and law (Ramshaw 2013), focus on the acoustic dimension of law is relatively new. Taking as my starting point James Parker's *Acoustic Jurisprudence* (2015), I seek to address how silence affects listeners and, in particular, attunes the listener to a legal performance (Dawson 2014).

The use of the term 'legal performance' (Rogers 2008) bewrays my interdisciplinary approach, drawing from my observations of legal performances and participation in theatrical performance. Silence, I conjecture, is used and experienced in a similar way in legal and theatrical performance. The paper, through advancing an interdisciplinary methodology of law as performance, contributes new insights into the existing scholarship on acoustic jurisprudence. It invites listening to the gaps in speech, the pauses, the background noise and the silence in the court.

Listening and the Politics of National Shame in Legal Responses to Historical Gender Based Violence in Ireland

Sinead Ring (Kent) and Mairead Enright (Birmingham)

Campaigns for public hearing of victims who suffered violence at the hands of Church and state authorities in Ireland have illuminated the role of shame, both in facilitating that original violence and in maintaining victims' silence. The state has developed and standardised a legal framework for responding to these victims' justice claims, in itself saturated by shame. The state claims both that it has the power to end shaming's past injuries, and that it is simultaneously shamed by stories of past injury. But shame does not necessarily provoke guilt. Rather, the state transforms shame from a matter of personal injury to one of national authority. The state, uniquely owns both the injury and the remedies. In taking shame upon itself, the state co-opts the position of the shamed subject. Instead of listening attentively to victims, it takes ownership of the injustice which must now be overcome, and it dictates the terms of overcoming. Victims are silenced and their unique authority to access shame's injuries is denied. This generates a mode of approaching the past in Ireland which, though speaking the language of injurious shame, cannot grapple with shame's origins. Rather it re-circulates and exploits old orders of shame at even as it generates new ones.

This paper explores the relationship between law, (counterfeit) national shame and the rendering inaudible of victims' stories. What is it about shame that prohibits certain forms of speech, or makes listening impossible? How does that prohibition shift, in the transfer of shame from victim to state? What are the responsibilities of shame? What might a plural account of shame say to the possibilities of listening more deeply to victims of past injury?

Portadores de Sueños: Audio-visual Submissions on Natural Disasters

Keina Yoshida (Doughty Street Chambers)

On the 11 March 2011, an earthquake struck Tohoku, Japan. A tsunami devastated the coastline of Northern Honshu. In Fukushima, people were evacuated as news broke of the effects of the tsunami on the nuclear power reactors. The effects of the natural disaster were and continue to be catastrophic. 18,000 people died, and displacement continues. In 2015, the Sendai Framework was agreed between States. Climate change, sustainable development and gender equality are increasingly considered vital to global peace and security.

On the 29th February 2016 the Committee on the Elimination of Discrimination against Women held a general discussion on the gender-related dimensions of disaster risk reduction and climate change. At the half day session in February the CEDAW Committee confirmed that it would elaborate a general recommendation on this topic and would receive oral and written inputs to assist the drafting of the general recommendations. Following a call for submissions, the Committee received a number of submissions from States, NGOs and other 'stakeholders' this year.

The CEDAW Committee has shown increasing willingness to listen to the views of civil society in developing drafts of its GR. If the Committee follows the process of its update to GR no 19 (violence against women), civil society and stake holders will have the opportunity to comment upon a draft. This paper takes seriously the *'ethnic commitment and responsibility to, and interaction with, all that surrounds us: persons, the environment and sounds of daily life'* and considers how the Committee might listen to the environment. Beyond input from eco-feminists, are there voices, and sounds that the Committee should hear from? What would this look, sound and feel like? In a techno-logical world how might we structure and frame submissions that allow these 'others' the chance to be heard?

Fugal Law

Gilbert Leung (Independent Researcher)

Abstract TBC

Panel 2

Listening to a catastrophe: Voices from Cizre basements

Elif Ceylan Ozsoy (Exeter)

Turkish authorities introduced 79 days long curfew between 14 December 2015 to 2 April 2016 in Cizre along with a several Kurdish towns. The authorities carried out military operations during which some civilians had been trapped wounded in the basements of the buildings and their right to an ambulance was denied. The authorities did not cut off the GSM lines. The people captured in the basements were able to make their voices listened. Some contacted TV channels, even joined a conference happening in the European Parliament building via mobile phones. However, this did not lead to saving their lives instead the world listened to a catastrophe happening live. This paper seeks to discuss the legal myth: making our voices heard through the dreadful experience of Cizre basements. It explores what happens when sounds of a catastrophe are listened live by the law, institutions and public through the doctrine of performative contradiction advanced by Judith Butler.

The Practice of Solar Hearing in the Women's Court of Sarejevo

Nur Kirmizidag (John Hopkins University)

In May 2015, hundreds of women from all across the former Yugoslavia traveled to Sarajevo to attend a 'Women's Court' to hear stories of pain and suffering, but also of courage and resistance from 36 women. Women's Court, despite its name, is not an actual court, but a response to the growing awareness that the ICTY failed to deliver on its promises of reconciliation. The elusiveness of the desired 'reconciliation' in BiH after more than a decade (as well as in South Africa after the TRC) gave rise to a subfield of 'lessons learned' within the field of transitional justice. In this paper, I argue the 'lessons learned' literature fail to offer tangible solutions for the implementation of Transitional Justice mechanisms on the ground, mostly because it relies on the same premises that undergird the field of transitional justice. An examination of the differences between what I call the practice of 'solar hearing' of the Women's Court and the practice of 'juridical listening' deployed by the ICTY highlights some of these premises, which I believe, lie behind the shortcomings of transitional justice mechanisms such as ICTY and the TRC.

'Listening to our local partners': Queer others, LGBTI rights and US public diplomacy

Kay Lalor (Manchester Metropolitan University)

Under the Obama administration, the US adopted an overtly supportive position on global LGBTI rights. The then US Ambassador to the UN Samantha Power, described the US approach to issues of sexual orientation and gender identity as one which began 'always by listening to our local partners'. This paper focuses on the act of listening and of forming partnerships in the context of LGBTI rights advocacy. It interrogates if and how listening can take place effectively across the fractured and contested multiplicity of international legal spaces, and examines the extent to which partnerships can - sometimes unintentionally - work to erase or simplify the complexity of sexual orientation and gender identity as they are expressed and embodied in different localities. As such, the paper investigates the way in which a commitment to listening and partnership can be used to perform and reproduce particular borders, power structures and legal architectures within transnational spaces. By foregrounding these contradictions and contestations it is possible to explore the positive and negative consequences of partnerships for LGBTI rights activists and to think through ways in which such partnerships might be 'queered'.

