

Critical Legal Conference
9-11 September 2011
Aberystwyth University

Being Before the Law:
Radical Thought in the Age of Technology



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PROGRAMME OVERVIEW

FRIDAY, 9TH SEPTEMBER 2011

- 11:30 – 15:00 Registration and Coffee (Foyer, International Politics Building)
- 15:00 – 15:30 Welcome (Main Hall, International Politics Building)
- 15:30 – 17:00 Parallel Sessions 1
- 17:00 – 17:30 Coffee break (Foyer, International Politics Building)
- 17:30 – 19:00 First Plenary Roundtable (Main Hall, International Politics Building)
- 19:00 – 20:30 Reception jointly hosted by the Department of International Politics and the Department of Law and Criminology (Foyer, International Politics Building)

SATURDAY, 10TH SEPTEMBER 2011

- 9:30 – 11:00 Parallel Sessions 2
- 11:00 – 11:30 Coffee break (Foyer, International Politics Building)
- 11:30 – 13:00 Parallel Sessions 3
- 13:00 – 14:30 Lunch (Arts Centre, upper level)
- 14:30 – 16:00 Parallel Sessions 4
- 16:00 – 16:30 Coffee break (Foyer, International Politics Building)
- 16:30 – 18:00 Second Plenary Roundtable (Main Hall, International Politics Building)
- 19:00 Conference Dinner, Penbryn (Penglais Campus)

SUNDAY, 11TH SEPTEMBER 2011

- 9:00 – 10:30 Parallel Sessions 5
- 10:30 – 11:00 Coffee break (Foyer, International Politics Building)
- 11:00 – 12:15 Closing Address: Prof Ruth Levitas (Main Hall, International Politics)
- 12:15 – 13:15 Lunch (Arts Centre, upper level)
- 13:15 – 15:00 Final Plenary Roundtable and Business meeting
- 20:00 Party at Rummings Wine Bar, Bridge Street, Aberystwyth, SY23 1QD

FRIDAY, 9TH SEPTEMBER 2011

11:30-15:00 **Registration** (Foyer, International Politics). After this time, registration continues in the West Room, International Politics.

15:00-15:30 **Welcome** (Main Hall, International Politics): The Head of Department of International Politics, Professor Mike Foley, and conference organisers.

15:30- 17:00 **Parallel Sessions 1**

1.1 Being Before the Law 1 (Law Seminar Room, Hugh Owen Building).

Chair: Nathan Gibbs, Aberystwyth.

- Aurora Voiculescu (Westminster School of Law), “The Language of Human Rights between the Texts, Contexts and Subtexts of Corporate Social Responsibility”
- Jessica Lawrence (Vrije Universiteit Amsterdam), “Trade Law in the *Dialectic of Enlightenment*”
- Jeffrey Kleeger (Florida Gulf Coast University), “Mutual reciprocity generates justice in takings to transfer”
- Bikramaditya Ghosh (W.B. High Court) and Karmendra Singh (Supreme Court of India), “Directors' duties in India: Lessons from the UK Companies Act, 2006”

1.2 The question of Derrida in the 21st Century 1: “There are more things in heaven and earth” (Steve Critcher, International Politics). Chair: Dan Matthews, Birkbeck.

- Anastasia Tataryn (School of Law, Birkbeck College), “Abandoning Hospitality or Hospitality as Abandon: asking the question of the scholar”
- Can Öztaş (School of Law, Birkbeck College), “Caché en Mal d’Archive”
- Toomas Kotkas (Research Department of the Social Insurance Institution of Finland), “Solidarity before Justice or Justice before Solidarity: Undecidability of the European Union”

1.3 The Power of Life’s Excess 1 (Law Conference Room, Hugh Owen Building).

Chair: Ryszard Piotrowicz, Aberystwyth.

- Awol K. Allo (Glasgow School of Law), “Law and Performativity: the Political Trial as a Performative Action”
- Anel Boshoff (Law and Criminology, Aberystwyth), “A (feminist) critique of violence”
- Marcel Van Der Stroom (Law and Criminology, Aberystwyth), “The Mismythification of Law; The Semiotics of the Political Abuse of Legal Terms”
- Louis E. Wolcher (University of Washington School of Law), “On Diversity”

17:00-17:30 **Coffee** (Foyer, International Politics)

17:30-19:00 **First Plenary Roundtable Panel** (Main Hall, International Politics).

Chair: Andreja Zevnik, Aberystwyth.

- Colin Wright (University of Nottingham), “The Body of Law: Lacan's Reconceptualisation of Perversion as Pere-version”

- Samo Tomsic (Humboldt University, Berlin), “Technology of *Jouissance*”

19:00-20:30 **Reception** co-hosted by the Department of International Politics and the Department of Law and Criminology (Foyer, International Politics).

SATURDAY, 10TH SEPTEMBER 2011

9:30-11:00 Parallel Session 2

2.1 The question of Derrida in the 21st Century 2: “There is nothing either good or bad, but thinking makes it so.” (Law Seminar Room, Hugh Owen Building).

Chair: Anastasia Tataryn, Birkbeck.

- Long Bui (University of California Riverside), “Vietnam War as Hauntology: Reading the Indeterminate Archive of History and Geopolitics”
- Chris Lloyd (School of Law, Birkbeck College), ‘It adds only to replace’: The Fetish of Immunity in Law; The Fetish of Law in Immunity”
- Erdem Ertürk (School of Law, Birkbeck College), “The horizon of nonknowledge: Between 9/11 and the killing of bin Laden”

2.2 Introducing law: perspectives and methods 1 (Steve Critcher, International Politics). Chair: Bald de Vries, Amsterdam.

- Juan M. Amaya-Castro (Vrije Universiteit, Amsterdam), “Legal Simulations & Critical Thinking in Law School”
- Henrique Carvalho (King’s College School of Law), “Paradise Lost: Terrorist, Responsibility and the Anxiety of Liberty”
- Anandna Handa, Sonashi Malhan & Saloni Patel (NALSAR University of Law, Hyderabad), “The Positioning of Positive Law in the First Year Classroom: Understanding the Alternative Methodology of Teaching Law and Analytical Jurisprudence”

2.3 The Power of Life’s Excess 2 (Main Hall, International Politics).

Chair: Stewart Motha, Kent.

- Andreja Zevnik (International Politics, Aberystwyth), “‘Coming together’: love, singularity and the (im)possibility of political community “
- Simona Rentea (International Politics, Aberystwyth), “The Other Scene of Law: Thinking about Community with Louis Althusser”
- Tom Frost (Newcastle School of Law), “The Hyper-Hermeneutic Gesture of a Subtle Revolution”

2.4 Being Before the Law 2 (Law Conference Room, Hugh Owen Building).

Chair: Anel Boshoff, Aberystwyth.

- James L. Hunt (Law and Business, Mercer University), “Contested Spaces: Pluralist Legal Boundaries in the U.S. State of Georgia, 1700-2000”
- Uday Shankar (Indian Institute of Technology Kharagpur), “Social and Economic Rights: Restructuring the Debate on Human Rights”
- Olga Jurasz (Law and Criminology, Aberystwyth University), “Why not let the ladies in first? Gender, war, asylum and the [fe]male discourse of refugee law”

- Aaron F. Simmons (Earlham College), “The Guise of Citizenship”

11:00-11:30 **Coffee** (Foyer, International Politics)

11:30-13:00 **Parallel Session 3**

3.1 Being Before the Law 3 (Steve Critcher, International Politics).

Chair: Olga Jurasz, Aberystwyth.

- Martin Škop (Masaryk University), “Can Art be a New Space for Radical Legal Thinking?”
- Annabelle Mooney (Roehampton), “The Book of Blood: Looking at Human Rights with the Body”
- Merima Bruncevic (Gothenburg University), “Access to Art as Knowledge: The Legal Concept of Cultural Commons”

3.2 Time as Technology: Law? Justice? Atomic Fission? 1: “Making Non/sense With Time: Law, Coherence, History and Music.” (Law Conference Room, Hugh Owen Building). Chair: Louise Amar, Kent.

- Emilia Mickiewicz (Newcastle School of Law), “Temporality and Legal Coherence”
- Hannah Franzki (School of Law, Birkbeck College), “Historical Time in (International) Criminal Law: Of Continuity and Rupture”
- Richard Bowyer (School of Law, Birkbeck College), “Reading Law in Double-time: Plato, Pater, Schoenberg, Joyce”
- Victoria Ridler (School of Law, Birkbeck College), “Meaning and Time in the Idea of Justice”

3.3 The Power of Life’s Excess 3 (Main Hall, International Politics).

Chair: Simona Rentea, Aberystwyth.

- Ari Hirvonen (University of Helsinki), “Silence”
- Soo Tian Lee (School of Law, Birkbeck College), “Prescribed and Proscribed Pathways: Sovereign Theory and Praxis in Academia”
- Erzsébet Strausz (International Politics, Aberystwyth University), “Truth, critique and writing: Foucault, every-day”
- Elisabetta Bertolino (School of Law, Birkbeck College), “An account of oneself as a space of resistance”

3.4 The Fetishisation of Man by the Machine (Law Seminar Room, Hugh Owen Building). Chair: Hillary J. Shaw, Shropshire.

- Chris Lloyd (School of Law, Birkbeck College), “This is what “the death of God” has always meant’: The Heart of Jean-Luc Nancy”
- Hillary J. Shaw (Harper Adams University College, Shropshire), “Machines, meaning and meals: a semiotic analysis of consumption and food technologies”
- Julia J.A. Shaw (De Montfort University, Leicester), “A view from the rabbit hole: monsters, myths and the possibility of justice”
- Tara Mulqueen (School of Law, Birkbeck College), “Disrupting Links: Gender, Identity and Security”

13:00- 14:30 **Lunch** (Arts Centre/ upper level)

14:30-16:00 **Parallel Session 4**

4.1 Being Before the Law 4 (Law Seminar Room, Hugh Owen Building).

Chair: Julia J. A. Shaw, De Montfort.

- James Parker (Melbourne Law School), “Acoustic Jurisprudence in the ‘Age of Technology’”
- Leif Dahlberg (Kungliga Tekniska Hogskolan, Stockholm), “The uses and effects of video technology on social interaction and legal space in the Swedish court of appeal”
- Luigi Russi (International University College of Turin), “The Evil Technology Hypothesis: A Radical Ecological Reading of International Law “

4.2 Time as Technology: Law? Justice? Atomic Fission? 2: “Law/memory/place” (Main Hall, International Politics). Chair: Richard Bowyer, Birkbeck.

- Louise Amar (Kent Law School), “The Pieds-Noirs: the New Hussars of the Postcolonial French Republic?”
- Emiliios Christodoulidis (University of Glasgow School of Law), “Social rights jurisprudence in South Africa: the case of an inflated paradigm”
- Stewart Motha (Kent Law School), “Un-homely Files: Law, Violence, and Memory”

4.3 The Power of Life’s Excess 4 (Steve Critcher, International Politics).

Chair: Erzsébet Strausz Aberystwyth.

- Angus McDonald (Staffordshire Law School), “Succession and Secession of Sovereignties”
- Tarik Kochi (Sussex School of Law, Politics and Sociology), “International Law and the Pin Factory”
- Connal Parsley (Melbourne Law School), “Representation as a legal technology: Giorgio Agamben, representation and critique”

4.4 Being Before the Law 5 (Law Conference Room, Hugh Owen Building).

Chair: Richard Ireland, Aberystwyth.

- Basak Ertür (School of Law, Birkbeck College), “The Ergenekon Trial: A Conspiracy to End all Conspiracies?”
- Jung-Jin OH (Pusan National University, Korea), “There was nobody before the Law at Yong-San: Toward a relocation of law’s position”
- Jaafar Aksikas (Columbia College Chicago), “What's to Be Done? Social Change and the Dialectics of Constitutional Reform in the Arab World”
- Konstantinos Gousis (Aristotle University) and Dimitris Poullos (University of Cardiff), “Capital, Law and Morality in post-IMF Greece: The case of Urban Governance and Fast-Track legislation”

16:00-16:30 **Coffee** (Foyer, International Politics)

16:30-18:00 **Second Plenary Roundtable Panel** (Main Hall, International Politics).
Chair: Nathan Gibbs, Aberystwyth.

- Oren Ben-Dor (Southampton School of Law), “Uncanny ipseities as nature's poem - appropriating/presencing beeness - worlding-rootedness - political differend: nearing the be-ginning of the west as the be-coming-of the east”
- Christophe Perrin (Paris-Sorbonne), “From Metaphysics to the Juridical: Heidegger and the Question of Law”

19:00- 21:00 **Conference Dinner**, Penbryn (Penglais Campus)

SUNDAY, 11TH SEPTEMBER 2011

9:00-10:30 **Parallel Session 5**

5.1 Time as Technology: Law? Justice? Atomic Fission? 3: “The Time of Constitutionalism”, A Roundtable Discussion (Law Conference Room, Hugh Owen Building). Chair: Emiliios Christodoulidis, Glasgow.

- Stacy Douglas (Kent Law School)
- Stewart Motha (Kent Law School)
- Illan Wall (Oxford Brookes Law School)
- Maria Carolina Olarte (School of Law, Birkbeck College)

5.2 The question of Derrida in the 21st Century 3: “Doubt thou the stars are fire” ().
Chair: Chris Lloyd, Birkbeck (Steve Critcher, International Politics).

- Dan Matthews (School of Law, Birkbeck College), “The Call of the *à venir*: The Derridian Performative and the Foundation of the Interim Transitional National Committee for Libya”
- Fred Cowell (School of Law, Birkbeck College), “Derrida and the legitimacy of violent African revolutionary movements”
- Riccardo Baldissone (Curtin University of Technology), “Before the Law, Our Doorkeeper Stands: Rethinking the Western Postclassical Legal Framework”

5.3 Introducing law: perspectives and methods 2 (Law Seminar Room, Hugh Owen Building). Chair: Bald de Vries, Amsterdam.

- Juan M. Amaya-Castro (Vrije Universiteit, Amsterdam)
- Henrique Carvalho (King’s College School of Law)
- Aurora Voiculescu (Westminster School of Law)
- Thanos Zartaloudis (School of Law, Birkbeck College)

10:30-11.00 **Coffee** (Foyer, International Politics)

11:00-12:15 **Closing Address** (Main Hall, International Politics).
Chair: John Williams, Aberystwyth.

- Ruth Levitas (School of Sociology, Politics and International Studies, University of Bristol), “The Necessity of Utopian Thinking”

12:15-13:15 **Lunch** (Arts Centre/ upper level)

13:15-15:00 **Final Plenary Roundtable Panel** (Main Hall, International Politics).

Chair: Thanos Zartaloudis, Birkbeck.

- Elena Loizidou (School of Law, Birkbeck College), “Humour and Anarchism”
- Marc de Wilde (University of Amsterdam), “Just Trust Us: Constraining Emergency Powers in the State of Exception”

Followed by the **Business Meeting**

20:00 **Party at Rimmers** Wine Bar, Bridge Street, Aberystwyth, SY23 1QD.

