

**Workshop on Law, Harm and Social
Reproduction
20-21 June 2018, Radcliffe House Warwick
University**

**Convened by Shirin Rai and Briony Jones (Warwick)
and Beth Goldblatt (University of Technology Sydney)**



**Sponsored by Warwick GRP International
Development Department of Politics and International
Studies and York Global Development Centre**

Can we argue for the broadening of legal definitions of harm that should include recognition and compensation of social reproduction and the depletion that may arise from this? This is the question that we would like to address at this workshop.

Much has been written about the importance of the anomaly of excluding most of the work within the home as unproductive labour and its harmful effects (Waring, 1988; Picchio, 1992; Fraser, 2017; Hoskyns and Rai, 2007). Feminist political economists have argued that there is a simultaneous crisis of the economy and of reproduction that has its roots in the denial of the place of social reproduction in the economy and its commodification through the market (Fraser, 2017; Elson, 2000). Feminist economists have also argued that the restructuring of states and markets is leading to a situation where the subsidy provided by social reproduction is being increasingly relied upon to fill the gaps in the state provision of welfare (Folbre, 2001; Elson, 2000; Pearson 1998). Rai et al (2014) argue that in order to identify the extent to which this is harmful we need to measure the costs of social reproduction, which they term depletion through social reproduction.

So what is harm? Rai et al (2014) argue that harm occurs when there is a measurable deterioration in the health and well-being of individuals and the fabric of households and communities, and when the inflows these require to maintain themselves fall below a threshold of sustainability. This is what they call depletion through social reproduction (DSR). In this context, despite consensual social relations, the doing of social reproductive work may still remain harmful. The harm through depletion is experienced not only by individuals involved in this work – to their health, both physical and mental, and to their sense of self as well as to their entitlements, but also to the fabric of the household and those who inhabit it in terms of the decrease in collective household resources, including lack of leisure time spent together, failure to manage the consequences of an increase in the number of household members engaged in wage labour and reduced support structures, and to the communities within which households and individuals live their lives, which would include the shrinking of spaces for community mobilization as a result of a lack of time commitments from those mobilized into paid work.

The feminist critiques of tort law also assist in understanding why the complexities of caring work and the depletion that may result from it are often absent in the law. For example, while tort law is focused on duties of care that people owe to each other it avoids acknowledging some of the key relationships that underpin this care in determining the legal scope of such duties (Conaghan, 2003; Steele, 2012). Feminist legal work in international law and in the context of post-conflict transition has also challenged traditional legal conceptions of harm and compensation. This has alerted us to ‘subsistence harms’ - deprivations of subsistence needs as a discrete form of violence (Sankey, 2014). It has also argued that ‘individual violations create communities of harm’ - where harm affects not only the individual but also the communities that situate her (Ni Aolain (2010).

In this workshop we address these and related questions of harm:

- Does the concept of depletion give greater conceptual depth to the notion of harm occasioned by caring?
- What role can the state play in developing policies that address the harm attendant upon depletion?
- Can legal change, whether through legislation or the courts, open up the compensatory regime, taking into account depletion of carers, households and communities?

- Can we include ideas of harm due to depletion into international law both in the area of transitional justice and more widely in framing a range of compensatory/ reparative responses?

Programme

9.30am - 10am

Coffee, Welcome and Introductions

Theme 1: Conflict, Harm and Social Reproduction

10am - 11.00

Diana Sankey, School of Law, Liverpool John Moores University -

Foregrounding social harm: Linkages between deprivations of subsistence needs, social reproduction and gendered experiences of mass atrocity. - Shaheen