Panel 3

Listening to a Rapist: *South of Forgiveness* and the Voice of Male Perpetrators in Conversations about Sexual Violence

Karen Crawley (Griffith)

In 2017, an extraordinary collaboration between a woman, Thordis Elva, and the man who raped her, Tom Stranger, garnered worldwide media attention. More than 20 years after the sexual assault, they came together to record a viral TED talk, in advance of the launch of their jointly-written book, *South of Forgiveness*, accompanied by a series of public talks and interviews in Australia. This initiative was both praised for bringing a neglected dimension of sexual violence – the perspective of the perpetrator – into the conversation, and also criticised for giving a self-confessed rapist a public platform and a book deal. This paper analyses the aesthetic and ethical dimensions of these public performances, drawing in particular on the confronting affective experience of listening to a Q&A with the authors in Brisbane, Australia in March 2017. It considers these performances as an extra-legal form of redress for sexual violence that is both akin to, and distinct from, transitional or restorative justice practices, as well as a significant and unprecedented intervention into the public conversation about rape. It situates this strategy within campaigns against sexual violence and the politics of survivors 'speaking out' and perpetrators 'taking responsibility.' In so doing it attempts to take seriously the challenge of humanising perpetrators of violence by asking what listening to the voice of the male perpetrator of violence brings to the conversation as well as what it distorts or occludes.

The Gavel

James Parker (Melbourne)

Today images of the gavel are everywhere: in books, on TV, at the movies, all over the web. Indeed, the gavel is surely one of the ubiquitous emblems of law and authority currently in circulation globally. But what its history suggests is that this symbolic life is fundamentally connected to its sonority. Before the gavel symbolises anything, after all, it has certain acoustic properties which make it particularly well suited for disrupting noise and attracting attention. A

sharp rap or two on the hardwood sounding-block will normally be sufficient to pierce through any unwanted hubbub: order restored, judgment rendered.

This paper considers the complex interplay between the gavel's material and symbolic life, its existence as both image and object, its relationship to both sound and silence. And it proceeds with the help of a film, by Italian artist Diego Tonus: the only film I know of, in fact, in which the gavel itself plays the starring role.

Just Listening: An 'Ethics of Attunement' in Music and Law

Sara Ramshaw (University of Victoria)

According to Her Honour Judge Patricia Smyth of the Northern Ireland County Court, 'if people genuinely feel they have been listened to, that the judge has understood their point, that the judge has given it proper consideration, even if they lose, they can deal with it ... because they have been listened to.' In law, listening with respect, openness and responsiveness is not always an easy task. Attentive or deep listening in law, as in music, requires an ethical commitment and responsibility to, as well as an interaction with, all that surrounds us: persons, the environment and the sounds of daily life. It demands attunement, not only to the singularity of the situation, but also to the context and community within which it is performed. Improvised music is very much in tune with attentive listening. It both relies on certain laws of music to be recognised as improvisation. Yet, at the same time, it transgresses these laws in a gesture towards the unknown other, to voices and sounds typically silenced in music and society. Attentive listening in improvised music thus does not just sound surprise in relation to the auditory. It forces us to think otherwise in terms of our *social* relationships and our customary frameworks of assumption. This paper looks to the aesthetics of improvised music in an attempt to map out an ethics of attunement in law. It does so by drawing on Lisbeth Lipari's concept of *akroatic thinking*, or, 'thinking listening as a way of being', Nathan Crawford's analysis of Derridean deconstruction as (musical) attunement, and Jean-Luc Nancy's distinction between 'hearing' and 'listening': the former implying a closure of understanding and truth, the latter evoking an openness to negotiation, uncertainty and otherness.

The Force of Sexual Difference

Yvette Russell (University of Bristol)

In his 1989 lecture 'Force of Law: The 'Mystical Foundation of Authority'', Derrida claims that deconstruction is the ultimate 'threat to *droit*, or law or right, and ruins the condition of the very possibility of justice'. It is deconstruction that exposes the 'walled up silence' in the violent structure of the founding act, that destabilises and complicates 'the opposition between law, convention, [and] institution on the one hand, and nature on the other...' In this paper I confront the force of law in the context of my own research into the law of rape in England and Wales and the courtroom space of the rape trial. I revisit Elizabeth Grosz's reflections on the 'Force of Sexual Difference' (2005) in light of Irigaray's latest work in *To Be Born* (2017) considering what it might require of law to end rape. I consider what it might mean to orientate oneself towards an alternative genealogy of the common law and to adjudicate according to principles not fundamentally underpinned by the monistic imagination of sexual indifference and the phallogocentric logic of positive law. Through a critical reading of a rape trial transcript, I attempt to listen to the force of law as it reveals itself during the iterative process of the giving and receiving of evidence.

Miseries of Capitalism: Poverty, Austerity and Despair

Panel 1: Affective, Aesthetic and Political Formations of Poverty

Images of Poverty: From Social Perception to Social Policies

Moniza Rizzini Ansari (Birkbeck)

This paper explores a political concept of poverty by situating the poor as political subjects in face of social perceptions about poverty and political projects for dealing with it. Apart from an economic, negative and relative concept related to scarcity, a political notion of poverty is frequently suggested in political philosophy but not directly thematised. The claim this paper poses is that politics can form the category of the poor in a different way, by operating within regimes of visibility and invisibility in the general perceptual space. This is, therefore, an aesthetical reflection. One that prioritises the spheres of perception, senses and imaginary. In fact, this is a study of narrative production and the challenges of decolonising our methods of understanding/narrating the world. The legal field is particularly interrogated as a specific field of documentation and fabulation which operates a normative invisibility or selective framing of poverty. This is about the links between, on the one hand, rationality, ethos, social perception, and on the other hand, visibility and existence. This discussion is based on Brazilian policies of urban social cleansing, designed to eliminate the ‘social problems’ posed by street populations: from sanitation to criminality.

Two Cases of Dirty Shoes

Elif Celik (University of Inonu, Malatya, Turkey)

Two incidents that came to public attention in Turkey in recent years, attracted exaggerated empathy –far from reality- from various social groups, which makes the cases worth analysing. Both cases concerned a similar gesture expressed by the persons of low-income class. One of them was a survivor mineworker who was injured in the coalmine ‘catastrophe’. The other person was a woman peasant who was visiting a state hospital. What both persons had in common was that they both attempted to literally take their ‘dirty’ shoes off in reaching emergency and health services as an act of supposedly ‘courtesy’ or at least this what the public opinion supposed to believe.

Although the gestures of these persons in both incidents have rang a bell concerning socio-economic issues; theories of recognition, class or human dignity at an intellectual dimension, not much thought was given from the perspective of the reactionary - both public and state - and no knowledge was revealed in this sense.

This presentation would aim to question the potential psychosocial logic underneath the reactions of both the general public and government agencies. While not having a certain theoretical frame in mind to rely on, it will bring forward the questions of identity, recognition, class, and equal dignity through the acts of gesturers as an example of the everyday life formation. But much more importantly it hopes to open a debate, concerning the reveal of the collective guilt of the rest of the population through examining their ways of reacting towards both incidents. Unfortunately the language of law does not seem to play a role in this investigation but rather its absence could perhaps have a say. The presentation would rely on the sources from the media, press and be supported with visuals.