INFORMATION ON PLENARY SESSIONS

First Plenary Roundtable, Friday, 9th September 2011

- **Professor Colin Wright (University of Nottingham), “The Body of Law: Lacan's Reconceptualisation of Perversion as Pere-version”**

This paper argues that, as Foucault perceived long ago, law has taken on a biopolitical function which situates a certain figure of the body at the core of the discourse of rights. This body is perceived as fragile, Cartesian in its solipsism, and as a commodity among others: its fragility demands the protection of Leviathan-like law (human rights, humanitarian intervention); its solipsism invites the policing of atomizing differences (individual rights, consumer rights); and its commodification encourages its abstract valuation (health insurance, compensation culture, corporations conceived as 'bodies'). But alongside this biopolitical shift in law as legislation for 'life', there has been a shift away from a central State apparatus and towards a capillary network of dispersed legal authority: Anti-Social Behaviour Orders, Acceptable Behaviour Contracts, and Social Impact Bonds. With the decline in the paternal authority of the Big Other then, we are enveloped by David Cameron's Big Society.

This paper will analyse these shifts and critique the figure of the body at their core through reference to Jacques Lacan. It will focus on Lacan's implicit critique of the pathological category of 'somasochism', as one way of understanding the relationship between law, the body and desire which has also played a problematic role in the Freudo-Marxist critical theory of the Frankfurt School and their analyses of National Socialism. As the 'Spanner' case in 1991 showed - in which fifteen gay men were convicted for indulging 'somasochistic' practices - normative legal frameworks cannot conceptualise the intermingling of pleasure and pain in *jouissance*: how can a body that willingly consents to endure 'torture' be legislated for? The body articulated by Lacan is very different from the one understood by the law: it is more than an organism but less than an imaginary totality, and it is the site of uncodifiable real of *jouissance*. Perversion, too, ceases to be a pathological and therefore normative diagnosis, becoming instead a structure with its own ethical orientation. Moreover, Lacan's pluralisation of the Name(s) of the Father and the shift he charts from perversion to what he calls *pere-version* offers a theoretical framework in which this confrontation between law and the singularity of *jouissance* can be staged. It will be argued that the law can only be pushed towards a horizon of justice if it is made to confront its inability to codify singularity.

Biography: Colin Wright is Director of MA Programmes in the Department of Culture, Film and Media, and Co-Director of the Centre of Critical Theory at the University of Nottingham. His general areas of research interest include French Critical Theory, Lacanian Psychoanalysis and Political and Postcolonial Theory. Specific interests currently include Alain Badiou's philosophy and the history of Jamaican conflict and culture from a postcolonial perspective. He is currently completing a book entitled *Alain Badiou in Jamaica: The Politics of Conflict*.

- **Dr Samo Tomsic (Humboldt University, Berlin), “Technology of *Jouissance*”**

The paper will discuss certain political aspects of Freudian and Lacanian psychoanalysis as it can be detected in Lacan's analysis of the complicity of scientific and capitalist discourse in Seminar XVII. Here we can see the beginning of Lacan's interrogation of 'the real without the law', on the one hand, and of his complex relationship with Marx, on the other hand. The paper will notably focus on the specific psychoanalytic theory of technology, linking it to the problem of the impacts or effects of psychoanalytic discourse on the level of 'libidinal economy', where, as Lacan would famously state, every subject finds itself in the position of

the proletariat.

Biography: Samo Tomsic is a Slovenian philosopher and translator. He published several papers on French structuralism and Lacanian psychoanalysis with particular focus on Lacan's final teaching. He is currently a Humboldt fellow at the Institute for German Literature (Humboldt University, Berlin). His current research concerns Lacan's reading of Marx, on the one hand, and representations of life and body in psychoanalysis, on the other hand. His book on Lacan's anti-philosophy was published in Ljubljana in 2011.

- **Professor Philippe Van Haute (Radboud University, Nijmegen), “The Human Being as a Sick Animal”**

Biography: Philippe Van Haute is Professor of Philosophical Anthropology at the Radboud University in Nijmegen (The Netherlands). He is a practicing psychoanalyst, member of the Belgian School of Psychoanalysis. He is the author of 'Against Adaptation. Lacan's Subversion of the Subject' (Other Press, 2002); (with Tomas Geyskens), 'Confusion of tongues. The primacy of the Sexuality' in Freud, Ferenczi and Laplanche (Other Press 2004); (with Tomas Geyskens), 'From Death Instinct to Attachment Theory: The primacy of the Child in Freud, Klein and Hermann' (Other Press 2007) and (with T. Geyskens), 'The art of an impossible enjoyment: Clinical Anthropology of Hysteria' in Freud and Lacan (Louvain University Press, in print).

Second Plenary Roundtable, Saturday, 10th September 2011

- **Dr Oren Ben-Dor (Southampton Law School), “Uncanny ipseities as nature's poem - appropriating/presencing beeness - worlding-rootedness - political differend: nearing the be-ginning of the west as the be-coming-of the east”**

In gliding I am letting, responding to a call constantly in a way which is mine but do not come from my ideas not even, if the response is unmediated, from my mind. I am being spoken by something changing that does never materialize into an extant event to which I form the idea of responding. Gliding is the graceful movement of call and response without doing violence to the call. In steering I decide, I form the idea, I represent the idea of what is that I am responding to, in thought. Gliding, then, let thinkingly. Steering is acting on the basis of a representational idea.

Is plurality the same as limitlessness? How does truthfulness originate as the negativity of plurality and as the negativity of limitlessness? How are human-beings, mortals, who are capable of speech, situated within the relationship of these origins. Finally, how are the temporal, material, political, legal implications of the relationship between these two kinds of origins? In this paper I argue that the meeting of limitlessness with mortality necessitate truthfulness as an originary withdrawal that involves letting-appropriation and gliding and that this relationship is primordial to the origin of plurality that already involves punctuation and with it human steering one that merely commerce with plural possibilities of correctness.

Biography: Oren Ben-Dor is a Reader in the Philosophy of Law at the Law School, The University of Southampton. He is the author of Constitutional Limits and the Public Sphere: a Critical Reconstruction of Bentham's Constitutionalism (Oxford: Hart Publishing, 2000); Thinking about Law: in Silence with Heidegger (Oxford: Hart Publishing 2007) as well as the editor of Law and Art: Ethics, Aesthetics Justice, (London: Routledge 2011). Oren writes on the uncanny origin of critical thinking and political emergence. He is working on a book which explores the relationship between the 'the jews', the configuration of anti-Zionism and Heidegger's calling silence.

- **Dr Christophe Perrin (Paris-Sorbonne), “From Metaphysics to the Juridical: Heidegger and the Question of Law”**

First, we have the facts, and unedifying facts at that. After resigning from his post as rector of Albert-Ludwigs-Universität on the 21 of April 1934, Heidegger, then a member of the Akademie für deutsches Recht founded by the Reichsleiter of the Nazi Party, Hans Franck, accepted an invitation to take part in the work of the Akademie's Ausschuss für Rechtsphilosophie alongside, most notably, Alfred Rosenberg, Carl Schmitt and Julius Streicher. No evidence of the results of these proceedings currently exists in any form. Apart from a seminar for beginners on Hegel's Philosophy of Right delivered during the winter semester of 1934 and the reflections on law developed in the lecture course Einführung in die Metaphysik delivered during the following summer semester, Heidegger never developed a complete thematic presentation of, what might be termed, the question of law. In any case, whilst there may be some reflections and comments here and there in his writings, what little does exist cannot really be pieced together so as to supply us with any ready-made Heideggerian 'theory of law'. In fact, what is noteworthy is that the problematic Heidegger did ostensibly pursue, attested to in all of his major writings was, as we know, the 'question of being'. Now, this is, even at first glance, a broader and deeper form of reflection than the explication of the regional ontological framework underpinning legal practice. Heidegger's questioning was carried on within and out of the horizon determined by the most fundamental questions of being and truth, questions Heidegger wrested out of a confrontation with metaphysical tradition, questions clearly not bound to or derivative from the mere factum of legal practice or even legal science.

Biography: Born in 1980, Christophe Perrin is currently fellow of the Fondation Thiers (Paris) and visiting scholar at the Free University of Brussels. He is also affiliated to Paris-Sorbonne University where he is engaged in teaching as an assistant to Professor Jean-Luc Marion (of the Académie Française). Under his supervision, he will shortly be defending his doctorate on Heidegger and Descartes. He is co-founder of the 'Bulletin heideggerien' in the French review 'Archives de Philosophie' and co-author of 'The Heidegger Concordance' (London/New York: Continuum, forthcoming). He will undertake a seminar series on Heidegger during the forthcoming academic year at the Collège International de Philosophie in Paris.

Third Plenary Roundtable, Sunday, 11th September 2011

- **Dr Elena Loizidou (Birkbeck School of Law), “Humour and Anarchism”**

Biography: Elena Loizidou is a Senior Lecturer at Birkbeck College School of Law. Her recent publications include *Judith Butler: Ethics Law Politics* (2007) London, Routledge and 'This is what democracy looks like', in Martel and Casas Klausen (eds) *How not to be Governed: Reading and Interpretations from a Postanarchist Left*, New York, Lexington Press (2011).

- **Dr Marc De Wilde (University of Amsterdam), “Just Trust Us: Constraining Emergency Powers in the State of Exception”**

Biography: Marc de Wilde is Assistant Professor of Legal History at the University of Amsterdam. He wrote a dissertation on the political theologies of Walter Benjamin and Carl Schmitt. His recent publications include: 'Locke and the State of Exception: Towards a Modern Understanding of Emergency Government', *European Constitutional Law Review* 6, no. 2 (2010), pp. 249-267 and 'The State of Emergency in the Weimar Republic: Legal

Disputes over Article 48 of the Weimar Constitution', *Legal History Review* 78 (2010), pp. 135-158.

Closing Address, Sunday, 11th September 2011

- **Professor Ruth Levitas (School of Sociology, Politics and International Studies, University of Bristol), “The Necessity of Utopian Thinking”**

Ruth Levitas will be talking about her current Leverhulme-funded work on Utopia as Method, arguing for the necessity of utopian thinking in the face of ecological and economic crises. In this context, utopia takes on the role of a provisional, reflexive and dialogic sociology of the future, postulating alternative principles, and institutions articulated as a totality. This has implications for the institutions of criminal justice and the law both nationally and internationally, and specifically for concepts of harm and of property.

Biography: Ruth Levitas is Professor of Sociology in the School of Sociology, Politics and International Studies at the University of Bristol, UK. Professor Levitas’s two main areas of research are utopianism and poverty and social exclusion. Her research interests in the first field cover the history of oppositional and utopian thought, the relationship between utopia and social theory, utopia as a method in the social sciences, utopia and music, and utopia, history, memory and place. Such themes were explored in her most recent book, *The Concept of Utopia* (2010). This work continues in her ‘Utopia as Method: The Imaginary Reconstitution of Society’, a research project funded by the Leverhulme Trust, 2010-2012. She is also co-founder and immediate past Chair of the Utopian Studies Society, Europe, an interdisciplinary society that aims to co-ordinate and encourage diverse bodies of work on the subject of utopianism across the continent.

PAPER ABSTRACTS BY STREAMS

Stream: Being Before the Law: Radical Thought in the Age of Technology

Stream convenors: Nathan Gibbs, Simona Rentea, Andreja Zevnik

The theme of this conference invites participants to reflect more profoundly on the fundamental questions faced by radical thought in its confrontation with law. Whilst participants are engaged in a problematization of the present age of technology, of 'modernity' or 'post-modernity', difficult and controversial questions arise as to the meaning of this very engagement. In this respect, the richness of what is now arguably a tradition, albeit a dissonant tradition of critical thought, poses its own problems.

Different modes of problemization have generated a dense and multi-layered vernacular of critique and, in some cases; the plasticity of this language can blunt the edge of radical thought curtailing its dynamic movement. The confrontation of radical thought with various forms of contemporary 'law' highlights the inescapability of these dilemmas. What might be called the 'legal' form of writing, in direct opposition to, for example, the 'literary form' described by Blanchot, often provides the pretext and perhaps even the privileged site for critique to fall back into technological thinking. The question for radical thought is whether it can retain its capacity to move beyond such a re-inscription within technological ordering in order to retain its acuity and capacity to hold onto the more fundamental questions posed by contemporary law; to retain, in other words, its proximity to the question of justice. From this impasse, questions arise over whether the Marxist problematization of the capitalist mode of production can be adequately re-interpreted in terms of the wider horizon of a post-Weberian critique of occidental rationalism and modernity. In other words, should we problematize the present in terms of 'exploitation', 'disenchantment' or in terms of the failure of 'mutual recognition'? If we persist in a Weberian understanding of the present, to what extent do we retain the Hegelian-Marxist vocabulary of 'reification' characteristic of the Frankfurt School's recognition of the 'Dialectic of Enlightenment' or to what extent does even this form of thought remain bound to static ontic categories and thus inadequate to understanding unfolding character of our technological age? These controversies also implicate our understanding of law, politics and justice: to what extent is 'law' the specific material form of political organization required to organize for example the 'commodity form' and to what extent might 'law' as such be superseded with the suppression of this mode of production or does the juridical principle and its mode of interpellating the subject of capitalism survive, as Althusser thought it did, to distort the emergence of new social formations?

This leads us to the question of justice itself. To what extent is a genuinely radical thinking of justice involved in a hermeneutic recovery of meaning or to what extent is radical thinking a matter of exposing the deferral of meaning, its elusive movement within the beguiling and impossible future? Finally, we might pose the question whether radical thinking enjoins an existential relation, a legal obligation, to justice or is it rather always a matter of self-enlightenment whether philosophical or psychoanalytic?

Reopening the question of radical thought certainly necessitates a movement beyond the representations of justice prevalent in particular spatio-legal settings. Repositioning legal enquiry in such a way opens the following set of questions:

- How can we extend our current ways of thinking and writing in order to make 'thinking at the limit' (Kristeva) possible? How can we use critical legal scholarship to give rise to unprecedented forms of understanding? How can we as critical legal scholars conceive of our forms of intervention in order to make the unthought possible?
- What are the implications of such interventions for the nation, region and international politics? Would this help render visible voices previously un-represented? Is a non-defensive form of nationalism possible? How would this

- change the mode of interaction between nations and the mode of co-existence in the international?
- What for the implications for the individual? Is it possible and/or desirable for critical legal scholars to decentre the subject? Can we do so by confronting him with the 'real worlding' of the law? Is this re-imagining of subjectivity radical enough to the centrality of subjectivity altogether in order to do so? Is it at all possible to engage with ways of being that exist through the experience of the traumatic, the unrepresentable or the Real?
 - What would be the implications for the symbolic and ethical order? Would such investigations lead to the collapse of existing orders? How are we to think the newly emerged (dis)order? Is this attainable, thinkable or desirable? How can our language overcome the one-sidedness of a systemic order shaped by communications technology?
 - Where are we to find new spaces for radical thinking? Can and in what manner might the experience of art, the body or political action be seen as examples of such spaces?

PANEL 1

Aurora Voiculescu, Westminster School of Law **The Language of Human Rights between the Texts, Contexts and Subtexts of Corporate Social Responsibility**

Taking a critical conceptual approach, this paper looks into the potential of the dominant corporate social responsibility (CSR) discourse to propose and support a new paradigm of the link between business and human rights in the context of the transnational market structures and of the existing normative economic frameworks.