Concepts of harm in transitional justice owe much to domestic law. Legal narratives of mass atrocity not only centre on a certain moment of violence, they often define violence through individualised concepts of physical integrity harm, harm to property, and a narrow understanding of mental harm. Feminist scholarship has critiqued how legal concepts of harm have silenced gendered experiences of mass atrocity (Ní Aoláin, 2009). Elsewhere I have argued that deprivations of subsistence needs - in the form of forced displacement, attacks on homes, livelihoods and basic resources - constitute a discrete form of gendered violence (Sankey, 2015). This paper explores the linkages between social reproduction and deprivations of subsistence needs, and synergies between concepts of “subsistence harms” and “depletion through social reproduction” (Rai, et al., 2014). Harms of starvation, the loss of home, separation of family and social dislocation have particular gendered impacts that cannot be captured without reflecting on contexts of social reproduction. Moreover, deprivations of subsistence needs place extra burdens on survivors, meaning that harms are reinforced in the long-term. Social understandings of harm that recognise human connectedness enable a different narrative of violence and understanding of reparation and redress from that often presented by transitional justice mechanisms. Reflecting on the approaches of the International Criminal Court and the Cambodian Khmer Rouge tribunal (ECCC), the paper questions the ability of justice mechanisms to transcend current concepts of harm. It may be therefore that we should also look to alternative spaces of recognition to contest legal concepts of harm and foreground lived experiences.

11.00 am - 12.00 pm

Eleanor Gordon, International Development, Monash University and Briony Jones, Department of Politics and International Studies, University of Warwick - Parvati Raghuram

Working for justice? An exploration of the personal-professional-political nexus of paid work in justice and security sector reform.

This paper will explore the impact on international development policy and practice - specifically within the field of building security and justice after conflict - of the departure of those assuming caring roles, predominantly women who become mothers. More broadly, this paper will explore how personal life stories impact the choices we make in our professional lives, including where, when and how we engage. These choices (the personal) have an impact on policy and practice (the professional), and inform how knowledge is created, circulated,

legitimised and becomes expert knowledge (the political). Indeed, if those engaged in building security and justice after conflict are predominantly male or child-free women, the paper argues that there are implications that warrant investigation. There are significant consequences (or harms), beyond the direct impact on individuals with caring responsibilities, as a result of their departure from the field.

In order to do this we will draw on and connect an emerging literature on personal change and agency in development studies (see for example Fechter 2012 and Eyben 2012), work which reflects on the way in which the epistemic boundaries of 'aidland' are constructed and maintained (see for example Heathershaw 2016) and feminist institutionalism which explores how institutions reflect and reconstruct dominant gendered power relations. We will adopt a grounded approach and draw on feminist methodologies to explore the life stories of international development practitioners engaged in building security and justice sector institutions after conflict. A mixed method approach is adopted by complementing the life stories with semi-structured interviews with current and former international development practitioners as well as analysis of relevant secondary sources.

The paper will conclude by suggesting international development organisations may want to consider ways in which they can retain the engagement of practitioners who assume caring responsibilities, and suggest ways in which this can be done. It is intended that these recommendations will be highlighted in a complementary briefing paper, which is also intended to be developed for wider circulation and impact.

12.00 – 1.00 pm

Fionnuala Ní Aoláin, Transitional Justice Institute, Ulster University (Belfast) and University of Minnesota Law School – Carol Wolkowitz

Harm: A Feminist Theory

Feminist scholars have long identified the limited capacity of law to fully capture the experiences of women. The limitations of legal systems in reflecting those experiences have been demonstrated across a panoply of arenas. This paper explores the construction of harm from a feminist perspective[1]. In doing so, I want to think about the macro and the micro experience of harm at the individual and group level for women. I think want to address why legal norms have fixed the notion of harm in ways that illustrate a propensity toward masculine rather than feminine experience. I seek to chart what a feminist theory of harm would encompass. The paper starts from the premise that the idea of harm to women has been central to women's placement in legal discourse. Such placement however is not synonymous with status and recognition. Rather, I assert that the dominant legal discourses of harm affirm the women as an object of legal attention and regulation but the conceptual and practical outworkings of such consideration affirms their secondary and disjunctive social status.[2] The classification of what constitutes "harm" for legal purposes is innately linked to the practical experience of justice for many. Here, as I draw the perimeters of gendered harm, the impact of rational classifications and presumptions loom large. Robin West has observed that much more effort has gone into the business of deploying law as an instrument for the redress of harm than with the more fundamental questions of what precisely harm entails and how we should know and recognise its manifestations.[3] This paper explores how, in developing

a feminist theory of harm, we might bring about a paradigm shift in our understanding of harm, its gendered underpinnings and the need for fundamental revision.[4] I use data collected from a long running project on maternal harm in armed conflict to illustrate the theoretical issues with real-world examples.