Politics of the ‘Runaway Crisis’ and Affective Interpretations of Law and Legal Status: Case Study of Bangladeshi Domestic Workers in Hong Kong

Veronika Stepkova, (Hong Kong PhD Fellowship Scheme)

Fifty to sixty percent of Bangladeshi domestic workers who first came to Hong Kong under a new policy co-designed by the UN transferred to illegality between 2012 and 2015. While the policy was part of a strategy for women’s empowerment, many ended up confined by poverty. The situation has been explained in the migration industry by cultural differences, lack of professional training and the women’s irrational decision-making while it has remained untackled by academic literature. This paper extends the existing accounts of poverty and legal status by examining legal decision-making of so-called runaway girls from the perspective of legal geography and affect theory. It namely explores recruiters’ affective interpretations of law and legality in Bangladeshi training centers and offices of recruitment agencies in Hong Kong to illustrate the politics behind the “runaway crisis.” Based on data from a 2-year-long participatory feminist ethnographic research study, I describe how Bangladeshi women migrating to Hong Kong are taught to resign their legally circumscribed rights and adjust to requirements of the market. Finally, I argue that the affective interpretations of the law together with tabooization of undocumented workers in official spaces contributed to the process of subjugation of migrant women.

Lives that slide out of view: the political agency of ‘the poor’

Adam Gearey (Birkbeck College)

This paper examines an underground theme in critical legal theory: the political agency of ‘the poor’. The National Unemployed Workers Movement in the UK and the National Welfare Rights Organisation in the America remain two very different, but essential points of reference. Rather than objects of charity, help or concern, and strictly outside of conventional ideas of political agency, poor people’s movements have shown an acute understanding of organisation and a politics of becoming visible. Using insights drawn from the both the NUWM and the NWRO, this paper will extend its analysis to contemporary organisations like Abahlali baseMjondolo in South Africa in order to think about a politics of poverty and ‘wageless life’.

Panel 2: Precarity and Vulnerability

Social Reproduction, Poverty and the Home- a Vulnerability Theory Perspective

Ellen Gordon-Bouvier, (University of Birmingham & Canterbury Christ Church University)

This paper focuses on a form of poverty that is largely invisible and is hidden behind the institution of the private family. Those that perform social reproduction in the home (including unpaid care and domestic work), in the context of an unmarried relationship, are denied remuneration and legal protection. In particular, they struggle to assert property rights in the home within a framework that heavily favours economic contributions. Law constructs social reproduction as private and sentimental work, therefore placing it beyond the scope of legal recognition and economic valuation.

As a result of the unsupportive legal framework, the social reproduction worker is vulnerable to poverty, both in the economic sense, but also in terms of loss of power within the relationship and lack of perceived social value. This becomes particularly visible on relationship breakdown. According to liberal theory, the social reproduction worker is the author of her own misfortune

and her position is the result of poor choices. However, this ignores the fact that the vulnerability faced by social reproduction workers is state-created and a direct result of a legal system that tolerates and normalises inequality. Consequently, the state must address and rebalance the position through measures focused on achieving equality.

Getting the Gig but Losing Rights: Catastrophic Removal of Employment Protection Post-Brexit

Andy Noble (Coventry University College)

Recent decisions from the Court of Appeal and below on the employment status of those in 'atypical' or 'irregular' work have brought significant numbers of such workers within the ambit of the legislative measures designed to secure employment rights protection. Growing numbers of individuals are engaged in the so called 'gig economy', whereby employers attempt to circumvent the burdens of observing fundamental protections for workers, such as a minimum wage, maximum working hours, and paid leave, by classifying such workers as 'independent contractors'. The current definition of 'worker' for the purposes of guaranteed protection for employment rights relies on the jurisprudence of the European Union, from which the United Kingdom has begun the process of withdrawal. In this paper, I carry out a doctrinal analysis of the protections currently provided to individuals classified as 'workers', how those protections are viewed by both 'employers' and 'workers', and what those protections may look like in a 'post-Brexit' United Kingdom. The findings of this study suggest that the protections currently afforded to 'workers' are likely to be eroded and undermined to the point where they become worthless once the UK is no longer subject to the supremacy of the European Union.

Domesticating Social and Economic Rights: The Fiscal Compact in Colombia

Johanna del Pilar Cortes-Nieto (Warwick)

This paper examines the constitutionalisation of expansionary austerity in Colombia under the name of Fiscal Sustainability. Neoliberalism has not just resulted in the normalisation of precarity and inequality; it has turned these conditions into governing techniques. Fear of destitution in highly unequal societies where the majority are already impoverished makes individuals easy to govern. Fiscal Sustainability in Colombia participates in this project to the extent that it entrenches a view of development which privatises social and economic rights. Furthermore, the amendment demoralises the masses of already precarised citizens by depriving them of a tool against impoverishment which had proved successful in the past to contest neoliberal reforms: the judicial enforceability of social and economic rights. In the way, a vision of political inclusion based on individual responsibilities and sacrifices is being reinforced, epitomised by the stigmatisation of 'greedy' public employees, pensioners and, in general, those who refuse to give up the entitlements promised by previous welfare arrangements.

Mythology of Modern Law Rountable

This year marks the 25th anniversary of Peter Fitzpatrick's *The Mythology of Modern Law*. An eloquent and incisive critique of Occidental law's pretensions to secular origins, Fitzpatrick's text remains of prime significance to scholars engaged with the constitutive forces of race, racism, and colonialism in the structure and political, philosophical and psychoanalytic imaginaries of

modern law. The participants on this roundtable will reflect on this landmark text and its continuing influence on critical legal theory and post-colonial legal studies.

Chair: Sara Ramshaw (UVIC, Faculty of Law)

Introductory Remarks: Brenna Bhandar (SOAS, School of Law)

Reflections On Corruption: Time, Law, Myth

Pablo Ghetti (Diplomat)

The global reach of the occidental mythology of law aptly described by Fitzpatrick coincides with its own potential ruin. We dwell in the exposure of its wound and learn how to cope with it through cynical or idealizing expedients. Roguery and hope, corruption and decency are mutually reinforcing polarities that sap political action and sustain contemporary forms of social exploitation and political hierarchies, in both domestic and international society. The tensions and contradictions that unfold could, however, have myth-making latitude and generate novel political sensitivities. Modern representation (visible, theatrical) is in crisis and belief in the shadows of God is waning. Faith in existing institutions is increasingly limited as in democracy itself. Politically progressive myths have been nearly erased: general strike, dictatorship of the proletariat, the welfare state, democratic revolution. The discourse on sustainable development is a weak substitute currently living off bureaucratic and managerial foodstuff.

Only decency remains – as a shadow to come in the dominant discourse of the struggle against corruption, with political (“ethics” in politics), legal (“messianic” judicial activism) and economic (“decent work”) dimensions. In all those domains, such a struggle encompasses and surpasses all competing discourses and hollows itself out to various degrees but often to the point of nothingness. Its depoliticizing effects can be noted both in domestic and international spheres. Its destructiveness has already been tested – and the Arab Spring’s discourse on corruption and dignity is a case in point. The decency discourse is also boosted by electoral expediency and current developments in legal decision-making (from rules and safeguards to principles and values). And yet the most radiant time of decency has yet to come. Not so much as a “paradigm” (Sousa Santos), but as a myth in the making. I shall address both the discourse on corruption, currently impoverishing political demands and legal arguments, and the healthy (worthy) core of this myth-making process. Its roots stem from globalization’s symbolic effect and from “intrinsic value” (Marx, Nancy), and their common exposure.

Corruption exposes law to its own essential “deconstitution” and it has the potential to prompt both cynicism and idealism, whilst its myth-making worth could exceed both.