The CSR discourse appears as a normative environment where the 'text' is largely dominated by voluntary codes of conduct and ethical initiatives, the 'context' is constituted by acknowledged *and embraced* inequalities of economic and lobbying power, and the 'subtext' is shaped by an acknowledged imperative need for a new paradigm of relating market and society. In this environment, the text(s), context(s) and subtext(s) often overlap, confound and confuse in a normative discourse that has difficulties proving its consistency and coherence. Placed at the confluence of economic (market economy) discourse, legal discourse and normative discourse, this paper develops on two dimensions. On the one hand, it undertakes a socio-legal path, looking at both the normative and the regulatory potential of key normative approaches developed in the 'business and human rights' debate. Drawing on the evolution of these initiatives, this paper addresses the points of contact that might be of relevance to the desired development of an instrument of global governance.

The second dimension of the paper builds on the socio-legal exercise undertaken in the first part. This is a normative and conceptual dimension that looks to the deeper theoretical underpinnings of the 'business and human rights' points of tension encapsulated in the dominant CSR discourse. In this sense, the paper addresses the calls for a radical rethinking of the working paradigms from the point of view of the socialisation of the economic actors and from the point of view of the input that various social agencies have in this process of socialisation. The conceptual part of the paper builds on theories addressing the idea of the embeddedness of market economy in society, as well as on socio-economic theories addressing the nexus of self-regulating markets, transnational risk regulation and human rights. It advances the idea that the process of the socialisation of economic actors can only be understood in the context of global economic and social interdependencies. From this conceptual platform, the paper critically evaluates the processes through which potentially beneficial economic processes can be embedded in social relations for a chance of protection and enhancement of human rights and (economic) justice.

Jessica Lawrence, Legal Studies, Vrije Universiteit Amsterdam
Trade Law in the *Dialectic of Enlightenment*

Adorno and Horkheimer's *Dialectic of Enlightenment* begins with the dire statement that "Enlightenment, understood in the widest sense as the advance of thought, has always aimed at liberating human beings from fear and installing them as masters. Yet the wholly enlightened earth is radiant with triumphant calamity." In this statement Adorno and Horkheimer set up their central inquiry: how can modernity's promise of liberation coexist with its practices of domination? This paper seeks to examine the WTO and EU regulation of trade in goods through the lens of Adorno and Horkheimer. In particular, it will examine the ways in which these regimes, which legally and conceptually sever tradable goods from the circumstances of their creation, (re)inscribe the distinction between product and process, rational and irrational, object and subject, and in doing so eliminate consideration of the relational and the embodied consequences of international trade. It will take as an example the ongoing WTO dispute between the EU and Canada over the trade in seal products, inquiring into the way that the trade regime makes possible and impossible the articulation of harm.

Jeffrey Kleeger, Legal Studies, Florida Gulf Coast University
Mutual reciprocity generates justice in takings to transfer

This paper explores how critical radical reflection on economic development takings may help develop better public policy on social welfare. The confrontation between radical thinking and law reveals justice is an ideal type whose image is used to legitimize intentional choices causing harm. Takings offer a means to institutionalize the privatization of relations of production. They promise improvements in social life when efficiency gains are effectuated by mutual reciprocity (justice and takings) in the social reproduction of material life

Political activity directs economic exchange toward enhancing social capital. The greater part of negativity associated with state-authorized expropriation is dissipated by the promise of countervailing social welfare gains due to acts facilitating higher, better and more productive land uses. Many will agree social interests may advance through machinations of the "invisible hand". This metaphor explains how economic efficiency improves productivity which promotes the public interest. Mutual reciprocity works much the same. Market failure justifies state intervention in production regimes to restore functionality. Enclosure is a remedy for market failure imposed to improve productivity by forcefully placing land into the hands of individuals better able to extract surplus. The result of taking to transfer is to enhance social reproduction by improving exchange relations thereby furthering the public good.

The state promotes efficiency gains (social utility) but in the process it masks the reality of the inequity of taking to transfer (sacrificing less efficient interests) by marketing a false consciousness of justice (compensation). A post-Marxist view of the capitalist mode of production and a post-Weberian critique of rationalism (applied in critical legal thinking) reveals weaknesses in a thesis claiming altruism for improving social welfare. It is more likely that takings release favored interests to pursue self-interested acts of capital accumulation. If these machinations enhance the social welfare it is more likely due to the unintended consequence of self-interest than sentiments of altruism.

Enclosure is not equitable by any means but there is some equity in paying just compensation to victims of takings. The privatization of constitutional principles in the context of land use and the relationship between social theory, economy, law and politics indicate fundamental rights central to resolving conflicting competitive interests are sacrificed to generate a net social surplus. The fencing of land simultaneously creates and destroys rights. Altering law to legitimize such results accomplishes the same.

The cultural conception of sacred value in land is a relic of the past reflecting a social life held together by religion for survival. The feudal (communal) system of social control nurtured interdependent thought and action but eroded in response to the individualism borne of progress in science and technology. Communal management and sustainable use evolved into the profanity of capitalistic self-interest which demanded private property ownership. Enclosure is thus a form of privatization to facilitate capital accumulation.

What changed is technology and industrial modernity had evolved. The argument that market outcomes serve the common good (public purpose) is a euphemism for a reality of mystification of preference for elites. Takings combine due process and equal protection principles. They derive legitimacy by proclaiming they are to promote the public good. Constitutional norms emerge in the transformation of law establishing binding rules on social governance. Change is instituted to set economic forces free for productive development. The tension between individual and social well-being is resolved by fusing diverse interests together. Mutual reciprocity holds them fast.

Social conflict demands structural coupling of law and politics to maximize rationality. The conversion of property rights by taking and transfer is but one example. Takings are applied political force to achieve organizational and technological efficiency. The goal is to improve social life and the market test of the efficiency is freedom. Where the economic system allocates resources to higher valued uses and benefits accrue to the private actors who drive capital accumulation activity, the illusion of choice becomes reality. Radical legal thinking helps discern how an inequitable result is just. While radical thinking requires a legal obligation to justice, if a little injustice is capable of generating a large amount of social gain (sufficient in degree to compensate for loss) then it may logically be argued that justice is served.

**Bikramaditya Ghosh, W.B. High Court and
Karmendra Singh, Supreme Court of India**

Directors' duties in India: Lessons from the UK Companies Act, 2006

The paper examines the legal status of directors in India. It looks at their fiduciary relationship as agents to the company as principal, the absence of fiduciary duty owed by directors to shareholders, the scope of directors' duty of care, and the position of directors as trustees. Also, it considers directors' criminal liability for breach of trust under the Indian Penal Code 1860 s.405 and it discusses the codification of directors' duties by the U.K. Companies Act 2006.

PANEL 2

James L. Hunt, Law and Business, Mercer University

Contested Spaces: Pluralist Legal Boundaries in the U.S. State of Georgia, 1700-2000

A general assumption of modern instruction in law is that there is one sovereign source of law within a given geographical space. Law students are generally taught "the" law within a particular jurisdiction. However, the historical basis for such an assumption is lacking. For much of world history multiple legal systems -- pluralist legal relations -- have operated within the same space. Occasionally these diverse legal relationships have been officially recognized and formalized, as in nations with "federal" governments. But in most other circumstances they have simply coexisted, with different degrees of toleration, conflict, and competition. As legal history scholars have increasingly recognized, legal systems, in effect, have had complex, ever shifting, and densely overlapping boundaries. This paper surveys the relationships and interactions between different conceptions of law in the American state of Georgia, with a historical focus on the years 1700 to 2000. The work is part of a broader study of the history of law in Georgia, and especially in its largest city, Atlanta.

In the U.S. legal history traditionally focuses on the reception of English common law and its development in the nineteenth century in formal institutions (courts, legislatures, the bar, and universities) as the evolution of something ultimately singular and "American." Yet this "winners" perspective ignores the fundamentally pluralistic and contentious heritage of American law. A geographical approach, such as the one taken in this paper, provides a different and critical perspective. As von Benda-Beckmann, von Benda-Beckmann, and Griffiths (2009) have recently stated, "[L]egal pluralism deserves a central position in the analysis of law in space. For it highlights the ways in which legal constructions of space in state and international law, religious and traditional law operate within their own spatial claims for validity."

The U.S. state of Georgia, like other places with colonial experiences, is a useful locale from which to explore this kind of analysis. Beginning in the 18th century, Georgia was a place of meeting (and confrontation) between European colonial powers (France, Spain, and Great Britain), native groups (especially Creek and Cherokee peoples, whose ancestors had lived there for more than 10,000 years), and Africans brought to the state as slaves, especially after 1750.

The principal argument of the paper is that Georgia's subsequent legal history and development is best characterized as an (both successful and unsuccessful) effort to reduce or eliminate legal pluralism and autonomy within the state's boundaries. Despite the colonial triumph of Great Britain over its Catholic European competitors by the 1760s, the nineteenth century was marked by continued conflict between white Georgians seeking independence from Great Britain, native peoples and European immigrants, African Americans and whites, as well as a bloody civil war in which the American national military invaded the state and redefined local property rights over slaves. A range of spatial consequences followed these conflicts, including the forced migration of the native peoples to the western U.S. and the construction of white supremacy and racial "spaces" through segregation in the late nineteenth century. This paper primarily uses property law to explore these themes. By so doing it highlights the pluralistic nature of law in Georgia and notes the often violent efforts of different groups to control the legal environment over time and space. The overall purpose of the paper is to show the usefulness of a spatial approach to the long-term legal development of one American state.

Uday Shankar, Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology Kharagpur

Social and Economic Rights: Restructuring the Debate on Human Rights

Inhabitants of a country fight against imperialism to enjoy freedom from want and fear. Independence movement generally witnesses success when it is backed with values inherent and ingrained in the society which is struggling to liberate from colonial ruler. Independence earned through cherished values of the society rather than based on borrowed principle of other jurisdiction lays down the foundation of cohesive structure. These values are instrumental in building the framework of governance of newly born country. Countries which got independence after World War II framed their constitutions under the influence of colonial system ignoring the values of the society.

India, one of those countries, was also influenced by the western philosophy of democracy, rights and justice. The creation of the institutions under the Constitution reflected the color and pattern of imperial ruler. The recognition of rights of individual was based upon dichotomy of human rights. Rights were emphasized as tool of limiting state power than as an instrument of empowering people. The regimented approach on human rights discourse resulted into categorization of rights in terms of implementation and obligations. Social and economic rights which are closer to Indian values are placed to the inferior positions in comparison to civil and political rights which are nearer to the Western philosophy. The ignorance of social and economic rights resulted into denial of opportunities to marginalized group, socially or otherwise. Individualistic approach of civil and political rights presented a justification for the legislative, executive and judicial action of State. This justification denigrates the importance of social and economic rights in addressing the scourge of poverty.

The paper attempts to analyze the misplaced importance to civil and political rights on the cost of social and economic rights. The attempts will be based on selective study of functioning of the Legislature, Executive and Judiciary that how the philosophy-in-practice has failed to fulfil the aspirations and hopes of millions of this Country. In conclusion, it strengthens the philosophy of Critical Legal Studies that the existing notion of Law and Justice is not bringing happiness and prosperity to those for whom the Constitution and Human Rights matter the most.

Olga Jurasz, Law and Criminology, Aberystwyth University
**Why not let the ladies in first? Gender, war, asylum and the [fe]male discourse of
refugee law**

The international system of refugee protection remains largely gender-blind. In particular, the current mechanism heavily disadvantages women, who are persecuted for gender-related reasons. Furthermore, the aspect of gender-related persecution ('GRP') becomes especially critical in times of armed conflict, when the political significance of women's gender makes them particularly vulnerable and exposed to the risk of serious harm. The main area of concern is wartime sexual and gender-based violence, which victimises women in a severe, disproportionate and long-term manner, usually leading to further violations of their rights and perpetuation of gender discrimination.

Nevertheless, immigration systems pay lip service to international developments (e.g. UNHCR, Guidelines on International Protection: Gender-Related Persecution), which call for a gender-inclusive approach in refugee determination procedures. As a result, the current legal status quo doubly victimises women: first, as victims of gender-related persecution in armed conflict, and secondly as victims of serious human rights violations, whose critical situation is ignored by both their own State and subsequently by other States, who fail to acknowledge the specificity of women asylum seekers' claims.

However, developments in refugee law at the European Union level may offer some hope for women, who seek to flee armed conflict on grounds of GRP. In 2004, the European Union issued its Qualification Directive (Council Directive 2004/83/EC), which sets "minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted". As such, it brings together the classical refugee status (1951 Convention) and subsidiary, or complementary, protection status.

Drawing on examples of recent developments in field of refugee law, in particular the Qualification Directive, this paper discusses the ways (including mechanisms outside the 1951 Convention), in which the refugee law discourse could evolve in order to respond more adequately to the situation of women escaping GRP in armed conflict or in its aftermath.

Aaron F. Simmons, Earlham College
The Guise of Citizenship

This paper seeks to explore the fallibility of citizenship within the context of the address to the subject by the officer of the law. It does this through a number of theorists including Michel Foucault, Judith Butler, and Louis Althusser, and through examples from U.S./Mexico immigration. The question for this paper is the generally assumed "obviousness" of citizenship which disappears within the context of immigration and liminal spaces of citizenship. The process of immigration and of being an immigrant is inherently a space where citizenship is always in question. Since 9/11 even naturally born, normalized citizens in the U.S. exist in this same space because of legal initiatives such as the Patriot Act. In this sense the more we interrogate citizenship the more it falls apart. In light of this why is citizenship considered to be an inherent right? And when it is not a god given right is there a citizenship that exists in a space outside the law? The space that is interrogated in this paper is *not* when citizenship goes un-questioned and remains static, but precisely when it comes into question, within the moment of the address from the law. In the moment when the police officer hails you, when your citizenship matter most, this is the moment when it falls apart, and indeed through this process the law itself fails.

PANEL 3

Martin Škop, Faculty of Law, Masaryk University,

Can Art be a New Space for Radical Legal Thinking?

Facing the development of technology, new sources of power in society, enlarging the area affected by law and proliferation of law, there rises a need to find new possibilities for studying the law. The radical thinking about law invoked changes that have helped to understand law and disclose the main power relations conserved by legal system. While the technological changes (development of new technologies, development of new means of communication etc.) can move the law beyond the creativity of people, the art can offer more human picture of law. Logic, economic or, mathematic principles are the fashionable methods of understanding the law. They offer an illusion of objective and rational picture of law make possible the cases deciding which is free of arbitrary creativity of deciding subject. Fifty years ago warned against this approach Theodor W. Adorno who studied the consequences of such “technologisation” and “rationalization” of law (and other means in society). Although these methods are popular, to understand them is not so easy; probably only a small part of the people using these methods really understands their principles. Ironically this situation can evoke democratization process in law: everyone will operate within popular pictures of this methodology. But as a consequence the objectivity and the “reason” will disappear. I suppose that more human approach to law offers literature or generally the art because it reflects the deciding process as the process of a creation rather than system of the logical consequences.

Reading the work of Pierre Bourdieu we can find some interesting consequences for studying the law, especially if we want to adopt some methods adopted in of creation and interpretation used in art. But in Bourdieu’s view the possibilities to adopt art in law are limited. We should not forget that law should be instrumental for every member of society. For every human being there must be a space in legal system to protect her space of freedom. But understanding the law (or art) needs some competencies. These competencies are not shared generally within society – not everyone understands the law; not everyone understands the art. Knowledge about these topics is not generally shared in society and therefore to promote art in law by critical thinking leads to emphasizing the role of capitals (Bourdieu) in society. The paper presented should answer questions connected to application of art in describing and understanding the law such as: What are the limits of using an art in law? Can application of art in law lead to preservation of current status-quo?