1.00 pm - 2.00 pm - LUNCH

2.00 - 3.00 pm

Jean Grugel, York International Development Network, Department of Politics, University of York - [Michael Thomson](#)

Child Carers and the Meaning of Harm

Women bear disproportionately the burden of care and domestic work, but children and adolescents also provide care (and more widely unpaid domestic work) to support their households and sometimes to third party households as well. Yet the provision of care and domestic work by children and adolescents has remained under-researched and largely limited to few contexts and issues, such as young carers in the Global North and in few HIV/AIDS-affected countries in Sub-Saharan Africa, and child domestic workers (Cluver et al. 2012; Robson et al. 2006; Evans and Atim 2011; East 2010; Becker 2007; ILO 2013). Few studies have tackled it by asking whether children and young people are 'harmed' in the process and, if so, what kind of harms do they experience. This paper draws on a pilot project in Mexico to explore the burden of care work experienced by children and young people and the attitudes that surround their experiences. It asks what 'harm' means in contexts where children and young people experience little in the way of choice in relation to the care work they carry out. Rianne Mahon, Balsillie School of International Affairs and Department of Political Science, Wilfrid Laurier University, Waterloo, Canada

3.00 - 3.30 pm - TEA

International Institutions and Recognition of Harm

3.30 pm - 4.30 pm

Rianne Mahon

Near Invisibility of harm to migrant carers - [Kate Bedford](#)

My presentation will address the near invisibility of the harm done to migrant carers in the eyes of major international organisations like the World Bank and the International Organisation for Migration, although the ILO and UN Women do somewhat better. I will go on to argue that were they to adopt the lens of harm and especially that of depletion through social reproduction, a clearer understanding would emerge and thus, hopefully, practices designed to address this.

4.30 - 5.30 - TEA

7.00PM - DINNER

21 June: 9.00 am – 10.00

Beth Goldblatt, Faculty of Law, University of Technology Sydney and Shirin M. Rai, Department of Politics and International Studies, University of Warwick

Compensating consequential harm to carers: addressing depletion through social reproduction in international law – *Juanita Elias*

The paper critically discusses the recent recognition of unpaid care at the UN level in the SDGs, at the ILO, and in international human rights law. This new focus is an opportunity to consider the multiple ways in which the costs of such care work, conceptualised as depletion through social reproduction, could be recognised and compensated better (Elson, 2000, Rai et al 2014). We have argued elsewhere that harm through depletion is experienced not only by individuals involved in this work – to their health, both physical and mental, and to their sense of self as well as to their entitlements, but also to the fabric of the household and those who inhabit it. We have also argued that law can and must take account of this harm (Goldblatt and Rai, 2017). This multi-level harm arises not only in the context of conflict and disaster but from a range of exigencies that confront individuals, households and families. In this paper we propose new interpretations of harm and responses to it that take account of depletion through social reproduction to inform improved international legal frameworks.

Theme 3: Social Reproduction and safeguarding against Harm

10.00 am – 11.00 am

Rosie Harding, Birmingham Law School, University of Birmingham – *Mathilde Matriot*

Safeguarding Against Harm? Health and social care, disability, and the challenge of social reproduction

Much work on depletion and social reproduction focuses on care labour within private domestic or familial relationships. In this paper, I seek to situate the questions at the heart of the workshop within the broader framework of health and social care, drawing out the points of tension and conceptual complications that arise through a view of caring that includes social institutions and corporate care providers as well as domestic sites of social reproduction.

In early 2018, Somerset Safeguarding Adults Board published their Review into abuse of residents by staff at Mendip House, a specialist autism care facility. Like previous care home abuse scandals (e.g., Winterbourne View in 2011), the abuse at Mendip House was found to be the result of systemic failures, yet simultaneously the responsibility of a small number of staff who subsequently faced disciplinary action. As well as reflecting on high-profile care home abuse scandals, I explore circumstances surrounding the premature and preventable deaths of three intellectually disabled people: Connor Sparrowhawk (18, who died in 2013) Robert Handley (33, who died in 2012) and Jack Adcock (6, who died in 2011). Each of these incidents took place during the provision of health and social care, within the context of the increasingly privatised and commodified health and social care marketplace. Bringing these seemingly unrelated cases together helps cast a spotlight on the failures of our health and social care systems to safeguard disabled people from harm.