Title TBC.

Mark Harris (UBC, The Social Justice Institute)

Naturalising The Myth: Hart And The Body Corporate

Tara Mulqueen (Warwick)

The Mythology of Modern Law concludes with a devastating critique of H.L.A. Hart’s *The Concept of Law*, finding myth at the very center of positivist legal theory. It is the persistence of myth that allows Hart to ultimately understand law as something which is divorced from society, standing above it, as the authority of officials. Despite Hart’s attempt to introduce a popular element to the law through a linguistic ‘internal aspect’, he ultimately reverts to an equation of law with authority in a Hobbesian or Austinian sense, by suggesting that subjective belief is only necessary

for officials; the rest must simply obey. However, as Fitzpatrick argues, in the very contemplation of whether or not to obey law, it must already have an internal dimension.

In this paper, I will suggest that not only does Hart re-inscribe myth into his concept of law, but by denying his own reliance on an idea of law as a source of authority that stands apart from society, he also naturalizes and decontextualises the mythic conception of law. This is apparent in his intervention into the debate over the nature of corporate personality that began with Savigny and Gierke. Hart contends that he transcends the old, tired debate between real and fictitious personality by explaining the meaning of corporate personality only by reference to the legal system in which it emerges. At the same time, Hart affords a considerable social role to corporate personality, suggesting that it both facilitates and constitutes social relations. Corporate personality, alongside other 'facilitative' elements of law such as wills and marriages, are so important that we could not imagine life without them. In its facilitative capacity, the law often becomes indistinguishable from the social. However, Hart quickly abandons and obscures the implications of this 'internal aspect of law'.

By insisting that the meaning of corporate personality cannot be understood outside of its relation to other legal rules, Hart curiously both maintains the idea of the corporate personality as a legal fiction (albeit without naming it as such) and naturalizes that fiction, by hypothesizing an identity between law and other social forms. The descriptive identity between law and social forms introduces an unacknowledged and consequently unexamined historical dimension to his analysis, one which takes for granted many of the legal changes that would take place in the nineteenth century, such as the introduction of general incorporation by registration. In so doing he introduces a biopolitical totalitarianism to the law, one which presumes but does not examine the supposed reality of law.

The Northern Voice?

Abdul Paliwala (Warwick)

My discomfort with modernity and Western civilization (two faces of the same phenomenon) is not with Western modernity's contribution to global history, but rather with the imperial belief that the rest of the world shall submit to its cosmology, and the naïve or perverse belief that the unfolding of world history has been of one temporality and would of necessity lead to a present that corresponds to the Western civilization that Hegel summarized in his celebrated lessons in the philosophy of history.

Walter D. Mignolo

As a de-colonial anti-dote, Mignolo suggests the device of 'border thinking' which requires the transcendence of territorial epistemologies. This meant "not to confuse thinking about borders while dwelling in disciplinary territorialities with border thinking that emerges from dwelling in the border and delinks from disciplinary territorialities".

Mignolo wrote this well after Fitzpatrick's *Mythology* and is a key voice in de/anti-colonial thinking from the perspective of the global South – a dweller in both the territorial and epistemological border of the global South. For me, Fitzpatrick at least equally transcends territorial and epistemological borders. However, his border dwelling and transcendence is of a different kind. *Mythology* is, of course, replete with experiences of dwelling in the South, in Papua New Guinea, experiences which he brings to bear on his critical understanding of Northern

mythologies of law. However, this paper suggests that his should be the real voice of the North, even if as an *Aussie* he would not appreciate that!

Justice And The Mythology Of Modern Law

Patricia Tuitt (Independent Legal Scholar, London)

Peter Fitzpatrick's *Mythology of Modern Law* examines natural/positive law theories to reveal the law's relation to savagery. Drawing on some examples of CLS scholarship, this paper traces the same relation within normative theories of law. To the natural/positive lawyer the savage is ungoverned by law. To the normative theorist the savage is too attached to law and to the pursuit of legal rights. The savage is damned in western legal philosophy-for her supposed refusal to be governed by an earthly law; for her refusal to embrace the Utopian claims of a higher justice. Just one instance of the genius of Fitzpatrick's text is its ability to withstand the myths that sustain the idea of justice.

Concluding Remarks And Reflections

Peter Fitzpatrick (Birkbeck School of Law)

Political Violence & Justice

Panel 1: Political Violence and Justice

Love Actually: Law and the Moral Psychology of Forgiveness

Alan Norrie (Warwick)

In this paper, I advance an account of love as the basis of a moral psychology of forgiveness. Drawing upon the dossier of accounts of guilt and forgiveness assembled by 'The Forgiveness Project', I argue that forgiveness can be understood metaphysically in terms of five forms of love: of self; of other; of the relation of self and other; of self, other and the wider community; and of self and other in their 'concrete universality'. Forgiveness is bivalent in its self/ other directionality. It involves both a 'giving to' and a 'giving up', and this can lead to a profound sense of identity with another in the most unlikely of relationships (that between a victim and a perpetrator). Forgiveness is also processual in three ways: it is psychological in a way that is different for each person; it may draw upon a public/ legal setting as a proxy for universal judgment; and it confronts social-structural and political elements which may block its development. It is necessary to distinguish the moral psychology of forgiveness and the ways it is expressed in normative political and legal philosophy.

Touching Justice? Sensory and Tactile Memories in Patricio Guzmán's

Nostalgia for the Light and The Pearl Button

Alison Ribeiro de Menezes (Warwick)

This paper explores memories of violence and disappearance in Pinochet's Chile through a discussion of two recent documentaries by Patricio Guzmán, *Nostalgia for the Light* and its companion piece, *The Pearl Button*. Both works are highly sensory, using in particular an appeal to touch to activate affective responses in the viewer. Guzmán's films explore the dilemmas of memory and silence in a context in which there is absence of adequate transitional justice

measures. Yet, they move beyond protest to explore the extent to which victims may reassert agency and overcome the consequences of past trauma.

Caribbean Conceptual Art and the Unspeakability of Slavery: The works of Jeannette Ehlers and François Piquet

Fabienne Viala (Warwick)

No transitional justice has ever taken place in the case of transatlantic slavery. While the European nations made huge profits during four centuries with the trade, the trafficking and the enslavement of 16 million African people, no apologies and no reparations have ever been made. The abolition of slavery, celebrated in European national histories, became a prominent narrative, which silenced all possible efforts to deal with the trauma of slavery and even less to negotiate the legacies of brutal racism in today's contemporary societies. Jeannette Ehlers, a Trinidadian performer and video artist based in Norway and François Piquet, a French sculptor based in Guadeloupe, have both explored the ways in which embodiment and empathy could meet and allow the process of transitional justice to start. I will explore more specifically the performance of Jeannette Ehlers 'Whip it Good' and François Piquet's 'Reparations' art project.