**Annabelle Mooney, Media, Culture and Language, Roehampton
The Book of Blood: Looking at Human Rights with the Body**

In this paper, a new mode for reading human rights is suggested -- ‘corporeal mentality’. This hermeneutic mode asks the reader to approach texts with empathy and to always keep in sight blood, bodies and the violent history that led to the contemporary human rights regime. The corporeal mentality focuses on what people have in common: blood. Thus, human rights texts should be seen as written in blood. This is not difficult to imagine as such a text exists. Leibniz Lab’s Book of Blood: Human Writes is an artwork that writes the Universal Declaration of Human Rights in human blood. Taking inspiration from this work reminds us of the law’s creative potential. Indeed, the corporeal mentality is compatible with legal traditions of interpretation and with customary international law.

**Merima Bruncevic, Law, Gothenburg University
Access to Art as Knowledge: The Legal Concept of Cultural Commons**

This paper aims to discuss the spaces in which artworks, understood as knowledge sources, can be accessed, communicated and shared. The concept of a cultural commons is firstly placed within a historical context of “public spaces” and their evolution. In *The Structural Transformation of the Public Sphere* Jürgen Habermas wrote “the polis [...] which was common (koine) to the free citizens [and which] was constituted in discussion (lexis), [...]”

could also assume the forms of consultation and of sitting in the court of law, as well as in common action (praxis)”¹ For him, both lexis and praxis thus constituted the public spaces. The role of the public space was to enable communication and sharing of knowledge, opinions and ideas.

Focusing on the *communication* of artworks as knowledge sources the paper then goes on to problematise the concept of “public space” and to discuss the concept of the commons instead, and the role it can play when access to art is studied. Adopting some of Jean-Luc Nancy’s arguments in *Being Singular Plural* the paper arrives at his concept of “being-in-common” and places the communication of artworks in the context of Nancy’s writings.

The aim of the paper is to discuss what role the law plays in the constitution of the cultural commons. If constituted and regulated legally what might be the benefit of it (e.g. unfettered access, unrestricted communication and sharing of knowledge, information, ideas) and what might the drawbacks be (e.g. commercial losses, colonising of an inherently open and dynamic space by legal regulation, and so forth)?

PANEL 4

James Parker, Melbourne Law School Acoustic Jurisprudence in the ‘Age of Technology’

As a community of jurists we have become deaf to law and to the problem of the acoustic. This is so despite two obvious facts. First, that as a material practice law is nothing if not sonorous. Second, that substantively it is constantly being posed questions which are directly concerned with sound and audition

Between September 2006 and December 2008 Rwandan musician and popular figure Simon Bikindi stood trial before the International Criminal Tribunal for Rwanda, accused of inciting genocide with his songs and speech. My doctoral research uses this case as a lens through which to begin to re-think the law-sound relation: to imagine, that is, a specifically *acoustic jurisprudence*. Such a task obviously takes in a number of aspects, but because this workshop takes the ‘age of technology’ as one of its central themes, it is to that question that this paper addresses itself.

Substantively, the charges against Bikindi were shot through with technology at virtually every level because insofar as either his songs or speech were a cause for concern at all, they were subject to transduction. First and foremost, it was radio airplay, amplified live performances and the sale and informal distribution of audio-cassettes that had meant that Bikindi’s music was such a large part of the Rwandan soundscape in the run up to and during 1994’s genocide.

Formally, audio technologies were ever-present at trial too. Bikindi’s music was played to the Tribunal regularly on tape and CD. Witnesses were required to speak and sing into microphones as everyone else tuned in on one of four audio-channels available to them on their headsets. Because the ICTR operates in three official languages, every word spoken at trial was being translated by interpreters listening in an adjacent room. And each audio-channel was supplemented by an accompanying so-called ‘instantaneous transcription’ which appeared on screens in front of each participant.

In this paper I take up two questions then. First, how did the Tribunal *understand* audio technologies for the purposes of judgment? What was its theory of techno-acoustics? Second, how did technology itself feature in relation to the soundscape at trial? How was it *used* and with what effects? What kinds of ‘audile technique’² is it necessary to develop in order to participate effectively in an international criminal tribunal in the ‘age of technology’?

¹ Jürgen Habermas: *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. Thomas Burger with the assistance of Fredrick Lawrence, Cambridge, MA: Polity, MIT Press, (originally published in German in 1962), (1992).

² Jonathan Sterne, *The Audible Past: Cultural Origins of Sound Reproduction* (2005).

Leif Dahlberg, Kungliga Tekniska Hogskolan, Stockholm
**The uses and effects of video technology on social interaction and
legal space in the Swedish court of appeal**

The paper studies the use of audio-visual media in contemporary Swedish courtroom praxis and how this affects social interaction and the constitution of legal space. The background to the study is the increasing use of digital audio-visual media in legal courts in Western countries during the last decennium, and in particular the new rules for court procedure introduced in Sweden in November 2008. An important innovation in Sweden is that interrogations and testimonies in the lower level court proceeding now are video recorded and, in case of a appeal trial, are re-played in the appellate court. The paper is based on an ethnographic study of the court of appeal in Stockholm conducted in the fall 2010. The study focuses on the uses of video recorded testimony in the Stockholm court of appeal (Svea hovratt) to present evidence and build a case. The paper also focuses on the effects of audio-visual media in the constitution of legal space in the courtroom.

Luigi Russi, International University College of Turin

The Evil Technology Hypothesis: A Radical Ecological Reading of International Law

This paper seeks to provide a radical ecological reading of international law by articulating the "evil technology hypothesis." It sets off by providing some background on the current "radical" debate on international law, focusing on Martti Koskenniemi's "indeterminacy thesi" and Anthony Anghie's depiction of international law as a technology. This is followed by the discussion of the possibility that technology-far from being a form amenable to different uses-actually be "evil" in itself, by privileging modes of relation to the human and other-than-human world that systematically favour objectification of the "other" and an ethos of domination over people and the planet. The ability of technology to channel energies into narrow pursuits is presented as a possible factor behind the unsustainable growth of civilisation, understood as a pattern of human living that (based on elevation of the reproductive interest of a certain human community above the possibility for other human and other-than-human communities equally to renew themselves) is incapable of being supported by the landbase and requires trade and extraction of resources. These insights are then applied in the field of international law. In this respect-just like any technology international law creates a distance between its "actors" and its "acted on," promoting a posture of social engineering that objectifies and often vilifies the "other." Secondly, international law, by being what international lawyers by default turn to, actually prevents the possibility to question the scale of the economy and the system of international law that supports it: regardless of whether one agrees with the "evil technology hypothesis," the chance should not be passed up to engage in a serious and open discussion about whether human activity on the planet should happen on such a grand scale as to even require a system of international law to be in place.

PANEL 5

Basak Ertür, Birkbeck School of Law

The Ergenekon Trial: A Conspiracy to End all Conspiracies?

On 12 June 2007, following an anonymous tip, the Turkish police found a cache of hand-grenades in a home in a largely working-class district in Istanbul. This initial discovery led to subsequent operations allegedly uncovering an 'armed terrorist organisation' called Ergenekon. As of June 2011, there have been close to thirty waves of police operations in total, leading to the arrest of hundreds of people and the discovery of several other secret

arsenals providing sufficient weaponry to outfit a small army. This massive and seemingly endless operation has resulted in what is perhaps the most controversial and high-profile trial of the past few decades in Turkey with approximately three hundred defendants including retired and active senior and junior military officials, police chiefs, civil leaders, ultranationalist militants, politicians, bureaucrats, journalists, academics, lawyers, businessmen, mafia bosses and small-time gangsters.

In the English-language press, the Ergenekon trial is often referred to as a ‘conspiracy trial’. While the designation is technically incorrect (the common law doctrine of conspiracy does not exist as such in Turkish law), ‘conspiracy’ nevertheless does prove to be a central theme: On the one hand, state prosecutors handling the trial claim that it adjudicates the Turkish ‘deep state’, a secret and illegitimate power structure that not only operates conspiratorially, but also has conventionally been occasion for much conspiracy theorising. On the other hand, the trial’s critics deem it to be a government conspiracy against the secularist elite whose ranks include the Turkish military. Meanwhile, evidence used against the defendants include their own correspondences which reveal particularly acute cases of conspiracy theorising and conspiratorial thinking. This paper is an attempt to untangle the Ergenekon process by analysing how the notion of conspiracy operates within it, discussing to what extent conspiratorial perception contaminates the law even in a legal system that has no conspiracy doctrine, and exploring questions of methodology in approaching this particularly confusing amalgam of facts and fictions of conspiracy.

Jung-Jin OH, Pusan National University, South Korea

There was nobody before the Law at Yong-San: Toward a relocation of law’s position

In the modern state everybody has right to stand equally before the law. But that is a just a principle; in the real world, people are not equal before the law. Sometimes people have trouble standing. Law sees people but often does not recognize them and so they become nobody. One such example was at Yong-San in Korea on 20th January in 2009, where dwellers were demonstrating against the demolishing of the Namildang building. The demonstrators asked for their re-allocation and stayed on watch against forceful suppression. It was not the police but the Special Corps who raided them in the middle of the night shooting water artillery and showing off their power. In the process someone shouted, “Somebody is here!” but the cry was ignored. In the end, five of demonstrators and one member of the Corps were dead. After that, in a series of court trials, all the causes and responsibilities for the dead were placed on to the demonstrators, including the deceased themselves. The demonstrators were found guilty and sentenced while the police officers and administrators were found not accountable. People watching the trial said: “This is not even a trial.”

If law does not look at us, what should and can we do? Should we try again to get the approval of the law, or in being seen as nobody before the law, can we rather make a new location for the law’s position? My paper will propose a method for this relocation.

Jaafar Aksikas, Columbia College Chicago,

What's to Be Done? Social Change and the Dialectics of Constitutional Reform in the Arab World

I am proposing a paper on the recent Arab revolts and constitutional change in the Middle East. In the light of recent revolts and protests in Tunisia, Egypt, Bahrain, Libya, and Yemen (and in many other parts in the region as well), many people--legal scholars and practitioners, activists, politicians, journalists, intellectuals--are now calling for new, more liberal and progressive constitutions. This raises an interesting question for the critical legal studies scholar. Probably the most central assumption in Critical Legal Studies (CLS) is that law and legal texts (in this case constitutions) do not really guarantee much at the level of actual (results) of legal practices. In this critical legal and cultural studies intervention, I would like to argue that law is indeterminate and that constitutions are not self-sufficient texts, but are rather located within a more complex social, cultural, political, and economic context and that it is this larger context that constitutes, even determines, the legal

practitioner's interpretation of the constitutional legal text. In the end, I argue here that it is this larger context that needs to be transformed, and not just the legal structures and texts.

**Konstantinos Gousis (Aristotle University of Thessaloniki) and
Dimitris Poullos (Welsh School of Architecture, Cardiff)
Capital, Law and Morality in post-IMF Greece: The case of Urban Governance and
“Fast-Track” legislation**

This paper aims to examine the current political and social conjuncture in Greece, suggesting that the ‘structural reforms’ introduced by the government in terms of its agreements with the EU, the ECB, and the IMF have so important legal consequences that signify a turning point in the whole period after the fall of the military Junta and the regime change in 1974, known in recent Greek history as “metapolitefsi”. It is then a real challenge for radical thought in its confrontation with law to be engaged with the new situation, which is not a Greek exception but an experiment, whose uncertain outcome will affect the balance of forces internationally, at least, all over Europe.

Our main reference is Evgeny Pashukanis’ General Theory of Law and Marxism, along with Michael Head’s critical reappraisal, and specifically Pashukanis’ thesis that in time of crisis the “constitutional state” is transformed into a disembodied shadow, revealing the nature of state power as the organized power of one class over the other. The paper is then positioned to a critical engagement with the government’s far – reaching inroads into basic democratic rights and draws conclusions about its motto “Legal means Ethical” in a context of increased legitimization of radical forms of protest, disobedience and a new sense of solidarity among the mass movements.

In this context the paper is going to examine the recent Urban Governance and the “Fast-Track” development legislation. These are two contemporary examples of how the central state reforms the “legal arsenal”, in order to transform but also coordinate the development process through the institutionalization of forms of governance, that go beyond any democratic foundation and control. The development of major urban areas in Greek Cities (eg. Elliniko) is the target of these reforms. Also it’s the transformation of the aims of contemporary legal thinking that tries to find legitimate ways to achieve capital’s efficacy.

Stream: Thou art a scholar: speak to it: The question of Derrida in the 21st Century

Stream convenors: Anastasia Tataryn, Dan Matthews, Chris Lloyd

Derrida ends *Specters of Marx* with an injunction for the 'scholar' of the future: let the ghost speak, let the revenant return, learn how to live by keeping up company with the specter. In the 'age of technology' where human interaction is increasingly facilitated by a series of spectral media and where that spectrality has enabled political empowerment and intervention, we return to Derrida to let his texts speak in contemporary contexts. What would be the result of a return to Derrida's work? What would consist in answering Derrida's spectral call? How can we let Derrida's ghost speak in the 21st Century?

This stream seeks to engage in the work of Derrida and deconstruction in order to answer his call at a time when we find a new generation of scholars grappling with deconstruction in a 'post-deconstructive era' (Catherine Malabou, *Plasticity at the Dusk of Writing*). We aim to set Derrida's work in contemporary contexts through deconstructing 21st century events, commenting on technology and the spectral, and questioning how the 'democracy to come' might influence new radical forms of resistance. Current questions of

legal theory are once again taking to task problems of sovereignty (world financial regulation), democracy (North African uprisings), the regulation of the public/private (Wikileaks), and the increasing use of *techne* within both the realms of *le politique* and *la politique* (biometrics and 'Facebook revolutions'). How can we as legal scholars of Derrida's future revisit his work in ways that allow it to speak to us again, as a revenant itself? How can we realise deconstruction's potential and let 'the impossible release the possible' (Richard Beardsworth, *Derrida & the Political*) in the face of today's legal and political challenges?

We welcome papers that explore the relevance of Derrida's work in today's legal and political climate and, more broadly, papers that return in innovative and critical ways to the themes and concepts that preoccupy much of Derrida's later work. We hope to explore new theoretical avenues by questioning afresh Derridian notions of *sovereignty*, *the politics of friendship*, *hospitality*, *cosmopolitanism*, *the archive*, *the democracy to come*, and *justice as an aporia*.

PANEL 1: 'There are more things in heaven and earth.'

Anastasia Tataryn, Birkbeck School of Law

Abandoning Hospitality or Hospitality as Abandon: asking the question of the scholar

In *Spectres of Marx* (1994), Derrida challenges us to think of the arrivant as justice – remaining at the point of deconstruction, and thus posing the very question of justice. In *Of Hospitality* (2000) and *On Cosmopolitanism and Forgiveness* (2001), he suggests that the asylum-seeker, the immigrant, the foreigner, embodies this point of deconstruction. I am interested in pursuing this specifically in regards to the labour migrant, whose presence in the country of employment (work and residence) is “temporary” and precarious.