By considering these systemic failures within the context of depletion and social reproduction, I then seek to show how harm cuts across these differing regulatory levels and contexts of care. I argue that the potentialities of harm within 'professional' care contexts generate imperatives on disabled people and their families towards social reproduction, in ways that iterate further harm in complex ways.

11.00 am - 12.00 pm

Ann Stewart, School of Law, University of Warwick - **Frances Griffiths**

Caring for Older Women within Kenya's Plural Legal System

How are older people in Africa cared for? How does the law contribute to the way in which caring relationships are supported, and to what extent are the interests of both those in need of care and those who provide it recognised and protected? Until recently, the provision of care generally and the position of the elderly in African societies has not attracted the attention of international or national policy makers. Now, policy makers, including those focusing on international development, are recognising the need for care policies.

This paper draws on research undertaken with the benefit of a Leverhulme fellowship (Oct 2017-Sept 2018) in Kenya. It assesses the contribution of community-based 'woman to woman' marriage practices in Kenya to the provision of care, particularly for older women, when there is little social welfare available. The everyday practices of caring for older people particularly women, traditionally woven into communal relations, are changing in the socio-economic and political circumstances of contemporary Kenya. Are woman to woman marriages, historically understood as a means of tackling infertility, evolving into a way of recognising and 'rewarding' the caring labour which is provided within kin based relationships? Is caring labour compensated through claims on property and in relation to distribution of bequeathable assets rather than through the wage relationship? How are claims for recognition of the socially reproductive labour provided by the 'younger' woman understood now in the 'formal' courts and within community dispute resolution practices? To what extent do such marriages mitigate the impact of social reproduction throughout the life course of both women?

12.00 noon - 1.00 pm

Ania Plomien, Gender Institute, London School of Economics - **Chris Clarke**

Production, social reproduction and mobility nexus in uneven and combined Europe

This paper draws attention to how migration and labour mobility regimes in the care, food and housing construction sectors constitute the gendered political economy of uneven and combined European capitalism. While it has been noted that the EU has become an economically integrated (but highly differentiated and unequal) space, the processes and mechanisms that construct and reproduce these inequalities are not fully understood. Faced with the crisis of production in Europe, the EU and its individual member states have responded through restructuring and expansion to defer capital's crisis tendencies. Technological change, the compression of wages within national economies, and shifting

production to regions with lower labour cost have been among the key solutions. Yet, capital's efforts to resolve its inherent contradictions have exacerbated the concomitant, and intrinsically related, needs of social reproduction. The character of social reproduction, however, gives rise to different sets of crisis responses. Given the spatial rootedness and the limits of technological change and wage disparities in care provision, food production and housing construction, the migration of labour represents the main remedy for the dual crisis of production and reproduction. By interrogating the interconnected mobilities of labour between Poland, Ukraine and the UK this paper illuminates how the uneven European space of production and social reproduction is (re)constituted. Our analysis points to the role of encroaching commodification, marketization, and privatisation in modifying, but not transforming, existing inequalities. Differences in labour market status, gender, and citizenship, used by capital to solve problems, do not (and cannot) provide a long terms solution to its crises. In fact, they exacerbate the crises tendencies.

1.00 pm - 2.00 pm: CLOSE AND LUNCH

SPEAKERS AND PARTICIPANTS: BIOS

Shaheen Ali is Professor of Law at the Warwick Law School. Her research interests lie at the intersection of Islamic Law and Jurisprudence, Women and Child Rights and International Law of Human Rights. She has written and published extensively in her areas of research. Her latest book is 'Modern challenges to Islamic law ' (Cambridge University Press 2016).

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Kate Bedford is Professor in the Birmingham Law School. Her first monograph (Developing Partnerships: Gender, Sexuality and the Reformed World Bank, 2009) explored the World Bank's gender and development lending in Latin America. She is involved in a new project exploring the consequences of the turn to law within gender and development. Her development research has been funded by the Ford Foundation, Overbrook Foundation, UNRISD, and the RCUK. Kate is also interested in gambling. In 2008 she began a project on the gendered political economy of gambling regulation, using commercial and non-commercial bingo to think in new ways about the regulation of everyday speculation.