Panel 2: Political Violence and Criminal Law

The Enemy In-Between: Hostility, Recognition, and Joint Enterprise

Henrique Carvalho (Warwick)

The Supreme Court's decision in *R v Jogee* [2016] presented us with a puzzling paradox: on the one hand, the decision categorically affirmed that the controversial doctrine of joint enterprise, or 'parasitic accessory liability', had unjustly expanded the scope of criminal liability for over 35 years, therefore abolishing it; on the other hand, it stressed with as much confidence that cases judged under the old law would not need to be reviewed, that their decisions could be considered safe. Indeed, to this day, all attempts to appeal against such previous decisions have been dismissed, with the sole exception of Ameen Jogee, who has been retried and reconvicted, albeit of the slightly less serious offence of manslaughter. This paper explores the extent to which the case of joint enterprise expresses and manifests an intrinsic ambivalence in criminal subjectivity, as the subject of criminal law is conceptualised as essentially caught between responsibility and dangerousness, between (broken) recognition and hostility.

Unjust Culpability and the Promise of Salvation

Chloë Kennedy (Edinburgh)

Attributing culpability and imposing punishment are two mechanisms through which the state, via criminal law, inflicts political violence. These forms of condemnation frequently marginalize those against whom they are used and serve to perpetuate inequality. At the same time, these practices constitute two of the main avenues through which we attempt, individually and collectively, to achieve and promote justice. In the interests of interrogating this duality, this paper considers one of its sources: the ways in which criminal law aims (imperfectly) to replicate divine justice. Historically, through specific interchanges and the more diffuse molding of our 'Western' social imaginary, the Judaic-Christian tradition has shaped several of the law's key culpability concepts, such as guilt, blame and reconciliation. Although this religious heritage is typically ignored or denounced within contemporary scholarship, this paper suggests that re-engaging with the theological underpinnings of our blaming practices is timely and worthwhile. It

argues that an appreciation of the doctrine of soteriology yields important insights regarding the tensions that permeate our thinking about culpability and punishment and point towards ways in which these might potentially be reconciled. In short, it provides a still-valuable resource for contemplating the possibility of justice in an unjust world.

Crimes of Need in Times of Crisis: Squatting, Homelessness and Necessity

Craig Reeves (Birkbeck)

Through a reconsideration of the position in *LBS v Williams*, this paper reflects on the question of how the criminal law ought to institute in its norms a recognition of the fact that the housing crisis is a direct expression of political violence. *Williams* is usually thought to establish that justificatory necessity is unavailable to a trespass or squatting charge where the offence is one flowing from housing need. I argue this view is unsound. Even if the decision was defensible at the time, it is no longer, and the criminal law ought to leave the question of necessity to the fact-finder. I consider Horder's defence of the decision by appeal to the 'sufficiency conditions' of defences rooted in the 'strategic aims' the law seeks to promote, and argue that it gives no support to the position on housing necessity *Williams* is taken to establish. I also argue that since *Williams* concerned a civil application for possession, it has no direct bearing on the issue s. 144 raises of criminal liability and the availability of defences to it that citizens have a right to expect, and that Horder's notion of strategic aims fails to adequately address citizens' legitimate interest in non-criminalisation when it comes to justifications as opposed to excuses, meaning that the judiciary must recognise a greater burden to respect the demands of justification, especially where, as with s. 144, the criminalisation decision is already of suspect pedigree. The difficulty for the criminal law in homelessness cases of necessity is that they force it to confront the very problems of social injustice and political violence that it necessarily lacks the resources to deal with, given that it is charged with defending a political order that is based on violence by appealing to its own moral legitimacy in order to do so.

Panel 3: Roundtable: Anatomising a forgotten 'catastrophe' - Bangladesh's 'historic struggle for national liberation' in 1971

In 1971 through one of the bloodiest conflicts of the 20th century Bangladesh emerged as an independent State. At the time the Pakistan Army's attack on the Bengali populace was described in the world press as 'the most incredible, calculated thing since the days of the Nazis in Poland.' Milan Kundera in *The Book of Laughter and Forgetting* quite prophetically summed up the next four decades when he wrote: 'The bloody massacre in Bangladesh caused Allende to be forgotten, the din of war in the Sinai Desert frowned out the groans of Bangladesh, ... and so on, and on and on, until everyone has completely forgotten everything.' In continuance of and adding to recent scholarly enquiry on what had been described as a 'forgotten genocide' this panel chooses not to 'forget' and proposes three papers that anatomise the catastrophe of '1971' from various perspectives. Through the prism of '1971', the panel looks at the right of self-determination, the acknowledgement of the occurrence of international crimes, and finally the marginalisation of domestic justice models.

The first paper explores the cause of the catastrophe by critiquing the exercise of the right of self-determination of the Bengali people in light of the report published by the International Commission of Jurists in 1972. The second paper focuses on the nature of the catastrophe of 1971 and uses it as a case study to explain the politics that shape and control the acknowledgement of international crimes like genocide and crimes against humanity. The third

paper uses the International Crimes (Tribunals) Act 1973 and the International Crimes Tribunals of Bangladesh as case studies to argue that the current 'institutionalized' understanding of international criminal law marginalises other justice models that choose to prosecute adopting standards that are not identical to mainstream standards of international law.

Participants:

- *Rayhan Rashid, (International Crimes Strategy Forum)*
- *Muhsina Farhat Chowdhury, (Warwick)*
- *Bahzad H. Joarder, (Birmingham)*
- *Rokeya Chowdhury (McGill)*
- *Shah Ali Farhad, (Lincoln's Inn)*
- *M Sanjeeb Hossain, (Warwick)*

Panel 4: Political Violence in Context

Punishment of Protesters & Civil Society Organizations Members in Egypt: Will it Work?

Hend Hanafy, (Cairo)

It has been six years since the 25th January 2011 Egyptian revolution, and worries remain about Egypt's path towards democracy. One of the main reasons behind these worries is the state's use of punishment as a mechanism of control in dealing with perceived stability-related issues, whether in relation to protests, civil society organizations work or political opposition dissent. This paper argues that the Egyptian state's use of punishment -though possibly successful in the short run- is likely to fail in the long run whether in terms of achieving greater good consequences such as deterrence and/or moral reform or in terms of applying just deserts and achieving justice. Further, such unjustified punishment undermines the legitimacy of the state, thus increasing the likelihood of political instability and dissent.

Title TBC

Gustavo Rojas Páez

Panel 5: Roundtable on Political Violence and Psychoanalysis: 'Klein and Punishment - Violence and the Bonds of Justice'

This panel will discuss the role and relevance of psychoanalytic scholarship to a critical engagement with issues of political violence, particularly in regards to crime and punishment. Although studies in criminal justice, and political violence more generally, have been displaying an increasing awareness of the importance of discussing themes and issues such as emotions, guilt, and trauma, a deeper and more consistent engagement with psychoanalysis is still largely missing from current debates. In an effort to address this gap, this panel aims to raise and debate the following questions:

- Why and how is psychoanalysis important for our attempts to (a) critically comprehend criminalisation and punishment, and (b) think beyond existing legal forms, to deeper or alternative ethical possibilities?

- What does psychoanalysis bring to the table that is otherwise missing from contemporary debates? How can psychoanalysis better inform our appreciation of feelings and emotions such as anger, guilt, shame and forgiveness, and help us think beyond existing conceptions?
- What are the objections to examining issues of crime and punishment in psychoanalytic terms? Can these objections be challenged or debunked?
- Which psychoanalysis do we need? Should we stick to an ‘intersubjective’ understanding of psychoanalysis, or should we appeal to an ‘intrapsychic’ psychoanalysis that addresses the role of drives? Can these approaches be reconciled?
- Can moral psychology ever be more than moralising psychology? To what extent can psychoanalysis ground a critical understanding of moral assumptions and normative conclusions?