I seek to respond to Derrida's challenge to take this question of the potential, the possibility of justice a step further. In this paper, I re-visit the concept put forth by Derrida, and used as a potential “hope” or “answer” by many scholars addressing migration issues and the state: Hospitality.

Given the transgressive (transgressing definition) and fluid nature of this demographic of irregular migrant labourers, what does hospitality mean? According to Derrida, hospitality must be both a conditional and unconditional – it must speak to both the demands of a closed identity, a home, and a community order, as well as extend itself towards the foreigner in spite of their foreign-ness and no matter what the demand. I question whether this is a useful concept when addressing an/other that is within, that is participating vitally in the labour market but as a non-citizen labourer distinct from citizens purportedly “able” to articulate rights. Can the aporia of hospitality do enough to *impel* us towards political and legal change, or must we cease to entertain the need for hospitality to be conditional and rather turn to *inoperative hospitality* to radically re-imagine our cities and lives as not being built off the labour of those existing in the shadow of the law? If so, what would this entail – is it a movement away from Derridean hospitality, or rather a firmer engagement with what Derrida has offered.

Can Öztaş, Birkbeck College School of Law

Caché en Mal d'Archive

'We are en mal d'archive: in need of archives... to be en mal d'archive... is to burn with a passion. It is never to rest, interminably, from searching for the archive right where it slips away. It is to run after the archive, even if there is too much of it, right where something in it anarchives itself. It is to have a compulsive, repetitive and nostalgic desire for the archive, an irrepressible desire to return to the origin, a homesickness, a nostalgia for the return to the most archaic place of absolute commencement... now the principle of the internal division of the Freudian gesture, and thus of the Freudian concept of the archive, is that at the moment when psychoanalysis formalises the conditions of archive fever and of the archive itself, it repeats the very thing it resists or which it makes its object' (*Archive Fever*).

In *Archive Fever* (1995), Derrida reveals how the archive, a constructed body of past holds also the key for the future and how it is related to the constituted unified body of a society or a nation. Derrida argues that the fever archive creates is caused by the fact that the archive being external holds commencement and commandment (through the rituals of memory, motives and desired functions of authorised forgetting and remembering) and shapes the inside which is the memory of the individual. Concealment, secrecy and rejection of the heterogeneous are principles favoured by a politics of the archive as memory control. The political control of memory and history is connected to the selection and control of archives. The individuals, societies and nations react to the rituals of archives and the memory it creates by repetitive symptoms caused by the fact of remembering the forgotten (in Freud's understanding of psychoanalysis) and this causes a constant fever.

Modern law is an institution of sovereignty, the language and means of power. Its history is strictly controlled and its procedures always regulated. While the record of cases, decisions and interpretations stretches back a few centuries, this is an archive that retains and reproduces dominant ideas about how a society should be ruled. Throughout legal history and process the 'other' enters the untouchable records of the law as disenfranchised and land-deprived sub-humans crowding the terra nullius or as victims of approved segregation (based on race or gender) or illegal refugees. And every hard earned victory for the 'other' hides an extensive history of defeat, thus forgotten.

By paying attention to the cause of our repetitive symptoms related to efforts of remembering the forgotten exposed in the legal archives of international law cases related to recent European history, my paper aims to bring forward the hidden drive of the archive fever, and how the legal archive becomes more than legal.

**Toomas Kotkas, Research Department of the Social Insurance Institution of Finland
Solidarity before Justice or Justice before Solidarity: Undecidability of the European Union**

During the last few years, solidarity has become one of the most topical issues in the research on the European Union. The impetus for this development has been numerous new EU documents – such as the Lisbon Treaty, the EU Charter of Fundamental Rights, several Commission Communications, etc. – in which the term has increasingly been used. On the one hand, in the EU-scholarship views have been presented according to which solidarity could finally make up as a real counterbalance to market freedoms. On the other hand, more skeptical views have also been presented. It has been argued, among other things, that the recognition of individual social rights by the ECJ does not necessarily advance solidarity because these rights are, in the end, based on individualism and market logic.

This paper discusses the relationship between the concepts of solidarity and justice in the context of the EU. It will be shown through a deconstructive reading of official EU-documents how the relationship between these two concepts is in constant flux. Sometimes, the documents imply that justice precedes solidarity as the EU Commission Communication (2007) 726 “Opportunities, access and solidarity: towards a new social vision for 21st century Europe” does. Sometimes, however, solidarity is seen as a prerequisite for justice like the Article 67 of the Treaty on the Functioning of the European Union suggests. Finally, it will also be argued that this kind of undecidability is characteristic not only to EU but to any polity trying to legitimize its own existence.

PANEL 2: “There is nothing either good or bad, but thinking makes it so.”

**Long Bui, University of California Riverside
Vietnam War as Hauntology: Reading the Indeterminate Archive of History and Geopolitics**

In 1971, the New York Times from an anonymous source published the “Pentagon Papers,” a top-secret U.S. Department of Defense controversial study recounting U.S. involvement in the Vietnam War. The illegally-leaked papers caused a stir for not only the American public

but the newly elected president Nixon who sought to “Vietnamize” the war and pull American troops from Indochina. Forty years later, on the anniversary of this leak June 13, 1971, The New York Times published all portions of these secret documents. Released at a moment when the United States and Obama is embroiled with efforts at “Vietnamization” in Afghanistan among other places, how does the ghost of Vietnam re-emerge as a trace of geopolitics and history that fails to disappear with time but rather constantly stages a return to enact an ongoing archive of violence?

Where the Vietnam War remains the most controversial war in modern U.S. history, it stands to make sense of this floating signifier again within post-9/11 extra-legal forms of warfare and social engagement. In the age of wikileaks, when phantom digital processes inform the virtual/viral nature of popular as well as governmental knowledge-production, how do we make sense of our current historical moment as it speaks to law and illegality, secrecy and publicity, archiving and encryption, temporality and memory?

In this essay, I employ Derrida’s term “hauntology” in *Specters of Marx* to speak about the Vietnam War in the 21st century as a the of spectral archive in the age of terror and electronic mediation. Derrida uses this term to speak of the relevance of Marx and his language of ghosts, specters and haunting in the “post”-Cold War capitalist era. As such, Derrida and his work remains highly useful to decipher the ongoing discourse of “Vietnam” that the philosopher described in the “Ends of Man” as marking the “appearance” of freedom and democracy that requires “interminable analysis.”

Chris Lloyd, Birkbeck School of Law

‘It adds only to replace’: The Fetish of Immunity in Law; The Fetish of Law in Immunity

This paper seeks to investigate what will be termed as the ‘fetishisation of immunity’ in law, whereby law can be seen to incorporate into its *dispositifs* understandings of immunity which are beyond itself (sovereign states, sovereign bodies, ontology over *hauntology*, sexual practices, definite *ipseities*, and so forth). In analysing what we can see to be ‘post-modern’ paradoxes of immunisation, the paper seeks to evaluate how deconstruction illuminates the problems which are created by the fetish of immunity.

Here, the paper seeks to unearth the immunity in law. The paper then also seeks to trace (in a Foucaultian genealogical style), the metaphor of law in immunology (*immunitas*) to its fictional origin. Here, the paper seeks to unearth the (fetishised) law in immunity. To do this, the work of Alfred I. Tauber will be used (*The Immune Self: Theory or Metaphor?*, Cambridge University Press, 1994). The purpose of the paper here is then to *re-trace* the place of law in immunology through to the presence of immunity in law, in order that the contamination of these disciplines can be illustrated as a *happening* of deconstruction. Finally, the paper will consider what these malleable categories may mean for our post-deconstructive age.

This paper will utilise the work of Donna J. Haraway, Roberto Esposito, Jean-Luc Nancy, and Jacques Derrida in order to explore this tangled web of legal doctrine, science, immunology and philosophy.

Erdem Ertürk, Birkbeck School of Law

The horizon of nonknowledge: Between 9/11 and the killing of bin Laden

In his analysis of the events of September 11, Derrida comments that the threat against America carries a significant risk for the world order which depends “largely on the solidity and reliability, on the credit, of American power.” However, according to Derrida, with the events of September 11, it is “the system of interpretation, the axiomatic, logic, rhetoric, concepts and evaluations that are supposed to allow one to comprehend and to explain precisely something like ‘September 11’” that come under a *more radical* threat. Thus, Derrida describes the ‘terror’ of September 11 as “the horizon of nonknowledge, the nonhorizon of knowledge – the powerlessness to comprehend, recognize, cognize, identify, name, describe, foresee.”

The purpose of this paper is to revisit Derrida's description of 'terror' in light of the killing of Osama bin Laden by the United States' special operations forces. A decade after the September 11 attacks, the paper proposes to evaluate 'the horizon of nonknowledge' by taking into account the consequences of the event of the killing.

What does the manner of killing bin Laden entail for the autoimmunitary logic? How does the abundant information constantly appearing in the media about Al Qaida's structure, members, and the leadership race after bin Laden relate to the horizon of nonknowledge? To what extent a probable diminishing of the horizon of nonknowledge would affect Derrida's call in the aftermath of September 11 for "a [philosophical] response that calls into question, at the most fundamental level, the most deep-seated conceptual presuppositions in philosophical discourse" – especially the discourse on 'war,' 'terror,' 'international law' and 'sovereignty'?

PANEL 3: "Doubt thou the stars are fire".

Dan Matthews, Birkbeck School of Law

The Call of the *à venir*: The Derridian Performative and the Foundation of the Interim Transitional National Committee for Libya

The paper looks at Derrida's account of the law's foundational moment in his essay "Declarations of Independence" and suggest a reading of this text that accounts for Derrida's claim that deconstruction calls for an ethical and political response. The paper will argue that Derrida's account of language, particularly his novel interpretation of J. L. Austin's theory of performative speech acts, is key to understanding this demand for political and ethical action. The paper will read Derrida's analysis of the signatures appended to the American Declaration of Independence alongside his approach to language, particularly his understanding of the formal structure of the signature. I elaborate on the claim that the foundational act of signature necessarily implies a call for countersignature and argue that this interminable play opens the founding signature to the *à venir*. I suggest that this inscription of the *à venir* in the foundational act is not disconnected from the political and ethical implications of Derrida's work.

I approach Derrida's texts in formal terms, arguing that the moment that founds an institution, a constitution or the law itself conforms to Derrida's account of performative utterances as described in his most celebrated book on language, *Limited Inc.* I suggest that this formal interpretation of Derrida's work informs deconstruction's political and ethical demands. In particular I want to elaborate upon and assess the claim made in J. Hillis Miller's most recent work on Derrida (*For Derrida*), that the Derridian performative calls to the "wholly other" and thus gestures towards the *à venir*.

The events of the so-called "Arab Spring" in North Africa prompt this return to Derrida's engagement with the question of the foundational moment. The formal reading of Derrida's work will be set against the founding statement of the Interim Transitional National Committee in Libya (TNC). I want to sketch out how the declaration made by the TNC on 5th March 2011 illustrates Derrida's take the nature of the foundational act and evidences my reading of the Derridian "performative." Though not a declaration of independence and not a declarative act that founds the law as such, I want to draw out how Derrida's reading of the Declaration of Independence can inform our understanding of the TNC's foundational statement. Furthermore, I want to give a sense of how a formal reading of the *à venir*'s inscription into a foundational moment of this sort can shed light on Derrida's infamous and problematic notion of "the democracy to come."

Fred Cowell, Birkbeck School of Law/ Commonwealth Human Rights Initiative
Derrida and the legitimacy of violent African revolutionary movements

In his 1987 essay "The Laws of Reflection Nelson Mandela in Admiration" Derrida paid tribute to Mandela, who was at the time of writing the world's longest serving political prisoner and argued that what made him a figure to be admired was that he reflected a "higher

law". The capacity of Mandela to 'reflect' shaped Derrida's defence of the violent tactics that the ANC had adopted later in the piece and Derrida outlined a theory of legitimate violence. In the "the force of law" Derrida argues that the violence that founds the law is in and of itself alegal, a formula that makes subsequent judgements as to the legitimacy of violence problematic. In fact in and after the force of law Derrida offers little by way of a framework for evaluating the legitimacy of acts of individual incidents of foundational violence.

It is this "legitimacy gap" in these writings is what this paper seeks to engage with, in the context of contemporary coups and violent secessionist movements in Africa. The problem that African supranational African legal institutions have faced, a problem that has escalated in the aftermath of the 'Arab Spring', is assessing where and when violent revolutionary movements become 'legitimate' and found legal regimes that can be engaged with in a legal sense. The focus on Africa, it will be argued, is due to the complex post colonial context of African statehood's birth which rendered the whole concept of legitimate government, the political classes and even the geographical structure of the state itself, questionable, making violent transfers of power more likely.

The criticism of Derrida advanced by Christopher Wise, that many Derrida's theoretical conclusions implicitly ignore African culture and politics, will be explored before engaging in an analysis of the problematic conceptions of legitimate violence in Derrida's work.

Riccardo Baldissone, Curtin University

Before the Law, Our Doorkeeper Stands: Rethinking the Western Postclassical Legal Framework

Before the Law, Kafka sets a doorkeeper, who is not to be overcome – and in case, the very doorkeeper evokes a series of other doors and more powerful guardians. If the encounter with Law only happens at the interface with its borders, radical thought should no longer construct the doorkeeper as deferring the access to Law. Radical legal scholars could instead underline that the presence of Law (and its ideal double Justice) produces the strength of the doorkeeper no less than actual juridical practice does. I argue that both the apologetic and the critical constructions of such double presence weaken those who might, perhaps, have the power to modify legal practices. Instead of following the ontotheological path of Western thought and asking - albeit critically - what is Law (and Justice), I suggest focusing on past and present juridical frameworks, and I invite radical scholars to intervene into the processes of legal subjectivation by decentring juridical concepts. In particular, I propose a reconsideration of the Western postclassical legal framework by comparing it with Roman law. As an example, I examine the Roman law of contracts, which regulates by analogy specific deals without recurring to an ideal form of contract.

Stream: Time as Technology: Law? Justice? Atomic Fission?

Stream convenor: Stacy Douglas

The relevance of time and temporality seems particularly pertinent for critical legal scholars interested in themes of memory, trauma, forgiveness, and post/colonialism. However, time also plays an important role in cases that are not overtly concerned with "history" as such. For example, ideals of justice are often oriented according to a particular time in both case law, and constitutional drafting. Indeed, the "present" and the "future" frequently represent the "time" of justice for lawyers, academics, and claimants. How does this notion of time shape what is at stake in conceiving of justice? How might attention to time alter how we imagine

otherwise? This stream will explore the potentialities of thinking (or unthinking) through temporality and whether such thinking offers insights for critical legal scholarship.

Walter Benjamin famously took a critique of history as "progress" as his intellectual aim. Benjamin rejected a notion of time as propelled forward by a chronological series of events, unfolding as a neat and tidy teleological narrative. Benjamin's project was a resistance to the forces of narratives that hinder the potentialities of the past, present, and future; a resistance to the strongest narcotic of the nineteenth century - the authoritative weight of chronological history (Benjamin 1999: 863). As such, Benjamin posits a radical re-conception of how we think of history and indeed what history is. What do these insights mean for critical legal conceptions of 'justice'? How do such challenges come to bear on law and critical legal thinking? How do legal practices and legal philosophy also function as smoothing and cohering technologies that deny the potentiality of subjects, objects, and ultimately the political? Though taking "time" as a backdrop, this stream also proposes to explore "explosions" more broadly.