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Chris Clarke is Associate Professor in Political Economy. He has published on a range of topics associated with International Political Economy and Finance. His first book is entitled Ethics and Economic Governance (2016) and was published in the Routledge RIPE Series in Global Political Economy. Chris is currently writing a monograph on platform lending based on his Leverhulme funded research.

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Juanita Elias is Reader in International Political Economy, Department of Politics and International Studies, University of Warwick. Juanita is an editor of the Rowman and Littlefield International book series Global Political Economies of Gender and Sexuality (with Nicola Smith and Adrienne Roberts), and serves on the editorial advisory board of the Review of International Studies. Juanita served as a Commissioner on the Political Studies Association of the UK Research Commission on the Crisis of Care in Austerity Britain which reported in November 2016.

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Beth Goldblatt is Associate Professor in the Faculty of Law, University of Technology, Sydney. She works in the areas of feminist legal theory, equality and discrimination law, comparative constitutional law, transitional justice, disability, family law, and human rights with a focus on economic and social rights, and the right to social security in particular. She is the author of

'Developing the Right to Social Security - A Gender Perspective' (Routledge, 2016) and co-editor of 'Women's Rights to Social Security and Social Protection' (Hart, 2014, with Lucie Lamarche).

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Eleanor Gordon is a Lecturer in Politics and International Development. After completing her PhD in Criminology, Eleanor spent the following 18 years working in the field of international development, specializing in security, justice and human rights issues. Her work has included building state security and justice institutions, working with demobilized guerrilla groups, addressing war crimes and human rights violations, promoting gender equality and inclusive approaches to peacebuilding, and addressing issues related to organized crime and terrorism. Eleanor is Associate Editor with Stability: International Journal of Security and Development.

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Frances Griffiths is Professor in the Warwick Medical School. Her research interests include: Information and communication technology in health care; Health care in low and middle income countries; Medical technology and the experience of health and health care; Living with long-term conditions; Research methods for health-related research including mixed methods and complexity science.

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Rosie Harding is Professor of Law in the Birmingham Law School and Chair of the UK Socio-Legal Studies Association (SLSA). Her research explores the place of law in everyday life. Her primary interests are in social justice family law, particularly the regulation and recognition of caring and intimate relationships. She uses social science methods including both qualitative and quantitative approaches to empirical research to investigate the place of law in everyday life, including everyday understandings of law and legal discourse. In 2017 she was awarded the Philip Leverhulme Prize for Law.

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Catherine Hoskyns is Professor Emerita at Coventry University and Visiting Academic at the CSGR, University of Warwick. She is currently writing a memoir on her time in East Africa in the fifties and sixties and have completed a monograph for the Africa Programme of the Royal Institute of International Affairs on the way in which African issues have been handled over the years. She is the author of 'Integrating Gender Women Law and Politics in the EU', London: Verso and co-author of (with Shirin M Rai and Dania Thomas (2014) 'Depletion: the Cost of Social Reproduction International Feminist Journal of Politics', 16/1 pp. 86---105.

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Briony Jones is Assistant Professor in the Department of Politics and International Studies, University of Warwick. Her research takes place at the intersection between International Development, Transitional Justice and Peacebuilding. In particular her work focuses on reconciliation, citizenship, political agency, the politics of intervention in societies undergoing a political transition and facing a past of massive human rights violations. She also has a strong research interest in the politics of knowledge production on and in such contexts. Her latest book is Jones, B. and Bernath, J. eds. (2017). *Resistance and Transitional Justice*. Routledge.

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Jean Grugel is Professor of Development Politics, University of York. She leads York's International Development Network. Her research interests include : The Sustainable Development Goals and Agenda 2030; Children's rights and children's work; Global and regional governance, especially the governance of vulnerability and marginalization; International human rights agreements and the domestic politics of compliance and The political economy of development in Latin America and the politics of 'post-neoliberalism' Her most recent books are *The Handbook of International Development* (2016 edited with Dan Hammett, Palgrave-Macmillan) and *Democratization: A Critical Introduction* (2014, with Matthew Bishop, Palgrave-Macmillan).