Participants:

- *Henrique Carvalho, School of Law, University of Warwick*
- *Alan Norrie, School of Law, University of Warwick*
- *Craig Reeves, School of Law, Birkbeck, University of London*

Populations, Precariousness and Legal Principles

Parenthood and the Artificial Womb

Claire Horn (Birkbeck)

The artificial womb is currently in development, and it presents inevitable legal and ethical tangles that I argue must be examined before its arrival. Shulamith Firestone, writing in the 1970s, described the artificial womb as ‘the end goal of feminist revolution’ (*The Dialectic of Sex*). In the years that have followed, a gulf has emerged between those who see such technology as a transformative opportunity to rewrite ‘gender,’ ‘reproduction,’ ‘humanity,’ and those who see it as the ultimate manifestation of bio-power.

I will consider these opposing potentialities with specific focus on what the artificial womb might mean for constituting families. Looking at existing legal doctrines of parenting as they have been applied in cases involving ARTs, I want to think about whether the artificial womb, in detaching reproduction from the body, could shatter legal constructions of the ‘two-parent’ family, or whether this technology will be used to extend the existing order.

I will draw on feminist theorists (Judith Butler, Rosi Braidotti), legal scholars (Kimberlé Crenshaw, Fiona Kelly, Chase Strangio, Laura Nixon), and reproductive justice advocates (Loretta Ross, Lois Uttley), and look at current case law, focusing on the access of queer and trans parents to reproductive technologies. I will be asking whether the artificial womb means inclusivity and new space for transforming parenting roles, or whether parenting doctrine will be ‘selectively deployed’ (Kelly *In Search of A Father* 340) to enforce traditional family formations.

The Limits of Collective Responsibility: A Critical Analysis of Bihar's Anti-liquor Law

Mukesh Kumar Jha (Jawaharlal Nehru University, India)

A large portion of the most exceedingly awful catastrophes are brought about by groups of individuals. War, genocide, riots, caste and gender-based discrimination are not the results of people acting alone. Is the group of people responsible? Are all members of the group responsible or only few members? Are the members of the group not responsible but only the group? The layered interjections around the question of responsibility are the reason behind several social legislations. Recent scholarships have been trying to understand the question of responsibility on various parameters; however, the emphasis on free will of an individual moral agent has remained its dominant understanding. In public life, however, the concept of responsibility invites a broader and more complex examination as individualistic theories of responsibility do not provide a lot of insight into collective responsibility in public life. Responsibility attribution becomes rather complicated in cases where collective actions of a group has shared agency, but the direct participation of members or their individual contribution in the outcome of such actions is almost negligible.

This paper aims enquires into the question of the responsibility of collectives by analyzing the extent to which an individual, as a part of a collective, could be considered ethically in charge of his/her failure or ignorance to stop the occurrence of practices considered to be 'immoral' in the collectives.

The paper aims to engage with this question by discussing the state legislation of Bihar Excise (Amendment) Act, 2016 which bans the selling, storing and consuming of all kinds of alcohols in Bihar. It must be noted that Bihar's anti-liquor policy has rigorous provisions as it makes all grown-ups in charge of the utilization and ownership of alcohol at home even if alcohol is possessed or drunken by any member of the family. Family members will be criminally liable for illegal manufacture, possession or consumption of alcohol by any person of the family. Owners and occupants of a land or a building will also be criminally liable for illegal manufacture, possession or consumption of alcohol even though they are not directly related to the illegal activity. The Bill presumes that the family members, owners and occupants of the building or land ought to have known that an illegal act is taking place. The supposition is that all grown-ups must be aware of everything, and must be legally charged until proven otherwise. All segments of the Act are non-bailable, abandoning it exclusively to the courts to choose in light of the conditions and gravity of individual cases. In all such cases, the Bill prescribes a punishment of at least 10 years of imprisonment, and a fine of at least one lakh rupees.

This ban on the consumption and storage of alcohol renews the debate about: whether individuals with no knowledge and intention to inflict harm or to violate the law could be held responsible for not able to prevent the happening of illegality in the authorized space? To what extent can an individual be held responsible for his/her failure to contribute actively to the development of an alcohol-free atmosphere?

Rethinking and Decolonising Critique

Stream Coordinators: Leticia da Costa Paes, Juliana Streva and Oscar Guardiola-Rivera

Panel 1

Facing Catastrophe and Mapping Critique: Towards a Decolonial Legal Critical Thinking

Juliana Moreira Streva (Freie Universität Berlin)

At the same time catastrophe presents the completely failure of a model, it also presents the need to move beyond it, rethink it, reshape it or even radically transform it. New spaces for resistances, new possibilities, new ways of being, new realities. With this in mind, this essay aims to investigate what is the place of coloniality within critical legal theory, as well as what is the place of critical legal theory within decolonial studies. With this concern, the article aims to map the critical legal movement adopting a decolonial epistemology and methodology. Regarding this ambitious task, the essay will be divided into four sections: i) modern Western philosophy: ii) 'critical legal studies', involving 'feminist legal theory', 'critical race theory' and 'British critical legal theory'; iii) postcolonial and decolonial movements; and finally, iv) decolonial critical legal theory.

Conquest, Colonialism, Catastrophe. Indian Cannibals and Legal Forms of Incorporation in the early Spanish-America

Alexis Alvarez-Nakagawa (Birkbeck)

With mass killings and slavery of Indians, the Conquest of America unleashed a human catastrophe of unprecedented dimensions that, at the same time, opened the gates to our modern world. Arguably, this latter stands over the ruins of the old colonial order and its foundational hecatomb. Therefore, an effort to seek in the colonial archive of modernity for antecedents and paradigms of contemporary catastrophe does not seem a vain or fruitless project. In this paper, I will focus on the role that the alleged cannibalism of the Indians played in the colonisation of America. Curiously, in the European imaginary of the sixteenth and seventeenth century, there was a no more recurring cause of terror than that of being eaten by the inhabitants of the New World, what is well transpired in chronicles, engravings, and maps of the time. All this anxiety about the cannibals, however, was due to their nuclear position in the legal discourse of the Conquest, something that today is rarely mentioned and very usually forgotten by historians and legal scholars. During the first three hundred years of the colonisation of America, the Spanish Crown enacted several 'cannibal laws' –as Michael Palencia-Roth (1993) rightly called them– that allowed to make war and to subject the Indians to slavery and death. Through the examination of the first of these laws, dated in 1503, I argue that the figure of the cannibal ultimately made possible the Conquest and its subsequent catastrophe, and set the legal framework through which the New World was incorporated into the *margins* of the Spanish empire.