For example, Benjamin's political project resonated strongly with Surrealism. In his work he claimed that the Surrealist Andre Breton redeemed the ephemeral by "causing the mighty forces of 'atmosphere' that lie hidden in these things to explode" (Benjamin 1979: 148). For Benjamin, Surrealism offered a methodology of seeing and thinking that had the potential to shock and interrupt. It was Benjamin's aim, like the project of atomic fission, to blast open latent energies, releasing them from the restrictive temporality that they were suffocated by. In a similar register, Giorgio Agamben explores the persistence of that which cannot be remembered. Like Benjamin, he excavates the potentialities of that which exceeds our categories of knowledge and understanding, and draws our attention to the force of the unseen presence of that which has been forgotten (Agamben 2005: 40).

How do the concepts of "blasting", "exploding", and "atomic fission" speak to the work of critical legal scholars? Contributors are asked to reflect on "explosions" (or lack thereof) as well as their potentialities, dangers, and capacities to "backfire". Papers may consider, but are not limited to, the role of law and legal scholarship in relation to: time and temporality, forgetfulness, history, schematism and/or periodization, time and the possibility of knowledge, non-knowledge, law as ruin/s/ed, as well as technologies of 'interruption' that may be found in law, art practices (e.g. Surrealism), literature and film.

References:

- Agamben, Giorgio. 2005. *The Time that Remains*. Stanford, California; Stanford California Press.
- Benjamin, Walter. 1999. *The Arcades Project*. Trans. Howard Eiland and Kevin McLoughlin. London: Belknap Press.
- "Surrealism". 1979. *One-way Street and Other Writings*. Trans. Edmund Jephcot and Kingsley Shorter. London: Verso.

PANEL 1: "Making Non/sense With Time: Law, Coherence, History and Music."

Emilia Mickiewicz, Newcastle Law School Temporality and Legal Coherence

Formalism asserts that law derives its coherence from within, establishing and sustaining itself as an autonomous source of authority. Against the formalist view, this paper seeks to understand law as a contingent, temporarily conditioned phenomenon that becomes intelligible only when placed against the wider background of a shared human practice. In the first part of this paper, Weinrib's conception of legal formalism will be investigated. In this paper both Wittgenstein's aspects perception theory and Heidegger's hermeneutics will be used to develop the analysis of formalism. The upshot of the analysis will be an alternative, exploratory understanding of legal coherence. In the second part of the paper relevant negligence case law will be employed to demonstrate the exploratory approach to legal coherence. It will be argued that the reasons that drive judicial decisions are often plural and

establishing their validity requires reference to what H.L.A. Hart called the *internal point of view*. It is from the perspective of a participant in a unique, temporarily conditioned society that one proceeds to assess the plural considerations relevant to the resolution of legal disputes. Likewise, it is from this standpoint that judges arrange them in a normatively defensible manner.

Hannah Franzki, Birkbeck Law School

Historical Time in (International) Criminal Law: Of Continuity and Rupture

The paper inquires, inspired by Benjamin's philosophy of history, into the notion of historical time underlying (international) criminal law. Norms, such as *crimes against humanity* or *genocide*, have acquired the status of *ius cogens* in this field. In the legal obligation to prosecute past human rights violations, a particular assumption about the connection of past, present and future – also rehearsed in a global transitional justice discourse – has materialised: a just future society, it is argued, can only be constructed when past injustices are dealt with. The present state of justice is defined over the past state of injustice, the present political regime through the execution of the past one.

On the basis of an analysis of trials in Argentina that deal with human rights abuses committed during the last military dictatorship, the paper looks at the ways in which historical time is construed in criminal trials in order to make some form of historical justice plausible. I suggest that as part of a national prosecution strategy, trials rely on a homogeneous, continuous notion of historical time, which allows for the past injustice to be addressed via legal judgement, suggesting a clear break with the successor regime. At the same time, international criminal law is used in strategical litigation to challenge the “past-ness” of what has been attributed to the past. This can be seen when in Argentina, for example, societal actors seek to establish criminal liability of corporations for human rights violations during the dictatorship in order to draw attention to corporate complicity with the regime and its consequences for current socio-economic relations. These strategies provoke questions such as whether criminal law can help to condemn the economic project of the dictatorship, rescue the political project of those who disappeared, and thereby write the past into present political struggles.

Richard Bowyer, Birkbeck School of Law

Reading Law in Double-time: Plato, Pater, Schoenberg, Joyce

In Plato's *Republic*, Book IV, the State lays its foundations in music; State-music seizes the souls of its people, and effects laws, constitutions and community. Non-State music is lawlessness. Between Platonic thought and modernism, the written word enjoys a certain eminence. Modernism arrives and the question of music and its relationship with law is taken up again, but in distinctly modernist ways. This paper explores the relationship between law and music in Plato, before swiftly moving on to discuss how modernists—notably Joyce, but also Schoenberg—take up the question of law and music once more. This latter part of the paper discusses how, in modernism, law is effected through certain musical forms and techniques which are principally concerned with memory, motif and repetition.

Victoria Ridler, Birkbeck Law School

Meaning and Time in the Idea of Justice

Recent literature has seen an emphasis on the role of sense, affect, sentiment and the emotions in relation to politics and ethics – sometimes as a prescriptive counter to the dominance that the role of *reason* has held in modern normative theory. In this paper I seek to challenge the way in which sense and reason have been juxtaposed by exploring the idea of meaning and time in our conceptions justice.

PANEL 2: “Law/memory/place.”

Louise Amar, Kent Law School

The Pieds-Noirs: the New Hussars of the Postcolonial French Republic?

Since its revolution in 1789, France has proclaimed its adherence to Republicanism. Hence, after a century of hesitation, it became from 1870 the dominant political ideology in France including during its colonial era. However, since 2005 different movements such as the “Indigenous of the Republic” are challenging within the postcolonial debate the mainstream French republican narratives and France’s inability to integrate the colonial episode in its collective representation and in the Republic’s past.

These disturbances in the linear account of French Republicanism have paradoxically been accompanied by the resurgence in political spheres of those who had been excluded from the national discourse since the end of French decolonization, the Pieds-Noirs. The French settlers of Algeria, who came back to the metropolis when Algeria became independent, have been since 1951 a vexed issue. In fact, once the pioneers of the republican civilizing mission, they became at decolonization the agents of what had become a failed “benevolent civilization” (Bancel and Blanchard 2006). However, since France is questioning its colonial past, it is eager to resurrect the republican myth of the “*Grande France*” (Bancel 2006) through the Pieds-Noirs. The Pieds-Noirs seem to be used by the French political arena to counter the dissident interpretations of the Republic’s postcolonial past and present, by emphasising the positive role of French colonisation and the *grandeur* of its intentions.

This paper will look at how the Pieds-Noirs are becoming the new hussars of the postcolonial French Republic, that is, how they have been used to reignite the republican ideal in the current postcolonial debate and how the Republic is regenerating itself in the symbolic carried by the Pieds-Noirs. It will ask what it means for France to retreat in a republican rhetoric developed during colonization and what role Republicanism plays in the French postcolonial debate. It will specifically focus on the analysis of French Republicanism developed by Jean-Fabien Spitz and the postcolonial critique of Edward Said and Frantz Fanon.

Emilios Christodoulidis, University of Glasgow School of Law

Social rights jurisprudence in South Africa: the case of an inflated paradigm

Post-apartheid South Africa stands at the crossroads of the ‘political’ and the ‘social’ in a way that calls us to put to question the usual ways in which the two, and their *separateness*, is conceptualised. According to one dominant explanation the reasons for South Africa’s current woes lie in the fact that despite its efforts the government never provided the kind of stability that would realise the levels of capital investment foreseen and necessary. At present, State provision of housing, water, sanitation, electricity, healthcare and education are currently widely considered inferior or more expensive than during apartheid as a result of macro-economic strategies put in place during the Kempton Park negotiations intended to bind the post-apartheid regime to a neo-liberal structural adjustment programme that it never showed the will or the power to resist. My own concern in this paper is with the severed link between the first set of conditions fulfilled (the political) with the denial of the second set (the social). What, might one ask, does this elevation of the *political* moment mean above the realities of *social* devastation wrought by a post-apartheid neoliberal structural adjustment programme that the ANC government committed the continent’s most developed state to from the very start? How does it come about that in two decades, during which huge mass political and syndicalist forces have been assembled, there has never arisen the kind of self-confident mass-power which could control its leaders and avoid the transmutation of the Alliance’s proclaimed overall socialist goals into investment-driven narratives of growth?

Stewart Motha, Kent Law School
Un-homely Files: Law, Violence, and Memory

“I am a lawyer working and living in my father’s house. My father was also a well-known lawyer in Jaffna [city in northern Sri Lanka]. My work involves dealing with documents and deeds, and for that reason I was unable to move out of Jaffna during the time of the civil war. For me home means bundles of documents and files” (Interview No. 69) This is an extract from an interview conducted by the artist Thamothearampillai Shanaathanan as part of his forthcoming work *The Incomplete Thombu* (2011). A ‘thombu’ is a public register of land which dates back to the Portuguese period of colonial rule in Sri Lanka (1506-1638). Shanaathanan’s art is a profound intervention going well beyond the recovery of memories about land, home, displacement, and the violence and destruction of the thirty-year civil war in Sri Lanka. Shanaathanan’s drawings respond to the memories of home and displacement recounted to him by Tamil-speaking civilians. *The Incomplete Thombu* also contains reproductions by displaced Tamils of floor plans created from memory of built structures such as court-yard houses, temples, bunkers, and farm buildings. Shanaathanan has created a terminal interruption of how law orders memory. Home may well be contained in bundles of documents and files as the tenacious lawyer from Jaffna tells us – but not just the kind found in a lawyer or notary’s office. At stake is the possibility of recuperating loss and representing displacement. What is the relationship between the ‘thing’ lost and the event of its memorialisation in art, narrative, or performance?

In this paper I juxtapose the re-imagining of the file contained in Shanaathanan’s art with Cornelia Vismann’s *Files: Law and Media Technology* (2008). Vismann gives an account of the centrality of files for the emergence of truth, the state, and the construction of the subject. Files have been an essential part of creating a public, constituting an archive, or founding a tradition. What concerns me in this paper is what exceeds and disrupts such publics, truths, states, national boundaries, records, and legal orders. What new forms of truth, conscious and unconscious regimes of memory, structure the production of homes.

PANEL 3: The Time of Constitutionalism: A Roundtable Discussion

Stacy Douglas, Kent Law School
Stewart Motha, Kent Law School
Maria Carolina Olarte, Birkbeck Law School
Illan Wall, Oxford Brookes Law School

The ‘time of constitutionalism’ is a theme that brings together many questions regarding notions of temporality, law, community, and the meaning of ‘the political’. From post-revolutionary questions about constitutions (or not) in the Maghreb, to resisting the discourse of progress in transformative constitutionalism in Columbia, this roundtable will explore these themes from diverse geographical and theoretical places. The discussion will begin with a brief introduction from each panelist, followed by a larger conversation between those on and off the panel. Join us for this deliberation on the role of law and temporality in the imagination of political communities.

Stream: The Fetishisation of Man by the Machine

Stream convenors: Julia J. A. Shaw and Hilary J. Shaw

From a classical perspective, early societies worshipped divinities, pursued grand narratives and ideas, then moved on to fetishising machines and this stage has arguably been succeeded by the fetishisation of man by the machine. In this age of late modernity, the machine transfers its functions onto man, as man has become the object of the perverse desire of the machine and the consummation of its desire to function at all costs. Once transcendent, man becomes exorbitate, reduced to the position of a satellite orbiting his own technologies; both socially real and at the same time a fictitious hybrid. The replacement of an organic representation of the world with an inorganic artificial worldview and consequent realisation of the possibility of syncretisation, means the body is no longer the locus of 'self' as the self is effectively isolated in a hallucinatory realm. We inhabit a new and unprecedented disembodied technosocial landscape in which the very conditions for human action have been transformed. Furthermore recent advances in neuro-cybernetic research move beyond the symbolic by actual presentation of the unrepresentable, as neurological brain implants which bypass sensory organs provide direct and complete sensory experience of a virtual body within a virtual environment. This stream invites papers on any aspect of the implications for regulation and justice consequent upon the reimagining of the individual and the idea of society as an aspiration of the machine.

PANEL

Chris Lloyd, Birkbeck School of Law

This is what “the death of God” has always meant’: The Heart of Jean-Luc Nancy

The proposed paper has as its focus the relationship between Jean-Luc Nancy and Jacques Derrida on the subject of the body. As is well known, in 1991 Nancy underwent a heart transplant and subsequently wrote about this traumatic experience in his text ‘L’Intrus.’ His thoughts in that paper accord with what we see in his other work on the body which was being written around the same time, *Corpus*, as he expounds Martin Heidegger’s ontological theory of *Mitsein* throughout both pieces. However what is perhaps less well known is how Derrida then paid homage to these works in his monograph dedicated to Nancy, *On Touching – Jean-Luc Nancy*. As a result of this response to Nancy’s work we find an interaction between the two thinkers which engenders a rich camaraderie on the topic of the body, and specifically, the body which is ‘...the illness and the medicine’ (*Corpus*, Fordham 2008) as Nancy proclaims his to be. This is due to Derrida’s deconstructive logic speaking to both Nancy’s appropriation of Heidegger’s ‘being-with,’ and the logic of the *pharmakon* which Derrida himself had been writing on thirty years earlier (‘Plato’s Pharmacy’).

The paper hence seeks to illustrate how Nancy’s and Derrida’s logic would challenge the equation of ‘I = I,’ in favour of the deconstructed equation of ‘I ≠ I’ (when one is talking of the body). Further, it is to be argued that this is, as Nancy asserts, what Friedrich Nietzsche’s “death of God” has always meant; that the *pharmakon* logic illustrates that man has always been man *and* the machine, as the *ipse* which would claim itself to be other than machine is necessarily contaminated by the artifice and the *techne* of the machine. What subsequently appears is a supplement (or a fetish) which has always been in place, and which will always remain: such is the ontological truth of ‘being-with.

Hillary J. Shaw, Harper Adams University College, Shropshire

Machines, meaning and meals: a semiotic analysis of consumption and food technologies

Lévi-Strauss used food preparation, cooking from the raw article, as a metaphor for the way in which the unexplicated imagery of nature is culturally produced so that it is able function as part of a symbolic system. Food can be used as commercial subterfuge for example as a persuasive treat for a client in the form of a business lunch; to signal a social occasion such as a birthday; or as a gift; or even to predict the future, by the use of tealeaves or the fortune cookie. The introduction by various food technologies of fast food from both the cheap early incarnations to the fine dining experience offered by upmarket supermarket chains has subverted the traditional idea of food as love, as passion, a flavoursome feast to be enjoyed with one's family and friends or prepared by one's lover. More space in food outlets is taken up by food which is pre-cooked, pre-packaged, and almost pre-digested. This evolutionary moment has underlined the functionality of food as fuel, food as favour and food as an arbitrary ideal of a mechanised society. The increasing alienation in many modern Western countries from food as signalling a family meal, a traditional Sunday lunch, a celebration, towards food-as-functional is part of the reconstitution of man as machine. My paper explores the semiotic importance of the role of food and the uniquely human rituals of consumption against the increasing dominance of food technologies and the subversion of one of our last important human pleasures.