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Rianne Mahon holds the CIGI chair in comparative social policy and global governance at the Balsillie School of International Affairs and Wilfrid Laurier University in Waterloo. has produced numerous articles and edited collections on the social policy and care. Her current research focuses on gender and global governance. She is the co-editor of *After '08: Social Policy and the Global Financial Crisis* co-edited volume (with Stephen McBride and Gerard Boychuk) UBC Press. Fall 2015; *Feminist Ethics and Social Politics: Toward a New Global Political Economy of Care* Co-edited with Fiona Robinson. University of British Columbia Press. Fall 2011; *Leviathan Undone: Towards a Political Economy of Scale* (co-edited with Roger Keil) UBC Press Spring 2009 . She is also the co-Editor of the feminist journal *Social Politics*.

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Fionnuala Ni Aolain is Professor of Law and Associate Director at Ulster University's Transitional Justice Institute (Belfast). She also holds a joint appointment as Robina Chair in Law, Public Policy and Society at the University of Minnesota Law School. Ní Aoláin was appointed by the UN Secretary-General as Special Expert on promoting gender equality in times of conflict and peace-making (2003). She led an Expert Study on Reparations for the ICC Trust Fund for Victims (2015), and Expert Consultant to UN Women and OHCHR on a Study on Reparations for Conflict Related Sexual Violence (2013). She is co-author of *On the Frontlines: Gender, War and the Post Conflict Process* (OUP 2011), and the *Handbook on Gender and Conflict* (OUP, 2017).

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Ruth Pearson is Emeritus Professor of Development Studies, University of Leeds. Her research interests include research is on gender and work in the global economy; homebased work and workers organisations; gendered analysis of production and social reproduction; migrant workers and identity – Burma/Thailand and the UK; gender and economic transition (Cuba); money – micro credit, community currencies; hypothecated taxation; gender and development policy and prospects. She has just published (with S Anitha) *Striking Women: Struggles and strategies of South Asian women workers from Grunwick to Gate Gourmet*.

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Ania Plomien Assistant Professor in Department for Gender Studies, London School of Economics. Her research interest is changing inequalities in relation to production and social reproduction from a feminist political economy perspective. work contributes to three distinct, but interrelated, strands of scholarship centred on gender inequality and policy in Central and Eastern Europe (especially Poland) and in the European Union, with particular attention to labour markets, work and employment, and reconciliation of work and care. She co-edited *The SAGE Handbook of Feminist Theory* (with Mary Evans, Clare Hemmings, Marsha Henry, Hazel Johnstone, Sumi Madhok, and Sadie Wearing (2014)

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Parvati Raghuram is Professor of Geography and Migration, the Open University. Her research interests focus on the ways in which the mobility of individuals, goods and ideas is reshaping the world. Most of the work I have done so far has focused on how people experience and negotiate globalisation, especially as they move as gendered workers in sectors where the 'knowledge' of global knowledge societies is embodied and embedded: sectors such as medicine, education and the IT sector. Her current research is funded by the ESRC (2016-18): *Gender, Skilled Migration and IT industry: a comparative study of India and the UK*, <http://www.gsm-it.com> (PI). She is the author of *Gendered Migrations and Global Social Reproduction*.

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Shirin Rai is Professor in the department of Politics and International Studies. She has written extensively on issues of gender, governance and development. Her current work has three strands: feminist international political economy, gender and political institutions and politics and performance. She is a co-Editor of the feminist journal Social Politics and is the co-Lead of the University of Warwick's Global Research Priority Programme on International Development. Her latest books include *New Frontiers in Feminist Political Economy* (eds with Georgina Waylen) and *The Grammar of Politics* and co-author of (with Catherine Hoskyns and Dania Thomas (2014) 'Depletion: the Cost of Social Reproduction International Feminist Journal of Politics', 16/1 pp. 86--105.

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Anne Stewart is Professor of Law in the Warwick Law School and co-Lead of the GRP International Development. Her research interests include issues of gender justice and postcolonialism, and issues relating to gender care and body work and gender and multiculturalism in the UK. She is the author of *Gender, Law and Justice in a Global Market*, CUP.

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Michael Thomson is Professor in the School of Law at the University of Leeds and Director of the Centre for Law and Social Justice. He has a fractional appointment at the University of Technology Sydney. His research interests span the fields of health law, children's rights, and legal theory with a particular focus on legal embodiment. In health law, he has written extensively on the legal regulation of reproduction and non-therapeutic interventions on children. His current work explores alternative decision-making frameworks and the pursuit of social justice in health law.

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