Decolonizing legal instruments to expand the canon: legal pluralism and Epistemologies of the South

Sara Araújo (Coimbra)

Modern Eurocentric law is a powerful instrument for the reproduction of colonialism and capitalism, promoting abyssal exclusions and circumscribing the horizon of political possibilities to the modern linear narrative of progress. This presentation takes on the critics and challenges

launched by Epistemologies of the South, its main proposals and founding metaphors – such as sociology of absences and emergencies and abyssal line or abyssal thinking - to reflect on the epistemological and methodological decolonisation of legal studies. It will focus particularly on the studies that address legal pluralism.

Theoretical or empirical recognition of legal pluralism does not involve an exercise of legal decolonization when it reproduces colonial hierarchies, analyses diversity as opposed to the Eurocentric canon and invisibilizes realities that cannot be accommodated into modern categories. However, this concept can be a useful instrument when used to expand legal cartographies and political imagination. Based on empirically founded studies conducted in Mozambique and East-Timor and addressing some of the main discussions on plurinational states in Latin America, this presentation will propose a reconfiguration of the concept of legal pluralism as an instrument of an ecology of law and justice that aims to open up the legal canon.

A political economy of the emergence of capitalism in Colombia

Alejandro Morales Henao (Sussex)

The debate on origin of capitalism has been at the core of critical approaches in social science. It encompasses not only a question on the emergence of capitalism, but also an inquiry on its very nature. The Marxist tradition has been deeply engaged in this problem. Either from a systemic analysis of capitalist laws of motion or a perspective focused on the centrality of power and class struggle, these explanations consider capitalism as a historical system resulting from specific social relations. However, those answers fail to understand how capitalism emerged in places outside of the core (United States and Europe). Moreover, studies on ‘the international’ origin of capitalism fail to grasp the specific conditions that allowed its establishment in regions like Latin America. Using as an example the process of Colombia during the 19th century and early 20th century, I argue that it is necessary to understand the idea of race in order to grasp the emergence of capitalism in the periphery. I do so, by borrowing the concept of ‘Coloniality of Power’ from the Modernity-Coloniality nexus to explain how the idea of race not only shapes the ‘will of civilization’ in the 19th Colombia, but also the idea of ‘modernization’ in the early 20th century.

PANEL 2

War / Wick

Angus McDonald

This paper spotlights a contrasting pair of moments in Warwick’s history of critical thinking, one from the 1990s, one from the 1970s, to ask what kind of critical thinking Warwick in the 2010s might offer us. The ‘Wick’ of the title refers to the mechanism by means of which a candle supplies fuel to a flame, and specifically invoked the collection of 1970s writings by EP Thompson issued under the title ‘Writing by Candlelight’. The title essay addressed the blackouts of the three day week in order to discuss political prospects in a time of heightened industrial class struggle. In the same decade, Thompson launched an early attack on one of the forerunners of the corporate business-oriented University which has become such a common feature of our landscape – Warwick University Limited. He also attacked, in *The Poverty of Theory*, the importation into English Marxism of structuralist philosophy, specifically Althusserianism, as a catastrophe for progressive thought. This English humanist Marxism is one point of reference.

'War' refers to another moment of critical efflorescence located at Warwick, the work in the 1990s of Nick Land and Sadie Plant. Their work, under the aegis of the Cybernetic Culture Research Unit, took the Deleuze & Guattari of Mille Plateaux and the Lyotard of *Economie Libidinale* as starting points for a futurist investigation of the post-human, the accelerationist and the hyper-real warmachine. This has developed in some very dubious directions under Land's more recent work, aligned with the alt-right, but also informed the work of the recently deceased Mark Fisher whose Capitalist Realism argument has been influential. It is in all regards the polar opposite of Thompson. By revisiting these two Warwick pasts, some possibilities for Warwick present and future can be delineated.

Israel/Palestine and the settler colonial paradigm - the thorny practicalities of a good theory

Rimona Afana (Transitional Justice Institute, Northern Ireland)

The epistemological violence perpetrated by colonial systems could be likened to an Orwellian ministry of truth. Yet, the elasticity of facts, that systematic falsification of reality in neo/colonial sites may lead to epistemological non-elasticity when we counter it. While concluding my dissertation, I'm wondering whether the settler colonial paradigm could not be itself turning into a ministry of truth – the pervasive fetichization of indigeneity, the 'decolonization' recipe repeated ad nauseam, the militancy of civic activism, the intellectual-affective rigidity of theoretical investigations. Over the past years I've pontificated in my research the settler colonial paradigm as the only critical, emancipatory analytical framework vis-a-vis Israel/Palestine. But given the atypical nature of colonialism and the parameters of the rapport here (that inescapable reciprocity between colonizer and colonized Mamdani and Sartre talk about), I sense a gap between the pertinence and the usefulness of the settler colonial paradigm. Theory building doesn't equate problem solving – the right analytical framework can produce the wrong effects, alienating people whose existence remains bound and ought to be harmonized. I wonder if conceptually the settler colonial paradigm doesn't maybe mute nuance, whether practically it doesn't replicate epistemological violence: the flip-side of the original one employed by the colonial enterprise.

Theologico-economicus'; critique of an economy of the axiomatic. . .

Alper Ral (Birkbeck)

This is a period of *modulation*, I refer to the colour of the times. . . In all spheres of life, what constitutes the very texture of society in its entirety, including in its mechanisms of reproduction, is the axiomatic of capital. M(oney)-C(ommodity)-M(oney); un-codable flows of abstract quantity whose proper essence is infinite reproduction that valorizes itself on its own terms, irreducible to any symbolic or structural dimension. Whatever the name it assumes: Nation, Civilization, Freedom, Future, and New Society have only one identity: *KAPITAL!* A phenomenon of the *diachronic-machinic 'surplus value of flux'* - of immanent commutativity, or the *fundamental theorem of replication* - that scatters to the winds anything bearing on the movement of *'interminable augmentation of exchange values; of the insatiable axiomatic.* The only immutable thing, said Marx, is the *'abstraction of movement': Mors Immortalis!* . . . *Mors Immortalis*, the *ontological melancholy* of an *immanent metamorphoses* in the nature of *'divine substance'* residing in the liquefaction of *theology* into *economics*. For there is nothing left but the *'law of value'*, a little price tag; we begin with money and we end with money, it is a *catastrophe*. . .

Empire state of mind: Deconstructing Property and Sovereignty in colonial law

Giacomo Capuzzo

Moving from Laurel Benton's study on Empires and colonial systems, this paper will unpack the classical legal thought idea of the separation between property and sovereignty as a legal tool to divide a private and economic sphere from a public and administrative one. My critique will show how both property and sovereignty were used as a biopolitical instrument to create, define and shape the multiplicity of force relations among different individuals and groups that constitute society, well before the creation of modern national states. This is particularly evident in the colonial context, where legal instruments were used to promote a certain kind of social organization (market and state dichotomy) and social groups (white, men, colonizers) and to marginalize other types of structures (traditional and customary laws) and social formations (non-white, women, colonized). In particular, the paper deepens how, during the Spanish Empire, law were deployed to create, organize and define the legal, social and political space of the colony. The western concepts of sovereignty and private property were employed as a mechanism to re-think colony as a series of anomalous zones, to change rural and urban life according to the ideals of progress and modernity, to re-framed social hierarchies and to elaborate a colonial legal discipline.