Julia J.A. Shaw, De Montfort University, Leicester

A view from the rabbit hole: monsters, myths and the possibility of justice

Advances in information technology have removed all physical barriers to communication, colonising the global landscape. New attachments have been forged within the pervasive and all-consuming replacement technoculture whilst the traditional territories of social interaction are dislocated, reducing human exchange to a residue. Whilst a material grounding in earlier forms of embodied social experience remains a necessary prerequisite of interaction with virtual systems, it is suggested that the virtual world is in the process of transforming the real world or, at least, subordinating it as slave to the machine world. The epoch of the machine is both modern miracle and monster. Once controllable and controlled as our companion species, the technomonitor now creates the narrative which constructs and controls us. The emergence of multiple monsters is acknowledged to be the defining characteristic of modernity as the widespread displacement of the object world value of human activity and consciousness, by emergent technologies, has created an imbalance of power between humans and the post-human.

According to Baudrillard, we are on the critical threshold of universal instantaneity of information, intensifying the process of information generation to the point of producing a phase inversion. This would give us an experimental facsimile of the catastrophic end of the universe, as we are propelled even further from the initial conditions of the real world. The idea of a world directed by human laws and made great by human initiatives, endeavours and passions is obsolescent. The new technologies are too often competitive with, rather than complimentary to, the existing norms of the real world and are not readily subject to legal or moral censure; and so the idealised cyber-community as simulacrum assumes an antagonistic relationship with the real.

This technomonitor has no past, no future, no city, no people, only an endless present. As a trans-human or post-human concept, the monster is understood in terms of its transcendence; existing beyond the divergent equivalence of human categories of difference such as race, gender, class, and outside of traditional binary oppositions, e.g., good /bad, love/hate, rational/irrational. Nonetheless, the monster is capable of evoking terror or pity, as in the case of Mary Shelley's Frankenstein where the monster is a consequence of the desire of his creator and becomes monstrous only once left to his own devices; at once terrifying and an appropriate object of pity, as abandoned and unloved. In this case there is the possibility of ethical ambiguity in the monster as antihero or antiheroine. This paper seeks to disclose the phenomenological basis of existing tensions in the monstrous man/machine relationship and

the possibility of law and justice in these transhuman, antihuman and often inhuman end times.

Tara Mulqueen, Birkbeck School of Law
Disrupting Links: Gender, Identity and Security

With the introduction of two new security programs at U.S. airports – the Secure Flight Program, which requires travelers to provide their name, date of birth and gender when booking a ticket, and Advanced Imaging Technology (body scanners) – the fetishisation of man by the machine assumes a stark and overt presence. Yet it is not simply through the verification of identity and scanning of the physical body that fetishisation occurs. It is through the reliance on particular pieces of data about or belonging to an individual as stable over time and representative of a whole and fixed "identity," that man is fetishised by the machine. Our analysis centers on a specific situation: the confusion that erupts at the airport when TSA officials perceive a conflict between the gender marked on one's papers, the image of one's body produced by a machine, and/or an individual's perceived gender presentation, as it occurs in the transgender experience at the airport. One part of an individual's identity, in this case gender, is taken to not only be permanent and securely linked to other identity documents, but also to provide an accurate way of determining who an individual is or is not. In this paper, we will examine how gender figures into and potentially disrupts the link between identity verification and security and discuss the implications of this securitization of gender as it occurs at the airport for legal conceptions of gender and the assumed continuity of identity over time.

Stream: Introducing law: perspectives and methods
Stream convenor: Ubaldus de Vries

Most law degree courses start with one or more introductory course to law. It is within these courses that students get acquainted with law, where it comes from, what it does and how a legal system is organised and structured. Usually, the focus is on positive law – the existing law of the particular jurisdiction in which the student is studying law. It means that introduction to law courses are really introduction to current Dutch positive law, English positive law, etc.

This stream seeks to explore the ideas behind such courses. It does so on the presumption that in these courses the tone is (or can be/should be) set as regards the academic attitude we expect from students: an inquisitive, critical perspective on law, what it is and what it does. What are the perspectives taken on law in these courses and what methods are explored in teaching students to study law inquisitively and critically? Is it by contextualising law through social theory (the age of technology in modernity, post-modernity, liquid modernity, second modernity?), through emphasising a philosophical basis of law and how law pertains to power structures and the political? Is there a shared critical *pedagogical* ideology within critical legal studies and if so how could it be formulated?

PANEL1

Juan M. Amaya-Castro, Vrije Universiteit, Amsterdam
Legal Simulations & Critical Thinking in Law School

Both in its political economic embeddedness, as through the particular demographic that law schools attract, it is always a challenge to include critical theoretical insights when teaching 'regular' 'positive law' courses. Institutional imperatives often make it very hard to include

theoretical readings alongside doctrinal ones, and in the classroom itself, philosophical perspectives are often persistently interpellated as external to the legal education that is expected to prepare students for the legal profession. Critical legal teaching often involves developing a number of strategies to consistently frame a topic in such ways that it allows for connections to theoretical debates, it also involves a degree of sublimation or the use of stealth tactics to enhance reflexivity, thereby hopefully creating spaces for critical engagement with the legal profession. As an intensely embedded practical activity, teaching law can be about not allowing doctrine to completely drown out critical theoretical insights.

This paper analyzes and reflects on one particular pedagogical tool that has become increasingly popular in law schools in general, and when teaching international law courses in particular: the simulation. Whether it is through moot courts or through a model UN, or a moot parliament, or through simulating negotiations, it seems ironic that amidst the increasingly technological embeddedness of legal education, there is still such an embrace of the age old 'let's pretend we're lawyers'-pedagogy. Nevertheless, significant resources and human capital are invested in this type of pedagogy. At face value this development seems to be a further mode of marginalization and exclusion for (critical) legal theory, since it turns law into a purely practical activity around a set of techniques. However, as this paper argues, this mode of introducing law offers critical legal scholars with a number of opportunities to open up spaces for critical engagement with law.

Henrique Carvalho, King's College London
Paradise Lost: Terrorist, Responsibility and the Anxiety of Liberty

Terrorism poses many challenges to contemporary conceptions of law and criminal justice, comprehended as they are within orthodox perspectives of legal, social and political theory. Classical conceptions of responsibility and individualism seem unable (or, more importantly, unwilling) to come to terms with what their own worldviews have defined as radical notions of deviance and exclusion. At the core of this tension between Western notions of subjectivity and the teeming conditions of social complexity in an increasingly dynamic and relational world, a tradition of theoretical thought which represses and preserves this very tension can be identified, turning any normative legal approach to resolve it into a vicious circle that merely perpetuates it.

The present paper aims to investigate the political and anthropological roots of the aforementioned tradition of positive, liberal thought in order to identify not only the roots of deviance and exclusion in legal thought, but mainly why these issues remain deeply problematic under contemporary social and political conditions. Such endeavour will be pursued through three steps. First, the paper will delineate theories of criminal law and criminal justice which attempt to describe current social conditions and deal with its main issues and problems, focussing here on recent developments on the criminal justice system regarding terrorist offences. The argument will then examine how these theories relate to current sociological explorations of concepts and matters involving risk, security and global society. A parallel between these two perspectives will be drawn in order to highlight common threads and issues regarding an abstract idealisation both of individuals and of the community in which they live, which seems to permeate the way in which problems of deviance are dealt with by legal theory. Finally, the paper will suggest the need to revisit the political philosophy behind legal theory, drawing attention to what is perhaps a prevalent and largely ignored symptom behind the issues that plague the contemporary systems of criminal justice: the anxiety of liberty.

This analysis of legal theory will then be used to highlight problematic tendencies in legal thought and legal education. These are tendencies not only to emphasise or focus on specific social and philosophical paradigms, but especially to omit ontological and epistemological premises that are arguably sustained by the present legal order. Legal thought thus examined presents us with a paradox, a conflict between the liberal principles it claims to preserve and the anxiety generated by the undesirable premises it represses under contemporary social and political conditions.

**Anandna Handa, Sonashi Malhan & Saloni Patel,
NALSAR University of Law, Hyderabad**

**The Positioning of Positive Law in the First Year Classroom: Understanding the
Alternative Methodology of Teaching Law and Analytical Jurisprudence**

Law schools manage to do some things well, but they do some things poorly or not at all. While law schools help students acquire some of the essential skills and knowledge required for law practice, most law schools are not committed to preparing students for becoming socially relevant citizens. It runs under a presumption that positive law and analytical thinking are the only things law schools are supposed to teach as a part of legal methods. However, law schools can do much better.

Hence, this paper aims to look at the role of teaching law in the alternative system apart from the positive aspects of law. The first part of the paper shall look at how the mind frame of the law student has to be diverted towards legal and analytical thinking while using tools apart from the positivist school. The second part shall look at adopting a comparative approach of analysing and comprehending the importance of other schools of thought being embedded within the teaching system. The final two parts shall be dedicated towards looking at the importance of social context in the law school learning of jurisprudence and a cumulative need of thinking approaches. The need for adopting clinical methodologies to understand the perspectives of law and legal framework shall be concluded with.

PANEL 2 Introducing law: perspectives and methods: A Roundtable Discussion.

Chair: Bald de Vries

Juan M. Amaya-Castro (Vrije Universiteit, Amsterdam)

Henrique Carvalho (King's College London)

Aurora Voiculescu (Westminster)

Thanos Zartaloudis (Birkbeck)

This 'open workshop' is meant to discuss ideas and thoughts without necessarily presenting a paper. The idea would be that these ideas and thoughts form the basis of a paper for CLC 2012 and a book afterwards on (critical) legal education. Please let me know whether you are interested to attend the workshop, or just appear at its scheduled time. So, all are welcome.

Stream: The Power of Life's Excess: Contesting sovereignty from sites that do not exist

Stream convenors: Andreja Zevnik and Erzsebet Strausz

The stream proposes to engage with the contemporary possibilities of resistance to everything that is or that can be associated with sovereignty, power or domination (sovereign power, sovereign practices, sovereign language, sovereign thought and the law of the sovereign) from the places, states and sites of what cannot be represented, known, seen, or governed. In other words, we attempt to think *the excess, the beyond, the Real, the virtual, jouissance, the other* of sovereign power: instances that cannot be thought within what offers itself to be known and recognized as 'politics', 'law', 'language' or 'science'.

The forms of resistance this stream aims to discuss are not only material or an active stand against the power of the law and the power of politics; equally, the stream aims to identify

and explore how these sovereign practices shape the way we think of the world, of the self and of politics as such. It not only wishes to challenge the materiality of sovereign power, but also its implicit ways of working - the thought, the thought process and the cognition of who 'we' as 'humans' are, how 'we' look for sites of resistance that may not only *counter* sovereign practices but *encounter* them in alternative ways, perhaps through transgression, transformation but maybe also through affirmation, co-sensation or love.

The stream invites contributions that inquire into the life and powers of sites, places, objects, emotions, and practices that *do not exist* in the eyes of sovereignty, or that pay no attention to sovereignty and its material and discursive workings. It calls for contributions that either challenge or excavate the workings of sovereign power, or propose an alternative from *whatever* place, in *whichever* form. Central - but not exclusive - to the stream are the following themes: post-human politics of the body, desire or the excess; the life of texts after the death of the author; the critique of the irrelevant contemporary; the thresholds of the visual and the articulable; or the powers of the unclassifiable who cannot be governed; forms of political existence that escape domination; ideas and possibilities of the world and community transgressing contemporary ethico-normative narratives and limits, as well as the becoming and emergence of such communities as sights of struggle and political activism. From *whatever* place, *whatever* space or *whichever* theoretical-philosophical inclination, the papers at this stream address the possibility of the becoming of a new world - as a collage of political, legal, ethical, poetical and artistic practices.

PANEL 1

Awol K. Allo, Glasgow School of Law

Law and Performativity: the Political Trial as a Performative Action

In *How to Do Things with Words*, John L. Austin formulated categories of linguistic utterances he termed performatives and constatives. In the classic Austinian formulation, performatives are categories of utterances that perform, create, transform or produce the things they speak about. In the Austinian schematic, the value of performative speech acts lie not in their truth value, but on their iterative constitution of truth. In the last three decades, performativity has angled away from its grammatical moment and served as a critical tool for intellectual/political projects Eve Sedgwick identifies as antiessentialist. In Judith Butler, performativity is inverted and theorized in a Foucauldian and/or Derridean gesture to challenge the unity of the liberal subject. Invoking Nietzsche's claim that "there is no 'being' behind doing, acting, becoming; . . . the doing itself is everything"; Butler launches her own gendered and discursive corollary: "there is no gender identity behind the expressions of gender; that identity is performatively constituted by the very 'expressions' that are said to be its results".

In this paper, I want to use this Butlerian insight to problematize law's constitutive exclusion/inclusion. Working through the concept of "legal personality", I want to extend the view that law is constitutive of the identity/reality it ostensibly refers to—that it performatively invents the "we" it governs; interpellating us as "subjects" to its jurisdiction—to the contested realm of the political trial. Drawing on the critical offshoot of performativity, I will try to investigate the emancipatory potential of the moment of the "political trial". First, conceiving the political trial as a site of a "micro-politics of resistance", I argue that a performative defense strategy activates politics at a site where politics is juridically deactivated. Second, insofar as law's gate-keeping³ functions irretrievably exclude the possibility of communication and understanding between the state and resistant subjectivities—the subaltern who uses the courtroom as a site of resistance and visibility, I

³ By gate-keeping, I am referring to legal discourses that frame and determine the boundaries of what can be lawfully contested, said, seen, written, and etc.

argue that any possibility of communication requires a performative disruption of gate-keeping discourses and an inventive re-creation of new subjects.

Marcel Van Der Stroom, Law and Criminology, Aberystwyth

The Mismythification of Law; The Semiotics of the Political Abuse of Legal Terms

It is often said that law is language and in many senses this is true, in the least in the sense that law presents itself as text. Even when we talk about customary law, which by its very nature is unwritten, it cannot be discussed without the use of words and text or in its basic designation, signs. In its capacity as language, we find that linguistic theories apply to law as much as it would to any other language. This paper will focus on the theory of mythification as introduced by Barthes, being a second-level Saussurean signification, and its application to law. It will especially look at the way legal terminology is used in everyday language, particularly in politics. When deconstructing this use of basic legal terms such as murder, responsibility, basic human rights and even more general terms such as wrong or just, these terms seem often to be used incorrectly. Having come to this conclusion, however, we will see that this could be the very purpose of this mythification. This author believes that we are faced with a new, third, level of signification, a mismythification, which facilitates the abuse of these terms for political reasons.

**Louis E. Wolcher, University of Washington School of Law
On Diversity**

“The same person has perceptions that, for all their differences, have the same object, which leads one to infer that there are different subjects contained within one and the same person.” Franz Kafka, *The Zürau Aphorisms* (1917-18).