Panel 3

Towards a politics of the appearance

Lior Zisman Zalis (Contemporary Art Museum of Barcelona)

Agamben once said that the exposure is the place of the political. That means there is a particular relation between the image itself with the construction and the dispute of what we can call the territory of the political. In that matter, I would like to ask how image itself, how the appearance, how the exposure or the visual can be a powerful element of critics, how the visual can play a unique role in the development of new forms of politics and imagine other worlds outside of capitalism itself and the colonized reality. Therefore, to think how images can see reveal more and more the effects of capitalism, and with this appropriation of the appearance, can develop new critics that can see the pretend obviousness of the colonized present.

In that case, it is urgent to invoke new ways of thinking the image in a reality of a knowledge based and built on words, in a western literate society who develop and created a history exclusively on the written history. Images are basically a resource, a toll as we can say, to imagine, a toll that sometimes comes from the past in the shape of memory. As Didi-Huberman asked, 'How do *images* draw so often from our *memories* to give shape to our desires for emancipation?'. Images can make the past jump to the present and criticized it, destroy it and built other forms of political imagination and decolonized desire to assemble.

Critique and utopia: for the decolonization of the future

Noa Cykman

The modern spirit was based on the European pretension to dominate through technical and classificatory understanding. The colonial impulse to domesticate and control was imposed not only upon nature, but upon all forms of life, society and thought. The mirage of modernity was a horizon in which all peoples – not differentiated by culture, but by the pace of their progress – would achieve emancipation through the development of rationality. The violence accepted as a means combined aggression, the justifying discourse of aggression and the attempt to destroy all alternatives in the name of rational emancipation – the only possible future. Under the collapse

of the modern/colonial project, visible in the progressive degradation of the social and environmental scenario, capitalism stutters at its assertion as a universal model.

In the flow of decolonization, to reclaim utopia means to reopen the future. The very notion of utopia is actualized: as it is detached from the idea of a linear and universal progress of history, utopia insurges in the present, as creation that comes out of the dissatisfaction with the given. Both historically oppressed peoples and the growing crowd of indignants within the system operate for the right to imagine and to invent on their own terms, breaking the monopoly of the future and sowing new paths from multiplicity.

Decolonizing subjectivity through Fanon and Deleuze?

David Jivegård, (Gothenburg)

On 14th of March 2017 the European Court of Justice (ECJ) decided that an employer could dismiss an employee for wearing an Islamic headscarf, provided that the company had a written policy of political, philosophical and religious neutrality, and provided that the means of achieving that aim were appropriate and necessary. Put in the context of a recent development in Europe, and also together with other court decisions (for example the ECoHR case S.A.S. v. France), this marks a tendency towards a shift away from legal protection of religious and cultural minorities to protection of majorities and societal centers instead.

So, this is where we stand... becoming-majoritarian is the catastrophe. The question is then, how do we get out of the catastrophe? This paper explores the possibility of looking within in order to get out. Avoiding the liberal notion of 'tolerance' and 'broadmindedness', by which minorities are reached from without, and thereby acted upon, this paper instead suggests a change that starts from within. By reading Fanon's notion of the non-subject person together with Deleuze and Guattari's concept of becoming-minor, this paper will explore potentials in legal theory for decolonization of thought and subjectivity.

Panel 4

Critical control//critique of control: a-identifying'

Nathan Moore (Birkbeck)

Control is not in control; however, rather than being a catastrophic paradox in the operation of control itself or, even, a potential for emancipation, control not being in control is the crucial basis for its operation. For this reason, control is supremely critical not only of everything that it comes into contact with but, first and foremost, it is critical of itself. Through endless internal differentiation, control is always able to displace its limitless limits so as to adapt to, incorporate, and decode any event and any life. Given that the communicational infrastructure that supports and thrives upon control has utterly saturated the social sphere, the age of the heroic revolutionary, who sought to 'take control', is at an end, and the proliferation of violently nostalgic 'strongmen' on the world stage should not be accepted as their substitute! Yet, on the other hand, the gesture of articulating yet another 'identity', in the hope of achieving some sort of critical mass of 'inclusivity', is anything but an 'alternative' to control itself.

Needless to say, none of this is a problem for the operation of law, but the question here is *how* law operates. To explore this question, Guattari's meta-modelling, as outlined in his *Schizoanalytic Cartography*, will be deployed to show a sort of neutrality or indifference within control itself, through which the artificiality of all human life can be grasped and experimented with. In this, it will be seen that law is not to be understood as an attempt to manage the destiny

of identities, but as a technology, like any other, of the accidental and discontinuous, which need not be inevitably aligned with the (out of) control administration of catastrophe.

Tanks, Armoured Cars, Machine-guns and Spaceships: The Scene of Armed Struggle

Oscar Guardiola-Rivera (Birkbeck)

Based on a single-line referenced made by Gramsci to the Second Thirty Years War and colonial warfare, and with the help of a few linguists and playwrights, the author seeks to suggest a renewed focus on matters of temporal projection, semiotic deictic orientation, and the color of speech with an impact on the thinking of law and politics.

Ironic Autonomy in the Face of Catastrophe

Serene Richards (Birkbeck)

The problem is not that our contemporary times are catastrophic but that they continue to be so, with death itself turned into a principle. Patricio Guzmán's *The Pearl Button* is an assemblage of catastrophes; from the 1883 Missionaries' colonisation and destruction of the way of life of indigenous peoples in Western Patagonia, to the abduction of the Fuegian native Jemmy Button, and to the case of thousands of 'disappeared' peoples, tortured and executed by the Pinochet regime. Perhaps the problem is that we are well aware of the destructive force that the financial dictatorship unleashes but we do not know what to do about it. It is possible, as Franco 'Bifo' Berardi says, that there is nothing we can do. So what do we do when nothing can be done? This paper will attempt to problematise this predicament in relation to the insufficiency of transcendent principles to truly grapple with techno-linguistic procedures in contemporary processes of subjectivation. Only an enunciation capable of disentangling social life, linguistic flows and imagination from the domination of financialisation can gesture towards the potential for social solidarity.

From Critique to Anthropophagic Clinique

Leticia Paes (Birkbeck)

Only anthropophagy unites us. Socially. Economically. Philosophically. With these words Oswald de Andrade introduces the Anthropophagic Manifesto, written in 1928 following the political and aesthetical movement in Brazil. Its aim was to denounce modernity in order to expropriate it of its philosophical or political logic, and also to devour it in the way of amerindian cannibalistic rituals. Almost ten decades have passed and the question remains: despite our remorse or guilt, our revolt and anger in relation to all forms of colonisation past or present, have we really changed all that much? There is a growing feeling that the world has entered the epoch of the Anthropocene, defined by Eduardo Viveiros de Castro *as the turning point where humans cease to only fear the catastrophe in order to become the catastrophe itself*. When humans become the catastrophe themselves, what kind of form should critique take?

Like the antropophagic, the aim of this paper is to devour the critical and clinical strategy used by Deleuze and Guattari to build upon their concept of *schizoanalysis* in order to explore new terrains of thought and experience: *the hunger of imagination marching in search of new forms*. Can delirium have a fundamental role in critique? Are critical theories ready to assume a veritable mission of permanent decolonisation of thought? If so, what is the role of critique in legal studies?