In Middle English, the word *divers* meant “different, odd, wicked, and cruel.” The unpleasant connotation of this medieval word for diversity was fully in keeping with the concept’s Latin root, the adjective *diversus*, which signified “contrary, different, unlike, and separate.” Throughout most of Western history noticeable differences amongst members of the species *homo sapiens* generally have been interpreted as something fortunate for Us (our group) and unfortunate for Them (their group). Normatively speaking, the exclusion of Them from the sphere of justice was at the same time an exclusive inclusion of Us as the only proper subjects of legal and moral rights. One of Us might choose to treat one of Them with respect, but this would only be “a sort of justice in a metaphorical sense,” as Aristotle put it. The 1948 Universal Declaration of Human Rights was supposed to put an end to this way of thinking and dealing with Them. Now for the first time all people were supposed to be subjects of a limited kind of universal justice solely by virtue of the fact that they were human. Yet even the word “human” resonates with the sort of exclusive inclusion that the U.N. Declaration and all subsequent human rights declarations have aspired to overcome: the concept of “humanity,” in its original (Roman) form, was based on the juridical and moral distinction between *homo humanus* and *homo barbarus* – the civilized, educated and fully human man of rights (Us) as opposed to the uneducated, uncivilized, and therefore non-human barbarian (Them). That the identity called “Us” entails the logically subordinated status of the identity called “Them” is true even when all of humanity seems to be conceived universally in human rights declarations, for what the declarations take to be universal and what they take to be tolerable under the heading “respect for cultural diversity” is necessarily constructed from the point of view of some “Us” or other: compare Rawls’s concept of “decent hierarchical societies” with the Shari’ah’s protections of certain rights for non-Muslim “People of the Book.”

Nevertheless, it remains an existential truism that no object fits into its concept so completely that it leaves no remainder that could complicate or negate its own future development. This is because the achievement of unity is always the work of a particular moment that no amount of abstract theory can prolong. As Adorno said, the essential untruth

of all claims of identity is indicated by the simple fact that a concept does not exhaust the thing conceived. This essay treats the theme of cultural diversity within the discourse of universal human rights from what might be called an “ethically non-identitarian” point of view. It claims that the most difficult (yet most necessary) ethical task in the theory of human rights arises from the recognition that all enduring claims of identity (Us, Them, Me, You, This Right, That Right) are essentially false, or rather, are false in an ethically important way no matter how true and imperative they may seem to be in the heat of the moment. The thesis is that only a Me that considers itself not fully a self, and therefore not fully either an Us or a Them, is capable of bearing ethical witness to the inescapably tragic dimension of human rights.

PANEL 2

Andreja Zevnik, International Politics, Aberystwyth

‘Coming together’: love, singularity and the (im)possibility of political community

Political communities are commonly formed on the basis of nationality, culture, religion, race or any other distinctive feature that brings people together and provides grounds for identification and a construction of a common identity. This paper challenges the assumptions that community can ultimately exist only when and if a form of common identity is present, or individuals living in a community have a similar way of life. Instead, the paper explores the possibilities of ‘coming together’ of singularities; in other words, the paper explores the possibility of thinking a community that is formed by singularities who have no shared identity or common identification. Their only ‘commonality’ is their ‘coming together’ – existence in a particular space they temporarily share. The paper explores the possibility of an alternative community by engaging with the thought of Spinoza, Gilles Deleuze and Jacques Lacan. In particular, the paper explores how their conceptions of conatus, pure life and desire can contribute to the thinking of an alternative political community. The paper explores these ideas by referring to the situations and ‘communities’ formed between detainees in Guantanamo Bay detention centre.

Tom Frost, Newcastle Law School

The Hyper-Hermeneutic Gesture of a Subtle Revolution

Drawing upon the thought of Giorgio Agamben, this paper focuses upon the potential of a single act to change a political order. Agamben’s writings on the exception and the figure of whatever-being retain the possibility for a paradigmatic gesture that opens up a space for a politics not founded on a form of belonging grounded in a particular property or substance, such as national identity, race or religion.

To illustrate this event this paper turns to Agamben’s construction of whatever-being, the form-of-life that can challenge sovereign violence and the creation of *homo sacer*. The figure of whatever-being is constructed *hyper-hermeneutically*. This term is chosen deliberately. Agamben constructs whatever-being through singular paradigmatic examples. These examples serve as evidence for whatever-being’s existence as a pure singularity, unable to be reduced to a particular quality or substance. Such examples stand as gestures that allow future modes of belonging to separate themselves from oppressive foundations and dominating constructions of political existence. They do so through revealing the possibility of a new way of being that does not require a revolutionary ‘zero hour’ to be brought about.

Crucially, whatever-being retains a hermeneutic structure. This allows for political life to be founded on nothing else but whatever-being’s own way of being. Such a gesture and its potential for such a ‘subtle revolution’ is illustrated by the self-immolation of Tarek al-Tayyib Muhammad Bouazizi, which sparked a ‘Werther effect’ that contributed to the Tunisian Revolution and formed the catalyst for the Arab Spring movement.

PANEL 3

Ari Hirvonen, University of Helsinki Silence

According to Theodor Adorno, Paul Celan's poetry wishes to express the acute horror of the holocaust by remaining silent. A key word for Celan is *Schweigen*, "silence", "being silent". Simultaneously, Celan considers poetry as "pure wanting-to-say". A poem is "a message in a bottle, sent out in the – not always greatly hopeful – belief that somewhere and sometime it could wash up on land". Thus, silence cannot mean keeping one's mouth shut or turning away from language and signification. It is the precondition of saying. As Emmanuel Levinas says, Celan's poem is a wink and a sign to one's neighbour, a sign of nothing, a sign of complicity to nothing, a saying without a said that takes place at the moment of pure touching, contact, grasping, squeezing. Perhaps, we have to re-think Celan's poetry as a breath-turn, a caesura, a rhythmic turn, a reversal, a change of identity, which also inscribes a way of being-together. We could also think the silence the real beyond the symbolic order and language. Perhaps, Celan's poems offer themselves to a Lacanian reading. The real of silence, if there is anything like it, is something that is beyond the writing subjected to the law, something that do not exist in the eyes of the symbolic order and its various sovereigns. But what is this silence?

Soo Tian Lee, Birkbeck School of Law

Prescribed and Proscribed Pathways: Sovereign Theory and Praxis in Academia

The 'world' of academia, like most worlds, is governed by a form of sovereignty whereby certain forms of writing and practice are deemed 'sufficiently academic', 'rigorous' and 'sound' whereas other forms are judged to have fallen short of these standards and are hence not recognised as 'serious' enough to be admitted into this world. The existence of a paper, article or presentation within the academic milieu is contingent upon its adherence to customs practised by the various academic communities. To put it in another way, one can only bring an academic child into 'life' by playing by the rules. An example of a custom of content is quoting the right theorists (or the right publications by these theorists), while an example of a custom of form is reading (or not reading, as it may be) one's paper almost verbatim. Hence, to go against the collective sovereign within academia is to be excluded, and to be effectively banned from meaningful participation under the law of the academe.

In this paper I shall attempt to think of (and to experiment with) what it means to resist this sovereign within the world we inhabit, through practices such as writing in an informal and/ or polemical style, citing unorthodox sources, and/or blurring the lines between the academic paper and other forms such as artistic and dramaturgical presentations. By moving away from prescribed pathways and entering proscribed ones, my intention is to reflect upon what it means to be counter-academic, which may be distinguished from being anti-academic. And perhaps the apparent falling short may also be a form and a moment of excess.

stop! cried the ogre
before you may enter you
must pay a toll of
submission to the standards
of this world, or be denied
existence at all
(being qua being?).

Erzsébet Strausz, International Politics, Aberystwyth University
Truth, critique and writing: Foucault, every-day

The paper engages with the possibilities of critique of the contemporary Western episteme and the everyday practices of academic life at the juncture where the early and the late Foucault meet: the limit-attitude of critique and the ethics of truth-telling as *parrhēsia*. Setting these ethical and political vistas of how to relate to ourselves and others against what has become the practice of truth-writing in the process of academic knowledge production, the paper seeks to reflect upon the knowledge-politics of Foucault's philosophical project and what might be considered 'event' among and in opposition to the disciplining effects of the academic discipline. By looking at some of the micro-sites of writing and subjectivity, the questions of truth and desubjectivation will be rethought and re-enacted in relation to the academic everyday (including this conference).

Elisabetta Bertolino, Birkbeck School of Law
An account of oneself as a space of resistance

This paper is about resistance, dissidence and refusing at times the sovereign language and order provided by law and politics from a unique and singular space such as it is an account of oneself. Resistance is intended here in the sense of beginning, of point of beginning and making new beginnings continuously. One begins to become aware, then one speaks and acts, then one fails or succeeds and begins again. Resistance can be seen as this Arendtian ability to begin again and again. Such a mode of resistance springs primarily from one's voice as corporeal and thus from one's body and is then concretised in action. Hence, for resistance to happen, it appears to be necessary an awareness of one's voice, body and vulnerability.

Rights such as freedom of expression, association and assembly and the right to security and liberty as secured by law and politics persist in articulating resistance through sovereign knowledge, speech and action. This means that when one speaks and acts within the symbolic order, one continues to reproduce repetition of the sovereign.

This is precisely the main point of the paper. It is argued that resistance and dissidence are not possible without an account of oneself that can allow beginning new beginnings in speech and action. Both the Arendtian *who-ness* and the Cavarerian singularity and corporeality of the voice provide good examples of what an account of oneself can be. Such a unique account is stranger to the imposed subjectivity of law and politics where only the language of abstract equality and reasonable beliefs are regulatory perspectives of speech and action.

The paper reflects consequently on dissidence and resistance from a space that does not exist in the eyes of sovereignty or from a space considered as *superfluous*. Such a space consists of a singular ability to begin anew through awareness and a capacity to listen to oneself as a corporeal and material self when speaking and acting.

PANEL 4

Angus McDonald, Staffordshire School of Law
Succession and Secession of Sovereignities

It is in the nature of radical challenges to any status quo that the wish is to succeed: not only in the obvious sense of being triumphant, but specifically to be next, to displace and replace the dominant paradigm. So Critical Legal Theory wished to succeed Analytical Legal Philosophy and Socio-Legal Studies in the sense of being the next stage in the Hegelian dialectic, speaking teleologically. However, although Critical Legal Theory has succeeded in creating an alternative site for the discussion of law, it has not succeeded in causing these other perspectives to disappear. Instead a relativist plurality obtains, where each "school" holds its own conferences and discussions, defining their respective authorities and lineages. In such circumstances, succession has become instead secession: the Critical Legal theorists

simply jumped ship on the existing schools and established an alternative.

The same logic applies to Sovereignty. If alienated sovereignty is to be contested, it is not merely by opposing it, but by positing the retained sovereignty of alienated subjectivity and this self-sovereignty must at first aim to succeed "to the throne". If it fails to do so, it becomes another secession instead, which may still be a site of opposition to existent sovereignty, but in the name of non-existent (or better, not-yet-existent) sovereignty. But whether a plurality of different sovereignties can co-exist peacefully is a more difficult question.

This paper will examine further the logics of succession and secession, both in relation to critical legal theorising and in relation to sovereignty.

Tarik Kochi, Sussex School of Law, Politics and Sociology International Law and the Pin Factory

The conceptual lens through which international law has dominantly been viewed in modernity is that of state sovereignty – its limiting through custom and contract and its reassertion against the humanitarian claims of cosmopolitan legal orders. Yet, the focus upon this projected realm of territory, jurisdiction and rights has obscured another mode of thought which has played, perhaps, an even more decisive role in shaping the modern understanding of the global legal order – Adam Smith's 'pin factory'.

The image of the 'pin factory' set out by Adam Smith at the beginning of his *Wealth of Nations* (1776) develops an account of the division of labour, productivity and growth which allows a justification for the global re-ordering of sovereignty and develops a new account of politics and of global 'right'. The image might be thought to play a role in organizing and re-shaping material life and producing new subjects (Marx, Foucault), as well as de-linking traditional modes of responsibility and enabling bureaucratic harm (Bauman).

This paper considers what it might mean to think of international law through the image of the pin factory? In particular it focuses upon the way in which the image frames an understanding of global property relations, in which the pin factory's account of legitimacy attempts to trump objections grounded in claims of poverty, inequality, theft and injustice.

Connal Parsley, Melbourne Law School

Representation as a legal technology: Giorgio Agamben, representation and critique

This paper considers representation as a legal technology; one that is central to the juridical tradition and decisive in the rise of secularism and the formation of Modern law and political organization. The cipher of law's relation to life, representation is more than a technical question of "election and accountability." As an important conceptual feature of debates on political theology, Schmitt regarded it as germane to "theological and juridical argumentation and cognition." Giorgio Agamben's work features a recurrent but dispersed critique of representation which addresses precisely this dimension. Gathering the logic of his approach to representation together, it is possible to identify within it a specific strategy for disabling the juridicality of representative structures--and contrast that strategy with Carl Schmitt's orientation to political representation on the ground of the norm, with its powerful political-theological structuring of life. In considering why a critique of representation is so important to Agamben's approach to law, this paper both affirms the diagnosis of representation as essential to law and its persons, and comments on the significance of a radical scholarship of law that does not share an orientation with law's technologies, but rather attempts to disable those technologies as the paradoxical means of better understanding law's relation to life.

USEFUL INFORMATION

INTERNET ACCESS

Wireless network: Critical-Legal

Password: md393a68bm

EATING OUT: DINNER

Ultracomida Delicatessen (Spanish)

2 Bridge Street

Aberystwyth, SY23 1PY

Gwesty Cymru Restaurant (Welsh)

19 Marine Terrace

Aberystwyth, SY23 2AZ

The Orangery

10 Market Street

Aberystwyth, SY23 1DL

The Olive Branch (Greek)

35 Pier Street

Aberystwyth, SY23 2LN

Wasabi (Japanese Restaurant)

31 Eastgate Street

Aberystwyth, SY23 2AR

La Taberna (Spanish)

1 New Street

Aberystwyth, SY23 2AT

Shilam (Indian Restaurant)

Alexandra Road

Aberystwyth, SY23 1LH

Lights of Asia (Indian Restaurant)

34 Eastgate Street

Aberystwyth, SY23 2AR

Little Italy Restaurant (Italian)

51 North Parade

Aberystwyth, SY23 2JN

EATING OUT: LUNCH AND COFFEE BREAKS

In town:

The Treehouse (Organic)

14 Baker Street

Aberystwyth, SY23 2BJ

Ultracomida Delicatessen (Spanish)

2 Bridge Street

Aberystwyth, SY23 1PY

The Orangery
10 Market Street
Aberystwyth, SY23 1DL

Blue Creek Café
St James's Square
Aberystwyth, SY23 1DU

Café MG's
26 Chalybeate Street
Aberystwyth, SY23 1HX

Caesar's Cafe
North Parade
Aberystwyth, SY23 2NF

On Campus:
The Arts Centre
Ta Med Da
Penglais Campus
Aberystwyth, SY23 3DE

TAXIS

The main taxi ramp is by the train station. The journey from the station to the Department of International Politics/Arts Centre steps is about £3.50 - £4. Most companies operate very similar tariffs.

A1 Taxi
01970 611119

Aber Cars
01970 627070

Cambrian Taxi
01970 626 292

Gary's Cabs
01970 623541

Happy Taxi
01970 820555

Padarn Cars
01970 612319
01970 623322

Taxi Domino
07791062631
01970 625888